



Kilima v Centre for Rights Education and Awareness (Employment and Labour Relations Cause E842 of 2022) [2023] KEELRC 824 (KLR) (13 April 2023) (Ruling)

Neutral citation: [2023] KEELRC 824 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E842 OF 2022**

BOM MANANI, J

APRIL 13, 2023

BETWEEN

NAOMI KAJAIRA KILIMA CLAIMANT

AND

CENTRE FOR RIGHTS EDUCATION AND AWARENESS RESPONDENT

RULING

1. The application before me prays for an order compelling the Respondent to supply the Claimant with the minutes of the meeting at which the decision to issue the Claimant with a notice to show cause was taken. The Claimant also prays for orders that the Respondent supplies her with a copy of the investigation report which informed the decision to send her on compulsory leave. She also prays for an order to restrain the Respondent from requiring her to resume duty during the pendency of the disciplinary process against her.
2. In support of her application, the Claimant argues that the Respondent failed to follow the procedure in its internal regulations whilst processing the decision to issue her with the letter requiring her to explain why disciplinary action should not be taken against her and sending her on compulsory leave. It is the Claimant's case that the decision to issue her with the notice to show cause was made out of hatred for her. She argues that the decision was made without giving her the opportunity to scrutinize and react to the accusations against her. In this context, it is the Claimant's position that she was condemned unheard.
3. Aggrieved by these events, the Claimant states that she requested for copies of the minutes of the aforesaid meeting together with the investigation report on the matter in order to assist her challenge the disciplinary process against her. However, the Respondent did not supply her with the information. It is the Claimant's case that the Respondent's failure to supply her with the aforesaid records infringed on her right to information. It is this alleged failure by the Respondent to provide these records that has triggered the current application.



4. The Claimant has also argued that even as she pursued the option of challenging the disciplinary case against her, the Respondent issued her with a letter requiring her to resume duty immediately. The Claimant was apprehensive that this move by the Respondent was intended to sanitize the allegedly flawed disciplinary process. She argues that the decision to get her back to work before the issues that informed the action against her had been resolved was intended to push her back into a toxic work environment with the intent that she resigns. The Claimant argues that the Respondent was trying to constructively dismiss her through this allegedly unfair labour practice.
5. The Respondent has denied the assertions by the Claimant. It is the Respondent's case that other members of staff raised complaints about the Claimant's conduct at work. That these complaints triggered the disciplinary process against the Claimant. That the Claimant was sent on compulsory leave pending investigations into the matter. That meanwhile, she was issued with a letter requiring her to respond to accusations of misconduct against her. That the investigation results allegedly pointed to improper conduct on the part of the Claimant.
6. It is the Respondent's case that after the investigations were concluded, the Claimant was allowed to resume duty but was warned against engaging in similar misconduct. She however declined to resume duty. It is also indicated that the Claimant declined to attend an appeal session that she had requested for.
7. The Respondent denies having refused to supply the Claimant with the records that she has now applied for. On the contrary, the Respondent argues that all these records were supplied to the Claimant as evidenced in the email exchanges between the parties. For the avoidance of doubt, the Respondent has indicated its willingness to supply the information once again should the need arise.
8. In respect of the audio records of the sessions, the Respondent states that this is not the subject of the application under consideration. The Claimant has not prayed for these records in the application. That this request has only come up later through a supplementary affidavit that was filed by the Claimant. In any case, it is the Respondent's case that the meetings it has held over the subject were not recorded. Therefore, it has no records of this nature.
9. The Respondent states that the Claimant resigned from employment on November 18, 2022. Therefore, the prayer to restrain the Respondent from requiring that she resumes duty is overtaken by events.

Determination

10. I have considered the contrasting arguments by the parties on the matters in dispute. The email correspondences produced by both parties suggest that the records that the Claimant is demanding were supplied to her before she resigned from employment. However, since the Respondent has indicated willingness to supply them afresh, I will order that the Respondent supplies the Claimant with the specific records prayed for in the application to wit the investigation report informing the decision to take disciplinary action against the Claimant and the minutes of the meeting at which the decision to issue the Claimant with a notice to show cause was taken.
11. Since the application before me does not pray for audio records of other meetings or indeed the meeting at which the decision to issue the notice to show cause against the Claimant was taken, I decline to issue this order on the basis of the supplementary affidavit filed by the Claimant.
12. On the request to bar the Respondent from requiring the Claimant to resume duty, there is evidence that the Claimant resigned from employment on November 18, 2022. Consequently, this request has been overtaken by events.



13. Accordingly, the application is allowed to the extent that is indicated in this ruling.

14. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED ON THE 13TH DAY OF APRIL, 2023.

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Petitioner

.....for the Respondents

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

