



**Okinyi v Mogas Kenya Limited (Cause 2066 of 2017)
[2022] KEELRC 12881 (KLR) (11 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12881 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2066 OF 2017
JK GAKERI, J
OCTOBER 11, 2022**

BETWEEN

ALVIN OPIYO OKINYI CLAIMANT

AND

MOGAS KENYA LIMITED RESPONDENT

RULING

1. Before me for determination is a notice of motion application dated July 6, 2022 by the respondent seeking leave to file comprehensive list and bundle of documents dated June 27, 2022. That the list and bundle of documents filed on June 27, 2022 be admitted as evidence before the court and be deemed properly filed and costs of the application be provided.
2. The application is expressed under section 1, 1A & 3A of the *Civil Procedure Act* and order 11 of the *Civil Procedure Rules, 2010* and is supported by the affidavit of P W Waitere, advocate who deposes that the respondent filed a list of documents and witness statement on June 22, 2018 and filed a comprehensive bundle and list of documents on June 27, 2022.
3. The affiant states that the additional documents filed include typed medical report of the claimant which initially was handwritten. Other additions are extracts of the respondent's human resource manual showing the grounds of termination of employment, a discharge voucher and Kenya revenue tax deduction card for 2016.
4. The affiant further states that none of these documents are new or will prejudice the claimant's case in any way as the claimant will have the opportunity to examine the documents.
5. Finally, the affiant states that it is in the interest of justice that leave be granted to have the documents filed on June 27, 2022 admitted as part of the record.



Claimant's/Respondent's Response

6. By the time the court retired to prepare this ruling, neither of the parties submissions had been uploaded on the CTS.

Determination

7. The only issue for determination is whether the respondent/applicant's notice of motion application dated July 6, 2022 is merited.

8. Order 7 rule 5 of the *Civil Procedure Rules 2010* provides as follows;

The defence and counter claim filed under rule 1 and 2 shall be accompanied by –

- (a) An affidavit under order 4 rule 1(2) where there is a counter claim.
- (b) A list of witnesses to be called at the trial.
- (c) Written statements signed by the witnesses except expert witness; and
- (d) Copies of documents to be relied on at the trial.

Provided that statement under sub-rule (c) may with leave of the court be furnished at least 15 days prior to the trial conference under order 11.

9. These provisions are explicit that documents must be filed within prescribed timelines.
10. The court is further guided by the sentiments of Waweru J in *P H Ogola Onyango t/a Pittsconsult Consulting Engineers v Daniel Githegi g/a Quantalysis* [2002] eKLR, where the learned judge stated as follows;

“Indeed discovery, along with interrogatories and inspection, is a pre-trial procedure. They are all meant to facilitate a quick and expeditious trial of the action. Though the court no doubt has jurisdiction to allow a party to introduce a document or documents once the opposing party has closed its case . . . To allow him to introduce documents after the plaintiff has closed his case, will occasion the plaintiff serious prejudice that cannot be cured by cross-examination. In civil litigation, there must be a level playing field. The field cannot be level were one party permitted to introduce documents in the trial after the opposite party has closed his case and many years after pleadings closed.”

11. Similarly, in *Johana Kipkemei Too v Hellen Tum* [2014] eKLR Munyao Sila J expressed himself as follows;

“The court has a constitutional mandate to ensure that a trial will be fair and therefore retains the power to disallow one party from tabling evidence that was not provided to the other party as contemplated by the rules. This was indeed the reasoning of the Supreme Court in the case of Raila Odinga & 5 others v IEBC & 3 others [2013] eKLR where in a presidential electoral dispute, the Supreme Court declined to allow additional evidence filed outside the contemplation of the rules.

This however is not to say, that the court can never under any circumstances, permit a party to adduce additional evidence, that was not furnished to the other party as provided under the rules. The court as a shrine of justice, has a mandate to do justice to all parties and not to be too strictly bound by procedural technicalities. This flows from the provisions



of article 159 (2)(2)(d) of the Constitution where such evidence can be adduced, without causing undue prejudice to the other party, the court ought to allow the application so as to allow such party the opportunity to present his case in full . . . If for example, the trial has not started, little prejudice may be caused to either party if one is permitted to introduce additional evidence. The prejudice to the other party no doubt increases as the trial progresses . . .”

12. Similar sentiments were expressed by Majaja J in Chairman, Secretary & Treasurer suing as officials/on behalf of House of Hope v Wotta-House Ltd [2018] eKLR.
13. The court is guided by these sentiments.
14. The applicant herein is explicit that the documents added are not new and will not prejudice the claimant’s case in any way as he will have a chance to question them during the trial.
15. Guided by the foregoing provisions and propositions of law, the court is persuaded that the claimant stands to suffer no prejudice and it is in the interest of justice to allow the notice of motion application dated July 6, 2022.
16. Accordingly, leave is hereby granted to the respondent to file the comprehensive list and bundle of documents dated June 27, 2022 and the same shall be deemed as properly filed.
17. There shall be no orders as to costs.
18. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 11TH DAY OF OCTOBER 2022

DR. JACOB GAKERI

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 15th March 2020 and subsequent directions of 21st April 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 has 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.

DR. JACOB GAKERI

JUDGE

