

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAIROBI

ELRC PETITION NO. E188 OF 2023

(Before Hon. Lady Justice Hellen Wasilwa, J)

KENYA UNION OF WATER &

SEWERAGE EMPLOYEES (KUWASE).....
.....PETITIONER

VS

THE HON. ATTORNEY GENERAL.....1ST
RESPONDENT

THE REGISTRAR OF TRADE UNIONS.....2ND
RESPONDENT

AND

THE PROPOSED WATER SERVICE

WORKER UNION.....1ST INTERESTED
PARTY

PATRICK KASIMU.....2ND INTERESTED
PARTY

CHARLES MAKINI.....3RD INTERESTED
PARTY

FAITH WANGARI KIMEMIA.....4TH INTERESTED
PARTY

SEBASTIAN MONGARE NYABERA.....5TH INTERESTED
PARTY

VICTOR ONYANGO ONG'OL.....6TH INTERESTED
PARTY

FRANCIS MUIYO KAIA.....7TH INTERESTED
PARTY

GRACE NJOROGE.....8TH INTERESTED
PARTY

RULING

1 The 1st Interested Party filed a Notice of Motion dated 27th October 2025 seeking orders that: -

- 1) *spent*
- 2) *this Honourable Court do review, vary, vacate and/or set aside the directions issued on 22nd September, 2025 that NAIROBI ELRC PETITION No. E188/2023: KUWASE v The Registrar of Trade Unions & Others be consolidated with NAIROBI ELRC APPEAL No. E437/2025: KENYA COUNTY GOVERNMENT WORKERS UNION v THE REGISTRAR OF TRADE UNIONS & WATER SERVICES WORKERS UNION.*
- 3) *An Order be issued striking out NAIROBI ELRC PETITION No. E188/2023: KUWASE v The Registrar of Trade Unions & Others in its entirety as the Petitioner lacks the requisite legal capacity to sue and/or be sued in its own name as they are no longer a registered trade union in line with the provisions of Section 21 of the Labour Relations Act;*
- 4) *The costs of and incidental to this Application be provided for.*
- 5) *Such other, further, incidental or alternative reliefs as the Honourable Court may deem just and expedient.*

Applicant's Case

2 The Applicant avers that on 21st May 2025, this matter came up for Mention for directions before Honourable Justice J.N Abuodha who issued the following orders:

- 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 Labour 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.

3 The Applicant avers that from the orders of 21st May 2025, the Court was able to differentiate the issues in both **NAIROBI ELRC PET/E188/2023: KUWASE v. The Registrar of Trade Unions & Others** and **NAIROBI ELRCCA/E129 of 2025: KUWASE v The Registrar of Trade Unions & National Labor Board.**

4 It is the Applicant's case that the orders observed that 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); **while ELRCCA/E129 of 2025** is an Appeal against the cancellation of KUWASE under Section 30 of the Labor Relations Act which was deregistered on 2nd May 2025.

5 The Applicant avers that on 3rd June, 2025, when this matter came up this court for mention for directions, the court directed this petition be held in abeyance up until 22nd September, 2025 pending the hearing and determination of **NAIROBI ELRCCA/E129 of 2025: KUWASE v The Registrar of Trade Unions & National**

Labor Board in line with the orders issued by Hon. Justice Abuodha on 21st May, 2025.

- 6 On 25th July, 2025, Hon. Justice Abuodha delivered his ruling in **NAIROBI ELRCCA/E129 of 2025** where it was ordered as follows:

“c. The Court therefore finds the appeal without merit and hereby dismisses the same with no orders as to costs since the claim arose out of a labour relations dispute in which the appellants genuinely believed they had a recourse to this court.

d. For avoidance of doubt and as earlier observed, this Ruling determines the issues in the application dated 26th May, 2025 and this appeal.”

- 7 It is the Applicant’s case that Justice Abuodha’s ruling reaffirmed the decision of the Registrar of Trade Unions together with The National Labour Board of issuing an order of cancellation of the registration of the Appellant union in the letter dated 30th April 2025.

- 8 The Applicant avers that from the ruling and in line with the provisions of Section 21(b)(i) and 23(4) of the Labour Relations Act, the Petitioner lacks the legal capacity to proceed with this Petition in its own name as they are no longer a registered and recognised trade union.

- 9 The Applicant avers that on 22nd September, 2025, this matter came up for mention for directions and this Court directed that the same be consolidated with **Nairobi**

ELRCC/E437/2025: Kenya County Government Workers Union V The Registrar of Trade Unions & Water Services Workers Union. It is the Applicant's case that this is in total disregard and in direct contravention of the ruling delivered by Hon. Justice Abuodha on 25th July, 2025 where it was affirmed that the Petitioner lacks the legal capacity to proceed with this Petition thus the same ought to be struck out due to lack of locus standi.

- 10 It is the Applicant's case that the Petitioner has no legal authority to proceed with this petition as their certificate of registration was cancelled in a letter dated 30th April, 2025 thus it is not a body corporate with the capacity in its own name to sue and be sued, and it cannot be a party to the petition and the same ought to be struck out due to lack of locus standi by its initiator.
- 11 The Applicant avers that it has suffered and will continue suffering substantial and irreparable loss if this petition is not struck off as there are orders that exist that affirm that their registration was done in line with the provisions of the Labour Relations Act and thus the issuance of their Certificate of Interim Registration, that forms the basis of this petition is no longer in question.

Interested Party/Applicant's Submissions

- 12 The Applicant submitted on two issues: whether an unregistered trade union has the legal capacity to sue and

be sued; and whether the Petition herein filed by the Petitioner should be struck out.

- 13 On the first issue, the Applicant submitted that an unregistered trade union does not have the legal capacity to sue and be sued pursuant to the express provision of Section 21(1)(b) of the Labour Relations Act that states that; a trade union shall be registered as a body corporate with the capacity in its own name to sue and be sued.
- 14 It is the Applicant's submission that the Court of 25th July, 2025 reaffirmed the decision of the Registrar of Trade Unions together with the National Labour Board of issuing an order of cancellation of the registration of the Appellant union (Kenya Union of Water & Sewerage Employees - KUWASE) in the letter dated 30th April 2025.
- 15 The Applicant submitted that in line with the provisions of Section 21(b)(i) and 23(4) of the Labour Relations Act, the Petitioner lacks the legal capacity to proceed with this Petition in its own name as they are no longer a registered and recognised trade union.
- 16 The Applicant submitted that the definition of 'capacity to sue' is defined in the case of **UNIVERSITIES ACADEMIC STAFF UNION (U.A.S.U) v JOMO KENYATTA UNIVERSITY OF AGRICULTURE AND TECHNOLOGY (JKUAT) [2006] eKLR** as follows: *"It became apparent to me during submissions by counsel that parties herein are somewhat confused as to the legal meaning of "capacity*

to sue” and “locus standi” which in my view are distinguishable in the sense that in the proceedings before me, the former relates to having the legal capacity to take out or defend legal proceedings while the latter relates to the legal interest in the matter in dispute. As is clear from the definition of “capacity” contained in “Black’s Law Dictionary, 8th Edition” Capacity denotes ones’ legal qualification which determines one’s ability to sue or be sued.”

- 17 It is the Applicant’s submission that the Petitioner, has no legal authority to proceed with this petition as their certificate of registration was cancelled in a letter dated 30th April 2025 thus it is not a body corporate with the capacity in its own name to sue and be sued, and it cannot be a party to the petition and the same ought to be struck out due to lack of *locus standi* by its initiator.
- 18 The Applicant submitted that in the case of **APEX FINANCE INTERNATIONAL LIMITED & ANOTHER V KENYA ANTI-CORRUPTION COMMISSION[2012]eKLR**, the Court stated as follows: one of the mandatory precondition for a court to competently assume jurisdiction in a dispute is that there must be proper parties before the Court.
- 19 It is the Applicant’s submission that the Petitioner is not a proper party to these proceeding and that this Court do allow the Application dated 27th October, 2025 to strike the instant petition in its entirety as the Petitioner lacks

the requisite capacity to sue/and or be sued in its own name.

- 20 On the second issue, the Applicant placed reliance in ***Kenya Union of Supermarkets and Allied Workers v Registrar of Trade Unions & another [2017] KEELRC 1319 (KLR)*** wherein it was declared as follows in regards to a party not having the proper locus: *“The court delivered a ruling in the suit on 09.12.2016 by striking out the suit as per the preliminary objection filed on 18.11.2016. The suit was struck out on account that the claimant did not exist and therefore could not file the suit as the claimant had not been registered as a trade union and was therefore not a person in law capable of suing as envisaged in section 21 of the Labour Relations Act, 2007. By the ruling delivered on 17.11.2016, the court found that the claimant and therefore the applicant in the application dated 01.03.2017 was not a person in law and could therefore not sue or be sued.”*
- 21 The Applicant submitted that since the Petitioner in this matter is no longer a registered trade union, following the ruling of Justice Abuodha on 25th July, 2025 that reaffirmed the decision of the Registrar of Trade Unions together with the National Labour Board of issuing an order of cancellation of the registration of Kenya Union of Water & Sewerage Employees -KUWASE in the letter dated 30th April 2025, this Petition ought to be struck out.

- 22 I have examined all the averments and submissions of the parties herein. The applicant seeks review of this court's order issued on 22/9/2025 which directed consolidation of NRB ELRCC/E437/2025 and this petition.
- 23 The applicants have averred that the petitioner KUWASE no longer exists as per the ruling of Abuodha J. in Nairobi ELRCCA/E129 of 2025 where the court in its decision reaffirmed the decision of the Registrar of Trade Union together with *National Labor Board* issuing an order of cancellation of the registration of the appellant union in the letter dated 30/4/2025.
- 24 The applicants contend that the petitioner therefore lacks the legal capacity to proceed with the petition in its own name as they are no longer a registered union.
- 25 The application was not responded to by the petitioners herein. It is however true that J Abuodha determined the status of the petitioner herein by nullifying the petitioners registration certificate vide a ruling of 25/7/2025 which affirmed the decision of the Registrar of Trade Union and *National Labor Board* cancelling the registration certificate of the petitioner.
- 26 This court's order of consolidating this petition with Cause No 437/2025 and JR 25 of 2025 of 22/9/2025 was made without considering the ruling of J Abuodha herein. The order was made in error given that the petitioner in

petition No E188/2023 is no longer in existence following the ruling of the Honourable court.

27 It is therefore apt for this court to review its orders consolidating petition no 188/2023 with Cause No 437/2025 and JR 25/2025 and substitute with an order that each matter will be handled separately. The order of 22/9/2025 are set aside accordingly.

28 The costs of the petition will be in the petition.

**Dated, Signed and Delivered Virtually at Nairobi
this 9th day of December 2025.**

**HELLEN WASILWA
JUDGE**