



**Momanyi v Petrafos Energy Limited (Cause E090 of 2024)
[2026] KEELRC 1125 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 1125 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E090 OF 2024
NZIOKI WA MAKAU, J
APRIL 30, 2026**

BETWEEN

ISAAC OMWENGA MOMANYI CLAIMANT

AND

PETRAFOS ENERGY LIMITED RESPONDENT

RULING

1. By an application dated 17th February 2026, the Respondent seeks, inter alia, a review, variation and/or setting aside of this Court's orders issued on 27th January 2026, by which its bundle of documents filed on 17th November 2025 was struck out. It further prays for the reinstatement and admission of the said documents as properly filed and served; the reopening of the defence hearing with leave to rely on the documents; and the reopening of its case for the limited purpose of admitting the impugned documentary evidence in the interest of substantive justice. The Respondent also seeks costs of the application.
2. The application is supported by the grounds set out on its face and the affidavit of Mr. Samuel Kiprop, the Respondent's Head of Sales and Accounts. He avers that the delay of 24 days in filing the documents after the close of pre-trial was not deliberate, but was occasioned by logistical challenges relating to communication and the acquisition of documents from the Respondent company based in India. He attributes the delay to differences in time zones and internal authorization procedures. Notwithstanding these challenges, the Respondent maintains that the documents were filed and served on 17th November 2025, prior to the scheduled hearing on 24th November 2025, and contends that, on that date, the Claimant's counsel did not raise any objection to their filing.
3. The Respondent further avers that it stands to suffer substantial prejudice if the application is disallowed, as the documents constitute the backbone of its defence. In particular, it depones that the documents demonstrate losses allegedly occasioned by the Claimant's conduct, as well as employment records, correspondence between the parties, and details of the Respondent's financial expenditure.



Their exclusion, which it contends, would expose the Respondent to significant financial loss. On that basis, the Respondent urges the Court to allow the application in order to safeguard its constitutional rights, including the right to a fair hearing under Article 50(1), the non-derogable right to a fair trial under Article 25(c), the right of access to justice under Article 48, and the obligation under Article 159(2)(d) to administer justice without undue regard to procedural technicalities. It maintains that the orders of 27th January 2026 disclose an error apparent on the face of the record and that the application has been brought without undue delay.

4. The application is opposed. The Claimant swore a replying affidavit on 23rd February 2026, in which he depones that although the Respondent filed a list of documents dated 2nd July 2025, it failed to file the accompanying documents until 17th November 2025, well after the close of pleadings. He further avers that the documents were filed without leave, in contravention of Rules 24 and 40 of the Employment and Labour Relations Court (Procedure) Rules, 2024, and were never served upon his advocate.
5. The Claimant contends, in addition, that the application does not meet the threshold for review, as no error apparent on the face of the record has been demonstrated. He argues that, having expunged the documents, the Court is functus officio on the issue and cannot be invited to sit on appeal over its own decision. He further points out that the Respondent had been granted several opportunities to file its documents, the last being on 29th September 2025 when it was given 14 days to do so, but failed to comply. In his view, the Respondent cannot invoke constitutional provisions to cure its indolence.
6. The Claimant therefore maintains that he would suffer prejudice if the application were allowed, particularly as the source and makers of the documents remain undisclosed and the matter has already reached the judgment stage. He further asserts that allowing the application would occasion delay in justice, noting that he has been out of employment since his alleged wrongful termination on 10th September 2024. He accordingly urges the Court to dismiss the application.
7. In rejoinder, the Respondent filed a supplementary affidavit sworn by Mr. Samuel Kiprop on 9th March 2026. He reiterates that the Claimant will suffer no prejudice, as the documents were filed prior to the commencement of the hearing. He maintains that the failure to attach the documents to the initial list was inadvertent and attributable to difficulties in obtaining them from the Respondent's offices in India. He further emphasizes that the Court retains wide discretion to allow the application in order to achieve substantive justice.
8. With regard to the Court's review jurisdiction, the Respondent contends that it is not confined to clerical or arithmetical errors, but extends to circumstances such as the present, where failure to intervene would result in manifest injustice. It further submits that the delay of 24 days was minimal, particularly in light of the geographical distance between Kenya and India, and was not the product of negligence or indolence.
9. The supplementary affidavit prompted a further affidavit by the Claimant, sworn on 11th March 2026. In it, he disputes the assertion that the Respondent is a foreign entity, stating that it is in fact registered in Kenya under registration number PVT-LRU YJR8Q. On that basis, he reiterates his opposition to the application and urges the Court to dismiss it, noting that he has already filed his final submissions. Subsequently, both parties filed written submissions in support of their respective positions.

Respondent's Submissions

10. In support of the application the Respondent identifies three issues for determination:
 - a. Whether this Honourable Court has jurisdiction to review its orders;



- b. Whether the Respondent has demonstrated sufficient cause to warrant review and reopening of the defence case; and
 - c. Whether reinstatement of the Respondent's documents will advance substantive justice without occasioning prejudice to the Claimant.
11. On the jurisdictional question, the Respondent submits that this Court is vested with the power to review its orders in cases of discovery of new and important matter, error apparent on the face of the record, or for any other sufficient reason. It contends that the present application falls within the ambit of "sufficient reason," as it seeks to remedy an order that unjustly excluded material evidence filed prior to the hearing. In support of this proposition, reliance is placed on *Nyangongo v Public Service Commission & another* [2025] KEELRC 3514 (KLR), where the Court affirmed that review jurisdiction is properly invoked where sufficient cause is demonstrated, and that the Court ought to intervene to prevent injustice arising from its own orders. As to whether sufficient cause has been established, the Respondent answers in the affirmative. It emphasizes that the documents were filed on 17th November 2025, prior to the hearing on 24th November 2025, and contends that the Claimant had knowledge of them, proceeded with the hearing without objection, and only raised an oral objection on 27th January 2026 during the defence hearing. It relies on the case of *Mveyange v Partnership for African Social & Governance Research Limited (PASGR)* [2025] KEELRC 2972 (KLR), in which the court held that reopening of proceedings may be permitted where sufficient cause exists, and emphasized that the concept of "sufficient cause" must be interpreted liberally to advance substantive justice, particularly where no bad faith or negligence is demonstrated. Further reliance is placed on *Ayuka v Nova Pioneer – Kenya* [2025] KEELRC 678 (KLR), which affirms that reopening proceedings lies within the Court's discretion, provided the evidence is material, no prejudice is occasioned, and the application is made without undue delay.
12. The Respondent also cites the case of *Wafula v Postal Corporation of Kenya* [2024] KEELRC 13597 (KLR), for the proposition that reopening proceedings is justified where the evidence sought to be introduced is relevant and no prejudice will be suffered by the opposing party. Flowing from the foregoing, the Respondent submits that the application is merited, as the documents are not intended to fill evidentiary gaps but are central to its defence, and their exclusion renders that defence hollow. It further contends that such exclusion infringes its right to a fair hearing under Article 50(1) of *the Constitution*, relying on *Kamande v Judicial Service Commission* [2025] KESC 48 (KLR), where the Supreme Court underscored that denial of an opportunity to present one's case through procedural exclusion of evidence amounts to a violation of that right. On the issue of prejudice, the Respondent maintains that none will be occasioned to the Claimant, as the documents were filed before the commencement of the hearing and were available to him for a considerable period. Conversely, it argues that it will suffer prejudice if the application is denied, as it would be unable to substantiate its defence, demonstrate its position on liability and financial loss, and fully exercise its right to be heard. It therefore urges the Court to allow the application.

Claimant Submissions

13. The Claimant, for his part, frames two issues for determination:
 - a. whether the application satisfies the threshold for review on account of an error apparent on the face of the record; and
 - b. whether the Respondent should be permitted to reopen its case and rely on documents filed out of time.



14. On the first issue, the Claimant submits that the application falls short of the threshold for review. He asserts that dissatisfaction with the expunging of documents is a matter for appeal, not review. In his view, an error apparent on the face of the record must be self-evident and not one that requires elaborate argument or extensive reasoning. He contends that such errors are typically clerical, arithmetical, or involve failure to consider a clear statutory provision or binding precedent, and do not extend to mere disagreement with a judicial determination. In support, he relies on *National Bank of Kenya Ltd v Njau* (Civil Appeal No. 211 of 1996) [1997] KECA 71 (KLR), in which it was underscored that a review cannot be used to correct an alleged erroneous decision, as such matters fall within the province of an appeal. The Claimant further disputes the assertion that his advocate was aware of the documents, contending that this is misleading. He maintains that the e-filing system constitutes the official court record and, in the absence of service, his advocate could not reasonably have been aware of the documents.
15. On the invocation of Article 159(2)(d) of *the Constitution*, the Claimant submits that the Respondent squandered the opportunity to file its documents between 3rd July 2025 and 22nd October 2025. He relies on the case of *Raila Odinga & 5 others v IEBC & 3 others* [2013] eKLR for the proposition that Article 159(2)(d) does not cure all procedural defects, and on the case of *Nicholas Kiptoo Arap Korir Salat v IEBC & 6 others* [2013] eKLR, where the Court of Appeal emphasized the importance of adherence to procedural rules and timelines. In light of the foregoing, the Claimant maintains that the Court exercised its discretion judiciously in expunging the documents and that no error apparent on the face of the record has been established. He urges the Court to be guided by the cases of *Multichoice (Kenya) Ltd v Wananchi Group (Kenya) Limited*; *Communications Commission of Kenya*; *Kenya Broadcasting Corporation* (Civil Appeal No. 368 of 2014) [2020] KECA 633 (KLR) and *Anthony Gachara Ayub v Francis Mahinda Thinwa* [2014] KECA 623 (KLR) in dismissing the application with costs.
16. With respect to the reopening of the Respondent's case, the Claimant submits that no sufficient reason has been demonstrated. He asserts that his case has already been closed without an opportunity to interrogate the impugned documents and that the application has been brought at a late stage, when the matter is pending judgment and after he has filed final submissions. He contends that the application is intended to delay the conclusion of the matter and prolong his hardship following unlawful termination. He further submits that the Respondent has not demonstrated that the evidence could not have been obtained with reasonable diligence, nor that it would materially affect the outcome. Placing additional reliance on the case of *Viloko v Grand Café Indian Cuisine* (Employment and Labour Relations Petition No. E017 of 2025) [2026] KEELRC 513 (KLR) the Claimant prays that the application be dismissed with costs.

Disposition

17. The application seeks reinstatement of documents struck out. The Respondent/Applicant calls in aid the provisions of Article 50 and asserts the various Constitutional imperatives including the right to a fair hearing under Article 50(1), the non-derogable right to a fair trial under Article 25(c), the right of access to justice under Article 48, and the obligation under Article 159(2)(d) to administer justice without undue regard to procedural technicalities were not met. The Claimant was opposed and argued that the present application falls short of the threshold for review. He asserted that dissatisfaction with the expunging of documents is a matter for appeal, not review. In his view, an error apparent on the face of the record must be self-evident and not one that requires elaborate argument or extensive reasoning. The Claimant contends that such errors are typically clerical, arithmetical, or



involve failure to consider a clear statutory provision or binding precedent, and do not extend to mere disagreement with a judicial determination.

18. The Respondent seems to labour under the false premise that a party must be heard at its convenience. The Court gave directions on the filing of documents which the Respondent repeatedly and consistently ensured were not filed. They only filed the documents without leave on the eve of the defence hearing and now asserts a right to hearing was infringed when these documents filed without leave of court were expunged from the record. Justice is a balance of the scales and no party has a monopoly to it. The documents filed by the Respondent are in the mind of the Court intended to fill evidentiary gaps.
19. The Respondent having refused to file documents on the multiple occasions it was given an opportunity to do so, cannot now fault the Court for the action taken when the Respondent casually delivered documents that had been in its possession, as employer, for as long as the case subsisted in Court. Article 159(2) cannot avail the Respondent of any relief as the striking out of the documents was not on procedural technicalities but the flagrant disobedience of Court orders that had been issued for the benefit of the offending party. Article 159(2) cannot be waved as the cure for the indolence and seemingly casual approach to defence by the Respondent. The arguments raised through the motion before me do not merit a consideration of the elements of review as this was not a review proper but a skewed attempt to appeal the Court's decision before the same court. If the Respondent was actually aggrieved, an appeal ought to have been preferred, but perhaps aware of the limitation of any cogent grounds of appeal, the Respondent decided to throw this application in with the hope it would succeed. Alas, it fails spectacularly and is dismissed with costs to the Claimant. There will be directions on the final submissions immediately after this Ruling.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF APRIL 2026

NZIOKI WA MAKAU, MCIARB.

JUDGE

