



Choru v Camusat Kenya Limited (Employment and Labour Relations Cause E665 of 2021) [2024] KEELRC 1928 (KLR) (26 July 2024) (Ruling)

Neutral citation: [2024] KEELRC 1928 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E665 OF 2021**

**K OCHARO, J
JULY 26, 2024**

BETWEEN

ESTHER CHORU CLAIMANT

AND

CAMUSAT KENYA LIMITED RESPONDENT

RULING

1. When this matter came up for hearing on the 5th March 2024, the Respondent’s Counsel objected to production of certain documents in evidence. The Claimant who had just started testifying was consequently stood down pending this ruling. The documents whose production were objected to were;
 - a. An email by one Fabrice Gausson, the Respondent’s Country Managing Director dated July 27, 2019 to Wilfred Waithaka, and copied to more than ten other people.
 - b. The Claimant’s document No. 9, captioned “termination of employment on account of redundancy.”
2. In opposing production of the first document forestated, Counsel for the Respondent submitted that the email though copied to several people, the Claimant was not in copy thereof. Further, the Claimant did not author the same.
3. Counsel further submitted that the email falls under the category, electronic evidence, yet it has not been accompanied with, a certificate of electronic evidence as contemplated under section 106 of the [Evidence Act](#).
4. Lastly, that the Claimant has not indicated or suggested that she will call any of those in copy of the email to testify to confirm the authenticity of the document.



5. On the 2nd document, counsel submitted that the same is purported to be a sample letter of redundancy issued in May 2021. A keen look at it reveals that it does not have a date. It does not indicate the sender and the recipient thereof. It has not been explained by the Claimant how she came to be in possession of the document.
6. In response, Counsel for the Claimant submitted that the first document (email) was clearly about the Claimant. The email was sent to one of the projects she was working at. Further, in the circumstances of the instant matter, the document is relevant.
7. Counsel further submitted that the Respondent will have a chance to cross-examine on the documents.
8. The Respondent too has placed forth emails that have not been accompanied by certificate of electronic evidence. Therefore, it cannot lie in the mouth of the Respondent to oppose the email sought to be produced by the Claimant on the account that it is not accompanied by a certificate of electronic evidence. Further, the email was one that was generated in the course of the Respondent's operations and business. The Claimant came to be aware of the email when the client of the project reached out to her, concerning her separation with the Respondent.
9. As regards the 2nd document, Counsel submitted that the same was handed over to her by a former colleague who exited the Respondent's employment on account of redundancy, with unfavourable terms. The document is relevant to the instant matter.
10. I have carefully considered the submissions by both Counsel for the parties and take a clear view that the objection raised by the Respondent must fail, for the following reasons;
 - a. On the 14th July 2022, the matter came up before this court for certification of the same as being ripe for hearing. Mr. Wachira for the Respondent was present. Counsel for the Claimant indicated to the court that the matter was ripe for hearing as the Claimant had filed all the necessary documents and undertaken requisite procedural steps. The Respondent's Counsel did not raise any issue as regards the documents that the Claimant had filed which she was to leave naturally to rely on in support of her case. He only sought for court to file a list of documents and witness statement on behalf of the Respondent.
11. The principal objective of the law establishing this court, the *Employment and Labour Relations Court Act*, 2007 enjoins this court, litigants and their representatives, to ensure just, expeditious, efficient and proportionate resolution of disputes. Section 3 of the *Act* stipulates.
 1. The principal objective of this Act is to enable the court facilitate the just, expeditious, efficient and proportionate resolution of disputes governed by this *Act*.
 2. The court shall in the exercise of its powers under this *Act* or the interpretation of the rights of individuals and parties, seek to give effect to the principal objective in subsection (1).
 3. The parties and their representatives as the case may be, shall assist the court to further the principal objective and, to that effect to participate in the proceedings of the court and to comply with directions and the orders of the court;
 4. Rule 15 of this court's *procedure and Practices Rules, 2016*, provides for a pre-trial conference. It is at this point when parties in conjunction with the court are supposed to identify the documents filed; whether there are any objections intended to be raised by any of the parties, identify issues for determination, and have set timelines for proceedings thereafter.



12. In my view, this statutory provision above and the rule are designed to give effect to the constitutional command encapsulated under Article 159 of the Constitution.
13. It is for the foregoing reason that I cannot allow the objection, for so doing will be aiding the Respondent bolt off the legal obligation to adhere to the principal objective, and the constitutional need for every person to aid expeditious disposal of matters.
14. The Respondent had an opportunity to raise the issues it is raising over the documents at the pre-trial stage. It did not seize the same.
15. The matters raised and in the manner raised could appropriately be stuff for an application for expunging the documents, application supported by an affidavit. The submissions by both counsel sound more of evidence than submissions.
16. In the circumstances of this matter the authenticity of the documents can be tested through cross-examination.
17. Lastly, this Court has not lost sight of the fact that Rule 18 of the court's procedure Rules, gives it the power to summon any witness to testify should it conclude that the justice of the matter so demand.
18. In the upshot, the objection to the production of the documents is found to be without merit. It is hereby dismissed.

READ, DELIVERED AND SIGNED THIS 26TH DAY OF JULY, 2024.

OCHARO KEBIRA

JUDGE

In the presence of:

Ms Kyalo holding brief for Mr. Weru for the Claimant

Mr. Wachira for the Respondent

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.

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OCHARO KEBIRA

JUDGE

