



Kenya National Private Security Workers Union v G4S Kenya Limited (Employment and Labour Relations Cause 587 of 2019) [2025] KEELRC 1433 (KLR) (20 May 2025) (Ruling)

Neutral citation: [2025] KEELRC 1433 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 587 OF 2019**

**HS WASILWA, J
MAY 20, 2025**

**BETWEEN
KENYA NATIONAL PRIVATE SECURITY WORKERS UNION CLAIMANT
AND
G4S KENYA LIMITED RESPONDENT**

RULING

1. The Claimant has raised an objection to the production of some documents by the Respondent.
2. I have considered the averments of the parties herein and I note as follows:
3. Section 65 (5) and (6) of the *Evidence Act* states as follows:

“(5) Notwithstanding anything contained in any other law for the time being in force—

- a. a micro-film of a document or the reproduction of the image or images embodied in such micro-film; or
- b. a facsimile copy of a document or an image of a document derived or captured from the original document; or
- c. a statement contained in a document and included in printed material produced by a computer (hereinafter referred to as a "computer print-out"),

shall, if the conditions stipulated in subsection (6) of this section are satisfied, be deemed to also be a document for the purposes of this Act and shall be admissible in any proceedings without further proof of production of the



original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

- (6) The conditions referred to in subsection (5) in respect of a computer print-out shall be the following, namely—
- a. the computer print-out containing the statement must have been produced by the computer during the period in which the computer was regularly used to store or process information for the purposes of any activities regularly carried on over that period by a person having lawful control over the use of the computer;
 - b. the computer was, during the period to which the proceedings relate, used in the ordinary course of business regularly and was supplied with information of the kind contained in the document or of the kind from which the information so contained is derived;
 - c. the computer was operating properly or, if not, that any respect in which it was not operating properly was not such as to affect the production of the document or the accuracy of its content;
 - d. the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of business.

4. Section 106B of the [Evidence Act](#) also states as follows:

“ 106B. Admissibility of electronic records.

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 electromagnetic 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,
 - d. 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 sections 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),
 - e. 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.”

5. In relation to case law, in *Ogembo v Yongo* [2024] KEHC 15763 (KLR), Justice Aburili held as follows:

“30. The appellant’s case was based on messages extracted from WhatsApp messages. However, the appellant did not attach a Certificate of Electronic Evidence in compliance with section 106B of the *Evidence Act*.

31. The admissibility of electronic records is provided for under Section 106 B of the *Evidence Act* (Cap 80) Laws of Kenya in the following terms:

“106B Notwithstanding, anything contained in this Act, any
 (1) 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 a 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.”

32. Under sub-section (4), where a party seeks to give evidence by virtue of section 106B he has, among other things, to tender a certificate dealing with any matters to which the conditions above relate. The certificate should further:

“a) identify the electronic record containing the statement and describing the manner in which it was produced; and



- b) give 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.”
33. In the case of *Republic vs Barisa Wayu Matuguda* [2011] eKLR the court observed that:
- “ . . . any information stored in a computer. . . which is then printed or copied. . . shall be treated just like documentary evidence and will be admissible as evidence without the production of the original. However section 106B also provides that such electronic evidence will only be admissible if the conditions laid out in that provision are satisfied.”
34. The court went on to state that:
- “This provision makes it abundantly clear that for electronic evidence to be deemed admissible it must be accompanied by a certificate in terms of section 106B (4). Such certificate must in terms of S.106B (4) (d) be signed by a person holding a responsible position with respect to the management of the device.... Without the required certificate this CD is inadmissible as evidence.”
35. In *Benson Mugatsia vs Cornel Rasanga Amater*, Election Petition 2 of 2012, citing *Republic vs Berisa Wayu Matuguda* Criminal Case No.6 of 2008, the court considered when a certificate of electronic evidence will be admissible and stated:
- “.....any information stored in a computer ...which is then printed or copied..... shall be treated just like documentary evidence and will be admissible as evidence without production of the original: However Section 106B also provides that such electronic evidence will only be admissible if the conditions laid out in that provision are satisfied.”
36. The Court of Appeal in *John Lokitare Lodinyo v I.E.B.C and 2 Others* [2018] eKLR addressed the question of admissibility of electronic records under S 106B and stated;
- “54: Essentially, the sections provide that electronic evidence which is printed out shall be treated like documentary evidence and will be admissible without production of the computer used to generate the information. The appellant claimed that his technical team downloaded the forms and had them printed. He admitted that the forms were from the IEBC public portal. Ordinarily, this would have meant accessing the IEBC portal, which one could only do if they had access to the internet, proceeding to log onto the IEBC portal page, clicking on the Forms 35A uploaded on Kacheliba Constituency, downloading the Forms 35A onto the computer’s hard disk and finally printing the documents via a printer connected to the computer.
55. It is at this juncture that the provisions of Section 106B of the *Evidence Act* come into play as the section sets out the conditions to be fulfilled to have this evidence admissible since evidence shall only be admissible if a certificate is presented identifying the electronic record and a description of the manner in



which the electronic evidence was produced, together with any particulars of any device involved in the production of that document, which the appellant did not do. This Court in the case of *County Assembly of Kisumu & 2 Others v Kisumu County Assembly Service Board & 6 Others* [2015] eKLR stated that;

“Section 106B of the *Evidence Act* states that electronic evidence of a computer recording or output is admissible in evidence as an original document “if the conditions mentioned in this section are satisfied in relation to the information and computer.” In our view, this is a mandatory requirement which was enacted for good reason. The court should not admit into evidence or rely on manipulated (and we all know this is possible) electronic evidence or record hence the stringent conditions in sub-section 106B (2) of that Act to vouchsafe the authenticity and integrity of the electronic record sought to be produced...”

37. In the case of *Richard Nyagaka Tong’i v Independent Electoral & Boundaries Commission & 2 others* Election Petition No. 5 of 2013 [2013] eKLR the court found that:

“27. In the present case the petitioner has not produced a certificate under section 106B (4) of the *Evidence Act* and the person who operated the computer and printer during the printing of the photographs was not called to testify as to the condition of the machines and the integrity of process of the printing of the photographs. The person who testified was the photographer who although he stated that he was with the computer operator when the photographs were made cannot vouch for the due operation of the computer and printer and the integrity of the photographs having himself admitted that they would at times sit with the operator to choose colours in which the photographs would be printed. The court cannot rule out the possibility of doctored photographs, and in accordance with section 106B, the photographs are inadmissible and shall not be considered.”

38. It is evidently clear that electronic documents must be accompanied by a certificate in terms of section 106 B (4) of the *Evidence act* for them to be deemed admissible. There is no other way out. This is a requirement in civil and criminal cases before courts, except in matters where statutes exclude the application of strict rules of evidence such as the Small Claims Court or specific tribunals.”

6. Having considered the law and the manner in which the Respondent seeks to produce the impugned documents without any certificate of electronic evidence, it is apparent that the documents so objected by the Claimant are inadmissible.

7. I therefore uphold the Claimant’s objection and expunge the said documents off the record. The Respondents are free to proceed minus the said documents. Costs in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH OF MAY, 2025.

HELLEN WASILWA

JUDGE

