



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NAIROBI**

**CAUSE NO. E013 OF 2020**

**(Formerly Cause No. 297 of 2020)**

**NANCY OMOLO.....CLAIMANT**

**VERSUS**

**MERCY CORPS.....RESPONDENT**

**RULING**

1. Objection is taken to the line of questions raised by the Respondent's Counsel in re-examination. Mr. Odhiambo for the Claimant asserts that he did not ask questions in relation to the context of the emails his learned colleague refers to. He objects that he would not be able to have an opportunity to cross examine on the same.
2. The Respondent's Counsel argues that the questions she is putting to the witness are permitted in re-examination and argues that she is only seeking to refer to documents the Claimant's Advocate referred to and ask questions that have arisen from the cross examination. Miss Mwangi argues that the questions she has asked are therefore not outside of the parameter of re-examination.
3. In a brief reply Mr. Odhiambo for the Claimant submitted he was afraid Counsel for the Respondent Miss Mwangi would ask questions on context and since all he asked was for a confirmation as to the source of the email, he could be unable to cross examine as the answers the witness could give in respect of the context.
4. During re-examination, the party asking the questions is limited in the scope of questions that can be put. It is only questions that arose in cross examination that are permitted. In order to permit a fair hearing, a party cannot open up new lines of questions that would leave the other party at the distinct disadvantage of not being able to counter or rebut by way of cross examination. In this case Counsel for the Respondent is busy re-opening the examination of the witness and as such the Court is in agreement that the Claimant's Counsel would not have a chance to cross examine the evidence now being led. I find that the objection is well taken. In the premises the questions being asked of the witness must be limited only to the areas covered in cross examination and only if they will clarify an issue as this is not an examination in chief. Objection upheld.

It is so ordered.

**Dated and delivered at Nairobi this 7<sup>th</sup> day of July 2021**

**Nzioki wa Makau**

**JUDGE**