



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 1350 OF 2016

TIRULPATHI NAND GOPAL.....CLAIMANT

VERSUS

HYDEL ENGINEERING AND CONSTRUCTION LIMITED.....RESPONDENT

RULING

The Claimant's application brought by Notice of Motion dated 31st October 2016 seeks the following orders:

a) A temporary order of injunction restraining the Respondent from disposing by way of sale or otherwise dealing with property known as L.R. No 1870/VI/94 and Motor Vehicle Registration No. KBM 546H ;

b) An order of attachment of Motor Vehicle Registration No. KBM 546H.

2. The application which is supported by the Claimant's affidavit sworn on 4th November 2016 is based on the following grounds:

a) The Claimant who is a citizen of India was employed by the Respondent as an Engineer and Project Manager from 1st September 2009;

b) The Claimant worked for the Respondent Company whose directors and shareholders are also from India for a period of six (6) years;

c) The Claimant has filed a claim seeking payment of USD 38,100 from the Respondent;

d) The Respondent has failed to enter appearance in the matter in spite of due service;

e) The Respondent's directors have relocated from the country, stopped all operations and have been disposing of the Company's properties held within the country with the aim of defeating the Claimant's claim;

f) The Respondent, through one of its directors had issued a cheque for Kshs. 900,000 in part

payment of the claim which was returned unpaid upon presentation after both directors had left jurisdiction;

g) The Respondent has stopped operations in the country and dismissed its employees apart from two (2) skeletal staff who were still in office at the time of service of the pleadings herein;

h) The Respondent's only know assets are L.R No. 1870/VI/94, Nairobi and Motor Vehicle Registration No. KBM 546H;

i) Unless the orders sought are granted, the Respondent will dispose of the said assets and thereby defeat any execution that may issue.

3. In the supporting affidavit sworn by the Claimant on 4th November 2016, he depones that the Respondent had terminated his employment in the month of October 2015 on the basis that the Company was not profitable and that his employment was no longer tenable.

4. The Claimant further depones that he had learnt that the Respondent was in the process of disposing of its assets within the jurisdiction of the Court and its directors were in the process of leaving the country for India so as to escape liability.

5. In considering an application such as the one before me, the Court is called upon to examine the conduct of the Respondent. In the instant case, the Respondent has failed to enter appearance and a cheque issued to the Claimant by one of its directors was dishonoured on presentation.

6. The Court therefore invokes Order 39 of the Civil Procedure Rules and makes the following orders:

a) The Respondent, whether by itself, its servants and/or agents is hereby restrained from disposing by way of sale or otherwise dealing with its interest in the property known as L.R. No 1870/VI/94 pending further orders of the Court;

b) The Respondent, whether by itself, its servants and/or agents is hereby restrained from disposing by way of sale or otherwise dealing with Motor Vehicle Registration No. KBM 546H pending further orders of the Court;

c) An order of attachment of the said Motor Vehicle Registration No. KBM 546H is hereby issued.

7. The costs of this application will be in the cause.

8. These are the orders of the Court.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 20TH DAY OF DECEMBER 2016

LINNET NDOLO

JUDGE

Appearance:

Mr. Njenga for the Claimant

No appearance for the Respondent



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