



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

CAUSE NO. 58 OF 2013

(Formerly Cause No. 722 of 2011 at Nairobi)

BANKING, INSURANCE AND FINANCE UNION (KENYA)..... CLAIMANT

VERSUS

TAIFA SACCO SOCIETY LTD..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 19th June, 2015)

RULING

The court delivered the judgment in this suit on 25.09.2014, thus, “ **The court therefore orders that the parties refer the issue of recognition to the National Labour Board for determination as required by Section 54(5) of the Labour Relations Act within 60 days from the date hereof. Either party be at liberty to apply for any facilitative or consequential orders.**”

The claimant filed a notice of motion on 07.04.2015 consequential to the order that parties were at liberty to apply as ordered in the judgment. The claimant prayed for orders:

1. That the respondent has not complied with the judgment of the court delivered on 25.09.2014 as no application on the issue of termination or revocation of the agreement has been made to the National Labour Board as per section 54(5) of the Labour Relations Act within sixty (60) days from the date of judgment.
2. That the respondent to sign the negotiated and agreed collective bargaining agreement on 22.08.2011 and confirmed by the Advocate or representative of the respondent in court on 12th April 2012 forthwith.
3. That the court may make other orders deemed fit.
4. That the court to award costs in favour of the claimant as foresaid.

It was submitted for the claimant that section 54(5) of the Labour Relations Act provides that an employer, group of employers or employers’ association may apply to the Board to terminate or revoke a recognition agreement. The respondent had failed to make such application as ordered by the court in the judgment and the claimant therefore submitted that there being a subsisting recognition agreement, parties were bound to conclude a collective agreement.

The respondent filed the grounds of opposition on 21.04.2013. It was submitted for the respondent that the parties and not the respondent was required to refer the dispute to the Board.

The court has considered the issues in dispute and makes findings as follows:

1. Revocation or termination of a recognition agreement by the Board under section 54(5) of the Labour Relations Act can only be at the instance of the respondent as the employer. The court finds that the respondent failed to initiate such revocation or termination of the recognition agreement within the time as ordered in the judgment.
2. There is no dispute that the parties signed a recognition agreement on 14.02.2004.
3. The court record shows that on 12.04.2012 counsel for the respondent informed the court that parties had concluded the recognition agreement and the parties would require 90 days to process the CBA. No concluded collective agreement has been exhibited to the court.
4. The court has considered section 57(1) of the Labour Relations Act which requires parties and particularly the respondent to conclude a collective agreement in view of the recognition agreement between the parties.

In conclusion, the court determines the application filed for the claimant on 07.04.2015 with orders as follows:

1. Parties shall negotiate and conclude a collective agreement by filing the same in court by 1.10.2015.
2. The persons discharging the duties as the respondent's chief executive officer and chairperson shall be responsible on the part of the respondent for full realization of order 1 above.
3. The respondent shall pay the claimant's costs of the application.

Signed, dated and delivered in court at Nyeri this Friday, 19th June, 2015.

BYRAM ONGAYA

JUDGE