



REPUBLIC OF KENYA



KENYA LAW
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**Nasimiyu v Hongkong Qingyutang Biotechnology Co. Kenya Limited
(Cause E311 of 2025) [2025] KEELRC 2250 (KLR) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2250 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E311 OF 2025
SC RUTTO, J
JULY 25, 2025**

BETWEEN

JUDITH NASIMIYU APPLICANT

AND

**HONGKONG QINGYUTANG BIOTECHNOLOGY CO. KENYA
LIMITED RESPONDENT**

RULING

1. What is before this Court for determination is a Notice of Motion dated 18th March 2024, through which the Claimant/Applicant seeks the following orders;
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 3. Spent.
 4. That a Mareva injunction be issued restraining the Respondent, its agents, servants, employees from selling and or disposing off the wellness machine pending the hearing and determination of the main suit.
 5. That in the alternative to prayers 2,3 and 4 above, the Respondent be ordered to deposit/ furnish security to this Honourable Court in the sum of Kshs 1,061,532/=, the same being the amount claimed by the Claimant/applicant in the memorandum of claim, pending hearing and determination of the Claim.
 6. That the costs of this application be provided for.
2. The Application is premised on the grounds set out on the face thereof and the annexed Affidavit of the Claimant, Judith Nasimiyu, sworn on 18th March 2025. Grounds in support of the Application are



- that the Claimant was employed by the Respondent in January 2023 as a director in the Respondent company. She carried out her duties diligently, but the Respondent stopped remitting her salary as agreed without any valid/lawful reasons.
3. The Claimant avers that as at now, the Respondent owes her Kshs 900,000/= in unpaid salary and Kshs 162,532/= in unpaid leave days all totalling Kshs 1,061,532/=.
 4. It is further averred that the shareholders of the Respondent company are foreigners and the Claimant is apprehensive that they shall close business and /or dispose off the wellness machine or move the said machine from the local limits of the jurisdiction of the court, before judgment so as to defeat the claim.
 5. The Respondent has opposed the Application through the Replying Affidavit of Liu Cai Hong, who has described himself as a Director and shareholder in the Company. Mr. Hong deposes that the Claimant is a Director of the Respondent Company and not an employee as she purports to claim. That therefore, the relationship between the Claimant and the Respondent is that of a director-company relationship and not an employee-employer relationship.
 6. Mr. Hong further avers that, given the true nature of the relationship between the parties, this Court lacks jurisdiction to entertain the dispute.
 7. According to Mr. Hong, most of the averments in the Claimant's Supporting Affidavit are complete falsehoods cleverly designed to mislead this Honourable court into falling prey to her selfish and unfounded demands.
 8. Mr. Hong further asserts that the Claimant's sudden claim of lack of payment without valid reasons is both surprising and suspect, given that she is one of the directors of the Company and not an employee.
 9. Mr. Hong further disputes that the Respondent has never entered into an agreement with the Claimant.
 10. According to Mr. Hong, the Respondent Company is fully compliant with the [Companies Act](#) regarding the filing of annual returns and maintenance of statutory registers and records, demonstrating its commitment to continued operation in Kenya.
 11. That further, the wellness machine is a critical component of the company's core business and cannot be disposed of without significantly affecting operations.
 12. It is Mr. Hong's further assertion that the Respondent has made genuine efforts to maintain business operations and that the Claimant's sudden concern about asset disposal is nothing more than a poorly veiled attempt to extract undue financial benefits.

Submissions

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

Analysis and Determination

14. Having considered the Application, the Respondent's response as well as rival submissions, it is evident that the singular issue arising for determination is whether the Application is merited.
15. The Applicant has sought an order to compel the Respondent to deposit/furnish security to this Court in the sum of Kshs 1,061,532/= pending hearing and determination of the suit herein and in the alternative, the Court to issue a Mareva injunction restraining the Respondent from selling and or disposing off the wellness machine pending the hearing and determination of the suit herein.



16. Order 39 Rules 5 and 6 of the [Civil Procedure Rules](#) deal with the attachment before judgment which is essentially the substance of a Mareva injunction. It applies in situations where the Respondent is about to dispose of or remove property from the jurisdiction of the court.
17. As can be discerned from Order 39 Rule 5 of the [Civil Procedure Rules](#), an applicant is required to show that the defendant is about to dispose of the whole or any part of his property or to remove it from the local limits of the court's jurisdiction, and that the purpose or intent of doing so is to obstruct or delay the execution of any decree passed against the defendant. If the applicant demonstrates that those requirements are present, the Court may direct the defendant to provide security within a time to be fixed by the Court or order the defendant to show cause why he should not furnish such security, or the Court may also order the conditional attachment of the property or a portion of it.
18. The Court of Appeal addressed this issue extensively in the case of *Kuria Kanyoko t/a Amigos Bar and Restaurant v Francis Kinuthia Nderu & others* (1988) 2KAR 126 and had this to say:

“The power to attach before Judgment must not be exercised lightly and only upon clear proof of mischief aimed at by order 38 rule 5, namely that the Defendant was about to dispose of his property or to remove it from the jurisdiction with intent to obstruct or delay any decree that may be passed against him”.
19. And further, in *Saving and Loan Kenya Limited v Erustus Mwangi Mungai* Nairobi High Court Civil Case No. 775 of 2000, the Court observed that before a Court can either order a defendant to furnish security or attach his property conditionally before judgment, it must be satisfied that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is either about to dispose of the whole of his property or is about to remove his property from the jurisdiction of the court and that mere apprehension however well-grounded without evidence that the defendant intends to do what is feared does not suffice.
20. In the present case, the main ground advanced by the Claimant in support of her Application is that the shareholders of the Respondent company are foreigners and she is apprehensive that they shall close business and or dispose off the wellness machine or move it from the local limits of the jurisdiction of this court.
21. Opposing the Claimant's Application, the Respondent has argued that the Claimant is a director in the Respondent company and is not an employee as she purports. The Respondent further avers that it is fully compliant with the [Companies Act](#), demonstrating its commitment to continued operation in Kenya. That further, the wellness machine is a critical component of the Respondent's core business and cannot be disposed off without significantly affecting its operations.
22. Applying the provisions of Order 39 Rule 5 to the instant case and having considered the rival positions advanced herein, it is apparent that there is no evidence on record that the Respondent has intent to obstruct and delay the trial of the Claimant's suit or has disposed or is about to dispose of its properties or about to remove the same from the local limits of the Court's jurisdiction.
23. What is before the court are mere allegations that are yet to be tested through evidence.
24. Indeed, the mere fact that the shareholders of the Respondent company are foreigners is not a sufficient ground for ordering attachment before Judgment under Order 39 Rule 5. This is unless it is further established that there is intent by the Respondents to defeat or delay execution of the decree that may be passed against them. At this point in time, there is no evidence establishing as much.



25. Further to the foregoing, it should be appreciated that the power to attach before judgment must not be exercised lightly. It can only be exercised upon clear proof of mischief that the defendant was about to dispose of his property or to remove it from the Court's jurisdiction with intent to obstruct or delay any decree that may be passed against him. On this issue, the court adopts the finding in *Saving and Loan Kenya Limited v Erustus Mwangi Mungai (supra)* that mere apprehension, however well grounded, without evidence that the defendant intends to do what is feared, does not suffice.
26. What's more, in the present case, the Claimant has not disputed the Respondent's assertions that the wellness machine is a critical component of its core business and cannot be disposed off without significantly affecting its operations.

Orders

27. To this end, the Court declines to grant the orders sought in the Application dated 18th March 2025.
28. Accordingly, the Application is dismissed with an order that costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Ms. Munyasya instructed by Ms. Soi for the Claimant/Applicant

Mr. Sang instructed by Mr. Owuondo 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.

