



**Ngatia v Blueshield Insurance Company Limited (Cause E728 of 2021)  
[2023] KEELRC 2423 (KLR) (3 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2423 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E728 OF 2021  
DKN MARETE, J  
OCTOBER 3, 2023**

**BETWEEN**

**KATHRYN NYAGUTHII NGATIA ..... CLAIMANT**

**AND**

**BLUESHIELD INSURANCE COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. This is an application dated 14th November, 2022 and comes out as follows
  1. That the suit herein as filed against the Respondent be stayed during the pendency of the moratorium declared by the Statutory Manager of Blue Shield Insurance Company on the 16<sup>th</sup> September, 2011.
  2. That there be no order as to costs.
2. This is on grounds inter alia that the Respondent is under receivership and that the High Court has set out a moratorium estopping all action against the Respondent.
3. The Respondent/Applicant in her written submissions dated 6th April, 2023 reiterates her case in support for the moratorium and upholding of her application for periods during the pendency of the same. She cites various authorities in such support.
4. The Claimant/Respondent opposes the application and posits that the moratorium is a matter on claims by policy holders against the Respondent and is not applicable in a labour related situation like is in the instant case.
5. It is her further case that she was engaged by the Respondent four years into the term of the moratorium and therefore the argument on the moratorium is baseless and inapplicable.
6. She further avers as follows in her replying Affidavits sworn 10th January, 2023;



8. That the instant application by the Respondent is all based on misapprehension of the order as the same does not cover the claim by myself.
  9. That entire application is hopelessly without merit, abuse of the Court process as the sole intention of it is to stall this claim, and pray that the same be dismissed with costs at themearliest.
7. In further opposition to the application, the Claimant/Respondent in her written submissions dated 25th May, 2023.submits as follows;

5. The claimant in this case is neither a policy holder nor creditor of the Respondent and does not fall within neither of the two classes of persons therefore the moratorium did not apply to her.

This position was emphasized in HCC No. 88 of 2012 *In the matter of Concord Insurance Company Limited* (2014) eKLR where Gikonyo Judge stated:

“As a good beginning point, I can pronounce with ease that the interested parties herein are not policy holders of or creditors to concord Insurance Company... Section 67 c (10) of the *Insurance Act* was not intended to deny legitimate suitors of their .... Rightto institute proceedings ... The said section is intended to allow the manager to discharge his duties in relation to the revival of the insurance company... the protection offered by the moratorium and Court orders attendant thereto is to the company from payment by the insurer (company) of its policy holders and other creditors .... Therefore in so far as the interested parties, there is nothing to stop them from pursuing the claims to logical conclusion.”

6. The Claimant reiterates that her claim against the Respondent does not in any way fall under the purview of Section 67c (10) of the *Insurance Act*.

11. By virtue of section 67 (c)of the *Insurance Act*, Cap 487, laws of Kenya, once the Respondent was placed under statutory management, then all contracts held within the previous management become null and void unless ratified and extended by the Statutory Manager. In the instant case this was a contract of engagement between Blue shield

Insurance companyLimited “under statutory management” dated 24<sup>th</sup> January, 2015 and the claimant (Kathryn NyaguthiiNgatia). The Respondent has no legs to stand on in its mistaken belief that it is immune to its breaches of law on account of a maritorium that does not match the current sit and its intents.

8. A look at the respective cases of the parties tilts this application in favour of the Claimant/ Respondent.This is because she has demonstrated the disability of Section 67(c) of the *Insurance Act* in respect to her case. This is a labour dispute touching on a contract of service that was instituted during the pendency of the moratorium. Even if this was not particularly the case, she submits that the



terms of the moratorium are not applicable to matters labour. They only apply to claims by insured's and other creditors accruing at the time of the moratorium. These must also be clearly covered by the terms of the said moratorium.

9. This not being the case in the circumstances, the application collapses and fails for want of merit.
10. I am therefore inclined to dismiss the application with orders that each party bears their cost of the same.

**DELIVERED, DATED AND SIGNED THIS 3<sup>RD</sup> DAY OF OCTOBER 2023.**

**D. K. NJAGI MARETE**

**JUDGE**

