



**Mugei & another v Registrar of Trade Unions & another (Appeal E014 of 2021) [2022] KEELRC 13161 (KLR) (31 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13161 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI**  
**APPEAL E014 OF 2021**  
**DKN MARETE, J**  
**OCTOBER 31, 2022**

**BETWEEN**

**TIMON K MUGEI ..... 1<sup>ST</sup> APPELLANT**

**OGAJA JASPER JUDE ..... 2<sup>ND</sup> APPELLANT**

**AND**

**REGISTRAR OF TRADE UNIONS ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The respondents by a Response to Appeal sworn on February 8, 2022 denies culpability and avers that she acted in good faith in denying registration of a proposed trade union.
2. The gist of the appeal is a refusal to register Kenya Union of Medical Imaging Technologists (KUMIT) on grounds that the Labour Relation Act, 2007 does not allow registration of trade union on professional and academic basis.
3. The appellant further faults the 1st respondent for rejecting the appellant's application without referring to the mandate, her membership on the fact that the said union does not replicate the mandate and or function of any other registered trade union.
4. Again, the 1st respondent erred in law and fact in denying registration on the basis that Kudheihia already represents all persons without taking into consideration that the KUMIT constitution and the fact that Medical Imaging Technologists are not unionized, or at all. This is an infringement of the appellant's right and provided by article 36 (1) and 41 (2) (c) of the Constitution of Kenya, 2010.
5. The appellants therefore pray as follows;
  1. That the appeal be allowed.



2. That the Kenya Union of Medical Imaging Technologists (KUMIT) be allowed to continue with recruitment and registration of members.
  3. That a declaration be issued that the applicants/appellants have a constitutional right to form, to join, to leave and to participate in the activities or programmes of a trade union of their choice.
  4. This Honourable court do reverse and/or set aside and/or nullify the decision of the 1st respondent on advise of the 2nd respondent of October 25, 2021 of refusing/declining registration of Kenya Union of Medical Imaging Technologists (KUMIT).
  5. That the 1st respondent to register the Kenya Union of medical Imaging Technologists (KUMIT) and issue it with a Certificate of Registration in Form B set out in Second schedule to the *Labour Relations Act* No 14 of 2007 within 14 days from to date of court's decision.
  6. The Honourable court to order the respondent to register Kenya Union of Medical Imaging Technologists (KUMIT) as a union.
  7. Costs of this appeal be awarded to the appellants.
  8. Any other further and better relied the Honourable court may deem just and fit to grant.
6. The respondents reply is that the appellants applied for a Certificate of Recruitment by a letter dated May 22, 2020 and the same was issued by 1st respondent on July 20, 2020.
  7. The applicants and five others made for an application for the registration of Kenya Union of Medical Imaging Technologists (KUMIT) in the requisite Form A and paid the registration fees. This application was gazetted to all trade unions and employers organizations or federations thereby attracting an objection from Kudheihya by a letter dated January 12, 2021. This was notified to the 2nd appellant as interim secretary general of KUMIT.
  8. On January 14, 2020 another objection was received and the interim secretary general was informed accordingly. Thereafter, on 13th-14th of October, 2020 this matter was presented to the National Labour Board for considering of registration and the board advised the 1st respondent not to register the proposed union. This was communicated to the interim secretary general of the people's union on October 25, 2021. This ultimately birthed this appeal by a service delivered on September 10, 2021.
  9. It is the 1st respondent's further averments that; That Medical Imaging Department in Health Care facility are represented by the unions of Kudheihya, Union of Kenya Civil Servants (UKCS) and Kenya County Government Workers Union (KGGWU) which means that the intended scope of representation is sufficiently covered. On the above ground, registration of the intended union was denied. It is the intention of the *Labour Relations Act*, 2007 that Trade Unions are registered on sector and or industry basis are not professional and academic basis. That if every cadre or very specialized professionals in the higher sector is allowed to form a trade union, employees who would be overwhelmed and antagonized by the disputes involving such unions instead of performing their core mandates. The principle of sufficiency of representation as enunciated in section 14(1) (d) of the *Labour Relations Act*, 2007 should be upheld to promote sound labour relations and practices. That on this ground, the respondent refused to register the union. That the action with the 1st respondent



was actuated in good faith and the execution of office was administratively and legally suave and should not be condemned, or at all.

10. The issue for determination therefore is whether the appellants are entitled to the relief sought. The appellants in their written submissions dated May 1, 2022 reiterate their case and submits in its favour. They therein raised several issues for determination as follows;
  1. Whether the appellants satisfied all the statutory requirement for registration of the proposed trade union (KUMIT);
  2. whether the refusal to register the proposed trade union (KUMIT) amounted to infringement of the appellant's and members of the proposed trade union (KUMIT) to form, join and participate in the activities and programs of a trade union of their choice;
  3. Whether the registrar (1st respondent) was justified to find that the envisioned cadre of representation who are employed in diverse areas are sufficiently represented.
  4. Whether the existence of other trade unions are justifiable reasons in terms of article 24 (1) and 41 of the *Constitution* to limit the appellants " right to form, join and participate in the activities and programs of a trade union of their choice and
  5. Who should pay costs and interest for he appeal effective date of judgment
11. The appellant's written submissions tackle these issues and answer them in relation to their respective cases. Their answers to the issues are positive and in their favour.
12. The respondents did not file any written submissions in the matter. They choose to rely on their response to the appeal.
13. A scrutiny of the respective cases of the parties tilts this matter in favour of the respondents. They have demonstrated their sincerity in denying the registration of the intended or proposed trade union, Kenya Union of Medical Imaging Technologists (KUMIT.) It is their case that trade unions and their registration is sector and or industry based and not on professional or academic inclinations. This takes care of disharmony and confusion that would be occasioned by a proliferation of trade unions representing the same sector and membership.
14. The respondent's case is that the action of denial of registration was made in good faith after a consultative determination and finding by National Labour Board. Indeed, it was on the advise of the said board after deliberations and consultation on the issue raised. Her action was administratively and legally sound and therefore should not be condemned, or at all.
15. I agree. The various objections to the registration of the proposed union, which were notified to the interim secretary general settle this matter in totality. The intended trade union became untenable on grounds that there were other existing unions that covered her ground. Her intended membership was already covered and represented by these subsisting trade unions. A registration of the proposed union would have been unnecessary duplication. It would not have favoured trade unionism as it stands today. I am therefore find that the appellants are not entitled to the relief sought.
16. On such a finding, the appeal dissipates.
17. I am therefore inclined to dismiss the appeal with orders that each party bears their costs of the same.



**DATED AND DELIVERED AT NYERI THIS 31ST DAY OF OCTOBER, 2022.**

**D.K.NJAGI MARETE**

**JUDGE**

**Appearances**

- 1. Mr.Kirwa instructed by Mwakio, Kirwa & Company Advocates for the Appellants.**
- 2. Mr.Gisemba instructed by State Law Office for the Respondents.**

