



**Kenya County Government Workers Union v County Government of Vihiga & 4 others  
(Cause E040 of 2024) [2025] KEELRC 2606 (KLR) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2606 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA  
CAUSE E040 OF 2024  
DN NDERITU, J  
SEPTEMBER 26, 2025**

**BETWEEN**

**KENYA COUNTY GOVERNMENT WORKERS UNION ..... CLAIMANT**

**AND**

**COUNTY GOVERNMENT OF VIHIGA ..... 1<sup>ST</sup> RESPONDENT**

**CHIEF OFFICER FINANCE COUNTY GOVERNMENT OF  
VIHIGA ..... 2<sup>ND</sup> RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE COUNTY  
GOVERNMENT OF VIHIGA ..... 3<sup>RD</sup> RESPONDENT**

**COUNTY SECRETARY COUNTY GOVERNMENT OF VIHIGA .... 4<sup>TH</sup>  
RESPONDENT**

**GOVERNOR COUNTY GOVERNMENT OF VIHIGA ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

**I. Introduction**

1. The claimant, a trade union representing workers engaged by county governments across the Republic commenced this cause through James Oketch & Company Advocates by way of a memorandum of claim dated 20th December 2024. The issue in dispute is stated as “The unlawful failure, neglect and/or refusal by the County Government of Vihiga to remit union dues to the Kenya County Government Workers Union”.
2. The claimant is seeking for the following orders/reliefs –



- a. A declaration do issue that the rights of the claimant's members under Article 41 of *the Constitution* of Kenya, 2010 as read with Section 48 and 50 of the *Labour Relations Act* No.14 of 2007 and section 19 of the *Employment Act*, 2007 have been violated by the Respondents.
  - b. An order do issue compelling the respondents to furnish the claimant with a certified statement of accounts together with the full schedule of the paying members in relation to the claimant's deducted and remitted union dues from 2013 to date.
  - c. An order do issue restraining the respondents from withholding any union dues payable to the claimant forthwith.
  - d. An order do issue compelling the respondents to remit and/or pay from their own funds all union dues to the claimant and for the years between 2013 and 2021 in the sum of Kenya Shillings Four Million Six Hundred and Sixty-Two Thousand Nine Hundred and Fifty-Two (Kshs. 4,662,952/=) together with all outstanding union dues, to the specified bank account as scheduled in the Gazette Notice No. 10698 of 2013.
  - e. An award of general damages against the respondents for the violation of and or breach of the claimant's members' Constitutional rights.
  - f. Fines to issue against the respondents pursuant to Section 82 of the *Labour Relations Act* No. 14 of 2007.
  - g. Costs of the suit and interest on the sums awarded at court rates from the date of default be awarded to the claimant.
  - h. Any other relief that the court may deem fit to grant.
3. Upon service, Mr. Godia, Advocate, appeared in court for all the respondents on 15th January 2025 and pleaded for time to respond to the claim. The respondents were granted 14 days to file a response to the claim. When the matter came up in court for mention on 6th February 2025 to confirm filing of the response to the claim and for directions on the hearing, there was no appearance from the respondents and no response had been filed. The matter was fixed for virtual hearing on 4th March 2025.
  4. On 4th March 2025 when the matter came up for virtual hearing in court Mr. Godia for the respondents again made an application for more time for the respondents to file a response to the claim. The court overruled that application and ordered the matter to proceed to hearing as scheduled. Mr. John Ndunda (CW1) took the stand for the claimant and testified in-chief, was cross-examined, and re-examined. He also produced for the claimant all the filed documents as exhibits except for the collective bargaining agreement (CBA) that was to be admitted upon counsel for the respondents comparing the photocopy filed with the original copy in custody of the claimant's counsel.
  5. The claimant's case was thus closed pending the confirmation of the authenticity of the CBA as stated above which confirmation was to be communicated to the court on 18th March 2025 and thereafter the court was to give directions on defence hearing. However, as noted above the respondents did not file a response to the claim and the court was going to mark the matter as closed for hearing and issue directions on submissions.
  6. However, when the matter came up in court on 18th March 2025 Miss Somba holding brief for Mr. Oketch for the claimant informed the court that the claimant had filed an application dated 14th March 2025. In the said notice of motion, the claimant is seeking for the following orders –
    1. Spent



2. That this honourable court do grant leave to the claimant to file the supplementary list of documents.
3. That this honourable court do grant leave to deem that the draft supplementary list of documents dated 14<sup>th</sup> March, 2025 and annexed “RSD-1” is properly filed.
4. That costs of this application be provided for.
7. The application is expressed to be brought under Order 2, Rule 13 and Order 51 of the Civil Procedure Rules, 2010, Rule 14 (10) of the Employment and Labour Relations Court Rules, Section 3 & 3A of the Civil Procedure Act Chapter 21 of the Laws of Kenya, Article 159 of the Constitution of Kenya, 2010 and all enabling provisions of the law.
8. The application is founded on the grounds stated on the face of it and supported with the affidavit of Mr. Roba S. Duba sworn on even date with several annexures thereto.
9. In response to the application, the respondents through their counsel filed grounds of opposition dated 19th March 2025.
10. By consent, the court on 20th March 2025 directed that the application be canvassed by way of written submissions. Counsel for the claimant filed submissions dated 24th March 2025 while counsel for the respondents filed submissions dated 25th March 2025.

## II. The Evidence

11. In the supporting affidavit, it is deposed that if the claimant is allowed to file the supplementary list of documents and the copies attached the respondent will suffer no prejudice. It is further deposed that the said documents shall aid the court in arriving at a fair and just determination of the issues in dispute.
12. As stated above, the respondents did not file a replying affidavit but filed grounds of opposition as follows –
  1. It would be prejudicial and manifestly unjust to the respondent for the claimant to be allowed to introduce into evidence the supplementary list of documents at this stage of trial as it is an afterthought after the claimant’s cross examination on 4<sup>th</sup> March, 2025. The claimant is attempting to cure their case done by introducing the said documents after testimony.
  2. It would be a violation of Article 50 (1) of the Constitution of Kenya, 2010 on the right to fair hearing on the part of the respondents. On 4<sup>th</sup> March, 2025 when the claimant testified and tendered his evidence, what the respondents’ advocate had in mind to aid his clients in the case, was that all the documents that the claimant would be relying on were already on record. The documents sought to be introduced was not in his contemplation. Therefore, the claimant’s application dated 14<sup>th</sup> March, 2025 should not be allowed because in essence, the trial will end up being unfair to the respondents.
  3. The claimant is ably represented by counsel and had the opportunity to file the documents in the draft supplementary list of documents dated 14<sup>th</sup> March, 2025 at the point required by law but discovered they did not file the said documents after the respondent’s counsel cross-examined their witness about the said documents on 4<sup>th</sup> March, 2025. This clearly of mere inaction, an afterthought and sharp practice.
  4. In the present claimant’s application dated 14<sup>th</sup> March, 2025 there is no credible, satisfactory, sufficient and/or compelling explanation, reason or grounds provided by the claimant for



failure to file the said documents at the required time allowed by law specifically rule 7(3) of the Employment and Labour Relations Court (Procedure) Rules, 2024 and therefore allowing the claimant's application dated 14<sup>th</sup> March, 2025 shall amount to an abuse of court process.

5. The orders sought in the claimant's application offends the provisions of Rule 38 of the Employment and Labour Relations Court (Procedure) Rules, 2024 which was gazetted vide Legal Notice 133 of 2024 and commenced on 16<sup>th</sup> August 2024 to wit- Additional documents  
Where a party, intends to rely on a document that has not been filed as at the time of filing pleadings, the party shall make sufficient copies of each document for the court file and serve the other party with a copy at least fourteen days before the case is set down for hearing or such shorter, period as the court may, order: Provided that after the close of pleadings, the court may allow the filing of a supplementary bundle of documents.
6. The honourable court lacks jurisdiction to entertain the present application as brought as the said application dated 14<sup>th</sup> March, 2015 is brought under the provisions of the Civil Procedure Rules, 2010 whereas the Employment and Labour Relations Court (Procedure) Rules, 2024 sufficiently provides rules that aid in the making of such orders and application. The Court of Appeal sufficiently addressed this issue in the case of TNT Express Worldwide (Kenya) Limited v Timothy Graeme Steel [2022] KECA 881 (KLR), that only where it is established that the ELRC rules and regulations have come up short of provisions that would aid in the making of such orders is when the court would rely on available Civil Procedure provisions to address the extant gaps. In our case there are no gaps as the Employment and Labour Relations Court (Procedure) Rules, 2024 clearly provides for provisions of the instant application particularly rule 44, 45, 47, 48 and 49.
7. The Court of Appeal case relied upon by the claimant at ground 7 of the Notice of Motion application dated 14<sup>th</sup> March, 2025 which is ABN Amro Bank N. V. v Kenya Pipeline Company Limited [2019] KECA 499 (KLR) neither does it relate to facts in the present case nor refer to production of documents after close of pleadings and after close of hearing. The respondent in that case filed a notice of motion dated 2<sup>nd</sup> April 2014 in which it sought production of various documents referred to by the appellant at paragraphs 42 – 44 of the appellant's amended plaint. That application was brought under power to order discovery and access to information specifically section under Sections 22(a) and 63 of the Civil Procedure Act and Article 35(1) (b) of the Constitution. Any attempt to convince the court otherwise is misleading.
8. On 4<sup>th</sup> March, 2025 after the claimant testifying, the court categorically stated that essentially the claimant's case was closed and what remained was just a verification by the respondents' counsel on the veracity of mfi-4 which was the Collective Bargaining Agreement. The application in effect seeks to reopen the claimant's case in gross violation of the rules governing case management and trial before this honourable court. The assertions by the claimant that its case was not closed is a misrepresentation of facts.
9. The documents sought to be filed are in admissible as they are introduced without further statement to explain their relevance and an application for the claimant witness to be recalled to testify for purposes of production.
10. On 4<sup>th</sup> March, 2025 the respondent sought for an adjournment but it was the claimant who vehemently opposed that application in the spirit of overriding objectives and expeditious



disposal of the suit and was very ready to give their testimony and evidence. It is a surprise that they are now asking the court to go back. This will be extremely unfair to the respondents.

11. The application amount to gross abuse of the process of the honourable court.

### III. Submissions by Counsel

13. Counsel for the claimant identified the following issues for determination –
  - i. Whether the claimant should be given leave to file their supplementary list of documents?
  - ii. Whether the respondents will be prejudiced by the introduction of the supplementary list of documents?
14. On the first issue counsel submitted that the application ought to be allowed as filed for the court to arrive at a fair and just conclusion of the issues in dispute. It is submitted that the court should be guided by the letter and spirit of Article 159(2)(d) of *the Constitution* that “justice shall be administered without undue regard to procedural technicalities”.
15. It is submitted that the claimant had not closed its case as at the point when the application was filed. Further, it is submitted that the respondents did not file a defence to the claim and as such they shall suffer no prejudice if the application is allowed.
16. It is further submitted that Rule 14(10) of the Employment and Labour Relations Court (Procedure) Rules (sic!) empowers this court to grant the orders sought by the claimant. In support of this argument counsel cited *Waithera V Haltons Pharmacy Limited (2023) KEELRC 832 (KLR)* amongst other decisions.
17. The court is urged to allow the application based on the right to fair hearing as enshrined in Article 50(1) of *the Constitution*.
18. On the second issue it is submitted that the burden of proof in the main cause lies with the claimant as per the provisions of Section 107 of the *Evidence Act*. It is submitted that the respondents have not commenced the hearing of their defence and as such they have an opportunity to fully respond to all the allegations made and evidence adduced by the claimant. It is further submitted that the claimant is not seeking to alter the fundamentals of its case but rather asking that the supplementary documents be admitted on record as evidence so as to enable the court arrive at a fair and just conclusion of the matter.
19. Counsel for the respondents submitted on three issues –
  - a. Whether the court has jurisdiction to entertain proceedings brought under the *Civil Procedure Act* Cap 21 whereas the Employment and Labour Relations Court (Procedure) Rules, 2024 sufficiently provides for the same;
  - b. Whether the claimant’s application dated 14<sup>th</sup> March, 2025 is merited; and
  - c. Who should bear the costs of the application?
20. On the first issue it is submitted that the provisions cited and relied upon by the claimant in filing this application do not apply in this court. It is emphasized that in matters procedure the Civil Procedure Rules do not apply in this court. It is further submitted that the Employment and Labour Relations Court (Procedure) Rules provide for the procedural aspects in proceedings filed in this court. It is further submitted that the Rule 14(10) of the Procedure Rules of this court cited by the claimant does not exist in the Rules of this court.



21. It is further submitted that the Procedure Rules of this court specifically provide for instances whereby the Civil Procedure Rules apply in the procedural process in this court as in Rules 44, 45, 47, 48, & 49.
22. It is submitted that the citing of the wrong provisions of the law by the claimant is not a mere technicality but goes to the core of the substance of the application and the same should be denied on that account alone.
23. On the second issue it is submitted that the claimant's case was heard and closed on 4th March 2025 and if allowed to introduce new evidence at this point the court shall be aiding the claimant to fill-in any gaps left out during the hearing, especially after CW1 was cross-examined in matters of membership to the union of the alleged employees and on the identity of the local branch officials. It is submitted that the intended new documentary evidence is clearly an afterthought intended to defeat justice and shall heavily prejudice the respondents. It is submitted that by allowing the application the court shall violate the right to fair hearing for the respondents under Article 50(1) of *the Constitution*.
24. It is submitted that the application has been filed too late in the day, long after the pleadings closed and after the claimant's case has been heard and closed. It is submitted that the application offends Rule 38 of the Employment and Labour Relations Court (Procedure) Rules. It is submitted that the above procedural rule provides for filing of additional or supplementary documents after close of pleadings but not after the hearing has commenced. It is submitted that such an application should be filed within reasonable time and not after a comparatively inordinate delay.
25. The court is urged to dismiss the application with costs.

#### **IV. Issues for Determination**

26. In the considered view of the court there is only one main issue for determination in this application – Should the court allow the application as prayed and hence admit the supplementary list and copies of documents by the claimant into the record of the court? And, who should meet the costs of this application?
27. The circumstances that led to the respondents not filing a defence or response to the claim have been explained in the introductory part of this ruling. The respondents failed to comply with the timelines set by the court and as such the claimant, who all along insisted on its readiness to proceed with the hearing, was thus allowed to proceed with the hearing on 4th March 2025.
28. The court record is very clear that after CW1 testified in-chief, cross-examined, and re-examined, Mr. Oketch informed the court that the claimant had closed its case at that point. However, due to the fact that the respondents' counsel had sought for time to confirm the authenticity of the copy of the CBA availed in court by the claimant, the court set the matter for "further hearing on 18th March 2025".
29. The above direction by the court neither stated nor indicated that the matter was to come for further hearing of the claimant's case on 18th March 2025 as the claimant had already closed its case. The matter was actually to come up for the respondents' counsel to confirm having compared the copy of the CBA filed in court with the original and for any arguments thereon by counsel for the parties on the admission or otherwise of the said document.
30. Otherwise, for all intents and purposes, the matter was coming up for defence hearing on 18th March 2025. However, since the respondents did not file a defence or response to the claim the court was to order closure of the hearing of the cause and issue directions on the filing of written submissions and disposal of the matter.



31. It is therefore wrong and misleading for the claimant's counsel to advance that the claimant had not closed its case as of 14th March 2025 when the application was filed.
32. Article 50 of *the Constitution* binds this court to give a fair hearing to all and sundry that appear before it. Further, Article 159 of *the Constitution* warns this court against having undue regard to technicalities. The court takes these two cardinal provisions of the supreme law with due reverence and caution.
33. It is the view and holding of this court that unless where specifically stated so in the rules, the *Civil Procedure Act* and the Civil Procedure Rules do not apply to this court. This is so because the Employment and Labour Relations Court (Procedure) Rules (ELRC Rules) are elaborate and adequate on procedural process of the court. Where the ELRC Rules intended that the Civil Procedure Rules apply they specifically provide as such. For example, Rule 63(8) of the ELRC Rules provides that the provisions on affidavits in the Civil Procedure Rules shall apply in the court. Further, Rule 73 of the ELRC Rules provides that execution of decrees and warrants and stay thereof shall be as provided for in the Civil Procedure Rules. Rule 10(2) of the ELRC Rules provides that Judicial Review proceedings in this court shall be governed by Order 53 of the Civil Procedure Rules.
34. Clearly and evidently, the provisions of the law cited by the claimant as forming the basis of the application are inapplicable in this court. However, the claimant cited Article 159 of *the Constitution* and "all other enabling provisions of the law". In the circumstances, the citing of the wrong provisions of the law does not render the application fatally defective in view of the other provisions of the law relied upon.
35. Justice is about fairness and cuts both ways. On 4th March 2025 the claimant's counsel was categorical that the claimant was ready to proceed with the hearing and vehemently opposed any and all attempts by the respondents seeking for more time to file a response or defence to the claim. And as if to confirm that readiness to proceed with the hearing, the claimant presented its case through CW1. At the close of CW1's testimony counsel for the claimant was categorical that the claimant had closed its case and the court marked the same as such except for the issue of admission of the CBA that was subject to verification by counsel for the respondent. The correct position on this issue has been elaborated elsewhere in this ruling.
36. So, as a matter of fact, the claimant is seeking to file a supplementary list and copies of documents after formally closing its case. And in the application the claimant is not seeking recalling CW1 to produce the said documents or for further testimony.
37. More fundamentally, the claimant has not offered any reason(s) whatsoever as to why the said documents were not filed with the others filed alongside the memorandum of claim. It is not explained why the said documents were not filed before the pleadings closed or immediately thereafter, with the leave of the court. It is not claimed or alleged that the said documents were not available or accessible then upon exercise of due diligence.
38. Clearly, this belated attempt by the claimant to sneak in the supplementary list of documents and copies thereof is an attempt to steal a match against the respondents. It is an inadvertently delayed afterthought that shall highly prejudice the respondents.
39. The claimant was all along vehemently opposed to any attempt by the respondents to be allowed to file a response or defence to the claim out of time as the claimant argued that that was to cause delay in the hearing and disposal of the cause. Now, after closing its case, the same claimant seeks to sneak-in new documentary evidence and completely keep away the respondents from fair hearing in that regard.



40. Justice and fairness as expressed in fair hearing apply to all parties and what the claimant is seeking to do is to get a favoured and or preferential treatment at the expense of the opponent. Such a move offends the very principles of fair hearing that the claimant is so vehemently arguing in favour of. This court must resist such an invitation that obviates the very essence of justice and fairness.
41. The court has said enough in demonstrating that the application by the claimant has no merits at all. Firstly, no reason has been offered as to why the intended supplementary documents were not filed alongside the others already filed at the commencement of the cause. Secondly, the claimant already closed its case and re-opening the same shall highly prejudice the respondents. Thirdly, it is too late in the day, nay proceedings, for the court to allow the application. It is in the interest of justice and for all the parties that the hearing of this matter is concluded at the earliest opportunity and the claimant has vehemently expressed that desire in the past as stated above. Fourthly, if the court was to allow the application, the necessary implication is that the respondents be allowed to defend the claim and file their documents in response to those filed by the claimant at this late stage of the proceedings. This shall take the court back to where it all started yet the court already ordered the matter to proceed, and indeed the same proceeded, without the response to the claim or defence from the respondents. Such orders shall negate the very essence of fair, just, and expeditious hearing and disposal of cases as enshrined in Article 159 of *the Constitution* and Section 3 of the *Employment and Labour Relations Court Act*.

#### V. Orders

42. The court makes the following orders –
- a. The notice of motion dated 14th December 2025 by the claimant is hereby dismissed.
  - b. Costs to the respondents in any event.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

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**DAVID NDERITU**

**JUDGE**

**ELRC KAKAMEGA**

