



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njeru v Liberty Life Assurance Ltd (Cause 589 of 2019)  
[2024] KEELRC 2363 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2363 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 589 OF 2019  
JK GAKERI, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**NGAI DICKMAXWELL NJERU ..... CLAIMANT**

**AND**

**LIBERTY LIFE ASSURANCE LTD ..... RESPONDENT**

**RULING**

1. Before the Court for determination is the Respondent's Notice of Motion dated 11<sup>th</sup> July, 2024 filed under Certificate of Urgency seeking orders that:
  1. Spent.
  2. Spent.
  3. The Respondent be granted leave to file additional witness statements.
  4. The Honourable Court be pleased to correct an error appearing at paragraph 12 of the Ruling delivered on 2<sup>nd</sup> November, 2022 to indicate that the Respondent had filed submissions as per the record of 27<sup>th</sup> July, 2022.
  5. The costs of this Application be in the cause.
2. The Notice of Motion is expressed under Article 159 of *the Constitution* of Kenya and the provisions of the *Employment Act*, *Civil Procedure Act* and the Employment and Labour Relations Court (Procedure) Rules, 2016 and is based on the grounds set out on its face and the Supporting Affidavit of Elizabeth Ngonde sworn on 11<sup>th</sup> July, 2024 who deposes that parties have been negotiating the matter without involvement of counsel, the discussions have taken long and no settlement had been received by 8<sup>th</sup> July, 2024 and the suit ought to proceed to hearing, an additional witness be called in defence of the suit and the additional witness statements were shared and the Claimant's counsel was ready to proceed with a hearing.



3. Counsel deposes that as pleadings closed in 2023, leave to file additional pleadings is necessary and no prejudice will be occasioned to the Claimant and the additional witness statements were shared and copies attached to the instant application.
4. According to the affiant, the application has been made promptly after negotiations failed to yield a settlement and it is in the interest of justice that the application be granted.
5. The affiant further deposes that paragraph 12 of the Ruling delivered on 2<sup>nd</sup> November, 2022 erroneously stated that the Respondent had not filed submissions yet it had and reported the same to the Court on 27<sup>th</sup> July, 2022.
6. The affiant deposes that the statement had damaging implications on the Respondent and counsel as it implicates negligence on the part of counsel to warrant disciplinary action and could damage counsel's career progression.
7. That the applicant has not sought a review of the decision but correction of an error on account of its implications.
8. The affiant deposes that the submissions were filed on or about 13<sup>th</sup> July, 2022 and were not considered occasioning an error apparent on the face of the record and the Ruling is now a public record.
9. That allowing the application will not prejudice the Claimant.

#### **Respondent's case**

10. By a Notice of Motion dated 8<sup>th</sup> July, 2024, the Claimant's counsel sought leave to cease acting for the Claimant on the premise that the Claimant had not provided proper instructions.
11. The application was granted on 31<sup>st</sup> July, 2024 with no Orders as to costs.
12. Counsel informed the Court that the Notice of Motion had been served on the Claimant.
13. In a nutshell, the Respondent's Notice of Motion is unopposed.

#### **Analysis**

14. The only issue for determination is whether the Applicant's Notice of Motion is merited in terms of leave to file additional witness statements in preparation for the hearing and correction of an error in paragraph 12 of the Ruling delivered on 2<sup>nd</sup> November, 2022.
15. On the first issue, the applicant avers that the application was necessitated by the failure of the Respondent and the Claimant to settle the matter out of Court despite lengthy discussions in an endeavour to do so.
16. That the application was filed shortly after the Respondent's in-house counsel notified the counsel that discussions had not yielded a settlement on 8<sup>th</sup> July, 2024, which is the case.
17. The Applicant has affirmed that the additional witness statements had already been shared with the Claimant's counsel before counsel ceased to act for the Claimant.
18. Records reveal that on 9<sup>th</sup> June, 2022, only the Respondent's counsel was in Court but absent on 29<sup>th</sup> June, 2022 for the hearing of its Preliminary Objection.



19. On 2<sup>nd</sup> November, 2022, Mr. Amuka, who was holding brief for Elizabeth Ngonde for the Respondent/Applicant was present in Court and sought leave to file additional documents and leave was granted.
20. Although the Claimant's counsel was accorded time to file legible documents on 28<sup>th</sup> March, 2023, counsel sought more time on 14<sup>th</sup> June, 2023 and had not complied by 12<sup>th</sup> July, 2023 and was granted the last opportunity.
21. On 28<sup>th</sup> September, 2023, the hearing date, the Claimant was reported to be unwell but counsel reported that they had made a proposal to settle the suit out of Court and the Applicant's counsel confirmed that counsels had talked about the Claimant's adjournment.
22. On 18<sup>th</sup> April, 2024, counsel for the Respondent/Applicant notified the Court that the Claimant had approached the Respondent directly for an amicable settlement and hearing was slated for 18<sup>th</sup> July, 2024 but the Applicant filed the instant application.
23. The foregoing lays it bare that the Applicant has been actively involved in the suit and had complied while the Claimant had not.
24. In the Court's view, since the Respondent considers the new witnesses necessary in the defence of its case and the Claimant's counsel perused the statements prior to cessation from acting for the Claimant and raised no objection, the Court is satisfied that the Respondent/Applicant has a meritorious case for grant of leave to file additional witness statements out of time.
25. Concerning correction of error in paragraph 12 of the Ruling delivered on 2<sup>nd</sup> November, 2022, the Applicant's case is that as counsel had filed submissions, the statement that the Respondent had not filed submissions was an error.
26. Pertinently, the Applicant has made it clear that the Notice of Motion is not an application for review of the Ruling but essentially to correct an error in the Ruling and has invoked the provisions of Rule 34 of the Employment and Labour Relations Court (Procedure) Rules, 2016 which provides that;

The Court shall, either at the request of the parties or on its own motion, cause any clerical mistake, incidental error or omission to be rectified and shall notify the parties of such rectification.
27. The Applicant seeks to have paragraph 12 of the Ruling delivered on 2<sup>nd</sup> November corrected to show that the Applicant filed submissions.
28. From the Judiciary Case Tracking system (CTS), it is evident that the Applicant/Respondent filed submissions in support of its Preliminary Objection on 14<sup>th</sup> July, 2022 consistent with the Supporting Affidavit which leaves no doubt that the Applicant's assertion that paragraph 12 of the Ruling is erroneous or incorrect and ought to be corrected so as to reflect the correct factual situation is sustainable.
29. Consistent with the Applicant's assertions, the Ruling in question is a public document accessible by any person and erroneous information could impact negatively on Counsel's professional image and reinforces the case for rectification of the offending paragraph.
30. It is important to underscore the fact that paragraph 12 was based on the fact that the Court relied exclusively on the physical file before it, bearing in mind that the suit was filed on 5<sup>th</sup> September, 2019 and the Notice of Preliminary Objection was filed on 20<sup>th</sup> November, 2019 and the Claimant availed a hard copy of its submissions dated 27<sup>th</sup> July, 2022.



31. Having found that the Claimant has demonstrated that it filed submissions on 14<sup>th</sup> July, 2022 and thus the contents of paragraph 12 of the Ruling is erroneous, the Court is satisfied that a case for rectification of paragraph 12 of the Ruling has been made.
32. Consequently, paragraph 12 of the Ruling delivered on 2<sup>nd</sup> November, 2022 is rectified so as to read that the Applicant/Respondent filed its submission via the e-filing on 14<sup>th</sup> July, 2022 and was thus compliant.
33. In the end, the Applicant's Notice of Motion dated 11<sup>th</sup> July, 2024 is merited and is granted in the following terms;
  - a. Applicant/Respondent has leave to file and serve additional witness statements within 7 days.
  - b. The Respondent/Claimant shall have corresponding leave to file and serve documents, as necessary.
  - c. Paragraph 12 of the Ruling delivered on 2<sup>nd</sup> November, 2022 is rectified so as to read that the Applicant/Respondent had filed submissions in support of the Preliminary Objection.
34. There shall be no orders as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2024**

**DR. JACOB GAKERI**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 *Civil 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.

**DR. JACOB GAKERI**

**JUDGE**

