



**Ouko v Imperial Managed Solutions E.A. Limited (Cause
716 of 2019) [2022] KEELRC 67 (KLR) (27 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 67 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 716 OF 2019**

J RIKA, J

MAY 27, 2022

BETWEEN

PATRICK OKETCH OUKO CLAIMANT

AND

IMPERIAL MANAGED SOLUTIONS E.A. LIMITED RESPONDENT

RULING

1. The Claimant worked for the Respondent as the East Africa Security Manager, between June 1, 2013 and May 24, 2019.
2. He left on redundancy, on May 24, 2019. His last monthly salary was Kshs. 203,697.
3. He lodged this Claim on October 28, 2019, pleading that redundancy amounted to unfair and unlawful termination of his contract of employment. He seeks a declaration to this effect; notice pay at Kshs. 203,687; 12 months' salary in compensation for unfair termination at Kshs. 2,444,248; and costs.
4. The Respondent filed its Statement of Response on December 19, 2019.
5. The Claimant filed an Application dated September 6, 2021, which is the subject matter of today's Ruling. He principally seeks orders that, the Managing Director of the Respondent is summoned before the Court and show cause why the Respondent should not furnish security for the decree that may be passed against the Respondent; and that, the Respondent deposits a sum of Kshs. 2,647,936 in a joint interest earning account, being the amount claimed by the Claimant.
6. The Application is founded on the Affidavit of the Claimant, sworn on September 6, 2021. He states that he has learnt that the Respondent is winding up its business, and that it would be shutting down operations in Kenya, in the 1st quarter of the year 2022. He was informed that the Respondent was selling its assets to a company known as DP World. This transaction had been reported in the local



and international press. The Respondent would lose its legal identity, making it impossible for the Claimant to execute any Judgment the Court makes in his favour.

7. The Application is opposed through an Affidavit sworn by Seraphine Njuguna, Respondent's Human Resource Manager, on 2nd February 2022. There is no evidence that the Respondent is in the process of disposing of its assets and divesting in Kenya. There is no winding-up petition brought to the attention of the Court. No press reports, local or international, have been exhibited to show the intended divestiture from Kenya. The Application was filed in September 2021. At the time of filing of the Replying Affidavit, there was no move made by the Respondent, to give credence to the allegations made by the Claimant. The Respondent has hundreds of suppliers and service providers, who by now would have moved against the Respondent, if the allegations made by the Claimant, had any truth. The Respondent prays for dismissal of the Claim.

The Court Finds:

8. The Claimant has not shown that the Respondent is in the process of winding-up its business in Kenya. The Respondent is described as a Kenyan Company in the proceedings. It has its registered office in Kenya. It is carrying on its business in Kenya. There is no press report exhibited by the Claimant, local or international, showing that the Respondent's business has been, or is in the process of being acquired by any other entity. The Claimant refers to press reports, local and international, but has not supplied the Court with evidence of such reports.
9. There is no form of communication to the Respondent's Employees, made by the Respondent, to the effect that the Respondent is divesting from Kenya, which has been availed to the Court by the Claimant. He simply states that he has been told, by unidentified Employees, that the Respondent is closing operations in Kenya.
10. The Claimant should focus on prosecuting the Claim. The Pleadings were filed way back in 2019. The Claimant ought to have endeavoured to prosecute his Claim, instead of filing an Application. The Application is not supported by evidence.

It is Ordered:

- a. The Application filed by the Claimant dated 6th September 2021 is declined.
- b. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 27TH DAY OF MAY 2022.

JAMES RIKA

JUDGE

