



**Okemwa & 8 others v Judicial Service Commission (Cause
16 of 2014) [2015] KEELRC 690 (KLR) (31 July 2015) (Ruling)**

Nicholas Muturi Okemwa & 8 others v Judicial Service Commission [2015] eKLR

Neutral citation: [2015] KEELRC 690 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

CAUSE 16 OF 2014

L NDOLO, J

JULY 31, 2015

BETWEEN

NICHOLAS MUTURI OKEMWA 1ST CLAIMANT
ANNE NYOKABI NG'ANG'A 2ND CLAIMANT
CHRISPINE MBUGUA KABIRO 3RD CLAIMANT
BRIGID JEPKEMBOI KONGA 4TH CLAIMANT
LUCY NYAMBURA WAWERU 5TH CLAIMANT
ANNE WAMAITHA MURIGI 6TH CLAIMANT
MARY MUTHONI NJUNGE 7TH CLAIMANT
JOSLYNE KATHURE NDUBI 8TH CLAIMANT
LYNETTE WAMBUI MWANGI 9TH CLAIMANT

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

RULING

1. On 17th March 2015, the Claimants filed a notice seeking production of the following documents by the Respondent:
 - a) Signed minutes of the Judicial Service Commission meeting held on 5th and 6th December 2013;



- b) Signed report of the Audit Committee of the Judicial Service Commission on benefits, allowances and expenditure of the Claimants referred to under paragraph 26(a) and 26(b) of the Respondent's Amended Response to the Amended Statement of Claim;
- c) Original/counterpart appointment letter for Anne Nyokabi Ng'ang'a dated 19th December 2012;
- d) Original/counterpart appointment letters for the following:
 - i) Beatrice Kamau dated 28th January 2013
 - ii) Katra Sambili dated 20th January 2013
 - iii) Lilian Odundo dated 28th January 2013
 - iv) Martha Kavengi Mueni dated 27th December 2012
 - v) Zakeem Rajan dated 27th December 2012
 - vi) Duncan Okello
- e) Appointment letters (on temporary terms) for the following Claimants:
 - i) Chrispine Mbugua Kabiro
 - ii) Brigid Kemboi Konga
 - iii) Lucy Nyambura Waweru
 - iv) Anne Wamaitha Waweru
 - v) Mary Muthoni Njunga
 - vi) Joslyne Kathure Ndubi
 - vii) Lynette Wambui Mwangi
- f) A list of all appointment letters signed by Gladys Boss Shollei during her tenure;
- g) Memo/circular approving payment of extraneous duty allowance for staff in the office of Chief Registrar, the Chief Justice and the Deputy Chief Justice;
- h) Appointment letters to the various procurement committees for the year 2012 and 2013 in respect of the 3rd to 9th Claimants;
- i) Attendance of all procurement committees convened in the year 2012 and 2013;
- j) Judicial Service Commission resolution on increment of salaries for judiciary staff and magistrates passed in January 2013 or thereabout;
- k) Memo dated 13/08/2012 ref. no. Est, list of panelists and secretariat members and authority to process in respect of interviews of candidates for the position of Storekeeper I and II;
- l) Imprest register for the following Claimants:
 - i) Nicholas Muturi Okemwa
 - ii) Anne Nyokabi Nga'ng'a
 - iii) Chrispine Mbugua Kabiro



- iv) Brigid Jepkemboi Konga
- v) Anne Wamaitha Murigi
- vi) Lynette Wambui Mwangi

2. In response to the Claimants' notice, the Respondent filed the following documents on 8th June and 17th June 2015:

- a) A copy of the 2nd Claimant's letter of appointment dated 19th December 2012;
- b) A copy of the 8th Claimant's offer of appointment dated 12th September 2011;
- c) A copy of the 3rd Claimant's offer of appointment dated 21st December 2011;
- d) A copy of the 9th Claimant's offer of appointment dated 17th February 2012;
- e) A copy of the 4th Claimant's offer of appointment dated 28th February 2012;
- f) A copy of the 7th Claimant's offer of appointment dated 17th May 2012;
- g) A copy of the 6th Claimant's offer of appointment dated 30th July 2012;
- h) A copy of the schedule of the gross monthly remuneration package for different cadres approved by the Judicial Service Commission. The Respondent states that there is no circular or memo as requested by the Claimants.
- i) A copy of an extract from the minutes of the JSC meeting held on 8th February, 2013;
- j) A copy of the Judiciary Scheme of Service for Human Resource Management;
- k) A copy of comparative data for the daily subsistence allowance (local travel);
- l) A copy of schedule of extraneous duty allowance and domestic staff allowance;
- m) A copy of letter dated 10th June 2013 from the Salaries and Remuneration Commission;
- n) A copy of memo dated 23rd January 2014;
- o) A copy of memo dated 7th December 2011;
- p) A copy of the extract of the signed minutes of the meeting held on 5th and 6th December 2013;
- q) A copy of memo dated 13th May 2014;
- r) A copy of memo dated 11th June 2014;
- s) A copy of memo dated 14th October 2014;
- t) A copy of the extract of the signed minutes of the meeting held on 9th May 2014.

3. The Respondent objects to production of the following documents:

- a) Signed report of the Audit Committee of the Judicial Service Commission on benefits, allowances and expenditure of the Claimants referred to under paragraph 26(a) and 26(b) of the Respondent's Amended Response to the Amended Statement of Claim;
- b) Original/counterpart appointment letters of named employees on the ground that these are confidential documents and no basis has been laid for their production;



- c) A list of all appointment letters signed by Gladys Boss Shollei during her tenure on the ground that the former Chief Registrar did not sign any other appointment letters;
 - d) Appointment letters to the various procurement committees for the year 2012 and 2013 in respect of the 3rd to 9th Claimants and attendance sheets of all procurement committees convened in the said period on the ground that the Respondent is not aware of the appointment of the Claimants to any procurement committees and does not have such a record. The Respondent states that this request is vague;
 - e) Memo dated 13/08/2012 ref. no. Est 60, list of panelists and secretariat members and authority to process in respect of interviews of candidates for the position of Storekeeper I and II on the ground that the Claimants have not laid a basis for the production of this document, it was not referred to by any witnesses and it has no basis in the pleadings. The Respondent states that the Claimants are on a fishing expedition;
 - f) Imprest register reports of the 1st, 2nd, 3rd, 4th, 6th and 9th Claimants on the ground that the Claimants have not laid a basis for its production. The Respondent states that the Claimants are on a fishing expedition.
4. In their response filed on 17th June 2015, the Claimants state as follows:
- a) The Respondent has not offered any explanation for non production of the documents requested under paragraphs 1 and 2 and should therefore be compelled to produce them;
 - b) The reason given for non production of documents under paragraph 4 is not acceptable as the documents will be used solely for court purposes and there is therefore no risk of breach of confidentiality. The Claimants state that they intend to use the documents to show that the former Chief Registrar of the Judiciary (CRJ) signed other appointment letters and not just the Claimants'.
 - c) This is necessitated by the Respondent's assertions under paragraph 10A of its amended Statement of Response that the Claimants' letters of appointment were irregularly signed by the former CRJ;
 - d) The Claimants testified that they attended procurement committees for which they were paid extra duty allowance. They testified that their attendances were minuted by the secretary of the committees and that the records are in the Respondent's possession;
 - e) In the Respondent's counterclaim against the 2nd Claimant, it has claimed that between 27th and 30th August 20102, the 2nd Claimant was paid honorarium of Kshs. 60,000 for being a member of an interviewing panel which the Respondent claims back because the 2nd Claimant was supposed to be visiting courts in Nyanza Region. The 2nd Claimant intends to rely on the document requested under paragraph 11 in her defence against this part of the counterclaim;
 - f) The Claimants intend to use the imprest register requested under paragraph 12 to rebut the Respondent's assertions that the Claimants irregularly obtained imprests which they should refund.
5. The law allows a party to a suit to seek production of documents in the possession of the opposing party if the documents sought are specific and important for the advancement of the case of the party seeking production (see Nyamu J in *Oluoch v Charagu* (2003) 2 EA, 649).



6. In *Timothy Njoya v Attorney General and another* [2014]eKLR, Lenaola J held that an applicant seeking production of documents under Article 35(1) of the Constitution must state clearly the information required, the right they wish to advance and how the information sought would assist in the advancement of that right.
7. A large number of the documents sought by the Claimants were produced by the Respondent in its responses filed on 8th June and 17th June 2015. What remains in contention are the documents contained in the Claimant's response filed on 17th June 2015.
8. I have looked at this list of documents and have formed the opinion that all of them are related to either the Respondent's defence or its counterclaim against the Claimants.
9. As held by Azangalala J (as he then was) in *National Social Security Fund Trustees v Dr. Sally Kosgei & Another* [2005] eKLR an order for production of documents does not aim at allowing the party seeking production to obtain proof of the other party's pleadings at the discovery and inspection stage.
10. In litigation, each party bears the burden of proving its case and a party who fails to produce documents that would aid that case, only works against itself. In my view, by seeking production of the documents in contention, the Claimants are asking the Court to order the Respondent to prove its defence and counterclaim at the discovery and inspection stage which is an irregular way of conducting litigation.
11. It follows therefore that because it is not the responsibility of the Claimants to prove the Respondent's defence and counterclaim, no basis has been laid for production of the documents in issue. The production notice is therefore overruled with costs in the cause.
12. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 31ST DAY OF JULY 2015

LINNET NDOLO

JUDGE

Appearance:

Mr. Muumbi for the Claimants

Mr. Issa for the Respondent

