



**London Distillers Limited & another v Kenya Union of Commercial, Food and allied Workers [KUCFAW] (Petition 93 of 2021) [2022] KEELRC 3984 (KLR) (10 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3984 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
PETITION 93 OF 2021  
J RIKA, J  
JUNE 10, 2022  
[PREVIOUSLY NAIROBI HIGH COURT PETITION NUMBER 326 OF 2019]  
IN THE MATTER OF: ARTICLES 22 AND 23 OF THE CONSTITUTION OF KENYA**

**- AND-**

**IN THE MATTER OF: ALLEGED THREAT TO AND  
CONTRAVENTION OF RIGHTS UNDER ARTICLE  
27, 31,36,41 AND 46 OF THE CONSTITUTION OF KENYA**

**-AND-**

**IN THE MATTER OF: LABOUR RELATIONS ACT, 2007;**

**-AND-**

**IN THE MATTER OF THE EMPLOYMENT ACT, 2007;**

**-AND-**

**IN THE MATTER OF CONSTITUTION OF KENYA [PROTECTION OF RIGHTS  
AND FUNDAMENTAL FREEDOMS] PRACTICE AND PROCEDURE RULES**

**BETWEEN**

**LONDON DISTILLERS LIMITED ..... 1<sup>ST</sup> PETITIONER**

**MOHAN GALOT ..... 2<sup>ND</sup> PETITIONER**

**AND**

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS  
[KUCFAW] ..... RESPONDENT**



## JUDGMENT

1. In their Petition, which was transferred to this Court from the High Court Nairobi, on May 27, 2021, the Petitioners pray for the following orders: -
  - a. Declaration that the Respondent is engaged in unfair trade practices.
  - b. Declaration that the Respondent's actions of forcefully recruiting the Employees of the 2<sup>nd</sup> Petitioner, is unlawful and the Respondent lacks locus standi to represent the Employees of the 2<sup>nd</sup> Petitioner in any Court action, and is engaged in unfair trade practices.
  - c. An order terminating all Court proceedings commenced / instituted by the Respondent against the Petitioners.
  - d. Declaration terminating the Recognition Agreement between the 1<sup>st</sup> Petitioner and the Respondent.
  - e. Declaration that all matters commenced before exhaustion of the dispute resolution process contravenes the provisions of the *Labour Relations Act* and *the Constitution* of Kenya, 2010, contrary to the Employees' legitimate expectation.
  - f. Declaration that the actions of the Respondent, of constantly visiting the 2<sup>nd</sup> Petitioner's home and surreptitious surveillance of the 2<sup>nd</sup> Petitioner's residence have violated and continue to violate the 2<sup>nd</sup> Petitioner's rights to security of his person and privacy under Article 29[a], [d] and [f] and Articles 31 [a] [c] and [d] of *the Constitution* respectively.
  - g. Declaration that the actions of the Respondent have threatened and continue to threaten the 2<sup>nd</sup> Petitioner's personal Employees who are not unionisable members of the Respondent.
  - h. Costs.
  - i. Such other orders the honourable Court shall deem it just to grant.
2. The Petition is founded on the Affidavit of the 2<sup>nd</sup> Petitioner, sworn on August 15, 2019. He describes himself as Subscriber, Founder, Governing Director, Chairman and Principal Shareholder of London Distillers Limited, the 1<sup>st</sup> Petitioner herein.
3. He resides with his family along Kiambu road, in his residential property which he has named 'Galot Estate Kiambu.' His office and Company's premises are situated along Dunga Close, within the Industrial Area, Nairobi.
4. He has employed Domestic Workers at the residence, who include Gardeners, Cleaners, House Assistants, Dog Handlers, Security Guards and Chefs.
5. His Company has over 538 Employees, working exclusively for the Company. The Company periodically undertakes job evaluation exercise of these Employees, to enable it ascertain unionisable and management Employees.
6. The Company and the Respondent executed a Recognition Agreement on March 18, 2010. The Parties were subsequently engaged in Collective Bargaining on various terms and conditions of employment. The 2<sup>nd</sup> Petitioner complains that the Respondent made unreasonable demands on bargaining, which would leave the Company insolvent and the Employees jobless.



7. Further, the Respondent issued a strike notice on August 9, 2016, to coerce the Company into caving in to its demands. The Company has faithfully deducted and remitted trade union dues to the Respondent. Dissatisfied with the unlawful activities of the Respondent, the Company notified the Respondent, on June 19, 2017, of its intention to terminate the Recognition Agreement,
8. The Respondent secretly recruited the 2<sup>nd</sup> Petitioner's Domestic Workers, and purported to extend the terms of the Recognition Agreement to the said Workers. There is no Recognition Agreement between the Respondent and the 2<sup>nd</sup> Petitioner, with regard to the 2<sup>nd</sup> Petitioner's Domestic and Personal Workers. Some of the 2<sup>nd</sup> Petitioner's Domestic and Personal Workers absconded, compelling the 2<sup>nd</sup> Petitioner to dismiss them. The 2<sup>nd</sup> Petitioner also declared redundancies.
9. The Respondent reported the existence of a trade dispute with respect to 4 of 2<sup>nd</sup> Petitioner's Domestic and Personal Workers. Due to arm-twisting, blackmail and undue influence by the Respondent, the Company was forced to conclude a CBA dated July 14, 2017.
10. The Respondent incited its members to strike, on August 22, 2017. The Company filed Cause 1639 of 2016, asking the Court to declare the strike illegal. The Company was compelled to record a consent order, conceding to wage increment of 17% in favour of the Respondent's members. The Respondent demanded that the increment applies to the 2<sup>nd</sup> Petitioner's Domestic and Personal Workers, which demand the 2<sup>nd</sup> Petitioner rejected. The 2<sup>nd</sup> Petitioner states that the Respondent has intruded into his residence, agitating for the Domestic and Personal Workers, and demanding that they subscribe to the Respondent.
11. The Respondent incited Domestic and Personal Workers to abscond. They were dismissed by the 2<sup>nd</sup> Petitioner, whereupon they initiated through the Respondent, a plethora of Claims at this Court, for unfair dismissal. Filing of these Claims has strained the relationship between the Parties. The Petitioners submit that the Recognition Agreement should be terminated, and the Employees be set at liberty to associate with a Trade Union of their choice.
12. The Respondent relies on Grounds of Opposition, filed on 3<sup>rd</sup> October 2018. It states that it has a Recognition Agreement with the 1<sup>st</sup> Petitioner Company, London Distillers. The 2<sup>nd</sup> Petitioner is the 1<sup>st</sup> Petitioner's Chairman, exercising control of the operations of the 1<sup>st</sup> Petitioner, as well as 1<sup>st</sup> Petitioner's associated businesses.
13. The 1<sup>st</sup> Petitioner and the Respondent have concluded CBAs. During the negotiations for the last CBA, the 1<sup>st</sup> Petitioner introduced job evaluation exercise, insisting it must be carried out, before negotiations were undertaken. Employees were not told why it was necessary to carry out evaluation.
14. On June 19, 2017, the 1<sup>st</sup> Petitioner attempted to terminate existing Recognition Agreement between the 1<sup>st</sup> Petitioner and the Respondent, and between the Respondent and 1<sup>st</sup> Petitioner's sister Company, Bounty Limited. The reason for proposed termination was that the Respondent had recruited Employees at Galot Estate.
15. None of the Employees at Galot revoked their membership of the Respondent; no rival Union claimed to represent those Employees; and the Respondent's membership had not fallen below 5 members, as prescribed by the law.
16. Following the threat to terminate Recognition Agreement, the 2<sup>nd</sup> Petitioner went ahead and dismissed all the contracts of Respondent's members' at Bounty Limited. The Parties were in the middle of negotiating a fresh CBA when Employees of Bounty Limited were dismissed and replaced with another set of Employees. This resulted in filing of E&LRC Cause Number 1512 of 2017, between the



Respondent and the 2<sup>nd</sup> Petitioner. Other Claims have been filed between the 1<sup>st</sup> Petitioner and the Respondent arising from the conduct of the 2<sup>nd</sup> Petitioner. In E&LRC Cause 120 of 2019 involving the Parties herein and Galot Estate, issues concerning Recognition Agreement between the 1<sup>st</sup> Petitioner and the Respondent, and the status of the Employees of Galot Estate, are pending determination.

17. Parties agreed to have the Petition considered and determined on the strength of their Submissions. They highlighted their Submissions on February 18, 2022.

**The Court Finds: -**

18. Prayers [a] and [b] of the Petition refer to ‘unfair trade practices.’
19. The Petitioners seem to confuse ‘unfair labour practices,’ with ‘unfair trade practices.’
20. The Petition does not involve fair trade at all. Fair trade is a trading partnership, based on dialogue, transparency and respect, that seeks greater equity in international trade.
21. Right to fair labour practice is an evolving concept, created by *the Constitution*, rooted in the jurisprudence of the erstwhile Industrial Court of Kenya. It relates to fair dealing in employment relationships, between labour and capital. It is different from fair trade.
22. The dispute herein, revolves around issues that are pending determination in other Claims.
23. Whether Employees of Galot Estate are eligible for Respondent’s membership; whether they are exclusively, Domestic and Personal Workers of Mohan Galot; and, whether they were illegally recruited by the Respondent, are issues subject matter of Cause No. 120 of 2019.
24. The dispute on CBA is subject matter of Cause No. 912 of 2018. The 1<sup>st</sup> Petitioner made an Application in that Cause, asking the Court to order that that the Claimant is compelled to rally its members, to participate in proposed job evaluation.
25. Other aspects of the Petition relating to termination of Employees’ contracts on account of redundancy and other reasons, are similarly the subject matter of other Claims involving the Parties.
26. The issues raised by the Petitioners are under judicial consideration elsewhere, and the Petition should not have been presented, while the same issues, between the Parties are pending in Court.
27. There is no legal basis, to seek by way of this Petition, to terminate all other Court proceedings, instituted by the Respondent against the Petitioners. Due process of the Court demands that any Party, who wishes to have any Claim terminated, makes the relevant Application in the particular Claim, before the relevant Court. This Court would be exercising a supervisory jurisdiction which is not given by Statute or *the Constitution*, were it to terminate Claims pending before other Judges of cognate jurisdiction.
28. In E&LRC Cause No. 1512 of 2017 involving the Respondent and 1<sup>st</sup> Petitioner’s sister Company Bounty Limited, there are orders finding Mohan Galot guilty of contempt of Court. The original file disappeared necessitating an Application for reconstruction of the file. How does the Court terminate all pending Court proceedings, in the circumstances? Does the 2<sup>nd</sup> Petitioner wish to be freed from the orders made against him on contempt of Court, through this Petition? When a Court file disappears, it is most likely that there is criminal enterprise behind such disappearance. The Court would appear to be aiding a criminal enterprise, by terminating all other Causes that are pending before the Courts, through the Petition filed herein.



29. The Petitioners should focus on the various Causes acknowledged by the Parties to be pending before this Court, relating to the issues raised by the Petitioners herein. All the prayers sought in the Petition, can be pursued and redressed within the pending Causes.
30. If any of the Party is dissatisfied with the outcome of any of the Causes pending in Court, it is open to that Party to appeal at the next level in the hierarchy of the Courts, instead of seeking to have such Claims terminated through a Constitutional Petition.
31. The Petition is in abuse of the process of the Court, and is declined, with costs to the Respondent.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 10TH OF JUNE 2022.**

**JAMES RIKA**

**JUDGE**

