

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 2192 OF 2015

ISAAC BABERE WANTAHE.....CLAIMANT

VERSUS

ST. PAUL'S CATHOLIC UNIVERSITY CHAPEL.....RESPONDENT

RULING

1. There is objection to the filing of the bundle of documents by the Respondent on 29th September, 2021. The Claimant opposed to the documents filed by the Respondent as no leave was sought and no prior notice issued before filing. Mr. Ng'ang'a for the Claimant states the Respondent did not therefore place the documents on record properly.
2. The Respondent is opposed and asserts that it is not true that the Respondent has not been keen to have the case heard and determined. Miss Mwangabi for the Respondent asserts that it is indeed the Claimant who has not been ready to proceed on previous occasion. She stated that the witness the Respondent intended to rely on was no longer working with the Respondent in post and as such prayed for the documents to be admitted.
3. Mr. Ng'ang'a in a brief response submitted that his colleague had not responded to the gist of the matter which is that the Respondent did not seek leave. He stated that they indeed could have been having challenges and even if there were challenges the Respondent ought to have sought leave **from** for filing of the documents. He submitted for that reason the bundle filed on 27th September 2021 and served upon them on 30th September 2021 ought to be struck out.
4. Under the Employment Act, some degree of certainty in proceeding is anticipated and under the Employment & Labour Relations Court (Procedure) Rules 2016; per Rule 13 and 14, Parties may file documents as stipulated in the Rules. The Parties are referred to Rule 14(6) which provides that a Party may amend pleadings after close **citing** with leave of the Court.
5. The exhibits produced on 27th September 2021 fall in this spectrum of pleadings. The Claimant is right in his surmise that the documents ought to have been filed with leave of the Court. The Court allowed the Claimant an adjournment on 15th June 2021 and the Respondent had time from mid-June to put its house in order. Having failed to and despite the Claimant having been the cause of the last adjournment, it did not allow for an abridgment of the Rules. The Respondent ought to have sought leave and in the absence of said leave the Court has no option but to strike out the documents filed on 27th September 2021 without leave.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF OCTOBER 2021

NZIOKI WA MAKAU

JUDGE