



**Ogutu v Kenya Airports Authority (Cause E561 of 2020)  
[2025] KEELRC 1411 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1411 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E561 OF 2020**

**L NDOLO, J**

**MAY 15, 2025**

**BETWEEN**

**ROMANSUS OKETCH OGUTU ..... CLAIMANT**

**AND**

**KENYA AIRPORTS AUTHORITY ..... RESPONDENT**

**RULING**

1. On 30<sup>th</sup> July 2024, the Claimant testified and closed his case. The Respondent's witness being absent, the matter was fixed for defence hearing on 29<sup>th</sup> January 2025, on which date the Respondent's Counsel informed the Court that there were new developments necessitating the Claimant to be recalled, for further cross examination.
2. In this regard, Counsel for the Respondent submitted from the Bar that the Claimant had rendered a clearance letter from Kenya Commercial Bank, which was deemed to be a forgery. Given the seriousness of the issue raised by the Respondent's Counsel, I directed him to file a formal application.
3. The application, which is the subject of this ruling, is dated 10<sup>th</sup> February 2025. By this application, the Respondent seeks leave to file additional documents and for the Claimant to be recalled for cross examination in respect of these documents, to ascertain their authenticity.
4. The Respondent also seeks leave to file a further witness statement.
5. The application is supported by an affidavit sworn by the Respondent's Manager-Employee Relations, Jacinta Wafubwa and is based on the grounds that:
  - a. In the course of proceedings on 30<sup>th</sup> July 2024, the Court directed the Claimant to go to the Respondent's offices and proceed with the process of clearance, to enable him access his terminal benefits;



- b. The Claimant proceeded to the Respondent's offices and in the course of clearance, he tendered a document purportedly procured from Kenya Commercial Bank, to facilitate clearance;
  - c. The Respondent, upon verification and on presenting the document to the Bank for authentication, was informed that the letter was a forgery. Additionally, the signatory of the letter was found not to be an employee of the Bank;
  - d. It was established that the Claimant had submitted to the Respondent, a fraudulent document purportedly authored by KCB Bank, as one of the documents to show that he had made alternative arrangements towards settling his loan with the Bank;
  - e. The Respondent has since obtained information that calls into question the authenticity of the document and therefore seeks to introduce further documentation to aid the Court in determining this suit;
  - f. It is in the best interest of justice that the Respondent be allowed to file additional documents for a just determination of the claim against it;
  - g. It is further in the interest of justice that the Claimant be recalled for cross examination regarding the said documents to ensure fair determination of the dispute;
  - h. The application is made in good faith, and no prejudice will be occasioned to the Claimant if the orders sought are granted;
  - i. The Respondent is ready to comply with any directions of the Court.
6. The Claimant opposes the application by his replying affidavit sworn on 17<sup>th</sup> March 2025. He terms the application as an abuse of the court process, baseless, an afterthought and only intended to protract the hearing and determination of his claim.
  7. The Claimant points out that filing of documents was closed at the pre-trial stage and the Respondent was given leave to file all documents related to the claim.
  8. He adds that the documents sought to be introduced relate to occurrences that took place after 30<sup>th</sup> July 2024 and therefore any documents that arose or were discovered thereafter cannot be said to be relevant to the determination of the claim.
  9. The Claimant avers that he visited the Respondent's offices on 5<sup>th</sup> and 6<sup>th</sup> August 2024, where he was issued with a clearance form to fill and present to all the departments for verification and approval.
  10. He states that he filled all the parts save for the Finance Department part, as it required a written confirmation from his Bank. He further states that he visited his Bank Branch where he was informed that since his accounts, save for the loan account, were dormant, the approval could only be issued by the Credit Department of the Bank. He claims to have been informed that a letter would be sent directly to his former employer.
  11. According to the Claimant, he did not furnish the Respondent with any letter from the Bank. He claims to be a stranger to two letters from KCB Bank Kenya Limited, in reference to his loan account.
  12. Jacinta Wafubwa swore a further affidavit on 19<sup>th</sup> March 2025, stating that the Claimant has an outstanding loan of Kshs. 2,500,000 with Kenya Commercial Bank Limited.
  13. Wafubwa depones that the Respondent has an agreement with the Bank to provide staff loans, which requires full settlement of any outstanding loan balances, before clearance of an employee.



14. By its Motion, the Respondent seeks to re-open the case by filing additional documents, upon which the Claimant will be recalled for cross examination.
15. In its written submissions dated 19<sup>th</sup> March 2025, the Respondent cites the decision in *Jobana Kipekmoi Too v Hellen Tum* [2014] eKLR where it was held that a court may in appropriate cases, allow adduction of additional evidence, outside procedural timelines, where no prejudice will be occasioned to the opposite party.
16. The principles upon which this discretion may be exercised were restated in *Raindrops Limited v County Government of Kilifi* [2020] eKLR as follows:
  - a. The Court’s jurisdiction to re-open the case and admit further evidence is a discretionary one and is to be exercised judiciously and 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;
  - b. Where the proposed re-opening is intended to fill gaps in the evidence of the applicant, the Court will not grant the plea;
  - c. The plea for re-opening of a case will be rejected if there is an inordinate and unexplained delay on the part of the applicant;
  - d. 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 and lastly, 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; and
  - e. The evidence must be apparently credible, though it need not be incontrovertible.
17. The documents which the Respondent seeks to introduce, and upon which it seeks an opportunity to further cross examine the Claimant, were availed in a clearance process ordered by the Court in the course of these proceedings. There is therefore no way the documents could have been produced earlier.
18. Serious allegations regarding the authenticity of the subject documents have been made and the Court must pose and take evidence on it. I see no prejudice to be suffered by any party nor is there a whiff of any attempt by the Respondent to fix its case.
19. For the foregoing reasons, the Respondent’s application dated 10<sup>th</sup> February 2025 succeeds and is allowed. The documents attached to the application are admitted with leave to the Respondent to file a supplementary witness statement limited to this issue only. The Claimant will be recalled for further cross examination on this issue only.
20. The costs of the application will be in the cause.
21. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 15<sup>TH</sup> DAY OF MAY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Ambani for the Claimant

Mr. Ouma for the Respondent

