



**Musau v Pinnacle Projects Limited (Cause 1323 of 2018)
[2025] KEELRC 2463 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2463 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1323 OF 2018
AK NZEI, J
SEPTEMBER 19, 2025**

BETWEEN

EPHRAIM KAKUI MUSAU CLAIMANT

AND

PINNACLE PROJECTS LIMITED RESPONDENT

RULING

1. The application before me for determination is the Claimant's Notice of Motion dated 3rd March, 2025, expressed to be brought under Sections 7 and 9 of the *Employment and Labour Relations Court Act*, Sections 10, 60(1)(a) & (k) of the *Evidence Act* and Sections 1A(3) & 1B of the *Civil Procedure Act*, among other stated provisions of the law. The Claimant/Applicant seeks the following Orders:-
 - a. That the application be certified as urgent and as a conservatory measure, prayer (a) be granted on interim ex-parte basis.
 - b. That the Respondent's Supplementary List of Documents dated 30th October, 2023 and witness statement dated 30th October, 2023 be completely struck from the record pending hearing and determination of the present application.
 - c. That the Respondent's Advocates face the full arm of the law as laid out under Sections 7 & 9 of the *Employment and Labour Relations Court Act* Cap 234B 2014.
 - d. That the Respondent's Advocates bear all costs of the present application.
 - e. Any other or further appropriate order.
2. The application sets out on its face the general grounds on which it is founded, and is anchored on the annexed supporting affidavit of Caroline W. Onyutta Advocate sworn on 3rd March, 2025. It is deponed in the said supporting affidavit:-



- a. that the Respondent has deceitfully and fraudulently filed a supplementary list of documents, supplementary list of witnesses and a witness statement of Mr. Geoffrey Kariuki dated 30th October, 2023 which did not form part of the documents already filed by the Respondent; but were only filed on 27th December, 2024 along with the index to the Respondent's pleadings and documents.
 - b. that the Respondent has intentionally resolved and is determined to mislead, defraud, misguide and to cheat the Court by sneaking in additional documents not before the Court; and to do so after closure of pleadings.
 - c. that the suit herein was physically filed on 23rd August, 2018 (before the advent of e-filing) and that on 26th September, 2018, the Respondent filed a witness statement of David Kuria and a list of documents dated 26th September, 2018.
 - d. that after several listings of the case, the Respondent formally sought the Court's leave to amend its Response to the claim, which leave the Court granted vide its Ruling delivered on 14th March, 2024. That the Claimant was allowed by the Court to file Reply to the Respondent's Amended Response; and that pleadings there upon closed and the suit was set down for hearing on 21st November, 2024.
 - e. that hearing did not proceed on the said date as the Claimant was unavailable, and the suit was fixed for hearing on 6th March, 2025.
 - f. that it has come as a surprise for the Claimant/Applicant to find a supplementary list of documents dated 30th October, 2023, a supplementary list of witnesses and a witness statement of Mr. Geoffrey Kariuki Peter dated 30th October, 2023; all of which did not form part of the Respondent's initial and further documents.
 - g. that the Respondent and its Advocates should not only suffer the fate of having its said documents struck off, but should suffer full consequences of Sections 7 and 9 of the *Employment and Labour Relations Court Act*, and should be found liable to pay a fine of Kshs.1,000,000/= as well as serve a jail term.
3. The application is opposed by the Respondent vide a replying affidavit of David Kuria, a director of the Respondent, sworn on 13th March, 2025. It is deponed in the said affidavit, inter-alia:-
- a. that the application is unnecessary, ill-advised and raises frivolous and vexatious claims as any concerns on lack of service could have been cordially raised before Court and fully addressed before hearing of the main suit.
 - b. that after the suit was brought, parties attempted to have the matter amicably settled out of Court, culminating in payment of Kshs.420,190/= out of a total claim of Kshs.786,555.16, which payment was formally acknowledged by the Claimant's firm. That parties were, however, unable to agree on the issue of leave days and payment thereon.
 - c. that after it was clear that the suit could no longer be compromised due to the outstanding issue, the Respondent applied to amend its Response to claim in order to cover the crucial averment that the claim in respect to any untaken leave was, inter-alia, time-barred by virtue of Sections 28(4) and 90 of the *Employment Act* 2007; and that the matter of the amendment was allowed by the Court (Dr. Jacob Gakeri, J) vide a Ruling delivered on 14th March, 2024.



- d. that following the filing of an Amended Response, it became essential for an additional set of documents to be filed; including a supplementary list of documents and a witness statement by the Respondent's Head of Administration and Human Resource (Geofrey Kariuki Peter); whose statement mirrors what was stated in the statement of David Kuria dated 26th September, 2018.
 - e. that the supplementary list of documents has only 2 documents, being leave application forms and staff leave days schedule, which documents were inadvertently left out when the Respondent's bundle of documents was filed on 26th September, 2018.
 - f. that the witness statement of Geofrey Kariuki Peter dated 30th October, 2023 was filed on 7th November, 2023 while the supplementary list of witnesses and list of documents were filed on 20th December, 2024. That the said documents were filed on the Court Tracking System (CTS) and the dates of filing can be verified thereon.
 - g. that the said documents were, therefore, not sneaked in through deceit as strongly suggested by Counsel for the Respondent, as the same were openly filed in the system months before the hearing date. That Counsel for the Respondent/Applicant intended to verbally urge the Court on the hearing date to deem the said documents as properly filed.
 - h. that the said documents were filed in support of both the Amended Response and what is already on record.
 - i. that any prejudice that the Claimant may suffer as a result of the said documents being deemed to be properly on record may be cured by a grant of an opportunity to the Claimant to file additional responses.
 - j. that it is irregular and unprocedural for the application to be brought and sworn by the Claimant's Counsel as matters deponed to are matters within the direct and special knowledge of the Claimant himself, being the person supposedly aggrieved by the documents allegedly filed without leave.
4. The Claimant/Applicant filed a further affidavit sworn by Caroline Onyutta Advocate on 27th March, 2025. I have noted the matters deponed to in the said further affidavit, which include a depositions:-
 - a. that being, and having been Counsel on record since inception of the suit herein, the deponent of the said further affidavit can justly raise matters of fact as she has full knowledge of all the details and documents filed in the case. That as an officer of the Court, the deponent has a duty to raise and highlight illegalities before the Court.
 - b. that the Respondent and his Advocate on record have admitted to deliberately filing documents without leave of the Court; and never informed the Court or the Claimant of the filing.
 5. Written submissions were filed on behalf of the Respondent, while Counsel for the Claimant/Applicant indicated that she would not be filing submissions.
 6. This is a 2018 suit; shown to have been physically instituted on 23rd August, 2018. According to the Court's record, the Respondent physically filed the following documents on 26th September, 2018:-
 - a. a Memorandum of Appearance.
 - b. Response to claim dated 26th September, 2018.



- c. a list of witnesses dated 26th September, 2018 and a witness statement of David Kuria.
 - d. a list of documents dated 26th September, 2018 listing 6 documents, and a bundle of unpaginated copies of documents (18 leaves of paper) labelled Appendix 1 to 4.)
7. The Court's record further shows that the Claimant filed Reply to the Respondent's Response. Five copies of documents are annexed to the said Reply. No action is shown to have been taken towards prosecution of the suit and on 7th June, 2023, the Court's Deputy Registrar issued a written notice to the parties herein to attend Court on 25th July, 2023 and show cause why the suit could not be dismissed for want of prosecution pursuant to Rule 16 of the Employment and Labour Relations Court (Procedure) Rules 2016 (now repealed).
 8. The said notice to show cause was, however, vacated by the Court on 25th July, 2023 after Counsel for the Claimant informed the Court that parties had been attempting to settle the matter out of Court.
 9. Vide a Ruling delivered on 14th March, 2024, the Court granted leave to the Respondent to amend its Response to Claim within 14 days of the Ruling. The Respondent's Counsel submitted in Court on 21st November, 2024 that an Amended Response was served on 14th March, 2024, the same day that the aforesaid Ruling was delivered. This submission was made after Counsel for the Claimant applied for adjournment of a scheduled hearing of the suit and indicated, inter-alia, that she believed that an amended response had been filed. She sought leave to file reply to the amended response. I have perused the Court's record and I have not seen a filed amended response to claim.
 10. In allowing the Claimant's application for adjournment, the Court made the following Orders:-
 - “(a) Having heard Counsel for both parties on the application for adjournment, I am inclined to allow the same, in view of the reasons given by Counsel for the Claimant.
 - (b) Consequently, the hearing scheduled for today is adjourned, and the matter is taken out of today's cause list. It is the last adjournment on the part of both parties, this being a 2018 matter.
 - (c) The Claimant is granted leave to file and serve Reply to the Respondent's Amended Response within 14 days of today.
 - (d) Both parties shall file and serve hard bundles, duly bound, paginated and flagged, of all their filed documents within 30 days of today.”
 11. I have seen on record the Respondent's supplementary list and bundle of documents dated 30th October, 2023 and shown to have been filed electronically on 20th December, 2024. The Respondent has admitted that both the aforesaid documents and the Respondent's supplementary list of witnesses and the witness statement of Geoffrey Kariuki Peter, said to be dated 30th October, 2023, were filed without leave of the Court.
 12. The Respondent is shown to have filed a hard copy of a 68-page trial bundle on 17th December, 2024; which includes the aforesaid documents filed without leave. Also in the Respondent's trial bundle is an Amended Response to Memorandum of Claim dated 24th October, 2023. It is to be noted that leave to amend the Respondent's Response to Claim was granted vide a Ruling of this Court delivered on 14th March, 2024 (Dr. Jacob Gakeri, J); and that amendment was to be effected within 14 days of the Ruling. I am not able to tell, from the record before me, whether the foregoing order on amendment was complied with, and if so, when.



13. The Claimant/Applicant's prayer that the Respondent's supplementary list of documents and supplementary list of witnesses, both dated 30th October, 2023 and the witness statement of Geoffrey Kariuki Peter dated 30th October, 2023, be struck off, must succeed. The prayer for the Respondent's Advocates "to face full arm of the law" pursuant to Sections 7 and 9 of the *Employment and Labour Relations Court Act* is ambiguous, and is not capable of being granted. Further, the cited Sections of the statute (Sections 7 and 9 of the *Employment and Labour Relations Court Act*) relate to tenure of the Office of Judges of the Court and Officers of the Court, and have no relevance to the issues raised in the application herein.
14. Having said that, I allow the Notice of Motion dated 3rd March, 2025 in the following terms:-
- a. The Respondent's supplementary list and bundle of documents dated 30th October, 2023 and the evenly dated supplementary list of witnesses and witness statement of Geoffrey Kariuki Peter are hereby struck off, and are expunged from the Court's record.
 - b. The Respondent may file and serve a further list and bundle of documents and witness statements, as may be necessary, within 14 days of this Ruling.
 - c. The Claimant may file and serve a further list and bundle of documents and/or witness statements, as may be necessary, within 14 days of service.
 - d. Thereafter, both parties shall file and serve hard copies of their respective trial bundles containing all their filed and served pleadings, witness statements and documents intended to be produced in evidence at the trial. The trial bundles shall be duly indexed, bound and paginated.
 - e. The suit shall be mentioned in Court on 18th November, 2025 to confirm compliance and to fix a hearing date.
 - f. Costs of the application are awarded to the Claimant, and shall be assessed and paid after the event.
15. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Achieng for the Claimant/Applicant

Mr. Ndegwa for the Respondent

