



**Otengo v Bidco Africa Limited (Cause E073 of 2024)
[2025] KEELRC 1735 (KLR) (16 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1735 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E073 OF 2024
NZIOKI WA MAKAU, J
JUNE 16, 2025**

BETWEEN

JESSICA MATILDA OTENGO CLAIMANT

AND

BIDCO AFRICA LIMITED RESPONDENT

RULING

1. Learned Counsel for the Claimant Ms. Akinyi objects to the production of the further list of documents filed herein by the Respondent. She asserts the further list was filed after close of pleadings and without leave of the Court. She thus seeks orders to have the same expunged.
2. Learned Counsel for the Respondent Mr. Chacha Odera objects to the documents being expunged and argues that they were filed and received in May 2025, 13th May 2025 without any objection. He asserts that in any event, he has cross-examined the Claimant on the documents and obtained answers thereon. He says that no prejudice will be suffered by the Claimant. He states that it is not denied that these documents would assist in the determination of the case. He apologised for the delay in filing them and asserts the documents will assist in the just determination of the dispute. He submits that if more time is needed, Learned Counsel could be allowed to prepare.
3. Ms. Akinyi for the Claimant submits that it is admitted that no leave was sought prior to filing and that the filing of further documents ought to be with leave of court. She asserts that these documents were filed on 13th May 2025 and a date for hearing had already been given meaning the pleadings had closed. She thus urges that the documents be expunged alongside any references to the documents as contained in evidence already on record.
4. The objection taken is on account of documents filed after the case had been set for hearing. Under Rule 38 of the [Employment and Labour Relations Court \(Procedure\) Rules 2024](#), there is provision as follows:



38. Where a party intends to rely on a document that has not been filed as at the time of filing pleadings, the party shall make sufficient copies of each document for the Court file and serve the other party with a copy at least fourteen days before the case is set down for hearing or such shorter period as the Court may order:

Provided that after the close of pleadings, the Court may allow the filing of a supplementary bundle of documents.

5. The Rules contemplate a scenario where a party can file documents without leave and also a scenario where leave may be sought from Court. In the case before the Court, it is apparent the date for hearing was set on 5th June 2025 for 16th June 2025. As at the 5th June 2025 when the case was due for hearing initially, the documents had been filed 14 days before the case was set down for hearing. The only tangible objection is that the documents were filed without leave of court.

6. It is asserted the documents will allow for a just determination of the claim. The Court has to consider the prejudice the documents may cause upon the opposite party, in this case, the Claimant. The Claimant was asked questions about the documents and she answered the questions without any issue. She was re-examined on the points raised on account of the questions related to the documents and she answered. As such, the Court does not discern any prejudice the Claimant will suffer. The Court therefore will allow the production of the documents before the Court contained in the bundle filed on 12th May 2025. Objection is overruled and examination in chief is to continue.

Orders accordingly.

DATED AND DELIVERED AT KISII THIS 16TH DAY OF JUNE 2025

NZIOKI WA MAKAU, MCIARB.

JUDGE

