

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 67 OF 2017

MAINA IRUNGU.....CLAIMANT

VERSUS

AAA GROWERS LIMITED.....RESPONDENT

RULING

1. The Notice of Motion application by the Claimant seeks the reopening of the Claimant's case closed on 11th April 2018 and a grant of leave to produce additional documents in the interests of justice. It is expressed to be brought under Rule 33 of the Employment & Labour Relations Court (Procedure) Rules 2016, Section 146 of the Evidence Act and Article 50(1) and 159(2)(d) of the Constitution of Kenya. The application was supported by the annexed affidavit of the Claimant. In the affidavit he filed he asserted that he had inadvertently forgotten to supply the documents to his counsel and only realized the same after he testified before court much to his bewilderment and dismay. He sought to introduce a letter giving the reasons for his termination and payroll and NSSF statements

2. The Respondent was opposed to the said motion and filed grounds of opposition as well as a replying affidavit. In the grounds, the Respondent asserted that the application lacks merit and would prejudice the Respondent as its witness had already testified and the Respondent had closed its case. The motion was stated to be scandalous, frivolous and vexatious. It was asserted that the motion was anathematic to the overriding objectives of the Civil Procedure Rules. In the affidavit in reply it was deposed that the alleged letter assigning reasons for dismissal was handwritten contrary to the requirements of the Respondent's code and that the same was authored by an employee who had left the employ of the Respondent who was not even authorized to issue termination notices.

3. The motion before me was argued on 26th September 2018. Mr. Thuku for the Claimant submitted that the application seeks to review the order of the court closing the Claimant's case and introduce additional very critical evidence that will enable proper adjudication of the claim before the court. Mr. Ochoki for the Respondent opposed the motion and submitted that the documents sought to be introduced were contrary to the averments of the Claimant generated on 22nd September 2016 yet the Claimant alleges these were supplied on 28th May 2015 when he was terminated. In reply Mr. Thuku submitted that the Claimant had discovered at the point of cross-examination that he had inadvertently forgotten to annex the documents. He argued that the Respondent would not suffer prejudice as there would be an opportunity to cross-examine the Claimant and also try to ascertain the veracity of the same.

4. The motion seeks to reopen the Claimant's case. It seeks the reopening to permit the Claimant the opportunity to present what he calls critical information in support of his claim which was inadvertently left out. The motion is opposed by the Respondent who calls it an abuse of the court process and highly prejudicial to the Respondent. The Claimant's position is that the Respondent will not be prejudiced as it will be able to cross-examine the Claimant on the documents and ascertain the veracity of the said documents. The motion before me was filed on 31st May 2018 yet the Claimant asserts that he realized after cross-examination and to his consternation and bewilderment that he had not availed certain critical evidence to his lawyer. If that was the case he would have filed the said motion shortly after the hearing on 11th April 2018. I find this quite telling. He had testified that he had not been given any reason for termination and his averments at paragraph 4 of his claim. This was reinforced by his statement annexed to the claim and the testimony he gave before me. The Claimant it seems has embarked on an effort calculated to engineer a successful outcome of a case he feels may have gone off the rails after the testimony on his side and that of the defence was given. The case was due for judgment today yet now there is a Ruling instead. Though the Claimant seems to suggest there was inadvertence in availing the evidence now sought to be introduced, his memorandum of claim and list of documents indicate otherwise. He listed the documents he was to rely on and none of the 'new' documents he alludes to now were in the list. He signed the verifying affidavit confirming the veracity of his averments. The motion is an abuse of the court process and is devoid of merit. It is dismissed with costs to the Respondent. A date for judgment will be given after this Ruling.

It is so ordered.

Dated and delivered at Nyeri this 8th day of October 2018

Nzioki wa Makau

JUDGE