



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kariuki & another v Registrar of Trade Unions (Cause E001 of 2022)  
[2022] KEELRC 13043 (KLR) (14 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13043 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE E001 OF 2022  
NJ ABUODHA, J  
OCTOBER 14, 2022**

**BETWEEN**

**PETER CHARAGU KARIUKI ..... 1<sup>ST</sup> APPLICANT**

**EVANS MAKOGHA WAFULA ..... 2<sup>ND</sup> APPLICANT**

**AND**

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

**RULING**

1. The applicants filed a Motion dated January 3, 2022 seeking orders among others that pending the hearing and determination of the application and the main suit, the Court do issue orders compelling the Registrar of Trade Unions to issue provisional certificate to enable the applicants commence recruitment of members to the Union known as Kenya Universal Government Workers Union.
2. The application was supported by the Affidavit of Peter Charagu Kariuki who deponed on the main that:
  - a. That on June 10, 2021, we applied for the establishment of trade union in the name of Kenya Devolved Units Workers Union.
  - b. That upon receipt of our application the Respondent herein asked for the Scope of our envisioned union *vide* a letter Ref: ML&SP/TU/R/328 dated June 10, 2021.
  - c. That we provided the scope *vide* a letter dated 25/6/2021.
  - d. That the respondent declined to issue a certificate of registration *vide* a letter REF ML&SP/TU/R/328/6 dated August 3, 2021.
  - e. That on July 20, 2021 we gave a notice of 7 days to the respondent through our counsel *vide* Ref: Kedwu/c/2021 to register our union.



- f. That on 3<sup>rd</sup> August, 2021 the respondent replied to our Demand Notice *Vide* letter Ref ML&SP/TU/R/328/6 whose contents was noted.
  - g. That on the advice of the respondent we changed name from Kenya Devolved Units Workers Union to Kenya Universal Government Workers Union.
  - h. That the respondent through her letter REF:ML&SP/TU/R/328 dated September 28, 2021 and marked as annexure ‘PCK7’ advised us to make a fresh application in the new name of Kenya Universal Government Workers Union to enable her consider the same.
  - i. That on the advice of the respondent we made fresh application in the name of Kenya Universal Government Workers Union (KUGWU) vide the letter dated September 29, 2021 and worked.
  - j. That the respondent vide her letter REF:ML&SP/TU/R/336/2 dated October 4, 2021.
  - k. That on October 7, 2021 we gave a detailed scope of coverage to the respondent herein marked.
  - l. That the respondent *vide* her letter Ref: Ml&Sp/Tu/R/336/3 dated September 28, 2021 and marked as annexure ‘PAC 11’ she asked to clarify whether we intended to cover county government workers, national government workers or both claiming the scope we gave doesn’t correspond to the name Kenya Universal Government Workers Union.
  - m. That on November 10, 2021, we clarified to the respondent as asked and submitted further scope.
  - n. That the respondent vides her letter REF ML&SP/TU/R/336/6 dated 18<sup>th</sup> November declined to issue us with certificate.
3. The Respondent filed a Replying Affidavit through one E.N. Gicheha who deponed *inter alia* that:
- a. That at the outset, and on the advice of counsel as above, I hold the present application as being bad in law on the following grounds:
    - i. It is incurably defective, incompetent, misconceived and offends the mandatory provisions of section 30 of the *Labour Relations Act*, no. 14 of 2007.
    - ii. That the application is untenable and a non-starter as it is unknown in law as the applicant have moved court through the wrong forum.
    - iii. That the court Lacks jurisdiction to hear and determine the matter as it is stationary time barred under section 30 of *LRA*.
  - b. That I have been advised by Senior State Counsel on record, which advice I verily believe to be correct that this court lacks jurisdiction to entertain the instant Notice of Motion which seeks to challenge the merit and justification of the decision of the respondent via the wrong forum.
  - c. That the applicants instituted the instant Notice of Motion oblivious of the governing legislations which employers the respondent to register and regulate trade unions and employer’s organizations as provided in the *LRA* and the instant Motion is a mere grope in the dark and a proper candidate for dismissal.
  - d. That under section 12 of *Labour Relations Act*, 2007 the respondent is mandated to register and regulate and issue certificate in respect of incorporation of trade unions, employers Organizations and federations.



- e. That under section 12(3) of the Act the registrar is under duty to issue the prospective applicant of either trade unions, employers' organizations and federation with a certificate within thirty (30) days unless where the said application is defective or proposed name of trade union is the same or sufficiently similar to an existing trade union or employer's organization to cause confusion or mislead.
- f. That it is true that the applicants applied for a certificate of recruitment of a trade union under the names of Kenya Universal Government Workers Union (KUBWU) via letter dated September 29, 2021.
- g. That it is true that the applicants was made under the provisions of section 12 of the Act however upon receiving the said application was found to be lacking pertinent information with regard to the scope of coverage and cadre of workers the union was intended to represent and the same was communicated to the applicants.
- h. That in response to our request the applicants made attempts to clarify the identify the identified lapses in our letter dated October 4, 2021 but upon receipt of said letter from the applicants we were left confused as it did not respond to the questions raised and had muddled explanations.
- i. That I am aware that the applicants further letter dated October 7, 2021 was not clear on the envisaged scope of coverage of the proposed trade union as it did not address the issue of the intended members of the trade union and aver that it was laced with statements of innuendoes and general facts that would make it difficult for one to verify the intended workers vis-à-vis the other existing trade unions catering to the intended area and a request for more detailed information was sought by my office.
- j. That I know that the applicants finally responded vide letter dated November 10, 2021 with a detailed explanation on the envisaged scope of representation of members to mean those unrepresented workers employed by the County Governments from 2013, County assemblies' staff and officers employed by the National Government and currently working under County Governments.
- k. That a decision was delivered vide letter dated November 18, 2021 dismissing the applicant's application citing several reasons, chiefly, that envisioned scope of representation was already represented elsewhere and the proposed name would cause confusion as it was sufficiently similar to existing union of Kenya Civil Servants (UKCS)-representing national government workers and the Kenya County government workers union (KCGWU)-representing county government workers.
- l. That I know of my knowledge that section 12 of the Act cannot be read in vacuum of sections 13 and 14 and that it is only upon receipt of a detailed application that my office can begin the process to ascertain the merits of the application vis-a-vis the respondent's mandate to regulate trade unions intended to affect the identified area within the county.
- m. That the applicants' claims are unfounded and unmerited as observed from above the due procedure was followed by both parties and wish to reiterate that it's not an absolute that one's application will always be allowed but is predicated on the circumstances of the application.
- n. That from the foregoing it is clear that the respondent's decision to deny the applicants' application was based on powers granted by the act vide section 20 of the Act and impugned



decision is an administrative function, well-grounded and was legitimately arrived at and in accordance with the law.

4. The applicant filed a response to the Respondents Replying Affidavit stating in material part that:
  - a. That the respondent in full falsehoods, mischief and her response is not anchored on law & facts. The respondent has failed to appreciate the provisions of section 12 of the [LRA](#) which clearly directs that upon application by any party that wishes to form a trade union has presented a qualified name such a person should be issued with a provisional certificate before recruitment of member. However, in this case the respondent has totally ignored and/or and refused to issue the applicant with the required certificate thereby attaching some other conditions not anchored on law e.g. the requirement of scope.
  - b. That it is in pursuit of constitutional provision that the applicants have filed this matter before the honourable court pursuant to article 36, and 41 of [the constitution](#) and as such it is wrong for the respondent to imply that the services the applicants want to offer to their members as been already offered by other trade unions particularly infringing the right to join a union of once choice.
  - c. That it is not true that applicants made the 1<sup>st</sup> application of a trade union on 29/9/2021 but the applicants 1<sup>st</sup> application was on June 7, 2021 in the name of Kenya devolved units workers union.
  - d. That on the advise of the respondent the applicants changed the name from Kenya devolved units workers union to another name – Kenya Universal government workers union.
  - e. That the respondents mandate must only be confined to the provision of the law and it should be noted that Trade unions are like companies or political parties meant for only the willing. Despite the applicants outlining the scopes as demanded by the respondent, it was not mandatory as there is no law that provides for scope.
  - f. That the decision vides the respondent letter dated November 18, 2021 was irresponsible, unlawful and laced with malice. The respondent is called to strict proof and demonstrate how the Kenya Universal government workers union is same as those existing unions she is protecting and how the proposed name of the union would cause confusion.
  - g. That the applicants have right on behalf of members to apply for the formation of the union pursuant to article 41 of [the constitution](#) of Kenya.
    - i. Kenya universal government workers union envisage members do not belong to any existing trade unions.
    - ii. The respondent cannot compel the workers who are not members of the existing trade unions to belong to them this will be in violation of article 36 “No person shall be compelled to belong to any association”
    - iii. The respondent should declare her interest in the existing trade unions as applicants’ members are not members of the existing trade unions.
5. In support of the application, counsel for the applicant Mr. Ayieko submitted that labour law provided that for associations to be established they have to obtain a certificate from the Registrar of Trade Unions to enable them recruit members. According to section 12 of the [LRA](#), the application is to be signed by two people (the promoters) specifying the name and providing relevant information. The



certificate is thereafter to issue in 30 days but may be denied if the application is defective or the name is similar or sufficiently similar to that of an existing union.

6. According to counsel, the applicants complied with the legal requirements under section 12 of the LRA and were entitled to issuance of a provisional certificate before section 14 of the LRA applied.
7. Mr. Ayieko further submitted that the reason behind not issuing the applicant with the provisional certificate was that there were other registered unions covering the scope of representation however none of the trade unions referred to filed a letter of protest or challenged the issuance of certificate to the applicants.
8. According to Counsel, the proposed union intended to represent unrepresented employees including statisticians, data clerks, disaster management officers and hansard officers working both in National and County Government.
9. Counsel submitted that the respondent did not act reasonably and justifiably within the ambit of the law. The right to form and join a trade union and freedom of association were constitutional rights. In this regard counsel relied on the case of Scientific Research International Technical & Allied Workers Union -v- Kenya Agricultural Research Institute & Another [2013] eKLR
10. Ms. Tigoi for the respondent on her part submitted among others that the court lacked jurisdiction to entertain the Motion as it sought to challenge the merit and justification of the decision of the respondent via a wrong forum. The applicants in the instant application are oblivious of the governing legislation which empowers the respondent to register and regulate trade unions and employer's organizations as provided under LRA hence the application was a mere grope in the dark.
11. Counsel further submitted that the issuance of a recruitment certificate to the applicant's proposed union would be tantamount encouraging encroachment upon the turf of registered and established trade unions where workers are catered for. The right to form and or join a trade union of one's choice is protected by the constitution and International Labour Organizations Convention 98 on the right to organize. The right to form or join a trade union is subject to parameters set out in the Labour Relations Act.
12. Ms. Tigoi conceded that it was true the applicants applied for a certificate of recruitment of a trade union under the name of Kenya Universal Government Workers Union. The application was made under section 12 of the Act however upon receiving the same it was found to be lacking the pertinent information with regard to scope, coverage and cadre of workers the union intended to represent.
13. Counsel further submitted that section 12 of the LRA cannot be read in vacuum of section 13 and 14. It was only upon receipt of a detailed application that the respondent could begin the process of ascertaining the merits of the application vis-à-vis the respondent's mandate to regulate trade unions. The Act allows workers to form trade unions however this right has set limitations and conditions which must be met and as a regulator the respondent is under duty to consider the provisions of the law vis-à-vis the circumstances of the application.
14. Section 12 of the LRA confers on the Registrar the power to vet and approve or decline to issue a certificate permitting an intended trade union to recruit members. In considering the application, the Registrar is guided by the provisions of the section which include ensuring the application is not defective and more importantly the name of the proposed trade union or employer's organization is not the same as that of an existing trade union or employers' organization or is sufficiently similar so as to mislead or cause confusion.



15. The applicant's herein initially applied to register a union by the name Kenya Devolved Units Workers Union. This application was rejected by the Registrar who became of the view that the proposed name would mislead or cause confusion as the meaning of the words County Government was sufficiently similar to devolved units.
16. The applicants subsequently altered the name of the proposed union to Kenya Universal Government Works Union. The Registrar via letter dated October 4, 2021 asked the applicants to expound on the scope of the coverage and clearly explain what cadre of workers they intended to represent. The Registrar emphasized that the applicants be specific as much as possible as their application was too general.
17. The applicants through a letter October 7, 2021 responded to the Registrar's letter making a scathing attack on the Registrar, accusing her of unwillingness to register their union and that there was no law in Kenya that limited the number of trade unions to be registered or takes regard to the scope that is covered by various trade unions. According to the applicants, the concerns at the stage they were dealing with was the name and not scope of the intended union. The issue of scope according to them would be required when the union submitted its constitution.
18. Section 12(3) of the *Labour Relation Act* mandates the Registrar of Trade Unions to refuse a certificate where the application is defective and or the name of the proposed trade union or employer's organization is the same as that of an existing trade union or employer's organization or is sufficiently similar so as to mislead or cause confusion.
19. As observed earlier, the applicants herein initially intended to register a trade union by the name Kenya Devolved Units Workers Union. This was rejected by the Registrar on the grounds that the words "Devolved units" were sufficiently similar to County Government for which there was already a union in existence hence would cause confusion. The applicants obliged and changed the name to Kenya Universal Government Workers Union. The Registrar felt the name was broad and in her letter dated October 4, 2021 referred to earlier, asked the applicants to expound on the scope of coverage and clearly explain what cadre of workers they intended to represent. The Registrar emphasized that the applicants be as specific as possible. The applicants instead mounted a scathing attack on the Registrar accusing her of among others, frustrating them and unwillingness to register the union.
20. The office of the Registrar of Trade Union has as one its functions, to implement policies and regulations governing Trade Unions including registration of new trade unions. Section 12(3) of the *Labour Relations Act* referred to earlier is an embodiment of the policy and regulatory framework. It enjoins the registrar not approve for registration an application which is defective and or where the name proposed is same as or sufficiently similar to existing trade union or employer's organization so as to mislead or cause confusion. In this context, the Registrar in her letter of 4<sup>th</sup> October, 2021 sought more information so as not to offend the provisions of Section 12(3) of the *Labour Relations Act*. The applicants instead of providing the information resorted to accusations against the Registrar.
21. The Court of Appeal in the case of *Charles Salano & 9 others -V-Registrar of Trade Unions & Another* CA No. 19 of 2016 observed as follows:

“We have set out the provisions of the Act in extension to demonstrate that it is a fallacy to argue that the 1<sup>st</sup> respondent is obligated to issue a certificate of registration within 30 days of receiving an application absent a defect or the existence of another group that sufficiently represents the interest of a group. If the registration was to be automatic as the appellant would like us to believe, one can foresee registration of a multiplicity of unions covering



groups with similar interests. This cannot by any stretch of imagination be said to be proper regulation and management of trade unions.”

22. Further in the case of *Felix Musyoka Sammy and Others -V- Registrar of Trade Unions* Appeal No. 12 of 2014 the court observed as follows:

“It is therefore inappropriate to introduce constitutional arguments in what is purely policy and administrative issue. Indeed, that article 36 and 41 of *the Constitution* read together protects freedom to form and join the trade union of one’s Choice. However, the exercise of this freedom is not absolute. It must be exercised in cognisance and conformity with policies and best practices in the labour movement. Limitation of the right to form and join a union of one’s choice in recognition of policies and best practices which have been tested over time is reasonable and justifiable in an open and democratic society.”

23. From the foregoing authorities and observations above, the Court is satisfied that the Registrar of Trade Unions had sufficient grounds to reject the applicant’s application for the registration of the Proposed trade union. The Motion is therefore found without merits and is hereby dismissed with costs.

It is so ordered

**DATED AND DELIVERED AT ELDORET THIS 14TH DAY OF OCTOBER, 2022**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

