



**Ogecha v Kenyatta University (Cause 369 of 2019)
[2022] KEELRC 1230 (KLR) (21 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1230 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 369 OF 2019**

**L NDOLO, J
JULY 21, 2022**

BETWEEN

PETER OGECHA CLAIMANT

AND

KENYATTA UNIVERSITY RESPONDENT

RULING

1. By its Notice of Motion dated October 7, 2021, the respondent seeks the following orders:
 - a) An order directing the Director of Criminal Investigations to furnish to the Court and to the parties herein, a certified copy of the Cyber Report prepared by the Directorate of Criminal Investigations in 2018 in File Reference CID/IB/SCU/1/1/20A/VOL. 1/181 (CR No. 121/294/2018), within seven (7) days of the order;
 - b) Witness Summons to the Director of Criminal Investigations or any other officer in the Directorate of Criminal Investigations as may be suitably deputed to attend court during the hearing of this matter and to testify thereof.
2. The application is supported by an affidavit sworn in the name of Professor James Kung'u who describes himself as the respondent's Deputy Vice Chancellor (Administration).
3. The application is premised on the following grounds:
 - a) The subject Cyber Report is in the custody of the Directorate of Criminal Investigations who have indicated that, according to their policy, they would not release a copy to the respondent without a court order to that effect;
 - b) Such a report would aid the court in resolving the dispute herein and in order to do justice to the parties;



- c) This court is empowered by section 20 of the *Employment and Labour Relations Court Act* to make such orders, such as those sought in the application, in order to ascertain the true facts and to do justice to the parties, without being shackled by technicalities.
4. In the affidavit in support of the application, it is deponed that the claimant was dismissed from the service of the Respondent after he was linked to some malicious emails, which had been circulated to staff and students of the respondent University, causing great anxiety at the University.
 5. It is further deponed that the claimant was investigated by the Directorate of Criminal Investigations in connection to the said emails and was presented in court in Kiambu Chief Magistrate's Court Criminal Case Number 1499 of 2018: Republic v Peter Ogecha Asiago to answer to charges of publishing a false report contrary to section 66(1) of the *Penal Code*.
 6. The claimant opposes the application by his replying affidavit sworn on January 13, 2022.
 7. He states the claimant's application is misplaced to the extent that it seeks to open pleadings that have already closed.
 8. In the claimant's view, the application is designed as a delaying tactic to tire the claimant and deny him justice, while propping up the respondent's weak case.
 9. The claimant contends that the respondent had over 2 years to close its pleadings and cannot now misuse the court process to reopen the pleadings. The claimant adds that the respondent already processed and concluded disciplinary proceedings against the claimant, the presumption being that the respondent had gathered sufficient evidence to conclude the case against the claimant which is what is supposed to be tested by the court.
 10. The respondent filed a supplementary affidavit sworn on January 18, 2022 in the name of Professor Paul Okemo, who describes himself as the respondent's Acting Deputy Vice Chancellor (Administration).
 11. In his affidavit, Professor Okemo adopts the supporting affidavit of October 7, 2021, which he claims to have sworn himself.
 12. Professor Okemo terms the insertion of the name of Professor James Kung'u as the deponent to the supporting affidavit as a clerical mistake made by the respondent's Advocates.
 13. Black's Law Dictionary defines an affidavit as:

“a written or printed declaration or statement of facts, made voluntarily and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath.”
 14. A party who swears an affidavit is in effect confirming the veracity of the information contained therein, much like a witness in a viva voce hearing.

An affidavit is therefore a crucial pleading that should not be taken lightly.
 15. In a bizarre twist in this application, there appears to have been two separate and distinct deponents to the supporting affidavit sworn on October 7, 2021. While the application and the body of the affidavit identifies the deponent as Prof. James Kung'u a scanned signature page, which differs materially in appearance, bears the name of Prof. Paul Okemo as deponent.



16. The only explanation given by the respondent is that the insertion of Prof. James Kung'u was a clerical error. When a party relies on affidavit evidence to seek relief from the court, that party must ensure that the affidavit is duly drawn and executed. The unanswered question remains which Professor appeared before the Commissioner for Oaths for execution of the subject affidavit.
17. To my mind, the lapse herein cannot be explained away as a clerical error as it invalidates the supporting affidavit for want of a clear deponent.
18. In the result, the respondent's application is devoid of any supporting evidence and is disallowed with costs to the claimant.
19. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF JULY 2022

LINNET NDOLO

JUDGE

Appearance:

Dr. Komolo for the Claimant

Mr. Thuo for the Respondent

