



**Kimweli & another v Warah & another (Cause 2590 of 2016)  
[2022] KEELRC 4118 (KLR) (10 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4118 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 2590 OF 2016**

**J RIKA, J  
JUNE 10, 2022**

**BETWEEN**

**JOSEPHINE NDINDA KIMWELI ..... 1<sup>ST</sup> CLAIMANT**

**FLORENCE KYENGO KATUNGE ..... 2<sup>ND</sup> CLAIMANT**

**AND**

**JAZZ WARAH ..... 1<sup>ST</sup> RESPONDENT**

**MINI WARAH ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The respondents filed an application dated January 19, 2022, praying for orders that: -
  - a. The claimants be ordered to deposit the sum of Kshs 100,000 as security for respondents' anticipated costs in this suit.
  - b. The said sum be deposited in a joint bank account between the counsel for the claimants and the counsel for the respondents.
  - c. In default, the claimants' suit herein be dismissed with costs.
2. The application is founded on the affidavit of the 2<sup>nd</sup> respondent, sworn on January 19, 2022.
3. He states that while this suit was pending, the claimants filed another Suit against the respondents, over the same subject, in E&LRC No 933 of 2017.
4. That claim was struck out with costs to the respondents, on March 9, 2018. Costs were assessed and awarded to the respondents, at Kshs 97,885. The claimants are yet to pay the said costs.



5. The respondents apprehend that the claimants will not be in a position to pay them costs, in event an order of costs is made against them, in the present proceedings. They ask for security for anticipated costs.
6. The claimants rely on the replying affidavit of the 1<sup>st</sup> claimant, sworn on January 21, 2022. She states that the application filed by the respondents, is a waste of time. She states that the claimants did not participate in taxation of costs in the previous suit. At the same time, the claimants state that the respondents were issued certificate of costs on May 13, 2019, and have not executed for 2 years.

**The Court Finds: -**

7. There is a ruling made against the claimants, in this court's Cause No 933 of 2017. The cause was initiated by the claimants against the respondents. It related to the same subject matter as pursued in the cause herein. Costs were awarded to the respondents, and assessed at Kshs 97,885. The certificate of costs is exhibited. The claimants have not satisfied costs.
8. The apprehension by the respondents, that the claimants will not satisfy any order of costs made against them in the current proceedings, is well-founded. They ought to pay the costs awarded to the respondents, before proceeding with the cause herein, or deposit security for costs as prayed herein, before they can be allowed to prosecute this claim.
9. If the claimants do not satisfy existing orders of the court on costs, and are allowed to pursue another claim against the respondents unhindered, the court would be encouraging the claimants to continue in their abuse of the process of the court. It would be denying the respondents their right to fair administration of justice.
10. The claimants' position that the respondents have delayed in executing for costs, does not in any way explain their refusal or inability to settle those costs.

**It Is Ordered: -**

- a. The claimants shall satisfy the orders for costs made in favour of the respondents, in E&LRC Cause No 933 of 2017 before proceeding with the cause herein.
- b. Alternatively, they are ordered to deposit the sum of Kshs 100,000 in court, as security for respondents' anticipated costs in this suit.
- c. In default, the claim herein stands dismissed with costs, within 60 days of this ruling.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 10TH DAY OF JUNE 2022.**

**JAMES RIKA**  
**JUDGE**

