



**Kenya Export, Floriculture, Horticulture and Allied Workers Union v Kenya Plantation and Agricultural Workers Union; Molo Greens Limited (Interested Party) (Cause E049, E051 & E052 of 2023 (Consolidated)) [2025] KEELRC 769 (KLR) (7 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 769 (KLR)

**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE E049, E051 & E052 OF 2023 (CONSOLIDATED)**

**J RIKA, J**

**MARCH 7, 2025**

**BETWEEN**

**KENYA EXPORT, FLORICULTURE, HORTICULTURE AND ALLIED WORKERS UNION ..... CLAIMANT**

**AND**

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

**AND**

**MOLO GREENS LIMITED ..... INTERESTED PARTY**

**JUDGMENT**

1. There are 3 separate Claims, presented by the 3 parties to this Claim.
2. They all relate to the territorial dispute, between the Claimant and the Respondent.
3. For long, the Respondent Union enjoyed a territorial monopoly over all Unionisable Employees, in the agricultural sector.
4. The Claimant Union is a new player in the sector, which was granted recognition through judicial intervention, and has naturally, been involved in a multiplicity of disputes with the Respondent, in its effort at securing for itself some portion of the territory previously monopolized by the Respondent.
5. In E&LRC Cause Number E051 of 2023, the Respondent herein sues the Interested Party, seeking an order compelling the Interested Party to execute a recognition agreement, in favour of the Respondent. The Respondent prays the Court also, to direct that there is a headcount of all Unionisable Employees at the Interested Party, to verify their union membership, and establish the numerical strength of the 2 Unions.



6. The Interested Party filed E&LRC Cause Number E052 of 2023 against the Respondent and some of its officials and other persons, who were said to have incited the Interested Party's Employees to go on an illegal strike, which the Interested Party felt, was aimed at pressuring the Interested Party to recognize the Respondent. The Claimant herein is named as an Interested Party, in Cause Number E052 of 2023. The Interested Party prays the Court to declare the strike illegal, and permanently bar the Respondent and its agents, from inciting Employees to strike.
7. The Claimant herein filed E&LRC Cause Number E049 of 2023. The Claim is against the Respondent, with the Claimant in Cause Number E052 of 2023, named as the Interested Party. The Claimant in Cause Number E049 of 2023, prays the Court to permanently restrain the Respondent, from misadvising the Employees of the Interested Party, to call or participate in any illegal strike. The Cause brought by the Claimant herein, and that by the Interested Party, revolve around the subject of illegal strike.
8. In a Ruling delivered on 30<sup>th</sup> January 2024, the Court found that the dispute on the strike had substantively been resolved upon grant of orders, restraining the Employees and their inciters from proceeding with the strike action. The Court narrowed down the remaining dispute, to one of territorial demarcation, between the Claimant and the Respondent, with respect to Unionisable Employees of the Interested Party.
9. The outstanding issue was referred for conciliation. The Conciliator heard both Parties at the Labour Office Nakuru, and submitted a report to Court dated 28<sup>th</sup> October 2024, containing her findings and recommendations.
10. The Parties appeared before the Court on 28<sup>th</sup> January 2025, and were directed to file submissions with respect to the conciliation report, and thereafter, the Court would retire to prepare this Judgment [not Ruling as erroneously indicated on record] disposing of the 3 Claims filed by the respective Parties.

**The Court Finds: -**

11. The Claims were consolidated by the Court in the presence of the Parties, on 19<sup>th</sup> October 2023, with Cause Number E049 of 2023, designated as the reference file.
12. This Court concurs with the Ruling delivered on 30<sup>th</sup> January 2024 [Wasilwa JJ], that the dispute on the strike, was resolved substantively with the order made halting the strike. Nothing remains to be determined in Cause Numbers E049 of 2023 and E052 of 2023.
13. The Conciliator found that members of the Claimant who are alleged to have joined the Respondent, had not rescinded their membership of the Claimant in accordance with Section 48 of the [Labour Relations Act](#). Importantly, the Conciliator confirmed that the Claimant and the Interested Party already have a recognition agreement executed on 21<sup>st</sup> October 2022. They executed a CBA subsequent to recognition.
14. On the proposed headcount, the Conciliator adopted the approach advanced by the Court of Appeal, in Civil Appeal Number 22 of 2016, between Railways and Allied Workers Union v. Rift Valley Railways Limited, that balloting is meant to determine disputes within Unions, and not disputes between Unions. Balloting would indirectly violate the Claimant's freedom of association and the right to organize, under Article 41 of [the Constitution](#) and ILO Convention No. 87. No headcount should therefore be taken, as proposed by the Respondent.



15. The recommendation of the Conciliator, anchored on judicial authorities, was that the Union already recognized by the Interested Party, ought to continue representing Employees of the Interested Party, and there is no legal foundation for a headcount.
16. In *Kenya Export, Floriculture, Horticulture and Allied Workers Union v. Kenya Plantation and Agricultural Workers Union and 2 Others; Cabinet Secretary for Labour and Social Protection and Another* [Interested Parties [2021] KEELRC 1021 [KLR], the Claimant herein sought orders directing the Respondent, to completely vacate export, floriculture and horticulture industry.
17. The Court found that the Respondent had a valid and longstanding recognition agreement with Agricultural Employers Association, named as the 2<sup>nd</sup> Respondent in that Cause, and that there were Employees in the territory freshly acquired by the Claimant, who continued to be represented by the Respondent, on the strength of the existing recognition agreement concluded with the Agricultural Employers Association.
18. It was held that the Employer did not need a fresh recognition agreement with a different Union, because there was already a recognition agreement executed with another Union. There was already a CBA, concluded on the strength of an existing recognition agreement.
19. Relying on the binding decision of the Court of Appeal in *Mombasa Maize Millers Limited v. Bakery, Confectionery, Food Manufacturing and Allied Workers Union* [2018] e-KLR, the E&LRC held that there is a presumption that the existing recognition agreement is valid, and that the presumption can only be rebutted through cogent evidence, such as resignation of Employees from the recognized Union.
20. The Court, while rejecting the Claim, concluded that the judicial trend, is to uphold existing recognition agreements.
21. The Court of Appeal in the above decision also took the position held in the *Railways and Allied Workers Union* decision invoked by the Conciliator on balloting, overturning a decision made by the E&LRC, for headcount of Employees, overseen by the Labour Officer, to establish the numerical strength of rival Unions.
22. The E&LRC in the Cause reported under citation [2021] KEERLC 1021 [KLR] however, disagreed with the Court of Appeal on the rules governing balloting at the workplace.
23. Although the decision of the Court of Appeal is binding, that departure from the reasoning of the Court of Appeal [paragraph22] is still valid.
24. The correct position, which is supported by statutes, is that whenever there is a dispute between Trade Unions on their numerical strength at a given workplace, the dispute is best resolved by conducting a headcount of the Unionisable Employees, and by establishing their membership.
25. The Court of Appeal relied on Section 56 [1] [d] of the *Labour Relations Act*, in concluding that balloting is meant as tool for resolving issues within a particular Union, in accordance with *the constitution* of the particular Union, and not resolving disputes between different Unions.
26. The provision relates to access granted to Unions by Employers, with whom they have executed recognition agreements, to interact with their members, and resolve issues such as, whether or when to proceed on industrial actions. The members are granted a chance to democratically elect, whether they should take certain collective actions, in accordance with the internal constitutions of the particular Unions. The Unions legitimize their calls for industrial action, by seeking the broad mandate of their



members through balloting. The decision is deemed to be a decision taken collectively by the members, rather than a decision imposed by the Executive.

27. Another form of balloting is provided for under Section 34 of the *Labour Relations Act*, where members participate in secret balloting to elect officials.
28. Section 56[1] [d] of the *Labour Relations Act*, does not bar headcount /balloting, conducted by Conciliators / Labour Officers, for purposes of establishing the numerical strength of competing Unions. It allows Unions to conduct ballots to resolve their own internal issues, in accordance with their constitutions. It is a rule premised on Employers making their business premises reasonably accessible to Trade Unions, to enable Trade Unions engage in legitimate activities. It regulates what Parties should take into account in drawing recognition agreements.
29. Section 35 of the *Labour Institutions Act*, grants Labour Officers wide powers, to enter into workplaces, and examine Employers, Employees and employment records, for purposes of ensuring compliance with the law.
30. Section 67 of the *Labour Relations Act* similarly grants Conciliators broad powers to resolve labour disputes, including the power to conduct fact-finding exercises.
31. Conducting headcounts / balloting when ordered by the Court in demarcation disputes, falls with this mandate of fact-finding and inspection of records, to ensure compliance with the law.
32. Recognition is about numbers, about the competing claims concerning Employees' union membership and loyalty, and is a dispute best resolved through the Employees expressing themselves through balloting, in an exercise conducted by Labour Officers.
33. The interpretation of balloting, adopted by the Court of Appeal is restrictive. Section 56 [1] [d] of the *Labour Relations Act*, does not outlaw headcounts conducted by Labour Officers, to determine the numerical strength of rival Unions, in recognition disputes. Employee voting is a crucial and democratic tool in fact-finding and resolution of demarcation conflict between Unions.
34. Headcount does not violate freedom of association and the right to organize; it props and guarantees freedom of association and the right to organize.
35. In resolving the 3 disputes herein the Court is bound by the existing decisions from the Court of Appeal, referenced above. It is persuaded by the findings and recommendations of the Conciliator. There is an existing recognition agreement between the Claimant and the Interested Party. A recognition agreement must be presumed to be valid. This was the same message communicated to the Claimant and the Respondent, by the Court, in their dispute, cited at paragraph 16 of this Judgment. At the time, it was the Claimant herein, who sought to void existing recognition obligations. Today the Respondent is the Party asking the Court to void existing sole collective bargaining agency rights, conferred on the Claimant by the Interested Party, through a valid recognition agreement. Balloting is not necessary and has been interpreted authoritatively, to only be necessary for resolving issues within Unions, and not between Unions.

It is ordered: -

- a. The Claims relating to the strike action are deemed to have been substantively settled.
- b. The Claim by the Respondent seeking recognition by the Interested Party, is declined.
- c. Parties shall bear their respective costs of the consolidated actions.
- d. The 3 files, Cause Nos. E049 of 2023, E051 of 2023 and E052 of 2023 shall be marked as closed.



- e. A copy of this Judgment to be placed in each of the 3 files.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU THIS 7<sup>TH</sup> DAY OF MARCH 2025.**

**JAMES RIKA**

**JUDGE**

