



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya National Private Security Workers Union v M'Mbolo & 8 others (Civil Application E085 of 2024) [2026] KECA 788 (KLR) (24 April 2026) (Ruling)**

Neutral citation: [2026] KECA 788 (KLR)

**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL AT KISUMU**  
**CIVIL APPLICATION E085 OF 2024**  
**HA OMONDI, LK KIMARU & AO MUCHELULE, JJA**  
**APRIL 24, 2026**

**BETWEEN**

**KENYA NATIONAL PRIVATE SECURITY WORKERS UNION ..... APPLICANT**

**AND**

**HESBON LUMUMBA M'MBOLO ..... 1<sup>ST</sup> RESPONDENT**

**JANET MUSIMBI OLWANGU ..... 2<sup>ND</sup> RESPONDENT**

**CAROLYNE MUKHWANA ..... 3<sup>RD</sup> RESPONDENT**

**JAIRUS KATERE SHIAMAKA ..... 4<sup>TH</sup> RESPONDENT**

**DEBORA KERUBO OGAKE ..... 5<sup>TH</sup> RESPONDENT**

**ONGERA SAMSON OMECHI ..... 6<sup>TH</sup> RESPONDENT**

**WILFRED DIZUZA BONGOKO (ALL SUIING ON BEHALF OF THE  
PROPOSED KENYA UNION OF SPECIAL & PROFESSIONAL GUARDS -  
KUSPROG) ..... 7<sup>TH</sup> RESPONDENT**

**THE REGISTRAR OF TRADE UNIONS ..... 8<sup>TH</sup> RESPONDENT**

**AND**

**CENTRAL ORGANIZATION OF TRADE UNIONS (COTU -  
K) ..... INTERESTED PARTY**

*(Being an application for injunction from the judgment of the  
Employment and Labour Relations Court of Kenya at Kisumu (Stephen  
Radido, J) Dated 7th February, 2024 in ELRC Case No. 5 of 2020)*



## RULING

1. The applicant moved this Court by notice of motion made under Rule 5(2)(b) of the Court of Appeal Rules seeking to be granted an order of injunction to restrain the respondents, as officials of Kenya Union of Special & Professional Guards (KUSPROG) from recruiting Private Security Officers, Security guards, Cadets, Rangers, VIP escort, Cash Escorts, Courier Services and Private Investigators or in any other way interfering or encroaching on the applicant's jurisdiction as gazetted and set out in Rule 3 of the applicant's Constitution. The grounds in support of the application are stated on the face of the application. The applicant states that it was aggrieved by the decision of Employment and Labour Relations Court (ELRC). It has filed notice of its intention to appeal against the said decision to this Court. It asserts that it has an appeal which is arguable.
2. The applicant states that if the respondents are not restrained, the applicant will suffer harm that is irreversible and extremely serious. The applicant states that it obtained a favourable Judgment in Kisumu ELRC Appeal No. 5 of 2020 which forbade the respondents from establishing a Trade Union with a view of targeting its members in the security sector for recruitment at its members.
3. In disobedience to this Judgment, the respondents secured registration on 24<sup>th</sup> August, 2024 and immediately commenced recruitment of the applicant's members employed by Private Security firms, specifically those that the applicant had entered into collective bargaining Agreements with. The applicant urged the Court to grant the order sought in the application to prevent chaos and bickering and create an environment that will promote industrial harmony and the general welfare of the Private Security Industry. The application is supported by the annexed affidavit of Isaac G.M. Andabwa, the National General Secretary of the applicant.
4. The application is opposed. Ongera Samson O., the 6<sup>th</sup> respondent swore a replying affidavit in opposition to the application on his own behalf and on behalf of the 1<sup>st</sup> to 7<sup>th</sup> respondents. The respondents deponed that its Union was registered on 29<sup>th</sup> August, 2024 and a certificate issued to them in line with the Judgment of the ELRC which was delivered on 7<sup>th</sup> February, 2020 in Kisumu ELRC No. 5 of 2020. The respondents swore that the aim of the application was to restrain a non-party to the proceedings from discharging its lawful mandate. They maintained that Kenya Union of Special and Professional Guards (KUSPROG) was not a party in the proceedings before the ELRC. The respondents stated that the applicant had filed another suit before the ELRC at Kakamega essentially seeking the same orders that it is canvassing before this Court. The respondents asserted that the issues being raised before this Court on the alleged dispute of "demarcation" and or "encroachment" was a new matter which had not been litigated before the trial court. The respondents were concerned that the application, if granted, would prevent security sector workers from exercising their freedom and constitutional right to be represented by a Trade Union of their choice. They were not convinced that applicant had established a case or met the legal threshold to enable this Court grant the order sought in the application.
5. The applicant and the 1<sup>st</sup> to 7<sup>th</sup> respondent filed written submission in support of their respective opposing positions. The applicant further filed a list of authorities and case digest that they sought to rely on in support of the application. During plenary hearing of the application, this Court heard oral rival submissions made by Mr. Wati, learned counsel for the applicant and by Ms. Caroline Gichuhi, learned counsel for the respondent. They substantially highlighted the written submissions that they had earlier filed.



6. We have carefully considered the application, the affidavits filed and the submissions by the parties herein. The exercise of our jurisdiction under Rule 5(2)(b) of the Court of Appeal Rules is guided by known established principles. The applicant has to establish that it has an arguable appeal and secondly, that if the order craved for is not granted, the intended appeal will be rendered nugatory. In *Stanley Kangethe Kinyanjui v. Tony Ketter & 5 others* [2013] KECA 378 (KLR) this Court held thus:

“This Court in accordance with precedent, has to decide first, whether the applicant has presented an arguable appeal and second, whether the intended appeal would be rendered nugatory if these interim orders are denied.”

7. In the present application, the applicant urged us to find that it has an arguable appeal. It is the applicant’s case that it would be harmed and suffer irreversible damages if the respondents are not enjoined from continuing with their recruitment exercise of its members in the security sector especially those that it has entered a collective bargaining agreement with their employers. In response to this assertion, the respondents state that, as officials of a registered Trade Union, they were at liberty to promote their union in exercise of their constitutional right of freedom of association. The key issue in this application is whether the respondents can, in exercise of their right to promote their union, recruit the applicant’s members with whom it has entered a collective bargaining agreements with their employers. In our considered view, this is an arguable issue which should be ventilated before this Court. As this Court has repeatedly held in several decisions, an arguable appeal is not one which will necessarily succeed but is one which is not frivolous (See *Andrew Kiplagat Chemongo v. Paul Kipkorir Kibet* [2018] KECA 701 (KLR)).

8. As regards whether the intended appeal will be rendered nugatory if the order of injunction craved for is not granted, two events have taken place that militate against us allowing the application; the first is that the respondents are already registered as the officials of KUSPROG, a Trade Union in the Security Sector after the ELRC had decided the case which is the subject of this appeal in their favour. As it were, the horse has already bolted from the stable. The respondents cannot be enjoined from running a union that has been officially registered. Secondly, the applicant filed another suit before the ELRC at Kakamega essentially craving for the similar orders that they are seeking before this Court. We are of the view that in such circumstances, the applicant cannot say that its intended appeal will rendered nugatory because what is sought to be restrained has already happened and, secondly, the applicant seems to have made the decision that it can pursue appropriate remedy before the ELRC. The applicant is in essence hedging its bet where it was likely to secure a favourable outcome. The applicant, cannot in the premises, be allowed to pursue the same remedy before different Courts of different jurisdictions. That would amount to abuse of the due process of the Court.

9. It is clear from the foregoing that the application lacks merit and is hereby dismissed with costs to the respondents.

**DATED AND DELIVERED AT KISUMU THIS 24<sup>TH</sup> DAY OF APRIL, 2026.**

**H.A OMONDI**

**JUDGE OF APPEAL**

.....

**L. KIMARU**

**JUDGE OF APPEAL**

.....



**A.O. MUCHELULE**  
**JUDGE OF APPEAL**

I certify that this is a true copy of original.

Signed

**DEPUTY REGISTRAR.**

