



**Okudho v S.S. Mehta & Sons Ltd (Cause E055 of 2023)
[2024] KEELRC 1202 (KLR) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1202 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E055 OF 2023**

**S RADIDO, J
MAY 22, 2024**

BETWEEN

WILIAM OTIENO OKUDHO CLAIMANT

AND

S.S. MEHTA & SONS LTD RESPONDENT

RULING

1. William Otieno Okudho (the Claimant) sued S.S. Mehta & Sons Ltd (the Respondent) alleging unfair termination of employment and breach of contract.
2. The Cause came up for directions/pre-trial on 5 October 2023, and the Claimant made an oral application to be granted leave to file further documents (after close of pleadings).
3. The Court allowed the request and directed the Claimant to file and serve further documents on or before 19 October 2023.
4. The Claimant did not comply with the order.
5. When the Cause came up for hearing on 1 February 2024, the Claimant and his advocate were absent and the Respondent applied to have the Cause dismissed. The Court obliged.
6. Later, the Claimant successfully applied to have the Cause admitted back and the Court reinstated the Cause on 19 March 2024. The Court scheduled the hearing for 25 April 2024.
7. When the Cause was called out for hearing on 25 April 2024, the Claimant made an application to have documents filed on 11 January 2024 allowed into the record. The Claimant sought solace for the application on Articles 50 and 159(1)(d) of the *Constitution*.
8. The Respondent opposed the application. It asserted that directions had been given and the Claimant had failed to comply after being indulged by the Court.



9. According to the Respondent, pre-trial directions were one of the hallmarks of fair hearing as set out by Article 50 of the *Constitution*, and the Claimant could not claim the assistance of the right when he had failed to comply with directions to file and serve further documents after grant of leave by the Court.
10. The Respondent further contended that the Claimant had not sought leave to file the documents late or secure leave before the hearing to have the documents allowed into the record.
11. The Court has considered the application.
12. Part of the cause of action advanced by the Claimant is a breach of contract from 13 June 2022. In the action, the Claimant alleges that he was assigned duties as a Material Store Keeper without attendant remuneration.
13. The Claimant wants the Court to allow the introduction of some 21 documents. Most of the documents relate to pre June 2022 period.
14. The only relevant documents in the further documents to the cause of action for unfair termination of employment and breach of contract appear to be documents serial numbers 16 – 20 and number 22.
15. These documents appear to be records kept by the Respondent in the ordinary course of business and should not prejudice its case.

Orders

16. The Court will therefore only allow the introduction of documents serial numbers 16 – 20 and 22.
17. The Claimant to pay the Respondent costs assessed as Kshs 4,500/- within 10 days from today.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 22ND DAY OF MAY 2024.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Oriwa & Co. Advocates

For Respondent Daniel Henry & Co. Advocates

Court Assistant Chemwolo

