



**Maundu v Lexo Energy Kenya Limited (Cause E094 of 2024)
[2024] KEELRC 1988 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1988 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E094 OF 2024**

**L NDOLO, J
JULY 31, 2024**

BETWEEN

SAMMY MAUNDU CLAIMANT

AND

LEXO ENERGY KENYA LIMITED RESPONDENT

RULING

1. This ruling flows from the Notice of Motion as amended on 30th April 2024, by which the Claimant seeks a conservatory order maintaining the status quo prevailing at the filing of the suit.
2. The application is supported by the Claimant’s own affidavit and is based on the following grounds:
 - a. At the time of filing the suit, the Claimant was an employee of the Respondent;
 - b. The Claimant had to bear the brunt of an exceedingly toxic work environment and has now sought the intervention of the Court as pleaded in the substantive claim;
 - c. Despite his best efforts, the Claimant had reached the end of his tether and unlike in an ordinary contract of employment, he could not just tender his resignation without the protection of the Court because once he exited the Respondent’s employment, he would lose a huge chunk of his investment that is tied to him being an employee of the Respondent;
 - d. The Claimant feared that the Respondent, ignoring the pendency of the suit, would move to dismiss him;
 - e. The intervention of the Court was sought to maintain the status quo, pending the substantive determination of the claim;
 - f. Unless conservatory orders are issued, the substratum of the claim shall substantially have disappeared by the time litigation is completed.



3. In its Grounds of Opposition dated 3rd June 2024, the Respondent states as follows:
 - a. The application does not meet the threshold for grant of a mandatory injunction established by the Court of Court Appeal in *Kenya Breweries Limited & another v Washington O. Okeya* [2002] eKLR. The application does not raise any special circumstances and/or clear and simple circumstances to warrant a summary determination of the legal issues. In the present circumstances, the grant of a mandatory injunction will steal a match on the Respondent;
 - b. The application does not meet the legal threshold for grant of an interlocutory injunction established in *Giella v Cassman Brown & Co. Ltd* (1973) EA, 358. The Claimant has failed to establish a prima facie case, with a probability of success;
 - c. The application for an interim order declaring the Claimant's dismissal as null and void would be highly prejudicial to the Respondent and would amount to a determination of the primary issue in the main suit;
 - d. The application is incompetent and improperly before the Court. It is in the interest of justice that it be dismissed with costs.
4. By his application, the Claimant seeks an order to the effect that the status quo ante, prevailing at the filing of the substantive claim be maintained, and that his dismissal be declared null and void.
5. The full impact of such an order would be reinstatement of the Claimant to the position held by him before the dismissal and as held by Rika J in *Alfred Nyungu Kimungui v Bomas of Kenya* [2013] eKLR reinstatement is a substantive remedy that can only be granted after a full trial and not at the interlocutory stage.
6. For this reason, the Claimant's application is declined with costs in the cause.
7. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY JULY 2024

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JUDGE

Appearance:

Mr. P.K Kamau for the Claimant

Mr. Wairoto for the Respondent

