



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2512 OF 2016

(BEFORE HON. JUSTICE MATHEWS N. NDUMA)

FRANCIS NZUKI MULU AND 43 OTHERS (BEING FORMER EMPLOYEES OF DUBAI BANK KENYA LIMITED IN LIQUIDATION).....CLAIMANT/APP.

VERSUS

KENYA DEPOSIT INSURANCE CORPORATIONS.....1ST RESPONDENT

MR. ADAM BORU LIQUIDATION AGENT DUBAI BANK KENYA LIMITED

(IN LIQUIDATION).....2ND RESPONDENT

THE CABINET SECRETARY MINISTRY OF LABOUR AND SOCIAL

SERVICES3RD RESPONDENT

RULING

1. The applicant seeks an injunction couched in the following terms–

i. THAT this application be certified urgent, service thereof be dispensed with and heard ex-parte in the first instance.

ii. THAT pending hearing and determination of this application and or suit, the 1st, 2nd and 3rd Respondents jointly and severally be ordered to deposit the sum of Kenya Shillings Fifty Million (Kshs.50,000,000/=) in Court forthwith as security or such sum thereof as may be sufficient to satisfy the decree that may be passed against them in this suit for the claim in respect of unpaid salaries, leave, notice in lieu of termination and compensation.

iii. THAT this Honourable Court be pleased to grant any other order under the circumstances and an urgent hearing date for this suit.

iv. THAT the costs of this application be provided for.

2. The application is supported on the grounds set out on the notice of motion and in the supporting affidavit of Francis Nzuki Mulu sworn on 5/12/2016.

3. The application is opposed vide a replying affidavit of Adam Boru, the 2nd respondent in which the

deponent states that the 1st Respondent Kenya Deposit Insurance Corporation is a Government Corporation and will be able to meet all its financial obligations without necessity of depositing any money in court and security.

4. That the Respondent is still committed to settle the Claims made in respect of salaries owed to the employees of the 1st Respondent now under receivership.

5. That insured Depositors take first priority in payment and all other claims including those by the Claimants will be made.

6. The 3rd Respondent on the other hand invites the Claimants to make an application to the cabinet secretary in terms of section 66 to 73 to The Employment Act, 2007.

7. The 3rd Respondent urges the court to find that this application by the Claimants is premature and the court do direct the Claimants to make written application to the 3rd Respondent accordingly.

8. The parties filed submissions in support of the respective positions.

9. The court is of the considered view that this application was made prematurely. That the applicant ought to follow the provisions under section 66 to 73 of the Employment Act, and in addition continue to pursue the out of court settlement that is ensuing.

10. Accordingly, the application lacks merit and is dismissed with no orders as to costs.

11. The main suit to be set down for hearing on a priority basis if settlement is not arrived upon.

Dated and Signed in Kisumu this 6th day of February, 2018

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 2nd day of March, 2018

Maureen Onyango

Judge

Appearances

Mr. Mandala & Co. for Claimant

Mr. Mbaka for 1st & 2nd Respondent

M/s. Odhiambo for 3rd Respondent

Anne Njung'e – Court Clerk