



**Kenya Salt Workers Union (Represented by its promoters and applicants) & 6 others
v Registrar of Trade Unions; Kenya Chemical Workers Union (Interested Party)
(Civil Appeal E028 of 2022) [2025] KECA 119 (KLR) (7 February 2025) (Judgment)**

Neutral citation: [2025] KECA 119 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT MALINDI
CIVIL APPEAL E028 OF 2022
AK MURGOR, KI LAIBUTA & GWN MACHARIA, JJA
FEBRUARY 7, 2025**

BETWEEN

**KENYA SALT WORKERS UNION (REPRESENTED BY ITS PROMOTERS AND APPLICANTS) 1ST APPELLANT
LAWRENCE K MAJALI 2ND APPELLANT
FOLLENI CHEA BOSHE 3RD APPELLANT
MOSES H KELLA 4TH APPELLANT
SAFARI KAZUNGU NYANJE 5TH APPELLANT
KAZUNGU KONDO DUKA 6TH APPELLANT
DETHI TARSS MAKO KOFA 7TH APPELLANT**

AND

REGISTRAR OF TRADE UNIONS RESPONDENT

AND

KENYA CHEMICAL WORKERS UNION INTERESTED PARTY

(Being an appeal from the Judgment and Decree of the Employment and Labour Relations Court of Kenya at Malindi (B. O. M. Manani, J.) delivered on 14th June 2022 in ELRC Appeal No. 1 of 2019)

JUDGMENT

1. This is an appeal against the judgment and decree of the ELRC at Malindi (B. O. M. Manani, J.) dated 14th June 2022 in Employment and Labour Relations Appeal No. 1 of 2019.



2. The precis of the “appeal” is that, vide a letter dated 10th January 2017, the appellants applied to the respondent herein, the Registrar of Trade Unions, seeking registration of the proposed trade union in the name of “Kenya Salt Workers Union”. In their letter, the appellants stated that:

“There are no union activities in all the six salt firms. Neither has there been any collective bargaining agreement currently in force. The union will cover all employees working in the salt firms so as to improve their working conditions and other terms of service.”
3. Vide a certificate dated 3rd March 2017, the respondent authorised the appellants to undertake lawful activities with a view of establishing a trade union and directed that a formal application for the registration of the proposed trade union be made to the respondent within six months next following.
4. The appellants lodged a formal application dated 16th September 2017 for registration of the proposed trade union. Accompanying the application were the requisite documents, including the Constitution of the proposed trade union; minutes of the meeting at which a resolution was made to apply for registration of the union; and a list of the founding members and officials of the proposed trade union.
5. Soon thereafter, the respondent published a Gazette notice in the Kenya Gazette No. 9496 dated 14th September 2018 giving public notice of the receipt of the application for registration of the proposed trade union. In addition to the notice aforesaid, the respondent gave notice to the interested party, Kenya Chemical Workers Union, a registered trade union, to submit its written objection (if any) to the application within 21 days from the date of publication of the said notice.
6. Vide a letter and Notification of Refusal of Registration dated 20th May 2019, the respondent notified the appellants that the registration of Kenya Salt Workers Union as a trade union was declined. The grounds for refusal were that the envisaged scope of representation, namely all employees in the salt firm industry was already represented by the interested party, which represents workers employed in the manufacture of basic industrial chemicals, including alkalis and salt, among other products; that, while considering the application, the National Labour Board (the Board) rightfully noted that trade unions should be based on industry/sector, and not on crafts already represented in a particular section; and that the provisions of section 14(1)(d) of the Labour Relations Act provides that a trade union may apply for registration if no other trade union is sufficiently representative of the whole or substantial proportion of the interests in respect of which the applicants seek representation.
7. Dissatisfied with the decision of the respondent, the appellants lodged an “appeal” in the ELRC vide a Memorandum of Appeal dated 13th June 2019, which was subsequently amended in terms of the “Amended Memorandum of Appeal” dated 29th October 2019. Their appeal to the ELRC was founded on the grounds that the respondent erred in law and in fact: in her decision not to register the appellant organization as the appellants had met all the legal requirements for registration as a trade union; in denying registration after allowing them to undertake union activities, which entailed expending substantial effort in enrolling its membership amounting to over 300 members, thereby causing the appellants to suffer prejudice; in denying registration in bad faith after the appellants enrolled members into the union upon being advised to do so, which amounted to a violation of the appellants’ right to join an association of their choice as guaranteed by Article 36 of the Constitution; in denying registration on the basis that there was already a registered trade union, namely the interested party, catering for the sector when there was no evidence that the interested party ever raised any objections to the appellants’ application for registration, or that the interested party represented the proposed union’s members in the salt sector; in denying registration thereby rendering the members of the proposed union destitute and without the ability to organize labour activities, which amounted to a violation of their fundamental right of association guaranteed in the Constitution; and in denying



registration despite the fact that no objections had been made by the interested party after the publication of the Gazette Notice.

8. In their “appeal”, the appellants sought an order quashing the decision of the respondent and by extension the Board; an order compelling the respondent to unconditionally register the Kenya Salt Workers Union as a trade union; and for costs of the appeal.
9. For the avoidance of doubt, the appellant’s “appeal” to the ELRC is essentially in the nature of a Reference for judicial review of the respondent’s impugned decision to decline the appellant’s registration as a trade union. In effect, the word “appeal” must be construed as a Reference seeking orders of certiorari and mandamus pursuant to section 30 of the [Labour Relations Act](#), 2007 and not in the sense of an appeal from a subordinate court.
10. Soon thereafter, the interested party union filed an application dated 14th November 2019 seeking to be joined as an interested party in the appeal, which was allowed vide a ruling dated 16th November 2021.
11. The appeal/Reference was argued by way of written submissions. It was submitted for the interested party, all the while making reference to the various documents annexed to the application for joinder, that the respondent, by virtue of her mandate, was aware of the existence of the interested party as a union duly registered, and representing workers in salt manufacturing industries in accordance with its Constitution; that it was aware of the Collective Bargaining Agreement that the interested party had signed with other salt companies, such as Kensalt Ltd; that it was aware that the interested party had recruited 324 out of 600 (being 54% and more than a simple majority of) employees of Krystalline Salt Limited; and that it was in the process of seeking recognition in Mombasa ELRC No. 77 of 2019.
12. It was further submitted by the interested party that the grounds for refusal by the respondent were anchored on section 14 of the [Labour Relations Act](#); that it was therefore legally justified as the respondent was required to ascertain whether there was another union that represents or covers the same sector as the appellants union sought to represent; and that this is what the respondent did.
13. In its judgment dated 14th June 2022, the ELRC (B. O. M. Manani, J.) held that there was nothing in the law to suggest that the Registrar was bound to register a proposed union if there was no objection to its registration by an existing trade union or unions in the same sector; that all that an objection by an existing trade union was meant to serve was to fortify the Registrar’s decision; that all that the law required of the respondent was to reject such an application if she had evidence that there was already a trade union serving the same sector; and that, in declining to register the appellants’ union, the respondent acted within the law.
14. With regard to the issue as to whether the respondent’s denial of registration amounted to an infringement of the appellants’ and other members of the proposed union’s constitutional right to associate in an organization of their choice, the ELRC held that the constitutional right to form and belong to a union as well as the freedom of association were not absolute and could be limited as contemplated in Article 24 of the [Constitution](#); and that the limitations thereby imposed were intended to facilitate the establishment of strong trade unions that serve the interests of workers.
15. In view of the foregoing, the ELRC held that the appeal against the respondent’s decision was without merit and declined to allow the appeal with costs to the respondents.
16. Aggrieved by the decision of the ELRC, the appellants lodged the instant appeal vide their Memorandum of Appeal dated 29th August 2022 in which they advanced the following grounds, namely:



1. That the learned judge erred in law and in fact to hold that the registrar of trade union was within her mandate to refuse registration of the appellants without any written objections, which position is contrary to the law and in particular section 15(1) d proviso of the Labour Relation Act 2007.
 2. That the learned judge in making the decision should not have assumed that the registrar of trade unions knew about the existence of the interested party when the registrar did not receive written objections as required by the law and therefore her refusal to register the appellants was clearly wrong and inconsistent with the current law.
 3. That the learned judge failed to take into account the procedures required of the registrar to follow after the appellant application was put in the Kenya gazette and where after the interested party did not file written objection; and likening it to failing to have a written constitution would have been a fatal flaw when the appellant had included its constitution and that was not of the reasons for the objection.
 4. That the learned judge in arriving at his decision erred in law and in fact to state that the registrar's decision to refuse registration of the appellants was correct on the basis that the interested party was already serving the interests of a trade union in the sector the appellant was seeking to be registered in yet she was not shown by the interested party its constitution; and failure to take into account such a factor amounted to partisanship as she would be unable to arrive at such a reasoning without second guessing the fact which is not allowed by the act.
 5. That the honourable Judge erred in law and in fact in suggesting that the registrar of trade union was right in failing to register the appellant; and that the rights of the appellants' members had not been violated because the limitation to register was justifiable in an open and democratic society.”
17. In support of the appeal, learned Counsel for the appellants, M/s. Antony Okuto and Company, filed written submissions and a list of authorities dated 7th June 2023 as well as a supplementary list of authorities dated 21st March 2024. However, it is noteworthy that none of the authorities listed were cited in their written submissions.
 18. On their part, learned Counsel for the interested party, M/s. Oluoch Kimori, filed written submissions dated 30th September 2024. However, counsel did not cite any judicial authorities in support of their submissions. On the other hand, the respondent did not file any written submissions.
 19. This being a first appeal, this Court's mandate was espoused in *Ng'ati Farmers' Co-Operative Society Ltd. V Ledidi & 15 Others* [2009] KLR 331 as follows:

“An appeal to this Court from a trial by the High Court is by way of re-trial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that, this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witness and should make due allowance in that respect. In particular, this Court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence, or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”



20. This mandate was reiterated in the case of *Kenya Ports Authority v Kuston (Kenya) Limited* [2009] 2 EA 212 as follows:
- “On a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”
21. We are, however, conscious as cautioned by the predecessor to this Court in *Peters v Sunday Post Ltd* [1958] E.A 424 that:
- “It is a strong thing for an appellate court to differ from the finding, on a question of fact, of the judge who tried the case and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution. It is not enough that the appellate court might itself have come to a different conclusion.”
22. We are enjoined to adopt the approach underscored in the afore-cited cases and, having considered the record of appeal and the grounds on which it is anchored, we form the view that the appeal stands or falls on our finding on the following three points of law and fact, namely whether the learned Judge erred in law or in fact: in concluding that members of the appellant proposed union were adequately represented by the interested party; in finding that the respondent correctly declined to register the proposed union; and in failing to find that the respondent’s decision to decline registration of the proposed union amounted to a violation of constitutional rights of the appellants and other members of the proposed union.
23. On the 1st and 2nd issues, which are closely linked, learned counsel for the appellants submitted that the learned Judge was at fault in holding that the Registrar was within her mandate to decline registration of the propose union without any written objections made by the interested party ; that the learned Judge’s position was contrary to statute law as the proviso to section 14(1)(d) of the *Labour Relations Act* contains a substantive direction that all objections be made in writing, and that the respondent admitted that no written objections had been made; that the learned Judge presumed that the respondent had knowledge of the existence of the interested party and, therefore, used that knowledge to decline registration of the appellants’ proposed union, which presumption was wrong and unlawful in the absence of any written objection in that regard; and that the learned Judge failed to take into account the elaborate procedures required before a trade union is registered.
24. Counsel further submitted that sections 12 through 18 of the *Labour Relations Act* clearly provide the procedure to be adopted before a union is registered. According to counsel, the appellants having satisfied all the requirements, obtained an interim certificate to operate as a trade union pending full registration and recruited members who were not affiliated with the interested party ; that a reading of the proposed union’s Constitution showed that it was different from the interested party’s Constitution; and that, in particular, the proposed union’s objective of agitating for the workers’ rights within salt firms that comprise a sector within the meaning of the Act.
25. On their part, learned counsel for the interested party submitted that it is evident from the interested party’s Constitution that the interested party, which is duly registered with the respondent, has been representing workers in salt manufacturing industries; that it was not in dispute that the respondent



had signed recognition agreements and Collective Bargaining Agreements (CBAs) with other salt companies, such as Kensalt Ltd, which CBAs were in the possession of the respondent pursuant to her statutory mandate; that it was clear from the documents attached to the interested party's application for joinder in the superior court that the interested party had recruited more than a simple majority of the employees of Krystalline Salt Limited, the same company that the appellants were seeking to represent; that the respondent took note of the fact that the appellants' union could not be registered since the sector they intended to represent had already been covered by the interested party; and that registration of the appellants' union would have led to encroachment and the creation of disputes between the two unions thereby disrupting membership and representation.

26. Counsel further submitted that the grounds advanced by the respondent in declining the appellants' application for registration were anchored on section 14 of the *Labour Relations Act* and were legally justified; that the section does not bar the respondent from declining registration merely because no written objection had been raised; that the Act only required the respondent to ascertain whether there was registered another union representing or covering the same sector, and that this is what the respondent did; and that the Act gives the respondent the mandate to consider applications and reject or approve them based on several factors, including those given to the appellants in the notification of the Registrar's refusal to register.

27. In this regard, we take the liberty to replicate the learned Judge's reasoning thus:

" 13. One of the grounds upon which an application for registration may be rejected is that there is already a Trade Union representing the sector in which the proposed Trade Union is to operate. This is the effect of section 14 (1) (d) of the *Labour Relations Act*.

14. Where the Registrar of Trade Unions is aware of the existence of a Trade Union in the sector where applicants seek to register a new Trade Union, he is obligated under the proviso to section 14 (1) of the Act to issue a notice to such Union inviting it to tender any objections to the application. Whilst the law stipulates that the existing Union should indicate its objections within the time specified by the notice, there is nothing in the law to suggest that the Registrar is bound to register the proposed new Union if he does not get an objection to its registration from the existing Trade Union.

14. To my mind, the powers of the Registrar to decline registration are not constrained by the failure to lodge an objection by the existing Trade Union. On the contrary, all that an objection by an existing Trade Union is meant to serve is to fortify the Registrar's decision...

... ..

17 ... the Respondent was under no obligation to register the Appellants' Union merely because the Interested Party failed to object to its registration. What the law requires of the Respondent is to reject such application if he has evidence that there is already a Trade Union serving the sector. In my view, the Respondent already had this information from the *Constitution* of the Interested Party. The court takes judicial notice of the fact that this Constitution is as a matter of law filed with the Respondent on registration of a Trade Union. Clause 2(a) (i) of the *Constitution* which is annexed to the Interested Party's affidavit dated 22nd October 2021 clearly indicates that



the Interested Party covers employees in the salt sector where the Appellants were seeking to register the proposed Trade Union. In compliance with the guidelines under section 14 of the *Labour Relations Act*, the Respondent took this factor into account in rejecting the Appellants' application.

18. I find that in declining to register the Appellants' Trade Union, the Respondent acted within the law."
28. The *Labour Relations Act* (Cap 233) mandates registration as an indispensable pre-requisite for any trade union to function as such. Section 23(1) of the Act provides that:
 23. Consequences of failure to register
 1. No person shall perform any act in furtherance of a trade union or employers' organisation unless that trade union or employers' organisation —
 - a. is registered under this Act; or
 - b. an application for its registration is being considered.
 29. On the other hand, section 23(2) of the Act allows proposers to undertake activities aimed at securing compliance with the requirements for registration and reads as follows:
 2. Notwithstanding the provisions of subsection (1), an employers' organisation or trade union may undertake activities in order to secure compliance with the requirements for registration if —
 - a. the Registrar has issued a certificate specified under section 12; and
 - b. less than six months have elapsed from the time the Registrar issued a notice as requested under section 14.
 30. In addition to the foregoing, section 12 of the *Labour Relations Act* prohibits recruitment of members where no certificate has been issued under the Act. The section provides as follows:
 12. Establishment of a trade union or employers' organisation
 - (1) No person shall recruit members for the purpose of establishing a trade union or employers' organisation unless that person has obtained a certificate from the Registrar issued under this section
 4. A certificate issued under subsection (3) shall specify that—
 - a. the promoters may undertake lawful activities in order to establish a trade union or employers' organisation; and
 - b. an application for the registration of the trade union or employers' organisation shall be made to the Registrar within six months of the date of issue of the certificate.
 31. Upon receipt of the certificate issued under section 12, the proposed union is required by section 13 to make a formal application for registration within 6 months next following. Section 13 reads:
 13. Application to register a trade union or employers' organisation

A trade union or employers' organisation shall apply to the Registrar for registration within six months of receiving a certificate issued under section 12.



32. Section 14 of the Act sets out the requirements to be met by a trade union before it can be registered. One of the requirements is the non-existence of a registered trade union that sufficiently represents the whole or a significant portion of the interests that the proposed union seeks to represent. This is provided under section 14(1) (d) of the Act, which reads:

14. Requirements for registering a trade union

(1) A trade union may apply for registration if—

... ..

(d) no other trade union already registered is—

- i. in the case of a trade union of employers or of employees, sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration; or
- ii. in the case of an association of trade unions, sufficiently representative of the whole or a substantial proportion of the trade unions eligible for membership thereof:

Provided that the Registrar shall, by notice in the Gazette and in one national daily newspaper with wide circulation, notify any registered trade union, federation of trade unions or employers' organisations which appear to him to represent the same interest as the applicants of the receipt of such application and shall invite the registered trade union federation of trade unions or employers' organisation concerned to submit in writing, within a period to be specified in the notice, any objections to the registration;

33. Section 20 of the Act empowers the Registrar to refuse an application for registration in the following terms:

20. Refusal to register a trade union, employers' organisation or federation

If the Registrar is not satisfied that a trade union, employers' organisation or federation meets the requirements for registration and refuses the application for registration, the Registrar shall advise the trade union, employers' organisation or federation of the reasons for that refusal in Form D set out in the Second Schedule.

34. We take to mind the fact that the appellants obtained the certificate under section 12 of the Act solely for the purpose of securing compliance with the requirements for registration. The respondent was yet to evaluate the appellant's formal application to satisfy herself that the requirements set out under section 14 of the Act had been met. It is common ground that the basis for the respondent's refusal of the appellants' application for registration was the existence of a duly registered trade union (the interested party), which sufficiently represented the interests of workers employed in the manufacture of basic industrial chemicals, including alkalis and salt among other products. The bar to registration of another union in the same sector is set out in section 14(1) (d) of the Act.

35. It must be borne in mind, though, that the proviso to section 14(1) (d) of the Act only imposes an obligation on the respondent to notify any existing trade union that appears to represent the same interests as the applicants of the receipt of the application, and to invite such trade union(s) to submit in writing any objections to the registration; and that failure to receive any objections from the existing trade union(s) within the prescribed period does not of itself bar the respondent from addressing the



pertinent question as to whether the application satisfies the requirement set out in section 14(1) (d) of the Act.

36. Accordingly, the appellants' contention that the learned Judge was at fault in presuming that the respondent had knowledge of the existence of the interested party, and yet no objections were received, is unconvincing. It is highly unlikely that the respondent arbitrarily selected the interested party as the subject of the Gazette notice inviting it to submit any objections to the registration of the appellants' union. The respondent was at all times in possession of the documentation presented with the interested party's application for registration (including the interested party's Constitution) as required under section 18 of the Act, which documentation must have informed her decision to invite the interested party to submit objections and thereafter refuse the appellants' application.
37. Clause 2(a) (i) of the interested party's Constitution sets out one of the objects and aims of the interested party as to secure the complete organization in the union of all persons and workers employed in firms, companies and organizations involved in "the manufacture of basic industrial organic and inorganic chemicals, such as acids, alkalis, salts ..." etc. Likewise, the objectives and functions of the appellants' union as set out under Article 1 of its Constitution include the organization and representation of workers in the salt industry.
38. The unchallenged documentation annexed to the interested party's application for joinder (including the CBA between the interested party and Kensalt Ltd; Union Deduction Reports from Krystalline Salt Ltd with respect to 324 of its employees; and pleadings in Mombasa ELRC No. 77 of 2019) also demonstrated that the interested party had already recruited and was representing a significant membership from salt manufacturers by the time the respondent was evaluating the appellants' application for registration of their union. In the circumstances, the respondent was legally justified to decline the appellants' application for the reasons given in the Notification of her Refusal.
39. Turning to the 2nd issue as to whether the learned Judge erred in failing to find that the respondent's decision amounted to violation of the appellants' constitutional rights and of the other members of the proposed union, counsel for the appellant submitted that the respondent's decision could have been a boardroom decision, which does not comply with the law and contravenes Article 47 of the *Constitution* on fair administrative action; that the decision not to register the proposed union ought to have been communicated to the appellants, giving them a right of reply immediately it appeared that another party was objecting, before a decision not to register was made; that denial of registration on the basis that those members were adequately represented by the interested party without any proof that they were actually members was a gross violation of the appellants' right to associate and form a trade union as enshrined in Article 41 of the *Constitution* and the *Labour Relations Act*; and that, in the absence of any written objection by the interested party to the effect that it was already representing workers in the salt farming sector, there was no basis for the refusal by the respondent to register the proposed union as a trade union in that sector.
40. On their part, counsel for the interested party submitted that, while the appellants claimed that the rights of employees of Krystalline Salt Limited to join a trade union had been violated, it was clear that the interested party had signed recognition agreements and CBAs with the said company and recruited several members who are already benefiting from the terms negotiated by the interested party; that the employees were already represented by a trade union of their choice, which they joined voluntarily; and that, in any event, the respondent's decision to reject the application for registration of the appellants' union was dictated by its statutory mandate to protect the rights of employees by preventing the registration of trade unions that sought to represent the same sector, which would have resulted in encroachment, confusion, disruption, and the creation of unnecessary disputes that could negatively impact the employees. In conclusion, counsel urged us to find that the learned Judge did



not err in concluding that the rights of the employees of Krystalline Salt Limited were not violated by the impugned decision.

41. In this regard, the learned Judge had this to say:

- “19. The right to form or belong to a Trade Union of one’s choice is protected under article 41 of the Constitution. This right is complemented by the freedom of association under article 36 of the Constitution.
20. However, these rights are not absolute. They do not fall in the category of rights that cannot be limited as pronounced under article 25 of the Constitution.
21. Article 24 of the Constitution permits imposition of limitations on some of the rights in the Bill of Rights so long as the limitation is imposed by law and is reasonable and justifiable in an open and democratic society. In my view, the limitations on the right to register a Trade Union imposed under the Labour Relations Act are examples of limitations on enjoyment of the rights under articles 36 and 41 of the Constitution. The question is whether the said limitations can be justified in an open and democratic society based on human dignity.
22. The limitations imposed by the Labour Relations Act on the right to form a Trade Union and freedom of association are not irrational or merely fanciful. Rather, they are intended to facilitate the establishment of strong Trade Unions that serve the interests of workers. This objective is facilitated by limiting the proliferation of Trade Unions in the same sector which will inevitably weaken the Unions due to unhealthy competition... This justification appears reasonable in an open and democratic society based on human dignity.”

42. The appellants contend that the respondent’s decision contravened their right to fair administrative action under Article 47 of the Constitution for the reason that they were not given the right of reply once it appeared that there was an objection by another party. However, it is clear from the record that no such objections were received. The respondent proceeded to evaluate the appellants’ application in consultation with the National Labour Board before making the impugned decision. To our mind, the regime for making applications for registration of trade unions under the Act sufficiently provides applicants with opportunities to furnish the respondent with information at various stages of the process for the respondent to consider and evaluate in determining whether or not to register the proposed union.

43. This Court in *Muiruri & 5 others (Kenya Aircraft Maintenance Personnel Union Represented by its Promoters and Applicants) v Registrar of Trade Unions* [2024] KECA 1188 (KLR) held that:

- “27. The application process under the Labour Relations Act for registration of a trade union is a two-stage process
28. We are at pains to appreciate the Appellants’ arguments that they were not afforded an opportunity to be heard in light of the above statutory procedural requirements and mechanisms for provisions of information by applicants for consideration by the Respondent. It is pertinent in this respect that section 14 of the



Act contains the necessary information required to be provided by applicants to demonstrate that they have met the requirements for registration as a trade union, including demonstrating that the existing trade unions are not sufficiently representative of a substantial proportion of their membership.”

44. The appellants’ other contention is that the denial of registration amounted to a gross violation of the appellants’ right to associate and form a trade union as enshrined in Article 41 of the *Constitution*. When considering a similar decision to refuse an application for registration of another proposed trade union, this Court in *Charles Salano & 9 others (Proposers & Promoters of Kenya Supermarkets Workers Union (KESMWU) v Registrar of Trade Unions & Food And Allied Workers Union* [2017] KECA 398 (KLR) held that:

Further, we are not convinced by the appellants’ submissions on the application of Article 36 and 41 (2) (c) of the *Constitution* which provides for freedom of association and the right to labour relations, for two reasons:- Firstly, the alleged breach of the appellant’s rights do not fall within the confines of Article 25 of the *Constitution* which expressly sets out fundamental rights and freedoms which may not be limited; and secondly, Article 24 (1) of the *Constitution* sanctions the limitation of fundamental rights and freedoms in the following terms:-

“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-[Emphasis added]

- a. The nature and extent of the limitation;
- b. The importance of the purpose of the limitation;
- c. ...
- d. ...
- (e) ...”.

In our view, we find and hold that the limitation of the appellants’ rights under Article 36 and 41 of the *Constitution* to be reasonable and justifiable in an open and democratic society. This is because the appellants interests are already sufficiently represented by an existing trade union and creation of a rival trade union would create confusion in the area that the appellant intended to represent.”

45. In the same vein, this Court held as follows in *Kenya Plantation & Agricultural Workers Union v David Benedict Omulama & 9 others* [2017] KECA 543 (KLR):

“[11] Generally speaking the regulation of registration of trade unions and imposition of reasonable conditions for their registration are not unconstitutional limitations of the right and freedoms to form and join a trade union nor is the specific limitation that a trade union is not qualified to be registered if there is in existence another trade union which is sufficiently representative of the whole or a substantial proportion of the interest sought to be protected by a proposed trade union. The latter condition has existed since



1952 and has achieved stability in industrial relations and fostered economic stability. It is a reasonable and justifiable condition in an open and democratic society.”

46. On the authority of the afore-cited decisions of this Court, we reach the inescapable conclusion that the learned Judge cannot be faulted for holding that provisions of the Act that imposed limitations on the appellants’ rights under Articles 36 and 41 of the Constitution were well-intentioned and compliant with the conditions set out under Article 24(1) of the Constitution.
47. All in all, having considered the record of appeal, the grounds on which it is anchored, the rival submissions, the cited authorities and statute law, we reach the inescapable conclusion that the appeal has no merit and is hereby dismissed in its entirety. Considering the public nature of the appeal, we make no orders as to costs.

DATED AND DELIVERED AT MOMBASA THIS 7TH DAY OF FEBRUARY, 2025.

A. K. MURGOR

.....

JUDGE OF APPEAL

DR. K. I. LAIBUTA CARb, FCIArb.

.....

JUDGE OF APPEAL

G. W. NGENYE-MACHARIA

..... **

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

