



**Kenya National Union of Nurses & Midwives v Union of Kenya
Civil Servants; Registrar of Trade Unions (Interested Party) (Cause
E998 of 2024) [2026] KEELRC 340 (KLR) (6 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 340 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E998 OF 2024
AK NZEI, J
FEBRUARY 6, 2026**

BETWEEN

KENYA NATIONAL UNION OF NURSES & MIDWIVES CLAIMANT

AND

UNION OF KENYA CIVIL SERVANTS RESPONDENT

AND

REGISTRAR OF TRADE UNIONS INTERESTED PARTY

RULING

1. The application before me is the Claimant’s Notice of Motion dated 20th November, 2025 and expressed to be brought under Rule 45 of the Employment and Labour Relations Court (Procedure) Rules and Sections 14 and 15 of the [Labour Relations Act](#). The Claimant/Applicant seeks the following Orders:-
 - a. That the application be certified urgent and be heard at the first instance on account of its urgency.
 - b. That pending hearing and determination of the application, the Court be pleased to suspend and/or stay recruitment of Nurses and Midwives by the Union of Kenya Civil Servants.
 - c. That pending hearing and determination of the application and the main suit, the Court be pleased to refrain the Registrar of Trade Unions from registering an entity called Kenya Union of Civil Servants “Nurses and Midwives Chapter”.
 - d. That the Court be pleased to issue an order restraining the Union of Kenya Civil Servants, its officials, officers, agents, assigns and anybody acting on its behalf from registering Nurses and Midwives into the UKCS Nurses and Midwives Chapter.



- e. That the Court be pleased to issue an order staying implantation of the form generated UKSC, Nurses and Midwives Chapter.
 - f. That upon inter-partes hearing, the Court do issue an order restraining the Union of Kenya Civil Servants, its officials, officers, agents assigns or anybody acting on its behalf from recruiting Nurses and Midwives into its membership pending hearing and determination of the claim.
 - g. That the Court be pleased to issue an order restraining the application of Gazette Notice No. 1511, Order No. 14 made with effect from 15th February, 2011 by the Minister of Labour under Section 48 of the *Labour Relations Act* 2007, for union dues on Nurses and Midwives employed by the National Government, State Corporations and all the 47 County Governments.
 - h. That the Court be pleased to give any other orders or reliefs as it deems fit to meet the ends of Justice.
 - i. That costs of the application be in the cause.
2. The application sets out on its face the grounds on which it is brought, and is based on the annexed supporting affidavit of Linet Moraa Nyagwondo sworn on 20th November, 2024. It is deponed in the said affidavit, inter-alia:-
- a. that both the Claimant and the Respondent are registered trade unions, each drawing membership from its constitution.
 - b. that the Respondent has embarked on a mission to establish a Nurses and Midwives Chapter, and is proceeding to recruit Nurses and Midwives into its membership, contrary to Section 14(f) of the *Labour Relations Act*.
 - c. that Section 14(f) of the *Labour Relations Act* (LRA) requires that the name of a trade union should not be similar or almost similar to another, to prevent confusion.
 - d. that the Registrar of Trade Unions mandate under Sections 14 and 15 of the LRA does not include registration of chapters.
 - e. that the Claimant has recognition agreements with the Ministry of Health, State Corporation Health facilities and all the 47 counties, which provide that the Applicant is the Sole Labour Organization representing the interests of Nurses and Midwives [working] with both levels of Government.
 - f. that the Claimant concluded CBA Agreements with the Ministry of Health and State Corporations covering all nurses employed in health facilities under the National Government; and is in the process of finalising negotiations on CBAs with the 47 County Governments.
 - g. that the Applicant has registered in Court a Collective Bargaining Agreement (CBA) between itself and the Ministry of Health.
 - h. that any attempt by the Respondent to register a Chapter with the name Nurses and Midwives shall contravene Section 14(f) of the LRA; and shall cause confusion as the name Nurses and Midwives is used by the Applicant.



- i. that the Applicant wrote a letter to the Registrar of Trade Unions on 15th November, 2024 enquiring on the registration of Union of Kenya Civil Servants Nurses and Midwives Chapter, but is yet to get feedback.
 - j. that the Respondent is purporting to recruit Nurses and Midwives based on a Gazette Notice No. 1511 of 2011.
3. Documents annexed to the supporting affidavit include the Applicant’s Certificate of Registration, a Certificate of Change of Name, the Applicant’s Constitution, the Respondent’s Constitution, the Respondent’s Form (tool) for recruitment of Nurses and Midwives, Collective Bargaining Agreements between the Applicant and the Ministry of Health and State Corporations covering all nurses in health facilities under the National Government.
4. Also annexed to the supporting affidavit are copies of Recognition Agreements between the Claimant/ Applicant, the Ministry of Health, the 47 County Governments, State Corporation Health facilities; and Gazette Notice No. 1511 dated 15th February, 2011.
5. The application is opposed by the Respondent vide a replying affidavit of Tom Mboya Odede sworn on 16th December, 2024. It is deponed in the said replying affidavit:-
 - a. that the Respondent is a registered trade union mandated to organize and represent employees within the service of the National and County Governments of the Republic of Kenya.
 - b. that the Respondent has not registered or attempted to register a separate entity under the name “Union of Kenya Civil Servants Nurses and Midwives Chapter,” and that the said name refers to an internal organizational structure mechanism of the Respondent trade union intended to enhance representation and engagement with specific professional groups within the union.
 - c. that the Claimant’s application contradicts Article 41 of the Constitution of Kenya, which guarantees every worker the right to fair labour practices, including the right to join or participate in the activities and programs of a trade union of their choice.
 - d. that Section 4 of LRA supports workers to organize and associate.
 - e. that the orders sought by the Applicant would unjustifiably infringe on the constitutional right of workers to unionize by effectively barring nurses and midwives who are civil servants and already members of the Respondent trade union (UKCS) from choosing their preferred union, including the possibility of dual membership whose legality has never been in question.
 - f. that the Respondent’s mandate to represent civil servants, including nurses and midwives employed by the Government is firmly grounded in its registration and the applicable labour laws.
 - g. that the Claimant/Applicant’s concerns about similarity in names is unfounded as the Respondent operates under the name “Union of Kenya Civil Servants” while the Applicant operates under the name “Kenya National Union of Nurses and Midwives”.
6. Annexed to the replying affidavit is the Respondent’s record on nurses’ union membership and a copy of a Nursing Office’s payslip.
7. The application was presented to the Court under a Certificate of Urgency on 25th November, 2024, and I directed that the same be served; and on 28th November, 2024 issued an interim order upon



hearing Counsel for both parties; whose terms the Court varied on 19th December, 2024, again upon hearing Counsel for both parties.

8. Written submissions on the application were filed on behalf of both parties pursuant to the Court's directions in that regard; and Counsel for both parties appeared in Court (virtually) on 7th July, 2025 and orally highlighted on those submissions.
9. Having considered the application, the affidavits thereon filed by both parties, documents annexed to the affidavits and submissions filed/made by both parties, the sole issue that falls for determination, in my view, is whether the orders sought by the Claimant at this stage are merited.
10. Prayers (a), (b) & (c) in the application (as set out in paragraph 1 of this Ruling) are spent; leaving prayers (d) & (f) as the only substantive prayers that the Court must address at this stage.
11. It is a common ground that both the Claimant/Applicant and the Respondent are registered trade unions; with the Claimant/Applicant shown to have been registered on 19th April, 2013, and to have changed its name on 28th August, 2024. Registration of trade unions by the Registrar of Trade Unions is governed by Section 14 of the [Labour Relations Act](#) (LRA). Under Section 14(b) of the said Act, one of the requirements for registration of a trade union is adoption by the trade union of a constitution that complies with the requirements of the Act, including the requirements set out in the First Schedule thereof.
12. The nature and scope of a trade union's membership is to be found in its constitution. Article VI Section 6.1.0 of the Claimant/Applicant's Constitution states as follows:-

“Membership of the union shall be open to employed Nurses and Midwives, and any other employees regulated by the Nursing Council of Kenya”.
13. Under Section 14(1)(e) of the [Labour Relations Act](#), only members in a sector specified in the [Constitution](#) qualify for membership of the trade union. In the case of the Claimant/Applicant herein, only employed nurses and midwives, and other employees regulated by the Nursing Council of Kenya, qualify for membership of the Claimant/Applicant trade union.
14. Article 4(1) of the Respondent's Constitution provides as follows:-

“Membership of the union shall be open to employees in the Public Service of the Government of Kenya, commonly known as “Public Service” and whose remuneration is derived directly from estimates voted for by the Parliament of Kenya or from the Consolidated Fund of the Government of Kenya.”
15. The foregoing provision of the Respondent's Constitution is quite broad, and will definitely include nurses and midwives employed in Kenya's Public Service. Recruitment of such nurses and midwives into the Respondent's membership will, however, be governed and demarcated by the law.
16. The Respondent placed reliance on Article 41 of the [Constitution](#) of Kenya, which the Respondent maintained guarantees each worker the right to join or to participate in the activities and programs of a trade union of their choice. The Respondent also placed reliance on Section 4 of the RLA which echoes the foregoing constitutional provision. It ought to be appreciated that the right to fair labour practices, which includes the right to form, join or participate in the activities and programmes of a trade union; is given effect by various statutes, of which the [Employment Act](#) and the [Labour Relations Act](#) are primary.



17. Citing from the Court’s findings in *Josephat Ndirangu – vs – Henkel Chemical (E.A) Ltd* [2013] eKLR, the Court in *Francis Atonya Ayieka –vs – The Kenya Police Service & Another* [2017] eKLR stated as follows:-

“20. A litigant should not avoid the provisions of the *Employment Act* regarding unfair termination or wrongful dismissal by going behind the statute and seeking to rely directly on Article 41 of the *Constitution* on the right to fair labour practices. The purpose of the *Constitution* is that the right to fair labour practices is given effect in various statutes, of which the *Employment Act* and the *Labour Relations Act* are primary.

The primary legislation should not be circumvented by seeking to rely directly on a constitutional provision. Both the *Employment Act* and the *Labour Relations Act* give effect to constitutional rights”

18. Still on the same issue, the Court of Appeal stated as follows in the case of *Summaya Athman Hassan – vs – Paul Masinde Simidi & Another* [2019] eKLR:-

“ . . . We adopt and uphold the general principle in the persuasive authority of *BARBARA DE KLERK* (Supra) that where legislation has been enacted to give effect to a constitutional right, it is not permissible for a litigant to find a cause of action directly on the *Constitution* without challenging the legislation in question. That principle has been reinforced by the Supreme Court in the *Communication Commissions’ case* (Supra).”

19. The import of all the foregoing is that the rights set out in Article 41 of the *Constitution* of Kenya 2010 are to be enjoyed in an orderly and regulated manner, as provided in the legislation giving effect to those rights; the *Labour Relations Act*. The right to fair labour practices, just like other rights, are enjoyed by individuals within a societal space where others also enjoy similar rights, hence the need for legislation giving effect to, and regulating enjoyment of those rights.

20. As already demonstrated in this Ruling, constitutions of both the Claimant and the Respondent clearly state that their respective membership is drawn from individuals who are employed. This brings into the picture a third person/entity, the employer. The *Labour Relations Act* has specific provisions regulating recruitment of members by trade unions at the work place.

21. Section 54(1)(6) of the *Labour Relations Act* provides as follows:-

“(1) An employer, including employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.

(2) . . .

(3) . . .

(4) . . .

(5) . . .

(6) If there is a dispute as to the right of a trade union to be recognised for the purposes of collective bargaining in accordance with this Section or the



cancellation of a recognition agreement, the trade union may refer the dispute for conciliation in accordance with the provisions of Part VIII.”

22. Section 56(1) of the [Labour Relations Act](#) provides as follows:-

- “(1) Without limiting the matters that may be dealt with in a recognition agreement, a recognition agreement shall provide for an employer to grant a trade union reasonable access to the employers premises for officials or authorised representatives of the trade union to pursue the lawful activities of the trade union, including but not limited to –
- a. recruitment of members for the trade union;
 - b. holding meetings with members of the trade union and other employees outside of working hours;
 - c. representing members of the trade union in dealings with the employer; and
 - d. conducting ballots in accordance with the [Constitution](#) of the trade union.”

23. The foregoing statutory provisions lay down a meticulous framework in accordance with which trade unions are to recruit and acquire membership of persons in employment.

24. As already stated elsewhere in this Ruling, documents annexed to the affidavit sworn in support of the application herein include recognition agreements and Collective Bargaining Agreements between the Claimant/Applicant and employers, who include:-

- a. Kenyatta National Hospital Board.
- b. Kirinyaga County Government Public Service Board.
- c. Samburu County Government Public Service Board.
- d. Uasin Gishu County Government Public Service Board.
- e. Narok County Government Public Service Board.
- f. Siaya County Government Public Service Board.
- g. Kajiado County Government Public Service Board.
- h. Nandi County Government Public Service Board.
- i. Wajir County Government Public Service Board.
- j. Bomet County Government Public Service Board.
- k. Nyamira County Government Public Service Board.
- l. Mombasa County Government Public Service Board.
- m. Lamu County Government Public Service Board.
- n. Nyandarua County Government Public Service Board.
- o. Tharaka Nithi County Government Public Service Board.



- p. Laikipia County Government Public Service Board.
- q. Nakuru County Government Public Service Board.
- r. Meru County Government Public Service Board.
- s. Embu County Government Public Service Board.
- t. Taita Taveta County Government Public Service Board.
- u. Bungoma County Government Public Service Board.
- v. Migori County Government Public Service Board.
- w. Kakamega County Government Public Service Board.
- x. Baringo County Government Public Service Board.
- y. Nyeri County Government Public Service Board.
- z. Kisii County Government Public Service Board.
- aa. Nairobi County Government Public Service Board.
- ab. Tana River County Government Public Service Board.
- ac. Mandera County Government Public Service Board.
- ad. Kilifi County Government Public Service Board.
- ae. Homa Bay County Government Public Service Board.
- af. Kitui County Government Public Service Board.
- ag. Kwale County Government Public Service Board.
- ah. Murang'a County Government Public Service Board.
- ai. Makueni County Government Public Service Board.
- aj. Kericho County Government Public Service Board.
- ak. West Pokot County Government Public Service Board.
- al. Busia County Government Public Service Board.
- am. Vihiga County Government Public Service Board.
- an. Elgeyo Marakwet County Government Public Service Board.
- ao. Isiolo County Government Public Service Board.
- ap. Moi Teaching and Referral Hospital Board.
- aq. Turkana County Government Public Service Board.
- ar. Marsabit County Government Public Service Board.
- as. Trans Nzoia County Government Public Service Board.
- at. Machakos County Government Public Service Board.



- au. Kiambu County Government Public Service Board.
 - av. The Public Service Commission and/or Authorized Representatives.
 - aw. Kisumu County Government Public Service Board.
 - ax. A Collective Bargaining Agreement between the Ministry of Health and the Kenya National Union of Nurses and Midwives signed on 6th August, 2024.
25. On a balance of probabilities, the Claimant has demonstrated that it has existing Recognition Agreements with the employers of Nurses and Midwives in the public sector. It has not been shown, or even alleged that any of the aforesaid Recognition Agreements and Collective Bargaining Agreements have been revoked and/or cancelled as by law provided or at all. I have noted that according to the Constitution of Kenya 2010 (Fourth Schedule thereof), that health services, including county health facilities and pharmacies, are a devolved function; hence the signing of Recognition Agreements between the Claimant/Applicant and the County Governments. I have also noted that the National Referral Health Facilities remain under the National Government. The Collective Bargaining Agreement signed between the Claimant/Applicant and the Ministry of Health is shown to apply to nurses working under the Ministry of Health.
26. The Respondent, though mandated by its Constitution to draw membership from Public Servants (Public Service), has not demonstrated the existence of formal labour relations (in form of Recognition Agreements) between itself and employers of nurses and midwives in the public sector. Provisions of the Labour Relations Act do not envision a situation whereby more than one trade unions are recruiting members from employees of an employer at the same time. Recruitment of members who are employed can only be done within the legal parameters laid down in the Labour Relations Act, which provides for recognition of only one trade union at any one given time by an employer. That is why the Act provides for a dispute resolution mechanism where a dispute arises regarding the right of a trade union to be recognised by an employer. Section 48(6) & (7) of the LRA on the other hand provides the procedure to be followed by a member/employee wishing to resign from a trade union that has been recognised by an employer.
27. Provisions of the Labour Relations Act ensure an orderly and regulated enjoyment of the Article 41 rights, as stated elsewhere in this Ruling.
28. The Respondent did not deny having developed a form (a tool) for recruitment of nurses and midwives into its membership. It did not also deny the Claimant’s allegation that it was conducting a recruitment drive aimed at recruiting nurses and midwives into its nurses and midwives chapter. The Respondent did not demonstrate the existence of any Recognition Agreement between itself and any employer of nurses and midwives, whether in the public sector or in the private sector. So, who are the target nurses and midwives, and whose employees are they.” According to the Respondent’s Constitution, the Respondent can only draw membership from the public service.
29. There must be order in the work place as intended by the legislature in legislating the Labour Relations Act, and more so in the public sector, and in a sector as crucial as the health sector.
30. Yes, the Respondent may recruit nurses and midwives into its membership, but not from employees of employers who have already signed recognition agreements with the Claimant/Applicant, as long



as those recognition agreements subsist. It was stated as follows in Kenya Airline Pilots Association – vs – Kenya Airways Limited [2016] eKLR:-

“9. The parties herein have a Recognition Agreement and a Collective Bargaining Agreement. A recognition agreement in its nature is a special contract between an employer and a trade union as it sets up a relationship between the employer and its employees through the trade union. The Agreement grants the trade union “recognition” and acknowledgement by the employer as the employees’ representative of their collective interests. Like a contract, the Recognition Agreement sets out how the relationship between the parties is to be governed. Therefore under it the parties by mutual consent set out the terms that govern their relationship as held in BIFU versus Maisha Bora Sacco Society Limited, Cause No. 2298 of 2014.”

31. Recognition Agreements are, according to Section 54(1) of the *Labour Relations Act*, made for purposes of collective bargaining. Once a Collective Bargaining Agreement signed between an employer and a trade union is registered pursuant to Section 60 of the *Labour Relations Act*, it covers not just the unionisable employees of the employer who are members of the trade union, but also the unionisable employees of the employer who are not members of the trade union. This is the creed conveyed by Section 49(1) of the *Labour Relations Act* which provides for deduction of agency fees. The law does not provide for recognition of two trade unions by an employer at the same time.
32. On registration of trade unions, the Registrar is only mandated by law (Section 25 of the LRA) to register trade unions and their branches, but not chapters. The law, therefore, does not provide for creation of Chapters within trade unions, but trade unions may have branches; which the Registrar is obligated to register. Any formation within a trade union going by the name “Chapter” is an illegality, and any purported recruitment of members into such illegal formation is a nullity.
33. Turning to the orders sought by the Claimant/Applicant, and having considered written submissions filed on behalf of both parties, and oral submissions made in Court by Counsel for both parties in highlighting of their respective written submissions, the Notice of Motion dated 20th November, 2024 is hereby allowed in the following terms:-
 - a. An order is hereby issued restraining the Respondent (Union of Kenya Civil Servants), its officials, officers, agents and assigns and anybody acting on their behalf from registering/recruiting nurses and midwives in employment of employers who have signed Recognition Agreements or CBAs with the Claimant/Applicant, into its membership and/or its “Nurses and Midwives Chapter”; pending hearing and determination of the suit/claim herein.
 - b. The suit herein shall be fast-tracked, and shall be set down for hearing.
34. Costs of the application shall abide the outcome of the suit.
35. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2026

AGNES KITIKU NZEI

JUDGE

Order



This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Suguti for the Claimant/Applicant

Mr. Wangatia for the Respondent

No appearance for the Interested Party

