



**Sikalieh (Suing on behalf of Karen and Langata District Association) v Karobia  
(Cause E562 of 2022) [2022] KEELRC 13065 (KLR) (3 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13065 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E562 OF 2022  
L NDOLO, J  
NOVEMBER 3, 2022**

**BETWEEN**

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

**AND**

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

**RULING**

1. By a notice of motion dated August 8, 2022, the Claimant seeks an interim order compelling the Respondent to deliver to the claimant all the claimant's properties in her possession to wit:
  - a. Laptop model 15.6-inch HP 250 G6 Notebook, Intel core is, 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. The application 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 is, 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. The claimant is thus apprehensive that the respondent may share the confidential personal data with third parties who may use the said personal data to the detriment of the members of the claimant. indeed, and as noted earlier, among the information contained in the laptop are property information which may land in the hands of third parties that may use it to deprive the claimant's members of their properties;
  - h. The application has been made expeditiously and it will be in the interest of justice if the orders sought are granted.
3. The respondent opposes the application by her replying affidavit sworn on September 20, 2022. She depones that the structure of the Karen Langata District Association constitutes of a committee headed by the Chairman and a secretariat headed by the Office Administrator and Manager, a position occupied by the respondent. She states that she has occupied this position for the last eight years and has served under four different committees.
  4. The respondent further depones that the Karen Langata District Association held a Special General Meeting on September 7, 2022 during which the members resolved to dismiss the claimant alongside the rest of the committee members. Subsequently, a caretaker committee was elected.
  5. The respondent asserts that as a result of the Special General Meeting and the resolutions flowing therefrom, the claimant had lost the capacity and/or authority to represent the Karen Langata District Association or to sue on its behalf. According to the respondent, the claimant lacks the *locus standi* to sustain these proceedings.
  6. The respondent states that in the management structure of the Karen Langata District Association, the secretariat is responsible for the day to day operations and administrative duties of the Association while the committee is responsible for overall oversight of the Association.
  7. She avers that one of the roles specifically assigned to her by virtue of her position as the Office Administrator is custody of members' data including their names, physical addresses, details of their property including land reference numbers, telephone numbers and other information that is considered as private and confidential.
  8. The respondent depones that the tradition and practice of the Association has been that even within the secretariat, only one person keeps the data safe and discreet because members would like their



private information in the hands of one person. She adds that she is personally and individually responsible for the safety and security of that data.

9. The respondent states that upon being elected as Chairman of the Association, the claimant asked her to forward the members' private data to his private email account for his own personal use, a request the respondent declined.
10. The respondent accuses the claimant of blackmailing and intimidating her. She avers that the decision to send her on compulsory leave was made unilaterally by the claimant, whose sole aim was to gain unfettered access to the members' data.
11. The respondent swore a supplementary affidavit on September 27, 2022, stating that the claimant had been replaced as Chairman of the Association and that she had been recalled from compulsory leave by the new Chairman.
12. In his further affidavit sworn on October 5, 2022, the claimant states that the resolution to remove him from the position of Chairman of the Association was made irregularly because the meeting at which the decision was taken was not properly convened.
13. The claimant denies having sought access to members' data irregularly and accuses the Respondent of insubordination. He further denies the allegations of blackmail and intimidation.
14. The claimant maintains that he remains firmly in the position of Chairman of the Association and denies that the respondent had resumed duty.
15. The order sought by the claimant in this application falls within the borders of a mandatory injunction and the law is that a mandatory injunction will only issue at the interlocutory stage in special circumstances, over and above the establishment of a prima facie case.
16. In its decision in *Kenya Breweries Limited v Washington O. Okeyo* [2002] eKLR 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 match on the plaintiff ..... a mandatory injunction will be granted on an interlocutory application”.
17. 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 match 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.”



18. Looking at the parties' pleadings, it is evident that this is not a simple case of an employee declining to hand over their employer's property. First, the claimant's position as Chairman of the Karen Langata District Association is a matter in contest; in fact, Counsel for the claimant submitted before the court that the leadership of the Association is the subject of active proceedings before the High Court. Second, the respondent states that she has no authority to release private members' data and accuses the claimant of unprocedurally seeking to gain access to the said data.
19. In light of this, the court is not satisfied that the claimant has met the threshold for granting of a mandatory injunction at the interlocutory stage.
20. Consequently, the claimant's application dated August 8, 2022 is declined with costs in the cause.
21. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 3<sup>RD</sup> DAY OF NOVEMBER 2022**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Kigata for the Claimant

Mr. Onyango for the Respondent

