



REPUBLIC OF KENYA



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**Beckwith v Mara Wildlife Services Limited (Cause E219 of 2025)
[2026] KEELRC 114 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 114 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E219 OF 2025
SC RUTTO, J
JANUARY 23, 2026**

BETWEEN

JOYCE WAIRIMU BECKWITH CLAIMANT

AND

MARA WILDLIFE SERVICES LIMITED RESPONDENT

RULING

1. What comes up for determination before this Court is the Claimant's/Applicant's Notice of Motion dated 17th July 2025, in which she seeks the following orders:
 - a. The Court be pleased to issue Witness Summons to:
 - i) Mihail Mihaylov
 - ii) David Kinsella
 - iii) Sanjeev Kumar
 - b. The Court be pleased to Order Mr. Mihail Mihaylov and Mr. David Kinsella to produce Flight Records as requested in the Notice to Produce dated 11th May, 2025 and specifically:
 - i. Passenger Manifests for Cameron A315 Aircraft registration number 5Y-CEN for the period November 2019 to November 2024;
 - ii. Aircraft Logbook for Cameron A315 Aircraft registration number 5Y-CEN for the period November 2019 to November 2024.
2. The Motion is premised on the grounds set out on its face and the Claimant's affidavit sworn on 17th July 2025. Grounds in support of the Motion are that the Claimant filed and served a Notice to



Produce dated 11th May 2025 seeking information under Article 35(1)(b) of *the Constitution*, as read together with the *Access to Information Act*, No. 31 of 2016.

3. The Claimant further avers that Mihail Mihaylov and David Kinsella are officers of the Respondent who were in direct communication with her concerning her work and contractual engagements both before and after her unlawful termination.
4. It is further averred by the Claimant that Mr. Mihaylov and Mr. Kinsella possess the requisite expertise and technical knowledge in aircraft operations, particularly in respect of the Cameron A315 aircraft, registration number 5Y-CEN, which the Claimant operated between November 2019 and November 2024.
5. The Claimant avers that Mr. Mihaylov and Mr. Kinsella are in custody of the documents and records sought through the Notice to Produce, specifically the Passenger Manifests and Aircraft Logbooks for the Cameron A315 aircraft, registration number 5Y-CEN, covering the period from November 2019 to November 2024.
6. The Claimant further avers that since the Respondent has disputed the records she produced in Court to demonstrate her flight history in its Response to the Claim, it is fair and just that Mr. Mihaylov and Mr. Kinsella be compelled to produce the Passenger Manifests and Aircraft Logbooks for the Cameron A315 aircraft, registration number 5Y-CEN, and be examined thereon.
7. According to the Claimant, the examination of the said witnesses on their communications, as well as on the Passenger Manifests and Aircraft Logbooks for the Cameron A315 aircraft, registration number 5Y-CEN, for the period November 2019 to November 2024, is necessary, and the documents sought are material to safeguard her right to a fair hearing and to assist the Court in the just determination of the issues in dispute.
8. The Claimant contends that she will suffer great prejudice if she is denied the opportunity to cross-examine the said witnesses and if the Passenger Manifests and Aircraft Logbooks for the Cameron A315 aircraft, registration number 5Y-CEN, for the period November 2019 to November 2024 are not produced, whereas the Respondent will suffer no prejudice if the witnesses are summoned for examination and the documents produced.
9. The Claimant further avers that Sanjeev Kumar is an officer of the Respondent in charge of occupancy at Keekorok Lodge and was responsible for authorising her to move into and occupy House Number 105, contrary to the Respondent's allegation that she unilaterally relocated.
10. In her supporting affidavit, the Claimant avers that Mr. Kinsella and Mr. Mihaylov were the individuals who communicated to her, both orally and in writing, that the reason for her termination was the alleged lack of a Group C rating. She further avers that the same officers denied her accrued leave, adding that Mr. Kinsella threatened her with termination should she insist on proceeding on leave.
11. In the circumstances, the Claimant contends that it is fair and just for the said witnesses to appear in Court for purposes of cross-examination on their utterances and written communications.
12. The Claimant further avers that the Respondent's legal officer, Angela Muhua, was at no time in direct or indirect communication with her, nor was she copied in any of the said communications, and therefore cannot be cross-examined on the contents of the utterances and writings attributed to Mr. Kinsella, Mr. Mihaylov, and Mr. Sanjeev Kumar.
13. The Claimant contends that Ms. Angela Muhua is not the custodian of the Passenger Manifests and Aircraft Logbooks for Aircraft registration number 5Y-CEN for the period November 2019



- to November 2024, and that even if she were to obtain the same, she lacks the requisite technical knowledge of aircraft operations and would therefore be unable to competently testify or be cross-examined on the subject matter.
14. The Respondent has opposed the Notice of Motion by way of a Replying Affidavit sworn on 25th September 2025 by its Legal Officer, Angela Muhua.
 15. Ms. Muhua avers that the Respondent objects to the production of the Passenger Manifests for the Cameron A315 aircraft, registration number 5Y-CEN, for the period November 2019 to November 2024 on the grounds that the said manifests contain personal and confidential information protected under the Data Protection Act, and may only be disclosed with the express consent of the affected passengers.
 16. She further avers that the Passenger Manifests contain sensitive business information, the disclosure of which would be prejudicial to the Respondent's business interests and is not relevant to the fair determination of the issues before the Court.
 17. Ms. Muhua further avers that the passengers whose details are sought are not parties to this suit and that their particulars are irrelevant to a claim for damages arising from unlawful termination. She contends that the production of the said manifests would not aid the administration of justice in this matter.
 18. It is her further contention that there is no dispute in this matter relating to the passengers allegedly flown by the Claimant, and that no reliefs have been sought in that regard.
 19. With regards to the production of the Aircraft Logbooks for the Cameron A315 aircraft, registration number 5Y-CEN, for the period November 2019 to November 2024, Ms. Muhua contends that the Claimant's claim for compensation in respect of off-days not taken relates only to the period between January 2024 and November 2024, and not the entire period from November 2019 to November 2024.
 20. She further avers that the Claimant's claim in respect of public holidays worked is confined to specific dates, namely 29th March 2024, 1st April 2024, 10th April 2024, 1st May 2024, 1st June 2024, 20th October 2024, and 1st November 2024, and does not extend to the broader period of November 2019 to November 2024. She adds that the Respondent's defence to the claims for off-days and public holidays is not based on the number of days worked, but on the assertion that the Claimant was duly compensated for the said days.
 21. It is therefore contended that the number of off-days and public holidays claimed is not in dispute, but rather whether payment was made, and that the Aircraft Logbooks for the period sought are not necessary for the resolution of the issues in dispute.
 22. To this end, Ms. Muhua avers that the information contained in the Aircraft Logbooks is neither relevant nor useful to the administration of justice in this matter, and that the relevance of the period spanning November 2019 to November 2024 has not been demonstrated.
 23. With respect to the Claimant's request to summon Mihail Mihaylov, David Kinsella, and Sanjeev Kumar to attend Court for purposes of cross-examination, Ms. Muhua contends that the said persons are not witnesses for the Respondent and, having not tendered any testimony, cannot be subjected to cross-examination.
 24. Ms. Muhua further deposes that in adversarial proceedings, each party has the exclusive right to determine the witnesses it shall call in support of its case, and that the Claimant cannot dictate which witnesses, if any, the Respondent should call.



25. In her view, documentary evidence speaks for itself, and save for the Claimant's document marked JW-21, to which the Respondent has raised an objection, the Respondent has indicated that it intends to rely on some of the documents filed by the Claimant.
26. She further avers that the Claimant's document marked JW-10, being an alleged audio recording between the Claimant and Mr. Kinsella, has not been objected to by the Respondent and is complete in itself. That as such, Mr. Kinsella cannot be summoned by the Claimant for cross-examination on the basis of her own document.
27. Ms. Muhua further contends that the Claimant bears the primary legal and evidentiary burden of proof under the *Evidence Act* in respect of all claims made against the Respondent, and that under Rule 58 of the Court's Rules, the Claimant cannot compel the Respondent to assist her in discharging that burden.
28. She further contends that rules of practice and procedure cannot override express provisions of statute.
29. Ms. Muhua further avers that the Staff Housing Policy is expressly provided for in the Claimant's contract of employment, and that the burden rests with the Claimant to prove any alleged discrimination.

Submissions

30. The Motion was canvassed by way of written submissions. On her part, the Claimant submitted that she had demonstrated, through audio recordings, emails, and text messages, that the intended witnesses were directly involved in, or authored, the communications and documents that form the subject matter of the dispute herein, and that they were her immediate superiors. In support of this position, the Claimant relied on *Re Estate of Amos Muhuri Koria (Deceased)* [2021] eKLR.
31. The Claimant further submitted that the testimony of the intended witnesses is both relevant and necessary for the just determination of the dispute. She maintains that they are competent and compellable witnesses within the meaning of sections 125 and 128 of the *Evidence Act*.
32. Relying on *Democratic Republic of Congo v Uganda* (2005) ICJ 87, the Claimant submitted that the documents sought to be produced constitute relevant records relating to her work during the material period; that they have been described with sufficient particularity; and that they are in the custody of the Respondent's named staff, agents, or officers, as well as the Respondent company itself.
33. In her supplementary submissions, the Claimant contended that Article 31 of *the Constitution* addresses the unnecessary requirement of disclosure of information. It was her position that, where necessary, the law permits the requirement or disclosure of personal information, data, or documents.
34. Citing *Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 4 others and Attorney General & another*, Petition No. 1 of 2017, the Claimant further argued that the use of the word "or" in sections 30 and 34 negates the need for consent where personal data is used for the protection of the interests of the data subject or another natural person, or for the establishment, exercise, or defence of a legal claim.
35. Referencing *IBM United Kingdom Ltd v LzLabs GmbH & Others* [2024] EWHC 423 (TCC), the Claimant submitted that confidential or sensitive information may be redacted for purposes of production in court, rather than excluding such evidence altogether.
36. The Claimant further submitted that there is nothing private or commercially sensitive in respect of the flight schedules of the aircraft she operated, her name appearing on those schedules, the passengers



she flew whose names could, if necessary, be redacted, and the dates and times of such flights. In support of this contention, reliance was placed on *Altron TMT (Pty) Ltd v City of Tshwane Metropolitan Municipality and Others* [2023] ZAGPPHC 1035.

37. According to the Claimant, she has sufficiently demonstrated the nexus between the information sought and the enforcement of her right to fair labour practices. To this end, she urged the Court to find in her favour in balancing the parties' competing rights under Articles 31 and 35 of *the Constitution*.
38. On its part, the Respondent submitted that the overarching consideration in determining whether to issue witness summons or orders for the production of documents is whether such evidence is relevant and material to the just and fair determination of the issues in dispute, and whether it aids the fair administration of justice.
39. In support of this position, the Respondent relied on *Okemwa & 8 Others v Judicial Service Commission* [2017] KEELRC 690 (KLR) and *Oliver Mukunza v AC Nielsen Kenya Ltd* [2018] KEELRC 2421 (KLR).
40. The Respondent contended that the Aircraft Logbook for the period November 2019 to November 2024 is neither relevant nor material to the advancement of the Claimant's case and does not serve the fair administration of justice in the circumstances of this matter.
41. The Respondent further submitted that, having alleged discrimination in staff house allocation, the Claimant bears the primary evidential burden of proving that allegation and cannot compel the Respondent to assist her in doing so. In the Respondent's view, to do so would be inimical to the fair administration of justice and would amount to an abuse of the Court's powers under section 20 of the *Employment and Labour Relations Court Act* and Rule 58 of the Court's Rules.

Analysis and Determination

42. The sole issue for determination is whether the Claimant's Notice of Motion is merited, specifically whether the Respondent should be compelled to produce flight records, namely the Passenger Manifests and Aircraft Logbooks for the Cameron A315 aircraft, registration number 5Y-CEN, and whether summons should issue to Mihail Mihaylov, David Kinsella, and Sanjeev Kumar to attend Court.
43. The Claimant contends that Mr. Mihail Mihaylov and Mr. David Kinsella are the Respondent's officers who were in direct communication with her concerning her work and contractual engagements both before and after her alleged unlawful termination. She further avers that the said officers possess the requisite expertise and technical knowledge in aircraft operations, particularly in relation to the Cameron A315 aircraft, registration number 5Y-CEN, which she operated between November 2019 and November 2024. The Claimant further contends that the said officers are in custody of the Passenger Manifests and Aircraft Logbooks for the Cameron A315 aircraft, registration number 5Y-CEN, for the period November 2019 to November 2024.
44. On the other hand, the Respondent contends that the Passenger Manifests sought contain personal, confidential information, and sensitive business information.
45. With respect to the Aircraft Logbooks, the Respondent avers that the Claimant's claim for compensation for off-days not taken relates solely to the period between January 2024 and November 2024, and not the broader period from November 2019 to November 2024.
46. Still on this issue, the Respondent contends that the issue in dispute is not the number of off-days and public holidays claimed, but whether the Claimant was duly paid for the same.



47. It is worth pointing out that in the Motion, the Claimant has not specified the particular aspect of her claim for which the production of the requested flight records is required. This is bearing in mind that, in her Statement of Claim, the Claimant has raised a broad range of issues, including allegations of unfair termination and violations of her constitutional rights under Articles 25(c), 27, 28, 29(d), 41, 47, and 50 of *the Constitution*. In addition, the Claimant seeks, inter alia, compensation for leave days not taken, off-days not taken, and public holidays worked.
48. With respect to the Claimant's claim for unfair termination, it should be appreciated that, as the employer, the Respondent is duty-bound under Sections 41, 43, 45, and 47(5) of the *Employment Act* to prove both the reasons for the termination of employment and the procedure followed in effecting the said termination.
49. Therefore, notwithstanding the alleged expertise and technical knowledge of Mr. Mihail Mihaylov and Mr. David Kinsella in aircraft operations, particularly Cameron A315 aircraft, registration number 5Y-CEN, the ultimate burden remains on the Respondent to prove that the termination was fair, valid, and based either on the Claimant's conduct, capacity, or compatibility, or on its operational requirements.
50. While it may be true that Ms. Muhua is not conversant with flight operations and may not have communicated with the Claimant in the period leading up to and following the termination of her employment, the fundamental point remains that the evidentiary burden of proving substantive justification and procedural fairness rests with the Respondent.
51. Accordingly, it is not for the Claimant to determine or concern herself with the manner in which the Respondent discharges its evidentiary burden under the *Employment Act*. Consequently, it is upon the Respondent to decide which witnesses to call in order to discharge its evidential burden.
52. In any event, the Claimant reserves the right to cross-examine Ms. Muhua regarding her assertions and her knowledge of the facts relevant to the claim herein.
53. With respect to the flight records, the Claimant has submitted that she requires the same not only for purposes of earning leave days, but also to demonstrate that she worked continuously for the Respondent from November 2019 to November 2024 and operated the same aircraft throughout the period of her employment.
54. In its Response to the Claim, the Respondent has contended that the Claimant was engaged on short-term contracts, each of which was distinct, separate, and independent of the others.
55. In her Reply, the Claimant has maintained that there was continuity of employment, asserting that the contracts related to the same employer, the same employment relationship, and the same job description.
56. In view of the foregoing, it is evident that the parties have taken divergent positions on this issue.
57. Accordingly, and in order to assist the Court in arriving at a just and fair determination on this issue, it is imperative that the Respondent produce the flight logbooks covering the period in question.
58. Further, regarding the Claimant's claim for leave days, off-days and public holidays worked, it is notable that the Respondent has acknowledged the provisions for off-days and leave days in the Claimant's contract of employment, but has not stated whether it disputes the Claimant's assertions regarding the specific days worked or her computations thereof.



- 59. It is notable that the Claimant has produced flight logs only for the period from June 2024 to October 2024, while the periods from January 2024 to May 2024 and November 2024 are not on record. Given the Respondent’s duty as an employer under Section 74(1) of the *Employment Act* to maintain employment records, and considering that the Claimant’s claim for off-days and public holidays encompasses January to May 2024 and November 2024, it is only fair and just that the Respondent produce the Flight Logbooks for the said periods.
- 60. As to the request for production of the Passenger Manifests for the Cameron A315 aircraft, registration number 5Y-CEN, it is notable that the Claimant has not stated the relevance of these documents to the Claim herein. Indeed, the Claimant has not elaborated why she requires the Passenger Manifests for the period November 2019 to November 2024, nor identified the specific aspect of her claim that she seeks to prove through them.
- 61. With respect to the Claimant’s request to summon Mr. Sanjeev Kumar, who is alleged to have authorized her to move into and occupy House Number 105, it is notable that the Claimant has annexed to her Statement of Claim the relevant communications concerning the housing issue.
- 62. Further, with regard to the Claimant’s allegation of discrimination in relation to housing, it is imperative to note that the law requires the Claimant to first establish a prima facie case of discrimination. Thereafter, pursuant to Section 5(7) of the *Employment Act*, the burden shifts to the Respondent, as the employer, to demonstrate that the alleged discrimination did not occur and that any act or omission was not based on any of the prohibited grounds specified in the section.
- 63. Accordingly, with respect to the claim of discrimination, each party bears its own evidential duty under the law, and it is for each party to determine how to discharge that duty.
- 64. As such, in the case herein, the ultimate decision regarding which witnesses to call for the Respondent to discharge its evidential burden on any aspect of the claim rests solely with the Respondent.
- 65. In the final analysis, the Court allows the Notice of Motion dated 17th July 2025 in part and directs the Respondent to produce the Aircraft Logbooks for the Cameron A315 aircraft, registration number 5Y-CEN, for the period November 2019 to November 2024.
- 66. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JANUARY 2026.

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STELLA RUTTO
JUDGE

In the presence of:
For the Claimant Ms. Nganga
For the Respondent Mr. Mungla
Court Assistant Catherine
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.

