



**Kunga v Credit Bank PLC (Cause E555 of 2023)  
[2024] KEELRC 2142 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2142 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E555 OF 2023**

**L NDOLO, J  
JULY 31, 2024**

**BETWEEN**

**NANCY SILVIA AKINYI KUNGA ..... CLAIMANT**

**AND**

**CREDIT BANK PLC ..... RESPONDENT**

**RULING**

1. This ruling flows from the Notice of Motion dated 29<sup>th</sup> January 2024, by which the Claimant seeks access to her employment contracts, various email correspondences and other documents in the Respondent's possession.
2. The application is supported by the Claimant's own affidavit and is based on the following grounds:
  - a. The Claimant intends to access her emails for period between 1<sup>st</sup> February 2019 and 8<sup>th</sup> March 2023, from email addresses namely; nkunga@creditbank.co.ke and westlands@creditbank.co.ke;
  - b. The purpose is to access her contracts of employment, various email correspondences and documents which she intends to rely on in this matter;
  - c. The Claimant is unable to access her email addresses since 8<sup>th</sup> March 2023, due to separation from the Respondent's employment.
3. The Respondent filed Grounds of Opposition dated 5<sup>th</sup> February 2024 stating as follows:
  - a. That the Claimant's prayer for production of her employment contracts is superfluous given that the Claimant had only one employment contract, which she has produced at pages1-4 of her bundle of documents dated 13<sup>th</sup> July 2023;



- b. That the application by the Claimant is irrelevant to her claim against the Respondent. There is no relationship between the Claimant's prayers and any allegations in her pleadings;
  - c. That the Respondent will be greatly prejudiced if the Claimant's application is granted for the following reasons:
    - i. Granting access to the email addresses cited by the Claimant will cause the Respondent to contravene the right to privacy of its customers and employees, enshrined under Article 31 of *the Constitution* of Kenya, 2010;
    - ii. Granting access to the email addresses cited by the Claimant will cause the Respondent to contravene the provisions of the Data Protection Act and the Respondent's Data Protection Policy in relation to the processing of personal data belonging to its customers and employees.
  - d. That the email address known as westlands@creditbank.co.ke is a group email address which is used to communicate to all staff stationed at the Respondent's Westlands Branch, and the Claimant has no right to access the said email address;
  - e. That the email address nkunga@creditbank.co.ke no longer exists as it was deactivated upon the termination of the Claimant's employment;
  - f. That the Claimant's application is ambiguous, vague and lacks in specificity as regards the particular documents that the Claimant seeks to access, evidencing a fishing expedition;
  - g. That the Claimant's application is frivolous, vexatious and an abuse of the court process, clearly intended to delay these proceedings.
4. The Respondent also filed a replying affidavit sworn by its Head of Legal, Human Resources & Industrial Relations Department, Wainaina Francis Ngaruiya, on 5<sup>th</sup> February 2024.
  5. Ngaruiya's affidavit mirrors the Grounds of Opposition filed by the Respondent. He reiterates that the prayers sought by the Claimant are ambiguous and therefore incapable of enforcement. He points out that the Claimant has not sought the production of any particular contract, email correspondence or document.
  6. Ngaruiya depones that the email address nkunga@creditbank.co.ke was assigned to the Claimant during the tenure of her employment and was deactivated upon her exit. Regarding the email address westlands@creditbank.co.ke, he states that this is a group email address for the Respondent's Westlands Branch, created for ease of communication within the Branch. According to Ngaruiya, no personal documents belonging to the Claimant were shared through this email address.
  7. The Respondent's position is that the request by the Claimant, if granted, will lead to disclosure and transfer of its customers' and employees' personal data, resulting in breach of Article 31 of *the Constitution* and Sections 25 and 26 of the Data Protection Act.
  8. It is deponed that the Respondent has provided all the documents relevant to the Claimant's claim, in its bundle of documents dated 16<sup>th</sup> January 2024. Ngaruiya states that it is clear from the Claimant's bundle of documents dated 13<sup>th</sup> July 2023 and supplementary bundle of documents dated 8<sup>th</sup> August 2023 that the Claimant has all the documents she needs to prosecute her claim.
  9. By her application the Claimant seeks access to the official email addresses hosted by the Respondent, being nkunga@creditbank.co.ke and westlands@creditbank.co.ke.



10. The Respondent states that nkunga@creditbank.co.ke was deactivated upon the Claimant's exit. It is a general practice in human resource operations for employers to disable official email addresses assigned to an employee upon cessation of the employment relationship. The explanation by the Respondent in this regard is therefore credible and there is nothing more to say on this particular email address.
11. Regarding westlands@creditbank.co.ke., the Respondent states that this is a group email address, created for ease of communication within its Westlands Branch. The Respondent contends that to allow the Claimant access to this email address would lead to violation of data protection protocols. In any event, the Respondent states that the Claimant has all the documents she needs to prosecute her claim.
12. On her part, the Claimant does not specifically identify the documents she seeks to retrieve from the subject email addresses. In its written submissions dated 13<sup>th</sup> May 2024, the Respondent refers to the decision in Concord Insurance Co Ltd. v NIC Bank Ltd [2013] eKLR where it was held that in an application for discovery, the applicant must demonstrate that the documents sought are relevant and necessary for their case.
13. This position was reiterated in Selecta Kenya Gmbh & Co. Kg & another v Peter Wanderi [2015] eKLR where it was held that documents sought by a party ought to be strictly relevant and necessary to the cause at hand.
14. The Respondent submits that the Claimant's application is no more than a fishing expedition, and I agree. As held by Lenaola J (as he then was) in Timothy Njoya v Attorney General [2014] eKLR, a party seeking production of documents must state clearly the information required, the right they wish to advance and how the information sought would assist in the advancement of that right.
15. In its decision in Peter Onditi Ogugu v Allpack Industries Limited & another [2017] eKLR this Court stated as follows:

“The basic principle is that while the law allows a party access to documents in the possession of the opposing party, the documents sought must not only be specific but must also be important for the advancement of the case of the party seeking production (see Nyamu J in Oluoch v Charagu [2003] 2 EA, 649).

Further, as held by Azangalala J (as he then was) in National Social Security Fund Trustees v Dr. Sally Kosgei & another [2005] eKLR an order for production of documents should not serve as coercion to a party to prove its pleadings at the discovery and inspection stage.”
16. In this case, the Claimant makes a broadside application without disclosing the specific documents she seeks to access. Her application falls way below the threshold for a proper discovery and is therefore disallowed with costs in the cause.
17. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY JULY 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Ojienda for the Claimant

Ms. Makena for the Respondent

