



Moloo v Uniglobe Fleet Travel [K] Limited (Employment and Labour Relations Cause E182 of 2021) [2023] KEELRC 172 (KLR) (31 January 2023) (Ruling)

Neutral citation: [2023] KEELRC 172 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E182 OF 2021**

J RIKA, J

JANUARY 31, 2023

BETWEEN

KEIZRA MOLOO CLAIMANT

AND

UNIGLOBE FLEET TRAVEL [K] LIMITED RESPONDENT

RULING

1. In her application filed on February 28, 2021, the claimant prays for orders restraining the respondent from harassing, intimidating and from claiming any money from the claimant, pending hearing and determination of the claim; the respondent is restrained from banking post-dated cheques issued by the claimant pending hearing of the claim; and the respondent is ordered to surrender motor vehicle registration Number KXXX XXXX to the Kileleshwa Police Station, pending hearing and determination of the claim.
2. The application is founded on the affidavit of the claimant, sworn on February 24, 2021. She explains that she was employed by the respondent as a credit controller, on February 15, 2013. She worked for 7 years, until February 29, 2020, when she resigned.
3. She states that the respondent retained her motor vehicle, subject of the dispute herein, and later purported to have sold it for Kshs 3.9 million, while it was valued at Kshs 7.7 million. Her search on ownership disclosed that the executive chairman of the respondent is now registered as owner to the subject motor vehicle.
4. The respondent's officers threatened the claimant after she resigned, illegally confined her to a closed room with several persons who claimed to be police officers, and a lawyer, and forced her to sign a commitment letter to pay to the respondent money, which was allegedly misappropriated while the claimant was in employment. She was forced to surrender her motor vehicle. She states that the motor vehicle should be surrendered to the police, pending the outcome of this claim.



5. The respondent relies on 3 affidavits. The first is sworn by its executive chairman and director Manzooral Kanani on March 10, 2021, the second by Lorna Atieno Omondi, managing director of Terminus Holidays and Travel Limited, on March 10, 2021 and the last by Abdulrazak Khalfan, respondent's director, finance administration on the same date, March 10, 2021.
6. Manzooral Kanani denies that the claimant voluntarily resigned on February 29, 2020. She misappropriated respondent's funds, and her continued employment was untenable. She resigned in circumstances where she offered to recompense the respondent. She surrendered the motor vehicle to the respondent, in part-payment of conceded misappropriated funds amounting to USD 77,116.
7. She offered the motor vehicle as security. The respondent accepted security, and reserved its right to sell the motor vehicle, or pursue criminal proceedings against the claimant. The chairman, in the company of the claimant, presented her motor vehicle at Al-Shujah Motors Limited, where it was valued at between Kshs 4 million and 4.5 million. It was refurbished and sold for Kshs 4 million. The respondent was not aware of valuation at Kshs 7.7 million. The chairman denies to have detained or threatened the claimant at any time. Khalfan and Omondi basically underscore the evidence contained in the affidavit of the chairman.
8. Parties agreed on October 25, 2022, to have the application disposed of by way of written submissions. These were confirmed to have been filed at the last mention on November 30, 2022.

The court finds

9. The matters raised by the applicant appear to border mostly, on the criminal and commercial jurisdiction.
10. She states she has reported illegal detention, threats and harassment by the respondent's officers, to Kileleshwa Police Station. It is not necessary for the court to offer more protection to the claimant, in a matter she has already reported to the police, and where the conduct attributed to the respondent's officers, is criminal conduct. It ought to be investigated by the police, and appropriate actions taken by the police. She is no longer in an employee-employer relationship with the respondent, so as to seek protection of the E&LRC. She resigned in controversial circumstances.
11. The prayer surrounding detention of the motor vehicle at Kileleshwa Police Station, is unconvincing. There is prima facie evidence that the claimant offered the motor vehicle as security, and that she accompanied the chairman to Al-Shujah Motors Limited, where the motor vehicle was valued, refurbished and eventually sold for Kshs 4,000,000. The allegations that the claimant did not transact away her motor vehicle, that she was compelled by the respondent to transact, can only be established through a substantive hearing. If the claimant establishes that the motor vehicle should be returned to her, it shall be returned to her after she has adduced substantive evidence; and if it cannot be reverted to her, she can be compensated by way of general damages, which is part of the prayers in her statement of claim.
12. The claimant concedes that she carried out search, and confirmed that the motor vehicle is registered in the name of the chairman. The court cannot interfere with the ownership and possession of the registered owner, until the matter is heard in full and determined. If the claimant was dispossessed the motor vehicle by criminal means, that ought to be part of her report to the police, alongside other complaints, while she waits to give substantive proof, that the respondent deprived her of her motor vehicle illegally, and converted it to its own use.
13. The claimant has not satisfied the court that she has a prima facie case, with probability of success, and most of the matters she has asked the court to assist in, are before the police. If she issued post-



dated cheques to the respondent, what is the justification in asking the court that the payee should not present the cheques to its bank? The court ought not to interfere with police investigations.

It is ordered

- a. The application dated February 25, 2021, filed on February 28, 2021, by the claimant is declined.
- b. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31ST DAY OF JANUARY 2023.

JAMES RIKA

JUDGE

