



**Ashton Mombasa Apparel (EPZ) Limited v Tailors and Textiles Workers Union
(Cause E007 of 2025) [2025] KEELRC 2845 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2845 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E007 OF 2025
K OCHARO, J
OCTOBER 9, 2025**

**BETWEEN
ASHTON MOMBASA APPAREL (EPZ) LIMITED APPLICANT
AND
TAILORS AND TEXTILES WORKERS UNION RESPONDENT**

RULING

1. Before this Court is a Notice of Motion application dated 27th January, 2025, by the Claimant/Applicant, expressed to be under the provisions of Article 41 of *the Constitution* of Kenya, 2010; Sections 54,76,77,78 and 80 of the *Labour Relations Act*, 2007, and Rules 16 of the Employment & Labour Relations Court (Procedure) Rules.
2. The applicant seeks the following orders:
 1. That this Motion Application be and is hereby certified as urgent and heard ex parte in the first instance.
 2. That pending the inter partes hearing and determination of this Application or until further orders of the Court, this Honorable Court be and is hereby pleased to issue a conservatory order restraining or prohibiting the Respondent, by itself, its officials, agents and/or any of its members from in any manner whatsoever causing, calling for, instigating, inciting any of the Claimant's employees across all its production lines to engage in or participate in or proceed with an unprotected and therefore illegal strike, go slow, lock out or any other form of unprotected and illegal strike or industrial action.
 3. That pending the inter partes hearing and determination of this Application and subsequently, this Claim, or until further orders of the Court, this Honorable Court be and is hereby pleased to issue a conservatory order restraining or prohibiting the Respondent's members who are engaged by the Claimant across all its production lines from engaging in or participating in



any unprotected and therefore illegal strike, go slow, lock out or any other form of unprotected and illegal strike or industrial action.

4. That pending the inter partes hearing and determination of this Claim, or until further orders of the Court, this Honorable Court be and is hereby pleased to issue a conservatory order restraining or prohibiting the Respondent, by itself, its officials, agents and/or any of its members from in any manner whatsoever causing, calling for, instigating, inciting any of the Claimant's employees across all its production lines to engage in or participate in or proceed with an unprotected and therefore illegal strike, go slow, lock out or any other form of unprotected and illegal strike or industrial action.
 5. That pending the inter partes hearing and determination of this Claim or until further orders of the Court, this Honorable Court be and is hereby pleased to issue a conservatory order restraining or prohibiting the Respondent's members who are engaged by the Claimant across all its production lines from engaging in or participating in any unprotected and therefore illegal strike, go slow, lock out or any other form of unprotected and illegal strike or industrial action.
 6. That in the alternative, this Honourable Court be and is hereby pleased to make such other or further conservatory orders pending the hearing and determination of this Application and this Claim as the Court may deem just and expedient in the circumstances.
 7. That the costs of this Application be borne in the Cause.
3. The application is founded on the grounds set out on its face and the supporting affidavit of Abizer Lokhandwala, sworn on 27th January 2025, and a further affidavit sworn on 24th April 2025.
 4. The Respondent opposed the notice of motion herein through a replying affidavit dated 17th February, 2025.

The Application

5. The Claimant asserts that by a letter dated 10 January 2025, the Union threatened to induce its members, who are its employees, to participate in an unlawful strike unless it complies with the Union's unlawful demands. The Union claims unjustifiably that it has engaged in unfair labour practices, failed to deduct and remit union dues, unlawfully dismissed employees, including shop stewards, and refused to recognise the Union.
6. The Claimant argues that, in addition to the claims being unfounded and even false, they are also critically in issue in ongoing cases pending determination, Mombasa ELRC Cause No. E014 of 2024, Ashton Mombasa Apparel (EPZ) Limited v. Tailors and Textile Workers Union, and Cause No. E096 of 2024, Tailors and Textile Workers Union v. Ashton Mombasa Apparel (EPZ) Limited. The first case was initiated because the Union had, around 15th February 2024, threatened to organise an illegal strike, prompting the Claimant to seek Court intervention.
7. In the first suit [E014 OF 2024], the Claimant sought, amongst other reliefs, a declaratory order that the strike/ industrial action threatened by the Union was unprotected and consequently illegal and a corresponding conservatory order to restrain the Union by itself, its officials, its agents or members from proceeding with, taking part in, calling, instigating or inciting the Claimant's employees to take part in the threatened unprotected strike/industrial action and an injunction to permanently restrain the Union and all of its officials from calling for, or instigating, participating in or proceeding with any strike, a lock out, or any other form of industrial action without full prior compliance with the provisions of the [Labour Relations Act](#).



8. Contemporaneously with the Statement of Claim, the Claimant filed a Notice of Motion Application dated 26th February 2024, seeking interim conservatory orders to restrain or prohibit the Union's members engaged by the Claimant at its production lines in Jomvu, Changamwe, and Mtwapa from participating in or engaging in the threatened unprotected and consequently illegal strike/industrial action.
9. On 16.05.2024, the Court (Hon. L.J. Mbaru) issued conservatory orders restraining the Union and its members from engaging in unprotected industrial action and directed the parties to maintain industrial peace. The matter has since been heard, and a judgment has subsequently been delivered.
10. In response to the said claim, the Union filed a Statement of Response together with a Counterclaim dated 12th March 2024. In the Counterclaim, the Union sought that the Court direct the Claimant to recognise it and to execute a Recognition Agreement with them, deduct and remit union dues for 1,473 newly recruited members, comply with the Return-to-Work Formula dated 2nd February 2024, and restrain the Claimant from threatening, harassing and intimidating its members.
11. Cause No. E 096 of 2024 was filed during the pendency of Cause No. E 014 of 2024.
12. By this Claim [E 096 of 2024], the Union sought the following reliefs;
 - (i) a declaratory order that the Claimant herein has violated and or breached the provisions of Section 48 and 49 of the *Labour Relations Act*,
 - [ii] an order that the Claimant herein deducts and remits Union dues in respect of 2511 alleged new members of the Union,
 - (iii) an order restraining the Claimant herein from interfering with the deductions, collection and remittance of the union dues,
 - (iv) an order directing the Claimant herein to reinstate the 203 employees whose employment was allegedly terminated by the Claimant unlawfully without loss of any benefits,
 - (V) an order restraining the Claimant from allegedly victimizing employees who have signed the check-off forms in acknowledgement of the Union membership,
 - (vi) an order directing the Claimant herein to pay damages to the Union for violation of its labour rights and lastly,
 - (vii) that Claimant herein be ordered to sign a Recognition Agreement with the Union with immediate effect to pave the way for Collective Bargaining Agreement.
13. The Claimant states that along with the claim, the Union filed a Notice of Motion Application seeking several interim reliefs pending the case, namely,
 - (i) that it be directed to deduct and remit Union dues as specified by the *Labour Relations Act*, and
 - (ii) that it be restrained from mistreating or victimizing employees based on their Union membership.
14. By Consent Orders recorded on 23.10.2024, the parties agreed that, pending the hearing and determination of the suit, the existing status quo concerning unionisable employees shall be maintained, and that the Claimant shall deduct and remit union dues in accordance with the provisions of the *Labour Relations Act*, effective from October 2024.



15. It is further stated that the Claimant, in response to the aforementioned claim, filed a Statement of Response dated 06.12.2024 and a Replying Affidavit dated 06.12.2024, through which it has definitively asserted that; [i] it has been diligently withholding and remitting dues to the Union in accordance with applicable legal provisions, [ii] the Union is yet to satisfy the criteria required for recognition by the Claimant, and [iii] it has not arbitrarily or unreasonably declined or refused to renew or extend fixed-term contracts for employees who are members of the Union, as alleged by the Union.
16. This Claim currently pends hearing and determination.
17. The Claimant states further that by a letter dated 15th January 2025, it, through its advocates, responded to the Union's letter dated 10th January 2025 and reminded the Union that every one of the issues raised in the said letter was directly in issue and pending determination in the two Claims between the parties, which are still pending before this Court. It also reminded the Union of the existence of the interim restraining Court Orders issued in E014 of 2024.
18. The Union, in a letter dated 17th January 2025, responded to the Claimant's letter dated 15th January 2025, asserting that it still intends to encourage its members to participate in an unlawful strike or industrial action unless their demands are met or satisfied.
19. The Claimant asserted that it continues to receive credible reports that the Union, through its officials and members, is actively taking steps to proceed with an unprotected illegal strike or industrial action, which could include a slowdown or even a complete breakdown of all its production and daily operations unless it yields to the Union's demands for recognition and payment of disputed union dues related to employees who have explicitly contested signing the Check Off Forms. The Claimant also states that the signatures on these Forms have clearly been forged and that the employees have made it clear that they have not consented to the deduction of union dues from their monthly wages for remittance to the Union.
20. It is therefore reasonably apprehensive that, on the premises, it may not be possible to amicably resolve the contrived conflict in time before the threatened and illegal strike or industrial action is taken by the Union.
21. The disruption of the Claimant's production and operations has, in the recent past, adversely and significantly impacted the Claimant's capacity to fulfil its existing contractual obligations regarding product delivery timelines to its international buyers. Consequently, this invariably results in the cancellation of current garment production orders by these overseas buyers, thereby causing job losses among all employees, including union members.
22. It is further contended that if the Union mobilises its members to undertake the threatened illegal strike or industrial action, the Claimant shall suffer significant and irreparable harm resulting from the consequential loss of production, the subsequent inability to fulfil and sustain contractual obligations with her overseas clients, potential loss of production materials, damage to property, and consequential reductions in revenue and reputation. Such circumstances would collectively threaten the continued viability of the Claimant as a going concern and imperil all existing employment positions.

The Response

23. The Respondent Union asserts that the Claimant decided to terminate the employment of its unionisable employees, including shop stewards, solely based on their membership in the Union.



24. It is further alleged that the Claimant failed to deduct and remit union dues from 2,511 employees who had signed valid check-off forms and instead resorted to terminating 4,853 members to weaken the Union's membership and intimidate others from joining.
25. The Claimant has declined to recognise the Union by refusing to sign a Recognition Agreement.
26. The Respondent asserts that, as a result of these actions, it had no option but to issue a strike notice on 10th January 2025. However, following intervention by the Ministry of Labour & Social Protection through a letter dated 29th January 2025, the parties were instructed to engage in dialogue, and a conciliator, Mr. Barrack Owange, was appointed to assist in resolving the dispute. The Ministry also requested the Union to suspend its strike notice while the conciliation process was ongoing. By a letter dated 30th January 2025, the Union informed the Cabinet Secretary that it had suspended the strike and allowed the dialogue process to proceed.
27. As such, the Claimant's application lacks merit, as the strike has since been suspended and the matter is already under conciliation.
28. It is further contended that the Claimant has filed multiple applications solely to impede the Union from fulfilling its mandate. The Respondent requests the Court to dismiss the application and permit the conciliation to continue as per the Ministry's directive of 29th January 2025.

The Rejoinder

29. In response to the issues raised by the Respondent, the Claimant states that recognition of a Union is contingent upon the Union recruiting a simple majority of unionisable employees. The Respondent has not yet met the statutory threshold for recognition. Additionally, a judgment delivered on 20 February 2025 by this Court (Mbaru J.) in Mombasa ELRC Cause No. E014 of 2024, Ashton Mombasa Apparel (EPZ) Limited versus Tailors and Textile Workers Union, dismissed the Union's claim for recognition and held that the Union had not satisfied the recognition criteria.
30. The Claimant admits that the Ministry of Labour and Social Protection indeed issued the letter dated 29th January 2025, following which the Respondent wrote that of 30th January 2025, suspending the scheduled strike.
31. However, despite being served with a notice, the Union did not attend or participate in the conciliation proceedings when the matter was scheduled before the conciliator on 18.02.2025. Clearly, the Union appears to be acting in bad faith with the intention of obstructing the resolution of the trade dispute.
32. It is further argued that the text of the Union's letter dated 30.01.2025 is clear. There is no dispute that the Union merely suspended the 21-day strike notice. It is also evident from the said letter that the Union did not cancel or abandon the strike. In the absence of a Court Order, nothing prevents the Union from calling for or inciting any of its members in the claimant's employment to participate in an illegal strike or industrial action.
33. No prejudice shall be suffered by the Union if, pending the outcome of the consultative dialogue and conciliation, the Court issues a conservatory order restraining or prohibiting the Union from engaging in or participating in any unprotected and therefore illegal strike.

Analysis and Determination

34. I have carefully considered the Applicant's application, the grounds on which it is premised, the affidavit in support thereof, the further affidavit, the replying affidavit, and the submissions filed herein, and a sole issue emerges for determination: whether the application is merited.



35. There is no doubt that what the Claimant seeks in its notice of motion are conservatory orders. The law regarding the grant of conservatory orders is now settled. Of applications for conservatory orders and conservatory orders, the Supreme Court of Kenya in the case of Peter Munya v Dickson Mwanda Kithinji & 2 Others, Application No. 5 of 2024 [2014] eKLR stated;
- “86. “Conservatory orders” bear a more decided public law connotation: for these are orders to facilitate ordered functioning with public agencies, as well as uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case, or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and proportionate magnitudes, and priority levels attributable to the relevant cause.”
36. A comprehensive review of the pleadings filed herein and the documents referred to above [paragraph 34] clearly reveals the following vital matters;
- a. That the instant suit and application were initiated while two suits between the combatants herein were pending before this court.
 - b. That, as explicitly stated by the Claimant on the grounds set out on the face of the application and the supporting affidavit, the alleged threats by the Respondent contained in a letter dated 10th January 2025 concerned issues that were actively under adjudication in the two suits pending before the court.
 - c. A restraining order was previously issued against the Respondent, including their agents, servants, officers, and members, in suit E014 of 2024. The order prohibited them from engaging in conduct analogous to the issues raised in the current suit and application, over which the Court’s intervention is also sought.
 - d. An order of maintaining the status quo, by the consent of both parties, obtained in Cause No. E96 of 2024.
37. In my view, considering these circumstances, the Claimant could seek the court’s intervention in any of the pending cases without filing a new suit as a basis for applying for conservatory orders. Unnecessary filing of suits and applications over matters that are already actively pending adjudication in suits or other proceedings initiated earlier amounts to nothing more than an abuse of the court process and an affront on the overriding objective of this Court. I see and hold that the instant application is an abuse of the court process.
38. Public interest, and constitutional values [Article 159 of *the Constitution*] command expeditious disposal of matters that are before the court for adjudication. This command shall become useless if litigants are allowed to initiate proceedings in various ways and at different times, even when it is clear that the proceedings can be justly undertaken under one suit.
39. The fundamental principle underlying the provisions of the *Labour Relations Act*, and in the interest of promoting industrial peace and harmony, is that trade disputes, including the alleged conflict between the Claimant and the Respondent, should be directed to conciliation prior to pursuing resolution through judicial avenues.



40. I hold that the Claimant deliberately contended in its pleadings, grounds on the face of the instant application and supporting affidavit, that the Respondent, by its actions, affronted the spirit. That they did not allow the matter to proceed for conciliation, only to turn around and admit in the further affidavit, that following an intervention by the Cabinet Secretary, Ministry of Labour, the Respondent did suspend the intended strike. Conversely, it is them who did not allow the conciliation process to run its full course.
41. Knowing that the matter was in the hands of the Ministry and subsequently, under conciliation pursuant to the provisions of the *Labour Relations Act*, the Claimant pressed on with the instant application, without waiting for the conclusion of the conciliation process, technically rendering the application premature.
42. By reason of the foregoing premises, the Claimant's application is an abuse of the Court process. It is premature. As a result, it is hereby dismissed with costs.

READ SIGNED AND DELIVERED THIS 9TH DAY OF OCTOBER 2025.

OCHARO KEBIRA

JUDGE.

