



**Kingori v Bandari Savings Cooperative Society (Cause 531 of 2017)
[2023] KEELRC 2937 (KLR) (16 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2937 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 531 OF 2017
AK NZEI, J
NOVEMBER 16, 2023**

BETWEEN

PETER NJUGUNA KINGORI CLAIMANT

AND

BANDARI SAVINGS COOPERATIVE SOCIETY RESPONDENT

RULING

1. The application before me is the Claimant's Notice of Motion dated 17/3/2023, shown to be brought under rule 17(1) of the *Employment and Labour Relations Court (Procedure) Rules* 2016, order 51 rule 1 of the *Civil Procedure Rules* 2010 and article 159 of the *Constitution* of Kenya 2010. The following orders are sought:-
 - a. that this Court expunge, and or issue an expunction order against the Respondent's further list of documents dated 30/3/2021 and filed on 12/4/2021 from the Court's record on the ground that it was filed after the Claimant's case had been closed and without leave of the Court.
 - b. that costs of the application be provided for.
2. The application sets out on its face the grounds on which it is brought, which are replicated in the affidavit of Boniface Otieno Advocate sworn on 17/3/2023 in support of the application. It is deponed in the said affidavit:-
 - a. that pleadings herein closed on 13/7/2018, and that on 30/10/2018, both parties having confirmed compliance, pre-trial directions were taken whereby the suit was consolidated with Case No. 531 of 2017 and by consent fixed for hearing on 20/2/2019.
 - b. that by close of pleadings, both parties had filed their respective documents.



- c. that on 20/2/2019, there being no representation for the Respondent, the Claimant's case was heard and closed, and directions on filing of submissions were given on closure of the Respondent's case as well.
 - d. that on 24/4/2019, by consent, the Respondent's case was re-opened to allow them to call their witnesses.
 - e. that the consent was limited to reopening of the Respondent's case to enable their witnesses to testify, based on the evidence already on record.
 - f. that the further list of documents dated 30/3/2021 seeks to irregularly sneak in item No. 6 thereon, which is new evidence not previously on record; which the Claimant will not have an opportunity to rebut.
 - g. that the Claimant/applicant will be highly prejudiced if the new evidence is allowed on record, as the Claimant has already concluded his case.
3. The application is opposed by the Respondent vide a replying affidavit of Akanga Alera Advocate sworn on 30/3/2023 and filed herein. It is deponed in the said affidavit that the only additional document in the impugned further list of documents is a copy of a delivery book for years 2016 and 2017, and nothing more.
 4. I have noted from the Court's record that on 24/4/2019, the Court (Ndolo, J) recorded the following consent order:-

“By consent the Respondent's case is reopened to allow them to call witnesses. Matter to be heard on 22/7/2019.”
 5. The foregoing consent order is shown to have been agreed upon by counsel for both parties. There is nothing on record to show that parties agreed on filing of further documents by the Respondent upon re-opening of their case. Re-opening of the Respondent's case was, in terms of the recorded consent, done for the sole purpose of enabling the Respondent to call their witnesses.
 6. The further list of documents said to be dated 30/3/2021 and to have been filed on 12/4/2021 was filed contrary to express terms of the said consent order and without leave. The same is improperly on record and is hereby struck off, and is expunged from the Court's record.
 7. The suit shall forthwith be fixed for defence hearing.
 8. It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 16th NOVEMBER 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

