



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT BUNGOMA**

**APPEAL NO.1 OF 2018**

**NATIONAL UNION OF DOMESTIC WORKERS.....APPELLANT**

**Represented by officials and promoters of the union Namely:-**

- 1. Paul khamasi**
- 2. Musa Kabaya**
- 3. Moses Mwangi**
- 4. Alex Shishanya**
- 5. Sylvia Iminza**
- 6. Michael Anyula**
- 7. Samwel Mwangi**
- 8. Christine Nesabo**
- 9. Lyndah Andeso**
- 10. Rose Naliaka**
- 11. Francis Furee**
- 12. Edith Vhenda**
- 13. Charles Salano**
- 14. Hellen Inyangala**

**VERSUS**

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

**AND**

**KENYA UNION OF DOMESTIC WORKERS EDUCATIONAL INSTITUTIONS AND  
ALLIED WORKERS (KUDHEIHA).....INTERESTED PARTY**

**J U D G M E N T**

This is an Appeal from a decision of the Registrar of trade union of Domestic Workers whose interim officials and/or promoters are set out in the Memorandum of Appeal. Kenya Union of Domestic Hotels, Educational Institutions, Hospitals and Allied Workers (Kudheih Workers) was joined as an interested party pursuant to an application dated 17.10.2018 and filed on the even date.

The appeal is grounded on facts set out on the Memorandum of Appeal that may be summarized as follows:-

That on 26<sup>th</sup> March 2016, the Appellants made an application vide Section 12(1) of the Labour Relations Act herein after LRA for the registration of Kenya National Union of Domestic Workers.

That application was informed by the fact that Domestic workers are engaged in a unique Sector whose duties are not adequately addressed by a general union in existence, the interested party.

On 9.4.2018, the respondent declined registration of the union by a letter of the said date.

The letter of refusal by E.N Gicheha, Registrar of Trade Unions stated the reasons for refusal to be

- i. The intended sector of coverage is already represented by other existing unions being KUDHEIHA which represents persons employed or engaged as subordinates in private homes, houses, flats, apartments, clubs, guest houses, children homes and other similar projects providing cleaning services, security and social services.
- ii. The Kenya National Unions of Service Employees (KNUSE) represents workers employed in cleaning and janitorial services, management consultancies among other related services.
- iii. Kenya Union of Commercial Food and Allied workers (KCFAW) represents among others, employees engaged in property management.

Therefore, the Labour Relations Act provides that a proposed trade union would only engage in recruitment where no other union exists. The letter concluded and the application was denied.

The appellants state that the refusal to register the proposed union is a violation of their rights under Section 5 of the Labour Relations Act and Articles 36 and 41 of the Constitution of Kenya 2010.

That the right to associate freely, to form and join a union of choice is unfettered and the respondent has no authority to refuse registration of the intended union.

The appellants further state that they were accorded no hearing before the refusal and therefore their right to a fair administrative action under Article 47 of the Constitution was violated by the Respondent.

Further more, the Appellants cite the International Labour Organization convention NO. 87 and 98 which they state have been ratified by Kenya and domesticated under Article 2 (6) of the Constitution of Kenya 2010 as a further reason why the respondent ought to be compelled to register the proposed union.

That the provisions of Section 14 (1) (d)(i) that the respondent used to deny appellants registration is out dated and overtaken by the robust constitution of Kenya 2010.

The Appellants gave many examples of trade unions operating in the same sector eg. KUPPET, KNUT, KUDHEIHA and Kenya Union of Secondary Schools and None Teaching Staff. In the medical sector Kenya National Union of Nurses; Kenya Medical and Dentist Practitioners Union, KUDHEIHA union and others. In Transport Sector, the Public Transport Workers Union, the long Distance Haulers Workers Union and in Railways, the Railways and Allied Workers Union and the Rift Valley Workers Union among others.

The Appellant therefore submit that the action by the respondent is discriminatory.

Further more the Appellants rely on court decisions where rival unions have been registered by the courts including in Appeal No. 9 of 2011 between Rift Valley workers Union (K) and Registrar of Trade Union and Railways and Allied Workers Union.

Appeal No. 10 of 2011 between Kenya Concrete Ceramic tiles Interior Design Workers union and the Registrar of Trade Unions and the Kenya Building Contraction Timber and Allied Workers Union and others.

Appellants pray that the appeal be allowed with costs.

**Response:**

The Respondents filed written submissions in which they oppose the appeal on the following grounds:

- i. The respondents was justified to refuse the registration of the new union by dint of Section 14 (1) d(i) LRA.
- ii. That KUDHEIHA, KUUSE and KUCFAW are active in the Domestic workers Sector and the proposed union would just crowd

the field for no good purpose.

iii. That Articles 36 and 41 of the Constitution do not provide absolute right of registration of new unions. That the provisions are subject to Article 24 of the constitution and in particular sub- Article 24 (1)(d) which provides that enjoyment of one person's right and freedoms ought not to prejudice the rights and freedoms of others.

iv. That the rights under Article 36 and 41 of the Constitution are not one of those rights that cannot be limited under Article 25 of the Constitution. The Respondents rely on the case of CHARLES LALANO & 9 OTHERS (PROPOSERS & PROMOTERS OF KENYA SUPERMARKETS WORKERS UNION (KESMWU) VS REGISTRAR OF TRADE UNIONS & ANOTHER) (2016) eKLR. In which the court stated " Further, we are not convinced by the Appellants submissions on the application of Article 36 and 41 (2) (c) of the constitution which provides for freedom of association and the right to labour relations, for two reasons: - firstly, the alleged breach of the appellant's rights do not fall within the confines of Article 25 of the Constitution which expressly set out fundamental rights and freedoms which may not be limited and secondly, Article 24(1) of the Constitution sanctions the limitation of fundamental rights and freedoms....."

Respondent further submits the role of the Registrar is to regulate and ensure fair playing ground and minimize conflicts at the shop floor to ensure good labour Relations and industrial peace.

Wherefore the Respondents pray that the Appeal be dismissed.

The Interested party KUDHEIHA also filed submissions giving reasons why the Appeal ought not to be allowed. They stated that the interested party has represented the targeted sector for a long time. That KUDHEIHA constitution under Rule No. 3 authorizes the union to cover employees in the Domestic sector. That the promoters of the new union are disgruntled dismissed employees of KUDHEIHA and their focus is to fight and kill KUDHEIHA and not motivated by genuine desire to represent domestic workers.

That KUDHEIHA is the champion of formulation and ratification of international labour organization convention NO. 189 on domestic workers protection.

That KUDHEIHA is now engaged in serious lobbying to have the convention ratified. That KUDHEIHA ought not to be disrupted in its pursuit by a rival union. That the promoters have an existing suit for unfair dismissal being cause No. 137 of 2016 against KUDHEIHA.

Wherefore the interested party prays that the Appeal be dismissed with costs.

#### **Determination:**

The issues for determination are

- a. Whether the registrar of trade unions, the respondent was justified to refuse the Appellant union registration.
- b. Whether the Appellant is entitled to the reliefs sought.

#### **Issue (a)**

In **Appeal No. 9 of 2011 Peter Mwangi and 7 others (Appellants) -vs- the Registrar of Trade Unions & Another**, Justice Nzioki Wa Makau stated at page 9 of the judgment;

"The respondent has not made any cogent response to the refusal to register when denying a party registration, it would not merely suffice to say there is a union in existence. The trade union movement is one in which competition is allowed and what loss would be visited on the unions able members if they had options?"

It has been submitted that the interested party has watched as its membership gets short changed. Could this be due to apathy as a monopoly?"

Justice Makau went ahead to rely on Articles 36 and 41 of the Constitution of Kenya 2010 and Article 2(6) of the Constitution of Kenya which provides

"2(6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under the constitution" to hold that

"The registrar of Trade Unions decision of refuse to register is Quashed."

While agreeing with the reasoning by justice Nzioki Makau in the aforesaid case, the court notes that if there is an idea whose time has come in Kenya and in the world at large, is the vigilant protection of the rights and freedoms of domestic workers. By domestic workers is meant in the court's view employees male or female working in private households and not those in commercial enterprise such as schools, hotels, clubs, hospital and various service providers.

For the purposes of this Appeal and the registration of the proposed union, the constitution of the proposed union should be limited to only "domestic workers in private house holds". This restriction shall remove possibility of conflict with the other cited unions herein by the

registrar of Trade Unions as the reason why she refused to register the union.

KUDHEIHA is of course commended for championing within the International Labour Organization the making and adoption of International Labour Organization convention No. 189 which was adopted in Geneva in the 100<sup>th</sup> ILO seminar on 16<sup>th</sup> June, 2011. The convention is on the protection of Domestic workers. This is the reason why the court is of the considered view that with the many woes experienced by domestic workers all over the world which woes and issues are sector specific to the domestic workers in private household, the idea of a specific union to private house hold domestic workers has come of age and is fully embraced by the court.

The court therefore finds that the respondent did not prove any reasonable justification to deny the Appellant union registration subject to the restriction noted by the court.

Accordingly, the Appeal is allowed by the court and the following orders made;

- a. The decision by the Registrar of Trade Unions not to register National Union of Domestic Workers is quashed.
- b. The National Union of Domestic Workers is to restrict its representation to domestic workers employed in private family, houses and not in any commercial and/or public establishments whether designated as homes or otherwise. The constitution of the Appellant is to be reviewed before registration is done to ensure this restriction is adhered to.
- c. The respondent and interested party to jointly and severally bear the costs of the Appeal.

**DATED, SIGNED and DELIVERED at BUNGOMA this 30<sup>th</sup> day of MAY, 2019.**

**HON. M. N. NDUMA, JUDGE**

**EMPLOYMENT AND LABOUR RELATIONS COURT**

**BUNGOMA**

**Appearances:**

Moses Mwangi for Appellant

Mr. Tarus for Respondent

Siembo for Interested Party

Chrispo: Court Assistant.