



**Mbataru v Plan International INC (Cause 509 of 2019)
[2023] KEELRC 1871 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1871 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 509 OF 2019
NZIOKI WA MAKAU, J
JULY 27, 2023**

BETWEEN

CATHERINE KARIMI MBATARU CLAIMANT

AND

PLAN INTERNATIONAL INC RESPONDENT

RULING

1. The Respondent's Counsel Ms. Wamuyu objects to the question asked of the Respondent's when regarding the provisions of section 13 of the People With Disabilities Act. It is submitted that ask question of law and the witness should not be compelled to answer it. It is argued that if Counsel had intended to ask a specific question, the section ought to have been produced and thereafter a question could be asked.
2. Miss Nyakundi for the Claimant submits that it is a requirement of the law that 5% of provisions in an establishment should be reserved in all forms of employment for people with disabilities. Counsel submits that ignorance of the law is not a defence.
3. Miss Wamuyu in reply submits that her objection is first and foremost that the witness has stated the Respondent was not aware the Claimant was disabled and that if they were aware, that would perhaps have been considered. She argues that the testimony given is that they were not aware.
4. The Respondent's objection is in regard to a question on a statutory provision and generally such questions should be avoided. In this case, there is a looming question on disability and though the issue will most probably form part of final submissions, it is a proper question to put, though the Claimant's Counsel seems to ask about it on the wrong way.
5. The Court hears her asking why the Respondent did not apply the provisions of the law and prefer the Claimant as she was a person with disability. Such a question can be asked of the witness and so



the witness will answer as to whether there was discrimination against the Claimant on account of disability.

6. In the premises, objection is overruled with the question being confined not to whether the witness knows what section of People With Disabilities Act (an act that has a misnomer as such people are other abled and terms such “people with disabilities” should be avoided as they seem to stigmatize and ostracise a portion of society. Be that as it may, Court will permit one question in respect to the discrimination the claimant alleges to have suffered.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JULY 2023

NZIOKI wa MAKAU

JUDGE

