



REPUBLIC OF KENYA



KENYA LAW
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**Muthoga v Devkan Enterprises (Cause E935 of 2023)
[2024] KEELRC 1452 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1452 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E935 OF 2023**

**J RIKA, J
JUNE 14, 2024**

BETWEEN

NANCY WAMBUI MUTHOGA CLAIMANT

AND

DEVKAN ENTERPRISES RESPONDENT

RULING

1. The Claimant filed two applications, the first dated 16th November 2023, the second, 21st November 2023.
2. The first seeks an order of mandatory injunction, compelling the Respondent to pay the Claimant arrears of salary, from October 2022, to 22nd September 2023.
3. The second seeks an order of mandatory injunction, directing the Respondent to release and transfer to the Claimant, motor vehicle registration number xxxx, a Nissan Note. She also seeks in the alternative to release and transfer, refund of Kshs. 465,000, which she states, was deducted by the Respondent from her salary, towards her purchase of the motor vehicle.
4. The applications are founded on the respective affidavits of the Claimant, Nancy Wambui Muthoga.
5. The Claimant explains that the Respondent terminated her contract on 22nd October 2023, without paying her arrears of salary. She cannot meet her daily needs. She cannot pay her rent, buy food, and meet the cost of her water and electricity utilities. She states that her arrears of salary are protected and immediately payable, invoking Sections 17 and 18 of the *Employment Act*. She submits that special circumstances exist, to compel the Respondent to immediately pay her arrears of salary.
6. She explains that she was offered the vehicle by the Respondent, whose cost, would be deducted from her salary. She paid Kshs. 465,000, but the Respondent retains the motor vehicle.



7. The applications are opposed through the affidavits of an officer of the Respondent, Meehir Shah, sworn on 27th December 2023. The Respondent alleges that the Claimant owes the Respondent Kshs 2 million; she is not owed any salary; it is in dispute whether the Claimant paid for the motor vehicle; and the ownership of the motor vehicle is similarly in dispute. The Respondent submits that an order of mandatory injunction will only be granted on interlocutory application, where special circumstances exist.
8. The Respondent submits that grant of the orders would result in grant of a major part of the Claim, a result against which the Court of Appeal cautioned, in *Kenya Breweries Limited & another v Washington O. Okeyo* CA 332/ 2000.
9. Parties agreed to have the applications considered and determined, on the strength of their affidavits and submissions.

The Court Finds: -

10. There is nothing in Sections 17 and 18 of the *Employment Act*, which allows the Court to grant prayers for salary arrears summarily.
11. The Claimant has pleaded the prayers for salary arrears, release, transfer and/or refund of purchase price for the disputed motor vehicle, through her Statement of Claim. The prayers are a major part of the substantive dispute, and cannot be granted summarily, without the benefit of a full hearing.
12. The Court is bound by the decisions of the Court of Appeal on the subject, which have been cited by the Respondent. In *Lucy Wangui Gachara v Minudi Okemba Lore* [2015] eKLR, the Court of Appeal held that except in the clearest of cases, the right of parties to a fair and proper hearing of their dispute, entailing calling and cross-examination of witnesses, must not be sacrificed or substituted by a summary hearing.
13. In *Joseph Kitbokoi Mutia v Kenya Power & Lighting Company Limited* [2016] eKLR, the Court of Appeal stated that grant of an order of mandatory injunction, would amount to grant of a major part of the relief claimed in the action, and the Court should therefore only allow an order of mandatory injunction, in the clearest of cases. The case has to be unusually clear and strong, before an order of mandatory injunction is granted. This is so even if it is sought to enforce contractual obligations. The Claimant seeks to enforce contractual and statutory obligations, and must prosecute her Claim in full, to enforce those obligations.
14. She must abide the full hearing and outcome of her Claim, to enjoy the orders she seeks through her two interlocutory applications. The Respondent's right to a fair hearing, must not be disregarded by granting the Claimant her claims in a summary form. It is a right that is equally protected in law.

It is ordered:-

- a. The applications filed by the Claimant, dated 16th November 2023 and 21st November 2023 are declined.
- b. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS 2020, THIS DAY 14TH OF JUNE 2024.

JAMES RIKA



JUDGE

