



**Kenya County Government Workers Union v Registrar of Trade Unions & another  
(Cause E437 of 2025) [2026] KEELRC 669 (KLR) (9 March 2026) (Judgment)**

Neutral citation: [2026] KEELRC 669 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E437 OF 2025  
HS WASILWA, J  
MARCH 9, 2026**

**BETWEEN  
KENYA COUNTY GOVERNMENT WORKERS UNION ..... CLAIMANT  
AND  
REGISTRAR OF TRADE UNIONS ..... RESPONDENT  
AND  
WATER SERVICES WORKERS UNION ..... INTERESTED PARTY**

**JUDGMENT**

1. The Appellant filed this appeal vide a Memorandum of Appeal dated 19<sup>th</sup> May 2025 being dissatisfied with and aggrieved by the decision of the Respondent herein made on 23<sup>rd</sup> April, 2025 on grounds: -
  1. The Registrar of Trade Union, the Respondent herein, erred in law and fact by proceeding to register the Interested Party herein as a trade union in the water services and/or sewerage sector without considering and/or taking into account the Appellant's representations and/or objections to the said registration.
  2. The Respondent herein erred in law and fact by condemning the Appellant unheard, thereby violating its constitutional right to fair hearing.
  3. The Respondent herein erred in law and fact by failing to take into account relevant factors, including the fact that there are already existing other trade unions in the water services sector that sufficiently and effectively represented the interests of employees of companies operating in the said sector.
  4. The Respondent herein erred in law and fact by failing to properly analyze the application for registration of the Interested Party herein against the statutory requirements of section 14 (1) (d) of the Labor Relations Act, 2007.



5. The Registrar of Trade Unions erred in law and fact by failing to consider the unnecessary confusion, unrest, and intense rivalry among unions in the water services sector that would ensue if another union is registered in a sector where other unions already exist which are sufficiently representative of the whole or substantial proportion of the interests in respect of which the Interested Party's application was sought.
2. The Appellant prayed for orders that: -
  1. The instant appeal be and is hereby allowed in its entirety.
  2. A declaration be and is hereby made that the Respondent's decision to register the Interested Party herein and issue it with the registration certificate number TU/194 dated 23<sup>rd</sup> April, 2025 without considering the Appellant's objections to the said registration is unprocedural, unfair, invalid, and unlawful hence null and void.
  3. The Respondent's impugned decision leading to the certificate of registration number TU/194 dated 23<sup>rd</sup> April, 2025 to the Interested Party herein be and is hereby set aside, reviewed, discharged, and/or varied.
  4. The Interested Party's registration certificate number TU/194 dated 23<sup>rd</sup> April, 2025 be and is hereby vacated and/or cancelled.
  5. The Respondent be and is hereby directed to reconsider the Interested Party's application for registration afresh in accordance with the judgment, orders, and/or directions of this Honourable Court, including a consideration of the Appellant's objections to the impugned registration.
  6. The costs of this appeal be borne by the Respondent and Interested Party herein.

### **Respondent's case**

3. In opposition to the appeal, the Respondent filed a replying affidavit dated 23<sup>rd</sup> July 2025 and sworn by Ann Kanake, the Acting Registrar of Trade Unions.
4. 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.
5. The Respondent avers that pursuant to Section 12 of the *Labour Relations Act*, the Interested Party applied for registration for issuance of a promotion certificate for a proposed union under the name "Water Services Workers Union" via a letter dated 7<sup>th</sup> July, 2022.
6. Upon receipt of the said application, the Respondent reviewed the said application and after establishing that the Interested Party had met all the prerequisite requirements for registration as provided for under Section 12, issued the Interested Party with a certificate of promotion dated 11<sup>th</sup> 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.
7. 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.



8. 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)*.
9. 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.
10. 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 23<sup>rd</sup> April 2025.
11. It is the Respondent's case that it is now settled law, as affirmed in cases such as *Mugambi & 4 others (Suing as promoters, interim officials and applicants for registration of Kenya National Union of Public Prosecutors (KNUPP)) v Registrar of Trade Unions [2022] KEELRC 4151 (KLR)* and *Dominic Ngolo & 7 others [Suing on their behalf and on behalf of the proposed Kenya Bodaboda, Tuktuk and Taxi Workers Union] v Registrar Of Trade Unions [2016] KEELRC 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.
12. 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.
13. It is the Respondent's case that mere existence of another trade union is insufficient grounds for refusal; it must evaluate whether the existing union truly represents the specific workforce segment or demonstrates substantial representation of the group in question.
14. The Respondent avers that the Appellant's 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**

15. In opposition, the Interested Party filed a replying affidavit dated 30<sup>th</sup> October 2025, sworn by Matilda Kimetto, its Secretary General.
16. The Interested Party avers that the Appeal is fatally defective, without merit, frivolous, and an abuse of the court process, and ought to be dismissed in its entirety.



17. It is the Interested Party's case that the Appellant's claim that the Registrar failed to consider the likelihood of confusion and rivalry in the water services sector is a misrepresentation, as they are the ones responsible for causing confusion by purporting to represent employees in the water sector yet there are decisions by various courts disputing the same.
18. The Interested Party avers that courts have consistently held that the Appellant, Kenya County Government Workers Union, has no right to represent employees in the water services sector. Reliance is placed on Kenya County Government Workers Union v Nairobi Water and Sewerage Company Limited & National Union of Water and Sewerage Employees [2021]eKLR, "In Cause 439 of 2010, the Court specifically restrained KLGWU from purporting to represent or hold itself out as an agent of the employees, recruiting or dealing with employees of water companies in any manner. In view of the confirmation of these decisions by the Court of Appeal decision in Civil Appeal No.18 of 2013, the KCGWU has no right to cover employees in the water services sector."
19. The Interested Party avers that in Kenya County Government Workers Union v Nairobi Water & Sewerage Company Ltd & 2 others [2025] KEELRC 1546 (KLR), the Court reiterated that the Appellant must expunge employees of water and sewerage companies from its constitution and lacks capacity to represent employees in the water services sector. The Court further held that recognition agreements and CBAs entered into by the Appellant in the sector were invalid where an existing recognition agreement with NUWASE subsisted.
20. It is the Interested Party's case that these decisions demonstrate that the Appellant is aware of the existence of the unchallenged Court of Appeal decision in Civil Appeal No. 18 of 2013 where it was expressly declared that, the KCGWU has no right to cover employees in the water sector and thus they cannot purport to represent employees in that sector.
21. 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.
22. It is the Interested Party's case that pursuant to section 14(1) of the *Labour Relations Act*, the Respondent established that it had complied with all legal requirements and duly issued a certificate of registration dated 23<sup>rd</sup> April 2025.
23. The Interested Party avers pursuant to Section 19 of the *Labour Relations Act*, the Registrar of Trade Unions consulted the National Labor Board and afterwards went ahead to issue the Interested Party with a certificate of registration no. TU/194 on 23<sup>rd</sup> April 2025.
24. The Interested Party further avers that 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 declared as follows in regards to the independence of the Registrar of Trade Unions: "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."
25. It is the Interested Party's case that the Registrar is not under a legal obligation to disclose detailed reasons for registering a trade union after receiving objections, so long as the Registrar is satisfied that the statutory criteria have been met and that the proposed union will adequately represent the intended employees.



26. The Interested Party avers that the mere existence of another registered union in a similar or related sector is not, in itself, a valid ground for refusal of registration of a new union.
27. The Interested Party therefore avers that the registration and issuance of Certificate No. TU/194 by the Respondent was lawful, procedural, and in full compliance with the [Labour Relations Act](#).
28. It is the Interested Party's case that the Memorandum of Appeal dated 19<sup>th</sup> May 2025 is frivolous, fatally defective, and an abuse of the court process, and should be struck out or dismissed with costs to the Interested Party.

### **Claimant/Appellant's submissions**

29. 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 Respondent's registration of the Interested Party herein is merited.
30. 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; it is a misrepresentation of the Court of Appeal's holding in Civil Appeal No. 18 of 2013.
31. 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."
32. 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.
33. 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."



34. 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 *Modern Soap Factory v Kenya Shoe and Leather Workers Union* [2020] KECA 4 (KLR).
35. It is the Appellant's submission 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.
36. 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.
37. The Appellant submitted that the Respondent's contention that it is not bound to consider objections flies 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..."
38. 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.
39. 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.
40. 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.
41. 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.

42. 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.
43. 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.”
44. 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.”
45. 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.
46. 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.
47. 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.

48. 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.
49. 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.
50. 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 Submission**

51. 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*.
52. 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.
53. 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.”

54. The Respondent submitted that the mere existence of another trade union is not sufficient grounds for refusal of registration.
55. 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 Submission**

56. The Interested Party submitted on two issues: whether the Appellant 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.
57. 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.
58. 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.
59. 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.
60. 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.
61. 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.
62. 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.”

63. The Interested Party submitted that on 11<sup>th</sup> 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.
64. 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.
65. 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 23<sup>rd</sup> April 2025.
66. 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 23<sup>rd</sup> April 2025 was valid and merited.
67. I have considered the evidence of submissions of the parties herein. The appellant filed this appeal against the decision of the respondent to register the interested party as a trade union citing the fact that there are other trade unions in existence who can expensively cover the interests of the union members. They have contended that registering the interested party would lead to fragmentation of unions in the water section leading to diluted representation.
68. The respondent the interested party explained what steps were taken by the respondent before registering the interested party indicating that the rights of their union member under article 41 of the Constitution is paramount and that they followed the requisite process that led to their registration.
69. Article 41 of the Constitution is explicit that every employee has a right to participate in the formation of a trade union and join a union of their choice. The interested party did apply to register a union and was allowed to promote its activities and finally got a following leading to the union being allowed to operate as such.
70. The contention by the applicant that they can handle the affairs of the union members alone may be true but fails in the face of article 41 of the Constitution which guarantees every employee the right to join and participate in a union of their choice. Insisting on one union when members have already chosen to join another of their choice would in my view curtail the rights of these members. It is



also true that the interested party is a union specific to water sector which does not infringe on the jurisdiction of the appellant and would not bring any confusion or overlap in the section

71. I do not find this appeal having any merit and I therefore dismiss it accordingly with costs to the respondents and interested party.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9<sup>TH</sup> DAY OF MARCH, 2026.**

**HELLEN WASILWA**

**JUDGE**

