



Kenya Union of Commercial Food and Allied Workers v Kabianga Dairy Limited & another (Cause E017 of 2025) [2025] KEELRC 3521 (KLR) (9 December 2025) (Ruling)

Neutral citation: [2025] KEELRC 3521 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE E017 OF 2025
AN MWAURE, J
DECEMBER 9, 2025**

BETWEEN

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS CLAIMANT**

AND

**KABIANGA DAIRY LIMITED 1ST RESPONDENT
AMEE HOLDINGS LIMITED 2ND RESPONDENT**

RULING

Introduction

1. The Claimant/Applicant filed a Notice of Motion dated 16th May 2025 under certificate of urgency seeking the following orders that:
 1. Spent
 2. Pending hearing and determination of this Application, an Order be and is hereby issued restraining the 1st Respondent from effecting the intended unlawful and unprocedural redundancies.
 3. Pending hearing and determination of this Application, an order be and is hereby issued directing the 1st Respondent to tender wages as it falls under the law
 4. Pending hearing and determination of this Application, an order be and is hereby issued directing the 1st Respondent to disclose the names of the employees targeted for redundancy.
 5. Pending hearing and determination of this Application, an order be and is hereby issued directing the 1st Respondent to disclose redundancy benefits.



6. Pending hearing and determination of this Application, an order be and is hereby issued restraining the 2nd Respondent from effecting any further redundancies.
 7. Pending hearing and determination of this Application, an order be and is hereby issued directing the 2nd Respondent to disclose the benefits paid to the four employees already unlawfully declared redundant.
 8. Pending hearing and determination of this Application, an order be and is hereby issued directing the Respondents to observe the applicable general Wages Orders when paying wages.
 9. Pending hearing and determination of this Application, an order be and is hereby issued directing the Respondents to remit statutory and authorized deductions to recipient bodies.
 10. The Honourable Court be pleased to issue any other order deemed just and fit to meet the ends of justice.
 11. Costs of this Application be in the court.
2. The application is brought under section 12 of the ELRC Act, section 40 of the [Employment Act](#), section 74 of the [Labour Relations Act](#), the ELRC(Procedure) Rules, and any other enabling provisions of the law.

Claimant/Applicant's supporting affidavit

3. The application is supported by the affidavit of Benjamin Tangara, the Claimant/Applicant's Branch Secretary at Kisumu.
4. The Claimant/Applicant avers that although a valid recognition and negotiation agreement with the 1st Respondent took effect on 5th November 2014, the parties did not conclude a collective bargaining agreement, which remains under consideration in a trade dispute.
5. Further, the Claimant/Applicant avers that by a letter dated 10th December 2014, the 1st Respondent notified the County Labour Officer at Kericho of an intended redundancy affecting an unspecified number of employees, yet no such notice was issued to the employees themselves.
6. The Claimant/Applicant avers that the Respondents have also failed to disclose the criteria for selecting affected workers, the payment arrangements, or the date of the intended layoffs, rendering the process unclear and procedurally deficient.
7. The Claimant/Applicant avers that the 1st Respondent has unlawfully delayed payment of wages, leaving employees without salaries for up to two months, and together with the 2nd Respondent, has declared six employees at the Kisumu Depot redundant without following the legal requirements under section 40 of the [Employment Act](#), 2007.
8. The Claimant/Applicant avers that no redundancy notices were issued to the County Labour Officer or the affected employees, and both Respondents have underpaid workers contrary to the General Wages Orders while failing to remit statutory deductions.
9. Since the initial notice of redundancy in December 2024, the Claimant/Applicant avers that no lawful action has been taken, rendering the Respondents' conduct unlawful, unprocedural, and detrimental to employees' rights, thus necessitating the granting of the orders sought in the Notice of Motion.



2nd Respondent's Replying affidavit

10. The 2nd Respondent opposed the application vide a replying affidavit sworn by Ridhwan Nabil, the 2nd Respondent's assistant branch, Kisumu, dated 9th July 2025.
11. The 2nd Respondent contends that the Claimant/Applicant's application is defective, misconceived, and an abuse of the court process.
12. The 2nd Respondent avers that restraining it from implementing redundancies would unlawfully infringe on an employer's rights under the law.
13. The 2nd Respondent further avers that the Claimant/Applicant has not clarified whether the affected individuals are its employees or members, given that no recognition or negotiation agreement exists between them.
14. The 2nd Respondent maintains that wages have been paid in line with the General Wages Orders and that the redundancies were lawfully initiated through a notice to the Kisumu County Labour Office dated 1st November 2024, not as alleged in connection with the 1st Respondent's letter of 10th December 2024.
15. Additionally, the 2nd Respondent avers that it disputes the inclusion of Mr. Ramadhan Ochieng Abok as one of its employees.
16. The 2nd Respondent avers that granting the orders sought would prejudice its constitutional and statutory rights and therefore urges the court to dismiss the application dated 16th May 2025 with costs.
17. Parties canvassed the application by way of written submissions.

Claimant/Applicant's submissions

18. The Claimant/Applicant relied on section 40 of the [Employment Act](#), which provides the conditions under which an employer may terminate a contract due to redundancy. Employers must notify either the trade union and labour officer (if the employee is unionized) or the employee personally and the labour officer (if not unionized) at least one month in advance. In selecting employees for redundancy, employers must consider seniority, skill, ability, and reliability, and ensure no disadvantage arises from union membership. They must pay any accrued leave in cash, provide at least one month's notice or wages in lieu, and grant severance pay of no less than fifteen days' wages per completed year of service. These rules do not apply in cases of insolvency, and the Cabinet Secretary may require certain employers to insure workers against redundancy through approved unemployment insurance schemes.
19. The Claimant/Applicant submitted that the Respondents are accused of unlawfully declaring redundancies without complying with section 40 of the [Employment Act](#), 2007. Although the Respondents claim to have notified the Kisumu County Labour Office, the Claimant/Applicant submitted that they failed to issue proper one-month written notices to it and individual employees, despite being aware of the workers' trade union membership and an existing Recognition Agreement.
20. The Claimant/Applicant submitted that the employees, who operated as the 1st Respondent's sales and marketing depot in Kisumu, targeted employees engaged in selling milk products but did not deny their direct relationship with the 1st Respondent or the issuance of redundancy letters. Payment of one month's salary cannot substitute the statutory requirement of prior notice, and the redundancy process must also adhere to lawful selection criteria and entitlements such as accrued leave, notice pay, and severance benefits. Consequently, any further redundancies without compliance should be halted until all legal procedures are properly observed.



21. The Claimant/Applicant argues that employers are legally bound to comply with statutory minimum wage orders and remit all authorized deductions, such as NSSF, NHIF, PAYE, loans, and taxes, with proof of compliance required. The Respondents, however, failed to issue proper redundancy notices under section 40 of the *Employment Act*, 2007, despite a Recognition Agreement with the Claimant, and wrongly assumed that notifying county labour offices sufficed. Their opposition is unclear, as they only dispute one employee's status and union membership, matters that require evidence at trial. The Claimant/Applicant submitted that no law bars the union from representing the affected employees, and the Respondents' actions in ignoring statutory redundancy procedures are unlawful.
22. The Claimant/Applicant therefore seeks that all orders in the Notice of Motion be granted, noting that a prima facie case has been established, the balance of convenience favours the employees, and further unlawful redundancies would cause irreparable harm. Costs of the application are also sought under Rule 70(4) of the ELRC Procedure Rules, 2024.

2nd Respondent's submissions

23. The 2nd Respondent submitted that the application dated 16th May 2025 is incompetent, defective, and should be dismissed since it only seeks interim orders pending determination and not substantive relief. The 2nd Respondent argued that courts can only grant orders specifically prayed for, citing the case of Atlas Copco Customer Finance Ltd V Polarize Enterprises Limited [2014] KEHC 8667 (KLR) in support of that proposition. While the application seeks to restrain further redundancies and compel disclosure of benefits, the 2nd Respondent maintain that the Applicant has failed to meet the threshold for an injunction as set out in *Giella V Cassman Brown & Company Limited* [1973] EA 358, which requires proof of a prima facie case, irreparable harm, and balance of convenience. The 2nd Respondent further submitted that the Applicant has not demonstrated any recognition or negotiation agreement with it, nor provided evidence that the affected employees are union members. The mere fact that the 2nd Respondent operated as the 1st Respondent's sales depot in Kisumu does not, in their view, establish a direct legal relationship with the Claimant/Applicant sufficient to sustain the application.
24. The 2nd Respondent submitted that the Claimant/Applicant lacks locus standi against it and has failed to establish a prima facie case. In *Nguruman Limited v Jane Bonde Nielsen & 2 others* [2014] KECA 606 (KLR), the Court of Appeal reiterated the above principles by giving the following guidelines:

“These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially. (See *Kenya Commercial Finance Co. Ltd V Afraha Education Society* [2001] Vol. 1 EA 86). If the applicant establishes a prima facie case that alone is not a sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted, it will be irreparable. In other words, if damages recoverable in law in an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant's claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration. The existence of a prima facie case does not permit “leap-frogging” by the applicant to injunction directly without crossing the other hurdles in between.”
25. The 2nd Respondent argued that the Claimant/Applicant has not demonstrated irreparable injury beyond what can be compensated by damages, while it would suffer greater harm if restrained from exercising its lawful right to redundancy under Article 41 of the *Constitution* and the *Employment Act*,



2007. The 2nd Respondent relied on *Abere V Mini Bakeries (Nairobi) Ltd* [2024] KEELRC 2207, which affirmed redundancy as a fair ground for dismissal when properly justified.
26. On balance of convenience, the 2nd Respondent relied on the cases of *Pius Kipchirchir Kogo V Frank Kimeli Tenai* [2018] KEELC 2424 (KLR) and *Paul Gitonga Wanjau V Gathuthi Tea Factory Company Ltd & 2 others* [2016] KEHC 7263 (KLR), stressing that the Claimant/Applicant has no recognition agreement with the 2nd Respondent and stands to suffer no prejudice, whereas the 2nd Respondent risks greater harm if the injunction is granted.
27. Finally, the 2nd Respondent invoked the principle that costs follow the event as articulated in *Reid, Hewitt & O.V Oseph Air 1918 CAL 717* and *Myres V Defries (1880) 5 EX D 180*, urged the Court to dismiss the application dated 16th May 2025 with costs.
28. At the time of writing this ruling, the 1st Respondent did not file any replying affidavit or submissions opposing the application herein.

Analysis and determination

29. The court has considered the application, replying affidavit and rival submissions by both counsels. The issue for determination is whether the Claimants were declared redundant lawfully or not.
30. In *Giella V Cassman Brown & Company Limited* [1973] EA 358, the court stated as follows:
- “The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, 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.” (*E.A. Industries v Trufoods*, [1972] E.A. 420)
31. The court reiterates the case of *Nguruman Limited V Jane Bonde Nielsen & 2 others* (*supra*) the Court of Appeal held that the foundation of granting an injunction, whether interim or permanent, rests on three distinct conditions that must be satisfied sequentially: establishing a prima facie case, proving irreparable harm, and showing that the balance of convenience favours the applicant. As emphasized in *Kenya Commercial Finance Co. Ltd V Afraha Education Society* [2001] EA 86, proving a prima facie case alone is insufficient; the applicant must also demonstrate that the harm suffered without the injunction would be grave and incapable of being compensated by damages. If damages provide an adequate remedy, no injunction should be issued regardless of the strength of the claim. Moreover, if a prima facie case is not established, the court need not consider irreparable injury or balance of convenience. In short, applicants cannot bypass these hurdles; each must be met before an injunction can be granted.
32. In this instant case, the Claimant/Applicant is seeking the disclosure of the names of the employees targeted for redundancy, the redundancy benefits, and restraining the 2nd Respondent from effecting unlawful and unprocedural redundancies. The Claimant/Applicant is also seeking the 2nd Respondent to disclose the benefits paid to four employees who were unlawfully declared redundant.
33. The Claimants *Hesborn Onyango Otieno, Edwin Sultan Muteya, Collins O. Owiti, Ramadhani Ochieng Abok and Husdon Mudogo Muzainzi and Bonfas K. Fula* were served with termination letters on grounds of redundancy. The letters are on different dates between November 2024 and December 2024. They were given about one month notice and were to be paid their salaries and dues upto the notice month. There is also a letter from *Kabianga Dairy Limited* addressed to Kericho



Labour office dated 10th December 2024 informing the labour office of their intention to give notice of termination to “affected employees.” and they said the notice was to be effective from 10th December 2024.

34. The court observed the notice to the labour office was issued by Kabianga Dairy Limited but the termination letters were on letter head of Ameer Holdings Limited. The conclusion that can be drawn by the foregoing is that the two companies are one and the same.
35. The draft collective bargaining agreement dated 5th November 2014 is between the Union and Kabianga Dairy Limited. It is signed by Sujala Desai for the company and is the same person who has signed the termination letters of Ramadhan Abok. The clear inference therefore is that the two companies are closely intertwined.
36. The main issue for determination is whether the Applicants have met the threshold to grant the prayers sought. The court is guided by Section 40 of the Employment Act in determining whether a prima facie case has been established. The said Section 40 of the Employment Act states as follows:-

“An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions -

- (a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
- (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
- (c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
- (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
- (e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
- (f) the employer has paid an employee declared redundant not less than one month’s notice or one month’s wages in lieu of notice; and
- (g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.

Subsection (1) shall not apply where an employee’s services are terminated on account of insolvency as defined in Part IX in which case that Part shall be applicable.”

37. Looking at the pleadings, submissions and the Exhibits in court, the Respondents fell short of complying with the provisions of the said Section.



The court has no evidence that the Union was informed at least a month in advance that the Claimants were to be declared redundant. There is equally no evidence that the employees were informed that they would be declared redundant.

38. The Respondents did not establish the criteria they used in selection of the employees to be declared redundant and generally there is no evidence of payment of unutilised leave days and other terminal benefits.
39. In the case of Amugune -vs- Danny Logistics Limited & Another (2025) KERLRC & 830 KLR nineteen employees were declared redundant. The court held they were entitled to redundancy benefits under Section 40(1) of the Employment Act. The court entered judgment in their favour as their claim remained unchallenged. A mandatory injunction was granted compelling the 1st Respondent to pay accrued leave, one month's salary in lieu of notice and severance pay as well as costs of the Application.
40. The court cited the Court of Appeal Case Shariff Abdi Hassan -vs- Nadhif Jama Adan (2006) eKLR where the court held that:

“The courts have been reluctant to grant mandatory injunctions at interlocutory stage.

However, where it is prima facie established in accordance with the legal standards set out above that the party to whom the mandatory injunction is sought is in the wrong the courts have acted to ensure justice is done without waiting for the full hearing of the case.”

41. Flowing from the foregoing, the court is inclined to grant the Claimants the underlisted prayers as per the notice of motion application dated 16th May 2025
 - (2) ...
 - (3) Prayer 3 & 8 are not granted as there is no evidence to support underpayment. The court has not even been advised the position and the salaries of the Claimants. Court cannot give orders in abstract.

Prayers 4, 5, 7, 6 and 9 are granted.
 - (4) The Respondent claim that one Ramadhan Ochieng Abok was not an employee of the 2nd Respondent and yet the termination letter was issued by Kabianga Dairy Limited dated 22nd November 2024. The letter of termination is signed by Sijala Desai General Manager of Kabianga Dairy. The Respondents have not tendered any proof that Ramadhan Abok was not their employee.
42. The two companies are one and the same and it would be hard for the employees to decipher the intricate details of their relationship. However, the two seems to be intertwined and the same.
43. The court holds that following employees Hudson M. Muzanzi, Bonfas Kairo Fula, Hesborn Onyango Otieno and Edwin Sultan Muteya and Collins Oloo Owiti will be paid their dues as follows by Amee Holdings Limited.
 1. One Month salary in lieu of Notice (as per their salaries).
 2. Unpaid leave days as per their respective salaries.
 3. Severance pay in accordance to the law.
 4. Costs of this application is to be borne by the Respondents.



5. Interest will be paid at 14% per annum from date of this Ruling till full payment.
6. Ramadhan Ochieng Abok will be paid his dues as above either by Kabianga Dairy Limited or Ameer Holdings Limited or by both the Respondents

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 9TH DAY OF DECEMBER, 2025.

ANNA NGIBUINI MWAURE

JUDGE

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 has 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

