



Onyancha & 2 others v Registrar of Trade Union (ROTU) & another; Kenya Medical Practitioners, Pharmacists & Dentist Board (Interested Party) (Employment and Labour Relations Appeal E059 of 2024) [2024] KEELRC 13571 (KLR) (13 December 2024) (Judgment)

Neutral citation: [2024] KEELRC 13571 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS APPEAL E059 OF 2024
AN MWAURE, J
DECEMBER 13, 2024**

BETWEEN

**DR APIMA ABEL ONYANCHA 1ST APPELLANT
DR LUCKY KAGUONGO 2ND APPELLANT
DR YVONE KWAMBOKA OSORO 3RD APPELLANT**

AND

**REGISTRAR OF TRADE UNION (ROTU) 1ST RESPONDENT
HON ATTORNEY GENERAL 2ND RESPONDENT**

AND

**KENYA MEDICAL PRACTITIONERS, PHARMACISTS & DENTIST
BOARD INTERESTED PARTY**

(Being an Appeal from the decision of the Registrar of Trade Unions dated 18th July 2024)

JUDGMENT

1. The Appellant being dissatisfied with the decision of the Registrar of Trade Unions dated 18th July 2024, the Appellant filed this appeal vide a Memorandum of Appeal dated 8th August 2024 where the Appellants came up with 22 grounds which Honourable Court will summarize into 5 grounds as follows:

1. That the learned Registrar of Trade Unions erred in law and fact for unreasonably relying on irrelevant issues such as logo and slogan on the letter of application making her arrive at an erroneous decision.



2. That the learned Registrar of Trade Unions erred in law and fact by wrongly finding that the proposed name is similar to Kenya Medical Practitioners, Pharmacists, and Dentist Union (KMPDU), and then wrongly refusing to consider the proposed change in name.
 3. That the learned Registrar of Trade Unions erred in law and fact by declining to promote and/or register the proposed union by acting discriminately to the appellant and registering other related unions in the health sector and other sectors of the economy while on the other hand declining/refusing the promotion and/or registration of the appellants' union
 4. That the learned Registrar of Trade Unions erred in law and fact by failing to register the proposed trade union, neglecting the sufficiency test and providing no empirical evidence under section 14 of the *Labour Relations Act* 2007, leading to an unsupported and arbitrary decision.
 5. That the learned Registrar of Trade Unions erred in law and fact by violating the Appellants' right of association in an open and democratic Society based on human dignity, equality & freedom as provided under Articles 19,20,21,24 & 36 of *the Constitution*.
2. The Appellants prays for:
- a. A declaration while processing the application(s) for promotion/registration of a trade union and/or any other association, the registrar of trade unions ought NOT to consider irrelevant and mundane issues like the logo & slogan on the letter of application and instead should focus /consider relevant and substantives of the application.
 - b. A declaration that the Registrar of Trade Unions erred in law by unlawfully and prematurely exercising of jurisdiction by placing reliance on considerations for registration instead of the considerations for promotion of a trade union.
 - c. A declaration finding is hereby made that the name Kenya Medical Doctors Union and/or Kenya Union of Medical Doctors and Associates (KUMDA) are not similar nor significantly similar to Kenya Medical Practitioners, Pharmacists and Dentists Union.
 - d. A declaration finding is hereby made that the Registrar of Trade Unions(1st Respondent) is in mandatory manner required at all times required to process any application made for promotion and/or registration of a trade union and/or any other association within the stipulated statutory and constitutional timelines, Failure of which she is guilty of dereliction of her duty and the office she holds and commits an offence of trampling on relevant statutory and constitutional provisions and associate rights and fundamental freedoms of affected individuals.
 - e. A declaration is hereby made that it is proper, legal and unconstitutional for the appellants to apply for registration of a trade union for Medical Doctors Only by any name considering there are no “medical doctors (MBChB/MD or its equivalent) only” union in Kenya.
 - f. A declaration is hereby made that the 1st Respondent (Registrar of trade unions) decisions made on or about 18th July 2024 through letters with documentation and/or fee as envisaged in section 18(1) & 18(2) or any other section of the *Labour Relations Act*, no. 14 of 2007 reference ML&SP/TU/NKR/ELRC/PET./E017/2023(29) and ML/TU/R/348(6) violate various articles of *the Constitution* inter alia Articles 1,3,10, 19, 20,21,27,28,30,36,41(2) (c),43,47,73 and 7 5 of *the constitution*(2010), *Labour Relations Act* 2007 and other relevant statutory provisions of law hence the same is illegal, unconstitutional null and void.



- g. The 1st Respondent's decision which was made on or about 18th July 2024 through letters with reference ML&SP/TU/NKR/ELRC/PET./E017/2023(29) and ML/TU/R/348(6) and any document on any other date which had an effect of declining promotion and/or registration of the union is hereby set aside
 - h. That pursuant to order(f) above, this court directs the 1st Respondent to promote and/or register and issue a promotion and/or registration certificate and/or any issue other than any relevant certificates/documents against the appellants in their proposed name of Kenya Medical Doctors Union and/or Kenya Union of Medical Doctors and Associates (KUMDA) and or/any other appropriate name as provided in section 18(4)(a) of the Labour Relation Act 2007 as a trade union in Kenya provided that the latter provides required within stipulated timelines.
 - i. That the Honourable court is pleased to issue an order of judicial review by way of an order of MANDAMUS compelling the 1st Respondent to issue statutory gazette notices and/or any other statutory instruments for purposes of promoting and/or registering the appellant's union as proposed-Kenya Medical Doctors Union and/or Kenya Union of Medical Doctors and Associates (KUMDA) and/or any other appropriate name as provided in Labour Relation Act 2007 and/or any relevant laws.
 - j. That the Honourable court to issue an order of judicial review by way of PROHIBITION and/or Permanent Injunction prohibiting/restraining the Respondents and/or any other party jointly and severally, from impeding the registration of the appellants union-Kenya Medical Doctors Union and/or Kenya Union Of Medical Doctors and Associates (KUMDA) and/or any other appropriate name as a labour/trade unions envisaged in Articles 36 and 41(2) (c) of the constitution as read with relevant sections of the Labour Relation Act 2007 and/or any relevant laws.
 - k. A declaration hereby is made that the Registrar of Trade Unions, Mrs. Beatrice Wambui Mathenge, is unfit to hold Public office for contravening the constitution of Kenya 2010 and relevant statutory provisions as enumerated in order(e) above as well as Chapter 6 of the constitution
 - l. Any other order or/and modification of the Appellants' prayer(s) which this honourable court may deem fit so as to achieve objects of justice for the appellant as a whole.
 - m. Costs of this Appeal to be borne by the 1st Respondent.
3. This Honourable Court directed that the appeal to be disposed of by way of written submissions.
 4. The Appellant and the Interested party filed their submissions while the Respondents did not file their submissions.

Appellant's submissions

5. The Appellants submitted that the 1st Respondent violated their rights, contradicting the rule of law established in the Constitution 2010. They contend that the Constitution should be interpreted to promote its purposes, values, and principles, advancing the rule of law, protecting human rights and fundamental freedoms, and contributing to good governance.
6. The Appellants relied on the case of the Institute of Social Accountability & Another V National Assembly & 4 others High Court, (2015) eKLR the court stated that it is enjoined under Article 259 of the Constitution to interpret the Constitution in a manner that promotes its purposes, values and



principles, advances the rule of law, human rights and fundamental freedoms in the Bill of Rights and that contributes to good governance. Also, in *Salaries and Remuneration Commission & Another V Parliamentary Service Commission & 15 others; Parliament & 4 others (Interested Parties)* [2020] eKLR the court emphasized the importance of the rule of law as follows:

“The principle of the rule of law, which is a foundational principle of *the Constitution*, requires the exercise of public power to conform to *the Constitution* and the enabling statutes.....The rule of law, and the related principles of legality and accountability are the central constitutional doctrines governing the exercise of public power.”

7. The Appellants submitted that the violation of their rights can be remedied under Article 23 of *the Constitution*. The Appellate relied on the case of *Salaries and Remuneration Commission & another v Parliamentary Service Commission & 15 Others; Parliament & 4 Others (Supra)* the court defined the appropriate relief citing the South African constitutional court in *Minister of Health & others V treatment action campaign & Others* as follows:

“322. ..appropriate relief will in essence be relief that is required to protect and enforce *the Constitution*. Depending on the circumstances of each particular case, the relief may be a declaration of rights, an interdict, a mandamus, or such other relief as may be required to ensure that the rights enshrined in *the Constitution* are protected and enforced. If it is necessary to do so, the court may even have to fashion new remedies to secure the protection and enforcement of these all-important rights...the courts have a particular responsibility in this regard and are obliged to “forge new tools” and shape innovative remedies, if need be to achieve this goal.”

8. The Appellants argued that the 1st Respondent questioned the legality and defects in a proposed union’s use of an email, slogan, and letterhead, citing the specific statute of the *Labour Relations Act* that prohibits such elements. The Appellants cited Article 159(2)(d) of *the Constitution* which states as follows:

“(2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles-

(d) justice shall be administered without undue regard to procedural technicalities.”

9. The Appellants also cited section 12(1) of the *Labour Relations Act* which provides as follows:

“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.”

10. The Appellants contended that the 1st Respondent’s interpretation of section 12(1) of the *Labour Relations Act* effectively prevents individuals from forming a trade union using letterheads, slogans, and emails. This interpretation restricts the right to associate and limits fundamental freedoms, contrary to Article 24 of *the Constitution* (2010).

11. The Appellants reiterated the case of *Institute of Social Accountability & Another V National Assembly & 4 others (supra)* in support of that proposition. The Appellant also submitted that the 1st Respondent’s decision to consider letterheads, slogan, and emails relevant to a trade union’s



promotion application is deemed illegal, null, and void. The Appellant cited the case of Republic V Public Procurement Administrative Review Board & 2 Others Ex-Parte Pelt Security Services Limited [2018] eKLR the court held that a decision is considered invalid when a decision-maker considers an irrelevant factor.

12. The Appellants argued that the proposed trade union, Kenya Medical Doctors Union or Kenya Union or Medical Doctors and Associates (KUMDA), is not similar to the Kenya Medical Practitioners, Pharmacists, and Dentist Union (KMPDU). The 1st Respondent contended that there is a similarity between the proposed trade union and KMPDU; however, the 1st Respondent failed to provide evidence to support its argument. Therefore, the 1st Respondent's decision to assert that the names are similar is an abuse of power.

13. The Appellants relied on the case of Unilever PLC V Bidco Oil Industries [2004] eKLR the court held that

“...the trade mark which is registered in the name of the plaintiff and which must be protected is “Blue Band” and not “Band”. The word “Band” on its own is not protected and is not a trade mark. It is the combination of the words “Blue Band” that is a trade mark. That being so, can there be a property in the word “Band” capable of being protected. In my mind, the answer must be no. The trade mark which can be infringed is “Blue Band” and not the word Band”.

14. The Appellants argued that in the event the names were similar, the 1st Respondent should request a proposal of a new name invoking Section 18(4)(a) of the Labour Relation Act 2007 provides as follows:

“If the proposed name of a trade union, employers' organisation or federation is the same or sufficiently similar to that of an existing organisation so as to mislead or cause confusion, the Registrar shall–

(a) request the applicant for registration to alter the name of the trade union or employers' organisation or federation.”

15. The Appellants submitted that Section 14(1)(d) of the *Labour Relations Act* allows a trade union to apply for registration if no other existing union is sufficiently representative of the interests of the applicant. However, before the Registrar can decline the refusal to promote the proposed union, they must consider section 14(2) of the *Labour Relations Act*.

16. In 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 held that the Registrar had to address both sections of the Act. Section 4 (c) of the *Labour Relations Act* provides that every employee has a right to participate in forming, joining, or leaving a trade union. The court further held that addressing the Registrar's mind on these issues was not optional but a statutory duty bestowed on her to look at those provisions as read with relevant Articles of *the Constitution*, including Articles 36 and 41(2)(a).

17. The Appellants submitted that the reason why the 1st Respondent failed to register their proposed union is that there is an existing union which represents their interests. The Appellants argued that the burden to prove that there is an existing union lies with the 1st Respondent which failed to do so. 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) the court cited the case of Nahason Nchamae & 9 Others V Registrar of Trade Unions (2017) eKLR the court stated



that the Registrar of Unions must provide strong justifications for denying the Appellants a right to fundamental freedom under Articles 30 and 41 of *the Constitution*, as the proposed union aims to represent a portion of the industries represented by the Transport Workers Union. The reason by the Registrar of sufficiency under section 14(1)(d) of the *Labour Relations Act* is not supported by any evidence.

18. The Appellants submitted that the proposed union is intended to exclusively represent doctors with a Bachelor of Medicine and Bachelor of Surgery degree (MBCChB). Like other medical professionals such as pharmacists and nurses, these doctors deserve a trade union focused on their specific challenges. The interested party represents multiple medical personnel including doctors, pharmacists, and dentists and the new union will concentrate solely on medical doctors (MBCChB/MD) and their MMed equivalents.
19. The Appellants submitted that the 1st Respondent abused her authority by refusing to register the proposed union without a rational justification, violating her constitutional and statutory duty to act fairly and reasonably, as outlined in Articles 3, 10, 47, 73, and 75 of *the Constitution* (2010). The Appellant further submitted that 1st Respondent's decision did not have sufficient representation, as required by the "sufficiency test" in Section 14(1)(d)(i) of the *Labour Relations Act*. Consequently, her decision was unsupported, and without any legitimate basis.
20. The Appellants submitted that the decision of the 1st Respondent in not giving sufficient reasons for not registering the proposed union violated the right to associate contrary to Articles 36 and 41(2)(c) of *the Constitution* and the limitation of rights is not justiciable as per Article 24 of *the constitution*. In *NGOs Co-ordination Board V EG & 4 Others; Katiba Institute (Amicus Curiae) (Petition 16 of 2019) [2023] KESC 17 (KLR)* the Supreme Court held that the right to freedom of association is upheld in international and regional human rights instruments ratified by Kenya. Article 260 of *the Constitution* defines "person" to include companies and associations, whether incorporated or not. This right to form associations is guaranteed to all individuals, regardless of race, sex, nationality, ethnicity, language, religion, or other status.
21. It is in the Appellant's submissions that the decision of the 1st Respondent was not justifiable under the circumstances in terms of Article 24 (1) of *the Constitution* so as to limit the right to form join or participate in the entities, and programs of a trade union. The Appellant relied on the case of *Hezekiah Chepkwony and 2 Others V Cabinet Secretary, Ministry of Health and 2 Others [2020] eKLR* where the court held that the Petitioners were entitled to protection of fundamental rights and freedoms under the Bill of Rights, which applies to all individuals and binds State Organs. This includes fair labour practices, freedom from discrimination, and equal legal protection. Additionally, the Respondents have a duty to uphold the national values stated in Article 10 of *the Constitution* in their interactions with the Petitioners.
22. The Appellants submitted that the final decision of Respondents were discriminatory in nature against the proposed union application contrary to Article 27 of *the Constitution*. The Appellants cited the case of *Gichuru V Package Insurance Brokers Ltd (Petition 36 of 2019) [2021] KESC 12 (KLR)* the Supreme Court defined what constitutes discrimination and held as follows:
 - "48. Black's Law Dictionary, 10th Edition defines discrimination as "failure to treat all persons equally when no reasonable distinction can be found between those favoured and those not favoured."
23. The Appellants argued that the Registrar unjustly denied the registration and promotion of their union while approving others in the health sector, such as the Kenya Union of Clinical Officers



(KUCO) and the Kenya National Nurses Union (KNUN). Despite stating that she could not register more than one union in a sector, she had allowed multiple unions in various fields. For instance, in education, the Kenya National Union of Teachers (KNUT) was founded in 1957, followed by the Kenya Union of Post Primary Teachers (KUPPET) and a union for Junior Secondary School teachers. In transport, the Kenya Transport Workers Union (TAWU) led to the establishment of other unions, including the Kenya Aviation Workers Union. The Kenya Union of Civil Servants also facilitated the formation of unions for doctors, pharmacists, nurses, and other civil servants.

24. The Appellant relied on the case of Masai Mara (SOPA) Limited V Narok County Government [2016] eKLR the court held the test to establish discrimination in interrogation should follow the South African Constitutional in the case of Harksen V Lane NO [1998] 1 SA 300, which interpreted section 8(2) of the Interim Constitution of South Africa. The court stated that if differentiation amounts to discrimination, it is on a specified ground, if not, it depends on whether it impairs fundamental human dignity, if it is unfair, and if so, rational justification under Article 24 of *the Constitution*.
25. 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) the court held that both parties revealed that the Registrar registered other transport sector unions, including Kenya Aviation Workers Union, Long Distance Track Drivers Workers Union, Public Transport Workers Union, Matatu Workers Union, and Tax Operators Workers Union.
26. The Appellants submitted that they had a legitimate expectation for their application to be processed promptly, fairly, and within a reasonable time. They claimed that the Registrar of Trade Unions' actions and omissions, which violated her oath of office, undermined their expectations and those of their fellow doctors.
27. The Appellants relied on the case of Oindi Zaippeline and 39 Others V Karatina University & Another [2015] eKLR, the Court of Appeal stated that legitimate expectation” is a doctrine well recognized within the realm of administrative law citing the case of re Westminster City Council, [1986] A.C. 668 at 692 the court stated that a duty of consultation may arise from a legitimate expectation, based on a promise or established practice. For an expectation to be legitimate, it must be clear, fair to both parties, reasonable, induced by the decision-maker, and within the decision-maker's lawful power. Additionally, it cannot contradict clear legal or constitutional provisions.
28. In conclusion, the Appellants pray that this Honourable Court set aside the decision of the Registrar of Trade Unions dated 18th July 2024 and allow the appeal as prayed for promotion/registration of the proposed union for the sake of justice for the appellant and thousands of members of the yet to be formed Doctors union.

Interested party submissions

29. The Interested Party argued that while the Appellants have the constitutional right to freedom of association under Article 36 and to form and participate in trade unions under Article 41, these rights are not absolute. It is limited by statute and subject to fulfilling statutory, legal conditions, and policy requirements.
30. The Interested party cited the case of Felix Musyoka Sammy and Others V Registrar of Trade Unions Appeal No. 12 of 2014 the court observed that Articles 36 and 41 of *the Constitution* protects the freedom to form and join a trade union, but this freedom is not absolute. It must be exercised in line with policies and best practices in the labour movement. Limiting the right to form and join a union, based on these policies and practices, is reasonable and justifiable in an open and democratic society.



31. The Interested party submitted that Section 12(3) of the *Labour Relations Act* provides the Registrar's criteria for granting or declining a promotion certificate application, including defects, similar names, or confusion. The Interested Party argues that one of the reasons for rejecting the Appellant's application was that the proposed name, Kenya Medical Doctors Union, was the same or sufficiently similar to Kenya Medical Practitioners Dentists and Pharmacists Union, which is an existing trade union.
32. It is in the interested party submissions that the Registrar's powers under section 12 are discretionary and that the Registrar is entitled to decline an application that does not contradict the law. Also, the Registrar acted within the law in rejecting the Appellants' application. The interested party relied on the case of Charles Salano and 9 Others V Registrar of Trade Unions & Another *CA No. 19 of 2016* the Court of Appeal observed that the *Labour Relations Act's* provisions are argued to be fallacious, as it is not necessary for the 1st respondent to issue a registration certificate within 30 days of receiving an application, unless a defect is detected or another group represents the group's interests. This would not be proper trade union regulation and management.
33. In Kariuki and Another V Registrar of Trade Unions [2022] KEELRC 13043 the court stated that section 12(3) of the *Labour Relations Act* requires the Registrar of Trade Unions to refuse a certificate for defective applications or if the proposed trade union or employer's organization's name is similar to an existing one, causing confusion or if is misleading.
34. The Interested Party submitted that section 14 of the *Labour Relations Act* provides for the conditions to be met by promoters of a proposed trade union to qualify for registration. Thus, the Appellants failed to meet a statutory condition of having a registered trade union that represents a substantial proportion of their interest, which is required for trade union registration.
35. The Interested Party submitted that there is already an existing union which represents the Appellants' interests therefore the registration of the proposed unions needs to be declined. In Angaha V Registrar of Trade Unions [1973] EA 297, 304 where Muli J upheld the Registrar's refusal to register a proposed union stating that the Registrar ensured the constitutional duty and policy of the Trade Unions Act was not infringed by allowing the registration of a proposed trade union. He had sufficient evidence that the interests of the Appellants were adequately represented by other registered trade unions, and any evidence that the interests were sufficiently represented was sufficient.
36. Also, in Charles Salano and 9 Others V Registrar of Trade Unions & Food and Allied Workers Union (supra) court stated that a new union cannot be registered if there is already an existing union that sufficiently represents the interests of the workers or employers that the new union aims to represent.
37. The Interested party submitted that the Appellants' application was rejected as they failed to prove a lack of representation for Medical Doctors in the Labour Movement. In Tera Aduda and 6 Others V Registrar of Trade Unions [1978] eKLR the court stated that the Registrar alternatively refused to register the proposed union, citing that another registered union already represents the interests sought. Based on the available evidence, the appeal was dismissed.
38. The Interested party urged this Honourable Court to dismiss the appeal as it lacks merit.

Analysis and determination

39. This Honourable court has perused the memorandum of appeal, the written submissions as well as the authorities cited and the law.



40. As the first appellate court, this Honourable Court must review and re-evaluate the evidence presented in the trial court. It must draw its own conclusions and ensure that the trial court conclusions align with the evidence-see *Selle V Associated Motor Boat Company Ltd* [1968] E.A.

41. The issues for determination for appeal are as follows:

- a. Whether it was appropriate for the Appellant to use logos, emails and slogans on the application letter on their proposed union.
- b. Whether the proposed name Kenya Medical Doctors Union or Kenya Union of Medical Doctors and Associates (KUMDA) is similar to Kenya Medical Practitioners, Pharmacists, and Dentist Union (KMPDU).
- c. Whether the Appellants' are already ably presented by the 1st Interested party.
- d. Whether the Appellants' rights were violated their right of association under Articles 36 and 41 of *the Constitution* were violated.
- e. Whether the Appellants were discriminated by the Respondents.

42. In the judgment delivered by Lady Justice Wasilwa in ELRC Petition No. E017 of 2023 on 4th July 2024 stated as follows:

“It is therefore this court’s position that the remedy available to the Petitioner at this point is to compel Registrar of Trade Unions (RTU) to consider their application and respond to their request within 14 days.”

43. The Appellants wrote to the 1st Respondent on several occasions with a letterhead with “proposed Kenya Medical Doctors Union.” Looking at the said correspondences, there is a presumption that there is an existence of such a union but in reality there is none. The Appellants were required to create a letterhead with the names of the promoters instead of using “proposed Kenya Medical Doctors Union.”

44. Also the said letter shows that the Appellants had already recruited members for its trade union before obtaining a certificate which is against section 12(1) of the *Labour Relations Act* which states as follows:

“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.”

This was in violation of *Labour Relations Act*.

45. In view of the foregoing the Registrar of Trade Union did not err in law and fact on her ruling on the issue of logo and slogans while making her decision.

46. Section 12(3) of the *Labour Relations Act* provides as follows:

“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.”



47. Also, section 14(d) of the *Labour Relations Act* provides that a new trade union can be registered if no other existing trade union adequately represents a substantial portion of the interests for which the applicants seek registration. Similarly, for an association of trade unions, the new association can be registered if no other existing association sufficiently represents a substantial portion of the eligible trade unions.
48. In this instant appeal, the proposed name, Kenya Medical Doctors Union or Kenya Union of Medical Doctors and Associates (KUMDA) is pretty much similar to the existing one Kenya Medical Practitioners, Pharmacists, and Dentist Union (KMPDU) and in the event, it is registered as it is it will confuse both the public and the health practitioners. The Appellants have not fully explained its main purpose even though and it was meant to represent doctors with a degree in Bachelor of Medicine and Bachelor of Surgery degree (MBChB). But there is no evidence that the Doctors and Surgeons are not ably represented by the existing union KMPDU.
49. In *Attorney General V Law Society of Kenya & Central Organization of Trade Unions* [2017] KECA 176 (KLR) where there was a dispute over the registration of a trade union with a name similar to an existing one. The Court of Appeal upheld the Registrar's decision to decline the registration, emphasizing the need for distinct and unique names to avoid confusion and misrepresentation.
50. The same time the unique objectives of the proposed new union here have not been well articulated or at all to differentiate it with those of KMPDU.
51. As per the name and objectives of the 1st Interested Party the Appellants' interests are already represented by the 1st interested party and in the event that the Appellant's proposed union is registered, the same will create rivalry and confusion defeating its intended purpose.
52. In *Kenya National Union of Teachers V Lagat and another* [2022] KECA 810 (KLR) the Court of Appeal held that the Registrar of Trade Unions correctly applied sections 12 and 14 (1) (d) (i) of the *Labour Relations Act*. The respondents' interests were already sufficiently represented by existing trade unions, and the creation of a new rival trade union would confuse them.
53. The Appellants' rights to freedom of association and labour relations under Articles 36 and 41 were not violated as the 1st Respondent gave sufficient reasons for declining their application for registration. Further, Article 24(1) allows these rights to be limited by law, provided the limitations are reasonable and justifiable in a democratic society. In *Kenya National Union of Teachers V Lagat and another* (supra), the Court of Appeal held that the respondents' interests as teachers are already sufficiently represented in existing trade unions, the limitation of the respondents' rights under Articles 36 and 41 of Constitution is reasonable and justifiable in an open and democratic society.
54. On the issue of discrimination, the Appellant has not proved how it was discriminated by the Respondents decision, to disallow the registration. In the case of *Maasai Mara (SUPRA) LIMITED - VS- NAROK COUNTY GOVERNMENT* (2016) eKLR the court held that:-

“for the purposes of the interrogation the test to help establish discrimination should truly be as was down in the case of *HARSKEN -VS- LANE NO. (1998) 1 S.A* which said

“74. Whether the differentiation amounts to discrimination. If it is on a specified ground, then discrimination will have to have been established. If it is not on a specified ground, then whether or not there is discrimination depends on whether, objectively, the ground is based on attributes and characteristics which have the penitential to impair the fundamental human dignity of



persons as human beings or to affect them adversely in a comparably serious manner.”

55. The examples of other registered unions by the applicants including unions in Education Sectors and Transport sector are not similar to this particular case.

This one refers to Doctors per se whereas the ones referred by the appellant refer to different cadres like clinical officers and nurses who are totally different, and transport industry as well as education sector. The court finds the comparison are like comparing maize to beans instead of maize to maize.

56. Clearly the similarities are missing and the court cannot base its findings of discrimination on those examples given therein.

The court finds there is no discrimination proved against the Registrar of the Trade Unions. Furthermore, the court agrees that the Registrar was right in finding the appellants did not prove they had complied with the requirements to pray for registration of a new trade union to cater for Doctors as provided in Sections 12 and 14 of the *Labour Relations Act*.

57. The court therefore finds and holds that the appeal dated 18th July 2024 has not been proved and is dismissed accordingly.

58. The court orders each party to meet the costs of the suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAKURU THIS 13TH DAY OF DECEMBER, 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 15th March 2020 and subsequent directions of 21st 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

