



Ochieng v Kenyatta National Hospital (Employment and Labour Relations Cause E1062 of 2025) [2026] KEELRC 1156 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEELRC 1156 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E1062 OF 2025**

BOM MANANI, J

APRIL 30, 2026

BETWEEN

JUDE ODHIAMBO OCHIENG CLAIMANT

AND

KENYATTA NATIONAL HOSPITAL RESPONDENT

RULING

Background

1. The Claimant instituted this action against the Respondent through a Statement of Claim dated 30th October 2025 to challenge the propriety of the closure of his contract of service. He contends that he was employed by the Respondent as a Pharmaceutical Technologist in its Comprehensive Care Centre HIV Programme until the end of September 2025 when the employment relationship between the parties came to a close.
2. The Claimant contends that the Respondent subjected him to unfair labour practices and discrimination. He further asserts that the Respondent unlawfully terminated his services through constructive termination of his contract after he raised concerns regarding the integrity and accuracy of the HIV programme data.
3. The Claimant avers that in September 2025, the Respondent conducted an internal retention and renewal exercise for staff on short-term contracts following which, it terminated his services. He contends that the one day exercise was carried out in an unfair and selective manner.
4. The Claimant avers that the Respondent carried out the exercise without notice to him whilst he was away on approved leave. As such, he contends that he was unfairly locked out of the process thus depriving him of the opportunity to have his contract renewed unlike his colleagues who were retained.



5. The Claimant further contends that the Respondent systematically denied him access to opportunities for appointment to acting and other positions whilst he was in service. He avers that the Respondent did this by determining beforehand the outcomes for such opportunities and failing to notify him of vacancies or discouraging him from applying for them.
6. The Claimant avers that the Respondent's actions demonstrated bad faith on its part. He avers that the Respondent's assertion that he was not envisioned for certain positions was self-contradictory and intended to stifle his career growth.
7. The Claimant contends that he was a victim of targeted exclusion, retaliation and unfair labour practices by the Respondent. He contends that the Respondent's actions were intended to disqualify him from every opportunity which arose.
8. The Claimant further contends that since 4th November 2008, the Respondent had continuously renewed his fixed term contract. He contends that this created legitimate expectation in him that the contract was to be renewed on its sunset date in September 2025 as long as his performance was satisfactory.
9. In view of the aforesaid, the Claimant contends that the Respondent violated his rights to: fair labour practice; not to be discriminated against; and fair administrative action. In addition, he contends that the Respondent unfairly terminated his services in breach of sections 41, 43 and 45 of the [Employment Act](#). Consequently, he prays for the various reliefs set out in the Statement of Claim.
10. Together with the Statement of Claim, the Claimant filed the application dated 31st October 2025. The application is supported by the grounds on the face thereof and the Claimant's affidavit.
11. The application, inter alia, sought the following interim reliefs:-
 - a. That the application be certified as urgent.
 - b. That pending resolution of the application, the court to order the Respondent not to fill, abolish, re-assign, permanently allocate or otherwise interfere with the Claimant's former position and or equivalent position within its rank and file.
 - c. That pending resolution of the application, the court to order the Respondent and its officers not to victimize, blacklist, defame or otherwise label the Claimant as disrespectful, uncooperative on account of the protected disclosures relating to HIV data accuracy and reporting.
 - d. That pending trial and determination of the suit, the court orders the Respondent to reinstate the Claimant to employment in his previous role or in an equivalent role within his former department on the same terms as those that applied to him as at 30th September 2025 without loss of continuity, salary or benefits.
 - e. In the alternative, the court to order the Respondent to continue remunerating the Claimant as per his gross monthly salary pending resolution of the case.
 - f. That the court orders the Respondent to preserve and file and serve on the Claimant: minutes and or notes of the performance review meeting which was held in or about early 2025 through which he flagged the discrepancies in the Respondent's HIV data; internal correspondence, memoranda, schedules, lists or approvals relating to the renewal exercise for short-term contracts which was conducted at the end of September 2025; the Claimant's appraisal drafts and supervisor comments for the period 2024/2025.



- g. That the court issues directions on costs of the application.
 - h. That the court issues further orders as may be just and expedient in the circumstances.
12. The grounds and affidavit in support of the application largely replicate what the Claimant has stated in the Statement of Claim. The Claimant reiterates his contention that he is a victim of discriminatory treatment and unfair labour practices. He further contends that he has been without income since 1st October 2025 when the Respondent declined to renew his contract. As such, he contends that his livelihood has been adversely affected. He further contends that it is critical for the court to issue the orders sought in order to prevent the Respondent from destroying or altering evidence which is critical to his case.
13. On 12th November 2025, the court granted the following interim reliefs based on the aforesaid application:-
- a. Pending the hearing and determination of the application, the court orders the Respondent not to fill, abolish, re-assign, permanently allocate or otherwise interfere with the Claimant's former position and or equivalent duties within Kenyatta National Hospital Comprehensive Care Centre (HIV Comprehensive Care Clinic) or any substantially similar post for which the Claimant was previously engaged on fixed term renewals.
 - b. Pending the hearing and determination of the application, the court orders the Respondent, its officers, agents, servants or anyone acting under its authority to refrain from victimizing, blackmailing, defaming or otherwise labeling the Claimant as disrespectful, uncooperative or using such equivalent terms in relation to his protected disclosures concerning HIV data accuracy and reporting.
 - c. That the Claimant to file and serve submissions on the other prayers in the motion within 7 days.
 - d. That the Respondent is at liberty to file and serve a response to the motion and submissions within 7 days of service of submissions by the Claimant.
 - e. Both parties to avail physical copies of their submissions to court before the next mention date.
 - f. Mention on 11th December 2025 to fix a ruling date.
14. On 15th December 2025, the court determined the application dated 31st October 2025 after the Respondent failed to oppose it despite having been served. The court issued the following orders:-
- a. The court orders the Respondent not to fill, abolish, re-assign or permanently allocate the Claimant's earlier position within its rank and file pending the trial and determination of the case.
 - b. The court also forbids the Respondent and or its officers and servants from victimizing, blackmailing or otherwise labeling the Claimant as disrespectful or uncooperative or using such other equivalent descriptions against the Claimant in relation to the protected disclosures concerning HIV data accuracy and reporting until this cause is heard and determined.
 - c. In order to balance the scales of justice, the court directs that the cause be given a date on priority basis so that the Claimant can know if he will benefit from reinstatement soonest but after full trial.
 - d. Costs of the application shall be in the cause.



15. The Claimant filed a second application dated 6th January 2026 which seeks the following orders:-
- a. That the Respondent be compelled to produce and present to court the Claimant's complete employment file which should include: the entire of the Claimant's contracts of service renewed from 4th November 2008, copies of all academic and professional qualifications submitted to and held by the Respondent; performance appraisals, renewal recommendations, disciplinary records (if any) and all correspondence relating to the Claimant's employment.
 - b. That the Respondent be compelled to produce all job advertisements, vacancy notices, internal circulars and recruitment communications issued between 2008 and 2025 relating to the Pharmaceutical Technologist position and or data, health information systems, strategic information or related functions.
 - c. That the Respondent be compelled to produce minutes, attendance registers, resolutions and action matrices of quarterly or periodic data and performance review meetings held between 2023 and 2025 including meetings involving Strategic Information Officers, Data Team Leader and any managerial or administrative officers responsible for HIV program reporting and performance oversight.
 - d. That the Respondent be ordered to produce retention criteria, evaluation tools, score sheets, minutes and comparative assessment records used in the review and retention of five Pharmaceutical Technologists at the Comprehensive Care Centre demonstrating the basis upon which the five officers were retained and the basis upon which the Claimant was excluded.
 - e. That the Respondent be compelled to produce monthly and periodic HIV program reports submitted by it to NASCOP and CDC for the period 2023 to 2025 limited to documents generated by it (the Respondent).
 - f. That the Respondent be compelled to produce a report detailing the employment pattern of Pharmaceutical Technologists showing: contractual versus permanent and pensionable engagement; and enrolment numbers and categories of officers without disclosure of names.
 - g. That the court to summon: the Director of Pharmaceuticals; the Human Resource Officer; the Comprehensive Care Centre Administrator; the Head of Unit, Comprehensive Care Centre; the Strategic Information Officer; the Head Data Officer; the Clinical Service Director; the Head of Research Kenyatta National Hospital; and the Commission on Administrative Justice to give evidence in the cause.
 - h. That the court orders that the Respondent complies with the various orders sought above within 14 days failing which the court to: draw an adverse inference that the withheld documents and testimony would have been unfavourable to the Respondent; bar the Respondent, its management and administrative officers from producing such documents or witnesses at the hearing; and proceed on the basis that the Claimant's evidence is not controverted.
 - i. That the court makes provision for costs of the application.
16. The aforesaid application is supported by the grounds which appear on the face thereof and the affidavits of the Claimant. The Claimant contends that whilst in the Respondent's service, he obtained various academic and professional qualifications which he shared with the Respondent. He avers



- that all records evidencing his qualifications, appraisals, renewals and related correspondence are maintained by the Respondent.
17. The Claimant avers that despite shortage of the requisite manpower within the rank and file of the Respondent, it (the Respondent) repeatedly failed to accord him an opportunity to serve in positions he was qualified for. He contends that the Respondent kept advertising and filling the positions without regard for him.
 18. The Claimant avers that in 2025, the Respondent undertook a retention exercise which involved 6 Pharmaceutical Technologists, including him. He contends that out of the 6, the Respondent retained 5 Pharmaceutical Technologists leaving him out.
 19. The Claimant avers that the retention process was done without an objective retention criteria and without the benefit of comparative evaluation. He contends that the Respondent did not share with him the score sheets and minutes for the exercise.
 20. The Claimant avers that between 2023 and 2025, he participated in data and performance review activities relating to HIV program reporting during which he raised various concerns regarding data discrepancies which were within the knowledge of the Respondent's management. However, he contends that the Respondent did not share with him the minutes, resolutions and management decisions which were generated from the meetings. He further avers that it is necessary for the court to issue him with the orders he seeks in order to prevent the Respondent from suppressing evidence which is critical to his case.
 21. The Claimant avers that the officers whom he requires the court to summon as witnesses are the decision makers and custodians of the Respondent's documents. As such, he avers that they are relevant witnesses in the cause.
 22. The Claimant filed a third application dated 10th January 2025 in which he seeks the following orders:-
 - a. That the court grants him leave to amend the Statement of Claim as per the annexed amended Statement of Claim.
 - b. That the Respondent be granted corresponding leave to amend its response to the Statement of Claim.
 - c. That costs of the application be in the cause.
 23. The application is supported by the grounds which appear on the face thereof and the affidavits of the Claimant. He contends that the proposed amendments are intertwined with the pleaded cause of action. He avers that the proposed amendments are intended to clarify the issues of legitimate expectation, career stagnation, procedural fairness and constitutional violations.
 24. The Claimant avers that the amendments sought will not occasion the Respondent prejudice. It is his case that the court has discretion to grant the leave sought.
 25. The Claimant filed a fourth application dated 29th January 2026 in which he seeks the following orders:-
 - a. That the Respondent be directed to file and serve written authorization for GMR Advocates LLP to represent it with the accompanying concurrence of the Attorney General.
 - b. That pending production of the authorization in paragraph a) above, the Memorandum of Appearance filed by the said Law Firm on behalf of the Respondent be stayed.



- c. That in default of production of the authorization in paragraph a) above, the Memorandum of Appearance filed by the aforesaid lawyers be struck out.
 - d. That the court orders that costs of the application be in the cause.
26. The application is supported by the grounds on the face thereof and the affidavits by the Claimant. He contends that the Respondent, being a State Corporation, is not entitled to hire private lawyers to represent it without authorization and approval and in disregard of its internal lawyers. He contends that the lawyers on record have not exhibited such authorization.
27. The Claimant asserts that a recent court decision makes it mandatory for the aforesaid approval to be sought and granted. As such, he avers that in the absence of the approval, the Respondent cannot be represented by private lawyers.
28. The Respondent filed one affidavit in response to the applications dated 6th January 2026, 10th January 2026 and 29th January 2026. The affidavit is sworn by one Flemming Lumumba Omondi, the Respondent's Principal Legal Officer.
29. In respect of the application dated 6th January 2026, the Respondent asserts as follows:-
- a. That the application is frivolous, vexatious and an abuse of the court process.
 - b. That the Claimant's request for discovery is unreasonable and amounts to a "fishing expedition".
 - c. That the Claimant has not spoken to the relevance of the various documents he seeks to be disclosed.
 - d. That the Claimant has not demonstrated that he tried to obtain the several documents before he filed suit.
 - e. That the request by the Claimant lacks reasonable limits with respect to time, scope or subject matter.
 - f. That the request is an invite to the court to sanction a general trawl through the Respondent's records in the hope that a cause of action may emerge.
 - g. That the purpose of discovery is to assist a party to prove a claim which is clearly pleaded.
 - h. That the process should not be resorted to in a bid to search for evidence to construct or refine a claim after the fact.
 - i. That it is not the duty of the court to assist litigants to gather evidence in support of their case.
 - j. That to order it to retrieve, review and produce documents which were prepared close to two decades will be prejudicial, and disproportionately labourous.
 - k. That having regard to passage of time, some of the documents which are sought may have been archived or disposed of.
 - l. That there is no law which obligates an employer to keep employment records indefinitely.
 - m. That the request to compel its officers to attend court for purposes of giving testimony is premature as evidence cannot be taken during interlocutory proceedings.
 - n. That the Claimant's employment was lawfully closed through effluxion of time. As such, the various documents which he seeks in the application are of no relevance to his case.



- o. That the application is merely intended to subject it (the Respondent) to harassment.
30. In respect of the application dated 10th January 2026, the Respondent avers that pleadings in the cause are yet to close. As such, it avers that the request for leave to amend the Statement of Claim is unnecessary.
31. In respect of the application dated 29th January 2026, the Respondent avers that being a State Corporation, it has powers to sue and be sued in its own name. As such, it avers that it has power to prosecute and defend claims in its own name.
32. The Respondent contends that its legal department cannot possibly defend all litigation against it (the Respondent). For this reason, it contends that it is entitled to and does procure external legal services so long as the process is done competitively as required by the Public Procurement and Disposal Act.
33. The Respondent avers that it secured external legal services for the cause through competitive tendering. It avers that the applicants were subjected to an evaluation process before the qualifying Law Firms were impaneled.
34. The Respondent contends that it only engages lawyers who are in the list for pre-qualified suppliers for legal services to represent it in various matters. It contends that the lawyers are requested to provide their quotations to enable it to pick the cheapest for any particular assignment.
35. The Respondent contends that it followed the aforesaid procedure whilst selecting the lawyers on record in the suit. It avers that the procedure is meant to ensure prudent use of public resources.
36. The Respondent avers that at the time it instructed the advocates in the suit, it had not been made aware of the decision in Nakuru Petition No. E001 of 2026. Further, it contends that there are other decisions which state a contrary view to the view expressed in the aforesaid case regarding representation of public entities by private lawyers.
37. The Respondent avers that as an entity, it is entitled to legal representation by lawyers of its own choice in terms of article 50 of *the Constitution*. As such, it urges the court not to stifle this right.
38. On 18th February 2026, the court gave directions that the various applications be heard together and that they be urged through written submissions. The Claimant was granted leave to file and serve a supplementary affidavit and to file submissions on all the applications within 7 days. On the other hand, the Respondent was directed to file and serve its submissions on the applications within 10 days from the date of service of submission by the Claimant. The court fixed the cause for mention on 9th March 2026 for purposes of fixing a ruling date.
39. Regrettably, it transpired that the court was not going to sit on 9th March 2026. As such, it mentioned the matter earlier on 3rd March 2026 for fresh directions.
40. On that day (3rd March 2026), the cause was relisted for mention on 16th April 2026 to fix a ruling date on the pending applications. This was to enable the Respondent to present its submissions.
41. On 31st March 2026 as the matter was pending for mention to fix a ruling date on the pending applications, the Claimant filed another application of even date seeking the following orders:-
- a. Conservatory orders to bar the Respondent from recruiting, engaging, advertising for or appointing any person to the substantive position of Pharmaceutical Technologist at the KNH Comprehensive Care Centre HIV programme that was previously held by the Claimant.



- b. An order to bar the Respondent from otherwise dealing with the aforesaid position in any manner that would render nugatory any order for reinstatement that the court may grant after hearing the cause.
 - c. An order directing the Respondent to preserve and not to destroy, alter, conceal or in any way interfere with various documents to wit: all records, minutes, lists, memoranda and communications relating to the September 2025 HIV programme employee retention exercise; all correspondence and communications between the Respondent and CIHEB Kenya from January 2025 to 31st December 2025 regarding funding, staffing and programme transition; the minutes of the data review meeting held in early 2025 at which the Respondent's Strategic Information Officer admitted the accuracy of the Claimant's data analysis; and all records relating to gratuity calculations and payments for the Claimant from 2008 to 2015.
 - d. An interim order to maintain the status quo by restraining the Respondent from taking any steps to recruit, fill or otherwise permanently resolve the disposition of the Claimant's former position pending the hearing and determination of the application.
 - e. An order of mandatory disclosure pursuant to articles 35(1) of *the Constitution* and section 4 of the *Access to Information Act* requiring the Respondent to provide the Claimant with certified copies of the following documents within 7 days: the objective selection criteria applied in the September 2025 retention exercise; the names, designations and contract details of all employees retained in the exercise of September 2025; minutes of the March 2025 data review meeting; all written communications between the Respondent and CIHEB Kenya from September 2021 to September 2025 regarding funding, staffing and programme transition; the Respondent's Whistle-blower Protection Policy as published and operative at all material times; the Respondent's complete payroll records on the Claimant for each years of service (2008-2025) showing gross salary, all deductions and contractual gratuity calculations; and the grant agreements and sub-grant agreements between the Respondent, CIHEB Kenya and CDC/PEPFAR for the period 2008-2025 showing personnel cost allocations.
 - f. An order that should the Respondent fail and or refuse to provide any of the aforesaid documents, the court will draw an adverse inference against the Respondent's case as particularized in the prayer.
 - g. An order that pending hearing, the Respondent be directed to preserve and not to destroy or alter or conceal the documents sought to be produced in the application.
 - h. An order that costs of the application be in the cause.
42. The application is supported by the grounds on the face thereof and the affidavits by the Claimant. The Claimant avers that he has a strong case with a probability of success and that failure to issue the orders sought will occasion him irreparable harm. He asserts that the balance of convenience and public interest tilt in favour of granting the orders.
43. The Respondent has opposed the application by filing Grounds of Opposition dated 14th April 2026. It avers that the application re-introduces matters which have either been determined or are pending before court. As such, it contends that the motion is an abuse of the court process.
44. The Respondent accuses the Claimant of engaging in piecemeal litigation by filing multiple applications in the cause. It avers that the applications seek orders which are largely similar.



45. The Respondent avers that the filing of multiple and successive applications in the cause by the Claimant is prejudicial to it (the Respondent) since it effectively converts interlocutory proceedings into an unending process. As such, it posits that the instant motion is an abuse of the court process.

Analysis

46. The first matter for consideration arises from the application dated 29th January 2025. The Claimant challenges the lawfulness of the Respondent's legal team to represent it (the Respondent) without the authorization of the Attorney General and the Respondent's management.

47. The Claimant's objection is predicated on a decision which was rendered by the High Court in the case of *Gikenyi B & 6 others v Council of Governors & 68 others; Office of the Auditor General & 2 others (Interested Parties)* [2026] KEHC 902 (KLR). In the case, the learned Judge held, in an interlocutory ruling, that public bodies are not entitled to engage the services of private legal practitioners without the approval of the Attorney General and their respective Boards.

48. However, the court made it clear that the orders did not affect procurement for legal services which was undertaken before 12th January 2026. It expressed itself on the matter as follows:-

“The Conservatory Orders herein shall not affect any procurement, instructions or undertakings for provision of external legal services to public bodies made prior to the 12th January 2026.”

49. In the instant case, the Respondent avers that it commenced the process of procuring the services of its lawyers on record on 12th November 2025. It has annexed a letter of even date to affirm this fact.

50. The Respondent's lawyers have filed the Respondent's instructions letter to them dated 2nd January 2026. In addition, they have uploaded a letter from the Attorney General to the Claimant advising him that the Respondent completed procurement for legal services in the cause on 2nd January 2026.

51. Clearly, the procurement process for the Respondent's lawyers' services commenced and was concluded well before the orders in the aforesaid High Court case were issued. As such and in terms of the observations by the learned Judge in the case, the orders do not affect the legal services which the Respondent procured before 12th January 2026.

52. That being the case, the court finds that the Respondent's lawyers are properly on record as the process of procuring their services was concluded before 12th January 2026. As such, the application dated 29th January 2026 fails.

53. The second matter for consideration relates to the Claimant's prayer to amend his Statement of Claim. In response to the request, the Respondent asserted that the application was unnecessary since pleadings were yet to close.

54. I understand the Respondent's position on the request to be that the Claimant does not require leave of the court since pleadings are yet to close. That being the case, the court allows the application dated 10th January 2025 in the following terms:-

- a. The Claimant has the liberty to amend his Statement of Claim as requested within 14 days from the date of this ruling.
- b. The Respondent has the liberty to file a response to the amended Statement of Claim within 14 days of service thereof on it (the Respondent).



55. The third matter for consideration relates to the Claimant's prayer for orders of status quo. In the application dated 31st March 2026, the Claimant seeks for orders to bar the Respondent from taking steps to fill the position he previously occupied within the Respondent's rank and file pending resolution of the case. It is his case that this order is necessary in order to give meaning to his plea for reinstatement. He contends that should the Respondent fill the position before the matter is heard and determined, it will be impractical to implement an order for reinstatement should the court grant it.
56. As noted earlier in the ruling, the Claimant had filed an earlier application dated 31st October 2025 in which he sought similar orders. On 28th November 2025, the court granted him an order to preserve his position pending inter-partes hearing of the aforesaid application.
57. The court subsequently confirmed the order on 15th December 2025 with the consequence that the Respondent is already prohibited from filling, abolishing, re-assigning or permanently allocating the Claimant's position pending resolution of the case. That being the case, the Claimant's fresh request in that regard is misguided as the court cannot issue the same orders twice.
58. The Claimant also makes a request for discovery of documents. This request is premised on the applications dated 6th January 2026 and 31st March 2026.
59. Discovery of documents in civil proceedings is governed by the Civil Procedure Act and Rules. Section 22 of the Act, inter alia, provides as follows:-
- “Subject to such conditions and limitations as may be prescribed, the court may, at any time, either of its own motion or on the application of any party make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence.”
60. Discovery has been described as a critical tool in the trial process. It enables parties to litigation to access information which is critical to their cases.
61. An extract from the Halsbury's Laws of England, quoted in *Almasi Bottlers Limited v M'Mbijiwe & 3 others* [2025] KEHC 8726 (KLR), speaks to the matter as follows:-
- “The function of the discovery of documents is to provide the parties with the relevant documentary material before the trial so as to assist them in appraising the strength or weakness of their relevant cases, and thus to provide the basis for the fair disposal of the proceedings before or at the trial. Each party is thereby enabled to see before the trial or to adduce in evidence at the trial relevant documentary material to support or rebut the case made by or against him, to eliminate surprise at or before the trial relating to the documentary evidence and to reduce the cost of litigation”.
62. The learned Judge in *Almasi Bottlers Limited v M'Mbijiwe & 3 others* (supra), quoted with approval the decision in *ABN Amro Bank N.V. v Kenya Pipeline Company Ltd* [2019] eKLR where the court observed on the subject as follows:-
- “ ...The application I am faced with is essentially one of disclosure of information held by another person which the applicant says is relevant and necessary to these proceedings, for, they are directly connected with the suit and will assist the court to determine the real issues in controversy completely and effectually. Discovery as a compulsory disclosure, at the



request of a party, of information that relates to the litigation in a civil suit is provided for in Section 22 of the *Civil Procedure Act* and Order 11 rule 3(2) of the Civil Procedure Rules, and given the nature of the discovery, I would class it as a means of access to information in the sense of Article 35(2) (b) of *the Constitution*. And as Justice Kimondo J stated in the Oracle productions case, I too conclude that “the true purpose of discovery is to level the litigation field, to expedite hearing, reduce costs and allow parties to gauge the case they will face at trial.” It, therefore, serves a higher objective as the enabler of fair hearing. Needless to state primary devices of discovery are interrogatories, depositions, request for admissions, inspection of documents and requests for production of documents etc. But such application seeking information and documents is measured on a new yardstick; the applicant must;

- a) identify the information and documents; and the person holding the information; and
- d) show that the information and or documents are required for the exercise or protection of a right or fundamental freedom.

The latter enjoins the applicant to show the information is relevant and necessary to determination of the suit. This constitutional test must be met before orders of discovery are issued.”

63. In *M. L. Sethi vs R. P. Kapur*, 1972 AIR 2379, 1973 SCR (1) 697, the Supreme Court of India made the following observations on the subject:-

“The documents sought to be discovered need not be admissible in evidence in the enquiry or proceedings. It is sufficient if the documents would be relevant for the purpose of throwing light on the matter in controversy. Every document which will throw any light on the case is a document relating to a matter in dispute in the proceedings, though it might not be admissible in evidence. In other words, a document might be inadmissible in evidence yet it may contain information which may either directly or indirectly enable the party seeking discovery either to advance his case or damage the adversary's case or which may lead to a trail of enquiry which may have either of these two consequences.”

64. From the foregoing, it is apparent that a request for discovery must be targeted and not general. The party seeking an order for discovery should specify the documents which are the subject of the discovery. He is not entitled to make broad and generalized requests.
65. Discoveries should not be used for purposes of “fishing” for new evidence. The court will generally decline broad requests for discovery because they are more likely than not intended to “fish” for new evidence.
66. The party seeking discovery must demonstrate that the documents in question are: in the exclusive control of the opponent; are relevant to the case; and are specific.
67. Speaking to this reality, the court in the case of *Almasi Bottlers Limited v M’Mbijiwe & 3 others* (supra) expressed itself on the subject as follows:-

“The duty to produce documents in one’s possession is sacrosanct. There is however no duty to produce documents not in possession of a party. Further, the materials must be shown to be materials sought on discovery and are relevant and necessary. Blanket order for discovery is not contemplated...”



.... discovery will not be ordered in respect of irrelevant allegations in the pleadings, which even if substantiated could not affect the result of the action nor in respect of an allegation not made in the pleadings or particulars, nor will discovery be allowed to enable a party to fish for witnesses or for a new case, that is to enable him start a new case.”

68. Before a court can issue an order for discovery, it must be satisfied that the documents sought are relevant to the dispute. Relevance here is determined by reference to the pleadings which originated the case before the court.
69. In determining the Claimant’s plea for discovery, the court will be guided by the aforesaid principles.
70. As mentioned earlier, the Respondent has opposed the application for discovery on the ground that the request is overly broad and seeks production of records which may have been destroyed. It contends that it has no legal obligation to keep employee records indefinitely.
71. It is however, noteworthy that the Respondent has not objected to the request on the ground that the records sought are non-existent. Neither has it contended that the documents are not in its control.
72. Sections 10 (6) and 74 of the *Employment Act* obligate an employer to keep employment records in respect of his employees. As such and based on these provisions, the Claimant’s employment records are deemed to be in the control of the Respondent.
73. Section 10 (6) of the *Employment Act* obligates an employer to keep the records of an employee for a period of at least five years from the date of termination of the employee’s contract of service. This being the case, the court finds that the Respondent is already under legal obligation to maintain the impugned records for the aforesaid period. As such, there is no need to issue an order to preserve that which the law has already ordered to be preserved.
74. The dispute between the parties, as can be discerned from the Statement of Claim on record relates to the following:-
 - a. Whether the Respondent’s decision not to renew the Claimant’s contract of service was discriminatory and not informed by sound reasons.
 - b. Whether the Respondent unfairly denied the Claimant opportunities for career growth whilst the Claimant was still in service.
 - c. Whether the Claimant was victimized for raising concerns about the accuracy and propriety of the HIV data that was generated and maintained by the Respondent.
75. The Claimant is expected to present evidence on the foregoing. Therefore, any material which has nexus to the matters is relevant and susceptible to the discovery process so long as it is not privileged information.
76. However, the request for such evidence must point to specific data. It must not be generalized.
77. In the application dated 6th January 2026, the Claimant seeks discovery of, inter alia, the following items:-
 - a. All the employment contracts the Respondent issued to him between 4th November 2008 and 30th September 2025.
 - b. Copies of academic and professional testimonials which he shared with the Respondent to wit the following: diploma in pharmacy; the Bachelor of Science degree certificate in information



technology; certifications by the University of Washington; and certifications for all training programs by the Ministry of Health, University of Nairobi, USAID and other partners.

- c. All performance appraisals and renewal recommendations for his contracts.
 - d. Job advertisements, vacancy notices and recruitment communications relating to the position of Pharmaceutical Technologists between 2008 and 2025.
 - e. Minutes, attendance registers, resolutions and action matrices by the Strategic Information Officer and Data Team Leader for quarterly or periodic data and performance review meetings for the period between 2023 and 2025 relating to the HIV program.
 - f. Records speaking to the selection criteria that was used to review the requests for retention, the score sheets and minutes for approval of retention of 5 out of the eligible 6 Pharmaceutical Technologists at the Comprehensive Care Centre.
 - g. Records to demonstrate the employment pattern of Pharmaceutic Technologists within the Respondent's rank and file with specific focus on evidence of: the number of officers who were hired from 2008; and how many of them were hired on fixed term and indefinite term contracts.
 - h. Periodic HIV program reports by the Respondent to NASCOP and CDC for the years 2023 to 2025.
78. In the application dated 31st March 2026, the Claimant seeks discovery in respect of, inter alia, the following:-
- a. Minutes of a data review meeting which was held in March 2025.
 - b. Payroll records in respect of the Claimant for the period between 2008 and 2025 showing his gross salary, deductions and contractual gratuity calculations.
 - c. The Respondent's Whistle-blower Policy.
79. After evaluating the Claimant's case based on the Statement of Claim on record, the court is of the view that the various documents mentioned above have a nexus to the matters which he (the Claimant) raises. As such, they (the documents) are relevant to his case and are susceptible to the discovery process.
80. Accordingly, the court directs the Respondent to provide the Claimant with certified copies of the aforesaid documents. However, the Respondent should redact the identities of patients from the periodic HIV program reports it presented to NASCOP and CDC or from any other data before the documents are shared with the Claimant. For the avoidance of doubt, the discovery order is limited to the documents mentioned above.
81. In addition to the above documents, the Claimant has also sought discovery of other material. These include: general correspondence; data relating to funding of the Respondent by CIHEB Kenya and CDC/PEPFAR; and the names, designations and contract details of all employees retained in the retention exercise which the Respondent undertook in September 2025.
82. However, the court is disinclined to issue an order for discovery of the aforesaid data as it has not been demonstrated how it is relevant to the Claimant's case. Further, some of the data relates to individual employee information which is confidential in nature. There is no cogent reason why such confidential employee data should be subjected to scrutiny by third parties. Importantly, the request for discovery in respect of these items is deemed as overly broad and amounts to asking the court to permit a "fishing expedition" for evidence to generate new claims.



83. The Claimant has also sought an order to compel various officers of the Respondent and the Commission on Administrative Justice to attend court to testify on the dispute between the parties. However, the court declines to issue such order at this interim stage. If the Claimant wishes to have any of the Respondent's officers or the Commission on Administrative Justice as his witnesses, he is at liberty to apply for witness summons in the prescribed manner at the trial stage.
84. If a party against whom an order for discovery has been made does not comply with it, the court is entitled, in appropriate cases, to make an adverse inference against him. However, this is to be determined on a case by case basis having regard to the peculiar circumstances of each case and at the stage of trial.

Determination

85. The upshot is that the court makes the following findings and orders:-
- a. The court finds that the Respondent's lawyers are properly on record. As such, it declines the prayers sought in the application dated 29th January 2026.
 - b. The court allows the application dated 10th January 2026 with the consequence that:-
 - i. The Claimant has the liberty to amend the Statement of Claim as proposed. The amended Statement of Claim to be filed and served within 14 days of this order.
 - ii. The Respondent has the liberty to file and serve an answer to the amended Statement of Claim within 14 days of service of the amended Statement of Claim.
 - c. The court declines to grant the order for status quo to bar the Respondent from filling the Claimant's position as prayed for in the application dated 31st March 2026 since this order had already been granted pursuant to the Claimant's earlier application dated 31st October 2025 and remains in force until this case is finalized.
 - d. The court declines to issue an order to preserve the records which are to be used as evidence in this cause as sought in the application dated 31st March 2026 since section 10 (6) of *the Employment Act* already imposes this obligation on the Respondent and there has been no evidence of breach of the obligation.
 - e. The court issues an order for discovery as requested in the applications dated 6th January 2026 and 31st March 2026 in respect of the documents here-below:-
 - i. All the employment contracts the Respondent issued to the Claimant between 4th November 2008 and 30th September 2025.
 - ii. Copies of academic and professional testimonials which the Claimant shared with the Respondent relating to: diploma in pharmacy; the Bachelor of Science degree certificate in information technology; certifications by the University of Washington; and certifications of all training programs by the Ministry of Health, University of Nairobi, USAID and other partners.
 - iii. All performance appraisals and renewal recommendations for the Claimant's contracts.
 - iv. Job advertisements, vacancy notices and recruitment communications relating to the position of Pharmaceutical Technologists between 2008 and 2025.



- v. Minutes, attendance registers, resolutions and action matrices by the Strategic Information Officer and Data Team Leader for quarterly or periodic data and performance review meetings for the period between 2023 and 2025 relating to the HIV program with the identities of patients redacted.
 - vi. Records speaking to the selection criteria that was used to review the requests for retention, the score sheets and minutes for approval of retention of 5 out of 6 Pharmaceutical Technologists at the Comprehensive Care Centre in September 2025 with the identities of the individual officers anonymized.
 - vii. Records demonstrating the employment pattern of Pharmaceutic Technologists within the Respondent's rank and file with specific focus on: the number of officers hired from 2008; and how many of them were hired on fixed term and indefinite term contracts.
 - viii. Periodic HIV program reports by the Respondent to NASCOP and CDC for the years 2023 to 2025 with the names of patients redacted.
 - ix. Minutes of the data review meeting which was held in March 2025.
 - x. Payroll records in respect of the Claimant for the period between 2008 and 2025 showing his gross salary, deductions and contractual gratuity calculations.
 - xi. The Respondent's Whistle-blower Policy.
- f. However, the court declines to issue an order for discovery in respect of general correspondence; data relating to funding of the Respondent by CIHEB Kenya and CDC/PEPFAR; and the names, designations and contract details of all employees retained in the retention exercise which the Respondent undertook in September 2025.
- g. The court declines to issue an order at this juncture to compel the Respondent's officers whose details are set out in prayer 7 in the application dated 6th January 2026 and the Commission of Administrative Justice to give evidence in the cause. However, the Claimant is at liberty to take out witness summons for the officers during trial if he wishes to call them as his witnesses.
- h. The costs of the various applications will abide the outcome of the case.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF APRIL, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

