

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS**  
**COURT AT NAIROBI**

**ELRC CAUSE NO. E6455 OF 2020**  
***(Before Hon. Lady Justice Anna Ngibuini Mwaure)***

**ERICK BINGE OMWENGA.....**  
**.....CLAIMANT**

**VERSUS**  
**GOVERNORS' CAMP MUSIARA**  
**LTD.....RESPONDENT**

**RULING**

**Introduction**

1. Before this court are two applications for determination dated 29<sup>th</sup> December 2025 and 22<sup>nd</sup> January 2026.
2. The Claimant filed a Notice of Motion dated 29<sup>th</sup> December 2025 seeking that the application be heard during the main hearing on 9.2.2026 before the trial court, and the Honourable Court be pleased to expunge Respondent's bundle of emails for want of compliance with section 106(B) of the Evidence Act.

**Claimant's supporting affidavit**

3. The application is supported by the affidavit of the Claimant dated on the same date as the application.

4. The Claimant avers that the Respondent's bundle of emails was improperly filed in violation of **section 106(B) of the Evidence Act**, stressing that he never authored them and that they lacked his electronic signature.
5. The Claimant contends the emails were doctored to mislead the court and undermine his claim, and notes that the law requires such electronic evidence to be accompanied by an expert's certificate, which was not provided.
6. The Claimant further avers that admitting the emails makes the Respondent act as complainant, prosecutor, and judge in its own cause, and therefore urges the court to expunge them from the record.
7. Finally, the Claimant maintains that excluding the emails will not prejudice the respondent's defence in any way.
8. The Claimant urged the court to allow the application as prayed.

### **Respondent's replying affidavit**

9. The Respondent opposed the Claimant's application dated 22<sup>nd</sup> January 2026, vide a replying

affidavit sworn by Alice Kabeke, the Respondent's Human Resource Manager.

10. The Respondent avers that the emails in question were legitimately authored by the claimant using his official work email address, complete with his unique signature, and form part of its routine HR records.
11. The Respondent avers that it details the process by which the emails were retrieved and shared from the Respondent's computer system, confirming that the devices were functioning properly and that the emails were generated in the ordinary course of HR operations.
12. The Respondent argues that the Claimant's denial of the emails is inconsistent since his claim itself is based on the same correspondence and emphasizes that the constitutional right to a fair hearing under Article 50.
13. The Respondent avers that excluding the emails would prejudice its defence, while their inclusion was lawful and not malicious.

14. The Respondent concludes that the Claimant's application is unmerited and should be dismissed with costs.

### **Respondent's application**

15. The Respondent, on the other hand, filed a Notice of Motion dated 22<sup>nd</sup> January 2026 seeking that the Honourable Court be pleased to admit the Applicant's certificate of electronic evidence dated 22<sup>nd</sup> January 2026 (the Certificate of Electronic Evidence) as properly filed with no orders as to costs.

16. The application is supported by the affidavit of Alice Kabeke, the Respondent's Human Resource Manager, dated even date as the application.

17. The Respondent avers that it filed its bundle of documents, including email threads, and later submitted a Certificate of Electronic Evidence on 22<sup>nd</sup> January 2026 in compliance with **sections 106A and 106B of the Evidence Act.**

18. The Respondent emphasizes that the emails are integral to the Respondent's defence and that excluding them would cause prejudice to their right

to a fair hearing, while no prejudice would be suffered by the claimant.

19. The Respondent avers that the late filing of the certificate is a procedural technicality and urges the court to admit the certificate and the emails in the interest of justice and expeditious resolution of the matter.

### **Claimant's grounds of opposition**

20. In opposition to the Respondent's application dated 22<sup>nd</sup> January 2026, the Claimant filed grounds of opposition dated 3<sup>rd</sup> February 2026 on the following grounds that:

***1. The application is an abuse of the court process as the same predicated on issues challenged by the Claimant in his application dated 29.12.2025.***

***2. Respondent's Human Resources officer, Alice Kabeke, is not an expert in Information Technology (IT), as well not custodian of the Company's Server and as such renders the application dated 22.01.2026 superfluous and null and void from the onset.***

**3. Despite the law providing filing of electronic evidence under section 106 (A) and (B) of the Evidence Act Cap 80 Laws of Kenya to a party who intends to reply and produce it in court the same should originate from an IT expert and not only reliance on hardware identification such as make of the computer, serial number of computer, printer and Computer model and/or brand.**

**4. The above are Technician specifications, Data in the Company's IT Inventory and not from an Expert.**

**5. Subject emails on pages 4 and 5 do not contain electronic signatures of the Claimant, late replies and insertion of the Claimant's name in other employee's email correspondence.**

21. This court directed the parties to file their respective written submissions to the two applications.

### **Respondent's written submissions**

22. The Respondent submitted that the Claimant's application to strike out the emails is premature and unprocedural, as admissibility of electronic

evidence should only be considered at trial. The Respondent relied on the case of **Republic v Mark Lloyd Steveson [2016] KEHC 4022 (KLR)**, **Maganga v Aquavita Limited [2024] KEELRC 171 (KLR)**, and **Teachers Service Commission v Obi [2024] KEELRC 838 (KLR)**, which emphasize that objections to electronic evidence must be raised when the evidence is produced, not at the interlocutory stage.

23. The Respondent further relied on the case of **Susan Wairimu Ndegwa v James Gichere Ndegwa [2018] KEELC 2106 (KLR)**, where the court emphasized that parties should be allowed to rely on every document that assists their case, and overturned a decision expunging documents, ordering instead that they be deemed properly on record and admissible upon proof of admissibility. In **Flora Cherono v Mary Njihia & 9 Others [2021] KEELC 1740 (KLR)**, the Court described expunging documents as **“a draconian step that should be exercised very sparingly”** and **cautioned that courts should be “extremely cautious and slow in expunging of a party's evidence or documents, thereby shutting him out of the proceedings.”**

24. On the certificate of electronic evidence, the Respondent submitted that **section 106B of the Evidence Act** does not prescribe timelines and cited the cases of **Ogembo v Yongo [2024] KEHC 15763 (KLR)** and **Nonny Gathoni Njenga & Jane Wambui Odewale v Catherine Masitsa & Standard Group Kenya [2014] KEHC 6468 (KLR)** to show certificates can be filed before production, even after the hearing begins.
25. The Respondent also relied on the Court of Appeal case of **County Assembly of Kisumu v Kisumu County Assembly Service Board [2015] KECA 397 (KLR)** to demonstrate that a responsible officer, such as the HR Manager, can validly certify electronic evidence.
26. The Respondent concluded that the emails and certificate are properly on record, and the Claimant's application should be dismissed with costs.
27. At the time of writing this ruling, the Claimant did not file their written submission on the CTS platform or present a hard copy as the ELRC directions rule.

### **Analysis and determination**

28. The court has considered the applications, the replying affidavit, grounds of opposition and submissions on the record; the issue for the determination is whether to expunge the Respondent's bundle of emails or to retain them on record.

29. **Section 106B of the Evidence Act** provides that information contained in an electronic record, once printed or stored on electronic or optical media, is deemed a document and admissible in court if certain conditions are met. These conditions include that the record was produced during regular use of the computer by someone with lawful control, that the information was regularly fed into the computer in the ordinary course of activities, that the computer was operating properly during the relevant period, and that the record accurately reproduces the information. It further clarifies that multiple computers used in succession are treated as a single computer. For admissibility, a certificate must be filed identifying the record, describing how it was produced, detailing the devices used, addressing the statutory conditions, and signed by a responsible person. Such a

certificate serves as evidence of the matters stated, provided they are to the best of the certifier's knowledge.

30. In ***John Lokitare Lodinyo v Independent Electoral and Boundaries Commission & 2 others [2018] KECA 439 (KLR)***, the Court of Appeal stated as follows:

***“Essentially, the sections provide that electronic evidence which is printed out shall be treated like documentary evidence and will be admissible without production of the computer used to generate the information. The appellant claimed that his technical team downloaded the forms and had them printed. He admitted that the forms were from the IEBC public portal. Ordinarily, this would have meant accessing the IEBC portal, which one could only do if they had access to the internet, proceeding to log onto the IEBC portal page, clicking on the Forms 35A uploaded in Kacheliba Constituency, downloading the Forms 35A onto the computer's hard disk and finally printing the documents via a printer connected to the computer.*”**

***It is at this juncture that the provisions of Section 106B of the Evidence Act come into play as the section sets out the conditions to be fulfilled to have this evidence admissible since evidence shall only be admissible if a certificate is presented identifying the electronic record and a description of the manner in which the electronic evidence was produced, together with any particulars of any device involved in the production of that document, which the appellant did not do. This Court in the case of County Assembly of Kisumu & 2 Others v Kisumu County Assembly Service Board & 6 Others [2015] eKLR stated that;***

***“Section 106B of the Evidence Act states that electronic evidence of a computer recording or output is admissible in evidence as an original document “if the conditions mentioned in this section are satisfied in relation to the information and computer.” In our view, this is a mandatory requirement which was enacted for good reason. The court should not***

***admit into evidence or rely on manipulated (and we all know this is possible) electronic evidence or record, hence the stringent conditions in sub-section 106B (2) of that Act to vouchsafe the authenticity and integrity of the electronic record sought to be produced...”***

31. In ***County Assembly of Kisumu & 2 others v Kisumu County Assembly Service Board & 6 Others(Supra)***, the Court of Appeal stated that the Evidence Act does not provide the format the certificate required under sub-section 106B (2) should take, and the certificate can therefore take any form, including averments in the affidavit of the recorder.
32. In this instant case, the Respondent filed its bundle of documents, which included emails but seem to have overlooked attaching certificate of electronic, which made the Claimant file the application to expunge the said document as provided in Section 106 of the Evidence Act.
33. The Respondent has made the appropriate application to file the said certificate of electronic evidence on its part, and the certificate has

complied with the requirements of Section 106(B) of the Evidence Act. The said certificate is dated 22<sup>nd</sup> January 2026.

34. The court finds the emails in question can better be interrogated during a full hearing and the Claimant will have opportunity to cross-examine the Respondent.

35. From the foregoing, the court finds the Applicant's application is not merited and if anything is premature. The said application dated 29<sup>th</sup> December 2025 is dismissed. On the other hand, the Respondent's Application dated 22<sup>nd</sup> January 2026 is meritorious and is allowed. The case to be set down for hearing.

36. The costs will be in the cause.

IT IS SO ORDERED.

**Dated, Signed and Delivered virtually at Nakuru  
this 18<sup>th</sup> Day of  
March, 2026.**

**ANNA NGIBUINI MWAURE  
JUDGE**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 has 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.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**  
**JUDGE**

ORIGINAL