



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. E403 OF 2021

(Before Hon. Lady Justice Anna Ngibuini Mwaure)

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS,
HOSPITAL AND ALLIED WORKERS (KUDHEIHA).....CLAIMANT**

VERSUS

THE NAIROBI HOSPITAL.....RESPONDENT

RULING NO. 2

1. The gist of this ruling is on the admissibility of documents (payment receipts) by the Respondent to the Grievants who are represented by the Claimant.
2. The case was filed sometime in May 2021 and thereafter pleadings closed.
3. Hearing was fixed and commenced on 4th August 2021. The Claimant's witness gave his evidence and subsequently closed his case.
4. The Respondent was to call his witness but said the witness had a board meeting and so was granted an adjournment though the Claimant objected. The Respondent should have closed his case then but was given another date being today, 28th September 2021.
5. Thereafter on 24th September 2021, without any leave of Court, oral or written he filed a supplementary list of documents and brought the same to the notice of Court today (28th September 2021) at the commencement of the hearing of the Respondent's case.
6. Section 13(5) and 14(6) of Employment and Labour Relations (Procedures) Rules 2016 provides that filing of pleadings or amendment therein after close of pleadings, can only happen with the leave of Court.
7. Section 14(6) in particular provides –

(6) A party may amend pleadings before service or before the close of pleadings:

Provided that after the close of pleadings, the party may only amend pleadings with the leave of the Court on oral or formal application, and the other party shall have a corresponding right to amend its pleadings

8. This action by the Respondent to introduce new documents at this point is late in the day and after close of Claimant's case and the Court is inclined to reject the same. The Respondent's documents dated 24th September 2021 are rejected.
9. Case to proceed with the Respondent's evidence.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 28TH DAY OF SEPTEMBER 2021

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 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.

ANNA NGIBUINI MWAURE

JUDGE