

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT NAIROBI**

CAUSE NO. E820 OF 2023

DOREEN KAVENYA MUTUNGA	CLAIMANT
v	
KENYA WILDLIFE SERVICE	1st
RESPONDENT	
DR ERUSTUS KANGA	2nd
RESPONDENT	

1. For determination is a Motion filed 8 September 2025 by the Respondents seeking

orders:

- (i) ...
- (ii) The Respondents be allowed to adduce additional evidence in this matter in (the) form of a

NAIROBI

... further supplementary list and bundle of documents containing:

- (a) Series of letters from the Ethics and Anti-Corruption Commission

(EACC) on investigations into the recruitment of the Claimant.

(b) A report of the Office of the Auditor General on the procurement of the Revenue Management System at the 1st Respondent.



EMPLOYMENT AND LABOUR RELATIONS COURT

(iii) **NAIROBI** Upon grant of prayer (2) above, the Court directs the Deputy Registrar to issue witness summons for the attendance of Abdi A Mohamud MBS, the Chief Executive Officer of the EACC.

(iv) Costs of this application be provided for.

2. The primary grounds advanced by the Respondents in support of the Motion were that they had discovered new documents sought to be introduced after the Cause had been set down for hearing; the documents had been missing; the documents had a direct bearing on the case and were crucial to their case; the interests of substantive justice required the introduction of the documents and that the Claimant would not be prejudiced if the Motion was allowed.

3. The Respondents filed their submissions on 19 September 2025. The Respondents cited *Ongeri v Skytop Technologies Ltd* (2019) eKLR and submitted that the evidence sought to be introduced was relevant and material and would show under what circumstances the Claimant resigned.

4. The Claimant filed a replying affidavit in opposition to the Motion on 22 September 2025.

5. The Claimant deponed that the Motion was brought in bad faith; did not meet the legal threshold; the evidence sought to be introduced was not relevant as investigations were conducted after separation; there was no employer - employee relationship with the EACC; there was no explanation for the delay in bringing in the new evidence since the investigations report was prepared in 2023; there was no public interest in the dispute and that the Motion was part of intimidation tactics from the Respondents.

6. The Claimant filed her submissions on 24 October 2025.

7. In the submissions, the Claimant urged that the Respondents had not met the legal threshold for the introduction of new evidence and reference was made to

Mohamed Abdi Muhamud v Ahmed Abdullahi Mohamad & 3 Ors (2018) eKLR and *Property Priority Ltd v Embakasi Properties Ltd & 5 Ors* (2025) KEELC 6977 (KLR).

8. The Claimant further cited *Mayfair Holdings Ltd v County Commissioner Kisumu & 3 Ors; Ethics and Anti-Corruption Commission & Ar* (Interested Parties) (2024) KEELC 450 (KLR)

to assert that the Respondents had not laid a basis for the request to issue a witness summons to the Chief Executive Officer of EACC.

9. According to the Claimant, the dispute before the Court concerned an employer-employee relationship and the EACC had no role in such a disputation.

10. The Court has considered the Motion, affidavits and submissions and makes the following determinations.

11. One, the Cause was certified ready for hearing on 2 April 2025 after the parties had

confirmed compliance with pre-trial processes.

12. Two, the hearing that was scheduled for 22 September 2025, aborted because of the instant Motion.

13. Three, although the Respondents' Motion is drafted as if they want to introduce new evidence, that is not correct.

14. Before a document becomes evidence, it follows a well-trodden path. It is filed. It is produced into evidence by a witness, at which juncture the other party can object to the production, and if it is allowed, it is admitted into evidence, and the contents must thereafter be proved (see *Kenneth Nyaga Mwige v Austin Kiguta & 2 Ors* (2015) KECA 334 (KLR)).

15. Four, at this stage, the Court cannot determine whether the documents sought to be filed are not relevant or material with any legal certainty. On the face of the

documents, there are findings and recommendations which may impact the outcome of the dispute herein.

16. Five, a new hearing date has not been scheduled and allowing the Respondents to file the documents at this stage will not prejudice the Claimant or the interests of justice.

17. The Claimant will have an opportunity to object to the production of the documents, if at all, at the appropriate stage of the hearing.

18. Six, the Respondents have not laid a foundation for issuing a witness summons to the Chief Executive Officer of the Ethics and Anti-Corruption Commission.

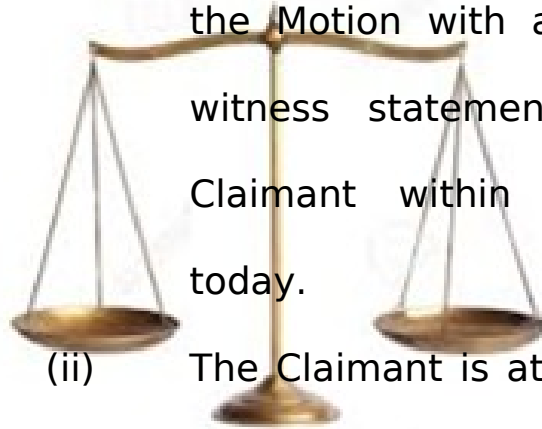
19. They have not disclosed whether they have reached out to him to stand in as a witness, and he has declined before invoking the coercive power of the Court in this employment dispute.

20. Lastly, the Claimant did not rebut the Respondents' assertions that the files with the documents to be filed had gone missing.

Orders

21. The Motion dated 8 September 2025 is allowed in terms:

(i) The Respondents to file and serve the documents set out in the Motion with any attendant witness statements upon the Claimant within 21 days of today.



(ii) The Claimant is at liberty to file and serve any additional documents within 21 days of service by the Respondents.

22. Costs in the cause.

Delivered virtually, dated and signed in Nairobi on this 22nd day of January 2026.

**Radido Stephen, MCI Arb
Judge**

Appearances

For Claimant

Okweh Achiando & Co.
Advocates

For Respondents

Hamilton Harrison &
Mathews Advocates

Court Assistant

Wangu

EMPLOYMENT AND LABOUR RELATIONS COURT



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