



Akello v Rural Development Solutions Ltd (Employment and Labour Relations Cause 554 of 2015) [2023] KEELRC 2000 (KLR) (31 July 2023) (Ruling)

Neutral citation: [2023] KEELRC 2000 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 554 OF 2015
MA ONYANGO, J
JULY 31, 2023**

BETWEEN

TONY BEN OLANG AKELLO APPLICANT

AND

RURAL DEVELOPMENT SOLUTIONS LTD RESPONDENT

RULING

1. The application before me for determination is dated May 24, 2021 and filed in court on June 4, 2021 by the claimant/applicant who seeks the following orders:
 - i. Spent,
 - ii. That this honourable court makes orders barring Svein Rene, Max Joachim, Eunice Adhiambo, Danson Lugare Lun'gatso, Sissel Austara Rene from disposing motor vehicle registration No KBZ 984T (Mitsubishi Canter) owned by Rural Development Solutions pending the hearing and determination of this suit
 - iii. That Svein Rene, Max Joachim Seifert, Eunice Adhiambo, Danson Ligare Lung'atso, Sissel Austara Rene directors of respondent/ judgment debtor to be directed to table before this honourable court the list of assets of the judgment debtor at the time of dissolution.
 - iv. That this honourable court makes an order for the attendance in court and examination of Svein Rene, Max Joachim Seifert, Eunice Adhiambo, Danson Ligare Lung'atso, Sissel Austara Rene directors of respondent/judgment debtor for production of books of account or documents for purposes of satisfying the decree herein
 - v. That in default of the said directors complying with the above orders, this honourable court be pleased to order that the said directors be held personally liable to pay the plaintiff /applicant the decretal sum and costs herein in the sum of Kshs 6,304,110 plus accrued interests.



- vi. That costs of this application be provided for.
2. The respondent filed a replying affidavit sworn on June 10, 2021 by Svein Rene in opposition to that application. Mr Svein who introduced himself as the Director of the respondent averred that the respondent as sued is a non-existent company dissolved vide Gazette Notice dated July 12, 2019. That as such, the applicant ought to have known that the effect of such a dissolution was that the respondent had nil assets. That he had been served with the warrants of attachment of movable property on behalf of the respondent on June 5, 2021 by which time motor vehicle Reg No KBZ 984T Mitsubishi Canter had been sold to a Mr Elisha Kipsang Meli on May 15, 2019 on agreed terms and conditions between the respondent and the said Elisha Meli. With regard to motor vehicle registration No KBQ 872P that the judgment creditor attached, Mr Svein deponed that at the time of attachment, the said vehicle was serving as a security to Sidian Bank Kenya Limited for a loan facility which the respondent was unable to pay. It was thus his contention that the respondent has no assets to satisfy the decree.
3. It its ruling delivered on August 13, 2021, the court granted prayers ii, iii and iv.
4. Pursuant to the said ruling, Mr Svein Rene was cross examined on September 26, 2022 pursuant to prayer iv.
5. Mr Svein Rene testified and introduced himself as a Director of the respondent. He testified that the applicant was a Managing Director of the respondent and that there was a mutual separation agreement wherein the applicant was to be paid Kshs 4,000,000. He conceded that the filing of this claim was necessitated by the failure on the part of the respondent to honour the said mutual separation agreement.
6. It was his contention that after the court delivered its judgment on this claim, the respondent filed a notice of appeal dated January 23, 2020 and was in the process of filing the appeal.
7. Mr Svein testified that as at the time the judgment was delivered on January 17, 2020, the company was not in existence having been dissolved in June 2019.
8. It was his contention that there are no assets available to settle the claim herein since the agreement to pay the applicant Kshs 4,000,000 was subject to availability of cash flow.
9. At the end of cross examination, Counsel for the applicant prayed for orders that the Directors of the respondent be held personally liable to pay the decretal sum as they had failed to produce the books of accounts.
10. The applicant in this case has judgment that was delivered in his favour as against the respondent, but he is unable to enjoy the fruits of the said judgment because he cannot execute against the respondent whose Director has informed the court that it has since been dissolved and that it has no assets that can satisfy the decree.
11. It is worth noting that Mr Svein Rene while being cross-examined by counsel for the applicant admitted that the applicant worked for the respondent for almost four years and was entitled to be paid Kshs 4,000,000 as per the mutual separation agreement between the parties.
12. It is also noteworthy that as at the time the cause of action arose, the company was still existing and according to the evidence tendered in court, the said company was dissolved during the pendency of this suit.



13. Is the Applicant therefore to remain without a remedy because the respondent is no longer in existence? I do not think so as that would be a grave injustice. Under common law, there cannot be a wrong without a remedy.
14. In the case of *LTI Kisii Safari Inns Ltd & 2 others v Deutsche Investitions-Und Entwicklungsgellschaft ('Deg') & others* [2011] eKLR the Court of Appeal observed as follows;
- “It is regrettable that despite these lamentations, the learned judge did not render justice between the parties according to law. It is not enough for a court of law to tell a victim of injustice that a wrong had been perpetrated against him without offering a remedy. It is a maxim of equity that Equity will not suffer a wrong to be without a remedy. The idea expressed in this maxim is that no wrong should be allowed to go unredressed if it is capable of being remedied by courts of justice. See Snell’s Equity 23rd Edn page 28.”
15. Based on the foregoing, it is my considered view that the applicant as a successful litigant, is entitled to enjoy the fruits of his judgment and this court being a court of law and a court of equity, is called upon to ensure that justice is done.
16. It is further noteworthy that the respondent was dissolved voluntarily while this suit was in court and its assets shared among the directors without regard to the liability likely to arise from this case.
17. It is therefore my finding that the directors of the respondent are personally liable to satisfy the decree herein.
18. In the end, I make the following orders:
- a. That Svein Rene, Max Joachim Seifert, Eunice Adhiambo, Danson Ligare Lung’atso, Sissel Austara Rene, being former directors of the respondent herein and having voluntarily dissolved the said company during the pendency of this suit, are jointly and severally personally liable to pay the applicant as per the decree of this court.
- b. The costs of this application shall be borne by the said directors together with accrued interests.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 31ST DAY OF JULY 2023.

M. ONYANGO

JUDGE

