



**Neba v African Academy of Sciences (Cause E370 of 2022)
[2023] KEELRC 1605 (KLR) (26 June 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1605 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E370 OF 2022
DKN MARETE, J
JUNE 26, 2023**

BETWEEN

ALPHONSUS NEBA CLAIMANT

AND

AFRICAN ACADEMY OF SCIENCES RESPONDENT

RULING

1. This is an application dated October 25, 2022 and seeks the following orders of court;
 - i. The honourable court lacks the requisite jurisdiction to take cognizance of and determine this matter as the respondent/applicant has diplomatic immunity against proceedings of the kind commenced herein.
 - ii. The honourable court be pleased to issue an order compelling the claimant/respondent to deposit Kes 10,000,000 (ten million Kenya Shillings), being security for costs, in a joint account opened in a reputable bank in the joint names of the claimant's and respondent's respective Advocates on record before further proceedings can be taken in this matter.
 - iii. The honourable court be pleased to issue an order expunging from the record all documents relied upon by the claimant/respondent which, pursuant to the respondent/applicant's diplomatic status, are immune from the hostile adversarial processes of this honourable court.
 - iv. The honourable court be pleased to issue an order that, to the extent that this suit is premised on alleged breaches of constitutional rights, the claimant/respondent has no reasonable cause of action against the respondent/applicant.
 - v. The costs of this application be provided for.



2. The claimant/respondent in a replying affidavit sworn on December 22, 2022 opposes the application and denies that the respondent/applicant has or ever had diplomatic immunity as alleged in the application. He put it thus;
 16. That this suit is properly before this honourable court, and that the parties herein are mandated to submit to the authority of this court and adhere to its orders and directives, as provided in the hosting agreement.
(See article IX of the headquarters agreement marked “AN 2”)
 17. That I am not a foreign diplomatic agent and I have never been engaged in any activity on behalf of my home country Cameroon, and that I only enjoyed the immunities and privileges outlined on the headquarter establishment agreement, in my capacity as an expatriate professional staff at the applicant organization wherein the immunities and privileges were limited to matters of taxation:
(See paragraph 2 article V of the headquarters agreement marked “AN 2:)
 18. That even if it is true that the parties herein have any immunity, which is denied, the same is not absolute and any claim for immunity cannot be used to defeat the rule of law.
 19. That the applicant ought to submit itself to the rule of law rather than purport to be above the law.
3. It is grounded variously on fact enlisted to the mainstay and operations of the respondent which arguably donate diplomatic immunity to herself as per the *Diplomatic Immunities Act*, chapter 179, Laws of Kenya. This therefore ousts the jurisdiction of the court in this cause howsoever.
4. It is the respondent/applicant’s contention that this suit offends the provisions of part IV of the *Privileges and Diplomatic immunities Act*, Chapter 179 of the Laws of Kenya (*Privileges and Diplomatic Immunities Act*) and the provisions of article 31 of the *Vienna Convention* on diplomatic relations thus incompetent and untenable in law.
5. The second limb of the respondent’s application is that the claimant/respondent is a foreign national of Cameroonian origin with no permanent place of abode in or within Kenya, no long term right of residence in Kenya, no fixed or known assets and no known status within the Republic of Kenya and as such can depart from the jurisdiction of this court at will at any time during the course of these proceedings and never come back.
6. It is her case that she is apprehensive that due to the status of the claimant, he can depart from the jurisdiction of this court at leisure never to return and therefore her exposure to risks of costs remaining unpaid should she succeed in this suit. This therefore justifies a call for Kshs 10,000,000.00 as a deposit for costs by the claimant.
7. Her penultimate case is that the claimant/respondent is protected from the jurisdiction of this court and therefore cannot invoke the jurisdiction of this court in his quest for his constitution rights
8. The claimant/respondent in his written submissions dated February 1, 2023, faults the respondent/applicant’s claim to diplomatic immunity for non production of documents called for in his notice to produce dated October 31, 2022 and filed in court on March 24, 2023.
9. The parties canvassed the various positions on the application vide their written submissions dated September 7, 2022 and February 1, 2023 for the applicant and respondent respectively. This is was also re-echoed in their highlight of oral submissions thereafter.



10. I have had occasion to scrutinise the respective cases for and against the application. It is my feeling, finding and position that the claimant/respondent case overwhelms that of the respondent/applicant. The applicant from the onset merely lays a claim to diplomatic immunity on her part but does not demonstrate the veracity of the claim. There is no evidence linking her various utterances and pronouncements by herself. She has failed to adduce evidence or bring out a convincing case in support of diplomatic immunity. Her case remains afloat.
11. The claimant/respondent has on the contrary put up a spirited case against both the issue of immunity and an award for deposit for costs. It is his position that this is not founded in law or fact. The applicant has failed to lay a basis for the claim to diplomatic immunity or even a deposit on costs.
12. It is also his case that in view of his basic rights as a person, the *Constitution of Kenya, 2010* is applicable and cannot be ousted as alleged by the applicant. The application must therefore fail.
13. I therefore inclined to dismiss the application with costs to the claimant/respondent.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF JUNE 2023.

D. K. NJAGI MARETE

JUDGE

