



**Kara v Medanta Africare Limited (Cause 11 of 2019)
[2022] KEELRC 1361 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1361 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 11 OF 2019
CN BAARI, J
JUNE 30, 2022**

BETWEEN

NAQEEB IMTIAZ KARA APPLICANT

AND

MEDANTA AFRICARE LIMITED RESPONDENT

RULING

1. Before Court is the Claimant's application dated February 6, 2019, seeking that the court compels the Directors of the Respondent to place an attachment on debt before judgment.
2. The application is premised on the grounds that the Respondent is closing down shop, and had already closed down some of their branches such as the ones in Kisumu, Nakuru and two in Nairobi, and secondly, that they are about to leave the local limits of the jurisdiction of the court.
3. The Claimant fears that the Respondent are about to leave Kenya under circumstances affording reasonable probability that the Claimant/Applicant may be obstructed or delayed in execution of any decree that may be passed by this court against the Respondent.
4. The Respondent opposed the application vide a replying affidavit filed in court on March 14, 2019. The Respondent's position is that she was only resizing and reorganizing her business to ensure profitability, and the allegations of winding up are untrue, and unfounded.
5. The Respondent avers that she is a company duly registered in Kenya and has an address in Nairobi where the Claimant served his pleadings and therefore the allegations that the Directors will flee the country are not true.

Determination

6. The application herein was filed on February 6, 2019, under certificate of urgency, the urgency being the grounds aforementioned. Today, it is three years down the line since the application was filed.



7. The application is brought pursuant to Order 23 Rule 1 and Orders 39 & 51 of the *civil Procedure Rules*. Order 39 rule 1 states:

“Where at any stage of a suit, other than a suit of the nature referred to in paragraphs (a) to (d) of section 12 of the Act, the court is satisfied by affidavit or otherwise—

- (a) that the defendant with intent 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—
 - (i) has absconded or left the local limits of the jurisdiction of the court; or (ii) is about to abscond or leave the local limits of the jurisdiction of the court; or
 - (iii) has disposed of or removed from the local limits of the jurisdiction of the court his property or any part thereof; or
- (b) that the defendant is about to leave Kenya under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may issue a warrant to arrest the defendant and bring him before the court to show cause why he should not furnish security for his appearance”

8. The Court of Appeal in the case of Kuria Kanyoko t/a Amigos Bar and Restaurant Vs Francis Kinuthia Nderu & others (1988) 2KAR 126 had this to say on attachment before judgment:

“The power to attach before Judgment must not be exercised lightly and only upon clear proof of mischief aimed at by order 38 rule 5, namely that the Defendant was about to dispose of his property or to remove it from the jurisdiction with intent to obstruct or delay any decree that may be passed against him.”

9. From the foregoing, nothing justifies the prayers sought by the Claimant. Firstly, the instant application was filed three years ago together with the statement of claim in the matter. The Respondent has through counsel, continued participating in the suit, and therefore if the Respondent was ever planning to leave the country or the court’s jurisdiction, three years was enough time to have done so.

10. In my view, the Applicant has not proved that the Respondent’s objective and main goal in re-sizing and reorganizing is to obstruct or delay any decree that may be passed against her.

11. I hold that the application lacks merit and is hereby dismissed.

12. The costs of the application shall abide the cause.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 30TH DAY OF JUNE, 2022.

CHRISTINE N. BAARI

JUDGE

Appearance:

Mr. Nyanga present for the Claimant



Mr. Ruiru present for the Respondent
Ms. Christine Omollo - Court Assistant

