



**Ouche v Weza Care Solutions (Claim E086 of 2024)
[2025] KEELRC 1435 (KLR) (19 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1435 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CLAIM E086 OF 2024
NZIOKI WA MAKAU, J
MAY 19, 2025**

BETWEEN

TED ODHIAMBO OUCHE CLAIMANT

AND

WEZA CARE SOLUTIONS RESPONDENT

RULING

1. There is an objection to the production of a report titled Investigation Report of Allegations of Sexual Harassment. It is argued that the production of this report which comprises of interviewing of several witnesses, conversations with several witnesses, is availed without audio recording and that it is therefore difficult to ascertain what is written tallies up. Ms. Achieng for the Claimant submits that under section 106E of the *Evidence Act* the electronic evidence is inadvisable as there should be a certificate. She urges the document be expunged.
2. The Respondent is opposed. It is submitted that the investigation report comprises of conversations held and interviews done and that it is not produced as an electronic record. Ms. Ngome for the Respondent thus urges it be allowed and the objection overruled.
3. In reply, Ms. Achieng asserts it is a report based on electronic evidence not shared with the Claimant.
4. Circumstances that bar production of electronic evidence are per section 106E of the *Evidence Act*. It is provided in that section that electronic evidence cannot be produced without a certificate issued. In section 78A of the Act, the electronic messages, digital materials, recordings and the like can be produced provided conditions on the reliability and integrity of the evidence are met. That is what the certificate does.
5. In this case, the witness before court asserts, she conducted an investigation and that in the course of the investigation, had conversations and telephone calls with the persons of interest and after the



investigations by the panel, a report was prepared. She says she prepared the report which appears at pages 45 to 52 of the Respondent's Bundle.

6. The report is not a transcript of the interview but it has sections or parties that indicate – Recorded conversation with Ms. (XXX), recorded interview with Ms. (YZZ). The Court notes there are other aspects of the report that are from conversations with others. It would therefore, in the mind of the Court, be in relation to the integrity of the process if a certificate together with the audio recording of the recorded conversations be availed. To that end the Court strikes out the report as filed and will give the Respondent one week to avail the recording and transcript together with the certificate as it is not possible to separate the aspects of the report that are able to stand on their own without the certificate. Witness on the stand is stood down pending the compliance.
7. The Respondent may call any other witness it may wish to present granted that witness on the stand must abide to preparation of the report as directed above on the Ruling.

Orders accordingly

DATED AND DELIVERED AT KISUMU THIS 19TH DAY OF MAY 2025

NZIOKI WA MAKAU, MCIARB.

JUDGE

