



Githu v P C E A Kikuyu Hospital (Employment and Labour Relations Cause 404 of 2016) [2023] KEELRC 1075 (KLR) (28 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 1075 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 404 OF 2016**

AN MWAURE, J

APRIL 28, 2023

BETWEEN

FRANCIS MBUGUA GITHU CLAIMANT

AND

P C E A KIKUYU HOSPITAL RESPONDENT

RULING

1. The case was proceeding for hearing of the main suit and the claimant had testified in his evidence in chief. In the middle of cross examination the respondent prayed to be allowed to amend the response as he discovered new evidence. The new evidence he claims he discovered was that the claimant was holding two jobs at the time he was working for the respondent.
2. He admitted in his cross examination that he was also working for Kiambu County Hospital. He therefore says the claimant was not unfairly terminated.
3. The advocate for the claimant Miss Mamo objected to the application as she said the claimant has already adduced his evidence. She says this is a case that has taken six years since it was filed and is absurd to pray for adjournment at this point.

Determination

4. In section 14(10) of the *Employment and Labour Relations Court (Procedure Rules) 2016* the court may allow the filing of supplementary bundle of documents.
5. Equally in section 14(6) a party may only amend pleadings with the leave of the court on oral or formal application and the other party shall have a corresponding right to amend its pleadings.
6. The law does not provide for amending of pleadings after the hearing has commenced and even the claimant has given evidence. There will be no room for the witness/claimant to defend his position when new documents are produced in the middle of the hearing.



7. In any case this is an old case and the court is not convinced the respondent did not have the information he is alleging he only discovered during the hearing. Respondent's counsel is the one who introduced the evidence during cross examination.
8. A case cannot remain open for ever and that is why the law provides when pleadings should be closed. The case was filed in 2016 and it must be heard and determined.
9. The court is not persuaded to allow the respondent to amend his response. The case should now proceed to its logical conclusion. So the respondent's application is rejected. Mention is on May 2, 2023 to take a hearing date

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 28TH DAY OF APRIL, 2023.

ANNA NGIBUINI 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 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 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

