



Guantai & 8 others v Sokowatch Ltd t/a Wasoko & another (Cause E076 of 2024) [2024] KEELRC 13401 (KLR) (7 November 2024) (Ruling)

Neutral citation: [2024] KEELRC 13401 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E076 OF 2024
S RADIDO, J
NOVEMBER 7, 2024**

BETWEEN

**DANNIS KIMATHI GUANTAI 1ST CLAIMANT
MICHAEL GATONYE THEURI 2ND CLAIMANT
DAVID WAIREGI MBUGUA 3RD CLAIMANT
STEPHENZ MWANGI WAWERU 4TH CLAIMANT
JOSEPH MUCHIRI WANJIRU 5TH CLAIMANT
LUCY KITHIA KIAMBA 6TH CLAIMANT
IVY WAITHAKA 7TH CLAIMANT
CAROLINE WANJUGU 8TH CLAIMANT
PATRICIA NYAMWAYA GESIMBA 9TH CLAIMANT**

AND

**SOKOWATCH LTD T/A WASOKO 1ST RESPONDENT
MAXAB LTD 2ND RESPONDENT**

RULING

1. The Claimants sued the Respondent and Interested Party alleging unfair termination of employment and breach of contract.
2. Filed together with the Memorandum of Claim was an application seeking interim injunctive relief. The Court granted interim injunctive relief at the ex-parte stage. The orders were extended on 14 March 2024, pending the determination of the Motion.



3. The Respondent then moved the Court through a Motion dated 25 March 2024 to discharge the interim orders (amongst other orders).
4. The Court delivered a Ruling on the Motion on 11 June 2024 vacating the injunctive orders. The Court made no order as to costs of the Motion.
5. The Court further ordered that the Cause be progressed to a hearing on the merits.
6. It appears that before the Ruling, the 4th Claimant and Respondent entered into out of court negotiations and an agreement was reached and signed on 13 May 2024.
7. A few days earlier, the 4th Claimant prepared a Notice of Withdrawal of his claim against the Respondent.
8. On 15 May 2024, the 4th Claimant's advocate notified the Court of the consent settling the dispute as between him and the Respondent.
9. On or around 15 July 2024, the remaining Claimants filed a Notice of Withdrawal of the Cause. The Notice was silent as to the question of costs.
10. When the parties appeared before the Deputy Registrar on 29 August 2024, the Respondent urged that it be awarded costs. The Deputy Registrar referred the costs question to the Court.
11. This Court took brief oral submissions on the question of costs on 14 October 2024.
12. The Claimants urged that each party should bear own costs because the Cause had not been set down for pre-trial; the Respondent had not filed a Response to the Memorandum of Claim; the Claimants were unemployed and a costs order would affect them adversely and that section 27 of the [Civil Procedure Act](#) granted the Court discretion to determine who to bear the costs of an action.
13. The Respondent and Interested Party submitted that since the Court had faulted the conduct of the Claimants in the Ruling of 11 June 2024, costs should be awarded; the Notice of Withdrawal had not been served and that by the time the Notice was filed, the Respondent was ready and preparing to file a Response.
14. The Interested Party asserted that it had been dragged into the dispute yet it was not in any contractual relationship with the Claimants.
15. The Court has considered the record and submissions.
16. The primary statutory anchor to the awards of costs before the Employment and Labour Relations Court is section 12(4) of the Employment and Labour Relations Courts Act and not the provisions of the [Civil Procedure Act](#) or Rules.
17. Under the aforesaid section 12(4) of the [Employment and Labour Relations Court Act](#), the Court is required to make such orders on costs as the Court considers just.
18. The Court is thus clothed with a discretion which should be exercised judiciously. In exercise of the discretion, the Court should look at the circumstances of each case.
19. In the circumstances of the instant Cause, the Respondents had not filed a Response within the prescribed timelines.
20. There was a Motion on record. When the Motion came up for inter partes hearing on 5 February 2024, it was adjourned at the instance of the Respondent.



21. The Court directed the Respondent to file and serve a replying affidavit within set timelines. The notes of proceedings for 13 February 2024 show that the Respondent did not comply within the timelines.
22. On or around 2 April 2024, the Respondent filed a Motion under certificate of urgency. The Court directed the Respondent to serve the application ahead of hearing on 15 April 2024. On the said date, it turned out that the Respondent had not served properly and the Court directed fresh service.
23. The Court also notes that the Cause had not been set down for a hearing and that the Court had in a Ruling delivered on 11 June 2024 alluded to the Claimants undeserving conduct.
24. Taking the above in consideration, it is the view of this Court that each party should bear own costs.

Orders

25. The Court determines and orders each party to bear own costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 7TH DAY OF NOVEMBER 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimants Kiriinya & Achieng Advocates

For Respondent MW & Co Advocates LLP

For Interested Party Kimani & Muriithi Associates Advocates

Court Assistant Wangu

