



**Ndubi v Utumoja Technologies (Cause E427 of 2024)
[2025] KEELRC 3200 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3200 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E427 OF 2024
SC RUTTO, J
NOVEMBER 14, 2025**

BETWEEN

SHARON FELISTE NDUBI CLAIMANT

AND

UTUMOJA TECHNOLOGIES RESPONDENT

RULING

1. By a Notice of Motion dated 30th September 2025, the Respondent/Applicant seeks leave to file a supplementary list and bundle of documents out of time.
2. The Motion is premised on the grounds set out therein and is supported by the Affidavit of Bastian Blankenburg, the Applicant's Director and Shareholder. The Applicant contends that the delay in filing the documents in question was due to logistical challenges in retrieving the records, and that the documents sought to be filed are relevant, material, and necessary for the just determination of the issues in dispute.
3. The Applicant further avers that the admission of these documents will not prejudice the Claimant, who will be afforded sufficient opportunity to review and respond to them.
4. The Claimant, Sharon Feliste Ndubi, opposed the Motion by filing a Replying Affidavit sworn on 13th October 2025. She avers that the extracted screenshots relied upon by the Applicant originate from an online platform known as Slack, which is used for project and workplace data management. She further explains that organizations subscribing to the platform can create their own workplace channels.
5. Ms. Ndubi states that after the Applicant subscribed to Slack, it created a channel named UTU and that any employee of the Applicant with a duly authorized email issued could access the UTU Slack channel.



6. She further avers that she was issued the email sharon@utu.io by the Applicant, but upon her dismissal, this email was removed or unsubscribed from accessing the UTU Slack channel. Consequently, she can no longer access the UTU workspace channel as she is no longer a member, and her email sharon@utu.io was deactivated.
7. Ms. Ndubi adds that on 6th October 2025, she attempted to access the UTU channel through the email provided by the Applicant, but the only accounts visible were her personal emails: fnsharon@gmail.com, Sharon.onano@gmail.com, and angavucleaners@gmail.com. Her issued work email, sharon@utu.io, was not available.
8. She contends that the screenshots provided by the Applicant do not cover a substantial period of her employment and fail to reflect her complete work history from 2021.
9. She further avers that the screenshots are heavily redacted and omit key discussions between her and the Applicant's directors.
10. Ms. Ndubi further notes that the Applicant filtered the Slack messages to display only the most recent communications.
11. She contends that the Applicant should be required to produce the entire thread of messages between her and the Applicant's directors from January 2024 to May 2024 within the UTU Slack channel, which remains under the Applicant's control.
12. It is Ms. Ndubi's view that the documents filed by the Applicant, in their current form, will cause her significant prejudice.

Submissions

13. On 5th November 2025, the Advocates for both parties canvassed the motion by way of oral submissions. In support of the Motion, the Applicant's Advocate, Mr. Situma, submitted that at this pre-trial stage, the Court is not required to assess the evidential value of the documents sought to be introduced. Instead, the Court should consider whether the documents are relevant to the case, whether they promote a fair trial, and whether any prejudice arises from the delay in filing them.
14. Mr. Situma further argued that since the trial has not yet commenced, the Claimant will not suffer prejudice, as she will have the opportunity to cross-examine the Applicant's witnesses with reference to the documents.
15. Representing the Claimant, Mr. Omwanza opposed the Motion and contended that the documents the Applicant seeks to introduce consist of Slack conversations under the Applicant's control, which have been selectively redacted. He argued that the Applicant has only produced the portions it wishes the Court to see, and that a prior Notice to Produce filed by the Claimant had not been honoured.
16. Mr. Omwanza further submitted that the documents, in their current form, are prejudicial to the Claimant. He maintained that the Applicant should have produced the entire conversation between its director and the Claimant, as they cannot cross-examine based on piecemeal messages that favours the Applicant.
17. In rejoinder, Mr. Situma argued that the Applicant could not retrieve the communications when the Claimant filed the Notice to Produce, as the Claimant's work email had been deactivated.
18. He reiterated that it is not the Court's role at the pre-trial stage to evaluate the evidential value of the documents, and that any concerns raised by the Claimant's Advocate could be addressed during cross-examination at trial.



19. Mr. Situma posited that the documents sought to be introduced would assist the Court in ensuring a fair trial and that the Claimant would not suffer any prejudice from their admission.

Analysis and Determination

20. Having considered the Notice of Motion, the Claimant's Replying Affidavit, and the rival submissions, the central issue for determination is whether the Court should grant the Applicant leave to file the documents contained in the list dated 5th August 2025, out of time.

21. It is evident that the documents the Applicant seeks to file out of time consist of conversations between the Claimant and the Applicant's director via the Slack channel.

22. The Claimant's prime objection is that the Applicant has selectively redacted these conversations in its favour, hence she would be prejudiced if the documents are admitted in evidence.

23. It is undisputed that the Applicant controls the Slack channel from which the conversations in question were extracted. It is also common ground that, following the deactivation of the Claimant's work email, she no longer has access to these communications.

24. As a compromise, the Claimant has stated in her Replying Affidavit that the Applicant should produce the full thread of conversations between her and the Applicant's Director covering the period from January 2024 to May 2024.

25. A review of the online conversations the Applicant seeks to file indicates that they have been filtered, resulting in a limited record of the discussions.

26. It is also noteworthy that, by a notice dated 20th February 2025, the Claimant had requested the Applicant to produce all Slack conversations with the Applicant's Director. Regarding this issue, the Applicant, through Mr. Situma, informed the Court on 13th March 2025 that it faced difficulties retrieving the conversations and was therefore unable to comply at that time.

27. The Court is enjoined to ensure fairness to both parties. Given that the Applicant now seeks to introduce a portion of the conversations previously requested by the Claimant, and that the Applicant retains control over the Slack channel, it is only fair that the Applicant produce the complete thread of conversations between the Claimant and the Applicant's Director from January 2024 to May 2024. This approach balances the interests of both parties, prevents prejudice to either party and allows the Court to make a fair determination.

28. In light of the above, the Application dated 30th September 2025 is allowed on the condition that the Applicant files the complete thread of conversations from the Slack channel between the Claimant and the Applicant's Director covering the period from January 2024 to May 2024.

29. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF NOVEMBER 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant /Respondent No appearance

For the Respondent/Applicant No appearance



Court Assistant Elijoy

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 15th March 2020 and subsequent directions of 21st 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

