



**Kenya Plantation & Agricultural Workers Union v Rea Vipingo Limited & another  
(Cause E008 of 2025) [2025] KEELRC 2098 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2098 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E008 OF 2025**

**M MBARŪ, J  
JULY 17, 2025**

**BETWEEN**  
**KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT**  
**AND**  
**REA VIPINGO LIMITED ..... 1<sup>ST</sup> RESPONDENT**  
**ESSENTIAL BUSINESS ADVISORY SERVICES ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The claimant filed an application dated 29 January 2025 under the provisions of section 12(1) and (4) of the *Employment and Labour Relations Court Act* and Rule 17(1), (3), (5), (6) of the Employment and Labour Relations Court (Procedure) Rules seeking orders;
  - a. Spent.
  - b. Spent.
  - c. An order to issue directing the 1st and 2nd respondents to deduct union dues and or agency fees from all unionisable employees and forthwith remit to the claimant.
  - d. A declaratory order shall issue declaring that the Collective Bargaining Agreement concluded between Kenya Sisal Growers & Plantation Association (Kenya) and the applicant herein constitutes the minimum terms and conditions of employment for all employees in the employment of the 1st and 2nd respondents and is binding upon the 1<sup>st</sup> and 2<sup>nd</sup> respondents.
  - e. A declaratory order is to issue directing the 1st and 2nd respondents to further comply with clause 19 of the Collective Bargaining Agreement by ferrying all field workers to and from their places of work if such places of work are outside a 2km radius from the assembly point or labour camp in which they reside.



- f. A declaratory order to issue directing the 1st and 2nd respondents to, at their discretion, provide a bicycle allowance equal in value to transport each field worker to their places of work, in such areas where work is outside a 2km radius from the assembly point or labour camp in which they reside.
  - g. A declaratory order directing the 1st respondent to refund all monies deducted from all field workers as bicycle deduction within 21 days from the date of this order. By default, the principal amount attracts interest at court rates and is subject to execution.
  - h. Costs are in the cause.
2. The application is supported by the Affidavit of Patrick Mlanda, the chief shop steward of the claimant, who avers that the claimant's union represents all workers in the agricultural sector in Kenya. The 1<sup>st</sup> respondent is a sisal-growing and processing company with sisal estates located in Vipingo, north of Mombasa, and Dwa Estate in Kibwezi, southeast of Nairobi. The 2<sup>nd</sup> respondent is an employment agency company contracted by the 1st respondent to offer outsourced labour services and operates from the confines of the 1<sup>st</sup> respondent.
  3. The 1<sup>st</sup> respondent is a member of the Kenya Sisal Growers & Employers Association of Kenya, with a valid Recognition Agreement, and has concluded several Collective Bargaining Agreements (CBAs) with the claimant that have been registered with the court. The current CBA is dated 3 May 2024.
  4. The CBA was concluded between the 1<sup>st</sup> respondent and the claimant under section 57(1) of the Labour Relations Act (LRA). It is binding on the respondents, including all unionisable employees in their employment, to the extent it relates to them.
  5. Under section 10(3)(e), 26(2), of the Employment Act, section 59(1)(a)(b)(c) and 59(3) of the LRA and clause 1 of the CBA, the 2<sup>nd</sup> respondent is bound by the same.
  6. Mlanda avers that the respondents have unilaterally and without consulting the claimant, and contrary to Section 10(5) of the Employment Act and Clause 32 of the CBA, revised the agreement by placing employees categorised in the CBA schedules into term contracts of different periods, ranging from one to three months. The respondents have acted contrary to Clause 19 of the CBA and refused to transport field workers to and from their places of work, which are outside a 2 km radius from the assembly point or labour camp in which they reside. Instead, the 1st respondent deducted the money from the field workers to provide bicycles.
  7. The respondents' actions constitute a breach of the contractual terms and conditions of employment agreed upon in the CBA, as they have chosen to revise, vary, and alter the terms unilaterally.
  8. The respondents' employees are aggrieved and apprehensive that they will be victimised for filing this cause and registering their grievances, as evidenced in the meeting held on 26 January 2025. Unless the orders sought are granted, the workers will have no confidence in the claimant and will recant their membership en masse.
  9. In his Supplementary Affidavit, Mlanda avers that under the CBA, job category "A", the requirements for the Cutting and or harvesting of sisal, transporting the cut sisal are positions of employment that are permanent and not seasonal or contractual because, the source is sisal plant which is available every day for harvest and processing. The job categories under the CBA job category "B" require decorticating, or processing the extraction of fibre from sisal leaves, then baling the sisal fibre into sisal bales, and finally joining them into ropes. This employment position is permanent and not seasonal or contractual, as its source is the sisal plant, which operates daily.



10. Mlanda aver that job category “C” comprises skilled jobs and permanent jobs in the Estates. Job category “D” includes permanent jobs applicable to different sisal estates in Kilifi Plantations Limited.
11. The 1<sup>st</sup> respondent has instead placed employees on renewable contracts of between 6 months. Most of these employees have been continuously employed for over 10 years and enjoy the CBA terms.
12. The employees involved in this case fear reprisals from the respondents. Under Rule 18(3) of the Court Rules, the claimant seeks to have the Commissioner for Labour conduct a site visit at the 1<sup>st</sup> respondent to interview the employees for verification. The 1<sup>st</sup> respondent, as the custodian of the work record, has the list of all the employees.
13. Mlanda avers that under section 10(3)(c) of the *Employment Act*, the 1<sup>st</sup> respondent must provide employment particulars to all employees, including those whose names are listed in this case. The CBA between the members of the Sisal Growers & Employers Association (Kenya) sets minimum conditions for all employees under categories “A”, “B”, “C”, and “D”.
14. Under section 11 of the LRA, the claimant has discharged its burden of proof against the 1<sup>st</sup> respondent. The CBA between the parties applies to all employees of the 1<sup>st</sup> respondent. By using different employee standards, the 1<sup>st</sup> respondent discriminates against contractual employees in terms of their service conditions. This is contrary to sections 5 and 7 of the *Employment Act*.
15. The orders sought by the claimant will not cause any prejudice to the respondents. The orders sought are under sections 59(5), 48(3) and 49(3) of the LRA and sections 16(2), (3) and (5) of the *Employment Act*.
16. In reply, the 1<sup>st</sup> respondent filed the Replying Affidavit of Janet Omulindi, the Human Resource Manager, who avers that employment at Rea Vipingo is categorised into permanent and fixed-term contracts. The 1<sup>st</sup> respondent has not revised the terms and conditions of employment for any of its employees, as alleged by the claimant. The various factors that affect labour focusing within the given period, which guide the form of engagement between the 1<sup>st</sup> respondent employees are that, Intensity and duration of the precipitation, Area available for replanting new crops, Crop physiology and pathology – unfurling of leaf, pests and disease, Foreign market dynamics, Production costs.
17. Omulindi avers that the 1<sup>st</sup> respondent has deducted and remitted union dues from its employees who are members of the claimant. There is no breach of Clause 19 of the CBA, which provides that it shall be at the management’s discretion where the employer opts to provide a bicycle allowance. The 1<sup>st</sup> respondent has provided field employees with a monthly bicycle allowance for those who work outside a 2 km radius.
18. Any employee interested in purchasing a bicycle from management must submit a written request. The employee pays for the bicycle in instalments. The bicycle allowance is paid to the employee, and no one is forced to take the bicycle.
19. Before 2020, the 1<sup>st</sup> Respondent had vehicles that would transport its employees. However, due to COVID-19 containment measures, transportation became difficult, and work was affected.
20. In the Further Affidavit, Omulindi avers that the claimant has sought orders compelling the deduction and remittance of union dues and agency fees from its employees. However, the 1<sup>st</sup> respondent has been deducting and remitting the same as the law requires. The 1<sup>st</sup> respondent received check-off forms dated on a Saturday, when the accounts department was not operational and had closed the payroll. The management adopted the bicycle allowance, and some employees opted to take the bicycles upon application.



21. Omulindi avers that the 1st respondent has not harassed or intimidated any employee as alleged. No disciplinary action is taken against an employee based on their enjoyment of constitutional rights, and no such case has been reported.
22. Omulindi avers that the 1<sup>st</sup> respondent effected the deductions of union dues and agency fees from the applicable members of staff and has since remitted the same. The orders sought have no merit and should be dismissed with costs.
23. In reply, the 2<sup>nd</sup> respondent filed the Replying Affidavit of Aggrey Anduuru, the director at the 2nd respondent, who avers that it is an outsourcing agency contracted by the 1<sup>st</sup> respondent to supply labour to the plantations. The claim is that the claimant has a CBA with the 1<sup>st</sup> respondent, which they seek to apply to the 2<sup>nd</sup> respondent's employees.
24. The 1<sup>st</sup> respondent does not act for the employees provided by the 2nd respondent. Therefore, the CBA in force only applies to the relationship between the claimant and the 1<sup>st</sup> respondent. The CBA in place does not apply to the employees of the 2<sup>nd</sup> respondent.
25. In the absence of an employer-employee relationship between the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent employees, the 1<sup>st</sup> respondent should not be a party in these proceedings.
26. The 2<sup>nd</sup> respondent has not opposed recruiting its employees into a union, a constitutional right. The LRA requires the employer to sign a Recognition Agreement, which records the terms and conditions governing employment relations. There is no recognition agreement between the claimant and the 2<sup>nd</sup> respondent.
27. The 2nd respondent is mandated to recruit labour, and it is only fair for the claimant to involve it in recruiting its members. The claimant should have informed the 2<sup>nd</sup> respondent of its intention to recruit its employees as members in terms of the LRA.
28. Anduuru avers that the 2<sup>nd</sup> respondent has never received notice from the claimant of its intention to register its employees as members. The 2<sup>nd</sup> respondent cannot be faulted for the claimant's inaction, and the orders sought should not be issued.

The parties agreed and filed submissions.

29. The claimant submitted that the CBA between the parties constitute the minimum terms and conditions of employment. These terms apply to employees outsourced to the 2<sup>nd</sup> respondent by the 1<sup>st</sup> respondent. Despite the claimant and 1st respondent's relationship being regulated under a Recognition Agreement and CBA, on 26 January 2025, the claimant held a General Workers Meeting, where its employees on fixed-term contracts joined the claimant's membership. The 2<sup>nd</sup> respondent's employees also joined the union.
30. Due to irregular employment and fear of reprisals for joining the claimant union, the respondents' employees have filed suit to secure their constitutional rights to freedom of association. The check-off forms were served to the respondents on 1 and 3 February 2025. Under section 48(3) of the LRA, the claimant is recruiting members from the respondents' employees and seeks restraining orders against them to prevent them from victimising the members.
31. The claimant submitted that the respondents should be restrained from breaching employees' constitutional rights on fixed-term contracts and those outsourced to the 2<sup>nd</sup> respondent. The 1st respondent admitted that there are two categories of employees, permanent and term contracts. This is irregular, and the fixed-term contract employees are denied the right to association for collective



bargaining and fear reprisal if they join the claimant union. Under article 36 of *the constitution*, everyone has the right to association, and under article 41, everyone has the right to unionise. These provisions of *the constitution* are operationalised under section 4 of the LRA. No employee should be discriminated against for joining a trade union of choice.

32. The ongoing recruitment of claimant members aims to secure employees' rights. In *Fondo Kalama & 19 others v Anderson M Mtalaki & 3 others* [2013] eKLR, the court held that the principles of association at work and collective bargaining are outlined under the ILO conventions and *the constitution*. These principles bind every employer, and the respondents' employees should not be restricted by the contract terms from joining the claimant's membership.
33. In the case of *Kenya Concrete, Structural, Ceramic Tiles, Wood Ply's and Interior Design Workers Union v Registrar of Trade Union & Another* [2013] eKLR, the court held that representation should not be restricted. Such a right should be protected when an employee seeks to join others for collective bargaining.
34. In this case, the respondents should be compelled to pay union dues from the employees who are members of the claimant and to remit agency fees from employees who are unionisable and have not joined the claimant union. Despite serving the respondents with check-off forms, they have refused to remit union dues and agency fees. This is a legal requirement under section 48 of the LRA. In *Amalgamated Union of Kenya Metal Workers v Unity Auto Garage (Nbi) Limited* [2014] eKLR, the employee should pay agency fees. This position is reiterated in the case of *Kenya Hotels and Allied Workers Union v Attorney General & 6 others* [2015] eKLR and the case of *Kenya Aviation Workers Union v Bolloré Africa Logistics – Kenya & another* [2016] eKLR.

The reliefs sought should issue with costs to the claimant.

35. 1<sup>st</sup> respondent submitted that the person who alleges has the burden of proving the allegation under Section 107(1) of the *Evidence Act*. In *Kenya Alliance Insurance Co Ltd v Kioko (Civil Appeal E143 of 2021)* [2023] KEHC, the Court held that Section 109 of the *Evidence Act* puts the burden of proof on the party possessing special facts to adduce them.
36. the 1st Respondent has complied with Clause 19 of the CBA between its association and the Claimant. Clause 19 of the CBA requires the management to provide field workers with transport to and from their places of work if such places of work are outside a 2-kilometre radius from the assembly point or labour camp in which they reside, or, at its discretion, provide a bicycle allowance. Under this clause, the 1st Respondent decides whether to provide actual transport or pay a bicycle allowance to the eligible employees.
37. The 1<sup>st</sup> Respondent opted to pay a bicycle allowance instead of providing the actual transport. This fully complies with the CBA, and the claim that the 1<sup>st</sup> Respondent has not adhered to it is incorrect. The claimant did not produce any evidence.
38. the 1st Respondent has complied with trade union dues and agency fees deductions. The Claimant has alleged that the 1st Respondent has declined to deduct trade union dues, yet deliberately omitted that the check off forms were submitted over the weekend, as captured in the 1st Respondent's further affidavit. Section 48(3) of the LRA provides that the employer must deduct the union dues within 30 days of service of the Form S. In this case, the claimant served the forms on the Respondent in January 2025, and the 1st Respondent made the deductions within the statutory timelines. The claim by the claimant is without basis, so the prayer sought should be declined.
39. The 1st respondent submitted that the claimant is not entitled to the reliefs sought. The prayers are akin to interlocutory reliefs, for which the Court can exercise its discretion in awarding the same. However,



for the claimant to succeed, they must demonstrate a prima facie case. The claimant has not met the threshold for granting the interlocutory reliefs established in *Giella v Cassman Brown & Company Limited* [1973] E.A 358. There is no prima facie case; the claimant has not shown what damage will be suffered, and the balance of convenience favours the 1st respondent.

40. The claimant has not submitted any evidence to substantiate the allegations in its application and supporting affidavit, nor has it exhibited any evidence to support its claims. No harm would be occasioned to the claimant if the interlocutory orders sought are not issued. The 1st Respondent deducted and remitted trade union dues as required under the *Labour Relations Act*.
41. The 2nd respondent did not file any written submissions. They opted to rely on the Replying Affidavit.  
Determination
42. The 1st respondent acknowledges the claimant, and there is a CBA regarding its members' employment terms and conditions. The claimant accepts that the 2nd respondent is an outsourced company providing labour to the 1st respondent, as Anduuru noted in his Replying Affidavit.
43. The claimant seeks an order directing the respondents to deduct union dues and agency fees from all unionised employees.
44. The claimant admitted to recruiting members from the respondents' employees and submitted check-off forms to the 1st respondent on 1 February 2025 and the 2nd respondent on 3 February 2025. These averments are included in Mlanda's Further Affidavit for the claimant.
45. The claim herein was filed on 30 January 2025. The instant application was submitted alongside the Memorandum of Claim, dated 29 January 2025. In the claim, the claimant asserts that it held a meeting on 26 January 2025 with its members employed by the respondents, during which it emerged that they fear reprisals due to unionisation under the claimant.
46. The rights to association and unionisation are protected under Articles 36 and 41 of *the Constitution*. This right is affirmed in the jurisprudence of the court and the Supreme Court of Kenya in the case of *Kenya Tea Growers Association & 2 others v National Social Security Fund Board of Trustees & 13 others* [2023] KESC 42 (KLR) and the case of *Kenya Plantation & Agricultural Workers' Union v Omulama & 9 others (The Kenya Export Floriculture, Horticulture and Allied Workers' Union (KEFHU) Represented by its Promoters)* [2020] KESC 59 (KLR).
47. However, in this case, where the claimant submitted the check-off forms with the respondents on 1 and 3 February 2025, under section 48(3) of the LRA, each respondent had 30 days to commence collecting trade union dues. Section 48(3) provides that,
  - (3) An employer in respect of whom the Minister has issued an order under subsection (2) shall commence deducting the trade union dues from an employee's wages within thirty days of the trade union serving a notice in Form S set out in the Third Schedule signed by the employees in respect of whom the employer is required to make a deduction.
48. In this case, the claimant moved to court before the lapse of 30 days. The orders sought in this regard are premature.
49. The 1st respondent has confirmed that on 1 February 2025, the month following the submission of the check-off forms, they began deducting and remitting trade union dues and agency fees. These statements have not been challenged.
50. Regarding whether the court should declare the CBA between the Kenya Sisal Growers & Plantation Association (Kenya) and the claimant as constituting the minimum terms and conditions of



- employment for all employees employed by the respondents, the relevant CBA has not been submitted for the court to analyse the terms and the parties involved. The claimant must provide context for the CBA to enable the respondents to respond and for the court to make an informed decision. Addressing such a matter in an interlocutory application denies the court access to crucial material and evidence.
51. As addressed above, the claim is recognised by the 1<sup>st</sup> respondent. Under such recognition, there is a CBA. The claimant is acknowledged as having a simple majority membership of all unionisable employees under the claimant. Such recognition is protected in law.
  52. In this case, under section 10(3)(a)(e) of the *Employment Act*, the employer is legally obligated to bring to the employee's attention any CBA in force upon employment. The 1<sup>st</sup> respondent admitted that it has employees on permanent terms and others on term contracts. It has outsourced labour to the 2<sup>nd</sup> respondent. Hence, both respondents' employees share the shop floor. The CBA negotiated by the claimant has a bearing on the employees' ability to perform similar tasks under the respondents, as held in *Munene v United States International University (Cause 105 of 2019) [2024] KEELRC*.
  53. In the case of *Kenya Building Construction Employees Union v Vaghjiyan Enterprises Ltd [2023] KEELRC 2805 (KLR)*, the court emphasized that Sections 10, 26, and 48 of the *Employment Act* provide that an employer shall not give less favourable terms to its employees than those provided for in the Act or regulations.
  54. This is in recognition that, when giving the employee a contract of employment, whether permanent or temporary, section 11(3) of the *Employment Act* requires the employer to bring to the employee's attention any CBA applicable and affecting the terms and conditions of employment.
    - (3) A statement under section 10 may refer the employee for particulars of either of the matters specified in section 10(3)(e) to the law or to the provisions of any collective agreement directly affecting the terms and conditions of the employment which is reasonably accessible to the employee.
  55. Failure to address these provisions has been held by the court to be discriminatory against the subject employee(s) as held in *Rang'ang'a v KCB Bank (K) Limited; Banking, Insurance and Finance Union (Interested Party) [2025] KEELRC 709 (KLR)* and the case of *Mutyaene v KCB Bank Limited & 3 others (Employment and Labour Relations Petition E241 of 2023) [2024] KEELRC*.
  56. On whether the 1<sup>st</sup> respondent failed to comply with clause 19 of the CBA by ferrying all field workers to and from their places of work if such areas are outside a 2km radius from the assembly point or labour camp where they reside, the response is that the employees were given the option to get a bicycle or an allowance. In the *Replying Affidavit of Janet Omusundi*, the 1<sup>st</sup> respondent confirmed that it has provided field employees with a monthly bicycle allowance to those who work outside a 2 km radius. Any employee interested in purchasing a bicycle from management must submit a written request. The employee pays for the bicycle in instalments. The bicycle allowance is paid to the employee, and no one is forced to take the bicycle.
  57. From these averments, the court assumes that the bicycle allowance is constant and that the employee can purchase one.
  58. Given the common standard and provisions of a bicycle allowance, the right to choose whether or not to purchase a bicycle is collective and personal. An employee who is provided with an allowance is allowed to make a purchase and pay in instalments. In *Mlandi's Supporting Affidavit*, he does not attach or speak to any employee who has been denied the bicycle allowance. No complaint or grievance exists that any has been stopped from pursuing one.



- 59. To grant this relief as couched would defeat the purpose of the bicycle allowance plan for the employees.
- 60. This analysis addresses the orders sought for the refund of monies deducted from fled workers for the bicycles. Ordering the 1<sup>st</sup> respondent to make a refund would deny the court crucial material regarding the relationship between the employees who enjoy the bicycle allowance and those who have applied to purchase a bicycle.
- 61. The claimant needs to ascertain these facts and collect the relevant statements. Where respondents victimise employees with valid grievances, the claimant, as the union representing their interests, is justified in lodging claims on behalf of these employees. However, the court wishes to draw the respondents' attention to the provisions of section 46(h) of the *Employment Act*.  
 The following do not constitute fair reasons for dismissal or the imposition of a disciplinary penalty—
  - (h) an employee's initiation or proposed initiation of a complaint or other legal proceedings against his employer, except where the complaint is shown to be irresponsible and without foundation;  
 or
 This shall suffice.
- 62. In this regard, the orders sought under the application dated 29 January 2025 shall not be issued. Parties are engaged in industrial relations, and each shall bear its costs to foster peace.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 17 JULY 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Japhet

..... and .....

