



**Kiarie & 5 others (Suing on Behalf of Kenya Road Truck Workers Union) v Registrar of Trade Union & another; Kenya Long Distance Truck Drivers and Allied Workers Union (Interested Party) (Employment and Labour Relations Appeal E168 of 2022) [2025] KEELRC 629 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 629 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E168 OF 2022**

**MN NDUMA, J**

**FEBRUARY 27, 2025**

**BETWEEN**

**DAVID MAINA KIARIE ..... 1<sup>ST</sup> APPELLANT  
BENARD NGIGI ..... 2<sup>ND</sup> APPELLANT  
ELIAS GITARI ..... 3<sup>RD</sup> APPELLANT  
EARNEST MBUGUA ..... 4<sup>TH</sup> APPELLANT  
GRACE NGANGA ..... 5<sup>TH</sup> APPELLANT  
JOHN KIMANI ..... 6<sup>TH</sup> APPELLANT  
SUING ON BEHALF OF KENYA ROAD TRUCK WORKERS UNION**

**AND**

**REGISTRAR OF TRADE UNION ..... 1<sup>ST</sup> RESPONDENT  
MINISTRY OF LABOUR AND PROTECTION ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**KENYA LONG DISTANCE TRUCK DRIVERS AND ALLIED WORKERS  
UNION ..... INTERESTED PARTY**

**JUDGMENT**

1. The Appellants, suing on behalf of Kenya Road Truck Workers Union filed the appeal fide a memorandum of Appeal on 4/10/2022 being aggrieved by the decision of the Registrar of Trade Union, E. N. Gicheha.



2. In the said decision, the Registrar refused to register the Appellants' proposed trade union, as a union authorized to operate and represent workers in the Long-Distance Trucks sector by a letter dated 15/3/2021.
3. The promoters of the proposed union applied for registration by a letter dated 15/8/2021. The Appellants had attached the application documents citing massive myriad problems experienced by truck drivers in the industry which the proposed union was meant to address when registered and allowed to operate lawfully in the sector. Issues cited included underpayment, working excessive hours; wrongful termination and unexplained surcharge, which the proposed union promoters said were not being addressed by the interested party, the existing union operating in the sector.
4. The Registrar wrote to the interested party on 19/2/2021 asking them to explain the allegations of non-performance made against them by the promoters of the proposed union.
5. The Interested Party by a letter dated 25/2/2021 responded to the letter by the Registrar explaining themselves on these alleged inadequacies including lack of registered office stating that they had offices at Mlolongo and Malaba; that they had negotiated and concluded CBAs with terms and conditions of long-distance drivers and had renewed CBA for Rongai workshop which awaited registration at the court. That Mombasa branch was dissolved and those collecting money were doing so illegally. That all the concerns raised by the promoters of the new union had not been raised with them.
6. The Registrar of Trade Unions wrote to the Appellants vide a letter dated 15/3/2021 in which she refused the application to establish the new union, Kenya Road Truck Workers Union and gave reasons therein including:-
  1. The Interested Party, Kenya Long-Distance Drivers and Allied Workers Union had responded to the concerns by the Appellants in their letter dated 19/2/2021 and had copied that letter in response to the Appellants.
  2. That elections of officials of trade unions are held after every five (5) years. That this is meant to give members any opportunity to evaluate the performance of their leaders and retain or remove them from office. Therefore being dissatisfied with a trade union leadership was not enough reason(s) to form another union.
7. By a letter dated 31/3/2021, the Appellants wrote to the Registrar expressing their dissatisfaction with the Registrar's decision to refuse to register the proposed union and labelling the Interested Party as "an unwarranted entity sponsored by employers who never wish the rights of drivers to ever be exercised," in contravention of section 28(2) a, b, c, d and e of [Labour Relations Act](#), 2007 and therefore the Interested Party should be cancelled or suspended as a union among many other issues raised in that response to the Registrar and not copied to the Interested Party.
8. The summary of issues raised by the Appellants in the Memorandum of Appeal include:-
  - i. The decision by the Registrar to refuse to register their union was baseless and the Registrar did not take into account the issues raised by the Appellants in their letter dated 15/11/2020.
  - ii. That the Registrar erred by making a decision based on the response by the General Secretary of the Interested Party dated 25/2/2021.
  - iii. That the Registrar erred by advising the Appellants to join the Interested Party and participate in getting changes of leadership in the Interested Party.



- iv. That the Registrar failed to consider whether the Interested Party upheld its constitution by protecting and promoting interest of long-distance truck drivers before arriving at her decision.
  - v. That the Registrar erred by discriminating against the Appellants' and wrongly holding that the Interested Parties sufficiently represented the interests of the workers in the sector.
  - vi. That the Registrar in the letter dated 2/7/2021 misdirected herself by holding that the mandate to register a union was not an administrative process but was a legal one.
  - vii. That the Registrar failed to consider the plight of sacked, suspended, underpaid and overworked workers in the five major long-distance truck companies who needed protection from a vibrant new union since the Interested party was dormant and ineffective.
9. The Appellants pray for the reliefs set out in the Memorandum of Appeal as follows:
- i. Allow the Appeal by setting aside the decision of the Registrar of Trade Unions of refusing to register the Appellants' Trade Union.
  - ii. Issue a mandatory injunction ordering the 1<sup>st</sup> Respondent to Register Kenya Road Truck Workers Union.
  - iii. The 1<sup>st</sup> and 2<sup>nd</sup> Respondent pay Appellants vindicatory damages for contravention of the Appellants' rights under Article 36 and 41 of the Constitution of Kenya 2010.
  - iv. Costs of this suit to be borne by the 1<sup>st</sup> Respondent.
10. The 1<sup>st</sup> Respondent, Registrar of Trade Unions filed replying affidavit sworn to by Beatrice Mathenge, Acting Registrar of Trade Unions, on 18/12/2023. The deponent traces the history of the application for registration by the Appellants and correspondence between the Registrar, the Appellants and Interested Party referred to by the Appellants herein.
11. The deponent further states that the application for registration dated 15/8/2020 was from the 1<sup>st</sup> Appellant David Maina Kiarie and the promoters of the said union were Juma Ali Kivilu and Zakayo Aggrey Munglon and so the 2<sup>nd</sup> to 5<sup>th</sup> Appellants are strangers in this Appeal as they made no application as alleged or at all for registration of Kenya Truck Workers Union.
12. The Registrar deposes that the decision not to register the proposed union communicated in the letter dated 15/3/2021 was informed by facts extracted from correspondence between the Appellants, the Interested Party and the Registrar which led to the conclusion that the allegations of non-existence of operations of the Interested Party by the Appellants was not factual and that the discontent raised by the proposers regarding non-performance by the Interested Party are matters that are best resolved internally and vide elections to remove non-performing union leaders. That these were not sufficient matters to cause registration of a new union.
13. That the appeal against the decision by the Registrar made on 15/3/2021 was filed on 3/10/2022 more than a year later. That the appeal was made out of time and ought to be struck out with costs.
14. That decisions by the Registrar were in accordance with section 12 and 14 of the Labour Relations Act 2007.
15. That the prayers sought are mis-conceived. That the court may only grant an order for registration of a trade union after all processes under section 12, 14, 18 and 19 of Labour Relations Act have been undertaken.



## Replying Affidavit by Interested Party

16. The Secretary General of the Interested Party deposed to a replying affidavit on 5/12/2023 in which he opposes the appeal. The deponent affirms the deposition by the Registrar in her replying affidavit stating that the appeal is mis-conceived and an abuse of the court process. That the Appellants are not members of the Interested Party and have no evidence in support of the unfounded allegations made in the correspondence to the Registrar. That the list of members in the proposed union does not indicate where they work and the identity of their employers. That it is not possible to establish whether alleged members of the proposed union belong to the truck driver sector. That on this score alone the application was a non-starter. The deponent reinforced what the Registrar stated in her letter dated 14/4/2022

“That the list of drivers proposed to be members of the proposed union forwarded by your client, is neither authenticated nor indicative of the employer(s), this is critical to avoid collision with the employees who have already entered into recognition Agreements and CBAs with the existing union.”

17. The deponent cited section 14(1)(d) (i) of Labour Relations Act which require an Applicant for registration of a new union to demonstrate inter alia that no other trade is sufficiently representative of the whole or of a substantial proportion of the interest in respect of which the Applicants seek.

18. That the Interested Party sufficiently represents the sector of truck drivers sought to be covered by the proposed union.

19. That the allegation by the Appellants on the inadequacies of the Interested Party are baseless, unfounded and untrue especially because the Appellants are not members of the Interested Party and have not tabled any evidence to substantiate the allegations made against the Interested Party.

20. That the Interested Party sufficiently represents the interest of the sector as demonstrated by four (4) registered collective Bargaining Agreements (CBAs) with companies in the sector including:

- a. AA Kenya PLC
- b. Rongai Workshop and Transport Ltd
- c. Executive Rentals LTD
- d. Ken Freight East Africa Ltd

21. That these are key players in the sector and is evidence that the Interested Party represent drivers in the truck sector. That the parties to the CBA, have always been in full compliance with the terms of the Agreement. That the allegations by the Appellants are therefore baseless. That the Interested Party has registered operational offices. Allegations by the Appellants in this respect are not true. The offices are at Mlolongo weighbridge next to Oilcom Petrol Station – a fabricated container. That the appeal lack merit and it be dismissed.

## Determination

22. The Parties filed written submissions which the court has carefully considered together with the depositions filed. The issues for determination are:-

- i. Whether the Appellants satisfied the requirements for registration of the proposed union under section 14(d) of Labour Relations Act.



- ii. Whether the Registrar mis-directed herself in refusing to register the proposed union
  - iii. Whether the remedies sought are warranted.
23. Section 20 of *Labour Relations Act*, empowers the Registrar of Trade Unions to refuse to register a proposed union if the Registrar is not satisfied that the proposed union meets the requirement for registration and the Registrar is obliged to inform the proposers of the decision with reasons contained in the letter.
  24. In the present matter, the Registrar duly informed the Appellants by a letter dated 8/7/2020 that she was not satisfied that the Appellants had provided good reasons to warrant registration as a union representing truck drivers since the sector was sufficiently represented by the Interested Party and that mere complaints without prove of alleged non-performance by the Interested Party did not satisfy the requirements of section 14(1) d(i).
  25. The Registrar and the Interested Party in their replying affidavits have demonstrated in a clear manner that the Appellants provided a list of intended members of the proposed union without sufficient prove that the said proposed members were employees of identified long distance truck companies or other companies in the sector. On the other hand, the Interested Party demonstrated that it had concluded recognition agreements and negotiated CBAs with major players in the trucking sector.
  26. The court has therefore concluded that the Registrar did not err in concluding that the Appellants did not demonstrate that the sector in which they sought to operate was not sufficiently represented by the Interested Party. The court finds that the Appellants did not satisfy the requirement under section 14(1)(d)(i) and so the decision by the Registrar was sound and was not based on any proved bias, disregard or discrimination as alleged by the Appellants' or at all.
  27. The court is fortified in this regard because, this appeal was filed more than one year from the date the Registrar refused to register the union. No explanation has been offered by the Appellants for that delay which the court considers inordinate in view of section 30 of the *Labour Relations Act*, which provides:-

Any person aggrieved by a decision of the Registrar made under this Act may appeal to the Industrial court against that decision within thirty days of the decision.”
  28. The Appellants did not apply for enlargement of time within which they could file the appeal. As said earlier, the decision by the Registrar to refuse to register the proposed union was made and communicated to the Appellants by a letter dated 15/3/2021.
  29. This appeal was filed on 4/10/2022 about one-year (1) and ten (10) months from the date the decision was made.
  30. The jurisdiction of this court to hear and determine this appeal is derived from section 30 of *Labour Relations Act* aforesaid. In the absence of any justification to enlarge that time and in line with known jurisprudence by the courts on matters of jurisdiction, including the Supreme Court decision in the case of *Samuel Kamau Macharia & Another versus Kenya Commercial Bank Ltd and 2 others* (Application No 2 of 2011 (2012) KESC 8 KLR where the Supreme Court held that;

‘A Court’s jurisdiction flows from either the *Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the *Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of



mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceeding'

31. This court lacks jurisdiction to hear and determine this appeal. Notwithstanding the earlier evaluation of the merit of this appeal for completeness purposes, the court strikes out the appeal for lack of jurisdiction to hear and determine the same.
32. The remedies sought by the Appellants cannot therefore be granted as prayed for reason that this court lacks jurisdiction to so grant and that in any event, the appeal was without merit in the first place

**DATED AT NAIROBI THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Julius Nyakangah for Appellant

Mr. Mungai for Interested Party

Ms. Akuno for 1<sup>st</sup> and 2<sup>nd</sup> Respondent

Mr. Kemboi – Court Assistant

