

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT AT NAKURU

CAUSE NO. E078 OF 2025
(Before Hon. Lady Justice Anna Ngibuini
Mwaure)

SIEERA FLORA

LIMITED.....CLAIMANT/RESPONDENT

VERSUS

**KENYA PLANTATION AND AGRICULTURE
WORKERS UNION**

.....RESPONDENT/APPLICANT

RULING

Introduction

1. The Respondent/Applicant filed a Notice of Motion dated 15th December 2025 under Certificate of Urgency seeking the following orders that:

1. Spent

2. This Honourable Court be pleased to issue a temporary injunction to prohibit and/or restrain the Claimant/Respondent and or its agents from victimizing, harassing, threatening to dismiss its employee's pending the hearing and determination of this application.

3. That this Honourable court direct the Respondent to enforce the Return to Work

formula dated 9th December 2025 and signed by the both parties

4. Costs of this application borne by the Claimant/Respondent

Respondent/Applicant's supporting affidavit

2. The application is supported by the affidavit of Thomas Kipkemboi, the Respondent/Applicant's Deputy General Secretary dated even date as the application.
3. The Respondent/Applicant avers Claimant/Respondent unlawfully issued transfer letters to shop stewards and commenced disciplinary proceedings against employees despite a Return-to-Work Formula signed on 9th December 2025 and order of the court issued on 15th December 2025 by Honourable Justice Rika.
4. The Respondent/Applicant avers that the Claimant/Respondent's actions, including issuing show-cause letters and threatening summary dismissals, are aimed at crippling the union and victimizing employees, contrary to the Recognition Agreement and Collective Bargaining Agreement.
5. The Respondent/Applicant maintains that the dispute is still pending before the court, that the

Claimant/Respondent's conduct is malicious and illegal, and unless the Court intervenes, the grievants stand to suffer irreparable harm.

6. The Applicant therefore prays that the Honourable Court grant the orders sought to restrain the Respondent and compel compliance with the law in the interest of justice.

Claimant/Respondent replying affidavit

7. The Claimant/Respondent opposed the application vide a replying affidavit sworn by Judellen Namwenya, the Claimant/Respondent's Human Resource Manager, dated 26th February 2026.
8. The Claimant/Respondent concedes that a Return-to-Work Formula was signed on 9th December 2025 but asserts that the Respondent/Applicant's account is misleading as it fails to disclose subsequent events.
9. The Claimant/Respondent deponed that on 10th December 2025, certain employees engaged in riotous and intimidatory conduct, including barricading access roads, threatening management and willing employees, and disrupting operations, thereby breaching both the Return-to-Work Formula and a subsisting court order.

10. The Claimant/Respondent maintains that such conduct constituted gross misconduct under the Employment Act, 2007, warranting issuance of show-cause letters and initiation of a lawful disciplinary process.
11. The Claimant/Respondent denied engaging in victimization or harassment, and instead it argued that the disciplinary measures were a proportionate response to specific acts of indiscipline.
12. The Claimant/Respondent further avers that the pendency of the main suit does not immunize employees from disciplinary consequences for new misconduct, that the interim orders issued were preservatory in nature and did not oust the employer's statutory right to discipline, and that contempt proceedings require strict proof which the Applicant has failed to establish.
13. The Claimant/Respondent contends that the balance of convenience favours allowing the internal process to proceed, that the application is frivolous and an abuse of process, and prays that the Notice of Motion dated 15th December 2025 be dismissed with costs.

Respondent/Applicant's further affidavit

14. The Respondent/Applicant filed a further affidavit sworn by Henry Omasire, the Respondent/Applicant's Assistant General dated 18th February 2026.
15. The Respondent/Applicant avers that despite clear court orders directing the Claimant/Respondent to retract dismissal letters and desist from victimizing employees, the Claimant/Respondent has failed to comply and continues to perpetrate illegalities in flagrant disobedience of the Court orders.
16. The Respondent/Applicant depones that the affected employees have been locked out of the premises since December 2025, denied entry despite subsisting orders, and have provided written statements evidencing such exclusion.
17. The Respondent/Applicant contends that this conduct amounts to contempt of court by the Respondent's management, specifically Mr. Tom Walikhe and Ms. Judy Namwenya, who should be punished through committal to civil jail.
18. The Respondent/Applicant further avers that the rights of workers under **Article 41 of the Constitution**, including the right to participate in

trade union activities, have been violated, and the Respondent has failed to honour the Return-to-Work Formula signed by both parties.

19. The Respondent/Applicant therefore prays that the Respondent be held in contempt and compelled to reinstate the affected employees without loss of benefits, in the interest of justice.

20. Parties canvassed the application by way of written submissions.

Respondent/Applicant submissions

21. The Respondent/Applicant submitted that the Claimant/Respondent's Human Resource Managers are in contempt of court orders by failing to retract dismissal letters despite clear and unambiguous directions of the Court, knowledge of the orders, and deliberate refusal to comply. The Respondent/Applicant defined contempt according to the Black's Dictionary 9th Edition as follows:

“The act or state despising; the conduct of being despised. Conduct that defies the authority or dignity of a court or legislature. Because such interferes with the administration of justice.”

22. The Respondent/Applicant placed reliance on **South African Constitutional case in Burchell v Burchell Case No. 364/2005, Koilel & 2 Others v Koilel & Another [2022] KEHC 10288**, and **Shimmers Plaza Ltd & another v National Bank of Kenya & 3 Others [2014] KEELC 50 (KLR)**, which affirm that knowledge of a court order suffices for contempt proceedings and that deliberate disobedience undermines the rule of law. The Respondent/Applicant further cites **Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another [2005] KLR 828** and **T.N. Gadavarman Thiru Mulpad v Ashok Khot [2006] 5 SCC**, emphasizing that courts must protect their authority by punishing contemnors.

23. On whether the Respondent/Applicant tendered evidence to justify summary dismissal, placed reliance on the case of **Titus Musau Ndivau & another v Waridi Limited [2012] KEELRC 190 (KLR)**, where Ongaya J (as he was then) held that summary dismissal is reserved for obvious cases of gross misconduct under **section 44 of the Employment Act**, and employers must follow due process under Section 41 of the Employment Act.

The Respondent/Applicant argued that the

Claimant/Respondent failed to tender evidence of misconduct, ignored the Return-to-Work Formula, and conducted poor investigations, resulting in unfair and unlawful termination. The Respondent/Applicant therefore prays that the application be allowed with costs.

Claimant/Respondent's submissions

24. The Claimant/Respondent submitted that the Respondent/Applicant's allegations of victimization are misplaced, as they deliberately omit the critical events of 10th December 2025 when employees engaged in riotous conduct, including barricading access roads and obstructing ingress and egress, actions which amount to gross misconduct under **section 44(4) of the Employment Act**. The Claimant/Respondent relied on the case of ***Titus Musau Ndivau & another v Waridi Limited (Supra)*** where summary dismissal is reserved for obvious cases of gross misconduct, and the conduct described in the replying affidavit of Ms. Namwenya falls squarely within this category. The Claimant/Respondent further contended that the "No Victimization" clause in the Return-to-Work Formula cannot be construed as a blanket amnesty for future misconduct, for it is trite law that

employees remain accountable for their actions. The disciplinary process was lawfully initiated after the breach of peace and is distinct from the earlier trade dispute.

25. The Claimant/Respondent submitted that the allegations of contempt introduced in the Respondent/Applicant's Further Affidavit dated 18th January 2026 are unfounded and premature. The Claimant/Respondent argued that the Respondent/Applicant has failed to satisfy the strict evidentiary threshold required in contempt proceedings, as articulated in ***Burchell v Burchell(supra)*** and affirmed in ***Koilel & 2 Others v Koilel & Another (Supra)***, which requires proof that the terms of the order were clear and unambiguous, that the Applicant had knowledge of those terms, that there was non-compliance, and that such non-compliance was deliberate. In respect of the order of 3rd February 2026, the Respondent/Applicant has not produced a certified copy of the extracted order nor proof of personal service upon the alleged contemnors, Mr. Walikhe and Ms. Namwenya. As held in ***Shimmers Plaza Ltd v National Bank of Kenya Ltd(supra)***, strict rules of service, including service

of a penal notice, must be adhered to before committal to civil jail can be considered. Moreover, the alleged contemnors have not been afforded an opportunity to be heard on the specific charges in a formal application. **Article 50 of the Constitution** enshrines the right to a fair hearing, and a mere mention in a Further Affidavit is insufficient to ground such grave allegations. The Respondent therefore prays that the Court finds the contempt claim unsubstantiated and dismisses it accordingly.

26. The Claimant/Respondent maintains that the balance of convenience favours it by allowing the internal disciplinary process to proceed, as the Respondent/Applicant has not demonstrated irreparable harm, while the Claimant/Respondent continues to suffer financial and reputational damage. Reliance is placed on ***Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another(supra)***, it is submitted that the Court should not permit its process to be abused.

27. Accordingly, the Claimant/Respondent prays that the Notice of Motion dated 15th December 2025 be dismissed with costs.

Analysis and determination

28. The court has considered the application, the affidavits and the rival submissions by both parties, the issue for determination is whether the application is merited and whether an injunction should be issued against the Claimant/Respondent.

29. In ***Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another(supra)***, the court stated as follows:

“Where an application for committal for contempt of court orders are made the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance, an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious - a contemnor would have no right of audience in any court of law unless he is punished or he purges the contempt. So, the court is

obliged to hear the application for committal first before any other matter. This is a general rule which must be applied strictly.”

30. In ***Beijing Industrial Designing & Researching Institute v Lagoon Development Limited***

[2015] KECA 365 (KLR) the Court of Appeal cited the South African Constitutional case in ***Burchell V. Burchell(supra)*** which stated as follows

“Compliance with court orders is an issue of fundamental concern for a society that seeks to base itself on the rule of law. The Constitution states that the rule of law and supremacy of the Constitution are foundational values of our society. It vests the judicial authority of the state in the courts and requires other organs of state to assist and protect the courts. It gives everyone the right to have legal disputes resolved in the courts or other independent and impartial tribunals. Failure to enforce court orders effectively has the potential to undermine confidence in recourse to law as an instrument to resolve civil disputes and may thus impact negatively on the rule of law.”

31. In this particular case, court orders were issued on 15th December 2025 and a Return to Work Formula was signed on 9th December 2025 by both parties but the Claimant/Respondent went ahead to summarily dismiss the grievants from the Respondent's/Claimant's employment while the matter was still pending in court.

32. The court granted the Applicant orders issued on 15th December 2025 restraining the Claimants/Respondents from taking disciplinary action against the affected employees.

33. The Claimant/Respondent then issued dismissal letters and the Applicant obtained orders for reinstatement of the affected workers. The Claimants/Respondents have not complied with those court orders even though for all practical purposes the orders are still valid and have not been challenged or set aside.

34. The defence by the Claimant/Respondent that the employees in question committed other acts which amounted to gross misconduct is not proved. There is no evidence tendered to show the said violations by the Respondents/Applicants. The court is

persuaded by the case of **ECONET WIRELESS KENYA LTD**

-VS- MINISTER FOR INFORMATION AND COMMUNICATION OF KENYA &

ANOTHER(Supra) where court put an emphasise that courts must protect their authority by punishing contemnors.

35. Further, in the case of **GULABCHAND POPATLAL SHAH & ANOTHER CIVIL APPLICATION NO. 19 OF 1996** the Court of Appeal stated:

“It is essential for the maintenance of the rule of law and order that the authority and the dignity of our courts are upheld at all times. The court will not condone deliberate disobedience of its orders and will not shy away from its responsibility to deal firmly with proved contemnors. It is the plain and unqualified obligation of every person against whom an order is made by court of competent jurisdiction, to obey it unless and until the order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by the order believes it to be irregular or void.” (emphasis)

36. The court having considered the pleadings and submissions and case laws critically is convinced the Claimants/Respondents disobeyed court orders

issued by a competent court. They are ordered to enforce the return to work formula dated 9th December 2025 and reinstate the sacked employees within 30 days failure of which the Claimants/Respondents representative will be summoned to court to show cause why they should not be found guilty of contempt.

37. Case to be mentioned on **16th June 2026** to confirm compliance.

Orders accordingly.

Dated, Signed and Delivered virtually at Nakuru this 15th Day of May, 2026.

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