



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 1643 OF 2017**

**SANERGY LIMITED.....CLAIMANT**

**v**

**KENYA UNION OF COMMERCIAL FOOD AND**

**ALLIED WORKERS (KUCFAW).....RESPONDENT**

**RULING**

1. For determination is an application dated 9 April 2018 by Sanergy Ltd (applicant) seeking orders

1. **THAT** this Honourable Court be pleased to review and set aside the Order of 17<sup>th</sup> October 2017 by Hon, Justice Nzioki wa Makau.

2. **THAT** this Honourable Court be pleased to allow the Claimant's application dated 21<sup>st</sup> August 2018. (sic)

3. **THAT** the costs of this application be provided for.

2. The background to the application is that the applicant had moved Court on 23 August 2017 seeking an order revoking the recognition agreement it had entered into with the Kenya Union of Commercial, Food & Allied Workers (Union) on 17 May 2016.

3. Filed together with the Memorandum of Claim was a motion under certificate of urgency seeking orders staying all pending conciliation processes between the applicant and the Union.

4. In a ruling delivered on 17 October 2017, the Court declined to grant the stay of conciliation processes which were ongoing between the parties.

5. In the said ruling, the Court referred the parties to go for conciliation on the recognition dispute.

6. In seeking reviewing and setting aside, the applicant contends that there was an error apparent on the face of the record (by Court directing the parties to go for conciliation of a dispute concerning revocation of a recognition agreement instead of channelling the dispute through the National Labour Board and by ignoring to consider the import of section 54(5) of the Labour Relations Act).

7. It was also contended that the interests of justice tilted in allowing the review/setting aside application.

8. In opposing the application, the Union asserted that the applicant had not pointed out any error on the face of the record and that the applicant should have approached the National Labour Board as the entity with jurisdiction over revocation of recognition agreements at the first instance.

9. The Court has considered the arguments advanced by the parties and come to the conclusion that what the applicant posits is an error on the face of the record is not an error, but an interpretation of the law made by the Court which considered the initial application.

10. In the view of the Court, what it is now being asked to review is tantamount to asking it to substitute its view/interpretation of the aforementioned sections of the law with those of the Court which determined the application.

11. The point, in the view of the Court should be canvassed on an appropriate appeal.

12. What the applicant is raising is in the nature of perceived misapprehension of the law on the part of the Court.

13. The Court also notes that the forum of first instance, the National Labour Board is currently seized of the dispute regarding the recognition agreement and it should be left to exercise its mandate.
14. Any delays on the part of the National Labour Board are not under consideration herein as the Board is not a party to these proceedings.
15. The Court finds no merit in the application dated 9 April 2018 and orders that it be dismissed with costs to the Respondent.

**Delivered, dated and signed in Nairobi on this 6<sup>th</sup> day of July 2018.**

**RADIDO STEPHEN**

**Judge**

**Appearances**

For applicant Ms. Kogai instructed by Anne Babu & Co. Advocates

For Respondent Mr. Nyumba, Industrial Relations Officer, Kenya Union of Commercial Food & Allied Workers

Court Assistant Lindsey