



Harrison & 3 others (Suing as Promoters of the Proposed Kenya Musicians Union) v Registrar of Trade Unions (Civil Appeal E130 of 2022) [2023] KEELRC 2006 (KLR) (22 August 2023) (Judgment)

Neutral citation: [2023] KEELRC 2006 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CIVIL APPEAL E130 OF 2022**

**J RIKA, J
AUGUST 22, 2023**

BETWEEN

**JOHN KATANA HARRISON 1ST APPELLANT
JUMA ODEMBA 2ND APPELLANT
GEORGE ODHIAMBO 3RD APPELLANT
MARTIN MURURIA 4TH APPELLANT
SUING AS PROMOTERS OF THE PROPOSED KENYA MUSICIANS UNION**

AND

THE REGISTRAR OF TRADE UNIONS RESPONDENT

JUDGMENT

1. The Appellants are, Kenyan musicians. They met alongside close to 200 other musicians, and resolved to register their trade union, to be known as Kenya Musicians Union.
2. They submitted their application for registration to the Respondent, in full satisfaction of the requirements under Section 14 of the *Labour Relations Act*.
3. The Respondent invited objections, and objection was raised by Kenya Union of Entertainment and Music Industry Employees.
4. Registration was denied on October 25, 2021, on the ground that there is another trade union, Kenya Union of Entertainment and Music Industry Employees, which sufficiently represents a substantial proportion of the musicians' interests.
5. The Appellants filed Memorandum of Appeal, dated July 18, 2022 arguing principally, that the Respondent erred in declining registration, because Kenya Union of Entertainment and Music



- Industry Employees, involves a wider group of Employees, including bouncers, waiters, waitresses, chefs, deejays, event organizers, comedians, among others.
6. They state, that musicians are a unique group. They are composers of artistic work. They are freelancers and mostly attached to music producers and labels for specific projects/ contracts. Others in entertainment industry are mostly in formal employment.
 7. Different trade unions, they argue, have been registered in the same field, provided they have different sectoral interests. They cite the medical field.
 8. They wrote to the Respondent on November 4, 2022, informing the Respondent that they had entered a Memorandum of Understanding [MOU] with Kenya Union of Entertainment and Music Industry Employees, and there was no longer objection to their registration.
 9. The MOU is attached to their Memorandum of Appeal. They informed the Respondent that in light of the MOU, they were ready to have the Appeal marked as settled, on grant of registration.
 10. The Respondent did not give the Appellants a positive response.
 11. The MOU bound the Kenya Union of Entertainment and Music Industry Employees, to support the registration of Kenya Musicians Union.
 12. They pray the Court to allow the Appeal and order that, Kenya Musicians Union is registered; and the Respondent is directed to issue the Kenya Musicians Union with a certificate of registration within 7 days of the Judgment, and its name entered in the appropriate register.
 13. The Respondent is opposed to the Appeal. She confirms that registration was denied solely on the ground that there is another trade union, Kenya Union of Entertainment and Music Industry Employees, which sufficiently represents the interests of musicians.
 14. She further states that one Laban Juma, was granted a certificate for recruitment of members of Kenya Musicians Union, under Section 12 of the [Labour Relations Act](#), on February 3, 2017. The Appellants failed to make the substantive application for registration under Section 13 of the [Labour Relations Act](#). The provision requires that the substantive application is made within 6 months.
 15. The Appellants' Advocate explained to the Respondent satisfactorily, the reasons for default in complying with Section 13 of the [Labour Relations Act](#). She issued another certificate to the Appellants, under Section 12 of the [Act](#), on July 3, 2018.
 16. They made a fresh substantive application for registration on November 29, 2018. The Respondent invited objections, and received objection on February 20, 2020, from Kenya Union of Entertainment and Music Industry Employees.
 17. The Respondent informed the Appellants about this objection, and advised that she had referred objection to the National Labour Board, where it was still pending.
 18. She further states that the National Labour Board has not received any appeal from the Appellants, for registration.
 19. Parties agreed that the Appeal is considered and determined on the strength of the record, and submissions, which they confirmed to have filed and exchanged at the last mention on July 11, 2023.

The Court Finds

20. Registration of a trade union is a quasi-judicial function, exercised by the Respondent.



21. The Respondent considers registration, in consultation with the National Labour Board, under Section 19 of the [Labour Relations Act](#).
22. The role of the National Labour Board is purely consultative. It is not the decision making organ, and is not an appellate body, where the decision of the Respondent is to be appealed. The National Labour Board does not take responsibility for the Respondent's decision, to register or not register, a trade union.
23. The Appellants were not required to file an Appeal to the National Labour Board.
24. Section 30 of the [Labour Relations Act](#), states that, "any person aggrieved by a decision of the Registrar made under this Act, may appeal to the Industrial Court [E&LRC] against that decision, within 30 days of the decision."
25. The Respondent misapprehended the law, by requiring the Appellants to file an appeal against her decision, at the National Labour Board.
26. There was only one reason why registration was denied: the objection made by Kenya Entertainment and Music Industry Employees.
27. The Objector has since withdrawn that objection through its MOU with the Kenya Musicians Union. Parties to the MOU state that, they recognized denial of registration of Kenya Musicians Union, was detrimental to both of them, and to the music community. They set out their framework of engagement with each other, within the broader principle of freedom of association. Why should regulatory authorities hold them back?
28. The Appellants have a right, under Section 4 of the [Labour Relations Act](#), to: participate in forming a trade union or federation of trade unions; join a trade union; leave a trade union; participate in the lawful activities of a trade union; participate in the elections of trade union officials; and stand for elections of a trade union.
29. The rights are entrenched in the [Constitution](#) of Kenya under Articles 36 and 41, and have long been internationally recognized under [ILO Convention 87](#) on Freedom of Association and Protection of the Right to Organize. This Convention belongs to the eight fundamental ILO Conventions for the protection of labour rights, safeguarding the rights of both Employees and Employers.
30. To continue to limit the Appellants, in exercising their freedom of association, when there is no longer objection to registration of their proposed trade union, and when the only objector has become a partner to the proposed trade union, would result in calling into question the very existence and utility of freedom of association, which is incompatible with the [Constitution](#).
31. It is difficult to sustain the argument for non-registration of the Kenya Musicians Union, in light of the withdrawal of the objection. The Appellants submit that the objector has been in existence for more than 50 years, and has never negotiated a CBA for musicians. There cannot be a better indicator, that there is no registered trade union, sufficiently representative of musicians in Kenya.
32. This Court has upheld registration of trade unions with specialized orientation, as contrasted with trade unions with generalized areas of representation, in [Peter Karegua Mwangi & 6 others v. Registrar of Trade Unions & Another; Kenya Union of Domestic Hotels, Educational Institutions and Hospital Workers \[KUDHEIHA\] \[Interested Party\]](#) [2021] e-KLR; [Benedict Omulama & 8 others v Registrar of Trade Unions & Another](#) [2014] e-KLR; and, [Mugambi & 4 others v Registrar of Trade Unions](#) [Appeal E 145 of 2021] [2022] KEELRC4145 [KLR] [29th September 2022]. The door was opened for registration of trade unions with specialized orientation in *Banking Insurance and Finance Union*



[BIFU] v Kenya Bankers [Employers] Association and Kenya Union of Commercial Food and Allied Workers [KUCFAW], Industrial Court Cause No 75 of 1999, which saw BIFU, granted registration as an offshoot of KUCFAW, the latter which hitherto, represented multiple commerce, business, finance, banking, and their intermediary workers. As the economy grows, it is recognized that new areas of economic activities, spurred by evolving technologies emerge, requiring registration of more trade unions, to sufficiently represent the interests of the emerging brand of workers. The musicians of today, are not the same musicians of 50 years ago, and cannot be lumped together with other workers, who are deemed to fall within the broader entertainment industry.

33. The Appellants have satisfied the Court that they are a specific industry player, with an identifiable community of interests, not shared by any other trade union. They merit to have a trade union of their own, to safeguard their rights, and advance their employment and artistic interests. They need a trade union of their own to collectively bargain on their behalf, and register a CBA, a labour instrument they have not had in their music careers. There is no impediment in law or fact, to deny them registration.

IT IS ORDERED

- a. The Appeal is allowed.
- b. The Respondent shall forthwith register Kenya Musicians Union.
- c. The Respondent shall issue Kenya Musicians Union with a certificate of registration and enter the Kenya Musicians name in the appropriate register.
- d. No order on the costs.

Dated, signed and released to the Parties electronically, via e-mail at Nairobi, under Practice Direction 6[2] of the Electronic Case Management Practice Directions, 2020, this 22nd day of August 2023.

James Rika

Judge

