



West Kenya Sugar Company Ltd & 3 others v Kenya Union of Sugar Plantation and Allied Worker (Cause E030 of 2024) [2025] KEELRC 614 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 614 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
CAUSE E030 OF 2024
DN NDERITU, J
FEBRUARY 27, 2025**

BETWEEN

**WEST KENYA SUGAR COMPANY LTD 1ST CLAIMANT
PLATINUM OUTSOURCING LOGISTICS EA LTD 2ND CLAIMANT
CONSOLIDATED HR SOLUTION LTD 3RD CLAIMANT
VOLT MANAGEMENT SERVICES LTD 4TH CLAIMANT**

AND

**KENYA UNION OF SUGAR PLANTATION AND ALLIED
WORKER RESPONDENT**

RULING

I. Introduction

1. The claimants(Applicants) commenced these proceedings by way of a statement of claim dated 2nd October, 2024 seeking the following reliefs –
 - a. A declaration that the strike commenced on 1st October,2024 by the respondent’s members and none members at the 1st claimant’s factory in Shamberere is illegal, unprotected, prohibited and not in compliance with the *Labour Relations Act*.
 - b. A declaration that there shall be no strike by the respondent either by itself, its officials, agents or members without following the due process as stipulated by law.
 - c. A prohibition against the respondent by itself, its officials, agents, and/or members, and/or the claimant’s employees from taking part, calling for, instigating, and/or inciting to take part in an unprotected strike.



- d. A prohibition restraining the respondent, by itself, its officials, agents and/or members and/or the claimant's employees, from holding impromptu meetings on the 1st claimant's premises during working hours, and or holding meetings which have not been legally called for within 500 meters of the claimant's factory premises.
 - e. The claimants are at liberty to take the necessary action against the respondent's members as provided for under Section 80 of the [Labour Relations Act](#).
 - f. Any other relief and order that the Honourable court may deem fit and just to make and/or grant in the spirit of promoting tranquility in the labour industry and minimizing the disruption of the claimants' operations.
 - g. Costs of the claim.
2. Contemporaneously, the claimants filed a notice of motion (the application of even date. This ruling is in regard to that application wherein the claimants are seeking the following orders –
- a. Spent.
 - b. That pending hearing and determination of this application and the main claim, the Honourable court be pleased to grant an injunction restraining the respondent, its agents, members, and/or representative if the respondent, from calling, carrying on, taking part, instigating, inciting and/or otherwise participating in the strike commenced on 1st October, 2024 and/or any other strike.
 - c. That pending hearing and determination of this application and the main claim, the honourable court be pleased to grant an injunction restraining the respondent's, its agents, members and/or representative of the respondent, from calling, carrying on, taking part, instigating, inciting and/or any other strike.
 - d. That the OCS Malava Police Station be directed to enforce and ensure compliance with this order.
 - e. That the costs of this application be provided for.
3. The application is expressed to be based on Sections 76,77, 78 & 80 of the [Labour Relations Act](#). It is founded on the grounds on the face of it and the supporting affidavit sworn by Duncan Abwawo on 15th November, 2024 and the annexures thereto.
4. In opposition the respondent filed a replying affidavit sworn by Jeremiah Ingalia Akhonya on 28th October, 2024.
5. By consent, the application was canvassed by way of written submissions. The claimants' counsel, Mr. Olendo, filed his written submissions on 9th December, 2024 and Mr. Bagada, for the respondent, filed on 13th December, 2024.

II. The Evidence

6. In the supporting affidavit by Duncan Abwawo, the human resource & administrative manager of the 1st claimant, it is deponed that there exists a collective bargaining agreement(CBA) between the 1st claimant and the respondent for employees who are members of the respondent. It is deponed that the 1st claimant outsourced bulk of its workforce from the 2nd to 4th claimants who do not have a recognition agreement or a CBA with the respondent.



7. It is deponed that on 27th September, 2024 while the respondent was negotiating a new CBA with the 1st claimant, the respondent purported to sneak in a clause in the CBA to include employees of the 2nd to 4th claimants, yet the 1st claimant has no mandate to represent the other claimants and hence the 1st claimant declined the said inclusion.
8. It is deponed that on 1st October, 2024 the respondent, aggrieved by the 1st claimant's stance, led by its officials incited its members at Shamberere to go on unprotected and prohibited strike in violation of the *Labour Relations Act*.
9. It is deponed that the strike crippled operations at the 1st claimant's factory, leading to fermentation of sugar juice in the tanks which could corrode the tanks affecting production and even lead to potential health and safety risks. It is deponed that the strike led to delays in collection of already harvested sugarcane from farmers and compromised the security and safety of the claimant's senior managers.
10. It is deponed that the respondent incited employees who are not employees of the 1st claimant's in a bid to coerce the 1st claimant to include the outsourced employees in the CBA which is not feasible as they are not employees of the 1st Claimant.
11. It is deponed that there exists no recognition agreement between the respondent and the 2nd to 4th Claimants and the 1st Claimant has no capacity to negotiate a CBA on behalf of the other claimants. It is further deponed that even were the CBA negotiations to include the aforesaid outsourced employees, the same would be unenforceable as the said employees are not employees of the 1st claimant.
12. It is deponed further that the county labour officer visited the factory after the strike started and attempted to resolve the dispute but the respondent allegedly incited the day shift employees to ensure that the night shift employees could not report to work.
13. It is deponed that the respondent's action of calling the strike will occasion great financial loss on the 1st claimant who will have to bear costs of cleaning the machines corroded by fermented sugar juice.
14. It is deponed that the officials of the respondent hired goons and forced entry into the 1st claimant's premises wherein they vandalized vehicles, machinery, and office equipment, and evicted all employees who were not taking part in the strike. It is deponed that these actions occasioned loss of millions of shillings and data to the 1st claimant.
15. It is deponed that the 2nd to 4th claimants are not aware of any dispute regarding their employees who are members of the respondent. It is deponed that the respondent's behaviour runs counter to the need for industrial harmony and peace. It is deponed that no dispute exists between the 1st claimant and its employees who are the members of the respondent.
16. It is contended that under Sections 76, 78, & 80 of the *Labour Relations Act*, a protected strike must comply with the law and where the strike is unprotected the same is illegal. It is deponed that the strike by the members of the respondent and non-members has led to losses to the claimants as the same has occasioned the closure of the 1st claimant's factory.
17. It is deponed that the strike has occasioned huge losses to the claimants and any loss so incurred may not be compensated by damages. It is deponed that the striking employees are not capable of making such compensation.
18. It is further deponed that the strike affected the claimant's customers who cannot access the factory to purchase sugar for their stores and the claimants are unable to meet third-party contracts which may subject them to third-party suits.



19. In the replying affidavit it is deponed that there exists a recognition agreement and a CBA between the respondent and the 1st claimant.
20. It is further deponed that the 2nd to 4th claimants were engaged by the 1st claimant sometimes in April, 2024 and have taken over the employment of the employees previously engaged by other firms to work for the 1st claimant.
21. It is deponed that the employees of the 2nd to 4th claimants are members of the respondent and that in Kisumu Employment court cause No. 258 of 2020 (JA-1); E020 of 200 (JA-2); & Cause No. 388 of 2018 (JA-3) the claimants were ordered to effect union dues' deductions.
22. It is denied that the respondent sneaked in clauses in the CBA that had not been negotiated and agreed.
23. It is deponed that on 1st October, 2024, during the impugned strike, the employees only sought to be addressed on the CBA negotiations as there was no sugarcane to mill at the time. The employees had sought the engagement by the General Manager, Mr. Sharma as they awaited accumulation of sugarcane for milling.
24. It is deponed that on the material date of 1st October, 2024, the general manager called the deponent informing him that the employees wished to be addressed by both the union and the 1st claimant's management. It is deponed that the deponent went to the 1st claimant's factory and a meeting of two to three hours was held with the labour officials in which it was agreed that the workers would be addressed and go back to work as soon as sugarcane was available for milling. It is deponed that there were no operations at the 1st claimant's factory on the material date since there was shortage of sugarcane and the respondent's officials had been invited to the factory by the 1st claimant's management.
25. It is deponed that the 1st claimant's chief human resource manager, Mr. Mung'atana, however informed the respondent through the general manager that they were to address employees before he arrived from Nairobi and directed the 1st claimant not to commit to any terms on return to work.
26. It is deponed that the employees working for the 2nd to 4th claimants are entitled to the benefits of the CBA as directed by the court in the aforesaid cause and the employees have a right to seek engagement from their employer and the union.
27. It is deponed that upon refusal by the chief human resource manager of the 1st claimant, the labour officials and the respondent left the factory. It is further deponed that the respondent's officials returned for the return-to-work negotiations on 2nd October, 2024 but were informed that only permanent employees were allowed entry into the company while the rest were locked out. It is deponed that a meeting was held between the labour commissioner and management of the 1st claimant on the same day and employees locked out of the premises were allowed into the factory freely.
28. It is deponed that there was no forced entry into the respondent's premises and the 2nd to 4th respondents were aware that their employees are entitled to terms of the CBA in place as ordered by the court and as the respondent had informed them.
29. It is deponed that it was the 1st claimant that invited the respondent for CBA negotiations and thus it cannot be said that the respondent used intimidation, dirty tricks, or violence to negotiate the CBA.
30. It is deponed that no strike occurred and the 1st claimant unlawfully locked out employees at its gate. It is further deponed further that no strike took place and the 1st claimant only wishes to victimize



the officials of the respondent and the employees who only sought a clarification. The respondent's officials were invited by the management to address the employees.

31. It is deponed that the 1st claimant has commenced disciplinary actions over the alleged strike yet it filed a suit to seek a declaration on the validity of the same strike. It is deponed further that no loss occurred as alleged by the 1st claimant and none has been demonstrated as at no instance did the employees refuse or fail to work.
32. It is deponed that the 1st claimant is only trying to intimidate employees for joining the respondent's membership and that the application is brought in bad faith.

III. Submissions

33. On the one hand, the claimants' counsel submitted globally on the illegality of the unprotected strike of 1st October, 2024. It is submitted that despite the respondent's denial that no strike occurred, there could not have been return to work negotiation if the employees had not gone on strike.
34. It is submitted that no strike notice has been availed by the respondent as required under Section 77 of the *Labour Relations Act* and, in any case, no recognition agreement or CBA exists between the respondent and the claimants to empower the respondent to have instigated the employees to strike. It is submitted that the demands for union deductions alleged by the respondent to be due from the 1st claimant can only be based and payable upon a recognition agreement with the 2nd to 4th claimants.
35. It is submitted that under Section 12(3)(l) of the *Employment and Labour Relations Court Act*, Rule 45(5) & 6 of the Employment and Labour Relations (Procedure) Rules, 2024 and Section 80(3) of the Labour Relations Court Act, the court is empowered to issue injunctive orders and determine issues of strikes and lock-outs.
36. The court is urged to be persuaded by the reasoning and holding in *Thomas Mumo Maingey & another v Sarah Nyiva Hillman & other* (2018) eKLR and issue an injunction, as the claimants have established a prima facie case that the strike was illegal and unprotected.
37. It is submitted that the claimants suffered losses running into millions or shillings which cannot be compensated by the members of the respondent or the other employees even if damages were awarded and to be paid in installments as they are not liquid. It is further submitted that the balance of convenience tilts in the claimants' favour for the court to issue the injunction.
38. It is submitted that the respondent has not provided any evidence that employees were locked out of the 1st claimant's factory and if indeed no strike had taken place there could not have been any return to work negotiation. It is submitted that there was no way employees could have been locked out if others were working, and hence any employee who participated in an unprotected strike is guilty of gross misconduct. To buttress this assertion, the claimants cited *Red Lands Roses Limited v Kenya Plantation and Agricultural Workers Union* (2020) eKLR.
39. It is submitted that there was no dispute between the claimants and the respondent to warrant the instigation of a strike, as no recognition agreement was in place between the 2nd to 4th claimants and the respondent. It is further submitted that the court orders referred to by the respondent have no bearing on the 2nd to 4th claimants as they were not party to the said cause and, in any case, there is no proof that the employees are members of the respondent. It is submitted that under Sections 54 & 57 of the *Labour Relations Act*, in the absence of a recognition agreement no CBA can be negotiated.
40. Citing *Inter-Public Universities' Council Consultative Forum of Federation of Kenya Employers V Universities 'Academic Staff Union & 5others* (2018) eKLR, it is further submitted that in failing



to refer the alleged dispute to conciliation before resorting to a strike the strike was illegal. It is submitted that the 1st claimant has demonstrated the losses suffered that cannot be compensated by the respondent or its members and for the foregoing, the court is urged to allow the application.

41. On the other hand, counsel for the respondent submitted that no strike had occurred. It is submitted that no strike occurred and no evidence has been availed demonstrating that any property was destroyed. It is submitted that the claimants have misconstrued the respondent's averments in the replying affidavit to assert that the return to work negotiations were in regards to a strike, yet the same related to the instance when the respondent's officials had been asked to address the employees to go to work which was declined by the 1st claimant's head of human resources. It is submitted that the claimants have not proved that a strike occurred and or that the respondents instigated the same.
42. It is submitted that had the strike occurred, the claimants should have adduced evidence of the allegedly destroyed property. It is submitted that averments that no operations were ongoing in the 1st claimant's factory during the alleged strike was false as no evidence was availed to that effect.
43. It is submitted that the prayer by the claimants to prevent the respondent from calling a strike is unconstitutional.
44. It is further submitted that the claimants have neither established a prima facie case that a strike occurred nor proved that any property was damaged or destroyed. It is submitted the evidence on record confirms that the employees had only sought to be addressed on the CBA negotiations and that is the 1st claimant that called the respondent to address the employees on the same.
45. It is submitted that to allow the blanket injunction to prevent the respondent or its members from engaging in future strike(s) would amount to curtailing them from exercising their constitutional mandate to call a strike and participate in lawful union activities.
46. It is submitted that the order sought will prejudice the respondent and not the claimant. On a balance of convenience it is submitted that the orders sought ought not be issued. The court is urged to dismiss the application with costs.

IV. Issues for Determination

47. In the considered view of the court, there is one main issue for determination in this application –
 - a. Whether the claimants/respondents have made out a case for granting of an interlocutory injunction sought; and
 - b. Who should bear the costs of the application?

V. Injunction

48. To qualify for grant of an injunctive relief, the claimants ought to have satisfied the conditions set out in *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358 where the court held thus –

The conditions for the grant of an interlocutory injunction are now well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt it will decide the case on the balance of convenience.” (Emphasis added)



49. On whether the claimants have established a prima facie case to warrant the grant of an injunction, the claimants are seeking injunctive orders to prevent the respondent and its members from calling, carrying, taking part, instigating, inciting, and or participating in the strike which commenced on 1st October, 2024 and further from participating in any other strike. The claimants further seek an order to prevent the respondent or its members from disrupting the claimants' business.
50. The respondent's position is that no strike took place and all employees had resumed work. It is argued that a blanket order preventing the respondent or its members from calling or participating in a strike is unconstitutional.
51. In their application the claimants stated that the strike commenced on 2nd October, 2024. The court issued interim orders on 3rd October, 2024 stopping the respondents or its members from participating in the said strike. The respondents assert that no strike ever took place.
52. The court finds and holds that the prayers seeking for orders prohibiting and restraining the said strike on 1st October, 2024 have been overtaken by events following orders of court made on 3rd October, 2024 and the subsequent return to work by the employees as per the evidence on record.
53. While the claimants in the submissions assert that the order sought in their application is to prevent the respondent or its members from participating in any other strike relating to the present suit, the order as framed in the application is a blanket order to restrain the respondent or its members from participating in any strike. Further, the application seeks to injunct the respondent or its members from disrupting the respondent's operations or businesses.
54. On whether the claimants have made a prima facie case to warrant preventing the respondent from future strikes, Article 41(2)(d) of *the Constitution* gives workers the right to go on strike while Section 81 of the *Labour Relations Act* prohibits strikes in essential services. The nature of the 1st claimant's business of sugar production does not fall under essential services as envisaged under Section 81 of the *Labour Relations Act*.
55. The ILO Conventions No.87 C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)) and 98 (ILO Convention No.98 Right to Organize and Collective Bargaining Convention) provide for freedom of association, protection of the right to organize, and the right to collective bargaining, and forms the juridical basis upon which the right to strike is derived. While the conventions do not directly refer to the right to strike, it is a norm that the right to strike is an integral and indispensable component of the right to collective bargaining and that where such right is restricted, there must be safeguards to ensure that workers can continue to participate in meaningful collective bargaining.
56. In any event Article 41(2)(d) of *the constitution* reinforces and upholds the right to go on strike by workers.
57. For the court to issue a blanket order preventing the respondent or its members from participating in strikes, it would be tantamount to crippling the rights of the members of the respondent from organizing and participating in meaningful collective bargaining. The court cannot not at this juncture speculate on whether the respondent or its members will organize a strike and issue a blanket order based on speculation. It is not equitably adequate to say timeo or I fear and for an order to be issued based on such fear or speculation.
58. On the prayer for an injunction to restrain the respondent from disrupting the operations of the claimants'/respondents' businesses, it was alleged that the respondent's officials forced their entry into the 1st claimant's premises but the respondent states that the 1st claimant's management invited its



officials to the premises. The circumstances relating to the activities of 1st October, 2024 form the substratum of the claimants' claim which is pending before this court.

59. For the court to determine whether the respondent or its members disrupted the 1st claimant's business would amount to looking into the merits of the claim before this court without having heard the parties. An injunctive order is issued to stop an action which occurred before or is contemplated. The court cannot presume the report of the occurrences of 1st October, 2024 or what may happen in the future.
60. On the question whether the claimants would suffer irreparable harm if the injunctive orders are not granted, the court notes that the claimants have asserted that they have incurred losses emanating from damages to vehicles, machinery, and loss of data after the alleged strike. No evidence or quantification has been attached to the application for the alleged destruction or damage or the loss incurred.
61. The court were to find that the claimants suffered any losses at this juncture, it would amount to making a finding that indeed there was a strike that was unprotected before hearing the parties on the claim, wherein the alleged loss of property and data is disputed.
62. Finally, in determining where the balance of convenience lies, the court must consider the legal consequences of restraining the respondent or its members from participating in strikes the claimants'. The court finds that the alleged strike of 1st October, 2024 was stopped by the court by issuance of the orders of 3rd October, 2024 and thus orders to stop the same are now overtaken by events. Further, on the right to strike, the court finds that a blanket order restraining the respondent or its members from participating in a future strike is tantamount to violating their right to fair labour practices.
63. Further, on the interference with the claimants business, this is an issue to be determined in the claim pending in court on whether or not there was any interference and if the court was to make a finding that the respondent disrupted the claimants business it would have the effect of determining the parties' claim without first according them an opportunity to be heard.
64. The upshot is that the court finds the claimants' application devoid of merit and the same is hereby dismissed with costs in the cause.

VI. Costs

65. Costs shall abide in the cause.

VII. Orders

66. The application is devoid of merits and the same is hereby dismissed with costs in the cause.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 27TH DAY OF FEBRUARY, 2025.

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DAVID NDERITU

JUDGE

