



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO.2481 OF 2017

LUCY NDUNGU.....CLAIMANT

VERSUS

NEW WIDE GARMENT EPZ.....RESPONDENT

RULING

1. This is a case where the claimant had filed a suit against the respondent New Wide Garments for wrongful termination from employment. The claimant had filed her statement of claim and the respondent had put a response.

The claimant had given her evidence and had actually closed her case.

2. The respondent had also given his evidence but when it came to producing documents the claimants counsel objected to the production of two of the respondent documents being the Equity Bank statements bearing the claimant's name and safaricom mpesa statements bearing the claimant's mobile number.

3. The claimants advocate submitted that the documents were electronically produced and were not obtained in compliance to Section 106 (B) of the Evidence Act.

4. The said Section 106 (B) provides in summary that electronic documents are admissible in any proceedings and sub (4) provided a certificate is produced.

5. The court also considered Section 78 (a) of the same Evidence Act which provides admissibility of electronic messages as evidence.

6. The court having considered the law relating to admissibility of electronic documents however has found no evidence to establish the said statements were electronic products or were documents obtained direct from the respective bank and safaricom.

7. In his objection to this application to expunge the said statements, the respondents advocate averred that the said documents were print out and so were not electronically obtained.

(i) Section 78 A of the Evidence Act states that electronic messages and digital materials shall be admissible as evidence

(ii) Section 20 of Employment Act mandates this court to act without undue regard to technicalities so long as the court informs itself of any matter it considers fast. This is enhanced by article 159 (2) (d) of the Constitution which provides that justice shall be administered without undue regard to procedural technicalities.

8. Apart from the above observations, the rules that determine the procedures of this court are the Employment and Labour Relations Court Rules.

Section 13 (4) provides that a statement under subsection 1 may refer the employee to a document which is accessible to the employee for a change in a matter specified in Section 10 (3) (ii) and (iii) and Section 12 (1) a and c.

9. As far as this case goes the court has observed that the claimant had indicated she could obtain her bank statements and mpesa statements way back by her letter to the respondent dated 12th October, 2016. She has had ample time to;-

(i) verify if those were her documents and to

(ii) raise objection to their production as evidence.

She was served with a response to the memorandum of claim dated 8th February, 2018 and she did admit in cross examination that she was served with the said documents. She admitted the documents bore her names and telephone numbers. She had ample time to verify even with her bank and with safaricom on the authenticity of the same.

10. That notwithstanding the most important question to answer is if these documents were electronically obtained or not. I did not belabour trying to analyse the facts and the laws as at the end of the day claimant did not establish if these documents were electronically produced or not.

11. The court in its finding concludes that for ends of justice to be met, the claimant's bank statements and mpesa statements are admissible as there will still be time for the parties to address themselves in the submissions of the respective parties and comprehensive judgment will be written at the end.

Case to proceed to full hearing.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 17TH DAY OF AUGUST, 2021.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of restrictions in physical court operations occasioned by 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.

ANNA NGIBUINI MWAURE

JUDGE