



Muendo v Eurocity Hospital Kisumu & another (Cause E007 of 2024) [2024] KEELRC 1208 (KLR) (20 May 2024) (Ruling)

Neutral citation: [2024] KEELRC 1208 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E007 OF 2024**

**S RADIDO, J
MAY 20, 2024**

BETWEEN

MAGDALENE MUENDO CLAIMANT

AND

EUROCITY HOSPITAL KISUMU 1ST RESPONDENT

DR A.O. 2ND RESPONDENT

RULING

1. In the course of the examination-in-chief of Magdalene Muendo (the Claimant) she attempted to introduce into evidence electronic recordings/compact disc she had made using her mobile phone.
2. The Respondents objected to the production of the recordings/compact disc on the grounds that the recordings were not audible and that there was no evidence to show that the phone/computer from which the recordings/compact disc was extracted was in good and working condition. The Respondent relied on section 106 of the *Evidence Act*.
3. The Respondent relied on the cases of Kisii High Court Civil Case No. 12 of 2017, Rachel Njoki Kihara v Gideon Migiro Nyambati and Ndwiga Steve Mbogo v Independent Electoral Commission & Boundaries Commission & 2 Ors (2017) eKLR.
4. In a brief reply, the Claimant contended that the objection should have been raised during pre-trial and that a Certificate as contemplated by section 106B of the *Evidence Act* had been filed and served, and the Certificate had the phone make and serial number and that there was confirmation that the phone and computer used to extract the recordings were in good working condition.
5. Section 106B of the *Evidence Act* provides the conditions to be met before the contents of an electronic recording can be admitted into evidence and these are that the computer output containing the information sought to be admitted was produced while under the lawful control of the party, the



information recorded in the electronic device was of a type regularly fed into the computer in the regular course of activities, the computer was operating properly and that the information in the electronic record was fed into the computer into the ordinary course of business.

6. The section also requires that a party intent on producing the electronic recording should provide a Certificate identifying the electronic record and how it was produced, indicating the particulars of the computer or device used in the production of the electronic recording and signed by a person who was responsible for the operations of the computer or device.
7. In the Certificate, the Claimant gave the phone device brand name, serial number, the make of the computer used to extract the recordings and the serial number. She further indicated that she is the owner of the phone and is the one who made the recordings and that both the phone and computer were in good working condition.

Conclusion

8. Having examined the Certificate and the parties' submissions, the Court is satisfied that the compact disc meets the criteria for admission as electronic evidence, save that the Claimant should prepare and file in Court a transcript of the recording.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 20TH DAY OF MAY 2024.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Lugano & Achura

For Respondent Peres Odoyo & Co. Advocates

Court Assistant Chemwolo

