



**Sukari Industries Ltd & 3 others v Ongoro & 3 others (Cause E067 of 2024) [2025] KEELRC 96 (KLR) (27 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 96 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E067 OF 2024  
JK GAKERI, J  
JANUARY 27, 2025**

**BETWEEN**

**SUKARI INDUSTRIES LTD ..... 1<sup>ST</sup> CLAIMANT  
PLATINUM OUT SOURCING LOGISTICS ..... 2<sup>ND</sup> CLAIMANT  
CONSOLIDATED HR SOLUTIONS ..... 3<sup>RD</sup> CLAIMANT  
VOLT MANAGEMENT SOLUTIONS ..... 4<sup>TH</sup> CLAIMANT**

**AND**

**PHILO OTIENO ONGORO ..... 1<sup>ST</sup> RESPONDENT  
DALMAS OCHIENG AOKO ..... 2<sup>ND</sup> RESPONDENT  
MICHAEL ODHIAMBO GWADA ..... 3<sup>RD</sup> RESPONDENT  
WYCLIFFE OCHIENG OYUGI ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. Before the Court for determination is the Claimant/Applicants Notice of Motion dated 19<sup>th</sup> August, 2024 filed under Certificate of Urgency seeking Orders that:
  1. Spent.
  2. Pending hearing and determination of the main suit the Honourable Court be pleased to grant an injunction restraining the respondents, their agents and/or all employees of the claimants working at Sukari Industries Ltd from calling, carrying on, taking part, instigating, inciting and/or otherwise participating in the strike commenced on 19<sup>th</sup> August, 2024 and/or any other strike.



3. Pending the hearing and determination of the main claim, the court be pleased to grant an injunction restraining the respondents, their agents and/or all employees of the claimants working at Sukari Industries Ltd from disrupting and/or interfering in any way with the operations and business of the claimant.
  4. The OCS Ndiwa Police Station be directed to enforce and ensure compliance with this Order.
  5. Costs of this application be provided for.
2. The Notice of Motion is expressed under Sections 76, 77, 78 and 80 of the *Labour Relations Act* and is based on the grounds set out on its face and the Supporting Affidavit of Collins Aluku sworn on 19<sup>th</sup> August, 2024 who deposes that on the morning of 19<sup>th</sup> August, 2024, without issuing any notice or proper notice the applicant's employees under the leadership of the respondents went on strike and go slow and shut the operations of the claimant's factory completely and destroyed property and threatened the safety and security of senior managers, customers and farmers.
  3. That prior to the illegal strike the respondents had not raised any complaints with the claimants or give dialogue a chance before resulting to the instant action.
  4. That the reasons for the strike are that the employees are seeking the removal of the 1<sup>st</sup> claimant's General Manager on the premise that he intends to close the factory on the pretext that the 1<sup>st</sup> claimant had crashed enough sugar to sustain its operations for the next 4 months which is untrue as the factory resumed operations in mid-July after a 3 months maintenance break and no notice of factory closure had been issued.
  5. The affiant deposes that the information about closure of the factory was passed on by the local member of the County Assembly.
  6. That the decision to go on strike was motivated and influenced by external politics from competitors to frustrate the claimants as there was no intention to close the 1<sup>st</sup> claimant's factory and it was not the business of employees to run the affairs of the 1<sup>st</sup> claimants company and factory and in particular hiring of managers.
  7. That the provisions of law relating to lawful strikes were not complied with and consequences ensue as the strike is illegal and has occasioned huge irreparable losses due to closure of the factory and the respondents are not capable of compensating the 1<sup>st</sup> claimant as farmers cannot access services, deliver sugar cane and the 1<sup>st</sup> claimant has defaulted in its contracts with 3<sup>rd</sup> parties and the application is timely.

### **Respondents case**

8. The 1<sup>st</sup> Respondent, Mr. Philo Otieno Ongaro deposes that he has been working for the 1<sup>st</sup> applicant as a Feed Table Operator and a worker representative and was on leave from 17<sup>th</sup> to 18<sup>th</sup> August, 2024 and when he reported on 19<sup>th</sup> August, 2024, he found night shift workers at the plant shouting that the General Manager must go and later went to the cane yard department and met one Mr. Nick, the Security Manager then to the workshop and later to the filing station shouting that the General Manager had refused to implement agreements on promotion, absorption of trainees, staff welfare, gratuity and they should be allowed to join the union.
9. That he told them not to destroy anything and move away which they agreed. The affiant further deposes that police from Ndiwa Police Station came and took away the General Manager, and one Mr. Boaz Amoke addressed the workers on their grievances and the employees resumed work till afternoon.



10. That on 20<sup>th</sup> August, 2024 the affiant found the gates closed and a notice that work would resume later after investigations and there was a court order and police officers. That after one (1) week some employees resumed duty.
11. He denied having guided anyone to go on strike or destroy any property.
12. That workers and managers had previously met on various issues as minutes reveal and a go-slow in June 2023 was not addressed by the applicants.
13. That the go-slow was occasioned by the 1<sup>st</sup> applicant's failure to respond to the issues raised by the employees as there had been dialogue.
14. That the factory was not closed on 19<sup>th</sup> August, 2021 and work resumed after Boaz Omoke addressed the workers and Mr. Patrick Ombuti and Wycliff Ochieng Oyugi were at work and the instant application was made in bad faith.
15. The 2<sup>nd</sup> Respondent, Mr. Dalmas Aoko deposes that he joined the 1<sup>st</sup> Applicant in November, 2011 as a Lab Analyst and had never participated in a strike since then and was cleared after suspension on 29<sup>th</sup> August, 2024 and has sought early retirement vide letter dated 2<sup>nd</sup> September, 2024 by virtue of having retained the age of 60.
16. That on 19<sup>th</sup> August, 2024, he reported at 6:20am and found people who had come of the factory and when he was passing by they hit him with sugar cane for going to work yet there was a go slow.
17. That he sat at the petrol station and the go slow ended at 11:00am and the employees resumed work and worked till the end of the shift.
18. That those who were on strike were amorphors and leaderless and he had no energy to engage in call or participate in a strike.  
That the go slow lasted for 3 hours.
19. The 3<sup>rd</sup> respondent, Mr. Michael Odhiambo Gwada deposes that he joined the 1<sup>st</sup> applicant in August, 2018 as a driver and on the material day he arrived at the work place at 7:05am and clocked in but found employees at the fuel station and no activity was going on and told him to drive the motor vehicle he had been driving but the office was closed and could he could not access the keys. That he came in together with one Kennedy Odhiambo, the Human Resource Manager. That the Deputy Transport Manager, Mr. David Wekesa advised him to to load fuel on the motor vehicle and take to the same weigh bridge but found employees at the fuel station being addressed by the Chief Engineer and Security Manager and went to his work place and did not participate in the strike, organized or called it.
20. That the participants were amorphors with no leader and the go slow lasted for about 3 hours.
21. The 4<sup>th</sup> Respondent, Mr. Wycliffe Ochieng Oduor states that he started his day earlier on 16<sup>th</sup> August, 2024 and on 19<sup>th</sup> was in Kisumu, travelled to Ndiwa on 18<sup>th</sup> August to report to the office on 19<sup>th</sup> August, 2024 but reported to work on 18<sup>th</sup> to arrange his work for the following day and returned to the house.
22. That on the material day, he dispatched the tractors at 5:30am and was in the field at 6:30am but was informed about a commotion at the company premises and at 10:00am Mr. David Wekesa called for the tractors to be released in the field and they came, did several trips and closed work at 7:00pm and was unaware of the strike and denies having funded anyone to go on strike or shout down any one and there was no closure of the factory witnessed and no strike took place.



23. Finally, the affiant depones that the application is intended to frustrate employees and is contrary to employee rights and there is no evidence of a strike at the 1<sup>st</sup> applicant's premises.
24. While the 1<sup>st</sup> and 2<sup>nd</sup> respondents attached documentary evidence on the occurrences at the respondents, the 3<sup>rd</sup> and 4<sup>th</sup> respondents did not.

### **Applicant's submissions**

25. The applicant isolated no specific issue but addressed the legal foundation of the application citing Sections 12(3)(1) of the *Employment and Labour Relations Court Act*, the Court's jurisdiction Section 77 of the *Labour Relations Act*, among other provisions and the decision in *Thomas Mumo Maingey & Another V Sarah Nyiva Hillman & Others* [2018] eKLR which cited *Charles House Investments V Simon K. Sang & Others*, to urge that the strike was illegal unprotected and irreparable loss ensued.
26. That no strike notice was issued as required by the provisions of Section 76 and 80 of the *Labour Relations Act* to urge that there was a strike at the 1<sup>st</sup> respondent's factory as confirmed by the 2<sup>nd</sup> respondent as the employees had no right to make demands on the terms of employment.
27. That the respondents adduced no evidence that normalcy had resumed.
28. The 1<sup>st</sup> Applicant submits that there were no pending grievances between itself and the employees as per the minutes and return to work formula signed in February 2024 and the respondents tendered no evidence of non-implementation of the return to work formula.
29. On the alleged losses or damages, the 1<sup>st</sup> Applicant urges that closure of the factory led to loss and the General Manager had to be rescued by the police and the respondents adduced no evidence to prove that loss did not occur on account of the strike.

### **Respondents submissions**

30. Counsel for the respondents submits that the 1<sup>st</sup> Applicant's Notice of motion lacks merit and is for dismissal with costs as the Supporting Affidavit comprises general allegations against the respondents having led employees to go on strike on 19<sup>th</sup> August, 2024 and lacking in specifics as to what each respondent did or how they participated in the so called strike.
31. Counsel submit that the 1<sup>st</sup> Applicant had not controverted the evidence by the respondents or filed other evidence to show that they reported the strike to the police.
32. Counsel urges that the instant application has no basis as there is no evidence that there was a strike at the company or that it was instigated by the respondents to warrant the order of injunction being sought and no report was made to the Labour Office of the alleged strike.
33. Counsel submits that the allegations made can only be determined by way of a full trial as opposed to an application and there is no evidence that the operations of the 1<sup>st</sup> applicant were affected and the application should be dismissed with costs.

### **Analysis and determination**

34. The Claimant/Applicants sought temporary orders of injunction pending the hearing and determination of the instant application and the main suit and when the Notice of Motion dated 19<sup>th</sup> August, 2024 came up under Certificate of Urgency, the court granted an injunction restraining the respondents, agents and employees of the 1<sup>st</sup> applicant from instigating, taking part or participating in the strike commenced in 19<sup>th</sup> August, 2024 or any other strike pending the hearing and determination



- of the application and restrained the respondents, agents and all the employees of the 1<sup>st</sup> applicant from disrupting and/or interfering with the operations and business of the claimants.
35. The only outstanding issue is whether similar orders are merited pending the hearing and determination of the main suit.
  36. The entire applicants case hinges on the allegation that on 19<sup>th</sup> August, 2024 employees at the 1<sup>st</sup> applicant's sugar factory under the leadership of the respondents went on an illegal strike and the strike occasioned a complete shutdown of operations at the factory, disrupting every activity and compromised the security of Senior Managers and no complaints had been raised previously.
  37. The 1<sup>st</sup> Applicant further alleges that it suffered huge losses running in the millions of shillings.
  38. On the other hand, the totality of the respondents evidence is that on 19<sup>th</sup> August, 2024 there was disruption of work at the 1<sup>st</sup> applicant's factory from early morning to about 10 or 11:00 O' clock and operations resumed thereafter. The 1<sup>st</sup> respondent admitted that on the morning of that day a group of employees went to the cane yard and met Nick, a Security Manager, then proceeded to the workshop and then to the filling station where they sat down and started shouting about the General Manager.
  39. That the 1<sup>st</sup> respondent told them not to destroy anything and they agreed.
  40. Equally, the respondent's averments reveal that the workers were addressed by the Security Manager and the Chief Engineer, Mr. Boaz Amoke, evidence the applicants did not contradict.
  41. What is exceptionally striking from the averments of the appellants and the respondents is the sharp contrast between them, to the extent that one may be excused for surmising that they relate to events that took place on different days or relate to different organizations.
  42. While the respondents averments paint a picture of what could have transpired, the applicants averments are generalized and lacking in supportive evidence to demonstrate what transpired on that date.
  43. Mr. Collins Aluku's affidavit raises more questions than answers. He does not state that he was present at the work place on that date or was briefed by anyone on what transpired.
  44. His deposition lacks essential details on the alleged strike or go slow. Were all employees involved? How did the start, progress and who were the leaders and what did they tell the employees? What was destroyed by the striking employees and was the same reported to the police and by whom and when? Was any employee arrested for the destruction or damage and how was the safety of Senior Managers secured and how did the strike end and for how long was the closure?
  45. Further, the applicants adduced no evidence as to who was inconvenienced by the alleged strike and how the alleged loss was occasioned and the estimated loss.
  46. Relatedly, it is unclear as to how the applicants isolated the four (4) respondents as the master-minds and organizers of the strike.
  47. The applicants adduced no shred of evidence to demonstrate the actual role or any role played by each of the respondents and their evidence was uncontroverted.
  48. Apart from the deposition by Mr. Collins Aluku, the appellants provided no material evidence to buttress its Notice of Motion and made no effort to respond to the respondent's depositions which it could have denied or controverted by evidence.
  49. Similarly, the grounds upon which the applicants Notice of Motion is based lack supportive evidence.



50. It is essential to note the respondents attached copies of documents which appear to suggest that the 1<sup>st</sup> applicant had challenges with some employees, for instance, Minute 8/06/2023 of the meeting held on 24<sup>th</sup> June, 2023 show that for unexplained reasons employees behaved in an unruly manners on 17 and 19<sup>th</sup> June, 2023 and disciplinary process had been initiated.
51. Similarly, the documents reveal that there was stoppage of work at the 1<sup>st</sup> Applicants factory on 8<sup>th</sup> February, 2024 and a Return-to-work formula was signed on 11<sup>th</sup> February, 2024 after a meeting attended by the Labour Officer, Area Assistant County Commissioner, Area CIDU and the Area Police Commander and resumption of work was agreed as 12<sup>th</sup> February, 2024.
52. The Return-to-work formula gave the Applicant's management 14 days to address employee grievances failing which the employees were at liberty to issue a 14 days trike notice.
53. Instructively employees had identified 18 grievances including salary review, racism and discrimination, unfair and unprocedural termination of employment, staff canteen, payment of salary by Mpesa not via bank, quality of PPEs, staff bus to drop employees after work, reinstatement of mid-month advance salary remission of statutory deductions, racist General Manger, joining of union, block emergency exits and gratuity/service pay among others.
54. It is unclear whether the 1<sup>st</sup> applicant had addressed all these grievances by 19<sup>th</sup> August, 2024 as the issue of the General Manager's conduct appear to have been one of the causes of the go slow.
55. The events of 19<sup>th</sup> August, 2024 must be seen in context of what had previously transpired.
56. Flowing from the foregoing, and in the Court's view, the Court is persuaded that the respondents' deposition on what transpired on 19<sup>th</sup> August, 2024 is more detailed and credible compared to the applicant's depositions which lacks particularity and detail on the actual occurrences and actions taken as none of the affiant's deposition are evidentiary demonstrable.
57. The principles that govern the grant of an injunction were articulated in the famous decision in *Giella V Cassman Brown and Co. Ltd* [1973] EA 358 namely: Prima facie case with probability of success, applicant might otherwise suffer irreparable injury if the remedy is not granted and if in doubt regard be had to the balance of convenience
58. The issue at hand is whether the applicant's case meets the threshold for the grant of an order of an injunction. The simple answer is that it does not for want of proof.
59. It is trite law that the person who alleges is obligated to establish the allegations.
60. Section 107(1) of the *Evidence Act* provides that
  1. Whoever desires any Court to give judgment as to any right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
  2. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.
61. Section 108 states that
62. The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all was given on either side.



63. Finally, Section 109 provides that

The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

64. See *Raila Odinga & Another V Independent Electoral and Boundaries Commission & 2 Others; Auko & Another (Interested Parties); Attorney General & Another (Amicus Curie)* [2017] KESC 42 (KLR) where the Court was emphatic that

On this sole important issue the law is clear that he who alleges must proof.

The term burden of proof draws from the latin phrase *Onus Probandi* and when we talk of burden we sometimes talk of *onus*”

65. See also *David Bagine V Martin Bundi* [19917] eKLR *Anne Wambui Ndiritu V Joseph Kiprono Ropkoi and Another* [2005] IEA 334, *Evans Nyakwana V Cleophas Bwana Ongaro* [2015] eKLR, *Nandi Tea Estates Ltd V Eunice Jackson Were* [2006] eKLR and *Mary Wambui V Kenya Bus Services Ltd* [1997] eKLR among other espousing on the burden of proof.

66. Needless to emphasize, the standard of proof in Civil cases is on a balance of probabilities are held in *Daniel Toroitich Arap Moi V Mwangi Stephen Muriithi & Another* [2014] eKLR where the Court of Appeal stated as follows:

It is a firmly settled procedure that even where a defendant has not denied the claim by filing a defence or an affidavit or even where the defendant did not appear, formal proof proceedings are conducted. The claimant lays on the table evidence of facts contended against the defendant. And the trial court has a duty to examine the evidence to satisfy itself that indeed the claim has been proved. If the evidence falls short of the required standard of proof, the claim is and must be dismissed. The standard of proof in a civil case on a balance of probabilities”.

67. In *Re H. & Others* [1969] Lord Nichol of the House of Lords stated that:

The balance of probability standard means that a Court is satisfied an event occurred if the Court considers that, on evidence, the occurrence of the event was more likely than not. When assessing the probability the Court will have in mind as factors to whatever extent is appropriate in the particular case that the more serious allegation the less likely it is that the event occurred and, hence the stronger should be the evidence before the Court concludes that the allegation is established on the balance of probability”.

The Court is guided accordingly.

68. From the foregoing, it is discernible that the applicants bore the burden of proof to establish that on the material day, the employees of the 1<sup>st</sup> applicant participated in a strike under the guidance of the respondents, detailing how the alleged strike started and progressed and how the applicants dealt with the issue including evidence of any report made to the police or the local labour officer.

69. The foregoing would have clearly demonstrated the requirements of an injunction.

70. As none of the foregoing was evidentiary demonstrated, it is the finding of the Court that the applicants have failed to prove their case on a balance of probabilities and the same is for dismissal.



71. Consequently, the applicants' Notice of Motion dated 19<sup>th</sup> August, 2024 is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 27<sup>TH</sup> DAY OF JANUARY, 2025.**

**DR. JACOB GAKERI**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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.

