



**Nganga v Safigen Kenya Limited (Cause 30 of 2019)
[2022] KEELRC 1433 (KLR) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1433 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 30 OF 2019
SC RUTTO, J
JUNE 23, 2022**

BETWEEN

KENNEDY WAWERU NGANGA APPLICANT

AND

SAFIGEN KENYA LIMITED RESPONDENT

RULING

1. The Claimant has moved this Court vide a Notice of Motion Application dated 12th January, 2022, expressed to be brought under sections 1A, 1B and 3B of the Civil Procedure Rules and Order 51 Rule 1 of the *Civil Procedure Rules* and all enabling provisions of the law. The Application which is supported by the Affidavit of Kennedy Waweru Ng'ang'a, the Claimant/Applicant, seeks the following orders: -
 - a. Spent.
 - b. That the court be pleased to grant a Hearing date for the main suit on priority basis pending the hearing inter-partes and determination of this Application.
 - c. That costs of this Application do abide the outcome of the said Appeal.
 - d. That any further or other order as the justice of the case may require to be made.
2. The Application is premised on the following main grounds: -
 - a. That the claim was filed on 22nd January 2019, a period of three (3) years ago.
 - b. That the Claimant has fully complied with Order 11 of the Civil Procedure Rules.
 - c. That obtaining a Hearing date for the suit has not been fruitful.



- d. That Respondent has moved their head office to the United States of America, changed its company name and is in the process of cutting ties with Kenya.
 - e. That the company has rebranded in a bid to dissociate itself from the original company Safigen aka Safi analytics.
 - f. That unless this Application is heard expeditiously the Claimant/Applicant's claim will be rendered nugatory and a mere academic exercise once the Respondent leaves jurisdiction.
 - g. That the Applicant has been brought without undue delay and no prejudice will be suffered by the Respondent if the Application is allowed.
3. The Application was opposed by the Replying Affidavit of Ms. Lauren Elise Dunford who identified herself as the Director of Safi Analytics Limited formerly known as Safigen Kenya Limited.
 4. The respondent contended through the said Replying Affidavit, that it is a subsidiary of a company called Safigen PBC, and that it changed its name from Safigen Kenya Limited to Safi Analytics. That this was followed by rebranding of the parent company and its subsidiaries hence adoption of the brand name "safi". That further, the shareholders of the respondent have not changed and it does not intend to wind up its operations in Kenya. That the claimant had mistaken the rebranding of the group of companies falling under Safi Analytics PBC, to constitute migration.
 5. The Application was canvassed by written submissions, which I have considered. The Applicant submitted that the respondent was in the process of leaving the jurisdiction hence the suit shall be rendered nugatory.
 6. On the other hand, the respondent submitted that the Application is fatally defective and overtaken by events. That the Applicant had not demonstrated the intention of the respondent to migrate from Kenya. That the Applicant's submissions do not support its clamour for an early hearing date.
 7. From the face of the Application, the substantive prayer being sought by the Applicant has been overtaken by events. Nonetheless, it is evident from the thread running through the Application and the Affidavit in support thereof, that the claimant is seeking that the matter be heard on a priority basis on grounds that the respondent is in the process of cutting ties with Kenya. The respondent has denied this assertion and presented evidence that it merely changed its name and rebranded. A certificate of change of name issued from the Registrar of Companies was presented in evidence.
 8. It is notable that the Applicant did not counter the evidence of the respondent and did not file a supplementary evidence despite being granted leave to do so.
 9. I have reviewed the evidence presented by both sides and note that the respondent changed its company name from Safigen Kenya Limited to Safi Analytics and to this effect, was issued with a certificate of change of name on 3rd October, 2018. This was approximately four (4) years ago and one (1) month from 31st August, 2018, which is the date the claimant was summarily dismissed from employment.
 10. The claimant has not presented evidence to prove that the respondent has relocated its operations or cut ties with Kenya since the time it changed its company name. A change of name is not evidence of relocation. Further, the change of name was effected within Kenya hence it is evident that the respondent was still in operation within the country, but under a different name.
 11. To this end, the Application is not meritorious. Be that as it may, I note that this is a 2019 matter, and the matter was certified ready for hearing on 22nd October, 2019. As such, parties can take a hearing date at the registry.



12. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JUNE, 2022.

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STELLA RUTTO

JUDGE

Appearance:

Ms. Luchemo for the Claimant/Applicant

Mr. Obura for the Respondent

Court Assistant Barille Sora

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the *Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

