



Were v Sanlam Life Insurance Limited (Formerly Pan Africa Life Assurance Limited) & 2 others (Cause 613 of 2019) [2025] KEELRC 743 (KLR) (7 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 743 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 613 OF 2019
B ONGAYA, J
MARCH 7, 2025**

BETWEEN

LINDA WERE CLAIMANT

AND

SANLAM LIFE INSURANCE LIMITED (FORMERLY PAN AFRICA LIFE ASSURANCE LIMITED) 1ST RESPONDENT

SANLAM KENYA PLC 2ND RESPONDENT

STANBIC BANK KENYA LIMITED 3RD RESPONDENT

JUDGMENT

1. The Court delivered the judgment in the cause on 28.06.2024 and ordered as follows:
 - a) The 1st respondent to pay the claimant interest due to the 3rd respondent from the claimant consequential to the termination on account of redundancy herein being the difference between the commercial interest rates and the preferential interest rates in view of the letter dated 19.01.2011 conferring the preferential interest rates by the 1st respondent in favor of the claimant and which binds the claimant and the 1st respondent with respect to the mortgage facility of April 2018 between the claimant and the 3rd respondent.
 - b) The 3rd respondent to compute the amounts due to the claimant in (a) above with respect to the whole loan facility period herein and to be included in the final decree.
 - c) The 1st respondent to pay the claimant the decretal sum in (b) by 01.09.2024 failing, interest to be payable thereon from the date of filing the suit until full payment.
 - d) The 1st respondent to pay the claimant’s costs of the suit.



2. The 1st and 2nd respondents have preferred an appeal against the judgment by filing a notice of appeal on 12.07.2024. The amount ordered per the judgment was computed in the sum of Kshs. 12,025,500.00 per the decree issued on 14.11.2024. The 1st and 2nd respondents have filed a notice of motion dated 30.07.2024 through RONN Law Advocates LLP. It is under section 12(3) of the *Employment and Labour Relations Court Act*, Rule 17 of the Employment and Labour Relations Court (Procedure) Rules, 2016, Order 42 rule 6 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law. The applicants pray that the Court be pleased to grant an order of stay of execution of the judgment delivered on 28.06.2024, the ensuing decree and all other consequential orders thereto pending the hearing and determination of the intended appeal against the judgment; and, costs of the application be provided for.
3. A temporary order of stay of execution was granted by the Court subject to the applicants depositing a partial security of Kshs. 5,000,000.00 with orders that parties are granted more time to explore further security and to record compromise in that respect. The applicants deposited the partial security and failed to compromise on further security, hence, the instant ruling on the issue of further security.
4. The applicants have filed the further replying affidavit of Gladys Muema sworn on 04.12.2024 and filed through RONN Law Advocates LLP. The applicants' case is that the claimant has admitted in the replying affidavit that she completely defaulted in making payments towards her mortgage from May 2022 to April 2024 and further from July 2024 to August 2024. The outstanding loan arises from penalties and interest on penalties arising from the default. In the circumstances, it is the applicant's case that the claimant would be unable to refund the money if the appeal is successful – exposing the applicants to substantial loss in view of the decretal amount is a substantial amount.
5. The claimant filed her replying affidavit sworn on 15.10.2024 and filed through Munyao, Muthama and Kashindi Advocates. The respondents' case is that while the instant case was pending, her property subject of the mortgage herein was sold by public auction in exercise of the 3rd respondent's statutory power of sale. Thereafter the 3rd respondent continued to deliver to her monthly notifications regarding the outstanding arrears amounting to Kshs. 22,709,267.10 as at the time of swearing the affidavit. The instant application therefore amounts to the 1st respondent's prolonging the enforcement of the commercial interest rates applicable to the mortgage scheme and in view of that she was not at fault when her employment was terminated by redundancy.
6. It is urged for the applicants that they have already deposited Kshs. 5,000,000.00 for due execution of the decree if the appeal is not successful. In consideration of the applicants' deposited amounts and the need for liquidity of the company to continue in operation, it is urged that the deposited amount be accepted as sufficient security to allow stay of execution pending appeal.
7. The Court has considered the parties' respective positions and returns that in view of the decretal amount and the amount already deposited, a stay of execution pending appeal should be allowed as meeting of justice for both parties. Each party to bear own costs of the application.

In conclusion, the application is hereby determined with orders:

- a. In view of the Kshs. 5,000,000.00 already deposited by the applicants as partial security, there be stay of execution of the decree flowing from the judgment delivered herein on 28.06.2024 and pending the hearing and determination of the appeal preferred against the Judgment.
- b. Each party to bear own costs of the application.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 7TH MARCH, 2025



**BYRAM ONGAYA
PRINCIPAL JUDGE**

