



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
APPEAL NO. 7 OF 2011

**KENYA EXPORT FLOURICULTURE, HORTICULTURE AND ALLIED WORKERS UNION
(KEFHAU) REPRESENTED BY ITS PROMOTOERS AND APPLICANTS:-**

1. **DAVID BENEDICT OMULAMA**
2. **ANDREW MAKWAGA**
3. **BERNARD AMUCHIZI MUKAISI**
4. **ADRIANO MUKALO**
5. **WYCLIFFE SORE**
6. **SOVERIO MASIKA**
7. **LILIAN INGUTIA**
8. **EFELI A. NANDI**
9. **JAMES AMATONYE.....APPELLANTS**

VERSUS

THE REGISTRAR OF TRADE UNIONRESPONDENT

AND

KENYA PLANTATION AND AGRICULTURAL

WORKERS UNIONINTERESTED PARTY

JUDGEMENT

1. The appeal herein was filed on 28th September 2011 upon the refusal of the registration of the appellant union, KEFHAU and the listed promoters by the Registrar of Trade Unions, the respondent herein. The Interested Party was enjoined herein with leave of the court, were initially sued as the 2nd respondent and upon their application they were enjoined herein as Interested Party. The basis of Interested Party herein is that upon they agree with the decision of the respondent in the refusal to register the appellant. The respondent filed their response on 4th May 2012 noting the registration of the appellant was heard by the national labour Board and rejected it and thus the appeal lack merits. On 20th March 2012 the Interested Party filed their response in support of the non-registration of the appellant by the respondent noting that the appellant's rights cannot override those of the Interested Party. The parties herein filed their written submissions dated 13th November 2013, 23rd January 2014 and 22nd November 2013 for the Appellant, the respondent and the Interested Party respectively. The parties also highlighted these submissions in further support of the arguments in Court. That the orders sought in the appeal are against the Registrar of Trade Unions for;

- a. *To quash Registrar of Trade Unions decision dated 30th August 2011;*

- b. *A mandatory order compelling registrar to unconditionally register the appellant's Union, Kenya Export Floriculture and Allied Workers Union, issue a certificate and entry the same in the register of registered trade unions*
- c. *Costs of the appeal;*
- d. *Any other relief that the Court may deem fit to grant.*

The appeal

2.The appeal herein is against the decision of the Registrar of Trade Unions refusal to register the appellant union vide letter and notice dated 30th August 2011 to Kenya Export Floriculture, Horticulture and Allied Workers' Union (KEFHAU). The appeal is based on the provisions of section 12 of the Industrial Court Act, Rule 8 and 27 of the Industrial Court Procedure Rules, section 30 of the Labour Relations Act and other enabling provisions of the law. The appeal is based on the grounds that the appellants are the promoters for the establishment of KEFHAU which was refused registration. The Registrar of Trade Unions under section 31(1) of the Labour Relations Act (LRA) is the respondent herein while the Interested Party is an amalgamation of 4 different unions which represent interests of workers in the coffee, tea, sisal and general agriculture industries; they opposed the registration of the appellant.

Facts of the Appeal

3.on 17th July 2009, the 1st and 2nd appellants, being the promoters and the 3rd to 9th appellants being the applicants in the registration of Kenya Export Floriculture and Allied Workers Union made an application for establishment of a trade union submitted to the respondent as under section 12 of the LRA. The respondent issued a certificate for establishment of the proposed trade union. The appellants complied with the requirements under the certificate and made application for registration on 16th February 2010 a period within 6 months. On 19th March 2010, vide gazette notice No. 28 the respondent published unions that had applied for registration and failed to publish the appellant union which resulted in administrative delay and discrimination. The respondent wrote to the Interested Party asking him to send objections against the appellant registration and on 28th October 2010 the Interested Party wrote to the respondent copying the appellants and raised an objection on the grounds that the registration of the appellant would contravene section 14(d) of the LRA. The appellant noted to the respondent that the provisions of section 14(d) LRA were inconsistent with the Constitution in Article 36 and 41 and thus should ignore the Interested Party objection. On 30th August 2011, the respondent gave notice to the appellant that their application for registration had been rejected.

4.The appeal herein is against the decision of the respondent. Since the appellant proposed union has no legal standing, the same is filed by the listed appellants 1 to 9.

the appellant states that the reasons given by the respondent for refusal of registration were premised on section 14(d) of the Labour Relations Act which provide that where there are already registered trade unions sufficiently representative of the whole or of a substantial proportion of the interest in respect of which the applicants sought registration, new registration will not be accepted. This refusal raises questions of law and fact that the court should address.

5.It was therefore the case for the appellants that the secretary general of Interested Party together with two of the members are members of the National Labour Board established under section 31 of the Labour Institutions Act, a body that advises the Minister of Labour on matters of trade union registration, suspension and deregistration. On 30th August 2010 the respondent thus wrote to the appellant and notified them of the refusal to register them as a union. The appellant had met all the requirements for registration and the only reasons for non-registration was that there existed the Interested Party.

6.that the appeal has legal foundations in that the respondent as a public officer is bound by the constitution when undertaking the duties of registration, suspension and deregistration of trade union, employer organisations and federations as under section 31 Labour Institutions Act and in this case the

Registrar of Trade Unions erred when there was failure to register the appellant as a trade union based on Interested Party objection. Article 2(1) and (4), where any law is inconsistent with constitution the same is invalid and in this case sec Interested Party on 14(d) LRA ought to have been ignored by the respondent. Article 10 provide for values which all public officers should apply while undertaking their public duties and Article 36 quarantee the right of association including that to form, join and particiapate in the activities of an association like a trade union. The failure to register the appellant on the grounds that there exists another union in the same sector was a contravention of Article 36(2) as there is a fundamental difference between the sector of the Interested Party and that to be addressed by the appellant.,

7. Further in the appeal, the appellant states that the basis of the respondent reliance on section 14(d) of the LRA was drawn from the provisions of the repealed constitution at section 80(d) which has since ceased to exist. That section 7 of the sixth schedule of the Constitution provide that all laws in force immediately before the effective date continues in force and shall be construed with the alteration, adaptations, qualifications and exceptions necessary to bring it into conformity with this constitution. Thus by the RTU relying on the fact that there existed another Unions under section 14(d) , the respondent was introducing a non-existent limitation to rights and freedoms guaranteed under Article 36 adb 41 of the constitution. That the refusal by the Registrar of Trade Unions to register the appellant was in contravention of the ILO convention 87 article 2 which provides that workers and employers shall without distinction shall have the right to establish organisations fo their own choice without the employer authorisation. The refusal by the Registrar of Trade Unions does not follow the legal procedure as the manner of communication did not comply with section 20 of LRA where the respondent was supposed to issue form D as per the 2nd schedule in the Act. That this refusal was an attack on the appellants democratic right and freedom that was not reasonable.

8. Other grounds in the appeal are that when the Registrar of Trade Unions refused to register the appellant this decision affected more than 500 workers in the floriculture and horticulture industries who are unable to exercise their freedom of association as they are not members of the Interested Party and the Interested Party does not claim that these are their members. Therefore, the respondent being the custodian of all information with regard to trade unions is an indication that he is aware that the formation of the Interested Party was based on the need to address the tea and agricultural in 4 distinct industries being Kenya tea, Kenya coffee, sisal and the general agriculture. The Interested Party is an amalgamation of these 4 industries whereas the appellant is seeking to address the floriculture and horticulture sector which is a highly specialised and unique industries facing different challenges as against those faced by the Interested Party.

9. Further that the Interested Party has less than 18% membership in the floriculture industry and has no binding CBA to all employers and employees in the floriculture industry whereas in the export horticulture industry the Interested Party has 5% membership of employees and no CBA with any employer or employees.

10. In this case the respondent failed to follow the current trend in the registration of the appellant and thus made a wrong decision on basis that there exists another union whereas this is not the case. The appellant area of focus is differnet from that of the Interested Party. Examples are given that there is Kenya Union of Post Primary Educaion Teachers, university Academic Staff Union, Kenya Private Schools' Teachers which were all registered regardless of the existence of Kenya National Union of Teachers. There is Railway workers union, Kenya airline pilots association, Kenya aviation workers union and Kenya union of long distance truck drivers' union despite the existence of Transport and Allied Workers union. There is the Banking, Insurance and Finance Union, Kenya Guards and allied Workers Union despite the existence of Kenya union of Commercial Food and Allied Workers Union. In the agricultural sector/industries there exists Kenya Plantation and Agricultural Workers union and Kenya Sugar Plantation Workers union and as such nothing should legally stop workers in the floriculture industry to form their own union in exercise of their rights.

11. The appellant therefore contest that by the respondent failing to observe constitutional rights due to the appellant was wrong. The respondent failed to note previous precendets where trade unions have been

registered in the same or similar industry and hence his rejection of the appellant application for registration was a violation of the bill of rights and relevant ILO conventions 87 and 98. If this decision is not overturned to allow the appellant registration, there will be prejudice suffered and the appellant members will be left without a union.

12.The appellant is seeking for orders quashing the decision of the respondent in the notice of refusal to register the appellant dated 30th August 2011; an order directing the respondent to unconditionally register the appellant and costs of this suit.

The respondent's case

13.In response to the appeal, the respondent stated that the appellant's application for registration was placed and exhaustively discussed by the national labour Board on 30th August 2011 and a decision was taken to reject that application. This was after the Board established that the interests of the appellants were well catered for by the already registered trade union that is the Interested Party herein and thus to allow the registration of the appellant it would create industrial disharmony between the appellant and the already registered trade union, the Interested Party.

14.Further that the rights as under Articles 36 and 41 of the Constitution are not absolute and that Article 24 of the Constitution allows for limitation of those rights as under the Bill of Rights to the extent that enjoyment of those rights and freedoms by any individual do not prejudice the rights and freedoms of others. That the letter and spirit of the Labour Relations Act is to discourage proliferation of trade unions within the same sector and to encourage formation of strong and viable unions. In this case the appellant has not demonstrated what prejudice or loss they stand for non-registration as the LRA allow such registration on the basis of industry or sector to avoid duplicity of trade unions in one industry or sector. That the appeal therefore lacks merit and should be dismissed.

The Interested Party's case

15.On their part, the Interested Party in response to the appeal state that the refusal to register the appellant by the respondent was not discriminative against them the same was based on the applicable law. The respondent as a public officer occupies a statutory office of Registrar of Trade Unions and thus duty bound to carry out duties of this office within legal parameters given by the law. The rights of the appellant do not override the rights of the Interested Party and they are not absolute. Article 2, 3, 10 and 36 of the Constitution apply to bodies and persons who are already in existence and as such they can only be enjoyed within the parameters set by the law and the decision of the respondent in rejecting the appellants' application had its basis in the law as the intended union is geared towards coverage of employees in an industry that is already covered by the Interested Party. The Registrar of Trade Unions did not contravene the ILO conventions in the refusal to register the appellant because this decision is informed by the constitution and directions of the Labour Board. The appellant rejection of registration was arrived at after a lawful procedure was followed and any allegation to the contrary is denied and the workers that the appellant is seeking to represent are adequately so represented by the Interested Party. That in this case the decision of the respondent as the Registrar of Trade Unions not to effect registration of the appellant as a trade union is lawful, procedural and democratic and the appeal should be dismissed.

Submissions

16.In submissions, all the parties herein filed their extensive written submissions. The appellant in submissions reiterated the averments in the appeal and further submitted that the respondent in rejecting their application for registration based the same on section 14(d) of the LRA which law has its basis in the repealed constitution as section 80 which provisions are now inconsistent with the new Constitution, 2010. In this regard, the limitations to rights allowed under the Constitution do not amount to blanket denial of a right. Where Article 24 of the Constitution allows limitations of Article 41, specific sectors are outlined particularly with regard to the operation of the section to defence forces and not to other sectors especially in the sector to be covered by the appellant that of floriculture and horticulture industries. Thus the total denial of registration by the respondent has no justification in law or under the Constitution.

17. The reason of existence of another trade union to deny and or refuse the registration of the appellant has no basis as there is evidence of registration of such new trade unions in the same sector or industry by the respondent. The Interested Party members are not the same members of the appellant and these non-members should not be denied their democratic right to form a trade union of their choice as the denial of appellant registration would be in essence forcing them to join the Interested Party. In this case the Interested Party has not proved that the respondent followed the law in the refusal to register the appellant noting that even though in the Interested Party constitution has got horticulture and floriculture industry, the rights of workers who wish to belong to the appellant union cannot be denied on the basis of their industry having been mentioned in the constitution of the Interested Party.

18. To support the submissions, the appellant relied on the case of *Kenya Union of Export, Import and Allied Workers versus The Registrar of Trade Unions and Kenya Shipping Clearance and Warehouses Workers' union* where the court held that ILO convention 87 on freedom of association its key purpose is to safeguard against violations of trade union rights where employees have a right to form and join a trade union of their own choice.

19. The respondent on the other hand submitted that the LRA gives discretion to the Registrar of Trade Unions in matters of registration of trade union. Under section 14 of the LRA sets out the requirements for registration of trade unions and with regard to this appeal the Registrar of Trade Unions exercised the powers conferred on him by section 14(1)(d)(i) where a registration may not be granted where there is evidence that there is an existing trade union which is already registered and is sufficiently representative of the whole or a substantial proportion of the interests with which an applicant seeks registration. The law places an obligation on the Registrar of Trade Unions to refuse registration, if there is reason to believe that there is a registered trade union within the same sector and in undertaking this mandate the Registrar of Trade Unions is required to consult the National Labour Board as under section 19(1) of the LRA even though the ultimate responsibility of registration of trade unions vests with the Registrar of Trade Unions. That in this case, the Registrar of Trade Unions acted responsibly within the powers accorded by the law.

20. With regard to the submission by the appellant that their rights and freedoms under article 36 and 41 were violated, the respondent submitted that the rights under the Bill of Rights are not absolute but subject to limitations as under Article 24 Constitution. Allowed are limitations of rights by legislation provided the limitation is reasonable and justifiable in an open and democratic society. Article 25 provide for rights that cannot be limited which do not include rights under Article 36 and 41. In this respect, section 14 of the LRA allow for limitation on the trade unions to be registered and these provisions have not been declared as inconsistent with the Constitution. Thus the appeal herein has no merit and should be dismissed.

21. The Interested Party on their part submitted that they became aware of the appellant application for registration on 19th March 2010 upon publication of Kenya Gazette Notice 28 of 2010 whereupon they lodged an objection with the respondent noting the provisions of section 14(d) of the LRA. The objection was based on the fact that the Interested Party constitution at Rule 3 gave it mandate to represent unionisable employees in agricultural and related sector and thus the refusal by the respondent to effect the registration of the appellant was lawful and well-grounded in law and done with due consideration of all relevant factors affecting the Interested Party whose coverage extends to areas covered as under the Interested Party constitution. In this case the National Labour Board only exercises oversight authority over the registration of all trade unions.

22. The Interested Party further submitted that rights under Article 36(1) and 41 of the Constitution are not absolute as the law governing the registration of trade unions, the LRA section 14(d) provides that the Registrar of Trade Unions should inform trade unions with similar objectives as the applicant and in this case the Interested Party was notified and raised objection on the basis that they cover the floriculture and horticulture areas which are part of the agricultural sector. It would thus be a violation of the law to register a new trade union in the sector covered by Interested Party as this would be duplication and interference of balance of industrial relations in the agricultural sector.

23. Interested Party additionally submitted that the appellants intended sector of coverage, floriculture and horticulture, may not be considered as specialised as this is within the agricultural sector and this cannot form a basis of consideration by Registrar of Trade Unions decision. Thus the respondent decision not to register the appellant was well founded on the law and the Interested Party objection is justified. To support these submissions the Interested Party cited *Misc. Case No. 188 of 2004 R. versus Registrar of Trade Unions Ex-parte appl. John Elijah Wambua and Others* where the applicants sought to quash the Registrar of Trade Unions decision to effect registration of new officials was dismissed and the court held that the duty vested upon the RTU was to make an enquiry and make a decision. In the case of *Kenya Tea Workers union versus Registrar of Trade Unions, HCCC No.248 of 1998* on the question where the Registrar of Trade Unions refused to register a proposed trade union and the court held that there was nothing peculiar that had been cited by the applicant and no specialisation was required to handle problems in the tea sector which could be achieved by formation of sub-committees within the existing union framework. The appeal as filed does not disclose any wrong action by the respondent and the Interested Party supports the submissions that the respondent acted according to law and thus the appeal should be dismissed with costs.

Determination of the issues

24. Before getting into the issues raised by the appellant and the responses of the respondent and the Interested Party I need to restate the following; that the Constitution was promulgated in 2010 and created a new dispensation with regard to rights and freedoms enjoyment. One of the declared purposes of the new dispensation and the Constitution was to ensure that the legislative framework governing labour relations was in accordance with the Bill of Rights, particularly Article 41 which was not in the older [repealed] Constitution. The most significant change in the labour regime introduced by the Constitution is the recasting of the collective bargaining provisions, the broadening of the right to strike, and the work place conditions. these provisions find a new meaning in the Constitution. Before all these came into being, there was the repealed Constitution and the LRA, 2007 which had come into force before the Constitution, 2010. Under the repealed Constitution, at section 80(2)(d) on the right to association and assembly, the parameters were set out within which the registration of trade unions were to be governed. These provisions of the repealed Constitution, read together with the applicable law the LRA at section 14, the Registrar of Trade Unions had a very wide discretion that was granted by the Constitution and legislation in the registration of new trade unions. Section 80(2)(d) of the repealed Constitution provided that;

Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

(a)...

(b) ...

(c) ...

(d) *For the registration of trade unions and associations of trade unions in a register established by or under any law, and for imposing reasonable conditions relating to the requirements for entry on such a register (including conditions as to the minimum number of persons necessary to constitute a trade union qualified for registration, or of members necessary to constitute an association of trade unions qualified for registration, and conditions whereby registration may be refused on the grounds that another trade union already registered or association of trade unions already registered, as the case may be, is sufficiently representative of the whole or of a substantial proportion of the interests in respect of which registration of a trade union or association of trade unions is sought).*

And except so far as that provision or, as the case may be, the thing done under the

authority thereof is shown not to be reasonably justifiable in a democratic society.

25. Thus under the repealed Constitution the Registrar of Trade Unions could *impose reasonable conditions* before including into the register any new trade union and some of these *reasonable conditions* could be, setting a minimum number of persons required for a union or association or that another trade union already exists that sufficiently represents in whole or substantial proportion of an interest. The legislative provisions for this role of the Registrar of Trade Unions is further outlined under section 14(d) of the LRA thus;

(d) no other trade union already registered is-

- i. in the case of a trade union of employers or of employees, sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration; or*
- ii. in the case of an association of trade unions, sufficiently representative of the whole or a substantial proportion of the trade unions eligible for membership thereof:*

Provided that the Registrar shall, by notice in the Gazette and in one national daily newspaper with wide circulation, notify any registered trade union, federation of trade unions or employers' organisation which appear to him to represent the same interest as the applicants of the receipt of such application and shall invite the registered trade union federation of trade unions or employers' organisation concerned to submit in writing, within a period to be specified in the notice, any objections to the registration;

26. Meaning therefore that the Registrar of Trade Unions would have to undertake an enquiry as to the constitution of the proposed union vis-à-vis already registered trade unions and where it emerges that there is a union that already exists covering the same interest, then registration would be denied. This seems to be further buttressed by LRA under section 14(2) thus;

(2) Notwithstanding the provisions of subsection (1)(d), the Registrar may register a trade union consisting of persons working in more than one sector, if the Registrar is satisfied that the constitution contains suitable provisions to protect and promote the respective sectoral interests of the employees.

27. This enquiry with regard to the application to register a proposed union is to be exercised reasonably and justifiable in a democratic society. In this case, these were the provisions as at the time the appellants applied for registration before the respondent on the 14th February 2010. On 25th March 2010, the respondent replied to the appellants acknowledging receipt of that their application for registration dated 20th December 2009 and that the same would be placed before the National Labour Board. The next communication from the respondent to the appellant was a notification of rejection of their application for registration. No reasons were given for this rejection.

28. These are processes that all took place early 2010 before the coming into force of the Constitution, 2010. The notification of refusal to register was issued on 30th August 2011. This was just over one year and 25 days after coming into force of the new Constitution. Under the new constitutional provisions, the responsibility cast on the respondent or the person exercising this power of registration of trade unions; was to ensure fair labour practices were the basis of any decision so made with regard to the functions of the office. as part of a government agency, the duty vested upon the respondent is to undertake reasonable measures that protects the rights of all persons within their administration. Further authority for this finding is to be found in **section 7(1) of the Sixth Schedule** to the Constitution which requires that all law existing prior to the effective date of the Constitution must be construed with the necessary **“alterations, adaptations, qualifications and exceptions to bring it into conformity with this Constitution.”**

Did the respondent then act reasonably and justifiably in a democratic society?

Was the rejection of the appellant application for registration reasonable?

Can this be justified in an open and democratic society?

Did the respondent violate Articles 36 and 41 of the Constitution?

29. The Registrar powers to register or refuse registration of a proposed union is as outlined under section 14 of the RLA. It is clear that, where the Registrar of Trade Unions acting in terms of his power under s 14, decides that he is not satisfied that the applicant union meets the requirements for registration, he is obliged to notify the applicant of this decision and must provide reasons for the decision. Further, he must provide notification by publication in a media that has wide circulation to enable any registered trade union with similar interest raise objection in which the applicant union has an opportunity to meet the statutory requirements for registration. In this case the Interested Party raised an objection noting that the proposed union interest was already covered under their constitution.

30. In this case the appellant submitted that they have a right to join and form a trade union of their own choice as they have constitutional protections under Article 36 and 41 of the Constitution and that ILO Convention 87 on the freedom of association safeguards against violation of the trade unions rights. These rights cannot be faulted. However, it must be appreciated that the duty vested upon the Registrar of Trade Unions is to ensure a balance between fragmentation, chaotic and proliferation of trade unions in the realisation of the rights as under Article 36 and 41 and nonetheless avoid trade unions duplication and industrial unrest. This is what was contemplated under ILO Convention 87 in seeking to protect the independence of trade unions and safeguarding the right of workers to create or belong to a trade union of their own choice.

31. The appellant submitted that;

the Interested Party has less than 18% membership in the floriculture industry and has no binding CBA to all employers and employees in the floriculture industry whereas in the export horticulture industry the Interested Party has 5% membership of employees and no CBA with any employer or employees.

32. However there is no scientific, factual or other support for the above assessment. The Interested Party has outlined the provisions of their constitution that outline that they cover;

General agriculture, including mixed farming, dairying and livestock rearing, cereals, vegetable, fruit growing nurseries and general agriculture processing factories.

Rice plantations and rice mills, cotton plantation and ginneries, co-operative societies of tea plantation and tea processing factories, coffee plantations, coffee processing factories and susal processing factories, flower plantations and pyrethrum growers....

All types of horticultural plantations and horticultural processing factories.

33. This was the enquiry supposed to be undertaken by the respondent and outlined in the notification of refusal of registration of the appellant. This should have formed the basis of the decision to reject or allow registration. Failure to give and or outline the reasons as to why the Registrar of Trade unions arrived at the decision to reject registration of the appellants application is contrary to the expectations placed on this office and thus can be termed as subjective viewed in the light of the provisions of Article 47 of the Constitution where an administrative action must be based on a sound finding of fact or law. That is what is fair and reasonable.

34. It is the finding of this court that the decision of the respondent in rejecting the application for registration of the appellant was largely based on the provisions as outlined in the repealed Constitution. Were this to be analysed based on the requirement to interpret the rights due to the appellants vis-à-vis the rights of the Interested Party, the limitations under article 24 of the Constitution do not apply with regard

to the appellants. Despite submission that the Interested Party covers the interest outlined by the appellant in the floriculture and horticulture industry, I find a fundamental difference between what comprise *plantations* and *agriculture* industries addressed by the Interested Party as against the *floriculture* and *horticulture* industries to be addressed by the appellants. even through there is no scientific or factual submission on the extent that the Interested Party has covered what they outline under their constitution as covering the *All types of horticultural plantations and horticultural processing factories*, the right to join and form a trade union of ones choice is protected for and of all employees in an open and democratic society. There is no fundamental justification as to why this right should be limited. This is in cognisance of the principles that there is freedom of choice where one can seek to join an association, organisation or union of one's choice; this is a personal choice that should not be interfered with and the right to organise once the choice is made must be secured. This is what is contemplated under Article 36 and 41 of the Constitution. Where there exists a genuine and legitimate need, a formation will arise. where the drive to form is based on self-interest, personal ambition that is illegitimate, the union will not form or will collapse as a pack of card or dominos.

35.This court appreciates that in a developing country with a dynamic and growing economy, there is growth not only of investors but also of the employees to attend to this dynamic economy and its needs. Agriculture has diversified into new horizons in the use of new technology, markets and specialisation based on diminishing agricultural land and thus investments going into irrigation farming, horticultural farming; thus the new floriculture industry. Many employees in the emerging sectors are not represented so as to enrich the new emerging sectors to enable them have bargaining units and viable organisational structures that go to the employee as the shop floor. This will also facilitate sectoral growth even where government policy does cluster horticulture and floriculture as part of the agricultural sector leaving out key aspects that require attention especially noting that in the floriculture industry it requires highly intensive form of agricultural methods that are mechanised and require modern technology. This is a reality that the law has largely not addressed and by not so doing the benchmarks are too low as they are the same as for general agriculture and thus by having this single focus, the worker in the floriculture and horticulture industries will have their realities addressed without driving the floriculture and horticulture investors out of business. The settling of new benchmarks for the floriculture and horticulture industry would not be in any way interfering with what is already applicable for the plantations and agriculture sector, quite to the contrary, there would be more enrichment to these sectors and the workers represented therein would have a more fuller representation.

36.This court finds that the refusal by the respondent to register the appellant is not justified or reasonable in the circumstances of this case as the interest to be addressed by the proposed Kenya Export Floriculture, Horticulture and Allied Workers' Union is clearly defined. The membership will be from the floriculture and horticulture sector and thus not interfering with the plantations and agricultural sectors represented by the Interested Party.

I therefore enter judgement in favour of the appellant in the following terms;

- a. **The decision of the Registrar of Trade Unions on 30th August 2011 is hereby reversed;**
- b. **The Kenya Export Floriculture, Horticulture and allied Workers' union is hereby registered as a trade union;**
- c. **The Registrar of Trade Unions [respondent] to immediately issue the appellant as in (ii) above with its registration certificate;**
- d. **Each party to bear their own costs.**

Dated and delivered at Nairobi this 11th Day of February, 2014

Monica Mbaru

Judge

In the presence of

Court Assistant:

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