



Sonawane & 62 others v Mediheal Group Limited & 16 others; Eshikhoni Auctioneers (Interested Party) (Employment and Labour Relations Cause E006 of 2024) [2024] KEELRC 13474 (KLR) (19 December 2024) (Ruling)

Neutral citation: [2024] KEELRC 13474 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E006 OF 2024
AN MWAURE, J
DECEMBER 19, 2024**

BETWEEN

PAWAN KUMAR SONAWANE & 62 OTHERS & 62 OTHERS & 62 OTHERS & 62 OTHERS & 62 OTHERS APPLICANT

AND

MEDIHEAL GROUP LIMITED & 16 OTHERS & 16 OTHERS & 16 OTHERS & 16 OTHERS & 16 OTHERS RESPONDENT

AND

ESHIKHONI AUCTIONEERS INTERESTED PARTY

RULING

Introduction

1. The Claimants/Applicants filed a Notice of Motion dated 17th July 2024 under Certificate of Urgency seeking the following orders that:
 1. Spent
 2. The Honourable Court be pleased to join Eshikhoni Auctioneers as an interested party to this Application for the limited purpose of responding and or complying with any court orders issued regarding the surplus (if any) arising from the scheduled auction of the Respondents' properties.
 3. Pending the hearing and determination of this Application, this Honourable Court do issue an order directing the Respondents to immediately and no later than 10 a.m 22nd July 2024 deposit the sum of INR 186,069,164 (circa KES 367,040,032) being the amount claimed by



the Respondents as salary arrears as security pending the hearing and determination of the Application.

4. In default of the order issued pursuant to prayer 3, the Claimants be at liberty to attach before judgment the debts owed to the Respondents (save for amounts payable to the Claimants by order of this Honourable Court in Nakuru, ELRC Cause No. E042 of 2023) by any third parties and the Interested Party be and is hereby directed to deposit in this Honourable Court, the surplus (if any) arising from the Interested Party's scheduled auction of the Respondents' properties.
5. Pending the hearing and determination of the suit, this Honourable Court do issue an order directing the Respondents to deposit the total sum of INR 354,144,164 (circa KES 698,584,777.90) being the total amount claimed by the Respondents as security.
6. In default of the order issued pursuant to prayer 5, the Claimants be at liberty to attach before judgment the debts owed to the Respondents by any third parties (save for amounts payable to the Claimants by order of this Honourable Court in Nakuru, ELRC Cause No. E042 of 2023) and the Interested Party be and is hereby directed to deposit in this Honourable Court, the surplus (if any) arising from the Interested Party's scheduled auction of the Respondents' properties.
7. Any other relief the Court deems fit in the interest of justice.
8. Costs of and incidental to this Application.

Claimants/Applicants' case

2. The Claimants/Applicants aver that they were employed by the 1st to 15th Respondents as medical expatriates.
3. The Claimants/Applicants aver that the 1st to 17th Respondents owe them salary arrears amounting to Indian Rupees 186,069,164, equivalent to Kshs.367,040,032.
4. The Claimants/Applicants aver that attempts to recover the salary arrears from the Respondents without court intervention have been futile.
5. The Claimants/Applicants aver that the Respondents have made various written promises to settle the Claimants/Applicants' salary dues *vide* a letter dated 27th October 2023 addressed to all expatriate employees as the 16th Respondent thanked the Claimants/Applicants for waiting patiently for their salary dues.
6. The Claimants/Applicants aver that the letter further stated the Claimants/Applicants' salary arrears would be settled by 15th November 2023.
7. The Claimants/Applicants aver that they had already filed a suit in Nakuru ELRC Cause No. E042 of 2023 where the Respondents also promised payment of all their salary arrears by 15th November 2023.
8. The Claimants/Applicants aver that the payment plan in the letter dated 27th October 2023 was not fulfilled prompting the 1st to 11th Claimants/Applicants to issue a demand letter dated 21st November 2023 and the 12th to 52nd Claimants also issued a demand letter dated 28th November 2023.
9. The Claimants/Applicants aver that the Respondents have ignored all demand letters and are trying to delay or obstruct any decree, as they have not responded to the claim in over 100 days, have closed



- all their branches except for one branch, and have properties scheduled for auction on 22nd, 23rd, and 24th July 2024. The Respondents' counsel confirmed this in court on 11th July 2024.
10. The Claimants/Applicants aver that the Respondents are intentionally delaying their response to ensure that the claim is resolved only after all of the Respondents' assets have been disposed of.
 11. The Claimants/Applicants aver that the Respondents' properties are scheduled to be auctioned on 22nd, 23rd, and 24th July 2024 per a notice published by the Interested Party.
 12. The Claimants/Applicants aver that if the orders sought are not granted, their victory may be hollow, as the Respondents' assets are already subject to garnishee nisi orders and scheduled for auction, meaning they are out of the Respondents' reach. Therefore, it is in the interest of justice for the application to be allowed as prayed.

Interested party's replying affidavit

13. In opposition, the Interested party filed a replying affidavit dated 2nd October 2024.
14. The Interested party avers that the 11th Respondent approached the Bank of India for credit facilities which was granted and secured charges over several properties including:
 - a. Pioneer/Ngeria Block 1 (EATEC) 10109, 10110, 10111, 10112, 10113, 10114, 10192 and 10193 registered in the name of Swarup Ranjan Mishra;
 - b. Land Reference Numbers, 7914/1283, 7914/124 & 7914/125 registered in the name of Mediheal Hospital and Fertility Centre Limited;
 - c. Kisii Municipality/Block 111/328 registered in the name of Mediheal Hospital and Fertility Centre Limited;
 - d. Irong/Iten/3829 registered in the name of Mediheal Hospital and Fertility Centre Limited;
 - e. Eldoret Municipality/Block 8/774 registered in the name of Mediheal Hospital and Fertility Centre Limited,
 - f. Eldoret Municipality/Block 8/863 registered in the name of Mediheal Hospital and Fertility Centre Limited,
 - g. Eldoret Municipality/Block 13/151 registered in the name of Swarup Ranjan Mishra and Pallavi, and
 - h. Cheptiret/Kichamo Block 2 (Mogobich)/96 registered in the name of Swarup Ranjan Mishra and Pallavi. Which properties were registered in the names of the 11th, 16th and 17th Respondents.
15. The Interested party avers that it was instructed by the Bank of India to issue 45-day redemption notices to the 11th, 16th, and 17th Respondents, who were in default of their credit facilities, and to conduct the sale of the secured properties. After issuing the redemption notices on 4th March 2024, the amount had accrued amounting to Kshs. 703,502,431.63 and followed up with 15-day sale notifications, advertising the properties for public auction in a widely circulated newspaper.
16. The Interested party avers that the notifications of sale and newspaper advertisement indicated that the public auctions were scheduled for 22nd, 24th, and 28th, July 2024.



17. The Interested party avers that as these auction dates approached, the 1st and 16th Respondents filed a suit in Eldoret HCCC No. E016 of 2024 to obstruct the Bank from exercising its legal remedies and prevent it from carrying out its instructions.
18. The Interested party avers the court granted the temporary injunction to stop the public auctions of properties scheduled for 22nd, 24th, and 28th, July 2024.
19. The Interested party avers that the case is ongoing. The temporary injunction remains in effect and if the Claimants/Applicants' application is allowed, it could create conflicting court orders, leading to judicial embarrassment.

Claimants/Applicants' submissions

20. The Claimants/Applicants submitted that the application is unopposed despite the Respondent being served with the application.
21. The Claimants/Applicants relied on the cases of *Daniel Kibet Mutai & 9 others V Attorney General* [2019] eKLR and *Karanja & 3 others V 4 Ndungu* [2024] KEELC 1345 (KLR) where it was held that the respondents did not controvert their evidence through a replying affidavit.
22. The Claimants/Applicants also submitted that the Respondents deliberately delayed the case while winding up their operations to remove their property from the court's jurisdiction, and have not denied these allegations.
23. The Claimants/Applicant submitted that they have shown that there is a strong case, the court has jurisdiction, and the Respondents are obstructing justice. The balance of convenience favours granting the orders, thus there will be no prejudice to either party. If the claim fails, the funds will be returned to the Respondents. If the claim succeeds, the funds will be used to settle the arrears owed.
24. The Claimants/Applicants submitted that the orders are granted to prevent the Respondents from hiding or wasting their assets to avoid enforcement of a prospective judgment. The court has the jurisdiction to grant these orders to ensure its proceedings are effective, and the current situation justifies their issuance.
25. In conclusion, the Claimants/Applicants pray that the application be allowed as prayed.
26. The Respondents did not file any replying affidavit or written submissions regarding the application.

Analysis and determination

27. The court has considered the application, the interested party replying affidavit as well as submissions, the main issue of determination is whether the application is merited.
28. In *Muruatetu & another V Republic*; Kenya National Commission on Human Rights & 2 others (Interested Parties); Death Penalty Project (Intended *Amicus Curiae*) (Petition 15 & 16 of 2015) (Consolidated) [2016] KESC 12 (KLR) the Supreme Court set out the principles for a party to be enjoined as an interested party as follows:

“From the foregoing legal provisions, and the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party: one must move the court by way of a formal application. Joinder is not as a right, but is at the discretion of the court; hence, sufficient grounds must be laid before the court, on the basis of the following elements:



- a. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough to stand apart from anything that is merely peripheral.
- b. The prejudice to be suffered by the intended interested party in case of non-joinder must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.
- c. Lastly, a party must, in its participation, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the court.

29. In this instant case, the interested party was instructed by the Bank to auction the Respondent's properties but the same did not take place as per the orders issued in Eldoret HCCC No. E016 of 2024 stopping the auction scheduled on 22nd, 24th, and 28th, July 2024.

30. The Interested party's main purpose is to auction off the Respondents' properties thus they are a crucial party to this case. The court will therefore allow the enjoinder of the interested party to the suit.

The claimant however in their submission have stated on Page 4 Paragraph 5 as follows-

“As the intended auction did not take place the claimants will not pursue the orders in the motion against the Interested Party.”

The same is therefore abandoned.

31. The Claimants/Applicants stated in Nakuru ELRC Cause No. E042 of 2023 the court ordered payment of the salary arrears to them but the Respondent filed another suit in Eldoret HCCC No. E016 of 2024 in regards to the properties mentioned above which they are relying on for payment of the salaries arrears pending hearing and determination. The court took note that the Respondents did not file a replying affidavit to controvert the claimant's averments.

The case of *Daniel Kibet Mutai & 9 Others v The Attorney General* (2018) eKLR faced a similar position of uncontroverted evidence.

That would imply the Claimant's evidence has not been disputed.

32. The court also finds the Claimant do actually have a good arguable case. The Respondents have severally admitted they have not paid their employees salaries and were negotiating a bank facility to pay their liabilities including their staff salaries.

Severally they communicated to their expatriate employees assuring them they would settle their salaries upon successful provision of the bank facility (letters dated 27th October 2023) to their employees, by Mediheal Group and by their Advocates Ndisi Munje Advocates and from Mckay Advocates.

The respondents clearly had financial challenges even from the media cuttings annexed as exhibits and from the affidavit of the Interested Party Eshikhoni Auctioneers who had been mandated to sell the Respondents' properties via public auction by a lender bank.

33. The court is persuaded the Claimant deserve to have their unpaid salaries secured and the way it is the Respondents may not be in a position to settle their salaries in future. The court therefore finds it is



reasonable for the Respondents to deposit the unpaid salary or at least part of it in court as security pending the hearing and or resolving of any issues pending or upon issuance of the decree of the court.

The court will order an amount being Indian Rupees 186,069,164 (Kshs. 367,040,030/=) to be deposited in court within 90 days from today's date.

34. Costs will be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAKURU THIS 19TH DAY OF DECEMBER, 2024.

ANNA NGIBUINI MWAURE

JUDGE

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 has 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 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

