



REPUBLIC OF KENYA



KENYA LAW
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**Mungai & 7 others v Board of Governors Alliance High School (Cause
476 of 2015) [2023] KEELRC 606 (KLR) (7 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 606 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 476 OF 2015
AN MWAURE, J
MARCH 7, 2023**

**BETWEEN
CATHERINE WAMBUI MUNGAI & 7 OTHERS CLAIMANT
AND
THE BOARD OF GOVERNORS ALLIANCE HIGH SCHOOL RESPONDENT**

RULING

1. The claimant filed a notice of motion application dated February 1, 2023 seeking the following:-
 1. That the honourable Court do grant leave to the Claimant to file a supplementary list of documents comprising to the 2007/2008 DPM circular.
 2. The cost of this application be in the cause.
2. The Claimant seeks to adduce further evidence in support of his claim which evidence was not available at the time of filing the suit in 2015 being the 2007/2008 DPM circular.
3. He says the Respondent deliberately applied the wrong government circular of 2006.
4. He says the admission of that document will not prejudice the Respondent as the case is not closed.
5. The Applicant is supported by the affidavit deponed by Ndungu Muchai Gichuru the 3rd Claimant who avers he has authority to swear this affidavit on his behalf and on behalf of the other Claimants.
6. The parties that is the Claimant and the Respondent on February 6, 2023 appeared before the Court and Respondent was ordered to file their responses within 7 days and hearing herein was scheduled for February 21, 2023. The Respondent did not put any response and did not appear in Court on that hearing date.



7. The fact that the Respondent did not put a replying affidavit to the application would indicate that the application is not opposed. Going by the fact that section 14(10) of [Employment and Labour Relations Court \(Procedure\) Rules 2016](#) provide that:

“ where a party intends to rely on a document that has not been filed as part of the pleadings the party shall make sufficient copies of each document of the Court file and serve the other party with a copy at least fourteen days before the case is set down for hearing or such shorter period as the Court may order provided that after the close of the pleadings the Court may allow the filing of a supplementary bundle of documents.

8. The Court is persuaded to admit the documents being DPM 2007/2008 circular as per the claimants application. The same is to be filed and copies made for court and the respondent within 4 days from today’s date. The case will proceed to hearing on April 18, 2023.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF MARCH 2023.

ANNA N. MWAURE

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 March 15, 2020 and subsequent directions of April 21, 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.**

ANNA N. MWAURE

JUDGE

