



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 1804 OF 2013

SERA MUTHONI MUTUA.....CLAIMANT

VS

AMURT INTERNATIONAL.....RESPONDENT

RULING

1. On 8th November 2013, the Claimant filed a claim against the Respondent for unfair termination of employment and failure to pay terminal benefits. Alongside the Memorandum of Claim, the Claimant filed a Notice of Motion under certificate of urgency seeking orders directing the Respondent to furnish security in the sum of Kshs. 2,000,000 on the ground that the Respondent was in the process of leaving the jurisdiction of the Court.
2. When Counsel for the Claimant appeared before me on 8th November 2013, I certified the application urgent and directed service upon the Respondent. The matter was then heard *inter partes* on 28th November 2013, with Mr. Kipngeno appearing for the Claimant and Mr. Kiranga holding brief for Mr. Gathu for the Respondent.
3. In the supporting affidavit sworn by the Claimant, it was deponed that the Respondent was a foreign corporation with its Headquarters in Switzerland outside the jurisdiction of the Court. The Claimant further deponed that she had been informed by the Respondent's Administrator one Redempta Mueni that the Respondent was winding up operations in Kenya and relocating to South Sudan. The Claimant was therefore apprehensive that satisfaction of any award issued in her favour would be hampered since South Sudan was not a reciprocating country with Kenya under the Foreign Judgments (Reciprocal Enforcement) Act, Cap 43 Laws of Kenya.
4. In a Replying Affidavit sworn by Bhola Sah, the Respondent's General Director, on 27th November 2013, it was deponed that the Respondent was duly registered in Kenya and that there was no intention to close the Nairobi office, which was a liaison office for the Respondent's activities in South Sudan. An unregistered lease between Kenya Reinsurance Corporation Ltd and AMURT (International) Kenya running between 1st May 2013 and 31st May 2018 was attached to the Replying Affidavit.
5. With regard to the termination of the Claimant's employment, Bhola Sah deponed that owing to financial constraints, the Respondent had surrendered the premises at which the Claimant was working, thus rendering her position redundant.
6. The issue for determination in this application is whether the Claimant has made out a case for an order for security against the Respondent. Save for details on the dates of employment, the Claimant's employment by the Respondent is not in contention. It is also common cause that the

Claimant left the Respondent's employment as a result of redundancy.

7. However, apart from a general statement in the Replying Affidavit of Bhola Sah that the Respondent had satisfied all the requirements of Section 40 of the Employment Act, the Respondent did not render any evidence to show that the Claimant had been paid her dues accruing from the redundancy.

8. Moreover, although there was no documentary evidence that the Respondent was relocating to South Sudan, Bhola Sah deponed that the Respondent's base in Nairobi was a liaison office for the Respondent's activities in South Sudan.

9. Additionally, the lease document produced by the Respondent, being unregistered provides no proof that the Respondent was not contemplating relocation from Kenya. Bhola Sah further deponed that the Respondent was experiencing financial difficulties.

10. From the foregoing, the Court finds the Claimant's apprehension well founded and directs the Respondent to deposit the sum of Kshs. 1,000,000 in Court as security within the next 30 days from the date of this ruling.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 21ST DAY OF JANUARY 2014

LINNET NDOLO

JUDGE

In the Presence of:

.....*Claimant*

.....*Respondent*