



**Kenya National Union of Teachers v Lagat & another (Civil Appeal  
83 of 2017) [2022] KECA 810 (KLR) (24 June 2022) (Judgment)**

Neutral citation: [2022] KECA 810 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL 83 OF 2017  
RN NAMBUYE, J MOHAMMED & HA OMONDI, JJA  
JUNE 24, 2022**

**BETWEEN**

**KENYA NATIONAL UNION OF TEACHERS ..... APPELLANT**

**AND**

**JOHN GITHUA MBATE ..... 1<sup>ST</sup> RESPONDENT**

**BARNABAS LAGAT ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from the judgment of the Employment and Labour  
Relations Court at Nairobi (Hellen Wasilwa, J.) dated and delivered at  
Nairobi on the 1st day of February, 2017) in ELRC NO. 12 OF 2016)*

**JUDGMENT**

**Background**

1. Barnabas Lagat and John Githua Mbate (the respondents) being desirous of registering a Trade Union known as the Kenya Teachers Congress (KTC) approached the office of the Registrar of Trade Unions to facilitate their aforesaid intention. They lodged an application for issuance of a certificate of establishment of a trade union at the office of the Registrar of Trade Unions.
2. The Registrar of Trade Unions made a decision on 29<sup>th</sup> March, 2016, and invoked the provisions of Section 12 as read with Section 14 of the *Labour Relations Act* (the Act) and declined to issue a Certificate of Recruitment leading to registration to the respondents.
3. The principal reason cited for the said decision was that the intended sector of coverage was sufficiently represented by the already registered unions including Kenya National Union of Teachers (KNUT) the appellant herein.
4. Aggrieved by the decision of the Registrar of Trade Unions, the respondents lodged an appeal at the Employment and Labour Relations Court (ELRC). The ELRC (Wasilwa, J.) rendered a judgment



on 1<sup>st</sup> February, 2017, and held that the decision by the Registrar of Trade Unions to deny the respondents their application for a certificate of recruitment to the intended union was not reasonable and justifiable.

5. Aggrieved, the appellant has appealed to this Court against that judgment in its entirety and seeks that the judgment be set aside. The appeal is premised on grounds which may be summarized as follows: -
  - a) That the learned judge erred in law in interpreting the provisions of Section 12 of the *Labour Relations Act* regarding issuance of certificate of recruitment of members to a trade union.
  - b) That the learned judge erred in law and in fact by failing to consider the letter and spirit of the *Labour Relations Act*, and particularly Section 12(3) and 14(1)(d).
  - c) That the learned judge erred in finding that the decision of the registrar of Trade Unions as premature, unreasonable and unjustified.
  - d) That the learned judge erred in law and in fact by failing to take into consideration the fact that the interests of the purposed members of the respondents' outfit were already catered for by the appellant union.

### **Submissions by counsel**

6. The appeal was disposed of by way of written submissions with oral highlights. The appellant filed submissions while the respondents did not file their written submissions.
7. At the plenary hearing, learned counsel for the appellant, Mr. Hillary Sigei submitted that the Registrar of Trade Unions acted within her purview by declining to issue the certificate of recruitment as the objectives of the prospective trade union were similar to the already existing ones and would only lead to confusion.
8. The appellant further submitted that the learned judge erred by interpreting one section of the Act instead of giving it a holistic approach. That for proper application of the section, one ought to interpret Section 12 read together with Section 14(1) (d). That the section cannot be interpreted in isolation. The appellant cited the case of *Charles Salano & 9 others (Proposers & Promoters of Kenya Supermarkets Workers Union (KESMWU) v Registrar of Trade Unions & another* [2017 eKLR] which emphasized this proposition.
9. The appellant further submitted that the Registrar of Trade Unions acted within the purview of her powers as stipulated in Section 12(3) and 14(1), (d). That the Registrar is mandated under the Act to ensure due diligence while performing her duties in order to ensure justice to all and safeguard industrial peace and harmony.
10. The appellant also submitted that the respondents did not fully outline which section of the teachers they were representing. That having looked at the letter addressed to them by the Registrar of Trade Unions it is evident that all groups they were to represent already have adequate representation. Further that the respondents had the onus of proving that the union to be formed was to represent teachers who lacked representation.
11. At the plenary hearing there was no appearance by counsel for the respondents despite service.

### **Determination**

12. We have perused the record of appeal, the impugned judgment, the grounds of appeal, the written as well as oral submissions, the authorities cited and the law.



13. This is a first appeal and we are at liberty to delve into matters of fact as well as law and make our conclusions therefrom. See Section 17 (1) of the *Employment and Labour Relations Court Act* (the ELRC Act) and the celebrated case of *Selle –Vs- Associated Motor Boat & Co* [1968] E.A. where the predecessor of this Court pronounced itself thus: -

“An appeal to this Court from a trial by the High Court is by way of retrial 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 witnesses and should make due allowance in this 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 demeanor of a witness is inconsistent with the evidence in the case generally (ABDUL HAMEED SAIF –VS- ALI MOHAMED SHOLAN [1955], 22 E.A.C.A. 270)”.

14. This appeal is premised on the meaning and interpretation of Sections 12, and 14 of the Act. We say so as the sole issue in controversy in this appeal is whether the Registrar of Trade Unions can decline to register a proposed trade union.
15. This Court in *Charles Salano & 9 others (Proposers & Promoters of Kenya Supermarkets Workers Union (KESMWU) v Registrar of Trade Unions & another* (supra) stated as follows:

“...the Act came into existence for purposes of “regulation” and “management” of Trade Unions.”

Accordingly, for a proper interpretation of Sections 12, 13 and 14 of the Act to be arrived at, the said provisions ought to be read conjunctively. We say so as any party desirous of registering a trade union cannot comply with either of the said provisions in isolation. Five steps in the registration of a trade union can be discerned from the Act:-

The first step is for promoters of a proposed trade union to apply to the Registrar of Trade Unions (Registrar) for a certificate which permits the promoters to recruit members of the proposed union (Section 12 (2)). The application has to satisfy the criteria specified in Section 12 (2). The Registrar has discretion to issue or not to issue the certificate.

If the certificate is issued, the second step is to apply for registration of the union in the prescribed form. The application for registration is required to be made within six months of receiving the certificate-(Section 13). The nine requirements for registration are stipulated in Section 14 (1) of the Act.” (Emphasis supplied)

16. Section 12 of the Act provides that promoters of a proposed trade union must apply to the Registrar of Trade Unions (Registrar) for a certificate which permits the promoters to recruit members of the proposed union (Section 12 (2)). The application has to satisfy the criteria specified in Section 12 (2). The Registrar has discretion to issue or not to issue the certificate. Section 13 of the Act provides that if the certificate of recruitment is issued, application for registration of the trade union is required to be made within six months of receiving the certificate.



17. Section 14 (1) of the Act provides for nine requirements for registration of a prospective Trade Union which are that:

- “(a) the trade union has applied for registration in accordance with this Act;
- (b) the trade union has adopted a constitution that complies with the requirements of this Act, including the requirements set out in the First Schedule;
- (c) the trade union has an office and postal address within Kenya;
- (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’ organization 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’ organization concerned to submit in writing, within a period to be specified in the notice, any objections to the registration;

- (e) subject to subsection (2), only members in a sector specified in the constitution qualify for membership of the trade union;
- (f) the name of the trade union is not the same as that of an existing trade union, or sufficiently similar so as to mislead or cause confusion;
- (g) the decision to register the trade union was made at a meeting attended by the least fifty members of the trade union;
- (h) the trade union is independent from the control, either direct or indirect, of any employer or employers’ organizations; and
- (i) the trade union’s sole purpose is to pursue the activities of a trade union.
- (2) Notwithstanding the provisions of subsection (1)(d), the Registrar may register a trade union consisting of persons working in more than one sector, if the Registrar is satisfied that the constitution contains suitable provisions to protect and promote the respective sectoral interests of the employees.” (Emphasis supplied)

18. We note that the impugned judgment held that “the issues raised by the Registrar of the Trade Unions in her reply however shifts from the provision of Section 12(3) of the Labour Relations Act”. We respectfully disagree with this holding as demonstrated herein below.



19. We hold the view Section 12 of the Labour Relations Act must be read together with other provisions of the Act including Section 14 (1) (d) (i) of the Act. If Section 14 (1) (d) (i) of the Act was to be ignored one can foresee registration of a multiplicity of unions covering groups with similar interests.
20. The Registrar of Trade Unions in her letter dated 29<sup>th</sup> March, 2016 declined to issue the certificate of recruitment on the ground that “the intended sector of coverage is sufficiently represented by the already registered unions.”
21. In our view, the Registrar of Trade Unions correctly applied Section 12 as read together with Section 14 (1) (d) (i) of the Act. This is in view of the fact that the respondents’ interests were already sufficiently represented by the existing Trade Unions and creation of a rival trade union would create confusion in the area that the respondents intended to represent.
22. We are cognizant of Articles 36 and 41 (2) (c) of the Constitution which provides for freedom of association and the right to labour relations. However, 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 supplied]
  - (a) The nature and extent of the limitation;
  - (b) The importance of the purpose of the limitation;
  - (c) ...
  - (d) ...
  - (e) ...”.
23. In light of the fact that the respondents’ interests as teachers are already sufficiently represented in existing trade unions, the limitation of the respondents’ rights under Articles 36 and 41 of Constitution is reasonable and justifiable in an open and democratic society.
24. The upshot of the foregoing is that we find merit in this appeal and accordingly proceed to set aside the judgment and decree of the ELRC dated 1<sup>st</sup> February, 2017. The appellant shall have costs before this Court and in the ELRC.
25. As Nambuye, JA has since retired from service as a Judge of this Court, this ruling is signed in accordance with Rule 32(2) of the Rules of this Court.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JUNE, 2022.**

**J. MOHAMMED**

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**JUDGE OF APPEAL**

**H. OMONDI**

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**JUDGE OF APPEAL**



*I certify that this is a true copy of the original*

*Signed*

**DEPUTY REGISTRAR**

