

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. E619 OF 2025

ELSA-MONDAY

MAKDWALLO.....CLAIMANT/RESPONDENT

VERSUS

BEIERSDORF EAST AFRICA LIMITED.....

RESPONDENT

RULING

1. By way of a Notice of Motion dated 19th September 2025, the Respondent/Applicant seeks the following orders:

- 1) *That the publication, broadcast or dissemination by any means of the names of the individuals mentioned in these proceedings and/or, of any information and evidence relating to these proceedings that might lead to the identification of the individuals involved and/or against whom allegations of sexual harassment have been made be prohibited.*
- 2) *That disclosure, publication, broadcast and dissemination of the Claimants' complaint for sexual harassment as well as the written records of the interviews conducted by the Respondent in respect to that*

complaint be prohibited and access to them be restricted to the parties to the suit and their legal representatives only.

3) That the title of these proceedings be anonymised by the use of the individuals' initials in the headings of all pleadings, Court file as well as the Court's cause list.

4) That costs of and occasioned this Application be provided for.

2. The Motion is anchored on the grounds outlined therein and is supported by the Affidavit of **Thobeka Nozuko Dandala**, the Applicant's Legal and Compliance Director for Sub-Saharan Africa. The Applicant asserts that the proceedings involve serious allegations of sexual harassment purportedly committed while the Claimant was employed by the Respondent.
3. It is contended that, in line with the constitutional right to privacy under Article 31, the protections afforded by the Data Protection Act, and the need to uphold confidence and fairness in the process, all reporting and investigative procedures under the Respondent's Sexual Harassment Policy are confidential.
4. The Applicant argues that unless the orders sought are granted, there will not only be a violation of constitutional and statutory protections, but the resulting

disclosure would erode the confidentiality guaranteed under the Sexual Harassment Policy. This, in turn, would undermine the full and candid disclosures necessary for the effective reporting and investigation of sexual harassment complaints.

5. The Applicant further contends that the orders sought are consistent with the principle of open justice, as they constitute a proportionate restriction to protect privacy guarantees without compromising the public interest.
6. The Application is opposed through a Replying Affidavit sworn on 4th November 2025, by **Elsa-Monday Makwallo**, the Claimant herein.
7. The Claimant contends that the Application effectively seeks to limit constitutional rights through a court order, thereby inviting the Court to assume a law-making role reserved for Parliament. She argues that such a request is untenable within the current constitutional framework.
8. She further states that, pursuant to Article 159(2)(e) of the Constitution, this Court is obliged to protect and promote the purposes and principles of the Constitution. In her view, the orders sought run contrary to this constitutional mandate.

9. The Claimant asserts that, given the Respondent's conduct thus far, the Application amounts to a red herring and is merely a tactic to delay the proceedings.
10. She also states that her sexual harassment claim is, among other issues, grounded in the Respondent's lack of a sexual harassment policy. In her view, the present Application is an attempt to introduce a policy that is otherwise nonexistent.
11. The Claimant maintains that neither her freedom of expression nor the public's right of access to information regarding court proceedings should be limited.
12. She additionally argues that the Respondent has failed to establish any factual or legal basis to justify the anonymization of individuals, parties, or the proceedings.
13. In her assessment, the prevailing legal framework does not support the issuance of the orders sought.

Submissions

14. The Motion was canvassed by way of written submission, which the Court has considered.

15. Submitting in support of the Motion, the Applicant argues that the anonymisation orders sought are intended to safeguard the integrity of the Respondent's investigatory process arising from a harassment complaint, both in respect of the Claimant and in relation to all similar complaints.


16. Citing *A (Respondent) v British Broadcasting Corporation (Appellant)*, [2013] *CSIH 43*; [2014] *UKSC 25*, the Applicant contends that the reliefs sought reflects a reasonable and appropriate balance within this Honourable Court's inherent jurisdiction, preserving the principle of open justice while permitting the withholding of a party's or witness's identity from public disclosure where necessary in the interests of justice.

17. The Applicant further submits that the grounds underpinning the Application are sound, and that the limited orders sought are both reasonable and justifiable. It argues that no public interest is served by disclosing the names of the individuals involved, noting that the matter concerns intensely personal and sensitive information, including conflicting accounts drawn from confidential

interviews involving not only the subject of the Claimant’s complaint but their colleagues as well.

18. In its supplementary submissions, the Applicant states that the Application is brought pursuant to Sections 3 and 20 of the ELRC Act, Rule 45 of the ELRC (Procedure) Rules, 2024, and the inherent jurisdiction of this Court.

19. Relying on *Osoro & another v Kiriga [2023] KEHC 1434 (KLR)*, the Applicant submits that the inherent power of this Honourable Court exists precisely to address situations where competing constitutional rights must be balanced in the interests of justice. It argues that the Court’s inherent jurisdiction empowers it to issue any orders necessary to achieve this balance, regardless of the absence of a specific statutory provision on reporting restrictions.



20. The Applicant maintains that the orders sought do not impede the Claimant’s right to a public hearing, nor do they limit public attendance at proceedings. Rather, the Application seeks proportionate reporting restrictions aimed at protecting the privacy and dignity of individuals named in sexual harassment proceedings, and does not amount to a “sealing” of the proceedings.

21. Opposing the Motion, the Claimant submits that the Application seeks to obscure matters involving a victim of sexual harassment in circumstances where the constitutional framework demands transparency. She contends that no evidence has been presented to demonstrate the existence of special circumstances warranting the orders sought. She further asserts that the public has a right to access information under Article 34 of the Constitution and Section 30 of the Employment and Labour Relations Court Act, and maintains that no law grants this Court authority to gag or anonymise proceedings.

Analysis and Determination

22. Evidently, the main issue for determination is whether the instant motion is merited.

23. In the Motion, the Applicant seeks orders restraining any publication, broadcast, or dissemination of the names of individuals referenced in these proceedings, together with any information or evidence that may reveal their identities or the identities of persons against whom allegations of sexual harassment have been made. The Applicant further seeks an order prohibiting the disclosure, publication, broadcast, or dissemination of the Claimant's sexual harassment complaint, including the Respondent's written interview records arising therefrom, with access thereto being confined strictly to the parties and their

legal representatives. In addition, the Applicant prays that the title of these proceedings be anonymised through the use of initials in place of the individuals' names in all pleadings, the Court file, and the Court's cause list.

24. The Applicant's Application is founded on the premise that the proceedings involve serious allegations of sexual harassment allegedly occurring during the Claimant's tenure with the Respondent. It is contended that any disclosure would compromise the confidentiality expressly protected under the Respondent's Sexual Harassment Policy and would impede the full and candid disclosures essential to the effective reporting and investigation of such complaints.

25. The Claimant contends that the present Application seeks to curtail constitutional rights by way of a court order. She further maintains that such an order would unjustifiably restrict her right to freedom of expression as well as the public's right of access to information.

26. The general rule is that legal proceedings are conducted in public, thereby promoting transparency and accountability, a principle commonly referred to as open justice, which is enshrined in the Constitution of Kenya, 2010. In particular, Article 50(1) guarantees every person the right to have any dispute that can be resolved by law determined in a fair and public hearing before a

court or, where appropriate, another independent and impartial tribunal or body. Further, Article 33(1) guarantees every person the right to freedom of expression, while Article 34(1) guarantees the freedom and independence of electronic, print, and all other forms of media, subject to the limitations set out in Article 33(2).

27. Consistent with the above constitutional provisions, Section 19 of the Employment and Labour Relations Act provides that court proceedings shall be conducted in public, except in circumstances contemplated under Article 50(8) of the Constitution.

28. Pursuant to Article 50(8), members of the press or the public may be excluded from proceedings where such exclusion is necessary, in a free and democratic society, to protect witnesses or vulnerable persons, safeguard morality, maintain public order, or protect national security.

29. In the present case, the Applicant contends that the application seeks only proportionate reporting restrictions designed to protect the privacy and dignity of individuals named in sexual harassment proceedings, and does not constitute a request to “seal” the proceedings.

30. Articles 28 and 31 of the Constitution guarantee, respectively, that every person has inherent dignity which must be respected and protected, and the right to privacy.

31. Accordingly, while the default position is that court proceedings are conducted in public, this principle is not absolute. It should be appreciated that the right to open justice must be balanced against the constitutional rights to privacy and dignity, particularly in cases involving sensitive matters such as the one herein.

32. Accordingly, this Court is required to balance the principle of open justice against the rights to privacy and dignity of the individuals referenced in these proceedings.

33. The Claimant has pleaded in her Statement of Claim that she experienced workplace sexual harassment while employed by the Respondent and has named the alleged perpetrator. This renders her a vulnerable person in the context of these proceedings.

34. At this pre-trial stage, the allegations made by the Claimant against the alleged perpetrator remain unproven. It must also be appreciated that sexual harassment

claims inherently involve the disclosure of intimate details and carry significant reputational and emotional implications for the parties involved.

35. Therefore, in balancing the right to privacy and dignity of the individuals referenced in these proceedings and the competing right of the people to open justice, the Court is inclined to allow the application dated 19th September 2025 in the following manner:

- 1) The title of these proceedings shall be anonymised by substituting the individuals' names with their initials in the headings of all pleadings, the Court file, and the Court's cause list.**
- 2) Any publication, broadcast, or dissemination by any means shall similarly use the anonymised names of the individuals involved, and this shall extend to all information and evidence relating to these proceedings.**
- 3) Costs shall be in the cause.**

DATED, SIGNED and DELIVERED at NYERI this 17th day of February, 2026.

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STELLA RUTTO

JUDGE

In the presence of:

No appearance for the Claimant/Respondent

Ms. Tanui instructed by Mr. Amoko for the Respondent/Applicant

Ndati Court Assistant

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.

STELLA RUTTO

JUDGE

ORIGINAL