



**Kamau v Biovision AfricaTrust & another (Cause E947 of 2022)
[2024] KEELRC 833 (KLR) (17 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 833 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E947 OF 2022
NZIOKI WA MAKAU, J
APRIL 17, 2024**

BETWEEN

PETER NJUGUNA KAMAU CLAIMANT

AND

BIOVISION AFRICA TRUST 1ST RESPONDENT

BIOVISION FOUNDATION 2ND RESPONDENT

RULING

1. There is objection to some emails produced on the Claimants Bundle. It is argued that the Claimant ought to have filed the certificate contemporaneously with the said emails. The Counsel for the Respondent Mr. Barrack thus objects to the production of the emails by the Claimant.
2. Counsel for the Claimant Ms. Oseko is opposed and submits that she did file a certificate of electronic record, albeit late. She apologises to Court and Counsel for the Respondent for late filing but adds the certificate of electronic record does not introduce any evidence. She submits she had served the bundle and there was no objection prior. She asserts the Counsel for Respondent ought to have objected to the same timeously and not wait till Claimant has closed his case and then raise the issue.
3. In a brief reprise Mr. Barrack for the Respondent asserts the Claimant’s Counsel ought to have pointed out to Court, out of prudence, of the late filling of the certificate. He submits it was filed after pleadings had closed and concedes he ought to have pointed out further. He points out that the Counsel for Claimant should have raised it earlier.
4. The matter of certificate for electronic evidence has begun to take centre stage in proceedings. Under the *Evidence Act*, there is the imprimatur to avail one when electronic evidence is adduced in a matter. In this case, the Claimant filed a certificate, conceded by Counsel for Claimant, to be late. It is this late filling that had irked the response by Respondent in the objection before me.



5. The bundle was filed in October 2023. It is presumed the Respondent became aware of the contents of the evidence upon service. The Respondent did not raise any objection then. The Claimant testified this morning and produced the bundle as part of the evidence. That did not elicit any objection then.
6. In my considered view, having been seized if the electronic record, which in all its glory was copied to and in some cases addressed to the witness for the Respondent, there being no objection to the content other than the omission to file a certificate contemporaneously with the bundle, it beats logic to impugn the emails on that score. Despite the late filing of the certificate, as pointed out by the Claimant's Counsel, the certificate does not introduce evidence it only points to the chain of custody. I will disallow the objection raised. The case to proceed as if the certificate was filed at the same time as the bundle. Objection overruled.

It is so ordered.

DATED THIS 17TH DAY OF APRIL 2024 AT NAIROBI

Nzioki wa Makau

JUDGE

