



**Odhiambo v Teachers Service Commission (Cause E030 of 2023)
[2024] KEELRC 2679 (KLR) (15 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2679 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E030 OF 2023
NZIOKI WA MAKAU, J
OCTOBER 15, 2024**

BETWEEN

TOM FRED ODHIAMBO CLAIMANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

RULING

1. There is objection taken by Counsel for the Claimant Mr. Odeny for the presentation of the Respondent's witness. The grounds advanced are that no witness statement was served upon the Claimant regarding the testimony this witness for the Respondent is to offer. It is stated there will be prejudice occasioned on the Claimant if witness is given without the benefit of a statement of the witness.
2. Mr. Mulakhu for the Respondent asserts the witness he has availed is an expert and that notice had been given in the initial list of witnesses filed before court. He submits that there is no need for a statement to be prepared by an auditor as he is an expert witness. He asserts that given the Claimant was duly served with the audit reports and granted this witness will not testify to any statements of fact other than what is contained herein. There was no necessity for the expert to give a statement. He as such urges the Court to disallow the objection and allow the witness to testify.
3. Mr. Odeny in a brief reply submits that the Claimant testified without the benefit of the statement by the witness and that the audit reports have authors. He asserts there is no indication whether the witness is an author of the reports and that even if he is an author, there is no rational basis for him not to give a statement even if he is the author of the report. He asserts a cardinal principle of justice will be violated if testimony is taken from the witness without the Claimant having any idea what the witness will testify to. He thus urges the witness to be disallowed.



4. Testimony that is to be adduced before this Court is well encapsulated in the Rules of the Court 2024 particularly in Rule 36 of the [Employment and Labour Relations Court \(Procedure\) Rules 2024](#). The Rule provides as follows:

A party who intends to call an expert witness shall serve a notice to that effect, together with a summary of the evidence, report or opinion of the expert witness, as part of the witness statement or list of documents and copies of documents to be relied upon and as prescribed under these Rules.

(Emphasis supplied).

5. I have not doubted that the witness on the stand is indeed what he says he is – an auditor – and therefore could fit in the realm of expert witness. Noting that he is presented as such, the Respondent did not, as required by the Rules aforesaid, avail to Court and the Claimant and his Counsel, a brief – i.e. summary of the evidence and the attendant opinion of this expert. As such, I will allow the objection raised and defer hearing of the witness pending filing of the statement – brief statement on the said witness testimony to be adduced. The Court will hereafter give directions on further hearing.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 15TH DAY OF OCTOBER 2024

NZIOKI WA MAKAU, MCIArb.

JUDGE

