



**Shalimar Fresh Limited v Kenya Plantations and Agricultural Workers Union (Employment and Labour Relations Cause E001 of 2024) [2025] KEELRC 346 (KLR) (11 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 346 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E001 OF 2024**

**HS WASILWA, J  
FEBRUARY 11, 2025**

**BETWEEN**

**SHALIMAR FRESH LIMITED ..... CLAIMANT**

**AND**

**KENYA PLANTATIONS AND AGRICULTURAL WORKERS  
UNION ..... RESPONDENT**

**RULING**

1. The matter before this court is an application dated 15<sup>th</sup> August 2024, certified as urgent as the object of the application will be defeated if not heard promptly. The Respondent issued a strike notice dated 13<sup>th</sup> August 2024, delivered on 14<sup>th</sup> August 2024, stating that the strike will commence at midnight on 19<sup>th</sup> August 2024 at the company premises. The applicant avers that the strike notice is illegal and contravenes the Recognition Agreement, which requires a 21-day notice instead of the 7-day notice issued by the Respondent. The applicant submits that the Respondent will not suffer any prejudice if the orders sought are granted, as the notice was issued in bad faith, contrary to the judgment of 9<sup>th</sup> July 2024, which directed the parties to meet and attempt to resolve the dispute. The Claimant requested for a meeting with the union both verbally and through a letter dated 29<sup>th</sup> July 2024, but the union refused to engage and frustrated the Claimant's efforts to resolve the matter. The Claimant is apprehensive that if the unprocedural strike proceeds, its operations will be paralyzed.
2. The Claimant/Applicant filed an application dated 15<sup>th</sup> August 2024, seeking urgent hearing during the court's summer vacation. The Respondent issued a seven-day strike notice via a letter dated 13<sup>th</sup> August 2024, stating its intention to strike from 19<sup>th</sup> August 2024. The notice was sent by email on 14<sup>th</sup> August 2024 to an unrelated third party and not to the Claimant. The strike notice demands payment of arrears on house allowance as per municipality rates and transport as per Clause 33 of the CBA.
3. Following the court's judgment delivered on 9<sup>th</sup> July 2024, the Claimant wrote to the Respondent on 29<sup>th</sup> July 2024, requesting engagement, but the letter went unanswered. Instead, the Respondent



- issued an unprocedural strike notice. The notice does not meet the threshold under Clause 3(d)(ii) (b) of the Recognition Agreement, which requires a 21-day strike notice after a recorded deadlock. The Claimant, through the Agricultural Employers Association, has proposed a consultative meeting chaired by the Ministry of Labour as a neutral arbiter.
4. The strike notice is in bad faith and directly disobeys the court's directive for parties to attempt to resolve the dispute. Granting the prayers sought will not prejudice the Respondent, as a strike should be a last resort, and no deadlock has been declared. The Respondent has not sought court intervention before calling for a strike and has refused to engage. If the orders sought are not granted, the Claimant will suffer immense loss as its workforce will cease operations based on an illegal strike.
  5. The Claimant/Applicant further filed an affidavit of even date sworn by Vitalis Osodo, the Group Human Resource Manager, who is familiar with the facts of the matter. He averred that the union issued a seven-day strike notice via a letter dated 13<sup>th</sup> August 2024, stating its intention to strike from 19<sup>th</sup> August 2024. The notice was sent by email on 14<sup>th</sup> August 2024 to an unrelated third party rather than the Claimant. The notice demands payment of arrears on house allowance as per municipality rates and transport as per Clause 33 of the CBA.
  6. The Claimant/Applicant averred that their representatives sent a letter to the union on 29<sup>th</sup> July 2024, requesting a meeting in line with the judgment delivered on 9<sup>th</sup> July 2024 and further court directions on 24<sup>th</sup> July 2024. The Respondent did not respond, and instead, an unprocedural strike notice was issued. The court in its judgment directed the parties to resolve the issue and report back within two weeks. The strike notice does not meet the threshold in Clause 3(d)(ii)(b) of the Recognition Agreement, which requires a recorded deadlock before issuing a 21-day notice. The Claimant proposed that the Ministry of Labour chair a consultative meeting as a neutral arbiter, but the Respondent has refused to engage.
  7. The strike notice is in bad faith and in direct disobedience of court orders. Granting the prayers sought will not prejudice the Respondent, as a strike should be a last resort, and no deadlock has been declared. The Respondent has not approached the court before calling for a strike and has deliberately refused to engage. If the orders sought are not granted, the Claimant will suffer immense loss as its workforce will cease operations based on an illegality. The affidavit confirms that the information provided is true to the best of the deponent's knowledge, with disclosed sources where applicable.
  8. The Claimant/Applicant filed a further affidavit dated 4<sup>th</sup> October 2024, sworn by Vitalis Osodo, the Group Human Resource Manager, who is familiar with the facts of the matter. He averred that further documentation has been obtained to assist the court in determining the review application. On 25<sup>th</sup> September 2024, an advertisement was published in the Daily Nation by the County Government of Nyandarua through its County Executive Committee Member, indicating that the County Assembly had approved the Integrated Strategic Urban Development Plan for Ol'Kalou Municipality on 27<sup>th</sup> March 2024. The advertisement was made pursuant to Section 50 of the *Physical and Land Use Planning Act*, which requires the County Executive Committee Member to publish a notice within fourteen days of approval. However, as of the time of making this affidavit, the County Government has not fully complied with Section 50, and the map is only available for inspection at the County Government's Physical Planning office.
  9. At the time of the court's judgment, no notice of approval had been issued by the County Government, confirming that the area where the Claimant is located was not part of a municipality, contrary to claims by the Respondent and the Labour Officer in their report. The Gazette Notice relied upon by the Labour Officer did not exist. Given that the issues before the court remain unresolved, clarity is sought on whether the Claimant's company falls within a municipality or another area as per the



recommendations of the Nyandarua Labour Officer, in light of the lack of gazettelement of the Ol'Kalou Municipality boundaries.

10. The parties met on 5<sup>th</sup> September 2024, 19<sup>th</sup> September 2024, and 3<sup>rd</sup> October 2024, but failed to reach a resolution, with the Union insisting that the Claimant's farm is situated in a municipality while the Claimant maintains that it is not within a gazetted municipal area. A certificate of disagreement was signed on 3<sup>rd</sup> October 2024, confirming their failure to agree. The Claimant remains willing to comply with the law once the municipality boundaries are officially gazetted. The court is urged to allow the application in the spirit of industrial relations, as no prejudice will be suffered by the Respondent or its members if the orders sought are granted. The affidavit confirms that the information provided is true to the best of the deponent's knowledge, with disclosed sources where applicable.

### **Respondent's Case**

11. The Respondent filed a Replying Affidavit dated 13<sup>th</sup> September 2024, sworn by Thomas Kipkemboi, the Deputy General Secretary of the Respondent Union. He stated that he had read and understood the Notice of Motion dated 15<sup>th</sup> August 2024 and the supporting affidavit of Vitalis Osodo and wished to respond. He confirmed that a seven-day strike notice dated 13<sup>th</sup> August 2024 was validly issued in line with Section 76(c) of the *Labour Relations Act* 2007, intending to engage in a lawful protected strike from 19<sup>th</sup> August 2024. He disputed the Claimant's contention that the strike notice was served on a stranger, stating that the Agricultural Employers Association had been on record for the Claimant and that the matter had already been heard and judgment delivered.
12. He acknowledged the Claimant's letter dated 29<sup>th</sup> July 2024 but asserted that it was a delay tactic and that the court's judgment had clearly stated that issues of transport and house allowance should be resolved as per the parties' Collective Bargaining Agreement (CBA). He argued that proposing a meeting at the Ministry of Labour was unnecessary since the CBA already provided a resolution framework. He further noted that the court had affirmed the validity of the second conciliator, Ms. Kingori, and her recommendations should have been implemented. He accused the Claimant of failing to attend conciliation meetings, thereby violating Section 77(3) of the *Labour Relations Act*, which bars a party that fails to attend conciliation from seeking relief in court.
13. He maintained that the Respondent had followed due process in issuing the strike notice, as the dispute remained unresolved, and the court had directed on 30<sup>th</sup> July 2024 that the parties were free to take the next course of action. He dismissed the Claimant's reliance on the Trade Disputes Act, stating that it had been repealed and did not align with the *Labour Relations Act* 2007. He contended that the Claimant was disobeying court orders by failing to implement the CBA as directed in paragraph 76 of the court's judgment dated 9<sup>th</sup> July 2024. He accused the Claimant of seeking refuge in court to evade its obligations under the CBA.
14. He asserted that the Claimant had ample time to engage the Respondent but failed to attend conciliation meetings and ignored the conciliator's recommendations. He argued that the Claimant had rushed to court to block the Respondent from seeking relief on the same issues. He dismissed the Claimant's claim of suffering losses, stating that no loss would be incurred if the court orders were obeyed and the CBA implemented. He stated that the Respondent had exhausted all legal mechanisms to resolve the dispute, while the Claimant had displayed arrogance by disregarding the conciliator's recommendations, the court's judgment of 9<sup>th</sup> July 2024, and the court's orders of 30<sup>th</sup> July 2024.
15. He cited the Labour Officer's report, which highlighted discrimination against Mahe employees, who were within a municipality and were denied municipal rate house allowances, while Shalimar employees, who were outside a municipality in Gilgil, received such allowances. The report also noted



- that house allowance arrears had remained unpaid for three years and should be settled to avoid discrimination. He attached copies of payslips showing the disparities and a table calculating the outstanding arrears for 47 months.
16. He dismissed the Claimant's arguments on the illegality of the strike and invited the court to deliberate on the municipal boundary issue. He cited a letter from the Chairman of the Municipal Board, confirming that the Claimant's farm was within the Ol'Kalou Municipality boundaries. He referred to Section 12 of the [Urban Areas and Cities Act](#), which grants county governments the power to administer municipalities.
  17. He urged the court to strike out the Notice of Motion dated 15<sup>th</sup> August 2024, arguing that the Claimant was already in arrears on employees' house allowances, causing financial hardship for workers who had to pay for their transportation. He accused the Claimant of using the court to shield itself from industrial action while remaining unwilling to resolve the dispute. He noted that the Claimant had failed to appear in court on 30<sup>th</sup> July 2024 when critical orders were issued. He prayed for the dismissal of the Claimant's application with costs and for the Claimant to be ordered to implement the terms of the CBA as directed in the conciliator's report. He affirmed that the affidavit was true to the best of his knowledge, information, and belief.
  18. The Respondent filed an undated Replying Affidavit to Further Affidavit through Thomas Kipkemboi, the Deputy General Secretary of the Respondent union. He stated that he was competent to swear the affidavit on behalf of the Respondent. He had read and understood the Further Affidavit dated 4<sup>th</sup> October 2024 and filed on 7<sup>th</sup> October 2024, as well as the supporting affidavit of Vitalis Osodo, and wished to respond accordingly. He denied the contents of paragraph 2 of the Applicant's Further Affidavit and urged the court to strike it out from the record. He also disagreed with paragraphs 3, 4, 5, and 6, arguing that the Applicant was introducing new evidence that had never been part of the case up to the time of the judgment delivered on 9<sup>th</sup> July 2024. He requested the court to strike out this new evidence, attaching a copy of the judgment.
  19. He further contended that the matter before the court was not a fresh suit, as it had already gone through conciliation, hearing, and determination, culminating in a judgment on 9<sup>th</sup> July 2024. He maintained that the Applicant's attempt to introduce new evidence was baseless. He disputed the contents of paragraphs 3, 4, and 5 of the Applicant's Further Supporting Affidavit, stating that the gazette notice referenced by the Applicant pertained to the Local Physical and Land Use Development Plan and the Integrated Strategic Urban Development Plan for Olkalou Municipality (ISUDP 2023-2033) and had nothing to do with the already gazetted Olkalou Municipal. He attached the relevant letter, gazette notice, and map to support his claim.
  20. In response to paragraph 7, he asserted that the court should strike out the new evidence, as it prejudiced the decision already made by the conciliator. He added that the Applicant was already in arrears for housing and transport. He further denied the assertions in paragraphs 8, 9, 10, and 11, arguing that the Respondent had exhausted all legal mechanisms to resolve the trade dispute. He claimed that the Applicant had displayed arrogance by disregarding the conciliator's recommendations, the judgment of 9<sup>th</sup> July 2024, and the court orders of 30<sup>th</sup> July 2024. He argued that paragraph 12 of the Further Supporting Affidavit merely reiterated an issue already decided by both the conciliator and the court. He maintained that the Applicant could not claim an illegality on the part of the Respondent while continuing to be in contempt of court.
  21. He urged the court to reject and dismiss all paragraphs of the Further Supporting Affidavit, arguing that the evidence was irrelevant as it pertained to a ten-year strategic plan of the already gazetted Olkalou Municipal. He prayed that the court issue a stay order on the judgment of 9<sup>th</sup> July 2024 and



order the Applicant to implement the conciliator's report before proceeding with the review case. He also prayed for the dismissal of the Applicant's Notice of Motion dated 15<sup>th</sup> August 2024 and the Further Supporting Affidavit dated 4<sup>th</sup> October 2024, with costs awarded to the Respondent. He further sought an order compelling the Applicant to fully implement the conciliator's report. He concluded by stating that everything deponed in the affidavit was true to the best of his knowledge, information, and belief.

22. I have examined all averments and submissions of the parties herein. The application is for review of this court's judgment dated 9/7/2024. The applicant claimants had sought a review of this judgment on the ground that the strike notice issued by the respondents would prejudice the claimants.
23. The applicants seek to have this matter resolved through a consultative meeting chaired by the Ministry of Labour headquarters as a neutral arbiter.
24. In its judgment of 9<sup>th</sup> July 2024, this court made an observation that the issue of transport and house allowance was to be resolved as per the CBA of the parties. The CBA in question was however not before court for the court to consider it. The extract produced however only indicated that " the company shall provide bus to ferry workers to and from the place of work"
25. The court then resolved that the parties resolve the issue through their own negotiations. It appears that the attempt to agree by the parties has failed hence the application to have the matter concluded by an independent arbiter at the Ministry of Labour Headquarters.
26. The application before me is not however in a nature of what the court can call a review because review under the Employment and labour relations court rules is viable due to an error on the record, due to new evidence coming up or for sufficient cause. The applicants in their application have failed to point out however the grounds upon which they seek a review.
27. The respondents opposed this application and contend that the applicants refused to attend conciliation meetings and even disregarded the conciliators recommendation. This court concluded the hearing of the case after considering the evidence rendered its judgment staying any strike action but resolved that the parties resolved the dispute.
28. It is true that the issues regarding the payments remain unresolved. It is still prudent in my view to try and resolve this matter once and for all. I had directed the parties to try a conciliation process which seems not to have worked.
29. It would also be imprudent to decide that the strike continues since the parties have not resolved the matter. In order to bring the matter to a closure, I will direct that the parties proceed and resolve the dispute through a consultative meeting chaired by the Ministry of Labour headquarters. This should be done within 60 days and a report submitted before court for adoption.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 11<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**HELLEN WASILWA**

**JUDGE**

