



**Kioko v Singh Retread Limited & 4 others (Cause E883 of 2024)
[2025] KEELRC 365 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 365 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E883 OF 2024
CN BAARI, J
FEBRUARY 13, 2025**

BETWEEN

JOHN KITHIMBA KIOKO CLAIMANT

AND

SINGH RETREAD LIMITED 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

KENYA REVENUE AUTHORITY 3RD RESPONDENT

NATIONAL SOCIAL SECURITY FUND 4TH RESPONDENT

**DIRECTOR, OCCUPATIONAL SAFETY AND HEALTH SERVICES 5TH
RESPONDENT**

RULING

Introduction

1. Before Court is the Claimant/Applicant’s motion dated 25th October, 2024, brought pursuant to Order 10 Rule 8 of the Civil Procedure Rules and Section 25 of the *Civil Procedure Act*. The Applicant seeks the following orders: -
 - i. Spent
 - ii. Spent
 - iii. Spent
 - iv. That pending the hearing and determination of the cause the Honourable Court be pleased to issue an order compelling the Managing Trustee of the 4th Respondent to before hearing of the instant Claim appoint a Compliance Officer pursuant to Section 17 of the National Security



Fund Act CAP 258 to enter inspect and examine, produce and report back to Court detailing mandatory contributions if any by the 1st Respondent and Claimant for the period April 2011 to January 2024.

- v. That the costs of this application be provided for.
2. The application is supported by the grounds on the face of the Motion and the affidavit of Solomon Akanga, counsel on record for the Claimant.
 3. The crux of the motion is that since filing of the claim herein, the 1st Respondent has been in the process of fabricating crucial evidence that could affect the outcome of the case, and that it has further through 3rd Parties been intimidating and threatening the Claimant to withdraw the case.
 4. The Claimant avers that he fears that his life could be in danger and is further afraid that crucial evidence that ought to be relied upon in the claim could be lost or compromised.
 5. The 3rd Respondent opposed the motion vide grounds of opposition dated 4th December, 2024. The 5th Respondent through the 2nd Respondent, similarly opposed the motion vide a Replying affidavit sworn by one Justus Bosire Nyakego on 30th October, 2024.
 6. On its part, the 3rd Respondent states that this Court lacks the jurisdiction to issue the orders sought against the 3rd Respondent. It avers that pursuant to the provisions of the *Income Tax Act* and the *Tax Procedures Act*, 2015 there are clear and statutory procedures for compliance with tax laws.
 7. It states further that pursuant to the provisions of Section 37 of the *Income Tax Act*, 2015 the statutory obligation to deduct and account for PAYE lies squarely on the employer and recovery of the taxes can never be on the employee.
 8. It is the 3rd Respondent's assertion that pursuant to the provisions of Section 6 of the *Tax Procedures Act*, 2015, it is bound by confidentiality from disclosure of the 1st Respondent's tax information to third parties.
 9. It finally states that pursuant to the provisions of Section 72 of the *Tax Procedures Act*, 2015, the Claimant is legally allowed to apply for a tax compliance certificate to the 3rd Respondent and not before this Court.
 10. The 5th Respondent on its part, denies failure and/or refusal to promote workplace safety and health and therefore ensure adherence to the provisions of the *Occupational safety and Health Act*, 2007 and its subsidiary legislations as well as adherence to the provisions of the *Work Injury Benefits Act*, 2007 in workplaces contrary to the allegations by the Claimant.
 11. It states further that the Claimant did not and has not attempted to seek any assistance regarding his Occupational Safety and Health and work injury compensation from the 5th Respondent and has not been turned away in attempting to do so.
 12. It is its assertion that the Claimant did not and has not attempted to report an occupational accident or disease to the 5th Respondent in accordance with section 22(5) of the *Work Injury Benefits Act*, 2007 in order to be assisted.
 13. It further avers that the Claimant is seeking to be compensated for injuries allegedly sustained at work without having been assessed and computation made in accordance with sections 28 and 30 of the *Work Injury Benefits Act*, 2007. That the Claimant has not sought for any medical examination by the Work Injury Evaluation Clinic constituted by medical practitioners who have been availed by the 5th Respondent to conduct medical examinations to workers.



14. It states that due administrative process as availed by the 5th Respondent was not utilized and exhausted by the Claimant to warrant this Directorate being a 5th Respondent in this suit in light of alleged grounds stated by the Claimant in his Memorandum of Claim and Statement.
15. Parties were directed to file submissions on the motion. Only the Claimant filed submissions and which have been duly considered.

Determination

16. I have considered the application, the grounds and the affidavit in support, the replying affidavit, the grounds of opposition and the Applicant's submissions. The issue for determination is whether the Applicant is deserving of the order sought.
17. I note that out of the four prayers subject of the instant motion, only prayer number 4 is the subject of this determination, as the other three are now spent.
18. In his motion, the Applicant seeks an order compelling the managing trustee of the 4th Respondent to before the hearing of the claim, appoint a compliance officer to enter, inspect and examine and produce to court a report detailing mandatory contributions by the 1st Respondent and the Claimant for the period April, 2011 to January, 2024.
19. The basis for this prayer from his motion, is that since filing of the claim, the 1st Respondent has been in the process of fabricating crucial evidence that could affect the outcome of the case, and that it has further through 3rd Parties has been intimidating and threatening him to withdraw the case.
20. It is his assertion that he fears that crucial evidence that ought to be relied upon in the claim could be lost or compromised.
21. I note for starters that what the Claimant/Applicant seeks to have produced relates to statutory deductions that the 1st Respondent is required by law to deduct and remit on behalf of the Claimant/Applicant in respect of the National Social Security Fund.
22. Ideally, what the Managing Trustee of the NSSF issues as prove of such deductions, is a statement of the employee's account which details both the employer and the employee's contributions.
23. The Applicant has not shown how evidence of such a nature could be under threat of either being lost or compromised. Further, the evidence on whether the deductions were made or not is not within the custody of the 1st Respondent as to be compromised before the Applicant's claim is heard or at all.
24. In the premise, I find and hold that the Applicant's motion is devoid of any legal basis and is for dismissal.
25. On whether the 3rd Respondent should be removed from this proceeding, I do order that it files a formal application for such removal.
26. The motion is dismissed with costs in the cause.
27. Orders of the Court.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 13TH DAY OF FEBRUARY, 2025.

C. N. BAARI

JUDGE



Appearance:

Mr. Akanga present for the Claimant/Applicant

N/A for the 1st Respondent

N/A for the 2nd Respondent

Ms. Gitau present for the 3rd Respondent

N/A present for the 4th Respondent

N/A for the 5th Respondent

Ms. Esther S -C/A

