



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 2245 OF 2015**

**JAMES MWAURA NJOROGE.....1ST CLAIMANT**  
**MICHAEL MAIYO.....2ND CLAIMANT**  
**MARTIN VERONICA MUGURE.....3RD CLAIMANT**  
**MATHEW WALUSIMBI.....4TH CLAIMANT**  
**FIONA ETYANG.....5TH CLAIMANT**  
**KAINGU MTAWALI.....6TH CLAIMANT**

**VS**

**BAKER HUGHES EHO LIMITED (KENYA BRANCH).....RESPONDENT**

**RULING**

**Introduction**

1. By a Memorandum of Claim dated 10th December and filed in Court on 15th December 2015, the Claimants have sued the Respondent for unlawful termination of employment and outstanding dues. Alongside the Memorandum of Claim, the Claimants also filed an application seeking orders to compel the Respondent to deposit in court the sum of Kshs.30,000,000 as security in the claim.

**The Application**

2. The Claimants' application which is supported by the supporting affidavit and supplementary affidavit sworn by the 1st Claimant, James Mwaura Njoroge is based on the following grounds:

- a. On diverse dates between 24th February 2015 and 28th May 2015, the Respondent terminated the Claimants' employment on account of redundancy;
- b. The Respondent is a subsidiary of Baker Hughes Incorporated, a foreign corporation whose Headquarters is in Houston, Texas, United States of America outside the jurisdiction of this Court;
- c. Baker Hughes Incorporated has entered into an agreement for sale of its outstanding shares to Halliburton in a stock and cash transaction worth USD 35 Billion;
- d. The said sale is expected to be completed before the end of the year and Baker Hughes Incorporated and the Respondent have already laid off more than 70 employees in Kenya in

anticipation of the expected buy out by Halliburton;

- e. The Respondent does not operate any bank accounts in Kenya and all major management decisions are made from the Headquarters of its parent company in Houston, Texas;
- f. If the Respondent is not compelled to furnish security for the claim there is reasonable apprehension that the Claimants will be obstructed or delayed in the execution of any decree in their favour;
- g. If the orders sought are not granted, the Claimants will suffer great prejudice as their claim will be rendered nugatory.

### **The Respondent's Reply**

3. The Respondent's reply is contained in a replying affidavit sworn by its Country Operations Manager, Chike Uchendu on 15th January 2016. Uchendu depones that the Respondent is a company incorporated in Bermuda but is registered in Kenya as a foreign company with a local branch pursuant to Section 366 of the Companies Act. The Respondent's major shareholder is Baker Hughes Nederlands BV whose major shareholder is Baker Hughes Incorporated.

4. It is further deponed that the Respondent has a registered office in Nairobi at Wing A, Ground Floor, Westend Towers, Waiyaki Way, on LR No. 209/4497 and LR No 209/4498. Having commenced operations in Kenya in the year 2013, the Respondent continues to operate in the country to date.

5. In controverting the Claimants' allegations that the Respondent is in the process of winding up its operations in Kenya, Uchendu depones that the Respondent has long term goals and commitments in Kenya. He makes reference to the following documents:

- a. Lease between Northend Estates Ltd and the Respondent for the period of six (6) years from 15th November 2012 to 14th November 2018 under which the Respondent pays rent in the sum of USD 23,895 per quarter;
- b. Ongoing contracts for provision of Casing and Tubular Running Services.

6. Uchendu goes on to state that the Respondent owns assets in Kenya including equipment worth hundreds of millions of Shillings. The Respondent also holds bank accounts in Kenya.

7. With regard to the sale of shares by Baker Hughes Incorporated to Halliburton, Uchendu depones that even though there are discussions on transfer of business, no agreement has been reached yet and the deliberations have not impacted on the Respondent's operations in Kenya.

8. It is the Respondent's position that the transactions involving Baker Hughes Incorporated are of no consequence to the Respondent whose major shareholder is Baker Hughes Nederlands BV. Baker Hughes Nederlands BV remains operational and has not been sold. The Respondent denies having laid off any workers in anticipation or by reason of the expected takeover by Halliburton.

9. With regard to the specific claims in this case, Chinendu depones that upon being declared redundant, the Claimants were paid severance pay together with all outstanding housing and transportation allowances as well as medical expenses.

### **Determination**

10. The issue for determination in this application is whether the Claimants have made out a case for a cash deposit in the sum of Kshs.30,000,000 as security in the claim. In granting orders for deposit of a cash security, the Court is called upon to strike a balance between securing a potential award in favour of the Applicant and the need to free up capital for use in the Respondent's operations.

11. As held by **Gikonyo J** in *Saudi Arabian Airlines Corporation v Sean Express Services [2014]eKLR* and **Sergon J** in *Jayesh Hasmukh Shah v Navin Haria & Another [2015] eKLR* an order for security deposit is discretionary and that discretion is to be exercised judiciously by taking into account the peculiar circumstances of each case. Overall, the Court must consider: lack of known assets and office within the jurisdiction of the Court, inability to meet financial obligations or the general financial standing of the Respondent, the *bona fides* of the Applicant's claim and the conduct of the parties.

12. While it is true that the Respondent in this case is a foreign company and is scaling down its operations in Kenya, the Court did not find evidence that it is divesting completely. In addition, at the time of filing of the claim, the Respondent had paid to the Applicants severance pay at the rate of 15 days' pay for every year of service. The Court was therefore satisfied that the Respondent has the ability to meet its financial obligations.

13. For the foregoing reasons, the Court finds no reason to order security deposit at this stage. I however direct that the main claim be fixed for hearing on priority basis.

14. The costs of this application will be in the cause.

15. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 26TH DAY OF FEBRUARY 2016**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Mandala for the Claimants

Mr. Nyaburi for the Respondent