



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**

**OF KENYA AT NAIROBI**

**CAUSE NO. 1503 OF 2013**

**ALIVIDZA AKATSA GEORGINA & 3 OTHERS.....CLAIMANT/APPLICANTS**

**VERSUS**

**IEBC.....RESPONDENT**

**RULING**

1. The 4<sup>th</sup> Claimant was in the throes of re-examination when counsel for the Claimants, Mr. Kang'atta, made an application seeking the introduction and production of a document which it was submitted was critical to the 4<sup>th</sup> Claimant's case. He submitted that the document attached at page 12 of the supplementary bundle of documents filed on 12<sup>th</sup> March 2015 referred to other documents and that it was necessary to attach these documents as evidence. He thus sought the court to grant the request. He submitted that the Respondent's witness was yet to testify and therefore would not to be prejudiced by the introduction of the evidence at this time. He stated that the inadvertence to attach the documents was purely the mistake of counsel and not the 4<sup>th</sup> Claimant.
2. Mr. Kariuki for the Respondent strenuously opposed the introduction of the evidence at this juncture as he had closed his cross-examination of the witness and would not be able to have an opportunity to cross-examine the witness again. He submitted that the Claimants had been beneficiaries of the Court's discretion in the past and had filed additional documents. He stated that if there was a document that they needed to file they got opportunity to do so whenever they applied. He abhorred the casual manner the application was made and submitted that the Respondent would be gravely prejudiced if the Claimant was allowed to introduce the fresh evidence. He stated that in cross-examination he had confined himself to the document that was produced by the Claimants and did not refer to any other document not before the Court.
3. Mr. Kang'atta in his brief reply stated that the incompleteness of the documents had become apparent during the course of proceedings. He submitted that had the issue arisen earlier the Claimant would have made an application to introduce the full document. He submitted that the Respondent would not suffer any prejudice and that the Respondent can re-examine the 4<sup>th</sup> Claimant if they so wish.
4. In matters of evidence, the Industrial Court (Procedure) Rules 2010 make provision that the strict rules of evidence shall not apply to this Court. That is the reason the Claimant has been able to file documents in the course of the proceedings. The request made as the 4<sup>th</sup> Claimant is under re-examination is however new. The documents that are sought to be introduced are referred to in a document that the Claimants had produced pursuant to leave granted by the Court in March 2015. It is clear that the Claimants have benefited from discretion of the Court and had the opportunity to present a proper bundle of documents. The document sought to be attached will prejudice the Respondent who has already rested after cross-examination of the 4<sup>th</sup> Claimant. It cannot be the import of the Rules of the Court to lead to absurdity. The opportunity to present fresh evidence ended once the parties presented their last bundles of documents. To introduce new evidence now would require that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Claimant being recalled to be examined afresh on the new

evidence. That in the Court's view would result in an unending case. The upshot of the foregoing is that I decline to exercise my discretion to allow the introduction into evidence the document that is stated to be an attachment to an exhibit before the Court.

Orders accordingly.

**Dated and delivered at Nairobi this 5<sup>th</sup> day of July 2016**

**Nzioki wa Makau**

**JUDGE**