



**Berhe v Canaan Developers Limited (Cause E587 of 2022)
[2023] KEELRC 1878 (KLR) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1878 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E587 OF 2022
NZIOKI WA MAKAU, J
JULY 31, 2023**

BETWEEN

FTSUM MEHARI BERHE CLAIMANT

AND

CANAAN DEVELOPERS LIMITED RESPONDENT

RULING

1. The respondent's counsel Mr Kipyegon objects to the production of the email produced by the Claimant. He submits it does not comply with the law on electronic evidence as no certificate has been attached. He asserts section 106B of *Evidence Act* is not adhered to and such document should be expunged.
2. The claimant is opposed and his Counsel Mr Mohamednur urges the court not to allow the expunging of the document. He asserts there is no objection being raised as to the content of the same but rather the manner it is produced. He urges the court to apply the principles in Article 159 to ensure the matter of admission is not defeated on the basis of a technicality.
3. In reply, Mr Kipyegon submits the email is a forward and forwarded messages allow for alteration or manipulation. He argues that the electronic records are of necessity to be produced under certificate as they are capable of manipulation and the authentication required would ensure the contents are sacrosanct. He submits the response by the Counsel for the Claimant does not vindicate the document. He urges the court to disallow it for the reason it is not authenticated.
4. Court proceedings in the employment and labour relations sphere have over time morphed and whereas the parties are deemed to know of the provisions of Rule 14(5) and fact that the strict rules of the law of evidence are not applicable, in regards to employment matters, as even testimony of the respondent can be taken first. Employment matters are *sui generis* and a failure to annex the certificate as sought by the Respondent in this case, cannot be basis for the expunging of the email. In any event,



the Court did not hear the Respondent to say that the email's contents are impugned. Instead, focus in the failure to annex a certificate under section 106B of the *Evidence Act*. In my considered view objection is not merited and is disallowed.

Orders accordingly.

Dated and delivered at Nairobi this 31st day of July 2023

Nzioki wa Makau

JUDGE

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