



**Mburu v International Committee of the Red Cross (Cause
315 of 2018) [2023] KEELRC 1417 (KLR) (8 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1417 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 315 OF 2018
NZIOKI WA MAKAU, J
MAY 8, 2023**

BETWEEN

SAMUEL JOSEPH MUTURI MBURU CLAIMANT

AND

INTERNATIONAL COMMITTEE OF THE RED CROSS RESPONDENT

RULING

1. An objection if taken to documents in the Respondent's Bundle. Mr. Chengecha for the Claimant submits that the receipts should be produced by their makers so that cross examination may be done on them.
2. Mr. Weru for the Respondent is opposed. He submits that the pre-trial stage had passed and that the case was now at the stage of hearing. He states, the Claimant has testified and the documents objected to, should be allowed on record. He argues that he does not know of a procedure where the documents in this court must be produced on their original form. He says that the objection be dismissed.
3. In a brief reply, Mr. Chengecha states that he prays that the makers be called and that it is not the original receipts that are sought. He argues that it is unfortunate that the Claimant was acting in person and did not comprehend the weight of the documents. He submits the *Evidence Act* is clear on production of documentary evidence. He asserts the documents should be produced by their maker. He prays the documents be marked for identification and produced by their maker. He asserts these documents are the crux of the case, they are the main issue in the case. He so submits.
4. In the Employment and Labour Relations Court, Rule 14 of the *Employment and Labour Relations Court (Procedure) Rules 2016*, provides as follows at Rule 14 (4);



Pleadings may contain evidence:

Provided that the court may require the evidence to be verified by an affidavit or sworn oral evidence.

5. In addition, Rule 21 allows the Court either by an agreement by all parties or on its motion, proceed to determine a suit before it on the basis of pleadings, affidavits, documents filed and submissions made by the parties. This presupposes that the Court need not hear the witness or have any documents provided by their makers.
6. In a further departure from the objection taken, the law holds that the Rules of Evidence are not to be strictly applied in this Court. The Court finds further comfort in the fact that unless the Claimant alleges the fabrication of the receipts by the Respondent, there can be no proper basis to exclude them. By parity of reasoning, he is the one who availed these receipts to the Respondent. It would be an absurdity if the Claimant challenges the authenticity of the documents since he is the one who presented them to the Respondent.
7. The above is sufficient to demonstrate that I find no merit in the objection taken and will allow the Respondent to produce these receipts which the Claimant shows the origin thereof to remain as evidence. The objection is overruled, case to proceed.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF MAY 2023

NZIOKI WA MAKAU

JUDGE

