



Amutavi v DHL Supply Chain Kenya Limited (Employment and Labour Relations Cause 271 of 2020) [2025] KEELRC 846 (KLR) (14 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 846 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 271 OF 2020**

AN MWAURE, J

MARCH 14, 2025

BETWEEN

JACQUELINE AMUTAVI CLAIMANT

AND

DHL SUPPLY CHAIN KENYA LIMITED RESPONDENT

RULING

1. Vide an amended memorandum of claim dated 19th July 2023, the Claimant was seeking several reliefs against the Respondent, including being wrongly classified in a lesser job group and ought to have upgraded to a higher job group, unfair termination, compensation for underpayment and many others.
2. The Respondent filed an amended memorandum of defence dated 31st October 2023. The parties exchanged pleadings, and the matter proceeded for the main suit of the suit.
3. On 19th March 2024, an objection was raised by the Respondent's counsel and in particular exhibits 57 and 58, which were audio recordings and the counsel contested the production of those exhibits.
4. Parties submitted orally before this Honourable Court on the issue of adducing audio recording. The objection for the production of the documents by the Respondent was that they were recorded without the consent of the other parties. So they submitted that the documents were not therefore authentic. He said they were not gathered in the normal cause of business.
5. The Claimant on the other hand stated the manner of obtaining the recordings had not been disputed and there is an electronic certificate in compliance with Section 106 of the *Evidence Act*.

Determination

6. This Honourable Court has considered the submissions for both counsels, and the issue for determination is whether the audio recorded documents are admissible before this Honourable Court.



7. Article 50(4) of *the Constitution* of Kenya, 2010, provides as follows:

“Evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair, or would otherwise be detrimental to the administration of justice.”

8. Section 106(B) of the *Evidence Act* provides as follows:

1. Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied on optical or electro-magnetic media produced by a computer (herein referred to as "computer output") shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein where direct evidence would be admissible.
2. The conditions mentioned in subsection (1), in respect of a computer output, are the following—
 - a. the computer output containing the information was produced by the computer during the period over which the computer was used to store or process information for any activities regularly carried out over that period by a person having lawful control over the use of the computer;
 - b. during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
 - c. throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its content; and
 - d. the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.
3. Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph (a) of subsection (2) was regularly performed by computers, whether—
 - a. by combination of computers operating in succession over that period; or
 - b. by different computers operating in succession over that period; or
 - c. in any manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, then all computers used for that purpose during that period shall be treated for the purposes of this section to constitute a single computer and references in this section to a computer shall be construed accordingly.
4. In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following—



- a. identifying the electronic record containing the statement and describing the manner in which it was produced;
 - b. giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
 - c. dealing with any matters to which conditions mentioned in subsection (2) relate; and
 - d. purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate), shall be evidence of any matter stated in the certificate and for the purpose of this subsection it shall be sufficient for a matter to be stated to be the best of the knowledge of the person stating it.
5. For the purpose of this section, information is supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of an appropriate equipment, whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purpose of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities.”
9. The court has noted that the Claimant filed a certificate in compliance with Section 106B (4) of the Evidence Act deponed on 19th July 2023 and the certificate of the computer via which the documents were printed was identified by Ombo Malumbe Advocates ID No. xxxxxx. Then Janet Akinyi deponed she was responsible for transcribing the said documents.
10. The court has not been presented with the impugned documents and the concrete reasons why the same are being objected by the Respondent.
- The court holds it is fair and it makes sense for the case to proceed with all the documents. The parties by consent had agreed that the claimant would file their amended claim and supplementary list of documents as per the Claimants Notice of motion dated 24th July 2023 and both parties consented to the filing of the amended claim on 11th October 2023. The motion also referred to the production of supplementary documents.
11. The court holds the Claimant’s exhibits including exhibits 57 and 58 are admissible as the Respondent will have opportunity to cross examine the witnesses during the hearing on all the documents.
12. This case had just commenced before me. It is the general policy that files are heard in their stations. This file is from Nairobi and is returned to Nairobi for directions before Her Ladyship Justice H. Wasilwa.
- Mention on 21st May 2025 before Justice H. Wasilwa for further directions.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 14TH DAY OF MARCH, 2025.

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 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

