



**Kenya Plantation & Agricultural Workers Union v Shalimar Fresh Flowers Limited
(Cause E102 of 2024) [2025] KEELRC 1909 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1909 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E102 OF 2024
AN MWAURE, J
JUNE 25, 2025**

**BETWEEN
KENYA PLANTATION & AGRICULTURAL WORKERS UNION . APPLICANT
AND
SHALIMAR FRESH FLOWERS LIMITED RESPONDENT**

RULING

Introduction

1. The Claimant/Applicant filed a Notice of Motion dated 13th December 2024 under Certificate of Urgency seeking the following orders that:
 1. Spent
 2. This Honourable Court be pleased to issue an order of immediate reinstatement and access of the 3 Grievants to their gainful employment based on the Conciliator’s report without loss of benefits pending hearing and disposal of this application.
 3. This Honourable Court be pleased to issue an order of injunction restraining the Respondent or their agents herein from issuing show cause letters, termination letters, dismissal letters, victimizing, harassing, suspending the Applicant’s members’ pending the hearing and determination of this application.
 4. Costs of this application be borne by the Respondent.
2. The application is brought under Rule 12 of the Employment and Labour Relations (Court) Procedure Rules 2016 and Section 45 of the [Employment Act](#) and all other enabling provisions of the law.



Claimant/Applicant's case

3. The application is supported by the affidavit of Thomas Kipkemboi, the Claimant/Applicant's Union Deputy General Secretary.
4. The Claimant/Applicant avers that it had successfully negotiated and registered a collective bargaining agreement (CBA) with the Respondent outlining employment terms for unionized workers.
5. The Claimant/Applicant avers that the grievants, under its union were employed as general workers in the pack house department, were arrested on 19th March 2024, following theft allegations raised by the security supervisor, but the police found no evidence to charge them.
6. The Claimant/Applicant avers that upon the grievants release on 21st March 2024, they returned to work, only to be issued Show Cause letters dated 22nd March 2024, requiring them to respond in writing within one day.
7. The Claimant/Applicant avers that following their suspension on 23rd March and 4th April 2024, the grievants were summarily dismissed on 9th April 2024.
8. The Claimant/Applicant avers that it reported the matter to the Labour Commissioner, leading to its registration as a trade dispute and the filing of a Memorandum of Claim.
9. The Claimant/Applicant avers that a conciliator was appointed and facilitated meetings on 30th July and 23rd August 2024.
10. The Claimant/Applicant avers that based on submissions, the conciliator found no evidence of conspiracy or theft and recommended the reinstatement of the grievants, along with salary compensation for the period of dismissal.
11. Despite receiving the conciliator's report, the Claimant/Applicant avers that the Respondent refused to comply.
12. The Claimant/Applicant avers that the Respondent's actions violate the Collective Bargaining Agreement and section 15(b) of the employment contract terms, affecting the grievants' rights and livelihoods.

Respondent's replying and supplementary affidavits

13. In opposition of the application, the Respondent filed a replying affidavit dated 30th December 2024 and a supplementary affidavit dated 11th April 2025 sworn by Vitalis Osodo, the Respondent's Group Human Resource Manager.
14. The Respondent avers that the grievants, through the Claimant/Applicant, seek reinstatement, but maintains that their termination was lawful.
15. The Respondent avers that on 19th March 2024, it suspected the grievants of colluding in company property theft after they were found in the cold room, outside their assigned work area.
16. The Respondent avers that the grievants' duties involved loading flowers onto trucks and cleaning the packhouse, not accessing the cold room.
17. The Respondent avers that its security supervisor reported the incident to the police for further investigation, and while it had no control over police procedures, upon the grievants' return to work,



- they were issued show cause letters requiring them to explain why disciplinary action should not be taken against them.
18. The Respondent avers that the grievants responded to the show cause letters and were suspended pending a disciplinary hearing on 5th March 2024, where they were allowed to defend themselves. After individual case reviews, they were asked to report back on 9th April 2024, when their services were terminated for alleged gross misconduct involving a conspiracy to steal company property.
 19. The Respondent avers that the Nyandarua Labour Officer later recommended their reinstatement on 25th September 2024, but issued conflicting reports on 15th October, and 23rd October 2024, with the latter reaffirming the initial reinstatement recommendation.
 20. The Respondent avers that due process was followed, and the application for reinstatement does not demonstrate urgency or injury suffered.
 21. The Respondent avers that the Supplementary Affidavit presents additional evidence regarding the incident on 19th March 2024.
 22. The Respondent avers that the head of security prepared an incident report, and the pack house manager confirmed discrepancies in the cold room, where two boxes of rose flowers were found.
 23. The Respondent avers that the grievants were issued show cause letters, responded to them, and were subsequently suspended for investigations.
 24. The Respondent avers that the grievants were later invited to a disciplinary hearing, and minutes of the proceedings were recorded. Following the hearing, they were dismissed but later appealed the decision, and the respondent replied to their appeals.
 25. The Respondent avers that the matter was reported to the Labour Officer, and a summary response was submitted.
 26. The Respondent avers that the prayers for reinstatement sought by the Claimant/Applicant should be handled through the main suit rather than as precipitate orders.
 27. The Respondent avers that reinstatement is untenable and urges this Honourable Court to dismiss the application.

Claimant/Applicant's supplementary affidavit

28. The Claimant/Applicant filed a response to the Respondent's Replying affidavit vide a supplementary affidavit dated 25th March 2025.
29. The Claimant/Applicant avers that the grievants' dismissal was malicious and unlawful, and maintains that the grievants were rightfully at their place of duty and their presence in the cold room does not imply theft.
30. The Claimant/Applicant avers that though the grievants were arrested and investigated, the police found no evidence and released them without charges.
31. Despite the grievants' clearance, the Claimant/Applicant avers that the Respondent issued show cause letters and later dismissed them without proof of conspiracy or theft.
32. The Claimant/Applicant avers that the conciliator initially recommended reinstatement, and the applicant insists that there were no conflicting reports.



33. The Claimant/Applicant avers that the Respondent failed to challenge the conciliator's report in court, implying acceptance of the findings.
34. The Claimant/Applicant avers that the Respondent refused to reinstate the grievants, despite police and conciliator clearance, demonstrating bad faith and a violation of the Collective Bargaining Agreement and employment contract.
35. The Claimant/Applicant urged this Honourable Court to allow the application and award the costs as prayed.
36. Parties canvassed the application by way of written submissions.

Claimant/Applicant's submissions

37. The Claimant/Applicant submitted that it sought for reinstatement of three grievants without loss of benefits. Following a reported trade dispute, the Ministry of Labour appointed a Conciliator, who analysed submissions and issued a report on 25th September 2024. The Claimant/Applicant submitted that the findings confirmed no conspiracy, insufficient evidence of theft, and no prior warning letters for the grievants. The conciliator recommended their reinstatement and salary compensation from the dismissal date. Despite the Claimant/Applicant urging the Respondent to implement the recommendations on 15th October 2024, the Respondent failed to respond or challenge the report in any lawful forum.
38. The Claimant/Applicant submitted that the grievants were arrested and investigated for theft but later released due to lack of evidence. Upon returning to work, they were issued show cause letters, suspended, and eventually dismissed under Section 44(4)(g) of the *Employment Act*, despite no charges being brought against them.
39. The Claimant/Applicant submitted that the dismissal violated Section 45 of the *Employment Act*, as there was no valid or fair reason for termination. Both the police and conciliator exonerated the grievants, yet the respondent failed to implement the conciliator's recommendation for reinstatement and salary compensation.
40. The Claimant/Applicant submitted that the Respondent should bear the costs of the application due to its refusal to honour the conciliator's report and urges this Honourable court to compel full implementation of the conciliator's recommendations, reinstating the grievants and ensuring payment of all pending arrears.

Respondent's submissions

41. The Respondent submitted that for injunctive orders to be granted, it needs to meet the threshold as set out in the case of *Giella V Cassman Brown & Co. Ltd (1973) EA* where the court held as follows:

“In an interlocutory injunction application, the applicant has to satisfy the triple requirement to:

- a. Establish his case at a prima facie level with probability of success
- b. Demonstrate irreparable injury if a temporary injunction is not granted, and
- c. Any doubt as to (b) by showing that the balance of convenience is in his favour.”



42. The Respondent submitted that the Claimant has failed to meet the threshold for it to be granted injunctive orders as prayed and cited on the cases of *Mrao Limited V First American Limited & 2 others [2003] eKLR* and *Mulwa V Marist International College [2025] eKLR* in support of that proposition.
43. The Respondent submitted that the Claimant/Applicant seeks reinstatement of the grievants pending the hearing and determination of the main suit, arguing that their summary dismissal lacked valid justification. The Respondent contends that reinstatement is a substantive remedy and should not be granted at an interlocutory stage unless exceptional circumstances exist.
44. The Respondent relied on the case of *Kenya Tea Growers Association & Another V Kenya Plantation & Agricultural Workers Union [2018] eKLR*, the Court held that:
- “Ordinarily, reinstatement of an employee is a substantive remedy, not a temporary relief. The law does not contemplate that reinstatement is issued as a provisional measure. It is a remedy that should normally be granted upon the full hearing of the employer and the employee.”
45. Similarly, in *Jael Achieng Onyango V Housing Finance Development and Investment (2021) eKLR*, the court declined an interlocutory reinstatement, stating,
- “The foregoing contention constitutes the main issues for determination during the trial of the main suit when evidence from the parties will be tendered. Therefore, I decline to order reinstatement at this interlocutory stage because I am not properly seized of the material evidence to enable me to make an informed decision on the said relief.”
46. Further, in *Joan Wairimu Wanyutu V Social Service League, MP Shah Hospital (2019) eKLR*, the court emphasized that reinstatement is equal to specific performance, which should only be granted after a full hearing unless exceptional circumstances exist.
47. The Respondent submitted that given the lack of demonstrated urgency or exceptional circumstances, the Respondent argues that the Claimant/Applicant has not met the threshold for an injunction, does not have a prima facie case with a high chance of success, and has not shown irreparable harm if the injunction is denied.
48. Consequently, the Respondent prays that the application is deemed devoid of merit and should be dismissed with costs.

Analysis and determination

49. The court has considered the application, replying affidavit, supplementary affidavits, and the rival submissions by counsels. The issue for determination is whether the application for injunction is merited.
50. For injunction orders to be issued, the orders need to align with the requirement as set out in *Giella V Cassman Brown & Co. Ltd (Supra)* which has been reiterated in the earlier part of this ruling.
51. The main grounds for granting of interlocutory injunction are laid down in the case of *Giella -VS- Cassman Brown & Co Ltd (1973) E.A 358* where the court held:-

“In an interlocutory injunction application the Applicant has to satisfy the triple requirement to;

- a. Establish his case at prima facie level with probability of success.



- b. Demonstrate irreparable injury if a temporary injunction is not granted and
- c. Ally any doubts as to (b) by showing that the balance of convenience is in his favour.”

52. As to the question of whether a prima facie case has been established the court has carefully perused the Claimant’s pleadings and the support documents including the report prepared by MS King’ori the County Labour Officer. The Conciliator found there was no conspiracy to steal as the grievants were in their area of duties.

53. The grievants were also taken to the police station for investigations and were found there was not enough evidence to charge them with criminal charges.

The Claimants were issued with show cause letters and suspension letters. A few days later they were dismissed.

54. The court finds that as defined in the Court of Appeal case Mrao Limited -VS- First American Limited & 2 Others (2003) eKLR which stated –

“In civil cases in a case which on the material presented to the court or tribunal properly directed itself will conclude that there exists a right which apparently been infringed by the opposite party as to call for an explanation or a rebuttal from the later.”

55. The facts on the face of this application do point existence of a prima facie case.

56. But the grievants have already been dismissed from their employment on 9th April 2024. Therefore, there is no irreparable harm that may be caused to the grievants if an interlocutory injunction is not granted.

57. The prayer No. 3 which prays that Respondents be restrained from issuing show cause letters, termination or dismissal letters to the grievants are overtaken by events.

58. The court is not keen to grant interlocutory injunction to reinstate the grievants to their former employment. Since they have made same prayers in the main suit the court will dismiss this application and order the main suit proceed for hearing with speed. The same will proceed on 21st July 2025 for mention to confirm pre-trial directions have been met and give a hearing date. Applicant to be served with mention notice.

59. Costs will be in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 25TH DAY OF JUNE, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article



159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

