

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E476 OF 2024

**BAKERY CONFECTIONERY FOOD MANUFACTURING &
ALLIED WORKERS UNION (K).....**

.....CLAIMANT

VERSUS

EVEREST INDUSTRIES LIMITED.....

RESPONDENT

CONSOLIDATED HUMAN RESOURCES

SOLUTIONS LTD.....PROPOSED 2ND

RESPONDENT

RULING

1. Before the Court are two motion applications. One by the Claimant dated 5th May, 2025, and another by the Respondent dated 12th May, 2025. The Claimant's Motion is brought pursuant to the provisions of Section 5 (1) of the Judicature Act Cap 8, Laws of Kenya, Order 52, Rule 3 of the Rules of the Supreme Court of England 1965, as read together with Rule 47 of the Employment & Labour Relations Court (Procedure) Rules 2024. The Applicant seeks orders THAT:

- i. Spent
- ii. Spent
- iii. Spent

- iv. Leave be granted to the applicant herein to lift the Respondent's veil of incorporation and to cite the Respondent's Directors, KETAN KESHA VLAL HIRJI SHAH and KESHA VLAL HIRJI TEJSHI SHAH, the 1st and 2nd Contemnors for Contempt of Court for contravening and violating the Orders of this Court dated 2nd July 2024 as well as the Ruling and Order dated 9th April 2025.
 - v. An order of Committal be made against the said KETAN KESHA VLAL HIRJI SHAH and KESHA VLAL HIRJI TEJSHI SHAH, the 1st and 2nd Contemnors, for contempt of court for contravening and violating the Orders of this Court dated 1st July 2024, as well as the Ruling and Orders dated 9th April 2025, and for their Committal to prison for such period as this Honourable Court may deem fit.
 - vi. In enforcing the committal orders above and as a consequence of any non-attendance, this Honourable court be pleased to issue a warrant of arrest, directing the Officer Commanding Station, Thika Police Station, to cause the arrest and presentation of KETAN KESHA VLAL HIRJI SHAH and KESHA VLAL HIRJI TEJSHI SHAH, the 1st and 2nd Contemnors to Show cause why they should not be committed to civil jail and for sentencing.
 - vii. An order that the costs of this Motion be paid directly by the Contemnors
- 2.** The motion is supported by the grounds on the face thereof and the supporting affidavit of Danchael Mwangure, sworn on the same day, together with the annexures thereto.

- 3.** The Claimant/Applicant states that the Court initially issued orders on 27th June 2024, which were released on 1st July 2024, restraining the Respondent from victimizing the Claimant's members or interfering with their employment terms due to their union affiliation. It avers that following an inter partes hearing, the Court reaffirmed and expanded these orders on 9th April 2025, further prohibiting the Respondent from any form of victimization, coercion to withdraw union membership, or interference with the members' employment status, terms, and conditions based on their participation in trade union activities.
- 4.** The Applicant avers that the Court issued an additional order restraining the Respondent from locking out or denying the Applicant's members access to the workplace to perform their contractual duties, but despite the Respondent's advocates being present when the ruling was delivered, the Applicant formally extracted and served the Court Order together with a Penal Notice on 10th April 2025, with physical service effected on 11th April 2025 and a copy also provided to the Sub-County Labour Officer, Thika.
- 5.** It contends that following the service, 20 employees who had previously been unlawfully locked out reported back to work, and although they signed in, they were not assigned any duties and were instead made to remain idle under poor conditions within the premises. It further avers that even

after submitting the medical certificates, the Respondent still failed to allocate them work.

- 6.** It is the Applicant's position that on 24th April 2025, the employees were issued with Show Cause Notices alleging submission of forged food handling certificates and were required to respond within 24 hours. It states that the employees responded and provided proof of payment for the certificates, but nonetheless, the Respondent proceeded to schedule a disciplinary hearing for 30th April 2025.
- 7.** The Claimant states that its members objected to the short notice for the disciplinary hearing through letters dated 29th April 2025, requesting more time and disclosure of any evidence supporting the allegation that their medical certificates were forged. It avers that the Respondent did not address these requests but instead rescheduled the hearing to 6th May 2025, indicating an intention to proceed with a predetermined and superficial disciplinary process.
- 8.** The Applicant avers that the employees/its members had obtained the medical certificates lawfully from the County Government of Kiambu and had no role in their issuance. It further avers that, in light of this, the disciplinary process appears to be a continuation of victimization in contravention of court orders.
- 9.** The Claimant/Applicant avers that the Respondent has persistently violated these orders by maintaining the

employees' lockout since June 2024, failing to pay their salaries despite their continued reporting to work, subjecting them to inhumane conditions upon return, and initiating an unsubstantiated disciplinary process aimed at justifying their termination.

- 10.** The Claimant avers that the Respondent's conduct is presented as deliberate defiance of the Court's orders, forming the basis for contempt proceedings. It states that the cited contemnors, being the company's directors, are argued to bear personal responsibility for implementing the Court's directives and cannot rely on the corporate veil to evade accountability.
- 11.** Accordingly, the Claimant seeks to have the corporate veil lifted so that the directors may be held individually liable for the continued breach of the Court's orders, due to their failure to comply, and that the ongoing violations are said to justify personal sanctions against them.
- 12.** The Respondent opposed the motion vide a replying affidavit sworn on the 20th of May 2025, wherein the deponents state that they are directors and shareholders of Everest Industries Limited and are fully conversant with the facts of the case.
- 13.** The Respondents' said directors assert that the court orders of 1st July 2024 and 9th April 2025 were brought to their attention through service on a company manager and, on legal advice, they complied with the same. They state that

the company allowed the Claimant's members access to the workplace and implemented measures such as maintaining an attendance register to ensure compliance.

- 14.** They further contend that most of the Claimant's members are casual workers engaged on a need basis and paid weekly, with only two individuals previously on permanent terms, but who have since exited employment and were issued with certificates of service. It is their case that work allocation depends on operational factors such as production needs, sales, and availability of raw materials.
- 15.** The Respondents maintain that they fully complied with the interim orders and argue that any alleged disobedience should have been raised at the time, as those orders have since lapsed. Concerning the orders of 9th April 2025, they reiterate compliance, explaining that employees were required to sign an attendance register to facilitate proper deployment. They add that there was initial resistance from employees, which required intervention by a union representative, and that after that, 21 individuals signed the attendance list.
- 16.** The Respondents maintain that they have not disobeyed court orders, arguing that employees were allowed access to the premises and signed attendance registers, but could not be redeployed without valid medical certificates, which they view as a legal prerequisite in a food-processing

environment. They emphasize that public health concerns outweigh the employees' interests.

- 17.** They further argue that the application to lift the corporate veil is premature and unjustified, asserting that any wrongdoing lies with the employees who allegedly engaged in fraud. They also oppose contempt proceedings and committal to jail, and contend that circumstances have changed significantly, justifying the discharge of the injunction, particularly given the employees' misconduct in presenting forged medical certificates.
- 18.** The Respondents argue that the earlier orders of 1st July 2024 have lapsed, and that the current contempt application is procedurally defective. They contend that contempt proceedings must follow a strict sequence: first, a finding of disobedience, followed by an opportunity for the alleged contemnors to show cause, and only then sentencing. In their view, the Applicant has prematurely sought punitive measures without first securing a finding of contempt.
- 19.** They further assert that the proposed contemnors have not committed any fraud and that the reliefs sought violate principles of natural justice and constitutional proportionality, particularly by seeking multiple penalties simultaneously.
- 20.** The Respondents maintain that the application is an abuse of court process, intended to halt a lawful disciplinary process. They invoke the equitable principle that a party must come

to court with clean hands, arguing that the Applicant's members engaged in misconduct.

- 21.** Accordingly, they urge the Court to dismiss the application dated 5th May 2025 with costs, affirming that the contents of their affidavit are true to the best of their knowledge, information, and belief.
- 22.** The Applicant contends that the Respondents' Supporting Affidavit is fatally defective for violating Section 4 of the Oaths and Statutory Declarations Act, as it was commissioned by an advocate who is also representing the Respondents in the same matter. Consequently, it argues that the affidavit should be struck out, rendering the application effectively unopposed.
- 23.** The Applicant maintains that the affected union members were not casual workers but regular employees protected under Section 37 of the Employment Act, 2007. It avers that this is based on the duration and continuity of their service.
- 24.** The Applicant further argues that there is no evidence to support the Respondents' claim that the employees were casuals, emphasizing that prior to their termination, the employees earned monthly salaries rather than daily wages, consistent with regular employment status.
- 25.** The Applicant asserts that the Respondent has persistently violated the Court's orders, particularly those issued on 1st July 2024 and later affirmed on 4th April 2025. They argue

that union members were unlawfully locked out of the workplace from 20th June 2024, shortly after joining the union, and remained excluded until the Court intervened again in April 2025. This, they contend, demonstrates clear victimization based on trade union affiliation rather than the Respondent's claim that the workers were casuals.

- 26.** The Applicant maintains that the affected employees had been regularly working and performing their duties prior to joining the union, and that the Court's orders applied to all employees regardless of their employment status. The continued lockout, therefore, amounted to a direct breach of the Court's restraining orders.
- 27.** It further alleges coercion and victimization through the Respondent's actions, including requiring employees to sign uniform affidavits recanting union membership under the pretext that they had been misled into joining a "Sacco." Additionally, the Applicant argues that the Respondent interfered with employees' terms and conditions of employment by allegedly outsourcing the workforce to a third party, thereby forcing union members to sign new contracts in contravention of the Court's orders.
- 28.** The Applicant disputes the Respondent's claim that the 1st July 2024 orders expired, asserting that they were meant to subsist until the determination of the application or related proceedings, and were, in any event, reaffirmed by the Court

in April 2025. They further argue that there is no strict time bar for filing contempt proceedings.

- 29.** Finally, the Applicant contends that the Respondent failed to comply with the April 2025 orders, as employees who reported to work were not assigned duties but were instead made to sit idle under poor conditions. They also challenge the requirement for employees to obtain food-handling certificates, arguing that this was historically the employer's responsibility and that employees had previously performed their duties without such certificates.
- 30.** Parties' submissions on the application have been duly considered.
- 31.** The second application referred to herein is the Respondents' Motion supported by the supporting affidavit of Joseph Gichanja Ndungu sworn on the 12th of May 2025, together with the annexures thereto, and opposed by the Claimant's Replying Affidavit sworn on the 10th June 2025.
- 32.** The Respondent's prayers are that the Claimant/Respondent's members be restrained by way of an injunction from accessing the Respondent/applicant's premises and a supervision and enforcement of the said order by the OCS Thika Police Station. The Applicant further seeks to discharge, vary and/or set aside the injunctive Orders issued herein on the 4th of April 2025 on account of material change in circumstances, an order that the Applicant's Memorandum of Claim be struck out with cost on

account of material change of circumstances and relationship of the parties, and that the Union be admonished for participating in illegal and extra-union activities.

- 33.** The Respondent/Applicant argues that it seeks to discharge, vary, or set aside the injunctive orders issued on 4th April 2025, on the basis of a radical change in circumstances arising after the orders were made.
- 34.** It contends that following compliance with the orders, it admitted the union members back to work, but it later emerged that the members submitted forged medical certificates and which was confirmed by the Head of Department, Laboratory Services at Thika Level 5 Hospital, who, in a letter dated 16th April 2025, disowned the documents, stating that no tests were conducted and that the signatures and stamps were forged.
- 35.** The Respondent/Applicant avers that as a result, disciplinary proceedings were initiated, leading to the termination of the affected members. It further contends that these post-injunction events fundamentally altered the circumstances underpinning the original orders and therefore justify their setting aside or variation. It further argues that the doctrine of res judicata is inapplicable, since the present application is based on new facts arising after the Court's ruling of 4th April 2025.

- 36.** The Claimant/Respondent opposed the application on procedural and jurisdictional grounds, arguing that the injunctive orders issued on 4th April 2025 were made inter parties and therefore attain a degree of finality.
- 37.** It is argued further that such orders cannot be varied or discharged in the manner sought unless the Applicant properly invokes the Court's review jurisdiction under Rule 74, and that in the absence of a formal review application grounded on that rule, the present application is incompetent.
- 38.** Further, the Respondent relies on the doctrine of functus officio, contending that once the Court rendered its decision on the injunctive application, it became functus officio in respect of those orders. Consequently, the Court lacks jurisdiction to revisit or alter its decision outside the legally prescribed review framework.
- 39.** On this basis, the Respondent urges the Court to decline the Applicant's invitation to interfere with its prior orders, as doing so would undermine the principle of finality in litigation.

Analysis and Determination

- 40.** The following issues arise for determination:
- i. Whether the Claimant/Applicant has met the threshold for contempt of court.

- ii. Whether the Court should lift the Respondent's corporate veil and cite the directors personally for contempt.
- iii. Whether the Respondent complied with the Court orders of 1st July 2024 and 9th April 2025.
- iv. Whether the orders should be varied or discharged.

Whether the Claimant/Applicant has met the threshold for contempt of court

41. The power of the Court to punish for contempt is donated by Section 5(1) of the Judicature Act, which provides as follows:

“(5)(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England, and that power shall extend to upholding the authority and dignity of Subordinate Courts.”

42. It is not disputed that Orders were issued by this court on 1st July 2024 and confirmed on 9th April 2025, restraining the Respondents from victimizing the Applicant's members and/or perpetrating any further acts or forms of victimization for reasons of engaging in trade union activities, and from locking out, and/or denying any of the Claimant's members access to the workplace for performance of their duties under their respective employment contracts.

43. The Respondent, through its directors, has also confirmed having knowledge of the orders subject of this application.
44. The Claimant alleges a continued lockout since June 2024, failure to allocate duties to its membership despite reporting to work, and initiation of disciplinary proceedings as a form of victimization.
45. The Respondent, on its part, maintains that the Claimant's members were granted access to their work stations and that they indeed signed attendance registers as evidence that they reported to work. The Respondent contends that deployment was conditional on the production of valid medical certificates, which it asserts is a legal requirement in food handling, and that the disciplinary action against the employees arose from alleged forgery, not from union activity.
46. In ***Mutitika v Baharini Farm Ltd [1985] KECA 60 (KLR)***, the Court of Appeal held that contempt must be proved to a standard higher than a balance of probabilities but lower than beyond reasonable doubt.
47. Further, in ***Katsuri Limited v Kapurchand Depar Shah [2016] KEHC 6447 (KLR)***, the Court outlined the essential elements that must be proved to make the case for civil contempt as:
- i. Existence of a clear and unambiguous court order;
 - ii. Knowledge of the order by the contemnor;

- iii. Breach of the order; and
- iv. Deliberate conduct in disobeying the order.

- 48.** Similarly, in ***Shimmers Plaza Limited v National Bank of Kenya Limited [2015] KECA 945 (KLR)***, the Court of Appeal emphasized that knowledge of a court order supersedes personal service, particularly where counsel is present in court. In this matter, knowledge of the two orders was not denied at all; it was, in fact, admitted.
- 49.** It then follows that what the Court must interrogate is whether failure to allocate work amounts to disobedience of the orders. In ***Teachers Service Commission v Kenya National Union of Teachers & 2 others [2013] KEELRC 656 (KLR)***, the Court held that contempt arises where a party defeats the purpose of a court order through indirect or technical compliance.
- 50.** In this case, it is evident that the Respondent allowed physical access, and the employees reported to work, signed attendance registers which have been produced in evidence, but were not assigned duties.
- 51.** The Respondent's conduct in my view amounts to constructive non-compliance, as it defeats the essence of the order, which was to restore employees to their work without victimization.

52. Further, the Respondent's reliance on medical certificates introduces a factual dispute, the authenticity of which is contested.
53. A party cannot unilaterally vary or condition a court order. In ***Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & another [2005] KEHC 1767 (KLR)***, it was held that court orders must be obeyed, whether one agrees with them or not.
54. In the circumstances of this case, I find and hold that the Respondent partially complied with the orders of the court, but the manner in which it did undermined the substance of the orders. There is, however, no evidence of deliberate and wilful disobedience, particularly in light of the medical certificate controversy and the disciplinary processes mounted.
55. I conclude by holding that contempt has not been proved to the required standard.

Whether to Lift the Corporate Veil

56. The Claimant seeks to cite the Respondent's directors personally and to achieve that, it seeks an order lifting the Respondent's corporate veil.
57. The principle on lifting the corporate veil was explained in ***Salomon Vs Salomon & Co. Ltd (1897) AC***

22 and Omondi Vs National Bank of Kenya Ltd & Others [2001] EA 175 (CAK), where it was held that a company is a separate legal entity from its directors.

- 58.** Courts may, however, pierce the corporate veil in cases of fraud or misuse, as stated in **Trust Bank Limited v Amalo Company Limited [2002] KECA 253 (KLR)**. In contempt proceedings, directors may be cited where they are shown to be personally responsible for disobedience of a decree or other court's orders.
- 59.** In the present case, the orders were directed at the company, and no evidence of personal acts of disobedience by the directors has been adduced. The dispute herein largely concerns the Respondent's company's operational decisions.
- 60.** In the premise, I hold that the threshold for lifting the corporate veil has not been met.

Whether the injunction should be discharged

- 61.** The Respondent/Applicant in the application dated 12th May, 2025, seeks discharge of the orders subject of the two applications based on changed circumstances.
- 62.** The principles for discharge of an injunction were set out in **Giella v Cassman Brown & Co. Ltd [1973] EA 358**, as being where there is a material change in circumstances, where the injunction no longer serves its purpose, or where the justice of the case requires discharge.

- 63.** In this case, there is an ongoing dispute regarding the employment status of the Claimant's members and the alleged misconduct. There is also no denying that the core issue, which is victimization, remains unresolved.
- 64.** It therefore follows that discharging the injunction orders would render the suit nugatory. In the circumstances, I hold that the application to discharge the injunctive orders is premature and unmerited.
- 65.** In the end, I make the following orders: -
- a) The Claimant's application dated 5th May 2025 is declined.
 - b) The Respondent's application dated 12th May 2025 is similarly declined
 - c) The Respondent shall fully comply with the Court orders by allowing employees access and actual deployment to duties, subject only to lawful and procedurally fair processes.
 - d) Costs shall be in the cause.

66. Orders accordingly.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN
COURT AT NAIROBI THIS 23RD DAY OF APRIL 2026.**

**C. N. BAARI
JUDGE**

Appearance:

Mr. Amalemba for the Claimant

Mr. Kipruto Present for the Respondent

Ms. Esther S-C/A