

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 876 OF 2015

KENYA COUNTY GOVERNMENT WORKERS UNION.....CLAIMANT

VERSUS

NAIROBI CITY WATER & SEWARAGE CO LTD.....RESPONDENT

RULING

1. The matter from all accounts is one that involves termination for misconduct. Mr Katuli submits it can be disposed of by way of written submissions. He states it is quite straight forward. In his submissions he states the cause can be determined from the documents filled by either side. He adds that seventy percent of the document relied on by the Respondents are forgeries and urges the Court to scrutinise the documents and determine the cause.
2. Mr. Okuta for the Respondent is of a contrary view and submits the demeanour of the Claimant and Respondent's witnesses are critical in determining the cause. He states *viva voce* evidence would need to be called as the case relates to the dismissal of the employee for dishonesty and therefore evidence would need to be led. He submits that Article 50 of the Constitution guarantees a right to fair hearing and that disposing the cause by written submissions will not guarantee a right to fair trial.
3. In his reply, Mr. Katuli submits that the matter was subject of conciliation and the conciliation was one that the Respondent participated in.
4. It is amply clear to the Court that there is a dispute between parties. The Industrial Court (Procedure) Rules 2010 provide under Rule 23 for the disposal of a cause by way of documentation. In my view, the provisions of Article 50 of the Constitution are not abridged by the Rules of this court. The Rules are designed to facilitate the expeditious disposal of cases in terms of Article 159 of the Constitution and do not fetter the right to fair trial. That said however, does not mean each case is fit for disposal by documents in terms of Rule 23 of our Rules. Indeed some cases require *viva voce* evidence to be adduced. Fairly simple matters need not encumber the Court with lengthy hearings.
5. The case before Court relates to the dismissal of the grievant in February 2009. There are factual issues that will require scrutiny in trial and the veracity of testimony tested. Indeed, if the Respondent has forged documents, only a trial can determine this.
6. The upshot of the foregoing is that the application is devoid of merit and is dismissed with costs to the Respondent.

It is so ordered.

Dated and signed at Nairobi this 7th day of June 2016

NZIOKI WA MAKAU

JUDGE