

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT ELDORET**

**MISC. APPLICATION NO. E002 OF 2025**

**MAJI MAZURI FLOWERS ..... APPLICANT**

**VERSUS**

**BUNGE LA WENYENCHI FORUM ..... 1<sup>ST</sup>**

**RESPONDENT**

**PETER KIBET ARAP BIWOTT ..... 2<sup>ND</sup>**

**RESPONDENT**

**ISSAC KIPKORIR ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**AGRICULTURAL EMPLOYERS**

**ASSOCIATION ..... 1<sup>ST</sup> INTERESTED PARTY**

**KENYA PLANTATION AND AGRICULTURAL**

**WORKERS UNION ..... 2<sup>ND</sup> INTERESTED**

**PARTY**

**JUDGMENT**

1. The Originating Motion herein is dated 20<sup>th</sup> January, 2025.

The Applicant seeks orders that: -

a) *Spent.*

- b) THAT pending the hearing and the determination of this application inter-parties, a temporary injunction be granted restraining the Respondents, its employees and all former employees employed by the Applicant from engaging or taking part in any conduct, activity or engaging in protest and demonstrations in contemplation of the protest scheduled to take place on 24<sup>th</sup> January 2025 at Chebarus Centre and the applicants offices.
- c) THAT pending the hearing and determination of this application inter-parties, an injunction be granted restraining the 2<sup>nd</sup> Respondent by himself, his servants and/or agents from engaging, mobilizing or taking part in any conduct, activity or meetings in contemplation of or towards preparation for a protest Chebarus Centre and the applicants offices on 24<sup>th</sup> January 2025.
- d) THAT pending the hearing of this application inter-parties, a temporary injunction be granted restraining all community members from engaging or taking part

in any conduct, activity or engaging in protest and demonstrations in contemplation of the protest

- e) scheduled to take place on 24<sup>th</sup> January 2025 at the 1<sup>st</sup> Applicant's premises and Chebarus Centre.
- f) THAT pending the hearing and determination of the Labour Dispute, an injunction be granted restraining the Respondents and all former employees employed by the 1<sup>st</sup> Applicant from engaging or organizing in any conduct, activity or engaging in protest and demonstrations in contemplation of the protest scheduled to take place on 24<sup>th</sup> January 2025 at the Chebarus Centre and the applicants offices
- g) THAT pending the hearing and determination of this suit, the 2<sup>nd</sup> Respondent be restrained by a temporary injunction from publishing and/or circulating unauthorized and/or unfounded information about the 1<sup>st</sup> Applicant on all digital platforms.
- h) THAT the Respondents do bear the costs of this application.

2. The application is instituted by way of an originating summons is expressed to be made under rule 17 of the Employment and Labour Relations Court (Procedure) Rules, Order 40 Rule 1, 2, 3, 4 and 10 of the Civil Procedure Rules, 2010, section 1A, 1B, 3 and 3A of the Civil Procedure Act and all other enabling provisions of the Law.
3. The application is supported by the grounds on the face thereof and the affidavit of IRENE CHEPNG'ENO, the Group HR Manager of the Applicant.
4. In the grounds in support of the application the Applicant states as follows:
  - a) That the applicant is a member of the 1st Interested Party which in turn has a Recognition Agreement with the 2<sup>nd</sup> Interested Party. The two parties have in turn negotiated a CBA which governs all the matters relating to terms and conditions of service and is binding not only on the Applicant but the entire floriculture sector in Kenya.
  - b) That on or about 10<sup>th</sup> January 2025, the Respondents served the Applicant with a Memorandum of

Engagement, raising many untrue and baseless labour related issues concerning the operations of the applicant's company and later on 14/01/2025 served a notice of protest/demonstration to be held on 24/01/2025 upon the Officer Commanding Police Division, Moi's Bridge Division.

c) That the Applicant was contacted and notified of the memorandum and intended demonstration by the Interior Assistant County Commissioner one Madam Eddah

Resiato requesting parties to meet for a conciliatory meeting on 20/01/25 to attempt to conciliate the issues amicably in lieu of the intended demonstrations.

d) The Applicant's responded to the issues raised in the memorandum from the community vide a letter dated 19th January 2025, shading light on the alleged issues raised in the Respondent's Memorandum and making a proposal on the way forward which it believed would be in the interest of all parties.

e) The Applicant's Response was basically explaining to the County Commissioner that the issues raised in the

Respondent's Memorandum, were labour related disputes which would be solved by a Labour Commissioner or a conciliator appointed by the Labour Commissioner with the involvement of the 1st and 2nd Interested Parties and not through protests and demonstrations.

- f) That the parties met at the applicant's Boardroom for a day-long meeting chaired by the Chief, Moi's Bridge Location one John Moseret which despite the many concessions made by the applicant did not resolve the intended demonstration as the respondents insisted that the applicant must dismiss its General Manager, Human Resources Manager and Production Manager based on the unsubstantiated allegations in the memorandum.
- g) THAT given the hard stand by the representatives of the community, the chairman called for an adjournment until 23/01/2025 with recommendations that;
  - i. The parties involve the labour office and the Union on all matters related to employment of labour.

- ii. *That the applicant to consult its board to considers matters of community support as suggested by the representatives of the community.*
  - iii. That any matters of alleged criminal conducts be investigated by the law enforcement officers.
  - iv. That parties explore an amicable settlement short of the intended demonstration.
- h) That the applicant and indeed the Floricultural Sector is highly regulated and audited for compliance to ensure adherence to the terms and conditions, environment, safety and freedom of association which is mandatory for issuance of export license. That there is no possibility that the applicant can be certified for export to the European Union if the allegations as claimed by the respondents are true. Towards this the applicant is certified by;
- a) Kenya Flower Council.
  - b) MPS GAP and GLOBAL GAP
  - c) Fair trade
  - d) NEMA.
  - e) Kenya Bureau of Standards.

- i) The Applicant, after consultations, reached a decision that it could not remove the Farm Manager, the Human Resource Manager and its Production Manager from office without following the due procedure for termination and disciplinary processes provided under the Employment Act 2007. Further the community demand could not be granted without the negative and destabilizing consequence to the applicant during the critical Valentine's Day peak season.
- j) That since the Respondent's memorandum had raised serious issues, the community had a duty to substantiate the same through legal mechanism before the allegations could be used as a basis of a decision as adverse as summarily dismissing the cited employees of the applicant.
- k) That the Interested Party has since written to the Ministry of Labour to urgently appoint a conciliator for a speedy resolution of the dispute and remain optimistic that the same shall receive urgent attention from the Ministry of Labour.

- l) That there is an impending threat of disruption of the Applicant's well established flower business if this Honourable Court does not intervene and restrain the Respondents from demonstrating.
- m) That the Applicant is among the giants of flower and horticultural businesses both regionally and internationally and if the demonstrations take place, its business shall be highly destroyed and disrupted.
- n) That the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have gone to the extent of publishing and circulating the unfounded memorandum on digital spaces through all the social media platforms and even paying bloggers with huge following to publish the same.
- o) That unless the Respondents are restrained from circulating and publishing fabricated allegations about the Applicant, the business image shall be tainted thus losing its business that has taken years to build.
- p) That considering that February is a high peak season in the flower industry, because of the Valentine's Day, the Applicant is apprehensive that unless the Respondents are restrained, this high season shall experience large

business losses due to the Respondents unlawful actions.

- q) That unless the Respondents are restrained, the Applicant stands to suffer irreparable loss and harm.
  - r) That the Applicant will suffer substantial loss and damage if orders sought herein are not granted, that the respondents have not demonstrated means and ability to indemnify the applicant of the losses.
  - s) That the Respondents' impeding actions are against employment and labour practices and the demands to dismiss employees without due process is illegal and cannot be enforced through protests and demonstrations.
  - t) That it is in the interest of justice that this Honourable Court grants the prayers sought herein and allows this application.
5. The averments in the affidavit of Irene Chepng'eno are by and large a rehash of the grounds in support of the application.
6. The application is opposed by the Respondents through the replying affidavit of **PETER KIBET ARAP BIWOTT,**

the 2<sup>nd</sup> Respondent in which he deposes that the management of the Applicant has oppressive tendencies which necessitated the employees and the other members of the neighbouring community to plan the protest against the Applicant as majority of the workforce come from the neighbouring community.

7. He further deposes that under Articles 22(1) and (2), 37 and 41 he has a right to protection against infringement of his rights and fundamental freedoms under the Bill of Rights, the right of assembly, demonstration, picketing and petition and the right to fair labour relations.
8. That he therefore had a right to plan the peaceful demonstration against the Applicant while the employees of the Applicant were also within their right to strike in agitation of their rights as employee of the applicant.
9. That Section 9 of the Environmental Management and Co-ordination Act CAP 387 Laws of Kenya provides that the object and purpose for which the National Environment Management Authority is established is to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal

instrument of Government in the implementation of all policies relating to the environment.

10. That the National Environment Management Authority is the body authorized to determine whether or not the Applicant has met the environment standards set by the law.
11. THAT we shall be highly prejudiced if the Respondents are prevented from engaging in the strike as the same is their constitutional right and the same is set to be peacefully carried out.
12. THAT the Applicant is flexing its financial muscle and influence in a bid to prevent the Respondents from exercising their constitutional rights.
13. THAT there have been various complaints filed against the Applicant by its employees.
14. He deposes that the Applicant should be ordered to produce the following documents which are relevant and instrumental in this case and which are within their custody:
  - i. Copy of the Collective Bargaining Agreement
  - ii. Memorandum of engagement

- iii. Notice of protest
  - iv. Response and attendance sheet
  - v. Letter from chief
  - vi. Copy of letter to Commissioner of Labour by AEC
  - vii. Correspondence between labour and interested party
  - viii. Print extract from online publication.
15. He deposes further that the Applicant has approached the court with unclean hands, that the orders sought will be prejudicial to him if granted, that the application is intended to frustrate him and employees of the Applicant and that the application does not meet the threshold for grant of an injunction.
16. The 1<sup>st</sup> Interested Party, the Agricultural Employers Association, also filed a replying affidavit of its Chief Executive Officer Mr. Wesley Siele sworn on 2<sup>nd</sup> April, 2025.
17. Mr. Siele deposes that the Applicant is a member of the Agricultural Employers Association and the Association is aware that the Respondents have raised complaints against the Applicant through a community memo.

18. He deposes that a meeting was called by the Area Chief on 20<sup>th</sup> January, 2025 where the Applicant, the Respondents and the 1<sup>st</sup> Interested Party were represented. That at the meeting it was established that the Respondents were raising community issues and labour issues as well as land and environmental issues.

19. The Respondents demanded:

- a) Removal of Mr. Juma who is the Farm Manager of the Applicant which who cannot be removed from employment at the whim of the Respondents as this would create a bad precedent as the demand was pegged on the fact that Mr. Juma is not from the same ethnicity as the Respondents, being Nandi.
- b) Lack of CSR and Community Access: The community pointed out the absence of Corporate Social Responsibility (CSR) since the death of the former director, restrictions on access for Christmas parties, and denial of access for firewood and grass collection.

- c) Labour Infringements: The community raised concerns regarding labour violations, including unfair treatment and long working hours. This is an issue that had not been raised by the Union or the employees at any time.
  - d) Land and Environment Issues: The community raised concerns over infringement of the Nandi cultural rights due to denial of access to the forest to conduct the cultural rights.
20. That at the meeting the 1<sup>st</sup> Interested Party pointed out to the Area Chief that the right forum for the employment disputes was the Labour Officer with attendance of the Interested Parties.
21. He further deposes that at the meeting it was recognized that the Respondents did not have the capacity to represent the employees of the Applicant in disputes under the Labour Relations Act.
22. That pursuant to the meeting the 1<sup>st</sup> Interested Party engaged the Ministry of Labour and a conciliator was appointed. That the court also referred the matter for conciliation by the Labour Officer, Uasin Gishu County. The

parties agreed to hold the meeting before the County Labour Officer, Nakuru. The Conciliator after meeting with the parties prepared a report which was filed in court.

23. The 1<sup>st</sup> Interested Party opines that the Respondent is interfering with the operations of a private organization and should be restrained to allow the internal existing mechanisms to operate without hindrance. That should this not be done there shall be erosion of industrial relations process and dispute resolution mechanism that have been entrenched in law, thus disturbing industrial peace.
24. The 2<sup>nd</sup> Interested Party did not file any response to the application.
25. The Application was disposed of by way of written submissions. Submissions were filed by the Applicant and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents only.

### ***Analysis and Determination***

26. I have considered the submissions of the parties which instead of addressing the substantive issues in the Originating Summons, only addressed the issue of interim

injunctions, yet directions were issued on 7<sup>th</sup> May, 2025 that parties address the substantive issues raised in both the suit and the conciliator's report. The submissions are thus not helpful to the court.

27. The issues for determination in the Originating Motion are in the court's considered view, whether the actions of the Respondents are legitimate and whether the Applicant is entitled to the orders sought.
28. The concern of the Applicant at the time of approaching the court was the notice served upon it by the Respondents through the Community Engagement Memorandum addressed to the Applicant in which the Respondents raised several issues, and a letter dated 13<sup>th</sup> January, 2025 addressed to the Officer Commanding Moi's Bridge Police Station requesting for protection by the Police during a planned protest match and/or demonstration against the Applicant from Chebarus Centre to Maji Mazuri Flowers, the Applicant's Office, on 24<sup>th</sup> January, 2025.
29. The letter which states the reasons for the Respondent's intended action is reproduced below:

*Bunge La Wenyenchi Forum since 2015*

*P.O Box 7896, 30100*

*Eldoret City, Kenya.*

*13<sup>th</sup> January, 2025*

*The Officer Commanding Police Division (OCBD)*

*Moi's Bridge Police Station*

*Moi's Bridge, Kenya*

**Subject: Request for Police Protection during peaceful Match and/or demonstration 24<sup>th</sup> January, 2024, Chebarus Center to Maji Mazuri Flowers Office**

*We acknowledge your work and service to the Nation as the Kenya Police service watumishi kwa wote disciplined team.*

*We the community around Maji Mazuri Flowers humbly requests your esteemed office to offer us police protection during our planned match and/or demonstration from Chebarus Center to Maji Mazuri flowers gate to deliver our memorandum and back to*

*Chebarus center from 10.00 a.m.to 2 p.m. on 24<sup>th</sup> January, 2024.As concerned community members about the inhuman treatment and sacking of our local people from working with Maji Mazuri Flowers, mistreatment of our sons and daughters through discrimination, alleged forced labour and slavery, victimization of locals, discrimination from employment opportunities, junior to senior vacancies, pollution of our water sources exposing-downstream residents to ill health and loss of their livelihoods, lack of corporate social responsibility, transfer and neglect of Maji Mazuri Primary belonging to community, infringement of indigenous culture rite of passage of our boys by restrictions to enter the indigenous bushes that the community accesses since time immemorial, inhuman treatment of neighbours through arrests for fetching firewood, grass and a case of locking in a toilet a boy who was hunting birds, poor remuneration, lack of job security, intimidation, and sacking of union officials in violation of article 41 of the Constitution of Kenya on*

*fair labour practices, and poor community engagement that threatens our social and economic existence. There is also violation of human rights and the right to life due to forcing of sick workers after medication despite sick offs (denial or reduction of sick offs) as reported by the victims. In recent times, 120 workers from the community have been sacked and 9 have lost their lives (we have a list of the same as evidence). In our view, after interrogating the victims, there is total disregard of Article 47 of the Constitution on fair administrative justice and also the Kenya employment law and related statutes.*

*We have invited all affected residents of Soy Sub County, and Uasin Gishu County at Large to proceed on a peaceful march and/or demonstration as provided for under Article 37 of the constitution of Kenya. Article 37 of the Constitution of Kenya protects the right of citizens to peacefully, and unarmed assemble, demonstrate, picket, and submit petition to either public or private established in Kenya.*

*I will be acting as the match and/or demonstration supervisor.*

*Name: Peter Kibet arap Biwott, 0719536940.*

*I will be assisted by,*

*Isaac Kipkorir 0728493220.*

*We expect at least 100 participants during the peaceful match and/or demonstration*

*We are committed to conducting the peaceful match in accordance with all applicable laws and regulations, and we respect the rights of all individuals involved. Our intention is to ensure that the demonstration remains peaceful, non-violent, and respectful to the community. In light of this, we kindly request your cooperation and assistance to ensure the safety and smooth functioning of the peaceful match. We would greatly appreciate it if you could provide any specific guidelines or regulations that we need to follow during the picketing event, please let us know in advance. We would appreciate any information or advice that can help us ensure a*

*peaceful gathering. It would be helpful if we could establish a designated point of contact within the Police Service to facilitate open communication before, during, and after the event. This will enable us to address any concerns promptly and ensure a coordinated approach to managing the peaceful match and/or demonstration.*

*We are fully committed to cooperating with the Police and all relevant authorities to ensure a safe and successful event.*

*Thank you for your attention to this matter. We look forward to your positive response and cooperation. Should you require any further information or have any specific requests, please do not hesitate to contact me at 0719536940.*

*Please accept the assurance of our highest consideration.*

*Yours sincerely,*

*Signed*

*Peter Kibet ARAP Biwott*

*Community Team Lead*

30. Upon filing of the Application the court granted orders restraining the Respondents from taking any industrial action including protests and demonstrations within the premises of the Applicant and fixed the application for inter partes hearing on 27<sup>th</sup> January, 2025.
31. On 27<sup>th</sup> January, 2025 the court was informed that parties were in discussions. The court nevertheless referred the parties for conciliation by the Labour Office. The matter was thereafter mentioned on 19<sup>th</sup> March and 7<sup>th</sup> May, 2025 to confirm filing of conciliator's report. The Labour Officer's Report filed in court is dated 25<sup>th</sup> April, 2025.
32. The parties held several meetings under the Conciliators guidance and the issues identified in the Conciliator's Report with the remarks/way forward are as set out below:

NO	GRIEVANCE	REMARKS/WAYFORWARD
1.	Arbitrary dismissal of 122 employees	If the aggrieved employees feel justice has not been served they are asked to follow the dispute reporting

		procedures through the union.
2.	Discrimination based on gender during recruitment - 1/3 rule missing	The management to balance gender when recruiting employees.
3.	Workers work beyond eight hours without compensation (12 to 18 hours)	Anytime worked is compensated this allegation is therefore not true
4.	Unrealistic targets causing fatigue	Targets to be set by the management in liaison with works representatives.
5.	Unfair treatment of workers due to biological presence of caterpillar insects	The employer to sit with the union to find way forward on how to deal with caterpillar without risking the employment of workers and market for the flowers and come up with a lasting

		<p>solutions.</p> <p>-There is SOP in place it should be reviewed with the involvement with the union.</p> <p>-The four employees who were terminated due to caterpillar issue to be re-engaged.</p>
6.	<p>Poor remuneration</p> <p>Lack of job security</p> <p>Intermediation and sacking of local staff and local union officials</p>	<p>The CBA is complied with.</p>
7.	<p>Forcing employees who are sick to work despite of having granted sick offs which led to death of nine</p>	<p>Sick off is treated as defiend in the CBA</p>

	employees.	
8.	Poor community engagement that threatens social and economic existence	The issue to be handled by local Administration
9.	Pollution of water sources exposing downstream residents to ill health and loss of their livelihoods	To be handled by National Environment Management Authority (NEMA)
10.	Lack of corporate social responsibility to foster community development and sustainable SMART partnership with the community	The issue to be handled by local Administration

11.	Transfer and neglect of Maji Mazuri Primary school belonging to community	The issue to be handled by local Administration.
12.	Infringement of indigenous culture rite of passage of restrictions to enter the bushes that the community accessed since time immemorial	The issue to be handled by local Administration.
13.	Inhuman treatment of neighbours through arrest for fetching firwood and grass and a case of locking a	The management is urged to put proper systems in place to curb such occurrences

	boy in the toilet	
14.	Obstruction from using the public road through Maji Mazuri Flowers by the community	Ministry of Lands and Physical Planning are the ones to handle the issue of public roads
15.	Violation of fair trade certification by Maji Mazuri Flowers	It is only Fair Trade agent who can stablish the allegation raised
16.	Sexual harassment of poor women and girls	No names of victims provided for action against alleged perpetrators
17.	Weapon assault (knife) by the farm manager on the staff where the group HR Protected the farm	The matter was reported to the police for investigation and action

	manager	
18.	Farm Manager arrest of neighbors animals, boys, girls and women who trespass	The community and the company to continue to dialogue on how to coexist under the leadership of local administration.
19.	Claims of torture of staff by security who was found with a piece of firwood	Assaults to be reported to police
20.	Theft of company properties by the security who are protected by the farm manager	The matter to be reported to the relevant authorities.
21.	Claims of determinant of women in the cold rooms and lack of	No women working in cold rooms. The detention issue is a false

	protective wear (PPES) which exposes the staff to ill health	allegation. This allegation is withdrawn by Isaac.
--	---	--

33. In his replying affidavit the 2<sup>nd</sup> Respondent insisted that he had a right to hold peaceful demonstrations against the Applicant and that the employees of the Applicant had a right to strike in agitation for their rights.
34. The employees of the Applicant are represented by a trade union and only the trade union can agitate for their rights. The trade union has a Recognition Agreement and a Collective Bargaining Agreement which has been revised severally, that defines the relationship and manner of engagement between the union and the applicant. The Respondents therefore have no locus standi to engage the Respondent directly on behalf of its employees on labour matters that are within the purview of the union engagements with the Applicant.
35. Further, the Labour Relations Act sets out the procedure to be taken before employees can engage in a strike. In

this case that procedure was not complied with and any resultant strike would therefore be unprotected. If the strike is called by the Respondents it would be an illegal strike and they would be subject to criminal sanctions for instigating the same.

36. For the issues that are not labour related, the Respondents ought to report to the relevant authorities for investigations and action. Any attempt to execute action by the Respondents would amount to lawlessness and would therefore be punishable as a criminal offence.

37. The right to assembly, demonstration, picketing and petition is provided for in Article 37 of the Constitution of Kenya, 2010 as follows:

***37. Assembly, demonstration, picketing and petition***

***Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.***

38. As is clearly provided, the right is to be exercised against public authorities, not private entities as the Applicant

herein. What the Respondents should do is report to the relevant authorities as identified in the report of the Conciliator. Should action not be taken by those relevant public authorities, the right to assembly, demonstration, picketing and petition would be directed against those public authorities and not against the Applicant.

39. For these reasons I find merit in the application and make the following orders:

a) A permanent injunction be and is hereby issued restraining the 2<sup>nd</sup> Respondent by himself, his servants and/or agents from engaging, mobilizing or taking part in any conduct, activity or meetings in contemplation of or towards preparation for a protest in Chebarus Centre and the applicants offices.

b) A permanent injunction be and is hereby issued restraining all community members of the 1<sup>st</sup> Respondent from engaging or taking part in any conduct, activity, protest and/or demonstrations in contemplation of the protest against the Applicant or its properties or premises.

c) A permanent injunction be and is hereby granted restraining the Respondents and all former employees of the Applicant from engaging or organizing or engaging in any conduct, activity or protest and demonstrations in contemplation of the protest scheduled to take place on 24<sup>th</sup> January 2025 or any other date at the Chebarus Centre and the applicants offices

d) The 2<sup>nd</sup> Respondent be and is hereby restrained by a permanent injunction from publishing and/or circulating unauthorized and/or unfounded information about the Applicant on all digital platforms.

40. Each party shall bear its costs.

41. Orders accordingly.

**DATED, DELIVERED AND SIGNED  
THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**M. ONYANGO  
JUDGE**