



Akuma (Suing on behalf of the founder members of the Kenya National Public Transport Employers Association) v Registrar of Trade Unions (Appeal 24 of 2020) [2022] KEELRC 14666 (KLR) (27 October 2022) (Judgment)

Neutral citation: [2022] KEELRC 14666 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL 24 OF 2020
M MBARŪ, J
OCTOBER 27, 2022

BETWEEN

GEOFFREY GICHANA AKUMA (SUING ON BEHALF OF THE FOUNDER MEMBERS OF THE KENYA NATIONAL PUBLIC TRANSPORT EMPLOYERS ASSOCIATION) CLAIMANT

AND

REGISTRAR OF TRADE UNIONS RESPONDENT

(Appeal arising from the decision of the Registrar of Trade Unions delivered on February 20, 2020)

JUDGMENT

1. The appeal herein arises following the decision of the respondent delivered on February 20, 2020 on the refusal to register the appellant as the Kenya National Public Transport Employers Association.
2. Aggrieved by the decision of the respondent, the appellant filed the appeal setting out 11 grounds which can be summarised as follows;
3. That the respondent erred in law and in fact in failing to find that the *Constitution* allow for the freedom of association and the right to form trade unions of one's choice and the Kenya National Public Transport Employers Association can only become a corporate entity that represents the interests of the employers in the public transport sector upon registration.
4. Although the members of the Kenya National Public Transport Employers Association are regulated by the National Transport and Safety Authority (NTSA) for regulatory purposes, the registration with the respondent does not preclude the appellant from belonging to any association of choice and refusal to register is based on irrelevant factors.



5. Other grounds of appeal are that the respondent's finding that the NTSA has made provision for the protection and promotion of the interests of the appellant is in error whereas no objection has been made against its registration. The appellant covers over 20,000 public transport employers and refusal to register the appellant violate article 47 and 41 of the Constitution on fair administrative action and fair labour relations and for these reasons the appeal should be allowed with an order that the respondent to register Kenya National Public Transport Employers Association.
6. The appeal is supported by the affidavit of Godfrey Gichana Akuma who avers that he is the national Executive Secretary of the proposed Kenya National Public Transport Employers Association and in August, 2019 the proposed association made application to the respondent for promotion of the association and provision for an interim certificate which allowed the appellant to recruit over 20,000 members but upon submission of application for registration this was declined leading to his appeal.
7. Parties addressed the appeal by way of written submissions.
8. The appellant submitted that on October 9, 2018 the promoters of Kenya National Public Transport Employers Association applied to the respondent for a certificate authorising them to recruit members and in a letter dated November 18, 2018 the respondent requested the promoters of the association to specify the mandate which was done and on February 12, 2019 the respondent issued a certificate under section 12 of the Labour Relations Act, 2007 (the LRA or Act).
9. The appellant recruited over 500 members drawn from the corporate organisations registered with NTSA and hence has a legitimate expectation to enjoy the benefits accruing to members of an employers' organisation.
10. On November 1, 2019 the respondent issued a public notice of the application for registration of the appellant and a Gazette Notice inviting registration of objections and none was made. On August 13, 2019 the appellant submitted application for registration and attached all the necessary documents and on February 20, 2020 the respondent wrote back and refused registration on the grounds that the appellant is not a corporate entity capable of negotiating with and signing CBA with workers as envisioned under the LRA. The appellant is not defined as an employer organisation/association to qualify as such under the LRA and the draft constitution and scope of members shall be drawn from organisations registered with NTSA and hence registration was denied leading to the appeal.
11. The appellant submitted that an employers' organisation is defined under section 2 of the LRA and clause 4 of the appellant's constitution, such mandate exists to justify registration. Members of the appellant are employers for the purpose of the LRA and the aims outlined under the Constitution allow the appellant to be such an association.
12. No objection has been lodged with the respondent to justify refusal to registered the appellant as an employers' association as held in *Japheth Anyira Agura & 6 others v Registrar of Trade Union* [2014] eKLR that the purpose of inviting objections publicly is meant to assist the registrar in determining if the proposed trade union registration would conflict with the interests sufficiently represented by another trade union resulting in demarcation disputes and industrial disharmony.
13. The allegations by the respondents that the transport sector is represented by Matatu Owners Association and Matatu Welfare Association under the Societies Act is not justified as the appellant is seeking to register an employers' organisation under the LRA and not the Societies Act. Such entities did not raise any objections to the appellant application for registration.
14. In *Dominic Ngolo & 7 others [suing on behalf of the proposed Kenya Bodaboda, Tuktuk & Taxi Workers Union] v Registrar of Trade Unions* [2016] eKLR the court held that the refusal of registration was



- not justified noting that there were no objections. The appellant is unique on its own kind and shall represent business persons trading in public transport as corporate entities licenced by the NTSA. The appellant has recruited over 500 members and under section 21 of the LRA the refusal to register will deny such members the right to associate under a corporate.
15. The respondent has previously allowed the registration of similar employers' associations such as the Kenya Airline Pilots Association and the refusal to register amounts to limitation of the right to association and fair labour practices.
 16. The respondent submitted that the appellant applied for registration as an employers' association and which application underwent all legal procedures provided under the LRA and was placed before the National Labour Board but was refused for reasons given in the Notification of Refusal. The powers vested upon the respondent are discretionary and registration may be refused upon consideration of the relevant law.
 17. The appellant's proposed association is not a corporate entity capable of negotiating terms and conditions of employment as the scope of representation they intend to represent are organisations licenced to operate under NTSA whereas an association registered under the LRA is mandated to promote sound labour relations between employers and employees. the appellant intended members are registered on condition they have a minimum 30 public service vehicles and as such the appellant does not qualify to be registered under the LRA as the intended scope represents vehicles and not employees.
 18. The appellant has not adduced any evidence or structure of operations to prove that the association they intend to represent have engaged employees whose terms and conditions of employment they will be negotiating with and should hence register the association under the Societies Act and not the LRA.
 19. Under article 41 and 36(3) of the Constitution does not allow the registration of an association already registered with the NTSA such as the appellant and the respondent acted within the law in the refusal to register the appellant as an employers' association. The rights under article 41 and 36 of the Constitution can be limited under Article 24 thereof. The discretion to limit the right to be registered vested upon the respondent was properly applied with regard to the appellant upon consultation with the National Labour Board pursuant to section 19 of the LRA as held in Civil Appeal No 12 of 2014 – Felix Musyoka Sammy & others as promoters of Kenya Public Schools Non-Teaching Staff (KEPUSNTESU) v Registrar of Trade Union where the court held that the rights under article 41 and 36 of the Constitution are not absolute. The right to be registered as an association must conform with policy and best practices in the labour movement and in Civil Appeal No 141 of 2014 – Kenya Plantation and Agricultural Workers Union v David Benedict Omulama & 9 others the court held that section 14 of the LRA is sufficient in limiting the right to form or join a trade union and that provision is not unconstitutional.
 20. The appeal should hence be dismissed with costs.

Determination

21. The appellant applied to the respondent to be registered as an employers' association of the proposed Kenya National Public Transport Employers Association (KNPTEA) which application was refused on the grounds that the appellant proposed entity is not a corporate entity capable of negotiating with and signing CBA with workers as envisaged under the LRA which has defined an employer which the appellant is not. The respondent also noted that the proposed association and its constitution, the



- scope of membership are drawn from organisations registered with the NTSA and which adequately addresses the appellant's interests and not the LRA.
22. Under the LRA, an employer's organisation/association is defined to mean;
 - “employers' organisation” means any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and their employees or the trade unions representing those employees;
 23. The organisation must be with the purpose of regulating relations between employers and their employees. The foundation of the organisation/association under the LRA is the employment matter.
 24. The concerned employment matters must relate to and concerning any terms or conditions of, or affecting, employment.
 25. The rights of an employer are outlined under section 6 of the LRA and which relates to;
 1. Every employer has the right to—
 - a. participate in forming an employers' organisation or a federation of employers organisations; and
 - b. subject to its constitution, join an employer's organisation or a federation of employers' organisations.
 26. Is the appellant and the proposed employers association as defined under the LRA and is the refusal to register the proposed association justified?
 27. Under article 3 of the appellant's Constitution it outlines the aims and objectives to include the formulation and establishment of national and regional offices, acquire and sell properties, promote professional development of its members and undertake trainings, expand resource base, organise business for a and legal aid, establish professional policies and practices, organise lawful processions to promote rights under the Bill of Rights and in compliance with the LRA and to lobby government on issues affecting the association and its members.
 28. Of interests in this regard is objective No 10 which relates to;
 - Negotiate with unions of employees as provided for in the Labour Relations Act, 2007 as a base for national benchmarking, occupation, safety and for decent enterprises.
 29. In this regard, the membership of the appellant proposed employers' association is drawn from corporate organisations registered with the NTSA.
 30. The elements of an employers' organisation or association of employers pursuant to the LRA is prominently lacking with regard to the appellant. The aims and objectives of its constitution and particularly objective 10 as outlined above is far remote and removed from being a convergence of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and their employees or the trade unions representing those employees. such deficiency hence removes the appellant from a body of employers' organisation envisaged under the LRA with regard to regulating relations between employers and their employees or the trade union representing those employees.
 31. The fact of their being no objections by any actor upon the appellant being gazetted to promote the proposed employers' association does not give the appellant legitimacy and or lawfulness under the LRA to justify registration as proposed.



32. The respondent, in the refusal to register the appellant held consultations with the National Labour Board pursuant to section 19 and 20 of the LRA. The reasons given are based on the assessment of the appellant and the proposed employers association constitution which is lacking in the elements outlined under the LRA with regard to being an entity to negotiate CBA with workers and does not fit the definition of an employer to qualify under the LRA.
33. The appellant has made effort to justify its registration on the fact that other associations such as the Kenya Airline Pilots Association have been recognised and registered by the respondent save, the characteristics and foundational constitution of such association is not defined and contradistinguished with that of the appellant.
34. The refusal of the respondent to register the appellant as an employer association is justified and the foundation of the refusal is the applicable law, the LRA and such decision is lawful.
35. The court finds the appeal herein is without merit and is hereby dismissed with costs to the respondent.

DELIVERED IN COURT AT NAIROBI THIS 27TH DAY OF OCTOBER, 2022.

M MBARÚ JUDGE

In the presence of:

Court Assistant: Okodoi

