



**Okolla v Kenya National Union of Teachers (Cause E606 of 2024)
[2025] KEELRC 1888 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1888 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E606 OF 2024
SC RUTTO, J
JUNE 27, 2025**

BETWEEN

ENOCK OKOLLA CLAIMANT

AND

KENYA NATIONAL UNION OF TEACHERS RESPONDENT

RULING

1. The main suit proceeded for hearing on 3rd March 2025, during which both parties called oral evidence in support of their respective cases. Subsequently, the Court directed the parties to file and exchange written submissions within specified timelines and appear in Court for mention on 7th April 2025 to confirm the filing of submissions and to take a judgment date.
2. In the intervening period, the Claimant/Applicant filed a Notice of Motion dated 8th March 2025 seeking the following orders:
 - a. Spent.
 - b. That the Claimant be allowed to re-open cross-examination of the Respondent's witness.
 - c. That the Respondent's Witness, Alice Twei be recalled for re-examination.
 - d. That the Claimant be allowed to introduce additional evidence to support the fact that there are employees within the category of drivers who have clear and permanent terms of employment.
 - e. That the Claimant be allowed to introduce additional evidence to controvert issues introduced by the Respondent and which were not canvassed in their Response or Witness statement.
 - f. That in the alternative part or all of the testimony of the Respondent's testimony (sic) be struck out.



- g. That also in the alternative the Witness of the Respondent stand impeached.
- h. That the costs of this application be in the cause.
3. The Application is supported by the grounds appearing on its face and the Affidavit of the Claimant/Applicant, Enock Okolla.
4. Mr. Okolla avers that upon examination of the testimony of the Respondent's witness, it is noted that the witness introduced new and additional issues that were not canvassed in their Response or witness statement. That the Respondent's witness stated that there exists no weekend allowance or related terminology in the Respondent organization when for a fact the allowance exists and has been referred to in official correspondence of the Respondent Organization.
5. Mr. Okolla avers that the Respondent's witness stated that there are no employee drivers or there has never been employee drivers in the Respondent who are on permanent terms since on or about the year 2009 but evidence available contradicts that very assertion. Mr. Okolla contends that the Respondent organization has and has always had employees in the category of drivers being on clear terms of permanent employment and which includes the Claimant's second witness. In Mr. Okolla's view, the witness either perjured herself or is greatly misinformed on the affairs of the Respondent organization.
6. He further avers that his witness was not granted leave to adduce evidence in support of new and additional issues raised by the Respondent at trial.
7. According to Mr. Okolla, if the hearing and trial were to close as heard on the 3rd of March 2025, he will be greatly prejudiced.
8. That by re-opening the examination of the Respondent's case, the Respondent will be afforded a fair opportunity to respond and be heard to the statements in this present Application and thus won't be prejudiced at all.
9. That he is ready to attend court for re-examination, should the Respondent so require.
10. The Respondent opposed the Application through the Replying Affidavit sworn on 2nd April 2025, by its Executive Officer/Human Resource Officer, Alice Tuei.
11. It is Ms. Tuei's assertion that the Claimant disingenuously claims that there exists a weekend allowance in the Respondent's organization, which allegation was denied in the pleadings and substantively subjected to the test by way of cross-examination at the hearing. She further denies that the terminology has been mentioned in official correspondence of the Respondent's organization. That the correspondence under reference was with respect to an elected official who served as an Executive Secretary at the Taita Taveta Branch and was later elected as the Assistant Secretary General to serve at the Headquarters.
12. Ms. Tuei further avers that during the trial, the Claimant strenuously claimed that daily travel allowance was the alleged weekend allowance. That this cannot be a basis to reopen the examination of the Respondent's witness and allow piece-meal litigation.
13. According to Ms. Tuei, she did not offer any perjured evidence and that on the contrary, she unambiguously stated that the Respondent sold all its vehicles in 2007, and ceased employing drivers on permanent terms and only employed drivers on a contractual basis. Consequently, there are no drivers in the employment of the Respondent who are on permanent and pensionable terms since the year 2008.



14. That the Claimant's second witness was employed prior to 2008 and retired in December 2024. This was well before the Respondent changed its policy of owning a fleet of vehicles for its elected officials. Following the policy change, the existing vehicles were sold. This explains why the employment contract of the Claimant's second witness is different.
15. According to Ms. Tuei, all these matters were comprehensively covered during the trial and it's pointless and unnecessary to recall her to be questioned on the same things.
16. That the Claimant has failed to show or demonstrate any additional or new evidence or issue introduced by the Respondent at trial as claimed in the Application.
17. That to the contrary, it is the Claimant who introduced new issues and even ambushed the Respondent at the close of its case with an oral Application seeking to introduce additional documents which was canvassed orally and the said request declined for the reasons that it would prejudice the Respondent as it will not have time to cross-examine the contents of the additional documents.

Submissions

18. The Application was canvassed by way of written submissions. Both parties filed written submissions and the Court has paid due consideration to the same.

Analysis and determination

19. Having considered the Application, the Respondent's Replying Affidavit and the rival submissions, the sole issue falling for the Court's determination is whether the Claimant has advanced a good reason for the reopening of the case and introduction of new evidence.
20. The decision whether to grant the orders as sought in the present Motion is based on discretion which must be exercised judiciously. Courts have consistently held that for a case to be reopened, the applicant must show that there has been new evidence which could not be obtained earlier and that the evidence is crucial to the case's determination. Further, the reopening of a case should not embarrass or prejudice the opposite party. More importantly, the reopening should not be intended to fill evidential gaps, and the application must not have been made inordinately late. (see *Samuel Kiti Lewa v Housing Finance Co. of Kenya Ltd & another* [2015] eKLR and *Susan Wavinya Mutavi v Isaac Njoroge & another* [2020] eKLR)
21. In this case, the basis of the Claimant's application is that the Respondent's witness introduced new evidence that there exists no weekend allowance or related terminology in the Respondent's organization and that there are no employees serving on permanent and pensionable terms in the Respondent's organization since 2009, yet evidence available contradicts this assertion. In this regard, the Claimant seeks to introduce additional evidence to support the fact that there are employees in the category of drivers who have clear and permanent terms of employment.
22. A look at the Respondent's witness statement reveals that she stated that weekend allowance does not exist within the Respondent's policies, contracts or remuneration packages. As to whether there is a related terminology in the correspondence and whether the same is equivalent to weekend allowance is an issue to be determined by the Court when analyzing the evidence presented by both sides. This cannot be the basis for recalling the Respondent's witness for cross-examination and re-examination.
23. Similarly, the Respondent's witness testimony during cross-examination that there are no employees serving as drivers employed on permanent and pensionable terms is not a cogent reason to reopen a case to introduce fresh evidence.



24. This finding is on the basis that the Claimant pleaded in his Claim that the Respondent issued him with conflicting letters and that he is uncertain whether he is on a permanent or contract basis. He further pleaded that the Respondent has discriminated against him as other driver employees in the same role have clear employment terms. This issue was controverted by the Respondent through its Statement of Response.
25. It is therefore evident from the record that through their pleadings, both parties laid bare the facts of this case from their respective standpoints. As such, the question as to whether they have adduced evidence in support of the facts pleaded is another issue altogether that is left for the determination of the Court. In any event, nothing turns on an issue that is not pleaded.
26. Indeed, the testimony of the Respondent's witness during cross-examination cannot be a basis for reopening the hearing. Ultimately, it is up to the Court to weigh the probative value of such testimony against the facts and evidence on record.
27. It is also worth pointing out that this Court has not been told that the Claimant has come upon or discovered some new and important evidence which, after the exercise of due diligence, was not within his knowledge. Indeed, the new evidence sought to be introduced by the Claimant that there are other employees of the Respondent in the category of drivers serving on permanent and pensionable terms does not constitute new evidence that was not within his knowledge at the time of filing the suit.
28. What's more, it is noted that the Claimant's Advocate had made an oral application to file further documents with respect to the terms of employment of other drivers employed by the Respondent as well as a letter dated 17th November 2021. The Court ruled on the said application and declined to allow further documents on record. That decision has not been stayed, reviewed or set aside. Needless to say, this is a second attempt by the Claimant to introduce new evidence through the instant Application, thus rendering it res judicata.
29. For the foregoing reasons, the Court finds no merit in the Claimant's Application dated 8th March 2025 and the same is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JUNE 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Mamboleo for the Claimant/Applicant

Mr. Odhiambo instructed by Mr. Mbaluto for the Respondent

Millicent Court Assistant

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 had 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 *Civil 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.

STELLA RUTTO

JUDGE

