

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

ELRC PETITION NO. E228 OF 2025

(Before Hon. Lady Justice Hellen Wasilwa, J)

PAULETTE ODERO.....1ST
PETITIONER

AYAN ADAN OSMAN.....2ND
PETITIONER

VS

REGISTRAR OF TRADE UNIONS.....
RESPONDENT

RULING

1 The Petitioner/ Applicant filed a Notice of Motion dated 28th October 2025 seeking orders that: -

1. *Spent*
2. *Pending the hearing and determination of this application and the petition, this honourable court do issue an order of certiorari quashing the respondent's letter dated 15th September 2025.*
3. *Upon hearing and determination of this application and the petition, this honourable court do issue an order of certiorari quashing the respondent's letter dated 15th September 2025.*
4. *Pending the hearing and determination of this application and the petition, this honourable court be pleased to issue orders prohibiting the respondent, either by themselves or by their*

agents, or any person purporting to act on instructions from it, from inciting the petitioners' employers into applying undue influence, force, or threats against the petitioners to drop their bid to register a trade union.

5. *Pending the hearing and determination of this application and the petition, this honourable court be pleased to issue orders prohibiting the respondent, either by themselves or by their agents, or any person purporting to act on instructions from it, from inciting the petitioners' employers into applying undue influence, force, or threats against the petitioners to drop their bid to register a trade union.*
6. *Pending the hearing and determination of this application and the petition, this honourable court orders the respondent to issue the petitioners or their representatives with a temporary certificate for registration of a trade union.*
7. *Upon hearing and determination of this application and the main suit, this honourable court orders the respondent to grant the petitioners or their representatives with a certificate of registration of a trade union.*
8. *Costs of the application*

Petitioners/Applicants' Case

- 2 The Applicants aver that they are employees of Kenya Airways, the national carrier and the country's largest airline. Together with other employees of the airline, save for pilots, they were compelled to join Kenya Airport Workers Union (KAWU), which continues to make trade union deductions from their salaries to date without their free and informed consent.
- 3 It is the Applicants' case that the KAWU is an umbrella body for all airport staff regardless of the nature of their work except pilots. Airport work is diverse, with different operational demands that it is not possible to effectively represent one cadre through an omnibus union like KAWU.
- 4 The Applicants aver that being dissatisfied with the inefficiencies and ineffectiveness of the said union in addressing the peculiar needs of cabin crew members, they sought to exercise their constitutional right to freedom of association by initiating the process of registering a trade union specifically tailored to represent cabin crew.
- 5 They aver that prior attempts by cabin crew members to register such a union were met with resistance, threats, and intimidation from both the employer and the existing union.
- 6 It is the Applicants' case that the KAWU has consistently failed to advance or protect the interests of cabin crew

members. In particular, the union supported the abolition of layover allowance, a benefit that directly affects cabin crew, thereby acting to their detriment rather than in their best interests.

- 7 The Applicants further aver that they formally wrote to the Respondent seeking the grant of a temporary certificate to enable them to proceed with the registration of their proposed trade union. However, the Respondent has failed and/or neglected to grant the said certificate and has not provided any reasons for declining or delaying the process, thereby frustrating their constitutional and statutory rights.
- 8 The Applicants aver that although a letter allegedly rejecting their application has been circulating on social media, neither they nor their advocates have been served with the said letter. They contend that the Respondent's failure to formally communicate its decision offends the principles of fair administrative action, transparency, and accountability.
- 9 It is the Applicants' case that the actions and omissions complained of unjustifiably limit their right to freedom of association and fair labour practices, and that this Court ought to intervene to protect and vindicate their constitutional rights.

10 Despite service, the Respondent neither entered appearance nor filed any replying affidavit or submissions in opposition to the application.

Petitioners/Applicants' Submissions

11 The Applicants submitted that the Respondent acted irrationally and *ultra vires* its statutory mandate by failing to formally communicate its decision on the application while allegedly circulating a rejection letter to third parties. Such conduct violated the national values and principles of governance enshrined under Article 10 of the Constitution, including transparency, accountability, equality and respect for human dignity.

12 It is the Applicants' submission that the Respondent violated their right to fair administrative action as guaranteed under Article 47 of the Constitution and the Fair Administrative Action Act, by failing to give written reasons for the rejection and by failing to serve the alleged decision upon the Applicants or their advocates, thereby rendering the decision opaque, arbitrary and procedurally unfair.

13 The Applicants submitted that the Petition does not seek to encroach upon the Respondent's statutory mandate, but rather invites this Court to compel the Respondent to

lawfully exercise its mandate by issuing a determination on the status of the application.

- 14 It was submitted that without a temporary certificate from the Respondent, the Applicants are legally barred from promoting or recruiting members, thereby frustrating the entire registration process at inception.
- 15 The Applicants submitted that the Respondent exceeded its powers under section 12(3) of the Labour Relations Act, which limits refusal of a temporary certificate to only two grounds, namely defectiveness of the application or similarity of the proposed name to that of an existing trade union. The Respondent did not demonstrate that the application was defective or that the proposed name was similar to that of an existing trade union, and therefore, the refusal to issue a temporary certificate was unlawful.
- 16 The Applicants submitted that the Respondent ought to have confined itself to Section 12(3) of the Labour Relations Act, as the merits of the application are to be considered at a later stage of the registration process. In the absence of any lawful justification falling within the exceptions provided by law, they were entitled, as of right, to the issuance of a certificate of temporary registration.
- 17 It is the Applicants' submission that the Respondent's actions were discriminatory and irrational, having previously registered specialised trade unions, including

those representing pilots, despite their membership under Kenya Airport Workers Union. The justification that their interests were already represented under an omnibus union was therefore untenable and discriminatory.

18 The Applicants placed reliance on ***Waithaka & 6 others (All Suing on Behalf of the Proposed National Union of Biomedical Engineers of Kenya) v Registrar of Trade Unions [2025] KEELRC 3247 (KLR)***, where the Court held that a blanket ban on the registration of new trade unions was unconscionable, particularly where new and specialized areas of practice emerge, and that it would be unjustified to block registration on the basis of generalized jurisdiction of an existing union.

19 I have examined the averments of the applicant petitioner herein. The applicant's contention relate to failure by the Registrar Trade Union to allow them register their union. The law on what a party needs to do in event of the Registrar of Trade Union not acting on their application to recruit and register a trade union is under section 28(5) of the Labour Relations Act 2007 which states as follow:

(5) A trade union, employers' organisation or federation may appeal against a decision of the Registrar to the Industrial Court.

20 Section 30 of the Labour Relations Act 2007 also states as follows:

30. Any person aggrieved by a decision of the Registrar made under this Act may appeal to the Industrial Court against that decision within thirty days of the decision.

21 In essence the law is clear that when a party is dissatisfied with any decision made by the Registrar of Trade Union the party can appeal to this court.

22 The applicant has chosen to file a petition and this application which in this court's view is not what is envisaged under the law. I decline to grant the orders sought and dismiss the application. Costs in the petition.

Dated, Signed and Delivered Virtually at Nairobi this 26th Day of February, 2026.

**HELLEN WASILWA
JUDGE**