



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 440 OF 2015

(BEFORE HON. JUSTICE HELLEN S. WASILWA ON 27TH MAY, 2015)

ANTHONY NDUNG’U GAKUO..... CLAIMANT

VERSUS

BAKER HUGHES EHO LIMITED (KENYA BRANCH)RESPONDENT

RULING

1. The application in court is one dated 20th March, 2015 brought by the Claimant Applicants herein under Certificate of Urgency and brought through a Notice of Motion brought under Section 12(3) of the Industrial Court Act 2011, Section 16 of the Industrial Court (Procedure) Rules 2010, Order 39 Rules 1, 2, 5 and 6 and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B, 3A & 63 (e) of the Civil Procedure Act, Chapter 21 laws of Kenya and all enabling provisions of the law
2. The Applicant seeks orders that:
 1. ***THAT this application be certified urgent, service thereof be dispensed with and heard ex parte in the first instance.***
 2. ***THAT the Respondent be ordered to deposit the sum of Kshs.2,000,000/= in Court or such sum this Honourable Court may deem fit as security for its appearance at any time when called upon while the suit is pending and until satisfaction of the decree that may be passed against it in this suit.***
 3. ***THAT in the alternative to prayer 2 above, pending the hearing and determination of the suit the Respondent be ordered to furnish security in the sum of Kshs.2,000,000/= or such sum thereof as may be sufficient to satisfy the decree that may be passed against it in this suit.***
 4. ***THAT the Honourable Court be pleased to order the Respondent within a time to be fixed by the Court to show cause why it should not furnish security by depositing in Court the sum of Kshs.2,000,000/= or such sum thereof as may be sufficient to satisfy the decree that may be passed against it in this suit.***
 5. ***THAT for the Court to satisfy itself to the sufficiency of the security, the Respondent through the Managing Director for Baker Hughes Incorporated East South West Africa Geomarket, Operational Support Director East South West Africa Geomarket and Manager Pressure Pumping Services East South West Africa, that is say, Messrs Cedric Rouatbi, Kenny Bertram, and Chike Uchendu be ordered to appear in Court within a time to be fixed by the Court to show cause why they should not furnish the security ordered by the Court.***
 6. ***THAT pending the hearing of this application interpartes and/or the hearing and determination of the suit the Respondent by itself, agents and/or servants be restrained from removing its property from the local limits of the jurisdiction of the Court.***
 7. ***THAT this Honourable Court be pleased to grant an urgent hearing date for this suit.***

8. ***THAT the costs of this application be provided for.***

3. This application is based on the grounds that:

- a. ***By a letter dated 26th August 2013, the Claimant was employed by the Respondent as a Field Specialist.***
 - b. ***On 24th October, 2014 the Respondent terminated the Claimant's contract of employment upon expiry of a one month's notice which had been issued to the Respondent by the Claimant but has neglected, failed and/or refused to pay the Claimant his entitlements as required and provided for under the law despite demands being made.***
 - c. ***The Respondent is a local branch/subsidiary of Baker Hughes Incorporated a foreign corporation whose headquarters is in Houston, Texas, United States of America outside the jurisdiction of this Court.***
 - d. ***The Hughes Incorporated has entered into an agreement with Halliburton whereby Halliburton will purchase all outstanding, shares of Baker Hughes Incorporated in a stock and cash transaction worth 35 Billion US Dollars.***
 - e. ***The said sale is expected to be completed in the second half of this year and Baker Hughes Incorporated and the Respondent have already started laying off their employees in anticipation of the expected take over or buy-out by Halliburton and owing to the falling oil prices in the World.***
 - f. ***The Respondent operates no local bank accounts in Kenya and all major management decisions are made from its parent company's Houston Texas headquarters.***
 - g. ***If the Respondent is not compelled to furnish security for costs there is reasonable probability that the Claimant will be obstructed or delayed in the execution of any decree that may be passed against it in this suit.***
 - h. ***The Claimant states that he stands to suffer great prejudice and this claim will be rendered nugatory if this application is not heard expeditiously.***
 - i. ***If the orders sought herein are not granted the Claimant will suffer great prejudice and his claim will be rendered nugatory.***
 - j. ***The Claimant has a good claim against the Respondent.***
 - k. ***It is in the interest of justice and for purposes of just determination of this suit if the orders sought herein are granted.***
- ***The Court diary for fixing hearing dates for the year 2015 has been closed.***

and also supported by the annexed affidavit of Anthony Ndung'u Gakuo herein who is the Claimant Applicant.

4. The Claimants contention is that the Respondents parent Company Baker Hughes Incorporated is a foreign company based in Houston Texas and has sold its shares to Halliburton a rival company. Both companies are in the oil industry and providing support services for drilling. The said sale is expected to be completed in the 2nd half of this year and the Respondent has started laying off their employees in anticipation of the expected take over on buying out by Halliburton and owing to the falling oil prices in the World.

5. It is the Applicant averment that the Respondent operates no local bank account and all its major management decision are made from Houston Texas.
6. The Applicants have attached documents in support of this application to show this proposed sale or take over where at pages 80 to 99, there is an explicit story of the sale.
7. The Applicant aver that they have a genuine claim and want the Respondents compelled to deposit security of 2 million pending hearing and determination of this case.
8. The Respondents opposed this application. They filed their replying affidavit in court on 30/4/2015 one deponed by Chike Uchendu. They aver that this application is based on a misapprehension of facts which are not on the ground. They deny that the Respondent has been sold or would up nor is it anticipating stopping its operations in Kenya. They aver that there is a difference between sell of shares and sell of company. They contend that there are just discussions on the sale of shares but the company will continue to exist.
9. Having heard both submissions, it is clear that indeed the Respondents have transferred their shareholding to another company which they have not denied. They have not shown they own other properties in Kenya nor even a local bank account. The fear of the Applicants are real and I allow the application and direct the Respondent to deposit in court Kshs. 1 million as security pending hearing and determination of this case. The same be deposited within 30 days from the date of this ruling.

Read in open Court this 27th day of May, 2015

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Kipngeno for Applicant – Present

No appearance for Respondents