



REPUBLIC OF KENYA



**KENYA LAW**  
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**Shah v Chadha & another (Cause E569 of 2022)  
[2023] KEELRC 163 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 163 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E569 OF 2022  
J RIKA, J  
JANUARY 31, 2023**

**BETWEEN**

**RAJUL SHAH ..... CLAIMANT**

**AND**

**JOGINDER KAUR CHADHA ..... 1<sup>ST</sup> RESPONDENT**

**CHADHA INVESTMENTS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Claimant filed an Application dated August 15, 2022. There are various provisional orders sought. Most of them are spent, save for prayer 5 which is, that pending hearing and determination of the Claim, the 2<sup>nd</sup> Respondent is restrained from intimidating, harassing, threatening, frustrating, and taking any retaliatory or adverse actions against the Claimant.
2. The Claimant explains in her founding affidavit, filed on August 15, 2022, that she is the 2<sup>nd</sup> Respondent's Finance Manager.
3. The 1<sup>st</sup> Respondent is a Co-Director of the 2<sup>nd</sup> Respondent. The other Director is Pervinder Singh Chadha.
4. The 2 Directors are embroiled in a dispute which culminated in a derivative Claim, High Court Civil Case No E160 of 2021, filed by the 1<sup>st</sup> Respondent, against the Co-Director and the 2<sup>nd</sup> Respondent.
5. The High Court granted the 1<sup>st</sup> Respondent an interim order, allowing the 1<sup>st</sup> Respondent to resume duties as a Director of the 2<sup>nd</sup> Respondent. The Co-Directors were ordered to operate the 2<sup>nd</sup> Respondent's Bank Accounts jointly.
6. After the orders issued, the 1<sup>st</sup> Respondent resorted to witch-hunting Employees deemed loyal to the Co-Director, including the Claimant. The Claimant suffered harassment, including alleged



termination of her contract by the 1<sup>st</sup> Respondent. She was also denied monthly salary. The actions were taken without the consent of the other Director.

7. The 1<sup>st</sup> Respondent relies on the Replying Affidavit sworn on October 3, 2022. It is agreed that the Directors have a disagreement on the management of the 2<sup>nd</sup> Respondent, which is subject-matter of High Court Civil Case No E160 of 2021. The 1<sup>st</sup> Respondent states that the Co-Director opted to freeze her out the management of the 2<sup>nd</sup> Respondent, leading to the High Court Claim. The Claimant has chosen to undermine the 1<sup>st</sup> Respondent's instructions, and her position as a Co-Director. Her attempt to correct the Claimant, have been characterized as harassment and intimidation. Her claims, concerning delayed payment of salary, affected all Employee during Covid-19-related business constraints. Her salary has since been paid.
8. Co-Director Pervinder Singh Chadha, in his Affidavit sworn on November 1, 2022, supports the Application. He explains that he is involved in a dispute with his Co-Director at the High Court, over the affairs of the 2<sup>nd</sup> Respondent. The 1<sup>st</sup> Respondent has since resuming duties as a Director, witch-hunted Employees. She has victimized the Claimant, and alleged to terminate her contract, on account of her good working relationship with Pervinder. The Claimant's salary was not delayed on account of Covid-19. The 1<sup>st</sup> Respondent deliberately refused to approve payment, which Pervinder had approved. Pervinder has not been involved in any disciplinary case, relating to the Claimant.
9. Parties agreed to have the Application considered on the strength of their Affidavits and Submissions on record. The Application was last mentioned on November 30, 2022, when the Parties confirmed filing and exchange of their Submissions.

**The Court Finds: -**

10. The Claimant has established that she has a prima facie case, with probability of success, to warrant the restraining order.
11. This has been achieved through her own evidence, and that of Co-Director Pervinder.
12. The evidence of the 1<sup>st</sup> Respondent appears also, to firm-up the Application.
13. Mrs Joginder Kaur Chadha, the 1<sup>st</sup> Respondent herein, states that the Claimant's salary was delayed, like other Employees' salaries, because of the business challenges posed by Covid-19 pandemic.
14. The Cash Payment receipts exhibited by Pervinder, have handwritten comments by the 1<sup>st</sup> Respondent, which she did not deny in her own Affidavits, to have authored.
15. She writes: -I continue to be coerced into writing this cheque and accept this payroll, which includes Rajul [ Claimant], whom I have dismissed back in November 2021 for gross misconduct...The salary of Rajul should not come out of the CIL [ 2<sup>nd</sup> Respondent's] account as she is a personal Employee of Pervinder Singh Chadha...
16. These statements and actions do not support the explanation by the 1<sup>st</sup> Respondent, that the Claimant's salary was withheld, because of Covid-19. It also confirms that the 1<sup>st</sup> Respondent had unilaterally decided to terminate the contract of the Claimant. She considered, without good reason, that the Claimant is a personal Employee of her Co-Director. These actions by the 1<sup>st</sup> Respondent do not seem to the Court to amount to instructions given to an Employee, which instructions have been disobeyed, resulting in insubordination, as advanced by the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent appears to have been brandishing a big, director's hammer, over the head of an Employee she felt



was disloyal to her, and who she felt, had chosen her Co-Director over her, in the 2<sup>nd</sup> Respondent's corporate strife.

17. The Claimant merits the protection of the Court. She appears to be a hapless Employee, caught between warring Directors of the Company which employs her.

**It Is Ordered: -**

- a. Pending hearing and determination of the claim, the respondents are restrained from intimidating, harassing, mishandling, abusing, threatening, frustrating and taking retaliatory or adverse action against the claimant.
- 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 31<sup>ST</sup> DAY OF JANUARY, 2023.**

**JAMES RIKA**

**JUDGE**

