



West Kenya Sugar Company Ltd & 3 others v Kenya Union of Sugar Plantation and Allied Worker (Cause E030 of 2024) [2025] KEELRC 615 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELRC 615 (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. In a notice of motion dated 17th October, 2024 (the application), the respondent (applicant) is seeking orders that –
 - a. Spent.
 - b. That pending hearing and determination of this application the claimants/respondents by themselves and or through their agents, employees, servants and or anyone acting under their instructions be restrained from initiating, proceeding with any disciplinary action and or taking any disciplinary action against their employees, union members or non-members of the applicant on account of participating in the alleged strike that commenced on 1st October, 2024 to 3rd October, 2024.
 - c. That pending hearing and determination of claimants' claim the claimants/respondents by themselves and or through their agents, employees, servants and or anyone acting under their



instructions be restrained from initiating, proceeding with any disciplinary action and or taking any disciplinary action against their employees, union members or non-members of the applicant on account of participating in the alleged strike that commenced on 1st October, 2024.

- d. That pending hearing and determination of the claimants' claim dated 2nd October, 2024, the claimants be restrained be restrained /stopped from victimizing or initiating any further disciplinary actions or termination or dismissal of any of their employees, union officials, union members and/or non-members be deemed as withdrawn.
 - e. That the costs of this application be borne by the claimants.
2. The application is expressed to be based on Articles 41 & 162(2) of *the Constitution*, Sections 12 of the *Employment and Labour Relations Court Act*; Rules 44 & 45 of the Employment and Labour Relations (Procedure)Rules, 2024, and ILO conventions. It is founded on the grounds stated on the face of it and supported with the affidavit sworn by Francis Bushuru Wangara on 17th October, 2024 and the annexures thereto.
 3. The claimants in opposition to the application filed a replying affidavit sworn by Duncan Abwawo on 15th November, 2024.
 4. 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 27th November, 2024.

II. The Evidence

5. In the supporting affidavit by Francis Wangara, the applicant's General Secretary, it is deponed that the respondents jointly filed a claim before this court that is pending determination on whether the activities of 1st October to 3rd October, 2024 amounted to an unprotected strike as to give the respondents the leeway to commence disciplinary action against its members.
6. It is deponed that despite the cause pending determination on whether the activities of the aforesaid dates amounted to unprotected strike, the claimants have issued the members of the applicant and other non-member employees with show-cause and suspension letters on account of participating in the alleged unprotected strike.
7. It is deponed that the claimants have usurped the court's power to declare the strike illegal and proceeded to undertake disciplinary action in abuse of the court process as the legality or otherwise as the strike is the subject matter of this cause pending in court.
8. It is deponed that contrary to Clause 8(iii)(b) of the Collective Bargaining Agreement(CBA) between the parties, the show cause and suspension letters were not copied to the union.
9. It is deponed that despite the interim orders issued on 3rd October, 2024 directing the respondent and all its members and non-members to resume work, the claimants have instituted the disciplinary action before the hearing and determination of their claim on the legality or otherwise of the strike.
10. It is deponed that should the court fail to issue orders to stop the claimants from carrying out the disciplinary action, the applicant's members of the respondent and non-members stand to be prejudiced before the determination of the cause.
11. It is deponed that the claimants' action is meant to intimidate and victimize the members of the respondent from participating in lawful activities of the union.



12. It is deponed that unless stopped the respondents will institute disciplinary action and terminate the employees while the cause is still pending in court for determination over that subject matter.
13. In the replying affidavit by Duncan Abwawo for the claimants, it is conceded that indeed the 1st Claimant commenced disciplinary action based on the allegedly illegal strike and issued show-cause and suspension letters to two of its employees.
14. It is deponed that the employees responded to the show cause letters and denied any involvement and requested further investigations. It is deponed that while the 1st claimant commenced the disciplinary process the respondent approached the court to halt the disciplinary action and the employees on suspension were recalled but directed them to proceed on annual leave.
15. It is deposed that the disciplinary action by the 1st claimant was above board and that the apprehension by the respondent has no basis. It is stated that the filing of the cause should not be a bar to the institution of disciplinary action.

***III. Submissions**

16. On the one hand, the respondent's counsel submitted globally on why the court should halt any disciplinary process by the claimants based on the strike whose legality or otherwise is the subject matter of this cause.
17. It is submitted that the claimants moved the court through their memorandum of claim dated 2nd October, 2024 seeking declaration that the alleged strike that commenced on 1st October, 2024 was illegal. It is submitted that despite the claimants filing the claim, they on 9th to 12th October, 2024 issued show-cause and suspension letters to the members of the respondent and non-members on the grounds of participating in the allegedly illegal strike of 1st October, 2024 to 3rd October, 2024.
18. It is argued that through the issued show-cause and suspension letters the claimants have declared the strike illegal, and neither that is yet to be determined by the court. The court is urged to be persuaded by the reasoning in *Yatich Kangungo v Board of Directors, Kenya Airports Authority & 2 others* (2017) eKLR, and find that the respondent's application is merited for the court to halt any disciplinary action pending the determination of the cause. It is submitted that by sending the employees on forced annual leave the 1st claimant unlawfully circumvented the court orders.
19. It is submitted that the members of the respondent and the non-member employees stand to be prejudiced should the court find that the strike was legal. The court is thus urged to justly interfere with the claimant's internal disciplinary process and stop any action pending the hearing and determination of the cause. It is submitted that the respondents' having filed the claim pending determination, they cannot have their cake and eat it. The court is urged to find the application merited.
20. On the other hand, counsel for the claimants submitted globally opposing the application to halt the disciplinary process. Citing *Anne Wambui Kamuiru v Kenya Airways Limited* (2016) eKLR, it is submitted that the court can only interfere with internal disciplinary processes in exceptional cases and circumstances.
21. It is further submitted that the disciplinary action by the claimants are not illegal or flawed and that the application is only intended to invite the court to interfere with the prerogative of an employer in managing its workplace and right to disciplining of employees.
22. It is submitted that allowing the application will amount to stifling the claimants' right to manage their affairs and encourage members of the respondent to disobey the human resources ethics and policies



governing their employment. Citing Professor Gitile J. Naituli v Multi Media University College & another [2013] KEELRC 221 (KLR), it is submitted that the disciplinary powers of an employer should not be stifled through judicial interventions.

23. It is submitted that the submission the disciplinary process will prejudice the members of the respondent is unfounded as no prejudice will be occasioned should the court finally find and hold that the strike was lawful. Citing *Ratemo v Kenya Film Commission & another* [2014] KEIC 3 (KLR), it is submitted that it is the claimants who will suffer prejudice if the application is allowed as the court will be taking away and curtailing an employer's right to institute disciplinary process. It is submitted that the court should only interfere with an internal disciplinary process where there is risk of irregularity staged towards a dismissal.
24. It is submitted that no evidence has been adduced that the disciplinary process is irregular, or proof that there is a pre-determined outcome to dismiss the employees.
25. The court is urged to dismiss the application with costs to the respondents.

IV. Issues for Determination

26. In my considered view, there is only one main issue for determination in this application –
 - a. Whether the court should halt the intimated internal disciplinary processes initiated by the claimants against the members of the respondent based on the purported strike?
 - b. Who should bear the costs of this application?

V. Disciplinary Action

27. The claimants filed 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.



28. The evidence on record is that the claimants despite having filed the statement of claim on 2nd October, 2024 proceeded to issue show- cause and suspension letters to various employees as per the letters attached (DA-1). The said letters which the court has perused are either dated 9th October, 2024, undated but received on 12th October, 2024, or dated 12th October, 2024. The letters were issued by the 1st to 3rd claimants. The respondent vide a letter dated 12th October, 2024 (DA-2) to the claimants called out the actions by the said claimants of undertaking the disciplinary process while the claim is pending in court.
29. The show-cause and suspension letters bear a common alleged misconduct being involvement in an illegal and unprotected strike from 1st to 3rd October, 2024.
30. The claimants however allege that the employees agreed to participate in the disciplinary process and the court only issued order on 23rd October, 2024 stopping the disciplinary action, yet the claimants had already commenced the disciplinary action. The claimants further argue that the court should only interfere with their prerogative to undertake administration of their internal functions under exceptional circumstances.
31. The claimants' case is for the determination whether the impugned strike commencing on 1st October, 2024 was illegal and unprotected. The show-cause and suspension letters produced in court suggest that the claimants have already determined that the strike of 1st October, 2024 was illegal and unprotected, yet that is the issue pending before this court for hearing and determination at the instance of the claimants.
32. In *Anne Wambui Kamuiru V Kenya Airways Limited*(Supra), it was held that “The Court will interfere not to stop the process altogether but to put the correct process on course”. The claim pending before the court is for the determination whether the strike of 1st October, 2024 was lawful and protected or unlawful.
33. The show-cause and suspension letters produced in court by the parties relate to the same cause of action pending before the court for determination. The application by the respondent does not seek to stop or prohibit the claimants from undertaking disciplinary action against the employees for other alleged misconduct but rather the application is seeking to stay the disciplinary process relating to the alleged strike that commenced on 1st October, 2024 pending the determination by the court on whether the alleged strike was lawful or unlawful.
34. The outcome of the claimants' cause shall determine whether the claimants had the right to initiate disciplinary action against the employees. Nothing shall prevent the claimants from instituting or continuing with the disciplinary action if the court finds that the strike was illegal.
35. The court finds and holds that this is a proper case for it to interfere with the claimants' prerogative of instituting the disciplinary action. This is so because the issue pending in court is also the subject of the disciplinary process and the outcome of the court process shall have a bearing on the disciplinary process.
36. The claimants jointly approached the court seeking a declaration on the legality of the strike and hence their own cause bound them to await the court's decision on the same. He who seeks equity must do equity and come to court in clean hands. The claimants on their own accord approached this court and must await its pronouncement of the legality or otherwise of the strike before commencing disciplinary action arising from the said strike.
37. For all the foregoing reasons, the court finds and holds that the respondent's application has merits and the same is allowed with costs in the cause.



VI. Costs

38. Costs shall abide with the cause.

VII. Orders

39. The court issues the following orders –

- i. The claimants by themselves and or through their agents, employees, servants and or anyone acting under their instructions is restrained from initiating or proceeding with any disciplinary action and or taking any disciplinary action against any of their employees, union members or non-members of the applicant, on account of their participation in the strike that took place between 1st and 3rd October, 2024.
- ii. The costs shall be in the cause.

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

.....

DAVID NDERITU

JUDGE

