



**Mbogo v Amitruck Limited (Cause E600 of 2025)
[2025] KEELRC 2712 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2712 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E600 OF 2025
SC RUTTO, J
OCTOBER 3, 2025**

BETWEEN

TUZLINE MBOGO CLAIMANT

AND

AMITRUCK LIMITED RESPONDENT

RULING

1. What is before this Court for determination is a Notice of Motion dated 25th June 2025, through which the Claimant/Applicant seeks the following orders;
 1. Spent
 2. Spent.
 3. That the Honourable court directs the respondent to produce all their financial documents including their bank details /bank accounts.
 4. That the Honourable courts direct and orders the Respondent to produce audited financial statements for the year 2023 & 2024.
 5. That the Honourable court directs and orders the Respondent to produce their management accounts/statement for the year 2024.
 6. That the Honourable court directs and orders that the respondent produces their respective registers for assets and securities.
 7. That in the alternative the Respondent do deposit Kshs 4,226,269.7/= in a joint interest earning bank account of both the claimant and the respondents advocates or before this court pending hearing and determination of the application and the suit.
 8. The costs of this application be provided.



2. The Application is premised on the grounds set out on the face thereof and the annexed Affidavit of the Claimant herein, Tuzline Mbogo, sworn on 25th June 2025. The Application is premised on the Claimant's averment that the Respondent declared all its employees redundant and is in the process of closing its business in Kenya and thereby threatens to frustrate execution. It is further averred that the Respondent has paid everyone else with the exception of the Claimant.
3. The Claimant contends she has a good arguable case and that urgent interim relief is required to protect the fruits of any future decree.
4. That further, the Respondent being in the logistics industry, has only remained with one business client (LOREAL) which they are simply managing out by the end of August 2025 (now past).
5. In response to the Application, the Respondent filed Grounds of Opposition dated 10th July 2025. The Respondent contends that:
 1. The Honourable Court lacks jurisdiction to issue the orders sought.
 2. The orders sought lack specificity, are generalized and the court cannot grant the same as prayed.
 3. In the absence of a substantive judgment, the orders sought cannot be granted.
 4. The Applicant is on a forum shopping expedition and is an abuse of court process.
 5. The Application be dismissed with costs.

Submissions

6. The Application was canvassed by way of written submissions. The Court has given due consideration to the submissions by both parties.

Analysis and Determination

7. Having considered the Application, the Respondent's Grounds of Opposition as well as rival submissions, the court has identified the following issues for determination;
 - a. Whether the Court has jurisdiction to issue the orders sought herein;
 - b. Whether the Application is merited.

Jurisdiction?

8. In its Grounds of Opposition, the Respondent has contended that this Court lacks jurisdiction to issue the orders sought. Submitting against the Application, the Respondent argues that the Mareva injunctions fall outside the specialised ambit of this Court under Section 12(3) of the *Employment and Labour Relations Court Act* (ELRC Act). On this score, the Respondent has argued that the remedy under Order 39 Rule 5 and 6 of the Civil Procedure Rules (CPR) has traditionally been exercised by the High Court in commercial disputes or commercial-related disputes. In support of its submissions, the Respondent has sought to rely on the case of *Chovondo & 3 others v Ultimate Engineering Ltd; Omido & another (Intended Respondent)* [2023] KEELRC 1269 (KLR).
9. With tremendous respect, the argument by the Respondent does not hold. I say for the reason that Section 12(3) of the ELRC Act expressly empowers this Court to grant interim preservation orders, including injunctions, where appropriate and urgent. Indeed, the foregoing statutory provision does



not limit the form of injunctive relief the Court may grant; rather, the operative question is whether the dispute arises out of employment or labour relations.

10. It is evident from the record that the dispute herein arises out of the Claimant's employment relationship with the Respondent and relates to termination of employment and payment of attendant benefits.
11. To this end, the Court finds that it has jurisdiction to consider and, where appropriate, grant interim injunctive relief. As such, the objection with respect to jurisdiction lacks merit.

Merit of the Application

12. The Claimant has sought an order of Mareva injunction to freeze any transfer, sale or removal from the Kenyan Jurisdiction of any assets of the company, monies held at NCBA Bank, Kenya Commercial Bank Accounts and /or any Bank Account held by the Respondent in any other bank within the jurisdiction of this Court.
13. The Claimant's Application is founded on Order 39 Rule 5 of the Civil Procedure Rules, which is essentially the substance of a Mareva injunction. It is essential to note that Order 39 Rule 5(2) requires an applicant to specify the property sought to be attached and provide an estimated value thereof, unless the Court otherwise directs. This specificity is material because freezing orders operate harshly on a respondent by restricting the use of property and funds.
14. In the present case, the Application does not identify specific assets or the bank accounts sought to be frozen. Indeed, the Claimant merely seeks a blanket freezing order against any assets or monies of the Respondent held in NCBA, KCB or "any bank account" within the jurisdiction. Needless to say, the order sought by the Claimant is overly broad.
15. As it is, there is no affidavit evidence before the Court showing that the Respondent in fact holds monies in the specific banks cited, nor evidence of particular assets susceptible to attachment. Therefore, the Claimant's averments on the removal of assets are general and speculative.
16. In the absence of particularised evidence of assets within the jurisdiction and of a real risk of dissipation of those assets, the Court is not persuaded that the Claimant has satisfied the threshold for the grant of a Mareva injunction.
17. For these reasons, the Court declines to grant the Mareva injunction sought.
18. The Claimant has sought an order in the alternative to the effect that the Respondent deposits the sum of Kshs 4,226,268.70 in a joint interest-earning bank account held by her advocates and the Respondent's advocates or in this court pending hearing and determination of the suit.
19. The basis of the Claimant's application is that the Respondent has declared all its employees redundant and she is aware that the Respondent is in the process of closing up its business in Kenya, therefore escaping the jurisdiction of this court. The Claimant has further averred that she is the only employee who has not been paid following the redundancy exercise by the Respondent.
20. The Respondent did not file a substantive response denying or addressing the Claimant's factual assertions. Instead, it filed Grounds of Opposition through which it advanced legal objections without rebutting the factual foundation of the Application.
21. In support of her Application, the Claimant annexed a copy of a demand letter dated 13th June 2025 from the Respondent's Advocate in which they admit that the Respondent owes the Claimant the sum of Kshs. 176,269.00.



- 22. A perusal of the Claimant’s claim indicates that she is claiming inter alia, the balance of her redundancy pay being the sum of Kshs. 176,269.70.
- 23. Rule 68(3) of the Employment and Labour Relations Court (Procedure) Rules (2024) provides as follows with respect to the deposit of security of the relief during the pendency of a suit:

“Where it is shown that the satisfaction of a relief as may be granted in a pending suit may be defeated or frustrated, the Court may, upon application, make an order imposing conditions including deposit of security for due satisfaction of the relief if the applicant is successful upon final determination of the suit.”
- 24. Applying Rule 68(3) to the present case, and having regard to the Respondent’s admission in response to the Claimant’s demand letter that the Respondent owes the Claimant Kshs. 176,269.70, together with the uncontroverted factual position that other employees were paid following redundancy except the Claimant, and the Respondent’s alleged winding up of local operations, the Court is persuaded that there is sufficient cause to order protective relief in the form of a deposit of security.
- 25. Be that as it may, the Court is not persuaded that a deposit of the larger sum of Kshs. 4,226,269.70 claimed in the Notice of Motion is warranted at this juncture. In the Court’s view, the sum of Kshs. 176,269.70, which represents the balance of the Claimant’s redundancy pay, is sufficient security.
- 26. To this end, the Notice of Motion dated 25th June 2025 succeeds in part. Consequently, the Respondent is hereby directed to deposit the sum of Kshs. 176,269.70, into a joint interest-earning bank account in the names of the advocates on record for the parties within thirty (30) days from the date of this Ruling.
- 27. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2025.

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STELLA RUTTO
JUDGE

In the presence of :

Mr. Wafula for the Claimant/Applicant

Mr. Chadianya for the Respondent

Millicent Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules , which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

