



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 834 OF 2014

ARCHYBALD MASINDE MUNIALO.....CLAIMANT

VERSUS

METAL CROWNS LIMITED.....RESPONDENT

RULING

1. The application dated 17th August, 2015 sought an order that the claimant be ordered by the Court to furnish security for the respondents costs pending the hearing and determination of the suit.
2. The application was based on the grounds that the respondent had settled all the claimants' dues hence had a bona fide defence to the claim. The respondent further stated that the claimants financial means were unknown to the respondent hence the latter would unlikely be able to recover its costs should it successfully defend the claim. The application was further supported by the affidavit of one Stephen Murithi who deponed to the grounds set out above.
3. An order for costs would not be made if the sole intention is to place a hurdle for the claimant in prosecuting an otherwise legitimate claim. However, the order will issue where it is plainly clear that the claim brought forward by the claimant is frivolous and does not stand a chance of succeeding at the trial and due to the claimants' lack of resources, he may not meet the respondent's costs.
4. An applicant for this order must show by evidence that the claimant due to his poverty or lack of financial resources would not be able to meet the applicant's costs if ordered. Mere suspicion is not enough.
5. The respondent in his application states that the claimant was its employee and was paid all his dues upon termination hence may not have the resources to meet costs of the respondent if it successfully defends the claim. The respondent further states that it does not have the claimant current contacts.
6. The fact that the claimant left the respondent's employment does not mean he has no resources to meet costs if the respondent becomes successful in defending the claim. No evidence or allegation has been made that the claimant does not have another job or that his only source of income was the salary which he drew from the respondent.
7. Considering that an order for cost may if made be oppressive and hinder a claimant from

prosecuting a claim, it should be made in exceptional cases as stated earlier in this ruling.

8. The Court is of the view that this is not a proper case for making the order and hereby disallows the application.

9. Costs in the cause.

10. It is so ordered.

Dated at Nairobi this 1st day of April 2016

Abuodha J. N.

Judge

Delivered this 1st day of April 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge