



**Osimbo v Registrar of Trade Unions & another (Petition
E001 of 2024) [2025] KEELRC 2081 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2081 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
PETITION E001 OF 2024
MA ONYANGO, J
JULY 10, 2025**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS ON THE RIGHT TO FORM AND JOIN A TRADE UNION OF CHOICE**

BETWEEN

GEORGE OSIMBO PETITIONER

AND

REGISTRAR OF TRADE UNIONS 1ST RESPONDENT

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS,
HOSPITALS AND ALLIED WORKERS (KUDHEIHA) 2ND RESPONDENT**

JUDGMENT

1. The Petitioner herein describes himself as an employee of the Kenya School of Government and one of the promoters of a proposed Trade Union in the name of Kenya School of Government and Kenya Institute of Curriculum Development Union.
2. The 1st Respondent is the Registrar of Trade Unions as established under the [Labour Relations Act](#).
3. The 2nd Respondent is a trade union registered under the Laws of Kenya to represent domestic workers, workers in hotels, non-teaching staff in educational institutions and hospital workers. The 2nd Respondent was enjoined to this Petition pursuant to the orders of the court issued on 16th October 2024.

The Petitioner's case.

4. In the Petition dated 6th February 2024, the Petitioner alleges that the Respondent has violated Article 41(1), 36(1) and 47(1) of [the Constitution](#) and section 12(1), 12(2)(a) and 12(3) of the [Labour Relations](#)



- Act by contravening his fundamental rights and freedoms on the right to form and join a trade union of choice.
5. According to the Petitioner, the Kenya School of Government and the Kenya Institute of Curriculum Development have no union to represent their labour interests.
 6. The Petitioner avers that the Union, if registered, seeks to organize, recruit and represent non-management employees within this economic sector of the Kenya School of Government and Institute of Curriculum Development workers who are entitled to fair labour practices and freedom of association as espoused in Articles 41(1) and 36(1) of the Constitution and this in particular the right to form and join a Trade Union of their choice within the Republic of Kenya.
 7. The Petitioner contends that as prescribed by Section 12(1) and (2) (a) of the Labour Relations Act, the promoters of the proposed Trade Union applied to the Registrar of Trade Unions for issuance of certificate of recruitment to facilitate the th August, 2022 pursuant to Section 12(3) of the Labour Relations Act and that upon receipt of such application, the Registrar of Trade Unions had a statutory maximum of thirty (30) days to decline or issue certificate of recruitment.
 8. The Petitioner maintains that after the lapse of the stipulated thirty (30) days, there was no communication on the recruitment certificate even after several follow ups. That to the date of filing this petition the application had not been acted upon by the office of the Registrar of Trade Unions.
 9. It is the Petitioner's case that the inaction by the 1st Respondent greatly prejudices his rights as a Petitioner and many others who are awaiting its decision as a result of which there has been breach of their right and freedom of association and denial of their right to labour representation.
 10. The Petitioner contends that pursuant to Article 47(1) of the Constitution, the workers of the two institutions have the right to administrative action that is expeditious, efficient, lawful, reasonable, just and procedurally fair from the 1st Respondent.
 11. The Petitioner therefore seeks the following orders against the Respondent: -
 - i. The Honourable Court through an Order, compel the Registrar of Trade Unions to issue a certificate of registration in name of Kenya School of Government and Kenya Institute of Curriculum Development Union to the Petitioner.
 - ii. The Honourable Court compel the Registrar to act in an expedient, efficient and lawful manner in relation to the registration of Kenya School of Government and Curriculum Development Union within fourteen (14) days of the judgement.
 - iii. The Honourable Court make any other Orders it deems fit and just for the Petitioners' petition.
 - iv. The Honourable Court issue an order on cost of this petition.
 12. In support of the petition, the Petitioner swore an affidavit on 6th February 2024 which rehashes the contents of the Petition.

The 1st Respondent's case.

13. The 1st Respondent opposed the Petition vide the Replying Affidavit sworn by its Acting Registrar, Beatrice Mathenge on 28th May 2024. The deponent deposed that the 1st Respondent received an application dated 23rd August 2022 for a certificate to promote the establishment of the Kenya School of Government and Curriculum Development Union from the Petitioner and one Leonard Onguka



but it did not act on the application within 30 days as required by section 12(3) of the [Labour Relations Act](#) as there was no Registrar in office for 3 months after the contract of service of the then Registrar of Trade Unions, Elizabeth Gicheha lapsed. The Acting Registrar avers that she was deployed by the Hon. Attorney General to the Ministry of Labour and Social Protection to act as the Registrar of Trade Unions in late September 2022.

14. The 1st Respondent further contended that the application for a promotion certificate was made by the Petitioner and one Leonard Onguka as provided under section 12 (2) (a) of the Act but the Petitioner herein has not enjoined the said Leonard Onguka in this Petition.
15. It is the 1st Respondent's case that the promotion certificate can only be issued to the two applicants who made the application to promote the proposed trade union as provided under section 12 (2) of the [Labour Relations Act](#) and that this Court cannot issue an order directing it to issue the Certificate to the Petitioner in the absence of the co-applicant.
16. Further, the 1st Respondent while citing section 13 of the Act averred that a trade union is required to apply for registration within six months upon receiving the promotion certificate and that in this case, the Petitioner cannot proceed to the next stage of the registration process without the promotion certificate. It is contended that the issuance of the promotion certificate is mandatory and cannot be waived due to delay in responding to the application.
17. Additionally, the 1st Respondent has asserted that while scrutinizing an application to promote the establishment of a trade union, it is required to check the scope of representation and the sector in which the applicant will recruit members from once the promotion Certificate is issued as provided under section 14 of the [Labour Relations Act](#). The 1st Respondent explained that the scrutiny involves going through the constitutions of other registered and existing trade unions in order to confirm that there is no other trade union that is already registered that sufficiently represents the whole or a substantial proportion of the interests in respect of which the applicants seek registration and that 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. This, according to the 1st Respondent is to ensure that the applicants do not recruit members from a sector where a registered trade union already exists so as to limit the proliferation of trade unions in the same sector and avoid inter-union rivalry and wrangles and therefore enhance industrial peace and harmony.
18. The 1st Respondent asserted that the application submitted by the Petitioner indicates that the proposed union proposes to draw its membership from institutions which are state corporations, that the members the Petitioner is seeking to recruit are represented by other existing registered trade unions namely: the Union of Kenya Civil Servants (UKCS); the Kenya Union of Post Primary Education Teachers (KUPPET); the Kenya National Union of Service Employees (KNUSE); the Kenya Tertiary and Schools Workers Union (KETASWU); and the Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA Workers), the 2nd Respondent herein.
19. The 1st Respondent therefore urged the court to allow it to scrutinize the application by the Petitioner and Leonard Onguka dated 19th August 2022 and make a decision as provided under section 12 of the [Labour Relations Act](#)
20. The 1st Respondent prayed that the petition herein be dismissed with costs.



The 2nd Respondent's Case.

21. The 2nd Respondent in opposing the Petition filed a Replying Affidavit sworn on 24th October 2024 by Albert Njeru Obed, its Secretary General, wherein he deposes that the Petitioner is attempting to encroach into a sector which is fully and sufficiently represented by the 2nd Respondent.
22. It is the 2nd Respondent's case that the 1st Respondent has followed the law in refusing the Petitioner's application for registration as the Petitioner is attempting to encroach into a sector which is fully and sufficiently represented by the 2nd Respondent.
23. According to the 2nd Respondent, the actions of the Petitioner are contrary to Section 14 of the [Labour Relations Act](#), which bars registration of a trade union in a sector where there is an existing trade union representing the interests of the employees.
24. The 2nd Respondent contends that there is already an existing registered trade union (KUDHEIHA), in the sector which is sufficiently representative of the whole of the interests in respect of which the Petitioner sought registration and that it already has recognition agreements in the sector.
25. The 2nd Respondent urged the court to decline the orders sought by the Petitioner arguing that if the proposed union is registered, there will be union rivalry and industrial unrest in the sector which is already well covered by the 2nd Respondent.

The Petitioner's rejoinder.

26. In response to the 1st and 2nd Respondents' Replying affidavits the Petitioner filed two affidavits both dated 20th November 2024.
27. The Petitioner deposes that under Section 12(3) of the [Labour Relations Act](#), the Respondents knew what to do within 30 days but they intentionally failed to act.
28. The Petitioner maintained that the 1st Respondent has not acted on his application and as such the court should intervene by way of issuing an order directing the 1st Respondent to issue a registration certificate to the Petitioner.
29. In his response to the 2nd Respondent's Replying Affidavit, the Petitioner deposes that the 2nd Respondent has no single member at both the Kenya School of Government and at the Kenya Institute of Curriculum Development.
30. The Petitioner submitted that employees at the Kenya School of Government used to remit their monthly subscriptions to the 2nd Respondent but they all withdraw their membership in June, 2022. He attached withdrawal letters to a covering letter which the Petitioner alleges was duly served upon the 2nd Respondent.
31. The Petitioner maintained that the 2nd Respondent in its Replying Affidavit attached a CBA signed in the year 2015 which he alleges was not registered and was neither operationalized nor enforced as no employee has ever benefited from it.
32. According to the Petitioner, on 1st March, 2016, the 2nd Respondent wrote a letter to the Ministry of Labour (CPMU Department) attaching the said CBA and schedule forms to be processed and forwarded to Employment Court for registration; that on 7th March 2016, the 2nd Respondent wrote a letter to Salaries & Remuneration Commission (SRC) seeking its input, recommendation and approval and on 9th March 2016, the Salaries & Remuneration Commission (SRC) wrote back to the 2nd Respondent promising to look into the CBA and give its recommendation.



33. It is contended that the CPMU noticing that there was no SRC input and recommendation as is required by law, nd Respondent to await SRC input and recommendation. On this basis, the Petitioner maintains that the CBA was not registered and no employee has ever benefited from it.
34. The Petitioner further contends that in 2018, the 2nd Respondent drafted a fresh CBA proposal for negotiations whose effective date was to be 1st July 2017 to 30th June 2021 which CBA draft proposal has never been negotiated and is still pending negotiations to date. The Petitioner therefore asserted that the 2nd Respondent has no operational CBA at all at the Kenya School of Government.
35. It is therefore the Petitioner's case that the failure by the 2nd Respondent to register the first CBA and to negotiate the second draft CBA proposal has prejudiced the Petitioner's right to enjoy better terms and conditions of service hence necessitating their request for registration of their Union.
36. In response to the allegation made by the 2nd Respondent that there would be rivalry and industrial unrest if more than of the Kenyan Constitution 2010 outlawed the issue of rivalry stipulated in Section 14(1)(d) of the [Labour Relations Act](#) 2007 by invalidating the monopoly of a Union in a Sector. In the Petitioner's view, any insinuation by the Respondents on the grounds of rivalry to hinder registration of the proposed union is overtaken by events.
37. The Petition was disposed of by way of written submissions.

The Petitioner's submissions.

38. In his written submissions dated 29th November 2024, the Petitioner submitted that he applied to the 1st Respondent for issuance of certificate of recruitment being the originating action to facilitate the registration of a Trade Union within the provisions of Section 12(1) and (2) of the [Labour Relations Act](#) on 23rd August, 2022. The Petitioner submitted that pursuant to Section 12(3) of the [Labour Relations Act](#), upon receipt of such Application, the Registrar of Trade Unions had a statutory maximum of thirty (30) days to respond either way by declining or accepting.
39. The Petitioner submitted that the omission by the 1st Respondent to respond to the application not only offends Section 12 of the [Labour Relations Act](#) but also offends the provisions of [the Constitution](#) and [Fair Administrative Action Act](#) regarding the Petitioner rights.
40. The Petitioner avers that the 1st Respondent's inaction and reasons deposed in her replying affidavit are not supported by relevant laws and are therefore misconceived.

The Respondents' submissions.

41. I have perused the record and did not find submissions for the 1st Respondent.
42. In the submissions of the 2nd Respondent dated 24th October 2024, it maintained that the orders sought by the Petitioner are contrary to Section 14 of the [Labour Relations Act](#), which bar registration of a trade union in a sector where there is an existing trade union representing the interests of the employees that the proposed union intends to recruit.
43. The 2nd Respondent asserted that the Petitioner is attempting to encroach into a sector which it is fully and sufficiently represented.
44. According to the 2nd Respondent, the 1st Respondent considered the material on record and found that it is indeed true that as per the provisions of [the constitution](#) of the 2nd Respondent, which has existed for over 40 years as a trade union, the Sector that the Petitioner wants to encroach upon is sufficiently represented wholly or substantially by the 2nd Respondent.



Determination.

45. After considering the Petition, the rival affidavits and the submissions on record, the broad issue that falls for consideration is whether the prayers sought in the Petition should issue.
46. The Petitioner seeks an Order compelling the Registrar of Trade Unions to issue a certificate of registration for Kenya School of Government and Kenya Institute of Curriculum Development Union to the Petitioner and that the court compels the Registrar to act in an expedient, efficient and lawful manner in relation to the registration of Kenya School of Government and Curriculum Development Union within fourteen (14) days of the judgement.
47. In its response to the Petition, the 1st Respondent stated that it has not refused to issue the promotion certificate to the Petitioner, that due to the workload in the office following the expiry of the contract of the former Registrar of Trade Unions, it has not been able to consider the said application. Additionally, the 1st Respondent has argued that the application for a promotion certificate was made by the Petitioner and one Leonard Onguka but the Petitioner herein has not enjoined his co-applicant in this Petition yet section 12(2) of the *Labour Relations Act* provides that the promotion certificate can only be issued to the two applicants who made the application. The 1st Respondent has stated that this Court cannot issue an order directing it to issue the Certificate to the Petitioner in the absence of the co-applicant.
48. Further, the 1st Respondent has argued that the members who the Petitioner is seeking to recruit are already represented by other existing registered trade unions, including the 2nd Respondent herein.
49. The 2nd Respondent on its part has contended that Petitioner in seeking to have the 1st Respondent issue him a certificate of recruitment is attempting to encroach into a sector which the 2nd Respondent is fully and sufficiently representing.
50. Although the Petitioner did not in his submissions respond to the 2nd Respondent's averments, in the affidavits he filed in court he asserted that the 2nd Respondent has no single member both at the Kenya School of Government and at the Kenya Institute of Curriculum Development as the employees at the Kenya School of Government withdrew their membership from the 2nd Respondent in June 2022. In support of this assertion the Petitioner attached letters of withdrawal from membership of the 2nd Respondent by 22 employees of Kenya School of Government.
51. The right to form or join a trade union of one's choice is recognized and protected in *the Constitution* under Article 41. The provision gives every person the right to fair labour practices which includes the right to form, join and participate in the activities and programs of a trade union.
52. Section 12 of the *Labour Relations Act* provides that: -
 1. "No person shall recruit members for the purpose of establishing a trade union or employers' organization unless that person has obtained a certificate from the Registrar issued under this section.
 2. An application for the certificate referred to in subsection (1) shall-
 - a. be signed by two persons who are promoting the establishment of the trade union or employers' organization;



- b. specify the name of the proposed trade union or employers' organization; and
 - c. contain any other prescribed information.
3. The Registrar shall issue a certificate within thirty days of receiving an application unless-
- a. the application is defective; or
 - b. the name of the proposed trade union or employers' organisation is the same as that of an existing trade union or employers' organisation or is sufficiently similar so as to mislead or cause confusion."

53. From the evidence on record, it has not been proved that the 1st Respondent refused to issue the Petitioner with a certificate of recruitment. As asserted by the 1st Respondent, the failure to issue a certificate was due to the absence of a registrar in office and not the refusal to issue the said certificate. The 1st Respondent stated in the replying affidavit that the Petitioner did not follow up the issuance of the certificate after she took office, albeit in acting capacity. The 1st Respondent urged this court to allow it consider the application by the Petitioner dated 19th August 2022 and make a decision as provided under section 12 of the *Labour Relations Act*. The 1st Respondent has stated that it is yet to consider the application made by the Petitioner and his co-application before it for issuance of a promotion certificate.

54. In the petition before the court the orders sought are not in respect of the certificate under Section 12 which provides for promotion of a trade union. His prayers are that this court-

compel the Registrar of Trade Unions to issue a certificate of registration in name of Kenya School of Government and Kenya Institute of Curriculum Development Union to the Petitioner.

compel the Registrar to act in an expedient, efficient and lawful manner in relation to the registration of Kenya School of Government and Curriculum Development Union within fourteen (14) days of the judgement.

55. Obviously the court cannot direct the registrar to issue a certificate of registration in the name of Kenya School of Government and Kenya Institute of Curriculum Development Union to the Petitioner. This is because the Petitioner has not yet applied for the registration of the trade union as provided at section 14 of the *Labour Relations Act* which sets out the requirements for registration of a trade union.

56. It is therefore the view of this court that the Petitioner's prayers in the petition are premature as he has not yet complied with the requirements and applied for the registration of a union having only applied for a certificate for promotion of the union. The Petitioner has further not demonstrated that he meets the requirements of section 14 in respect of the union he intends to register.

57. It is the view of the court the 1st Respondent ought to be given a chance to perform its mandate under section 12 of the *Labour Relations Act* with regard to the application for issuance of a certificate of recruitment which was made by the Petitioner and which is pending action by the 1st Respondent.

58. Consequently, I find that the instant petition was filed prematurely. The same is dismissed with no orders as to costs.



DATED, SIGNED AND VIRTUALLY AT ELDORET*ON THIS 10TH DAY OF JULY 2025

MAUREEN ONYANGO

JUDGE

