



Promoters, Kenya Salt Workers Union (Lawrence K Majali, Folleni Chea Boshei, Moses H Kellah, Safari Kazungu Nyanje, Kazungu Kondoduka And Dethitarss Mako Kofa) v Registrar of Trade Unions; Kenya Chemical Workers Union (Interested Party) (Employment and Labour Relations Appeal 1 of 2019) [2022] KEELRC 1513 (KLR) (14 June 2022) (Judgment)

Neutral citation: [2022] KEELRC 1513 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
EMPLOYMENT AND LABOUR RELATIONS APPEAL 1 OF 2019**

BOM MANANI, J

JUNE 14, 2022

BETWEEN

PROMOTERS, KENYA SALT WORKERS UNION (LAWRENCE K MAJALI, FOLLENI CHEA BOSHEI, MOSES H KELLAH, SAFARI KAZUNGU NYANJE, KAZUNGU KONDODUKA AND DETHITARSS MAKO KOFA) APPELLANT

AND

REGISTRAR OF TRADE UNIONS RESPONDENT

AND

KENYA CHEMICAL WORKERS UNION INTERESTED PARTY

(Being an appeal from the decision of the Registrar of Trade Unions dated 20th May 2019)

JUDGMENT

1. This appeal arises from the decision by the Respondent on May 20, 2019 declining to register the Kenya Salt Workers Union as a Trade Union. According to the Respondent, the field in respect of which the Appellants sought to register the proposed Trade Union was already being served by an existing Trade Union (the Interested Party). Consequently, and by virtue of the provisions of section 14(1) (d) of the *Labour Relations Act*, the Respondent was obligated to reject the application.
2. Aggrieved by the Respondent's decision, the Appellants filed the current appeal. Since the issues in the appeal revolve around the sector in which the Interested Party represents workers, the court allowed the application by the Interested Party to be joined and make representations in the matter.
3. The parties agreed to argue the appeal through written submission. All the three parties have since filed their written submissions which I have considered.



4. From the Record of Appeal, the Appellants raise 6 grounds of appeal. These can be summarized into three issues for determination as follows: -
 - a. Whether the Respondent acted within the law to decline to register the Trade Union that the Appellants were promoting.
 - b. Whether the decision not to register the proposed Trade Union infringed on the constitutional right of the Appellants and the right of other members of the proposed Trade Union to associate in an organization of their choice.
 - c. Whether the Respondent was entitled to decline to register the Trade Union proposed by the Appellants on the grounds that there was already a Trade Union (the Interested Party) representing workers in the sector that was to be covered by the proposed Trade Union notwithstanding that the Interested Party had not objected to such registration as contemplated in law.
5. I propose to combine issues numbers one and three. Issue number two shall be considered separately even though it is a corollary of the other two issues.
6. On issues one and three, it is clear from page 12 of the Record of Appeal that by a letter dated 10th January 2017, Moses H Kellah and Lawrence K Majali, two of the Appellants in this appeal wrote to the Respondent seeking to register a Trade Union in the salt sector. From the letter, the name of the proposed Trade Union was indicated as Kenya Salt Workers Union. The proposed offices of the Trade Union were to be located within Malindi town in the Republic of Kenya.
7. In response, the Respondent issued the said Appellants with a notification dated 3rd March 2017 indicating that they had been authorized to undertake the process leading to the registration of the proposed Trade Union. This notification, it would appear, is what served as the interim certificate to the Appellants to commence promotional activities for the proposed Trade Union.
8. On September 16, 2017, the Appellants lodged with the Respondent the formal application for registration of the proposed Trade Union. In compliance with the law, the Respondent caused to be published in Kenya Gazette No. 9496 of September 14, 2018 a notice of the application for registration and called upon the Interested Party to lodge any objections to the application within 21 days of the notification.
9. In addition to the application for registration of the proposed Trade Union, the Appellants lodged with the Respondent the other documents required for registration including: *the Constitution* of the proposed Trade Union; the minutes of the meeting at which a resolution was taken to apply for registration of the Union; and the list of founder members of the proposed Union.
10. It does appear that the Respondent declined to register the proposed Union. Communication in this respect was sent to the interim secretary of the proposed Union vide a letter dated May 20, 2019 forwarding a notice of refusal of registration of even date.
11. According to the notice appearing at page 50 of the Record of Appeal, the Respondent declined the application by the Appellants as there was already a registered Trade Union covering the sector in which the Appellants wanted to have the new Trade Union registered. The Respondent invoked section 14 (1) (d) of the *Labour Relations Act* which authorizes him to decline an application to register a Trade Union if there is in existence another Trade Union that is sufficiently representative of the whole or a substantial proportion of the interest in respect of which the applicants seek registration.



12. In this appeal, the Appellants argue that the Respondent acted outside the law in declining their application. They also contend that the Respondent was not entitled to decline to register the proposed Trade Union on the grounds that there was already a Trade Union (the Interested Party) representing workers in the salt sector notwithstanding that the Interested Party had not objected to the Appellants' application for registration as contemplated in law.
13. I have considered the arguments by the parties on these points. It is clear to me that the Respondent has power under the law to either register or decline to register a proposed Trade Union. One of the grounds upon which an application for registration may be rejected is that there is already a Trade Union representing the sector in which the proposed Trade Union is to operate. This is the effect of section 14 (1) (d) of the *Labour Relations Act*.
14. Where the Registrar of Trade Unions is aware of the existence of a Trade Union in the sector where applicants seek to register a new Trade Union, he is obligated under the proviso to section 14 (1) of the Act to issue a notice to such Union inviting it to tender any objections to the application. Whilst the law stipulates that the existing Union should indicate its objections within the time specified by the notice, there is nothing in the law to suggest that the Registrar is bound to register the proposed new Union if he does not get an objection to its registration from the existing Trade Union.
15. To my mind, the powers of the Registrar to decline registration are not constrained by the failure to lodge an objection by the existing Trade Union. On the contrary, all that an objection by an existing Trade Union is meant to serve is to fortify the Registrar's decision.
16. To suggest as the Appellants do that because the Interested Party did not lodge an objection to the proposed registration of their Union, the Registrar was obligated to register it appears flawed in my view. What would for instance happen if there is no objection to registration of a new Union by an existing Union in the same sector but the Registrar realizes other flaws such as absence of a Constitution in the application? Will the Registrar be obligated to turn a blind eye to such flaws and proceed to register the new Union merely because the existing Union has not filed objections to its registration? Such is the state of affairs that the Appellants suggest.
17. I agree with the position taken by the Respondent and the Interested Party that the Respondent was under no obligation to register the Appellants' Union merely because the Interested Party failed to object to its registration. What the law requires of the Respondent is to reject such application if he has evidence that there is already a Trade Union serving the sector. In my view, the Respondent already had this information from *the Constitution* of the Interested Party. The court takes judicial notice of the fact that this Constitution is as a matter of law filed with the Respondent on registration of a Trade Union. Clause 2(a) (i) of *the Constitution* which is annexed to the Interested Party's affidavit dated October 22, 2021 clearly indicates that the Interested Party covers employees in the salt sector where the Appellants were seeking to register the proposed Trade Union. In compliance with the guidelines under section 14 of the *Labour Relations Act*, the Respondent took this factor into account in rejecting the Appellants' application.
18. I find that in declining to register the Appellants' Trade Union, the Respondent acted within the law. The Respondent was under no obligation to register the proposed Union merely because the Interested Party had failed to register its objection to the Appellants' application. I therefore decline to allow the grounds of appeal questioning the Respondent's decision on this basis.
19. The last issue relates to whether the decision by the Respondent not to register the proposed Trade Union by the Appellants infringed on the constitutional right of the Appellants and the right of other members of the proposed Trade Union to associate in an organization of their choice. 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*.

20. 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*.
21. Article 24 of *the Constitution* permits imposition of limitations on some of the 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 limitations on enjoyment of the rights under articles 36 and 41 of *the Constitution*. The question is whether the said limitations can be justified in an open and democratic society based on human dignity.
22. The limitations imposed by the *Labour Relations Act* on the right to form a Trade Union and freedom of association are not irrational or merely fanciful. Rather, they are intended to facilitate the establishment of strong Trade Unions that serve the interests of workers. This objective is facilitated by limiting the proliferation of Trade Unions in the same sector which will inevitably weaken the Unions due to unhealthy competition. The point is made in *Tera Aduda & 6 Others v Registrar of Trade Unions* [1978] eKLR relied on by the Respondent's counsel. This justification appears reasonable in an open and democratic society based on human dignity.
23. The upshot is that the appeal against the Respondent's decision not to register the Appellants' Trade Union is without merit. I decline to allow it. Costs of the Appeal are granted to the Respondent and the Interested Party.

DATED, SIGNED AND DELIVERED ON THE 14TH DAY OF JUNE, 2022

B. O. M. MANANI

JUDGE

In the presence of:

No appearance for the Appellants

No appearance for the Respondent

Oluoch for the Interested Party.

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 April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B O M MANANI

