



**Kathambi v Safaricom PLC (Cause 1986 of 2014)  
[2024] KEELRC 381 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 381 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1986 OF 2014  
J RIKA, J  
FEBRUARY 29, 2024**

**BETWEEN**

**EVA BESSY KATHAMBI ..... CLAIMANT**

**AND**

**SAFARICOM PLC ..... RESPONDENT**

**RULING**

1. This is an old Claim filed in 2014, ten years ago.
2. Judgment was delivered in favour of the Claimant, on 25<sup>th</sup> July 2023.
3. The Court found that the Claimant suffered work injury/illness, awarding her general damages at Kshs 2.5 million.
4. The Respondent filed an Application for stay of execution pending appeal, dated 22<sup>nd</sup> August 2023.
5. The Application is founded on the Affidavit of the Respondent’s Senior Legal Counsel-Litigation, Daniel Mwenja Ndaba, sworn on 28<sup>th</sup> August 2023.
6. Counsel explains that the Respondent was dissatisfied with the Judgment of the Court; it intends to appeal against the Judgment; it has applied for proceedings of the Court without delay; it filed a Notice of Appeal dated 3<sup>rd</sup> July 2023 timeously; the Appeal is arguable with high probability of success; the Respondent is willing to offer security; and the Claimant is an individual with no known means of income, who will not be readily able to refund Kshs 2.5 million, in event the Appeal succeeds.
7. The Respondent relies on her Affidavit sworn on 12<sup>th</sup> September 2023. She laments that Judgment was obtained after a lengthy delay, which was occasioned by a myriad of reasons, including loss of the original court file. There was never doubt that she suffered permanent work injury, and it was never in doubt also, that the Respondent failed to provide her a safe work environment. The sum awarded by the Court as general damages was modest.



8. Further, the Claimant swears that she is a person with the means to refund the decretal sum, if the Appeal is successful. She explains that when she worked for the Respondent way back in 2008, she was holder of a Bachelor of Arts Degree in Community Development. She furthered her education after she left employment, and today, holds PhD in Environmental Governance and Management, Biodiversity Conservation and Implementation of SDGS. She is in high demand in her labour market, serving domestic and international organizations as a consultant.
9. She exhibits her PhD certificate and bank statements showing a healthy balance of Kshs 4.1 million, as at 9<sup>th</sup> September 2023.
10. Parties agreed to have the Application determined on the basis of their Affidavits and Submissions. They confirmed filing and exchange of Submissions at the last mention before the Court, on 28<sup>th</sup> November 2023.

**The Court Finds: -**

11. The Claimant has demonstrated that she has the financial wherewithal to refund the decretal sum, in event the intended Appeal succeeds. She is a PhD holder, engaged as a consultant by domestic and international organizations. She has exhibited details of her bank account. Her account is healthy. She is not a lady of straw. The Respondent's assertion that in event its Appeal succeeds, the Claimant would not be able to refund, because she is an individual of no known means, is misplaced.
12. The Claim was filed in 2014, and there is no persuasive reason, to delay the Claimant further, in enjoyment of her long-delayed fruits of litigation. It was the finding of the Court that she sustained severe work injury/illness. She merits redress granted by the Court. The Respondent's right of appeal will not be extinguished, by satisfying the decree. The right of appeal is alive and well. The Claimant is clearly a person with the means to refund. She holds a PhD certificate, and is able to understand the consequence of the Court of Appeal, allowing the Appeal against her Judgment. The Appeal if successful, will not be rendered nugatory.

**It Is Ordered: -**

- a. The Application for an order of stay of execution, filed by the Respondent, dated 22<sup>nd</sup> August 2023 is declined.
- b. Costs to the Claimant.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, THIS 29<sup>TH</sup> DAY OF FEBRUARY 2024.**

**JAMES RIKA**

**JUDGE**

