



Nyaga v Langfields Systems Limited & another (Employment and Labour Relations Cause 262 of 2017) [2025] KEELRC 1479 (KLR) (23 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1479 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE 262 OF 2017**

**AN MWAURE, J
MAY 23, 2025**

BETWEEN

TIMOTHY KINYUA NYAGA CLAIMANT

AND

LANGFIELDS SYSTEMS LIMITED 1ST RESPONDENT

KENYA POWER & LIGHTING COMPANY LTD 2ND RESPONDENT

RULING

Introduction

1. Before this Honourable Court is the determination of whether the Respondents should be allowed to call their witnesses or not.
2. The Claimant commenced this cause vide a Memorandum of Claim dated 20th June 2017 and filed in court on 21st June 2017 seeking the following orders as follows:
 - a. General damages
 - b. Special damages Kshs.22,500,000/=
 - c. Costs of this suit and interest
 - d. Any other cost that the court may award.
3. The matter was mentioned on several occasions for compliance in accordance with Order 11 of the Civil Procedure Rules on pre-trial directions. The Respondents raised preliminary objections on the jurisdiction of the court and the existence of the employer and employee relationship between parties. The Honourable Court (Wasilwa J) dismissed the Respondents' preliminary objections.



4. The matter proceeded with the Claimant’s case on 10th November 2021, but the Claimant put in an application for amendment of the Claim dated 22nd June 2022, and a ruling delivered by the Honourable Court (Nderitu J) allowing the application as prayed.
5. The Claimant filed an application to file the amended Statement of Claim out of time, and the same be deemed as filed and served. This Honourable Court dismissed the application, and the matter proceeded for hearing on 5th March 2025. After the close of the Claimant’s case, the Claimant’s counsel, Mr. Wandaka, raised the issue of the Respondents’ having no right to call their witnesses as they have not filed documents in accordance with Order 11 of the Civil Procedure Rules on pre-trial conference.
6. On the other hand, Mr. Kinyanjui, the 1st Respondent’s counsel, argued that both Respondents raised preliminary objections, which were already determined, and the Claimant made an application for the amendment to the Claim, which was allowed. Mr. Kinyanjui also argued that if the Claimant is ready to open proceedings after closing his case, how can the Claimant state that the Respondents have no right to call their witnesses when the Respondents have already filed their documents and witness statements in 2021.
7. This Honourable Court has considered the oral submissions by both counsels. Article 159(2)(b) of *the Constitution* provides that justice shall not be denied on procedural technicalities. In *Hellen Chemeli Kenduiywa V Mathew Kenduiywa & Another* [2021] KECA 567 (KLR), the Court of Appeal quoted Article 159 of *the Constitution*, which provides as follows:

159(1) Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution. (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—

- (a) justice shall be done to all, irrespective of status;
- (b) justice shall not be delayed;
- (c) ...
- (d) justice shall be administered without undue regard to procedural technicalities; and
- (e) the purpose and principles of this Constitution shall be protected and promoted ...”.

8. In *Said Sweilem Gheithan Saanum V Commissioner of Lands (being sued through Attorney General) & 5 others* [2015] KECA 284 (KLR), the Court of Appeal stated as follows:

“Justice shall not be delayed” is no longer a mere legal maxim in Kenya but a constitutional principle that emphasizes the duty of the advocates, litigants and other court users to assist the court to ensure the timely and efficient disposal of cases. The principles which are reiterated by sections 1A and 1B of the *Civil Procedure Act* are intended to facilitate the just, expeditious, proportionate and affordable resolution of disputes. The principle cannot therefore be a panacea which heals every sore in litigation, neither is it a licence to parties to ignore or contravene the law and rules of procedure. We agree, with respect, with the learned Judge’s conclusion that the suit in the High Court was not properly handled by the appellant’s advocate. The court cannot be invited to turn a blind eye in the face of such inordinate delay and in the absence of sufficient explanation. Likewise it cannot be



fashionable for parties to blame their advocate and disclaim that the mistakes made by their advocates, who they have themselves appointed, cannot be visited upon them.”

9. In this instant case, Mr. Kinyanjui, submitted that the Respondents had filed their documents in 2021. The Memorandum of response was filed on 18th August 2017. On the same day the 1st respondent gave notice that they would avail their documents 15 days before the pre-trial conference under order 7 rule 8 of Civil Procedure Rules.

The court is aware that case was mentioned on several occasions in compliance with order II of Civil Procedure Rules and on 14th January 2019 the Respondent filed a Preliminary Objection challenging the jurisdiction of the court. A ruling was delivered and the preliminary objection was dismissed.

10. The Claimant also applied to be allowed to amend his claim by his application dated 22nd June 2022. The same was allowed by the Ruling delivered on 21st July 2023. The Claimant did not comply with the court order and applied yet again by application dated 20th March 2024. This the court disallowed.
11. The matter then proceeded for hearing on 23rd September, 2024 and the Claimant proceeded with his case and finalised it.

At that stage is when he objected to the Respondent witnesses testifying on allegation that the Respondent filed his bundle of documents late.

12. The court is cognizant that the Respondent filed their bundles in October 2021. They had however filed their response on 24th October 2017.

There was a lot happening in this file with numerous applications. It is correct the Respondents should have obtained leave of the court to file their documents out of time. They however had filed their responses in good time and the Claimant did not raise any issues at the pre-trial conferences.

13. In view of the fact that courts are urged not to lock out parties from the corridors of justice due to procedural technicalities the court finds no good reason to lock out the Respondents’ witnesses from testifying in court. Their witness statements have been in court since October 2021 and the Claimant had never raised any objection.

It is also late in the day to raise an objection at this point when the Claimant had even referred to the Respondent’s evidence during his evidence in chief.

In compliance with article 159(2)(d) which provide that justice shall be administered without regard to undue procedural technicalities the court finds it just to allow the Respondent witnesses to testify in the matter. The case will proceed for further hearing on 25th June 2025.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 23RD DAY OF MAY, 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

