



**Mutiso & 4 others (Suing on their Own Behalf and on Behalf of Members of KCPA) v gikonyo & 12 others (Cause E688 of 2024) [2024] KEELRC 13573 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13573 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE E688 OF 2024**  
**S RADIDO, J**  
**DECEMBER 19, 2024**

**BETWEEN**

**JORUM MWEI MUTISO ..... 1<sup>ST</sup> CLAIMANT**  
**DAVID NDUNGU ..... 2<sup>ND</sup> CLAIMANT**  
**BOSCO MURIITHI ..... 3<sup>RD</sup> CLAIMANT**  
**MARGARET KANAKE ..... 4<sup>TH</sup> CLAIMANT**  
**RAPHAEL MAGANGA ..... 5<sup>TH</sup> CLAIMANT**  
**SUING ON THEIR OWN BEHALF AND ON BEHALF OF MEMBERS OF KCPA**

**AND**

**PETER GIKONYO ..... 1<sup>ST</sup> RESPONDENT**  
**TOM WANAMBISI ..... 2<sup>ND</sup> RESPONDENT**  
**JOSEPHINE NDIKWE ..... 3<sup>RD</sup> RESPONDENT**  
**STELLA THUO ..... 4<sup>TH</sup> RESPONDENT**  
**JOSEPH MWAURA ..... 5<sup>TH</sup> RESPONDENT**  
**BONFACE MWANGANGI ..... 6<sup>TH</sup> RESPONDENT**  
**WIFENZIO NJERU ..... 7<sup>TH</sup> RESPONDENT**  
**BONFACE NJOROGE ..... 8<sup>TH</sup> RESPONDENT**  
**JIMMY SIMBI WAMALWA ..... 9<sup>TH</sup> RESPONDENT**  
**NICHOLAS ONDIMU ..... 10<sup>TH</sup> RESPONDENT**  
**JOSEPH KIMEMIA ..... 11<sup>TH</sup> RESPONDENT**  
**REGISTRAR OF TRADE UNIONS ..... 12<sup>TH</sup> RESPONDENT**



## RULING

1. On 21 November 2024, the Court issued the following orders:
  - i. An order of temporary injunction is hereby issued restraining the Respondents by themselves, servants and or agents from carrying out any transactions for and on behalf of the Kenya Coffee Planters Association, a trade union or its accounts held at Cooperative Bank Wakulima House Branch pending further directions of this Court on 21 November 2024.
  - ii. Mr Kanyoko Advocate to personally bear the costs wasted in the sum of Kshs 10,000/-.
  - iii. The costs to be paid on or before 21 November 2024.
2. The orders essentially confirmed orders the Court granted on 22 October 2024.
3. The 1<sup>st</sup> to 11<sup>th</sup> Respondents were dissatisfied with the orders, and they moved the Court through a Motion dated 29 October 2024, to discharge or set aside the orders.
4. In a Ruling delivered on 21 November 2024, the Court declined to discharge or set aside the injunctive orders it had issued.
5. Boniface Mwangangi, Wifenzio Njeru and Bonface Njoroge (6<sup>th</sup> to 8<sup>th</sup> Respondents and now the applicants) were dissatisfied with the Ruling and on 27 November 2024, they filed a Motion seeking orders:
  - i. ...
  - ii. ...
  - iii. That the Honourable Court be pleased to discharge, vary and/or set aside the injunctive orders made herein on 21.11.2024.
  - iv. That the Honourable Court be pleased to strike out this entire cause.
  - v. That the costs of this application be provided for.
6. The Court directed the applicants to serve the Motion and further that the served parties file and serve responses ahead of further proceedings on 10 December 2024.
7. The Claimants filed a replying affidavit on 8 December 2024 (should have been filed and served on or before 6 December 2024).
8. The Court took oral submissions from the parties.
9. The Court has given due consideration to the Motion and will address itself to the 2 substantive prayers.

### Discharge or setting aside

10. The main grounds set out by the applicants in support of the discharge prayer were, in brief, that, the Court had granted injunctive orders directed at the Kenya Coffee Producers Association yet it was not a party to the dispute; the Kenya Coffee Producers Association was a distinct legal entity in terms of section 21 of the *Labour Relations Act*; that the Kenya Coffee Producers Association was condemned



unheard; the Claimants had admitted that the Registrar of Trade Unions had not registered any other officials apart from the 1<sup>st</sup> to 11<sup>th</sup> Respondents as officials after the elections of 2019; these Respondents were bona fide officials of the Kenya Coffee Producers Association; the injunctive orders had paralysed the operations of the Association and that the injunctive orders had been granted when no proper suit was before the Court.

11. During submissions, the advocate for the applicants' also asserted that the Court order had referred to the Kenya Coffee Planters Association and not the Kenya Coffee Producers Association.
12. The Claimants on their part asserted that the Motion was res judicata because the Court had already addressed its mind on the questions raised save for the issue of jurisdiction.
13. According to the Claimants, the Kenya Coffee Producers Association, a body corporate, could only act through natural persons, its officers.
14. In this regard, the Claimants contended that it is the natural persons who had been sued that had breached *the Constitution* of the Association.
15. Further, the Claimants stated that the Registrar of Trade Unions had not registered any officials from the elections of 10 July 2024 and therefore, the 1<sup>st</sup> to 11<sup>th</sup> Respondents could not transact on behalf of the Association.
16. The Kenya Coffee Producers Association is not a party to the instant Cause. The injunctive relief granted by the Court on 22 October 2024 was not directed at the Kenya Coffee Producers Association.
17. The order was directed to the 1<sup>st</sup> to 11<sup>th</sup> Respondents, who had allegedly been elected at an Annual Delegates Meeting held on 10 July 2024.
18. The Registrar of Trade Unions in her affidavit deponed that she had not registered these Respondents as officials of the Kenya Coffee Producers Association.
19. Section 35(5) and (6) of the *Labour Relations Act* provides:
  - (5) No change of officials shall have effect until it is registered by the Registrar.
  - (6) No person who is not registered by the Registrar in accordance with this section shall act or purport to act as an official of a trade union, employers' organisation, or federation or of any branch.
20. The Respondents' purported election as officials of the Kenya Coffee Producers Association on 10 July 2024 have not been registered by the Registrar of Trade Unions.
21. In the Ruling delivered on 21 November 2024, the Court rendered itself thus in paragraph 34:

Under section 35(3) and (4) of the *Labour Relations Act*, an official of a trade union cannot act until registered by the Registrar of Trade Unions. The Registrar has stated in black and white that she has not registered the Respondents.
22. There is no material to suggest that the facts have changed.
23. Until registration is effected, the substantive law bars the Respondents from purporting to act on behalf of the Association.
24. The Court would therefore be abetting an illegality by lifting the order which restrained the Respondents from operating the Association's bank account.



25. The Court must at this juncture mention that the 6<sup>th</sup> to 8<sup>th</sup> Respondents who are the applicants participated fully in the earlier application seeking the discharge or setting aside of the injunctive orders which were confirmed and which application was not allowed.
26. They are attempting to have a second bite at the cherry.

### **Striking out the Cause**

27. The other substantive order sought by the applicants was the striking out of the Statement of Claim. The grounds were that the Association was not a party to the Cause; the Claimants had not exhausted alternative dispute resolution mechanisms as outlined in section 10 of the *Labour Relations Act*, section 9 of the *Fair Administrative Action Act* and Rules 8(3) and 23(3) of the Employment and Labour Relations Court (Procedure) Rules, 2024.
28. The Court has looked at section 10 of the *Labour Relations Act*. It applies to disputes arising from the provisions of Part II of the Act such as freedom of association and discrimination.
29. The instant action is not hinged on the provisions of Part II of the *Labour Relations Act*, but rather Parts III and IV of the Act.
30. The applicants also desired the striking out of the Cause because the Statement of Claim had been signed by the Claimants' advocate; it had not been taken through conciliation and the Claimants had not signed and filed letters of authority as envisaged by Rules 8 and 23 of the Rules.
31. The Cause herein is a dispute between members of a trade union and officials of the trade union. The Statement of Claim was signed by the members' advocates and the Court sees nothing contrary to the intent of Rule 8. Again, the Claimants did not plead that they were making the claims in a representative capacity to implicate Rule 23 of the Rules.
32. Section 9 of the *Fair Administrative Action Act* provides for the process of judicial review of administrative actions. The Court's jurisdiction in such instances is deferred until the exhaustion of all internal or statutory dispute resolution mechanisms.
33. The Court can however assume jurisdiction if an applicant satisfies it that there are exceptional circumstances in the interest of justice.
34. The Act defines administrative action as:  

administrative action" includes –

  - (a) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or
  - (b) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;
35. The anchor to the Claimants' cause is whether the purported election of the officials of the Association on 10 July 2024 were lawful and valid and whether these officials can act or transact on behalf of the Association.
36. In the view of the Court, and at this interlocutory stage, it is still doubtful whether the elections comprise an administrative action within the context of the *Fair Administrative Action Act*.
37. The law on striking out pleadings has followed a well-trodden path. Ordinarily, a pleading would be struck out on the grounds that it discloses no reasonable cause of action; is scandalous, frivolous or



vexatious; may prejudice or delay a fair trial of the Cause or is otherwise an abuse of the court process (see Order 2 Rule 15 of the Civil Procedure Rules).

38. In *Co-Operative Merchant Bank Ltd. v George Fredrick Wekesa* (Civil Appeal No. 54 of 1999) the Court of Appeal stated:

Striking out a pleading is a draconian act, which may only be resorted to, in plain cases...Whether or not a case is plain is a matter of fact...Since oral evidence would be necessary to disprove what either of the parties says, the appellant's defence cannot be said to present a plain case of a frivolous, scandalous, vexatious defence, or one likely to prejudice, embarrass or delay the expeditious disposal of the respondent's action or which is otherwise an abuse of the process of the court.

39. Similarly, in *D.T. Dobie & Company Kenya Limited v Joseph Mbaria Muchina & Ar* (1980) eKLR, the Court of Appeal stated:

No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.

40. The instant Cause does not appear to the Court to be plain or hopeless. There is no material that it amounts to an abuse of the court process or is malicious and vexatious. There are factual and legal questions which require interrogation.
41. The Court is therefore minded not to strike out the Statement of Claim.
42. Before concluding, the Court notes that in the Ruling of 21 November 2024, it made reference in paragraph 36(i) to Kenya Coffee Planters Association and not Kenya Coffee Producers Association.
43. The use of the word Planters instead of Producers was a typographical error and the word Planters is hereby amended and substituted with the word Producers.

## **Orders**

44. The Motion dated 27 November 2024 is dismissed with costs.
45. The Court will hereinafter give directions on the expedited hearing of the Cause on the merits. In the meantime, the parties should seriously and in good faith explore avenues of resolving the dispute.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 19<sup>TH</sup> DAY OF DECEMBER 2024.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Claimant Musee Manyolo & Associates

For 1<sup>st</sup> – 5<sup>th</sup> and 9<sup>th</sup> – 11<sup>th</sup>

Respondents Kanyoko Lewis & Co Advocates

For 6<sup>th</sup> – 8<sup>th</sup> Respondents Kivuva Omuga & Co Advocates



