



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2465 OF 2017

(Before Hon. Justice Hellen S. Wasilwa on 8th March, 2018)

THIERRY POUSSARD.....CLAIMANT

-VERSUS-

BRADLEY LIMITED.....RESPONDENT

RULING

1. The application is dated 12th January 2018 and filed in Court on 15th January 2018. The Application was brought under Certificate of Urgency by the Claimant herein who seeks orders that the Respondent herein be ordered to deposit Kshs.26,000,000/= being projected costs and award in the claim.
2. The application is premised on the grounds that the Respondent have suspended its operations in Kenya with effect from 7th January 2018 and unless the amount in question is deposited in Court, the entire claim would be frustrated.
3. The Applicant also seeks orders that pending the hearing and determination of this application, there be a temporary injunction restraining the Respondent, his servants and agents from transferring, disposing of or withdrawing or parting with possession of money amounting to Kshs.26,000,000/= held in Account No. 0060015025240101 at Eco Bank in Thika Branch or any bank account in the name of the Respondent.
4. The Applicant contends that he filed suit against the Respondent on 15th December 2017 for unlawful termination and he stands greatly prejudiced if this application is not allowed as the Respondent has publicly declared suspension of its operations in Kenya via a Public Notice on 7th January 2018 in the Daily Nation.
- 5 The Applicant is therefore apprehensive that his claim will be rendered nugatory and justice will be obstructed should he succeed, as the Respondent will have lost its ability to honour its obligation.
6. He avers that the Respondent has no known assets upon which execution can be done if his claim succeeds.
7. The Respondents filed their replying affidavit to this application on 29th January 2018. The affidavit was sworn by one Paul Muchene Kinuthia the Respondent's Managing Director. He deponed that the Respondent is licenced by the Betting Control and Licensing Board to undertake the business of a Private Lottery within the Republic of Kenya and has been operating a National Lottery in the name of PAMBAZUKA NATIONAL LOTTERY (PNL), which is available for participation throughout the country.
8. They aver that whereas they published the notice the subject matter of this application, it is clear from the said notice that it is only temporarily suspending sale of Lottery tickets to allow for the institution of a sustainable regulatory framework in the Industry and which does not constitute a winding up of the company as a legal entity capable of meeting all its legal obligations.
9. They aver that the effect of the notice was to suspend the weekly draws that the Respondent was holding.
10. They also aver that the Respondent is a Kenyan Company with Local Directors and who have many other diverse businesses and property interests in Kenya and they have no intention of absconding.
11. The Respondent aver that this application is an abuse of the Court process that seeks to enrich the Applicants before hearing of this case.

12. I have examined the averments of both parties plus submissions filed herein. In determining whether the Respondent should furnish security to Court to satisfy any decree that may be passed, I am guided by Order 39 rule 1(b) and (2) of the Civil Procedure Rules which provide as follows:-

“Where at any stage of a suit, other than a suit of the nature referred to in paragraphs (a) to (d) of section 12 of the Act, the court is satisfied by affidavit or otherwise:-

b. that the defendant is about to leave Kenya under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may issue a warrant to arrest the defendant and bring him before the court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff’s claim; and such sum shall be held in deposit by the court until the suit is disposed of or until the further order of the court.

1. Where the defendant fails to show such cause the court shall order him either to deposit in court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of the decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to rule 1.

2. Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit. 3Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

13. The guiding principles then is that the Respondent is about to leave the Country in order to obstruct or delay any decree.

14. In the affidavit placed before me, there is no indication that the Respondent is about to leave the country. There is also no indication that he is disposing of his property in order to avoid or obstruct payment of any decree that may be passed by this Court. I am minded of the law that a man should not be condemned unheard.

15. I therefore find that the Applicant has not placed before this Court facts which point to the Respondent’s action or omission aimed at intending to obstruct justice. I therefore find the application is not merited and I dismiss it accordingly.

16. Costs in the cause.

Dated and delivered in open Court this 8th day of March, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Kivindu holding brief Gatwiri for the Claimant Applicant – Present

No appearance for Respondent