



**Gazemba & another v Registrar of Trade Unions (Appeal E093 of 2025)
[2025] KEELRC 3508 (KLR) (5 December 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3508 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E093 OF 2025
NJ ABUODHA, J
DECEMBER 5, 2025**

BETWEEN

MELXADECK GAZEMBA 1ST APPELLANT

DAVID ODUNGA 2ND APPELLANT

AND

THE REGISTRAR OF TRADE UNIONS RESPONDENT

JUDGMENT

1. Through the Memorandum of Appeal dated 3rd April 2025, the Notice of Motion dated the 3rd April, 2025 the Appellants approached this court under Certificate of Urgency under Articles 36 and 41 of *the Constitution* of Kenya 2010 and section 12 and 30 of the *Labour Relations Act*, 2007 seeking for an order to issue compelling the Respondent to issue a certificate for purposes of establishing a trade union to the Appellants forthwith for purposes of recruiting members to the intended union.
2. The court on 8th April, 2025 directed the suit to proceed as a cause.
3. The Appellants averred as follows: -
 - a. The Appellants/Promoters of the intended Trade Union sought to establish a trade union vide an application letter to the office of the Respondent dated 21st January, 2025 requesting her to issue them with a certificate of establishing a Trade Union by the name Kenya National Union of Cement and Allied Employees (KNUCAE) within the provisions of section 12 of the *Labour Relations Act*, 2007.
 - b. The Respondent declined to issue the said certificate to the Appellants vide her letter dated 4th February, 2025 citing the provisions of section 14(1) of the *Labour Relations Act* which provides that a trade union cannot be registered where there is another trade union already



registered that is sufficiently representative of the whole or of a substantial proportion of the interest in respect of which the Appellants seek registration.

- c. The Respondent declined to issue a certificate of establishment to the Appellants on grounds that there exists two trade unions representing the group that the Appellants seek to represent namely Kenya Building Construction, Timber and Furniture Industries Employees Union and Kenya Concrete Structural, Ceramic Tiles, Woodplys and Interior Design Workers Union.
 - d. The Appellants wrote another letter to the Respondent dated 27th February, 2025 in which they stated that their application was in respect to issuance of a certificate of establishment (Promoting a trade union) pursuant to the provisions of section 12 of the *Labour Relations Act* and not for the certificate of registration which is provided under the provisions of section 14 of the same act.
 - e. The provisions of section 14(1) relied upon to deny them certificate of establishment did not apply to their application instead the only applicable law under the circumstances was the provisions of section 12 which requires the Respondent to only check whether the name of the proposed Trade Union is similar to the name of an existing Trade Union so as to mislead or cause confusion and also whether the application was defective.
 - f. The Appellants reiterated that the provisions of section 14(1) of the *labour Relations act* would only apply at the time they lodge a formal application for registration of the proposed union and during which time the Respondent would issue a gazette notice inviting registered unions to file their objections if any against the registration of an intended trade union.
 - g. The Appellant's referred the Respondent to the courts judgments in Nairobi ELRC Appeal No. 7 of 2016 and Nairobi ELRC Appeal No. 12 of 2016 in which the court settled the issue on the issuance of the certificate to promote a trade union. That the Respondent was furnished with all the required information to reconsider her position and issue the Appellants with a certificate of promoting their union yet she maintained her earlier position vide the letter dated 3rd March, 2025 by refusing to issue the certificate of establishment and cited provisions of section 30 of the *Labour Relations Act*.
 - h. The Respondent had no valid reason of denying the Appellants a certificate to establish a trade union in so far as the provisions of section 12 of *Labour Relations Act* were concerned. That the Respondent put the cart before the horse by applying the provisions of section 14(1) of the act to deny the Appellants a certificate of promoting/establishing a trade union and yet the said provision was only applicable at the time an already established union was seeking to be registered.
 - i. The Respondent misapplied the law to unreasonably deny the Appellants their constitutional right of establishing a trade union as provided for under Articles 36 and 41 of *the Constitution* and section 4 of the *Labour Relations Act*.
 - j. The court should move to assert its authority and issue such compelling declaratory Orders upon the Respondent to safeguard *the Constitution* and Labour Laws of Kenya. That if the orders sought are not granted the Appellant's fundamental rights and freedoms as provided for under the Provisions of Articles 36 and 41 of *the Constitution* shall continue to be unreasonably and blatantly infringed.
4. The Appellants prayed for a declaration that the actions of the Respondent of refusing to issue a certificate of establishment were unconstitutional, unlawful and unfair and the Respondent be



directed to issue a certificate of establishment to the Appellants/ promoters pursuant to the Provisions of section 12 in order to commence recruitment of members.

5. The Respondent in reply to the Appeal and the notice of motion application filed the Replying Affidavit sworn on 8th May, 2025 by Ann Kanake the acting registrar of trade unions. The Respondent averred as follows: -
- a. The Appellants applied for registration for issuance of a promotion certificate for a proposed union under the name Kenya National union of Cement and Allied Employees (KNUCAE) via a letter dated 21st January, 2025
 - b. That due process for granting a promotion certificate was followed. That the process of issuance of 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 Labour Relations Act and finally grant or refusal to grant a promotion certificate.
 - c. The Respondent received, reviewed and replied to the Appellants letter dated 21st January, 2025 vide the letter dated 4th February, 2025. In the said letter addressed to the promoters who are the Appellants herein the Respondent notified them that their application dated 21st January, 2025 was unsuccessful and gave reasons thereof.
 - d. That part of the reasons advanced was that the sector the proposed union by the Appellants seeks to represent were employees in the cement industry who were already sufficiently and effectively represented by existing registered trade unions including Kenya Building, Construction, Timber and Furniture Industrial Employees Union whose membership as per their unions constitution is open to all employees engaged in the activities and trades of building, construction and precast concrete and the Kenya Concrete Structural, Ceramic Tiles, Woodplys and Interior Design Workers Union whose Membership as per the Union's constitution was open to all employee engaged in the activities of concrete products.
 - e. That by dint of section 12(2)(c) of the Labour Relations Act where an application shall contain any other prescribed information it is was the Respondent's view that section 12(2)(a) and (b) of the Labour Relations Act on reasons for rejection for issuance of a promotion certificate was not exhaustive. Section 12(3) was not to be read or applied in solitude but as a whole for the purposive effect of registration of any trade union.
 - f. That the said section 12(3) provides that the Respondent is required to issue certificate to promote the establishment of a trade union and the same was not automatic but subject to conditions listed under section 12(3) of the act that the application be not defective and the proposed name be not the same as that of an existing trade union or sufficiently similar to an existing one so as to mislead or cause confusion.
 - g. 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. This is to ensure 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 to avoid union rivalry and wrangles and therefore enhance harmony in industrial relations.
 - h. 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. 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.

- i. That the registration of a trade union is a process not an event and it starts at the issuance of a promotion certificate that must comply with all the requirements for registration outlined in the *Labour Relations Act*. That the Registrar has the necessary discretion to refuse any application or issuance of a certificate to promoters if the scope upon which the applicants are seeking registration is sufficiently represented by any other existing trade unions like this case.
 - j. 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 abused or exercised capriciously.
 - k. That the rights under Articles 36 and 41 of *the Constitution* and sections 14 and 12 of the *Labour Relations Act* are not absolute and can be limited in accordance with Article 24(1) of *the Constitution*. That the courts are also of the view that among the 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 Relations Act*. That the Supreme Court pronounced itself on this issue in *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)*.
 - l. 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.
 - m. That registering a similar trade union would lead to inter union rivalry and wrangles due to scrambling of members which does not augur well for industrial peace and harmony. That having many unions in the same sector also makes it difficult for collective bargaining and obtaining recognition agreements from employers.
 - n. That this would eventually work against the interests of the workers as the employers would take advantage of the inter union rivalry and wrangles which would undermine the interests of workers. That 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.
6. The Appeal was disposed of by written submissions by consent of parties on 20th May, 2025.

Appellants' Submissions

7. The Appellants through Melxadeck Gazemba filed written submissions dated 27th May, 2025 and submitted that they agreed that the two registered trade unions referred by the Respondent exist but denied that the said trade unions represent the interests of the employees working in the cement and allied industries.
8. The Appellants submitted that the Respondent has failed to explain why the two trade unions were registered to allegedly represent the same category of employees if at all a proposed trade union cannot seek registration when there is already a registered trade union representing the same category of employees.



9. The Appellants submitted that the Appellants' application was at its first stage which was under the mandatory provisions of Section 12 of the [Labour Relations Act](#), 2007 and had not reached the second and third stage where the Respondent would have applied the provisions of Section 14 of the [Labour Relations Act](#), 2007 on registration of a trade union.
10. The Appellants submitted that the reason the Respondent relied upon is not among the reasons specified under section 12(3) of the [Labour Relations Act](#), 2007 as applicable reasons available to her to deny the Appellants the certificate to promote their trade union.
11. The Appellants submitted that at the first stage, the Respondent is only supposed to check whether the application for a certificate to establish a trade union was defective and also whether the name of the proposed trade union was the same or similar to that of an existing trade union as to mislead or cause confusion. The Respondent has not alleged the above.
12. The Appellants submitted that at the second stage, the promoters would lodge a formal application for registration of their trade union which had already recruited members. The Respondents will then be required to invite the two trade unions or anybody else through a gazette notice who would wish to object to the registration of the already established trade union.
13. The Appellants submitted that the Respondent decided to hold brief for the two trade unions by objecting on their behalf without even providing Recognition Agreements, or even the Collective Bargain Agreements (CBA)s between the cement manufacturing companies and the two trade Unions. The membership of the two trade unions' Constitution does not reflect the membership from the intended sector and that the members of the two trade unions are drawn from the companies that use the products from the cement industries.
14. The Appellants submitted that the Appellants disagreed with the Respondent that she had the discretion to refuse to issue a certificate to establish a trade union and that it is the law which determines the outcome of every application and not the discretion of the Respondent.
15. The Appellants submitted that the provisions of Section 12(3) of the [Labour Relations Act](#), 2007 are written in mandatory terms and they do not give any discretion to the Respondent to issue a certificate of establishment to Applicants. That the Respondent averred that while scrutinizing the application to promote/establish a trade union she is required to check on the scope of representation and the sector which the Applicants wish to recruit members from however, the court had not been explained and /or informed why there a number of trade unions registered to represent workers in same sector in a number of sectors like education, transport, health and hospitality.
16. The Appellants submitted that the Respondent referred to the Petition No. 4 of 2018 between the Kenya Plantation and Agriculture Workers Union v Kenya Export Floriculture, Horticulture and Allied Workers Union. The Kenya Export Floriculture, Horticultural and Allied Workers Union applied for a certificate for establishment and was issued. The Application went through the entire process provided for under the provisions of the [Labour Relations Act](#) though the Applicants were denied registration. The Appellants were aggrieved by the decision of the Registrar and consequently moved to the Employment and Labour Relations Court at Nairobi to which the court ordered the office of the Respondent to register the Applicants hence this procedure supports the Appellants' application.
17. The Appellants submitted that the Respondent by applying the provisions of Section 14(1) of the [Labour Relations Act](#) unreasonably denied the Appellants/Promoters their constitutional right of establishing a trade union and yet the said provisions are only applicable at the time an already established union is seeking to be registered.



Respondent's Submissions

18. The Respondent's through Lorna Orege, State Counsel at the office of the Attorney General & Department of Justice filed written submissions dated 28th May, 2025 and submitted that the Respondent performs her duties diligently and therefore the refusal to issue certificate of establishing a trade union was fair and lawful. Counsel relied on Section 14(1) of the [Labour Relations Act](#) to submit that the law supports the Respondent's position in refusing to issue a certificate of registration provided that there are two unions that already exist and are registered as seen above.
19. Counsel relied on Section 12(3) of the [Labour Relations Act](#) 2007 and the case of Leonard Omondi Aluku & 3 others v Registrar of Trade Unions and Another [2018] to submit that a trade union could be rejected due to existence of a similar trade union. Counsel further relied on among the case stipulated at the Respondent's replying Affidavit above of Kenya Plantation & Agricultural Workers Union (supra) to submit that among the reasons for refusal of registration was where there was 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 Relations Act](#).
20. Counsel further referred to the case at the Replying Affidavit of Communication Workers Union v Registrar of Trade Unions and another [Supra] to submit that there was need to prevent unnecessary duplication of trade unions.
21. Counsel relied on Articles 36(3) and Article 24(1) of [the Constitution](#) of Kenya to submit that the Registrar did not refuse to issue a Certificate of Registration unreasonably but it was on grounds that there was already existence of registered trade unions in the area of interest. In reference to Article 24(1), counsel submitted that the freedom of association is limited to the extent of which the law provides. In this case, it is limited by Section 14 of the [Labour Relations Act](#) 2007.

Determination

22. The court has reviewed and considered the pleadings and submissions by the parties and the authorities relied herein and is of the view that this is a single issue dispute on whether the respondent was justified in refusing the application by the appellant to promote and eventually form a trade union for reasons stated in the letter of refusal.
23. Section 12 of the [Labour Relations Act](#) provides as follows: _
 12.
 - (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...
 - (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.
24. Section 14 (1)(d) (i) provides as follows: -



- 14.
- (1) A trade union may apply for registration if—
 - (d) no other trade union already registered is—
 - (i) in the case of a trade union of employers or The *Labour Relations Act*, 2007 18 of employees, sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration
25. The Appellant’s alleged that the right section the registrar ought to have applied was section 12 as it was seeking establishing a trade union before it went to the second and third stage of registration where the two trade unions in existence would be involved as per section 14 of the act. That only preconditions under section 12 were if the application was defective or if the name was similar to an existing trade union to cause confusion. That the name they were promoting that the Kenya National Union of Cement and Allied Employees was different from the existing two unions that is the Kenya Building Construction, Timber and Furniture Industrial Employees Union and Kenya Concrete Structural, Ceramic Tiles, Woodplys and Interior Design Workers Union.
26. The Appellants averred that the membership of the two trade unions’ constitutions did not reflect the membership from the intended sector of cement and Allied employees and the members of the two trade unions were drawn from the companies that use products from the cement industries.
27. The Respondent on the other hand averred that the sector the Appellants sought to represent were employees in the cement industry who were already sufficiently and effectively represented by existing registered trade unions whose members were open to employees engaged in the activities and trades of building, construction and precast concrete and activities of concrete products.
28. ThThe issueThis court notes that whereas the Appellants have their Constitutional rights under Article 36 and 41 as well as section 4 of the *Labour Relations Act* to form or join or participate in activities of a union or association the same is not absolute and it is limited under article 24 of *the Constitution*. This was the position arrived by this court in the case of Charles Salano & 9 others v Registrar of Trade Unions & another [2015] KEELRC 149 (KLR) which decision was upheld on appeal to the Court of Appeal which had similar facts as this case the court went on to find as follows: -
- “Trade Union movement is concerned with protection of workers and employers rights as a collective. This right is protected under article 41 of *the Constitution*, International Laws and ILO Conventions. The right however is not absolute. It can be regulated or limited in context of article 24 of *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”.
29. The Respondent attached *the Constitution* of the two trade unions she alleged that two unions existed representing the same members the Appellants wished to represent which was stated as construction, building, precast concrete and activities of concrete products. The Appellants alleged that these unions were involved in use of products from the cement industries.
30. This court therefore is faced with the question whether the employees in Cement industries are covered in the above two unions or not and notes that the Appellants after the Registrar declined to issue



the certificate of establishment due to existence of two unions vide the letter dated 4th February, 2025 the Appellants wrote another letter of 27th February, 2025 stating that they were relying on section 12 and not 14 of the Act. The Appellants ought to have gone ahead and illustrated what they proposed union would deal with which was not covered under the two existing unions. They alleged that the Cement and Allied Industry employees were not covered under the two unions as they dealt with cement products users.

31. This court therefore finds that whereas the Appellants felt that section 12 should be read in isolation with section 14 this court is guided by the Court Appeal decision in Charles Salano & 9 others (Proposers & Promoters of Kenya Supermarkets Workers Union (KESMWU) v Registrar of Trade Unions & another [2017] KECA 398 (KLR) which was an appeal from this court's decision which upheld by the Court of Appeal when it stated:

Accordingly, for a proper interpretation of Sections 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. Five steps in the registration of a trade union can be discerned from the Act:-If the I

32. The Appellants at this point apart from the name of the proposed union they have not illustrated what the proposed union will deal with which is not sufficiently represented by the two unions apart from stating that the two unions are users of the products of cement industries. This was the Appellants duty as observed by this court in the case above to avoid causing duplicity of unions, cause union rivalry and lack of peace and cohesion which will be against the interests of workers. The court held as follows in Charles Salano & 9 others (Proposers & Promoters of Kenya Supermarkets Workers Union (KESMWU) v Registrar of Trade Unions & another [2017] KECA 398 (KLR) that :

7. Further, the interested party has sufficiently shown that by its constitution it represents supermarkets workers and has indeed previously represented the promoters of the proposed union against their employer Nakumatt. It therefore behove the appellant to demonstrate that over the years supermarket workers have become so specialized or disadvantaged to a point where it may reasonably be said that the interested party no longer sufficiently represents them. Whereas no union can claim monopoly over workers representation, for the sake of order and harmony in industrial relations, duplicity in representation should be avoided.

33. Whereas The Appellants without evidence of which scope of members their proposed union seeks to represent who are not represented by the two unions in existence the court finds that the Registrar was justified in refusing to issue the certificate of establishing the proposed trade union to avoid the duplicity of unions which would cause unnecessary industrial rivalry. The refusal by the registrar was lawful and fair in the circumstances.

34. The Appeal is therefore found without merit is hereby dismissed with no orders as to costs.

35. It is so ordered.

DATED AT NAIROBI THIS 5TH DAY OF DECEMBER 2025

DELIVERED VIRTUALLY THIS 5TH DAY OF DECEMBER 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

