



**Odhiambo v Teachers Service Commission (Cause E030 of 2023)
[2024] KEELRC 2275 (KLR) (23 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2275 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E030 OF 2023
NZIOKI WA MAKAU, J
SEPTEMBER 23, 2024**

BETWEEN

TOM FRED ODHIAMBO CLAIMANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

RULING

1. Objection is taken as to the testimony being adduced. Mr. Mulaku for the Respondent asserts the witness is making allegations of fabricated evidence, a matter that is neither pleaded nor indicated anywhere in the testimony of the Claimant. He asserts the evidence should be expunged for that reason as Respondent will be handicapped in response or answer to this new evidence being adduced.
2. Mr. Odeny for the Claimant asserts the Respondent produced minutes of the meetings held both at the Board and at TSC and that it was therefore within bounds for the Claimant to refer to them. He urged the Court to disallow the objection raised. He indicated the witness for the Respondent would be able to avail answers and respond to the allegations made.
3. In a brief reply Mr. Mulaku for Respondent asserts the defence is handicapped as the Claimant makes no specific reference to a document and the allegations made are without foundation. He states the witness should point out specifically at the documents in respect to his testimony.
4. When adducing evidence, it is imperative that witnesses make reference to specific documents. In the mater before me, it is asserted the Claimant is now testifying over things he was neither pleaded nor raised prior.
5. Having perused the proceedings by the Claimant, I see no indication of any allegation of fabricated minutes. There is no reply to defence advertng to the allegations of fabricated minutes. Whereas the Claimant can give a general comment on the documents produced by the Respondent, he cannot be permitted under the rules of evidence to avail fresh evidence that would handicap the ability of the



Respondent to defend itself. There is equality of arms and each side has to be reasonably notified of the case it is to meet. Merely stating the defence has opportunity to reply is not good enough. In my considered view, the Claimant must of necessity make reference to specific documents and then his comment thereon can be invited. As such, I uphold the objection made to the extent that the Claimant should pull out the memo of claim or defence and refer to specific documents.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 23RD DAY OF SEPTEMBER 2024

NZIOKI WA MAKAU

JUDGE

