



**Ntabo v Mwalimu National Society Limited (Cause E499 of 2023)
[2026] KEELRC 943 (KLR) (17 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 943 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E499 OF 2023**

**AK NZEI, J
APRIL 17, 2026**

BETWEEN

CONFAS MARANGA NTABO CLAIMANT

AND

MWALIMU NATIONAL SOCIETY LIMITED RESPONDENT

RULING

1. Trial in the defended suit herein opened before me on 14th October, 2025. On the said date, the Claimant testified in-chief, was exhaustively cross-examined, and was re-examined. Upon closure of the Claimant's case, Counsel for the Respondent asked the Court to give the matter another date for defence hearing, which request the Court granted and fixed the matter for defence hearing on 1st December, 2025.
2. When the matter was called out for defence hearing in the morning of 1st December, 2025, Counsel for both parties told the Court that they were ready to proceed with defence hearing. The Court confirmed the matter for defence hearing at 11.00 a.m on the said date.
3. At the aforesaid appointed hour, however, Counsel for the Respondent told the Court that she had realized that there were some documents that the Respondent had not filed. Counsel orally applied to be allowed to file those documents, which she mentioned as minutes of a disciplinary hearing, a certificate of service, and proof of payment of the Claimant's dues. The oral application was vehemently opposed by Counsel for the Claimant, and the Court declined to allow the same. Counsel for the Respondent sought leave to file a formal application; which leave the Court granted.
4. The application before me for determination is, therefore, the Respondent's Notice of Motion dated 10th December, 2025, filed pursuant to the aforementioned leave. The Respondent seeks the following Orders:-



- a. That the Respondent be granted leave to file and serve a supplementary list and bundle of documents.
 - b. That the supplementary bundle of documents annexed to the application be deemed as duly filed and served upon payment of the requisite Court fees.
 - c. That the Claimant be at liberty to be re-called for further examination or cross-examination on the supplementary list and bundle of documents.
 - d. That costs of the application be provided for.
 - e. That the Court be pleased to issue such further orders as it may deem fit in the interest of justice.
5. The application sets out on its face some general grounds on which it is brought, and is based on the supporting affidavit of Mercy Rono sworn on 10th December, 2025. It is deponed in the said supporting affidavit:-
- a. that upon closure of the Claimant's case, and while preparing for hearing of the defence case scheduled for 1st December, 2025, it came to the attention of the Respondent's Advocate that several crucial documents had inadvertently been omitted from the Respondent's original list and bundle of documents filed in Court; those being proof of payment of the Claimant's terminal dues, a certificate of service issued to the Claimant, and minutes of the disciplinary hearing.
 - b. that the said documents are essential and directly relevant to issues before the Court.
 - c. that the Respondent discovered the omission upon reviewing documentation shortly before the scheduled defence hearing.
6. The application is opposed by the Claimant/Applicant vide his detailed replying affidavit sworn on 15th December, 2025, the contents of which I have noted.
7. Parties filed written submissions on the application pursuant to the Court's directions in that regard.
8. As already stated in this Ruling, the Claimant testified in this matter and was exhaustively cross-examined by Counsel for the Respondent. The Claimant's Counsel then re-examined the Claimant and closed the Claimant's case. Allowing the Respondent to file evidential documents which were not on record when the Claimant testified, both in chief and under cross-examination, and allowing it to produce those documents in evidence after closure of the Claimant's case, will be highly prejudicial to the Claimant. The Claimant will not have an opportunity to testify on those documents.
9. Recalling the Claimant to testify on the documents sought to be introduced as the Respondent appears to suggest will not cure the prejudice, as the defence has already heard the Claimant's case and cross-examined him, and further heard the Claimant's evidence on re-examination. Allowing the present application will be tantamount to giving the Respondent an unfair advantage over the Claimant, which this Court will not do.
10. Parties herein are, and have all along been ably represented by Counsel. It is quite amazing that Counsel for the Respondent/Applicant did not notice the necessity to file further evidential documents while preparing for trial on or before 14th October, 2025. Did Counsel note the necessity to file further evidential documents while cross-examining the Claimant? Why did Counsel wait until conclusion and closure of the Claimant's case? The Respondent has not given any valid reason for failing to file its alleged crucial evidential documents at least before conclusion and closure of the Claimant's case.



This Court's discretion cannot be exercised in favour of a party which or who fails to give reasons and/or cogent reasons as to why the discretion should be exercised in his favour. It is not enough to plead inadvertence on the part of Counsel.

11. The Respondent has not told the Court that the documents sought to be introduced at this stage had, for some good and valid reasons, not been forwarded by it to its Counsel for filing in Court, either before the taking of pre-trial direction or before commencement of trial.
12. It was stated as follows in the case of Charles Omwata Omwoyo – v African Highlands Produce Company Limited [2000] eKLR (Ringera, J – as he then was):-

“Time has come for legal practitioners to shoulder the consequences of their negligent acts or omissions like other professionals do in their fields of endeavours. The Plaintiff should not be made to shoulder the consequences of the negligence of the defendant's advocate. This is a proper case where the defendant's remedy is against its erstwhile advocates for professional negligence and not setting aside the judgment.”

13. In the upshot, and having considered the written submissions filed on behalf of both parties herein, I find no merit in the Notice of Motion dated 10th December, 2025, and the same is hereby dismissed with costs.
14. The suit shall be set down for defence hearing.
15. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF APRIL 2026

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Bogongo for the Claimant/Respondent

Miss Obiayo for the Respondent/Applicant

DRAFT

