



**Wanjala v SBI International Holdings AG (Kenya (Cause E316 of 2024)
[2024] KEELRC 13257 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13257 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E316 OF 2024
BOM MANANI, J
NOVEMBER 28, 2024**

BETWEEN

WARREN SHIKUKU WANJALA CLAIMANT

AND

SBI INTERNATIONAL HOLDINGS AG (KENYA RESPONDENT

RULING

Background

1. The Claimant has lodged this action to challenge the Respondent's decision to terminate his contract of service. Contemporaneous with the Memorandum of Claim, he has filed the application dated 24th April 2024 through which he prays for *inter alia*, orders that: the Respondent be summoned to show cause why it should not furnish security for the decree that may be passed in the matter; the Respondent be compelled to provide security in the sum of Ksh. 3,000,000.00; or that the court issues an order of injunction to restrain the Respondent from dealing in its property as specified in the application.
2. The basis for the Claimant's request is that he has been informed that the Respondent is winding up its activities in Kenya and disposing of its assets. As such, he fears that the decree which this court may issue will be in vain since the Respondent shall have closed shop. It is on this basis that he asks for security for the performance of the anticipated decree.
3. The Respondent has vehemently opposed the application. It denies that it is in the process of winding up its activities in Kenya. The Respondent contends that it has many ongoing projects in the country. As such, the Claimant's contention that it is winding up is spurious.
4. The Respondent contends that it has invested heavily in the Kenyan market. As such, the possibility of calling it a day from the country in the near future does not arise.



5. The Respondent avers that the Claimant has not provided evidence to back his claims. As such, the application is frivolous and ought to be rejected.

Analysis

6. The orders which the Claimant seeks can only issue if he is able to cogently demonstrate that the Respondent, with intent to defeat the decree that may be passed against it, is about to dispose the whole or any part of its property or is about to remove the whole or any part of the property from the local limits of the jurisdiction of the court. The obligation to provide material facts to establish the foregoing rests with the Claimant.
7. In *Freight Forwarders Kenya Limited v Aya Investment Uganda Limited* [2013] eKLR, the learned Judge quoting with approval the decision by the Court of Appeal in *Kuria Kanyoko t/a Amigos Bar and Restaurant Vs Francis Kinuthia Nderu & others* (1988) 2KAR 126 on this matter stated as follows:-

“The power to attach before Judgment must not be exercised lightly and only upon clear proof of mischief aimed at by order 38 rule 5, namely that the Defendant was about to dispose of his property or to remove it from the jurisdiction with intent to obstruct or delay any decree that may be passed against him”.

8. The Claimant has made allegations that the Respondent intends to wind up its operations in Kenya without providing cogent evidence to back these claims. There is no evidence to suggest that the Respondent has commenced disposing of its property with intent to leave Kenya, let alone defeat the decree anticipated from these proceedings. As such, I am not satisfied that the application meets the threshold for the grant of the orders sought.

Determination

9. The upshot is that the application for security and or attachment before judgment is devoid of merit.
10. Consequently, it is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 28TH DAY OF NOVEMBER, 2024

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M. MANANI

JUDGE

