



REPUBLIC OF KENYA



KENYA LAW
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**Leiyio v Jamii Bora Bank (Cause 344 of 2019)
[2025] KEELRC 696 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 696 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 344 OF 2019
CN BAARI, J
MARCH 6, 2025**

BETWEEN

SAMUEL LENGETE LEIYIO CLAIMANT

AND

JAMII BORA BANK APPLICANT

RULING

1. Before Court is the Respondent's application dated 23rd May, 2024, brought pursuant to Sections IA, I B and 3A of the Civil Procedure Act and Article 159 (2) (d) of the Constitution of Kenya, 2010. The Applicant seeks orders that: -
 - i. This Honourable Court be pleased to grant leave to the Respondent to adduce additional evidence in this matter, being the Investigation Report dated 17th August 2017, 2016 Cash Management Procedures Manual, and the Claimant's Response dated 25th July 2017 to the show cause letter dated 11th August 2017.
 - ii. This Honourable Court be pleased to make an order as to costs.
 - iii. This Honourable Court be pleased to make any such or further orders as it may deem necessary to grant in the interest of justice.
2. The application is supported by grounds on the face and the affidavit of John Wamwati sworn on 19th March, 2024. The Applicant avers that this Court granted the Claimant leave to serve a Notice to Produce with respect of relevant documents in the Claimant's possession, and that the Claimant issued the Notice dated 18th June 2019 to the Respondent for the production of the Investigation Report.
3. That the Respondent issued the Claimant with a Certificate of Service on 25th June 2019, and informed the Claimant that it would issue the minutes of the disciplinary hearing, as well as any other documents once the same were found. It states that sometime in the year 2017 the Respondent moved offices



from Koinange Street in the Central Business District of Nairobi City to their current location along Argwings Kodhek in Hurlingham.

4. The Applicant further states that in the moving process, some documents were misplaced and/or misfiled, and that the minutes of the disciplinary hearing, the 2016 Cash Management Procedures Manual, Investigation Report and the Claimant's response to the show cause letter were among some of the documents misplaced that could not be found even after due diligence.
5. It states further that by the time the hearing of this matter commenced on 9th November 2023, the said documents could not be found and the Claimant opened and closed his case without the production of these documents.
6. That the Respondent has now managed to find the Investigation Report dated 17th August 2017, 2016 Cash Management Procedures Manual, and the Claimant's Response dated 25th July 2017 to the show cause letter dated 11th August 2017. It avers that unfortunately; the Minutes of the Disciplinary Hearing could still not be found.
7. The Respondent states that it now intends to have these documents admitted into the record, and thus seeks leave of this Honourable Court to adduce the same in evidence.
8. The Claimant opposed the application through a replying affidavit he swore on 26th September, 2024. The Claimant avers that this application is coming so late that it can only be properly perceived as a delaying tactic and an abuse of the process of this court.
9. He states that he filed this claim on 23rd May, 2019 and that it has been five years and the matter has not been determined. It is his position that procedures require that courts proceed in a proper, organized and decent manner, such that by the time a matter is set down for hearing, all applications would have been dealt with and the court would have also dealt with adequately, the pre-trial process.
10. The Claimant further states that even if the court was to accommodate such a request on the grounds of fair hearing, it can only do so if it is demonstrated that the documents that are to be introduced were not within the possession, knowledge or access of the Applicant. That the documents sought to be produced have always been within the knowledge and custody of the Applicant herein.
11. The Claimant states that he will be greatly prejudiced should the court allow the documents to be introduced at this stage. He states that the instant application is being made by a party that has not complied with the orders of 11th August, 2019 issued to it to avail the documents. He states that the Applicant/Respondent is now cherry picking the documents it wishes to produce, as it still does not wish to produce the documents it was ordered by court to produce.
12. The Claimant prays that the application be dismissed with costs.
13. Parties canvassed the application through written submissions, and which have been duly considered.

Determination

14. I have carefully considered the application by the Respondent, together with the grounds and affidavit in support, the Claimant's opposition captured in his replying affidavit, and the submissions by both parties. The singular issue that falls for determination is whether the motion has merit.
15. The Respondent/Applicant seeks leave of this court to introduce additional evidence in this matter, being the Investigation Report dated 17th August 2017, 2016 Cash Management Procedures Manual, and the Claimant's Response to the show cause letter dated 25th July 2017.



16. The Claimant terms the motion a delaying tactic coming five (5) years after the suit was filed. He further avers that even if the court was to accommodate such a request on the grounds of fair hearing, it can only do so if it is demonstrated that the documents that are to be introduced were not within the possession, knowledge or custody of the Applicant.
17. It is not disputed that that the documents sought to be produced have always been within the knowledge and custody of the Applicant herein and are in fact the documents of the Applicant.
18. The court notes that this court (differently constituted) issued an order allowing the Claimant leave to serve a Notice to Produce with respect of relevant documents in the Respondent's possession, and that the Claimant issued the Notice on 18th June 2019 to the Respondent for the production of the Investigation Report. It is also clear that the Respondent now turned Applicant, has neither obeyed this order nor explained why it did not produce the documents when ordered to do so by the court.
19. Further, the Respondent/Applicant's assertion that moving offices in the year 2017 caused some documents to be misplaced and/or misfiled, and were only found in 2024 is lame, flimsy and totally unconvincing.
20. To say that the delay in filing the instant motion is inordinate, is an understatement. Five years to file or seek to file documents that have all along been in its own custody, is in my view inexcusable. The Applicant has not given this court reasonable explanation for the delay.
21. In the case of P.H. Ogola Onyango t/a Pittsconsult Consulting Engineers v. Daniel Githinji t/a Quantalysis (2005) eKLR also cited by the Claimant, the court opined:-

“The present suit was filed way back in 1999. The Defendant filed his defence in January, 2000. He had more time to make discovery before the trial commenced. To allow him introduce documents after the Plaintiff had closed his case, will occasion the Plaintiff serious prejudice that cannot be cured by cross-examination. In civil litigation, there must be a level playing field. That field cannot be level were one party to be permitted to introduce documents in the trial after the opposite party has closed his case, and many years after pleadings closed.”
22. It is not disputed that the Claimant herein has already closed his case, and this matter was listed for hearing of the Respondent's case and the instant application was just filed before the said hearing. For this reason, I concur that admitting new evidence at this juncture will not only delay this matter farther, but will also occasion the Claimant great prejudice.
23. In whole, this court finds the Applicant/Respondent's motion devoid of merit, and is for dismissal. It is dismissed with costs to the Claimant.
24. The suit be set down for hearing of the Respondent's on priority basis.
25. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 6TH DAY OF MARCH, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Okatch Present for the Claimant



Mr. Dachi for the Respondent

Ms. Esther S- C/A

