



**Kamau v Del Monte Kenya Limited (Cause 1070 of 2018)
[2023] KEELRC 1902 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1902 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1070 OF 2018**

**L NDOLO, J
JULY 27, 2023**

BETWEEN

NANCY WANJIKU KAMAU CLAIMANT

AND

DEL MONTE KENYA LIMITED RESPONDENT

RULING

1. By a memorandum of claim dated June 18, 2018, the claimant sued the respondent for unlawful termination of employment. The respondent filed a statement of response on August 7, 2018.
2. As part of her evidence, the claimant seeks to rely on electronic evidence in the form of compact disc rom (A) and compact disc rom (B) containing an audio recording of proceedings of an official meeting of the respondent.
3. By notice dated October 3, 2022, the respondent objected to production of this evidence on the ground that it was unlawfully obtained contrary to article 50(4) of the Constitution and is therefore inadmissible.
4. In response to the objection, the claimant filed a replying affidavit sworn on March 24, 2023. She terms the objection as an attempt to suppress evidence which would aid her case.
5. In pursuing its objection, the respondent relies on article 50(4) which provides as follows:
 4. Evidence obtained in a manner that violates any right or fundamental freedom in the bill of rights shall be excluded if the admission of that evidence would render the trial unfair, or would otherwise be detrimental to the administration of justice.
6. The respondent submits that admission of the evidence in issue would amount to infringement of its right to privacy guaranteed under article 31 of the Constitution.



7. In its written submissions, the respondent relied on the decision in *Shakunt Rajnikant Shah v Bhupendara Motichand Shah t/a John Cumming & Company & another* [2021] eKLR where Ochieng J (as he then was) upheld the protection of private data.
8. The claimant herself depones that the evidence in issue consists of an audio recording of the respondent's meeting. She appears to have done the recording secretly without the respondent's knowledge at the time when she was an employee of the respondent. This by itself was an act of misconduct and to allow the end product would be tantamount to sanitising the misconduct.
9. I must therefore agree with the respondent that the impugned audio recording as contained in compact disc rom (A) and compact disc rom (B) is inadmissible as evidence.
10. The result is that the respondent's objection dated October 3, 2022 is upheld with costs in the cause.
11. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF JULY 2023

LINNET NDOLO

JUDGE

Appearance:

Mr. Wesonga for the Claimant

Ms. Wayua h/b for Mr. Uvyu for the Respondent

