



REPUBLIC OF KENYA



KENYA LAW

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**Orangi & 21 others v Philips East Africa Limited (Cause E262 of 2025)
[2025] KEELRC 3392 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3392 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E262 OF 2025
BOM MANANI, J
NOVEMBER 28, 2025**

BETWEEN

BONFACE ORANGI 1ST CLAIMANT
RUTH OTIENO 2ND CLAIMANT
STEPHEN M MUSYOKA 3RD CLAIMANT
KENNEDY NJOGU 4TH CLAIMANT
IAN GITHAIGA 5TH CLAIMANT
CORNELLA OUMA 6TH CLAIMANT
MARY GATHU 7TH CLAIMANT
STEPHEN VALA 8TH CLAIMANT
MICHAEL ABANG 9TH CLAIMANT
GILBERT BALINDA 10TH CLAIMANT
MICHAEL MUREITHI 11TH CLAIMANT
BENTER OKENDO 12TH CLAIMANT
MOSES KIMARU 13TH CLAIMANT
PETER NG'ETICH 14TH CLAIMANT
SYLVIA NYASETIA 15TH CLAIMANT
BONFACE MUMO 16TH CLAIMANT
ANDREW KARANJA 17TH CLAIMANT
JANE GACHIRI 18TH CLAIMANT
MOSES MULI 19TH CLAIMANT



MICHAEL ODARI 20TH CLAIMANT
VIRGINIA KIIRU 21ST CLAIMANT
FRANCIS MUSYOKA 22ND CLAIMANT

AND

PHILIPS EAST AFRICA LIMITED RESPONDENT

RULING

Introduction

1. The Claimants are employees of the Respondent. They have instituted these proceedings to challenge the Respondent's decision to sell its shares to a potential investor on the ground that the process is likely to result in their positions being rendered redundant. They assert that the Respondent has not involved them in the process.
2. The Claimants contend that they run the risk of losing the benefits they have accumulated for the years they have worked for the Respondent if the process is allowed to go on. They further contend that the Respondent's action, which they describe as discriminatory and malicious, is likely to infringe on their right to fair labour practices. As such, they seek for the various reliefs which are set out in the Statement of Claim.
3. Accompanying the Statement of Claim is a Notice of Motion application dated 1st April 2025 in which the Claimants seek the following orders:-
 - a. Spent.
 - b. Spent.
 - c. That the court grants them (the Claimants) a temporary order of injunction to restrain the Respondent from implementing the transfer of its shares to a new investor pending the hearing and determination of the suit as the process is likely to lead to the unlawful redundancy of their positions.
 - d. That the court gives directions on the costs of the application.
4. The application is based on the grounds appearing on the face thereof. It is also supported by the affidavit of Boniface Orangi, one of the Claimants.
5. The Claimants contend that they are permanent and pensionable employees of the Respondent. They further contend that they are faced with an imminent threat of loss of their positions because of the Respondent's decision to offload its shares to a third party.
6. It is the Claimants' case that the Respondent has commenced this exercise without consulting them. As such, they contend that the Respondent has failed to place their welfare at the centre of the impugned process.
7. The Respondent is opposed to the application. Whilst it admits that it is scouting for a potential investor to buy shares from it, it denies that the process will result in the loss of the Claimants' employment. It maintains that the Claimants' contracts of service will not be impacted and that their contention that they face imminent redundancy is misplaced.



8. The Respondent avers that it has not issued any redundancy notices to the Claimants to trigger the suit. As such, it avers that the suit is premature and speculative as it is premised on nonexistent redundancies.
9. The Respondent maintains that it enjoys the prerogative to steer the direction of its business by, inter alia, bringing on board a new investor. It avers that the process of sale and transfer of shares to a third party is not synonymous with a redundancy which requires consultations with employees.
10. The Respondent avers that the Claimants occupy the position of employees and not co-owners of its business. As such, it contends that they are not entitled to be consulted on the business decision it makes with respect to its investment.
11. Consequently, the Respondent contends that the suit and application are without basis. As such, it prays that the motion be dismissed with costs.

Analysis

12. It is evident from the preliminary materials that have been placed before the court that the dispute between the parties was triggered by the Respondent's decision to source for and transfer shares to a potential investor. Whilst the Claimants contend that the decision may result in their positions being declared redundant, the Respondent denies this assertion. For the Respondent, the process is purely strategic to enable it grow its business without the possibility of rendering the Claimants redundant.
13. Transfer of shares or undertaking is not an unusual occurrence in the realm of business. It is an accepted and entrenched business practice the world over.
14. Although sale of shares or transfer of undertaking by an enterprise is a business decision which is meant to steer the trajectory of the enterprise, the process has the potential of impacting on individual contracts of service of employees. It may lead to: job losses through redundancies; transfer of employees from one employer to another; and alteration of the terms and conditions of service for the affected employees, sometimes to the employees' detriment.
15. Because of the potential effect that the aforesaid process may have on individual contracts of employment, it is usually advisable that the employer navigates this space carefully to avoid the process negatively impacting the employees. As such, it is desirable for the employer to consult and keep the employees informed about the process.
16. A share transfer is distinct from transfer of undertaking. In the former, the corporation only transfers a portion of its shares to a new investor. In the latter, the corporation may divest entirely by transferring the business to a new investor.
17. Because of the difference in the two processes, their impact on individual contracts of service is inevitably different. In a share transfer, the employees' contracts of service may not be affected since the initial investor remains on board. On the other hand, in a transfer of undertaking, the employees run the risk of losing their jobs since the investor has no obligation to inherit them alongside the enterprise.
18. Because of the risk to job security that arises from a transfer of undertaking, it is upon the divesting employer to ensure that the interests of the employees in the enterprise are protected. As such, it (the employer) has to either negotiate with the new investor to take over the employees on the same or similar terms as the ones they were serving under together with their accrued benefits or pay the employees their accrued benefits and redundancy dues as they exit employment.
19. Whilst share sales and transfer of undertakings are accepted business practices in Kenya, the country is yet to enact legislation to protect employee rights during such process. The only law that indirectly



speaks to the matter is article 41 of *the Constitution* which obligates the employer to ensure that the right of an employee to fair labour practice, including during a share or business undertaking transfer, is upheld.

20. As a result of this constitutional edict, an employer who seeks to undertake a share transfer or a transfer of undertaking is duty bound to ensure that the transaction does not disadvantage the employees. He must ensure that the employees' accrued benefits are protected and their terms and conditions of engagement are not adversely affected by negotiating a smooth transition with the incoming investor. These negotiations should ideally involve the affected employees but only to the extent of their accrued employment rights and not the general business direction that the enterprise proposes to take.
21. If the transaction involves a transfer of undertaking, the employees have the liberty to accept to be taken over by the new investor or exit employment through a redundancy process. It is in this context that it becomes necessary that their (the employees') voices be heard in the process.
22. Speaking to this reality, George Ogembo in his publication titled "Employment Law Guide for Employers" 2nd Edition Chapter thirteen states as follows:-

"Transfer of undertakings is the process of transfer of business or part of an undertaking or business and the employees to another employer because of a legal transfer or merger. The Employment and Labour Relations Court safeguards as far as possible, the rights of employees in the event of a change of employer. Business transfer per se is not a ground for dismissal unless it incorporates redundancy actions. Hence there must be safeguards to allow the employees to remain in employment on the same conditions as those agreed with the transferor.

The law against unfair labour practices, transparency and accountability forbids employers' act of converging to defeat the ends of justice based on agreements as between themselves to the exclusion of the affected employees. This is true especially where the agreements have the effect of stripping employees of benefits that they would have otherwise continued to enjoy had the employer not interfered or interrupted the existing employment relationships.....

....Once a determination is made that there exists a transfer of undertaking or business as a going concern, the outgoing employer should take steps aimed at protecting the rights of employees. The incoming and outgoing employers need to understand and appreciate employee interests in the whole transaction. This helps to ease the tension that develops as a result of the varying interests between the parties.....

...If the employee learns that his place of work or company is transferring or under new management and that he is invited to continue working under the new owner, he may not be interested in the minute details of the transaction. The transfer is a boardroom matter that largely happens without the employee's involvement. It is no wonder, therefore, that he may have scanty or no information about the deal. His major concerns are security of his accrued benefits and assurance that the terms and conditions of employment are either unaffected or not materially altered to his disadvantage.....

....By their very nature as commercial contracts, the employment courts are slow in compelling the incoming employer to engage the existing employees as doing so amounts to undue interference in what appears to be purely civil and commercial contracts between parties. The onus is on the outgoing employer to ensure the entire exercise does not result in unfair labour practices or breach of employees' accrued statutory and contractual rights."



23. From the foregoing, it is apparent that whilst an employer has no obligation to consult employees over the commercial aspects of a decision to transfer either shares or the undertaking, he nevertheless has a duty to consult and keep them informed on any aspects of the transaction that may impact on their job security. It is only when this is done that the employees will, for instance, be able to make an informed election whether to be transferred to the new investor or exit employment. Further, it is only during such consultations that the employees will get to know the terms and conditions of service under which they are to transit to the new employer, if at all.
24. At paragraphs 8 and 9 of the Respondent's replying affidavit, the affiant avers as follows:-
- “ I am aware that as part of a group-wide shift, the Respondent is considering options that would best serve the region for further growth and scale. In that context, the Respondent is also considering a potential strategic transaction that could involve a sale of its shares to build a more sustainable, efficient and profitable business....
- ...To this end, the Respondent is currently in the process of engaging with third parties positioned for growth in the region that could take over the entire current employee population of the Respondent as part of a proposed transaction with the aim of pursuing growth and scale and retaining long term, sustainable opportunities for the Respondent's employees in the region..”
25. These paragraphs affirm the fact that the Respondent is exploring the possibility of bringing a new investor on board. The paragraphs further affirm that the Respondent's intention is to have the new investor take over its (the Respondent's) entire employee population.
26. Clearly, what the Respondent is engaged in has the potential of impacting its current employee population. As such, the employees have the right to be involved in the process in order to determine whether to buy into it or opt out.
27. Whilst it is the Respondent's sole prerogative to chart the path that its business should take, its employees are entitled to know and comment on aspects of the process which will impact on their employment. It is in this context that the process should be conceptualized.
28. In various parts of the Respondent's replying affidavit, it asserts that the impugned process is not going to impact on the Claimant's contracts. It contends that the Claimants are not going to be declared redundant as a result.
29. The position expressed by the Respondent may be correct. That notwithstanding, the employees are still entitled to be consulted on the matter.
30. It is not only in instances of potential redundancy that the affected employees are entitled to be consulted. They are also entitled to decide whether to be taken over by the new potential employer through the device of outsourcing or transfer of human resource as a means of obviating a potential redundancy (*Elizabeth Washeke and 62 others v Airtel Networks (K) Ltd & another* [2013] KEELRC 572 (KLR)). In this context therefore, the Respondent is not entitled to avoid consultations with the Claimants on the process under the guise that it (the process) is unlikely to result in redundancies.

Determination

31. In the instant case, the court appreciates that the Respondent is entitled to make business decisions which will determine the trajectory that the enterprise will take. To this extend, the court is disinclined to interfere in the process by issuing injunctive orders that will hamper it (the process).



32. However, the court is alive to the fact that the Respondent has an obligation to consult its employees, including the Claimants, on aspects of its decision that are likely to impact on their employment. To this extend, the court is inclined to intervene in the process in order to require the Respondent to consult with the Claimants on aspects of the business transfer that will impact on their job security and accrued employment benefits.
33. The court takes the above view in recognition of the fact that a court of law is usually slow to interfere with the employer's exercise of managerial prerogative at the workplace. It (the court) will only interfere in the process when it is apparent that it is being undertaken in violation of the law, internal rules, the contract between the parties or in a manner that is prejudicial to the rights of the affected employee(s) (see *Geoffrey Mworira v Water Resources Management Authority & 2 others* [2015] KEELRC 1124 (KLR)).
34. Even then, the court will not intervene in the process with the intention of stopping it all together. Rather, it will do so with the intention of ensuring that the employer addresses the defects in the process to enable it (the process) to proceed in accordance with the law.
35. Speaking to this fact, the court in the case of *Ali v National Health Insurance Fund & 2 others; Transparency International & 2 others (Interested Parties)* [2022] KEELRC 13443 (KLR) quoted with approval the decision in the case of *Thomson Kerongo & 2 others v James Omariba Nyaoga & 3 others* [2017] KEELRC 262 (KLR) where the learned Judge observed on the subject as follows:-
- “The court will only interfere where there is breach of the process and even so, only with a view to setting the process right.”
36. As such, whilst not issuing an order of injunction to bar the Respondent from carrying out the impugned transfer of shares and or undertaking, the court directs the Respondent to devise an objective and verifiable mechanism through which it will actively and meaningfully consult the Claimants on aspects of the process which will impact their job security prior to taking any firm decision on the matter. The mechanism so devised should provide for methodologies for:-
- a. Seeking the Claimants' views on whether they are keen to be transferred to the new investor, if at all.
 - b. Seeking the concurrence of the Claimants who wish to be transferred to the new investor on the terms and conditions of such transfer, if at all.
 - c. Negotiating and agreeing with the Claimants who do not wish to be transferred to the new investor on their exit benefits in accordance with the applicable law.
 - d. Consulting and agreeing with the Claimants on the quantum and management of their accrued benefits during the transition process, if at all.
37. Either party has the liberty to apply.
38. There is no order as to costs of the application.

DATED, SIGNED AND DELIVERED ON THE 28TH DAY OF NOVEMBER, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimants



.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

