



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. APPEAL 11 OF 2011**

**THE KENYA UNION OF MEDICAL PROFESSIONALS AND ALLIED STAFF (KUMPAS)  
REPRESENTED BY ITS PROMOTERS (SETH PANYAKO & 7 OTHERS)  
.....APPELLANTS**

*VERSUS*

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

**THE UNION OF DOMESTIC, HOTELS, EDUCATION INSTITUTION, HOSPITALS &  
ALLIED STAFF.....INTERESTED PARTY**

M/s Wachira for Appellants

M/s Mumu for Respondent

Mr Nyabena for Interested party

**JUDGEMENT**

1. This Appeal arises from a decision of the Registrar of Trade Unions refusing to register the Appellants' proposed union. In response to the appeal herein, the Respondent filed a response dated 7<sup>th</sup> July 2015. The interested party also filed a replying affidavit sworn to on 28<sup>th</sup> October 2015. The Appellant and the Respondent rely on written submissions filed on 30<sup>th</sup> July 2015 and 11<sup>th</sup> November 2015 respectively.
2. The Appellants seek orders in the main quashing the Respondent's notifications of refusal to register Kenya Union of Medical Professionals and Allied Staff (KUMPAS) and declare the union as duly registered.
3. The Appellants also seek an order directing the Registrar of Trade Unions to process certificate of registration for the union. Further orders are sought directing the interested party (KUDHEIHA) to delete the word 'Hospitals' from its constitution.
4. The issues for determination are as follows;
  - i. Whether the Registrar of Trade Unions in refusing to register the Appellants' Union acted fairly and in accordance with the law applicable
  - ii. Whether the Appellants freedom of association was infringed by the Registrar of Trade Unions
  - iii. Whether KUDHEIHA would continue operating in the Hospital sector

**Issue i**

5. Section 14(1) of the Labour Relations Act, 2007 provides;

“A trade union may apply for registration if-

- i. *in case of a trade union of employers or of employees is sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration;”*
6. The Appellants seek to represent medical practitioners who presently are represented by;
  - a. Kenya Union of Domestic Hotels Educational Institutions Hospital and allied Workers(KUDHEIHA)
  - b. Union of Kenya Civil Servants
  - c. Kenya National Union of Nurses
  - d. Kenya medical Practitioners, Doctors, Pharmacists and Dentists Union

7. It is without a doubt that the health sector is presently over crowded by four (4) different unions. In the case of **Wesly Tomno & 97 others –Vs- Registrar of Trade Unions, Employment and Labour Relations court petition 61 of 2014** Justice Nzioki Wa Makau on page 16 and 17 states that:-

*“the ILO convention sets the bar; the municipal law of Kenya brings it to life. The union that the petitioner proposes is one that would be superfluous or surplus to requirements. The health professionals who are proposed members of the Respondent are already catered for in the existing trade unions. If that were not so each craft would have a union. There is therefore justification to refuse registration of a union that is intended for a sector that is adequately represented.....”*

8. I could not agree more. The findings by the Judge apply *mutatis mutandis* to the present matter. The appellant herein is yet another union which wants to join the fray in the health sector.
9. Section 14(1) of the Labour Relations Act, remains valid and relevant today as it was before the promulgation of the Constitution of Kenya 2010.
10. I say this having taken into considerations the dicta of Justice Rika in the case of **Kenya Concrete, Structural, Ceramics, tiles, Wood plys and Other Interior designs Workers Union –Vs- Registrar of Trade Unions & Another[2013]** eKLR, in which he embraced the view of the High Court in **Civil Appeal 171 of 1996** to the effect that sufficiency of representation must include real and practical representation of the interests of the members including how well and visible such a trade union represents its members in court, quality and number of Collective Bargaining Agreements concluded and within the context of a devolved state, and the geographical reach of the trade union. The Judge concluded that sufficiency of representation must be seen as qualitative and quantitative.
11. Whereas I agree with this expose by the Judge, I must hasten to state that the onus of proving lack of sufficient representation in quality and quantity is on the applicant. It is the finding by the court that the section of the Labour Relations Act, 2007 which provides for freedom of association as follows;
12. “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”*

Must be read together with section 14(1) (d) (i) aforesaid without defeating the intent and purpose of either provision. Article 41(2) (c) of the Constitution of Kenya 2010 adopted the provisions of section 4(1) (a) and (c) and 4 (2) (a) word for word.

13. It is the court’s considered view and finding that section 14 (1) (d) (i) of the Labour Relations Act, 2007 meets the requirements under Article 24(1) as read with 24(2) (b) and (c) of the Constitution in that it seeks to limit the freedom of association in a clear and specific manner and does not derogate from the core or essential content of the freedom of association guaranteed under Article 41 (2) (c) of the Constitution.

14. To this extent, having carefully considered the facts of the case and the law, the decision by the Registrar of Trade Unions to deny the Appellants' union registration was sound in law and fair in the circumstances of the case.
15. However, the Registrar is bound to deal with this kind of applications expeditiously so as not to defeat the cause of justice. In this respect the National Labour Board which has statutory mandate to advise the Registrar regarding applications for registration of trade unions is also bound to deal with such applications and render its advice without inordinate delay.
16. The delay exhibited in this matter was inordinate and would be considered in an appropriate case, unfair administration action in contravention of Article 47 of the Constitution.
  
17. In the final analysis the appeal lacks merit and is dismissed with no order as to costs.

**Dated and delivered at Nairobi this 18<sup>th</sup> day of March 2016.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**