



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya County Government Workers Union v Kericho Water and Sanitation Company Limited (Cause E012 of 2005) [2025] KEELRC 1863 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1863 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO  
CAUSE E012 OF 2005**

**J RIKA, J  
JUNE 27, 2025**

**BETWEEN  
KENYA COUNTY GOVERNMENT WORKERS UNION ..... CLAIMANT  
AND  
KERICHO WATER AND SANITATION COMPANY LIMITED .. RESPONDENT**

**RULING**

1. The Claim herein is brought on behalf of 9 members of the Claimant Union, who are former Employees of the Respondent. Some of the Employees were Claimant's Branch Officials.
2. The Employees are: -
  - a. Tom Mboya Ober, Branch Secretary.
  - b. Philomena Koech, Branch Chair.
  - c. Kibet Shadrack Sigel, Branch Youth Representative.
  - d. Chebet Joyce Koech Koskei, Women Representative.
  - e. Kibii Paul Rop, member.
  - f. Kirui Nancy Chepkorir, member.
  - g. Philemon Langat, member.
  - h. Kipkurui Korir, member.
  - i. Shamin Nandalal, member.
3. The Employees were dismissed by the Respondent on 24<sup>th</sup> February 2024. Dismissal was the ground that the Employees participated in an illegal strike. It is submitted that there was a return-to-work



formula, ironed out between the Claimant and the Respondent, and dismissal decision went against the formula.

4. The Claimant approached the Court under certificate of urgency, in an application dated 25<sup>th</sup> March 2025, asking the Court to restrain the Respondent from filling up the positions previously held by the affected Employees, until the Claim is heard and determined.
5. The application is founded on the affidavit of Roba Sharu Duba, General Secretary of the Claimant, sworn on 25<sup>th</sup> March 2025.
6. The Respondent relies on Grounds of Opposition, dated 2<sup>nd</sup> May 2025. They are: the Claimant has no legal capacity to institute the Claim; the Court lacks pecuniary jurisdiction, the Employees, having been on gross monthly salaries of less than Kshs. 80,000 each; the disciplinary process against the Employees was concluded; the Respondent offers essential services to the public and must not be restrained from filling vacant positions; and the fairness of termination cannot be determined on an interlocutory application.
7. The Parties agreed that the application is heard and determined on the strength of their pleadings, affidavits and submissions on record.

**The Court Finds: -**

8. The Claim is presented by a trade union, and has its origin in a trade dispute, involving strike action and subsequent return-to-work formula, crafted and executed by the Parties.
9. This is not an employment dispute, litigable at the Chief Magistrate's Court, based on pecuniary jurisdiction. It is a labour relations dispute, presented by a trade union on behalf of its members, properly filed at the E&LRC, pursuant to Section 12 [1] [b] of the E&LRC Act. The Court rejects the objection raised by the Respondent on its jurisdiction.
10. There is no good reason given by the Claimant, why the Respondent should be restrained, from filling up vacancies relating to discharge of essential services. The Respondent supplies water and sanitation services to the public.
11. The Claimant does not appear to have supplied the Court with evidence of the positions held by the Employees at the Respondent, and importantly, with evidence establishing that the Respondent has commenced the process of filling up such positions.
12. The substantive prayers in the Claim, include compensation for unfair termination and damages for constitutional violations. There is also a prayer for reinstatement, which is not rendered unobtainable, by the mere fact that the Respondent may recruit fresh Employees to discharge the 9 dismissed Employees' roles. There are sufficient remedies sought in the substantive prayers, which makes it unnecessary to restrain the Respondent, in recruiting fresh Employees.
13. The Court can only caution the Respondent that filling up the positions, does not place the remedy of reinstatement beyond the affected Employees. A bloated county public service, will not be a reasonable ground to bar granting an order of reinstatement, if the evidence marshalled by the Claimant, and the applicable law, supports its award.
14. Secondly dismissal of trade union officials on account of their exercise of legitimate trade union activities, is normally deprecated by the law, and may result in declaration of unfair dismissal. Section 46 of the *Employment Act*, lists dismissal on account of engagement in legitimate trade union activities, and in lawful strikes, to amount to unfair dismissal. ILO Convention 135, Workers Representatives



Convention, elaborately protects trade union officials against dismissal or other prejudicial actions, based on their engagement in legitimate trade union activities.

15. In declining the application, the Court cautions the Respondent to tread carefully, so that it does not encounter insurmountable legal burdens, in event the Claimant is successful with its substantive prayers.

**It is Ordered: -**

- a. The application filed by the Claimant dated 25<sup>th</sup> March 2025 is declined.
- b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT KERICHO THIS  
27<sup>TH</sup> DAY OF JUNE 2025.**

**JAMES RIKA**

**JUDGE**

