



**Kenya Union of Sugar Plantation and Allied Workers v Nzoia Sugar Company Limited
(Constitutional Petition E006 of 2024) [2025] KEELRC 1404 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1404 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA
CONSTITUTIONAL PETITION E006 OF 2024**

DN NDERITU, J

MAY 15, 2025

IN THE MATTER OF THE RIGHT TO FAIR LABOUR PRACTICES

AND

IN THE MATTER OF RIGHT TO NON-DISCRIMINATION

AND

**IN THE MATTER OF ARTICLES 1(1 & 4), 2(1),22(1), 23(3), 27(5), 33(1), 37,
42(1), (2), & (4), 47(1), 50(2) AND 157(1) OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF THE LABOUR RELATIONS ACT,2007

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER THE CONSTITUTION OF THE REPUBLIC OF KENYA, 2010**

AND

**IN THE MATTER OF RULE 2(1), 3(1), 4 AND 10 OF THE
CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMNTAL FREDOMS) PRACTICE AND PROCEDURE RULES,2013**

AND

**IN THE MATTER OF RULE 7 OF THE EMPLOYMENT AND
LABOUR RELATION COURT (PROCEDURE)RULES, 2016**

AND

IN THE MATTER OF SECTIONS 4, 5 & 8 OF THE LABOUR RELATIONS ACT, 2007

BETWEEN



**KENYA UNION OF SUGAR PLANTATION AND ALLIED
WORKERS PETITIONER**

AND

NZOIA SUGAR COMPANY LIMITED RESPONDENT

JUDGMENT

I. Introduction

1. The petitioner commenced these proceedings by way of a petition dated 13th December, 2024 through P. D. Onyango & Company Advocates, seeking for the following reliefs –
 - a. A declaration that the actions of the respondent of suspending Mr. Benard Yaola Wanyonyi for indefinite period violates his right to fair labour practices and, therefore it is unconstitutional and therefore null and void.
 - b. A declaration that the actions of the respondent of subjecting Mr. Benard Yaola Wanyonyi, the member and official of the petitioner on suspension which is indefinite period and requiring him to show cause within 72 hours is in violation of the terms of the collective bargaining agreement and the constitution.
 - c. A declaration that the respondent as violated the constitutional right of the members of the petitioner herein, right to legitimate expectation that no employee who participated in the standoff shall be victimized.
 - d. A declaration that the actions of the respondent of suspending Mr. Bernard Yaola Wanyonyi, the member and official of the petitioner without notifying the respondent is in violation of the terms of the collective bargaining agreement.
 - e. An order declaring null and void the disciplinary process taken by the respondent against Mr. Benard Yaola Wanyonyi the member of the petitioner.
 - f. A conservatory order barring the respondent by its agents, servants and any other person acting under its authority from harassing, intimidating, summoning and or in any way from subjecting Mr. Benard Yaola Wanyonyi to disciplinary process that is not in compliance with the law and terms of the Collective Bargaining agreement between the parties herein.
 - g. Costs of the petition.
2. The petition is said to be anchored on Articles 1(1 & 4), 2(1), 22(1), 23(3), 27(5), 33(1), 37, 42(1), (2), & (4), 47(1), 50(2) & 157(1) of the Constitution of Kenya, Rule 2(1), 3(1), 4 & 10 of the Constitution of Kenya (Protection Of Rights And Fundamental Freedoms) Practice and Procedure Rules, 2013, Rule 7 of the Employment and Labour Relation Court (Procedure)Rules, 2016, & Sections 4, 5, & 8 of the Labour Relations Act, 2007.
3. The petition is accompanied with a verifying affidavit in support sworn by Francis Wangara, the petitioner's general secretary.
4. The facts and the law relied upon are set out in the body of the petition.
5. Contemporaneously, the petitioner filed a notice of motion (the application) of even date seeking for the following orders –



- a. Spent.
 - b. That pending the hearing and determination of this application inter partes, the honourable court be pleased to issue an order of injunction stopping the suspension and disciplinary proceedings against Mr. Benard Yaola Wanyonyi, the grievant herein(spent).
 - c. That pending the hearing and determination of this petition the honourable court be pleased to issue an order of injunction stopping the suspension and disciplinary proceedings against Mr. Benard Yaola Wanyonyi.
 - d. That the cost of his application be in the cause.
6. The application is expressed to be founded on Articles 22 & 23(3)(b) of *the Constitution*, Rule 17 of the Employment and Labour Relations Court(Procedure)Rules,2016, and Sections 3 & 3A of the *Civil Procedure Act*. It is based on the grounds on the face of it.
 7. The application is supported with the affidavit of Francis Wangara sworn on 13th December, 2024 with several annexures thereto.
 8. The respondent entered appearance through Makokha Wattanga & Luyali Associates and filed a replying affidavit sworn by Shadrack Nyongesa Masinde, the respondent's acting human resource manager, on 17th December, 2024 with several annexures thereto.
 9. The respondent also filed a response to the petition dated 17th December, 2024 seeking for the dismissal of the petition with costs for having been filed prematurely.
 10. On 19th December, 2024 when the matter came up in court for directions, the court directed that the application and the petition be canvassed concurrently by way of written submissions. The court further issued interim orders directing Mr. Benard Yaola Wanyonyi (the grievant) to remain on suspension but stayed further disciplinary action. The grievant was ordered to stay away from the respondent's premises pending the hearing and determination of the petition.
 11. With the leave of the court, the petitioner filed a further affidavit sworn by Francis Wangara on 13th January, 2025.
 12. Counsel for the petitioner, Mr. Onyango, filed written submissions on 14th January, 2025 while counsel for the respondent, Mr. Simiyu, filed on 24th February, 2025.

II. The Petitioner's Case & Evidence

13. The petitioner is a trade union representing workers in the sugar industry. The grievant is an employee of the respondent and also the branch secretary of the petitioner.
14. It is deponed that on 27th November, 2024 the respondent's employees had a stand-off with the management, complaining about the frequent breakdown of the factory equipments and salary arrears for eight months.
15. It is deponed that a meeting was held on the said date between the petitioner and the respondent's management which the grievant was in attendance. It is at the said meeting that it was agreed that the employees involved in the standoff would return to work, the factory equipment repaired, and no employee was to be victimized. To that end, it is deponed that the respondent issued a letter to the petitioner to the effect that no employee could be victimized over the stand-off (FW-1).



16. It is deponed that in a strange term of events, the respondent singled out the grievant and issued him with a suspension/show-cause letter dated 10th December, 2024. It is deponed that contrary to the collective bargaining agreement(CBA) between the respondent and the petitioner (FW-3), the respondent directed the grievant to respond to the suspension/show cause letter within 72 hours instead of 7 days. It is deponed that the suspension is for an indefinite period and discriminatory and amounting to unfair labour practices.
17. It is further deponed that in singling out the grievant the respondent, intends to intimidate, harass, and prevent him from participating in the lawful activities of the trade union. It is pleaded that the disciplinary process commenced against the grievant is contrary to the petitioner's legitimate expectation that no employee was to be victimized. The petitioner asserts that the disciplinary process against the grievant offends *the Constitution* and the CBA and hence unless the court issues the orders sought, the grievant risks losing his livelihood.

III. The Respondent's Case & Evidence

18. In its replying affidavit and response to the petition, the respondent states that the petition is an abuse of the court process, and the petitioner has not established a prima facie case as to be entitled to the prayers sought.
19. It is stated that while every person has a right to institute constitutional proceedings, the said right is not absolute. It is pleaded that while every person has a right of expression, that right cannot be exercised to infringe on another's rights.
20. It is stated that on 22nd November, 2024 the grievant called the respondent's Chairman, Mr. Alfred Khang'ati and requested the management to address the workers on various grievances.
21. It is stated that on 27th November, 2024 while two of the respondent's Board members and the petitioner's representatives were in a meeting, the grievant stormed out of the meeting, mobilized and incited the petitioner's members in the respondent's workplace who stormed the boardroom, ejected and frog- marched the respondent's board members out of the respondent's factory.
22. It is stated that the workers led by the grievant demanded that the management issue a letter stating that no employee was to be victimised, which forced the management to comply to quell the rowdy workers.
23. It is stated that on 29th November, 2024 the grievant again mobilized the workers and demanded that the management address them, despite the laid down channel of addressing the workers' grievances.
24. It is stated that the management of the respondent held a meeting on 6th December, 2024 whereby it was resolved disciplinary action be taken against the grievant. It is as a result of that meeting that the grievant was suspended on 10th December, 2024. It is stated that clause 8(ii) of the CBA (NSC1 & NSC2) empowers the respondent with the power to suspend an employee for 21 days. The suspension directed the grievant to stay away from the respondent's factory.
25. It is further stated that on 17th December, 2024 the grievant in the company of armed Boda Boda riders broke into the respondent's premises seeking revocation of his suspension and in the process the gate to the respondent's premises was damaged.
26. It is further stated that on 17th December, 2024 the grievant sneaked into the premises and joined the Secretary General to address workers, stalling the factory's operations, and leading to losses of up to Kshs40 million.



27. The respondent states that the grievant responded to the suspension/show-cause letter vide a letter of 13th December, 2024 (NSC4) and having submitted to the disciplinary process, he, as an employee of the respondent, is to be subjected to the terms of the CBA on disciplinary process. It is stated that the present petition is disguised as a constitutional petition while aimed at inciting workers from carrying out their lawful duties.
28. The respondent states that the action against the grievant is not intended to harass or intimidate, but rather an exercise in fair labour practices. The court is urged to dismiss the application alongside petition.

IV. SUBMISSIONS

29. Counsel for the petitioner submitted globally in support of the application and the petition to the effect that the indefinite suspension of the grievant violates the right to fair administrative action under Article 47(1) of *the Constitution*.
30. Citing a plethora of decisions – Kenya Magistrates & Judges Association v Judicial Service Commission & 2 others (2020) eKLR, Kenya Union Of Commercial Food And Allied Workers v Mek Sacco Society Ltd (204) eKLR, and Bryan Manila Khaemba v Chief Justice and President of Supreme Court of Kenya & another (2019) eKLR, counsel submitted that an indefinite suspension amounts to unfair labour practice.
31. Further, citing Mumias Sugar Company Limited v Kenya Union of Sugarcane Plantation Workers (2017) eKLR, & Mumias Sugar Company Limited v Kenya Union of Sugar cane plantation Workers (2017) eKLR, it is submitted that the disciplinary process against the grievant is discriminatory contrary to Article 27 of *the Constitution*, as the grievant was singled out for being a union official from all the employees who participated in the stand-off.
32. It is submitted that under Article 41 of *the Constitution*, a trade union has a right to organise its activities, and the act of suspending the grievant is meant to stifle the union activities through intimidation, and to create fear aimed at stopping union officials from undertaking their mandates under the *Labour Relations Act*.
33. Citing Jane Kiongo & 15 others v Laikipia University & 6 others (2019) eKLR, the court is urged to find that the grievant had a legitimate expectation that no action was to be taken against him from the events of 27th November, 2024, as per the letter of assurance by the respondent addressed to the petitioner.
34. The court is urged to find that the disciplinary action against the grievant is discriminatory, set the same aside and prohibit it.
35. On the other hand, the respondent's counsel submitted on twin issues – Whether the petitioner qualifies to be granted any conservatory orders of stay; and, Whether the petition is incompetent and an abuse of the due process of the court.
36. On the first issue, counsel cited a plethora of decisions – Gatirau Peter Munya v Dickson Menda Kithinji & 2 others (2014)eKLR; Cascade Company Limited v Kenya Association of Music Production(KAMP) & 3 Others (2015)eKLR; Centre for Rights Education and Awareness(CREAW) & 7 other v The Attorney General(2011)eKLR; Ndengu & 13 others v County Public Service Board of Bungoma & 3 others [2025] KEELRC 247 (KLR), submitting that conservatory orders can only be granted in the arena of public law, but not in private or personal rights litigation.



37. It is submitted that the show-cause/suspension letter dated 10th December, 2024 was addressed to the grievant and not the petitioner, and as per the Change advice form(NSC2) adduced by the respondent, the grievant's suspension was for 21 days as per the CBA contrary to the assertion that the grievant's suspension was indefinite.
38. It is submitted that the petitioner, in articulating the private rights of the grievant, should have filed an ordinary cause for remedies, reliefs, and rights under the Act rather than disguising the same as a constitutional petition.
39. On the second issue, it is submitted that despite the petitioner setting out the Articles of *the Constitution* alleged to have been violated, the petitioner has failed to state with precision how the said Articles have been violated.
40. It is submitted that the grievant's actions resulted in the respondent incurring losses, and no violations are proved that could warrant the issuance of conservatory orders.
41. Citing *Matiba v AG (1990) eKLR, & William S.K Ruto & Another V Attorney General [2010] KEHC 1431 (KLR)*, it is submitted that no evidence of any violations or infringement of the petitioner's rights has been adduced, and a right to fair labour practices does not in itself preclude administrative action being taken against an employee.
42. The court is urged to find that the administrative action undertaken is proper and lawful and dismiss the application and the petition.

V. Issues For Determination

43. The court has carefully and dutifully gone through the application, the petition, the supporting affidavit, the annexures thereto, the further affidavit by the petitioner, the response to the petition and the replying affidavit by the respondent. The contents of the said records have been summarized above. The court has also read and summarised the submissions by the counsel for both parties in the foregoing paragraphs of this judgment.
44. In the considered view of the court, the following issues commend themselves to the court for determination –
 - a. Whether the petitioner's application and the petition are premature?
 - b. Should the court issue the conservatory orders sought?
 - c. What are the appropriate orders for the court to make?
 - d. Costs.

VI. Premature Application/petition?

45. The interim orders issued on 19th December, 2024 directed that the grievant would remain on suspension, but no further disciplinary action should be taken against him pending the hearing and determination of the application and the petition; and, that the grievant was not to visit the respondent's premises in whatever capacity.
46. The petitioner's case is that the grievant's suspension arising from the standoff on 27th November, 2024 offends the CBA provisions in that the grievant was only issued with 72 hours' notice to respond to the show-cause letter; the show cause letter was not copied to the branch secretary, which violates the grievant's right to fair labour practices; and, that the suspension is against the grievant's legitimate



expectation that no action was to be taken against any employee arising from the stand-off of 27th November, 2024.

47. The respondent's position, on the otherhand, is that after 27th November, 2024 the grievant on 29th November, 2024 mobilized employees from their workstations and directed them to demand to be addressed on various grievances by the respondent, despite the laid down dispute resolution mechanisms, prompting his suspension on 10th December, 2024.
48. The grievant responded to the letter of suspension vide his letter dated 13th December, 2024. The petitioner did not inform the court that the grievant had already responded to the suspension/show-cause letter, when one of the issues raised in the petition is that the period for responding to the same was short.
49. The court is asked to make a finding on whether the suspension/show-cause letter issued to the grievant violated his right to legitimate expectation, or whether the said suspension letter is in line with the laid down provisions of the CBA between the petitioner and the respondent.
50. The court has perused clause 8 of the CBA adduced by the parties, and observes that "suspension" falls under "discipline" where an employee can be suspended by the respondent on any alleged misconduct. The clause further outlines an elaborate procedure on how the suspension process is to be conducted until a final decision is made. The clause is reproduced below –

(ii) Suspension

- a. Where misconduct by an employee requires investigations, the employee will be suspended from duty with half pay for a period not exceeding 21 days whilst an inquiry is being carried out.
- b. Depending on the circumstances, all suspension letters will be accompanied by a show cause letters within seven days.
- c. All suspension/show-cause letters shall be copied to the union branch secretary and human resource manager within seven days. Where such letters may not be copied for whatever reasons as provided, the union shall take up the matter in accordance with the grievance handling procedures.
- d. No suspension shall exceed 21 consecutive days. If exceeded the employee shall be reinstated, except where the union and management have both agreed that more time is required to complete the investigations or where the investigation is done by the police or the case is pending before a court of law, when the employees will continue to receive half pay.
- e. If it is proved that the employee has committed an offence, he/she shall be dismissed or terminated as from the date of determination.
- f. If the offence does not warrant dismissal or termination of service, the employee shall be served with a written warning letter copied to the union Branch secretary.
- g. If the offence is not proven, the employee shall be reinstated in his job with full pay and benefits from the date of suspension.
- h. An employee on suspension shall not be subjected to daily reporting unless required.
- i. Security investigations reports touching on suspended employees will be availed to the union.'



51. The disciplinary process against the grievant commenced by issuance of the suspension/show-cause letter. The grievant responded to the said letter. Before the process could proceed to the next step as per the CBA, the petitioner filed the application and petition presently before the court three days later, seeking to quash the said suspension.
52. The court is empowered by Section 41 of the Act to assess the procedural fairness of any disciplinary process and to make a finding on whether the process meets the threshold set thereunder. The process encompasses informing an employee of the charges against him/her giving the employee a chance to be heard and give their representations before a decision is made.
53. The grievant is still in the employment of the respondent but on suspension and on half salary as per the provisions of the CBA cited above. The petitioner's application and petition are preemptive in nature that the disciplinary process is meant to dismiss the grievant if the same is allowed to proceed to a conclusion. Clearly, the procedure under clause 8 above is yet to be exhausted.
54. It would be premature for the court to determine the validity of an incomplete disciplinary process that is sanctioned by the CBA between the parties. The court's hands are tied in that, where an alternative dispute resolution mechanism exists, a party has no audience with a court as a first port of call, but must exhaust that avenue before invoking the court's jurisdiction – see the Supreme Court in paragraph 107 in *Abidha Nicholus v Attorney General & 7 others; National Environmental Complaints Committee (NECC) & 5 others (Interested Parties)* [2021] KEELC 4495 (KLR).
55. The upshot is that before the internal disciplinary process is completed the court should not make a pronouncement on the validity of the said procedure. The court must refrain from entering into the arena of an employer's right to manage the workplace and to lawfully discipline employees.

VII. Conservatory Orders

56. On whether the court can issue a conservatory order to stop any disciplinary action against the grievant, the court is guided by the principles upon which conservatory orders may be issued, which were enunciated by the Supreme Court in *Peter Gatirau Munya V Dickson Mwenda Kithinji* (supra). In distinguishing conservatory orders from orders of injunctions, stay, and other interlocutory orders, the apex court stated as follows –

‘Conservatory orders bear a more decided public law connotation for these are orders to facilitate ordered functioning within public agencies as well as to uphold the adjudicatory authority of the court, in public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private party issues such as the prospects of irreparable harm occurring during the pendency of the case or high probability of success in the applicant's case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.’
57. The import of the above is that conservatory orders are more appropriate and applicable in public interest litigation or public law causes as opposed to litigation in personal relationships, such as employment, which mandate parties to seek the reliefs, rights, and remedies provided for in the Act, the *Employment and Labour Relations Court Act*, and the rules made thereunder, and any other applicable statutes. They are more applicable in cases of rights in rem as opposed to rights in personam.
58. For a conservatory order to issue in an ordinary cause such as an employment and labour dispute, it must be demonstrated that there is a threat, violation, or breach of the constitutional rights and



freedoms of an individual. The grievant was issued with a show-cause letter to which he responded and this set in motion a process that has since been stayed. The grievant is on half-salary as contemplated in the CBA.

59. While the court exercises original and unlimited jurisdiction in matters of employment and labour relations, the court cannot descend into the arena to manage or micromanage the human resources functions of the respondent and direct the respondent on what actions to take against its employees.
60. The grievant is an employee of the respondent and, whether or not he is a member of the petitioner, he is subject to the codes of conduct applicable. The court takes the view and holds that if upon finalization of the disciplinary process against the grievant the same was deemed flawed, the claimant shall be true to seek and obtain remedies as per the law established.
61. The disciplinary process is not yet completed, and the petitioner's apprehension of what the result of the said disciplinary process shall be is at best only speculative. The court takes the view and holds that the applicant has not made out a prima facie case warranting the granting of conservatory orders as sought, whose effect shall be to tie the hands of the respondent from taking any administrative or disciplinary action over the grievant. That is not in the realm of the jurisdiction of this court.
62. The court finds and holds that the petitioner has not satisfied or convinced the court that conservatory orders should be issued to stop the respondent from continuing with the disciplinary action against the grievant as its employee. The petitioner has not adduced evidence to show that the action against the grievant is malicious or otherwise based on his membership with the petitioner. There is no evidence demonstrating that the respondent has so far violated the law or the code of conduct applicable in taking the disciplinary action against the grievant.
67. Accordingly, the court lifts the interim order issued on 19th December, 2024 stopping the respondent from proceeding with any disciplinary proceedings against the grievant and finds that both the application and the petition dated 13th December, 2024 were filed before the court prematurely.
68. The petition and application are hereby dismissed for lack of merits.

V. Orders

67. The court issues the following orders –
 - a. The application and the petition herein were filed in court prematurely and are hereby dismissed for lack of merits.
 - b. The interim orders issued on 19th December, 2024, stopping the respondent from proceeding with any disciplinary proceedings against the respondent are hereby lifted.
 - c. Each party to meet own costs in the application and the petition.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT BUNGOMA THIS 15TH DAY OF MAY, 2025.

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DAVID NDERITU

JUDGE

