



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwanga v Eden Reforestation Projects (Cause E088 of 2022)  
[2024] KEELRC 333 (KLR) (14 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 333 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E088 OF 2022  
DKN MARETE, J  
FEBRUARY 14, 2024**

**BETWEEN**

**VICTOR MWANGA ..... CLAIMANT**

**AND**

**EDEN REFORESTATION PROJECTS ..... RESPONDENT**

**RULING**

1. This is an application dated November 28, 2023 and seeks the following orders of court;
  1. That this Application herein be certified urgent and be heard Ex-parte in the first instance.
  2. That the Respondent be directed to deposit the sum of Kshs.15 Million as security for the Claimant/Applicant's Claim to act as security for the anticipated Judgment by this Honourable Court pending the delivery of Judgment as following the conclusion of the hearing of the matter.
  3. That the costs of this application be paid for by the Respondent.
2. The application is *inter alia* grounded on the fact that the Claimant/Applicant is apprehensive and has reason to believe that the Respondent is in the process of winding up its operations and leaving the jurisdiction of this court.
3. Further, the Respondent is believed to be in the process of closing its operation in the country and has served her employees with a notice of intention to declare them redundant due to lack of donor funding.
4. The application is further supported by an affidavit of the Claimant/Applicant sworn on even date. This sets out the facts in support of the case and documentary evidence on the subject.



5. The Respondent in a Respondent's Replying Affidavit sworn on 4th January, 2024 opposes the application and denies that she is indeed winding up her activities and answers as follow;

5. That with this background in mind, I wish to respond as follows to the Applicant's allegations:-

- a. In response to paragraph 6 of the Applicant's Supporting Affidavit, I confirm that indeed, some of the Respondent's employees were declared redundant. However, it is important to clarify that the redundancy relates to the Respondent's Ngomeni site, one site within the Respondent's project portfolio. The decision to close the Ngomeni site and lay off employees at the site was prompted by the cessation of active donor funding for the specific site, rendering the operations therein unsustainable.
- b. In response to paragraph 7 of the Applicant's Supporting Affidavit, it is not true to assert that the referenced media article (published in August 2023) implies a general cessation of the Respondent's operations in Kenya. A clear reading of the article reveals that it is specific to the Respondent's Gwassi restoration site, and not a discontinuation of the respondent's overall operation in Kenya. The Ngomeni and Gwassi sites received funding from the same donor. Consequently, when the donor funding for the sites ceased, the Respondent was compelled to suspend its operations in both sites.

6. That the Respondent continues with its normal operations in over 30 other sites in Kenya.

7. That in the circumstances, and contrary to the Applicant's assertions at paragraphs 6 and 7 of his Supporting Affidavit, I confirm that the Respondent has not discontinued its operations in Kenya. There is no intention, nor has there been any intention, on the part of the Respondent to leave the jurisdiction of this Honourable Court, as alleged by the Applicant.

10. That in the circumstances, there is no valid justification for the issuance of an order for security of costs, especially at this stage in the proceedings when the hearing is long concluded, and the case is awaiting judgment. The Applicant's prayer for security of costs lacks both legal and factual foundation, and the substantial amount sought of Kes.15 million has no basis and has not been substantiated in any manner.

6. In the penultimate, the Respondent deems the application unmeritorious and misplaced in both fact and law. She submits it is a gross abuse of the process of court and should therefore be dismissed with costs.

7. The parties also filed their respective written submissions in support of their cases in the application. The Claimant/Applicant submit that he is likely to suffer irreparable harm if these orders are not granted and in the event of the Respondent leaving the jurisdiction of court and therefore defeating his claim. He seeks to rely on authority of *Monica Imali Muliango v Catherine Masaka*, ELRC Cause No. 989 of 2018 where similar orders were issued in the circumstances.

8. The Respondent on the other hand raise out various authorities in opposition to the application. These authorities were anchored on the grounds of offer for security or attachment before judgment as follows;

“The power to attach before judgment must not be exercised lightly and only upon clear proof of the mischief aimed at by order 38, Rule 5, namely that the Defendant was about to dispose off his property or to remove it from the jurisdiction with intent to obstruct or delay any decree that may be passed against him.” This is, in addition to the authorities of *Kuria*



9. It is the Respondent's case and submission that the Claimant/Applicant has failed to demonstrate that there is a valid justification for the issuance of an order of security of costs especially at this stage of proceedings. The application lacks both legal and factual foundation and that the substantial amounts of Kshs.15 million has not been substantiated in any manner.
10. In view of the fact that the court has fully had and judgment is nigh, the application is not meritorious and should be dismissed.
11. I agree with the Respondent. A factual and legal scrutiny of this matter tilts in favour of the Respondent's case. There is no sufficient evidence of the allegations in support of application. The application is therefore only material for dismissal for want of merit and I so order.

**DELIVERED, DATED AND SIGNED THIS 14TH DAY OF FEBRUARY 2024.**

**D. K. NJAGI MARETE**

**JUDGE**

**Appearances:**

Miss Okondo holding brief for Guserwa instructed by J.A Guserwa & Company Advocates for Claimant/Applicant.

Mr. Kyalo holding brief for Munyu instructed by Iseme, Kamau & Maema Advocate for the Respondent.

