



**Kudheiha Workers Union v Happiness Real Limited t/a Morning Star Diani  
(Cause E119 of 2025) [2026] KEELRC 1147 (KLR) (27 April 2026) (Ruling)**

Neutral citation: [2026] KEELRC 1147 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E119 OF 2025  
K OCHARO, J  
APRIL 27, 2026**

**BETWEEN**

**KUDHEIHA WORKERS UNION ..... CLAIMANT**

**AND**

**HAPPINESS REAL LIMITED T/A MORNING STAR DIANI ..... RESPONDENT**

**RULING**

1. By a Notice of Motion application dated 11<sup>th</sup> November 2025, the Claimant/ Applicant seeks the following orders;
  - I. That pending the hearing and determination of the main suit, the Court does issue orders restraining the Respondent from coercing employees to withdraw from the Union on account of their union membership.
  - II. That pending hearing and determination of the main suit, this Court do issue orders restraining the Respondent from victimising, intimidating, coercing, harassing, disciplining, terminating or otherwise discriminating against the Claimant's members whose names appear on the check-off forms on account of their union membership.
  - III. That the Respondent be directed to execute the Recognition Agreement in the prescribed form under the *Labour Relations Act* without undue delay and or postponement,
  - IV. That the respondent commences the deduction and remittance of union dues as per the check-off system to the claimant's bank account.
  - V. That the costs of this Application be provided for.
2. The Application is supported by the supporting affidavit sworn by Albert Njeru Obed, the Secretary General of the Claimant, sworn on 11<sup>th</sup> November 2025.



3. The Claimant/Applicant states that the Respondent operates a hotel establishment known as Morning Star Beach Resort, located in Diani, within Kwale County.
4. Between June 2025 and August 2025, the Claimant Union recruited a simple majority of the Respondent's employees. Despite forwarding a Recognition Agreement and following up with the Respondent, the Respondent has refused to sign it.
5. The Claimant further states that the Respondent, through its Director, Joachim Morgenstern, has intimidated and coerced employees and advised them to withdraw their membership. The Director has drafted the withdrawal letters himself and distributed them to members for execution, denouncing their membership.
6. The Respondent's action constitutes unfair labour practices contrary to Article 41 of the 2010 Constitution of Kenya and Section 5 of the *Labour Relations Act*.
7. Unless restrained, the Respondent will continue to victimise employees to frustrate their participation in Union activities.
8. The Respondent opposes the application on the grounds set out in the replying affidavit sworn on 24<sup>th</sup> November 2025, by Joachim Morgenstern, the Director of Happiness Real Limited.
9. It is admitted that, indeed, there have been negotiations on a recognition agreement between the parties herein.
10. It is further stated that at the commencement of the negotiations, the Respondent had a total of 65 employees. It currently has 71 employees.
11. Out of the initial 65 employees, 49 opted to join the Claimant. Of the 49 employees, 1 absconded from duty and is no longer in active employment. The contracts of 2 employees expired, 2 resigned, and 1 was dismissed for unsatisfactory performance. Additionally, 15 withdrew their membership before the recognition agreement negotiations could be concluded. As such, only 28 of the initial 49 employees remain as members of the Claimant Union.
12. The Respondent states that some employees left the Union upon learning they were required to pay union dues. Apparently, the Claimant had not candidly explained that they would be required to do so.
13. Currently, the Claimant does not have a simple majority of the Unionisable employees, and as such, the Respondent cannot sign a recognition with them.
14. The Respondent further states that initially, the Respondent was ready and willing to negotiate with the Claimant on a reasonable and comprehensive recognition agreement, but the Claimant adopted a hard and combative stance with unreasonable terms, which stalled all negotiations.
15. The Respondent's last letter and email dated 6<sup>th</sup> October 2025 went unanswered by the Claimant. All its counter-proposals were declined.
16. The Claimant has misled this Court by insinuating that the Director intimidated, coerced, and advised employees to withdraw from union membership. Throughout, it kept its employees abreast of developments in the negotiations between it and the Claimant union.
17. The Respondent has not dismissed any employee on account of joining the Union, nor victimised or intimidated them in any way.



18. The Respondent contends that orders 4 and 5 sought in the application are final in nature and cannot be issued at an interlocutory stage. The other orders sought are unmerited, as the Respondent has not engaged in the actions complained of.
19. Although the Claimant does not have sufficient employee numbers to engage the Respondent in a recognition agreement, the Respondents are open to continuing to allow the Claimant to recruit more employees and to engage in productive and progressive negotiations, aimed at strengthening and streamlining the employee-union-employer relationship without hindrance.

**Analysis and Determination.**

20. Undoubtedly, the orders sought under limbs 4 and 5 of the instant application are final in nature and can only be justly granted after this Court has taken evidence from the parties. This Court is not persuaded to grant these two orders at this interlocutory stage, as doing so would have the effect of determining the substantive issues raised in the suit without a full hearing.
21. I have carefully considered the other limbs of the application and the affidavit in support of the application, and hold that the contents of the affidavit, in a prima facie sense, demonstrate that the acts complained of have been committed. To be clear, the affidavit is insufficient, as it is too general in content.
22. The supporting affidavit, weighed against the counter-affidavit by the Respondent, reveals only one thing: the Claimant has not established that he has a prima facie case with chances of success.
23. By reason of the foregoing premises, I find the Application lacking in merit. It is hereby dismissed.
24. The justice of this matter requires that it be heard on a priority basis. It shall be heard on the priority date hereafter given.

**READ SIGNED AND DELIVERED THIS 27<sup>TH</sup> DAY OF APRIL 2026.**

**OCHARO KEBIRA**

**JUDGE**

