



**Njeru v Banda Homes Limited (Employment and Labour Relations Cause E489 of 2021) [2023] KEELRC 2796 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2796 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E489 OF 2021  
MA ONYANGO, J  
OCTOBER 31, 2023**

**BETWEEN**

**MOSES MUREITHI NJERU ..... CLAIMANT**

**AND**

**BANDA HOMES LIMITED ..... RESPONDENT**

**RULING**

1. The Application before me for determination is dated 15<sup>th</sup> June 2021 and is filed by the Claimant who seeks the following orders:
  - i. Spent
  - ii. Spent
  - iii. That this court be pleased to stop the Respondent, its servants, authorized agents and whomsoever acting on their behalf from seizing, attaching, repossessing and/or interfering with the Applicant's user and possession of motor vehicle KCT 575A including initiating, commencing and or pursuing criminal proceedings against the Applicant pending hearing and determination of this suit.
  - iv. That costs of this application be borne by the Respondent.
2. The Notice of Motion is founded on the grounds set out at the face of the application and in the supporting affidavit of the Claimant. The Claimant avers that he was employed by the Respondent between 5<sup>th</sup> January 2018 and 20<sup>th</sup> December 2020 as a general manager in charge of operations and was earning a net salary of Kshs. 300,000; that during the course of the said employment, the Claimant was offered a car loan of Kshs 1,000,000 to purchase motor vehicle registration no. KCT 575A; the Respondent deducted Kshs 50,000 per month from the salary of the Claimant towards settling the loan facility; that the Respondent effected the said deductions amounting to Kshs 600,000 and leaving



- a balance of Kshs 400,000; that the Claimant left employment in December 2020 after the Respondent failed to pay his salary for 9 months amounting to salary arrears of Ksh 2,700,000; that the failure to pay the Claimant his monthly salary for a period of 9 months amounted to constructive dismissal.
3. The Claimant contends that the Respondent through its director, Mr Andrew Kamau has since been demanding that the Claimant hands over the suit Motor vehicle because he did not complete paying for the vehicle; that the said director has resorted to using the police to try and reposes the said motor vehicle; that the Claimant has been summoned severally by the DCI to record statements over the said motor vehicle and the Claimant is apprehensive that the police may arrest him on trumped up charges to coerce the Claimant to hand over the vehicle to the Respondent; that the Respondent's claim over the motor vehicle KCT 575A is unjust, unconscionable, illegal and amounts to unjust enrichment as the Respondent owes the Claimant Kshs 2,700,000 in salary arrears and potential damages arising out of constructive dismissal.
  4. The Claimant avers that it is imperative that motor vehicle registration no. KCT 575A is preserved pending the hearing and determination of this suit.
  5. The Respondent filed a Replying affidavit sworn on 18<sup>th</sup> March 2022 by Andrew Kamau Muhio the Respondent's Director. He admitted that the Claimant indeed purchased a vehicle from the Respondent at a price of Kshs 1,000,000 whereupon a deduction of Ksh 50,000 per month was made from his salary towards settlement of the car purchase.
  6. According to the Respondent, the suit vehicle had been procured by the Respondent from a vehicle selling company and as such, the suit vehicle does not directly belong to the Respondent; that the Claimant's implied conduct of absconding work and his refusal to comply or pay what is due from him on the acquisition of the subject vehicle has not only caused the company irreparable losses and damages but also loss of future sales and smooth running of the company considering the Claimant's post as the General Manager-operations.
  7. The Respondent maintains that there was a breach of agreement on acquisition of the suit motor vehicle and that the Respondent has a legitimate claim over the said vehicle.
  8. On 7<sup>th</sup> February 2022, the court gave directions that the application be canvassed by way of written submissions. Both parties complied. The Claimant's submissions are dated 27<sup>th</sup> September 2022 and the Respondent's submissions are dated 19<sup>th</sup> October 2022.
  9. The only issue that falls for determination by this court is whether the orders sought ought to be granted.
  10. It is not in dispute that the parties herein were at some point engaged in an employer-employee relationship and that the said parties entered into an agreement where the Claimant was to purchase the suit motor vehicle registration no. KCT 575A from the Respondent at a cost of Kshs 1,000,000. It is further not disputed that the Claimant was paying Kshs 50,000 per month through deduction from his salary towards settlement of the said car loan.
  11. From the evidence on record, the Claimant did indeed pay Kshs 600,000 leaving a balance of Kshs 400,000 before the parties fell out. The Claimant avers that he was constructively dismissed whereas the Respondent contends that the Claimant absconded duty. These are issues that are for determination at the hearing of the main suit.
  12. It would thus be in the interest of justice that the status quo is maintained pending the hearing and determination of this suit.



13. For these reasons, I allow the application dated 15<sup>th</sup> June 2021 in terms of prayer (iii) thereof.

14. Costs will be in the cause.

**DATED, DELIVERED VIRTUALLY AND SIGNED AT ELDORET THIS 31<sup>ST</sup> DAY OF OCTOBER, 2023.**

**M. ONYANGO**

**JUDGE**

