

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

ELRC APPEAL NO. E140 OF 2025

GILBERT ODOYO AWINO.....APPELLANT

*(Suing on behalf of the proposed Kenya Union of Public Relations and Communications
Professionals (KUPRECOMP))*

VERSUS

REGISTRAR OF TRADE UNIONS.....RESPONDENT

*(Being an Appeal from the decision of the Registrar of Trade Unions dated the 24th of
April, 2025)*

CORAM

Before Lady Justice J.W. Keli

C/A Otieno

JUDGMENT

1. The Appellants herein, being dissatisfied with the decision of the Registrar of Trade Unions dated the 24th of April, 2025 filed a memorandum of appeal dated the 9th of May 2025 seeking the following orders:-

i. The appeal be allowed.

- ii. A declaration that the refusal by the Respondent to register Kenya Union of Public Relations & Communication Professionals (KUPRECOMP) upon it satisfying the requirements of section 12 & 18 of the Labour Relations Act No. 14 of 2007 is contrary to Article 41 (2) of the Bill of rights under the Constitution of Kenya 2010 and the decision is 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 register the union and issue the Certificate of Registration sought.
- iv. An order be and hereby issued quashing the Registrar of Trade Union's decision and orders dated 25th April 2025 as contained in Form D.
- v. An order be and hereby issued directing the Registrar of Trade Unions to register the Kenya Union of Public Relations & Communication Professionals (KUPRECOMP) and issue it with a certificate of registration in Form B set out in the Second Schedule to the Labour Relations Act No. 14 of 2007 within 14 days from the date of these orders.
- vi. Costs of the appeal.
- vii. Any other relief the Court deems just and fit to grant.

GROUND OF THE APPEAL

2. The Respondent erred in law and in fact in holding that persons employed by Public Relations communications practitioners actually carry out tasks related to communications and therefore fall squarely under the sector already represented by Communication Workers Union of Kenya.

3. This Conclusion was not factually and legally correct because PR practitioners are involved in managing an organization's image and reputation through communication and they cannot be lumped with other players like mobile phone accessories sellers, cyber cafes and bureaus, call centres and postal courier who are retail or service-oriented businesses as the Respondents seems to suggest.
4. The said conclusion was further not factually and legally correct because the aims and objectives of the Appellant as captured in their Constitution presented to the Respondent and the mission of the Appellant is to unite all Public Relations and Communications Professionals in institutions across Kenya by advocating for the establishment of sound ethical and professional policies.
5. In any event and without prejudice to the foregoing, the Respondent erred in law and fact in not outlining how persons employed by PR Communications practitioners actually carry out tasks related to communications.
6. The Respondent erred in law and in fact in not outlining how PR communications practitioners fall squarely under the sector already represented by the communications workers Union of Kenya.

7. Besides, the Respondent erred in fact and in law by failing to appreciate that there exists a difference between PR on the one hand and mobile phone service providers, broadcasting houses, mobile phone accessories sellers, cyber cafes and bureaus, call centres and postal courier who are retail or service-oriented businesses represented by COWU-K.
8. The Respondent fell in error in both law and fact by failing to appreciate the very vital role Public Relations Professionals play in the communication industry, a profession that the National Assembly of Kenya sought to legislate on through The Public Relations and Communication Management Bill 2024.
9. The Respondent erred in fact and in law by failing to appreciate that there is no other union of employers and employees that is sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the Appellants seek registration.
10. The Respondent erred in fact and in law relying on the existence of another union to refuse registration of Kenya Union of Public Relations & Communication Professionals; an opportunity she failed to use when drafting a notice for gazetteement inviting objections from them if it appeared to her they are sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the Appellants seek registration in line with Section 14 (1) (d) of the Labour Relations Act.

11. The Respondent erred in fact and in law in finding COWU-K is representative of the interests of PR Professionals without evidence availed before her, or the National Labour Board to show as much.
12. The Respondent erred in facts and in law by violating the Appellant's fundamental Constitutional right to form a trade union and which right can only be limited by law, in this case Section 14 (1) of the Labour Relations Act, 2007, if such an application has been made in contravention of Section 14 (1) (d), (e), (f), (g), (h) and (j) which was not the case herein.
13. The Respondent erred in law and in fact by failing to consider the exclusivity of the powers conferred upon her by Section 31 of the Labour Institutions Act, 2007 and Section 19 (1) and (2) of the Labour Relations Act, 2007.
14. The Respondent erred in fact and in law by failing to consider the public interest issues involved if the proposed trade union was formed, by denying a forum for PR practitioners who are just as vital in the communications cycle.
15. The fundamental right of association of the Appellants and members of the proposed trade union has been violated by the action of the Registrar of Trade Unions in contravention of ILO Conventions, Articles 36 and 41 of the Constitution of Kenya 2010, and Section 4 of the Labour Relations Act.

16. In response to the memorandum of appeal, the Respondent filed a Replying Affidavit sworn by ANN K. KANAKE dated 4th June 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 “Kenya Union of Public Relations and Communications Professionals (KIPRECOMP)”, the same was received, reviewed thoroughly and rejected because there is an existing trade union that is sufficiently representative of the interest sought in the registration. There was an objection in writing from the Communication Workers Union of Kenya, which was forwarded to the appellant vide letter dated 17th January 2025. The appellant responded to the said objection vide letter dated 29th January 2025 (AK-2 were copies of the letters). The decision to reject the application was made by a fully constituted National Labour Board.

BACKGROUND TO THE APPEAL

Appellant’s case in brief

17. The Appellants herein made an application to the Registrar of Trade Unions, the Respondent herein, vide an application letter (Form A) dated 2nd December 2024 requesting registration of a trade union to be known as the Kenya Union of Public Relations and Communications Professionals (KUPRECOMP) in compliance with Section 18 of the Labour Relations Act.
18. The said application fulfilled the requirements for registering a trade union under section 14 of the Labour Relations Act and was processed as satisfactory culminating in the publication of a notice in the Kenya Gazette Notice No. 16887.

19. The Appellants went over and above the requirements as stipulated under Section 14(1)(d) of the Labour Relations Act of making a single publication in a newspaper of national daily wide circulation and effected two publications in the newspaper.

20. The Communication Workers Union of Kenya (COWU) raised an objection to the registration of KUPRECOMP citing publication of the notice in the Weekly citizen as opposed to National Daily newspaper, and the similarity of the name KUPRECOMP to COWU in the following terms:

“...the name of the proposed union KUPRECOMP has an element of communications and intends to recruit employees from the same sector of communications which is sufficiently represented by COWU-K. Similarly, the said proposed name bearing communication in it would severely cause confusion and mislead our current and or potential members thereby creating unwarranted demarcation dispute in the communication industry.”

21. The Appellant argues that the names KUPRECOMP and COWU-K are not similar, and the word “communication” is not exclusive to COWU-K. They state that a precedent for the use of a single word in multiple organizations has been set in other sectors for instance in relation to teachers unions, where the word “teachers” is used by multiple organizations namely KUPPET, KNUT, KEWOTA and KUSNET. Similarly, in the media sector, the word “Media” is used by multiple organizations namely the Media Council of Kenya (MCK) and the Association of Media Women in Kenya (AMWIK) among others.

22. It is the Appellant's case that the claim that the Appellant intends to recruit members from the same sector of communication advanced by COWU-K is not supported by evidence.
23. The Appellant state that they responded to COWU-K's objection comprehensively, but the Respondent failed to appreciate the Appellant's distinct membership pool as stated in its Constitution, that is majorly public relations and communications professionals and practitioners who studied PR or Communications at the University or tertiary level and/or are practising in these fields. COWU-K's membership consists of employees predominantly in the telecommunications industry who may not be PR and communications professionals, and may include persons employed by communications industries, telecommunication organizations, mobile phone providers, mobile phone accessory retailers, cyber cafes and bureaus, call centres, postal courier and allied industries including engineers, clerks and secretaries. On the contrary, the Appellant's membership is specifically comprised of PR and communications professionals who work in any organization, not only in the telecommunications sector. It is therefore the Appellant's case that there is no overlap between its membership and COWU-K's.
24. The Appellant avers that when the Respondent issued them with a promotion certificate under Section 12 of the Labour Relations Act, she was satisfied that the proposed trade union was unique in its name and proposed membership pool.

25. Vide a letter dated 24th April 2025, the Respondent declined the Appellants' application for registration on the premise that the envisaged scope of representation is already sufficiently represented by an existing trade union, being COWU-K.

Respondent's case in summary

26. The Respondent admits that the Appellant submitted an application for registration for issuance of a promotion certificate for a proposed union under the name "Kenya Union of Public Relations and Communications Professionals (KUPRECOMP)", and the same was issued on 26th August 2024. They also admit that the Appellant subsequently made an application to register the union by filling the prescribed FORM A. As required under the Labour Relations Act of 2007, the notice to register was gazetted in the local dailies and Kenya Gazette wherein members of the public were given a notice on the same in case they had any objection. An objection in writing was received from the Communication Workers Union of Kenya and the same was forwarded to the appellant vide a letter dated 17th January 2025. The Appellant responded vide a letter dated 29th January 2025.

27. The entire application was also forwarded to the National Labour Board for their input pursuant to Section 7 (1) © of the Labour Institutions Act 2007 which mandates them to advise the minister on any issue relating to labour relations and trade unionism. The members of the said Board scrutinized the application and unanimously failed to find merit in it.

28. It is the Respondent's position that the Appellant has refused to join the existing 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. They state that registering a similar trade union would lead to inter union rivalry and wrangles due to scrambling of members which will compromise industrial peace and harmony; and having many unions in the same sector also makes it difficult for collective bargaining and obtaining recognition agreements from employers, which eventually works against the interests of the workers.
29. The Respondent cites the case of *Communication Workers Union v Registrar of Trade Unions & Another* eKLR where the Court emphasized the need to prevent unnecessary duplication of trade unions and the importance of maintaining industrial harmony and cohesion. Allowing the registration of the proposed union would result in fragmentation of representation among professionals, contrary to the objectives of the Labour Relations Act and national policy on trade union organization.

DETERMINATION

30. The appeal was canvassed by way of written submissions. Both parties filed.
31. This being 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."

32. 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

33. In their submissions dated 21st July 2025, the Appellant identified the following issues for determination:

- i. Whether the Appellants satisfied all the statutory requirements for the registration of KUPRECOMP.
- ii. Whether the Appellants were denied registration fairly and legally.

- iii. Whether the Registrar of Trade Unions' decision and orders dated 24th April 2025 as contained in Form D ought to be quashed by this Honourable Court and an order be issued directing the Registrar of Trade Unions to register the KUPRECOMP and issue it with a certificate of registration in Form B set out in the Second Schedule to the Labour Relations Act No. 14.
- iv. Who bears the costs of this appeal.
34. The Respondent identified the following issues for determination in their undated submissions:
- i. Whether there is existence of a sufficient representative union.
 - ii. Whether there is precedent on the matter.
 - iii. Whether there is public policy and industrial harmony.
35. The court on perusal of the pleadings and submission of the parties finds the issues to be determined in the appeal is whether it was merited.

Appellant's submissions

36. Article 41(2) (c) of the Constitution of Kenya 2010 makes provision for the rights of workers as follows: - "Every person has the right to form, join or participate in the activities and programmes of a trade union." Article 36 of the Constitution on the freedom of association on the other hand provides as follows: - (1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. (2) A person shall not be compelled to join an association of any kind. (3) Any legislation that requires registration of an association of any kind shall provide that—

(a)registration may not be withheld or withdrawn unreasonably; and (b)there shall be a right to have a fair hearing before a registration is cancelled.” That the Appellants satisfied all the statutory requirements for the registration of KUPRECOMP as was required of them under Sections 12, 14 and 18 of the Labour Relations Act, 2007. As a matter of fact, it was upon the said satisfaction that the Registrar, Respondent herein, after processing the application for registration of Kenya Union of Public Relations & Communication Professionals (KUPRECOMP) as a trade union gave a notice in the Kenya Gazette Notice No. 16887 of the Appellants as a proposed trade union and issues them with a Promotion Certificate on 26th August, 2024. The Certificate authorised the Appellants herein to, in line with Section 12 (3) of the Labour Relations Act, ‘...undertake lawful activities in order to establish a trade union...’. This, to our mind is significant because it is indicative of preliminary approval of the Appellant’s registration. It was required of the Appellants to make the application for the registration, to the Registrar, of the trade union within six months of the 26th August, 2024 date; which the Appellants herein did. When the Application was placed for consideration before the National Labour Board on 23rd April, 2025 in line with Section 19 of the Labour Relations Act, the Board did not return a verdict of the Appellants having not complied and/or satisfied any of the statutory requirements for the registration of KUPRECOMP The ONLY reasons for the refusal to register the Appellants according to the communication of 25th April 2025 was twofold; - 1. the envisaged scope of representation is already sufficiently represented by an existing trade union being the Communication workers Union of Kenya. 2. There is no evidence adduced to show that the Applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector.’

37. The issue of the options that the Respondent herein has, once Applicants comply with all the statutory requirements for the registration of a Trade Union has sufficiently been canvassed all the way to the Supreme Court of Kenya. In *Petition 4 of 2018, Kenya Plantation & Agricultural Workers' Union v Omulama & 9 others (The Kenya Export Floriculture, Horticulture and Allied Workers' Union (KEFHAU) Represented by its Promoters) (Petition 4 of 2018) [2020] KESC 59 (KLR) (23 January 2020) (Judgment)* the Supreme Court had the following to say; - 'It is clear in our mind that once an application for registration of a trade union has been made and the same is compliant with the aforesaid Sections and the Constitution, the Registrar of Trade Unions has no choice but to register the same. The only reason 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 same Act. (emphasis ours). That even without belabouring this particular issue and drawing guidance from the Supreme Court decision, the Respondent herein had no choice other than to register the Appellants unless if the Appellants application was not in conformity with Section 14 (1) (d) of the Labour Relations Act. Issue No. 2; whether the appellants were denied registration fairly and legally. We draw from the wisdom of your brother Judge James Rika on the aspect of gatekeeping in the Labour movement. In *Kenya Concrete, Structural, Ceramics Tiles, Wood Plys and Interior Designs Workers Union v Registrar of Trade Unions & another* [2013] eKLR the good judge had the following to say; The Labour Movement has traditionally been a very close-knit family, where interests have become vested over many years, with the main players bent on closing out new entrants. There is a perception that the established players are wielding their power at the National Labour Board to frustrate registration of new trade unions, which explains the growing number of Applicants seeking

the intervention of the Court. When groups of people have built a dominant position, they tend to use all means to suppress any move forward that threatens their hegemony. This in the view of this Court plays against the purpose of the Constitution. (emphasis ours) It is the common position of the parties that the appellants were denied registration for the following reasons; 1. the envisaged scope of representation is already sufficiently represented by an existing trade union being the Communication workers Union of Kenya. 2. There is no evidence adduced to show that the Applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector.'

38. The question that this Court must then answer is whether the reasons provided were reasonable, plausible, fair and legal and whether any evidence was advanced to support the denial. On reason no. 2 as advanced by the Respondent for the refusal that is; -'...that there is no evidence adduced to show that the Applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector.' This reason is not only absurd but equally illegal and unconstitutional. It is unconstitutional because the Constitution at Article 36 (1) and (2) provide as follows; - (1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. (2) A person shall not be compelled to join an association of any kind. From this constitutional provision, it matters not whether the Applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector; they have the freedom of association and a right to form, join or participate in the

activities of an association of any kind. It matters not whether the Applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector; they have the freedom of association and a right not to be compelled to join an association of any kind. We have further properly appraised ourselves with the provisions of Section 14 (1) (d) of the Labour Relations Act which provides guidance on the requirements for registering a trade union. For context we shall reproduce the said section.

14. Requirements for registering a trade union (1) A trade union may apply for registration if;

- (a) (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 proportion of the trade unions eligible for membership thereof: Provided that the Registrar shall, by notice in the Gazette and in one national daily newspaper with wide circulation, notify any registered trade union, federation of trade unions or employers' organisations which appear to him to represent the same interest as the applicants of the receipt of such application and shall invite the registered trade union federation of trade unions or employers' organisation concerned to submit in writing, within a period to be specified in the notice, any objections to the registration; From the foregoing, we submit that there is absolutely nowhere in the said section of the law or anywhere in the Act where it provides that registration of a trade union shall be denied because the Applicant did not demonstrate that they 'suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector.' That is why in Supreme Court of Kenya Petition 4 of 2018, Kenya Plantation &

Agricultural Workers' Union (supra) the Court was very categorical that; - 'The only reason 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 same Act. (emphasis ours). The reason therefore propounded by the Respondent is not only unconstitutional but also contra-statute and should not be allowed to stand.

39. Back to reason number one for the denial of registration. The Registrar in her wisdom noted that the envisaged scope of representation of the Appellants herein is already sufficiently represented by an existing trade union being the Communication workers Union of Kenya. The Respondent then goes further and states that under its Constitution, the communication Workers Union of Kenya represents persons employed by communication industries, telecommunication organisations, mobile phone service providers, mobile phone accessories sellers, cyber cafes and bureaus, call centres, postal, courier and allied industries. But the pertinent question relevant to this issue is, what was this envisaged scope of representation that the Appellants sought to represent? This can be decrypted from the Mission of the Appellant's Constitution which states that its mission is; - To unite all Public Relations & Communications Professionals in institutions across Kenya by advocating for the establishment of sound ethical and professional policies. We are committed to ensuring job security and providing fair solutions to our members' grievances through lawful and effective union activities and ensuring fair representation in labour matters. On the other hand, the communication Workers Union of Kenya, (COWU) the Union that the Respondent alleges sufficiently represents the scope sought to be registered by the Appellant states its mission to be; - To be a well-focused, Viable, Effective and strong member-based Trade Union. In

addition, to fully organize and unionize the working society in the Communication Sector (Industries). (See their website at <https://www.cowukenya.or.ke/index.php/about-us>) COWU further describes itself as; - ‘... an Industrial Trade Union registered by the Kenya Government. We represent workers in the Telecommunications Industries in the Country and those involved in the Postal and mail services. Currently our major organizations engaged in such services include Telkom Kenya Limited (TKL), Postal Corporation of Kenya (PCK), Kenya Broadcasting Corporation (KBC), Communication Authority of Kenya (CAK), Midcom Limited, Ison BPO, Fones Direct Limited, Egypro East Africa Limited, and Data Rush Services Limited.’ Article 7.0 of the Appellant’s constitution is very clear on where it draws its membership from and that is from; - ‘.....PR & Communications Practitioners, professionals who have studied PR & Communications or Public Relations from Universities and colleges or have attained relevant PR certifications and work in institutions/ corporates of good standing and are certified, licensed (upon enactment of necessary laws) or are authorized to Practice Public Relations in Kenya, shall have the right of admission to any of the branches of the Union upon payment of the entrance fee as provided in the rules of the union...’ This, to our mind provides sufficient guidance as to the Scope of representation of either union. 39. While adjudicating on this very issue of scope of representation in *Angaha and Others v. Registrar of Trade Unions* [1973] E.A. and *Kenya Tea Workers Union and 7 others v the Registrar of Trade Unions* [2001] KLR. this Court gave the following guidance which we submit is relevant to the instant Appeal; - ‘.....in order to be satisfied that the interests of a proposed trade union are sufficiently or substantially represented by another trade union already registered, the Registrar is not bound on a preponderance of probabilities, but only on a scintilla of evidence.’ 40. Further, in the matter *Nahason Ndiamae & 9 others v Registrar of Trade Unions* [2017] eKLR this Court directed that the Registrar was obligated

to “demonstrate compelling reasons supported by tangible evidence” that unions that object to registration of a rival union “sufficiently represent the whole or a substantial proportion of the interests of the sector in question.” Unfortunately, the Registrar neither provided compelling reasons supported by tangible evidence to show that the interests of the Appellant herein are sufficiently or substantially represented by COWU. That evidence was never provided then and neither has it been brought to this Court in the Respondents Response to the Appeal. The Respondent is however faulting the Appellants of having refused to ‘join the existing registered trade union’ and further stating that ‘having similar trade unions would lead to inter union rivalry and wrangles due to scrambling of members....’ This to us is not evidence for refusal to register but a very poor attempt at justifying why the Respondent refused to register the Appellants. To appreciate this, we hereby outline the difference in the scope of representation between the two unions as follows; While COWU-K Constitution states that they are an Industrial Trade Union registered in Kenya that represents workers/employees in the Telecommunications Industries in the Country and those involved in the Postal and mail services, KUPRECOMP Constitution states that it represents PR & Communications Practitioners, professionals who have studied PR & Communications or Public Relations from Universities and colleges or have attained relevant PR certifications and work in institutions/ corporates of good standing and are certified, licensed (upon enactment of necessary laws) or are authorized to Practice Public Relations in Kenya. In our mind and from what we have highlighted hereinabove, KUPRECOMP is a specialist Trade Union, with the object of advancing the rights and interests of a specialist group of Lawyers PR & Communications Practitioners, which cannot be lumped together with other Public Service Trade Unions and workers in the Telecommunications Industries in the Country and those involved in the Postal and mail services. The appellants, are Public Relations &

Communications Professionals. They represent a larger group of Public Relations & Communications Professionals working independently, for various organisations and/or government and government departments. There is no reason whatsoever why the Appellants, who are Public Relations & Communications Professionals, and which is an identifiable community of professional and with identifiable interests, should be denied the right and freedom to associate. We submit that the Registrar was not justified in finding that the envisaged scope of representation by KUPRECOMP is already sufficiently represented by an existing trade union being the Communication workers Union of Kenya, (COWU). We further submit that the Registrar was not justified in finding that persons employed by PR communications practitioners actually carry out tasks related to communications and therefore fall squarely under the sector already represented by communication Workers Union of Kenya. Further, that the Registrar was not justified in finding that there is no evidence adduced to show that the Applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector. Lastly, that the Registrar's decision infringed on the Appellants constitutional rights under Article 36 and 41 of the Constitution of Kenya 2010 and the Labour Relations Act and hence her actions were illegal and unfair. To this end therefore your very humble Appellants pray that you give declaratory Orders to the effect that the refusal by the Respondent to register Kenya Union of Public Relations & Communication Professionals (KUPRECOMP) upon satisfying the requirements of section 12 & 18 of the Labour Relations Act No. 14 of 2007 is contrary to Article 41 (2) of the Bill of rights under the Constitution of Kenya ,2010 and the decision is null and void ab initio. Issue No. 3; Whether the Registrar of Trade Unions' decision and Orders dated 25th April 2025 as contained in Form D ought to be quashed by this Honourable Court and an Order be issued

directing the Registrar of Unions to register the Kenya Union of Public Relations & Communication Professionals (KUPRECOMP) and issue it with a certificate of Registration in Form B set out in Second Schedule to the Labour Relations Act No. 14.

40. That having arrived at the inevitable conclusion that the refusal by the Respondent to register Kenya Union of Public Relations & Communication Professionals (KUPRECOMP) upon satisfying the requirements of section 12 & 18 of the Labour Relations Act No. 14 of 2007 is contrary to Article 41 (2) of the Bill of rights under the Constitution of Kenya ,2010 and the decision is null and void ab initio, there can only be two things to be done. Giving an Order; -
- i. Quashing the Registrar of Trade Unions' decision and Orders dated 25th April 2025 as contained in Form D;
 - ii. Directing the Registrar of Unions to register the Kenya Union of Public Relations & Communication Professionals (KUPRECOMP) and issue it with a certificate of Registration in Form B set out in Second Schedule to the Labour Relations Act No. 14 of 2007 within 14 days from the date of these Orders. For the reason that the role of registration and regulation of Trade Unions vests with the Registrar. She owns the decision to register or not to register. This is why proceedings on refusal to register, are initiated in court against her, and not the National Labour Board. She is not an agent of the National Labour Board.

Respondent's submissions

41. On the existence of a sufficient representative union =The main issues is whether the interests sought to be represented by KUPRECOMP, are already covered by an existing union. The registrar and National Labour Board found that the proposed Kenya union of Public Relations

and communications professionals (KUPRECOMP). Under section 14(1)(d) of the labour act prohibits registration of a new union where a there is an existing union is sufficiently represented.

42. Whether there is precedent on the matter. The court have determined and demonstrated that where by there is an existing union that represents sufficiently there is no need for another union as in the various case law below: In Communication Workers Union v Registrar of Trade Unions & Another [2016] eKLR, the Court emphasized the need to prevent unnecessary duplication of trade unions to maintain industrial harmony and cohesion.(The Court did not trace the decision online and hence no access) In Kenya Union of Courier and Allied Workers v Registrar of Trade Unions [2018] eKLR, the Court upheld the Registrar's refusal to register a new union where the sector was already represented, reinforcing the principle that the existence of a sufficiently representative union is a bar to registration In Nicky Njuguna & Others v Registrar of Trade Unions [2019] eKLR, the Court reiterated that the Registrar must provide specific reasons for refusal, but also recognized that registration can be refused if statutory requirements are not met, including the existence of a sufficiently representative union. Whether there is public policy and industrial harmony Allowing multiple unions in the same sector would lead to inter-union rivalry, wrangles due to scrambling of members and which does augur well for industrial peace and contrary to the objectives of the labour Relation Act Communication Workers Union v Registrar of Trade Unions & Another [2016] e KLR.

Decision

The relevant legal framework

43. Article 41(2)(c) of the **Constitution** makes provision for the rights of workers as follows:
“Every person has the right to form, join or participate in the activities and programmes of a trade union.”
44. Article 36 of the **Constitution** on the freedom of association provides as follows:(1)Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.(2)A person shall not be compelled to join an association of any kind.(3)Any legislation that requires registration of an association of any kind shall provide that--(a)registration may not be withheld or withdrawn unreasonably; and(b)there shall be a right to have a fair hearing before a registration is cancelled.”
45. Article 24 of the **Constitution** makes provision for limitation of rights and fundamental freedoms in the following terms: “A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including--(1)(a)the nature of the right or fundamental freedom;(b)the importance of the purpose of the limitation;(c)the nature and extent of the limitation;(d)the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and(e)the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.(2)Despite clause (1), a provision in legislation limiting a right or fundamental freedom --(a)in the case of a provision enacted or amended on or after the effective date, is not valid unless the legislation specifically expresses the intention to limit that right or fundamental freedom, and the nature and extent of the limitation;(b)shall not be

construed as limiting the right or fundamental freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation; and(c)shall not limit the right or fundamental freedom so far as to derogate from its core or essential content.(3)The State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this article have been satisfied.(4)The provisions of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Muslim law before the Kadhis' courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.(5)Despite clause (1) and (2), a provision in legislation may limit the application of the rights or fundamental freedoms in the following provisions to persons serving in the Kenya Defence Forces or the National Police Service--(a)article 31 – Privacy;(b)article 36 – Freedom of association;(c)article 37 – Assembly, demonstration, picketing and petition; (d)article 41 – Labour relations;(e)article 43 – Economic and social rights; and(f)article 49 – Rights of arrested persons.”

46. On the requirements for the registration of Trade Unions, the ***Labour Relations Act***, 2007 provides as follows:“12.(1)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. ...13.A trade union or employers’ organization shall apply to the Registrar for registration within six months of receiving a certificate issued under section 12.”14.(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 proportion of the trade unions eligible for membership thereof:-Provided that the Registrar shall, by notice in the Gazette and in one national daily newspaper with wide circulation, notify any registered trade union, federation of trade unions or employers’ organizations which appear to him to represent the same interest as the applicants of the receipt of such application and shall invite the registered trade union federation of trade unions or employers’ organization concerned to submit in writing, within a period to be specified in the notice, any objections to the registration; (e)subject to subsection (2), only members in a sector specified in the constitution qualify for membership of the trade union;(f)the name of the trade union is not the same as that of an existing trade union, or sufficiently similar so as to mislead or cause confusion;(g)the decision to register the trade union was made at a meeting attended by at least fifty members of the trade union;(h)the trade union is independent from the control, either direct or indirect, of any employer or employers’ organizations; and(i)the trade union’s sole purpose is to pursue the activities of a trade union.(2)Notwithstanding the provisions of subsection (1)(d), the Registrar may register a trade union consisting of persons working in more than one sector, if the Registrar is satisfied that the constitution contains suitable provisions to protect and promote the respective sectoral interests of the employees.”Kenya has not ratified the Convention No. 87 Freedom of Association and Protection of the Right to Organise, 1948 which Guarantees the right to establish and join organizations without previous authorization by the state.

47. The Supreme Court in Kenya Plantation & Agricultural Workers' Union v Omulama & 9 others [2020] KESC 59 (KLR) pronounced itself on the registration of trade unions as follows-'34. *We have carefully perused the provisions of sections 12, 13 and 14 of the Employment and Labour Relations Act and other relevant statutory and Constitutional provisions in respect to the issue in question. It is clear in our mind that once an application for registration of a trade union has been made and the same is compliant with the aforesaid sections and the Constitution, the Registrar of Trade Unions has no choice but to register the same. The only reason 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 same Act. It is not disputed that the 1st to 9th respondents' trade union met the criteria for registration as set out in sections 12, 13 and 14. The only reason the appellant challenged the registration of the respondents' union was that it contravened section 14(1)(d) of the Labour Relations Act. We will therefore limit ourselves to the said section.*

35. *We have to make it clear from the onset that section 14(1)(d) of the Labour Relations Act does not operate in a vacuum. The Registrar has to make an inquiry on any objection before arriving at a decision to reject or allow an application. In the instant case, we are convinced that the inquiry made by the trial Judge based on the evidence presented before her, to the effect that the decision of the 10th respondent in rejecting the application for registration of the 1st to 9th respondent's Union, was largely based on the provisions in the repealed Constitution; that the limitations under article 24 of the Constitution did not apply with regard to the 1st to 9th respondents' union; and that there was a fundamental difference between what comprises plantations and agriculture industries, as against the*

floriculture and horticulture industries was proper. This position was also upheld by the learned Judges of Appeal.’’ (emphasis given).

48. The appellant contended that contrary to the decision of the Registrar of Trade Unions that their proposed group is sufficiently represented by the Communication Workers Union, that is not the case, taking into account their proposed constitution and that of the Communication Workers Union. The appellant was issued with a promotion certificate on the 26th August 2024 under section 12(3) of the Labour Relations Act 2007 which stated as follows- *’It is hereby certified in accordance with section 12(3) of the Labour Relations Act, 2007 that the proposed KENYA UNION OF PUBLIC AND COMMUNICATIONS RELATIONS (KUPRECOMP) has been authorized: PROFESSIONALS*

a) To undertake lawful activities in order to establish a trade union.

b) That application for the registration of the trade union shall be made to the Registrar within six months of the date hereof.

DATED this 26th day of August,2024. “On the 25th April 2025 following application for registration of proposed union ag Registrar of Trade Unions communicated rejection of the registration to the appellants and annexed the following form D- ‘FORM D (S.20)

THE LABOUR RELATIONS ACT

NOTIFICATION OF REFUSAL OF REGISTRATION

It is notified that the registration of Kenya Union of Public Relations and Communications Professionals (KUPRECOMP) as a trade union under the Labour Relations Act is refused. The grounds of the refusal are as follows

The envisaged scope of representation is already sufficiently represented by an existing trade union being the Communication Workers Union of Kenya. Under its constitution, the Communication Workers Union of Kenya represents persons employed by communication industries, telecommunication organizations, mobile phone service providers, mobile phone accessories sellers, cyber cafes and bureaus, call centers, postal, courier and allied industries.

Section 14 (1) (d) (i) of the Labour Relations Act, 2007 provides that a trade union may apply for registration if no other trade union already registered is sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration.

It is noted that persons employed by PR communications practitioners actually carry out tasks related to communications and therefore fall squarely under the sector already represented by Communication Workers Union of Kenya.

Further, there is no evidence adduced to show that the applicants suffer from any substantial deficiency in representation from the existing union or that they were denied membership of the existing union to warrant the registration of another union in the same sector.

Dated this 24th day of April, 2025.’’

49. The Supreme Court in Kenya Plantation & Agricultural Workers’ Union v Omulama & 9 others [2020] KESC 59 (KLR) stated the only reason for refusal for registration upon

compliance with legal requirements is “The only reason 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 same Act.” This is consistent with the decisions cited by the respondent of *Communication Workers Union v Registrar of Trade Unions & another* (2016)e KLR, (The court did not access the decision online) *Kenya Union of Courier and Allied Workers V Registrar of Trade Unions* (2018)e KLR and *Nicky Njuguna & others v Registrar of Trade Unions* (2019)e KLR. The Registrar in FORM D stated the representation of the Communication Workers Union to be – *‘Communication Workers Union of Kenya represents persons employed by communication industries, telecommunication organizations, mobile phone service providers, mobile phone accessories sellers, cyber cafes and bureaus, call centers, postal, courier and allied industries.’* The proposed union- Kenya Union of Public Relations and Communication professionals’ representation scope appeared, to the court, to be as stated in its constitution Article 4 (h)- to negotiate with the government agencies , any public or private institutions offering PR related services and (k)to promote and protect the right of PR and communications professionals serving in PR and Communications Industry in Kenya. To the court, this was a wide scope and included the scope covered by the Communication Workers Union. The scope of the Communication workers union appeared to the court to be focused to communication industries, telecommunication organization, mobile service provides , mobile phone accessories sellers , cyber cafes and bureaus, call centers, postal, and allied industries. The court then finds there is a gap in the PR and communication areas outside these specific arears stated in the constitution of Communication Workers Union like government and other private sectors PR professionals. The court found the omnibus restriction was not justified taking into account

the provisions of Article 24(1) of the Constitution to wit- ‘A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including--(1)(a)the nature of the right or fundamental freedom;(b)the importance of the purpose of the limitation;(c)the nature and extent of the limitation;(d)the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and(e)the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.’” The test of sufficiency in representation was not met as the Communication Workers Union focused on specific sectors. The court then allows the appeal, restricting the proposed union to the scope of areas not specifically mentioned in the scope of the Communication Workers Union. The proposed constitution to be amended to include a clause for the scope of the proposed union and specifically not to include the following sectors stated in the FORM D by the Registrar of unions namely - telecommunication organizations ,mobile service providers , mobile phone accessories sellers , cyber cafes and bureaus, call centers, postal ,courier and allied industries already represented by the Communication Workers Union. The Communication Workers Union's scope of the communication industry is a general term, and the court in exercise of its judicial discretion cannot uphold the rejection of the proposed union based on the general term, communication, in an open and democratic society based on human dignity, equality and freedom.

CONCLUSION

50. The court allows the appeal on condition that the Constitution of the proposed union is amended to define the scope of representation and specifically exclude telecommunication organizations ,mobile service providers , mobile phone accessories sellers , cyber cafes and bureaus, call centers, postal ,courier and allied industries which are sufficiently represented by the Communication Workers Union and submit the amended constitution to the Registrar of Trade unions.
51. The court issues an order quashing the Registrar of Trade Unions’ decision dated 25th April 2025 as contained in form D.
52. The court issues an order directing the Registrar of Trade Unions to register the proposed Kenya Union of Public Relations and communication professionals (KUPRECOMP) and issue it with a certificate of Registration in FORM B set out in second schedule to the Labour Relations Act within 14 days of receipt of the amended constitution as stated above.
53. The court makes no order as to costs as the appeal was allowed with conditions to the appellant.
54. It is so Ordered.

**DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH
DAY OF NOVEMBER, 2025.**

**J.W. KELI,
JUDGE.**

IN THE PRESENCE OF:

Court Assistant: Otieno

Appellant – Ashioya

Respondent: Absent

ORIGINAL