



REPUBLIC OF KENYA



**Ndagwa v Kalita System Debt Holdings Kenya Limited (Kalita System FZC)
(Cause E089 of 2023) [2024] KEELRC 1101 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1101 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E089 OF 2023**

L NDOLO, J

MAY 16, 2024

BETWEEN

BONIFACE ODHIAMBO NYAGUTE NDAGWA CLAIMANT

AND

**KALITA SYSTEM DEBT HOLDINGS KENYA LIMITED (KALITA SYSTEM
FZC) RESPONDENT**

RULING

1. By his Notice of Motion dated 30th January 2023, the Claimant seeks orders compelling the Respondent to issue him with a certificate of service and to remit his monthly salary for part of the month of August 2022 and September 2022, including benefits and reimbursements.
2. The Motion is supported by the Claimant's own affidavit and is premised on the following grounds:
 - a. That the Claimant had been employed by the Respondent as the Executive Director for the East Africa Macro Region (Kenya, Tanzania, Rwanda and Uganda);
 - b. That the Respondent terminated the Claimant's employment on 27th September 2022;
 - c. That as at the time of termination of the Claimant's employment, the Respondent had not paid the Claimant his salary for part of the month of August 2022 and September 2022, including benefits and reimbursements due to him;
 - d. That the Claimant requested for his salary, benefits and reimbursements but the Respondent did not oblige;
 - e. That the Claimant has not had a chance to secure another means of livelihood, since his employment was terminated by the Respondent, and as such has been unable to cater for personal needs and the needs of his family;



- f. That the Respondent's actions have put the Claimant to unexplainable hardship, trouble and inconvenience both psychologically and financially;
 - g. That the Respondent's actions have put a strain on the Claimant's day to day life, as he is forced to cater for expenses while he has no money and while his salary, benefits and reimbursements are being held by the Respondent, without proper justification or reason;
 - h. That attempts to address the issue with the Respondent has been an exercise in futility as the Respondent has not honoured any demand raised by the Claimant;
 - i. That the actions of the Respondent are not only unfair but also unlawful and it is only through this Court's intervention that the Claimant's salary, allowances and reimbursements will be paid to him;
 - j. That there will be no prejudice to the Respondent if this application is allowed;
 - k. That it is in the interest of justice that the application is allowed.
3. The Respondent filed Grounds of Opposition dated 15th February 2023 stating that:
- a. The application is bad in law as the Claimant is seeking a summary determination of the claim rather than a full hearing on merit;
 - b. The application amounts to an abuse of the court process as the orders sought are similar to those sought in the main suit, which orders cannot be granted at the interlocutory stage;
 - c. The application is devoid of merit as the orders sought are mandatory in nature and cannot issue at the interlocutory stage as the Claimant has failed to demonstrate clear and special circumstances to warrant the matter to be determined summarily.
4. The Respondent also filed a replying affidavit sworn by its local director, Jeremiah Kayango Moronge on 28th February 2024.
5. Moronge depones that the Claimant's employment with the Respondent came to an end on 27th September 2022, after the parties mutually agreed to part ways. He accuses the Claimant of failing to execute a proper handover. In particular, the Claimant is said to have failed to file the relevant notifications at the Companies Registry and to hand over the Respondent's e-citizen platform login credentials.
6. Moronge swore a further affidavit on 10th March 2023, deponing that the Claimant was paid his dues through swift transfers.
7. In his supplementary affidavit sworn on 30th November 2023, the Claimant accuses the Respondent of frustrating efforts to settle the dispute out of court.
8. The Claimant claims to have performed his end of the bargain, by perfecting the handover process as agreed between the parties.
9. By his application, the Claimant seeks summary determination of his entire claim. While this procedure is available in clear cases, a party seeking to apply it must demonstrate special circumstances obtaining in their case.
10. Further, the orders sought fall within the province of mandatory injunctions which are not ordinarily issued at the interlocutory stage. In its decision in [*Joseph Kaloki t/a Royal Family Assembly v Nancy*](#)



Atieno Ouma [2020] eKLR the Court of Appeal reaffirmed the position that a mandatory injunction should not be granted at the interlocutory stage, in the absence of special circumstances.

11. Looking at the pleadings filed by the parties, there are many contested issues of fact, which can only be determined in full trial. For this reason, I find and hold that the Claimant has failed to establish special circumstances for summary determination of his claim and grant of orders in the nature of mandatory injunction at the interlocutory stage.
12. The application dated 30th January 2023 is therefore declined with costs in the cause.
13. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF MAY 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Okatch for the Claimant

No appearance for the Respondent

