



Otwori v Merkle (Cause 2385 of 2017) [2023] KEELRC 920 (KLR) (20 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 920 (KLR)

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

CAUSE 2385 OF 2017

L NDOLO, J

APRIL 20, 2023

BETWEEN

FLORENCE OTWORI CLAIMANT

AND

CASPAR MERKLE RESPONDENT

RULING

1. On October 5, 2021, counsel for the respondent, Ms Nyaguthie appeared before me and asked for a hearing date of the claim, which I granted and directed counsel to serve the claimant.
2. Counsel for the respondent appeared before me again on May 9, 2022, when she indicated that she had lost touch with the respondent. The court allowed counsel time to trace her client.
3. By a strange twist on September 27, 2022, counsel for the respondent sought to resuscitate a preliminary objection challenging the jurisdiction of the court on the ground of diplomatic immunity. As it turned out, this issue had already been dealt with by ON Makau, J.
4. By yet another twist, counsel now seeks to resuscitate an application dated July 19, 2018 on the same issue. I have looked at the court record and find that this too was dispensed with by ON Makau, J who on November 28, 2018, delivered the following *ex tempore* ruling:

“After perusing the pleadings on record so far and the Notice of Motion dated 19.7. 2018 I direct that the issues raised in the notice of motion should be canvassed during the trial. I further direct that the suit will go to full trial for determination on merit.

Consequently, the respondent is placed at liberty to file and serve defence, witness statement and documents within 14 days.

Mention on December 17, 2018 for pretrial directions.”



5. From the record, it is clear as day that the preliminary issues raised by the respondent either by way of a preliminary objection or an interlocutory application have been dealt with.
6. That being the case, what remains pending is to hear the parties in full trial and determine the matter one way or the other. Because the issue of diplomatic immunity will be canvassed at the trial, I will resist the temptation to look at the submissions filed by the parties in this regard.
7. The parties are directed to fix the matter for hearing of the main claim on priority basis.
8. These are the orders of the court.

DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF APRIL 2023

LINNET NDOLO

JUDGE

Appearance:

Mr. Agwata for the Claimant

Ms. Nyaguthie for the Respondent

