



**Obwoge v Flamingo Horticulture Kenya Limited (Cause E001 of 2025)
[2025] KEELRC 3346 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3346 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E001 OF 2025
J RIKA, J
NOVEMBER 28, 2025**

BETWEEN

JAMLECK OBWOGE CLAIMANT

AND

FLAMINGO HORTICULTURE KENYA LIMITED RESPONDENT

RULING

1. There are 2 applications which come up for ruling today.
2. The 1st, dated 23rd June 2025, is filed by the Respondent.
3. The Respondent prays the Court to strike out paragraph 83[b] of the Statement of Claim, and expunge from the record, documents detailing the monthly and yearly salary of Louisa Butland. Butland was a Co-Employee of the Claimant, who the Claimant alleges, was paid superior salary, for work of equal value.
4. The application is supported by the affidavit of Audrey Namwakira, Respondent's Legal Officer, sworn on 23rd June 2025.
5. The Respondent's position is that Louisa Butland is not a party to the proceedings; her salary information is personal data; the Respondent has an obligation to protect that data from unauthorized disclosure; the origin, source and authenticity of the data is not known, and the said data cannot be relied upon; the Claimant did not make request for the personal data of Butland; use of her data amounts to invasion of her privacy rights; and data was obtained illegally, contrary to the *akn ke act 2019 24 Data Protection Act, 2019*.
6. Paragraph 83 of the Statement of Claim, avers that Butland was given preferential treatment in comparison to the Claimant. It provides details of preferential treatment.



7. The Claimant opposes the application through his affidavit, sworn on 7th July 2025. He explains that he sued the Respondent for unlawful discrimination at the workplace, based on race. Butland is named in his pleadings, as a comparator. She was like the Claimant, employed by the Respondent in senior management, but earned superior remuneration. The Claimant cannot establish inequality, without a comparator. He relies on Sections 51[c] and 53 of the Data Protection Act, in submitting that processing and disclosure of personal data is permissible, where it is necessary for the establishment, exercise or defence of a legal claim.
8. The 2nd application, dated 7th July 2025, is filed by the Claimant. He prays the Court to order the Respondent to file certified copies of Butland's monthly pay slips for 2018-2023; employment contracts for 2018-2023; her academic certificates relied upon at her recruitment; bank statements or salary remittance records; PAYE returns filed with KRA; and any other payroll records.
9. The application is supported by the Claimant's affidavit, sworn on 7th July 2025. He explains again that his Claim is for employment discrimination, and that Butland is a comparator. Her records are important in establishing prima facie discrimination. He reiterates that his request is not in violation of the Data Protection Act, and that it is consistent with his right to information, under Article 35 of *akn ke act 2010 constitution the Constitution*, and *akn ke act 2016 31 Access to Information Act, 2016*.
10. Audrey Namwakira swore a replying affidavit on 15th August 2025, denying that the Claimant is entitled to access Butland's employment records. She states that the Claimant's pursuit of access to Butland's personal data, is driven by 'personal animus' towards her. She performed different roles from those performed by the Claimant. She ought not to be dragged to this Claim. The Claimant's application is made solely in reaction to the Respondent's application dated 23rd June 2025. Procedure for access of data under *akn ke act 2016 31 Access to Information Act*, has not been followed.
11. Parties filed and exchanged written submissions concerning both applications. Mr. Obok for the Respondent highlighted the Respondent's position at the last mention before the Court, on 2nd October 2025.

The Court Finds : -

12. The issue raised in the respective applications, was raised in this Court's *Bajaber v. Planning Systems Limited [2024] KEELRC 1462 [KLR]*, and decided in a ruling dated 14th June 2024.
13. Bajaber pleaded that 3 of his former Co-Employees, received preferential treatment. He sought to exhibit annual leave records of his Co-Employees, to establish discrimination.
14. Planning Systems Limited, objected to production of the Co-Employees' records, alleging that production would be in breach of the Data Protection Act.
15. The Court held that: -

“ In a Claim where the Employee alleges discrimination at the workplace, he is required to give evidence of comparators. Without comparators, what would discrimination be founded upon?
16. The Court elaborated that while the Respondent was in the position of a data collector or processor, with the duty to protect data, it was an Employer with the responsibility under Section 3[3] of the *akn ke act 2011 20 Employment and Labour Relations Court Act*, to assist the Court in furthering the principle objectives of the Act.



17. The Data Protection Act does not prohibit use of comparator's data, for purposes of establishing discrimination at the workplace. The Act seeks to protect such data from being used for purposes that are prejudicial or harmful to the data subject. The Act recognises that personal data can be used for legitimate purposes, such as in the enforcement of the law.
18. Butland's personal data is not being supplied to the Court for prejudicial or harmful purpose. It is for legitimate purpose. It is for comparative use by the Court. The Court is constitutionally mandated to enforce the law against workplace discrimination, pursuant to Section 5 [1] of the *akn ke act 2007 11 Employment Act*, and Article 27 of *akn ke act 2010 constitution the Constitution*.
19. The Court in Bajaber, [supra], found that annual leave records, did not constitute sensitive personal data, as defined in the Data Protection Act. Pay slips or payroll records, retained by an Employer, likewise, do not constitute sensitive personal data.
20. Sensitive personal data under the Data Protection Act would include biometrics such as physical, physiological, behavioural characterization; blood typing; fingerprinting; DNA analysis; earlobe geometry; retinal scanning; voice recognition; and health data.
21. Although contracts of employment are concluded between an Employer and an Employee, there are common standards in employment, created in law or workplace policy. Such contracts can be exhibited in Court by third parties claiming violation of these common standards. The principle of equal remuneration, for work of equal value; the laws surrounding gender, race and ethnic discrimination at the workplace, would not be achievable, without bringing before the Court, comparator's employment data.
22. Sections 45 [c][i] and 51[2] of the Data Protection Act, permit use of personal data, where it is necessary for establishment, exercise or defence of a legal claim.
23. In *Leland I Salano v. Intercontinental Hotel* [2013]e-KLR, this Court held that confidential information, acquired by an Employee in the course of his employment, could be used by an Employee after his service, unless the information was classified as a trade secret, or was so confidential, that it required protection as a trade secret.
24. The Court in *Salano*, [supra], by way of comparative jurisprudence cited the New Jersey Supreme Court [US] case, *Quinian v. Curtis-Wright Corporation* 204 NJ [2010].
25. Joyce Quinian filed a claim for sex discrimination at the workplace. She relied on more than 1,800 documents, some containing personnel information of her Co-Employees. She exhibited her male colleague's performance evaluation documents, showing that although the male colleague had performed abysmally, he was promoted ahead of her. The Court relied on personal data of comparators, upholding the claim for sex discrimination. Critics of the decision argued that Quinian relied on court-sanctioned theft of documents, to establish her claim.
26. The application by the Respondent, dated 23rd June 2025 is declined.
27. The application by the Claimant dated 7th July 2025, was filed in reaction to the Respondent's own application. The Claimant alleges discrimination, and cannot turn to the Court, to be assisted in accessing evidence of discrimination. It is his obligation to show that his comparator was given preferential treatment. The Court agrees with the Respondent that an applicant is presumed to have a copy of a document, before he can seek the Court's assistance to access the original, under Section 69 of the *akn ke act 1963 46 Evidence Act*.



28. The Claimant has the opportunity of producing on trial, all the secondary documents in his custody, upon issuing a notice to produce to the Respondent. His application should have been directed to the Respondent, as a notice to produce. The Court has no reason, to order the Respondent to supply the Claimant with original documents, whose copies the Claimant has not shown that he possesses, or whose existence has not been established.

29. His application dated 7th July 2025 is declined.

It Is Ordered : -

- a. Both applications dated 23rd June 2025 and 7th July 2025, filed by the respective parties are declined.
- b. No order on the costs.
- c. The main Claim to be scheduled for hearing at the Registry.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, PURSUANT TO RULE 68[5] OF THE E&LRC [PROCEDURE] RULES, 2024, THIS 28TH NOVEMBER 2025.

JAMES RIKA

JUDGE

