



**Njuguna & another v Equity Bank Kenya Limited (Cause E023 of 2023)
[2024] KEELRC 2577 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2577 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E023 OF 2023
BOM MANANI, J
OCTOBER 24, 2024**

BETWEEN

ERICK MURIITHI NJUGUNA 1ST CLAIMANT

PATRICE NJOROGE KIIRU 2ND CLAIMANT

AND

EQUITY BANK KENYA LIMITED RESPONDENT

RULING

1. The parties to this action had an employment relationship whose termination has been challenged by the Claimants. The Claimants contend that the Respondent's decision to terminate the relation was unjustified and therefore unfair. On the other hand, the Respondent contends that the decision was justified.
2. In a bid to support their respective positions, the parties have alluded to a series of documents in their possession. Whilst some of the documents are directly connected to the employment relation between them, others appear to relate to the business of the Respondent.
3. The Claimants have filed the instant application to compel the Respondent to furnish them with copies of the documents it has referred to but which were not filed in court. A list of these documents is provided in the body of the application.
4. The Respondent has opposed the application. It relies on a replying affidavit sworn by one Wycliffe Ontumbi, its Human Resource Manager.
5. The Respondent contends that some of the documents sought by the Claimants are not relevant to the action between the parties. As such, they should not be produced in evidence.



6. The Respondent further contends that some of the documents called for by the Claimants contain confidential information. As such, they can only either be produced in redacted form or cannot be produced in their entirety as this will breach its duty to its customers.

Analysis

7. The application by the Claimants is founded on article 35 (1) (b) of *the Constitution*. This provision guarantee's every citizen the right to access information that is held by another person or private entity.

8. To give effect to article 35 of *the Constitution*, Parliament enacted the *Access to Information Act*, Cap 7 M Laws of Kenya. The preamble to the Act provides that it is "an Act of Parliament to give effect to Article 35 of *the Constitution*; to confer on the Commission on Administrative Justice the oversight and enforcement functions and powers and for connected purposes."

9. Clearly, the purpose of this legislation is to:-

- a. Give effect to the entire of article 35 of *the Constitution*.
- b. Provide mechanisms for enforcement of the right to information.
- c. Provide an institutional framework for enforcement of the right to information.

10. This reality is not just evident from the preamble to the Act. It is also apparent from the objects of the Act as set out under section 3 thereof.

11. Although the legislation overemphasizes the place of public entities in its application, it is obvious from the text that it is intended to regulate access to information held both by public and private entities. As such, a citizen seeking to access information from either a public or private entity ought to follow the procedure prescribed under the Act.

12. The Act requires a citizen interested in certain information to write to the agency holding the information to ask for it (the information). If the citizen is not satisfied with the response from the agency, he is required, by virtue of section 14 of the Act, to write to the Commission on Administrative Justice seeking review of the agency's response. Upon receipt of this request, the Commission will, by virtues of section 21 of the Act, review the decision and render its orders as mandated under section 23 of the Act. Finally, the Commission's order is to be placed before the High Court for adoption and enforcement (see section 23 (4) & (5) of the Act).

13. Evidently, the Act vests the mandate of handling preliminary requests for information in the Commission on Administrative Justice. As a matter of fact, section 20 of the Act grants the Commission powers to oversee and enforce its (the Act's) provisions.

14. By virtue of section 23 (3) of the Act, if an applicant is dissatisfied with the directions issued by the Commission, he may appeal to the High Court within twenty one (21) days of the Commission's decision. On receipt of this appeal, the High Court will render its decision on the matter.

15. From the foregoing, it is clear to me that an application for access to information from either a public or private entity must first be lodged with the entity holding the information. The matter is then escalated to the Commission on Administrative Justice before it finds its way to the High Court or courts of equal status either as an appeal or for purposes of enforcement.

16. As such, the High Court or Court of Equal Status is only entitled to entertain a request for information either at the stage of enforcement of the decision by the Commission on Administrative Justice or by way of Appeal from such decision. It has no jurisdiction to entertain the request in the first instance.



17. In effect, the instant application has been placed before court without following the procedure under the [Access to Information Act](#). It has therefore been filed in violation of the principle requiring exhaustion of alternative remedies. As such, the application is prematurely before court.
18. Whilst I decline this application because it has been presented prematurely, I nevertheless presume that the Respondent appreciates its obligation to furnish the Claimants with all information which is relevant to the instant dispute. This obligation must be appreciated in the context of section 4(3) (g) of the [Fair Administrative Action Act](#).

Determination

19. For the reasons set out above, the court declines the invite to determine the Claimants' request for information at this stage.
20. The Claimants are asked to pursue their request for information in accordance with the procedure under the [Access to Information Act](#)
21. For the moment, the instant application is dismissed.
22. There is no order as to costs.

DATED, SIGNED AND DELIVERED ON THE 24TH DAY OF OCTOBER, 2024

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimants

.....for the Respondent/Applicant

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

