



REPUBLIC OF KENYA



**Roamtech Solutions Limited v Kamuyu (Cause E644 of 2022)  
[2022] KEELRC 12933 (KLR) (17 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12933 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E644 OF 2022  
L NDOLO, J  
OCTOBER 17, 2022**

**BETWEEN**

**ROAMTECH SOLUTIONS LIMITED ..... CLAIMANT**

**AND**

**HUMPHREY NGOIYA KAMUYU ..... RESPONDENT**

**RULING**

1. On September 12, 2022, the claimant filed a statement of claim alleging breach of contractual obligations by the respondent.
2. Contemporaneously with the statement of claim, the claimant filed a notice of motion under certificate of urgency dated September 8, 2022 seeking an interim injunction compelling the respondent to immediately return the claimant's property namely, a laptop model HP Spectre Core i7, Serial Number CND8055W69 issued to him by the claimant during his employment.
3. The motion is supported by an affidavit sworn by Felista Gachau and is based on the following grounds:
  - a. Data, information, and intellectual property are central to the claimant's business as the claimant specialises, inter alia, in the following:
    - i. Mobile application development and management;
    - ii. Mobile marketing including provision of bulk short message services (SMS), unstructured supplementary service data (USSD), short codes, mobile database, building and management, SMS tagging for advertising;
    - iii. Interactive voice response (IVR);
    - iv. E-commerce and e-payment systems;
    - v. Security and authentication systems;



- vi. Real time tracking and monitoring systems;
  - vii. Customer loyalty programs and sales promotions; and
  - viii. Lotteries and gaming.
- b. Data and information technology is the nucleus of the claimant's operations. For this reason, maintaining the safety, security and integrity of the claimant's company data, information, resources, equipment, and property, including laptops, passwords and/or credentials to domains, servers, hard drives, and devices, is of utmost importance to the claimant;
  - c. The claimant's clients expect it to always maintain its information and communication systems safe and secure and to maintain utmost confidentiality;
  - d. The respondent is in breach of the letter of appointment and the claimant's human resource policy by retaining the laptop that he was required to surrender after his employment with the claimant was terminated;
  - e. The claimant continues to suffer threats of data theft, hacking and other cyber-crimes as the respondent illegally withholds the claimant's equipment and credentials;
  - f. The information contained in the laptop may constitute personal data and information which the claimant is required to safeguard under Section 25 of the [Data Protection Act](#) and if the Respondent continues to hold the claimant's property, the claimant may be held liable for breach of its statutory duty;
  - g. The laptop may contain confidential information as well as intellectual property of the claimant, including but not limited to copyrightable information and trade secrets, that, if disclosed to third parties, may irreparably prejudice the claimant's business;
  - h. The Respondent's refusal to return the laptop is in contravention of Section 41 of the [Computer Misuse and Cybercrimes Act, 2018](#), that requires an employee to relinquish all codes and access rights to their employer's computer network or system immediately upon termination of their employment;
  - i. The claimant has suffered and continues to suffer irreparable harm resulting from the Respondent's acts and/or omissions;
  - j. It is in the interest of justice for this Notice of Motion to be allowed as prayed.
4. The respondent filed grounds of opposition dated September 20, 2022 stating:
- a. That the claimant's application for a mandatory injunction does not meet the threshold established by the Court of Appeal in [Kenya Breweries Limited & another v Washington O. Okeyo](#) [2002] eKLR;
  - b. That the claimant is guilty of wilful material non-disclosure for conveniently omitting to reveal to the Court that immediately prior to filing of this suit and application, the parties were negotiating the Respondent's outstanding terminal benefits and clearance process which was due to take place following the Respondent's appeal against his summary dismissal;
  - c. That the claimant's application and indeed the entire suit are premature and filed in bad faith as the Respondent has not been given an opportunity to clear at his workplace as per the terms of the negotiated settlement agreement;



- d. That the present application and court proceedings are demonstrative of the bad faith and strong-arm tactics that the claimant has been perpetrating against the Respondent to avoid settling the terminal benefits it had proposed to pay by feigning a non-existent grievance based on bare unsubstantiated allegations;
  - e. That the claimant has failed to demonstrate by way of evidence that the laptop model HP Spectre i7 Serial No. CND8055W69 indeed exists, and that it was issued to the Respondent in the course of his employment and the prayers sought are unenforceable as the Respondent has never been issued with the said laptop, model HP Spectre Core i7 Serial No. CND8055W69;
  - f. That the claimant has failed to demonstrate by way of evidence when, where and how the respondent has breached his duty of confidentiality as alleged or at all and the claimant's application is baseless and merely a device to muzzle the respondent who is a whistle-blower. The claimant is attempting to steal a match on the respondent whose defence and counterclaim will require him to produce certain confidential information in his possession to the court, in relation to unethical malpractices that he unearthed at his workplace and which ultimately led to his unlawful termination;
  - g. That the claimant's conduct of proposing to the Respondent settlement terms for payment of the Respondent's terminal dues at Kshs. 3,147,739 in exchange for undertaking of the clearance process as well as return of the claimant's materials as set out in clause 9 of the settlement agreement as bait to lure the Respondent into discussions only for the claimant to prematurely file this suit when the parties were inching towards execution, smacks of extreme bad faith;
  - h. That he who comes to equity must come with clean hands and the Court shall not countenance the strong-arm tactics being exerted by the claimant upon the Respondent to avoid settling his terminal benefits by stimulating a case where none exists;
  - i. That the claimant's entire suit is a device aimed at frustrating, delaying and eventually denying the Respondent the right to his accrued terminal benefits and apart from being bad in law, it is an abuse of the court process;
  - j. That it is in the interest of justice that the claimant's application dated September 8, 2022 be dismissed with costs to enable this matter to be heard and determined after the Court has taken viva voce evidence of both parties.
5. The respondent also swore a replying affidavit on September 23, 2022. He depones that he was an employee of the Respondent holding the position of Head of Technology- Technical Department until March 5, 2022 when his employment was terminated.
  6. The respondent states that he lodged an appeal against the termination which was successful but the claimant had undergone a restructuring with the Respondent's previous position being abolished. The Respondent was therefore offered a different position of Head of Core Engineering which he claims did not match his skillset.
  7. The Respondent adds that there was an agreement for an amicable separation between the claimant and himself with a proposed settlement of Kshs. 3,147,739.40.
  8. The Respondent depones that it was an express agreed term of the settlement agreement that he was required to return to the Head of Human Resources all confidential information and copies plus all property belonging to the claimant, within seven (7) days.



9. The Respondent accuses the claimant of reneging on the settlement agreement and instead initiating the present proceedings.
10. According to the Respondent, the effect of the suit papers being served upon him was to formally scuttle the agreed settlement terms as well as the agreed clearance process.
11. The Respondent states that he does not have in his possession or under his control a laptop model HP Spectre Core i7 Serial No. CND8055W69 as alleged by the claimant adding that the said laptop model HP Spectre Core i7 Serial No. CND8055W69 was not issued to him.
12. The Respondent depones that he was provided with a basic HP Notebook model namely HP Notebook-15bs085 Product No. CJ77EA.
13. The Respondent states that as Head of Technology, he was privy to a myriad of confidential information belonging to his former employer and adds that he has never divulged any confidential information to any third party.
14. The Respondent claims that his exit from the claimant's employment was precipitated by his having unearthed unethical malpractices by company staff. He further claims that his termination revolves around a mock disciplinary hearing conducted by high ranking staff complicit in the malpractices.
15. The Respondent depones that his access to the Company's email was revoked on February 16, 2021, before the impugned disciplinary hearing held on March 5, 2021, in a bid to cripple his defence as he no longer had access to his email accounts and could not produce the email evidence needed to exonerate himself from the charges levelled against him.
16. The Respondent further depones that the only evidence of his role as a whistle-blower in uncovering the malpractices and unethical conduct that he unearthed at his workplace and which precipitated his unlawful termination is to be found in his work laptop HP Notebook-15 which evidence he intends to adduce before the Court in support of his Defence and Counterclaim.
17. The Respondent claims that the evidence of malpractices and unethical conduct that he unearthed and is contained in his work laptop HP Notebook-15 is of such gravity that if proved, it would generate a scandal and would attract hefty fines from the industry regulators, service providers and exposure to litigation by content creators.
18. The Respondent terms the claimant's application as an attempt to muzzle him by taking away the evidence in his possession which will be the basis of his defence and counterclaim.
19. Felista Gachau swore a further affidavit on September 26, 2022, stating that upon termination of his employment, the Respondent was notified of the requirement to return all company property including the company laptop, namely model HP Spectre Core i7 Serial Number CND8055W69 issued to him for use in his employment.
20. Gachau terms the Respondent's assertions of unethical conduct by the Respondent's staff as baseless.
21. The prayers sought by the claimant in this application are in the nature of mandatory injunction. It is well settled in law that a mandatory injunction will only issue at the interlocutory stage in special circumstances over and above the establishment of a prima facie case.



22. Counsel for the Respondent referred the Court to the decision in *Kenya Breweries Limited v Washington O. Okeyo* [2002] eKLR where the Court of Appeal cited with approval the following excerpt from the *Halsbury's Laws of England*, 4<sup>th</sup> Edition, Vol. 24, para 948:

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff ..... a mandatory injunction will be granted on an interlocutory application”.

23. The Court of Appeal went further to cite the persuasive decision in *Locabail International Finance Ltd. v. Agroexport and others* [1986] 1 ALL ER 901 where it was held:

“A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”

24. I have had occasion to review the pleadings filed by the parties in this application and what emerges is a web of issues ranging from a failed disciplinary process, an unexecuted settlement agreement, allegations of misconduct, and an alleged attempt to lock out evidence.

25. This is certainly not a clear or simple case. Moreover, the identity of the laptop in issue is a matter in contest. I therefore decline to issue any orders at the interlocutory stage.

26. In the result, the claimant's application dated September 8, 2022 is declined with costs in the cause.

27. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF OCTOBER 2022**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Wairoto for the claimant

Mr. Gachugi for the Respondent

