



REPUBLIC OF KENYA



KENYA LAW
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**Gaiti v Diakonie Emergency Aid (Cause 956 of 2016)
[2023] KEELRC 139 (KLR) (24 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 139 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 956 OF 2016
JK GAKERI, J
JANUARY 24, 2023**

BETWEEN

SUSAN WANJIRU GAITI CLAIMANT

AND

DIAKONIE EMERGENCY AID RESPONDENT

RULING

1. Before the court for determination is a Notice of Motion by the Claimant/Applicant dated October 3, 2022 seeking orders that:-
 - i. The court be pleased to grant leave to the Claimant/Applicant to introduce in evidence all the documents listed under the Supplementary Bundle of Documents dated July 26, 2022.
 - ii. The Claimant's Supplementary Bundle of Documents dated and filed on July 26, 2022 be deemed to be duly filed and served upon the Respondent.
 - iii. The court do make such other and further orders as it may deem fit, necessary and expedient in the interest of justice.
 - iv. The costs of this application be in the cause.
2. The Notice of Motion is expressed under Articles 27, 50 and 159(2)(d) of the *Constitution of Kenya, 2010*, section 3 of the *Employment and Labour Relations Court Act*, Rule 17 sub-rule 1, Rule 14 sub-rule 10 of the *Employment and Labour Relations Court (Procedure) Rules* and all enabling provisions of the law and is based on the grounds set forth on its face and supported by the Affidavit dated October 4, 2022 sworn by Susan Wanjiru Gaiti, the Claimant/Applicant.
3. The affiant deposes that the claim was filed in 2016 alongside the bundle of documents on May 24, 2016 and the Respondent filed its documents on June 29, 2016.



4. The affiant further deposes that a hearing date was slated for April 6, 2017 but the matter was not listed for hearing on that day and despite efforts, a hearing date was unavailable in 2019.
5. That the Respondent filed a Supplementary Bundle of Documents and witness statement on November 26, 2021, two days before the hearing date. The Claimant did not object ostensibly in appreciation of the right of parties to plead their full case and adduce evidence in support thereof.
6. The affiant states that in mid-July 2022, she became aware of the existence of documents that would assist the court in the determination of the suit and caused them to be introduced through a Supplementary Bundle of Documents dated July 26, 2022 and the same was objected to by the Respondent.
7. It is the Applicant's case that the documents should be admitted for purposes of having a complete case. That denial of the evidence would negate her right to fair hearing as envisaged by the provisions of Article 27 and 50 of the [Constitution of Kenya, 2010](#).
8. The affiant states the documents were beyond her reach in 2016 and have a direct bearing on the cause at hand and should be admitted in the interest of substantive justice.
9. The affiant further states that the documents consist of 2 emails dated September 12, 2018 and a report entitled "Sacrificial Lambs: The Wanton Slaughter Continues."
10. The applicant deposes that the Respondent stands to suffer no prejudice if the documents are introduced and shall the opportunity to respond.
11. The affiant further states the court had unfettered discretion to grant the prayers sought.
12. That it is in the interest of justice that the application be granted.
13. Although the Respondent had objected to the filing of the Claimant/Applicant's Supplementary Bundle of Documents and was afforded time to respond to the Notice of Motion as early as July, 2022 and a further 10 days on October 5, 2022 it neither filed a Replying Affidavit nor submissions.
14. The Notice of Motion before the court is thus unopposed.
15. In support of the Notice of Motion Application, the Claimant/Applicant relied on the decision in [Hangover Kaakwacha Hotel Ltd v Philip Adundo & Leonard Adundo t/a Hangover Kaakwacha Hotel \(2022\) eKLR](#) to urge that every person had the right to access courts of law which were required to administer justice without undue regard to procedural technicalities, including affording parties the full opportunity to be heard.
16. It was urged that the court had jurisdiction to allow parties to file further documents or call witnesses even after pre-trial and before hearing took place.
17. It was submitted that the Claimant ought to be granted the opportunity to file and present to court the evidence at her disposal for a fair and just determination of the suit.
18. As regards filing of documents out of time, the decision in [Raila Odinga & others v IEBC & 3 others \(2013\) eKLR](#) was relied upon to urge that the court's discretion should be exercised on the basis of the nature, context and extent of the new material.
19. Courts appear to emphasize that where the documents sought to be produced are not bulky and consist of a few pages which can be responded to timeously, the court ought to consider such factors in exercise of a discretion.



20. It was urged that the documents sought to be introduced are two paged email and a 3 page email to shed light on the unprofessional culture at the Respondent's place of work.
21. Finally, since the Notice of Motion dated October 3, 2022 is unopposed, the same is granted as prayed.
22. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 24TH DAY OF JANUARY 2023.

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 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 *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

