



**Walker v Valar Frontiers (Kenya) Limited (Cause 161 of 2018)  
[2023] KEELRC 2583 (KLR) (19 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2583 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 161 OF 2018  
AK NZEI, J  
OCTOBER 19, 2023**

**BETWEEN**

**JOHN ROBERT WALKER ..... CLAIMANT**

**AND**

**VALAR FRONTIERS (KENYA) LIMITED ..... RESPONDENT**

**RULING**

1. This is a 2018 suit. the Court's record shows that the Court (Ndolo, J) delivered a Ruling in open Court on May 17, 2018. I have not seen that Ruling on record. The matter first came up before me on September 23, 2021, but the same was adjourned at the instance of the Respondent. I subsequently fixed the suit for hearing on March 24, 2022, but on that date hearing was adjourned at the instance of the Claimant. I thereupon fixed the suit for hearing on September 21, 2022.
2. When the matter was called put for hearing in open Court on September 21, 2022, Counsel for both parties agreed as follows:-
  - a) both parties will file bundles containing the parties' respective pleadings to which they have consented; and the same will constitute the documents to be considered by the Court in determining the suit. Lists of those documents and issues for determination to be filed as well.
  - b. the Respondent's second witness, Mr Jimmy Nyikuli, to testify in person in Court today.
  - b. pleadings and documents for the respective parties will be as follows:-

For the Claimant

    - i. amended statement of claim dated 22/3/2018.
    - ii. list and bundle of documents attached to the original statement of claim dated 22/3/2018.
    - iii. transition report dated 22/3/2018.



For the Respondent

- i. amended response to the amended statement of claim dated December 14, 2018.
  - ii. replying affidavit sworn by the Respondent's Chief Executive Officer on 3/4/2018.
  - iii. a Replying Affidavit sworn by the Respondent's Chief Executive Officer on 28/4/2018.
  - iv. a Replying Affidavit to the Notice to produce sworn by the Respondent's Chief Executive Officer on 28/8/2020.
  - v. further affidavit sworn by the Respondent's Chief Executive Officer on December 14, 2020.
  - vi. consolidated list and bundle of documents dated 10/8/2020.
  - d. the Respondent's Counter-claim and any response by the Claimant be, and is hereby withdrawn.
  - e. Counsel for the Respondent undertakes to supply Counsel for the Claimant with a copy of the Replying Affidavit sworn by the Respondent's Chief Executive Officer on 28/8/2020. The same to be provided within seven (7) days of today."
3. The Respondent's witness, Mr Jimmy Edwin Nyikuli (RW-1) testified, and he was cross-examined and re-examined. The Court then ordered as follows regarding the Respondent's said witness:-
- (a) the witness (RW-1) is directed to avail certified copies of all the documents that he has referred to in his evidence, to both the Court and Counsel for both parties. This should be done within 14 days of today.
  - b. any information in those documents that is not relevant to the evidence given by the witness may be redacted from copies of the documents to be given by the witness to the Court and to parties to the case herein."
4. Further, I gave counsel for both parties twenty one (21) days to file their respective bundles of documents referred to in paragraph 2 of this Ruling. Both parties have since filed their respective bundles. The Respondent's bundle is shown to have been filed on October 13, 2022 while the Claimant's bundle is shown to have been filed on November 22, 2022.
5. The Respondent's witness (RW1) did not, however, avail to the Court and to the Claimant certified copies of the documents referred to by himself in his evidence in Court, either within the (fourteen) 14 days ordered by the Court or at all; and on 7/12/2022, I granted him thirty (30) more days to avail certified copies as earlier ordered; and specifically ordered that there would be no further extension of time in that regard. There was no compliance, and I on 2/2/2023 declined to extend time further, and ordered Counsel for both parties to file written submissions within specific timelines; and fixed the suit for mention on 24/4/2023 to fix a judgment date.
6. On 9/2/2023, the Respondent filed a Notice of Motion dated 8/2/2023 seeking the following order:-
- a. that the application be certified urgent and the same be heard ex-parte, and service be dispensed with in the first instance.
  - b. that the application be listed for inter-partes hearing on priority basis upon service on the Respondent.



- c. that orders issued by Hon A Nzei on February 2, 2023 be reviewed to allow the Respondent's expert witness (sic) lodge documentary evidence (Immigration) documents in support of the Respondent's defence in the suit.
  - d. that costs of the application be provided for.
  - e. that the Honourable Court be pleased to grant any other or further orders as it may deem fit in the interest of justice.
7. The application is supported by supporting affidavits of Jimmy Nyakuli (RW-1) and Gabriel Oser (the Respondent's Chief Executive Officer), both sworn on 7/2/2023. It is stated as follows in RW-1's supporting affidavit:-
- a. that the documents in issue are classified and majorly contain personal data and information, hence requiring special authorization before release to any third party.
  - b. that the Department of Immigration Services was not a party to the suit herein, necessitating special clearance from security services, the Patron Principal Secretary and the Director, Immigration Services.
  - c. that due to the electioneering period before, and after hearing of the suit, on or about 2/9/2022, there were difficulties in obtaining such clearance from the required authorities, given the reorganization within the government organization.
  - d. that clearance was only obtained in early February 2023 and the documents made ready for submissions before Court.
8. The supporting affidavit of Gabriel Oser simply supports the depositions made in RW-1's supporting affidavit.
9. The foregoing is the application before me for determination; and is opposed by the Claimant.
10. It is to be noted that in seeking an extension of time to file the documents in issue herein, the Respondent/Applicant's Counsel on 7/12/2022 submitted that RW-1 was seeking more time to comply with the Court's orders as there had been activities in his office regarding transition, and would comply with the orders during the month of January 2023. The Claimant opposed, but the Court allowed the application for more time, nevertheless, and granted the Respondent/Applicant's said expert witness (RW-1) thirty (30) more days to file the documents referred to in his evidence. The Court made a specific order that there would be no further extension of time. Come 2/2/2023, and Counsel for the Respondent/Applicant sought for a further period of two weeks for RW-1 to comply with this Court's said orders. The application was opposed by the Claimant, in view of the orders dated 7/12/2022. The Court declined to grant more time.
11. The Court is now being asked to review its order dated 2/2/2023 to allow the Respondent's said expert witness to lodge documentary (Immigration documents) in support of the Respondent's case in the suit. I made the following orders on 2/2/2023:-
- (1) on 7/12/2022, the Court gave the Respondent's expert witness 30 days to file and serve the documents referred to in his evidence; and specifically stated that there would be no further extension of time. The said order has not been complied with.
  - (2) I decline to extend time further.
  - (3) The Claimant shall file and serve written submissions within 14 days of today.



- 4) The Respondent shall file and serve written submissions within 14 days of being served by the Claimant.
- 5) Mention on 24/4/2023 to fix a date for judgment.”
12. The present application was filed on 9/2/2023, and I am being asked to review this Court’s foregoing orders to allow RW-1 to file the aforementioned documents. It is to be noted that this Court’s orders dated 7/12/2022 remain in place. They have never been varied, and the time granted therein has never been extended. The Court has not been asked to extend that time. All that the Respondent is asking this Court to do is to review its orders dated 2/2/2023.
13. This Court’s power to review its judgments, awards, orders or decrees is donated by Section 16 of the *Employment and Labour Relations Court Act* which provides as follows:-
- “The Court shall have power to review its judgments, awards, orders or decrees in accordance with the Rules.”
14. Rule 33(1) of the *Employment and Labour Relations Court (Procedure) Rules 2016* provides as follows:-
- “(1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling –
- a. If there is a discovery of new and important mater or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;
  - b. On account of some mistake or error apparent on the face of record.
  - c. If the judgment or ruling requires clarifications; or
  - d. For any other sufficient reason.”
15. The Respondent/Applicant’s application herein does not, in my view, meet the threshold set by the foregoing rule. The Applicant has not demonstrated discovery of any important matter or evidence which was not in the Respondent’s (RW-1’s) knowledge as at 2/2/2023; and no existence of an error and/or mistake that is apparent on the face of the record has been demonstrated. No other sufficient reason has been advanced in seeking a review order. Indeed, the transition narrative advanced by the Respondent’s Counsel on 2/2/2023 was the same advanced on 7/12/2022, and the Court was on 7/12/2022 told that RW-1 would comply with the Court’s orders in issue during the month of January 2023. That is why the Court fixed the matter for mention on 2/2/2023.
16. Having said that, and having considered written submissions filed by Counsel for both parties herein, I find no merit in the Notice of Motion dated 8/2/2023, and the same is hereby dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 19<sup>TH</sup> OCTOBER 2023**

**AGNES KITIKU NZEI**

**JUDGE**



**ORDER**

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

..... for Claimant

..... Respondent

