

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT MERU

CAUSE NO. 1 OF 2018

PAUL GITARI.....CLAIMANT

VERSUS

THE BOARD OF MANAGEMENT KANYAKINE HIGH SCHOOL...RESPONDENT

RULING NO. 1

1. The objection raised is to the effect that pleadings were not served on the Claimant's Advocate by Mr. Kiongo for the Respondent. It is asserted that the Advocate for the Claimant has not had sight of the documents in question which the Respondent is relying on and which are objected to.

2. The Advocate for Respondent asserts that he did duly serve the documents upon the clerk of the Claimant's Advocate on 31st January, 2019. He submits that there cannot be any objection as the documents were duly received by the clerk to Mr. Mbogo. The Advocate for the Respondent submits that the service was acknowledged on his principal copies of the defence and the list of exhibits and statements.

3. Mr. Mbogo in his reply states that the gentleman who received documents is known to him and is his brother in law who though known is not an employee leave alone a clerk. He asserts that the said gentleman is an auctioneer working in Meru. He states he operates from Maua and if there is process to be served it can be served at Maua or at the office here in Meru where his partner Mr. Muriuki sits. He says that he received the defence document yet did not receive the bundle filed hence his objection. He asserts he discussed the defence with his client but not these documents.

4. The objection is made in regard to documents filed on 30th January 2019. The documents that have been placed before me are both signed by the same hand and on the same date. Matter was mentioned at which date parties indicated readiness to proceed with the hearing. Granted the provenance and the statements filed by the parties before court, the question that begs an answer as to what testimony the Advocate for the Claimant anticipated the witness for the Respondent was to bring forth without a statement. In the courts view it is doubtful that the documents passed over to Mr. Mbogo excluded the statement filed as well and documents accompanying the said statement. If there is no statement he had sight of, it is curious why he would permit the Respondent to hold out that it has a witness in court yet the witness obviously has no statement to proffer. In the court's considered view the objection is misplaced and the Claimant is expected to have at least an opportunity to prepare otherwise the Respondent would not have any witness to testify on its behalf objection is overruled as it lacks merit. Case to proceed and the advocate for the Claimant may procure the lists of copies if he is so minded to help him question the defence witness whose testimony will follow Claimant's.

It is so ordered.

Dated and delivered at Meru this 3rd day of October 2019

Nzioki wa Makau

JUDGE