



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 946 OF 2014

BETWEEN

MACMILLAN MADATO.....1ST CLAIMANT/APPLICANT
NAOMY SAYOH.....2ND CLAIMANT/APPLICANT
PAUL MARTIN.....3RD CLAIMANT/APPLICANT
DENNIS SHAHONYO.....4TH CLAIMANT/APPLICANT
BRILLIANA FAITH.....5TH CLAIMANT/APPLICANT
SIMON MATHAKA.....6TH CLAIMANT/APPLICANT

VERSUS

ZHAO JIAN.....1ST RESPONDENT
CHIKEN FOODSTUFF SUPPLIERS LTD T/A
FAMILY RESTAURANT.....2ND RESPONDENT

RULING

1. By a motion dated 6th June, 2014, the applicants seeks from the Court an order directed to the Respondent to be restrained from closing down, selling or changing ownership of its business prior to paying the Claimants/Applicants terminal benefits. The applicants further seek an order that the Respondent deposits the sum of Kshs.1,565,661/= being their terminal benefits in Court.
2. In support of the application the applicants aver that the 1st Respondent being a foreign national may go out of jurisdiction without paying the terminal benefits, the subject matter of the suit herein.
3. The Respondent has refuted the application and has denied by way of affidavit that he is about to flee jurisdiction and that he has been in the country for the past 9 years and has since acquired permanent residence status. The respondent further depones that he has invested heavily in the country hence has no intentions of leaving jurisdiction for good.
4. Whereas the Respondent has attempted to provide evidence to demonstrate his attachments

to the country and has by way of deposition vehemently refuted the applicants' allegations, the applicants have merely made bare allegations not backed by any documentary evidence of the source of their apprehension that the Respondent is about to sell and leave jurisdiction.

5. Prejudgment attachment deprives the defendant of his property rights prior to adjudication on merits. For this reason it should not issue without a careful and proper analysis of the basis upon which it has been requested by the applicant. This analysis can only be done if the applicant presents to the Court credible and sufficiently probable material that the defendant with the intention of defeating the outcome of the suit is dissipating his assets within the realm and or about to leave jurisdiction. It is a jurisdiction which the Court ought to exercise sparingly and in a proper case only.

6. In the case before me, I am not persuaded by the material before me that this order is merited and hereby decline to issue the same with the consequence that the application is hereby dismissed with costs.

7. It is so ordered.

Dated at Nairobi this 16th day of October 2014

Abuodha J. N.

Judge

Delivered this 16th day of October 2014

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge