



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 361 OF 2015**  
**(Originally Kisumu Cause No. 366 of 2015)**

**SHALIMAR FLOWERS (K) LIMITED**

**CLAIMANT**

v

**KENYA PLANTATION & AGRICULTURAL**

**WORKERS UNION**

**RESPONDENT**

**RULING**

1. The Agricultural Employers Association and the Kenya Plantation & Agricultural Workers Union (Respondent) entered into a recognition agreement on 6 September 1999.
2. Pursuant to the agreement, the Respondent was recognised as a properly constituted and representative body and sole labour organisation representing the interests of workers in the employ of the Association's members.
3. Shalimar Flowers (K) Ltd (the Claimant) is a member of the Association which a recognition agreement with the Respondent, but it also signed a recognition agreement with the Respondent on 24 May 2005, hence the 2 recognition agreements bind it. Consequent upon the recognition agreement, the Claimant and the Respondent have entered into several collective bargaining agreements.
4. The last of such collective bargaining agreement was for the period 2013 – 2015, and was to expire around 1 March 2015.
5. The parties engaged each other in an attempt to negotiate a new collective bargaining agreement to replace the expired agreement and on 16 March 2015, the Respondent submitted to the Claimant its proposals.
6. On 18 March 2015, the Claimant consulted the Association on the proposals by the Respondent and sought its intervention. The Claimant raised 3 issues of concern and these were that, *clause 39 of the proposed collective bargaining agreement had not been agreed; appendix B had not been agreed* and lastly that *the Claimant's Group Human Resources Manager ought to be a signatory to the collective bargaining agreement*.
7. The Claimant also raised issue with a proposal on death expenses for spouses and children of employees.

8. On 15 April 2015, the Association wrote to the Respondent advising it that the proposed collective bargaining agreement could not be signed because of the issues already referred to in the preceding 2 paragraphs, and that a meeting should be held on 22 April 2015 to discuss the contentious proposals.
9. It appears that the meeting called for 22 April 2015 did not materialise.
10. On 6 August 2015, the Claimant forwarded to the Respondent 5 copies of collective bargaining agreement for 2013-2015 for execution and registration by the Court.
11. Just to pose there, the collective bargaining agreement for the period 2013-2015 had been the subject of litigation and the Court had delivered judgment on 14 November 2014. Although the Court directed the parties to sign a collective bargaining agreement in terms of the judgment, the judgment had not been complied with because the parties could not agree on the interpretation to be given to the clause on wage increment (parties have since settled the issue).
12. On 25 September 2015, the Respondent issued a 7 day strike notice to the Claimant. The reason given for the strike notice was the Claimant's failure to sign a collective bargaining agreement for 2013-2015 in terms of the judgment of 14 November 2014. The strike was to commence on 3 October 2015.
13. The strike notice prompted the present proceedings which were commenced before the Court in Kisumu.
14. After hearing the Claimant *ex parte*, the Court in Kisumu granted an order in the following terms  
That a temporary injunction is issued to restrain the Respondent's members or its agents from proceeding or taking part in any strike or go slow at the Claimant's place of work pursuant to a strike notice dated 25<sup>th</sup> September 2015 pending inter partes hearing of this application.
15. The motion was served upon the Respondent and it filed a list of authorities and replying affidavit through its Deputy Secretary General on 13 October 2015.
16. The motion was taken *inter partes* on 8 December 2015.
17. The Claimant urged that it was seeking orders (c) and (d) in terms of the motion. For emphasis, the Court will set out the said proposed orders
  - (c) THAT this Honourable Court do and hereby issue a permanent prohibitory order declaring the strike called by the Respondent unlawful and unprotected as contained in the strike Notice dated 7/1/2015 (date was explained as a typing error and the Court assumes so).
  - (d) Any other further orders that this Honourable Court may deem just to grant.
18. According to the Claimant, the strike notice gave a false impression that the Court had ordered a salary increment from 1 March 2015 while the parties were still negotiating a new collective bargaining agreement.
19. The Claimant also submitted that the strike was called without exhausting the clear internal dispute resolution mechanisms agreed by the parties in the recognition agreement (clause 3(d)).
20. It was also urged that a social partner who had declined to engage in social dialogue loses the right to call for a strike.
21. The Claimant further submitted that the Respondent had called out all workers on strike yet the parties had mutually agreed that certain categories of employees involved in essential services could not go on strike.

22. The Claimant in a parting shot indicated that it was still willing to engage in dialogue and that the sector it was operating in was highly sensitive.
23. The Respondent opposed the motion. It was submitted on its behalf that the strike called related to implementation of the judgment of the Court delivered on 14 November 2014 in Nakuru Cause No. 62 of 2014, *Kenya Plantation & Agricultural Workers Union v Shalimar Flowers (K) Ltd.*
24. It was also submitted that the notice to strike was pursuant to Article 41(2)(d) of the Constitution and in compliance with section 76 of the Labour Relations Act and that the 7 day window was to allow for dialogue and that the only issue for determination was whether the strike notice was lawful.
25. Towards this end, the Respondent submitted that the strike notice related to terms and conditions of employment and that the dispute had gone through conciliation, but there was no agreement hence it was also subject of adjudication by the Court and that judgment was rendered on 14 November 2014.
26. The Respondent also drew attention of the Court to the nature of the orders sought by the Claimant (permanent prohibitory order).
27. The Respondent also faulted the Claimant for filing a fresh Cause when it could have made an application under Cause 62 of 2014. According to the Respondent, this was mischievous and an abuse of Court process.
28. The Court has taken note and considered the papers, submissions and decisions cited.
29. The strike notice dated 25 September 2015 is clear that the strike was called because of the Claimant's failure to sign a collective bargaining agreement for 2013-2015 in terms of the judgment delivered on 14 November 2014. The notice does not relate or concern proposed collective bargaining agreement for 2015-2017.
30. The collective bargaining agreement for 2013-2015 was the subject of a conciliation process. The dispute was reported to the Cabinet Secretary, Labour through a letter dated 19 August 2013. The parties did not agree on the issue of general wage increase and this prompted the present Respondent to move to Court, and the Court made a determination on the question on 14 November 2014.
31. The Claimant had in its Reply sought a prayer that the unionisable employees be awarded a 10% wage increase for 2 years.
32. The Court awarded a 10% increase effective 1 March 2013 and another 10% increase effective 1 March 2014. That decision has not been appealed against.
33. In this regard, clause 3(d) of the recognition agreement does not assist the Claimant's case herein.
34. The dispute went through conciliation and Court adjudication and to expect the parties to go through the same process would be a mockery of the objectives and purposes of establishment of this Court. That would be a game of musical chairs.
35. Section 76 of the Labour Relations Act provides the statutory basis for strikes. Its main anchor however is Article 41 of the Constitution.
36. It is material to set out the section in full.

76. A person may participate in a strike or lockout if-

a) the trade dispute that forms the subject of the strike or

lock-out concerns terms and conditions of employment or the recognition of a trade union;

(b) the trade dispute is unresolved after conciliation—

(i) under this Act; or

(ii) as specified in a registered collective agreement that provides for the private conciliation of disputes; and

(c) seven days written notice of the strike or lock-out has been given to the other parties and to the Minister by the authorised representative of—

(i) the trade union, in the case of a strike;

(ii) the employer, group of employers or employers' organisation, in the case of a lock-out.

37. The subject of the strike notice concerns terms and conditions of employment. It related to a collective bargaining agreement for 2013-2015. The dispute went through conciliation and a deadlock was reached. It remained unresolved.

38. The Respondent then moved Court and a determination was made on 14 November 2014. The parties could not even agree despite the clear determination on the issue of *salary increment*. The Court sent the parties to the Labour Officer. Even his interpretation was not acceptable to the parties.

39. It is within this context that the Respondent issued a 7 day strike notice.

40. In the view of the Court, the strike notice was in compliance with the stringent requirements for calling a lawful strike.

41. The only other issue is whether the Claimant has demonstrated that the Respondent has failed to negotiate in good faith.

42. Disputes concerning these two parties herein have come to Court regularly. The Court has observed some sort of hardball tactics on both sides. That is very regrettable as it does not engender industrial peace and relations.

43. This Court has no power or jurisdiction to force the social partners to reach agreement.

44. Moreover, where the Court has done its bit but the partners cannot agree on the implementation of the orders of the Court, and where a partner has satisfied the statutory requirements for calling a strike, the Court would have no hesitation in refusing to issue orders stopping such a strike.

45. Disputes such as the present one project power plays between workers (unions) and employers, and the Court ought to be cautious of being drawn inappropriately into such power plays where one party has complied with the requisites for calling industrial action and the other wants to use the law tactfully to its advantage.

46. The right to strike is a constitutionally protected right and the Court must avoid clawing back on the right by reading implicit limitations in the right where one social partner wants to use the right to strike to balance out the social and economic power/equation and the other partner will not budge.

47. The motion dated 30 September 2015 is therefore for dismissal, but before concluding the Court wishes to again observe that the rules of the Court need to be amended in order to provide that applications predicated on section 76 of the Labour Relations Act be commenced through Originating Motion or Summons, as essentially once the interlocutory application is determined, nothing remains of the Memorandum of Claim. The grant of final orders under the guise of interlocutory application obviously gives one social partner a tactical advantage.

48. The upshot of the foregoing is that the Court declines the invitation by the Claimant and orders that the motion be dismissed with costs to the Respondent.

**Delivered, dated and signed in Nakuru on this 26<sup>th</sup> day of February 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant  
Association

Mr. Kinyanjui, Legal Officer, Agricultural Employers

For Respondent  
Agricultural Workers Union

Mr. Khisa, Organising Secretary, Kenya Plantation &

Court Assistant

Nixon