



Kenya Union of Commercial Food and Allied Workers v Banking Insurance & Finance Union & another (Cause E686 of 2022) [2025] KEELRC 728 (KLR) (6 March 2025) (Ruling)

Neutral citation: [2025] KEELRC 728 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E686 OF 2022
MA ONYANGO, J
MARCH 6, 2025**

BETWEEN

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS CLAIMANT

AND

**BANKING INSURANCE & FINANCE UNION 1ST RESPONDENT
MWALIMU NAIONAL SAVINGS AND CREDIT CO-OPERATIVE SOCIETY
IMITED 2ND RESPONDENT**

RULING

1. The Claimant is a trade union registered under the [Labour Relations Act](#) to represent employees in commercial and food sector as more specifically set out in its constitution registered with the Registrar of Trade Unions.
2. The 1st Respondent is also a trade union registered under the [Labour Relations Act](#) to represent employees in banks and other financial institutions as set out in its registered constitution.
3. The 2nd Respondent is a savings and credit cooperative society registered under the Cooperative [Societies Act](#) with membership drawn mainly from teachers within Kenya.
4. On 21st September, 2023 I delivered judgment in this suit in which I made the following orders:
 - i. That the recognition agreement between the Claimant and the 2nd Respondent is valid and substituting;
 - ii. That the recognition agreement dated 13th August 2022 between the 1st and 2nd Respondents is null and void;



- iii. The 2nd Respondent is directed to immediately commence the deduction and remittance of union dues to the Claimant;
 - iv. Consequently, cause No. E599 OF 2022 filed by the 1st Respondent herein Banking Insurance Finance Union against the 2nd Respondent Mwalimu National Sacco Society Ltd is terminated as the substratum upon which the claim is anchored is non-existent;
 - v. Cause No. E840 OF 2022 between the Claimant herein and the 2nd Respondent herein shall proceed to conclusion. In view of the fact that no negotiations were held in respect of the CBA that is the subject matter of the said claim, parties are directed to meet and negotiate within the next 60 days to narrow down the issues in dispute. A date for mention of the same for the parties to report on outcome of the negotiations will be taken at the time of delivery of this judgment.
5. Following delivery of judgment, the 1st Respondent filed an application dated 4th October 2023 in which it sought the following orders:
- a. That the Honourable Court be pleased to certify this Application as being urgent and same be heard ex-parte in the 1st instance and service be dispensed with.
 - b. That pending the inter partes hearing of this Application, an order be and is hereby issued staying the execution of the judgment herein delivered on 21st September, 2023 by the Honourable Lady Justice Maureen Onyango.
 - c. That pending the hearing and determination of this Application and the Appeal, an order be and is hereby issued staying the execution of the judgment herein delivered on 21st September, 2023 by the Honourable Lady Justice Maureen Onyango.
 - d. That this Honourable Court do award costs in favour of the Applicants as foresaid.
6. The application was fixed for inter partes hearing on 31st October, 2023. No interim orders were granted.
7. Vide another application dated 14th November, 2023, the 1st Respondent sought the following orders:
- a. The judgement in this matter was delivered on 21st September, 2023 and orders highly detrimental to the 1st Respondent/Applicant issued without being heard on merit of the Statement of Claim dated 26th September, 2022 or Notice of Motion Application dated 26th September, 2022 or the Preliminary Objection dated 29th September, 2022.
 - b. The 1st Respondent/Applicant being aggrieved by the whole decision of the Honourable Court's judgement has preferred or lodged an Appeal at the Court of Appeal.
 - c. There is eminent threat of execution by the Claimant/Respondent against the 2nd Respondent which will directly affect the 1st Respondent/Applicant's members.
8. Upon considering the application ex-parte I noted that the prayers were similar to those in the application dated 4th October, 2023 and struck out the application on grounds that it was an abuse of court process.
9. On 4th December, 2023 when parties appeared before me for directions on the application dated 4th October, 2023 Mr. Munoru for the 1st Respondent sought certain orders of stay pending the determination of the application and after hearing both Mr. Munoru and Mr. Atela appearing for the Claimant, I made orders staying order (iii) of the Judgment in respect of employees who are not



members of the Claimant. I however clarified that subscriptions in respect of members of the Claimant to continue being remitted to the Claimant and subscriptions in respect of employees who are not members of the Claimant and had signed check-off in favour of the 1st Respondent to continue being deducted and remitted to the 1st Claimant pending determination of the application.

10. Vide an application dated 11th December, 2023 the Claimant seeks the following orders:
 - a. This Application be certified urgent and heard *ex parte* in the first instance.
 - b. This Honourable Court be pleased to issue an order setting aside the order issued on 4th December, 2023 and dated 6th December, pending the inter-parties hearing of this Application.
 - c. This Honourable Court be pleased to issue an order of stay of execution of the order issued on 4th December, 2023 and dated 6th December, 2023 pending the hearing and determination of this application.
 - d. This Honourable Court be pleased to issue an order vacating the order issued on 4th December, 2023 and dated 6th December, 2023.
 - e. Costs of this Application be awarded to the Claimant/Application.
11. By another application dated 2nd February, 2024 the Claimant seeks the following orders:
 - a. This Application be certified urgent, service thereof be dispensed with and the same be heard *ex parte* in the first instance.
 - b. An order be and is hereby issued expunging the new, fresh or additional evidence being introduced by the 1st Respondent through their Replying Affidavit sworn and dated 22nd January, 2024.
 - c. Costs of this Application be awarded to the Claimant/Applicant
12. The 1st Respondent replied to the same application vide the replying affidavit of Joseph Lepapa Tipape sworn on 29th February, 2024.
13. There are several replying affidavits and submissions on record in respect of all the applications herein which I have considered. The issues arising from the applications are the following:
 - a. Whether the prayers in application dated 4th October, 2023 should be granted
 - b. Whether the prayers in application dated 14th November, 2023 should be granted
 - c. Whether the prayers in application dated 11th December, 2023 should be granted
 - d. Whether the prayers in application dated 2nd February, 2024 should be granted.
14. In the application dated 4th October, 2023 the Applicant who is the 1st Respondent in this suit seeks stay of execution of the judgment herein pending appeal. As indicated at paragraph 5 above the judgment declared the recognition agreement between the 1st and 2nd Respondents null and void. As a consequence of nullifying the recognition agreement the suit filed by the 1st Respondent against the 2nd Respondent which was derived from the recognition agreement also became a nullity hence the order number (iv) terminating the suit.
15. Cause No. E840 relates to CBA between the Claimant and 2nd Respondent herein which had stalled due to the disagreement over which of the two unions had the right to negotiate with the 2nd Respondent.



16. As held in the judgment, an employer who has a recognition agreement with one trade union cannot purport to enter into a second recognition agreement with another trade union to cover the same employees when the first recognition agreement is still valid and in force.
17. The implication of granting a stay of the judgment herein as prayed by the 1st Respondent is that there will be two trade unions fighting over representation of the 2nd Respondent's employees which is detrimental to peaceful industrial relations and to the interests of the employees of the 2nd Respondent. The situation led to the two unions filing disputes against the 2nd Respondent and the stalling of negotiations for the CBA between the Claimant and 2nd Respondent. The consequence is that the terms and conditions of service of the staff of the 2nd Respondent on whose interests the two unions should be championing have not been reviewed since the disputes arose.
18. It would also mean that the 2nd Respondent would have to defend two suits in respect of negotiation of CBA for its employees.
19. The consequences of granting the orders sought would be to take the parties back to the undesirable situation subsisting at the time of filing the suit herein.
20. The Applicant did not substantiate the substantial loss it is likely to suffer if the orders sought are not granted. I am not persuaded that the orders sought are merited.
21. The second applications dated 14th November, and 11th December, 2023 and the application dated 2nd February, 2024 are redundant and unnecessary as they were filed in reaction to orders given in the application dated 4th October, 2023 in the interim pending determination of the same. The said applications seek to address issues that arose out of or as a consequence of the application dated 4th October, 2023.
22. Having found the application dated 4th October, 2023 to be without merit, the applications dated 11th December, 2023 and 2nd February, 2024 have been rendered redundant.
23. For the foregoing reasons, the application dated 4th October, 2023 is dismissed.
24. The applications dated 14th November, 2023, 11th December, 2023 and 2nd February, 2024 are declared redundant.
25. Each party shall bear its costs in the applications.

DATED AND DELIVERED VIRTUALLY IN ELDORET THIS 6TH DAY OF MARCH 2025

MAUREEN ONYANGO

JUDGE

