



**Teachers Service Commission v Obi (Employment and Labour Relations
Appeal E001 of 2024) [2025] KEELRC 1875 (KLR) (27 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1875 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
EMPLOYMENT AND LABOUR RELATIONS APPEAL E001 OF 2024**

**AN MWAURE, J
JUNE 27, 2025**

BETWEEN

TEACHERS SERVICE COMMISSION APPELLANT

AND

BARRY MOTARI OBI RESPONDENT

*(Being an Appeal from the Ruling and Order of Honourable F.M Nyakundi, Principal
Magistrate, delivered on 13th December, 2022 in Kericho MCELRC Case No. 15 of 2022)*

JUDGMENT

Introduction

1. The Appellant, Teachers Service Commission, being dissatisfied with the Ruling and order of Honourable F.M Nyakundi, Principal Magistrate, filed this appeal vide a Memorandum of Appeal dated 29th April 2024, where the Appellant came up with 12 grounds which will be summarized as follows:
 1. The learned trial magistrate erred in law and fact by expunging disciplinary proceedings, minutes, and witness evidence dated 9/2/2018, arguing that the ruling was based on factual errors and lacked evidentiary or legal basis.
 2. The learned trial magistrate erred in law and fact by relying on flawed assumptions, such as the 3rd Respondent's non-attendance and withdrawal, without proof of falsification or disowning of the documents.
 3. The learned trial Magistrate erred in law and fact by doing so at an interlocutory stage and without considering the Appellant's submissions, prior leave granted by the court, and applicable constitutional rights under Articles 47, 48, and 50, the learned Magistrate is said to have violated principles of fair hearing, procedural fairness, and natural justice.



2. The Appellant prays that:
 - a. The appeal be allowed with costs;
 - b. The Ruling of Hon. F.M Nyakundi in Kericho CMELRC No. E015 of 2022 made on 13th December 2023 expunging the Appellant’s minutes dated 9/2/2018 and the substituted witness statement of Doris Oyoo be set aside and the said documents be allowed as part of the Appellant’s record.
 - c. Substitution of the Order dated 13th December 2023 with an order dismissing the Respondent’s Application dated 6th November 2023 with costs.
 - d. The matter to proceed to full hearing before any other court other than Hon. F.M Nyakundi.
3. Parties herein canvassed the appeal by way of written submissions.

Appellant’s submissions

4. The Appellant submitted that it contests the trial Magistrate’s interlocutory ruling that expunged the disciplinary minutes dated 9/2/2018 and the substituted witness statement of Doris Oyoo, asserting that this decision was made without proper evidentiary analysis or trial process.
5. The Appellant argued that the trial learned Magistrate wrongly concluded that the minutes were falsified based solely on the Respondent’s claim that the 3rd Respondent did not chair or attend the meeting, despite the Appellant never asserting that she did. The Appellant maintains that such factual disputes concerning the authenticity and propriety of the disciplinary proceedings and related evidence should be resolved at trial through cross-examination and full evidentiary hearing, not summarily at the interlocutory stage, thereby implicating violations of procedural fairness and natural justice.
6. The Appellant submitted that the trial learned Magistrate erred by expunging the disciplinary minutes dated 9/2/2018 and the substituted witness statement of Doris Oyoo at the interlocutory stage without subjecting them to proper evidentiary scrutiny. It is argued that issues surrounding the authenticity and probative value of the minutes require examination during the full hearing, through cross-examination of witnesses, to ensure a fair determination.
7. The Appellant further submitted that the learned trial Magistrate prematurely assumed falsification without evidence tested to the required legal standard. The Appellant relied on the Court of Appeal decision in *Evangeline Nyegera (suing as the legal representative of Felix M’thiugu alias M’ikingu Jeremiah M’Raibuni (deceased) V Godwin Gachagua Githui [2017] eKLR*, where the court emphasized that relevance is the test for admissibility, and parties must be allowed to present and test evidence through examination, failing which the right to fair trial is compromised.
8. The Appellant submitted that the learned trial Magistrate erred in expunging the substituted witness statement of Doris Oyoo and the supplementary documents, asserting that leave to substitute had been granted by the court on 12/7/2022. The Appellant emphasized that the Respondent’s application did not seek expungement of these documents and that their removal was based solely on submissions, which are not pleadings. The Appellant relied on the case of *David Sironga Ole Tukai V Francis Arap Muge & 2 Others [2014] KECA 155 (KLR)*, the Appellant underscores that courts must confine themselves to issues properly raised in pleadings. Additionally, in *Flora Cheronu V Mary Njihia & 9 Others [2021] KEELC 1740 (KLR)*, the court cautioned against casually severing filed documents, likening them to essential parts of a case’s structure. Expunging such material prematurely, the Appellant maintains, denied it the right to be heard and seriously compromised its case.



9. The Appellant urged this Honourable Court to allow the appeal, thus seeks to have the impugned ruling and all its consequences set aside.

Respondent's submissions

10. The Respondent submits that the trial court acted within its discretion to expunge documents that were allegedly introduced in breach of court orders and procedural rules, citing Sections 20 and 21 of the *Evidence Act* to argue that admissions are admissible against the maker or their representative, even where no formal defence is filed.
11. The Respondent emphasized that the 3rd Respondent did not testify nor defend the claim, and that the documents in dispute were irregularly filed and potentially manipulated. The Respondent relied on *Kenya Railways Corporation & 2 others V Okoiti & 3 others* [2022] KESC 2 (KLR), the Supreme Court affirmed the principle that courts must reject irregularly obtained documents under Article 50(4) of *the Constitution*. Furthermore, in *Neeraj Jayatilaiya Kalaiya V Cheruiyot & 5 Others* [2022] KEELC 2669 (KLR) and *Nicholas Kiptoo Arap Korir Salat V Independent Electoral and Boundaries Commission & 7 others* [2014] KECA 782 (KLR), the courts reiterated that documents filed in violation of clear court orders are a nullity unless leave is granted.
12. The Respondent submitted that failure to comply with case management directions warrants expunging documents and that the appeal was premature. On the application to transfer the case, it is argued that no credible evidence of judicial bias or impropriety was shown, referencing the standard that perceived bias must be objectively reasonable and supported by facts. As held in *Teachers Service Commission V Kenya National Union of Teachers & 2 Others* [2013] KEELRC 656 (KLR), judicial orders must be obeyed, and as reiterated in *Njeru Macharia V Attorney General* [2001] eKLR, dissatisfaction with a ruling is not a ground for transfer; justice requires that courts operate within the confines of law and order.
13. The Respondent urged this Honourable Court to dismiss the appeal with costs.

Analysis and determination

14. The court has considered the record of appeal, rival submissions of both counsels; the issue for determination is whether the appeal is merited before this Honourable Court.
15. Being a first appellate court, the court needs to re-assess, re-evaluate, and re-analyze the evidence on record and arrive at its own independent conclusions, while bearing in mind that it did not have the advantage of seeing or hearing the witnesses first hand, and must therefore make due allowance for that limitation as set out in *Selle & Another V Associated Motion Boat Co. Ltd & Others* (1968) EA 123 and *Peters V Sunday Post* (1958) EA 424.
16. Sections 107, 108 and 109 of the *Evidence Act* provides that the burden of proof lies on the party who asserts a fact and seeks the court's judgment based on it. This means that if no evidence is presented by either side, the party who would fail in such a scenario bears the evidentiary burden. Additionally, when a specific fact is alleged, the responsibility to prove its existence rests with the party making that claim, unless another law expressly shifts that burden.
17. In *Trust Bank Limited V Amalo Company Limited* [2002] KECA 253 (KLR) the Court of Appeal held that the appellant was entitled to be heard on the documents already on record and had offered a reasonable explanation for the delay in serving them. Even if the matter proceeded ex parte, the judge was still obligated to assess the application on its merits. The court found that the judge erred in how he handled the matter and exercised his discretion improperly.



18. In this instant case the Respondent has filed an application dated 6th November 2023 seeking among others that the court expunge from the court record documents TSC/DISC/074 marked as appendix 6 based upon or referred to in Paragraph 11 of the Respondents Defence.
19. The Trial magistrate delivered his ruling dated 13th December 2023 and expunged the said minutes from record and also expunged the witness statement of one Prisca Nyoro.
20. The argument of the Respondent in that application as he claims the minutes were false and doctored that were used to dismiss him and that the person who was registered as the chair of that hearing was Dr. Lydia Nzomo who admitted she was not in that meeting. The trial court therefore concluded that the minutes were falsified by members who were in that meeting. This was a very generalised and very serious allegations against public officers and the same should have been followed up by the relevant bodies like Directorate of Criminal Investigations. There would have been need to go deeper into these allegations as they are very serious.
21. Looking at the minutes referred to of 9th February 2018 the members present were indicated therein including Dr. Lydia Nzomo Commission/Chairperson, and other Commissioners. One Commissioner Kinoti Imanyara has been ticked and is the one who signed the minutes.
22. In Section 47 of the *Teachers Service Commission Act* provides the commission can make regulations among other roles to appoint, discipline and remove staff from the Commission. The Teachers Service Commission Code of Regulations clause 151 provide that the Discipline Committee at the Headquarters level will comprise at least one member of the commission who will chair the panel.
23. The panel in this case had several commissioners and Mr. Kinoti Imanyara signed the minutes as the Chairperson. In that case the committee was well constituted and a commissioner chaired the meeting.
24. Indeed, without any evidence that the minutes were forged or falsified the court cannot conclude that since Dr. Nzomo did not sign the minutes then they were falsified. Dr. Nzomo did not even need to be in the meeting so long as a commissioner was present to chair the hearing accordingly.
25. As for the prayer pertaining to denial of substitution of witness Doris Oyoo as the Respondent claim the court did not grant leave to substitute her. On page 20 of the Appellant's Supplementary record of Appeal dated 24th February 2025 the Appellant requested Hon. Justice O. Makau to substitute the witness and leave was granted on 12th July 2022. It was an oral application.
26. The trial court therefore erred in holding that the Appellant had not been given leave to substitute the witness statement. Furthermore, the trial court should not have expunged the witness statement and their supplementary documents as that was not pleaded by the Respondent. The trial court engaged in an over kill in expunging the witness statement and second supplementary list of documents which he described as all irregular. The Respondent in his application had not prayed for expunging those supplementary documents.
27. It is trite law that courts are bound by the pleadings of the parties. In David Sironga Ole Tukai case - vs- Francis Arap Muge & 2 Others (2014) eKLR court held:

“The court, on its part, is itself bound by the pleadings of the parties. The duty of the court is to adjudicate upon the specific matters in dispute, which the parties themselves have raised by their pleadings. The court would be out of character were it to pronounce any claim or defence not made by the parties as that would be plunging into the realm of speculation and might aggrieve the parties or, at any rate, one of them. A decision given on a claim or



defence not pleaded amounts to a determination made without hearing the parties and leads to denial of justice.”

28. The court in conclusion finds no evidence that the Appellant falsified the minutes in question and the substituted witness was granted leave by court to substitute her.
29. The court is persuaded the appeal dated 29th April 2024 is merited and so is granted. Case to proceed for hearing before another court rather than before Hon. F.M. Nyakundi. Parties to take a hearing date speedily.
30. The Respective parties to bear their costs of this appeal
Orders accordingly.

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

ANNA NGIBUINI MWAURE

JUDGE

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 has 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 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

