



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 529 OF 2014

MUNSHI ZULEKHA BAHADUR.....CLAIMANT

VERSUS

METAL CROWNS LIMITED.....RESPONDENT

RULING

1. This ruling relates to the Respondent's application brought by Notice of Motion dated 9th May 2016 seeking orders directing the Claimant to furnish security for the Respondent's costs in the claim.
2. The application which is supported by an affidavit sworn by the Respondent's Human Resource Manager, Stephen Mureithi is based on the following grounds:
 - a. That the Respondent has settled all the Claimant's dues;
 - b. That the Respondent has a bona fide defence to the claim;
 - c. That the Claimant's financial means are unknown to the Respondent since she left employment;
 - d. That the Respondent is therefore unlikely to recover its costs should it successfully defend the claim;
 - e. That it is in the interest of justice that the orders sought are granted.
3. In a replying affidavit sworn by the Claimant on 25th May 2016, she depones that the application seeking to compel her to furnish security is misguided and malicious as the Respondent terminated her employment prematurely before expiry of her contract. She adds that there was no valid reason for the termination and that procedural fairness requirements were not adhered to.
4. The Court was referred to the ruling by **Abuodha J** in **Archybald Masinde Munialo v Metal Crowns Limited (Cause No 834 of 2014)** in which the learned Judge held that an order for costs should not serve as an impediment to a claimant in prosecuting an otherwise legitimate claim. I have looked at the pleadings filed by the parties in this case and have formed the opinion that there is a legitimate claim for adjudication by the Court.
5. The Respondent's application is premised on the ground that the Claimant was paid all her dues which she duly acknowledged. I do not think however that this would preclude the Claimant from bringing a

claim for unlawful termination of employment.

6. Consequently, the Court finds that an order for costs at this stage would place an unnecessary limitation to the Claimant's right to access the seat of justice.

7. The result is that the Respondent's application is dismissed with costs being in the cause.

8. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 27TH DAY OF JANUARY 2017

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JUDGE

Appearance:

Mr. Oduor for the Claimant

Mr. Muriuki for the Respondent