



**Ngunjiri v Middle East Bank Kenya Limited (Cause 97 of 2019)
[2025] KEELRC 2409 (KLR) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2409 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 97 OF 2019
K OCHARO, J
JUNE 23, 2025**

BETWEEN

GABRIEL MURAYA NGUNJIRI CLAIMANT

AND

MIDDLE EAST BANK KENYA LIMITED RESPONDENT

RULING

1. This matter was filed on 9th December 2019. Its hearing did not commence until 5th November 2024, approximately five years after the filing. On 5/11/2024, the claimant testified in chief and was partially cross-examined by counsel for the Respondent, Mr. Ismail. Due to time limitations, the claimant was stood down for further cross-examination until 28th November 2024. On this day, counsel further and extensively cross-examined him, but did not conclude the cross-examination, which had gone up to 1.05 pm. The court was compelled to adjourn the matter for further cross-examination.
2. On 28th May 2025, the further cross-examination did not proceed as the court did not sit for the reason recorded. The matter was adjourned to today, 23rd June 2025.
3. Counsel for the respondent now informs the court that on 27th May 2025, he filed two witness statements from Calvin Muchebi and Edith Omolo. He states that the filing was motivated by the fact that, during cross-examination of the claimant, the claimant raised issues in his evidence that are not included in his pleadings or witness statement. Consequently, the only way to rebut these was by submitting the witness statements.
4. Counsel for the claimant, Mr. Wachira, requested that the witness statements be removed from the record. They were filed five years after the close of pleadings, and the claimant gave his testimony in chief. Therefore, he will not have any opportunity to comment on or challenge the contents of the witness statement.



5. Undeniably, the witness statements have been filed without the court's leave, and when the hearing of the claimant's case is at its tail end. He would not have an opportunity to, by way of evidence, counter the contents of the two filed witness statements. Hence, I agree that he will suffer prejudice as his right to a fair hearing under Article 50 of *the Constitution* shall be violated.
6. Filing witness statements is a pretrial step. Once the matter has been deemed ready for hearing, any further or new witness statements can only be filed with the court's leave and only if the court is satisfied that a sufficient reason has been provided for it and that the justice of the case requires the filing.
7. It is trite law that nothing turns on evidence that flows not from a party's pleadings. Elaborating on this, the court in the case of Independent Elections and Boundaries Commission and Another VS Stephen Mutinda Mule & 3 Others (2014) eKLR, which cited with approval the case of Adetoan Olejedu v Nigeria Breweries LC SC.91 of 2021, where the court stated as follows:-

It is trite principle of law that parties are bound by their pleadings, and that any pleading and any evidence led by any of the parties which does not support the averments in the pleadings or put in another way, which is at variance with the averments of pleadings goes to no issue and must be disregarded.”

In Philip Osore Ogutu -vs-Michael Onjuya Aringo & 2 Others [2013] eKLR, the court stated: -

“It is now opportune to say this: there can be no quarrel with the principle that any evidence that goes beyond pleadings must either be rejected outright or disregarded.”

8. The principle aims to prevent one party from surprising the other with new arguments mid-trial. It also promotes predictability in litigation, as parties are aware of the issues they need to address.
9. The proper course for the respondent is to emphasise this principle in their final submissions. Urge the court not to consider or let the judgment be influenced by the unpleaded matters that the claimant has introduced mid-trial.
10. Allowing the filing of new witness statements during the hearing to address emerging issues would be inappropriate and violate this court's procedural rules. Such a practice would undermine the purpose of pleadings, encourage attempts to salvage failing cases or defences, and create unwarranted situations where litigation rarely concludes efficiently and promptly.
11. Ultimately, the two witness statements are unnecessary and improperly filed. They are expunged from the record.

DATED, SIGNED, AND DELIVERED AT MOMBASA THIS 23RD JUNE 2025

OCHARO KEBIRA

JUDGE

