

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

CAUSE NO. E020 OF 2024
*(Before Hon. Lady Justice Anna Ngibuini
Mwaure)*

PATRICK TEYIE.....

.....CLAIMANT

VERSUS

GREENSTEDS INTERNATIONAL SCHOOL

RESPONDENT

RULING

Introduction

1. The Claimant/Applicant filed a Notice of Motion dated 29th January 2026 seeking the following orders that:

1. This Honourable Court be pleased to grant the Claimant/Applicant leave to amend his claim as per the annexed draft amended memorandum of claim to address errors and omissions in the claim to ensure the real question and or issues are justly determined by the Court.

2. This Honourable Court be pleased to grant the Claimant leave to re-open his case to adduce additional evidence, being the

statements reflecting non-remittance of deductions from the Claimant's salary to the SACCO and pension managers, as well as the corresponding pay slips.

3. This Honourable Court be pleased to grant leave to recall the Claimant for the purposes of adducing additional evidence, being the statements reflecting non-remittance of deductions from the Claimant's salary to the SACCO and pension managers, and any attendant testimony appurtenant thereto;

4. This Honourable Court be pleased to grant leave to the Respondent, if need be, to respond to the additional evidence and testimony.

5. The costs of the Application be in the cause.

Claimant/Applicant's supporting affidavit

2. The application is supported by the affidavit of Patrick Omusinde Teyie, the Claimant himself, dated even date as the application.

3. The Claimant/Applicant avers that, having closed his case on 9th December 2025, the matter was scheduled for defence hearing on 10th February 2026.
4. The Claimant/Applicant avers that he now seeks the court's discretion to amend the claim and reopen his case for purposes of admitting additional evidence comprising pay slips and statements from Jubilee Insurance, Mwalimu National SACCO and KAVAU, which demonstrate non-remittance of statutory and SACCO deductions from his salary.
5. The Claimant/Applicant avers that the said evidence, obtained at the end of January 2026 despite diligent efforts, is directly relevant to the issues in dispute, materially affects the sums owed, and is necessary to prevent a miscarriage of justice.
6. The Claimant/Applicant contends that there was no negligence in failing to produce the evidence earlier, that the Respondent will suffer no prejudice as it will have opportunity to respond, and that the application has been brought without undue delay.
7. The Claimant/Applicant therefore humbly prays that this Honourable Court, in the interest of justice and in line with Article 50 of the Constitution, grants leave to amend the claim and reopen the case to

enable a fair and comprehensive determination of all issues between the parties.

Respondent's replying affidavit

8. In opposition to the application, the Respondent filed a replying affidavit sworn by Khalid Abdalla Issa, the Respondent's advocate, dated 9th February 2026.
9. The Respondent contends that the Claimant/Applicant's application is a delaying tactic contrary to the Oxygen Principles enshrined in **sections 1A and 1B of the Civil Procedure Act** and **section 3 of the Employment and Labour Relations Court Act**, which demand the just, expeditious, and cost-effective resolution of disputes.
10. The Respondent argues that the Claimant/Applicant's case was duly closed on 9th December 2025 after full testimony and cross-examination, and reopening it now would amount to litigation by instalments and an abuse of process.
11. The Respondent maintains that the pay slips and SACCO statements sought to be introduced were always within the Claimant's reach during his tenure as Headmaster, and no sufficient diligence has been demonstrated to justify their late production.

Allowing the amendment to introduce claims exceeding Kshs.3,000,000/= would cause irreparable prejudice by dismantling the Respondent's defence strategy already settled upon closure of the Claimant's case.

12. The Respondent avers that **Order 18 Rule 10 of the Civil Procedure Rules** and **Rule 34 of the Employment and Labour Relations Court (Procedure) Rules, 2024**, confine the court's discretion to reopen cases to exceptional circumstances in which evidence could not be obtained with reasonable diligence.
13. The Respondent avers that the Claimant/Applicant's attempt is merely to fill gaps exposed during cross-examination, contrary to settled law, and that the interest of justice requires finality in litigation.
14. Accordingly, the Respondent prays that this Honourable Court finds the application devoid of merit and dismiss it with costs.
15. Parties canvassed the application by way of written submissions.

Claimant/Applicant submissions

16. The Claimant/Applicant invoked **section 3 and 12(3)(viii) of the Employment and Labour**

Relations Court Act, Rule 34 and Rule 66 of the Employment and Labour Relations Court (Procedure) Rules, 2024, Articles 50 and 159(2)(d) of the Constitution of Kenya, 2010, Section 146(4) of the Evidence Act, and Order 18 Rule 10 of the Civil Procedure Rules to urge the Court to exercise its discretion to amend pleadings and reopen the case.

17. The Claimant/Applicant submitted that the additional evidence comprising pay slips and statements from SACCO and pension managers was obtained in January 2026 after diligent efforts, is directly relevant to the pleaded issue of non-remittance of deductions, and its admission will prevent a miscarriage of justice. Reliance is placed on ***Omari v Sendwave Limited [2024] KEELRC 13540, Mwangi v Garissa & Another [2025] KEELRC 3279, Eastern Bakery v Castelino [1958] 1 EA 461, Mulu v Total Kenya PLC [2025] KEELRC 22, Aluodo v Cisco Systems Management B.V [2023] KEELRC 825, Raindrops Limited v County Government of Kilifi [2020] KEHC 1478 (KLR), Microsoft Corporation v Mitsumi Computer Garage Ltd & another [2001] KEHC 846 (KLR), Attorney***

General v Torino Enterprises Limited [2020] KECA 930, and ***Techbiz Limited v Royal Media Services Limited [2021] KEHC 3272 (KLR)***, all of which affirm the court's wide discretion to allow amendments and admit additional evidence where necessary to facilitate substantive justice.

18. The Claimant/Applicant submitted that the application has been brought without undue delay, no prejudice will be occasioned to the Respondent, who will have the opportunity to respond and cross-examine, and that the broader interests of justice and the constitutional right to a fair hearing demand that the application be allowed.

Respondent's submissions

19. The Respondent submitted that the principles governing admission of additional evidence were conclusively settled by the Supreme Court case in ***Mahamud v Mohamad & 3 others [2018] KESC 71 (KLR)***, which established strict cumulative conditions requiring proof that the evidence could not have been obtained with reasonable diligence, that it is not intended to fill gaps, and that its admission will not prejudice the opposing party. In ***Odinga & 5 Others v Independent Electoral and Boundaries***

Commission & 3 Others [2013] KESC 6 (KLR)

reaffirmed that admission of further evidence is an exceptional measure, not a routine indulgence. The Respondent contended that the Applicant has failed to demonstrate diligence, citing ***Wanje v A.K.Saikwa [1984] KECA 58 (KLR)*** and ***Ngiga v Twiga Foods Limited [2026] KEELRC 313 (KLR)***, where courts declined similar applications for lack of timely effort. The Respondent argued that the application seeks to cure evidentiary gaps, contrary to the caution in ***Salat v Independent Electoral and Boundaries Commission & 7 others [2014] KESC 12 (KLR)***, and that its allowance would occasion substantial prejudice, as emphasized in ***Kenya Revenue Authority v Murgani [2010] KECA 508 (KLR)***. The Respondent further invoked the overriding objective under ***sections 1A and 1B of the Civil Procedure Act***, noting the Court of Appeal's pronouncements in ***Hunker Trading Company Limited v Elf Oil Kenya Limited [2010] KECA 480 (KLR)*** and ***City Chemist (Nbi) Ltd & another v Oriental Commercial Bank Ltd [2008] KEHC 2172 (KLR)***, that the Oxygen Principles do not excuse indolence or uproot procedural discipline. Reliance is also placed on

Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 others [2009] KECA 453 (KLR),

in which abuse of process was defined as conduct that undermines the orderly administration of justice.

20. In light of the foregoing, the Respondent submitted that the Claimant/Applicant has not met the threshold for admission of additional evidence, that the application is an abuse of process, offends the overriding objective, undermines finality, and should therefore be dismissed with costs.

Analysis and determination

21. Having considered the application, supporting affidavit, replying affidavit, together with the rival submissions by both parties, the issue for determination is for the court to rule if the Claimant should be allowed to re-open the case and file further list of documents.

22. ***Rule 34 of the Employment and Labour Relations Court (Procedure) Rules 2024***

provides as follows:

“A party may amend pleadings before service or before the close of pleadings: Provided that after the close of pleadings, the party may only amend

pleadings with the leave of the Court on oral or formal application, and the other party shall have a corresponding right to amend its pleadings.”

23. In ***Central Kenya Ltd v Trust Bank Ltd & 5 Others [2000] KECA 367 (KLR)***, the Court of Appeal stated as follows:

“It is also trite law that, as far as possible, a litigant should plead the whole of the claim which he is entitled to make in respect of his cause of action. Otherwise, the court will not later permit him to reopen the same subject of litigation (see O.II rule 1 of the Civil Procedure Rule) only because they have, from negligence, inadvertence, or accident omitted that part of their case. Amendment of pleadings and joinder of parties is meant to obviate this. Hence the guiding principle in applications for leave to amend is that all amendments should be freely allowed and at any stage of the proceedings, provided that the amendment or joinder as the case may be, will not result in prejudice or injustice to the other party which cannot properly

be compensated for in costs (see, Beoco Ltd v. Alfa Laval Co. Ltd [1994]4 ALL ER. 464)."

24. **Section 146(4) of the Evidence Act** provides as follows:

"The court may in all cases permit a witness to be recalled either for further examination-in-chief or for further cross-examination, and if it does so, the parties have the right of further cross-examination and re-examination respectively."

25. In ***Mahamud v Mohamad & 3 Others (Supra)***, the Supreme Court stated that for a case to be reopened to admit further evidence only in exceptional circumstances where justice so demands. The Court emphasized that such evidence must be directly relevant to the issues in dispute, its exclusion must not risk denying a fair hearing, and it should not cause prejudice to the opposing parties.

26. In ***Raiply Woods (K) Ltd v Sub County Co-operative Office, Turbo & Soy & 2 Others [2026] KECA 334 (KLR)***, the Court of Appeal stated as follows:

“The law governing the reopening of cases is clear. A court retains the discretion to reopen proceedings after the close of evidence, but that discretion must be exercised judiciously and with due regard to the interests of both parties. The statutory framework within which that discretion operates is instructive. Section 146(4) of the Evidence Act provides that the court may, in all cases, permit a witness to be recalled either for further examination-in-chief or for further cross-examination, and if it does so, the parties have the right of further cross-examination and re-examination respectively. Order 18 Rule 10 of the Civil Procedure Rules, 2010, similarly provides that the court may at any stage of a suit recall any witness who has been examined and may, subject to the law of evidence for the time being in force, put such questions to him as the court thinks fit. Order 4 Rule 1(4) further provides that where the plaintiff is a corporation, the verifying affidavit shall be sworn by an officer of the company duly authorized under the seal of the company to do so.”

27. Still in ***Raiply Woods (K) Ltd v Sub County Co-operative Office, Turbo & Soy & 2 Others (Supra)***, the Court of Appeal cited the case of ***Wavinya Mutavi v Isaac Njoroge & Another [2020] eKLR***, which stated as follows:

“Over the years, Kenya’s superior courts and courts in the Commonwealth have developed principles which guide the exercise of jurisdiction to re-open a case and receive additional evidence in a civil trial court. First, the jurisdiction is a discretionary one and is to be exercised judiciously. In exercising that discretion, the court is duty-bound to ensure that the proposed re-opening of a party’s case does not embarrass or prejudice the opposite party. Second, where the proposed re-opening is intended to fill gaps in the evidence of the applicant, the court will not grant the plea. Third, the plea for re-opening of a case will be rejected if there is inordinate and unexplained delay on the part of the applicant. Fourth, the applicant is required to demonstrate that the evidence he seeks to introduce could not

have been obtained with reasonable diligence at the time of hearing of his case. Fifth, the evidence must be such that, if admitted, it would probably have an important influence on the result of the case, though it need not be decisive. Lastly, the evidence must be apparently credible, though it need not be incontrovertible.”

28. In this particular case, the court notes that the Claimant/Applicant tendered his evidence on 9th December 2025 and the defence hearing was scheduled for 10th February 2026. The Claimant/Applicant now seeks leave to amend his claim and file additional documents, including statements evidencing non-remittance of salary deductions to the SACCO and pension managers, together with the corresponding pay slips. The Respondent opposes the application, contending that no sufficient diligence has been demonstrated to justify the late production of the documents. It is further argued that permitting the amendment to introduce claims exceeding Kshs. 3,000,000/= at this stage would occasion irreparable prejudice by dismantling the Respondent’s defence strategy

already settled upon closure of the Claimant/Applicant's case.

29. The Court acknowledges that, while amendment of pleadings may be permitted at any stage of proceedings and the reopening of a case lies within its discretion, the proposed amendment herein is confined to an arithmetic correction of the sums claimed for non-remittance of salary deductions. The additional documents sought to be introduced are, namely pay slips and statements evidencing non-remittance to the SACCO. The court will rely on Section 34 of Employment and Labour Relations Court Procedure (Rules). The said section as already cited earlier on provides for amendments of pleadings before and after closure of the pleadings.
30. The law clearly provides that after close of pleadings the party may only amend pleadings with the leave of the court on oral or formal application and the other party may have corresponding right to amend its pleadings.
31. In this case, the Claimant already testified and closed his case. At this juncture, he is praying to re-open the case and introduce some documents including his salary to SACCO and pension managers as well as payslips.

32. The court finds it is late in the day to re-open the case and to allow pleadings to be filed all over again. If the orders are allowed it will mean the Claimant files the documents and the Respondent will then be given right to reply. The case will have to be re-heard.
33. The Claimant has not given reasons as to why the documents which should have been in his possession were not filed before the closure of the pleadings.
34. **Section 66 of the Employment and Labour Relations Procedure Rules 2024** also provide that the court shall not re-open hearing unless for sufficient reason, it considers it fit to do so. In this case, the court finds no sufficient valid reason to re-open the case.
35. In the cited case of **WANJE -vs- A.K. SAIKHA 1984 KECA 58 (Supra)** the court declined to re-open the case for lack of timely effort. The Respondent argued that the application sought was to cure evidentiary gaps.
36. In **Mahamud -vs- Mohamed & 3 Others (2018) Supra** the court held that strict cumulative conditions requiring proof could not have obtained

with reasonable diligence that it intended to fill gaps and that its admission will not prejudice the opposing party.

37. The Claimant was given his day in court and there is no sufficient reason to justify re-opening the case.

38. The court finds the Claimant's application is not justified and so is dismissed with costs in the cause.

39. Respondents case will proceed on.

It is so ordered.

**Dated, Signed and Delivered virtually at Nakuru
this 15th Day of
May, 2026.**

**ANNA NGIBUINI MWAURE
JUDGE**

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email.

They have waived compliance with **Order 21 Rule 1**

of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE