



REPUBLIC OF KENYA



**KENYA LAW**  
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**Maina v Lynk Jobs Limited & another (Cause E091 of 2022)  
[2022] KEELRC 1697 (KLR) (19 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1697 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E091 OF 2022**

**L NDOLO, J**

**MAY 19, 2022**

**BETWEEN**

**MEM EPHANTUS MURANGU MAINA ..... CLAIMANT**

**AND**

**LYNK JOBS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**ADAM GRUNEWALD ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Claimant filed a Statement of Claim dated 10<sup>th</sup> February 2022, seeking general damages and compensation for unlawful termination of employment plus terminal dues.
2. Alongside the Statement of Claimant, the Claimant filed a Notice of Motion under Certificate of Urgency seeking the following reliefs:
  - a) An interim temporary injunction staying the sale and transfer of the 1<sup>st</sup> Respondent's business pending the hearing and determination of the application inter partes;
  - b) An interim temporary injunction prohibiting the sale and/or transfer of Motor Vehicle Registration No. KCW xxxx, Lorry and Motor Cycle Registration No. KMEV xxxx pending the hearing of the application inter partes;
  - c) An interim order directing the 2<sup>nd</sup> Respondent, Adam Grunewald to deposit his passport in court pending the hearing of the application inter partes;
  - d) An order directing the Respondents to deposit the sum of Kshs. 17,393,114.80 in an interest earning account in the names of Counsel for the Claimant and the Respondents.
3. The Motion is supported by the Claimant's own affidavit and is based on the following grounds:



- a) That Lynk is a platform that connects households and businesses with verified domestic workers, fundis and artisans and blue collar professionals in Nairobi. It envisions a world in which informal sector workers can enjoy job security, fair wages, a safe work environment and the opportunity for career growth;
  - b) That the Claimant is a former employee of the 1<sup>st</sup> Respondent, whose Chief Executive Officer and Founder is the 2<sup>nd</sup> Respondent;
  - c) That the Claimant was declared redundant in February 2021 and his severance pay, which amounted to Kshs. 1,393,114.80 was not paid;
  - d) That failure to pay the said sum was in blatant violation of Section 40(1)(e) and (g) of the Employment Act and therefore amounts to unfair termination of employment;
  - e) That the Claimant was subjected to racism and unfair labour practices by the Respondents;
  - f) That the constitutional rights of the Claimant as protected under Article 41(1) and (2)(a) and (b) were violated;
  - g) That the Claimant has come to learn that the 2<sup>nd</sup> Respondent has offered the 1<sup>st</sup> Respondent's business for sale; should the said business be sold, the Claimant would not be able to get any dues and compensation and would therefore suffer substantial loss and damage;
  - h) That the Claimant has also learnt that the 2<sup>nd</sup> Respondent fraudulently and in a criminal manner forged a contract purporting it to be the Claimant's and used it to mislead the Immigration Department to issue him with permits and exemptions to return to Kenya in 2020, at height of the COVID-19 Pandemic;
  - i) That since the 2<sup>nd</sup> Respondent is a foreigner, he may run away from the country and place himself outside the jurisdiction of the Court before the hearing of the matter herein.
4. The Respondent's response is by way of a replying affidavit sworn by the 2<sup>nd</sup> Respondent, Adam Grunewald on 22<sup>nd</sup> February 2022.
  5. Grunewald states that the Claimant has no cause of action against him as the Claimant was at all material times an employee of the 1<sup>st</sup> Respondent Company, which is a separate legal entity from the 2<sup>nd</sup> Respondent.
  6. Grunewald further states that the reliefs sought by the Claimant are founded on misrepresentations. He adds that the termination of the Claimant's employment was on the basis of mutual agreement, following discussions with the Company on 26<sup>th</sup> January 2021.
  7. The 2<sup>nd</sup> Respondent depones that the Claimant left employment without properly handing over his duties and/or returning assets which were critical to the operations of the Company and as a result, the operations were severely affected. He maintains that any outstanding payments were to be remitted to the Claimant upon return of company assets and settlement of account.
  8. The Respondents accuse the Claimant of coming to court with unclean hands, by concealing information material and relevant to the determination of the instant application.
  9. The 2<sup>nd</sup> Respondent denies the allegation made against him by the Claimant, that he forged a contract in order to obtain work permits and exemptions to return to Kenya in 2020 at the height of the COVID-19 Pandemic.



10. The Respondents further raised a Preliminary Objection by notice dated 22<sup>nd</sup> February 2022 citing the following grounds:
  - a) The Claimant has no locus standi to institute the instant Notice of Motion and consequently the accompanying claim is incompetent;
  - b) The Claimant has not established any nexus between himself and the 2<sup>nd</sup> Respondent;
  - c) The application and accompanying claim are fatally defective, misconceived, bad in law and an abuse of the court process.
11. The Claimant swore a supplementary affidavit on 4<sup>th</sup> March 2022.
12. Regarding the question whether the 2<sup>nd</sup> Respondent is properly joined in these proceedings, the Claimant states that the 2<sup>nd</sup> Respondent is liable in his personal capacity for the following reasons:
  - a) That the 2<sup>nd</sup> Respondent is the Chief Executive Officer of the 1<sup>st</sup> Respondent who made decisions on employment of staff and thereby subjected the Claimant to racial discrimination which is the basis of part of the Claimant's claim;
  - b) That the 2<sup>nd</sup> Respondent fraudulently forged the Claimant's employment contract which he forwarded to the Immigration Department, while applying for a work permit.
13. On the face of the Claimant's Notice of Motion prayers (2), (3), and (4) which are duplicated at (5), (6) and (7) were sought and declined at the *ex parte* stage. In this regard, I have noted the attempt by the Claimant's Advocates to amend these prayers by way of supplementary submissions dated 22<sup>nd</sup> April 2022. The only thing I will say on this is that a party's pleadings cannot be amended by way of submissions by Counsel. That said, the only surviving prayer is number 8, by which the Claimant seeks an order for attachment before judgment.
14. The Court was referred to the decision in *Bayusuf Grain Millers v Bread Kenya Limited* [2005] eKLR where Kimaru J stated the following:

“...for the order of an attachment before judgment to be issued, [the] court must be satisfied beyond peradventure that indeed the defendant intends to abscond from the jurisdiction of the court or dispose his assets with a view of defeating the cause of justice. The order of attachment before judgment is draconian and can only be issued in the clearest of cases.”
15. This remains good law. An order of attachment before judgment places an onerous burden on a party before the issues in dispute are fully ventilated and a court issuing such an order must therefore be confident that the conditions for issuing it have been met.
16. In this case, the Claimant's plea is premised on allegations of fact that are highly contested as between the parties. I have therefore formed the opinion that in order to render an objective determination on these issues, I would need to take *viva voce* evidence. For this reason, the Claimant's plea is declined.
17. Regarding the Respondent's Preliminary Objection, the only thing to say is that it is based on matters of fact to be determined at trial. These matters cannot therefore form the subject of a Preliminary Objection as defined in law.
18. In the end, both the Claimant's application and the Respondents' Preliminary Objection fail and are disallowed with costs in the cause.
19. Orders accordingly.



**DELIVERED VIRTUALLY AT NAIROBI THIS 19<sup>TH</sup> DAY OF MAY 2022**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Magee for the Claimant

Miss Tanui h/b Mr. Madowo for the Respondents

