



Mudanya v Kenya School of Monetary Studies (Employment and Labour Relations Cause E991 of 2021) [2024] KEELRC 1333 (KLR) (30 May 2024) (Ruling)

Neutral citation: [2024] KEELRC 1333 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E991 OF 2021**

MN NDUMA, J

MAY 30, 2024

BETWEEN

GEOFFREY CHUNGULI MUDANYA CLAIMANT

AND

KENYA SCHOOL OF MONETARY STUDIES RESPONDENT

RULING

1. The applicant by a notice of motion application dated 2nd October 2023 prays for:-
 - i. Leave to file supplementary list of witnesses and witness statements of John Waweru Kimani dated 18/5/2023 and that of Kasaine ole Koyiet dated 24/7/2023
 - ii. Costs of the application to abide the outcome of the suit
2. The application is based on grounds 1 to 6 set out on the face of the application and buttressed in the supporting affidavit of the applicant to wit that pleadings have closed and the applicant has obtained documents which hitherto were not in his possession which documents provide crucial evidence in the matter. That the respondent will have opportunity to tender further documents if desired and cross-examine the witnesses intended to be called by the claimant.
3. That it is in the interest of justice that the matter be heard and determined upon consideration of all relevant evidence.
4. The application is opposed vide grounds of opposition by the respondent dated 19/10/2023 in which is stated that claimant has not given justifiable reasons for the delay in filing the documents intended to be filed. That the unreasonable delay has not been explained by the claimant.
5. That the application is anchored in the wrong law and is defective. That the application be dismissed for lack of merit.



6. The parties filed written submissions which the court has carefully considered.
7. Rule 9 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* provide: -
“A party may with leave of court, call other witnesses.”
8. Rule 10 further states:

Where a party intends to rely on a document that has not been filed as part of its pleadings, the party shall make sufficient copies of each document for the court file and serve the other party with a copy at least fourteen days before the case is set down for hearing or such shorter period as the court may order provided that after the close of pleadings, the court may allow the filing of a supplementary bundle of documents.”
9. The application was filed on 9/10/2023 and the suit had been set down for hearing on the merits on 23rd October, 2023.
10. The court notes that the application and the two witness statements intended to be filed are attached to the application. The application and the statements were served on the respondent at least ten (10) days before the date of the intended hearing of the suit.
11. Indeed, had this application not been opposed, the respondent would have had sufficient time to consider the supplementary witness statements duly filed by the claimant and decide whether to file further documents in response and in time for the suit to proceed to hearing on merit as was scheduled.
12. The court is satisfied with the explanation given by the applicant for the delay in obtaining the witness statements from the two witnesses, the claimant intends to call.
13. The court is also satisfied that the respondent will suffer no prejudice at all if the statements are filled because the respondent has opportunity to file additional documents and cross-examine the additional witnesses.
14. To the contrary, the right of the claimant to a fair hearing guaranteed under Article 50 of the *Constitution* will be greatly impaired by a denial of the opportunity to adduce additional relevant evidence in support of his case.
15. Accordingly, the court allows the application and deems the additional list of witnesses and witness statements as duly filed provided requisite fee is paid by the applicant.
16. Costs of this application shall be in the cause.

DATED AT NAIROBI THIS 30TH DAY OF MAY, 2024.

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Mutonyi for Claimant/applicant

Ms. Kadima for Respondent

Mr. Kemboi, Court Assistant

