



Mutua v Wanderjoy Party World Limited (Employment and Labour Relations Cause E661 of 2022) [2024] KEELRC 738 (KLR) (5 April 2024) (Ruling)

Neutral citation: [2024] KEELRC 738 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E661 OF 2022**

AN MWAURE, J

APRIL 5, 2024

BETWEEN

JUSTUS MUTUA CLAIMANT

AND

WANDERJOY PARTY WORLD LIMITED RESPONDENT

RULING

1. The Claimant filed a Notice of Application dated 28th November 2023 seeking orders that:
 1. this Honourable Court be pleased to issue an order directed to the Respondent to produce and make available for the court’s inspection the letter dated 28/10/2021 bearing the Claimant’s original signature and alleged to have been signed by the Claimant acknowledging receipt thereof.
 2. the costs of this application be provided for.

Claimant/ Applicant’s Case

2. The Claimant/ Applicant avers that the Respondent filed its list of documents in court including a document dated 28/10/2021 bearing his signature acknowledging receipt of the same, which he denies ever signing the letter.
3. The Claimant/ Applicant avers that the signature on the letter was superimposed on the letter and he denies ever receiving the letter dated 28/10/2021.
4. The Claimant/ Applicant avers that it is imperative for fair administration of justice that the Respondent be directed to produce and make available for the Court’s inspection the letter dated 28/10/2021 bearing his alleged signature and purported to be signed by him acknowledging receipt thereof.



5. The Claimant/ Applicant avers that this court has jurisdiction to issue the orders sought and it is only fair, just and in the interest of justice that the orders sought be granted.

Respondent's Case

6. In opposition to the application, the Respondent filed a replying affidavit dated 1st February 2024.
7. The Respondent avers that there is no basis for the application since the documents were filed and served upon the Claimant in September 2023.
8. The Respondent avers that the Claimant has not proffered any sufficient reasons to warrant this Court to grant the prayers sought.
9. The Respondent avers that the application is meant to delay further the hearing of this matter to its logical conclusion.
10. The Respondent avers that the allegations advanced by the Claimant can only be proved through full hearing and not at this interlocutory stage opted by the Claimant.

Claimant/ Applicant's Submissions

11. The Claimant/Applicant submitted that Section 67 of the *Evidence Act* provides thus: "Documents must be proved by primary evidence except in the cases hereinafter mentioned." The Claimant/Applicant seeks that the letter bearing his signature in its original form be produced as it is in the custody and possession of the Respondent.
12. The Claimant/ Applicant submitted that he does not wish to rely on the letter but rather challenges its authenticity. Section 69 of the *Evidence Act* addresses the issue of notice to produce a document and the same is inapplicable in this case as he does not wish to rely on the impugned letter.
13. The Claimant/ Applicant submitted that he has laid a basis for production of the letter dated 28/10/2021 with the original signature attributed to the Claimant.

Respondent's Submissions

14. The Respondent submitted that the prayer sought in the said application at this interlocutory stage is substantive and can only be granted after a full hearing of all the parties herein.
15. The Respondent submitted that what the Claimant is seeking before this Court is to usurp the role of the Court based on documentary evidence which the Claimant has made an allegation and conclusion without a chance to cross-examine the makers. The allegation that it has laid a basis for production is totally unfounded since the matter has not yet been heard. It urges the Court to decline to this invitation as it amounts to an egregious abuse of court process.
16. The Respondent submitted that majority of the documents provided in its list of documents were in the Claimant's custody and were filed in court and served upon the claimant way back in September, 2023. The Claimant should have indicated his intention then and /or during hearing but he chose to use the excuse of a document on 21/11/2023 so as to continue dragging the matter in court and in turn continue having the suit hanging on the Respondent's head. This conduct prejudices the Respondent further and should be discouraged.
17. The Respondent submitted that the nature of the orders sought by the Claimant are discretionary in nature which must be exercised cautiously and which there is no single and justifiable ground for the Court to exercise the said powers in favour of the Claimant.



Analysis and Determination

18. Section 170 of the *Evidence Act* reads as follows:

“Production of documents of doubtful admissibility.

- (1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to court notwithstanding any objection which there may be to its production or to its admissibility, but the validity of any such objection shall be tried by the court.
- (2)
 - (a) The court, if it sees fit, may inspect the document, unless it is a document to which the provisions of section 131 of this Act are applied, or take other evidence to enable it to determine on its admissibility.
 - (b) If for such purpose it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence.”

19. In view of the following, the orders sought by the Claimant lacks merit as it can be effectively addressed during the hearing of the main suit when he gets a chance to cross-examine the Respondent’s witness (es). The court however is curious to see that original document and why the claimant thinks his signature is forged. The court will inspect it during the hearing date. The respondent will avail it to court on the hearing date.

20. The parties to take a hearing date and proceed to hearing.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF APRIL, 2024.

ANNA NGIBUINI MWAURE

JUDGE

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 15th March 2020 and subsequent directions of 21st 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.

