



REPUBLIC OF KENYA



KENYA LAW
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**Okova v Kenya Pipeline Company Limited (Cause 192 of 2020)
[2023] KEELRC 1316 (KLR) (29 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1316 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 192 OF 2020
NZIOKI WA MAKAU, J
MAY 29, 2023**

BETWEEN

DEREK WANGAKI OKOVA CLAIMANT

AND

KENYA PIPELINE COMPANY LIMITED RESPONDENT

RULING

1. There are 3 applications before me. The first is the claimant's notice of motion application dated July 27, 2022. It was seeking injunctive relief in respect to parcel No. LR 337/969 and a motor vehicle which were acquired through loan proceeds from the respondent. This application was granted by Gakeri J. on July 28, 2022 in the following terms – Application granted in terms of prayer 2 and 5. Prayer 2 sought orders in the interim pending hearing inter partes whilst prayer 5 sought the following order:

5. That pending the hearing and determination of the main suit this court be pleased to issue an injunction restraining the proposed interested party (Cleverline Auctioneers Limited) by itself, its agents, servant and or employees or otherwise however from repossessing, offering for sale, selling, charging and or disposing off whether by private treaty and or auction all that claimant/applicant's property known as Maisonette No. 12 Chester Hill Athi River on LR No. 337/969 forming part of this application.
2. The order by my brother Gakeri J. was to allow prayers 2 and 5. Prayer 5 was final in nature in that the court granted injunctive orders with finality. The import of this will be clear later on in this Ruling.
3. The second application is the one by the respondent. In its notice of motion application dated August 19, 2022, the respondent seeks to set aside these orders issued on July 28, 2022.
4. The third application is the claimant's motion dated February 21, 2023 seeking to amend his claim. The claimant's claim has been amended previously – August 14, 2020.



5. All these applications must fail. Reasons are as follows:- the respondent's motion seeks to reverse the orders of a fellow Judge. There is no review application before me, and secondly, I am not the Court of Appeal and cannot in all fairness recant the orders of a fellow Judge. The appropriate thing would have been to appeal the decision and obtain relief at the Court of Appeal. The claimant's motion of July 28, 2022 is superfluous as the court granted the orders he now seeks. There is nothing more to be granted in respect to the motion in relation to preservation of the property.
6. The claimant now seeks to amend his claim. From a plain reading of the same, it amounts to introducing a new cause of action as it materially alters the tenor of the cause before the court. As such, being brought too late in the day and not being well founded cannot be allowed. The claimant amended his claim in August 2020 and granted that it is his case he should have known what his case was before coming to court. He cannot shift goal posts midstream.
7. In the final premises this court dismisses all the 3 applications and orders that each party bears their own costs. The matter has been pending since 2020 and the only fit thing to do is hear it and have a decision on the merits. A hearing date will be given after the delivery of this Ruling to ensure the matter is concluded speedily.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF MAY 2023

NZIOKI WA MAKAU

JUDGE

