



**Okuwa & 6 others (As Interim Officials of Kenya Management Staff Union) v The Registrar of Trade Unions (Appeal E046 of 2021)  
[2022] KEELRC 4863 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4863 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
APPEAL E046 OF 2021  
CN BAARI, J  
SEPTEMBER 29, 2022**

**BETWEEN**

**JAPHY E.O. OKUWA ..... 1<sup>ST</sup> APPELLANT  
POLYCARP LUGONGO ..... 2<sup>ND</sup> APPELLANT  
JACKSON OKITE OLOO ..... 3<sup>RD</sup> APPELLANT  
ZAINAB NGAMI HARRISON ..... 4<sup>TH</sup> APPELLANT  
PAUL LESTLIE ODHIAMBO ..... 5<sup>TH</sup> APPELLANT  
DAMARIS ACHIENG OMOLO ..... 6<sup>TH</sup> APPELLANT  
BONIFACE M.O ONYANGO ..... 7<sup>TH</sup> APPELLANT  
AS INTERIM OFFICIALS OF KENYA MANAGEMENT STAFF UNION**

**AND**

**THE REGISTRAR OF TRADE UNIONS ..... RESPONDENT**

**JUDGMENT**

1. The appeal herein follows the decision of the respondent carried in their letter of October 25, 2021, rejecting the appellants' application for registration of Kenya Management Staff Union.
2. The grounds of refusal to register the proposed Kenya Management Staff Union as per form d, are as follows:

“The envisaged scope of representation for all supervisory and managerial staff in both private and public sectors, who are not civil servants, is ambiguous and confusing. The scope is too wide and too general to categorically determine who a manager and a supervisor is. That



the *Labour Relations Act*, 2007, defines an employee as “a person employed for wages or salary and includes an apprentice or an indentured learner” A trade union is defined as “an association of employees whose principal purpose is to regulate relations between employees and employers, including any employees’ association.”

An employer on the other hand is defined as “any person, public body, firm, corporation or company, who or which has entered into a contract of service to employ any individual and includes agent, foreman, manager, or factor of such person, public body, firm cooperation or company.

Based on the above definitions, managers and other factors of such persons (supervisors) are defined as employers as opposed to employees. Consequently, where there are industrial matters to be discussed in the work place, it should be very clear and unequivocal, who will constitute management (employer) and will negotiate/discuss with employees”

3. The appellants in their memorandum of appeal dated November 17, 2021, raised a total of thirteen (13) grounds of appeal. The grounds are summarized as follows:
  - i. That the Registrar of Trade Unions erred in law and fact in failing to find that the Kenya Management Staff Union has grown exponentially over the years, and currently employs thousands of Kenyans who deserve protection and representation by a trade union that is specific to their needs.
  - ii. That the Registrar of Trade Unions erred in law and fact in failing to find that the Constitution and the relevant law entitles individuals to the right of freedom of association; which includes the right to form, belong to and participate in trade unions of their choice and the decision appealed against is in violation of this fundamental right.
  - iii. That the Registrar proceeded without granting the interim officials of the proposed union a fair hearing contrary to the law and the rules of natural justice.
  - iv. That in deciding to refuse registration of the proposed Union, the Registrar abdicated her statutory duty and subordinated her office to the National Labour Board.
  - v. That management staff are the only employees that do not have a Union representing their interests.
4. The appellants’ prayer is that the court sets aside the decision of the Registrar of Trade Unions refusing to register Kenya Management Staff Union, and issues an order compelling the Registrar of Trade Unions to register the proposed Union
5. Parties sought to canvass the appeal by way of written submissions. Both parties filed their written submissions.

### **The Appellants’ Submissions**

6. The appellants state that Appeal No 21 of 2016, was dismissed for reason of having been filed late and without the leave of the court, and hence the dismissal does not and should not inform the court’s decision in the instant appeal.
7. The appellants further submit that the only workers not allowed to join trade unions are those listed in Chapter Four of the *Constitution* read with article 24(5), and that supervisory and managerial positions are non-executive positions.



8. It is the appellants' submission that the scope sought to be covered by the proposed union is supervising and managerial staff in both private and public sector, and who are not civil servants. They submit that in their view, and contrary to the assertions of the Registrar, the scope is clear.

### **The respondent's Submissions**

9. The respondent submits that the appellants sought to register a trade union whose name mirrors a similar union by the name Kenya Union of Management Staff which had a pending case at the time in Appeal Case No 21 of 2016, and which the appellants were notified of. It is the Respondent's further submission that the case was determined on the 4<sup>th</sup> day of January, 2018, resulting in its dismissal.
10. The respondent in submission admits that the appellants lodged their application for registration in terms of section 14 and 18 of the Labour Relations Act, and had satisfied all requirements under the Act. It is their further submission that being satisfied with the compliance by the appellants it caused gazette notice no9131 dated September 27, 2019 under the Labour Relations Act.
11. It is further submitted that the respondent in exercise of her mandate under section 20 of the Labour Relations Act 2007 rejected the appellants application as indicated in form d on the grounds that:
- “...The envisage scope of representation for all supervisory and managerial staff in both private and public sectors, who are not civil servants is ambiguous and confusing. The scope is too wide and too general to categorically determine who is a manager and a supervisor is.”
12. The respondent submits that she acted lawfully and in accordance with the law in refusing to register the appellants' trade Union. The respondent further contends that the grounds advanced for refusal to register the appellants' Trade Union are valid and reasonable.

### **Determination**

13. I have considered the appeal and the rival submissions. The issues that fall for determination are:
- i. Whether the appellants satisfied the statutory requirements for registration of their proposed union.
  - ii. Whether the grounds given for refusal to register Kenya Union of Management Staff are justified
  - iii. Whether the refusal to register the appellants' union violated their constitutional rights.
- Whether the appellants satisfied the statutory requirements for registration of their proposed union.
14. It is not contested that the appellants complied with the provisions of sections 12 of the Labour Relations Act, 2007, culminating in the issuance of a certificate dated March 7, 2018. The certificate empowered interim officials to recruit members for purpose of establishing the proposed union.
15. The respondent by her submissions agrees that the appellants complied with the statutory requirements for registration and proceeded with the recruitment process in readiness to apply for the union's formal registration, and that on the August 8, 2018, they lodged an application with the Registrar of Trade Unions seeking registration of the trade union.
16. The respondent vide their replying affidavit, averred that the appellants satisfied the formal requirements for registration, following which, it caused Gazette Notice No9131, dated September 27, 2019, under the Labour Relations Act, to be issued notifying all trade Unions, Federation of Trade



- Unions, employers organizations or Federations pursuant to sections 14, 15 and 17 of the [Labour Relations Act](#), of the receipt of application for registration of Kenya Union of Management Staff.
17. It is therefore not in dispute that the appellants adhered to the statutory requirements for registration of a union per the [Labour Relations act](#), 2007.
- Whether the grounds given for refusal to register Kenya Union of Management Staff are justified.
18. As stated in the preceding paragraphs, the grounds for refusal to register the appellants' union as set in Form are as follows”
- “...The envisage scope of representation for all supervisory and managerial staff in both private and public sectors, who are not civil servants is ambiguous and confusing. The scope is too wide and too general to categorically determine who is a manager and a supervisor is.”
19. In the Supreme court of Kenya at Nairobi Petition No 4 of 2018 reported as : [Kenya Plantation & Agricultural Workers Union v The Kenya Export Floriculture, Horticulture and Allied Workers Union \(KEFLIAU\) represented by its Promoters David Benedict Omulama & 8 others and the Registrar of Unions](#) (2020) eKLR - the court stated:-
- “It is clear in our minds that once application for the registration of trade Unions has been made and the same is compliant with the aforesaid sections ( 12, 13 & 14 of the [Labour Relations Act](#)) and the Constitution, the Registrar of Trade Unions has no choice but to register the same. The only reason for refusal of registration is where there is another trade Union sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicant seek registration as provided under section 14 (1) (d) of the same Act”.
20. The reasons given for refusal to register the appellants' trade union, concerns the scope of representation of the proposed union, and not the existence of another union representing similar interests. The issue of scope is one the respondent would have resolved through invocation of section 18(3) of the [Labour Relations Act](#), that empowers the Registrar to call for further information or give the appellant opportunity to rectify whatever was ambiguous or general about the scope of their representation as opposed to rejecting the application.
21. Further, although the respondent brought to the attention of the appellants the existence of a trade union named Kenya Union of Management Staff who had a pending appeal concerning their registration, and whose officials had objected to the registration of the appellants Union, the appeal by the promoters of Kenya Union of Management Staff was dismissed on January 4, 2018.
22. The respondent's argument where it bases its rejection of the appellant's union on definitions of employee and employer, in my view does not stand. There is no ambiguity on the difference between an employee and an employer so as to constitute the reason for refusal to register a trade union.
23. I find the grounds given for refusal to register the appellants' trade union unjustified and unreasonable. Whether the refusal to register the appellants' union violated their constitutional rights.
24. Article 41 of the [Constitution](#) entitles every person the right to form, join or participate in the activities of a trade union. Further, section 4 of the [Labour Relations Act](#) states:
- “ 4 (1) Every employee has the right to—
- (a) participate in forming a trade union or federation of trade unions;



- (b) join a trade union; or
- (c) leave a trade union.
- (2) Every member of a trade union has the right, subject to the constitution of that trade union to—
  - (a) participate in its lawful activities;.....”

25. Section 5 of the *Labour Relations Act* prohibits discrimination against any employee seeking to exercise any right conferred under the Act.
26. It has been held that the exercise of the right to belong to a trade union by management staff would stunt the right of collective bargaining and the courts have previously permitted the limitation under article 24 of the *Constitution* on this basis. Article 24 of the Constitution however, requires that limitation be expressly stated in legislation and which limitation is currently not provided for under the *Labour Relations Act*, 2007.
27. Further, the union that the appellants seek to register is specifically dedicated to management employees. In my view, this right is not limited and there would be no violation if the union proposed by the appellants is registered.
28. In conclusion, I make orders as follows:
- a. That the appeal against the decision of the respondent (Registrar of Trade Unions) refusing to register Kenya Management Staff Union is allowed.
  - b. That the respondent is hereby directed to register the appellants’ union within 30 days of this judgment.
  - c. That each party shall bear their own costs of the appeal.
29. Judgment of the court.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2022.**

**CHRISTINE N. BAARI**

**JUDGE**

**Appearance:**

Mr. J. Okuwa present for the appellant

Ms. Kimberly h/d for Ms. Essendi for the respondent

MS. Christine Omollo - Court Assistant.

