



IN THE REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1159 OF 2016

(Before Hon. Lady Justice Hellen S. Wasilwa on 6th February 2018)

NEHEMIAH MOSINGI NYANGARESII.....1ST CLAIMANT
CHARLES OMANGA OTONGO.....2ND CLAIMANT
BISMACK SIKO OMAMBIA.....3RD CLAIMANT
JOB BOSIRE.....4TH CLAIMANT
EVANS ONDIEKI BANGLI.....5TH CLAIMANT
PAUL ONYANGO OTIENO.....6TH CLAIMANT
JOHN OTIENO AWINO.....7TH CLAIMANT
JERRY WAFULA WAWIRE.....8TH CLAIMANT
ERNEST OWINO AKULA.....9TH CLAIMANT
STEPHEN MUSUNGU EMU.....10TH CLAIMANT

VERSUS

ILBEY CONSTRUCTION

TURKISH COMPANY LIMITED.....RESPONDENT

RULING

1. The Application before Court is dated 7th July 2016. The Application is brought under Certificate of Urgency and brought through a Notice of Motion filed under Rule 3 of the High Court Practice and Procedure Rules, Section 10 of the Judicature Act and Section 12 of the Industrial Court Act, 2011, and all the enabling provisions of law.

2. They seek orders that:

1. This application be certified urgent and be heard on priority and ex parte in the first instance.

2. The Respondent do furnish security for the likely award in the Claim by depositing the sum of Kshs.3,060,750/= in Court within 7 days.

3. In default Warrants be issued to an Auctioneer to execute against the Respondents to recover the sum of Kshs.3,060,750/=

and deposit the said monies in Court pending the full and final hearing of this case.

4. The Respondents do bear the costs of this application.

3. The Application is also supported by the annexed affidavit of Nehemiah Nyangaresi the 1st Claimant herein deponed to on 7th July 2016 and also on the following grounds:-

1. The Respondent has recently sold off and abandoned its operations at its sister company namely Izomix Company Limited. Verified and reliable information from the Claimants and other employees in the Company is to the effect that the company is posing to sell of its assets and to close operations in the Respondent Company herein.

2. The Company Directors are foreigners and upon closure or sale they will leave the Court's jurisdiction and the Claimants will have no recourse if they vacate the jurisdiction of the Court.

3. The Directors to the Respondent are keeping the whole process as a top secret to evade the justice of this case.

4. It is in the interest of justice and for the protection of the Court process for the orders sought to be granted.

5. It is just and equitable to grant the relief.

4. When the Claimant Applicants came to Court ex-parte on 7th July 2016, the Court granted orders for status quo to be maintained to ensure the ownership of the Respondents does not change or its assets disposed off.

5. The Respondents filed a replying affidavit to this application through one Icoz Ridvan the Respondent's Managing Director. He deponed that the Application is bad in law and an abuse of the Court process and sought its dismissal.

6. He avers that the Applicants averments are based on non-existent facts, speculation, malice and a desire to chase away the clients of the Respondent. He avers that it is laced with falsehoods and hearsay.

7. He also states that the Respondent company was incorporated in 2011 (LRI) and it is a lie for him to depone that he was employed in August 2010.

8. The Respondents also deny that the Applicants are entitled to the amounts calculated. They aver that the claim cannot be sustained. They also aver that the Respondent has no sister company and that they have no plan for any sale or relocation abroad.

9. They want this Applicant dismissed with costs.

10. By Consent of the parties, the application proceeded by way of written submissions.

11. I have considered the submissions filed by both parties. The issue to determine is whether the Respondents are in any way disposing of their property in Kenya in view of defeating the judgment of this Court in this case if any. Order 26 rule 1 of the Civil Procedure Rules state as follows:-

"In any suit the court may order that security for the whole or any part of the costs of any defendant or third or subsequent party be given by any other party".

12. This Order can be granted by Court if there is proof that the Respondent has by their action or omission shown that they intend to defeat the judgement of the Court. The Applicants must demonstrate this occurrence through evidence. The Applicants have however not presented before Court any evidence that the Respondents have sold their assets or intend to close the company.

13. It is true that the Respondents are foreigners but there is no indication that they intend to sneak out of the Country in order to defeat this claim if judgement is given.

14. I find the application is not merited and is therefore dismissed accordingly.

15. Costs in the cause.

Read in open Court this **6th day of February, 2018.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties