



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 319 OF 2018

CAROLINE KIAMBI.....CLAIMANT

- VERSUS -

BRADLEY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 22nd June, 2018)

RULING

The claimant filed the statement of claim on 14.03.2018 through J.A. Guserwa & Company Advocates. The claimant also filed the Notice of Motion on 03.04.2018 under section 12 of the Employment and Labour Relations Court Act and the practice rule thereto, the inherent powers of the Honourable Court and all other enabling provisions of law. The prayers in the application were as follows:

- a) That the application herein is certified urgent and be heard ex-parte in the first instance.
- b) That the Honourable Court is pleased to grant orders directed at the Equity Bank, Community Corporate Branch, Account No. [...] and Eco Bank, Thika Branch, Account No. [...] to preserve or freeze the respondent's funds (estimated at Kshs. 16,000,000.00) being held in the said Accounts respectively, pending the hearing and determination of the instant suit.
- c) That the claimant be at liberty to apply for such further or other orders or directions as the Court may deem fit and just to grant.
- d) That costs of the application be provided for.

The application was supported with the affidavit of the claimant Caroline Kiambi attached thereto and upon the following grounds:

- a) The respondent unlawfully, irregularly and prematurely dismissed the claimant on 25.07.2017 without justifiable cause.
- b) The respondent is in the process of suspending its operations effective 08.04.2018 in Kenya hence the need to seek protection from the Court. The applicant relies on a public announcement issued on 07.01.2018 on suspension of operation due to current tax regime whose consequence was to raise the respondent's operational costs to 115%.
- c) If orders sought are not granted and the claim may never be paid but the suit may be rendered nugatory.

The applicant also filed a supplementary affidavit on 17.05.2018.

The respondent opposed the application by filing the replying affidavit of Paul Muchene Kinuthia, the respondent's Managing Director. The grounds of opposition are as follows:

- a) The suspension of the business was a temporary measure on sale of lottery tickets to allow for a sustainable regulatory framework in the industry and which does not constitute the winding up of the respondent as a legal entity as the respondent remains a legal person capable of meeting its legal obligations.
- b) The respondent was not closing business and its directors were not moving out of Kenya and the application should therefore not be granted.
- c) The suspension in issue only suspended the respondent's weekly lottery draws but the company was still in business with running registered office. The tax issue was being reviewed by Parliament and the prohibitive 35% was agreed to be lowered to 15%.

d) The respondent was a Kenyan company with Kenyan directors with diverse businesses in Kenya and satisfaction of the decree herein would not be an issue if the claimant was successful in her otherwise unmerited suit.

e) A similar application had been dismissed in **Thierry Poussard –Versus- Bradley Limited cause No.2465 of 2017** in the ruling delivered on 08.03.2018 by Wasilwa J.

The Court has considered the application, the grounds in support and against it, and the submissions made for the parties. As submitted for the respondent, the procedure and the circumstances for furnishing security for anticipated obstruction or delay in satisfaction of a decree is provided for in order 39 rule 1(b) and (2) of the Civil Procedure Rules. It must be shown 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 and in which event the Court will issue an order that the defendant is arrested to show cause why he should not furnish security in that regard. The Court returns that the provisions have not been met and further the order sought is not for the respondent to show-cause but that the bank accounts stated are frozen. Thus, the Court returns that the orders sought are not available in the circumstances of the application as they are not the kind of remedy anticipated in order 39 rules 1(b) and (2).

Further, as submitted for the respondent attachment of a credit deposit in a bank account as prayed for would obtain as a garnishee proceeding under order 23 rule 1 of the Civil Procedure Rules and in absence of a decree to be executed, the orders as prayed may not issue.

In conclusion, the application filed for the claimant on 03.04.2018 is hereby dismissed with orders:

- a) costs in the cause; and
- b) parties are invited to take directions on further steps in the suit.

Signed, dated and delivered in court at **Nairobi** this **Friday 22nd June, 2018**.

BYRAM ONGAYA

JUDGE