



**Eshiwani v Kenyatta University (Employment and Labour Relations Cause  
1634 of 2018) [2024] KEELRC 958 (KLR) (26 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 958 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1634 OF 2018**

**K OCHARO, J**

**FEBRUARY 26, 2024**

**BETWEEN**

**RACHEL ESHIWANI ..... CLAIMANT**

**AND**

**KENYATTA UNIVERSITY ..... RESPONDENT**

**RULING**

1. When this matter came up for hearing on the 12<sup>th</sup> February 2024, the Claimant was stood down midway her testimony. This was occasioned by the fact that counsel for the Respondent, Mr. Kibe noted that the Claimant had not filed what to him could constitute a witness statement as contemplated under the rules of Procedure, but a one paragraphed document captioned “the Claimant’s statement”.
2. According to him, the Claimant had not filed any witness statement. She could not therefore proceed to testify as though she had one on record.
3. Counsel further noted and submitted that the document purported to adopt the contents of her statement of claim as her witness statement. The approach was strange and an affront to the provisions of Rule 25(3) of this court’s rules. Further, pleadings are not evidence and will never be.
4. Counsel for the Claimant, Mr. Jaoko in response stated that contrary to Counsel Kibe’s submissions, the Claimant has a witness statement on record though in a summary form. The facts which could have been reproduced in the witness statement are in paragraphs 4 – 30 of the Amended statement of claim.
5. Further, the Rules, the basis for the Respondent’s objection, employs the phrase “may be”, rendering the filing of a witness statement not a mandatory action.
6. Article 159 of the Constitution commands this court to shun technicalities but engage dispensation of substantive justice.



7. Counsel concluded that the Respondent’s counsel was employing every tactic to ensure that the matter was adjourned.
8. In response to Mr. Jaoko’s submissions, Mr. Kibe, submitted that both the Civil Procedure Rules and this court’s Procedure Rules provide for filing of different documents. One cannot be allowed to be substituted for the other. Further, pleadings normally contain facts and points of law, and witness statements, facts only. Reason why one cannot take the place of the other.
9. Counsel Kibe submitted further that the question as to whether there was a proper witness statement on record or not cannot be termed a technical question. It is a question on a substantive matter.
10. I have carefully read the document captioned “the Claimant’s Statement” which Counsel for the Claimant calls a witness statement in summary form and consider it imperative to bring out its contents fully, thus;

“ Claimant’s statement (Witness statement)

I, Rachel Eshiwani, a Kenyan female adult of sound mind and disposition and resident of Nairobi and the Claimant herein, and of P.O. Box 30681 – 00100, Nairobi in the Republic of Kenya, do hereby make this statement, and state as follows:-

1. That I am the Claimant herein conversant with the matters in issue and therefore competent to swear this affidavit. I want to adopt my memorandum of claim as my statement as well.

.....”

11. It is my clear view that a witness statement is a formal document that contains a witness’s account of the facts relating to a particular dispute, whose purpose is to provide to the court and adversary written evidence to support a particular party’s case. It is flowing from this that in appropriate cases, the Rules of this court allow the court to render a decision on a matter based on witness statements and documents by the parties, without necessarily taking their oral testimonies.
12. It is at this juncture, that I must point out, that a witness statement is a vital document that will be required to and relied upon at the trial, and urge litigants and advocates alike to ensure that their witness statements are both accurate and comprehensive.
13. Considering the foregoing premises, I hesitate not to conclude that the document in issue cannot be considered a witness statement for the purposes and intents of this court’s Procedure Rules.
14. As a result, the document is expunged from record. The Claimant is pursuant to the overriding objective of this court granted 21 days of today to file and serve a proper witness statement. The Respondent shall have 21 days of receipt of the Claimant’s witness statement to file and serve a further witness statement, if need be.

**READ, DELIVERED AND SIGNED THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**OCHARO, KEBIRA.**

**JUDGE**

In the presence of:

Jaoko for the Claimant

Ms Lagat holding brief for Kibe Mungai for the Respondent



## Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**OCHARO KEBIRA**

**JUDGE**

