

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 406 OF 2017

SOPHIA KHATENJE SHANZU.....CLAIMANT

VERSUS

KENBLEST LIMITED.....RESPONDENT

RULING

1. Under the Evidence Act, confessions as relating to criminal matters are governed by Section 25A of the Act. Under Subsection 25A(2), the Attorney General in consultation with the Law Society of Kenya, the Kenya National Commission on Human Rights and other suitable bodies is to make rules governing the making of confessions in all instances where the confession is not made in court. So far as I am aware, no rules under this Section have been gazetted.

2. In the case before me, the claimant objects to the production of statements produced by the respondent which are in the words of the claimant, confessions. The court has seen the statements are recorded in the way police statements are recorded but do not have the endorsements that are on regular police statements showing the station and whether they were self recorded or recorded by a police officer. Whereas the provisions of the Evidence Act are excluded from strict appliance in labour matters, the objection is one that cannot be taken lightly. The court will accede to the request by claimant and disallow reference to the documents objected to being the statements recorded by the claimant. The respondent is to file a bundle excluding the said document free of cost as the admission of the documents was not the fault of the respondent.

3. The suit will therefore not proceed to hearing as the parties will need to have the correct bundle for use in the trial. The maker of the recording seems aware of the provisions of section 78A. The recording and certificate on the recording indicate the recording was properly undertaken and satisfies the requirements of section 78A(4) of the Evidence Act regarding the electronic evidence. I have heard the recording and the facts therein have to be adduced and can be rebutted on trial.

4. In the premises I allow the production of the electronic evidence. Respondent shall file a transcript of the recording alongside the bundle of documents that the respondent will file after the Ruling herein.

Dated and delivered at Nyeri this 9th day of April 2018

Nzioki wa Makau

JUDGE