



**Onyango v Jiang Xijing Tai Water Conservancy & Electric Power Construction Kenya Limited (Cause E793 of 2023) [2025] KEELRC 3034 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3034 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E793 OF 2023  
SC RUTTO, J  
OCTOBER 31, 2025**

**BETWEEN**

**EDWARD SANTOS ONYANGO ..... CLAIMANT**

**AND**

**JIANG XIJING TAI WATER CONSERVANCY & ELECTRIC POWER  
CONSTRUCTION KENYA LIMITED ..... RESPONDENT**

**RULING**

1. In a judgment delivered on 17<sup>th</sup> January 2025, this Court found as follows:
  - a. The Claimant is awarded the sum of Kshs 300,000.00 being unpaid salary for two (2) months.
  - b. The Claimant is awarded the sum of Kshs 363,462.00 being accrued leave.
  - c. The Respondent's Counterclaim succeeds to the tune of Kshs 150,000.00 which is equivalent to one month's salary.
  - d. The sum in (c) above will be set off against the Claimant's total award of Kshs 663,462.00, hence the final award due to the Claimant stands at Kshs 513,462.00.
  - e. The final award, shall attract interest at court rates from the date of Judgment until payment in full.
  - f. Each party shall bear its own costs in view of the fact that the Claim has been allowed and the Counterclaim has partially succeeded.
2. Pursuant to the judgment, the Respondent/Applicant filed the instant Notice of Motion dated 20<sup>th</sup> May 2025, seeking the following orders:
  1. Spent.



2. Spent.
  3. That this Honorable Court be pleased to review or vary its judgment delivered on 17<sup>th</sup> January 2025. The variance being specific to paragraph 78 of the judgement.
  4. That this Court considers the newly discovered evidence, that is the email dated 16<sup>th</sup> April 2025 and that of 17<sup>th</sup> April 2025, confirming that the Respondent does not have the complete documents to substantiate the additional works that were done on the project.
  5. That upon consideration of the new evidence, the court be pleased to substitute its judgment and decree with an appropriate order as it may deem fit in the given circumstances.
  6. That costs of the application be borne by the Claimant.
3. The Application is supported by the grounds set out on its face and the Affidavit sworn by Tabitha Okaya on 17<sup>th</sup> May 2025, on behalf of the Respondent/Applicant. Ms. Okaya deposes that in the judgment delivered on 17<sup>th</sup> January 2025, the Court dismissed the Respondent's prayer for indemnity against penalties arising from delays in project implementation, which delays were allegedly caused by the Claimant's failure to hand over the project site to the new site agent.
  4. She avers that the prayer is anchored on the fact that the Claimant, who served as the Deputy Site Agent, was responsible for the day-to-day management of site activities and ensuring the smooth progress of the project. However, before completion of the works, the Claimant abandoned his duties without applying for leave or obtaining permission from his supervisor, an act the Respondent considered malicious and amounting to desertion.
  5. Ms. Okaya further avers that the Claimant resurfaced after approximately one and a half months, worked for two weeks, and thereafter tendered his resignation. He then ceased reporting to work from 7<sup>th</sup> July 2023, effectively acting on his resignation.
  6. According to Ms. Okaya, the separation between the parties was not smooth as the Claimant left with critical company information, including IPC Certificate No. 16, which was essential for the Respondent's payment process.
  7. She deposes that Certificate No. 16 was required by the Respondent in June 2023 to facilitate payment, but the same was not surrendered by the Claimant, thereby frustrating the process.
  8. She further contends that the Claimant crippled project operations by refusing to hand over login credentials for the site email address, together with all project documents, including subcontract agreements, local purchase orders, invoices, delivery notes, and other supplier details.
  9. She asserts that the Claimant also failed to properly hand over the project to both the newly appointed site agent and engineer.
  10. Ms. Okaya is emphatic that the handover process is critical to ensuring continuity and smooth project transition, and its disruption inevitably leads to project stalling.
  11. She avers that the Claimant admitted to withholding company documents, login credentials, site emails, and the vital IPC Certificate No. 16.
  12. Despite being requested by the Respondent to attend a handover meeting a month after resignation, the Claimant failed to appear.
  13. Ms. Okaya observes that the Court dismissed the Respondent's claim for indemnity due to lack of supporting evidence linking the Claimant's failure to hand over with the resultant project delays.



14. However, she deposes that three months after judgment, on 16<sup>th</sup> April 2025, the project owner wrote to the Respondent requesting submission of completion documents. The letter highlighted the absence of critical supporting documents, including the Engineer's instructions and measurement sheets, which were necessary to substantiate claimed quantities and price adjustments, thereby delaying payment for additional works.
15. Following this letter, the Respondent's advocate wrote to the Claimant's advocate requesting the Claimant to expedite the handover process to enable the Respondent finalize and submit the final project accounts.
16. Ms. Okaya asserts that this new evidence demonstrates that the Respondent does not possess the completion documents, as the Respondent would have submitted them to secure payment had they been available.
17. It is her contention that the newly discovered evidence is crucial and supports the Respondent's claim for indemnity against penalties arising from project delays occasioned by the Claimant's failure to hand over the site and related documentation.
18. The Claimant, Edward Santos Onyango, opposed the Application through a Replying Affidavit sworn on 22<sup>nd</sup> October 2025. He avers that the Application is an afterthought aimed at delaying his enjoyment of the fruits of the judgment delivered in his favour.
19. He contends that the Application has been maliciously crafted in an attempt to defeat the ends of justice by avoiding compliance with the judgment of this Court issued on 17<sup>th</sup> January 2025.
20. Mr. Onyango further asserts that the prayer for review is untenable, as the evidence sought to be introduced is not new as it was within the Applicant's possession both prior to the filing of the suit and throughout its pendency.
21. Mr. Onyango maintains that the alleged new evidence, being mere email correspondence between the Applicant's and the Respondent's advocates, is immaterial and incapable of altering in any way the judgment.
22. He further deposes that the purported new letters do not change the fact that, at the hearing of the suit, the Respondent had failed to prove its counterclaim against him.
23. Mr. Onyango also contends that this Court is functus officio, having rendered its judgment and dismissed the Respondent's counterclaim.
24. In his view, the prayer for review is, in essence, an invitation for the Court to rehear the matter, a jurisdiction it no longer possesses.

### **Submissions**

25. The Application was canvassed through written submissions. Both parties filed written submissions which the Court has duly considered.

### **Analysis and Determination**

26. The Court has carefully considered the Application, the Claimant's Replying Affidavit, as well as the rival submissions and evidently, the key question for determination is whether the Applicant has satisfied the legal requirements for the grant of an order of review.



27. Rule 74(1) of the Employment and Labour Relations Court (Procedure) Rules, 2024 expressly stipulates that the Court may review its judgment or ruling only where any of the following grounds are established: -
- a. if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;
  - b. on account of some mistake or error apparent on the face of the record;
  - c. if the judgment or ruling requires clarification; or
  - d. for any other sufficient reason.
28. In the present case, the Applicant seeks a review of paragraph 78 of the judgment delivered on 17<sup>th</sup> January 2025, on the basis that it has discovered new evidence demonstrating the absence of completion documents to substantiate the additional works that were done on the project.
29. Annexed to the Affidavit of Tabitha Okaya are letters dated 16<sup>th</sup> and 17<sup>th</sup> April 2025, which the Applicant contends constitute the newly discovered evidence it seeks to introduce.
30. Revisiting the Court’s judgment, it is notable that in dismissing the Applicant’s counterclaim for “indemnity against any penalties that could arise due to the delay in project implementation occasioned by the Claimant’s failure to hand over the site to the site agent,” the Court found that the claim was speculative and unsupported by evidence.
31. This finding was informed by the manner in which the Applicant framed its prayer in the counterclaim, particularly the reference to “any penalties.” More significantly, at the time, there was no evidence of penalties imposed or loss suffered by the Respondent as a result of the Claimant’s alleged failure to hand over the site to the site agent.
32. The Court has reviewed the letter dated 16<sup>th</sup> April 2025 from Eng. D.R. Hirani, which the Applicant seeks to introduce as new evidence. For context, I will reproduce the letter in part, thus:
- “However, we note with disappointment that majority of the additional quantities being sought/claimed therein since finalization of IPC 16, do not have any tangible supporting documentation (engineer’s instructions, measurements sheets etc) to substantiate claimed quantities and/or price increases. It should be noted that during preparation of IPC 16, extensive joint measurements were jointly verified by your site team and our site representative.”
33. Upon considering the contents of the said letter alongside the Claimant’s assertion during the hearing that he handed over “everything” to the Respondent upon resignation, it is evident that the Respondent’s claim for penalty cannot be conclusively determined at this point in time on the basis of Affidavit evidence alone.
34. Determining the Claimant’s liability for any penalties or losses allegedly arising from his failure to hand over the site would necessitate the taking of viva voce evidence.
35. In the Court’s considered view, the evidence the Applicant now seeks to introduce, though it may form the basis of a fresh cause of action, is not suitable for purposes of reviewing the judgment.
36. Accordingly, the Court finds that the Application has failed to meet the threshold established under Rule 74(1) of the Court’s Rules.



37. Consequently, the Application dated 20<sup>th</sup> May 2025 is hereby dismissed, with no order as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER, 2025.**

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**STELLA RUTTO**

**JUDGE**

In the presence of:

Ms. Nekoye instructed by Mr. Ochieng for the Claimant/Respondent

Ms. Munda instructed by Mr. Eredi for the Respondent/Applicant

Millicent Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

