

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E877 of 2022

GERRY WAKA.....CLAIMANT/RESPONDENT

VERSUS

DAN CHURCH AID KENYA (DCA).....1ST RESPONDENT/APPLICANT

KAREN POORE.....2ND
RESPONDENT/APPLICANT

R U L I N G

1. The Respondents/Applicants have moved this Court by way of a Notice of Motion dated 25th November 2025, seeking the following orders:

- 1) THAT the Honourable Court be pleased to order that the 2nd Respondent be struck out as a party to these proceedings.***
- 2) THAT paragraphs 4 and 5 of the Claimant's Further Witness Statement dated 31st October 2025, referencing the procurement of the 1st Respondent's current advocates, be struck out and expunged from the court record for being scandalous, irrelevant, prejudicial, and an abuse of the court process.***

- 3) *Paragraphs 6 to 10 of the Claimant's Further Witness Statement dated 31st October 2025, referencing the engagement of Mr. Kevin Doyle and Mr. Andre Vording be struck out and expunged from the court record for being scandalous, irrelevant, prejudicial, and an abuse of the court process.*
- 4) *THAT the work permit, passport pages and immigration documents relating to the 2nd Respondent, listed as item number 7 in the Claimant's List of Documents dated 25th November 2022 and item number 1 in the Claimant's Further List of Documents dated 4th November 2025, be expunged from the court record and declared inadmissible, for being unlawfully obtained, irrelevant, oppressive, and in violation of Article 31 of the Constitution, the Data Protection Act and the Claimant's contractual obligations.*
- 5) *THAT documents Nos. 1, 11, 12, 13 and 14 contained in the Claimant's Further List and Bundle of Documents Claimant's Further dated 31st October 2025, and document number 8 contained in the List and Bundle of Documents and dated 25th November 2025 be struck out excluded from evidence, for having been unlawfully obtained in breach of confidentiality, in violation of the Data Protection Act, and/or for being irrelevant to the matters in issue.*

6) THAT all paragraphs in the Claimant's pleadings and statements purporting to impugn the procurement of the 1st Respondent's advocates, and correspondence and documents filed by the Claimant purporting to relate to alleged procurement irregularities from 2020, be expunged, the same having no nexus to the Claimant's December 2022 performance-based termination.

7) THAT Claimant be barred from relying upon, referring to, or producing in evidence the impugned paragraphs and documents at the hearing of this suit.

8) THAT the costs of this Application be provided for.

2. The Notice of Motion is supported by the annexed Affidavit of **Karen Poore**, the 2nd Respondent herein, and the 1st Respondent's Country Director. The grounds in support of the Motion are that the joinder of the 2nd Respondent (Ms. Poore) serves no useful purpose, discloses no reasonable cause of action, and is vexatious, oppressive, and an abuse of the court process. It is further contended that the Claimant's suit is founded entirely on the employment relationship between the Claimant and the 1st Respondent, and that the issues before this Court can be fully and effectually determined as between the Claimant and his employer alone.

3. Ms. Poore avers that at all material times she acted in her official capacity as an employee and agent of the 1st Respondent, and that any actions undertaken in relation to the Claimant's performance management and disciplinary process were carried out strictly within the mandate of the employer. She maintains that, in law, no personal liability can attach to her for acts undertaken in the course of employment.
4. She further deposes that she is not a necessary party to the present suit and that her presence is not required for this Court to completely and effectually adjudicate upon the issues in dispute.
5. Ms. Poore further avers that the Claimant's Further Witness Statement dated 31st October 2025 contains material that is scandalous, irrelevant, vexatious, and prejudicial, and which bears no relation to the issues before this Court.
6. She deposes that paragraphs 4 to 10 of the said Further Witness Statement contain allegations that are oppressive and irrelevant, and appear intended solely to embarrass the Respondents. These include averments impugning the procurement of the Respondent's legal counsel and raising extraneous matters relating to procurement activities dating back to 2020. According to Ms. Poore, these allegations are false, malicious, unsupported, and unrelated to the

Claimant's termination, and are clearly intended to embarrass both the Respondents and counsel on record.

7. Ms. Poore further contends that the procurement allegations relate to events said to have occurred in 2020, two years before the Claimant's alleged performance challenges arose in 2022. In her view, the allegations bear no nexus whatsoever to her interactions with the Claimant, the documented Performance Improvement Plan (PIP) process, or the performance-based grounds upon which the Claimant's employment was terminated.
8. It is further averred that the impugned material is wholly irrelevant to the matters in issue, bears no connection to the events leading to the Claimant's performance management or termination in 2022, and does not advance or support any cause before this Court. Instead, its only effect is said to be to prejudice, scandalise, and malign the Respondents.
9. Ms. Poore further contends that the Claimant never lodged any grievance, complaint, or whistleblower report regarding the alleged procurement irregularities at any time.

10. She also avers that the Claimant has unlawfully obtained and disclosed confidential internal documents belonging to the 1st Respondent, including procurement records, internal audit materials, and internal correspondence.

11. Ms. Poore further avers that the impugned documents were extracted from the Respondent's internal systems and records without authority, in breach of the Claimant's contractual obligations of confidentiality as well as the Respondent's internal policies, and therefore constitute inadmissible material.

12. Ms. Poore further states that the Claimant has disclosed her personal and sensitive data, specifically including copies of her passport pages and work permit information. It is her assertion that she did not consent to the Claimant accessing, retaining, or disseminating her immigration records.

13. She maintains that the procurement allegations and immigration documents introduced by the Claimant are irrelevant to the dispute before the Court and appear intended solely to scandalise, vilify, embarrass, and personally attack both her and the 1st Respondent.

14. The Respondents further aver that the collection, retention, and publication of the said personal data was unlawful, having been undertaken without consent or

any legitimate purpose, in contravention of Sections 25, 26, 28, and 72 of the Data Protection Act, 2019, and in violation of Article 31 of the Constitution.

15. It is Ms. Poore's contention that the Claimant seeks to rely on unlawfully obtained material for purposes wholly unrelated to the issues before this Court, in an attempt to divert the proceedings into collateral allegations concerning procurement and other historical matters that are neither pleaded nor relevant to the dispute.

16. The Claimant (**Gerry Waka**) opposed the Motion through his Replying Affidavit dated 28th November 2025. Mr. Waka avers that the Respondents have not demonstrated any prejudice that cannot be adequately addressed at the substantive hearing. According to him, the matters described by the Respondents as "scandalous," "irrelevant," or "oppressive" are in fact directly connected to his employment, the disciplinary process, and the circumstances that culminated in his termination.

17. He further deposes that the Respondents' Application is unmeritorious and highly prejudicial, and is intended to suppress the introduction of crucial evidence relating to alleged procurement irregularities and unethical governance within the 1st Respondent, including actions attributed personally to the 2nd Respondent.

18. Mr. Waka further avers that the 2nd Respondent was directly involved in his supervision, appraisal, disciplinary process, and decision-making. In his view, her joinder is necessary for the complete and effectual adjudication of the dispute and falls within the principles governing proper and necessary parties to a suit.

19. He contends that the application seeking to strike out the 2nd Respondent is premature and unfounded. According to him, he has pleaded specific acts and omissions attributable to the 2nd Respondent within the disciplinary and performance management process, and the question of whether personal liability attaches can only be determined at the hearing upon evaluation of the evidence, rather than through summary disposal.

20. Mr. Waka further avers that the contested evidence demonstrates that he had raised objections to alleged procurement misconduct, specifically referencing the alleged illegality of the single-sourcing of consultants such as Mr. Kevin Doyle and Mr. Andre Vording in October 2020, prior to the alleged performance issues that arose in 2022. In his view, this establishes the retaliatory motive behind what he terms his unlawful termination.

21. In Mr. Waka's view, the Application is therefore an attempt to censor his pleadings, sanitise the Respondents' conduct, limit scrutiny of relevant documents and actions, and divert the focus of the suit from his whistleblowing claims to what he describes as a narrow narrative of "performance-based termination."

22. Mr. Waka maintains that the presence of the 2nd Respondent is necessary to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit. He further contends that the dispute is not merely grounded in an alleged breach of the contractual employment relationship but also concerns allegations of racial prejudice and a tortious course of conduct involving malice, intimidation, and retaliation allegedly instigated by the 2nd Respondent personally.

23. Mr. Waka further contends that the actions attributed to the 2nd Respondent fall outside the protection of acts performed in an official capacity where they involve alleged racial discrimination, unlawful conduct in the performance of administrative functions while allegedly lacking a valid work permit, or alleged procurement violations, which he argues amount to breaches of fiduciary and statutory duty.

24. He avers that the documents which the Respondents seek to have struck out form part of the factual matrix necessary for the Court to determine whether the termination of his employment met the standards of procedural and substantive fairness under the Employment Act. According to him, their exclusion would undermine his right to a fair hearing as guaranteed under Articles 41 and 50 of the Constitution.

25. Mr. Waka further contends that the 2nd Respondent's objection to the document relating to the alleged expiry of her work permit is an afterthought, as the document was part of the original claim and was produced before the Court without the Respondents having previously filed a substantive application to strike it out on grounds of inadmissibility.

26. He adds that the 2nd Respondent expressly requested him in November 2022 to process the renewal of her work permit, thereby confirming that he obtained the document lawfully in the course of discharging his duties as a ProLog Officer. He states that the delay in processing the work permit formed part of the matters raised in the PIP and ultimately contributed to his termination, and for that reason, the document cannot be struck out given its relevance to the issues before the Court.

27. In Mr. Waka's view, the evidence is crucial as it allegedly demonstrates that the 2nd Respondent continued to perform official acts constituting "*working for gain*" including the final PIP review conducted on 21st November 2022 and the issuance of a Notice to Show Cause on 23rd November 2022 at a time when her work permit had allegedly expired on 11th November 2022 and while she was officially on leave, which he argues demonstrates a malicious personal vendetta.

28. Mr. Waka avers that the cumulative effect of the prayers sought by the 2nd Respondent is to undermine the evidentiary foundation of his case and shield the employer from scrutiny. He contends that this does not constitute a proper invocation of the Court's jurisdiction to strike out pleadings and instead amounts to an abuse of process intended to frustrate and delay the trial.

Submissions

29. The Motion was disposed of by way of written submissions, which the Court has duly considered.

Analysis and Determination

30. Flowing from the record, the Court has distilled the following issues for determination: -

- a) *Whether the Court should strike out the 2nd Respondent as a party to these proceedings.*
- b) *Whether paragraphs 4 to 10 of the Claimant's Further Witness Statement dated 31st October 2025 should be expunged from the court record.*
- c) *Whether the work permit, passport pages and immigration documents relating to the 2nd Respondent should be expunged from the court record.*
- d) *Whether documents Nos. 1, 11, 12, 13 and 14 contained in the Claimant's Further List and Bundle of Documents dated 31st October 2025 should be expunged from the court record.*

Whether the Court should strike out the 2nd Respondent as a party to these proceedings

31. The 2nd Respondent contends that her joinder in these proceedings serves no useful purpose and discloses no reasonable cause of action against her. She maintains that the Claimant's suit is founded entirely on the employment relationship between the Claimant and the 1st Respondent, and that the issues before the Court can be effectively determined as between those two parties.

32. She further avers that at all material times she acted in her official capacity as an employee and agent of the 1st Respondent. According to her, any actions undertaken in relation to the Claimant's performance management and disciplinary process were carried out strictly within the mandate of the 1st Respondent.

33. Conversely, the Claimant asserts that the 2nd Respondent was directly involved in his supervision, appraisal, disciplinary process and decision-making. He therefore maintains that her joinder is necessary to enable the Court to effectually and completely adjudicate upon the dispute, in line with the principles governing proper and necessary parties.

34. The Claimant further argues that the 2nd Respondent cannot shield herself behind the protection of acting in an "official capacity" where the impugned conduct allegedly entails racial discrimination, unlawful administrative actions while purportedly lacking a valid work permit, or involvement in procurement irregularities, which he contends amount to a breach of fiduciary and statutory duties.

35. I have considered the Further Amended Memorandum of Claim and note that, notwithstanding the various allegations made against the 2nd Respondent, the

cause of action as framed lies against the 1st Respondent, who was the Claimant's employer.

36. In addition, the reliefs sought by the Claimant are directed primarily against the 1st Respondent. Should the Court ultimately find that the allegations of racial discrimination are substantiated, liability would attach to the 1st Respondent for the acts of the 2nd Respondent, its employee.

37. It is also evident from the record that the 2nd Respondent has been identified by the 1st Respondent as its witness. As such, she will be available for cross-examination on any allegations concerning her conduct in relation to the Claimant.

38. In any event, since the Claimant's claim arises from the employment contract with the 1st Respondent, it can still be effectively prosecuted and determined with or without the participation of the 2nd Respondent as a party to the suit.

39. In the circumstances, the Court finds that the 2nd Respondent is not a necessary party to these proceedings.

Whether paragraphs 4 to 10 of the Claimant's Further Witness Statement dated 31st October 2025 should be expunged from the court record

40. The Respondents contend that paragraphs 4 to 10 of the Claimant's Further Witness Statement contain allegations that are oppressive, irrelevant and intended to embarrass them. In particular, they submit that the said paragraphs include unfounded averments impugning the procurement of the Respondents' legal counsel and raise extraneous matters relating to procurement activities allegedly undertaken in 2020.

41. According to the Respondents, the impugned material bears no nexus to the matters in issue, particularly the circumstances surrounding the Claimant's performance management and eventual termination in 2022. They argue that the averments do not advance or support any cause before this Court and serve only to prejudice, scandalise and malign them.

42. The Claimant, on the other hand, maintains that the impugned paragraphs set out alleged procurement irregularities, including the unilateral engagement of the current advocates and the direct sourcing of consultants, which he contends are relevant and necessary to demonstrate the motive and malicious context surrounding his termination.

43. In his Further Amended Memorandum of Claim, the Claimant alleges that the 1st Respondent's Country Director, Ms. Poore, was involved in irregular procurement practices and that he anonymously reported the matter through the

Respondent's whistleblowing mechanisms. He contends that due to the alleged weakness of that system, Ms. Poore became aware of his identity and thereafter embarked on a campaign of harassment and intimidation against him.

44. He further avers that instead of addressing the concerns he had raised regarding the alleged irregularities, Ms. Poore retaliated by unilaterally and irregularly placing him on a PIP.

45. According to the Claimant, the termination of his employment was ultimately effected under the guise of poor performance.

46. Fundamentally, the Claimant attributes the termination of his employment to his alleged whistleblowing regarding the purported procurement malpractices committed by Ms. Poore.

47. In the circumstances, the Court finds that the Claimant's assertions in the Further Witness Statement relating to the alleged procurement irregularities bear relevance to the issues raised in the pleadings. Whether those assertions are ultimately proved or are unfounded is a matter that will fall for determination upon the Court receiving and evaluating evidence from both parties.

48. At this stage, it would be premature to conclude that the impugned averments are irrelevant. Similarly, whether the Claimant lodged any complaint or grievance regarding the alleged procurement irregularities is an evidentiary matter to be determined at trial. Accordingly, the Respondent's prayer in this regard is refused.

Whether the work permit, passport pages and immigration documents relating to the 2nd Respondent should be expunged from the court record

49. As part of his List and Bundle of Documents, the Claimant annexed the work permit, passport pages and immigration documents belonging to Ms. Poore. The Respondents contend that these documents constitute sensitive personal data and that their acquisition and use contravene Article 31 of the Constitution, the Data Protection Act, as well as Ms. Poore's right to confidentiality under the 1st Respondent's internal procedures.

50. The Claimant, on his part, avers that Ms. Poore expressly requested him to process the renewal of her work permit in November 2022. He therefore contends that he obtained the documents lawfully in the course of discharging his duties as a ProLog Officer.

51. Notwithstanding the Claimant's explanation regarding the manner in which the documents were obtained, the Court finds their inclusion in his List and Bundle of Documents to be irregular. This is particularly so in light of his own assertion that he obtained the documents for the specific purpose of facilitating the renewal of Ms. Poore's work permit. Having obtained the said documents for that limited purpose, he cannot properly deploy them for use in these proceedings. Accordingly, they ought to be expunged from the court record.

Whether documents Nos. 1, 11, 12, 13 and 14 contained in the Claimant's Further List and Bundle of Documents dated 31st October 2025 should be expunged from the court record

52. It is worth noting that Document No. 8, which the Respondents reference as part of the Claimant's List and Bundle of Documents dated 25th November 2025, is not traceable on the court record. This is because the said List and Bundle of Documents is neither on the online portal nor in the Court's physical records. Accordingly, the Court will confine its consideration to the Claimant's List and Bundle of Documents dated 31st October 2025.

53. The documents Nos. 1, 11, 12, 13, and 14 referenced by the Respondents in the Claimant's Further List and Bundle of Documents dated 31st October 2025 comprise the following: *the Post Audit Letter dated 31st October 2021;*

Derogation for Service Contract dated 10th December 2020; Note to File: Single Sourcing for Proposal Development and Note from Kevin Doyle dated 13th October 2022; Note to File: Application for Blanket Derogation for Award of Service Contract dated 4th December 2020; and Justification Response from Uliks dated on/about 10th December 2020.

54. The Respondents contend that these documents were unlawfully obtained, are inadmissible, and irrelevant to the matters before this Honourable Court.

55. On his part, the Claimant asserts that the Post Audit Letter dated 31st October 2021 outlines recurring instances of non-compliance with procurement procedures during FY 2019, 2020, and 2021. He further contends that the internal memo, in which his technical supervisor, **Uliks Hasanaj**, formally disassociated himself from the single-sourcing decision in December 2020, directly supports his objection to the alleged procurement irregularities.

56. It is notable that the communication from Uliks Hasanaj annexed to the Claimant's List and Bundle of Documents was addressed to the Claimant personally in response to his email of 10th December 2020. Similarly, Document No. 12, titled "*Single Sourcing for Proposal Development and Note from Kevin Doyle*" dated 13th October 2022, was addressed to the Claimant by the 2nd

Respondent. Accordingly, it cannot be concluded that the Claimant obtained these documents unlawfully.

57. However, the Claimant has not provided an explanation as to how the remaining documents, specifically, the Post Audit Letter dated 31st October 2021 and the Note to File: Application for Blanket Derogation for Award of Service Contract dated 4th December 2020, were obtained or came to be in his possession.

58. For these reasons, the Court finds that documents Nos. 1 and 13 of Claimant's Further List and Bundle of Documents dated 31st October 2025 are deemed to have been irregularly obtained.

59. In the event the Claimant intended to rely on these documents as evidence, he could have done so lawfully by serving the 1st Respondent with a Notice to Produce.

Orders

60. In sum, the Court partly allows the Respondents' Notice of Motion dated 25th November 2025 as follows:

- a) The 2nd Respondent is hereby struck out as a party to these proceedings.
- b) The work permit, passport pages, and immigration documents pertaining to the 2nd Respondent are hereby expunged from the court record.

c) Documents Nos. 1 and 13 in the Claimant’s Further List and Bundle of Documents dated 31st October 2025 are hereby expunged from the court record.

d) Costs shall be in the cause.

DATED, SIGNED and DELIVERED at MERU this 13th day of March, 2026.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Mokua	for the Claimant/Respondent
Ms. Ondече	for the Respondents/Applicants
Qabale	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