



Kenya County Government Workers Union v Registrar of Trade Unions; Water Services Workers Union (Interested Party) (Cause E437 of 2025) [2025] KEELRC 3517 (KLR) (9 December 2025) (Ruling)

Neutral citation: [2025] KEELRC 3517 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E437 OF 2025
HS WASILWA, J
DECEMBER 9, 2025**

BETWEEN

KENYA COUNTY GOVERNMENT WORKERS UNION CLAIMANT

AND

REGISTRAR OF TRADE UNIONS RESPONDENT

AND

WATER SERVICES WORKERS UNION INTERESTED PARTY

RULING

1. The Claimant/Applicant filed a Notice of Motion dated 19th May 2025 seeking orders that: -
 1. this application be heard expeditiously and on a priority basis within such period as the Honorable Court may direct.
 2. the Honorable Court be pleased to issue an interlocutory temporary injunction staying and/or restraining the implementation of the decision of the Respondent herein contained in the registration certificate issued on 23 April, 2025 pending the hearing and determination of the instant application.
 3. the Honorable Court be pleased to issue an interlocutory temporary injunction staying and/or restraining the implementation of the decision of the Respondent herein contained in the registration certificate issued on 23+ April, 2025 pending the hearing and determination of the appeal filed herewith.
 4. this Honorable Court be pleased to grant any other orders that it may deem necessary and fit to grant.



5. costs of this application be provided and the same be borne by the Respondent herein.

Claimant/Appellant's Case

2. The Appellant avers that the Respondent vide its decision dated 23rd April 2025 proceeded to register a new union being the Interested Party herein, without considering its representation and/or objections.
3. The Appellant avers that subsequent to the registration of the Interested Party, the Respondent further proceeded to issue a register of the officials of the newly registered Interested Party as at 5th May, 2025.
4. It is the Appellant's case that the Respondent has condemned it unheard thereby infringing upon its constitutional right to fair hearing and/or to be heard.
5. The Appellant avers that the Respondent has failed to take into account the fact that the registration of the Interested Party as a trade union to operate in the water services sector when there are already other existing unions including the Appellant, the Union of Kenya Civil Servants (UKCS), Kenya Union of Commercial Food, & Allied Workers (KUCFAW), and many others representing employees of water companies in the said sector will only serve to cause more confusion in the representation of workers in the sector.
6. The Appellant contends that the Respondent's impugned action of registering the Interested Party to operate in the water services sector is contrary to the requirements of Section 14 (1) (d) of the Labor Relations Act, 2007 which provides that a trade union may apply for registration; and the Respondent may accept the application only if no other trade union, already registered, is sufficiently representative of the whole or substantial proportion of the interest in respect of which the applicant union seeks registration.
7. The Appellant avers that the Respondent failed to consider that there are already trade unions in the water services sector including itself which are already sufficiently representative of the whole or substantial proportion of the interests in respect of which the Interested Party's application for registration was sought and granted by the Respondent.
8. Consequently, various employers in the water and sanitation services sector have already recognized the Appellant as the trade union for purposes of collective bargaining since it represents the simple majority of the unionisable employees of these companies or employers.
9. It is the Appellant's case that the Respondent's decision will fuel rather than avoid rivalry and industrial unrest in the water services sector which is already well covered and/or represented by the already existing unions.
10. The Appellant avers that if the Respondent's decision is allowed to stand, there is likely to be overlapping and potentially disruptive union representation in the water and sanitation services sector in the country, thereby hurting employees of companies in this sector and further leaving many of them unrepresented.
11. It further avers that the registration of the Interested Party amounts to registration of a splinter trade union, which will weaken existing trade unions in the water and sanitation services sector and unnecessarily bring confusion and disrupt the delivery of water services by companies operating in the sector across the country.
12. The Appellant/Appellant avers that the fact that there exists similar applications seeking similar orders against the Interested Party in other related cases does not necessarily render its application frivolous, fatally defective, or an abuse of the Court process since it is not a party in any of the cited cases.



Respondent's case

13. In response to the application, the Respondent filed a replying affidavit dated 23rd July 2025 and sworn by ANN KANAKE, the Acting Registrar of Trade Unions.
14. The Respondent avers that under Section 4(1) of the *Labour Relations Act*, 2007 and Article 41 of *the Constitution*, every employee has a right to participate in the formation of a trade union and to join a trade union of their choice.
15. The Respondent avers that pursuant to Section 12 of the *Labour Relations Act*, the Interested Party submitted an application for registration for issuance of a promotion certificate for a proposed union under the name "Water Services Workers Union" via a letter dated 7th July, 2022.
16. Upon receipt of the said application, the Respondent reviewed the said application and after establishing that the Interested Party had meet all the prerequisite requirements for registration as provided for under Section 12, issued the Interested Party with a certificate of promotion dated 11th May 2023 authorizing the promoters to undertake lawful activities in order to establish a trade union and to file a formal application within six months from the date of the said certificate.
17. The Respondent avers that the Appellant made an application to register the union as required under Section 14(1) of the Act and after being satisfied that the Interested Party had met all the requirements under Section 14(1) (d) of the Act, a notice to register Interested Party was gazetted and published in the local dailies. Members of the public were given a notice if they had any objection.
18. Following the said gazette notice, the Respondent reviewed all the objections received and found that they had not established sufficient ground to hinder registration of the Interested Party. Additionally, the Respondent decision to register a union is not bound by the presence or absence of objections from existing unions as the court held in *Promoters, Kenya Salt Workers Union (Lawrence K Majali, Folleni Chea Boshei, Moses H Kellah, Safari Kazungu Nyanje, Kazungu Kondoduka And Dethitarss Mako Kofa) v Registrar of Trade Unions; Kenya Chemical Workers Union (Interested Party) [2022] KEELRC 1513 (KLR)*.
19. The Respondent avers that in exercising her discretion under Section 14(1) of the Act, the Respondent proceeded to register Interested Party after the Respondent established that the Interested Party had complied with all the requirements under Section 14(1) of the Act. She was guided not only by the law but also by *the Constitution* of Kenya, in particular Article 36, which guarantees every person the right to freedom of association, including the right to form, join or participate in the activities of an association of any kind.
20. The Respondent avers that in accordance with Section 19(1) of the Act, she consulted the board who were in favour of the registration of Interested Party and thus she proceeded to issue the Interested Party with a Certificate of Registration dated 23rd April 2025.
21. It is the Respondent's case that it is now settled law, as affirmed in cases such as *Mugambi & 4 Others v Registrar of Trade Unions (2022) KEELCR 4151(KLR)* and *Dominic Ngolo & Others v Registrar of Trade Unions (2016), KEELCR 128 (KLR)* that the existence of an older union in the same sector does not automatically bar the registration of a new union unless it can be shown that the former sufficiently represents the specific group in question.
22. The Respondent asserts that she exercised her statutory discretion reasonably and fairly, based on evidence that the group of employees now forming the Union had not received adequate



representation and their constitutional right under Article 36 would be unjustifiably curtailed by denying them registration.

23. A mere existence of another trade union is insufficient grounds for refusal. The Respondent must evaluate whether the existing union truly represents the specific workforce segment or demonstrates substantial representation of the group in question.
24. The Respondent avers that the Appellant claim that unnecessary confusion, unrest and intense rivalries among unions would ensue after registering the Interested Party were far-fetched as the Respondent must support decisions with tangible evidence, not mere apprehension, to justify restriction of constitutional rights to association. That Mere speculation about possible rivalry among unions is insufficient to deny registration to a party that has satisfactory met legal prerequisite requirements for registration.

Interested Party's Case

25. In opposition, the Interested Party filed a Notice of Preliminary Objection dated 25th July 2025 on the following grounds:
 1. That the subject matter of the dispute in this Application/Appeal concerns the Interested Party's registration certificate issued on 23rd April 2025 together with the prayers seeking an interlocutory temporary injunction staying the implementation of the said registration certificate and that the same matters are sub judice as there exists another Application of 24th April, 2025 before the NAIROBI ELRC PET/E188/2023: KUWASE v. The Registrar of Trade Unions & Others that equally challenges the registration of the Interested Party and that is equally pending determination; THAT the Application dated 19th May, 2025 is fatally defective and bad in law as it offends the provisions of Section 6 of the Civil Procedure Rules, 2010 that expressly state as follows: 'No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.'
 2. That the present Application is fatally defective, null and void ab initio and the same ought to be struck out in that the suit is sub judice and offends the provisions set out in the case of Kenya National Commission of Human Rights V Attorney General; Independent Electoral & Boundaries Commission & 16 Others (interested parties) 2020 eKLR, where the Court stated as follows: "The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives."
 3. That the existence of the two Applications seeking similar orders, relating to the registration certificate issued to the Interested Party on 23rd April, 2025 will not only lead to confusion and



embarrassment but it is also an abuse of Court process, waste of judicial time and resources as if this Application is allowed to proceed it will likely lead to different outcome by two different Courts sitting in the same Station.

4. That this Honourable Court has no jurisdiction in this matter under the now established Doctrine of sub judice; and
 5. That for the foregoing reasons, this Honourable Court also lacks jurisdiction as the Application is frivolous, fatally defective and a blatant abuse of due process of the court and as such the same ought to be dismissed with costs.
26. The Interested Party further filed a replying affidavit dated 1st July 2025, sworn by Matilda Kimetto, its Secretary General.
 27. The Interested Party avers that the application is fatally defective and an abuse of court process and time and the same ought to be struck out as the same orders were sought and issued.
 28. The Interested Party avers that registration of a trade union is up to the discretion of the Registrar of Trade Unions once they are satisfied that the proposed trade unions meet the requirements provided for under Section 14 of the Labor Relations Act and after considering objections raised in writing.
 29. The Interested Party avers that the Appellant has not been denied their right to be heard by the Respondent and puts them to strict proof in line with the provisions of Section 11 of the Labor Relations Act that provides that a party that alleges that a right or protection conferred by this part has been infringed shall prove the facts of the conduct.
 30. The Interested Party avers that the Appellant has no locus in the water sector, they are not recognized by employers and they additionally do not sufficiently represent workers in the sector. It contends that the Appellant is misrepresenting themselves to be the union capable of representing employees in the water sector and thus the Appellant is causing confusion and disruption of the delivery of water services.
 31. The Interested Party avers that the application is sub judice as the Petitioner had filed a petition dated 3rd October 2023 filed against it in Nairobi ELRC PET/E188/2023: KUWASE v The Registrar of Trade Unions and Others seeking similar orders as in the instant suit. On 24th April 2025, this court issued the following orders:
 - a. That pending hearing and determination of this Application, the Honourable Court be pleased to issue an interim conservatory order of injunction preserving the registration status, the name and *the constitution* of the Kenya Union of Water and Sewerage Employees and all recognition Agreements and the Collective Bargaining Agreements between it and several Employers together with extracts of its officials at Headquarters and all its branches as subsisting prior to 23rd April 2025.
 - b. That pending hearing and determination of this Application, the Honourable Court be pleased to issue an order staying the operations of Registration certificate issued by the 1st Respondent in favour of the 1st Interested Party on 23rd April, 2025, any extracts of officials of the 1st Interested Party thereto as a result
 - c. of the 1st, 2nd and 3rd Respondents' resolution made on or before 23rd April 2025 or after.
 - d. That pending hearing and determination of this Application, the Honourable Court be pleased to issue an order staying the Respondents' ORDER OF CANCELLATION OF REGISTRATION of the 2nd Appellant union dated 2nd May 2025 and the notification letter



thereto dated 2nd May 2025 in relation to the 1st, 2nd and 3rd Respondents' resolution made on 23rd April 2025.

- e. That pending hearing and determination of this Application and the main Appeal, the Honourable Court be pleased to issue an order maintaining the register of the 2nd Appellant as subsisting prior to 2nd May 2025.
 - f. That pending hearing and determination of the main Appeal, the Honourable Court be pleased to issue an order staying the operations of the registration certificate dated 23rd April, 2025 and any actions thereto in relation to the 1st Interested Party, issued by the 1st Respondent on 23rd April 2025.
 - g. That pending hearing and determination of this Application, the Honourable Court be pleased to issue an order staying the operations of the registration certificate dated 23rd April, 2025 and any actions thereto in relation to the 1st Interested Party, issued by the 1st Respondent on 23rd April 2025, any extract of officials of the 1st Interested Party made by the 1st Respondent as a result of the 1st, 2nd and 3rd Respondents' resolution made on or before 23rd April 2025 or after.
 - h. That costs of this Application and Appeal be met by the Respondents.
32. Subsequently, when the aforementioned matter came up for mention on 7th May 2025, the Petitioner failed to disclose to the Honourable Court that they had filed a subsequent Application before the ELRC Court 9: (Nairobi ELRCCA/E129/2025: Kenya Union of Water And Sewerage Employees v Registrar Of Trade Unions And National Labour Board & 2 Others) seeking similar orders and subsequently Justice Aboudha issued the following orders on 21st May 2025:
- a. The Application dated 24th April 2025, challenges the registration of the 1st Interested Party as a union. This arose when this Petition was pending before the Court (Hon. Lady Justice Hellen Wasilwa). The Court (Court 7) has substantially dealt with this Petition and is best placed to hear the same to conclusion;
 - b. Appeal No. E129 of 2025 (KUWASE v Registrar of Trade Unions & National Labor Board) which is before Court 2 concerns the decision of the Registrar of Trade Unions to cancel the Certificate of registration of the Appellant. The Appeal was filed pursuant to Section 30 of the Labor Relations Act;
 - c. The Petitioner herein (Pet. E188 of 2023: KUWASE v State Law & Registrar of Trade Unions and another) does not have the capacity to proceed with this Petition and any other litigation in its name until the Appeal E129 of 2025 (KUWASE v Registrar of Trade Unions & National Labor Board) is heard and determined and hopefully resolved in its favour;
 - d. Appeal E129 of 2025 is set for Mention on 30th June 2025 for direction on hearing of the Application challenging the cancellation of the Appellant's certificate of registration;
 - e. It must therefore be prudent to avoid contradictory orders from this Court and Court 7, the Petition E188 of 2023 (KUWASE v Registrar of Trade Unions and others) and JR E025 of 2025 to be held in abeyance pending the determination of Appeal E129 of 2025. These directions are applicable to JR E025 of 2025 which was also placed before the Court;
 - f. Let this Petition and JR E025 be mentioned before Hon. Lady Justice Wasilwa on 28th May, 2025 for further directions.



33. The Interested Party avers that from the order issued on 21st May, 2025, the Court was able to differentiate the issues in both NAIROBI ELRC PET/E188/2023 and NAIROBI ELRCCA/E129 of 2025. The main thrust of ELRCPET/E188/2023 is the issuance of the Certificate of interim registration to the 1st Interested Party: the Proposed Water Services Workers Union (WASWU) and all other issues relating to the registration of the proposed union while ELRCCA/E129 of 2025 is an appeal against the cancellation of KUWASE under Section 30 of the Labor Relations Act as communicated to them on 22nd May 2025.
34. The Interested Party avers that from the order of 21st May, 2025, all matters relating to the registration of the Interested Party are to be determined in ELRCPET/E188/2023 in order to not only avoid confusion and embarrassment but also an abuse of court process, waste of judicial time and resources. If this application is allowed to proceed it will likely lead to different outcome by two different courts sitting in the same station.
35. It is the Interested Party's case that the Application dated 19th May 2025 is frivolous, fatally defective and an abuse of the court process and time and the same ought to be struck out from the record as there already exists a similar application seeking similar orders against it.

Claimant/Appellant's submissions

36. The Appellant submitted on two issues: whether the Appellant herein has locus to institute the instant proceedings; and whether the Appellant's appeal challenging the Respondents registration of the Interested Party herein is merited.
37. On the first issue, the Appellant submitted that the Interested Party's allegation that it lacks locus in the water sector, is not recognized by employers, and does not sufficiently represent workers in the water sector; is a misrepresentation of the Court of Appeal's holding in Civil Appeal No. 18 of 2013.
38. The Appellant submitted that in Civil Appeal No. 18 of 2013, the issue of its capacity to represent employees of water sector companies was not one of the issues for determination and hence there is no way the Court of Appeal could have determined an issue not before it. The Court of Appeal, in framing the issues for determination, stated as follows: - "We have given due consideration to the totality of the record in the light of the appellants' submissions. We remind ourselves that as a first appellate court the lack of participation of the respondents in the prosecution of the appeal notwithstanding, we are obligated to render a merit determination of the issues in controversy as contained in the compressed grounds of appeal. In our view, the issue that falls for our determination is:- whether the learned Judge exercised his discretion judiciously when:- (a) he ordered a consolidation of the enumerated suits, proceeded to stay the same and then purported to determine the same on the platform of the consolidation and stay order. (b) he suo motu called for Industrial court cause No. 439 of 2010 and Industrial Court cause number 213 of 2010 reviewed and set aside the final orders that had previously been made therein. (c) he suo motu called for Industrial court cause number 118 of 2010 and proceeded to declare a CBA duly registered as RCA 88 of 2010 as spent."
39. The Appellant submitted that nowhere in the framing of the issues for determination by the Court of Appeal did the appellate Court frame the issue of the capacity or otherwise of the Union Applicant herein to represent employees of water sector companies. Therefore, the Court of Appeal has not rendered itself on the issue of the Union Applicant's capacity, which issue is currently pending determination in Civil Appeals No. 80 and 87 of 2025.
40. The Appellant submitted that Justice Rikain Nyambane & another v Kenya County Government Workers Union & 3 others [2025] KEELRC 970 (KLR) held as follows regarding the capacity of



the Appellant herein, in distinguishing between a relevant and right union in a particular sector:-
“But being the most relevant, does not automatically entitle any Trade Union to the sole collective bargaining agency right; the Trade Union must establish that it has a simple majority of Unionisable Employees, working for the relevant Employer.

A judicial declaration of relevance, is not a judicial grant of the right of representation.

If this was the intention of the law, that the Union declared as the most relevant in an industry or sector, acquires automatic sole collective bargaining agency right of representation, by virtue of such judicial declaration, there would be no need to recruit members, once a Trade Union is adjudged to be the relevant, sole player in a particular industry or sector.”

41. The Appellant submitted that by virtue of its registration as a trade union pursuant to Section 21 the Labour Relations Act, 2007 and by dint of its own union Constitution, the Appellant has the standing or locus to institute the instant proceedings. Not even a recognition agreement is required for a trade union to have locus standi as held by the Court of Appeal in as the Court of Appeal held in *Modern Soap Factory v Kenya Shoe and Leather Workers Union* [2020] KECA 4 (KLR).
42. On the second issue, the Appellant submitted that the Respondent has merely suggested that she reviewed all the objections received and found that they had not established sufficient ground to hinder the registration of the Interested Party herein as a trade union. However, there is no evidence that at all presented by the Respondent to demonstrate that she indeed considered all the objections to the impugned registration, including the Appellant's.
43. The Appellant submitted that the Respondent's contention that it is not bound to consider objections filed in the face of the letter and spirit of the Constitution, particularly the provisions of Article 10 thereof on the participation or engagement of the people. It cited the Supreme Court in Kenya *Plantation & Agricultural Workers' Union v Omulama & 9 others* (Petition 4 of 2018) [2020] KESC 59 (KLR) (23 January 2020):-

“...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...”
44. The Appellant submitted that it reviewed the Interested Party's application for registration as a trade union and established that it had met all the prerequisite requirements for registration as provided under Section 12 of the Labor Relations Act, 2007. The Respondent has not tendered any compelling reasons supported by tangible evidence to demonstrate that the Interested Party had met all the requirements and that the Appellant did not sufficiently represent the whole or a substantial proportion of the interests of the sector in question, being the water sector.
45. The Appellant submitted that pursuant to Section 14 (1)(d)(i) of the Labour Relations Act, the Respondent herein is conferred with discretion, within the parameters of the Act, to accept or refuse to register a proposed trade union. It is a discretion comparable to judicial discretion which “is not a wild and unaccountable discretion” but a discretion to be exercised on settled principles. The Respondent has not availed any evidence to support its exercise of discretion in registering the Interested Party herein as a trade union.
46. The Appellant submitted that in *Frank Esevwe & 6 others* (being proposers and promoters of Universities Service Workers Union) v Registrar of Trade Unions [2018] eKLR the court declined registration of a proposed union where the area proposed to be covered was already served by an



existing union. In the instant case, the Respondent failed to consider the fact that the Appellant already sufficiently represents the interests of workers in the water sector.

47. On whether it has capacity and locus standi in the water sector, the Appellant submitted that the cases cited by the Interested Party, *Kenya County Government Workers Union v Nairobi Water & Sewerage Company Ltd & 2 others* [2025] KEELRC 1546 (KLR), *Kenya County Government Workers Union v Nairobi Water and Sewerage Company Limited & National Union of Water and Sewerage Employees* [2021] KEELRC 2303 (KLR) and *Kenya County Government Workers Union v Nairobi Water & Sewerage Co. Ltd; National Union of Water & Sewerage Employee (Interested Party)* [2022] KEELRC 1122 (KLR) place a lot of emphasis and reliance on the holding or decision of the predecessor of this Honorable Court, the Industrial Court, in C.A. No. 213 of 2010 upheld in Cause No. 439 of 2010 to the effect that Kenya Local Government Workers Union (KLGWU) [now Kenya County Government Workers Union (KCGWU)] should delete the phrase “and the Councils’ from Water Companies” from its CBA and that National Union of Water & Sewerage Employees (NUWASE) was the appropriate Union for employees of water companies.
48. The Appellant submitted that a lot has changed both legally, constitutionally, and factually in the industrial, employment, and labor sector since the predecessor of this Court made the said decisions relied upon, blindly so (respectfully), in some of the later decisions. For instance, when the Industrial Court in Cause No. 439 of 2010 purported to restrain the Appellant herein from purporting to represent or recruiting employees of water companies as its members, the Industrial Court did not consider the provisions of Articles 36 and 41 of *the Constitution* of Kenya, 2010.
49. The Appellant submitted that any supposed limitation of Articles 36 and 41 of *the Constitution* must meet the constitutional muster under Article 24 (1) of *the Constitution* to the effect that:-
- “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— (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.”
50. The Appellant submitted that whereas the Industrial Court’s decision in this case may have been relevant at the time when it was rendered because that was the law then, any later decision that relies on its holding in Cause No. 439 of 2010 was decided per incuriam and the same is not persuasive upon this Court. In *Rai & 3 others v Rai & 5 others* (Petition 4 of 2012) [2013] KESC 21 (KLR) (20 August 2013), the Supreme Court held that:-
- “...a decision per incuriam is mistaken, as it is not founded on the valid and governing pillars of law.”
51. The Appellant submitted that the decisions relied upon and cited by the Interested Party as authority for the proposition that the Appellant herein lacks the locus standi or capacity to operate in the water services sector is not binding on this Court as they are decisions of courts of concurrent jurisdiction. This Court is duty bound to distinguish and/or refuse to follow a previous decision of this Court that is per incuriam.



52. The Appellant submitted that the argument that the Appellant herein is not the proper union to represent employees of water sector companies has been largely based on the argument that since water services companies are not county government entities, the Appellant cannot purport to represent or recruit their employees as it is not the right union. But the *Water Act*, 2016 has rendered this argument otiose. So that as things stand following the enactment of the *Water Act*, 2016, employees of water and services or sewerage companies are employees of county governments, thereby bringing them within the ambit of the Appellant to recruit them as its members.
53. The Appellant submitted that upon the enactment of the *Water Act*, 2016 and Paragraph 11 of Part 2 of the Fourth Schedule to *the Constitution* of Kenya, the provision of water and sanitation services is now a devolved function of the counties. The Appellant is a duly registered trade union representing employees of all the 47 county governments and the entities associated with those counties, including water companies owned by County governments.
54. It is the Appellant's submission that the argument that it is not the proper union to represent employees of water sector companies has been largely based on the argument that since water services companies are not county government entities, has been rendered otiose by the *Water Act*. Therefore, the following the enactment of the *Water Act*, employees of water and services or sewerage companies are employees of county governments, thereby bringing them within the ambit of the Appellant herein to recruit them as its members.
55. The Appellant submitted that even if this Court were to agree with the Interested Party's argument that following the decision in CBA No. 34 of 2020, all recognition agreements between the Appellant and water companies across the nation are invalid, that in itself would not deprive the Appellant of the locus standi or capacity in the water sector to represent or sue on behalf of employees of water sector companies. For, it is now trite law that a trade union's capacity, or locus standi, to sue is generally established by its membership and not solely determined by a recognition agreement.
56. The Appellant placed reliance in *Aga Khan University Hospital v Kenya Private Universities Workers Union* [2024] KECA 1950 (KLR) wherein the court held:

“Similarly, the Supreme Court in *Teachers Service Commission v Kenya National Union of Teachers & 3 Others* [2015] eKLR affirmed that the lack of a recognition agreement does not strip a union of its locus standi to represent its members. The court underscored the importance of protecting workers' rights to representation and collective bargaining. The court emphasized the fundamental nature of workers' rights to representation and collective bargaining, which are enshrined in *the Constitution* and international labor standards. The judgment highlighted that these rights are essential for the protection and promotion of workers' interests and cannot be undermined by the lack of a formal recognition agreement.”

Respondent's Submissions

57. The Respondent submitted that under Section 4(1) of the *Labour Relations Act*, 2007 and Article 41 of *the Constitution* of Kenya, 2010, every employee has the right to participate in the formation of a trade union and to join a trade union of their choice. The Interested Party applied for issuance of a certificate of promotion for a proposed trade union under the name Water Services Workers Union pursuant to Section 12(1) of the *Labour Relations Act*.
58. The Respondent submitted that upon receipt of the said application, she reviewed it and established that the Interested Party had met all the prerequisite requirements for registration under Section



12 of the Act. The Respondent accordingly issued a certificate of promotion, authorizing the promoters to undertake lawful activities in establishing the trade union and to file a formal application within six months. The Interested Party subsequently applied for registration as a trade union under Section 14(1)(d) of the Act. After confirming that the statutory requirements had been satisfied, the Respondent caused a notice of intention to register to be gazetted and published in the local dailies, inviting objections from the public.

59. It was submitted that the Respondent duly considered all objections received and found that none established sufficient grounds to hinder registration. The Respondent's discretion in this regard is well grounded in *Promoters, Kenya Salt Workers Union (Lawrence K Majali, Folleni Chea Boshei, Moses H Kellah, Safari Kazungu Nyanje, Kazungu Kondoduka And Dethitarss Mako Kofa) v Registrar of Trade Unions; Kenya Chemical Workers Union (Interested Party)* [2022] KEELRC 1513 (KLR), the Court held:

“The Registrar has an independent statutory obligation to assess whether the requirements of Section 14(1)(d) have been satisfied. The existence or absence of an objection is not determinative. What matters is whether there exists another trade union sufficiently representing the whole or a substantial proportion of the interests sought to be represented.”

60. The Respondent submitted that the mere existence of another trade union is not sufficient grounds for refusal of registration.
61. It is the Respondent's submission that she was guided not only by Section 14(1) of the *Labour Relations Act*, but also by Article 36 of *the Constitution*, which guarantees every person the freedom of association, including the right to form, join, or participate in the activities of any association. Furthermore, pursuant to Section 19(1) of the *Labour Relations Act*, the Respondent consulted the National Labour Board, which was in favour of the registration of the Interested Party.

Interested Party's Submissions

62. The Interested Party submitted on two issues: whether the Appellant herein has locus standi in the water sector; and whether the decision by the Respondent herein to issue the Interested Party with a Certificate of registration no. TU/194 was merited and valid.
63. On the first issue, the Interested Party submitted that the Appellant has no locus standi in the water sector and thus they cannot purport to represent employees in the said sector. The Appellant is thus causing unnecessary confusion, unrest, and intense rivalry by purporting to represent employees in the water sector yet there are decisions by various courts disputing the same and the Appellant is aware of the existence of the said decisions.
64. The Interested Party cited this court's decisions in *Kenya County Government Workers Union v Nairobi Water & Sewerage Company Ltd & 2 others* [2025] KEELRC 1546 (KLR), *Kenya County Government Workers Union v Nairobi Water and Sewerage Company Limited & National Union of Water and Sewerage Employees* [2021] KEELRC 2303 (KLR) and *Kenya County Government Workers Union v Nairobi Water & Sewerage Co. Ltd; National Union of Water & Sewerage Employee (Interested Party)* [2022] KEELRC 1122 (KLR) wherein the courts held that the Appellant, Kenya County Government Workers Union, has no right to cover employees in the water services sector.
65. The Interested Party submitted that it is clear that the Appellant union herein, lacks the proper locus standi in the water sector to represent employees and sign recognition agreements and that the Appellant is in continuous contempt of the unchallenged decisions by various courts.



66. It is the Interested Party's submission that the Appellant union, has no locus standi in the water sector and they ought to stop misrepresenting themselves as they are causing unnecessary confusion.
67. On the second issue, the Interested Party submitted that its certificate of registration number TU/194 is valid and was issued in line with the provisions of the [Labour Relations Act](#), as per the discretion of the Registrar of Trade Unions.
68. The Interested Party submitted that Section 12 of the [Labour Relations Act](#) provides the guidelines and procedure for the establishment of a trade union as follows:
- “(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.
- (5) The Registrar may withdraw a certificate issued under this section if the Registrar has reason to believe that—
- (a) the certificate was obtained by fraud, misrepresentation or as a result of a mistake; or
- (b) any person has undertaken an unlawful activity, whether in contravention of this Act or any other law, on behalf of the proposed trade union or employers' organisation.”
69. The Interested Party submitted that on 11th May, 2023, the Registrar of Trade Unions issued it with an interim certificate of registration pursuant to the above provisions of Section 12 of the [Labour Relations Act](#) thus proving that the Respondent was satisfied with the application for registration and the same was in accordance with the law.
70. The Interested Party submitted that subsequently upon its compliance with Section 14 of the [Labour Relations Act](#) which provides for the requirements necessary for the registration of a trade union, the Registrar of Trade Unions went ahead and issued a gazette notice No. 4672 expressing the intention to register the Interested Party union and that persons with any objections were to do so within a period of 21 days.
71. It is the Interested Party's submission that after receipt of the said objections, the Respondent reviewed the same and was satisfied that none of them established sufficient ground to hinder the registration of the Interested Party union. The Respondent further consulted with the National Labor Board in line with Section 19 of the [Labour Relations Act](#) and afterwards went ahead to issue the Interested Party with a certificate of registration no. TU/194 on 23rd April 2025.
72. It was submitted that the registration of the Interested Party union was indeed in line with the provisions of the [Labour Relations Act](#) and thus their certificate of registration No. TU/194 issued on 23rd April 2025 was valid and merited.
73. I have examined all the averments and submissions of the parties herein. The gist of this ruling is an application filed by the appellants challenging the registration of the interested party as a union by



the respondent herein. The applicant seeks an order staying the implementation of the decision by the Registrar of Trade Unions contained in a certificate issued on 23/4/2025 which registered the interested party as a union. The applicants seek stay of the said decision. The applicants sought stay pending hearing and determination of this appeal.

74. The appellants have raised a preliminary objection that this matter has already been determined by the decision of judge Abuodha in a ruling of 25/7/2025. I have looked at that ruling by J. Abuodha and I note it related to KUWASE where the court determined that KUWASE (the union)'s appeal was without merit and the current matter relates to the interested party herein who is the Water Services Workers Union.
75. The interested party herein is substantially different from KUWASE whose status has already been determined by J. Abuodha. The preliminary objection therefore lacks merit. The issue then is whether to grant the order staying the implementing of the decision by the Registrar of Trade Unions registering the interested party. The prayers sought in the application are substantially similar as those sought in the appeal. It is therefore my finding that determining this application at this stage will substantially determine the entire appeal.
76. I therefore decline to grant any orders at this stage and direct that the parties proceed with the main appeal. Costs in the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF DECEMBER 2025.

HELLEN WASILWA

JUDGE

