

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. E245 OF 2021

TERESIA WANJIRU MUKAMBA.....CLAIMANT/APPLICANT

VERSUS

RADIO AFRICA LIMITED.....RESPONDENT

RULING

1. The Application before me is the Claimant's Notice of Motion dated 22nd March 2021. In it, the Applicant seeks the following Orders:

a. *Spent.*

b. That this Honourable Court be pleased to direct the Respondent at its costs to immediately supply the Claimant with a complete copy of her employment records including but not limited to, Contract of Employment dated 1st October 2019; Contract of Employment issued on or about 4th December 2020; previous Contracts of Employment issued on or about December 2017; all copies of Employee appraisals and feedback; copies of payslips from December 2019 to December 2020; proof of Employee and Employer payment and employer contribution to NSSF and NHIF; all copies of any Loan agreements between the Respondent and the Claimant.

c. That this Honourable Court be pleased to make a declaration that in the event the Respondent fails to supply the Claimant with her complete set of employment records, that the Court will deem any missing documentation is prejudicial to the Respondent.

d. That any orders that this Honourable Court deems it fit to meet the ends of justice.

e. That the costs of the Application be provided for.

2. The motion was supported by the affidavit of the Claimant Teresiah Wanjiru Muikamba sworn on 22nd March 2021 together with annexures attached thereto being TWM-1 to TWM11. The Claimant deponed that she was at all material times to this suit an employee of the Respondent serving as a Classic 105 radio presenter and content creator together with her co-host Mike Mondo on the daily drive time show on Classic 105. She deponed that she did not have the contracts entered into with the Respondent. She asserted that the Respondent's program director one Pete Sinclair was abusive to the extent of using expletives and calling her useless despite the fact that the Respondent was aware that her leave of absence was on account of a medical condition for which she was hospitalized and inhumanely handled by the Respondent's HR Director who sought a medical leave form from her while she lay in the hospital bed. She deposed that the Respondent's HR was more concerned with when the Claimant would resume work not her condition when the HR visited her in hospital while at the High Dependency Unit. She asserts that she did not have sufficient cover for her medical expenses and had to top up an amount of Kshs. 10,000/- per day which when brought to the attention of the Respondent's CEO Mr. Patrick Qaurco, the CEO proffered a gratuitous payment of Kshs. 50,000/- for the medical expenses which was forwarded in the form of a cheque. She deponed that at no point was this amount indicated to be a company loan but at all times the consensus was that this was issued on a humanitarian basis. The Claimant further deponed that the Respondent's director of programs Mr. Pete Sinclair subjected her to verbal abuse, demeaning her, hurling expletives and displaying his sexist, chauvinistic and bigotry persona. She asserts she raised the matter with the HR department and the CEO and this was seemingly to be addressed but was not. She deposed that given the circumstances, the work place became toxic as the abuse continued causing her to send her resignation letter which she later rescinded. She avers that the Respondent had not responded to her email requests for information despite reminders.

3. The Respondent is opposed to the grant of the motion and filed a reply affidavit sworn by Jemima Ngode in which the Respondent's Group Human Resource Manager avers that the Claimant's request for the production of documents has been answered by the Respondent's list and bundle of documents dated and filed on 13th April 2021 which supplied the Claimant with all the employment records that she may not have had in her possession. The deponent went on to assert that she was aware the Respondent had produced emails evidencing that the Respondent supplied the Claimant with all the employment records which she may not have had in her possession. She averred that the Respondent had produced emails evidencing that the Respondent had forwarded to the Claimant her itemized payslips from her first month of employment with the Respondent – December 2017 to her last month of employment – November 2020. She deponed further that the Respondent deducts the relevant amount of NSSF and NHIF dues from an employee's salary and indicates the deduction on the employee's payslip and thereafter collates the amounts deducted from all the employees of the Respondent and submits in bulk to the NHIF and NSSF with a cumulative list itemizing the contributions each employee makes to the 2 funds. She deposed that the amounts are submitted in bulk and that the list forwarding the contributions contains lists of names and deduction details of the contributors and that there is a real risk that the submission of this list to the Claimant will breach the data rights of the employees and breach the Right to Privacy under the Data Protection Act, 2018. She deponed that the Claimant is able to confirm from both NSSF and NHIF that the Respondent remitted all the statutory deductions in respect of the Claimant and that she verily believed that this is the most reasonable course of action given the privacy risks that would arise should the Respondent produce submission lists that it uses to forward its employees' statutory deductions. She urged

the dismissal of the motion as the Respondent had supplied the documents needed by the Claimant.

4. The Claimant had sought the production of a slew of documents which from the emails exhibited were not availed until after the suit was filed. It would seem there has been some degree of compliance by the Respondent which has rendered part of the motion before me moot. The Respondent however was right in its surmise that to give the Claimant the NSSF and NHIF lists would infringe the rights of fellow employees at the Respondent as the Claimant's concerns are personal to her and she has a way of ascertaining whether the Respondent indeed submitted the NHIF and NSSF deductions by approaching the two institutions for her statement. In the premises this Court is averse to giving the order in respect of proof of Employee and Employer payment and employer contribution to NSSF and NHIF. The Claimant is entitled to a copy of the loan agreement(s) she may have with the Respondent in as far as they will impact this suit which relates to her employment and payments made to her or expected from her by the employer. As the documents issued did not include any loan agreement, the Respondent is ordered to avail a copy of the loan agreement by way of a supplementary bundle of documents to be filed within 14 days of this Ruling. As the balance of the motion was largely unsuccessful and granted the Respondent availed the documents on 13th April after the motion of 22nd March was filed, each party will bear their own costs for the motion.

5. The matter will be listed on 12th October 2021 to confirm compliance with pre-trial procedures and for further directions as to the hearing of the suit.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF SEPTEMBER 2021

NZIOKI WA MAKAU

JUDGE