



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO. E555 OF 2023

NANCY SILVIA AKINYI.....**CLAIMANT**

VERSUS

CREDIT BANK PLC.....

.....**RESPONDENT**

RULING

1. By a Notice of Motion dated 18th December 2025 brought under Section 12 of the Employment and Labour Relations Court Act, the Claimant seeks leave of the court to file the Audit Reports for the years 2022 and 2023, as well as the Credit Review Report for the year 2022 relating to the Respondent's Westlands Branch, where she previously served as the Branch Manager.

2. In support of the application, the Claimant avers that she served as the Respondent's Westlands Branch Manager prior to the termination of her employment. She states that the documents sought to be introduced were not in her possession at the time the matter was set down for hearing but have since come into her custody. According to the Claimant, the documents are critical to her case because the reasons advanced for her termination are closely connected to the matters addressed in the said audit and credit review reports. On that basis, she urges the court to allow the application.

3. The Respondent opposed the application through Grounds of Opposition dated 27th January 2026. It contends that the authenticity of the documents is doubtful as they are unsigned, undated, and their source has not been disclosed. The Respondent further avers that the application has been brought after undue and unjustified delay and that the Claimant has not demonstrated the relevance of the documents so as to justify departure from established procedural rules. In its view, the admission of the documents, particularly where they were not referenced in

the Claimant's witness statement, would amount to trial by ambush. The Respondent further contends that the Claimant is attempting to reposition her claim after the close of pleadings. It also asserts that the Claimant has exhibited a pattern of delaying the proceedings while continuing to enjoy interim orders issued on 9th November 2023. Consequently, the Respondent urges the court to dismiss the application on the grounds that it is frivolous, vexatious, an abuse of the court process, and prejudicial to the Respondent.

4. The Application was canvassed by way of written submissions.

Applicant's/Claimant's Submissions

5. The Claimant submits that, having served as the Respondent's Westlands Branch Manager, the reasons for the termination of her employment are directly related to the operational, audit, and credit functions of that branch. She therefore contends that the Audit Reports for 2022 and 2023 and the Credit Review Report for 2022 are directly linked to the issues raised in the claim and are necessary for the fair

and just determination of the dispute. The Claimant further submits that at the time of filing the suit the documents were not within her custody or control and that, despite exercising due diligence, she was unable to file them earlier. She therefore urges the court to exercise its discretion and admit the documents in the interests of justice. In support of this position, she relies on the case of **Mulu v Total Kenya PLC [2025] eKLR**, where the court, citing the decision in **Kennedy Nyamwaya Bundi v Insta Products (EPZ) Limited [2017] eKLR**, observed that although parties are generally required to file all documents before trial to avoid trial by ambush, the court retains discretion to admit additional documents where the trial has not commenced and where the interests of justice so demand..

6. On the nexus between the documents and the claim, the Claimant relies on **Aluodo v Cisco Systems Management B.V. (Cause 1382 of 2018) [2023] KEELRC 825 (KLR)**, where the court held that in determining whether to admit additional documents after the pre-trial conference, the court should consider the reasons for the delay, the relevance of

the documents to the dispute, and whether the opposing party would suffer prejudice, as well as whether such prejudice can be mitigated. The Claimant also cites **Ongeri v Skytop Technologies Limited (ELRC Cause 235 of 2019) [2023] KEELRC 834 (KLR)** for the proposition that where additional records are likely to shed light on the issues in dispute and no prejudice will be occasioned to the opposing party, the court should allow their admission in furtherance of the court's primary objective of facilitating the just resolution of disputes.

7. The Claimant also submits that allowing the application will not prejudice the Respondent, since the Respondent will have the opportunity to examine the documents, file further evidence if necessary, and cross-examine witnesses. She relies on **Britania Sacco v Jambo Biscuits Limited [2018] eKLR**, where the court held that new evidence may be admitted where the failure to file it earlier was *bona fide* and where any prejudice to the opposing party can be mitigated.
8. Finally, the Claimant invokes the principle of natural justice, relying on **The Management Committee of Makondo**

Primary School & another v Uganda National Examination Board HC. Civil Misc Application No. 18 of 2010 (unreported), as cited in **Mandeep Chauhan v Kenyatta National Hospital & 2 others [2013] eKLR**, submitting that denying her the opportunity to place before the court documents central to her case would offend the principle that no party should be condemned unheard. She therefore urges the court to allow the application.

Respondent's Submissions

9. In opposition to the application the Respondent identifies the issues for determination as:
- a.) Whether there was undue delay without reasonable justification in bringing the application;
 - b.) Whether there has been demonstration of necessity or relevance of the documents justifying the overriding of procedural requirements;
 - c.) Whether it would suffer prejudice incapable of compensation if the documents are admitted; and
 - d.) Whether the application is frivolous, vexatious, and an abuse of the court process.

10. On the first issue the Respondent submits that the delay is inordinate and without justification, For the broad reasons that; its close to 3 years since the Claimant filed the suit, the Claimant had already sought to rely on voluminous documents running to 89 pages, the suit was confirmed ready for hearing more than 7 months ago and the Claimant had confirmed readiness to proceed with the hearing on 8th December 2025 without the documents. Particularly, it draws attention to the fact that the Claimant's bundle encompassing his Statement of Claim as well as her statement and documents is dated 13th July 2023, she filed a supplementary list of documents dated 8th August 2023 and subsequently the matter was set down for hearing on 8th December 2025 on which date the Claimant confirmed she was ready to proceed. Further exhibiting the Claimant's disingenuity, the Respondent submits that this application was filed more than a month after the said hearing date, despite her expressed readiness to proceed.

11. The Respondent further submits that the Claimant has not explained when or how she obtained the documents in

question, nor has she indicated their date or source. In the absence of such explanation, the Respondent contends that the assertion that the documents were only recently acquired remains unsubstantiated and does not justify the exercise of the court's discretion in the Claimant's favour. In support of this position, the Respondent relies on **Aluodo v Cisco Systems Management B.V [2023] KEELRC 825 (KLR)**, where the court emphasized that the discretionary power to admit additional documents must be exercised judiciously rather than whimsically or arbitrarily. The Respondent also cites **Too v Tum [2014] KEELC 512 (KLR)**, where it was held:

*"The court has a constitutional mandate to ensure that a trial will be fair and therefore retains the power to disallow one party from tabling evidence that was not provided to the other party as contemplated by the rules. This was indeed the reasoning of the Supreme Court in the case of **Raila Odinga & 5 Others, Supreme Court of Kenya Petition Nos. 3, 4, and 5 of 2013 [2013] eKLR**, where in a presidential electoral dispute, the Supreme Court declined to allow additional evidence filed outside the*

contemplation of the rules.. but it is up to each court to weigh the surrounding circumstances of each case, and determine whether it will be in the interests of justice, to allow such evidence to be tendered, though outside the time frame provided by the rules.”

12. On the second issue the Respondent submits that there is *prima facie* no nexus between the additional documents and the claim. It asserts that for the basic reasons that they are undated, do not disclose authorship or source, their relevance cannot be deduced. Regarding the question of prejudice, the Respondent submits that it would suffer substantial prejudice if the documents are admitted. It submits that the Claimant continues to enjoy interim orders while delaying the expeditious disposal of the suit and that the pending litigation has continued to cause reputational and operational challenges to the Respondent. It further argues that the Claimant has not incorporated the additional documents in her witness statement, thereby increasing the risk of trial by ambush. In this regard, the Respondent relies on **Ongeri v Skytop Technologies Ltd [2023] KEELRC**

834 (KLR), for the proposition that additional documents should not be admitted if they would occasion prejudice to the opposing party.

13. Finally, the Respondent submits that the application is frivolous, vexatious, and an abuse of the court process. It reiterates that nearly three years have elapsed since the filing of the suit and that the matter was certified ready for hearing seven months prior to the application. It also points out that the Claimant agreed to the hearing date without seeking leave to introduce additional documents and has failed to demonstrate any nexus between the documents and the claim. For these reasons, the Respondent urges the court to dismiss the application with costs.

Disposition

14. The issue for determination by this Court is whether sufficient grounds have been laid down for the Court to permit an amendment of pleadings. Rule 14(6) of the Employment and Labour Relations Court (Procedure) Rules, 2016 provides as follows:-

“A party may amend pleadings before service or before the close of pleadings: Provided that after the close of pleadings, the party may only amend pleadings with the leave of the court on oral or formal application, and the other party shall have a corresponding right to amend its pleadings.”

15. Clearly, there is room for the amendment of pleadings prior to hearing of the case. In the case of **Eastern Bakery v Castelino (Civil Appeal No. 30 of 1958) [1958] EACA 147 (19 September 1958)**, the Court of Appeal for East Africa held that amendments to pleadings sought before the hearing should be freely allowed if they can be made without injustice to the other side, and there is no injustice if the other side can be compensated by costs. In the Court’s considered view, the amendment sought having been requested for prior to the commencement of hearing, there is no injustice or prejudice that will be suffered by the Respondent as there will be an order for costs to compensate the Respondent. In the case before the Court, it is the position of the Claimant that these documents are vital to her claim and their inclusion is critical in determining the

questions in issue in this claim. The Court therefore exercises its discretion to permit the introduction of the Audit Reports for the years 2022 and 2023, as well as the Credit Review Report for the year 2022 relating to the Respondent's Westlands Branch. This must be done within 14 days of this Ruling. The Respondent is at liberty to file a bundle of documents in response thereto within 14 days of service. Parties are reminded to comply with Rule 24(1) of the Rules of this Court. Costs of the motion to the Respondent. The matter shall be placed for directions as to disposal of the suit on 21st April 2026 before me.

It is so ordered.

Dated and delivered at Kisumu this 10th day of March

2026

**Nzioki wa Makau, MCI Arb.
JUDGE**