



Wanakacha v Bob Morgan Services Limited (Employment and Labour Relations Cause 2031 of 2015) [2024] KEELRC 50 (KLR) (25 January 2024) (Ruling)

Neutral citation: [2024] KEELRC 50 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2031 OF 2015
MN NDUMA, J
JANUARY 25, 2024**

BETWEEN

ABRAHAM WAFULA WANAKACHA CLAIMANT

AND

BOB MORGAN SERVICES LIMITED RESPONDENT

RULING

1. The respondent/applicant in the Notice of Motion dated 22nd March 2023 prays for an order in the following terms:-
 1. That the claimant herein be recalled for further cross-examination by the respondent's Advocate.
 2. That the respondent be given leave to file a supplementary list of documents and the supplementary list of document be deemed as properly filed in court.
 3. That the costs of this application be in the cause.
2. The application is premised on grounds 1 to 5 set out on the face of the Notice of Motion the gist of which is that the claimant's case was heard on 20th February 2023 wherein the claimant testified that he was not aware of the disciplinary hearings held on 17th January 2014 and 3rd April 2014 as he had not reported to work since January 2014 hence could not attend the same.
3. The respondent seeks to produce named documents to rebut the said allegations by the claimant. That the respondent would suffer great prejudice if the supplementary bundle of documents is not produced.
4. That the claimant will be able to cross-examine the respondent on the documents and so will not suffer any prejudice. That the application has been brought without undue delay upon the testimony of the



claimant. The application is buttressed by the supporting affidavit of Dennis Micheke who reiterates the stated facts under oath.

5. The application is opposed by the claimant who states that it is too late in the hour to allow introduction of documents by the respondent after he had already cross-examined the claimant.
6. The claimant states in the replying affidavit that he is not aware of any such minutes sort to be produced belatedly by the respondent. That the claimant would be greatly prejudiced by such belated introduction. That no explanation is given by the respondent as to why he did not produce the said documents when it filed its list of documents on 11th March 2016 more than 9 years ago. That the application was bad in law and prejudicial to the claimant and it be dismissed.
7. The parties filed written submissions and the issue for determination is whether the respondent has given any tangible reason as to why it did not produce the supplementary bundle intended to be introduced now before the close of proceedings and after the claimant has already testified and closed his case.
8. In terms of Rule 13(10) of the Employment and Labour Relations Court (procedure) Rules, 2016,

Where a party intends to rely on a document that has not been filed as part of the pleadings, the party shall make sufficient copies of each document for the court file and serve the other parties with a copy at least fourteen days before the case is set down for hearing or such shorter period as the court makes order: provided that at the close of pleadings the court may allow the filing of a supplementary bundle of documents."
9. The rules of this court make no provision at all for filing of supplementary documents to be relied on by a party after the suit has been set down for hearing and in particular after the hearing of the suit has commenced and the claimant has closed its case.
10. The applicant has not provided any reasonable justification for the court to exercise its judicial discretion to permit filing of a supplementary bundle of document after the claimant has already testified and closed his case.
11. It would not be in the interest of justice to ambush the claimant with new documentation supposedly to contradict evidence already adduced by the claimant in chief and has been cross-examined by the respondent. Such a move would be greatly prejudicial to the claimant. The application has been brought after the horse has bolted from the stable.
12. The application contravenes the rules of this court, is bad in law and is dismissed with costs in the cause.
It is so ordered.

MATHEWS N. NDUMA

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JANUARY, 2024

Appearances

Mr. Njuguna for respondent/applicant

Ms. Mutemi for claimant/respondent

Ekale Court Assistant

