



Oria & 4 others v Maramoja Transport Limited & 2 others; SGS Kenya Ltd (Interested Party) (Employment and Labour Relations Cause E313 of 2025) [2025] KEELRC 2436 (KLR) (16 September 2025) (Ruling)

Neutral citation: [2025] KEELRC 2436 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E313 OF 2025
BOM MANANI, J
SEPTEMBER 16, 2025**

BETWEEN

**DAISY ORIA 1ST CLAIMANT
JOHN MULULU 2ND CLAIMANT
DAVID WAFULA 3RD CLAIMANT
MICHELLE MIDDII 4TH CLAIMANT
ZAKIA MOHAMMED 5TH CLAIMANT**

AND

**MARAMOJA TRANSPORT LIMITED 1ST RESPONDENT
JASON ROBERT EISEN 2ND RESPONDENT
BASTIAN BLANENBURG 3RD RESPONDENT**

AND

SGS KENYA LTD INTERESTED PARTY

RULING

Background

1. The Claimants have instituted the instant suit against the Respondents to claim for unpaid salaries as more particularly set out in the Memorandum of Claim dated 12th April 2025. Together with the Memorandum of Claim, they filed the application dated 12th April 2025 through which they seek the following orders: -

a. Spent.



- b. Spent.
 - c. That pending the hearing and determination of the suit, the 2nd and 3rd Respondents be ordered to deposit their passports in court as they are a flight risk.
 - d. That pending the hearing and determination of the suit, the Interested Party be ordered to deposit the sum of Ksh. 1,314,629.00 in a joint account in the names of the Claimants' and Respondents' Advocates.
 - e. That the costs of the application be awarded to the Claimants.
2. The application is supported by the affidavit and further affidavit of the Claimants sworn on 12th April 2025 and 6th May 2025 respectively. It is also anchored on the ground that are set out on the face thereof.
 3. In their joint supporting and further affidavits, the Claimants aver that they were all employees of the Respondents. They aver that the Respondents paid their salaries up to November 2024 where-after they defaulted in discharging this obligation. As a result, they allege that the Respondents owe them Ksh. 1,596,473.00 in salary arrears.
 4. The Claimants aver that despite efforts to have the Respondents settle the aforesaid arrears, the latter have not done so thus necessitating this court action. The Claimants contend that the Respondents have no known assets in Kenya. As a result, they (the Claimants) fear that they may lose the amount that is due to them in accrued salaries.
 5. The Claimants aver that they are aware that the Interested Party owes the Respondents the sum of Ksh. 1,314,629.00 for services rendered. They pray that the amount be attached and deposited either in court or in a joint account in the names of the lawyers for the parties pending resolution of the dispute.
 6. The Claimants aver that the 2nd and 3rd Respondents are foreign nationals. They further allege that the two Respondents have closed the 1st Respondent's offices and discharged all of the 1st Respondent's employees. The Claimants express their apprehension that the 2nd and 3rd Respondents may leave the jurisdiction of the court thus limiting their (the Claimants') hope of recovering their unpaid salaries.
 7. The application was served on the Respondents and the Interested Party. Despite this, neither of them filed their response to the motion.

Analysis

8. The court gave directions for the application under review to be heard through written submissions. At the time of issuing the aforesaid directions, the Respondents and Interested Party had not filed their responses to the motion. As such, the court gave further directions that they (the Respondents and Interested Parties) file and serve their responses on the Claimants to enable them (the Claimants) file their submissions.
9. The court record shows that despite the aforesaid directions, both the Respondents and the Interested Party did not file their respective responses to the motion. That being the case, the Claimants' advocates took the view that the application was unopposed. As such, they opted to rely on the affidavits in support of the motion without filing submissions.
10. The Claimants aver that the Interested Party is holding the sum of Ksh. 1,314,629.00 due to the 1st Respondent on account of services the 1st Respondent rendered to it (the Interested Party). On the other hand, they (the Claimants) aver that the Respondents owe them Ksh. 1,596,473.00 in salary arrears. As such, they pray that the amount due from the Interested Party to the 1st Respondent be



attached and preserved for purposes of settling the decree they anticipate with respect to their alleged outstanding salaries.

11. The Claimants express the fear that if the Interested Party pays the Respondents the aforesaid sum of Ksh. 1,314,629.00, they (the Claimants) are unlikely to recover their salary arrears since the 1st Respondent has closed down. Further, they aver that the 2nd and 3rd Respondents who are the 1st Respondent's directors and foreign nationals have shown intention of leaving the court's jurisdiction.
12. The Claimants' averments have not been challenged. The Interested Party has not denied that it is holding Ksh. 1,314,629.00 on the 1st Respondent's account. As such, the court believes that the Interested Party owes the 1st Respondent the aforesaid sum.
13. The law on attachment before judgment is now fairly settled. In the case of *David W.Ndirangu v Adijah Hassan Abdalla* [1980] eKLR, the Court of Appeal spoke to the procedure that ought to be followed by an applicant for this kind of order before the order can be issued. The applicant is expected to demonstrate that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him:-
 - a. is about to dispose of the whole or any part of his property; or
 - b. is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court.
14. The learned Judges of the Court of Appeal went further to state that if the court is satisfied about the foregoing, it is supposed to issue a notice to the defendant to appear before it to show cause why he should not be ordered to provide security for the performance of the anticipated decree. It is only if the defendant does not show cause to the satisfaction of the court that an order for attachment before judgment can issue.
15. The Claimants allege that the 2nd and 3rd Respondents have closed the 1st Respondent's offices and laid off all of its staff with intent to relocate from Kenya. They contend that the 2nd and 3rd Respondents are foreign nationals and could leave the court's jurisdiction at any time.
16. However, besides making these assertions, the Claimants have not tabled cogent evidence to demonstrate that the 1st Respondent's offices have been shut down and all of its staff laid off with the intention of exiting Kenya. As was observed in *David W.Ndirangu v Adijah Hassan Abdalla* (supra), it is not sufficient for an applicant for an order for attachment before judgment to make bare assertions that the defendant is intent on absconding from the court's jurisdiction. He (the applicant) must table cogent evidence to satisfy the court that the defendant's actions are aimed at defeating enforcement of the anticipated decree.
17. The Claimants have also sought for an order that the 2nd and 3rd Respondents deposit their passports in court. They contend that the two are foreign nationals and therefore a flight risk.
18. Despite the above bare assertions by the Claimants, they did not present evidence to demonstrate that the 2nd and 3rd Respondents are foreign nationals and that they are preparing to leave the jurisdiction of the court. Absent these evidence, the court has no basis upon which it can issue an order requiring the two Respondents to deposit their passports in court.

Determination

19. The Claimants have failed to provide preliminary material to demonstrate that the Respondents are disposing off the assets of the 1st Respondent or that they are relocating out of the court's jurisdiction



with intent to defeat the anticipated decree in the cause. Consequently, the court will not issue an order to attach the 1st Respondent's assets (including debts owed to it by the Interested Party) at this preliminary stage. Instead, the court issues an order requiring the 1st Respondent, through its directors, to appear before it on a date to be appointed to show cause why it should not furnish security for the performance of the anticipated decree herein. If the 1st Respondent fails to show cause as directed to the court's satisfaction, an order for attachment before judgment will issue forthwith.

20. Meanwhile and in order to prevent the property of the 1st Respondent from being decimated, the court issues an order to freeze payment by the Interested Party of the sum of Ksh. 1,314,629.00 to the 1st Respondent and or its agents and or servants pending finalization of this process. Accordingly, the Interested Party is prohibited from releasing the aforesaid funds to the 1st Respondent, its agents and or servants until otherwise ordered by the court.
21. The prayer that the 2nd and 3rd Respondents deposit their passports in court is declined.
22. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED ON THE 16TH SEPTEMBER, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimants

.....for the Respondents

.....for Interested Party

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

