



**Gichuki v Attorney General & another (Cause E023 of 2023)
[2023] KEELRC 1177 (KLR) (5 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1177 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E023 OF 2023
AN MWAURE, J
MAY 5, 2023**

BETWEEN

PAULINE WAMBUI GICHUKI CLAIMANT

AND

ATTORNEY GENERAL 1ST RESPONDENT

REGISTRAR OF COMPANIES 2ND RESPONDENT

RULING

1. The applicant has filed an application i.e notice of motion dated 13th February 2023.
2. She has made the following prayers:
 1. That this application be certified and the same be heard exparte the first instance.
 2. That the respondents be restrained from clearing Glaxosmithkline Pharmaceuticals Kenya limited pending hearing and final determination of ELRC 228 of 2021 Nairobi, *Pauline Wambui Gichuki Vs Glaxosmithkline Pharmaceuticals Kenya Ltd.*
 3. That the costs of this application be provided for.
3. She avers that in 2021 she sued GlaxosmithKline pharmaceutical Kenya limited in ELRC 228 of 2021 and the said suit is still pending in court.
4. Currently GlaxosmithKline Pharmaceuticals Kenya limited is in the last stages of winding up business operations in Kenya so as to hand them over to agents known as Surgipharm limited under Imperial Health Service Company.
5. That part of the process of winding up operations entails seeking clearance from various government bodies such as Kenya Revenue Authority, the Pensions Board, Pharmacy and Poison's board and the Registrar of companies.



6. That upon clearance they will exit the country quietly and people they owe obligations will be left destitute.
7. The applicant has made inquiries on several occasion but has not made any response. She says the pharmaceutical will cease operations by May 2023. In that case they will escape liability and hence this order should be granted.
8. The claimant deponed further affidavit dated March 7, 2023 whereby she annexed a letter dated October 11, 2022 being quoted as a letter to one of respondent's employees who had said they had been considering changing the business model from local company and to cease having its local presence.
9. The Assistant Registrar of companies replying affidavit dated March 13, 2023 deponed the said company GlaxoSmithKline Pharmaceuticals Kenya Ltd is not winding up and no application has been made to strike it off or to wind up the said company. The affidavit was deponed by Sarah Wainaina who said she is the regulator and custodian of the records of all companies and implements Companies Act 2015. She says there is also no application for voluntary winding up of the company either.
10. In view of the confirmation by the custodian of the company's documents that there is no application to wind up or strike off Glaxosmithkline and the said company has not applied for voluntary winding up the court finds no reason to assume it is exiting the stage.
11. In that case the court is not inclined to entertain speculation and grant orders that are not capable of being implemented. Courts are not there to make orders that are in vain and are not capable of being implemented or effected.
12. Court has considered the letter purported to be from GSK and it is not addressed to any particular person. It is not an official document but is a copy of a letter purporting to inform somebody that the company is considering changing its business from a local entity.
13. The court finds the said letter is not sufficient to presume the company is being wound up and make orders against the attorney general and Registrar of companies and yet the applicant has not annexed any document to prove that the said company is being wound up either by a third party or voluntarily.
14. The court finds this application is merely speculative and finds no grounds to grant the orders prayed in the application vide the notice of motion dated February 13, 2023.
15. The said application is therefore dismissed accordingly.
16. The court would freely advise the applicant to urgently proceed with her main statement of claim dated March 11, 2021 instead of spending and losing time in applications that are merely speculative.
17. Costs of this application will be in the cause.
18. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 5TH DAY OF MAY, 2023.

ANNA NGIBUINI MWAURE

JUDGE

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.

