



**Muchiri v African Agricultural Technology Foundation (AATF) & another
(Cause 663 of 2019) [2022] KEELRC 3827 (KLR) (18 August 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3827 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 663 OF 2019
AN MWAURE, J
AUGUST 18, 2022**

BETWEEN

CAROLINE MUCHIRI CLAIMANT

AND

**AFRICAN AGRICULTURAL TECHNOLOGY FOUNDATION (AATF) 1ST
RESPONDENT**

QUALIBASIC SEED COMPANY (QBS) KENYA 2ND RESPONDENT

RULING

1. The claimant has brought an application for Notice to Produce all books, papers, letters, copies of letters and other writings and documents in the respondents possession, custody or power containing any entry, memorandum, minutes relating to matters in question and especially as per the list contained in the notice to produce application dated November 13, 2020.
2. The claimant in her submission said the documents sought are relevant for purposes of ensuring a fair trial and she relies on *Oracle Productions Limited -vs- Decapture Limited & 3 others* [2014]eKLR where court observed the true purpose of discovery is to level litigation field to expedite hearing and reduce costs and allow parties to gauge the case they will face at the trial.
3. She says she was subjected to discrimination in the disciplinary process and especially as compared to the disciplinary process of Alex Kimani Kariuki and Abu Umaru Joseph. She says Alex Kimani Kariuki was infact subjected to disciplinary process originating from same transaction that led to claimant's dismissal.
4. She also says she continued to serve the 2nd respondent in November 2018 and continued to serve as its board secretary and did not receive remuneration for the same.



5. The Grounds of opposition by the respondents on the applications for notice to produce are that the respondents complied with rule 15 of [Labour Relations Court procedure rules](#) and that this application therefore is intended to vex the respondent.
6. Furthermore the respondent says the documents requested for Alex Kimani Kariuki and Abu Umaru who are not parties to the suit should not be produced as they are legally protected under article 31 of the [Constitution](#) of Kenya 2010 and [Data Protection Act](#) 2019, and section 6(1)(d) of [Access to Information Act](#) 2016.
7. Further the correspondences between 1st respondent and its director of legal affairs and the firm of Kaplan and Stratton Advocates falls within the ambit of section 6(1) (i) of [Access to Information Act](#). The respondent avers all information relating to claimant's termination is already in possession of the claimant as in the consultative meeting held on October 26, 2018. Further the documents requested of the meeting held on October 17, 2018 are not relevant to this dispute.
8. The respondent further says any documents in relation to the 2nd respondent are irrelevant as the claimant's employment relationship, was with the 1st respondent so he says claimant has no reasonable grounds to request for the information sought. He prays the applicants application be dismissed with costs to the respondents.
9. Respondent in their submissions state that if the documents relating to the other employees they will count documents. They rely on the case of *Gloria Meli Musa and another -vs- Microsoft East Africa Limited* [2021] eKLR where the court held that other employee's payslips are private and personal. They are protected under [Data protection Act](#) 2019.
10. So even if claimant has a right to access to information under article 35(1)(b) of the [constitution](#) the respondent and its employees also has a right to privacy under article 31(a) not to have information relating to their family or private affairs unnecessarily required or revealed.
11. They have also referred to client evidence relationship as provided in section 134 & 137 of [Evidence Act](#).
12. They say the evidence requested is irrelevant in this matter and is a mere fishing expedition. He therefore prays the application notice to produce be dismissed with costs to the respondent.

Decision

13. Section 69 of the [Evidence Act](#) provides the criteria where one party can request the party in possession of required documents is given notice. In this case the claimant has put a notice to produce application and the respondent has objected to that notice to produce.
14. The court has considered the application and the submissions by the claimant as well as the grounds of opposition by the respondent and their submissions and authorities.
15. The documents requested relate to disciplinary proceedings related to other employees of the respondent namely Alex K Kariuki and Abu Umaru Joseph. I find the production of disciplinary proceedings is very personal and private to the employer and employee and is not fair to expose it to the public unless the party consent to the same. I concur that article 31 of the [Constitution](#) of Kenya 2010 and especially subsection (c) protects private information of individuals. So, I rule that the respondents do not have to produce the required documents in prayers a & b of the Notice to produce dated November 11, 2010.
16. The court has considered the provisions of articles 31 of the [constitution](#) and article 35 of the said constitution and have been obsessed in attempting to balance the two and make sure neither the one



who is entitled to privacy nor the one who is entitled to access to information are disadvantaged or even have their rights violated for that matter.

17. Indeed, I find all the documents, letters and communication which relate to the claimant will not prejudice her since she is the one who has requested for them. The same will also not prejudice the respondent who is a party to these proceedings. With the support of *Oracle Productions Ltd -vs- Decapture Limited and 3 others* [2014]eKLR I find it is fair and reasonable to avail the claimant some documents to enable her prepare her case appropriately.
18. In the cases cited by the respondent *Gloria Meli Musao & another vs Microsoft East Africa Limited* [2021]eKLR is not similar to this one as it refers to employee's payslip. The one of *Kennedy Kimathi & 2 others vs Roche Kenya Ltd*[2021] eKLR the court held that discovery is meant to ensure the right to fair hearing but it must not violate another's constitutional rights. So, the other documents requested refer only to the claimant and the respondents and not third parties. So, I will order the respondent produces documents in paragraph 3 of Notice to Produce 5, 6 and 7 but those listed in paragraph 1, 2, & 4 will not be produced. In order to move the process forward the court orders the said documents to be produced within 30 days from today's date and the case should then proceed on.
19. Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 18TH AUGUST, 2022

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on March 15, 2020 and subsequent directions of April 21, 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by article 159(2)(d) of the *Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under article 48 of the *Constitution* and the provisions of section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

ANNA NGIBUINI MWAURE

JUDGE

