



**Kenya Union of Sugar Plantation and Allied Workers v Chemelil Sugar Company Ltd
(Petition E015 of 2022) [2022] KEELRC 12784 (KLR) (28 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12784 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
PETITION E015 OF 2022**

S RADIDO, J

SEPTEMBER 28, 2022

**IN THE MATTER OF ARTICLES 1(1) & (4), 2(1), 22(1), 23(3), 27(5), 33(1), 37, 42(1),
(2), (4), 47(1), 50(2) AND 157(11) OF THE CONSTITUTION OF KENYA AND IN
THE MATTER OF THE LABOUR RELATIONS ACT, 2007 AND IN THE MATTER
OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS
UNDER THE CONSTITUTION OF KENYA, 2010 AND IN THE MATTER OF RULES
2(1), 3(1), 4 AND 10 OF THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE
RULE, 2013 AND IN THE MATTER OF RULE 7 OF THE EMPLOYMENT AND
LABOUR RELATIONS COURT (PROCEDURE) RULES, 2016 AND IN THE
MATTER OF SECTIONS 4, 5 & 8 OF THE LABOUR RELATIONS ACT, 2007**

BETWEEN

**KENYA UNION OF SUGAR PLANTATION AND ALLIED
WORKERS PETITIONER**

AND

CHEMELIL SUGAR COMPANY LTD RESPONDENT

JUDGMENT

1. On or around January 25, 2022, some named employees of Chemelil Sugar Co Ltd (the respondent) were arrested and charged before the Tamu Magistrates Court with offences of creating a disturbance and malicious damage to property. The Kenya Union of Sugar Plantation and Allied Workers (the union) says that the arrested employees were its branch officials.
2. On the same day, the respondent suspended the employees and requested them to show cause why disciplinary action should not be taken against them (three of the employees received suspension letters dated January 24, 2022).



3. The letters also indicated that further investigations were ongoing. The period of suspension was not disclosed.
4. On January 28, 2022, the respondent instructed some of the employees to record statements with the police.
5. The union subsequently engaged the respondent, and a meeting was held on March 1, 2022. The union asserts that it was agreed in the meeting that the suspensions be lifted.
6. On or around March 23, 2022, the respondent notified and invited the union to attend disciplinary hearings in respect of the suspended employees. The hearings were to run from March 28, 2022 to April 4, 2022.
7. Alarmed with the turn of events, the union moved to the court on April 7, 2022, seeking orders:
 - (a) A declaration that the actions of the respondent of suspending the members of the petitioner listed herein above for indefinite period violates their right to fair labour practices, and therefore it is unconstitutional and therefore null and void.
 - (b) A declaration that the actions of the respondent of subjecting the members of the petitioner on suspension, which is indefinite period, violated the terms of the collective bargaining agreement and the Constitution.
 - (c) An order declaring null and void the disciplinary process taken by the respondent against the members of the petitioner.
 - (d) A declaration that the respondent has violated the constitutional right of the members of the petitioner herein right to legitimate expectation that their suspension will be lifted and that they will be reinstated to work without being subjected to another disciplinary proceedings with regard to the same allegations.
 - (e) A conservatory order barring the respondent by its agents, servants and any other person acting under its authority from harassing, intimidating, summoning and or in any way from subjecting the members of the petitioner listed herein above to disciplinary process over the same issues that the parties have already entered into an agreement.
 - (f) Costs of the petition.
8. Filed with the petition was a motion under a certificate of urgency.
9. The court issued directions on the petition and motion on April 8, 2022. The court also stayed the disciplinary hearings pending further directions on May 19, 2022.
10. The respondent filed a replying affidavit in opposition to the petition and motion on April 26, 2022.
11. Pursuant to further court orders on May 19, 2022, the union filed a further affidavit and its submissions on July 7, 2022 (should have been filed and served before June 30, 2022), and the respondent on August 2, 2022.
12. On June 15, 2022, the court received a letter from some 10 of the suspended employees indicating that they wanted to withdraw from the petition (Joseph Ndolo, John Njoroge Kaigu, Peter Omondi Osuga, Hesbone Otieno Oduwo, Justus Melabi Mukhwana, Francis Kenei Kiptoo, Samuel Okello Akoko, Eric Omondi Anyul, Julius Kipchirchir Sang and Kenneth Kiplagat Kiprono).



13. The 10 employees also distanced themselves from the interlocutory orders granted on April 8, 2022 and served on the respondent on April 12, 2022.
14. The court has given due consideration to the petition, motion, affidavits, and submissions.

Unfair suspension

15. The union challenged the suspension of the named employees on the grounds that the same was unfair because of its indefinite nature; the allegations leading to the suspension formed the basis of criminal charges before the magistrates court and exposed them to double jeopardy; the suspensions were meant to intimidate them from participating in lawful trade union activities, and that contrary to an agreement reached on March 1, 2022, the respondent had failed to lift the suspensions.
16. The respondent defended itself by contending that the named employees had gone on an unlawful strike and had breached the rules on discipline; engaged in criminal behaviour; hence a report was made to the police; the employees had disregarded the terms of an agreement reached on January 18, 2022; the employees had already appeared for disciplinary hearings before the union moved to court and it was only communication on the outcome of the hearings pending, and therefore the court proceedings were misdirected.

Indefinite Suspension

17. Clause 9 of the collective bargaining agreement between the union and the sugar employers group of the federation of Kenya employers envisages the suspension of an employee on half-pay for 21 days to facilitate investigations into misconduct.
18. The relevant clause provides that where a suspension exceeds 21 days, the employee shall be reinstated unless both the union and employer agree on an extension, police investigations are ongoing, or there is a pending case in court.
19. The named employees herein were arraigned in court on January 25, 2022, and they were suspended on the same day. By dint of clause 9(ii)(d) of the collective bargaining agreement, the suspension could exceed the 21 days provided in clause 9(ii)(a).
20. The arguments on indefinite suspension consequently have no lawful foundation.

Double Jeopardy

21. The union also challenged the suspension(s) on the ground of double jeopardy.
22. Disciplinary proceedings and criminal proceedings have different objectives and purposes, and the courts have underscored the possibility of both running concurrently (see *Gladys J Cherono v Board of Trustees NSSF & Ar* (2021) eKLR and *North West Anglia NHS Foundation Trust v Gregg* (2019) EWCA Civ 387)
23. The court would, again, find this objection without substance in the instant case.

Intimidation Of Trade Union Officials

24. The union also assailed the suspensions by alleging that it was meant to intimidate its officials from participating in trade union activities. No evidence or pattern of intimidation was placed before the court.



25. The court has looked at the charges and particulars thereof and is of the view that making a determination on the validity or otherwise of the criminal process in these proceedings would potentially undermine the criminal trial of the officials.

Compromise/dispute Already Resolved

26. Lastly, the union challenged the fairness of the suspensions on the basis that an agreement had been reached on March 1, 2022 to lift the suspensions and reinstate the employees.
27. The respondent admitted in paragraph 9 of the replying affidavit that there was a resolution to lift the suspensions. However, the respondent asserted that it had not implemented the resolution because the said minutes were not fully executed and, therefore, could not be implemented.
28. It is, therefore, not in dispute that the parties reached an agreement to lift the suspensions. The agreement must have been reached in good faith. Good faith is one of the cornerstones of industrial relations.
29. With respect to the respondent, the court is of the view that the failure to sign the minutes of March 1, 2022 is more of an excuse rather than a genuine reason not to lift the suspensions.
30. The resolution created a legitimate expectation on the named employees that the suspensions would be lifted.
31. The petition, therefore, succeeds on this basis.

Conclusion and Orders

32. From the foregoing, the court orders:
- i. A declaration is hereby issued that the respondent has violated the petitioner's named members' right to a legitimate expectation that their suspensions will be lifted and that they will be reinstated to work.
 - ii. An order is hereby issued directing the respondent to comply forthwith with the agreement reached on March 1, 2022, lifting the petitioner's named members' suspension.
33. Considering the social partnerships between the parties, the court orders each party to bear own costs.
34. These orders do not apply to the 10 persons who disassociated from the case through the letter dated June 15, 2022.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 28TH DAY OF SEPTEMBER 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Petitioners P.D. Onyango & Co. Advocates

For Respondent Amos O. Oyuko & Co. Advocates

Court Assistant Chrispo Aura

