

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

ELRC CAUSE E020 OF 2024

COLLINS CHIKO MWAHENDO.....CLAIMANT

VS

MUSLIMS FOR HUMAN RIGHTS.....RESPONDENT

RULING

1. When this matter came up for hearing on 24 November 2025, and while the Claimant was testifying, the Respondent's Counsel objected to the production in evidence of; a) The audio-recorded conversation stored in the USB flash disk,

b) The certificate of electronic evidence of the audio conversation.

c) Transcript of recording

d) English translation of the audio-recorded conversation.

2. Counsel for the Respondent asserted that the recording was obtained illegally. The Claimant has admitted in his witness statement that he recorded the conversation without the 3rd Party's consent.

Further, it has not been shown that the third party is intended to be a witness in this matter.

3. In response, Counsel for the Claimant stated that the conversation was between him and the former Chairman of the Respondent and concerned his employment. In the recorded conversation, the former Chairman was speaking as a former chair of the Respondent, notwithstanding that he is currently in the Respondent's employment.

4. If the Respondent is not comfortable with the recording for whatever reason, they are best suited to call the 3rd party as a witness to discount the recording.
5. The conversation concerned the Claimant's right to fair labour practice. During the conversation, the 3rd Party expressly stated that, if called upon, he would take the liberty of testifying to matters discussed.

Analysis and Determination

6. I have carefully considered the submissions by Counsel for the parties. Inarguably, the conversation, the subject of the audio recording stored on the flash disk, has not been shown to have been recorded with the consent of the 3rd party. I hold the view that it would be inconsistent to the principles of legal propriety and procedural fairness to admit into evidence an audio recording of a conversation between the Claimant and a third party who was unaware that the conversation was being recorded. The covert nature of such recording raises concerns regarding consent, privacy, rights, and a reasonable expectation of confidentiality in private communications.
7. Admitting such evidence may undermine the integrity of the judicial process. Particularly as the recording was obtained without the knowledge or authorisation of all parties involved. Courts are generally cautious in permitting evidence obtained in a manner that may infringe upon statutory protections and constitutional safeguards.
8. For the reasons set out above, I am not persuaded by the Claimant that the conversation should be admitted as evidence in this matter. The flash disk and the objected-to documents cannot be tendered as evidence in this matter. The objection is upheld.

Read, Signed and Delivered this 26th Day of February 2026.

SIGNED
JUSTICE OCHARO KEBIRA