



**Angira v British High Commission (Cause E253 of 2021)
[2022] KEELRC 12768 (KLR) (6 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12768 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E253 OF 2021
L NDOLO, J
OCTOBER 6, 2022**

BETWEEN

SHADRACK OTHIENO ANGIRA CLAIMANT

AND

BRITISH HIGH COMMISSION RESPONDENT

RULING

1. The subject of this ruling is the claimant's objection to production of a video footage contained in Exhibit 1 in the respondent's supplementary list of documents dated April 19, 2022.
2. The objection is documented by a notice dated April 28, 2022 and is based on the following grounds:
 - a) Contrary to section 106B (2) of the *Evidence Act* (chapter 80 of the Laws of Kenya) the respondent's witness has failed to satisfy the conditions stipulated under section 106B (2)(a), (b), (c) and (d);
 - b) The respondent's witness (Mr Oliver Rudden) has failed to adequately identify the mobile telephone by which he recorded the video in so far as the make or model of the mobile telephone is not disclosed;
 - c) The purported video does not show the date and time when it was recorded;
 - d) The video footage as well as the images on the mobile telephone mounted on the dash board of the motor vehicle are blurred and unclear. The profile or rear image of the driver does not correspond with the true likeness of the claimant. The footage therefore lacks veracity, authenticity and probative value;
 - e) The video does not identify the registration number of the vehicle featured in the footage. The footage therefore lacks veracity, authenticity and probative value;



- f) The footage lacks corroborative evidence from Ms. Eddah Kangee who was allegedly present at the time the video footage was recorded. It therefore lacks veracity and probative value;
 - g) The video footage does not show Mr Oliver Rudden and/or Ms Eddah Kangee as passengers in the alleged motor vehicle at the time of recording of the footage and it therefore lacks authenticity, veracity and probative value.
3. The claimant's objection turns on section 106(B) of the [Evidence Act](#) which provides as follows:
- 106(B) Admissibility of electronic records
- (1) Notwithstanding anything contained in this act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied on optical or electronic-magnetic media produced by a computer (hereinafter referred to as "computer output") shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original, or of any fact stated therein where direct evidence would be admissible.
 - (2) The conditions mentioned in subsection (1), in respect of a computer output, are the following-
 - (a) The computer output containing the information was produced by the computer during the period over which the computer was used to store or process information for any activities regularly carried out over that period by a person having lawful control over the use of the computer;
 - (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
 - (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not as to affect the electronic record or the accuracy of its content; and
 - (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.
 - (3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph (a) of subsection (2) was regularly performed by computers, whether-
 - (a) by combination of computers operating in succession over that period; or



- (b) by different computers operating in succession over that period; or
 - (c) in any manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, in any manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, then all the computers used for that purpose during that period shall be treated for the purposes of this section to constitute a single computer and references in this section to a computer shall be construed accordingly.
- (4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following-
- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
 - (b) giving such particulars of any evidence involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
 - (c) dealing with any matters to which conditions mentioned in subsection (2) relate; and
 - (d) purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate), shall be evidence of any matter stated in the certificate and for the purpose of this subsection it shall be sufficient for a matter to be stated to be to the best of the knowledge of the person stating it.
5. For the purpose of this section, information is supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of an appropriate equipment, whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purpose of those activities, that information, if duly supplied to that computer, shall be taken as supplied to it in the course of those activities.

4. Emerging jurisprudence on admissibility of electronic records as evidence is to the effect that a party seeking to rely on such records is required to demonstrate the mode employed in recording and transmitting the evidence, the description and identity of the devices deployed in the process and capacity of the person(s) undertaking the activity (see [*William Odhiambo Oduol v Independent Electoral & Boundaries Commission & 2 others*](#) [2013] eKLR).



5. The impugned footage in this case is accompanied by two certificates; one by Oliver Rudden, an employee of the respondent holding the position of Immigration Liaison Manager and the other by Robert Kanyi who describes himself as an Information Technology Engineer employed by Hamilton Harrison & Mathews (HH&M) Advocates. The mode of recording and transmission of the footage and the devices used in doing so have been fully disclosed.
6. Looking at the two certificates, the court is satisfied that the manner in which the footage was recorded and transmitted was in compliance with the requirements of section 106(B) of the *Evidence Act*.
7. In his objection, the claimant delves into the probative value of the footage, which is a secondary issue to be canvassed during the trial, when the respondent is expected to avail its witnesses for cross examination. At this preliminary stage, the issue at hand is one of admissibility of the footage and being satisfied that the conditions for presentation of electronic records have been met, I see no reason to lock out this piece of evidence at this stage.
8. In the result, the claimant's objection is overruled with costs in the cause.
9. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF OCTOBER 2022

LINNET NDOLO

JUDGE

Appearance:

Mr. Jaoko for the claimant

Mr. Ochieng for the respondent

