

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

ELRC CAUSE NO. E154 OF 2024

(Before Hon. Lady Justice Hellen Wasilwa, J)

DOUGLAS ESROM OKEDI.....1ST
CLAIMANT

ALLAN MUNYUA THAIRU.....2ND
CLAIMANT

JOSEPHINE WAWIRA WANJIRA.....3RD
CLAIMANT

VS

**NATIONAL
AUTHORITY.....RESPONDENT**

CONSTRUCTION

RULING

- 1 The Respondent/ Applicant filed a Notice of Motion dated 16th December 2025 seeking orders that: -
1. *Spent*
 2. *Pending the hearing and determination of this application, the hearing and determination of the main suit be stayed.*
 3. *Leave be granted to the Respondent to adduce additional evidence relating to the disciplinary hearing held on 8th December 2023 and the Respondent's Supplementary Bundle of Documents dated 11th December 2025 be admitted onto the court's record and be deemed as properly filed.*

4. Upon admission of the Respondent's Supplementary Bundle of Documents dated 11th December 2025 into the court's record, the 1st and 2nd Claimants be recalled for further cross examination.

5. The costs of this application be provided for.

Respondent/Applicant's Case

- 2 The Applicant avers that the hearing of the main suit commenced on 4th November, 2025 during which the 1st and 2nd Claimants testified, and that the matter is scheduled for further hearing on 23rd March, 2026.
- 3 It is the Applicant's case that during their testimony, the 1st Claimant stated that he was not aware of the matters contained in the minutes of the disciplinary hearing held on 8th December, 2023, while the 2nd Claimant testified that he did not attend the said disciplinary hearing.
- 4 It was stated that the allegation of non-attendance at the disciplinary hearing and lack of knowledge of the contents of the minutes was raised for the first time during oral testimony in Court and had not been pleaded in the Statement of Claim or in the Witness Statements filed by the Claimants, thus ambushing the Respondent/Applicant.
- 5 The Applicant avers that its Supplementary Bundle dated 11th December, 2025 contains an attendance sheet showing the names and signatures of persons who attended the disciplinary hearings held on 8th December,

2023 and 8th January, 2024, which documents are intended to rebut the allegations raised by the Claimants during trial.

- 6 It is also the Applicant's case that at paragraph 14 of the Response to the Statement of Claim dated 16th April, 2024, it had expressly stated that the Claimants attended the disciplinary hearing and had produced, at pages 10 to 12 of its bundle, letters dated 1st December, 2023 inviting the Claimants to the said hearing. The Applicant avers that, prior to the oral testimony, attendance at the disciplinary hearing had not been contested.
- 7 It contends that it is necessary and in the interest of justice that the documents contained in the Supplementary Bundle be admitted into the court record so that the Court is seized of all relevant and material facts before the hearing proceeds further, and to aid the Court in determining the correctness of the evidence presented by the parties.
- 8 The Applicant avers that parties are under a legal obligation to assist the Court in achieving a just, expeditious, efficient and proportionate determination of disputes in accordance with Section 3 of the Employment and Labour Relations Court Act, and that the production of the Supplementary Bundle is in furtherance of that obligation.

- 9 It is the Applicant's case that no prejudice will be occasioned to the Claimants if the application is allowed, as they will have an opportunity to be re-examined on the said documents during the hearing.
- 10 The Applicant avers that the application has been made timeously and prays that the same be allowed in the interest of justice.

Claimants/Respondents' Case

- 11 In opposition to the application, the Claimants filed Grounds of Opposition dated 19th March 2026 on the following grounds:
- 1. The Application is premised on the intention by the Applicant to delay the conclusion of this matter that is part heard and should not be adjourned for whatever reason.*
 - 2. The Application is belated and made with ulterior motives bordering on malice.*
 - 3. The Application lacks merit and is intended to steal a match against the Claimants who have already given evidence in the matter.*
- 12 I have examined all the averments and submissions of the parties herein. The applicant respondents seeks to introduce certain documents in court in order to prove a disciplinary process did proceed.

- 13 In view of the fact that the claimants have already testified the respondents aver that the application is intended to steal a match against them.
- 14 It is true that the claimants have testified before court and this is in a cause filed in 2024 wherein hearing progressed after both parties confirmed compliance with pre-trial directions including filing of all documents they wished to rely upon.
- 15 Under the ELRC (procedure) rules 2024, rule 38, after close of pleadings, the court may allow the filing of a supplementary bundle of document. The rules envisage the fact that documents must be filed before a case is set down for hearing.
- 16 In the current suit the respondents filed all their pleadings and at para 14 of the response they attached a copy of the disciplinary hearing. It is apparent that what the respondents now seek to file as “minutes” is not any of the documents they had indicated they have and which if introduced at this point would be prejudicial to the respondents case since the document to be introduced would be used to fill in what the respondents omitted if at all. The claimants having already testified, introducing fresh documents at this stage is prejudicial to them and I find the intended documents should not be allowed at all. I decline to allow the application and order the hearing to proceed accordingly.

Costs in the cause.

**Dated, Signed and Delivered Virtually at Nairobi
this 9th Day of April, 2026.**

**HELLEN WASILWA
JUDGE**