



**Oriedo v Baobab Beach Resort Mombasa Ltd (Cause E007 of 2021)
[2026] KEELRC 1199 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 1199 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E007 OF 2021**

**K OCHARO, J
APRIL 30, 2026**

BETWEEN

ALLANSON MKOKO ORIEDO CLAIMANT

AND

BAOBAB BEACH RESORT MOMBASA LTD RESPONDENT

RULING

1. By a Notice of Motion Application dated 7th November 2025, the Respondent/ Applicant seeks the following orders;
 - a. The Court be pleased to grant leave for the Respondent to file and serve,
 - i. A further Witness Statement.
 - ii. Supplementary List & Bundle of Documents
 - b. The Further Witness Statement filed on 31/10/2025 and served on 31/10/2025 be deemed as duly filed and served.
 - c. The Claimant/ Respondent be at liberty to file his Further Witness Statement and/or Supplementary List & Bundle of Documents.
 - d. Costs of this Application be in the cause.
2. The Application is grounded on the following principal grounds;
 - i. The Further Witness Statement, if filed, will save judicial time by making the statement more comprehensive, allowing the Respondent to adopt it without further examination-in-chief.



- ii. The question of the difference in the content of the skills of the Claimant as compared with those of the other employee in the IT Department in the Information Technology arose during the hearing on 6/10/2025.
 - iii. The further supplementary list of documents and the Supplementary witness statement will assist the Court in effectively determining whether the respondent's decision to declare the claimant redundant amounted to discrimination or differentiation.
 - iv. The statement and documents will not prejudice the Claimant, as the Respondent does not object to the Respondent filing additional statements and/or documents of his own.
 - v. The supplementary statement and bundle of documents will help the court to determine the dispute effectively
3. The Claimant opposes the Application on the following grounds;
- a. That the Application is fatally defective, frivolous, vexatious and an abuse of the court process.
 - b. That the Application has been brought after the close of the Claimant's case and after the testimony of the Respondent's first witness, making it an impermissibly late attempt to introduce new evidence.
 - c. That the Application is a transparent attempt to rescue the Respondent's case after weaknesses were exposed during the hearing, and is intended to cure evidentiary gaps rather than advance the ends of justice.
 - d. That the witness whose statement is now sought to be amended filed his original statement way back in 2021, and no explanation or justification has been provided for seeking amendments more than four years later.
 - e. That allowing the amendments sought would amount to trial by ambush, causing prejudice to the Claimant who testified and closed his case based on the Respondent's previously disclosed evidence.
 - f. That the Respondent has had ample time—over four years—to prepare its case, compile its documentary evidence, and file proper witness statements. The failure to do so cannot be remedied through last-minute applications.
 - g. That the Application does not satisfy the legal threshold for the introduction of further evidence or supplementary witness statements at this advanced stage of the proceedings.
 - h. That the Application is contrary to the principles of fairness, finality of pleadings, orderly trial procedure, and the overriding objective of the Court to facilitate the just and expeditious disposal of cases.
 - i. That the Application is otherwise an abuse of the court process and ought to be dismissed with costs.

Determination

4. I have carefully considered the Applicant's application, the grounds upon which it is premised as discerned from those on the face of it and the supporting affidavit, and the grounds of opposition filed by the Respondent, and I distil one issue for determination in the instant application: is the application merited?



5. This application to file a further witness statement and additional documents is brought after an inordinate and unexplained delay of nearly five years since the institution of this suit. By this stage, the proceedings have substantially progressed; the Claimant has already testified and formally closed his case, and the Respondent has commenced its defence, with one witness having testified. The litigation has therefore moved well beyond the preliminary stages.
6. Allowing the application in these circumstances would cause clear prejudice to the opposing party and undermine the integrity of the trial process. It would, in effect, disrupt the orderly progression of the hearing and potentially necessitate the recall of witnesses. Such a course would not only defeat the principle of expeditious disposal of disputes but would also run afoul of the court's duty to ensure fairness and procedural discipline, the overriding objective of this court, and the command under Article 159 of *the Constitution* for expeditious disposal of matters.
7. In the absence of any compelling justification for the delay or demonstration that evidence could not, with due diligence, have been presented earlier, the application is plainly untenable and ought to be declined.
8. In the upshot, I find the application lacking in merit. It is hereby dismissed with costs.

READ SIGNED AND DELIVERED THIS 30TH DAY OF APRIL 2026.

OCHARO KEBIRA

JUDGE.

