



**Kenya Shipping Clearing Freight Logistics and Warehouse Workers Union v Shalimar Fresh Limited (Cause E513 of 2023) [2025] KEELRC 3059 (KLR) (31 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3059 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E513 OF 2023  
SC RUTTO, J  
OCTOBER 31, 2025**

**BETWEEN**  
**KENYA SHIPPING CLEARING FREIGHT LOGISTICS AND WAREHOUSE WORKERS UNION ..... APPLICANT**  
**AND**  
**SHALIMAR FRESH LIMITED ..... RESPONDENT**

**RULING**

1. Through a Notice of Motion dated 28<sup>th</sup> May 2025, the Claimant/Applicant moved this Court seeking the following orders: -
  - a. Spent
  - b. That pending the hearing and final determination of this suit, this Honorable Court be pleased to issue an interim injunction order restraining the Respondent, whether by itself, its agents, servants, employees or otherwise howsoever, from harassing, victimizing, intimidating, terminating or in any other manner interfering with the employment of unionized employees who are members of the Applicant Union.
  - c. That pending the hearing and final determination of this suit, this Honorable Court be pleased to issue an order compelling the Respondent to maintain the status quo prevailing as at March 2024 in respect of the unionized employees, their terms and conditions of employment, and their union membership.
  - d. That the costs of this application abide the outcome of the main suit and be provided for in the final determination of this matter.
2. The Application is anchored on the grounds set out on its face and is supported by an Affidavit sworn on 29<sup>th</sup> May 2025 by James Tongi, the National General Secretary of the Claimant/Applicant Union. It



- is averred that upon learning of the employees' lawful exercise of their constitutional right to unionize under Article 41 of *the Constitution*, the Respondent embarked on unlawful retaliatory actions, including issuing threats of termination against employees who maintained their union membership.
3. In his Affidavit, Mr. Tongi further deposes that the Claimant Union successfully recruited members from among the Respondent's workforce, having attained and surpassed the statutory threshold for recognition as provided under Section 54 of the *Labour Relations Act, 2007*.
  4. He further avers that upon meeting the required membership threshold, the Claimant Union formally initiated the recognition process by serving upon the Respondent a Model Recognition Agreement.
  5. Mr. Tongi avers that the Respondent willfully neglected and/or refused to acknowledge receipt of, or respond to, the Claimant's formal communication dated 6<sup>th</sup> May 2024, thereby necessitating the declaration of a trade dispute.
  6. He further contends that the workforce data provided by the Respondent to the conciliator was materially inaccurate, as it improperly included employees from affiliated sister companies. The Respondent also failed to furnish an authentic payroll reflecting the actual number of employees within the bargaining unit, thereby frustrating proper verification.
  7. Mr. Tongi maintains that despite the Claimant Union's efforts to implement the conciliator's recommendations by formally requesting a joint verification meeting through its letter dated 5<sup>th</sup> November 2024, the Respondent unjustifiably declined to cooperate.
  8. The Respondent opposed the Application through a Replying Affidavit sworn on 15<sup>th</sup> July 2025 by Vitalis Osodo, who describes himself as the Respondent's Group Human Resource Manager.
  9. Mr. Osodo contends that the Claimant Union has not met the statutory threshold for recognition as stipulated under Section 54(1) of the *Labour Relations Act*.
  10. He confirms that the Respondent received correspondence from the Claimant Union, including letters dated 6<sup>th</sup> May 2024 and 21<sup>st</sup> May 2024, together with a draft Recognition Agreement. However, he explains that the agreement was not executed because the Claimant Union had not attained the requisite simple majority of unionisable employees within the Respondent's workforce.
  11. Mr. Osodo further states that, in response to the Claimant's letters, the Respondent issued a letter dated 27<sup>th</sup> May 2024 indicating that it had 246 employees, out of whom the Union had recruited only 68 members, falling short of the simple majority required under the *Labour Relations Act*.
  12. According to Mr. Osodo, the Claimant Union, however, disputed the Respondent's figures, alleging inaccuracies in both the total employee count and the number of recruited members. He adds that the Respondent subsequently wrote another letter dated 27<sup>th</sup> August 2024, confirming that the company still had 246 employees and that the Union's membership had increased slightly to 72 members, still below the statutory threshold for recognition.
  13. He acknowledges that several meetings were held to address the matter. Still, he maintains that the Respondent could not recognise the Claimant Union as it had not satisfied the legal requirements for recognition.
  14. The dispute was thereafter referred to conciliation under the auspices of the Ministry of Labour, where both parties presented their submissions and supporting documents.



15. Upon evaluating the material placed before him, the Conciliator concluded that the Claimant Union had not attained the simple majority required under Section 54 of the [Labour Relations Act](#) and was, therefore, not entitled to recognition by the Respondent.
16. Mr. Osodo denies that the Respondent has ever threatened, intimidated, or coerced any employee on account of union membership, asserting that the Respondent fully respects its employees' constitutional and statutory rights to freedom of association.
17. He further deposes that the Respondent remains ready and willing to recognize the Claimant Union and execute a Recognition Agreement once the Union meets the legal threshold by recruiting a simple majority of the Respondent's unionisable employees.
18. Mr. Osodo notes that other units and farms within the Respondent's group of companies already have CBAs with various trade unions, including the Claimant Union. He terms the allegations in the present Application as being made in bad faith and intended to mislead the Court, given that the Union is well aware of its legal obligations prior to recognition. He adds that once the Union satisfies the statutory requirements, the Respondent will readily recognize it and engage in CBA negotiations as has been done with other group entities.
19. In his view, the intervention of this Honourable Court is unwarranted at this stage, as the matter merely involves the Union's failure to meet the statutory precondition for recognition.

#### **Submissions**

20. The Application was canvassed by way of written submissions. Both parties filed written submissions which the Court has given duly considered.

#### **Analysis and Determination**

21. From the face of the Application, it is apparent that at this juncture, the issue before the Court is whether the Application is merited.
22. It is noteworthy that although the Claimant seeks injunctive relief restraining the Respondent from harassing, victimizing, intimidating, terminating, or otherwise interfering with the employment of unionized employees who are its members, its submissions delve extensively into the issue of recognition.
23. Similarly, the averments contained in the Supporting Affidavit of Mr. Tongi are confined solely to the subject of recognition.
24. Indeed, the Respondent's Replying Affidavit likewise focuses on the question of recognition and addresses it at length in its submissions.
25. From the Court's standpoint, the question of recognition does not properly arise for determination at this juncture, as it does not flow from the specific prayers sought in the Notice of Motion.
26. The matter for determination, therefore, is whether this Court should issue an order of injunction restraining the Respondent from harassing, victimising, intimidating, terminating, or otherwise interfering with the employment of its unionized employees pending the hearing and determination of the suit.
27. The Claimant avers, in the grounds appearing on the face of the Motion, that upon the Respondent becoming aware of its employees' lawful exercise of their constitutional right to unionize under Article



- 41 of *the Constitution*, it engaged in retaliatory acts, including threats of termination, directed at employees who are members of the Union.
28. Annexed to the Affidavit of Mr. Tongi is a letter dated 27<sup>th</sup> August 2024 authored by the Claimant's Industrial Relations Officer, Mr. Evans Sendeu, addressed to the Respondent's Director, alleging violations of employees' right to freedom of association. In the said letter, Mr. Sendeu averred that members of the Respondent's management had approached employees who had acknowledged membership in the Claimant Union and coerced them to resign from the Union.
  29. It is apparent that the said letter was followed by another dated 3<sup>rd</sup> September 2024 from Mr. Tongi to the Managing Director and Chairperson of the EAGA Group, reiterating the allegations of harassment and intimidation of employees by the Respondent's management on account of their participation in trade union activities. Notably, there is no evidence on record of any response from the Respondent addressing the concerns raised by the Claimant Union.
  30. The Respondent, in its Replying Affidavit, denies having threatened, intimidated, or coerced any of its employees in relation to their trade union activities.
  31. Both *the Constitution* and the *Labour Relations Act* recognize and safeguard the right to freedom of association, which encompasses the right of every employee to join or refrain from joining a trade union.
  32. In this regard, Article 41(2)(c) of *the Constitution* guarantees every worker the right to form, join, or participate in the activities and programmes of a trade union while Article 36(1) of *the Constitution* guarantees every person the right to freedom of association, including the right to form, join, or participate in the activities of any association.
  33. Section 4(1) of the *Labour Relations Act* operationalises these constitutional provisions by affirming the right of every employee to join a trade union of their choice and to participate in its lawful activities.
  34. Applying the foregoing provisions to the present case, it is evident that the Respondent's employees enjoy an inviolable right to join the Claimant Union and to participate freely in its activities without interference or reprisal.
  35. Having considered the rival positions taken by the parties, it is apparent that the issue of alleged harassment or intimidation can only be conclusively resolved upon full hearing of the matter, where the parties' evidence will be tested through cross-examination. At this interlocutory stage, the Court is unable to make a definitive finding on that issue.
  36. Nevertheless, the Court wishes to underscore that victimization of employees on account of their trade union membership constitutes a direct affront to Article 41 and Article 36 of *the Constitution*.
  37. I reiterate that the right to freedom of association is sacrosanct and must not be curtailed. Any form of harassment, intimidation, or victimisation of employees for exercising their right to unionise is a grave constitutional violation which the Court cannot countenance. Employees who elect to join a trade union must be allowed to do so freely and without fear of reprisal.
  38. In the premises, the Court is persuaded that the Respondent's employees who are members of the Claimant Union merit protection. Consequently, the Application dated 28<sup>th</sup> May 2025 is allowed.
  39. To this end, the Respondent is whether by itself, its agents, or servants, is hereby restrained from harassing, victimising, intimidating, or terminating from employment any of its employees on account of their membership in the Claimant Union or participation in trade union activities.



40. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF OCTOBER, 2025.**

.....

**STELLA RUTTO**

**JUDGE**

In the presence of:

For the Claimant/Applicant Mr. Mutongoi

For the Respondent Mr. Ochieng instructed by Mr. Kinyanjui

Court assistant Millicent

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

