



**Gichuki v Glaxosmithkline Pharmaceutical (Cause E228 of 2021)  
[2022] KEELRC 13476 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13476 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E228 OF 2021  
AN MWAURE, J  
DECEMBER 7, 2022**

**BETWEEN**

**PAULINE WAMBUI GICHUKI ..... CLAIMANT**

**AND**

**GLAXOSMITHKLINE PHARMACEUTICAL ..... RESPONDENT**

**RULING**

1. The claimant filed an application *vide* a notice of motion dated April 4, 2022.

**Applicant's Case**

2. The applicant's prayer as per the application are as follows:-

1. That the respondent be compelled to allow a forensic expert to have;
  - i. Restricted access to veeva CRM with privileges to read/view and retrieve all organization-wide reports for the period October 2016 to August 2018.
  - ii. Access control list (ACL) document, or similar, outlining system user roles and their associated rights/privileges on the veeva CRM platform.
  - iii. Restricted access to QlikView BI platform with privileges to read/view and generate reports for the period October 2016 to August 2018, business analytics system.
2. That the respondent be compelled to allow a forensic expert to consult with;
  - i. The Human Resource (HR) Manager responsible for overseeing GSK HR duties in the period October 2016 to August 2018 for consultation.
  - ii. The system/IT administrator responsible for overseeing GSK email and veeva systems in the period October 2016 to August 2018 for consultation.



- iii. The former Medical Sales Representative, Jacqueline Marumaki, for consultation.
3. That the respondent be compelled to avail the following to the court and to the claimant's forensic expert for evaluation;
- iv. Copies of all email messages for the account "pauline.w.gichuki@gsk.com" assigned to Pauline Gichuki for the period October 2016 to August 2018.
  - v. Copies of all emails for the account "jacqueline.k.marumaki@gsk.com" assigned to Jacqueline Marumaki for the period October 2016 to August 2018.
  - vi. Copies of all emails for the account "allan.f.otieno@gsk.com" assigned to Allan Otieno for the period October 2016 to August 2018.
  - vii. Copies of all emails for the account "kevin.m.mutuma@gsk.com" assigned to Kevin Mutuma for the period October 2016 to August 2018.
  - viii. Historical activity logs from the veeva CRM platform for GSK Kenya for the period October 2016 to August 2018.
  - ix. Copies of veeva reports for IDs "PWG16132" (Pauline Gichuki) and "JKM13618" (Jacqueline Marumaki) for the period October 2016 to August 2018.
  - x. GSK company policy documents, or similar, governing human resources, data retention and backup, and use of Information Technology (IT) assets.
  - xi. Copies of QlikView Business Intelligence (BI) reports for users "PWG16132" and "JKM13618" for the period October 2016 to August 2018.
  - xii. Copies of multichannel cycle plans (MCCPs) and sales line targets (SLTS) for Pauline Gichuki" and "Jacqueline Marumaki" for the period October 2016 to August 2018.
  - xiii. Copy of the complete recording [audio and/or video/cctv] of the disciplinary hearing of Pauline Gichuki held in the month of February 2018.
  - xiv. Copy of recording of the disciplinary hearing meeting of Jacqueline Marumaki held in the month of February 2018.
  - xv. Copy of transcript from investigation interview of Pauline Gichuki on December 19, 2017.
  - xvi. Copy of GSK disciplinary action and procedure policy document(s) in force between October 2016 and August 2018.
4. That the costs of this application be provided for.
3. The application is based on following grounds:-
1. That the orders sought are essential in order that the court may go to the root of the claim in order to write an informed judgment.
  2. The claimant intends to call an expert witness
  3. That it is fair and just that order prayed for be granted.
  4. That the respondent will not suffer any prejudice in case the orders are granted.



4. As well Pauline Wambui Gichuki also supported her prayers via her supporting affidavit dated also the April 4, 2022. She claims the information sought is in the custody of the respondent and she says they are essential to enable the court write an informed judgment.

### **Respondent's Claim**

5. The respondent in his ground of objection dated May 6, 2021 states that the claimant has not demonstrated the issues for which the documents are sought and how the documents sought are relevant to the case.
6. The respondent states the claimant's main claim is for unlawful termination and the said claimant has produced multiple documents and according to the respondent some are not even relevant to this suit.
7. According to the respondent the application does not comply with article 35 of the Constitution.
8. They further says the veeva systems she is demanding be re-opened are not domiciled in Kenya.
9. He says the prayer by the claimant is an illegal attempt to get confidential information and furthermore the parties referred in that application are not a party to the suit.
10. He says the application by the respondent only serves to delay the hearing and increase the costs of litigation and since no grounds have been established to support the claim the same then should be dismissed with costs.

### **Claimant's Submissions**

11. The claimant submits that the required emails, letters, IT tickets and documents (veeva CLT) are in order to present their claim effectively.
12. She says the respondent consults veeva operations from Kenya. She says she has explained the relevance of all the required documents are explained in statements Nos 4, 5 & 6. The claimant says the information gathered upon access as will be filed in court and compiled by an expert. She prays that her application be allowed as prayed.

### **Respondent's Submissions**

13. The respondent submits that the claimant will need to demonstrate how the requested documents sought are relevant to the matter in question. The respondent further says the claimant has brought a case for unfair termination and says these documents are not in their custody. They say the individuals referred in the application are not party to the suit and other are no longer employees of the respondent.
14. Replying on the case of JLN & 2 others -vs- Director of Children Services & 4 others (2014)eKLR relied on the English case of W -vs- Edgell (1990) I All ER 835 where court held *interalia*:-  

“That for confidential information to be disclosed it must be a real serious risk of danger to the public and it must be that which is absolutely necessary.”
15. The respondent submits that the information requested will not assist the case and so the claimant has failed to demonstrate that she is entitled to the prayers sought. They pray the application be dismissed with costs.



## Determination

16. The claimant filed a claim on March 11, 2021 and application to produce documents and allow expert witnesses to be called. The court has noted that the claimant has first as has been stated by the respondent an elaborate memorandum of claim as well as a good number of documents in support of her claim. The court is not in a position to ascertain if the documents demanded are in the custody of the respondent or not and as well the experts she asks to be called are they available or not and those are questions the court is grappling with.
17. The respondent has this to say:-
  - a. They do not have access to the veeva platform in Kenya and since she is requesting for it to be opened from 2016-2018 they state it is not relevant as the events leading to this case were in the period of 2017-2018.
  - b. The individuals referred are Mr Kevin Mutuma a human resource manager whom they say the claimant can cross examine him during the hearing.
  - c. Mr Allan Otieno and Jacqueline Marumaki are no longer employees of the respondent.
  - d. The prayers for production of emails for claimant, Jacqueline Marumaki, Allan Otieno and Kevin Mutuma are not relevant according to the respondent to the issues in the suit. They say the same are confidential and in any case the relevant ones are already produced by the respondent and the claimant. They say in any event should they all be produced they would be in thousand of pages.
  - e. They say the policies are already produced by both the claimant and the respondent.
  - f. They also say there are no recordings of the disciplinary hearing but they are minutes which have been signed by the respondent.
18. The case has not proceeded for hearing and is not possible to tell what documents are relevant or not relevant at this stage. A quick glimpse on the pleadings and the exhibits in the court file seem quite comprehensive and court would have recommended the suit goes for hearing to prove whether claimant, was lawfully terminated or not.
19. There is no doubt a lot of time will be wasted to call for all the documents and expert witnesses demanded by the claimant and is not clear what will be the value addition of all these documents and demands. However section 35(1) (b) of the *Constitution of Kenya 2010* provides that every citizen has a right to information held by another person and required for the exercise or protection of any right or fundamental freedom.
20. The court is aware these documents may not be easily available but finds it prudent to exhaust all channels for the sake of justice to be availed to all. So the court will allow the claimant's application dated April 4, 2022 and respondent to avail whatever documents are in their possession and whatever is not possible to produce can be explained to court in writing.
21. This will no doubt take time and is unfortunate because the claimant is delaying proceeding with the trial of her suit but that is her choice. Mention will be on February 6, 2023 to confirm position and give further directions.

Orders accordingly.

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 7<sup>TH</sup> DECEMBER, 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 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**

