



Nzyoki v Kenya Safari Lodges & Hotels Limited & another (Cause E001 of 2025) [2026] KEELRC 841 (KLR) (25 March 2026) (Ruling)

Neutral citation: [2026] KEELRC 841 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT VOI
CAUSE E001 OF 2025
M MBARŪ, J
MARCH 25, 2026**

BETWEEN

GEOFFREY BANDA NZYOKI CLAIMANT

AND

KENYA SAFARI LODGES & HOTELS LIMITED RESPONDENT

AND

KUDHEIHA INTERESTED PARTY

RULING

1. The respondent filed an application dated 26 February 2026 seeking orders that the Respondent's Response already filed on 22 December 2025 and served be deemed duly and properly filed on record. If necessary, this Court be pleased to exercise its inherent jurisdiction to reopen proceedings for the limited purpose of regularising the record.
2. The application is supported by the Affidavit of David Mvoi Wachenje, advocate for the respondent, who avers that the Court retains inherent jurisdiction to prevent miscarriage of justice. No judgment has been reserved, and the matter is coming up for a defence hearing.
3. The Respondent duly filed and served its list of documents, bundle of documents and witness statements. parties mutually confirmed compliance and fixed the hearing date. The omission to upload the Response was inadvertent and administrative.
4. Wachenje avers that this dispute involves allegations of forged academic credentials and engagement of investigative bodies, including the DCI and EACC. The matter transcends a private employment dispute and implicates public interest considerations. No prejudice will be occasioned to the Claimant, and any prejudice is curable by an order for the reopening of the proceedings. Article 159(2)(d) of *the*



Constitution of Kenya mandates the Court to administer justice without undue regard to procedural technicalities.

5. The claimant filed his Grounds of Opposition, asserting that the respondent has not filed a response, and that the alleged response filed on 22 December 2025 was without the court's leave. The respondent has acted outside of practice and the law by filing a response without first seeking the court's indulgence. There are no valid grounds or reasons given for failing to file a response in time, despite filing various records in response.
6. The claimant avers that the court's discretionary powers are not to aid indolence but are exercised judicially, and that this is not available in this case. The discretion called should only be exercised in access to justice but not to a party who has deliberately failed to dress and hence meant to frustrate the claimant.
7. Both parties attended and made submissions, and filed a list of cases.
8. At the core of the respondent's application is that the response filed on 22 December 2025 be deemed properly filed and that the claimant be recalled for cross-examination.
9. Under Rule 29(4) and (5) of the Employment and Labour Relations Court (Procedure) Rules, once pleadings have closed, a party may, with the leave of the court, seek the extension of time to file the document necessary for the case. Once pleadings have closed, the party seeking to introduce documents must have good cause.
10. However, Rule 31(1) of the Court Rules states that, where there is no response filed, the claimant is allowed to proceed with the claim through formal proof.
31. (1) Where a respondent has failed to enter an appearance or file a defence, the claimant may apply to the Court for directions that the matter proceed to formal proof as an undefended suit.
11. In this case, the respondent entered an appearance, filed various work records, but failed to file a response. The pleadings closed, and a hearing date was allocated. The claimant has since argued his case and closed.
1. The respondent asserts that there was an inadvertent error in failing to file the response with the documents. The response has since been filed to demonstrate an arguable case against the claim.
13. As outlined above, for good cause, before judgment is delivered, the court has discretion to amend pleadings, file documents, or ensure that each party is heard on the merits. There is a high probability that the respondent filed various documents but, in error, failed to file the necessary response. However, within this error, the claimant has since been called and argued his case on the basis that there is no response.
14. Taking the claimant back would entail additional costs not contemplated.
15. To ensure justice for both parties, the response dated 22 December 2025 is hereby admitted. The respondent shall serve the claimant by allowing 14 days' right of reply. The claimant shall be recalled on his case to allow the respondent a chance to cross-examine him in light of the response.
16. The respondent shall meet the claimant's costs in this regard, assessed at Ksh. 30,000 to be paid within 14 days from the date hereof.
17. Orders accordingly.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 25TH DAY OF MARCH 2026.



M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Omar

..... and

