



**Mwangi & 2 others v Registrar of Trade Unions & another (Employment and Labour Relations  
Petition E023 of 2024) [2024] KEELRC 13291 (KLR) (28 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13291 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS PETITION E023 OF 2024  
AN MWAURE, J  
NOVEMBER 28, 2024**

**BETWEEN**

**KINYUA MWANGI ..... 1<sup>ST</sup> PETITIONER  
MARTHA OMOLLO ..... 2<sup>ND</sup> PETITIONER  
EVA MUCHEMI ..... 3<sup>RD</sup> PETITIONER**

**AND**

**THE REGISTRAR OF TRADE UNIONS ..... 1<sup>ST</sup> RESPONDENT  
THE HONOURABLE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Petitioners filed a petition dated 26<sup>th</sup> February 2024.

**Petitioner's case**

2. The Petitioners aver that they are trained teachers employed by the Teachers Service Commission.
3. The Petitioners aver that they are not members of any trade union representing their fraternity, yet they have monthly agency fees deducted by either the Kenya National Union of Teachers or the Kenya Union of Post Primary Teachers.
4. The Petitioners aver that with the high number of teachers, the current trade unions representing teachers are inadequate and unable to represent the interests of all teachers particularly those in junior secondary schools.
5. The Petitioners aver that they have proposed to establish the Kenya National Educators Union to represent junior secondary school teachers who are not adequately represented.



6. The Petitioners aver that they are aware that the 1<sup>st</sup> respondent has registered other trade unions for specific segments of the teaching profession including the Kenya Union of Special Needs Education Teachers.
7. The Petitioners aver that the two main unions face governance issues leading to unwarranted member expulsions and a lack of other registered unions to represent teachers.
8. The Petitioners aver that they applied for registration with the 1<sup>st</sup> Respondent on 21<sup>st</sup> September 2022, but received no response or determination, prompting this Petition.
9. The Petitioners aver that attempts to follow up were met with claims of office workload and no deadline given. The Petitioners argue that this inaction violates their rights to a fair hearing, administrative action, and the right to form and join a trade union.
10. The Petitioners aver that the 1<sup>st</sup> Respondent's failure to act is unconstitutional and malicious, violating natural justice and their labour rights.
11. The Petitioners pray that:
  - a. A declaration that the failure by the 1<sup>st</sup> Respondent to evaluate the application for registration of Kenya National Educators Union is unconstitutional and a violation of Articles 10, 36, 41, 47 and 50 of *the Constitution* of Kenya as read together with sections 12, 13, 14, 18 and 19 of the *Labour Relations Act*, 2007, and sections 4,5 and 6 of the Fair Administrative Actions Act.
  - b. An order of Mandamus be issued by the Honourable Court compelling the 1<sup>st</sup> Respondent to evaluate and consider the application dated 10<sup>th</sup> March 2023 relating to the registration of a trade union named Kenya National Educators Union.
  - c. An order of Mandamus be issued by the Honourable Court compelling the 1<sup>st</sup> Respondent to issue the Petitioners with the certificate of registration of Kenya National Educators Union in compliance with sections 12, 13, and 14 of the *Labour Relations Act* as read together with Articles 10,36, 41, 47 and 50 of *the Constitution* of Kenya.
  - d. The Honourable Court to find and uphold that the decisions, actions, inactions, delays and omissions of the 1<sup>st</sup> Respondent in respect of the failure to register Kenya National Educators Union constitute conduct that violates Articles 10, 22, 36, 41, 47 and 50 of *the Constitution*.
  - e. Costs of the Petition
  - f. Any other reliefs the Honourable Court may deem fit and just to grant.

### **Respondent's case**

12. In opposition to the petition, the 1<sup>st</sup> Respondent filed a replying affidavit dated 26<sup>th</sup> June 2023.
13. The 1<sup>st</sup> Respondent avers that the petition contains locus standi of the petitioners to institute the proceedings herein and no response was required.
14. The 1<sup>st</sup> Respondent avers that the petition is incompetent, lacks merit, is fatally defective, is bad in law, and is frivolous, vexatious, and scandalous; thus, it should be dismissed with costs.
15. The 2<sup>nd</sup> Respondent did not put any response.
16. The Petition was canvassed by way of written submissions.



## Petitioner's submissions

17. The Petitioners submitted that the 3<sup>rd</sup> Petitioner endorsed the application for union registration and is constitutionally obliged to uphold *the Constitution* under Article 3(1). Article 22(1) and (2) grants her the right to initiate proceedings if a right or freedom in the Bill of Rights has been denied, violated, infringed and/or threatened.
18. The Petitioners submitted that the 3<sup>rd</sup> Petitioner has the legal standing to file this petition both as a union proposer and in the public interest, ensuring constitutional compliance and accountability of the 1<sup>st</sup> Respondent.
19. The Petitioners submitted that the 1<sup>st</sup> Respondent failed to approve the application within the statutory timelines from 21<sup>st</sup> September 2022 to 6<sup>th</sup> February 2024. Section 12(3) of the *Labour Relations Act* obliges the 1<sup>st</sup> respondent to issue the certificate to the proposed union within 30 days or provide a written explanation to issue the certificate.
20. The Petitioners submitted that the 1<sup>st</sup> respondent did not communicate explaining its decision about the application which was unconstitutional, capricious arbitrary, pre-determined, injudicious, actuated by malice, and violates the rules of natural justice and the rights to fair administrative action and right to fair labour practices.
21. The Petitioners submitted that the purported response dated 6<sup>th</sup> February 2024 was not sent to them and did not provide a clear basis for the decision. The Petitioners relied on the case of Seth Panyako & 5 others V Attorney General & 2 Others [2013] eKLR the court stated that to justify limiting a right, compliance with Article 24 of *the Constitution* must be proven. Section 14(1)(d)(i) of the *Labour Relations Act* restricts union registration if a similar union exists, but it's unclear how the sufficiency of representation is determined. Workers have a fundamental right to choose their union, which negotiates essential terms like wages, housing, and medical services, ensuring their welfare and dignity at work. This right is protected in the Bill of Rights and labour legislation.
22. The Petitioners submitted that 1<sup>st</sup> Respondent evaluation and action falls under sections 12, 13 and 14 of the *Labour Relations Act* arguing that it is an administrative action under section 2 of the *Fair Administrative Action Act*. The Petitioners relied on the case of Republic V National Cohesion and Integration Commission; Chama Cha Mawakili Limited(ex-parte) (Judicial Review Application E057 of 2022) [2022] KEHC 10206(KLR) (Judicial Review)(14 July 2022) the court stated that the *Fair Administrative Action Act* (FAAA) was enacted to ensure the constitutional right to fair administrative action. According to Section 2, "administrative action" includes powers, functions, and duties exercised by authorities or quasi-judicial tribunals, and any decisions affecting legal rights or interests. An administrator is defined as anyone taking such actions or decisions. The impugned action qualifies as administrative, as it affects the applicant's and other citizens' legal rights and interests. The respondent, in this context, is considered an administrator under the Act.
23. The Petitioners submitted that they were not given the chance to demonstrate the proposed union's ability to recruit members and represent a distinct segment of the teaching profession due to the 1<sup>st</sup> Respondent's failure to issue the necessary certificate.
24. The Petitioners submitted that the 1<sup>st</sup> Respondent failed to apply the sufficiency test of representation in the teaching sector and acknowledge the high number of teachers in the public and private sectors. The Petitioners argue that the existing unions are ineffective and unable to represent the trade union interests of all teachers adequately.



25. The Petitioners submitted that the registration of multiple unions demonstrates inadequate trade union representation of teachers. The Petitioner relied on the case of Solomon Wanjala & 6 others (suing on behalf of the proposed, Kenya National Union of Breakdowns Recovery, Commuters & Freight Agency Workers) V Registrar of Trade Unions (2021) eKLR the court stated that the substantial gap in representation for millions of employees in the transport sector, finding the Registrar's decision unsupported. The term "Sector" under the Act includes an industry or service, which makes the argument against the union based on existing representation illogical. The definition is too broad to justify the refusal of a new union. The Supreme Court's sufficiency test under Section 14(1)(d)(i) of the *Labour Relations Act* was not met, making the rejection of the union's registration unjustified by law and evidence.
26. In Kenya Plantation and Agricultural Workers' Union V Kenya Export Floriculture, Horticulture and Allied Workers' Union (KEFTHAU) & Others [2020] eKLR the Supreme Court stated that Section 14(1)(d) of the *Labour Relations Act* requires the Registrar to investigate any objections before making a decision on union registration applications. In this case, the trial Judge's inquiry concluded that the 10<sup>th</sup> respondent's decision to reject the union's registration was based on the old Constitution. The limitations under Article 24 did not apply to the union in question, and there is a clear distinction between plantations and agriculture industries versus floriculture and horticulture industries.
27. The Petitioners submitted that the 1<sup>st</sup> Respondent must disclose the nature and content of objections against the union registration. By not doing so and not allowing the Petitioners to address these objections, the 1<sup>st</sup> Respondent violated their rights to a fair hearing, fair administrative action, and freedom of association. Sections 4, 5, and 6 of the *Fair Administrative Action Act* require the 1<sup>st</sup> Respondent to ensure administrative actions are expeditious, efficient, lawful, reasonable, and procedurally fair, provide opportunities to be heard, give reasons for actions taken, and supply information to facilitate appeals or reviews.
28. The Petitioners relied on Republic v National Cohesion and Integration Commission; Chama Cha Mawakili Limited (Ex Parte) (supra) citing the case of Republic v Nairobi City County ex parte Registered Trustees of Sir Ali Muslim Club (2017) eKLR the court stated that administrators with statutory powers must follow the *Fair Administrative Action Act's* provisions, which require notifying affected individuals, hearing their views, considering all relevant matters, providing reasons for decisions, and informing them of their appeal rights. Justice Odunga emphasized that the rule of law ensures predictability and uniform application of actions by public bodies, and mandates transparency and accountability as defined in *the Constitution*. Before making adverse decisions, affected individuals must be heard, ensuring fairness as stipulated in Article 47 of *the Constitution* and the Fair Administrative Actions Act.
29. The Petitioner submitted that the 1<sup>st</sup> Respondent failed to prove and analyse the adequate representation of teachers to the Petitioners and the court. The claim that multiple unions exist in the education sector does not justify rejecting the Petitioner's proposed union without other compelling reasons. Additionally, a trade union's role extends beyond collective bargaining for its members.
30. The Petitioners relied on the case of Dominic Ngolo & Others [Suing on their behalf and on behalf of the proposed Kenya Bodaboda, Tuktuk and Taxi Workers Union] v Registrar Of Trade Unions (2016) eLKR where the court stated that trade Unions serve multiple purposes beyond collective bargaining, such as organizing members, protecting their interests, resolving disputes, providing training, legal advice, and promoting welfare. They also influence labour policies and participate in legislative processes. The Registrar's view that the Appellants had to demonstrate their collective bargaining



targets was too restrictive and ignored the broader role of trade unions. Therefore, refusing registration based on potential collective bargaining challenges was incorrect.

31. The Petitioners also submitted that the 1<sup>st</sup> Respondent's claim about existing trade unions for teachers underscores the need for diverse representation. The Petitioners' situation having agency fees deducted without being union members shows that not all potential members of the five unions are actively involved in union activities.
32. The Petitioners submitted that by denying the certificate, the 1<sup>st</sup> Respondent prevented them from confirming the need for representation and whether potential members were adequately represented by existing unions. This also denied the Petitioners the chance to demonstrate their intended niche, such as recruiting Junior Secondary School teachers, most of whom are not currently union members and are thus disenfranchised.
33. In *Solomon Wanjala & 6 Others (Suing on Behalf of the Proposed, Kenya National Union of Breakdowns Recovery, Commuters & Freight Agency Workers) v Registrar of Trade Unions* (supra) where the court stated that several other unions in the transport sector were registered despite the existence of the Transport Workers Union, indicating a recognition of inadequate representation by the latter. This raises questions about why the Appellant's proposed union was denied registration under Section 14(1)(d) despite meeting all requirements. An objection from the Transport Workers Union on 6<sup>th</sup> August 2018, and the Appellant's response on 24<sup>th</sup> August, 2018, seemed to influence the Registrar's decision, concluding that the existing union sufficiently represented the targeted workers.
34. The Petitioners submitted that the 1<sup>st</sup> Respondent failed to disclose the source of any objections to their proposed union registration. They contended that, if objections were raised, the 1<sup>st</sup> Respondent was required to allow the Petitioners to address and oppose them and the 1<sup>st</sup> Respondent has an obligation to disclose any objections related to the registration of a trade union.
35. The Petitioners submitted that the 1<sup>st</sup> Respondent's delay in considering the application for union registration violated statutory and constitutional requirements, including good governance, integrity, transparency, and accountability. In *Peter Karegua Mwangi & Others vs. Registrar of Trade Unions* KLR (2021), where the court held that the Registrar must consider sectoral interests and comply with specific provisions of the *Labour Relations Act* and *the Constitution* when deciding on union registrations.
36. The Petitioner submitted that the duty to register a union must comply with the right to a fair trial and administrative action. In *Dominic Ngolo & Others v Registrar of Trade Unions* (supra), the court stated that the Registrar of Trade Unions has executive and decisional authority in registration matters, requiring independent and impartial decisions, with the Board only offering policy guidance. The Registrar's decisions are quasi-judicial and appealable in the Employment and Labour Relations Court, emphasizing that the Board should not determine union registration applications.
37. In *Nahason Nchamae & 9 Others v Registrar of Trade Unions* (2017) eKLR, the court stated that when the Registrar of Unions denies an application for registration based on existing union representation, they must provide compelling reasons supported by tangible evidence. This evidence must show that the existing union sufficiently represents the whole or substantial proportion of the sector's interests.
38. In conclusion, the Petitioners pray that this Honourable Court allows the petition as prayed.



## The 1<sup>st</sup> Respondent's submissions

39. The 1<sup>st</sup> Respondent submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners applied for a certificate to promote the Kenya National Educators Union on 21/9/2022. They met with the Registrar, who explained delays due to workload. On 6/2/2024, the 1st Respondent declined the certificate, citing valid reasons.
40. The 1<sup>st</sup> Respondent submitted that the petition is overtaken by events as a decision has already been made, and the Petitioners have not appealed within the allowed 30 days.
41. The 1<sup>st</sup> Respondent submitted that the Petitioners were informed about the need to collect the decision letter but failed to do so, and it was subsequently emailed to them. Despite some delays, the 1<sup>st</sup> Respondent provided legitimate reasons for them. Additionally, the 1<sup>st</sup> Respondent argues that the Petitioners' allegations lack evidence and that the requests made in the petition are outdated which were addressed in the replying affidavit dated 26<sup>th</sup> June 2024, addresses these issues.
42. The 1<sup>st</sup> Respondent submitted that the orders sought in prayers (b) and (c) of the petition can only be issued through judicial review, not a constitutional petition. The 1<sup>st</sup> Respondent also submitted that the freedom of association and the right to form and join a trade union are not absolute.
43. The 1<sup>st</sup> Respondent relied on the case of Malindi ELRC Appeal No. 1/2009 the Promoters of Kenya Salt Workers Union (Lawrence Majali & 5 others) v The Registrar of Trade Unions, the court stated as follows:

“...The right to form or belong to a trade union of one's choice is protected under Article 41 of *the Constitution*. This right is complemented by the freedom of association under Article 36 of *the Constitution*. However, these rights are not absolute. They do not fall in the category of rights that cannot be limited as pronounced under Article 25 of *the Constitution*. Article 24 of *the Constitution* permits the imposition of limitation on some rights in the Bill of Rights so long as the limitation is imposed by law and is reasonable and justifiable in an open and democratic society. In my view, the limitations on the right to register a Trade Union imposed under the *Labour Relations Act* are examples of the limitations on enjoyment of the rights under Article 36 and 41 of *the Constitution*...”

44. The 1<sup>st</sup> Respondent submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners have not met the requirements for registration of the proposed union under the Act, so prayer (c) cannot be granted. The 1<sup>st</sup> Respondent also submitted that the Petitioners have not shown any violation of constitutional rights by the 1<sup>st</sup> Respondent, making prayer (d) inadmissible.
45. The 1<sup>st</sup> Respondent submitted that the 3rd Petitioner, Eva Muchemi, was not involved in the original application and should be struck out from the petition.
46. In conclusion, the 1<sup>st</sup> Respondent prays that the petition is incompetent and meritless, requesting its dismissal with costs.

## Analysis and determination

47. After carefully considering the pleadings and submissions by both parties, I find that the main issues for determination are whether the petition is merited and whether they are entitled to the reliefs sought.
48. Section 12 of the Labour Relation Act provides for the establishment of a trade union or employers' organisation as follows:



- (1) No person shall recruit members for the purpose of establishing a trade union or employers' organisation 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' organisation;
    - (b) specify the name of the proposed trade union or employers' organisation; 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 to mislead or cause confusion.
49. The court is in agreement with the respondents that the Petitioners did not obtain a certificate from the Registrar as required under the above.
50. Further the court also notes that the respondent failed to respond to the Petitioners which is unacceptable from 2022 and they only responded in February 2024.
- In this instant case, the 1<sup>st</sup> Respondent issued a letter dated 6<sup>th</sup> February 2024 explaining the reasons that there are other unions which express the interests of teachers. In the said letter, the 1<sup>st</sup> Respondent stated that section 14(1)(d) of the Labour Relation Act provides that another trade union cannot be registered where there is another trade union already which represents the same interest of the same group.
51. The Petitioners did not give concrete reasons as to why there was need to register another trade union to take care of interests of teachers. Initially they had said they wanted a union for teachers in childhood Development and Tertiary teachers BUT later on 10<sup>th</sup> March 2023 they said the union was for teachers under TSC but were not union members. It would appear they were not clear which interest groups they were representing.
52. Further under Section 14 of *Labour Relations Act* the Petitioner did not make an application in compliance with the act and so the application is found to be defective.
53. The 1<sup>st</sup> Respondent by their letter dated 12<sup>th</sup> October 2023 gave a legitimate reason for the delay of the response and it was beyond their control which did not violate the Petitioners constitutional rights. In *Charles Salano & 9 others (Proposers & Promoters of Kenya Supermarkets Workers Union (KESMWU) V Registrar of Trade Unions & Food and Allied Workers Union [2017] KECA 398 (KLR)* the Court of Appeal held that the appellants' rights under Articles 36 and 41 of *the Constitution* are deemed reasonable and justifiable in an open and democratic society. Their interests are already sufficiently represented by an existing trade union, and creating a rival union would cause confusion in the area the appellants intended to represent.
54. The Court finds the Petitioners have not given sufficient reasons for registration of a trade union of the cadre presented. The court therefore finds the prayers in the petition dated 26<sup>th</sup> February 2024 are unmerited and are disallowed.



55. The court orders each party to meet their respective costs.

Order accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 28<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

