



**Gikunga v Suhufi Agencies Ltd (Cause 64 of 2019)
[2022] KEELRC 12867 (KLR) (13 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12867 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 64 OF 2019
AK NZEI, J
OCTOBER 13, 2022**

BETWEEN

FRANCIS KIARIE GIKUNGA CLAIMANT

AND

SUHUFU AGENCIES LTD RESPONDENT

RULING

1. When the suit herein came up for hearing on May 17, 2022, the claimant adopted his recorded and filed witness statement dated September 17, 2017 as his testimony in chief. His bid to produce in evidence the nineteen documents listed on his list of documents dated September 13, 2017 was objected to by the respondent's advocate. Counsel submitted that the respondent was objecting to production in evidence of the documents listed as item nos. 1,2,4,5,6,7,9,10,13 and 18 on the claimant's list of documents, stating that the said documents had not been made by the witness (the claimant), and therefore could not be produced by him; and that production by the claimant of the said documents would amount to hearsay, which is not admissible.
2. Counsel for the respondent further submitted that some of the documents were remotely related to the claimant's claim while others were not, and that the documents did not comply with the law, which counsel cited as section 106B of the *Evidence Act*.
3. In response, counsel for the claimant submitted that the respondent's objection was being made too late in the day as no indication of an objection had been made by the respondent when the claimant's list of documents was filed and served on them. That there was time to object, but no objection was made; and that counsel for the respondent could cross examine the witness on the documents in issue.
4. Counsel for the claimant further submitted that most of the documents objected to were emails directly addressed to the claimant, thus making him a subject of the documents, that the claimant had



filed certificates on the emails in compliance with the law, and that the documents could be produced by him.

5. It was further submitted on behalf of the claimant that the document itemized as item no 2 was the claimant's bank statement and that he could produce it in evidence as it belonged to him.

6. I have noted from the court's record that the respondent's reply to the memorandum of claim was filed in this court on October 11, 2019. Rule 13(3) & (4) of the *Employment and Labour Relations Court (Procedure) Rules* 2016 provides:-

“(3) A party served with a response to any pleading under paragraph (1) may file and serve a reply within seven days of the service of the response.

(4) the pleadings in a suit shall close fourteen days after the service of a reply under paragraph (3) or, where a reply is not filed, fourteen days after service of a response to pleadings under paragraph (1).”

7. Rule 15(1) of the *Employment and Labour Relations Court (Procedure) Rules* 2016 provides as follows:-

“(1) the parties to a suit shall, within fourteen days after the closure of pleadings or such other period as the court on application may direct, move the court to hold a scheduling conference to ascertain:-

- a. Points of agreements and disagreements.
- b. The possibility of alternative dispute resolution or any other form of settlement.
- c. Whether evidence is to be oral or by affidavit.
- d. Whether legal arguments shall be written or oral or both.
- e. The estimated length of the hearing; and
- f. Any other matter the court may deem necessary.”

8. The suit is shown to have come up in court severally before the same was finally fixed for hearing on May 17, 2022. The respondent is not shown to have raised any objection and/or disagreement with production by the claimant of any document listed on the claimant's list of documents. I must state here that both the *Employment and Labour Relations Court Act* and the *Employment and Labour Relations Court (Procedure) Rules* 2016 do not contemplate situations where trial in a suit may be interrupted once the same commences as the pre-trial stage is meant to isolate all points of agreement and disagreement. In my view, once the trial commences, the same is a one-way process that must be conducted and concluded expeditiously.

9. The foregoing spirit is anchored on section 3 of the *Employment and Labour Relations Court Act* which states as follows:-

“(1) the principal objective of this act is to enable the court to facilitate the just, expeditious, efficient and proportionate resolution of disputes governed by this Act.



- (2) the court shall in the exercise of its powers under this Act or the interpretation of the rights of individuals and parties, seek to give effect to the principle objective in subsection (i)
 - (3) the parties and their representatives, as the case may be, shall assist the court to further the principle objective and, to that effect, to participate in the proceedings of the court and or comply with directions and orders of the court.”
10. Section 20 of the *Employment and Labour Relations court Act* mandates this court to act without undue regard to technicalities regarding any proceedings to which the act applies. This position is echoed by rule 38 of this court’s Rules which provides that the court may regulate its own procedure.
11. Having said that, and having looked at the documents objected to by the respondent, I have noted the following:-
 - a. documents itemized as item nos 1,5,6, and 13 are downloaded emails addressed to the claimant, among other persons, by the respondent on various dates. The said downloaded emails are filed under appropriate certificate by the claimant.
 - b. documents itemized as item no 2 is a bank statement on the claimant’s bank account, shown to have been issued and certified by the claimant’s banker, KCB Bank Limited.
 - c. the document itemized as item no 4 is a letter by the ministry of water and irrigation dated January 25, 2018 regarding the claimant. The said letter is issued by a Public body and is a public document.
 - d. the document itemized as item no 7 on the claimant’s list of documents is a tender document issued by the ministry of tourism in December 2018. The same is shown to have been signed and executed by the respondent on December 3, 2018, and to have been witnessed and signed by the claimant on the same date.
 - e. the documents listed as item nos 9 and 10 are described by the claimant as photographs of screenshots of public notices posted by the respondent to its facebook page and whatsapp group, notifying all that the claimant’s employment had been terminated by the respondent. The said photographs of screenshots were filed under the claimant’s certificate.
 - f. the document itemized as item no 18 is shown to be a letter by the respondent addressed “to whom it may concern.”
12. I see no reason why the claimant should not produce the aforesaid documents in evidence. The respondent, which will have an opportunity to cross-examine the claimant on the said documents, will not in any way be prejudiced.
13. It is worthy mentioning here that although this court is not strictly bound by provisions of the *evidence Act* in the conduct of proceedings before it, the claimant has complied with section 106B of the *Evidence Act*, to the satisfaction of the court.
14. I find no merit in the objection raised by the respondent. The documents objected to shall be produced in evidence by the claimant.
15. The objection is hereby dismissed with costs.
16. Orders accordingly.



DATED, SIGNED AND DELIVERED AT MOMBASA THIS 13TH DAY OF OCTOBER, 2022.

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Philip for claimant

Miss Asige for respondent

