



Musee v Local Authorities Provident Fund Board & another (Cause E014 of 2024) [2025] KEELRC 2266 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2266 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E014 OF 2024**

**L NDOLO, J
JULY 31, 2025**

BETWEEN

CHARLES MUSEE CLAIMANT

AND

LOCAL AUTHORITIES PROVIDENT FUND BOARD 1ST RESPONDENT

CHIEF EXECUTIVE OFFICER LAPFUND 2ND RESPONDENT

RULING

1. This ruling flows from the Respondents' notice of objection dated 15th April 2025, seeking to bar production of 140 LAPFUND admission forms listed as number 11 in the Claimant's list of documents dated 6th February 2025.
2. The objection is based on the following grounds:
 - a. That the forms contain and unnecessarily reveal personal and sensitive data belonging to the 1st Respondent's pension members and their families, contrary to Article 31 of the Constitution of Kenya, 2010 and the Data Protection Act;
 - b. That they fail the test for admissibility of documentary evidence as set out under Section 35 of the Evidence Act;
 - c. That they are unnecessary in these proceedings, contravene the right to privacy of the 1st Respondent's pension members and should be expunged from the court record in limine.
3. In their written submissions in support of the objection, the Respondents assert that the subject forms are not necessary in these proceedings as they do not contain any statements or information as to the facts in issue before the Court.



4. The Respondent's rely on Section 35 of the Evidence Act, which provides for admissibility of documentary evidence as to facts in issue.
5. The Respondents submit that the 140 LAPFUND admission forms are standard forms prepared by the 1st Respondent and filled and executed by its pension members. They add that the forms make no reference to the Claimant and were not witnessed by him.
6. The Respondents further submit that the forms were filled and executed between August and September 2022, before commencement of the Claimant's probation period on 1st October 2022.
7. The Respondents state that the forms provide personal and sensitive data belonging to the 1st Respondent's pension members and their families, which are unnecessary as proof of any of the claims by the Claimant. According to the Respondents, the Claimant lacks the capacity to produce these forms.
8. The Respondents make reference to Article 31 of the Constitution, which guarantees the right to privacy as follows:

31. Privacy

Every person has the right to privacy, which includes the right not to have –

(a)...

(b)...

(c) information relating to their family or private affairs unnecessarily required or revealed.

9. In this regard, the Respondents submit that the contents of the 140 LAPFUND admission forms reveal data on addresses and contact information of the 1st Respondent's pension members and their families and private information of named beneficiaries in the event of death of pensioners.
10. The Respondents maintain that the forms in issue contain personal data as defined in Section 2 of the Data Protection Act. The Respondents add that they are under obligation to protect this data.
11. In his submissions dated 26th May 2025, the Claimant submits that the impugned admission forms serve as documentary evidence that he discharged his contractual duties, including recruitment and admission of new members into the LAPFUND.
12. The Claimant states that he was summarily dismissed on the ground of poor performance, pointing to a performance appraisal report dated 20th March 2023, with the verdict that he had failed to demonstrate adequate ability to engage and grow business in Makueni County.
13. According to the Claimant, the admission forms contradict the Respondents' assertion that he had only managed to recruit 30 members from the County Government of Makueni. He contends that these forms provide crucial evidence of satisfactory performance on his part. He therefore concludes that expunging the admission forms from the record would cause undue prejudice to him.
14. The Claimant's case is that the admission forms, which are the subject of this objection, are both relevant and necessary for the fair determination of this matter. He urges the Court to balance the right to privacy with his right to a fair hearing.



15. Finally, the Claimant offers to redact all personal identifying information relating to the pensioners, including the contact information and identification numbers. In this regard, he relies on the decision in *Adan v Premier Bank Kenya* [2025] KEELRC where it was held that redaction of personal data may be permitted so as to preserve privacy, while admitting the rest of the evidence, if found relevant and admissible.
16. According to the pleadings filed by the parties, the Claimant's employment was terminated on the ground of poor performance. He was specifically faulted for failure to meet targets with regard to recruitment of new members into Lapfund.
17. On his part, the Claimant contests the recruitment figures given by the Respondent. It is therefore evident that the admission forms in issue are necessary for a fair determination of the dispute before the Court.
18. Regarding the question of privacy of pension members, their families and beneficiaries, the Claimant has allayed any fears of breach by offering to provide redacted version of the subject forms. Subject to compliance with this condition, the Respondents' objection is overruled with costs in the cause.
19. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Mwangi for the Claimant

Mr. Limbe h/b for Ms. Karigi for the Respondent

