



Shalimar Flowers Limited v Kenya Plantation and Agricultural Workers Union (Employment and Labour Relations Cause E001 of 2024) [2024] KEELRC 1746 (KLR) (9 July 2024) (Judgment)

Neutral citation: [2024] KEELRC 1746 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E001 OF 2024**

HS WASILWA, J

JULY 9, 2024

BETWEEN

SHALIMAR FLOWERS LIMITED CLAIMANT

AND

**KENYA PLANTATION AND AGRICULTURAL WORKERS
UNION RESPONDENT**

JUDGMENT

1. This suit was instituted by a memorandum of claim dated 9th January, 2024. The Claimant states that the Respondent has issued an illegal strike Notice and sought for the following reliefs; -
 - i. This Honourable court do quash the recommendations dated 23rd November, 2023 by S. N. Kingori on the faulty and illegal implementations and transport and housing finance.
 - ii. This Honourable court do declare that the strike notice dated 19th December, 2023 as illegal and unprocedural.
 - iii. This Honourable Court do strike out the strike Notice dated 19th December, 2023.
 - iv. This Honourable Court do order the ministry of Labour to appoint an impartial conciliator to determine the dispute
 - v. This Honourable court do grant any other Orders as it may deem fit to grant.
 - vi. This Honourable Court do grant costs to the claimant herein.
2. The claimant states that it has executed a Recognition Agreement with the Respondent and negotiated a Collective Bargaining Agreement. That on 19th December, 2023, the Respondent issued a 21 days strike Notice through its Deputy General Secretary, indicating that the strike would commence on 12th January, 2024.



3. The basis upon which the strike notice was issued was on the recommendations issued by Nyandarua County labour office dated 22nd November, 2023, which issued recommendation of unresolved issue to the effect that the management of the claimant to implement the CBA on housing as per clause 12 and start paying the municipal rates commencing November, 2023. Secondly that the management to pay the housing allowance arrears for the last 3 years, the period which the dispute remained unsettled. Thirdly that the management revoke the Memo that withdrew transport for Kaptein and Mubao and any other areas transport is required and lastly that the two issues in dispute should be fully settled as per the CBA.
4. Prior to issuance of the said certificate of unresolved issues, the parties attended a conciliation meeting on 14th December, 2023 at the Agricultural Employer's Association to discuss the said issues that had not been agreed upon.
5. The genesis of the matter is that on 30th June, 2020, the claimant issued a transport policy on all its firm indicating that they will be offering transport to only employee who live 5km away from the farm and placed designated pick up points being Kiganjo, Jua Kali and Ol kalou. Subsequently, they notified their employee by the memo of 7th July, 2020 of the changes in transport routes and categorically indicated that all employee from Mubao route would not be offered transport.
6. Pursuant to this Memo, a meeting was convened on 22nd July, 2020 to discuss the changes of the transport route. In the said meeting, the Respondent requested for Captain route to be scrapped off and instead Mubao route to be retained.
7. Despite settling on the issue other meetings were convened between the parties on 2nd October, 2020 and 11th December, 2020 to discuss on the transport issue and later the issue was referred to M.N Kirera, a conciliator, appointed by Nanyuki Labour office who addressed the issue of withdrawal of Transport and Wrongful calculations on pack house bonuses'.
8. On 16th March, 2021, the parties agreed through the guidance of the conciliator agreed that the claimant should extend pick up point by 3kms and the Union reduce the picking point by 3 kms.
9. It is stated that while the issue was still pending for determination in the labour office, both parties met on 6th December, 2021 , where the Union suggested that the route be reviewed to DN to Mubao and Olakaolou to Captain. Therefore that the report made to the labour office of alleged withdrawal of transport was malicious and against the spirit of good industrial relations.
10. It is stated further that the conciliator issued a certificate of unresolved dispute, giving its recommendation and requiring the claimant to comply failure to which, the Respondent was given green light to issue a strike notice.
11. The claimant took issue with the fact that the matter was send to another conciliator by the name S. N. Kingori to address one issue on withdrawal of transport, when Mr. M. N Kirera was still ceased of all the other issues between the parties. Consequently, the claimant wrote a letter to the Chief Industrial Relations officer asking the officer to clarify the appointment of S.N Kingori and demanded for another conciliator to be appointed as the said Kingori gave recommendations for only one party.
12. Subsequently, they convened a meeting of 14th December, 2023 to discuss the issue of Transport of employees and House allowance payable as per the municipality rates. However, that the parties could not agree.
13. The claimant stated that the farm is not within the municipality as such municipality housing rates cannot apply. In any event that Nyandarua Municipal Manager informed the claimant by the letter



- of 12th July, 2021 that the boundaries for Ol Kalou Municipality had not be gazetted. Hence the said rates will only be payable to the employees upon the boundaries being gazetted that will delineate the location of the farm.
14. He stated that in their last meeting of 14th December, 2023, the parties agreed to give the claimant time to respond to the matter raised in the letter dated 28th November, 2023 and reconvene on 18th January, 2024. However, that they were surprised by the strike Notice issued by the Respondent when the time agreed upon had not lapsed.
 15. He maintained that the parties had not reached a deadlock as per Clause 3(d)(i) of the parties Recognition agreement to warrant the issuance of the strike Notice.
 16. It is averred that the labour office did not act as an independent arbiter in allowing the appointment of one conciliator when the issues were pending before another conciliator. Further that S. N Kingori, the new conciliator was not neutral as he gave recommendations favouring one side.
 17. In response to the claim, the Respondent filed a memorandum of Response on 21st February, 2024 denying the claim and stating that the strike is protected by the law.
 18. The respondent denied having any discussion on the outcome of the conciliator's report/ recommendations and stated that the claimant was non-committal to any fruitful discussions.
 19. It is stated that the certificate of unresolved trade dispute was issued after the claimant turned down all invitations to the conciliations meetings and ignored any form of dispute resolution.
 20. The Respondent stated that I wrote to the ministry of labour reporting the unresolved dispute and seeking for direction, which ministry responded by appointing any conciliator who summoned parties for conciliators on the two issues but that the claimant refused to attend any of the meetings. He maintained that the issues to be dealt with by S.N Kingori were on transport and House allowance, being the only issue that the parties had not agreed in the first conciliation process led by Kireri.
 21. The Respondent stated that Mahee farm is located within municipal as gazetted because it is situated in Kaimbaga Ward. He added that the respondent's members are discriminated against as the claimant pay its employee house allowances according to municipality terms when it is located in Gilgil outside municipality.
 22. On the withdrawal of transport, the Respondent states that the Claimant violated clause 33 of the CBA in withdrawing transport for Captain and Mubao route which is 12 kilometers, forcing the employees to incur extra costs when commuting to work. He added the matter was reported to the labour office in good faith and in the bid to protect the right of the affected employees.
 23. In conclusion, the Respondent stated that the claimant is not entitled to the reliefs sought and urged this Court to dismiss the suit with costs.
 24. During hearing, the claimant called its Human Resource manager Mr. Vitalis Osodo as its RW-1 . he adopted his witness statement dated 9.1.2024 and produced the list f documents as their exhibits 1-29 respectively.
 25. Upon cross examination, the witness testified that they do not discriminate against its employees. he stated that the Respondent has a transport policy that is used by all its farms. While the housing policy applies as per the CBA. he stated that the employees were involved in drafting the policies though they do not sign them. He also stated that the CBA does not have everything.



Claimant's Submissions

26. The claimant submitted on the following issues; whether Nyandarua Labour Officer was properly appointed and did she have jurisdiction over the matter, whether the Claimant was afforded a fair hearing during Conciliation, whether the recommendations by Nyandarua Conciliator were legal and valid, whether Shalimar Flowers is within the Ol Kalou Municipality boundaries, whether the strike notice was legal and valid and who bears the cost of this suit.
27. On the first issue, it was submitted that the appointment of a Labor Officer is set out under section 65 of the [Labour Relations Act](#) that;
 - “ 65. Minister to appoint conciliators (1) Within twenty-one days of a trade dispute being reported to the Minister as specified under section 62, the Minister shall appoint a conciliator to attempt to resolve the trade dispute unless; (a) the conciliation procedures in an applicable collective agreement binding on the parties to the dispute have not been exhausted; or (b) a law or collective agreement binding upon the parties prohibits negotiation on the issue in dispute.
28. Pursuant to section 65 of the Act, Nanyuki Labor Officer Mr Kirera was appointed to adjudicate over the dispute titled Withdrawal of transport, and upon hearing the parties who invited parties for a resolved that Shalimar Mahee flowers to extend the transport pick-up points by 3 kilometers and the union to reduce their proposed pick up points by 3 kilometers to enable the parties come up with a clear pick up points. Subsequently, the parties met at the Nanyuki Labour office on 31st March 2022 and agreed on the transport routes and employee pick-up points and were only awaiting the Conciliator's final report. However the Claimant was ambushed by another invitation for another meeting at the Nyahururu Sub-county Offices, the issue being “ Refusal by management to pay house allowance as per the Municipality rates in the CBA Clause 12 & Withdrawalof transport of employment by the management of Shalimar Flowers Ltd CBA Clause 33”.
29. It was submitted that the claimant wrote to Ms. Kingori, informing her that the issue of transportation of employees had already been adjudicated upon by the Nanyuki Labour Officer Mr Kirera. Also that it had not received any letter registering the dispute and consequent appointments as required by Section 62 and section 65 of the [Labour Relations Act](#) as the Respondent did not serve the it with a copy of the reported trade dispute as required under section 62 of the [Labour Relations Act](#) against the spirit of good industrial relations and the principles of Natural Justice.
30. It was also argued that the Claimant was not served with letter of appointment of the said Ms. Kingori, or the copies of the reported trade dispute to enable the Claimant to ascertain her Jurisdiction and Authority to adjudicate over the matter. Nonetheless, that contrary to section 67(2)(b) of the [Labour Relations Act](#), the Nyandarua County Labor Officer proceeded to determine the dispute and issue a Certificate of Unresolved dispute with findings and recommendations, completely ignoring the Claimants' request to ascertain her appointment and denying the Claimant an opportunity to present their memoranda on the disputed issues. A clear indication that the Nyandarua Conciliator was not properly appointed as per the procedure of appointment in the [Labour Relations Act](#) and consequently did not have Jurisdiction to adjudicate over the trade dispute.
31. On whether the Claimant was afforded a fair hearing during Conciliation, it was submitted the Respondent did not serve the Claimant with the letters of the reported trade dispute as per Section 62 of the [Labour Relations Act](#) and that Nyandarua Conciliator, conducted a meeting with one party



being the Respondent in complete ignorance of the Claimants concerns contrary to section 67 of the Labor Relations Act that bestows such a conciliators with a duty to mediate over issue impartially, However the Nyandarua Conciliator inadvertently picked a side and issued recommendations without consideration of the Claimant's sentiments and position in the dispute. Hence the Claimant was not afforded an opportunity to be heard before the Nyandarua Conciliator. To support this, the claimant relied on the case of Republic v National Cohesion and Integration Commission; Chama Cha Mawakili Limited (Exparte) (Judicial Review Application E057 of2022) [2022] KEHC 10206 (KLR) (Judicial Review) (14 July 2022) (Judgment) which court held thus:

“Every administrator bestowed with statutory powers to make decisions or take actions that adversely affect an individual or group of individuals must not lose sight of the provisions of section 4 and 5 of the FAAA and to specifically accord such person or persons notice of intended action, hear his/her/their views, consider all relevant matters, give reasons for the decision taken and inform them of the right and manner of Appeal. I agree with the sentiments of Odunga J in Republic v Nairobi City County ex parte Registered Trustees of Sir Ali Muslim Club [2017] eKLR where he stated:- In a nutshell, the rule of law also allows for predictability of actions by public bodies and the fact that law would be uniformly and objectively applied. Part of our Constitution (article 10) asserts that transparency and accountability are some of the hallmarks that define the rules that bind a state organ. Since the rule of law enforces minimum standards of fairness, both substantive and procedural it follows that before a decision adverse to the interest of a person is made, that person must be accorded a hearing as stipulated in article 47 of [the Constitution](#) as read with sections 4 and 7 of the Fair Administrative Actions Act.”

32. It was argued further that the right to fair administrative Action is provided for Article 47 of [the Constitution](#) and section 4 of the Fair Administrative Actions Act. Therefore that the Nyandarua Conciliator is a Public Officer appointed to adjudicate over trade disputes among other duties to the public. She is therefore bound by the provisions of the [Labour Relations Act](#), [the Constitution](#) of Kenya, The [Fair Administrative Action Act](#), the spirit of good industrial relations, and the Principles of Natural Justice all of which she casually threw out of the window in making her recommendations and denying the Claimant relevant information requested and an opportunity to be heard.
33. On whether the recommendations made by Ms. Kingori were legal and valid, it was submitted that the Nyandarua Labor Officer was not properly appointed and did not have jurisdiction over the matter, neither did she execute her mandate as per [Labour Relations Act](#) to provide information to the Claimant nor did she accord the Claimant their statutory right to be heard. Hence, her recommendations are illegal and invalid as they arose out of a fundamentally flawed and illegal process.
34. On whether Shalimar Flowers is within the Olkalau Municipality, it was argued that the Claimant through its representatives sought clarification from the County Government of Nyandarua via a letter dated 29/06/2021 and the County Municipal manager Ms. Anne W. Theuri replied stating that the boundary for the Olkalou Municipality was yet to be gazzeted. In early 2020, the claimant sought to establish the same issue and the Municipal manager at the time responded by the letter of 7th December, 2020 stating the farm was infact outside gazetted boundaries of Ol Kalou Municipal but within the proposed boundaries. Therefore that Ms. Kingori made recommendations in her certificate of Unresolved dispute relying on a non-existent gazette notice no 6658 of 2012. On that note, it was argued that Shalimar Mahee Flowers is not within the currently gazetted Ol Kalou Municipality Boundaries and therefore the Claimant cannot be forced to Implement housing allowance as per the Ol Kalou Municipality while being outside the current gazetted boundaries.



35. On whether the strike notice was legal and valid, it was submitted that the parties have had numerous meetings in an effort to find common ground and resolve the dispute. It is stated that on 14th December 2023 the parties held a meeting to discuss the issues raised by the Respondent's letter dated 28th November 2023 where the Respondent requested the Claimant to implement the Conciliator's report failure to which the Respondent would instruct their members to down their tools. The parties then agreed to adjourn the meeting to 18th January 2024 as per the minutes of the said meeting. However that the Respondent went ahead to issue a strike notice before the lapse of the timelines set and while the parties were still engaged in a dialogue.
36. It was argued further that the parties herein had not reached a deadlock for the Respondent to issue a strike notice as such the notice was in violation of Clause 3(d)(ii) of the Recognition agreement between the Respondent and the Claimant's representative Agricultural Employers Association That .
- “Failure to reach an agreement ii) No strike, lockout or other action to stop or hinder the operations of the business of the Association member on a dispute which has been or should be referred to the national level of the Association and the Union shall take place until:- a) Deadlock has been recorded by the parties, and b) After such deadlock, twenty-one days strike or lock-out notice has been given and had elapsed in addition to the statutory period stipulated in the Trade Disputes Act and no action has been taken in settling the dispute in terms of the Trade Disputes Act.”
37. Accordingly, that the Respondent went against the signed recognition agreement to issue a strike notice while there was no recorded deadlock by the parties. Therefore that the issuance of the strike notice was malicious
38. On costs, the Claimant relied on the case of Cecilia Karuru Ngayu v Barclays Bank of Kenya & another [2016] eKLR where Mativo J , cited the case of Republic vs Rosemary Wairimu Munene, Ex-Parte Applicant Vs Ihururu Dairy Farmers Co-operative Society Ltd that held as follows:-
- “The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.
39. On that note, the claimant submitted that it is a well settled principle that Costs follow the event. He thus implored this Court to awards costs to the Claimant.

Respondent's Submissions.

40. The Respondent on the other hand submitted on Seven issues; whether the strike notice was validly issued, whether the Claimant discriminated Mahee employees against those of Shalimar on housing allowance yet they are under one management as per the CBA, whether the claimant violated Appendix ili clause 36 of CBA terms on transport, whether Shalimar Flowers limited (Mahee farm) lies within Municipal Boundary and the legality of the Manager's letter, whether the conciliator was validly appointed, whether the Claimant was afforded a fair hearing during the second conciliation and who should bear the costs.
41. On the first issue, it was submitted that section 76(b) of the *Labour Relations Act* 2007 provides a person may participate in a strike or lockout if - the trade dispute is unresolved after conciliation under



this Act; or as specified in a registered collective bargaining agreement that provides for the private conciliation of disputes; and seven days written notice of the strike or lockout has been given to the other parties and to the Minister by the authorized representative of the the trade union, in the case of a strike.

42. Accordingly, it was submitted that all the above threshold was satisfied to the later, thus, the strike notice was validly issued and the strike was protected by law.
43. On whether the Claimant discriminated Mahee employees against those of Shalimar on housing allowance yet they are under one management as per the CBA Clause 12. The Respondent submits that the Claimant acted in discrimination when it refused to pay Mahee Farm workers their monthly house allowances as per municipal rate yet they are paying Shalimar Flowers which is in Gilgil, which is outside municipality. It was argued in addition that the allowance payment rates are well laid down in Clause 12 of the CBA which was signed and recorded in this Honourable Court and in the said Agreement, both Shalimar flowers and Mahee are under one management, this follows therefore, that housing payment arrangement should be uniform across the board.
44. On whether the claimant violated clause 36 of the CBA terms on transport, it was submitted that the Claimant violated Appendix (iii) Clause 36 of the CBA between parties by withdrawing transport for employees residing around Captain and Mubao routes by the Memo dated 7th July, 2020 forcing affected employees to use their own means to and fro work.
45. On whether Shalimar farm (Mahee farm) lies within Municipal boundary, it was argued that by the letter of 28th January, 2022, the Chairman Mr. Mwangi Nyaga of Olkalou Municipal Board wrote to the Management of the Claimant herein confirming that Mahee Farm is within the Municipality. That the said chairman's name appears on the list of Municipality Board members vide gazette notice of 19th July, 2019, while the name of the author of the letter of 12th July, 2021, Ms. Anne W. Theuri does not appear on the list of Municipal Board members gazetted by County Governor. We still do. not know at what capacity she wrote the letter. Further to the above, the Chairman in his letter of 28th January, 2022 states that the letter of 12th July, 2021 by Municipal Manager was erroneous reason being she was very new in Olkalou and she was transferred on that account of the error she did.
46. On whether the conciliator was validly appointed, it was submitted that the trade dispute between the parties remained unresolved at the Nanyuki conciliator for close to 3 years. The Respondent while acting in accordance with section 69 and 70 of the *labour relations act* 2007 wrote to the Cabinet Secretary, Ministry of Labour through a letter dated 15th May, 2023 to report an unresolved trade dispute in accordance with Section 70 of the *Labour Relations Act* 2007 which states;

“70.

- (1) if the Minister is satisfied that it is in the public interest to prevent a dispute from arising or to resolve a dispute, the Minister may appoint a conciliator or conciliation committee to attempt to present a dispute or resolve the dispute. (2) The Minister may appoint a conciliator or conciliation committee under subsection (1) — (a) in respect of a dispute that - (i) has not been referred to conciliation; or (ii) is unresolved after conciliation. (b) irrespective of whether — (i) a trade union is a party to the dispute or not.”



47. Therefore, that the Minister acted in accordance with the law by appointing a second conciliator in Nyandarua to try and resolve the dispute.
48. On whether the Claimant was afforded a fair hearing during the second conciliation. The Respondent submitted that the Claimant was summoned by the County Labour Officer by a letter dated 26th September, 2023 to attend Conciliation meeting and another letter issued dated 7th November, 2023 and in both instances, it failed to turn up. Thus the Conciliator issued a certificate of Unresolved dispute dated 22nd November, 2023.
49. On costs, it was submitted that it is evident from the forgoing analysis that had the Claimant implemented the recommendations of the Conciliator as per the CBA to the later, this suit would not have been necessary and had it heeded to the numerous appeals by the Respondent prior to this action, costs could have been mitigated had this settled from the onset. It is on this basis, that the Respondent urged this Court to order for payment of costs of the suit in favour of the Respondent.

Analysis

50. I have examined all the averments and submissions of the parties herein. The genesis of this claim is the strike notice issued by the Respondents herein dated 19th December 2023 which this court stayed until the parties attempt a reconciliation process.
51. The Claimants have submitted that before the notice was issued, the parties were already negotiating and therefore the notice issued was illegal.
52. The Respondents on the other hand submitted that they went through the reconciliation process which failed and hence the notice which they submit was legal and procedural.
53. The impugned strike notice referred to a conciliator's report addressed to the General Manager, the Managing Director, the Chief Industrial Relations officer among others giving reconciliation over a trade dispute between the parties and recommending that the company should pay house allowance arrears for 3 years and revoke a memo that withdraws the transport and reinstate the transport for captain and Mubeo.
54. It appears that the recommendations of the conciliator were not agreeable to the Claimant who chose not to implement leading the Respondents to issue their strike notice.
55. Section 65 of the Labour Relation Act states as follows:-

“ 65.

- (1) Within twenty-one days of a trade dispute being reported to the Minister as specified under section 62, the Minister shall appoint a conciliator to attempt to resolve the trade dispute unless—
 - (a) the conciliation procedures in an applicable collective agreement binding on the parties to the dispute have not been exhausted; or
 - (b) a law or collective agreement binding upon the parties prohibits negotiation on the issue in dispute.



- (2) The Minister may require any party to a trade dispute to supply further information for the purpose of deciding whether to appoint a conciliator.
- (3) If the Minister refuses to appoint a conciliator as specified in subsection (1), the Minister shall supply the parties to the dispute with written reasons for that decision.
- (4) Where a party is aggrieved by a Minister's decision under this section, that party may refer the matter to the Industrial Court under a certificate of urgency.
- (5) The Minister may consult the Board on any trade dispute, which has been reported for conciliation.”

56. As per this provision the Claimant aver that one Mr. M. N. Kirera had been appointed as a conciliator and parties had made representations before him as per Appendix VO6 of 22nd July 2020. It is indeed true that there had been attempts by the parties herein to resolve the issue of Mubao transport. The meeting ended well with the Claimant agreeing to consult further and call for another meeting to discuss the way forward.
57. Another meeting was called on 2nd October 2020 and similar issues were discussed and the Claimant indicated that transport had not been withdrawn but only the picking points had been restructured. The union requested that the Claimant scraps the captain notice and maintain the notice from farm to DN and back. The Claimant agreed to this request.
58. The issue of transport was discussed again and again without an agreement and it appears that a dispute was reported to the Minister appointed one M. N Kirera as a conciliator. On 16.6.2021 the said Kirera invited the parties to submit their proposals on the dispute and also invited them to a joint meeting on 25th July 2021 at 2.15 pm (Appendix VO9).
59. On 14th October 2021 pursuant to this request the parties met and agreed to revisit the issue of the pick-up and drop up points and centers and agree on exactly where to pick and drop the employees. They were to report back on 28th October 2021 at 10 am (Appendix VO10).
60. Another meeting took place on 6th December 2021 (Appendix VO11) and as per the meeting the issue of route review was not resolved and the Claimant agreed to consult and give feedback as soon as possible. Another meeting on 16th March 2022 with the conciliator still failed to resolve the issue.
61. There is no indication that the said conciliator ever resolved the issue.
62. Vide a letter of 22nd November 2023 another conciliator S.N Kingori (Mrs) indicated that she had been appointed as conciliator in the same matter. Her appointment letter or the circumstances under which she had been appointed as conciliator instead of M. N. Kirera were not explained.
63. It is also clear that the second conciliator Kingori dispute related to payment of house allowance as per municipality rates in CBA clause 12 and withdrawal of transport by employees whereas the dispute before Kirera related to withdrawal of transport and wrongful calculations of pack house bonuses.
64. There may have been an overlap on issue of transport being resolved but it appears that Mrs Kingori was also appointed as conciliator in her own right. She called for a meeting and as per her report both the Claimant and Respondents made their submissions before her.



65. The Claimant declined to attend the conciliation meetings called. This led the conciliator to write recommendations of 22nd November 2023 recommending that the house allowance as per clause 12 of CBA be implemented commencing November 2023 for 3 years and the management to revoke the memo that withdrew transport for Kaptain and Mubao and other areas of transport as required.

Determination

66. I have analyzed the chronology of events between the Claimant and Respondent above. It is clear that the dispute between the parties was reported to the Minister of Labour as per the law. A conciliator one Mwera appointed didn't resolve the issue. The matter remained unresolved for over 2 years.

67. As per law, a trade dispute should be resolved within 30 days as per section 67 of the [Labour Relations Act](#) which states as follows:-

“ 67.

- (1) The conciliator or conciliation committee appointed under section 66 shall attempt to resolve the trade dispute referred to in section 65 (1) within-
 - (a) thirty days of the appointment; or
 - (b) any extended period agreed to by parties to the trade dispute.
- (2) For the purposes of resolving any trade dispute, the conciliator or conciliation committee may -
 - (a) mediate between the parties;
 - (b) conduct a fact-finding exercise; and
 - (c) make recommendations or proposals to the parties for settling the dispute.
- (3) For the purposes of resolving any trade dispute, the conciliator or conciliation committee may –
 - (a) summon any person to attend a conciliation;
 - (b) summon any person who is in possession or control of any information, book, document or object relevant to resolving the trade dispute to appear at the conciliation; or
 - (c) question any person present at a conciliation.
- (4) The Minister shall pay the prescribed witness fee to any person who appears before a conciliator or conciliation committee in response to a summons issued under sub-section (3).
- (5) No person shall without good cause fail to –
 - (a) comply with a summons issued under subsection (3);



- (b) produce any book, document or item specified in a summons issued under subsection (3); or
- (c) answer any relevant question asked by a conciliator or conciliation commission under subsection (3).”

68. Another conciliator Kingori also appointed tried to resolve the issue but also failed to do so and her recommendations were not implemented and so the trade dispute remained unresolved. When the conciliator Kingori asked the Claimant to attend the meeting and raise their concerns, they declined to do so. This was a good opportunity to ever attend and ever her appointment.

69. Section 69 of the *Labour Relations Act* states as follows:-

“ 69. A trade dispute is deemed to be unresolved after conciliation if the——

- (a) conciliator issues a certificate that the dispute has not been resolved by conciliation; or
- (b) thirty day period from the appointment of the conciliator, or any longer period agreed to by the parties, expires.”

70. Whereas it’s true that Mr. Kirera had been a conciliator before, after the matter was not received after over 2 years, his appointment lapsed and another conciliator was appointed. The submissions that Mrs Kingori’s appointment was irregular in my view does not therefore hold.

71. The Respondent issued a strike notice after failure to resolve the dispute through conciliation. When the strike notice was issued, the parties also appeared before and I advised they try to resolve the trade dispute out of court. I gave parties time to try and settle the matter but it is also evident that this did not bear fruit from January to June 2024 and so the court ordered parties to proceed before me.

Remedies

72. Having considered the issue before the parties, the issue on transport and house allowance should be resolved as per the CBA of the parties. It is unfortunate that the parties have not exhibited there CBA before this court to enable it consider the same.

73. Clause 36 of an agreement presented in court only indicates that “The company shall provide bus to ferry workers to and from the place of work’.

74. There are no other details. My reading of the clause shows that transportation of the parties was agreed upon and the Claimant renege on it. They must provide adequate Logistical safeguards which will cater for all workers.

75. The issue of pack houses bonuses was not part of what informed the issuance of a strike notice.

76. As per the strike notice, the other reason for the notice was on payment of house allowance which issue remains unresolved to date. The 2nd conciliator Mrs Kingori recommended settlement as per the CBA. I will direct that this be done as per the CBA of the parties which unfortunately has also not been presented before this court.

77. In view of the fact that this issue remains largely unresolved, I will direct the parties to resolve the same and report back to court their resolutions of the same within 2 weeks.

JUDGEMENT DELIVERED VIRTUALLY THIS 9TH DAY OF JULY, 2024.



HON. LADY JUSTICE HELLEN WASILWA
JUDGE

In the presence of: -

Ms. Wairimu holding brief Wachira for Claimant – present

Makhula for Respondent – Present

Court Assistant - Fred

