



**REPUBLIC OF KENYA**  
**INDUSTRIAL COURT OF KENYA AT NAIROBI**

**CAUSE NO. 2036 OF 2012**

*(Before D.K.N. Marete)*

**PHILIP MUUO KITIVI .....CLAIMANT/RESPONDENT**

Versus

**H. YOUNG & CO. EA LTD .....RESPONDENT**

**RULING**

This is an application by way of Notice of motion dated the 26th August, 2013 in which the applicant seeks the following orders of court;

1. **THAT** leave be granted to the Respondent to introduce the Claimant's hand written note authored on 19<sup>th</sup> June 2012 as part of the Respondent's documents in evidence.
2. **THAT** the said hand written note annexed hereto and filed herewith be deemed as having been filed and served on payment of the requisite court fees.
3. **THAT** the cost of this application be in the cause.

It is grounded on the following;

1. **THAT** the delay in filing the document sought to be introduced in evidence was inadvertent.
2. **THAT** none of the parties herein will be prejudiced in any way whatsoever by leave being granted.
3. **THAT** the introduction of the document made by the Claimant's own hand will only serve to bring to the attention of the court, the real issues in dispute between the parties.

The application is supported by the affidavit of Charity Purity Nyakio sworn on 26th August, 2013.

The respondent opposes the application by way of Grounds of Opposition dated the 9th September, 2013 and a Replying Affidavit sworn by the applicant dated 7th September, 2013. The grounds of objection are as follows;

1. *The said application is an afterthought, bad in law and an abuse of this Honourable Court's process.*

2. *The Respondent has not given any sufficient reason to justify the application and why the orders sought are deserved.*
3. *The application is frivolous and without any tangible basis.*
4. *The delay occasioned in filing his application is evidently inordinate and therefore the application should not be allowed.*
5. *The application if allowed will frustrate the ends of justice.*
6. *That in view of the foregoing, the orders sought by the Respondent should not be granted.*

The issue for determination therefore is whether this application should be allowed or otherwise and if so, whether this would be prejudicial to the interests of justice and prejudice the interests of the claimant as a party.

The applicant seeks leave to introduce the claimant's hand written note to the pleadings and argues that the issue arose at the time of examination of her witness the same document having been misplaced and not found at the time of filing a defence and list of documents on 12th November, 2012. The document had been misallocated and misfiled on a different file belonging to Bono Dofandai.

The applicant prays that this court finds that the delay in location and filing of this note is not inordinate and also that the same shall not prejudice to the other party if this is allowed.

The respondent is of the opposite view. He argues and submits that the application is an afterthought, bad in law and is an abuse of the process of court. He also submits that no sufficient reason(s) has been offered to warrant the application and that this is frivolous and without any tangible basis and if allowed would frustrate the ends of justice. In the replying affidavit sworn by the claimant, the authenticity of the said document is denied thus arising issues as to its efficacy and validity.

I shall hold in favour of the introduction of the document to be record of court. This is because, like is argued and submitted by the applicant, this shall go far in shedding light on the subject and bringing out the real issues in dispute between the parties. In an open and transparent thrashing of the issues in dispute, it would not in any way prejudice any of the other parties to the suit and shall go a long way in bringing out the ends of justice.

Secondly, the respondent disputes the authenticity, authority and contents of the personal letter sought to be introduced. Its admission gives him and the other party an opportunity to tender evidence for and against the document which the court shall thereon evaluate and determine in the interests of justice to the parties. I therefore allow the application and grant orders in terms of prayers 1 – 3 of the application as follows;

1. **THAT** leave be and is hereby granted to the Respondent to introduce the Claimant's hand written note authored on 19th June 2012 as part of the Respondent's documents in evidence.
2. **THAT** the said hand written document annexed hereto and filed herewith be deemed as having been filed and served on payment of the requisite court fees.
3. **THAT** the cost of this application be on cause.

Dated, delivered and signed this 20th of December, 2013.

**D.K. Njagi Marete**

**JUDGE**

Appearances:

1. Miss Muriu instructed by Wanjiku Muriu & Company Advocates for the Applicant/Respondent.
2. Mr. Mbucho instructed by Mbaluka & Company Advocates for the Respondent/Claimant.