



Awach & 6 others v Registrar of Trade Unions & 2 others; Water Services Workers Union (Interested Party) (Appeal E129 of 2025) [2025] KEELRC 2218 (KLR) (25 July 2025) (Ruling)

Neutral citation: [2025] KEELRC 2218 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

APPEAL E129 OF 2025

NJ ABUODHA, J

JULY 25, 2025

IN THE MATTER OF APPEAL AGAINST THE DECISION OF THE REGISTRAR OF TRADE UNIONS UNDER SECTION 30 OF LABOUR RELATIONS ACT

BETWEEN

ELIJAH AWACH 1ST APPELLANT

KENYA UNION OF WATER & SEWERAGE EMPLOYEES (KUWASE) 2ND APPELLANT

JIMMY ODHIAMBO ELIZABETH OKWIRI DENIS AWINO (ALL SUIING ON BEHALF OF KUWASE KISUMU BRANCH IN THEIR CAPACITIES THE BRANCH SECRETARY, BRANCH TREASURER AND BRANCH CHAIRPERSON) 3RD APPELLANT

OMONDI COLLINS EDWARD MULI TOM IRUNGU (ALL SUIING ON BEHALF OF KUWASE NAIROBI BRANCH IN THEIR CAPACITIES THE ASSISTANT BRANCH TREASURER, A MEMBER AND ASSISTANT NATIONAL TREASURER) 4TH APPELLANT

STANELY KUIRA KIMANI (SUIING AS CHAIRMAN AND PAID UP MEMBER KUWASE RUIRU BRANCH) 5TH APPELLANT

PATRICK KIAMBI (SUIING AS ASS. NATIONAL ORGANIZING SECRETARY, A PAID UP MEMBER KUWASE MERU BRANCH) 6TH APPELLANT

KEVIN ODUOR (SUIING AS PAID UP MEMBER OF KUWASE AND CHAIRPERSON SIBO BRANCH) 7TH APPELLANT

AND

REGISTRAR OF TRADE UNIONS 1ST RESPONDENT

NATIONAL LABOUR BOARD 2ND RESPONDENT

CABINET SECRETARY FOR LABOUR 3RD RESPONDENT



AND

WATER SERVICES WORKERS UNION INTERESTED PARTY

RULING

1. Before me is an application dated 26th May, 2025 brought under certificate of urgency seeking orders among others: -
 - I. An Order be issued staying the implementation of this Honourable Court's ex-parte Orders issued on 7th May 2025, pending the service, hearing and determination of this Application and specifically, Orders Number (3) and (4) that state as follows:
 - a. That pending the hearing and determination of this Application, the Honourable Court is pleased to issue a temporary order staying the operations of registration, certificate issued by the 1st Respondent in favour of the 1st Interested Party on 23rd April 2025, any extract of official of the 1st Interested Party thereto as a result of the 1st, 2nd and 3rd Respondents resolutions made on or before 23rd April 2025 or after;
 - b. That pending the hearing and determination of this Application, the Honourable Court is pleased to issue a Temporary Order staying the operations of Registration certificate issued by the 1st Respondent in favour of the 1st Interested party on 23rd April 2025, any extract of officials of the 1st Interested Party thereto as a result of the 1st, 2nd and 3rd Respondents resolutions made on or before 23rd April 2025 or after;
Inter-partes
 - II. That the 1st Interested Party be stricken out from the Appeal, Application and all subsequent proceedings relating to the Appeal as they are not the decision making body in line with Section 30 of the *Labor Relations Act* and thus, they have no interest in the Appeal.
 - III. This Honourable Court be pleased to vacate and/or set aside the ex-parte Orders issued on 7th May 2025 specifically, Orders Number (3) and (4) that state as follows:
 - a. That pending the hearing and determination of this Application, the Honourable Court is pleased to issue a temporary order staying the operations of registration, certificate issued by the 1st Respondent in favour of the 1st Interested Party on 23rd April 2025, any extract of official of the 1st Interested Party thereto as a result of the 1st, 2nd and 3rd Respondents resolutions made on or before 23rd April 2025 or after;
 - b. That pending the hearing and determination of this Application, the Honourable Court is pleased to issue a Temporary Order staying the operations of Registration certificate issued by the 1st Respondent in favour of the 1st Interested party on 23rd April 2025, any extract of officials of the 1st interested party thereto as a result of the 1st, 2nd and 3rd Respondents resolutions made on or before 23rd April, 2025 or after;
2. The application was supported by the affidavit of Matilda Kimetto who deponed among others that:-
 - i) On 21st May, 2025, when this matter came up for Mention for directions, this Honourable Court issued orders the following orders:



- a. The Application dated 24th April 2025, challenges the registration of the 1st Interested Party as a union. This arose when this Petition was pending before the Court (Hon. Lady Justice Hellen Wasilwa). The Court (Court 7) has substantially dealt with this Petition and is best placed to hear the same to conclusion;
- b. Appeal No. E129 of 2025 (*KUWASE v Registrar of Trade Unions & National Labor Board*) which is before Court 2 concerns the decision of the Registrar of Trade Unions to cancel the Certificate of registration of the Appellant. The Appeal was filed pursuant to Section 30 of the [Labor Relations Act](#);
- c. The Petitioner herein (Pet. E188 of 2023: *KUWASE v State Law Registrar of Trade Unions and another*) does not have the capacity to proceed with this Petition and any other litigation in its name until the Appeal E129 of 2025 (*KUWASE v Registrar of Trade Unions & National Labor Board*) is heard and determined and hopefully resolved in its favour;
- d. Appeal E129 of 2025 is set for Mention on 30th June 2025 for direction on hearing of the Application challenging the cancellation of the Appellant's certificate of registration;
- e. It must therefore be prudent to avoid contradictory orders from this Court and Court 7, the Petition E188 of 2023 (*KUWASE v Registrar of Trade Unions and others*) and JR E025 of 2025 to be held in abeyance pending the determination of Appeal E129 of 2025. These directions are applicable to JR E025 of 2025 which was also placed before the Court;
- f. Let this Petition and JR E025 be mentioned before Hon. Lady Justice Wasilwa on 28th May, 2025 for further directions.

(Annexed hereto and marked "MK-01" is a copy of the Order of 21st May 2025)

- ii. I have been advised by my Advocates on record, whose advice I verily believe to be true that from the Orders issued on 21st May, 2025, as provided for above, that the Honourable Court was able to differentiate the issues in both NAIROBI ELRC PET/E188/2023: *KUWASE v The Registrar of Trade Unions & Others* and Nairobi ELRCCA/E129 of 2025: *KUWASE v The Registrar of Trade Unions & National Labor Board*. The main thrust of ELRCPET/E188/2023 is the issuance of the Certificate of interim registration to the 1st Interested Party. The Proposed Water Services Workers Union (WASWU) while ELRCCA/E129 of 2025 is an Appeal against the cancellation of KUWASE under Section 30 of the [Labor Relations Act](#) as communicated to them on 22nd May 2025.
- iii) On 7th May, 2025 when the matter (Nairobi ELRCPET/E188/2023) came up for mention, the 2nd Appellant failed to disclose to the Trial Court that they had filed an Application before this Honourable Court seeking for the same orders that they had already sought in their application dated 24th April, 2025 and that were as follows:
 - a. The Honourable Court be pleased to issue conservatory orders restraining the 2nd Respondent, 9th and 10th Intended Interested Parties, their servants, agents and or any officer acting under their command from acting on and or implementing and or Gazetting the 2nd Respondent's decision made on or before or after 23rd April, 2025 and or in any manner whatsoever interfering with the status of the registration of the Applicant union pending hearing and determination of this Petition;



- b. . That the Hon Court be pleased to issue an Order of cancelling and or revoking the certificate of registration number TU/194 issued to the 1st Interested Party on 23rd April 2025, any actions thereto.
- iv) This Honourable Court granted the interim orders that the 2nd Appellant was seeking against the 1st Interested Party and the Orders barring the operations of the 1st Interested Party are: -
- a. prejudicial and detrimental to the existence and the operation of the 1st Interested Party Union which has undertaken tremendous steps towards promotion, recruitment of members and operation since the issuance of their Promotion Certificate on 11th May,2023 and certificate of registration on 23rd April 2025; and
- b. an abuse of Court process as the same Orders (Prayer No. (3) and (4)) being sought in the present Application, were wrongfully sought in an Appeal matter brought under Section 30 of the Labor Relations Act that deals purely with Appeals against the decision of the Registrar of Trade Unions.
- iii. I have been advised by my Advocates on record, whose advice I verily believe to be true that the 1st Interested Party in this matter is wrongfully joined in this suit as it purely deals with the decision by the Registrar of Trade Unions and the National Labor Board to cancel the registration of the 2nd Appellant Union for the following reasons:
- a. Failure to file annual returns for the years 2017-2024 contrary to the provisions of Section 43 of the Act;
- b. Failure to produce books of accounts and records for the year 2017-2024 for the Registrar's inspection contrary to the provisions of Section 44 of the Act.
- iv. I have been further advised by my Advocates on record whose advice I verily believe to be true that the case of *Communications Commission of Kenya & 4 others v Royal Media Services Limited & 7 others* [2014] addresses the issue of who can be enjoined as an Interested Party as follows:
- ... an interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is the one who will be affected by the decision of the court when it is made, either way. A party could be enjoined in a matter for the reasons that:
- a. Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
- b. Joinder to provided protection of the rights of a part who would otherwise be adversely affected in law;
- c. Joinder to prevent a likely course of proliferated litigation.
- v. From the foregoing, I have been advised by my Advocates on record whose advice I verily believe to be true that the 1st Interested Party has no legal authority to revoke the registration of the 2nd Appellant Union neither were they responsible for the cancellation of the said Union and thus they have no reason to be a party to the present Appeal before this Honourable Court.
- vi. Additionally, one cannot be a party to an Appeal against a decision if they weren't the decision making body and further, the registration of the 1st Interested Party Union was not the reason for the cancellation of the 2nd Appellant Union as they have purported to claim.



- vii. The 1st Interested Union has no identifiable stake or legal interest or duty in the proceedings before the Court neither do they have an interest in the outcome of the Appeal and thus they are wrongfully joined in the present Appeal and the Orders obtained against them were entered fraudulently and were an abuse of Court process by the 2nd Appellant.
 - viii. The 1st Interested Party has suffered and will continue suffering substantial and irreparable loss if this they are not struck off from this Appeal as they have no interest or stake in the proceedings and its outcome and if all orders obtained them are not vacated.
3. The 1st Appellant in response, filed a replying affidavit on behalf of the rest and deponed among others that:-
- i. That I am the National General Secretary of the Kenya Union of Water and Sewerage Employees herein hence competent and authorized to swear this affidavit
 - ii. That I have read the affidavit sworn by Matilda Kimetto on 26th May 2025 and the contents therein and wish to respond as hereunder.
 - iii. That the contents of paragraph 1 of the supporting Affidavit sworn by Matilda Kimetto on 26th May 2025 are not true to the extent that the deponent has lied on oath due to the fact that her registration and that of her union had been stayed together with all consequential document which includes the registration certificate number TU/194 issued on 23rd April 2025, the Extracts of officials and any other documents in regards to the registration of the 1st interested party by this court on 7th May 2025 therefore the descriptions at paragraph 1 of the said affidavit are contrary to section 35(6) of the *Labor Relations Act*.
 - iv. That further to the above, the deponent does not have locus standi pursuant to section 2(a) of the *Labor Relations Act* and the Appellant shall at the Hearing of this application raise a preliminary objection at a point of law.
 - v. That the contents of paragraph 3 of the affidavit sworn by Matilda Kemetto on 26th May 2025 are partially admitted to the extent that on 21st of May 2025 there were directions issued by J.N. Abuodha transferring the two files in Petion E188 of 2023 which court 7 had partially delt with and a ruling was delivered and judicial review number E025 of 2025 and it is important to inform the court that Petition E188 of 2023 was challenging the intended registration of the 1st Interested party, while JR E025 of 2025 concerns the registration of the resolutions of the governing council of 2nd Appellants made on 22nd February 2025 which the 1st respondent refused to register without lawful reasons.
 - vi. That further to the above, the instant Appeal number E129 of 2025 is challenging the decision of the registrar of trade unions to cancel the certificate of registration of the 2nd Appellant. The appeal was filed pursuant to section 30 of the *labour relations act*.
 - vii. That the contents of paragraph 4 of the affidavit are not true to the extent that the deponent is still lying on oath that there was communication made to the Appellant on 22nd May 2025, meaning that there was conspiracy between the 1st respondent and the 1st Interested party concerning cancelation of the 2nd Appellants certificate of registration and intended plot to register the 1st Interested Party.
 - viii. That further to the above, I put the 1st Interested party to prove the alleged communication purportedly deponed on paragraph *para_ 4 4* a day before the meeting of the national labour board.



- ix. That the contents of Paragraph *para_5 5* are not true to the extent that the two application one dated 24th April 2025 and the one dated 6th Mayth 2025 was to bar the registrar from registering the 1st interested party as a union as there was an existing union being the 2nd Appellant while the 2nd Application dated 6th May 2025 sort for reinstatement of certificate of registration of the 2nd Appellant and cancellation of the 1st interested party registration.
 - x. That the contents of paragraph *para_6 6* are not true to the extent that no search recruitment has been proved to have taken place and I further deny that in the previous we sort for an order burring 1st Interested party registration and, in the appeal, we were seeking for orders staying the illegal registration of the 1st Interested party.
 - xi. That the contents of paragraph 7 and 8 of the affidavits are not true to the extent of the issue of the joinder of the 1st Interested party has been heard and determined by a court of competent jurisdiction and is therefore burred by principals of Res judicata and the appellant shall at the appropriate time shall raise a preliminary objection on a point of law since there is no Appeal has been lodged towards the said Ruling. (Annexed is a copy of Ruling dated 3rd April 2025 marked as EOA 1).
 - xii. That paragraph *para_9 9* is not true and I attest that the 1st Interested party had influenced the Appellant cancellation of the registration certificate.
 - xiii. That the contents of paragraph *para_10 10* are partially admitted to the extent that the 1st Interested party does not have legal capacity to cancel registration of the Appellant's trade union, save that she exerted her influence by inducing the 1st Respondent to cancel the Appellant's union and register her trade union illegally during the pendency of petition E188 of 2023.
 - xiv. That the application lacks merit and I urge the Honorable Court to dismiss the same with costs.
 - xv. That the contents of paragraph *para_11 11* and *para_12 12* are not true as alleged and the 1st Interested party/ Applicant has not substantiated the alleged substantial suffering and loss since they have not members and union is membership.
4. The 2nd Appellant filed a notice of preliminary objection stating in the main that the Court lacked jurisdiction to hear and determine both applications as both applications are *subjudice* and *res judicata*.
5. In the Motion dated 6th May, 2025, the Appellant's sought orders inter alia:-
- a. That pending hearing and determination of this Application, the Honourable Court be pleased to issue an interim conservatory Order of injunction preserving the registration status, the name and the constitution of the Kenya Union of Water and Sewerage Employees and all recognition Agreements and the Collective Bargaining Agreements between it and several Employers together with the extracts of its officials at Headquarters and all its branches as subsisting prior to 23rd May 2025.
 - b. That pending the hearing and determination of this Application, the Honorable Court be pleased to issue an order staying the operations of Registration certificate issued by the 1st Respondent in favor of the 1st Interested party on 23rd April 2025, any extract of officials of the 1st Interested party thereto as a result of the 1st, 2nd and 3rd Respondents resolutions made on or before 23rd April 2025 or after.



- c. That pending the hearing and determination of this Application, the Honorable Court be pleased to issue an order staying the operations of Registration certificate issued by the 1st Respondent in favor of the 1st Interested party on 23rd April 2025, any extract of officials of the 1st Interested party made by the 1st respondent as a result of the 1st,2nd and 3rd Respondents resolutions made on or before 23rd April 2025 or after.
 - d. That pending hearing and determination of this Application, the Honorable Court be pleased to issue an Order staying the 1st Respondents Order Of Cancellation Of Registration of the 2nd Appellant union dated 2nd May 2025 and the notification letter thereto dated 30th April 2025 in relation to the 1st ,2nd and 3rd Respondents resolutions made on 23rd April 2025.
 - e. That pending the hearing and determination of this Application and the main Appeal, the Honorable Court be pleased to issue an order maintaining the register of the 2nd Appellant as subsisting prior to 2nd May 2025.
 - f. That pending hearing and determination of the main Appeal, the Honourable Court be pleased to issue an order staying operations of the registration certificate dated 23rd April 2025 and any actions thereto in relation to the 1st interested party, issued by the 1st Respondent on 23rd April 2025.
 - g. That pending the hearing and determination of this Application, the Honourable Court be pleased to issue an order staying the operations of Registration certificate issued by the 1st Respondent in favor of the 1st Interested party on 23rd April 2025, any extract of officials of the 1st Interested party made by the 1st respondent as a result of the 1st,2nd and 3rd Respondents resolutions made on or before 23rd April 2025 or after.
6. The application was supported by the affidavit of Elijah Otieno Awach who deponed among others that:-
- i. That am the immediate General secretary of the 2nd Appellant union herein hence competent to swear this Affidavit on my behalf and on behalf of the 2nd Appellant. Copy of the Extract of officials of the appellant dated 28th April 2025 is annexed and marked as EOA1.
 - ii. That on 23rd April 2025, the 1st ,2nd and 3rd Respondents held a Meeting of National Labor Board and resolved to cancel the registration of the Kenya Union Of Water And Sewerage Employees without my notice as the authorized representative and Immediately registered the 1st Interested party (WASWU) as a trade union contrary to Article 36(b) of the constitution of Kenya which requires that there shall be a right to a fair hearing before a registration of an association is cancelled. Copies of the Registrars order dated 2nd May 2025 cancelling our registration and a forwarding Letter dated 30th April 2025 and Certificate of Registration of the 1st Interested party dated 23rd April 2025 are marked as EOA2.
 - iii. That the said meeting of 23rd April 2025 and the resolutions thereto cancelling our registration was marred with irregularities and illegalities which requires this Honorable courts intervention to save the rights of our members whose representation has been illegally and arbitrarily halted by the registrar of trade union and the National Labor Board for personal gains unless interim preservative Orders of injunction are granted, our members of about 5000 will suffer irreparable loss for lack of representation and a right to collective bargaining.
 - iv. That, despite the aforementioned decision being couched by the registrar of trade union to cancelling our registration and to specifically register the 1st Interested party (WASWU) an



intention she had way back in 2023 which ended in court proceedings where her office had been named as a party and the WASWU is as well named as the 1st interested party in the ongoing proceedings in Petition Number E188 OF 2023 which is pending determination before this court, we were never issued with a notice for hearing and or invitation and or Agenda of the intended meeting, place of the said meeting, to defend ourselves on the alleged commissions, omissions' and or obstructions or any offences levelled against us. Copy of ruling delivered on 3rd April 2025 is marked as EOA3.

- v. That it is now open that the registrar of trade union and the National Labor Board have Jointly colluded to aid the WASWU registration to halt and or obstruct the ongoing proceedings to which they are parties, an open civil contempt of court proceedings which has not been determined and the court had delivered its ruling on 3rd April 2025 dismissing an application by WASWU the 1st interested party seeking to be struck out of the proceedings, directions were given on 28th April 2025 on the main petition upon compliance by all the parties and the matter is scheduled for inter-partes hearing on 7th May 2025 unless stay orders are granted, the actions by the 1st Respondent may usurp the outcome of the said petition as the same will have been overtaken by events.
- vi. That, the same decision by the regulator were deliberate actions done to aid the registration of the 1st Interested party WASWU to ensuring our registration status is destabilized and finally cancelled to secure the 1st interested party's installation as Union, leaving about 5000 members of KUWASE (the appellant herein) unrepresented and putting the entire membership at risk of being dismissed by their respective employers and or compel them to join the 1st interested party contrary to Article 36(2) and 3(b) which states that a person shall not be compelled to join association of any kind and further that there shall be a right to have a fair hearing before a registration is cancelled.
- vii. That, this led to the illegal, unconstitutional and malicious cancellation of our union KUWASE for an alleged failure to filling Annual returns and failure to produce books of Accounts and records as allegedly described in the order of Cancellation of Registration issued in form N dated 2nd May 2025 by the 1st Respondent. (Refer to Exhibit 2).
- viii. That, despite the Union Constitution only allowing the National Treasurer as the in charge of funds of the Union and responsible for inspection of books of Accounts as captured under rules 16 and 17 respectively of our registered constitution and section 42 of the *Labor Relations Act* which defines official means treasurer , the 1st Respondent has been meddling with the status of registration of the said position by unilaterally registering and removing the Said registered persons/officials and the most recent changes made by her was on 28th April 2025 where she returned the then National Treasurer Walter Muga in place of Mr. Jared Nyawanda who was registered on 2nd December 2024 and another changes were made on 11th March 2025 where registrar silently removed Mr. Jared Nyawanda without any resolution of either NEC or Governing Council. Copies of the Appellants registered constitution and extracts issued on 2nd December 2024, 11th March 2025 and 28th April 2025 are annexed and marked as EOA4
- ix. That further to the above, before registrar issuing its Notice of intention to cancel the Registration of our Union dated 11th December 2024 she had already made changes in the leadership structure and or positions of the National chairpersons and the National Treasures respectively made changes on the same position by registering Walter Muga on 11th March 2025 in less than three months without an order of the court and or Form Q presented to her for registration as a result of any resolutions from Governing council as per rule seven (7) of



our constitution ,a clear indications of the irregularities and illegalities that were secretly done by her causing total confusion of identifying the official National treasurer and the national chairperson respectively for purposes of convening and or Sanctioning NEC and or Governing Council to deliberate on issues of Annual returns in compliance with section 43 of the labor Relations Act, which requires the Authorized representative to furnish the Registrar annually by a prescribed date a general statement by 31st December of the preceding year all sums, list of assistance and liabilities as the a stalled process of filing annual Returns and appointment of an Auditor for smooth process to compliance

- x. That the Registrar of trade unions had served us with a notice of intention to cancel our registration vide her Notice dated 11th November 2024 late in December 2024 before we break for December Holidays which we responded to 28th January 2025. Copy of the Notice dated 11th December 2024 is marked as EOA5
 - xi. That, in an attempt to hoodwink the Union, register that it was following the anticipated law and silently orchestrating unnecessary corrections in our register of the officials, the registrar wrote to us on 1st April 2025 confirming receipt requesting us to indicate timelines within which we wanted to comply whereas we responded on 3rd April, 2025 to her having proposed to simultaneously commence compliance effective June 2025 which is a few days ahead. Copies of the letter by the registrar dated 1st April 2025 and our response dated 3rd April 2025 are marked as EOA6
 - xii. That, since then, the registrar has not communicated to us on the same even writing back to us confirming acknowledging our letter dated 3rd April 2025 accepting or rejecting it.
 - xiii. That, despite noting the irregularities and intended cancellation of our registration after meddling with our register severally Moreso in the positions of the National Chairman and National Treasurer respectively, registrar on 2nd May 2025 through her Agents called the our offices for collection a letter from her offices wherein upon collection of the said letter , we noticed that it was a letter dated 30th April 2025 with an Order dated 2nd May 2025 attached thereto, cancelling registration of our Union.
 - xiv. That, Registrar went ahead to illegally register the 1st interested party WASWU thereby cancelling our unions registration on 23rd April 2025 (21 days after receiving our letter dated 3rd April 2025 requesting to commence filing of annual returns by June 2025 without further communication either accepting or rejecting it knowing that filling Annual returns is a process which requires hiring an auditor after convening the National Executive council which is the governing body of the union and our constitution requires for a notice of not less than 21 days and this can only be done on availability of funds when union dues has been received into unions designated account.
7. The 1st Respondent through Anne K. Kanake filed a Replying Affidavit in which she deponed inter alia that:
- a. That I am the Acting Registrar of Trade Unions and the 1st Respondent herein well conversant with the matters herein and hence competent to swear this affidavit.
 - b. That the mandate of the 1st Respondent is the registration and regulation of trade unions, ' employer's organizations and federations.



- c. That all trade unions are required under section 43 of the *Labour Relations Act* (hereinafter referred to as the Act), to furnish the annual returns of the union to the Registrar in a prescribed form.
- d. That further, under section 44, the Registrar is mandated to inspect the books of account and the register of members of a trade union, employers' organization or federation at any reasonable time.
- e. That from the year 2017 to date, the 2nd Appellant has persistently failed, refused, and/or neglected to file its annual returns with the 1st Respondent and has equally failed to submit its books of account for inspection, in contravention of its statutory obligations as prescribed under the above referenced sections.
- f. That the 2nd Respondent has, on several occasions, issued formal notices to the 2nd Appellant, including but not limited to notices of intended cancellation, as reminders and demands for compliance with the statutory requirements to file annual returns and submit books of account for inspection. These notices were issued consistently from the year 2022, but the 2nd Appellant has failed to comply as required by law. (Annexed and marked "AKK- 1" are copies of the reminders/notices duly served upon the 2nd Appellant.)
- g. That despite receiving the said notices, the 2nd Appellant refused and or ignored the same and continued operating in blatant disregard of the requirements by the law.
- h. That the *Labour Relations Act* 2007 mandates the Registrar to cancel or suspend any union that operates in contravention of the Act. Section 28 stipulates;
 - 28.
 - (2) The Registrar shall cancel or suspend the registration of a trade union, employers* organization or federation if the Registrar is satisfied that the trade union, employers' organization or federation-
 - (b) is operating in contravention of this Act;
- i. That consequently, the 2nd Appellant having failed to comply with direct instructions as per the law and the office of the Registrar, the 1st Respondent proceeded and cancelled the registration on the union, by following due process as outlined under the aforementioned section 28 which requires that the Registrar to issue sufficient notice and to give reasons for 'the cancellation, (annexed and marked "AKK-2" is a copy of the order of cancellation as issued to the 2nd Appellant on 2nd May 2025).
- j. That In response to paragraph 2 of the Supporting Affidavit sworn by Mr. Elijah Awach on 6th May 2025, the 1st Respondent reiterate the contents of paragraphs *para_77* and *para_88* hereinabove and further aver that all matters brought before the National Labour Board are considered and determined on a case-by-case basis. Accordingly, the decision by the 1st, 2nd, and 3rd Respondents to register the 1st Interested Party was made independently made and is not in any way predicated upon, nor does it arise from, the decision to cancel the registration of the 2nd Appellant.
- k. That contrary to the averments under paragraphs 2 and 3 of the said affidavits, the National Labour Board in their meeting resolved to cancel not just the registration of the 2nd Appellant but several other unions which had failed to comply with provisions of the Act. The claim that the same was illegally done and for personal gains is null and void since notices were issued to



several unions over a period of several years, with some unions rectifying their noncompliance whereas others ignored the same, which all had their registration cancelled on the said date.

- l. That further and in response to the averments under paragraphs 4, 5 and 6 of the said affidavit, the fact is that the registration of the interested party, Water Services Workers' Union (WASWU), was commenced in 2023, long before I joined this office and that the same did not have a bearing on the cancellation of the 2nd Appellant, which was purely for their non-compliance. Nevertheless, the issue of registration of the interested party is a matter that is under judicial consideration in ELRC No. 25 of 2025 *Kenya Union of Water and Sewerage Employees v Registrar of Trade Union* hence is *subjudice*.
 - m. That the Appellants are simply facing the consequences of their non-compliance and adherence to the law even upon receiving several notices, and are trying to hoodwink this honorable court to sanitize their illegal operations.
 - n. That I associate myself with the findings of Honorable Justice Nduma Nderi who when faced with a similar appeal in in Petition No. 98 Of 2015; *Kenya Union of Employees of Voluntary and Charitable Organizations (KUEVACO) & Anor v Registrar of Trade Unions* took the following stand;
 27. The court is satisfied that the provisions of section 28 and 43 are for proper regulation, management and democratization of trade unions. Officials of the unions must be accountable to their members, and must at all times observe the law of the land.
 28. These provisions do not derogate from the freedom of association and the right to a trade union provided under Articles 36 and 41 of the *Constitution* of Kenya 2010.
 29. The provisions of Sections 28 and 43 provide lawful limitation to the provisions of Articles 36 and 41. The need for the Registrar to regulate unions in accordance with the Act, is reasonable and justifiable in an open and democratic society like Kenya as provided in Article 24 of the *Constitution*.
 30. Clearly, the petition is misconceived and an abuse of court process as it is meant to urge the court to shield the petitioners from observing the law. This court is not amenable to such invitation. (Annexed hereto and marked "AKK -3" is a copy of the judgement)
8. On 30th June, 2025 when the parties appeared before me, the court stated that the application dated 26th May, 2025 being in the nature of a complaint over misjoinder, it could be dealt with independent of the application dated 6th May, 2025 as the latter application challenged the deregistration of the applicant as a trade union. The Court further observed that considering the nature and impact of both applications in industrial relations and general labour movement, the court would fast track the hearing of both applications and the appeal. The court therefore directed the interested party/applicant to file and serve submissions on all the parties within 5 days and the appellants and respondent's to respond within a similar period after service. When the matter came for mention before Hon. Riany on 11th July, 2025, the applicant informed the Court that it had filed submissions as directed by the Court while the appellant had not. Ms. Aluoch for the 1st to 3rd respondent informed the court that her clients did not intend to file submissions.
9. The Court has noted that the application dated 6th May, 2025 if decided, would essentially dispose of the appeal herein. The Court has further noted that Mr. Awach in his submissions dated 18th July, 2025 significantly dealt with the issues in the present application, the application dated 6th May, 2025 and



the appeal. Therefore in the interest of fast tracking the matter and saving on judicial time, this ruling will serve as the determination of the application dated 6th May, 2025 and the main appeal.

Interested party's submissions

10. The Interested party submitted among others that when the Court issued directions on 21st March, 2025, it was able to differentiate the issues in Petition E188 of 2023 and Appeal 129 of 2025. That the main thrust of Petition E188 of 2023 was the issuance of certificate of interim registration to the 1st Interested Party while Appeal No. 129 was against cancellation of KUWASE's certificate of registration under section 30 of the [Labour Relations Act](#) as communicated to them on 21st May, 2025. Counsel further submitted that on 7th May, 2025 when Petition E188 of 2023 came up for mention, the 2nd appellant failed to disclose that they had filed a similar application before the honourable court seeking similar orders they had already sought in their application dated 25th April, 2025.
11. Mr. Ngwele for the Interested Party further submitted that the interim orders granted by the Court were prejudicial and detrimental to the existence and operation of the 1st Interested Party Union which had undertaken tremendous steps towards promotion, recruitment of members and operation since the issuance of promotion certificate on 11th May, 2023 and certificate of registration on 23rd April, 2025. Counsel further submitted that the application was an abuse of the Court process since the same orders (prayers 3 and 4) being sought in the present were sought in the appeal matter brought under section 30 of the [Labour Relations Act](#) which dealt purely with appeals from the decisions of the Registrar of Trade Unions.
12. Counsel submitted that the 1st Interested Party was wrongfully joined in the suit as it purely dealt with the decision by the Registrar of Trade Unions and National Labour Board to cancel the registration certificate of the 2nd appellant union. The 1st Interested Party had no legal authority to revoke the registration of the 2nd appellant neither were they responsible for the cancellation of the said union and thus they have no reason to be a party to the present appeal. Counsel further submitted that the registration of the 1st Interested Party was not one of the reasons for the cancellation of the 2nd respondent's certificate of registration. Counsel further submitted that his client, 1st Interested Party, had no identifiable stake or legal interest or duty in the proceedings before the court neither did they have an interest in the outcome of the appeal. They have therefore been wrongfully joined in the appeal and orders obtained against them were obtained fraudulently and were an abuse of the court process. The 1st Interested Party had therefore suffered and continued to suffer substantial and irreparable loss if they are not struck off from this appeal as they neither have interest nor stake in this appeal and its outcome.
13. In support of the submissions and on who constitutes an interested party, counsel relied on the case of [ISC v Speaker of the National Assembly & Another](#) [2013] eKLR and [Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others](#). On the issue who can be joined in a suit, counsel cited the case of [CCK & 5 Others v Royal Media Services & 5 Others](#) [2004] eKLR and submitted that from the principles stated in the cited cases, the 1st Interested Party did not qualify to be joined in the present proceedings as an interested party and its continued presence will not result in a complete settlement of all questions involved in the proceedings as they were not the decision making body resulting in the cancellation of the 2nd appellant's certificate of registration. Counsel therefore urged the court to rely on the Court of Appeal's decision in [Alton Holmes Limited & Another v Nathan Chelgoi & 5 Others](#) [2020]KECA 326 KLR and strike his client's off these proceedings.
14. On the issue of subjudice, counsel submitted that on 24th April, 2025 the 2nd appellant filed a petition being Petition No. E188 of 2023 challenging the registration of the 1st Interested Party as a trade



union and that on 25th May, 2025 the Court issued orders that the application dated 24th April, 2025 challenged the registration of the 1st Interested Party as a Union. This arose when Petition E188 was pending before Lady Justice Wasilwa. That Court had substantially dealt with the Petition and was the one best placed to hear the same to conclusion. Appeal 129 (the present appeal) concerned the decision of the Registrar of Trade Unions to cancel the 2nd appellant's certificate of registration. From the foregoing orders, counsel submitted that this court did not have the jurisdiction to listen to matters relating to the registration of the 1st Interested Party as there already exists another pending application in Petition E188 of 2023 seeking similar orders hence the matter before this Court is therefore subjudice.

15. Mr. Awach for the appellants submitted among others that the present application is seeking similar orders as those sought in the application dated 29th February, 2014 in Petition E188 of 2023 involving similar parties which was determined by the court and a ruling dated 3rd April, 2025 was delivered. On *res judicata*, Mr. Awach invoked section 7 of the [Civil Procedure Act](#) and submitted that in the instant application, the 1st Interested Party seeks to be struck off from the proceedings in this appeal yet they had previously filed an application dated 29th February, 2024 seeking similar orders in Petition E188 of 2023 which was heard and determined and a ruling delivered on 3rd April, 2025 declining to strike them out of the proceedings. No appeal was preferred against the ruling. In this regard Mr. Awach relied on the case of [John Florence Maritime Services Ltd & Another v Secretary Transport & Infrastructure & 3 Others](#) [2021]KESC 39 KLR where the Supreme Court extensively discussed the issue of *res judicata*. He submitted that the issue of *res judicata* goes to jurisdiction and therefore the Court lacked the jurisdiction to determine the present application.
16. On whether the Court should vacate the interim orders issued on 7th May, 2025, he submitted that the orders were issued to cure the illegal registration of the interested party during the pendency of Petition E188 which challenged the application for registration of the interested party on the grounds that there exists the 2nd appellant herein representing the water and sewerage sector. The conservatory orders granted on 7th May, 2025 were meant to maintain the status quo pertaining before the interested party's registration and simultaneous cancellation of the appellant's certificate of registration, pending the hearing and determination of the present appeal. The orders being sought to be vacated were orders issued in Petition No. E188 of 2023 which is distinct and separate from the present appeal.
17. Regarding the Notice of Motion dated 6th May, 2025, Mr. Awach submitted that the 1st -3rd respondent's held a National Labour Board meeting on 23rd April, 2025 with the aim of cancelling the second appellant's registration and to register the 1st Interested Party as a trade union contrary to article 36(b) of the [Constitution](#) which required that there shall be a right to fair hearing before a registration of an association is cancelled. The meeting of 23rd April, 2025 and the resolutions thereto cancelling the registration of the 2nd appellant union was therefore marred with irregularities and illegalities. The appellants, were never issued with a notice for hearing of the meeting to defend itself on the alleged commissions, omissions and or obstructions or any offences levelled against it.
18. Mr. Awach further submitted that the actions by the 1st-3rd Respondents have openly obstructed the Honourable Court's proceedings and is in dire contempt of the proceedings as it had been a party to ongoing proceedings being petition E188 of 2023 challenging the registration of the 1st Interested Party which matter had not been determined by the Court and the court by its ruling delivered on 3rd April, 2025 declined to strike out the 1st Interested Party from the proceedings in Petition E188.
19. The actions by the 1st -3rd Respondent's according to Mr. Awach, were deliberate and intended to ensure that the registration status of the appellant was destabilised to secure the 1st Interested Party's



installation as a union to derail the 2nd appellant's operations countrywide leaving over 5000 members unrepresented and putting the entire membership at risk of being unrepresented.

20. Mr. Awach further submitted that the installation of the 1st Interested Party as a union led to deregistration of the 2nd appellant on the alleged failure to file annual returns and failure to produce books of accounts and records. He further submitted that the 1st respondent has with the intention of cancelling registration on the 2nd appellant, made consistent but unnecessary changes by registering Walter Muga as the 2nd appellant's treasurer on 11th March, 2025 in place of Jared Nyawanda who was registered on 2nd December, 2025. These changes he contended were made without a court order or resolutions by the appellant union with the sole intentions of jeopardising the unions operations and to achieve the intention of cancelling the registration of the 2nd appellant.
21. As earlier stated, on 30th June, 2025 when the parties appeared before me, the court stated that the application dated 26th May, 2025 being in the nature of a complaint over misjoinder, it could be dealt with independent of the application dated 6th May, 2025 as the latter application challenged the deregistration of the applicant as a trade union. The Court further observed that considering the nature and impact of both applications in industrial relations and general labour movement, the court would fast track the hearing of both applications and the appeal. The court therefore directed the interested party/applicant to file and serve submissions on all the parties within 5 days and the appellants and respondent's to respond within a similar period after service. When the matter came for mention before Hon. Riany on 11th July, 2025, the applicant informed the Court that it had filed submissions as directed by the Court while the appellant had not. Ms. Aluoch for the 1st to 3rd respondent informed the court that her clients did not intend to file submissions.

Determination

22. The Court having considered, reviewed and summarised the pleadings and submissions by the parties as above, is of the view that only two issues require to be determined by it. Namely:-
 - i. Whether it was proper to join the interested party in this appeal and;
 - ii. Whether 1st respondent was justified in cancelling the registration certificate of the 2nd appellant.
23. On the issue whether the 1st Interested Party should have been joined in this appeal, they submitted among others that the appeal before this court concerned the cancellation of the certificate of registration as a trade union of the 2nd appellant. According to the 1st Interested Party, this was an action taken by the 1st Respondent and had nothing to do with them. They neither participated in the process nor had the capacity to cancel the 2nd respondent's registration certificate.
24. Although the 1st Interested Party did not attach its constitution with the pleadings herein, by its very name it is a union intending to represent workers in the water sector. Rule 3 of the 2nd appellant's constitution provides that the membership shall be open to all employees in water, sewerage and sanitation companies among others. This therefore means that there is a confluence of operational objectives of the 1st Interested Party and the 2nd appellant. The cancellation of the 2nd appellant's registration certificate and the registration of the 1st Interested Party as a union in the sector similar to that which the 2nd appellant operated is a matter that affects both of them. It was therefore in order to join the 1st Interested Party in this appeal. It is important to note that the issue of joinder of the 1st Interested Party in proceedings involving the 2nd appellant and the 1st respondent and others had been



addressed by Lady Justice Wasilwa in Petition No. E188 of 2023 where the learned Judge in dismissing an application by the 1st Interested Party to be removed from that petition observed:-

“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 officials who are also interested parties in the petition. The presence of the 1st Interested party will in this court’s view not prejudice the petitioner in any way. This even so due to the petition before the court which touches on the 1st Interested Party”

25. The Supreme Court in Uganda in considering a provision similar to our Order 1 rule 10 of the [Civil Procedure Rules](#) in the case of *Deported Asians Property Custodian Board v Jaffer Brothers Limited* (1999) I EA 55 (SCU) had this to say:

“A clear distinction is called for between joining a party who ought to have been joined as a defendant and one whose presence before the Court is necessary in order to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. A party may be joined in a suit, not because there is a cause of action against it, but because that party’s presence is necessary in order to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter...

For a person to be joined on the ground that his presence in the suit is necessary for effectual and complete settlement of all questions in the suit one of two things has to be shown. Either it has to be shown that the orders, which the plaintiff seeks in the suit, would legally affect the interests of that person, and that it is desirable, for avoidance of multiplicity of suits, to have such a person joined so that he is bound by the decision of the Court in that suit. Alternatively, a person qualifies, (on an application of a Defendant) to be joined as a co-defendant, where it is shown that the defendant cannot effectually set a defence he desires to set up unless that person is joined in it, or unless the order to be made is to bind that person.” (emphasis by underline).

26. I find nothing useful to add to a point so succinctly put save that it adequately addresses the issue framed by the Court on whether it was proper to join the 1st Interested Party in the appeal. It was therefore proper and prudent to join the 1st Interested Party in this appeal. The application to have the 1st Interested Party removed from the appeal therefore fails.
27. The second question to be addressed by the Court is whether the 1st respondent was justified in cancelling the registration certificate of the 2nd appellant herein. According to the 1st respondent, the reasons for cancellation as contained in Form N dated 2nd May, 2025 were that the 2nd appellant failed to file annual returns for the years 2017-2024 contrary to provisions of section 43 of the [Labour Relations Act](#) and failure to produce books of accounts and records for the year 2017-2024 for the Registrar’s inspection contrary to provisions of section 44 of the [Labour Relations Act](#). As detailed in the affidavit of Ann K. Kanake (the acting Registrar of the 1st Respondent), The 1st respondent had on several occasions issued formal notices to the 2nd appellant including notices of intended cancellation, as reminders for compliance with statutory requirements to file annual returns and submit books of account for inspection but the 2nd appellant failed to comply as required by law.
28. The 2nd appellant through the 1st appellant though not denying that the 2nd respondent had not complied, accused the 1st respondent of cancelling the 2nd appellant’s certificate in order to clear way for the 1st Interested Party to take over the sector the 2nd respondent represented. Mr. Awach actually



alleged in his affidavit sworn on 6th May, 2025 that the 1st -3rd Respondent herein held a meeting on 23rd April, 2025 with the sole purpose of cancelling the registration of the 2nd appellant despite the fact that the matter was pending in court and there were conservatory orders. This Appeal was filed on 7th May, 2025 concurrently with a Notice of Motion seeking conservatory orders over the registration status of the 2nd appellant. The Court (Lady Justice Keli J) granted conservatory orders as prayed. However the Notice of Cancellation of the 2nd appellant's registration as a trade union is dated 2nd May, 2025 and the decision to cancel the 2nd appellant's registration as a trade union was made by the National Labour Board at its meeting held on 23rd April, 2025 which implies that by the time the appellant was moving the Court, the decision to cancel the 2nd appellant's registration had been made and a notice communicating the same issued. The allegation that the 1st and 2nd Respondent acted against a Court Order is not therefore correct.

29. Section 43(1) of the *Labour Relations Act* requires an authorised representative of a registered trade union, employers' organisation, or federation to furnish annually by a prescribed date to the Registrar, a general statement of all receipts and expenditure during the year ending 31st December of the preceding year. The statement shall include among others, all sums of money received by way of donations or grants, list of assets and liabilities and a copy of auditors report in a prescribed form. Further, section 28(2) of the *Labour Relations Act* empowers the Registrar of Trade Unions cancel or suspend any union that operates in contravention of the Act.
30. As observed earlier, the 1st appellant does not deny not complying with the provisions of section 43(1) from 2017 to 2024, a period of about seven years. The appellant's have not furnished any credible reason why they have not done so. They seem to blame the 1st Respondent for capriciously changing the 2nd appellant's officials but have not stated that these statutory reports were ready but could not be filed due to the alleged changes by the 1st respondent. The Act under section 43(1) does not specify that these reports can only be filed by a specific official. The Act only makes reference to "authorised official". Which means any official authorised by the union could file these statutory reports despite the alleged frequent changes in the office of the treasurer.
31. Honourable Justice Nderi Nduma in the case of *Kenya Union of Employees of Voluntary and Charitable Organizations (KUEVACO) & Anor v Registrar of Trade Unions* 2017 KEELRC 419(KLR) observed:-

“The Court is satisfied that the provisions of section 28 and 43 are for proper regulation, management and democratisation of trade unions. Officials of the unions must be accountable to their members and must at all times observe the law of the land... these provisions do not derogate from the freedom of association and the right to a trade union provided under article 36 of the Constitution 2010...the provisions of section 28 and 43 provide for lawful limitation to the provisions of article 36 and 41. The need for the Registrar to regulate unions in accordance with the Act, is reasonable and justifiable in an open and democratic society like Kenya as provided in article 24 of the Constitution...”
32. Within the framework of ILO, trade unions play a crucial role in promoting decent work, advocating for workers' rights, and influencing social and economic policies. They act as key players in the ILO's tripartite structure, working alongside governments and employers to set labour standards, develop policies, and implement programs that ensure fair and equitable working conditions. ILO Convention 87 on Freedom of Association and Protection of the Right to Organise, 1948 is one of the key conventions in the ILO architecture and the backbone of international trade union movement. It however provides under article 8 that in exercising the rights provided for in the Convention workers



and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

33. Trade union management and accountability to members is therefore crucial for maintaining member trust and ensuring the union effectively represents its members' interests. This includes financial transparency, democratic decision-making processes, and effective communication about union activities and policies. Deriving from the foregoing, it is therefore counter to the spirit and intendment of trade unionism for the 2nd appellant not to obey the law for that long despite reminders from the 1st respondent. From some of the averments contained in the 1st appellant's affidavit sworn on his behalf and that of the 2nd appellant, it would seem that they want to shift the blame and impute malice on the 1st respondent herein for exercising her duty as mandated by the law. This is unacceptable. As a union, the appellant's remain accountable to their members and that accountability can only be assured by complying with the law. For the above reasons, the 1st and 2nd Respondent were within their right to take the action they did against the 2nd appellant by deregistering the 2nd appellant after it failed to comply with the law of the land for such a long time despite reminders to do so.
34. The Court therefore finds the appeal without merit and hereby dismisses the same with no orders as to costs since the claim arose out of a labour relations dispute in which the appellants genuinely believed they had a recourse to this court.
35. For avoidance of doubt and as earlier observed, this Ruling determines the issues in the application dated 26th May, 2025 and this appeal.
36. It is so ordered.

DATED AT NAIROBI THIS 25TH DAY OF JULY, 2025

DELIVERED VIRTUALLY THIS 25TH DAY OF JULY, 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

