

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. E1035 OF 2024

(Before Hon. Lady Justice Agnes Kitiku Nzei)

BANKING, INSURANCE AND FINANCE UNION ...CLAIMANT

VERSUS

NACICO CO-OPERATIVE SAVINGS AND

CREDIT SOCIETY LIMITEDRESPONDENT

JUDGMENT

1. The Claimant sued the Respondent herein vide a Statement of Claim dated 5th December, 2024 and pleaded:-

- (a) *that the Claimant and the Respondent have a valid Recognition Agreement signed on **5th April, 2007**, and subsequently negotiated and concluded Collective Bargaining Agreements (**CBAs**); and that the CBA that is the subject of review was effective from **1st September, 2018 to 30th August, 2022**.*

- (b) that on **16th June, 2022**, the Claimant forwarded to the Respondent a **CBA review proposal for the year 1st September, 2022 to 30th August, 2026**. That the Respondent acknowledged receipt of the proposal **and forwarded a counter-proposal on 25th October, 2022**.
- (c) that parties went for negotiations on **23rd and 24th February, 2023** and agreed on several issues, save for special duty allowance/responsibility allowance, redundancy and salary and wages.
- (d) that the Claimant reported a dispute to the Cabinet Secretary Ministry of Labour, and that a Conciliator was appointed vide a letter dated **15th March, 2023**. That parties met severally before the Conciliator and **reached agreement**, save for introduction of Salary Progression Guide (sliding scales).
- (e) that the Conciliator issued a certificate of unresolved dispute dated **24th January, 2024**, but the Respondent prevailed upon the Claimant **not to file suit in Court**, to allow for engagement with shop stewards in an effort to resolve the issue

of progression scales. **That parties reached a compromise after several meetings**, upon which the Claimant drafted and forwarded the CBA to the Respondent on **25th November, 2024** for signing. That the Respondent has never replied to the request.

(f) that the signing of the CBA will cushion workers from the effect of the rise in the cost of living (**i.e Housing Levy 1.5%, Social Health Insurance Fund (2.75%) and NSSF - based on gross salary**).

2. The Claimant prays that the Court issues an order **compelling and/or directing the Respondent to sign the Collective Bargaining Agreement with the Claimant Trade Union as negotiated and agreed by the parties, within 14 days from the date of delivery of Judgment**. The Claimant also seeks an order that the Respondent pays costs of the suit.

3. Documents filed alongside the Statement of Claim include a witness affidavit of the Claimant's Secretary General

(Joseph Lepapa Tipape) sworn on **5th December, 2024** and an evenly dated list of documents, listing 5 documents. The listed documents include the CBA **lapsing** on **30th August, 2022** and the certificate of unresolved dispute, among other documents.

4. The Respondent filed a Response to the Claimant's claim dated **29th January, 2025** and pleaded, *inter-alia*:-

(a) *that the reason why it refused to sign the CBA was due to the 15 years salary sliding scale guide as it concerned the viability of about 15 years salary guide, **while the CBA is for a period of 4 years.***

(b) *that the Respondent Sacco is already facing financial challenges due to non-remittance of members' check-offs and deductions from various employers.*

(c) *that the Respondent is already offering competitive salary with reasonable increments every year, and that the 15 years' salary scale guide is unreasonable, and agreeing to it will highly prejudice the Respondent Sacco.*

(d) that the Respondent will be highly prejudiced if it is forced to sign the CBA with the 15 years' salary progression guide as the Sacco is undergoing financial difficulties, and committing to a 15 years' salary guide while the CBA is for a period of 4 years raises some unrealistic financial implications for the Sacco.

5. The Respondent also filed a witness statement of **Samuel Kiiru Kihumba** (the Respondent's CEO) dated **29th January, 2025** and a (witness) affidavit sworn by the same person on **1st October, 2025** pursuant to this Court's directions given on **18th September, 2025** in that regard. The Claimant filed a further witness affidavit sworn by **Isaiah Munoru** on **22nd October, 2025**.

6. On **23rd October, 2025**, this Court directed that the suit be determined on the basis of the pleadings filed, affidavits and documents pursuant to **Rule 59 of the Employment and Labour Relations Court Procedure Rules (2024)**, and directed parties to file written submissions. Both parties have since filed written submissions.

7. Having considered the pleadings filed herein, witness affidavits and documents filed, as well as **submissions made orally by both parties during Court proceedings herein**, the single issue falling for determination is whether the orders sought by the Claimant can issue.
8. It was a common ground that the CBA signed by the parties herein on 7th September, 2018 lapsed and/or came to an end on 30th August, 2022. It came out clearly during the proceedings herein that the parties herein have since negotiated another CBA that was meant to cover the period from **1st September, 2022 to 31st August, 2026**, and have agreed on all the items covered in the CBA; and that both parties' signatories have since signed the same, save for **the Respondent's Chairman**, who has **refused to sign the CBA**. This position was confirmed by **the Respondent's Counsel in Court on 29th April, 2025 and 15th May, 2025 respectively**. Indeed, Counsel for the Respondent told the Court on **15th May, 2025 that the Respondent's Chairman had not given any reasons for refusing to sign the negotiated CBA**. This prompted the

Court to give an order **directing** the Respondent's Chairman to attend Court and to show cause why he could not sign the negotiated CBA.

9. The Respondent's Chairman, **Mr. Tom Seme**, attended Court **virtually on 24th July, 2025** and told the Court that parties were **yet to agree on the issue of salary arrears**, and requested that parties be granted 30 days to finalise on negotiations. The Claimant denied knowledge of any dispute over salary arrears; **insisting that the CBA had been concluded in April 2023**, and that **all** that remained was the Respondent's Chairman's signature. The Court granted the parties 30 days to complete the signing of the negotiated CBA, and fixed the matter for mention on **18th September, 2025**; on which date the Respondent said Chairman told the Court that parties had **not agreed on the issue of arrears that would fall due upon signing of the CBA**. That the Respondent's income had diminished, and it was in debt. **That the Respondent had given a proposal to clear the arrears within 12 months of signing the CBA, but the Claimant had declined. That**

parties had also not agreed on the commencement date of the negotiated CBA.

10. It is clear from the forgoing that **basically**, what is in dispute is **the effective date of the CBA negotiated after the lapse on 30th August, 2022 of the previous CBA signed by the parties herein on 7th September, 2018 and which, according to its terms, remains in force until a subsequent CBA is negotiated and finalized.** The Claimant maintains that the effective date ought to be **1st September, 2022**, and at the same time states that negotiations on the new CBA were concluded in **April 2023**. On its part, the Respondent maintains that **negotiations on the new CBA were concluded in 2024, and proposes that the effective date be 1st September, 2024.** That if **1st September, 2022** is taken as the effective date, the Respondent will **not** be able to pay the arrears arising due to retrospective application of the CBA.

11. It is to be appreciated that Collective Bargaining Agreements are **agreements between the parties thereto, and are therefore products of negotiations between such**

parties. This Court will, therefore, be guided by the proposals put forward by the parties herein regarding the outstanding issues. It was a common ground that parties went into negotiations **after** the expiry of the previous CBA on 30th August, 2022. Those negotiations, according to the Respondent, were concluded **in 2024**. According to the Claimant, they were concluded in **April 2023**. **Section 59(5) of the Labour Relations Act** provides as follows:-

“(5) A collective agreement becomes enforceable and shall be implemented upon registration by the Employment and Labour Relations Court and shall be effective from the date agreed upon by the parties.”

12. The Court **cannot** compel the employer (the Respondent) to sign a backdated CBA as it will be the employer to shoulder the resulting financial consequences in retrospect. I accept the effective date proposed by the Respondent, **being 1st September, 2024**.

13. The Court of Appeal stated as follows in the case of **Teachers Service Commission (TSC) - vs - Kenya Union of Teachers (KNUT) & Others [2015] eKLR:-**

“. . . The Constitution in Article 41(5) recognizes the right to engage in collective bargaining. The right is founded on the concept of social dialogue, freedom of dialogue and autonomy of parties in collective bargaining. Article 41(5) recognizes that collective bargaining is the preferred method of determining terms and conditions of employment. The Article emphasizes the ability of the employer and trade unions to operate as partners rather than adversaries.”

14. As partners rather than adversaries, employers and trade unions should **always** take advantage of their constitutionally created partnership and seek to resolve issues arising between them through negotiations, and within reasonable time frames. That way, unnecessary litigation costs will be avoided; and **time**, which is a precious resource in the employment and labour space, **will be**

gainfully utilized. I say this because I have noted that **had** parties agreed on the effective date, the CBA in issue would have been signed long time ago, and without having to result to litigation. Employers and Trade Unions should **always consider ceding some ground, in the interest of negotiations, when that becomes necessary.**

15. In the upshot, and having considered submissions filed on behalf of both parties, judgment is hereby entered for the Claimant against the Respondent as follows:-

(a) The already negotiated Collective Bargaining Agreement shall be signed by both parties herein within thirty (30) days of today, and the effective date thereof shall be 1st September, 2024.

(b) The Respondent shall, within 14 days of the signing of the CBA, submit the signed Collective Bargaining Agreement to the Employment and Labour Relations Court for registration in accordance with Section 60 of the Labour Relations Act.

(c) Each party shall bear its own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
17TH DAY OF APRIL 2026**

AGNES KITIKU NZEI

JUDGE

ORDER

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Munoru for the Claimant

Miss Wambui for the Respondent