



**Sikalieh (Suing on behalf of Karen and Langata District Association) v Karobia  
(Cause E562 of 2022) [2023] KEELRC 1801 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1801 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E562 OF 2022**

**L NDOLO, J  
JULY 27, 2023**

**BETWEEN**

**SAMORA SIKALIEH ..... CLAIMANT  
SUING ON BEHALF OF KAREN AND LANGATA DISTRICT ASSOCIATION**

**AND**

**ROSEBELL WACUKA KAROBIA ..... RESPONDENT**

**RULING**

1. In a ruling dated November 3, 2022, I dismissed a notice of motion dated August 8, 2022, by which the claimant had sought an interlocutory mandatory injunction, directing the respondent to release the following assets:
  - a. Laptop model 15.6-inch HP 250 G6 Notebook, Intel core i5, 1TB HDD Quadcore 8GB;
  - b. Company's mobile phone;
  - c. Passwords to unlock the laptop and mobile phone including the personal data contained therein and a comprehensive handover report.
2. Subsequent to this, the claimant filed another notice of motion dated May 8, 2023, seeking the following:
  - a. Review of the ruling dated November 3, 2022, its setting aside and rehearing of the notice of motion dated August 8, 2022;
  - b. A mandatory order compelling the respondent to release the claimant's property in her position to wit:
    - i. Laptop model; 15.6-inch HP 250 G6 notebook, Intel core i5, 1TB HDD Quadcore 8GB;



- ii. Passwords to unlock the laptop;
    - iii. Personal data contained in the laptop plus a comprehensive hand-over report.
  - c. An order that the respondent will be paid her final dues upon compliance with the foregoing orders and after the claimant has verified the correctness of the information contained in the laptop model; 15.6-inch HP 250 G6 notebook, Intel core i5, 1TB HDD Quadcore 8GB;
  - d. In the event the information contained in the laptop model; 15.6-inch HP 250 G6 notebook, Intel core i5, 1TB HDD Quadcore 8GB is deleted and/or corrupted, the claimant be granted leave to amend the memorandum of claim and seek damages against the respondent.
3. The motion is supported by an affidavit sworn by Samora Sikalieh and is based on the following grounds:
  - a. The respondent was employed as an office administrator vide a letter dated May 21, 2018. Her office is the nerve centre of the association as she undertakes daily administrative roles to promote the objective of the association;
  - b. To facilitate her employment, the respondent was given a laptop model: 15.6-inch HP 250 G6 Notebook, Intel Core i5, 1TB HDD Quadcore 8GB that contains all crucial, confidential and sensitive information of the association including names, age and physical addresses of members; property of the members and contributions by each member;
  - c. The respondent was also given a mobile phone and being an administrator, she was allowed to create WhatsApp groups wherein she retained the role of an administrator of the said WhatsApp groups. As an administrator therefore she retains the rights to add or remove any member of the group;
  - d. On July 4, 2022, the claimant sent the respondent on compulsory leave with pay, pending investigations;
  - e. In blatant breach of her employment contract, the respondent has failed and/or refused to hand over the claimant's property to the chairman of the association as directed. This has grounded operations of the claimant as the laptop which the respondent has retained contains all crucial information relating to the association;
  - f. The information contained in the claimant's laptop that has been retained by the respondent is deemed its intellectual property. The information therein further contains personal data of the claimant's members and the continued retention of the laptop and the information therein is deemed personal data breach, in violation of the provisions of the [\*Data Protection Act, 2019\*](#);
  - g. By an application dated August 8, 2022, the claimant sought orders compelling the respondent to release the association's properties unlawfully withheld. In response to the application, the respondent challenged the status of the claimant as the chairman of the association, stating that he lacked the authority to sue in the association name;
  - h. In a ruling delivered on November 3, 2023, the court declined to grant the orders sought on the ground that the status of Samora Sikalieh as the chairperson of the claimant was in contention;
    - i. By a further ruling delivered on April 26, 2023 on an application dated April 24, 2023, the court declined to issue any orders on grounds that the orders sought were similar to an earlier application and the prayer for review had not been sought;



- j. As per the supplementary affidavit deponed by Sikalieh on October 5, 2022, he informed the court that the dispute as to the officials of the Association was being litigated in HCCC No E171 of 2022: Samora M. Sikalieh v Murtaza Mohammed Ali & others. Indeed, parties in the said case had entered a consent to the effect that Sikalieh maintained the position of Chairman of the Association pending the holding of an Annual General Meeting in March 2023;
  - k. This position was communicated to the respondent *vide* a letter dated February 23, 2023 wherein the respondent was reminded to return the claimant's properties unlawfully withheld;
  - l. The respondent responded *vide* a rude letter dated February 23, 2023, stating that she would not release the properties unlawfully withheld;
  - m. As per the consent of the parties in HCCC No E171 of 2022, an Annual General Meeting of the association was to be held on March 31, 2023 but was adjourned to April 7, 2023 when Sikalieh was re-elected as the chairperson of the association;
  - n. Further to the application dated August 8, 2022, the respondent had since returned the mobile phone through which the Association WhatsApp Group had been created. The respondent is however adamant that she will not release the association's laptop;
  - o. In the meantime, the respondent was invited to a disciplinary hearing *vide* a letter dated March 10, 2023 for hearing on March 22, 2023. She nonetheless failed to attend the hearing. By a subsequent letter dated April 14, 2023, her services were terminated;
  - p. The claimant is apprehensive that the respondent, who has since ceased being an employee of the claimant may share the confidential personal data in the laptop with third parties, who may use the said personal data to the detriment of the claimant's members;
  - q. The respondent has refused to clear with her former employer, thus delaying payment of her dues;
  - r. It is in the interest of justice that the orders sought be granted to prevent a miscarriage of justice.
4. In her replying affidavit in opposition to the claimant's application, the respondent states that the application does not raise any new issues. She adds that the circumstances have not changed from the time the court issued its ruling on the previous application.
  5. The respondent terms the present application as vexatious and a waste of judicial time.
  6. According to the respondent, the remedies sought by the claimant are of a substantive nature and can only be determined fully pursuant to a substantive trial, not through an application.
  7. The respondent accuses Sikalieh of seeking the subject data for personal gain against the desire of the members of the association.
  8. The respondent depones that the consent dated February 17, 2023 gave the interim committee a very restricted mandate to operate the bank account which had been frozen and also to organise an Annual General Meeting at which a new committee was to be elected.
  9. The respondent contends that no Annual General Meeting took place and therefore no committee members were elected. The respondent accuses Sikalieh and his faction of organising an irregular meeting on April 7, 2023, which was a public holiday, without the participation of the other faction.



10. The respondent asserts that there has been no election and Sikalieh remains an interim chairman, with a very limited mandate with no power to organise a disciplinary meeting or to terminate the respondent's services.
11. The claimant's application is brought under the provisions for review of court decisions as codified in section 16 of the [Employment and Labour Relations Court Act](#) and rule 33 of the [Employment and Labour Relations Court \(Procedure\) Rules](#).
12. Rule 33(1) of the Procedure Rules provides as follows:
  1. A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling-
    - a. if there is discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made; or
    - b. on account of some mistake or error apparent on the face of the record; or
    - (c) if the judgment or ruling requires clarification; or
    - (d) for any other sufficient reason.
13. The claimant proceeds on the basis of rule 33(1)(a) which provides for review upon discovery of new and important matter or evidence. Counsel for the claimant submitted that the new matter in this regard has to do with the positions of the applicant and the respondent. He told the court that the applicant had been re-elected as chairman of the association while the respondent had been dismissed from employment.
14. On her part, the respondent accuses the applicant of manipulating the circumstances to suit his desired outcome of the case. She submits that the applicant remained an interim chairman with limited powers, which did not include dismissal of employees of the association.
15. Looking at the application before me in its totality, it is evident that what is sought is in fact a setting aside of my ruling dated November 3, 2022 and a re-hearing of the application dated August 8, 2022.
16. This is certainly not the purpose of the powers of review granted to the court under section 16 of the [Employment and Labour Relations Court Act](#) and rule 33 of the [Employment and Labour Relations Court \(Procedure\) Rules](#).
17. As held by the Supreme Court of India in [Ajit Kumar Rath v State of Orisa & others](#), 9 Supreme Court Cases 596 at page 608, a review is not analogous to fresh hearing or arguments.
18. In the result, the only finding to make is that the application dated May 8, 2023 is incompetent. I will therefore proceed to strike it out with costs to the respondent.
19. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> DAY OF JULY 2023**

**LINNET NDOLO**

**JUDGE**



Appearance:

Mr. Kigata for the Claimant

Mr. Onyango for the Respondent

