

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT BUNGOMA**  
**CAUSE NO. 56 OF 2021**  
**(FORMERLY KISUMU 13 OF 2021)**

**KENYA UNION OF SUGAR  
PLANTATION & ALLIED WORKERS.....APPLICANT**

**VERSUS**

**BUSIA SUGAR INDUSTRY LIMITED.....RESPONDENT**

**(BEFORE HON. JUSTICE DAVID NDERITU)**

**RULING**

**I. INTRODUCTION**

1. In a notice of motion dated 17<sup>th</sup> April 2025 (the application) the applicant is seeking for orders that –
  - (i) *Spent.*
  - (ii) *This Honourable Court be pleased to set aside, review and vary its orders/directives given on the 25<sup>th</sup> March 2025 which in effect has closed the suit.*
  - (iii) *The court be pleased to reinstate/reopen the suit.*
2. The application is expressed to be founded on ***Rules 44 & 74 (1) & (3) of the Employment and Labour Relations Court(Procedure)Rules, 2024, Sections 1A & 1B of the Civil***

***Procedure Act (Cap 21) and Articles 41, 50 & 159 of the Constitution.*** It is based on the grounds on the face of it.

3. The application is supported with the affidavit of Jeremiah Akhonya, an officer of the applicant, sworn on 17<sup>th</sup> April 2025 with several annexures thereto.
4. In opposition to the application the respondent filed a replying affidavit sworn by Philip Jackah Ipapu on 29<sup>th</sup> October 2025.
5. By consent, the court directed that the application be canvassed by way of written submissions.
6. The applicant's representative, Mr. Akhonya, filed written submissions on 16<sup>th</sup> October 2025. The respondent did not file submissions.

## **II. EVIDENCE**

7. In the supporting affidavit, it is deponed that the court in its ruling of 6<sup>th</sup> February 2025 directed the applicant to provide a list of its members working with the respondent within 14 days from that date.
8. It is deponed that the applicant sent its two officers to the respondent's factory to find out its exact membership but they were denied entry.
9. The deponent stated that on 19<sup>th</sup> March 2025 he personally sought audience with the respondent but he was denied entry into the respondent's factory on the grounds that the respondent was pursuing the matter on appeal.

10. It is deponed that the applicant was forced to physically interrogate employees to find out the members as all the union shop stewards had either been threatened not to engage with the applicant or their contracts had been terminated. It is deponed that this process delayed the availing of the list as directed by the court.
11. It is further deponed that on 21<sup>st</sup> March 2025, the applicant managed to draw and file the list of its members, in compliance with the court's ruling of 6<sup>th</sup> February 2025.
12. It is deposed that on 25<sup>th</sup> March 2025 when the matter was coming up for directions, the deponent experienced technical challenges while logging into the virtual court. It is stated that when he was finally able to log-in he was informed that his matter had been dealt with and he was directed to follow up with the registry whereby it was confirmed that the file had been closed.
13. It is deponed that after consultations with the applicants' general secretary, a letter to apply for the reopening of the file was written dated 2<sup>nd</sup> April 2025 after which the formal application was filed.
14. It is deponed that the present application is to request the court to set aside its directive of 25<sup>th</sup> March 2025 and reopen the file in the interest of justice to enable the respondent's workers enjoy the rights to unionization pursuant to **Articles 41 of the Employment Act, Sections 4 & 5 of the Labour Relations Act, and ILO Convention 87.**

15. In the replying affidavit the respondent states that the application is not merited as it seeks to restore an application for contempt that the court had issued orders on. It is further stated that the applicant failed to comply with the court's directions as directed in the contempt application proceedings. It is advanced that had the applicant been keen on complying with the court order the present application would not have been necessary.
16. The respondent states that the purported members of the applicant alleged to be in its employ have either left its employ or no longer wish to be union members and thus do not wish to have their dues deducted.

### **III. SUBMISSIONS**

20. The applicant's representative reiterated the grounds in the application and urged the court to reopen the cause to ensure that the orders of the court issued on 30<sup>th</sup> November 2023 for the employer to deduct and submit union dues are not rendered nugatory.
21. It is submitted that the court in allowing the application shall ensure that the respondent's workers do not lose their right to join a union and associate and represented by a union.
22. It is submitted that the application has been brought without inordinate delay and hence the file should be reopened to ensure the enlisted workers are accorded justice.

#### **IV. ANALYSIS & DETERMINATION**

23. The court has carefully read and considered the application, the affidavit in support, the replying affidavit, and the written submissions by the applicant's representative. The following issue commends itself to the court for determination – ***Whether an order to reopen the file should issue?***

#### **V. RE-OPENING A FILE**

24. In its ruling of 6<sup>th</sup> February 2025 the court directed as follows –

***“In the interest of justice and in order to bring this matter to its logical conclusion, the claimant is ordered to avail in court a list of its members in employment on the respondent within 14 days hereof for the court to issue further order(s) or directions.***

***Failure to do so the court shall proceed to close this file.”***

25. The matter came up for mention on 25<sup>th</sup> February 2025 when neither party appeared. A mention notice was issued for 25<sup>th</sup> March 2025 when again neither party appeared and the court proceeded to close the file as per its directions in the ruling cited above.

26. The applicant stated that as of 25<sup>th</sup> March 2025 it had complied with the court direction and filed a list of 38 of its members who are in the respondent's employment. The respondent in the replying affidavit of Mr. Ipapu states that the members of the applicant alleged to be in its employment do not wish to be the applicant's members and that other members have left employment.

27. The court notes that the respondent, apart from purporting that the alleged members are not in its employment or do not wish to be unionized, did not attach any list of the alleged members who have allegedly either left its employment or do not wish to be members of the union.
28. The decision whether or not to reopen a matter is discretionary but dictated by the interests of justice. The reason advanced by the applicant's representative that he had technical challenges that prevented him from logging into the virtual court is reasonable.
29. The application was made promptly, barely a month after the file was closed. The court has taken into account that the respondent has not demonstrated any irreparable prejudice that would be occasioned if the file is reopened. All that the court had requested for was the claimant to avail the list which is now said to have been filed late.
30. In any event, the right to a fair hearing under **Article 50** and the principles in **Article 159(2)(d) of the Constitution** obligate the court to apply all lawful means to hear all parties to the greatest extent unless the parties themselves make it impossible to be heard.
31. Consequently, the application dated 17<sup>th</sup> April 2025 is allowed with no orders as to costs.

## **VI. ORDER**

32. The court orders and directs that –

- (i) *The order issued on 25<sup>th</sup> March 2025 be and is hereby set aside.*
- (ii) *The file is hereby reopened for further orders/directions.*
- (iii) *No orders as to costs.*

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT  
BUNGOMA THIS 23<sup>RD</sup> DAY OF JANUARY 2026.**

.....  
**DAVID NDERITU**

**JUDGE**