



Gichuki v Tropical Brands (Africa) Limited & another (Cause E226 of 2021) [2026] KEELRC 157 (KLR) (28 January 2026) (Ruling)

Neutral citation: [2026] KEELRC 157 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E226 OF 2021
CN BAARI, J
JANUARY 28, 2026**

BETWEEN

PAULINE WAMBUI GICHUKI CLAIMANT

AND

TROPICAL BRANDS (AFRICA) LIMITED 1ST RESPONDENT

DANONE NUTRICIA AFRICA 2ND RESPONDENT

RULING

1. This ruling relates to the Claimant’s application dated 1st March, 2024 wherein, the Claimant seeks leave to file an additional list of documents. The application is supported by grounds on the face and the supporting affidavit sworn by the Claimant/Applicant.
2. The Claimant/Applicant avers that she already filed a compact disk which forms part of her list and bundle of documents, and that when her current advocate took over the matter from her former advocate (now deceased), he realized that they needed to file a transcript on the compact disk.
3. It is her position that she further intends to file a certificate of electronic evidence, which the court already allowed her to file by a consent entered by the parties on 22nd March, 2023.
4. The Claimant further avers that the transcript will be helpful to the court in reaching an informed decision, hence the instant application.
5. Counsel for the Claimant/Applicant in his oral submissions, argues that the 2nd Respondent’s opposition by way of grounds of opposition is only attacking the evidence the Applicant seeks to produce which he submits is an issue to be raised during the trial, hence the ground is premature.
6. It is counsel’s further argument that the Respondent’s position that the disk was transcribed a year ago is not a ground to oppose the filing of the transcript.



7. The Claimant/applicant prays that her application be allowed.
8. The 2nd Respondent, on its part, opposed the application, arguing that by consent of the parties, the Claimant/Applicant was allowed to file a certificate of electronic evidence on 22nd March, 2023, and that to date, none has been filed.
9. It is counsel for the 2nd Respondent's (Mr. Andiwo) position that what the Claimant/Applicant seeks to introduce is an unauthenticated audio recording and for reason that the Claimant/Applicant is yet to file its certificate of electronic evidence, means that its primary evidence is unauthenticated in accordance with Sections 78(a) and 106(b) of the Evidence Act.
10. Counsel further argued that the transcript is secondary evidence per Section 66 of the Evidence Act, which cannot be had from electronic evidence if primary evidence has not been authenticated. It is counsel's position that a transcript is also electronic evidence, which also has to be accompanied by a certificate detailing how the audio was moved from a compact disk to a piece of paper, who moved it, and what their competence is. He placed reliance In *William Odhiambo v. IEBC*, where the court held that a transcription has to be accompanied by a certificate of electronic evidence.
11. It is Mr. Andiwo's assertion that all documents sought to be filed were within reach of the Claimant/Applicant, who has been allowed to file documents over six times, and has at each opportunity filed huge bundles, hence pleading must finally come to an end.
12. It is the 2nd Respondent's prayer that the Claimant/Applicant's application be dismissed with costs.
13. The 1st Respondent equally opposed the application through grounds of opposition dated 24th July, 2024.
14. Ms. Ithondeka, appearing for the 1st Respondent, argued that this application was filed after the Claimant had been stood down in her testimony, and hence the same amounts to piecemeal litigation and an attempt to repair defects in her case.
15. It is Counsel's argument that the Claimant/Applicant has not shown why, in the two years when she filed several bundles of documents, this transcription was not filed. She asserts that the sole reason for filing the transcript is to better detail the contents of the compact disk, which indicates that the evidence is already before the court.
16. She maintains that the Claimant ought to be satisfied with the evidence she has already placed before the court, as introducing more documents mid-trial is prejudicial to the Respondents.
17. In his rejoinder, counsel for the Claimant/Application opined that there is no requirement that a transcript be accompanied by a certificate of electronic evidence. It is his prayer that the minor infractions in the matter be ignored and the Claimant's application be allowed.

Determination

18. The singular issue for determination is whether the Claimant/Applicant should be granted leave to file an additional list of documents, namely a transcript of an audio recording already filed on a compact disk, mid trial.
19. It is now settled that courts have an inherent and statutory discretion to allow parties to file additional documents at any stage of proceedings, provided that the evidence is relevant, the delay is explained, no undue prejudice is occasioned to the opposing party, and the interests of justice so demand.



20. This discretion must, however, be exercised judiciously and not to aid a party to patch up weak points in its case. In *Raila Odinga & 5 Others v IEBC & 3 Others* [2013] eKLR, the Supreme Court emphasized that parties must bring their whole case at once and that late introduction of evidence should not be used to ambush the other side or cure defects already exposed.
21. Further in *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* [2014] eKLR, the Court held that additional evidence should only be admitted where it is necessary and where the party seeking it has provided a satisfactory explanation for the failure to produce it earlier.
22. Sections 78A and 106B of the *Evidence Act* govern the admissibility of electronic evidence. Section 106B(4) is explicit that electronic evidence must be accompanied by a certificate describing the manner in which the electronic record was produced, the device used, and confirming the integrity and reliability of the process.
23. The courts have consistently held that compliance with Section 106B is mandatory. In *William Odhiambo Ramogi & 2 Others v IEBC & 2 Others* [2017] eKLR, also cited by the 2nd Respondent, the Court of Appeal held that a document derived from electronic evidence (including transcriptions) is itself electronic evidence and must be accompanied by a certificate under Section 106B.
24. Similarly, in *Republic v Barisa Wayu Matuguda* [2011] eKLR, the court rejected electronic evidence for lack of the requisite certificate, holding that authentication is a prerequisite to admissibility, not a mere procedural technicality.
25. Further, and as correctly argued by Counsel for the 2nd Respondent, under Section 66 of the *Evidence Act*, secondary evidence is only admissible where primary evidence has been properly produced or accounted for. A transcript of an audio recording is derivative in nature and cannot stand independently unless the primary electronic evidence is authenticated.
26. It is not disputed that the compact disk containing the audio recording is already on record, and the court, by consent of the parties, on 22nd March 2023, allowed the Claimant to file a certificate of electronic evidence, which to date, has not been filed.
27. In my considered view, the explanation advanced by the Claimant that the need for a transcript was realized after a change of advocates is insufficient. A change of counsel does not absolve a litigant from compliance with statutory evidentiary requirements, nor does it explain why, over a period exceeding two years and after multiple opportunities to file documents, the transcript was not produced earlier.
28. It is also not lost on this court that the Claimant had already testified and had been stood down mid-trial. In my view, introducing further documents at this stage would amount to piecemeal litigation and an attempt to repair gaps in the Claimant's case, which the courts have consistently frowned upon.
29. This court further agrees with the submission of the counsel for the 1st Respondent that the Respondents will suffer prejudice for reason that they are entitled to know the full case they are to meet before, and not during trial.
30. In the upshot, I find and hold that the Claimant/Applicant's application dated 1st March, 2024, is devoid of merit and is hereby dismissed.
31. Costs shall be in the cause.
32. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 28TH DAY OF JANUARY, 2026.



C. N. BAARI

JUDGE

Appearance:

Mr. Thuita present for the Claimant

Ms. Ithondeka present for the 1st Respondent

Mr. Andiwo present for the 2nd Respondent

Ms. Esther S -C/A

