



Munguti v General Plastics Limited [under administration] & another (Miscellaneous Application E143 of 2022) [2023] KEELRC 220 (KLR) (31 January 2023) (Ruling)

Neutral citation: [2023] KEELRC 220 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E143 OF 2022**

**J RIKA, J
JANUARY 31, 2023**

BETWEEN

DAN MUNGUTI CLAIMANT

AND

**GENERAL PLASTICS LIMITED [UNDER ADMINISTRATION] 1ST
RESPONDENT**

PVR RAO [ADMINISTRATOR] 2ND RESPONDENT

RULING

1. The applicant is a former employee of the 1st respondent.
2. The 1st respondent was placed under the 2nd respondent's administration, on January 14, 2020.
3. The applicant seeks leave under section 432 of the *Insolvency Act* No. 18 of 2015, in his application dated September 19, 2022, to bring a claim for unfair termination.
4. His contract was terminated on June 15, 2021 through the 2nd respondent.
5. The respondents oppose the application through the replying affidavit of the 2nd respondent, sworn on November 4, 2022.
6. They contend that the application contravenes section 560 of the *Insolvency Act*; the High Court is the right forum to seek leave; the 1st respondent has engaged a financial advisor to assist in reorganization of its business; filing of the claim would occasion the 1st respondent irreparable harm and damage; the applicant has not established a prima facie case with probability of success; and the application is in gross abuse of the process of the court.



The Court Finds:

7. The applicant has a right of access to justice, under article 48 of *the Constitution*.
8. The claim he intends to file against the respondents must be filed within a limited period of 3 years under section 90 of the *Employment Act*.
9. His contract was terminated on June 15, 2021, which means that over one year is already spent, out of the 3 years granted to him by the law, within which to file his claim.
10. He does not have control over the time administration proceedings at the High Court shall take. To bar him from filing his claim, until those proceedings come to an end, would impede his right of access to justice. He does not have control over the time the administration proceedings take, or indeed the outcome of those proceedings.
11. *The Constitution* of Kenya creates 3 courts with the status of the High Court- the High Court itself, the Employment and Labour Relations Court and the Environment and Land Court. These courts have their distinctive mandates.
12. Where insolvency as in the present application, affects employment and labour relations, jurisdiction is entirely with the Employment and Labour Relations Court.
13. It cannot be that leave is sought and issued at the High court, to file a claim at the Employment and Labour Relations Court. Section 2 of the *Insolvency Act*, like section 2 of the *Civil Procedure Act*, defining the Court to mean the High Court, must be understood within the context of *the Constitution* of Kenya.
14. Moratorium against commencement or continuing legal proceedings may be lifted against the Company, or against the Company's assets, with the approval of the court, or the administrator.
15. Approval is appropriate, where the applicant is likely to suffer significant loss. in this application, the administrator has not considered the prejudice the applicant would suffer if his claim is not filed within the prescribed time. He has not stated anything about the claimant's constitutional right of access to justice. He had not convinced the court in what way, the mere act of filing a claim, will disrupt the administration process.
16. The court has carefully weighed the interests of the parties, and concludes that the application must be allowed.

It Is Ordered

- a. The application for leave to file claim against the respondents is allowed.
- b. The applicant shall file and serve his claim within the 30 days of this Ruling.
- c. No order on the costs.

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

JAMES RIKA

JUDGE

