



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 511 OF 2014**

**EVANS KAMANDA KIVOCHI.....CLAIMANT**

**V**

**ELDORET MATTRESSES LTD.....RESPONDENT**

**RULING**

1. The Claimant filed a summons application on 13 February 2016 seeking
  - a. ....
  - b) That the Honourable court do issue warrant of arrest against the 1<sup>st</sup> Respondent's Director namely Milan KARNIYA SHAH and be brought before court to show cause, why he should not furnish security for his appearance in court pending the hearing and determination of this application inter-partes in the first instance and thereafter pending the hearing and determination of this cause.
  - c) That the Respondent do furnish security by way of deposit of the sum of 3,521,650/= or such other sum sufficient to answer the claimants claiming in court pending the hearing and determination of this application inter-parties in the first instance and thereafter pending the hearing and determination of this cause.
  - d) That the court do make such other orders as may be fit in the interest of justice.
  - e) That the costs of this application be provided for.
2. The Respondent filed grounds of opposition to the application and it was urged on 29 February 2016.
3. The reasons/grounds urged by the Claimant for seeking the orders set out above were that the 1<sup>st</sup> Respondent was winding its operations in Kenya and that the 2<sup>nd</sup> Respondent was about to leave the jurisdiction of the Court and therefore any execution of judgment would rendered nugatory.
4. The Claimant's supporting affidavit identified one Milan Karniya Shah as a Director of the 1<sup>st</sup> Respondent who was about to leave the jurisdiction of the Court.
5. The Respondent opposed the application as frivolous and vexatious and incurably defective.
6. The Court has considered the arguments presented before it and agrees with the Respondent that the Claimant's application is not only frivolous and vexatious, but scandalous as well, because its purposes could only have been to irritate and annoy the Respondent.
7. The reasons for such a conclusion are glaring and apparent from the record.
8. One, there is only one Respondent named in the Memorandum of Claim filed in Court on 14

- October 2014 and that is *Eldoret Mattresses Ltd*.
9. Through the application, not only has the Claimant purported to sneak in a second Respondent, *Daniel Ngugi t/a Kamtinga Services* but it has alleged that the said second Respondent intends to leave the jurisdiction of the Court.
  10. The said Daniel Ngugi is not a party to the proceedings.
  11. Two, the Claimant has not shown even a shred of evidence that the Respondent, *Eldoret Mattresses Ltd* plans to wind up its activities in Kenya.
  12. Without the slightest evidence, the allegation can only be a figment of the imagination of the Claimant and Court's do not act on figments of the imagination.
  13. Third, the Claimant has not demonstrated that either MILAN KARNIYA SHAH, or Daniel Ngugi are or were directors of the Respondent.
  14. Obtaining such evidence would not have required much of the Claimant. A search at the Companies Registry is all that was needed in that respect.
  15. Lastly, the Claimant did not even make a feeble attempt to set out the legal principles applicable when seeking the orders enumerated above or demonstrate that it had made out a *prima facie* case.
  16. Advocates also ought to be faithful to professionalism, and be diligent.
  17. The instant application is for dismissal and it is so ordered.
  18. Because of the conclusion above that the application is not only frivolous but vexatious and scandalous, the Court orders the Claimant to pay the Respondent Kshs 15,000/- as costs within 30 days from today.

**Delivered, dated and signed in Nakuru on this 3<sup>rd</sup> day of May 2016.**

**Radido Stephen**

**Judge**

**Appearance**

For Claimant Ms. Tarus instructed by Chepkwony & Co. Advocates

For Respondent Mr. Othuro instructed by Ms. Gicheru & Co. Advocates

Court Assistant Nixon