



**Amadi v Great Lakes University of Kisumu (Cause E071 of 2023)
[2024] KEELRC 1207 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1207 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E071 OF 2023**

**S RADIDO, J
MAY 22, 2024**

BETWEEN

PROF ANNE ATIENO AMADI CLAIMANT

AND

GREAT LAKES UNIVERSITY OF KISUMU RESPONDENT

RULING

1. Prof Anne Atieno Amadi (the Claimant) sued the Great Lakes University of Kisumu (the Respondent) asserting breach of contract.
2. On 5 March 2024, the Respondent filed a Motion seeking orders:
 - i. That the Claimant be ordered to furnish security for the costs of the suit.
 - ii. That the costs of this application be provided for.
3. The grounds in support of the Motion were that the Claimant had absconded the jurisdiction of the Court after a warrant of arrest had been issued for her arrest after a finding of contempt of court in Kisumu Chief Magistrate Court Civil Case No. E017 of 2020. The Court had ordered the Claimant to hand over after dismissal from the service of the Respondent.
4. The Claimant filed a replying affidavit in opposition to the Motion on 21 March 2024. In the affidavit, the Claimant challenged the competence of the application on the ground that the supporting affidavit had been sworn on 20 February 2024, whilst the Motion was dated 5 March 2024. The Claimant also deponed that she had already planned to leave the country by the time the purported warrants were issued.
5. The Claimant further deponed that she had requested the Respondent in writing to facilitate her hand over including to one of her deputies, but her letters were never acknowledged.



6. The Claimant asserted that she was employed in the United States of America, had visited Kenya several times and was capable of satisfying an order on costs were the Court to make such an order.
7. With respect to the warrants of arrest, the Claimant appeared to acknowledge that warrants were issued against her on 22 December 2020, the same day she left the country.
8. The Court has given due consideration to the Motion, affidavits and submissions.
9. The provision of security for costs is envisaged by Order 26 of the Civil Procedure Rules. However, it must not be lost to a Court of law that when dealing with an application for security for costs, it does not issue an order impeding a person's right to access justice.
10. The principles governing an order for security for costs were espoused in *Jayesh Hasmukh Shah v Narin Haira & Ar* (2015) eKLR as follows;

It is now settled law the order for security for costs is a discretionary one as long as that discretion is exercised reasonably, and having regard to the circumstances of each case. Such factors as absence of known assets in the Country, absence of an office within the jurisdiction of the court, inability to pay costs; the general financial standing or wellness of the plaintiff; the bona fides of the plaintiff's claim, or any other relevant circumstances or conduct of the plaintiff or defendant may be taken into account.

11. In *Gatirau Peter Munya v Dickson Mwenda Githinji & 2 Ors* (2014) eKLR, the Supreme Court emphasized that:

In an application for further security for costs, the Applicant ought to establish that the Respondent, if unsuccessful in the proceedings, would be unable to pay costs due to poverty. It is not enough to allege that a Respondent will be unable to pay costs in the event that he is unsuccessful. And the onus is on the Applicant to prove such inability or lack of good faith that would make an order for security reasonable.

12. In *Shah v Shah* (1982) KLR 95 it was held that:

The general rule is that security is normally required from Plaintiff's resident outside the jurisdiction, but as was agreed in the Court below, a Court has discretion, to be exercised reasonably and judicially, to refuse to order that security be given.

13. In the present suit, it is not disputed that the Claimant is currently outside the jurisdiction of the Court. There were Court proceedings before the lower Court in which injunctive orders were issued. Despite asserting that she was not served with the orders, the Claimant deposed in her replying affidavit that she moved unsuccessfully to have the orders set aside. The Claimant also acknowledged that a warrant of arrest was purportedly issued on 22 December 2020 against her, the same day she left the country.
14. The Respondent did not controvert the Claimant's deposition that she is in gainful employment in the United States of America or that she has visited the country several times after the warrant of arrest was issued. There was no suggestion that the Claimant had relocated for good from the jurisdiction of the Court or that she did not own any assets within.
15. The Respondent has not lodged a Counterclaim against the Claimant in spite of securing leave of the Court.
16. The Court finds that the Respondent has not made a case for deposit of security for costs.



Orders

17. From the above, the Motion dated 5 March 2024 is dismissed with costs in the cause.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 22ND DAY OF MAY 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant ROW Advocates LLP

For Respondent Owiti, Otieno & Ragot Advocates

Court Assistant Chemwolo

