



**Kenya Union of Commercial, Food and Allied Workers v Jubilee Merchants Limited  
(Cause E072 of 2024) [2025] KEELRC 836 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 836 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE E072 OF 2024  
MA ONYANGO, J  
MARCH 13, 2025**

**BETWEEN**

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED  
WORKERS ..... CLAIMANT**

**AND**

**JUBILEE MERCHANTS LIMITED ..... RESPONDENT**

**RULING**

1. The Claimant is a trade union registered under the Labour Relations Act to represent the employees engaged in the commercial sectors as more specifically set out in the membership clause of its Constitution.
2. The Respondent is a company registered under the laws of Kenya and engages in business in Kenya.
3. The Claimant and the Respondent do not have a recognition agreement. The Claimant has however alleged that it has recruited 53 of the Respondent's employees into its membership and has presented a copy of the recognition agreement to the Respondent for signature as is evident from the documents attached to its pleadings herein.
4. Vide an application dated 27<sup>th</sup> August, 2024, the Claimant prayed for the following orders.
  1. That this Application be certified urgent, the same be heard ex parte in the first instance and service be dispensed with.
  2. That the claim filed herein be certified urgent and be heard on priority basis.
  3. That the Honourable Court do issue orders restraining the respondent from forcing employees into signing new contracts of employment without proper procedure.



4. That the Honourable Court do issue interim orders restraining the respondent from victimizing, intimidating, coercing, harassing, disciplining, or terminating the services of the Claimant/ Applicants members whose names appear on the check-off forms on account of their union membership, pending hearing and determination of the main suit.
  5. That the Honourable Court to order the Respondent to commence deduction and remittance of union dues to the Claimant's members whose names appear on the check-off forms.
  6. That the Honourable Court to order the Respondent to recognize the Claimant Union for the purposes negotiating Collective Bargaining Agreement.
5. The application was filed under certificate of urgency and the High Court (Organization and Administration (General) Rules.
6. Upon considering the application the court ordered as follows:
- a. That the application dated 27<sup>th</sup> August filed under certificate of urgency is certified urgent and fixed for inter partes hearing on 18<sup>th</sup> September, 2024
  - b. That interim orders be and is hereby granted restraining the respondent from victimizing, intimidating, coercing, harassing, disciplining, or terminating the services of the claimant/ Applicant's members whose names appear on the check-off forms on the account of their union membership pending hearing and determination of the main suit.
  - c. That an order be and issued to the respondent to commence deduction and remittance of union dues to the Claimant's members whose names appear on the check-off forms.
  - d. That applicant to serve the Respondent forthwith.
  - e. That Respondent to file response to the application within at least one day before the hearing date.
7. It would appear that the Respondent did not comply with the said orders prompting the Claimant to file a contempt application dated 8<sup>th</sup> October, 2024 in which it seeks the following orders:
- a. This Application be certified as urgent, service thereof be dispensed with and the same be heard ex-parte in the first instance.
  - b. An order do and is hereby issued removing the corporate veil shielding the Respondent's Directors from personal responsibility.
  - c. An order be and is hereby issued summoning Mr. PETER KIPSIGEI SANG to personally attend court on a date and time as shall be fixed by the court to show cause why he should not be cited for contempt of Court for disobeying the orders of this court.
  - d. This Honorable Court be pleased to issue an order committing MR. PETER KIPSIGEI SANG to civil jail for contempt of Court for disobeying the orders issued on 8th September, 2024.
  - e. That this Honourable Court be pleased to issue an Order directed at the OCS, Kapsabet Police Station, Kapsabet Town to arrest and produce MR. PETER KIPSIGEI SANG in court should he fail to honour summons of this court.
  - f. That cost of this Application be borne by the Respondents.



8. According to the Claimant the Respondent continued to intimidate and victimize its members compelling it to file another application dated 17<sup>th</sup> December, 2024. In the application the Claimant prays for orders as follows:
  - a. This Application be certified as urgent, service thereof be dispensed with and the same be heard ex-parte in the first instance.
  - b. An order do and is hereby issued removing the corporate veil shielding the Respondent's Directors from personal responsibility.
  - c. That the ruling date for the Application be moved to a nearer date to protect the Applicant/ Claimant members from victimization, harassment, coercion, and termination by the Respondent on account of their Union membership.
  - d. An order be and is hereby issued summoning Mr. PETER KIPSIGEI SANG to personally attend court on a date and time as shall be fixed by the court to show cause why they should not be cited for contempt of Court for disobeying the orders of this court.
  - e. An Order be and is hereby issued committing the said MR. PETER KIPSIGEI SANG to civil jail for six (6) months for his disobedience of the orders of the Court.
  - f. An Order be and is hereby issued directing the OCS, Kapsabet Police Station to Produce the said Mr. Peter Kipsigei sang in Court should he fail to honour the summons of this Court.
  - g. That cost of this application be borne by the Respondents.
9. The application is supported by the grounds on the face thereof as follows:
  - a. The Applicant filed a Notice of Motion Application together with a Memorandum of Claim dated 27th August, 2024 in the Employment and Labour Relations Court, Eldoret in Cause No. E072 of 2024 against the Respondent herein.
  - b. The Application dated 27th August, 2024, sought grant of orders as filed therein.
  - c. On 8th September, 2024, the Honourable Court issued orders restraining the Respondent from acts of coercion and intimidation of Union members for reasons of their Trade Union membership.
  - d. The Respondent and its Director have blatantly disregarded the orders of this Court and hatched a scheme to force union members to sign short term contracts of between 3-6 months to defeat trade union representation.
  - e. The said acts of intimidation are intended to scare the remaining employees from enjoying their right of freedom of association.
  - f. The Applicant addressed the Respondent to stop such acts of intimidation but they have since displayed disregard and total defiance of the court.
  - g. Any party served with an order of the court has a duty to obey such orders are at liberty to and approached the court to review such orders where they feel aggrieved.
  - h. The Respondent and their Directors have not expressed any issue with the orders of the court but have chosen to blatantly disobey them.
  - i. Court orders can never ever be issued in vain and the court has a duty to ensure the order is complied with as to protect the authority and sanctity of the court.



- j. Unless the court intervenes and punishes the Respondent and its Directors, the Applicant may lose all its members for no reason other than on account of their Trade Union membership.
10. In the supporting affidavit of Rodgers Ombati Momanyi, the Claimant's Branch Secretary Eldoret, he reiterates the grounds on the face of the application.
11. The Respondent filed a replying affidavit 2024 of Peter Kipsigei Sang in response to the application dated 17<sup>th</sup> December, in which he deposes that he is a director of the Respondent and Mr. Emmanuel Kipruto is the Manager of the Respondent in charge of human resource management of handling all human resource management sittings, meetings, communications and/or correspondences with any workers and any other entities or parties.
12. The affiant deposes that the he has never violated any court orders as alleged or at all. That the Respondent has 173 employees in all its branches whose records are kept by the Respondent as required by law.
13. Mr. Sang deposes that out of the 173 employees the Claimant has recruited 41 members representing 23.6% of the unionisable employees of the Respondent.
14. Mr. Sang deposes that there has never been any acts of intimidation and coercion of any member of the union or member of staff. That the Respondent has never, to his knowledge, received any complaint from alleged union members on allegations of intimidation and coercion. That the Claimant has not adduced any evidence of any complaint from any of its members as of intimidation or coercion as alleged by the Claimant. Further, that particulars of intimidation are lacking as no member has sworn an affidavit alleging intimidation or coercion.
15. Mr. Sang deposes that it is the preserve of the Respondent to carry out its mandate of issuing fresh contracts to its workers upon expiry of the old contracts and the same does not in any way amount to intimidation and coercion of its workers.
16. He further deposes that it is the preserve of management to carry out disciplinary procedures and none of the workers undergoing disciplinary process have reported intimidation or coercion by the Respondent.
17. Mr. Sang deposes that any worker who fails to sign the contract of employment on the advice of the Claimant will be released from the workforce.
18. On the employees the Claimant alleges to have been dismissed for participation in union activities after the Respondent was served with check off forms the Respondent states that:
- a. Cosmas Kemboi - was a casual worker and he deserted duty when he was expected to report. The company never terminated his services or at all.
  - b. Mercy Jelagat — is an employee of the respondent. Was found to have stolen goods from the respondent's shop. Deserted duty upon learning of her actions. Was not terminated
  - c. Jermiah Kipkoech — Was found to have stolen bread from the shop and destruction of respondent's network cables. Deserted duty upon learning of his offence. Was not terminated
  - d. Sharon Chepkosgei — Is a wife to Jermiah Kipkoech. Deserted duty and later resigned once the husband left work. Left work on her own volition.
  - e. Agnes Chepleting - was a casual employee of the respondent. Deserted duty when she was expected to report. Was not terminated.



- f. Albert Kimeli - Was a casual employee of the respondent. Was found to have stolen goods from the respondent's shop. Deserted duty upon learning of his actions. Was not terminated.
  - g. Simon Ndeche — is a casual employee. Deserted respondent 's premises for 4 months. Was not terminated.
  - h. Foreman Nandi - left on his own volition. Was not terminated.
  - i. Nathan Bett - Resigned.
  - j. Cornelious Kirwa — deserted duty. Was not terminated.
  - k. Geoffrey Mutai — Was on termly contract. The contract came to an end.
  - l. Robert Kiptoo - Was on termly contract. The contract came to an end.
  - m. Joash Kipruto Kimeli — Theft of respondent's goods worth 4 million. Currently undergoing disciplinary process.
  - n. Simon Kiplimo - Was on termly contract. The contract Mr. Sang deposes that the action taken against the said employees does not amount to intimidation.
19. The application was disposed of by oral submissions. Mr. Tacko for the Claimant submitted that the instant application relates to orders made on 27<sup>th</sup> August, 2024 which restrained the Respondent from intimidating members of the union. That the Respondent disobeyed the said orders forcing the Claimant to file the application for contempt.
  20. Mr. Tacko submitted that on the same date the orders were made the Respondent terminated the services of 4 employees being Mutai, Kiptoo, Kimeli and Kiplimo. He submitted that unless the court intervenes the Respondent will continue disobeying the court orders.
  21. He submitted that court orders are not made in vain. That to protect the authority and sanctity of the court Mr. Peter Kipsigei Sang should be summoned to appear in court to show cause why he should not be punished for disobeying court orders.
  22. Mr. Kirwa for the Respondent opposed the application. Relying on the Replying affidavit sworn by Mr. Sang, Mr. Kirwa submitted that Geoffrey Mutai was on termly contract which came to an end, and so was Robert Kiptoo and Simon Kiplimo Tum. That Joshua Kipruto stole and is undergoing disciplinary process.
  23. Mr. Kirwa submitted that the Respondent has a right to manage its workforce. That none of the employees alleged to have been victimized have filed an affidavit to explain what happened. That there has further not been any incident report or medical report in respect of any of the employees alleged to have been victimized and what has been presented to court is lacking in merit and should be struck out. He prayed that the application be dismissed with costs.
  24. In a brief rejoinder, Mr. Tacko submitted that the Claimant communicated to the Respondent through letters which have been attached as annexures to the application. On the issue of contract coming to an end Mr. Tacko submitted that no contract had been filed. That neither has any evidence been submitted on the issue of theft.



## Determination

25. Black's Laws Dictionary 10<sup>th</sup> Edition defines contempt of court as conduct that defies the authority or dignity of a court for it interferes with the administration of justice and is punishable by a fine or imprisonment.
26. Romer LJ said in *Hadkinson vs Hadkinson* (1952) P 28;  

“It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it and unless and until that order is discharged. The uncompromising nature of the Obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void”.
27. In the instant case the Claimant states that the Respondent disobeyed the court orders issued on the application dated 27<sup>th</sup> August 2024. The orders restrained the Respondent from acts of coercion and intimidation against union members for reasons of their trade union membership.
28. The Respondent has in the replying affidavit denied that it disobeyed the court order as alleged and states that it was merely carrying out its management role over the employees of the company.
29. For the court to find an alleged contemnor guilty of contempt of court, the Applicant must prove: (i) The terms of the order were clear, unambiguous and binding on the alleged contemnors; (ii) The alleged contemnors had knowledge of or proper notice of the terms of the order; (iii) The alleged contemnors acted in breach of the terms of the order; (iv) The conduct was wilful and deliberate. Refer to *Samuel M. N. Maweu & others v National Land Commission* (2020) eKLR.
30. In the instant case there is no issue raised by the Respondent about the clarity of the orders of the court. There is further no issue raised about lack of service or knowledge of the orders. The only issues the court is called upon to decide are whether the alleged contemnors acted in breach of the terms of the order and if the conduct was wilful and deliberate.
31. The alleged contemnor Mr. Sang states in the replying affidavit that the actions he took against each of the employees named by the Claimant as victim of intimidation, coercion and or harassment either left employment because the contract under which they were working came to an end, or they deserted duty, or resigned, or they were under disciplinary process.
32. No evidence has been adduced by the alleged contemnor of any of these averments. A desertion of duty or theft or disciplinary process or resignation is a documented event.
33. It is on record that the Claimant served check off forms on the Respondent by letter dated 23<sup>rd</sup> January, 2024. The acts complained of by the Claimant all took place after the Respondent received the check off forms and after service of the court order issued on 8<sup>th</sup> September, 2024.
34. The specific accusations against the alleged contemnor are that he terminated the employment of Geoffrey Mutai, Robert Kiptoo and Simon Kiplimo Tum after service of the court order. No proof has been adduced by the alleged contemnor that the action taken against the named employees were legitimate actions by an employer over its employees and not acts of harassment, intimidation, coercion or victimization for joining membership of the union. There is no evidence that the 3 employees were on termly contracts which came to an end.



35. For the foregoing reasons I find Mr. Peter Kipsigei Sang guilty of contempt of this court's orders dated 8<sup>th</sup> September, 2024.
36. The said Mr. Peter Kipsigei Sang is directed to appear in court on a date to be given at the time of delivery of this ruling for sentencing.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 14<sup>TH</sup> DAY OF MARCH 2025.**

**MAUREEN ONYANGO**

**JUDGE**

