Kenya Plantation & Agricultural Workers Union v Equinox Horticulture Limited; Kenya Export Floriculture, Horticulture & Allied Works Union & another (Interested Parties) (Cause E457 of 2025) [2025] KEELRC 2841 (KLR) (21 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2841 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE E457 OF 2025

SC RUTTO, J

OCTOBER 21, 2025

BETWEEN

KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT

AND

EQUINOX HORTICULTURE LIMITED ..... RESPONDENT

AND

KENYA EXPORT FLORICULTURE, HORTICULTURE & ALLIED WORKS UNION ..... INTERESTED PARTY

AGRICULTURAL EMPLOYERS ASSOCIATION ..... INTERESTED PARTY

RULING

1. What comes up for determination is the Claimant/Applicant's Notice of Motion dated 21st May 2025, in which it seeks the following orders;

    1. Spent.

    2. That an order be and is hereby issued staying the implementation, application and the enforcement of the Collective Bargaining Agreement between Equinox Horticulture Limited and Kenya Export Floriculture & Allied Workers Union entered in the Court Register of Collective Agreements entry RCA No. 131 of 2025 on the 6th May 2025 pending the full hearing and determination of this cause.

    3. That, an order be and is hereby issued de-registering and or staying the implementation or the enforcement of the Collective Bargaining Agreement between Equinox Horticulture Limited and Kenya Export Floriculture & Allied Workers Union entered in the Court Register of Collective Agreements entry RCA No. 131 of 2025 on the 6th May 2025.

4. That, a declaratory order be and is hereby issued declaring that the Collective Bargaining Agreement between Agricultural Employers Association and Kenya Plantation &Agricultural Workers Union entered in the Court register under RCA No 410 of 2023dated 5th October 2023 is binding and enforceable upon the Respondent and all its unionisable employees.

5. That costs be in the cause.

2. The Application is supported by the grounds stated on its face and the Affidavit of Meshack Khisa, the Organizing Secretary of the Claimant/Applicant. It is averred that the Applicant is a duly registered trade union representing employees in the agricultural and flower industries across Kenya.

3. Mr. Khisa avers that the Respondent's employees are members of the Applicant union and are beneficiaries of the terms and conditions of employment negotiated under the Collective Bargaining Agreement (CBA) concluded between the Respondent and the Applicant in this matter.

4. He further avers that the Respondent has a valid Recognition Agreement executed with the Applicant through the 2nd Interested Party.

5. In addition, Mr. Khisa states that the Respondent and the Applicant concluded a CBA on 28th August 2023, which the Respondent committed to implement. The said CBA was subsequently registered in Court on 5th October 2023 as RCA No. 410 of 2023.

6. Mr. Khisa contends that the aforesaid CBA remains valid and binding upon both the Applicant and the Respondent, including all unionisable employees, and forms an integral part of each employee's contract of employment.

7. He further avers that the Respondent has also entered into another CBA with the 1st Interested Party, which was presented to this Court and registered on 6th May 2025 as RCA No. 131 of 2025.

8. According to Mr. Khisa, when submitting the latter CBA for registration, the Respondent deliberately withheld the material fact that she had already concluded an earlier CBA with the Applicant.

9. Mr. Khisa contends that the Respondent was under a legal duty to disclose to the Court the existence of the CBA concluded with the Applicant in order to avert a legal conflict arising from the incorporation of two different CBAs into the same employees' contracts of employment.

10. In Mr. Khisa's view, the *Labour Relations Act*, 2007, envisage that only a single CBA should be incorporated into an employee's contract of employment.

11. Mr. Khisa asserts that it would be contrary to public policy, impractical, and financially burdensome for the Respondent to implement two separate CBAs for the same group of employees.

12. The Applicant filed a Further Affidavit sworn by Mr. Meshack Khisa on 16th June 2025, wherein he maintains that unless the Respondent and the 1st Interested Party demonstrate compliance with the threshold prescribed under Section 54(1), (2) and (3) of the *Labour Relations Act*, the CBA registered on 6th May 2025 is null and void ab initio and unenforceable.

13. Mr. Khisa is emphatic that, pursuant to Section 60(a) and (b) of the *Labour Relations Act*, this Court is bound to de-register the CBA entered into between the Respondent and the 1st Interested Party.

14. Mr. Khisa avers that the employees of the Respondent subscribe to the Applicant and enjoy terms and conditions of employment and or CBA duly concluded between the Respondent and the Applicant in this matter.

15. In response to the Application, the Respondent filed a Replying Affidavit sworn by Carolyne Kariuki, who describes herself as the Respondent's Human Resource Manager.

16. Ms. Kariuki avers that the Applicant has persistently and deliberately sought to frustrate the lawful existence and operations of the 1st Interested Party by instituting multiple legal proceedings, including escalations to the Supreme Court, all of which have been dismissed.

17. She contends that the Applicant's actions amount to a calculated attempt to suppress the rights and freedoms of the 1st Interested Party, contrary to its constitutional and statutory entitlement to exist and operate as a duly registered trade union.

18. Ms. Kariuki further states that the 1st Interested Party submitted to the Respondent a total of 21 check-off forms containing the names of employees who had purportedly enlisted as its members.

19. Upon verification, and by mutual agreement between the parties, the list was subjected to a clean-up process to remove duplicate entries and non-unionisable employees. The final verified list comprised 454 employees who unequivocally confirmed their membership in the 1st Interested Party.

20. According to Ms. Kariuki, this number represents a clear majority of the Respondent's unionisable workforce, thereby satisfying the legal threshold for recognition under Section 54 of the *Labour Relations Act*.

21. She further avers that the CBA between the Respondent and the 1st Interested Party was duly processed through the Ministry of Labour and scrutinized by this Honourable Court, which confirmed compliance with the requirements of Section 54(1) (2) and (3) of the *Labour Relations Act* prior to registration. Following this, a Certificate of Registration was issued.

22. Ms. Kariuki also asserts that the Applicant no longer has members among the Respondent's employees and that these proceedings are merely intended to hold the 1st Interested Party and its members who are the Respondent's employees, hostage.

23. She maintains that the Respondent does not interfere with employees' freedom of association or determine which union they should join, but only negotiates and concludes a CBA with the union duly authorized by its employees.

24. She further adds that the Respondent's overriding concern is to maintain industrial harmony at the workplace, which can only be achieved by allowing employees to freely exercise their right of association and to be bound by the terms of the union they have chosen.

25. Ms. Kariuki further deposes that there is palpable tension among the employees owing to the anxiety caused by the restraining orders currently in place, which, unless vacated, will deny them the benefits of the CBA they freely negotiated. She added that the first benefits under the CBA were due to take effect at the end of July 2025.

26. Ms. Kariuki further avers that the CBA between the Applicant and the Respondent expired on 31st July 2025, and any attempt to extend it would amount to an infringement of the employees' constitutional right to freedom of association and collective bargaining.

27. In response to the Application, the 1st Interested Party filed a Replying Affidavit sworn on 16th July 2025 by David Benedict Omulama, who describes himself as the Secretary General of the 1st Interested Party.

28. Mr. Omulama avers that the 1st Interested Party recruited members from among the employees of the Respondent and, upon attaining the simple majority threshold, approached the Respondent to conclude a Recognition Agreement pursuant to Section 54(1) of the *Labour Relations Act*.

29. He states that the Respondent and the 1st Interested Party duly executed a Recognition Agreement on 23rd March 2025, thereby entitling them to engage in collective bargaining in accordance with Section 57(1) of the *Labour Relations Act*.

30. Mr. Omulama further avers that the CBA between the Respondent and the 1st Interested Party was submitted to the Central Planning and Monitoring Unit (CPMU) of the Ministry of Labour for analysis. The Unit confirmed that the CBA complied with the minimum statutory standards under the *Employment Act* and the Agricultural Wages Order and Guidelines, before it was subsequently forwarded to this Honourable Court for registration.

31. He contends that the Applicant lacks locus standi to represent the Respondent's employees before this Court, as those employees are not members of the Applicant union, nor has the Applicant invoked this Court's jurisdiction through a constitutional petition under Article 22 of *the Constitution*.

32. Mr. Omulama maintains that the Applicant is not the exclusive union within the broader agricultural sector, adding that the 1st Interested Party is also a duly registered trade union representing employees in the floriculture and horticulture sectors, which include the cultivation of flowers, fresh exotic vegetables, and fruits for export. He is categorical that the Applicant does not have a single member among the Respondent's workforce.

33. Mr. Omulama further avers that there is no CBA specifically executed by the 2nd Interested Party on behalf of the Respondent as an individual employer. Rather, the existing CBA was concluded between the 2nd Interested Party and the Applicant, covering a group of employers listed therein, without evidence of a Recognition Agreement specific to the Respondent or proof that its employees are members of the Applicant union.

34. Mr. Omulama asserts that the 1st Interested Party duly met the legal requirements for recognition by the Respondent and was therefore entitled to conclude the negotiations that culminated in the execution of the impugned CBA.

35. He further contends that the Applicant is a stranger to the CBA registered on 6th May 2025 and consequently lacks locus standi to seek its suspension or deregistration, by virtue of the doctrine of privity of contract.

36. Mr. Omulama avers that granting the orders sought in the Application would prejudice the members of the 1st Interested Party, who stand to lose the benefits under the CBA scheduled to take effect on 21st June 2025, including salary increments ranging between 5% and 7%.

37. Mr. Omulama maintains that the remunerative provisions of the CBA between the Respondent and the 1st Interested Party are superior and, given that they were to take effect from 21st June 2025, the members of the 1st Interested Party would suffer irreparable harm if the orders sought are granted or if the interim stay is extended.

38. The Court notes that the 2nd Interested Party's response to the instant Application is not traceable on the Court's physical record or on the online portal.

Submissions

39. The Application was canvassed by way of written submissions. Notably, the Applicant's submissions were not traceable on the Court's physical record or the online portal.

40. The Respondent submitted that the CBA it held with the Applicant lapsed on 31st July 2025. That its employees subsequently withdrew their membership from the Applicant and instructed the 1st Interested Party to negotiate and enter into a CBA on their behalf.

41. The Respondent further submitted that, having established that the conditions under Section 54(1), (2), and (3) of the *Labour Relations Act* were satisfied, the CBA was duly registered by the Court in accordance with Section 60(2).

42. Citing the case of Kenya Petroleum Oil Workers Union v Nas Oil Kenya Ltd (Cause E041 of 2024) [2025] KEELRC 107 (KLR), the Respondent submitted that a trade union's authority is derived from its representation of employees. It was the Respondent's position that the Applicant cannot insist on enforcing a binding relationship with the Respondent when it no longer has any members.

43. The 1st Interested Party submitted that the terms and conditions of the CBA it concluded with the Respondent were reviewed by the Ministry of Labour and found to be compliant with the law prior to submission to the Court for registration.

44. In the same vein, the 1st Interested Party submitted that there is no legal provision permitting the deregistration of a CBA voluntarily executed between an employer and a union solely on the basis of alleged non-compliance with terms contained in a previous CBA.

45. The 1st Interested Party further submitted that, being a stranger to the CBA between the Respondent and the 1st Interested Party, and having no members employed by the Respondent, the Applicant lacks standing to sue under the CBA. That on this basis alone, the Applicant cannot establish a prima facie case with a likelihood of success.

46. It was further submitted by the 1st Interested Party that, by virtue of the principles of privity of contract, this suit is not a petition brought under Article 22 of *the Constitution*, which confers the right to bring proceedings for alleged violations of fundamental rights.

47. In the 1st Interested Party's view, the Applicant has failed to demonstrate that it has members among the Respondent's employees who are represented in this suit, or that such employees would suffer irreparable harm that could not be compensated by damages.

48. Submitting in support of the Application, the 2nd Interested Party contended that the CBA executed between the Respondent and the 1st Interested Party resulted in a downward alteration of the terms and conditions of employment of the Respondent's employees.

49. The 2nd Interested Party further submitted that this conduct constitutes a violation of Section 26(2) of the *Employment Act*, as it exposes employees to diminished terms and conditions of employment, amounting to an unfair labour practice. To reinforce this position, the 2nd Interested Party cited the case of William Mogeni Momanyi v Aga Khan University Hospital [2015] KEELRC 842 (KLR).

50. It was the 2nd Interested Party's position that any variation of employment terms to the detriment of employees qualifies as an unfair labour practice under the law.

Analysis and Determination

51. Having considered the Application, the responses thereto, and the submissions on record, the Court finds that the central issue for determination is whether the Applicant has met the requisite threshold for the grant of an injunction at this interim stage. Put differently, the question is whether the Court should issue an order staying the enforcement of the CBA between the Respondent and the 1st Interested Party, registered as RCA No. 131 of 2025 on 6th May 2025, pending the hearing and determination of the main suit.

52. It is settled law that an injunction is a discretionary remedy, granted based on evidence and established legal principles. The guiding principles in applications of this nature are well-settled, as articulated in the landmark case of Giella v Cassman Brown & Co Ltd (1973) E.A. In this regard, the following principles are to be considered:

> " Firstly, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."

53. Applying the foregoing principles to the present case, the first and foremost question is whether the Applicant has established a prima facie case with a likelihood of success.

54. The Court of Appeal, in Mrao Ltd v First American Bank of Kenya Ltd & 2 others [2003] eKLR, defined a prima facie case as follows:

> " So, what is a "prima facie case" I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the Applicant's case upon trial. That is clearly a standard, which is higher than an arguable case."

55. Further, the Court of Appeal in Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR held that:

> " The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. We reiterate that in considering whether or not a prima facie case has been established, the court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right which has been or is threatened with violation...."

56. In light of the foregoing precedents, it is evident that the Applicant must demonstrate that the rights of its members have been, or are threatened with being, violated by the impugned CBA. Once this is established, the burden shifts to the Respondent to provide an explanation or to rebut the Applicant's

claim. At this stage, it must be emphasized that the Court is not conducting a full trial and will not examine the evidence with microscopic scrutiny.

57. Fundamentally, the Applicant is required to show that its rights, or those of its members, have been infringed or are at risk of infringement by the Respondent. Upon demonstrating as much, the onus then rests on the Respondent to address or refute the claim.

58. The gist of the Applicant's application is that the Respondent's employees are its members and benefit from the terms and conditions of employment under the CBA it concluded with the Respondent, which was registered in Court on 5th October 2023 as RCA No. 410 of 2023. The Applicant further contends that there exists a potential conflict between the said CBA and the CBA entered into between the Respondent and the 1st Interested Party.

59. The Applicant has further proceeded to identify several clauses in the impugned CBA which it contends are in conflict with its CBA and with the provisions of the *Employment Act*.

60. On the other hand, the Respondent and the 1st Interested Party hold that the Applicant no longer has any members among the Respondent's workforce and that the CBA previously executed with the Applicant expired on 31st July 2025.

61. On its part, the 2nd Interested Party submits that the impugned CBA between the Respondent and the 1st Interested Party contains provisions that downgrade the terms and conditions of the Respondent's employees, contrary to Section 26 of the *Employment Act*.

62. In light of the rival positions advanced by the parties herein, it is apparent that at the hearing of the main suit, the Court will be required to examine and determine the Applicant's assertions as well as the specific clauses cited by the Applicant and the 2nd Interested Party in the context of the relevant provisions of the *Employment Act*.

63. Applying the principles established in Mrao Ltd v First American Bank of Kenya Ltd (supra), the Court is satisfied that the Applicant has demonstrated the existence of a prima facie case.

64. It is trite that the existence of a prima facie case is not, by itself, sufficient to warrant the grant of an interlocutory injunction. The Court must also be satisfied that the injury likely to be suffered by the Applicant, should the injunction not be granted, would be irreparable.

65. The Court of Appeal, in Nguruman Limited v Jan Bonde Nielsen & 2 others [supra], observed as follows regarding the concept of irreparable injury:

> " An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy."

66. Applying the principles set out in Nguruman Limited v Jan Bonde Nielsen & 2 others (supra), the Court finds that the Applicant has not demonstrated that its members, who are employees of the Respondent, would suffer irreparable harm if the orders sought are not granted at this interim stage.

67. I say so for the reason that upon the full hearing and consideration of evidence adduced by all parties, the Court may make orders, including but not limited to, nullifying any clause that is found to be inferior to the minimum basic conditions of employment as prescribed under the *Employment Act*.

68. What's more, on the basis of the balance of convenience, the Respondent's employees covered by the CBA are likely to suffer if the implementation of the agreement as a whole is suspended pending the hearing and determination of the main suit. On the other hand, in the event the Court confirms the

injunctive orders currently in place and, upon full hearing, finds the suit to be without merit, the Respondent's employees would have suffered irreparable harm by being denied the benefits of the CBA. Needless to say, the balance of convenience does not favour the Applicant.

Orders

69. In the circumstances, the Court declines to grant a blanket order restraining the Respondent from implementing the CBA registered as RCA No. 131 of 2025 on 6th May 2025 in its entirety. Instead, the Court orders that the implementation of clauses 3, 4, 15, 26, and 36 of the impugned CBA be suspended pending the hearing and determination of the suit herein.

70. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF OCTOBER 2025.

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STELLA RUTTO

JUDGE

In the presence of

Mr. Khisa for the Claimant/Applicant

Mr. Kinyanjui for the Respondent

Ms. Kwamboka for the 1st Interested Party

Ms. Wairimu instructed by Ms. Wachira for the 2nd interested party

Millicent Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE