



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO 956 OF 2013**  
**FESTUS KIREMA MUTHUKU.....CLAIMANT**  
**VS**  
**MELLECH ENGINEERING & CONSTRUCTION LTD.....RESPONDENT**

**RULING**

**Introduction**

1. On 24th June 2013, the Claimant filed a Memorandum of Claim for benefits and dues pursuant to unlawful termination of his employment by the Respondent. Alongside the Memorandum of Claim, the Claimant filed a Notice of Motion under certificate of urgency seeking immediate release of the sum of Kshs. 275,918 which the Respondent had admitted as owing to the Claimant. The Claimant also sought an order directing the Respondent to deposit the sum of Kshs. 396,092 in court towards securing his terminal benefits and entitlements.
2. Following an order of this Court issued on 28th June 2013, the Respondent released the sum of Kshs. 275,918 to the Claimant on 19th July 2013. What remains for determination in this application therefore is the prayer for an order directing the Respondent to deposit the sum of Kshs. 396,092 in court.

**The Claimant's Submissions**

3. Mr. Kirimi, Counsel for the Claimant submitted that the Respondent had moved its operations to South Sudan making the Claimant apprehensive that an award in his favour would be difficult to enforce since the Respondent was effectively moving out of the jurisdiction of the Court. Counsel added that the Respondent had difficulties paying the Claimant's salary and other undisputed dues leading to a conclusion that it was experiencing financial difficulties thus putting an award in favour of the Claimant in jeopardy.
4. It was the Claimant's case that the Respondent had purported to declare him redundant without following the law and the Claimant therefore had a *prima facie* case with a high chance of success. Counsel added that the Respondent would suffer no prejudice if the order sought was granted.

**The Respondent's Submissions**

5. In opposing the Claimant's application, Mr. Mwaniki Counsel for the Respondent submitted that the delay in releasing the undisputed sums to the Claimant was occasioned by the Claimant's refusal to sign a final dues statement as required by the Respondent's policy.

6. While admitting that the Respondent had lost some contracts in Kenya and was seeking business in South Sudan as part of its restructuring strategy, Counsel submitted that this did not mean that the Respondent was moving out of Kenya.

**Ruling by the Court**

7. The single issue for determination in this Ruling is whether the Claimant has made out a case for an order directing the Respondent to deposit the claim sum in court. The Claimant's prayer is premised on his assertion that he has a *prima facie* case against the Respondent and that he has real fear that the Respondent may not be in a position to satisfy an award in the Claimant's favour.
8. The Claimant's claim as set out in his Memorandum of Claim is that the Respondent declared him redundant without following the law. The Claimant also asks the Court to take notice of the Respondent's reluctance and/or inability to pay the undisputed sums to the Claimant. Finally, it was submitted on behalf of the Claimant that the Respondent was in the process of moving out of the jurisdiction of this Court.
9. With regard to the issue of the termination of the Claimant's employment, the Court is persuaded that the Claimant has advanced an arguable case meriting inquiry by the Court. On the Respondent's conduct with respect to release of the undisputed sums to the Claimant, it is on record that it took the intervention of this Court for the Respondent to comply.
10. Counsel for the Respondent told the Court that the Respondent, having lost some contracts in Kenya, was venturing into South Sudan. The extent of divestiture from Kenya was not disclosed nor was the financial health of the Respondent made known to the Court. For these reasons, I find that the Claimant's fears are well founded and direct the Respondent to deposit the sum of Kshs. 396,092 in Court within the next thirty (30) days from the date of this Ruling. The costs of this application will be in the cause.

Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF NOVEMBER 2013**

**LINNET NDOLO**

**JUDGE**

**In the Presence of:**

.....**Claimant**

.....**Respondent**