



**Gatobu v Tullow Kenya Limited (Cause E964 of 2021)
[2024] KEELRC 830 (KLR) (17 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 830 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E964 OF 2021
NZIOKI WA MAKAU, J
APRIL 17, 2024**

BETWEEN

LYNNET NANCY KATHURE GATOBU CLAIMANT

AND

TULLOW KENYA LIMITED RESPONDENT

RULING

1. Objection has been taken in respect to the documents at page 60-63 being correspondence which counsel for Claimant Ms. Chitechi asserts is marked “without prejudice”. She submits that the documents so marked are excluded from production in any legal proceedings. She submits that if a party seeking to rely on such, there be specific leave sought to lift the privilege that attaches to them.
2. Mr. Musyoka, Learned Counsel for the Respondent asserts the documents were filed a while back and there was no objection. He asserts that. It is common ground there was an attempt at mutual separation which collapsed, the essence of the letter was to demonstrate the attempt. He thus urges the court to disallow the objection.
3. Ms. Chitechi learned counsel for Claimant in a brief reply asserts that it is standard procedure that any document marked “without prejudice” should not be a subject of discussion in any legal proceedings. She submits that a party can object at any time to such a document as there is no preclusion to making an objection to such a document. She thus urges the documents to be expunged.
4. The provenance of “without prejudice” communication is that a document so marked is to be precluded from any legal proceedings. It is clear the documents at page 60 – 63 of the Respondents bundles are so marked. It is noted that in certain circumstances, a party can seek dispensation to avail and rely on documents marked “without prejudice”. The caveat against using privileged communication which is what “without prejudice” means, is one that is used to allow parties to negotiate freely and without the fear of their offer being subjected to the rigors of legal proceedings.



The Court is thus inclined to agree with the Claimant's counsel that the privilege attaching to the documents eliminates the content from the eyes of the Court. Granted the court will have to adduce the case on the basis of the evidence before it, it follows that these two letters must be expunged from the court record. Consequently, the Respondent will have to file a duly bound and paginated bundle of documents excluding these from the trial bundle. It is hoped the hearing can proceed to a degree, given the prevailing circumstances unless the parties are opposed.

It is so ordered.

DATED THIS 17TH DAY OF APRIL 2024 AT NAIROBI

NZIOKI WA MAKAU

JUDGE

