



**Kenya Union of Domestic Workers, Educational Institutions & Allied Workers v  
Musyoka (Cause E140 of 2025) [2025] KEELRC 1301 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1301 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E140 OF 2025**

**S RADIDO, J**

**MAY 8, 2025**

**BETWEEN**

**KENYA UNION OF DOMESTIC WORKERS, EDUCATIONAL INSTITUTIONS  
& ALLIED WORKERS ..... CLAIMANT**

**AND**

**DORCAS MBEKE MUSYOKA ..... RESPONDENT**

**RULING**

1. The Kenya Union of Domestic Workers, Educational Institutions & Allied Workers (KUDHEIHA) sued Dorcas Mbeke Musyoka (the Respondent) on 27 February 2025, and it stated the Issue in Dispute as:
  - i. Publication of defamatory words in the Facebook media against the Union and its Secretary-General by the Respondent.
  - ii. Defaming the Union and its Secretary-General by the Respondent on the Facebook media.
2. Filed together with the Memorandum of Claim was a Motion seeking orders:
  - i. ...
  - ii. ...
  - iii. Pending the hearing and determination of the main suit, this Honourable Court be pleased to issue to the Claimant an order of temporary injunction stopping the Respondent from publishing defamatory words in the Facebook media or any other social media against the Union and its Secretary-General Albert Njeru Obed as well as the Union's Accountant Joseph Nelson Ndungu.
  - iv. Costs of this application be in the cause.



3. The grounds supporting the Motion were that the Respondent had posted on Facebook on 20 February 2025 malicious words depicting KUDHEIHA's workspace as a place where sexual harassment was taking place and women who failed to accept sexual advances were abducted or killed; the defamatory words were copied to several persons; the Respondent knew the words were false and meant to injure the reputation of KUDHEIHA and the Secretary-General and that KUDHEIHA stood to be prejudiced if an injunction was not granted.
4. The Respondent filed Grounds of Opposition on 7 March 2025, contending that:
  - i. The said application is bad in law, frivolous, vexatious and hopeless for want of strict compliance with provisions of the *Evidence Act*, CAP 80 Laws of Kenya.
  - ii. There is no proper Applicant/Claimant.
5. KUDHEIHA's Deputy Secretary-General filed a supplementary affidavit responding to the Grounds of Opposition on 10 March 2025.
6. In the affidavit, it was deponed that KUDHEIHA was the Claimant; the Respondent was acting with her advocate on record, a former employee, in defaming KUDHEIHA and that the Respondent had made a complaint to the Senate to bring the Union to its knees.
7. The Respondent filed her submissions on 10 March 2025, in which she asserted that KUDHEIHA had relied on electronic evidence which did not meet the admissibility threshold set by sections 106A and 106B of the *Evidence Act*. The Respondent also alleged that the dispute was meant to harass her and was a violation of her rights to fair labour practices and fair administrative action.
8. KUDHEIHA filed its submissions on 12 March 2025.
9. In the submissions, KUDHEIHA contended that it had not presented electronic evidence but extracts of defamatory words not subject to section 106B of the *Evidence Act*.
10. KUDHEIHA submitted that it had made a prima facie case.
11. The Court has considered the Motion, affidavits and submissions.
12. KUDHEIHA alleged that the Respondent defamed it on Facebook and produced extracts from the said media.
13. The Respondent objected to the admissibility of the extracts on the basis of sections 106A and 106B of the *Evidence Act*.
14. Section 106B of the *Evidence Act* provides:
  - (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 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), 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.



15. Despite the arguments by KUDHEIHA that the extracts of the purported defamatory words are not subject to sections 106A and 106B of the [Evidence Act](#), the legal position is to the contrary.
16. The extracts would only be admissible and subject to proof of the contents if the strictures of section 106B of the [Evidence Act](#) were fulfilled. As it is, KUDHEIHA did not comply with the requirements as to the production and admissibility of electronic evidence.
17. The Court concludes that KUDHEIHA did not establish a prima facie case.
18. With respect to the objection that there is no Claimant, the law allows a corporate body to sue for defamation, and the Court rejects the objection that there is no Claimant.

### **Orders**

19. The Motion dated 26 February 2025 is dismissed with costs.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 8<sup>TH</sup> DAY OF MAY 2025.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Claimant Nchoe, Jaoko & Co. Advocates

For Respondent Tonge Yoya & Associates Advocates

Court Assistant Wangu

