



**Wamriew v Copy Cat Limited (Cause E028 of 2025)
[2026] KEELRC 81 (KLR) (26 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 81 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E028 OF 2025
S RADIDO, J
JANUARY 26, 2026**

BETWEEN

ELIJAH OKUMU WAMRIEW CLAIMANT

AND

COPY CAT LIMITED RESPONDENT

RULING

1. Elijah Okumu Wamriew (the Claimant) sued Copy Cat Ltd (the Respondent) on 17 January 2025, alleging unfair termination of employment.
2. On 13 June 2025, the Claimant filed a Motion dated 12 June 2025, seeking orders:
 - i. That this Honourable Court be pleased to expunge the Mpesa records filed by the Respondent in their List of documents dated 7th May 2025, as the evidence was obtained illegally.
 - ii. That this Honourable Court be pleased to declare that the Mpesa records produced by the Respondent were obtained illegally, contrary to Article 31 and Article 50(4) of the Constitution of Kenya 2010.
 - iii. That this Honourable Court be pleased to declare that the Mpesa records produced by the Respondent were obtained illegally and amount to an offence as per sections 72 and 73 of the Data Protection Act, 2019.
 - iv. That the Mpesa records obtained illegally are prejudicial to the Claimant/Applicant and will not accord him a fair trial, given that this evidence was never presented to him during his disciplinary hearing or at any time during the entire disciplinary process conducted by the Respondent.
 - v. That this Honourable Court be pleased to issue any other Orders that are just and expedient in the circumstances.



- vi. That the costs of the Application herein be borne by the Respondent.
3. The main grounds in support of the Motion were that the Claimant had not given the Respondent consent to access his mpesa records; the mpesa records were obtained illegally; the Court had not sanctioned the release of the mpesa records; the records would prejudice the Claimant's right to a fair trial and that the Respondent had breached sections 72 and 73 of the Data Protection Act as read with Articles 31 and 50(4) of *the Constitution*.
4. The Respondent filed a replying affidavit in opposition to the Motion on 18 July 2025. It was deposed in the affidavit that the mpesa records were provided by an a whistle-blower and were not obtained illegally; the Respondent had a whistle-blower policy and the Claimant was aware of the policy; the records should be allowed in the interests of justice; the right to privacy was not absolute; the Claimant had not disputed the veracity of the mpesa records; the records were crucial and relevant to the determination of the dispute and that the Claimant would have the opportunity to challenge the records during the trial.
5. The Claimant filed his submissions on 6 November 2025. In the submissions, the Claimant cited *Rufus Mogere Waithaka v Edita Naitore Ntongai (2021) KEELC 859 (KLR)*, *Antony Watuku Kibandi v R (2020) eKLR* and *RC v KKR (2021) eKLR* to urge the Court to reject the mpesa records because they were obtained without his consent and illegally and would prejudice his right to a fair hearing.
6. The Court gave directions on 7 October 2025 and 19 November 2025.
7. The Respondent filed its submissions on 18 November 2025. The Respondent relied on *John Muriithi & Ors v Registered Trustees of Sisters of Mercy Kenya t/the Mater Misericordiae Hospital & Ar (2018) eKLR* and *Njenga v Dib Bank Kenya Ltd (2023) KEELRC 1549 (KLR)* to argue that the right to privacy was not absolute, and that the Court should be more concerned with the relevance of the mpesa records.
8. In the Respondent's view, the mpesa introduction and admission of records would not render the hearing unfair.
9. On the question of breach of the Data Protection Act, the Respondent submitted that the mpesa records fell within the exclusion in section 72(4) of the Act because the records were for a legitimate purpose related to the dispute before the Court.
10. The Court has considered the Motion, affidavits and submissions and has concluded that the Motion is premature.
11. The Court has come to the premature conclusion because the introduction of evidence into the record follows a well-trodden path as explained in *Kenneth Nyaga Mwige v Austin Kiguta & 2 Ors (2015) KECA 334 (KLR)*.
12. The most appropriate time to object to the introduction of evidence is at the point a witness seeks its production, admission and proof.
13. The mere filing of the mpesa records does not make the records evidence for consideration by the Court.
14. The delivery of this Ruling has been brought forward with notice to the parties.



Orders

15. The Motion dated 12 June 2025 is dismissed with costs in the cause.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 26TH DAY OF JANUARY 2026.

RADIDO STEPHEN. MCIARB

JUDGE

Appearances

For Claimant Gakaria & Co. Advocates

For Respondent Ng'ang'a & Associates Advocates

Court Assistant Wangu

