



Kenya Export Floriculture Horticulture and Allied Workers Union v Kenya Plantation and Agricultural Workers Union; Molo Greens Limited (Interested Party) (Employment and Labour Relations Cause 49, 50 & 51 of 2023 (Consolidated)) [2024] KEELRC 68 (KLR) (30 January 2024) (Ruling)

Neutral citation: [2024] KEELRC 68 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE 49, 50 & 51 OF 2023 (CONSOLIDATED)**

**HS WASILWA, J
JANUARY 30, 2024**

BETWEEN

KENYA EXPORT FLORICULTURE HORTICULTURE AND ALLIED WORKERS UNION APPLICANT

AND

KENYA PLANTATION AND AGRICULTURAL WORKERS UNION RESPONDENT

AND

MOLO GREENS LIMITED INTERESTED PARTY

RULING

1. The ruling herein is in respect of three Application filed by the applicants in each of the files listed above. The first Application is the one filed in ELRC Cause No. 49 of 2023 dated 9th October, 2023, while the Applications in ELRC Cause numbers 51 and 52 of 2023, are both dated 11th October, 2023. These files were all consolidated by consent of the parties on the 19th October, 2023, with ELRC Cause Number E049 of 2023 marked as the lead file.
2. The first Application in ELRC cause number E049 of 2023 was filed by the Claimant/ Applicant, Kenya Export Floriculture Horticulture & Allied Workers Union against Kenya Plantation & Agricultural Workers Union as the Respondent and Molo Green Limited as the Interested party, the Applicant herein sought for the following Orders; -
 1. Spent



2. Pending inter-party hearing of this Application, the ongoing strike in the interested party farm be and is hereby called off and the Applicant and the interested party to engage in a dialogue before the labour officer in Nakuru to resolve any issues raised by the workers and report back to the Court in days.
 3. Pending inter partes hearing, the Respondent through its officials, officers, agents, assigns or anybody claiming and acting in its name be and are hereby restrained from instigating, inciting, advising or in any manner whatsoever causing the employees of the interested party to participate in the continuing strike or failing to report to work for reasons of the ongoing strike.
 4. Upon interparty hearing, the Respondent be and is hereby permanently restrained from inciting, instigating or otherwise advising employees of the interested party who are members of the Applicant from participating participating in any strike not lawfully called for by the applicant through a strike notice.
 5. Any other order that the Court may deem fit and just to meet the ends of justice to issue.
 6. Costs of this Application be met by the Respondent.
3. The basis upon which this Application is made is that the interested party is an employer operating in Kuresoi North sub-county within Nakuru County and is engaged in the business of growing flowers for the export market.
 4. That the Applicant has a Recognition Agreement with the Interested party and have even concluded a Collective Bargaining Agreement that addresses all terms and conditions of employments for all its members.
 5. However, that on 5th October, 2023, the interested party's employees staged a sit in and refused to work, causing the interested party to contact the Union seeking for answers which the Applicant did not have because it had not called for any demonstration or strike.
 6. Upon inquiry, the applicant was informed that the Respondent herein, Kenya Plantation and Agricultural Workers Union, has called for strike and was holding conversations with the interested party employee advising them to abscond work and demanding audience from the employee and employer, seeking to address employees' issues, when they didn't have locus because they did not have any recognition agreement.
 7. The Applicant contends that the strike and sit in has been used by the Respondent Union, to gain access to the Employees and in the process recruit them to its Union, to their detriment and in violation of Section 4 of the Labour Relations Act as read with Articles 36 and 41 of the Constitution.
 8. He stated that the strike was called out in violation of Section 76 of the Labour Relations Act and by a party that lacks Recognition Agreement and therefore it is apprehensive that unless the strike is called off the employees, who are its members will be dismissed to their detriment.
 9. The Application herein is fully supported by the Interested party who filed a replying affidavit sworn on 13th October, 2023, by Mohamed Arshad Khan, the director of the interested party.
 10. The affiant herein stated that the Interested party supported the application in its entirety because the actions of the Respondent in staging a sit in and or demonstration was illegal, unprocedural and in violation of the anchored labour relations, therefore that the application should be allowed as prayed. In any event that the Respondent was not a recognized Union, as such did not have any authority to call for any industrial action.



11. The Respondent on the other hand opposed the application by filing a replying affidavit deposed upon on 17th October, 2023 by Thomas Kipkemboi, the deputy General Secretary of the Respondent.
12. In the affidavit, the affiant stated that the Respondent has recruited the simple majority of employees of the Interested party and furnished it with copies of Recognition Agreement and Collective Bargaining Agreement but that the Interested party has refused to execute the same in contravention of the law.
13. He contends that the recognition agreement between the claimant and the interested party was obtained fraudulently having been purportedly signed on 21st October, 2023.
14. The Respondent doubts the existence of any genuine Recognition Agreement or check off forms send to the Interested party because they only produced 89 check off forms which does not meet the simple majority of the employees of the Interested party.
15. It is their case that the Claimant and the interested party have, in cahoots, presented fraudulent documents on 12/10/2023 before Justice Stella Ruto in the bid to register a Collective Bargaining Agreement, which contents are not a reflection of wishes of the employees of the Interested party who had signed check off forms with the Respondent herein.
16. The affiant stated that the claimant had only 50 members who have all since resigned from the claimant's Union, a further confirmation that the claimant had not recruited a simple majority. Further that by fraudulent means, the Claimant has obtained an approval letter for registration of CBA between it and the interested party.
17. He stated that the recognition Agreement signed on 21st October, 2022 by David Omulama, Andrew Nandi and the managing director is null and void having been nullified by Issa Wafula and Andrew Nandi in presence of the director of the interested party with a proviso that there should not be any signing of Recognition Agreement and any CBA negotiations thereafter.
18. Based on the foregoing, the Respondent stated that since it has recruited a simple majority and obtained all check off forms, he should be the one that should be Recognized by the Interested party.
19. He therefore urged this Court to appoint a labour officer to carry out a head count on the Interested party's unionisable employees for the purposes of ascertaining the true position and settle the issue raised in these suits.
20. On 11th October, 2023, the Kenya Plantation and Agricultural Workers Union filed their case serialized as ELRC Cause no. 51 of 2023 against Molo Green Limited, alongside the Suit, they filed an Application dated 11th October, 2023 seeking for the following Orders; -
 1. Spent.
 2. That the Honourable Court be pleased to grant Orders prohibiting and or restraining the Respondent from victimizing, harassing, threatening to dismiss its employee namely; John Meraba Joseph who is the Chief shop steward representing the rights of unionisable employees with the claimant/ Applicant union pending the hearing and determination of the application and or the cause.
 3. This Honourable Court be pleased to grant orders prohibiting and or restraining the Respondent from victimizing, harassing, threatening to dismiss all its unionisable employees with the claimant/ applicant union pending the hearing and determination of this application and or cause.



4. This Honourable Court be pleased to compel the Respondent to sign a Recognition Agreement with the claimant/Applicant herein.
5. Costs of this Application be borne by the Respondent.
21. The Applicant herein stated that it's a registered trade Union within the meaning of section 2 of the [Labour Relations Act](#) representing workers within the agricultural sector and the main issue of concern is that on 2nd October, 2023, the Respondent herein suspended from duty one of its members and a shop steward on claims that on 31st August, 2023, he organized a meeting outside the Respondent's farm gate where alleged derogatory, ethnic profiling and tribal statements were made against the Respondent's staff and management.
22. He stated that the grievant was blamed for allegedly failing to stop the said meeting when he was a shop steward. Therefore, that the move to suspend the grievant for merely being a shop steward is malicious and illegal and only meant to victimize him for agitating for employees' rights and championing the employees to be the Union members.
23. The Applicant stated that it has recruited members of the Respondent and submitted check off forms for the purposes of deductions of union dues and further tabled a recognition agreement for the Respondent's signature, which the Respondent has refused to sign in contravention of the law.
24. It is the Applicant's case that unless an order is issued by this Court, the Respondent will proceed to force its members to proceed on forced leave, sign clearance forms and threaten employees who have joined its Union.
25. This Application is supported by the affidavit of Thomas Kipkemboi, the deputy secretary general of the Applicant's Union, deposed upon on the 11th October, 2023.
26. The Application herein is opposed by Molo Greens Limited, through a replying affidavit deposed upon on the 13th October, 2023 by Mohamed Arshad Khan, the director of Molo Greens Limited.
27. The affiant herein stated that the application herein is frivolous, incompetent, legally crippled and only meant to micromanage the affairs of its company.
28. He stated that the Applicant herein is a stranger because it does not have any Recognition Agreement and that its only Kenya Export Floriculture, Horticulture and Allied Workers Union, that they have signed a Recognition Agreement and are in the final stages of registering a Collective Bargaining Agreement (CBA). Further that the employer is already remitting Union dues.
29. The affiant admitted to suspending one John Meraba Joseph and stated that he did so on strength of section 44 of the [Employment Act](#) because the said employee violated its employment contracts and not on the basis of being a union official.
30. The affiant herein denied sending its employees on compulsory leave and terminating their services and instead confirmed that all its employees are back to work pursuant to the Orders by the Court issued on 12th October, 2023, stopping the sit in.
31. The affiant stated that the Applicant herein is the one that has been exerting unnecessary pressure on its employees and illegally inciting them to join its union by even staging an illegal strike on 6th October, 2023 and holding illegal meetings at the Respondent's premises, when they do not have any recognition agreement with the Respondent.
32. He stated that due to the actions of the Applicant herein, their employees are at a greater risk of losing employment to their detriment.



33. The Interested party also opposed the application and filed Grounds of opposition on the 19th December, 2023 based on the following grounds;
- a. That the notice of Motion dated 11th October, 2023 does not meet the threshold for grant of interlocutory Injunctive Orders pursuant to the law espoused in the case of *Giella Vs Cassman Brown & Co Limited* [1974].
 - b. That prayer 4 in the notice of Motion cannot be granted at an interlocutory stage.
 - c. That the Honourable Court Jurisdiction to hear and determine the claim upon which the notice of motion is predicated.
 - d. That the entire suit should be struck out and disfurnished for want of jurisdiction on the part of the Court.
34. In addition, the Interested party filed a replying affidavit sworn on 14th November, 2023 by David Benedict Omulama, the secretary General of the Interested party herein.
35. In his affidavit, the affiant stated that the interested party was admitted as a party upon oral application and stated with regard to disciplinary measure taken against one John Meraba, that disciplinary control is a prerogative of the employer and there are sufficient avenues for an employee to seek redress in the event they are aggrieved.
36. He reiterated that the Applicant herein fully participated in the meeting of 31st August, 2023 and the same was captured in a video clip.
37. He stated that its union has a Recognition Agreement and a subsisting Collective Bargaining Agreement with Molo Greens Limited, as such they are the ones that are legally representing the Respondent's employees and not the Applicant herein.
38. He condemned the means in which the Applicant is using in seeking to be recognized by the Respondent and added that the said Recognition Agreement has been brought to court prematurely contrary to the provisions of section 54 of the [Labour Relations Act](#), hence this Court does not have jurisdiction to grant the prayers sought.
39. He thus prayed for the Application herein to be dismissed with costs to the Respondent.
40. On the same day on 11th October, 2023, the firm of Farrah Munoko and Company Advocates filed ELRC Cause Number E52 of 2023, where Molo Greens Limited is the Claimant, while Kenya Plantation And Agricultural Workers Union, is the 1st Respondent, Livingstone Were, Thomas Kipkemboi, Isah Wafula, Denis Kiplangat Kikwai, Vincent Kipkoech Sigei, Julius Cheruiyot Chirchir, Agens Chekech, Daniel Kipkemoi Ruto, Chepkurui Zeddy, Mercy Chepchumba Koskei and Joyce Cheruto were listed as the 2nd to 12th Respondents respectively and Kenya Export Floriculture Horticulture and Allied Workers Union was listed as an interested party.
41. Similarly, the Applicant herein filed a Notice of Motion dated 11th October, 2023, seeking for the following orders; -
1. Spent.
 2. That pending the hearing and determination of this Application, this Honourable Court be pleased to order the 1st to 12th Respondents and or their officials, agents, servants to immediately call off the ongoing strike by the employees of the Claimant/ Applicant.



3. That this Honourable Court be pleased to issue an injunction restraining the 1st to 12th Respondents, their officials, servants and or agents from barring the Claimant's/Applicant's Employees from accessing the farm, interfering with the smooth operations of the Claimant/Applicant through declaration of illegal and unprotected industrial actions/strikes pending the hearing and determination of this Application.
 4. That the Officer Commanding Station (OCS) - Kuresoi North Police Station do ensure peace and compliance with the above orders prevails.
 5. That the Honourable Court be pleased to issue an injunction restraining the 1st and 2nd Respondents and/or their agents or servants from inciting the members of the interested party against the Claimant/Applicant through the media including social media on account of this cause pending the hearing and determination of this cause.
 6. That cost of the instant application be provided for.
42. The Applicant herein stated that it is a leading medium sized flower grower and exporter situated within Molo - Kuresoi in Nakuru county priding itself with a human workforce of approximately 150 personnel at the farm in which over 80% of the said workforce are subscribed members of Kenya Export Floriculture Horticulture and Allied Workers Union, the interested party whom it has duly executed a recognition agreement and is in the final stages of executing and registering a Collective Bargaining Agreement.
 43. Accordingly, that it remits all the employees requisite subscription and membership dues to the interested party pursuant to the provisions of Section 54 *Labour Relations Act*.
 44. However, that sometimes in October, 2023, the Respondents jointly and or severally have been illegally, unprocedurally incited the Claimant's/Applicant's employees to join the membership of the 1st Respondent through issuance of threats, intimidation(s) and blocking the Claimant/Applicant's workers from reporting to duty.
 45. That despite copious correspondence from the Claimant/Applicant to the 1st Respondent geared towards amicably resolving the dispute on membership, the Respondents have jointly and or severally on the 6th October 2023 barred the Claimant's/Applicant's employees from accessing the farm to undertake their daily chores as a result of the aforementioned threats and or intimidations despite the said employees being those categorized under essential services due to the perishable nature of the produce at the Claimant's farm.
 46. It is stated that since 6th October 2023, the Claimant's/Applicant's employees have been engaging in picketing, demonstrations and or strikes at the outskirts of the Claimant's/Applicant's gate and holding meetings with the Respondents and or their officials who are not recognized, in effect undermining the sensitive operations of the Claimant/ Applicant.
 47. Consequently, the Respondents have pursuant to the express provisions of Section 78 of the *Labour Relation Act* declared an illegal and unprotected strike forcing the Claimant's/Applicant's employees from accessing the farm, which strike has greatly indented the operations of the Claimant/Applicant occasioning great financial losses and failure to meet the strict export targets.
 48. More particularly, that the Claimant's/Applicant's employees are at a greater risk of losing all their jobs and or livelihoods as a result of the ongoing unprotected, illegal, and unconstitutional industrial action.



49. Accordingly, that this Honourable Court is invited to grant the injunctive prayers sought calling off the illegal and unconstitutional strike to allow the Claimant's/Applicant's employees report back to work forthwith even as the union matters are being determined with finality by this Honourable Court.
50. It is averred that the Respondents stand to suffer no prejudice whatsoever as the ongoing unconstitutional and illegal strike only affect the operations of the Claimant's/Applicant's and leaves its over 150 workers jobless without a livelihood whatsoever.
51. This Application is further supported by the affidavit of Mohamed Arshad Khan, the director of the Applicant herein, sworn on 11th October, 2023, who reiterated the grounds of the application.
52. The Application in this cause was opposed by the 1st Respondent, through an affidavit sworn on 17th October, 2023 by Thomas Kipkemboi, its Deputy General Secretary.
53. He stated that prayer 2 of the application herein has been overtaken by events, since this Court issued orders stopping the said strike. Further that they do not have any intention of calling for any unprotected strikes rather that they are only seeking to access Molo Greens farm to ensure the Recognition agreement is signed and a CBA is negotiated for the interest of its members who are a simple majority.
54. He maintained that they have recruited a simple majority in Molo Greens Limited and followed the law in seeking to be recognized in order to start negotiations of a CBA. He added that the recognition agreement between Molo Greens Limited and Kenya Export Floriculture Horticulture and Allied Workers Union is fraudulent and the deductions allegedly made are not proper having been remitted to individuals as opposed to the Union as captioned by their MPESA.
55. He contends that justice will only be realized if this Court makes an order appointing a labour officer to carry out head count of all unionisable employees at Molo Greens Limited to ascertain the allegations by the parties and confirm who has indeed recruited a simple majority and to determine who is deserving the Recognition and eventual CBA.
56. Directions were taken for the three application to be canvassed by written submissions. The Claimant, Kenya Export Floriculture Horticulture and Allied Workers Union, filed theirs on the 19th December, 2023, while the Respondent, Kenya Plantation and Agricultural Workers Union filed their submissions on the 7th December, 2023. The interested party on the other hand sought to rely on its Affidavits and the submissions made by the the Claimant.

Claimant/ Applicant's Submissions.

57. The Applicant submitted that it has a Recognition Agreement with the interested party, which Agreement provide for dispute resolution mechanism individually or collectively, as such any issue that its members need redress has to be addressed amicable between the Union and the employer before any action can be taken. He argued that the move taken by its members to stage a sit-in before the issues could be addressed amicable was unlawful and in violation of section 78 of the *Labour Relations Act*, with consequences of such action stated at section 80 of the *Labour Relations Act*.
58. It was argued that unless this Court intervenes and issues the interim Orders sought, its members risk losing their employment with the interested party to their detriment as employees and Union.
59. The Applicant submitted that for conservatory Orders to be issued, the applicant must satisfy the court on three elements; whether there is a prima facie case with a chance for success, demonstrate prejudice



that the applicant will suffer and in the event the court is in doubt then to decide on a balance of probability.

60. On prima facie case, it was submitted that the Respondent approached the interested party employees, seeking to have audience of all employees and claiming that they would address their grievances but since they did not have a Recognition Agreement with the interested party and lacked such audience, they incited the said employees into participating in unprotected strike. It was argued that the move by the Respondent is a decoy used to seek the attention of the Interested party to sign another recognition Agreement when the Applicant has already recruited a simple majority of employees at the interested party farm and is in the process of negotiating a Collective Bargaining Agreement.
61. Accordingly, that the applicant has demonstrated that it has a case against the Respondent, who is interfering with its members and seeking for Recognition through unlawful means.
62. On loss that it will incur, the Applicant submitted that the interested party employees are its members who pay monthly Union dues to it as such if the actions of the Respondent are not stopped, their members are likely to loss employment which will translate to loss of revenue for its Union, which loss cannot be compensated by damages or costs.
63. The Applicant submitted also that the Respondent has not justified its actions of calling for strike and only accused the interested party of failing to recognize it as a Union and deduct Union dues, when it has not complied with the procedure leading to Recognition such as recruitment of a simple majority of unionisable employees and reporting any dispute to the cabinet secretary in line with section 62 of the *Labour Relations Act*.
64. With regard to the interested party application dated 11th October, 2023, the Applicant herein fully supported the Application therein and urged this Court to allow it as prayed and declare the strike illegal and then order for the return of all employees to work forthwith.
65. On the Respondent's Application dated 11th October, 2023, the Applicant submitted that the substantive prayer number 3 invites this Court to stop the interested party from undertaking internal disciplinary procedures in addressing its employees misconduct and violations. It was submitted that the Interested party is justified in carrying out disciplinary control over its employees and apart from the letter of suspension produced as evidence, the Respondent has not demonstrated how the said John Meraba Joseph was harassed, intimidated, threatened or victimized to warrant the issuance of the Orders sought. to support this argument, the Applicant cited the case of *Rosemary Waitberero Mburu Vs Kenya Airways Limited* [2020] eKLR where this Court held that; -

“The only reason for which this Court may interfere with the disciplinary process if at all is if there is evidence that it is flawed. The Applicant has not in any way explained why the process is flawed for this Court to intervene. Courts are reluctant to interfere with an employer's internal disciplinary process unless it is evidently flawed and in breach of the law and such interference will only be limited to putting the process to the right course.”
66. With regard to prayer 4 seeking for Orders to compel the Interested party to Recognize the Respondent, it was argued that the Respondent has not demonstrated that it has recruited a simple majority or sought redress as provided for under section 54 of the *Labour Relations Act*, as such the Application is premature and the same should be dismissed.
67. The Applicant submitted that for injunctive orders to issue, the Applicant must demonstrate the irreparable loss it will suffer if the Orders sought are not granted as held in the celebrated case of *Giella Vs Cassman Brown and Company Ltd* [1974] EA 378. Similarly, that the Respondent has not



demonstrated any prejudice it will suffer that cannot be compensated by damages. In any event that even if the said Employee is dismissed from employment, there are several avenues that such issue can be raised and the employee will be paid damages in the event the Court find in their favour, therefore that the interim orders sought are not warranted.

Respondent's Submissions.

68. The Respondent submitted on Five issues; Whether the grievant Joseph Meraba Joseph committed any cognizable offence, Whether the Respondent met the requisite threshold for recognition by the Interested Party, Whether the Applicant met the requisite threshold for recognition by the Interested Party, Whether the Collective Bargaining Agreement executed by the claimant/applicant and interested party is valid before court and whether the prayers sought should issue.
69. On the first issue it was submitted that the grievant is employed by the Interested party as a general worker and has been carrying out his duties professionally and diligently. However, on 24 October 2023, the Interested party wrote a suspension from duty letter to the grievant claiming that on 31st August 2023 he organized a meeting outside its farm gate where alleged derogatory, ethnic profiling and tribal statements were made against the its staff and management. He argued that the Interested party alleges that by virtue of the grievants position as the Chief Shop steward, he neither stopped such a meeting from happening nor did he find it fit to report to its Management of the alleged situation and that it resulted in putting the lives and safety of Molo Greens Management at risk and making staff live in fear. That the Interested party alleged that it learned all these through the circulation of a social media video clip, which was not adduced as evidence before this Court.
70. The Respondent maintained that it is a stranger to any such meeting held on the 31st August 2023, and refutes such claims in Toto and would like the Interested Party to tender such evidence before this Honourable court. He added that the actions of the Interested party are malicious and illegal and are only meant to victimize the grievant for the reason that he is agitating for workers' rights and championing employees to be members of the applicant union.
71. It was submitted that the requirement for procedural fairness in terminating an employees' contract under Section 41 of the *Employment Act* was set out in *Anthob Mkala Chivati Vs. Malindi Water & Sewerage Comean Ltd* [2013] eKLR Radido] set out three elements of procedural fairness:
 - i. That the Employer should inform the employee as to what charges the employer is contemplating Using to dismiss the employee. This gives a concomitant statutory right to be informed to the employee.
 - ii. Secondly, it will follow naturally that if an employee has a right to be informed of the charges he has right to a proper opportunity to prepare and to be heard and to present a defence / state his case in person, writing or through a representative or shop floor union representative if possible;
 - iii. Thirdly if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representation by the employee before making the decision to dismiss or give other sanction.
72. To emphasize on this argument, the Respondent cited the case of *KN vs JMT* [2018] eKLR, where the Court opined that the elementary principle of law is that he who alleges must prove the allegations as is stipulated in Section 107(1)(2) of the *Evidence Act* and Section 112 of the *Evidence Act* that states that in civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.



73. The Respondent also relied on the case of *Selle -vs-Associated Motor Boat Co.* [1968] EA 123 where the Court held that:
- “The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon the Court of Appeal acts are that the court must reconsider the evidence evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect in particular the court is not bound necessarily to follow the trial Judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally .”
74. Accordingly, that it’s clear that the actions of the Interested Party are malicious and illegal and are only meant to victimize the grievant for the reason that he was agitating for workers’ rights and championing employees to be members of the applicant union. In any event that the Interested Party has not tendered any evidence to show that the grievant committed any offence to warrant any form of disciplinary action and/or dismissal.
75. On whether the Respondent met the requisite threshold for recognition by the Interested Party, it was submitted that section 54 (1) of the *Labor Relations Act* mandates that an employer, including an employer in the public sector, to recognize a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees. He argued that it has met the requisite threshold required by law of fifty plus one (50+1), furnished the Interested Party with copies of Recognition Agreement and Collective Bargaining Agreement but the Interested Party has failed and or refused to execute the same in clear contravention of the law.
76. It was argued that the Respondent served the Interested Party with the membership check-off forms as exhibited showing that it had recruited over 300 members, and requiring the Interested party to deduct and remit the union dues. He argued that the refusal by the Interested Party to comply with the law, has resulted in the employees, who have chosen to join the Respondent union and the Respondent to suffer irreparably. Hence it is in the interest of justice that the orders sought herein are granted.
77. Based on the foregoing, the Respondent submitted that it has proved on a balance of probabilities, that it had recruited a simple majority of all unionisable employees of the Interested Party and that the respondent is eligible for recognition by the Interested Party in terms of Section 54 (1) of the *Labour Relations Act*, 2007. To support this, the Respondent relied on the decision in ELRC No. 526 of 2014 Kenya Union of Commercial Food & Allied Workers Vs. Jade Collection Limited where this Court faced with similar facts, granted recognition to the union.
78. On whether the Applicant has met the requisite threshold for recognition by the Interested Party, it was argued that the Applicant is trying to use ‘the coercive hand of the court’ to disrupt contractual obligations between Respondent and Interested Party. He elaborated further that the Applicant has purportedly and fraudulently obtained recognition agreement between itself and the Interested Party as there are irregularities with regards to the dates of execution and attestation which is stated to have been signed on 21st October 2023. Furthermore, due process was not followed. In any case that the Applicant has not produced check off forms duly signed by workers of Molo Greens Limited and has only produced deductions of 89 employees.
79. It was submitted further that the applicant and interested party presented false and fraudulently acquired documents on 12/10/2023 before Hon Lady Justice Stella Ruto in an effort to secure



registration of a Collective Bargaining Agreement with full knowledge and awareness that the said documents are not a true reflection of the wishes of the employees who have already signed for union membership with the respondent. He added that no evidence has been adduced before this honorable court that the applicant recruited members, met the simple majority and have in place copies of signed check off forms with regards to its alleged members because initially the applicant had only (50) fifty members as evidenced by the employees who have so far resigned from his union and joined the Respondent union. Also that the purported Recognition Agreement between the Interested party and the applicant was not signed with authority of the board of directors of the interested party there being no minutes of the board to that effect.

80. It was also submitted that the recognition agreement signed on 21st October 2022 by the Mr. David Omulama and Mr. Andrew Nandi and the Managing director is null and void since the initial recognition agreement had been nullified by Mr. Isaa Wafula and Andrew Nandi in the presence of the director for the Interested party. Further that after obtaining the recognition agreement, the applicant and the interested party further used fraudulent means and obtained a letter from the ministry of labour approving for registration of the Collective Bargaining Agreement between itself and the interested party.
81. The Respondent argued that since they dispute the Recognition agreement between the Applicant and the Interested party, they urged this Court to come to their rescue and directs that a head count be conducted on the shop floor to decide the will of each and every employee of the Interested party and ensure its done in line with Article 41 (1), and (2) of the [Labor Relations Act](#).
82. On whether the Collective Bargaining Agreement executed by the claimant/applicant and interested party is valid before court. the Respondent cited the case of [Scientific Research International Technical & Allied Workers Union v. Kenya Agricultural Research Institute & Another](#) [2013] eKLR, where the Court stated:
- “Recognition of Trade Unions rests on freedom of association. Employees have the right to join and leave Trade Unions. Recruitment is a continuous process. Even where an Employer has formally granted Trade Union recognition, Employees belonging to that recognized Trade Union are not barred by any law from shifting allegiance to another Trade Union. Freedom of Association acknowledges the right to associate is co-joined to the right to dissociate; Just as the right of recognition includes the right of de-recognition. Employees look at the Trade Union that is best placed to articulate their collective rights and interests of the moment, and do not take a lifelong vow of fidelity, by joining any one Trade Union.”
83. This was reiterated by the same Court in [Aviation & Allied Workers Union v. Air Kenya Express Limited & Another](#) where the Court concluded:
- “The law acknowledges that freedom of association includes the right of an Employee to belong, or Not belong to a Trade Union. An Employee can associate and dissociate. It is stated that the right to belong to the Union must be accompanied by the right not to belong, just as much as freedom of expression, must include the right to silence.”
84. Similarly, that in this case, the respondent tendered resignation letters in its supporting affidavit of employees who had resigned from the applicant union with the clear intention to joining the respondent union. The interested party on the other hand has used unlawful and illegal strategies to victimize its employees e.g by verbal dismissals in an attempt to discourage these employees to exercise their free will. Therefore it's clear that the Recognition agreement concluded between the applicant and interested party was not properly attested in the presence of a shop steward and other



witnesses, no minutes or meetings preceded to warrant a recognition and as such a misrepresentation has occurred occasioning a Collective Bargaining Agreement between the applicant and interested party to be concluded and registered, which action is a serious anomaly that can only be cured by this honorable making a declaration that the collective bargaining agreement be deemed null and void and a head count be conducted to determine the free will of the employees herein.

85. In light of the foregoing, the Respondent urged this Court to grant them the prayers sought in their application orders.
86. I have considered the averments and submissions of the parties herein.
87. The 1st application in ELRC No.49 of 2023 was in respect of a strike which had been called purportedly by the respondents herein.
88. The respondents on their part opposed the application indicating that they too have recruited members of the interested party and also signed a CBA with them as so are entitled to be recognized by the interested party.
89. They asked this court to appoint a labour officer to do a head count on the IP's unionisable employees for purposes of ascertaining the true position and settle issues raised herein.
90. The interested party supported the application.
91. The application having been filed ostensibly to call off a strike which didn't progress is in my view overtaken by events and there are no interim orders to be granted in the circumstances.
92. The application fails therefore for being overtaken by events.
93. The 2nd application dated 11th October, 2023 filed in ELRC 51/2023 on the other hand prohibited the respondents from victimizing, harassing, threatening to dismiss one John Joseph the Chief Shop Steward of the applicant.
94. This was filed by the Kenya Plantation & Agricultural Workers Union against Molo Green Limited.
95. The respondents opposed this application indicating that they have not signed any recognition agreement with the Kenya Plantation & Agricultural Workers Union and so this union cannot get orders so sought.
96. They also aver that they are in final stages of negotiating a CBA with the Kenya Export Floriculture, Horticulture & Allied Workers Union.
97. The respondents have denied targeting any employees on account of union membership or union activities.
98. The interested party The Kenya Export Floriculture Horticulture & Allied Workers Union opposed the application contending that the issue of disciplinary measures taken are a prerogative of the employer.
99. They aver that they have a recognition agreement with the respondent and they are legally representing the respondents employees and not the applicant herein.
100. Having considered these submissions, it is true that there is no recognition agreement between the applicant and the respondent.
101. The applicant can however only file a claim against the respondent for an employee who is a member of their union.



102. One John Meraba Joseph is described as the Chief Shop Steward of unionisable employees with the claimant.
103. There is evidence exhibited by the applicants that he is a member of their union as member No. 428 (page 23 of applicant's documents) and requesting the respondents to deduct and remit union dues on his behalf.
104. This being the position, matters concerning his employability with the respondent and union membership are matters which must be resolved to ensure no unfair treatment on account of union activities.
105. The grievant herein is alleged to have participated in an illegal meeting. These are matters which need proof to establish that the disciplinary process is fair.
106. In the circumstances, I will confirm interim orders granted on 16/10/23 pending determination of the main claim.
107. The 3rd application is one dated 12th October, 2023 filed in E52/2023 by the Molo Greens against KEPAWU seeking calling off a strike called by KEPAWU.
108. The orders were granted in the interim. It is my finding that the orders sought have been overtaken by events as per orders in the 1st application in cause No. 49 of 2023.
109. The issues pending in these causes in my view relate to demarcation of the 2 unions within the employer's organization Molo Greens.
110. These issues cannot be resolved through force or threats of strikes.
111. The issues in the application having been resolved, I will direct the parties to proceed with the main claim.
112. Costs in the cause.

RULING DELIVERED VIRTUALLY THIS 30TH DAY OF JANUARY, 2024.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:-

Omulama for KEFHAWU – present

Dowood for the Respondent - present

Court assistant – Fred

