



**Kenya Ports Authority v Dock Workers Union (Cause E099 of 2021)
[2025] KEELRC 981 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 981 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E099 OF 2021
M MBARŪ, J
MARCH 27, 2025**

BETWEEN

KENYA PORTS AUTHORITY CLAIMANT

AND

DOCK WORKERS UNION RESPONDENT

JUDGMENT

1. The background of this matter is a claim filed by the claimant on 15 November 2021. The issue in dispute is the unprotected industrial action threatened by the respondent through a notice issued on 10 November 2021.
2. The respondent filed various documents, and the matter went back and forth in court while the parties negotiated.
3. In a ruling delivered on 15 June 2023, the court sent the parties for conciliation; however, there was no resolution.
4. When the matter came up for hearing on 10 June 2024, the court directed parties to attend an open court on 11 July 2024 to address the issue of who filed and attended these proceedings for the respondent. In a ruling delivered on 30 January 2025, the court held that records filed by Leonard Rufus Ochieng for the respondent were irregular and were expunged.
5. On 20 February 2025, the respondent appointed the officer to attend court in these proceedings. However, there was no request or application to reinstate the expunged records.

The claim is unopposed.



Claim

6. The claimant's case is that the claimant is a state corporation established under the [Kenya Ports Authority Act](#), while the respondent is a trade union. Parties have a Recognition Agreement titled the Industrial Relations Machinery 1986 (IRM), upon which CBAs have been negotiated. Section 9 of the IRM requires parties to undertake negotiations and consultations in dispute resolution. The IRM has established the Joint Industrial Council (JIC), which includes the parties' representatives, to undertake the negotiations and consultation processes. The JIC requires that any dispute be presented 30 days in advance to facilitate the formulation of the agenda items for discussions. The JIC must appoint a committee to investigate any matter and make a report to ensure that a dispute or matter is fully exhausted.
7. The IRM further binds parties to the provisions of the law, especially the [Labour Relations Act](#) (LRA) and the [Employment Act](#). Any dispute that is not resolved should be reported to the Minister under Section 62 of the LRA.
8. In this case, the claimant has been negotiating with the respondent for the CBA from 2020 to 2023, which, upon conclusion and execution, should be registered with the court under Section 60 of the LRA. But in utter disregard to the dispute resolution mechanisms in place, the respondent, through a letter dated 10 November 2021, issued a 7-day strike notice to the claimant on the basis that there was a failure to respect and adhere to the IRC and CBA as related to the terms and conditions of service.
9. The strike notice is based on ambiguous reasons and allegations that the claimant has failed to apply the Human Resources Manual 2017 to benefit employees who have been in an acting capacity for more than 6 months, while others have acted for more than 4 years. However, the notice fails to list the specific employees concerning whom and the instances in which the claimant is alleged to have failed to apply the HR Manual.
10. In the strike notice, the respondent alleged that it had tried to resolve the matter where 10 employees of the ex-Kenya Ferry Services were in acting positions for over 6 years, but were ignored by the claimant in the JIC. However, various employment matters are under consideration, including acting appointments. The issue of ex-Kenya Ferry Services employees was never an agenda item in any JIC; therefore, there was no basis to issue a strike notice over it before making efforts to apply the structures set to resolve the matter. There is no Recognition Agreement between the parties over the staff of Kenya Ferry Services, and therefore, the intended strike notice by the respondent is prohibited, and concerns matters unrelated to the mandate of the respondent.
11. The claim is that the respondent has failed to adhere to the dispute resolution mechanisms laid down under the LRA. The LRA and IRM negotiation mechanism under Section 14(1) has not been addressed. The respondent has failed to issue notice as stipulated under Section 14(2) of the LRA. Failing to invoke Section 62 of the LRA by reporting the dispute to the Minister to allow for a conciliator to negotiate the process and issuing a strike notice over a matter that the claimant is not a party to.
12. The claim is that the strike notice by the respondent is unlawful, contrary to section 76(b) of the LRA, read together with Section 78(1) (e) and 78(2) of the LRA in a matter concerning an essential service. Such notice is unlawful, null and void. The claimant is seeking the following orders;
 - a. A declaratory order that the respondent's notice to strike through a letter dated 10 November 2021 is unlawful and unprotected for failing to meet the threshold set out in the IRM and section 76 of the LRA;



- b. A mandatory prohibitory order restraining the respondent themselves, their officials, agents and or members from taking part in, calling, instigating or inciting others to participate in an unprotected strike or any form of industrial action under the notice issued on 10 November 2021.
 - c. Costs of the suit.
13. In evidence, the claimant filed the Affidavit of Bildad Kisera to support the claim that the strike notice by the respondent lacks specificity as to who the grievants are and the position in contention has not been filled upon acting for over 6 months. The claimant has many acting positions, and to allow for a proper perspective, without specificity, the claimant cannot address the matters raised by the respondent.
14. The scope of the respondent is for unionisable employees in the claimant's service. Only unionisable members can be represented when moving to take industrial action. A class action bringing on board third parties is not permissible.
15. The claimant has implemented a new structure from April 2022 and transitioned to a new establishment. The respondent's notice is unclear as to whether it seeks to have two parallel systems of employees, which would create chaos. The respondent cannot seek to stop past events unilaterally, and the demand for general promotions cannot suffice, where the respondent seeks an automatic appointment without its members or other third parties being taken through due process.
16. Kisera avers that following the strike notice dated 10 November 2021, the claimant was forced to file suit to stop the unprotected and illegal industrial action, and the orders sought should be issued with costs.
- The claimant also filed written submissions.
17. The claimant submitted that the strike notice issued by the respondent on 10 November 2021 was unlawful. The response did not comply with section 76 of the LRA. A dispute involving employees in essential services is regulated by law. Having reached a deadlock in negotiations at the JIC, the respondent ought to have reported a dispute to the Minister, which was not done, making the strike notice unlawful. In the case of *Ogwedhi Properties t/a Vittoria Suites Kisumu v Kenya Hotels and Allied Workers Union* [2024] eKLR, the court held that where a respondent has failed to evidentially demonstrate that the provisions of section 76 of the LRA had been complied with before issuance of the strike notice, the notice is premature and unlawful.

Determination

18. As outlined above, the respondent's documents filed herein were expunged. No effort was taken to address the ruling delivered on 30 January 2025.
19. It is not in dispute that the claimant is a state corporation established under the *Kenya Ports Authority Act*, and the respondent represents unionised employees in the claimant's service. Parties herein have also secured their relations under various instruments, including the Recognition Agreement, IRM, and JIC, to ensure that matters of mutual concern, including terms and conditions of service and dispute resolution, are addressed within the given frameworks.
20. An employer can secure its establishment and apply internal rules, regulations, and policy measures to address conduct and work rules. In the case of *Kenya Power & Lighting Company Limited v Kenya Electrical Trades and Allied Workers Union* [2017] KEELRC 291 (KLR), the court held that where parties in an employment relationship are bound under a Recognition Agreement, where there is



a dispute, reference to the internal regulation of workplace rules and regulations is imperative. The purpose of such a mechanism is to allow parties to negotiate and settle matters between themselves out of court. Where appropriate, further negotiations may consider these internal instruments in *Charles Oyunge Onkware v Telkom Kenya Limited* [2015] KEELRC 7 (KLR). The court in the case of *Ojwang' v African Nazarene University; Council of Legal Education & another (Interested Parties)* [2023] KEELRC 2359 (KLR) and the case of *Lamu County Government & another v Muhammed Ali Shee* [2021] KEELRC 429 (KLR) emphasized that courts are entitled to inquire into whether the employer has exercised its prerogative within the law, the internal regulations at the workplace and the agreement between the parties.

21. In this case, parties are bound under the Recognition Agreement, which is premised on the LRA, the IRM, and the JIC under the *Employment Act*. The respondent has endorsed these documents, which apply to regulating industrial relations on the shop floor.
22. It is a common cause that the claimant, a state parastatal, is engaged in essential services as classified under section 81 of the LRA. Any industrial action under such a framework is highly regulated under Section 78(1) (f) of the LRA. A notice must be issued over any grievance, and if not addressed, the matter must be reported to the Minister to allow for conciliation. Where conciliation fails, the matter must be filed in court to determine whether the strike notice is lawful. Without adherence to these procedures, any call for industrial action is unprotected.
23. In the case of *William Nembe Obora & 73 others v Rift Valley Railways (K) Limited* [2014] KEELRC 1148 (KLR), the court held that under Section 76 of the LRA, a person could only participate in a lawful strike sanctioned by the court. Section 80 of the LRA addressed in the case of *Kakuzi Limited versus Kenya Plantations and Agricultural Workers Union*, Cause No. 1450 of 2011, that where an industrial action was unprotected as defined under the law, any employee who engages in it is in breach of contract of service and liable to disciplinary action. In such a case, summary dismissal is permissible. See *Teachers Service Commission v Kenya National Union of Teachers (KNUT) & 2 others* [2021] KECA 85 (KLR) and *Mohammed Yakub Athman & 18 others v Kenya Ports Authority* [2017] KECA 606 (KLR) that a strike notice that fails to adhere to the provisions of the LRA is unprotected.
24. In this case, the respondent issued a notice dated 10 November 2021 and demanded that;

... you have deliberately ignored and refused to apply the Human Resource Manual, 2017, to benefit those employees who have been in an acting capacity for more than six (6) months and others who have acted for a period now more than four (4) years and above. ...
25. The claimant asserts that the particulars for the affected unionized employees alleged to have served in acting capacity for more than 6 months or 4 years have not been entered. The various letters and communications the respondent asserts to have shared with the claimant are not attached to this notice to give it context and perspective.
26. Additionally, in the notice, the respondent noted that;

Sometimes, in February 2021, the Cabinet resolved to dissolve Kenya Ferry Services into yourself. You have ignored and abandoned the decision of the Cabinet, which dissolved the Kenya Ferry Services into the Department of Kenya Ports Authority under different terms. Yet, you have taken over its assets and expressly, directly and overtly exercised controls over assets, daily collections and staff. There are over ten (10) employees of the ex-Kenya Ferry Services who have been on acting appointment for over six (6) years, and management ignored our attempt to resolve the matter in the JIC.



We brought up this issue in our Joint Industrial Council meeting on 3 November 2021, and you brushed aside this very important and fundamental issue regarding the recognition agreements. ...

27. Indeed, under Section 76 of the LRA, the respondent can only issue a notice of industrial action for its members and not third parties. Under such a framework, the respondent can only issue the requisite notice and, where the demands are not met, refer the matter to the Minister per Section 62 of the LRA. The Minister must then appoint a conciliator to allow for consultations and settlement. Where the matter is not resolved, a Certificate will be issued allowing the parties to proceed to the court to urge their case. Taking industrial action, threatening to take one without the court's sanction, is unprotected.
28. The respondent cannot urge an industrial action to agitate the case of third parties. Where the claimant failed to address concerns relating to ex-Kenya Ferry Services employees, such employees are allowed under the law to file their case. The respondent is removed from making a case for them, even where the issue relates to the Recognition Agreement. The respondent's recognition of the claimant is not transferable to third parties. The negotiated IRM and JIC must be given context. Unlike a CBA that should be applied equally and without discrimination to all unionisable employees on the shop floor, industrial action cannot be used in the same context. It must relate to the entity under which the respondent enjoys, dock workers only.
29. In this regard, the orders sought by the claimant are with merit.
30. The notice issued by the respondent, dated 10 November 2021, is unlawful without following the due process of section 76 of the LRA. Agitating for an industrial action within 7 days of such notice is to engage in an unprotected industrial action without the sanction of the court.
31. Equally, the call to take industrial action on matters touching on third parties unrelated to the mandate of the respondent is unlawful, null and void. The respondent has not received authority from any other person, entity or group of persons other than dock workers to urge a case for them as persons who have been on acting appointment for over 6 months and over 6 years. To do so without authority is to act outside the LRA and, hence, unlawfully.
32. Taking the analysis above into account, the claim for costs is justified. The claimant is entitled to costs because the respondent failed to regularize its attendance in these proceedings.
33. Accordingly, judgment is hereby entered for the claimant against the respondent in the following terms;
 - a. A declaratory order is hereby issued that the respondent's notice to strike through a letter dated 10 November 2021 is unlawful and unprotected and contrary to section 76 of the *[Labour Relations Act](#)*;
 - b. A mandatory prohibitory order is hereby issued restraining the respondent, their officials, agents and or members from taking part in, calling, instigating or inciting others to take part in an unprotected strike or any form of industrial action under the notice issued on 10 November 2021.
 - c. Respondent to meet the costs due to the claimant in this suit.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 27 MARCH 2025.

M. MBARŪ



JUDGE

In the presence of:

Court Assistant:

..... and

