



Amwayi v Nairobi Golf hotels (Kenya) Ltd (a.k.a Windsor Golf Hotel Country Club) (Cause E880 of 2021) [2022] KEELRC 1586 (KLR) (2 June 2022) (Ruling)

Neutral citation: [2022] KEELRC 1586 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
CAUSE E880 OF 2021**

AN MWAURE, J

JUNE 2, 2022

BETWEEN

KENNEDY SIMWA AMWAYI APPLICANT

AND

NAIROBI GOLF HOTELS (KENYA) LTD (A.K.A. WINDSOR GOLF HOTEL COUNTRY CLUB) RESPONDENT

RULING

1. The claimant filed an application under certificate of urgency dated September 10, 2021 and the prayers are among others to order the Respondent, Nairobi Golf Hotels And (kenya) Ltd A.k.a. Windsor Golf Hotel And Country Club to pay ABSA Bank Kenya Ltd on behalf of the Claimant money deducted from the Claimant's payslip a total of Kshs 117,888/- from the month of April 2020 to date.
2. The claimant also prays that pending the hearing and determination of this application the court be pleased to make temporary orders staying the summary dismissal effected upon the claimant on April 21, 2021 by Nairobi Golf Hotels (kenya Ltd) a.k.a. Windsor Golf Hotel & Country Club.
3. That the costs of this application be in the cause.

Claimant's Case

4. The claimant states that he worked for the respondent diligently for over 6 years till he was terminated from his employment on April 21, 2021.
5. He says he was accused falsely of instigating an illegal gathering without the notice of the management. He says his salary at the time of dismissal was Kshs. 62,399/07.



6. He says he was deducted Kshs. 117,888/- from April 2020 to April 2021 for remittance to ABSA bank but was never remitted. He says the loan outstanding with ABSA bank is kshs 611,368/70 and the bank is threatening to take action against the claimant.
7. The claimant has made other prayers for moneys allegedly due and owing to him from the Respondent as per his affidavit deponed on September 10, 2021.

Respondent's Case

8. The respondent's witness Leah Nzioki says that she is opposed to the claimant's attempt to argue his case at the interlocutory stage and before the Respondent called upon to answer the allegations of the Memorandum of claim. They therefore pray that the Application be found incompetent and be dismissed.
9. The court has considered the respondent's and the claimant's submissions and have taken consideration of the submissions tendered by the respective parties.

Decision

10. The claimant is praying for remittance of Kshs. 117,888 to ABSA Bank Kenya Ltd which he avers was deducted from his payslip and was never submitted to the bank. The respondent by its affidavit deponed by Leah K. Nzioki denies having deducted Kshs.117,888/- from the Claimant's salary. It however admits having deducted Kshs. 9,824/- from his salary which it admits is ready to remit to the Claimant.
11. The prayer from the notice of motion dated September 10, 2021 the claimant is praying for respondent to pay Kshs 117,888/- to ABSA Bank Kenya Ltd on behalf of the claimant from month of April to date. In the claimant's written submissions however dated February 25, 2022 the claimant prays the respondent to remit Kshs. 96,921/- to ABSA Bank Kenya Ltd. Therefore it appears the claimant is not even convinced of the amount he claims was deducted from his salary and at what period.
12. The claimant did not produce all the payslips to demonstrate that the respondent deducted Kshs. 117,888/- from his salary to pay to ABSA Bank Ltd. The statement purported to be from Absa Bank produced as exhibit on pages Nos 54-56 do not show how respondent deducted money from the claimant and failed to remit to the bank. The claimant will have to produce authentic evidence to convince the court that money was deduced from his salary and at what period and that it was not remitted to ABSA Bank.
13. The claimant's payslip produced as his exhibit on pages 48 of the claimant's list of documents show that in the claimant's payslip of March 2020 there was a deduction of Kshs 9,824/- which was to be remitted to the ABSA Bank. In fact this is the amount the Respondent admits they deducted from the claimant's salary.
14. The other prayers by the claimant in the Notice of Motion dated September 10, 2021 are praying for temporary orders staying the summary dismissal effected on the claimant on April 21, 2021 by the Respondent pending the hearing of the suit. He has also prayed for the costs of the application to be in the cause.
15. The order for temporary injunction is overtaken by events since the same was effected on April 21, 2021.



16. In the case of *Siskena* 1977 3 ALL E.R it was held:

“A right to obtain an interlocutory injunction is not a cause of action if it cannot stand on its own.”..

In *Nation Media Group & 2 others v John Harun Mwau* (2014) eKLR the Court of Appeal stated:

“It is trite Law that for an interlocutory mandatory injunction to issue an applicant must demonstrate existence of special circumstance. A different standard higher than that in a prohibitory injunction is required before an interlocutory mandatory injunction is granted.”

17. The prayers herein are better dealt with after a full hearing of the main suit and looking at the numerous prayers by the claimant. In all fairness the court would only be in a better position to determine all the prayers after a full hearing of the suit and considering respective submissions by the parties.

18. The court therefore declines the prayers sought by the claimant and orders the main suit filed vide a Memorandum of claim dated September 10, 2021 be prosecuted after the compliance on filing of the pleadings. Costs of the application be in the cause.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 2ND DAY OF JUNE, 2022.

ANNA NGIBUINI MWAURE

JUDGE

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 has 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 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.

A signed copy will be availed to each party upon payment of court fees.

ANNA NGIBUINI MWAURE

JUDGE

