



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 37 OF 2019

BETWEEN

JOSHUA SIWACLAIMANT

VERSUS

FLAMINGO HORTICULTURE [K] LIMITEDRESPONDENT

RULING

1. The Claimant filed his Claim on 23rd January 2019. He seeks compensation for unfair termination, general damages over the same breach, costs and interest.
2. He then filed an Application under Certificate of Urgency, on 23rd October 2020, asking the Court that his Claim is certified urgent, and heard on a priority basis, on the ground that, the Respondent is in the process of transferring its business to a 3rd Party. He states that transfer would result in compromise or loss of evidence. The hearing and conclusion of the Claim would be delayed by the impending changes.
3. The Application is supported by the Affidavit of the Claimant, sworn on 16th September 2020. The Claimant restates the grounds set out above, in support of the Application, in his Affidavit.
4. The Respondent opposes the Application, relying on the Affidavit of Dennis Mwirigi, Director, Legal, Human Resource, Compliance and Corporate Affairs, sworn on 3rd November 2020.
5. Mwirigi deposes that the Respondent is not undergoing any transfer of business. The Claimant is merely seeking accelerated hearing and determination of the Claim.
6. Parties agreed to have the Application determined on the strength of the record. They confirmed filing and exchange of their Submissions at the last appearance in Court, on 26th February 2021.

The Court Finds: -

7. There is no evidence from the Claimant, supporting his allegation that the Respondent is in the process of transferring its business.
8. Even if there was such transfer, it would not legally defeat the Claim, or impair the Claim in the manner apprehended by the Claimant.
9. Employment obligations are not defeated or impaired by transfer of business.
10. If there is any particular evidence the Claimant wishes to be preserved, there are ways of preserving such evidence, without rushing everyone to a premature hearing.
11. The Claimant must be told also, that there are many Claims pending before this Court, in which the Claimants would wish to be heard on accelerated basis.
12. The Court is limited in its personnel, time and space, and cannot hear everyone on a priority basis.
13. Parties would serve their causes best, by avoiding interlocutory applications such as has been made by the Claimant, and focus on the

substantive disputes.

14. It is noted even as the Claimant was filing and fixing his Application for hearing, arguing the Application and awaiting the Ruling, many other Claimants have obtained hearing dates of their respective Claims, from this Court. The given dates fall between March 2021 and July 2021.

15. There was absolutely no need to file this Application seeking to have a date for hearing. Other Parties have obtained suitable dates without making interlocutory Applications. The Claimant only needs to satisfy the Court that he has meet all the pre-trial requirements, to be scheduled for hearing.

IT IS ORDERED:

a. The Application dated 23rd October 2020 filed by the Claimant is rejected.

b. Costs in the Cause.

Dated, signed and released to the Parties, under Ministry of Health and Judiciary Covid-19 Guidelines, at Chaka, Nyeri County, this 27th day of May 2021.

James Rika

Judge