REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT MOMBASA

CAUSE NO. E008 OF 2025

KENYA PLANTATION & AGRICULTURAL WORKERS UNION……. CLAIMANT

VERSUS

REA VIPINGO LIMITED ……. 1ST RESPONDENT

ESSENTIAL BUSINESS ADVISORY SERVICES ……..…… 2ND RESPONDENT

RULING

The claimant, Kenya Plantation and Agricultural Workers Union filed an application dated 6 November 2025, filed under the provisions of section 3, 12 (3), 16 and 20 of the Employment and Labour Relations Curt Act, Rule 44, 45 and 47 of the Employment and Labour Relations Court (Procedure) Rules and seeking for Orders that the court be pleased to set aside and vacate the orders made on 17 July 2025 marking the suit as closed. The suit be reinstated for hearing on its merits.

The application is supported by the Affidavit of Meshack Khisa, who avers that on 17 July 2025, the court delivered a ruling and closed the suit without giving reasons or before the substantive issue was heard on merit. The claimant raises triable issues touching on the enforcement of a registered collective agreement (CBA) between the parties.

The closure of the suit without hearing the claim on merit violates the claimant's right to a fair hearing under Article 50(1) of the Constitution. The claimant has always been ready and willing to prosecute its suit, but due to the inadvertent closure of the same, such right is lost.

The court has inherent power under section 12 of the Employment and Labour Relations Court Act and Order 12, rule 17 of the Civil Procedure Rules to set aside, vary, or review its ruling and to allow the claimant to be heard on the merits.

Khisa avers that the claimant filed the suit seeking to enforce and uphold the terms of the CBA registered on 3 May 2024 pursuant ot section 59 of the Labour Relations Act. In the claim, the claimant raises the issues of breach and non-observance of the CBA by the respondents, the unilateral variation of terms and conditions of employment, and the contravention of section 10(5) of the Employment Act. There are unlawful deductions from the employees' wages contrary to section 19(1) of the Employment Act and victimisation of employees who seek to agitate their constitutional rights by joining the claimant as the trade

union of their choice. This is contrary to fair labour practices secured under Article 41 of the Constitution.

On 17 July 2025, the court dismissed the interim application together with the main suit without hearing the parties on the merits. The suit was marked as closed in the Case Tracking System (CTS), rendering it impossible for the claimant to act on the matter. No reasons have been assigned to the closure of the matter before a full hearing. This has occasioned the claimant's prejudice and, hence, seeks that the ruling be set aside, the suit be reinstated, and the claimant be allowed to prosecute the suit on merit.

The claimant relied on the cases of **Nicholas Kiptoo Arap Korir Salat v IEBC & 7 others [2014] eklr; Belinda Murai & others v Amos Wainaina [1978] eklr; Philip Chemwolo & another v Augustine Kubende [1982-88] 1 KAR; and Mwaura v Gathogo & another [2021] eklr,** where the courts have emphasised that, in the interests of justice, a suit can be reinstated and be determined on merit.

In reply, only the 2nd respondent filed the Replying Affidavit of Aggrey Anduuru, the director, who avers that the claimant filed the claim seeking several prayers against the respondents. These prayers included the registration of a CBA, referenced as E017 of 2024, for Flora Ola Limited and the Kenya Export Floriculture & Allied Workers Union. However, the 2nd respondent is not a party to the CBA, and no nexus has been created in this suit.

The other orders sought by the claimant are declaratory in nature and similar to those sought in the notice of motion dated 29 January 2025, which was addressed in the ruling delivered on 17 July 2025. The court determined both the application and suit with finality. The court held that the suit was filed before the 30-day period expired, within which the respondent was required to commence trade union deductions under section 48(3) of the Labour Relations Act. The orders thus sought were premature.

Anduuru avers that the court, in its ruling on 17 July 2025, held that the CBA sought to be enforced provided for minimum terms and conditions of employment and that, in the event of a dispute, the parties should resort to alternative dispute resolution mechanisms. Hence, the issues raised by the claimant could well be addressed between the parties.

Anduuru avers that the instant application is without merit. Proceeding with prosecution will be to hear a claim that is determined and hence *res judicata.*

The claimant filed written submissions, which are analysed.

The sole issue for determination is whether the suit, which was closed by a ruling delivered on 17 July 2025, should be reinstated and heard on the merits.

The claimant filed the claim, and the Notice of Motion seeking various orders. Through a ruling delivered on 17 July 2025, the court determined both the suit and application and held that the suit was premature. The suit was marked as closed.

The claimant seeks that the suit be reinstated, as they were not heard on the merits. Indeed, this is the claimant’s suit. The claimant-applicant appreciates that, under article 50(1) of the constitution, there is a right to a fair hearing. Although article 50 (1) of the Constitution

provides for the right to a fair hearing, the right itself must be properly understood as held in Judicial Service Commission v Shollei & another [2014] KECA 334 (KLR). Article 50(1) of the Constitution decrees that legal proceedings should be heard fairly. Indeed, where parties are regulated under a CBA that provides for an alternative dispute resolution mechanism, such a forum should be addressed first.

However, as set out above, the claimant moved the court seeking various orders. The claimant asserts that the prayers sought were not heard on the merits, and it is only fair that the court hears both parties on the merits. Indeed, this is a matter given prominence by the Supreme Court of Kenya in County Assembly of Migori v Aluochier & 2 others [2024] KESC 7 (KLR); and Githiga & 4 others v Kiru Tea Factory Company Ltd [2020] KESC 27 (KLR); that the court should not dwell on technicalities but hear parties on merit.

This position is emphasised in **Mugenda & another v Okoiti & 4 others [2016] KECA 663 (KLR)**, which holds that, as far as possible, courts must hear parties on the merits.

In **Tetra Radio Limited v Communications of Kenya Civil Application No. 121 of 2012**, the Court held:

> *…However, before us is an application, at the heart of which lies a presumption that the respondent has already been adjudged guilty of contempt of court or, at the very least, has admitted being in contempt of court. So, we are not being asked to hear and determine whether the respondent is in contempt of court, we are being asked to visit upon it the consequences of contempt of court without any application for such order ever having been made, let alone a court of competent jurisdiction having pronounced it.*

Thus, the right to be heard is sacrosanct. It must be protected. It must be respected. It must be secured.

The claimant seeks a hearing. Hearing the parties on merit will not be prejudicial to any party. The court will have the chance to determine all issues addressed by the claimant on the merits. The respondents will have the opportunity to file responses, call their witnesses and examine the evidence presented by the claimant.

Accordingly, the suit herein is reinstated. The main claim shall be heard on merit. Costs shall abide the outcome of the suit.

Delivered in open court at Mombasa, this 22nd day of January 2026.

M. MBARŨ

JUDGE

In the presence of:

Court Assistant:

…… and ……