



**Akoto v Kenindia Assurance Company Limited (Cause E713 of 2020)
[2023] KEELRC 3233 (KLR) (8 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3233 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E713 OF 2020
J RIKA, J
DECEMBER 8, 2023**

BETWEEN

PRISCAH A. AKOTO CLAIMANT

AND

KENINDIA ASSURANCE COMPANY LIMITED RESPONDENT

RULING

1. The Court delivered Judgment in favour of Claimant on 7th July 2023, finding that she was subjected to workplace harassment and discrimination by the Respondent, and her contract was terminated unfairly.
2. She was granted compensation for unfair termination at Kshs. 7,572, 852, and general damages for harassment and discrimination at Kshs. 3,000,000, total Kshs. 10,572,852. She was awarded costs of the Claim as prayed.
3. The Respondent filed a Notice of Appeal, dated 17th July 2023, and an Application for stay of execution of the Judgment dated 3rd August 2023.
4. The Application is founded on the Affidavit of James K. Macharia, Chief Operating Officer of the Respondent, sworn on 3rd August 2023.
5. Macharia exhibits the Notice of Appeal and a Draft Memorandum of Appeal, stating that the Respondent has an arguable Appeal; the Claimant has no gainful employment and will be handicapped in refunding the Respondent, in case the Appeal succeeds; and the Respondent is a reputable Insurance Company, which is ready to provide security as directed by the Court.
6. The Claimant is opposed to the Application. She relies on her Affidavit, sworn on 8th September 2023. She denies that the Respondent has an arguable Appeal with probability of success. The Respondent has not shown that it would suffer substantial loss, if stay is declined. She is not a woman



of straw, having serving the Respondent in senior management for 7 years. She acquired movable and immovable assets over the period. She would be in a position to repay the decretal sum, if the Appeal succeeds. The Application is meant to frustrate the Claimant, in enjoyment of her fruits of litigation. She proposes that if the Court is persuaded to grant the Application, it does so on the condition that she is paid 50% of the decretal amount, and the other half is deposited in an interest-earning joint bank account, in the names of the Parties' Advocates.

7. Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submissions, on 19th September 2023. They confirmed filing and exchange of their Submissions at the last mention, on 11th October 2023.

The Court Finds: -

8. The Claimant's right to enjoy the result of her litigation, must be carefully balanced against the Respondent's undoubted right of appeal.
9. In balancing these rights, the Court has noted that the Claimant was employed by the Respondent in senior management for 7 years. She states, and there is no evidence by the Respondent to contradict her, that she accumulated wealth during the 7 years of service at the Respondent, in a considerably high management position. She cannot be said to be a woman of straw, who would be financially handicapped, in refunding the Respondent, in event the proposed Appeal succeeds.
10. On the other scale, the Court notes that the Respondent had moved expeditiously to initiate and pursue the proposed Appeal. A Notice of Appeal was filed timeously. Copies of certified Proceedings and Judgment were sought from the Court by the Respondent, without delay. A Draft Memorandum of Appeal exhibited by the Respondent, discloses there are arguable grounds of appeal. Lastly, the Respondent is an established player in the insurance industry, who has committed to abide by any security, the Court may direct it to provide.

It is Ordered:-

11. The Application for stay of execution is granted on the condition that: -
 - I. 50% of the principal amount at Kshs. 5,286,426 shall be paid to the Claimant by the Respondent, through her Advocates, within 14 days, from 8th January 2024.
 - II. 50% of the principal amount at Kshs. 5,286, 426, shall be deposited in an interest-earning joint bank account in the names of the Parties' Advocates within the same period of 14 days, from 8th January 2024.
 - III. Costs shall be taxed and paid to the Claimant as awarded.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 8TH DAY OF DECEMBER 2023.

JAMES RIKA

JUDGE



