



**Kenya Union of Water & Sewerage Employees (KUWASE) v Attorney General & another;
Proposed Water Service Worker Union & 7 others (Interested Parties) (Employment and
Labour Relations Petition E188 of 2023) [2025] KEELRC 1078 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1078 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E188 OF 2023**

**HS WASILWA, J
APRIL 3, 2025**

BETWEEN

**KENYA UNION OF WATER & SEWERAGE EMPLOYEES
(KUWASE) PETITIONER**

AND

THE HON ATTORNEY GENERAL 1ST RESPONDENT

THE REGISTRAR OF TRADE UNIONS 2ND RESPONDENT

AND

THE PROPOSED WATER SERVICE WORKER UNION .. INTERESTED PARTY

PATRICK KASIMU INTERESTED PARTY

CHARLES MAKINI INTERESTED PARTY

FAITH WANGARI KIMEMIA INTERESTED PARTY

SEBASTIAN MONGARE NYABERA INTERESTED PARTY

VICTOR ONYANGO ONG'OL INTERESTED PARTY

FRANCIS MUIYO KAIA INTERESTED PARTY

GRACE NJOROGE INTERESTED PARTY

RULING

1. The 1st Interested Party filed a Notice of Motion dated 29th February 2024 seeking orders that: -



- i. Spent the 1st Interested Party be struck out as a party to these proceedings as they are not registered trade union and thus they do not have the legal capacity to sue or be sued as enacted under the provisions of Section 21(1)(b) of the *Labour Relations Act*.
 - ii. there be no costs in relation to this application.
2. The Application was brought under Section 12, 19 and 21 of the *Labour Relations Act* and Order 1 Rule 9 of the Civil Procedure Rules and is supported by an affidavit sworn by Patrick Kasimu.

Applicant's Case

3. The Applicant avers that the 2nd and 8th Interested parties as the Promoters and Applicants of Water Service Workers Union (WaSWU), the 1st Interested Party, have since lodged their application for the registration of the WaSWU as a Trade Union in accordance with the provisions of Section 12 & 13 of the *Labour Relations Act*.
4. The Applicant avers that pursuant to Section 12(3) of the *Labour Relations Act* has registrar issued the Interested Parties as the Promoters/ Applicants of WaSWU an Interim Certificate of registration dated 11th May 2023, however, WaSWU has not yet submitted its documents for registration thus it is still an unregistered trade union.
5. It is the Applicant's case that the 1st Interested Party having not been registered, is not a body corporate with the capacity in its own name to sue and be sued, hence cannot be a party to these proceedings.

Respondent's Case

6. In response to the 1st Interested Part's application, the Petitioner filed a replying affidavit dated 10th December 2024. The Respondent is opposed to the application on grounds that all the interested parties filed a joinder application dated 5th October 2023 which was allowed hence there should be no room to disappear during the hearing of the main petition as they are already parties.
7. It is the Petitioner's case that the Applicant failed to annex any written authority from the other interested parties giving him authority to swear affidavit plead and or act on their behalf. This offends Section 35(6) of the *Labour Relations Act* which states that no person who is not registered by the Registrar in accordance with this section shall act or purport to act as an official of a trade Union, employers' organization, or federation or of any branch.
8. The Petitioner avers that if another trade union is registered in the water and sanitation sector, it will bring confusion and create disharmony in the sector creating industrial disharmony.
9. The Petitioner avers that the 1st Interested Party being the sole custodian and regulator of all trade unions and federations was aware the Petitioner was registered as a union in the water and sanitation sector and has been in existence since 2006, the 1st Interested Party submitted its application does not permeate the 2nd Respondent to register the 1st Interested Party as a trade union where there exists a duly registered trade union and this would be contrary to Section 18(4) of the *Labour Relations Act*.
10. It's the Petitioner's case that the 2nd to 8th Interested Parties are listed as interim officials of the 1st Interested Party hence recognized in the certificate to promote an establishment of the 1st Interested Party and they jointly filed a joinder application Notice of motion dated 5th October 2023 which was allowed and thereafter filed a Preliminary Objection which the court dismissed on 24th May 2024 for lack of merit and the court made an observation that the matter needs to be litigated and the court needed to make a determination.



Applicant's Submissions

11. The Applicant submitted that an unregistered trade union does not have the legal capacity to sue and be sued pursuant to the express provision of Section 21(1)(b) of the [Labour Relations Act](#) which provides that a trade union only acquires the legal capacity to sue and be sued when it is registered successfully.
12. It is the Applicant's submission that it has only received their Promotion Certificate under Section 12 of the [Labour Relations Act](#) hence has not completed the registration process. Against this background, the Applicant does not qualify to be considered as a registered trade union under the Section 19 of the [Labour Relations Act](#) as they not only lack a certificate of registration but also the name and details of the trade union have not been entered into the appropriate register.
13. The Applicant submitted that it is not a proper party to these proceedings hence the Court should strike the 1st Interested Party from these proceedings.

Analysis and Determination

14. I have examined all the averments and submissions of the parties herein. The 1st interested party is before court having applied to be enjoined in these proceedings as promoters of a new trade union whose registration has a bearing on the matter in court.
15. The 1st interested party has exhibited evidence that they have applied and been given authority by the registrar to start promoting their union as per section 12 of the [Labour Relations Act](#).
16. Having been given a go ahead by the Registrar to promote its establishment and recruit members to the union, they are a recognised entity for that purpose.
17. On 12/6/2023 they completed their promotion and proceeded to apply for their registration which is still pending.
18. Despite the 1st interested party not having legal capacity to sue and be sued, they have been given prudence by the order of the Registrar allowing them to proceed with their registration and are an interested party with the officials who are also interested parties in this petition.
19. The presence of the 1st interested party will in this Court's view not prejudice the petitioners in any way. This is even so due to the petition before court which touches on the 1st interested party. I therefore find the application for the interested party to be struck out of the proceedings unmerited and is dismissed Costs in the petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3RD OF APRIL, 2025.

HELLEN WASILWA

JUDGE

