



Osman v Cabinet Secretary, Ministry of State for Defence and Chairperson, of the Defence Council & another (Cause 32 of 2014) [2024] KEELRC 584 (KLR) (15 March 2024) (Ruling)

Neutral citation: [2024] KEELRC 584 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 32 OF 2014
J RIKA, J
MARCH 15, 2024

BETWEEN

HASSAN ADEN OSMAN CLAIMANT

AND

**THE CABINET SECRETARY, MINISTRY OF STATE FOR DEFENCE AND
CHAIRPERSON, OF THE DEFENCE COUNCIL 1ST RESPONDENT**

THE ATTORNEY-GENERAL 2ND RESPONDENT

RULING

1. This Claim came up for full hearing, on 29th September 2023, when the Respondents objected to production by the Claimant, of the only 3 documents he intends to rely on in prosecuting his Claim, which are marked HAO 1, HAO 2 and HAO 3.
2. Earlier, the Respondents had again raised objection to the Claim which was overruled by the Court, where the Respondents alleged that the Claim is statute-barred.
3. The objections explain in part, why the Claim has been unresolved for 10 years since it was filed, in 2014.
4. The present objection is based on Sections 68 [2] [c], 80 [1] and 81 of the *Evidence Act* Cap 80 the Laws of Kenya.
5. It is the position of the Respondents that the documents annexed by the Claimant are photocopies. They are not original documents. The Claimant has not established why he intends to rely on secondary evidence. The documents have not been certified.
6. The Court directed the Respondents to raise their objection formally, which they have done through the application dated 5th October 2023.



7. The application is opposed through the grounds of opposition dated 27th October 2023 filed by the Claimant. He states that the application is fatally defective; it is aimed at delaying hearing; is an abuse of the court process; and the Respondents have not come to Court with clean hands.
8. It was agreed that the application is considered and determined on the strength of written submissions, which the Parties confirmed to have filed and exchanged, at the last mention before the Court, on 15th December 2023.

The Court Finds

9. HAO 1 comprises a copy of a certificate of service, a certificate of discharge, issued upon the Claimant by the first Respondent. These are statutory documents required to be issued under the [Kenya Armed Forces Act](#), indicating the date of, and reason for discharge.
10. They serve the same purpose as a certificate of service issued to Employees on termination of service, under Section 51 of the [Employment Act](#).
11. Accompanying these certificates are the Claimant's service testimonials, showing military and civilian courses undertaken by him, during his service.
12. HAO 2 is Part 11 Orders, a summary of the charges against the Claimant, and the decision of the Claimant's 12 Engineering Battalion, through which his service was terminated.
13. The last document, HAO 3, is a statutory notice issued to the Respondents before institution of the Claim, under the [Government Proceedings Act](#).
14. The Respondents submit that that the documents should be expunged from the record, leaving the Claim unsupported, without a single document to be relied on.
15. With tremendous respect to the Respondents, their application is untenable. It appears to be a second attempt at derailing or delaying the Claim, the first attempt on limitation of time, having been declined. Did the Respondents employ the Claimant and discharge him by word of mouth?
16. The documents sought to be expunged are part of the Claimant's employment records. The custodian of these records is the first Respondent. Section 74 of the [Employment Act](#) mandates an Employer to keep a written record of all Employees, employed by him.
17. In their Statement of Response dated 29th January 2014, the Respondents concede that the Claimant was employed by the Kenya Defence Forces, and that he was discharged from service for commission of an offence, under Section 68 of the Armed Forces Act.
18. But the Respondents have not exhibited any document, showing that the Claimant was in the service of the Kenya Defence Forces, or that he was dismissed for the specified offence. HAO 2 shows that the Claimant was charged with an offence under Section 68 of the Armed Forces Act. Why would the Respondents be averse to production of documents, which are stating the same position, expressed by the Respondents in their Response? Where are the original documents, in the custody of the Respondents, that perhaps state a different position? The Court would readily expunge the photocopy documents, if the Respondents brought the original documents in their custody, before the Court. They have had notice, since 2014, when the photocopies were filed before the Court.
19. They have not contested these documents since 2014, until the hearing date, almost 10 years on. They did not even contest the documents when they raised their first objection. They have opted to object to the Claim in instalments, when it suits them. They have not provided alternative documents, original or otherwise, to contradict what they are objecting to.



20. The principle objective of this Court under Section 3 of the *E&LRC Act*, is to facilitate the just, expeditious, efficient and proportionate resolution of disputes. Parties and their representatives have an obligation to assist the Court in furtherance of the principle objective. The Respondents have not demonstrated their willingness to assist the Court, by their repeated and frivolous technical objections, on the hearing of this long pending Claim.

It is Ordered

- a. The Application filed by the Respondents dated 5th October 2023 is declined.
- b. The Claim to be fixed for further hearing on an accelerated basis.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 15TH DAY OF MARCH 2024.

JAMES RIKA

JUDGE

