



**Mbuthu v De La Rue Currency and Security Print Limited (Cause  
969 of 2017) [2023] KEELRC 2217 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2217 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 969 OF 2017  
L NDOLO, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**ALICE NZAMBI MBUTHU ..... CLAIMANT**

**AND**

**DE LA RUE CURRENCY AND SECURITY PRINT LIMITED .... RESPONDENT**

**RULING**

1. The main claim in this matter is part heard. In the meantime, the claimant has filed an interlocutory application dated July 28, 2023, seeking orders directing the respondent to deposit the sum of Kshs. 19,072,632.40 to be held by the Court, pending the hearing and determination of the suit.
2. The claimant further asks the Court to direct that in default of compliance, the respondent's property within the jurisdiction of the Court, shall be attached to satisfy the said sum.
3. The application is supported by the claimant's own affidavit and is based on the following grounds:
  - a. That the claimant commenced this suit vide a Statement of Claim dated May 5, 2017;
  - b. That the claimant inter alia, sought the following reliefs:
    - i. One month's salary in lieu of notice.....Kshs. 762,905.32
    - ii. Salary for December 2015 to June 2016.....4,577,431.92
    - iii. Service pay for 12 years.....4,577,431.32
    - iv. 12 months' salary for wrongful dismissal.....9,154,863.84
  - c. That the respondent filed a Response to Claim on 5<sup>th</sup> October 2017;
  - d. That vide a reply filed on October 31, 2017, the claimant responded to the respondent's response to Claim;



- e. That on November 15, 2022 and on February 27, 2023, hearing proceeded and the claimant tendered evidence in support of her case;
  - f. That the respondent's witnesses namely; Kerry Ryan and Douglas Denham testified on February 28, 2023 and April 20, 2023 respectively;
  - g. That further cross examination of Douglas Denham is scheduled to proceed on November 8, 2023;
  - h. That on July 25, 2023, the claimant came across an article dated June 30, 2023, published in the Business Daily Newspaper online, which read 'De La Rue spends Sh2.7bn to lay off staff, exit Kenya';
  - i. That from the article, the respondent was reported to have spent f4.9 million (Shs870.5 million) to write off property, plant and equipment and f2 million (Shs355.3 million) to impair inventory;
  - j. That considering that the respondent has taken steps towards closing down its operations in Kenya, the claimant is bound to suffer irreparable harm and prejudice in the event that the respondent completely shuts down its operations before this case is heard and determined;
  - k. That in the event that the respondent shuts down its operations in Kenya and the court thereafter enters judgment in the claimant's favour, she will be obstructed from executing the decree since there will be no single asset available for attachment;
  - l. That it is necessary that the Court issues orders when the respondent is still within its jurisdiction requiring it to provide security, pending hearing and determination of this suit equivalent to the claim herein being Kshs. 19,072,632.40;
  - m. That in the event that the Court does not issue the orders sought, the judgment and decree emanating from this suit will be rendered a mere academic exercise and the claimant will suffer irreparable prejudice;
  - n. That the respondent will not suffer any prejudice if it is ordered to deposit Kshs. 19,072,632.40 as security, since it has already spent billions of Shillings to enable it close its operations in Kenya;
  - o. That considering the steps taken so far by the respondent to close its operations in Kenya, it is unlikely that by the time further hearing resumes on 8<sup>th</sup> November 2023, the respondent will still be operating in Kenya;
  - p. That it is necessary that the Court certifies the application urgent since the respondent is likely to close its operations in Kenya soon;
  - q. That it is in the interest of justice that the orders sought are granted.
- 4. The respondent opposes the claimant's application by a replying affidavit sworn by its Director, Francis Marigi Gakuru on September 6, 2023.
  - 5. Gakuru states that the respondent is a limited liability company incorporated and registered in Kenya.
  - 6. He depones that the article published by the Business Daily on its website [www.businessdailyafrica.com](http://www.businessdailyafrica.com) on June 30, 2023, relates to suspension of operations of De La Rue Kenya EPZ Limited, the laying of its staff and related expenditure.



7. Gakuru points out that none of the pronouncements in the article are attributed to De La Rue Currency and Security Print Limited, the respondent herein.
8. He further points out that the article clearly identifies the entity that is the subject of the storyline as a joint venture company in which the Government of Kenya owns a 40% stake. He states that he is aware that De La Rue Kenya EPZ Limited is the entity in which the Government of Kenya (through the Cabinet Secretary to the Treasury) holds a 40% stake. He relies on an official search certificate (CR12) dated September 4, 2023 to support this averment.
9. Gakuru also relies on the respondent's official search certificate (CR12) dated September 4, 2023 to demonstrate that the Government of Kenya has no stake in the respondent.
10. Gakuru asserts that the respondent did not carry out any redundancy in the year 2023 of the type described in the article. He adds that there has been no change to the business status/position of the respondent in the last 5 years and there is no plan to wind up, liquidate, dissolve or deregister the respondent or take any other step that would lead to the respondent ceasing to exist.
11. According to the respondent, the claimant has not satisfied the principles for grant of the orders sought in the application for furnishing of security or attachment before judgment as provided under order 39 of the *Civil Procedure Rules*.
12. In her further affidavit sworn on 11<sup>th</sup> September 2023, the claimant takes issue with the person who has sworn the replying affidavit on behalf of the respondent. She states that the fact that a person from the respondent, a subsidiary of De La Rue PLC has sworn the replying affidavit does not give her any comfort.
13. According to the claimant, the best person to respond to the issue whether or not the respondent is exiting Kenya is an officer of De La Rue PLC.
14. In her further affidavit, the claimant sought to introduce the annual report of De La Rue PLC, which according to her, states that the Company was exiting Kenya, through its subsidiaries, including the respondent.
15. The parties urged their respective positions by way of written submissions. The application is brought under order 39 rule 1 and 5 of the *Civil Procedure Rules* which establishes the threshold for grant of orders in the form of security or attachment before judgment. In this regard, an applicant of such orders is required to demonstrate that:
  - a. The respondent has taken action with the intention to delay or to avoid any process of the court, or to obstruct or delay the execution of any decree that may be passed against the respondent; or
  - b. The respondent has absconded or left the local limits of the jurisdiction of the court; or
  - c. The respondent is about to abscond or leave the local limits of the jurisdiction of the court; or
  - d. The respondent has disposed of or removed from the local limits of the jurisdiction of the court its property or part thereof; or
  - e. The respondent is about to leave Kenya under circumstances affording reasonable probability that the applicant will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the respondent.



16. In her written submissions in support of the application, the claimant cited the decision in *TNT Express Worldwide (Kenya) Limited v Timothy Graeme Steel* (Civil Appeal E365 of 2018) KECA 881 (KLR) (10 June 2022) (Judgment) where the Court of Appeal, in considering the conditions to be met in applications brought under order 39 rule 1 and 5, stated as follows:

“The provisions and ensuing decisions are clear that what an applicant must prove are that:

- i. the Defendant with the intent to delay the Plaintiff or
- ii. to avoid the process of the Court or
- iii. to obstruct or delay the execution of any decree that may be passed against him or
- iv. has either disposed of or
- v. removed from the local limits of the jurisdiction of the Court his property or
- vi. is about to abscond or leave the local jurisdiction of the Court.”

17. In exercising the powers donated by order 39 rule 1 and 5, the court must bear in mind that at this stage, none of the parties has proved their case on merit. This position was re-stated in *Peter Onsongo Ogeto v Shem Osiago Morumbwa & another* [2019] eKLR, cited by the respondent, in the following terms:

“It must be remembered that at this stage, none of the parties has established his case through a hearing on the merits. The outcome of the case upon hearing could go either way. The court must therefore be careful not to saddle any of the parties with obligations that ordinarily ought to be left for the final determination of the suit. As is apparent from a reading of both order 39 rule 1 and 5, an applicant who seeks security should not demonstrate that the defendant is actuated by an intention to delay the plaintiff; or to avoid any process of the court, or to obstruct or delay the execution of any decree that may be passed against him.”

18. From the record, the claimant’s application was triggered by an online article published by the Business Daily on June 30, 2023, which according to the claimant, communicated the respondent’s plan to exit Kenya. The respondent’s response is that the article did not relate to it but to another separate and distinct entity known as De La Rue Kenya EPZ Limited.

19. In her further affidavit sworn on September 11, 2023, the claimant made a good effort to link the respondent with De La Rue PLC and De La Rue Kenya EPZ Limited, the subject of the article that led her to move the Court.

20. It is my considered view however, that the relationship among the three entities cannot, by itself, be a sufficient cause for the Court to grant the orders sought which fall within the realm of attachment before judgment. The court did not find any evidence to support any of the violations under order 39 rule 1 and 5.

21. In the result, the claimant’s application dated July 28, 2023, is disallowed with costs in the cause.

22. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2023**

**LINNET NDOLO**



## **JUDGE**

Appearance:

Mr. Ng'ethe for the claimant

Mr. Omondi for the respondent

