



Ouma & another (Suing on Behalf of the Proposed Accountants Union of Kenya - AUK) v Registrar of Trade Unions (Employment and Labour Relations Appeal E077 of 2025) [2025] KEELRC 2651 (KLR) (26 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2651 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E077 OF 2025**

**JW KELL, J
SEPTEMBER 26, 2025**

BETWEEN

**GEORGE GUDA OUMA 1ST APPELLANT
SYLVESTER MUTUNGA KIMASYU 2ND APPELLANT
SUING ON BEHALF OF THE PROPOSED ACCOUNTANTS UNION OF
KENYA - AUK**

AND

REGISTRAR OF TRADE UNIONS RESPONDENT

(Being an Appeal from the decision of the Registrar of Trade Unions, A.K. Kanake dated the 20th of February, 2025)

JUDGMENT

1. The Appellants herein, being dissatisfied with the decision of the Registrar of Trade Unions, A.K. Kanake dated the 20th of February, 2025 filed a memorandum of appeal dated the 18th of March 2025 seeking the following orders:-
 - i. The appeal herein be allowed.
 - ii. A declaration that the Respondent failed in her statutory duty when she communicated her decision vide letter dated 20th February 2025 declining to issue the Appellants with the recruitment certificate in terms of Section 12 of the Labour Relations Act, 2007, her action being bad in law, her letter dated 24.05.2018 be declared invalid, null and void ab initio.



- iii. A declaration that the fundamental rights and freedom of association of the Appellants were substantively breached by the Respondent's refusal to issue them with the Certificate of Recruitment sought.
- iv. An order of injunction compelling the Respondent to issue the Appellants with the Certificate of Recruitment for the proposed Accountants Union of Kenya as applied in the letter dated 3rd February 2025.
- v. Any other relief the Court may deem just and fit.
- vi. The Respondent bears the costs of this appeal.

Grounds Of The Appeal

2. The Respondent so gravely and seriously erred in law and fact when she prematurely refused to issue the Appellants with a promoter's certificate for recruitment of members for establishing the proposed union.
3. The Respondent's decision to decline the issuance of the certificate upon the ground that Accountants were already represented by other existing unions namely; Kenya Union of Service Employees, Union of Kenya Civil Servants, Union of Non-Governmental Organization Employees and Human Aid Providers and County Government Workers Union (Kenya), that *akn ke act 2010 constitution the constitution* of the aforementioned unions covered the same scope as the proposed union were reasons not within the provisions of Section 12 (3) of the *akn ke act 2007 14 Labour Relations Act, 2007*.
4. The Respondent so gravely and seriously erred in law in declining to issue the appellants with a certificate of recruitment on grounds other than those provided for under Section 12 (3) in the sense that, an application under Section 12 of the Act should be declined if the application is incurably defective or if the proposed union name already exists or is so similar to an existing union as to cause confusion. In her letter dated 20th February 2025, the Respondent did not raise any of those grounds as the reasons for declining the issuance of the promoters' certificate of recruitment. Hence the Respondent's decision being non-compliant with Section 12 of the Act.
5. The Respondent erred in law and in fact by denying the Appellants the certificate of recruitment as was applied for; technically and procedurally the Appellants were at the initial stages of applying for a certificate under Section 12 of the Act. The stage for application of Section 14 in the process had not accrued. The Appellants could not be able to fulfil the requirements of Section 13,14,18, 19 and 20 of the *akn ke act 2007 14 Labour Relations Act 2007* without the promoter's certificate of recruitment under Section 12 of the Act. Thus, the Registrar's letter dated 20th March 2025 was unlawful.
6. That Section 12 of the Act is mandatory and is designed to properly regulate the Respondent's discretion in the exercise of statutory duty. The Respondent gravely acted without jurisdiction by failing to look into the provisions of Section 12 (2) (a) (b) (c) and 3 (a) (b).
7. That as a consequence, the Respondent has fundamentally and substantively violated the rights of the Appellants to exercise their rights as provided under Articles 36 and 41 of *akn ke act 2010 constitution the Constitution* of Kenya and breached the provisions of Sections 4 and 12 of the *akn ke act 2007 14 Labour Relations Act, 2007* and similarly, has acted in breach of statutory mandate conferred upon her office to discharge fairly, reasonably and not whimsically, capriciously, frivolously and callously.
8. The errors made by the Respondent to camouflage under the guise of the existence of other trade unions is self-defeatist as the same is not a ground set by Section 12 of the Act. Her actions were meant



- to breach the rights of the Appellants to establish a trade union as provided under Section 12 of the Act and Article 41 of *akn ke act 2010 constitution the Constitution*, the right and freedom of association as provided under Article 36 of *akn ke act 2010 constitution the Constitution*, and the right to enjoy a fair administrative action as provided under Article 47 of *akn ke act 2010 constitution the Constitution*.
9. The Appellants of the proposed trade union have complied with the requirements under Section 12 of the Act.
 10. That altogether, the Respondent so gravely and seriously erred in law in arriving at a decision not supported by Section 12 (3) of the Act. Her decision ought to be set aside.
 11. In response to the memorandum of appeal, the Respondent filed a Replying Affidavit sworn by ANN K. KANAKE dated 14th April 2025. The Respondent strongly opposed the relief sought and filed a Replying Affidavit sworn by Ms. Ann K. Kanake dated 14th April, 2025. The Respondent case was as follows;-
 12. That the mandate of the Respondent is the registration and regulation of trade unions, employers' organizations and federations. That the Appellants submitted an application for registration for issuance of a promotion certificate for a proposed union under the name "Accountants Union of Kenya" via a letter dated 3rd February, 2025 (Refer to Respondent's annexure marked "AK-1"). That in response to paragraph 1 of the Memorandum of Appeal, the Respondent avers that the due process for granting a promotion certificate was followed and put the appellants to the strict proof of their averments. Furthering the process of issuing a promotion certificate involves receipt of the application, review of the application for compliance with conditions in section 12 (3) and 14(d) of the *akn ke act 2007 14 Labour Relations Act*, and finally, grant or refusal to grant a promotion certificate. That the Respondent received, reviewed, and replied to the Appellants' letter dated 3rd February, 2025 vide a letter dated 20th February 2025. In the said letter addressed to the promoters who are the Appellants herein, the Respondent notified the Appellants that their application dated 3rd February, 2025, was unsuccessful and gave reasons thereof. (Refer to Respondent's annexure marked "AK -2").
 13. The respondent submitted that part of the reasons advanced was that the sector the proposed union by the Appellants seeks to represent are accountants who are already sufficiently and effectively represented by existing registered trade unions including the Kenya Union of Service Employees whose membership as per their Unions constitution include workers rendering accounting services. (Refer to Respondent's annexure marked "AK-3") Union of Kenya Civil Servants, County Government Workers Union (Kenya) and the Banking, Insurance and Finance Union (BIFU), among others, depending on the sector of employment. That in response to paragraphs 2,3 and 4 of the Memorandum of Appeal, by dint of section 12(2)(c) of the *akn ke act 2007 14 Labour Relations Act* where an application shall "contain any other prescribed information". The Respondent stated that it was her considered view that section 12(3) of the Labor Relations Act of 2007 on reasons for rejection for issuance of a promotion certificate is not exhaustive. That although section 12(3) of the *akn ke act 2007 14 Labour Relations Act* provides that the Respondent is required to issue certificate to promote the establishment of a trade union, the same is not automatic but subject to conditions listed under section 12(3) of the Act inter alia that the application is not defective and the proposed name is not the same as that of an existing trade union or sufficiently similar to an existing one so as to mislead or cause confusion. That further to paragraph 9 above, it was her considered view that the section 12(3) of the *akn ke act 2007 14 Labour Relations Act* of 2007 is not to be read or applied in solitude but as a whole for the purposive effect of registration of any trade union. That the Respondent while scrutinizing an application to promote the establishment of a trade union is also required to check the scope of representation and the sector in which the applicants will recruit members from once the promotion certificate is issued. That this is to ensure that the Applicants do not recruit members from a sector



where a registered trade union already exists so as to limit the proliferation of trade unions in the same sector, avoid inter – union rivalry and wrangles and therefore enhance harmony in industrial relations. That under section 14 (1) (d) (i) of the Act, a trade union can only apply for registration if there is no other trade union already registered which is sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration.

14. That the Respondent is also required, before issuing a promotion certificate to go through the constitutions of other registered trade unions in order to confirm that there is no other trade union that is already registered that sufficiently represents the whole or a substantial proportion of the interests in respect of which the Petitioners seek registration and as provided under section 14 (1) (d) (i) of the Act. That in addition to averments in paragraphs above, the Respondent further factored in all the provisions of section 12 and 14 of the Act in declining to issue a promotion certificate, and consequently gave her reasons for the decline in writing as outlined in the aforementioned letter. That the registration of a trade union is process not an event and it start at the issuance of a promotion certificate that must comply with all the requirements for registration outlined in the *akn ke act 2007 14 Labour Relations Act*.
15. That in response to paragraph 5 of the memorandum of appeal, section 12 of the Act, the Registrar has the necessary discretion to refuse any application for issuance of a certificate to promoters if the scope upon which the applicants are seeking registration is sufficiently represented by any other existing trade union like in this case. That the appellants have not shown that the said discretion was exercised without any legal or factual basis, nor has it been demonstrated that the discretion was abuse or exercised capriciously.
16. That in response to paragraph 6, the Respondent is of the considered view that the rights envisaged under Article 36 and 41 of *akn ke act 2010 constitution the Constitution* and sections 4 and 12 of the *akn ke act 2007 14 Labour Relations Act* are not absolute and can be limited in accordance with the provisions of article 24(1) of *akn ke act 2010 constitution the Constitution*. That the courts are also of the view that the among reasons for refusal of registration is where there is another trade union sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration as provided under section 14(1)(d) of the Labour Act. The Supreme Court of Kenya pronounced itself on this issue in *Kenya Plantation & Agricultural Worker's union v Omulama & 9 others (The Kenya Export Floriculture, Horticulture and Allied Workers Union (KEFHAU) Represented by its promoters (petition 4 of 2018) (2020)*. (Refer to Respondent's annexure marked "AK -4" is a copy of the judgement. That the Appellants have refused to join the existing registered trade union that is sufficiently representative of the interests in which they are seeking registration, hence they are not entitled to the orders sought in the memorandum of appeal. That registering a similar trade union would lead to inter union rivalry and wrangles due to scrambling of members and which does not augur well for industrial peace and harmony. That having many unions the same sector also makes it difficult for collective bargaining and obtaining recognition agreements from employers. That this would eventually work against the interests of the workers as the employers would obviously take advantage of the inter union rivalry and wrangles and this would eventually undermine the interest of the workers.
17. That in response to paragraph 7,8 and 9 of the memorandum of appeal, the Respondent reiterates the averments in all the above paragraphs and puts the appellants to strict proof to the contrary. That similarly in the case of *Kenya Union of Commercial Food and Allied Workers v Registrar of Trade Unions & Another [2015] eKLR*, the Court held that the Registrar was within their mandate to reject registration of a union where there exists another sufficiently representative union. (Refer to the Respondent's annexure marked "AK-5" is a copy of the judgement. That further in Communication



Workers Union v Registrar of Trade Unions & Another [2016] eKLR, the Court emphasized the need to prevent unnecessary duplication of trade unions and the importance of maintaining industrial harmony and cohesion. (Refer to the Respondent’s annexure marked “AK -6” is a copy of the judgement. 29. That allowing the registration of the proposed union would result in fragmentation of union representation among professionals, contrary to the objectives of the *akn ke act 2007 14 Labour Relations Act* and national policy on trade union organization. That the nature of the orders sought by the appellants leads deviation from set mandatory terms of trade union registration process as provided for in the *akn ke act 2007 14 Labour Relations Act*. That in the circumstances the memorandum of appeal is devoid of any merit, is premature, bad in law, incompetent, scandalous, frivolous and vexatious and should be dismissed with costs to the Respondent.

Background To The Appeal

18. The Appellants herein made an application to the Registrar of Trade Unions, the Respondent herein, vide a letter dated 3rd February 2025 seeking the registration of a union to be known as Accountants Union of Kenya (AUK) to represent accountants (pages 8-10 of the ROA dated 18th March 2025).

PARA 19.

Vide a letter dated 20th February 2025, the Respondent declined the Appellants’ application for registration on the premise that there exist other unions which are sufficiently representative of a substantial proportion of the whole or a substantial proportion of the interest in which the Appellants had sought registration (pages 11-12 of ROA).

Determination

20. The appeal was canvassed by way of written submissions. Both parties complied.

21. This being the a first appellate court, it was held in *Selle v Associated Motor Boat Co. [1968] EA 123* 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 which 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.”

22. Further in on principles for appeal decisions in *Mbogo V Shah [1968] EA Page 93 De Lestang V.P (As He Then Was) Observed At Page 94*:

“I think it is well settled that this court will not interfere with the exercise of its discretion by an inferior court unless it is satisfied that its decision is clearly wrong, because it has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion.”

Issues for determination

23. In their submissions dated 22nd May 2025, the Appellant identified the following issues for determination:



- i. Whether the respondent, in denying the appellants a certificate for recruitment of members for purposes of forming a trade union, acted in accordance with the applicable provisions of Section 12 of the *akn ke act 2007 14 Labour Relations Act, 2007*.
 - ii. Whether the fundamental rights and freedom of association of the appellants were substantively breached by the respondent's refusal to issue them with a Certificate of Recruitment.
24. The Respondent identified the following issues for determination in their submissions dated 1st July 2025:-
- i. Whether the Respondent's action of refusing the Appellants request for certificate of recruitment was well founded within the law.
 - ii. Where does the balance lie between the public interest at large and the interest of the Appellants?
 - iii. Are the Appellants therefore entitled to the reliefs sought and who bears the costs of the suit.
25. Conversely the respondent outlined the following issues for determination in the appeal-
- a. Whether the Respondent's action of refusing the Appellants request for certificate of recruitment was well founded within the law.
 - b. Where does the balance lie between the public interest at large and the interest of the Appellants?
 - c. Are the Appellants therefore entitled to the reliefs sought and who bears the costs of the suit?
26. The court determined whether the appeal was merited.
Appellant's submissions
27. Whether the respondent, in denying the appellant a certificate for recruitment of members for purposes of forming a trade union, acted in accordance with the applicable provisions of section 12 of the *akn ke act 2007 14 Labour Relations Act, 2007*. The Appellants submitted that the Respondent, Registrar of Trade Unions, failed in her statutory duty by declining to issue the Appellants with a Certificate for Recruitment as mandated by Section 12 of the *akn ke act 2007 14 Labour Relations Act, 2007*. Section 12 of the *akn ke act 2007 14 Labour Relations Act, 2007* stipulates that: "No person shall recruit members for the purpose of establishing a trade union or employers' organization unless that person has obtained a certificate from the Registrar issued under this section." Further section 12(2) outlines the requirement in the application for grant of the certificate mentioned above. It states that; An application for the certificate referred to in subsection (1) shall-
- a) be signed by two persons who are promoting the establishment of the trade union or employers' organization;
 - b) specify the name of the proposed trade union or employers' organization; and
 - c) contain any other prescribed information.
28. For grant of a certificate for recruitment, section 12(2) does not envisage any other requirements in the application apart from the ones listed above. Indeed, the respondent did not raise any concern with the Appellants compliance with section 12(2). The application was signed by two promoters, the name was uniquely identified and information relating to the reasons for the application were disclosed. Further,



section 12(3) of the Act provides that the registrar shall issue a certificate within thirty days of receiving an application unless:

- a) the application is defective, or
- b) the name of the proposed trade union or employers' organization is the same as that of an existing trade union or employers' organization or is sufficiently similar so as to mislead or cause confusion.

29. The Appellants' case is that in declining to grant them a certificate under section 12 of the Act, the respondent did not invoke any of the grounds prescribed in section 12 (3) but acted unreasonably by invoking a ground that was not contemplated, namely, that the appellant's proposed union would recruit members that were sufficiently represented by Kenya Union of Service Employees, Union of Kenya Civil Servants, Union of Non- Governmental Organization Employees and Human Aid Provider and County Government Workers Union(Kenya). The respondent replied that in *Charles Salano & 9 Others (Proposers & Promoters of Kenya Supermakets Workers Union (KESMWU) - Versus- Registrar of Trade Unions and Another* [2017]eKLR, the Court of Appeal held thus, "Accordingly, for a proper interpretation of Section 12, 13, and 14 of the Act to be arrived at, the said provisions ought to be read conjunctively. We say so as any party desirous of registering a trade union cannot comply with either of the said provisions in isolation." The Appellants followed that holding as it is bound accordingly. The Appellant's further submits that the three cited sections are conjunctively considered at the point of registering a trade union and not at every stage of the process which commences with the promoters of a proposed trade union applying for a certificate to recruit as provided for under section 12 of the Act.
30. The Appellant's submitted that at that initial stage the Registrar is bound to only consider the mandatory criteria in section 12 (3) in granting or declining the prescribed certificate for recruitment of members - because at that stage, it is not an application for registration of the union but an initial certificate to facilitate the recruitment and then thereafter, the application for registration will follow in six months. Section 13 of the Act provides that a trade union or employers' organization shall apply to the registrar for registration within six months of receiving a certificate issued under section 12. Emphasis Added.
31. The appellant urged the court to consider the mandatory criteria in section 12 (3) of the Act and find that indeed the appellants have shown that they had complied. To put the above into context; the respondent has not shown that name of the proposed trade union is the same as that of an existing trade union or employers' organization or that it is sufficiently similar so as to mislead or cause confusion. Secondly, the respondent has not shown that the application was defective. That the meaning of the application being defective is described under section 12(2) and the Appellants application would be defective only if it is not compliant with the formalities in subsection 12 (2) of the Act. The subsection provides that an application for the certificate referred to in subsection (1) shall be signed by two persons who are promoting the establishment of the trade union or employers' organization; specifying the name of the proposed trade union or employers' organization; and contain any other prescribed information. The appellants have shown that they complied accordingly and there is no material on record to show that their application failed to contain any other prescribed information (as no such prescribed information was mentioned in the present case). That it is now clear that it is after making an application under section 13 that consideration can be made whether the application for registration meets the tests and conditions in section 14. That such consideration must embrace a factual approach including consideration of the recruited persons following the grant of the certificate in section 12 and the consideration for registration cannot be based on mere speculation or unfounded anticipation and



apprehension that the proposed union subject of an application in section 12 of the Act will cover the same sector as an existing union and such decision made unilaterally by the respondent in purported exercise of statutory discretion.²³ Indeed, it is not enough that on the face of it the proposed union would cover a membership in a sector for which a union is already registered but that under the law, such already registered union would have to raise an objection in the subsequent steps of considering the application for registration.

32. The appellant contended that the Act clearly imposes a judicious process that embraces a factual approach rather than the respondent's exercise of a discretion based only on her opinion. That it is indeed an inescapable finding of superior courts that once promoters meet the criteria in subsection 12 (3) of the Act the respondent is bound to issue the certificate to recruit as prescribed and thereby pave way for a judicious consideration of the application for registration if the application is subsequently made as prescribed in the Act.
33. The appellant submitted that the respondent in declining their application considered section 14 of the Act on the elaborate requirements for registering a trade union which finding the Appellants contends to be unfair and ultra vires being reasons for denial of a certificate for recruitment of members as envisaged in section 12 of the Act, and on a purported summary finding without necessary material facts to decline the certificate upon consideration of the matters in section 14(1)(d) where one requirement that may lead to denial of registration was apprehensively relied upon by the respondent to decline the certificate under section 12 as had been applied for. This refusal and or decline being premature before the actual registration process.
34. The appellant cited the judgment of the court dated 14 Day of December 2021 In the case of Solomon Wanjala and 6 Others v. Registrar of Trade Unions [2019] eKLR, where it held that the Registrar's refusal to register a trade union was unreasonable and unjustifiable in an open and democratic society based on human dignity, equality, and freedom. The court did emphasize the constitutional right of individuals to form and join trade unions, as enshrined in Article 41 of *akn ke act 2010 constitution the Constitution*. The Court of Appeal has held in Charles Salano & 9 Others (Proposers & Promoters of Kenya Supermarkets Workers Union (KESMWU) - Versus- Registrar of Trade Unions and Another [2017] eKLR, that the limitation of the rights in Article 36 and 41 of *akn ke act 2010 constitution the Constitution* is reasonable and justifiable in an open and democratic society. Further, the Court of Appeal in Kenya Plantation and Agricultural Workers Union 1 Versus- David Benedict Omulama and 9 Others, Civil Appeal No. 141 of 2014 held that section 14(1) (d) (i) of the *akn ke act 2007 14 Labour Relations Act, 2007* is sufficient statutory provision limiting the right to form or join a trade union and that provision is not an unconstitutional limitation to form and join a trade union. However, the appellants were at the initial stage of applying for a certificate to recruit members under section 12 of the Act and the stage for the application of section 14 in the process had not accrued - section 14 provision had been invoked prematurely.
35. Similarly, in Kenya Plantation and Agricultural Workers' Union v. Kenya Export Floriculture, Horticulture and Allied Workers' Union [2020] eKLR, the Court affirmed the right of workers to establish and join trade unions, noting that such rights are fundamental and should not be unduly restricted.
36. The appellant contended that in considering the reason for denial of the certificate under section 12 of the Act, in an appropriate case, section 14 of the Act is clear that the registrar may register a trade union (even if a sector trade union is already registered) consisting of persons working in more than one sector if the registrar is satisfied that *akn ke act 2010 constitution the constitution* of the trade union contains suitable provisions to protect and promote the respective sector's interests of the employees.



Thus, existence of an already registered union in a sector an applicant under section 12 of the Act would not constitute a valid and conclusive reason for denying the certificate as applied for.

37. The Appellants submits that the appropriateness or lack of it to register the proposed union would have to be evaluated judiciously and in view of the provisions in section 14 of the Act and other relevant and lawful considerations if an application to register the proposed union is subsequently made and that would be upon issuance of the certificate for recruitment within 30 days. Finally, the Appellants submitted that the reasons advanced in their application for the grant of a certificate for recruitment and ultimate further application for registration, which includes inter alia; (a) "That Kenyan accountants encounter challenges that are distinct from those faced by other professions, such as frequent changes in taxation laws, accounting standards, and other regulatory frameworks. That the current trade unions are not equipped with the knowledge or the focus to address these specific concerns. For example, the legal and regulatory burdens that accountants bear require a union that can advocate for better frameworks for professional development, adequate protection from unfair practices, and fairer working conditions. A union that is focused on the accounting profession would ensure that such concerns are addressed directly, through consultations with relevant regulatory bodies like the Institute of Certified Public Accountants of Kenya (ICPAK) and the Kenya Revenue Authority (KRA).(b) That the current trade unions, which may represent a broader group of professionals or workers, often do not provide accountants with sufficient bargaining power regarding issues unique to their profession. For instance, while accountants in private firms may face long hours, poor remuneration, and pressure from clients, the broader unions do not specialize in advocating for conditions specific to this profession. Consequently, accountants do not enjoy the same level of support or recognition in terms of fair pay, benefits, and work-life balance. A trade union for accountants would have the expertise and authority to negotiate favorable terms on behalf of the members within the context of the accounting profession...."were not considered by the respondent in her decision while declining to grant the Appellants the certificate under section 12 of the Act. The Appellants submits that the said criteria would be subjected to the said test at a later stage when the Appellants would have made applications for registration. Further, that the consideration at this initial stage amounts to premature judgment and conclusions aimed at offending the requirements under section 12(3) of the Act.
38. The Respondent's decision to decline the issuance of the certificate upon the ground that Accountants were already represented by other existing unions namely; Kenya Union of Service Employees, Union of Kenya Civil Servants, Union of Non-Governmental Organization Employees and Human Aid Providers and County Government Workers Union (Kenya), that *akn ke act 2010 constitution the constitution* of the aforementioned unions covered the same scope as the proposed union were reasons not within the provisions of Section 12 (3) of the *akn ke act 2007 14 Labour Relations Act, 2007*. The Respondent so gravely and seriously erred in law in declining to issue the appellants with a certificate of recruitment on grounds other than those provided for under Section 12 (3) in the sense that, an application under Section 12 of the Act should be declined if the application is incurably defective or if the proposed union name already exists or is so similar to an existing union as to cause confusion. In her letter dated 20th February 2025, the Respondent did not raise any of those grounds as the reasons for declining the issuance of the promoters' certificate of recruitment. Hence the Respondent's decision being non-compliant with Section 12 of the Act. That the Respondent erred in law and in fact by denying the Appellants the certificate of recruitment as was applied for; technically and procedurally the Appellants were at the initial stages of applying for a certificate under Section 12 of the Act. The stage for application of Section 14 in the process had not accrued. The Appellants could not be able to fulfil the requirements of Section 13,14,18, 19 and 20 of the *akn ke act 2007 14 Labour Relations Act 2007* without the promoter's certificate of recruitment under Section 12 of the Act. Thus, the



Registrar's letter dated 20th March 2025 was unlawful. That Section 12 of the Act is mandatory and is designed to properly regulate the Respondent's discretion in the exercise of statutory duty. The Respondent gravely acted without jurisdiction by failing to look into the provisions of Section 12 (2) (a) (b) (c) and 3 (a) (b). That as a consequence, the Respondent has fundamentally and substantively violated the rights of the Appellants to exercise their rights as provided under Articles 36 and 41 of *akn ke act 2010 constitution the Constitution* of Kenya and breached the provisions of Sections 4 and 12 of the *akn ke act 2007 14 Labour Relations Act, 2007* and similarly, has acted in breach of statutory mandate conferred upon her office to discharge fairly, reasonably and not whimsically, capriciously, frivolously and callously. The errors made by the Respondent to camouflage under the guise of the existence of other trade unions is self-defeatist as the same is not a ground set by Section 12 of the Act. Her actions were meant to breach the rights of the Appellants to establish a trade union as provided under Section 12 of the Act and Article 41 of *akn ke act 2010 constitution the Constitution*, the right and freedom of association as provided under Article 36 of *akn ke act 2010 constitution the Constitution*, and the right to enjoy a fair administrative action as provided under Article 47 of *akn ke act 2010 constitution the Constitution*. The Appellants of the proposed trade union have complied with the requirements under Section 12 of the Act. That altogether, the Respondent so gravely and seriously erred in law in arriving at a decision not supported by Section 12 (3) of the Act. Her decision ought to be set aside.

Respondent's submissions

39. On whether the respondent's action of refusing the appellant's request for recruitment was well-founded within the law. The Respondent contended that the provisions of Section 31 (3) of the *akn ke act 2007 12 Labour Institutions Act* provides that the Registrar of Trade Union, (the Respondent herein) shall in the exercise of her powers in relation to the registration and regulations of Trade Unions act in accordance with the law. The Law is that Registration may be refused if any particular sector is already represented elsewhere, as demonstrated. The provisions in Section 14 (1) (d) of the *akn ke act 2007 14 Labour Relations Act* limits the powers of the Respondent herein to register a trade Union in Circumstances where there is in existence another trade Union which is sufficiently representative of the whole or a substantial proportion of the interests in respect of which the Appellants seeks to be issued with certificate of recruitment with a view of being registered as a Trade Union. My Lady, the right to join and form a Trade Union is not absolute and we rely on the case of Charles Salano & 9 Others vs. The Registrar of Trade Unions & Another (2015)eKLR wherein it was held: "...Trade Union movement is concerned with protection of workers and employers' rights as a collective. This right is protected under article 41 of *akn ke act 2010 constitution the Constitution*, International Laws and ILO Conventions. The right however is not absolute. It can be regulated or limited in the context of Article 24 of *akn ke act 2010 constitution the Constitution*. That is, such regulation or limitation must be seen in the context of what is permissible in an open and democratic society. Therefore, in so far as the right to join, leave or form a trade union of one's choice goes, no union can be registered if there is already in existence a union which sufficiently represents the interest of the workers or employers sought to be represented by the new union. The application was submitted to the Registrar. She had the benefit of looking at the entire application together with the documents in support and become of the view that the interest sought to be represented by the appellant was already sufficiently represented by the interested party..."
40. The Respondent submitted on where does the balance lie between the public interest at large and the interest of the appellants? Honourable Court, the enjoyment of freedom of association by the Appellants as enshrined in *akn ke act 2010 constitution the Constitution* of Kenya 2010 under the Bill of Rights is limited to the extent that their enjoyment shall not be prejudicial to other Party's rights. The respondent urged the court to find that the public interest supersedes the private claims of an



individual, as called in aid by the words of Nyamu J (as he then was) in Kenya Guards & Allied Workers Union vs. Security Guards Services and 38 others and another (IP) H.C. Misc. 1159 of 2003, where Justice Nyamu (as he then was) expressed himself as follows: “Where national or public interest is denied the gates of hell open wide to give way to deforestation, pollution, environmental degradation, poverty, insecurity and instability. At the end of the day, we must remember those famous words of a famous jurist: Justice is not a cloistered virtue. I must add that where justice is done and public interest upheld, it is acknowledged by the public at large, the sons and daughters of the land dance and sing, and the angels of heaven sing and dance and Heaven and Earth embrace. By upholding the public interest and treating it as twinned to the human rights we shall be able to do away with poverty eradication programmes and instead we shall have empowered our people to create real wealth for themselves. Public Interest must be the engine of the millennium, and it must, where relevant, occupy center the courts...” The registration of the Appellants’ proposed union would be tantamount to encouraging encroachment upon the turf of registered and established Trade Unions where the workers are catered for. The Respondent should not be seen to contribute to confusion and union rivalries which may harm the harmonious Industrial relations existing in the Sector. The enjoyment of freedom of association by the Appellants as enshrined in *akn ke act 2010 constitution the Constitution of Kenya 2010* under the Bill of Rights is limited to the extent that their enjoyment shall not be prejudicial to other Party’s rights.

41. The Respondent further submitted on whether the appellants therefore entitled to the reliefs sought and who bears the costs of the suit. The Appellant’s Memorandum of Appeal is without merit and is an abuse of the court process. The respondent urged that the Appellant’s Memorandum of Appeal be dismissed with Costs to the Respondent herein.

Decision

42. The appellant raised the following grounds of appeal: The Respondent’s decision to refuse the issuance of the certificate on the grounds that Accountants were already represented by other existing unions, namely Kenya Union of Service Employees, Union of Kenya Civil Servants, Union of Non-Governmental Organization Employees, Human Aid Providers, and County Government Workers Union (Kenya), was based on reasons not within the provisions of Section 12(3) of the *akn ke act 2007 14 Labour Relations Act, 2007*.; The Respondent so gravely and seriously erred in law in declining to issue the appellants with a certificate of recruitment on grounds other than those provided for under Section 12 (3) in the sense that, an application under Section 12 of the Act should be declined if the application is incurably defective or if the proposed union name already exists or is so similar to an existing union as to cause confusion. In her letter dated 20th February 2025, the Respondent did not raise any of those grounds as the reasons for declining the issuance of the promoters’ certificate of recruitment. Hence the Respondent’s decision being non-compliant with Section 12 of the Act.; The Respondent erred in law and in fact by denying the Appellants the certificate of recruitment as was applied for; technically and procedurally the Appellants were at the initial stages of applying for a certificate under Section 12 of the Act. The stage for application of Section 14 in the process had not accrued. The Appellants could not be able to fulfil the requirements of Section 13,14,18, 19 and 20 of the *akn ke act 2007 14 Labour Relations Act 2007* without the promoter’s certificate of recruitment under Section 12 of the Act. Thus, the Registrar’s letter dated 20th March 2025 was unlawful.; That Section 12 of the Act is mandatory and is designed to properly regulate the Respondent’s discretion in the exercise of statutory duty. The Respondent gravely acted without jurisdiction by failing to look into the provisions of Section 12 (2) (a) (b) (c) and 3 (a) (b).; That as a consequence, the Respondent has fundamentally and substantively violated the rights of the Appellants to exercise their rights as provided under Articles 36 and 41 of *akn ke act 2010 constitution the Constitution of Kenya*



and breached the provisions of Sections 4 and 12 of the *Kenya Labour Relations Act, 2007* and similarly, has acted in breach of statutory mandate conferred upon her office to discharge fairly, reasonably and not whimsically, capriciously, frivolously and callously.;The errors made by the Respondent to camouflage under the guise of the existence of other trade unions is self-defeatist as the same is not a ground set by Section 12 of the Act. Her actions were meant to breach the rights of the Appellants to establish a trade union as provided under Section 12 of the Act and Article 41 of *Kenya Constitution*, the right and freedom of association as provided under Article 36 of *Kenya Constitution*, and the right to enjoy a fair administrative action as provided under Article 47 of *Kenya Constitution*. ;The Appellants of the proposed trade union have complied with the requirements under Section 12 of the Act. That altogether, the Respondent so gravely and seriously erred in law in arriving at a decision not supported by Section 12 (3) of the Act. Her decision ought to be set aside.

43. In response to the memorandum of appeal, the Respondent filed a Replying Affidavit sworn by ANN K. KANAKE dated 14th April 2025. While the Respondent admits that the Appellant submitted an application for registration for issuance of a promotion certificate for a proposed union under the name “Accountants Union of Kenya”, the same was received, reviewed thoroughly and rejected because accountants are sufficiently and effectively represented by existing trade unions. The Respondent states that under Section 12 (3) of the *Kenya Labour Relations Act* the issuance of the certificate applied for is not automatic; and the list of reasons for rejection of an application for a promotion certificate is not exhaustive.
44. Section 12 of the *Kenya Labour Relations Act* states as follows- ‘12. Establishing a trade union or employers’ organisation
- (1) No person shall recruit members for the purpose of establishing a trade union or employers’ organisation unless that person has obtained a certificate from the Registrar issued under this section.
 - (2) An application for the certificate referred to in subsection (1) shall—
 - (a) be signed by two persons who are promoting the establishment of the trade union or employers’ organisation;
 - (b) specify the name of the proposed trade union or employers’ organisation; and
 - (c) contain any other prescribed information.
 - (3) The Registrar shall issue a certificate within thirty days of receiving an application unless—
 - (a) the application is defective; or
 - (b) the name of the proposed trade union or employers’ organisation is the same as that of an existing trade union or employers’ organisation or is sufficiently similar so as to mislead or cause confusion.”
45. The decision rejecting the application of the Registrar was under section 12(3) to wit- ‘(b) the name of the proposed trade union or employers’ organisation is the same as that of an existing trade union or employers’ organisation or is sufficiently similar so as to mislead or cause confusion.’ The Registrar stated- ‘Our records indicate that there already exist unions representing the group that you seek to represent as per your application namely;



- a) Kenya Union Of Service Employees whose membership as per the Union's Constitution includes all workers employed in cleaning and janitorial services, waste removal processing, recycling services, community and environmental services, healthcare and social services, accounting, auditing and advertising services, computer and related services, office machine and equipment services.
 - b) Union Of Kenya Civil Servants whose membership as per the Union's Constitution shall be open to employees in the Public Service of the Government of the Republic of Kenya commonly known as Public Servants
 - c) Union Of Non-governmental Organisation Employees And Iiuman Aid Providers whose membership as per the Union's Constitution is open to all persons employed in Non-Governmental Organisation and Human Aid Providers
 - d) County Government Workers Union(kenya) whose membership as per the union's Constitution is any person employed in any capacity in any County Government in Kenya.”
46. The Court finds that Registrar for the purposes of promotion certificate was only required to comply with section 12(3) and could only deny the certificate on 2 conditions- defective application and (b) the name of the proposed trade union or employers’ organisation is the same as that of an existing trade union or employers’ organisation or is sufficiently similar so as to mislead or cause confusion.” On examination of the cited unions, Kenya Union Of Service Employees, Union Of Kenya Civil Servants, Union Of Non-governmental Organisation Employees, And Iiuman Aid Providers And County Government Workers Union(kenya), none was the same or sufficiently similar to the proposed union name, namely, Accountant Union of Kenya (AUK).
47. The court agreed with the appellant that the decision on whether there existed other union(s) representing the group that you seek to represent as per your application was not applicable under section 12 but later in section 13 and 14 of the *akn ke act 2007 14 Labour Relations Act* to wit-‘13. Application to register a trade union or employers’ organisation

A trade union or employers’ organisation shall apply to the Registrar for registration within six months of receiving a certificate issued under section 12.

14. Requirements for registering a trade union

- (1) A trade union may apply for registration if—
 - (a) the trade union has applied for registration in accordance with this Act;
 - (b) the trade union has adopted a constitution that complies with the requirements of this Act, including the requirements set out in the First Schedule;
 - (c) the trade union has an office and postal address within Kenya;
 - (d) no other trade union already registered is—
 - (i) in the case of a trade union of employers or of employees, sufficiently representative of the



whole or of a substantial proportion of the interests in respect of which the applicants seek registration; or

- (ii) in the case of an association of trade unions, sufficiently representative of the whole or a substantial”

48. The decision of the Registrar of the Trade Union was thus erroneous for application of the wrong provision of the law in denying the appellant the certificate of promotion under section 12. A certificate of promotion is the official document issued by the Registrar of Trade Unions in Kenya that authorizes promoters to lawfully undertake activities to establish a trade union, serving as the initial legal step before full registration. The Registrar can still reject the registration if on perusal of the proposed union constitution finds existence of unions that represent sufficiently the proposed sector. That can only happen after the issuance of the promotion certificate. The denial of the certificate outside the two reasons stated in section 12 of the *akn ke act 2007 14 Labour Relations Act* that is, defective application and (b) the name of the proposed trade union or employers’ organisation is the same as that of an existing trade union or employers’ organisation or is sufficiently similar so as to mislead or cause confusion amounts to violation of labour rights under Article 41 of *akn ke act 2010 constitution the Constitution* of workers right to –‘2 (c) to form, join or participate in the activities and programmes of a trade union. For the foregoing reasons, the court holds that the decision by the Registrar was unlawful and unjustifiable in an open and democratic society based on freedom of association among others. (Mbogo v Shah).

Conclusion

49. The appeal is allowed. The decision of the Registrar of Trade Unions, A.K. Kanake dated the 20th of February, 2025 is set aside. Judgment is entered for the appellant against the respondent as follows- The appeal herein be allowed.
- i. A declaration that the Respondent failed in her statutory duty when she communicated her decision vide letter dated 20th February 2025 declining to issue the Appellants with the recruitment certificate in terms of Section 12 of the *akn ke act 2007 14 Labour Relations Act*, 2007, her action being bad in law, her letter dated 24.05.2018 be declared invalid, null and void ab initio.
 - ii. A declaration that the fundamental rights and freedom of association of the Appellants were substantively breached by the Respondent’s refusal to issue them with the Certificate of Recruitment sought.
 - iii. An order of mandatory injunction compelling the Respondent to issue the Appellants with the Certificate of Recruitment for the proposed Accountants Union of Kenya as applied in the letter dated 3rd February 2025.
 - iv. The Respondent is to bear the costs of this appeal.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2025.

J.W. KELI,

JUDGE.

In The Presence Of:



Court Assistant: Otieno

Appellant – Guda

Respondent: Kioko

