



Amagove v Ultimate Manpower & General Supplies Limited (Cause 343 of 2017) [2023] KEELRC 1017 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 1017 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 343 OF 2017
K OCHARO, J
APRIL 27, 2023**

BETWEEN

MILDRED AMAGOVE CLAIMANT

AND

ULTIMATE MANPOWER & GENERAL SUPPLIES LIMITED RESPONDENT

RULING

1. The Application before this Court by the Respondent/Applicant dated May 19, 2022 expressed to be brought under Article 159 of the Constitution of Kenya, Section 12 of the Employment and Labour Relations Court Act, Rule 17 of the Employment and Labour Relations Procedure Rules 2016, Sections 1A,1B,3A and 63 of the Civil Procedure Act and Order 12 of the Civil Procedure Act 2010, seeks the following orders:
 1. That this Honourable Court do certify this Application as urgent and place the same to be heard on priority basis and service of the same be dispensed with in the first instance.
 2. That in the interim and pending the hearing and determination of this Application, this Honourable Court be pleased to stay execution of this honourable Court's judgment and the decree issued herein.
 3. That this Court be ultimately pleased to set aside its judgment entered on September 21,2021 for the Claimant against the Respondent only in default of entering appearance and filing a defence together with any consequential Decree and Orders of the Court as the court may deem fit and just.
 4. That this Honourable Court be pleased to grant the Respondent/Applicant herein to file its' Defence and defend the suit albeit out of time as per draft Defence annexed to this Application that raises cogent triable issues.



5. That this Honourable Court be pleased to grant a stay of execution of the Judgment and Decree entered on September 21, 2021 and or any further proceedings or any subsequent Orders therefrom pending the hearing and final determination of the main suit.
6. That costs of this Application be provided for.
2. The judgment the subject matter of the stated application was rendered by Hon Justice Odongo. The same was placed before this court as after the judgment the Honourable Judge got transferred to another station. I am aware that he is currently stationed in Nairobi Employment and Labour Relations Court. Prudence demands that he handles the application.
3. In the premise;
 - I. The applicant's application herein dated May 19, 2022, shall be determined by Hon Justice Odongo.
 - II. The application shall be placed before him on May 4, 2023, for directions on how it shall be proceeded with.

READ, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF APRIL, 2023.

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OCHARO KEBIRA

JUDGE

In the presence of

Ms Acheka for Mr Onenga for the 1st and 2nd Respondents.

Mr Amukombe for the Claimant.

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.

OCHARO KEBIRA

JUDGE

