

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT MERU

SUIT NO. 17 OF 2018

(Formerly Nyeri ELRC 170 of 2016)

JUSTUS KIBAARA KIBAI.....CLAIMANT

VERSUS

MT. KENYA EAST FARMERS CO-OP LIMITED.....RESPONDENT

RULING

1. The Claimant's Counsel objects to the production of the evidence contained in the report headed *Management Letter* in the Respondent's Bundle of Documents. Mr. Muthoni for the Claimant submits that the Claimant contests the production of the document as it condemned him without being heard.

2. Mr. Mutegi for the Respondent asserts that the Claimant and his Counsel have had notice of the document since 1st November 2016 when the Respondent's bundle was served upon the said Counsel and that no intimation was given that the Claimant objected to the said document or that the maker of the document was to be called to produce it. The Respondent asserts through Counsel that though the Evidence Act has provision that the maker of the document should be called the purpose of filing the document is to ensure the party who is so served may intimate objection so that the maker is called to avoid occasioning an adjournment. He thus prayed that the Respondent be allowed to tender the document in evidence.

3. The Claimant's Counsel contends by submitting that the principle of *audi alteram* is abridged by the said report and that its contents were contentious and the Claimant wishes to cross-examine the maker thereof.

4. Under the Rules of the Court and indeed under provisions in many of the other statutes dealing with proof of evidence in Civil Cases, there is an increasing dependence on bundles of evidence. In this Court, the practice dates to the time the Court was a Tribunal under the Trade Disputes Act repealed and replaced by the Industrial Court Act 2011 and subsequently renamed as the *Employment & Labour Relations Court Act*. The Rules of the Court in place when the Court was promulgated in 2012, was without doubt express in its provisions. The Evidence Act and its Rules of Evidence was not to strictly apply. See Rule 24(3) of the 2010 Repealed Rules. In 2016, the Chief Justice replaced the Rules that had served the Court during the transition from Tribunal to Court of equal status with the High Court per Article 162(2). Under the Employment and Labour Relations Court (Procedure) Rules 2016, Rule 25(3) makes provision that a Court may at any stage of a hearing require the attendance of a deponent or an author of a written statement for the purposes of examination of the facts deposed or written.

In exercise of my powers under the said Rules, I therefore order and direct that the Co-operative Auditor Mr. Z. G. Njeru who authored the report subject of the objection do appear before me on 1st October 2018 for purposes of testifying about the letter he is stated to have authored.

5. The Cross-Examination of the Respondent's first witness will thus be deferred till that witness has testified and produced the report. The Registrar of this Court or Deputy Registrar for that matter may issue summons as appropriate to carry out to effect the production of the Report by the said Mr. Z. G. Njeru.

It is so ordered.

Dated and delivered at Meru this 3rd day of July 2018

Nzioki wa Makau

JUDGE