



**IN THE INDUSTRIAL COURT OF KENYA**  
**AT NAIROBI.**

**(Coram: Charles P. Chemmutut, J.,**

**J.B. Ongaro & P.M. Osero, Members.)**

**CAUSE NO. 5 OF 2004.**

**KENYA UNION OF PRINTING, PUBLISHING, PAPER**

**MANUFACTURERS & ALLIED WORKERS .....Claimants.**

**.v.**

**NEW WORLD PRINTERS LTD. ....Respondents.**

**Issue in Dispute:-**

**“Refusal and failure to sign Recognition Agreement”.**

**Isaac Wamboye, Deputy General Secretary, for the Claimants (hereinafter called the Union).**

**M. Onyango (Mrs.), Executive Officer, F.K.E., for the Respondents (hereinafter called the Company).**

**AWARD.**

On 16<sup>th</sup> December, 2003, the Minister for Labour referred this dispute to the Court for consideration and determination under powers vested in him by Section 8 of the Trade Disputes Act, Cap. 234, Laws of Kenya (which is hereinafter referred to as the Act). The reference, together with the statutory certificate from the Labour Commissioner and the Minister himself under Section 14(9)(e) and (f) of the Act, were received by the Court on 12<sup>th</sup> January, 2004. The dispute was then listed for mention on 22<sup>nd</sup> January, 2004, when Messrs. Isaac Wamboye and Alex Icharia, who appeared for the parties respectively, were directed to submit or file their respective memoranda or statements on or before 23<sup>rd</sup> February and 23<sup>rd</sup> March, 2004, and the dispute was fixed for hearing on 4<sup>th</sup> May, 2004. The Union submitted its memorandum on 19<sup>th</sup> February, 2004 and the Company filed its reply statement thereto on 28<sup>th</sup> April 2004, and the case was heard as aforesaid.

According to Mr. Wamboye for the Union, the Company, which commenced its operations in 1980, is a printer of general commercial, educational and business books, including magazines and stationery; and by virtue of the nature of its business, the Union is the rightful or appropriate union to represent the unionisable employees of the Company and that there is no any other rival union claiming representation of such employees. He submitted that on 11<sup>th</sup> February, 1997, the Union forwarded a check-off form to the Managing Director of the Company, duly filled and signed by the unionisable employees, authorizing him to effect union deductions. On the following day, i.e. 12<sup>th</sup> February, 1997, the Union also forwarded a memorandum of recognition agreement to the Managing Director for signature, but he neither signed the recognition agreement nor implemented the check-off. Mr. Wamboye went on to submit that on 4<sup>th</sup> March, 2002, the Union forwarded another check-off form to the Managing Director of the Company but he persisted in his refusal to implement the same (see Union Anns. 1 to 7). He pointed out that despite having recruited more than a simple majority, i.e. 99% of the total labour force as members of the Union and also holding a series of meetings with the management of the Company to resolve the matter, the Company declined to recognise the Union.

Therefore, on 24<sup>th</sup> March, 1998 the Union reported a formal trade dispute to the Minister for Labour in accordance with

Section 4 of the Act. The Minister accepted the dispute and appointed Miss M.W. Kahuthia of Nyayo House Labour Office, Nairobi, to act as the Investigator; and his investigation report, which was released to the parties on 28<sup>th</sup> May, 2003, the Minister found and recommended as follows:-

### **“FINDINGS.**

..... it is not in dispute the First World Printers Ltd. is involved in Printing Business, and that KUPRIPUPA is the right Union to represent the workers in the Industry.

..... that a check-off list was sent to the Management duly signed by the employees (and).... that a series of meetings took place between the management and the Union to discuss the issue of recognition.

..... that for some unknown reasons employees who had joined the union wrote letters indicating they had withdrawn from the Union. A fundamental question remains unanswered as to why the said workers wrote the letters one year down the line after the check-off had been presented to the Management and a series of meetings having taken place.

..... it is clear that the withdrawal was initiated by the management to frustrate the Union's efforts to seek recognition as the action does not seem to reflect the feelings of the workers.

Finally, .... that KUPRIPUPA is the right Union to represent employees in this industry, there is no rival Union claiming recognition and the Union has enlisted a simple majority.

### **RECOMMENDATION.**

.... I recommend that the Management accord the Union recognition.”

The Minister finally appealed to the parties to accept the recommendation as a basis of settlement of this dispute. The Union accepted the recommendation but the Company rejected it on the ground that the Union did not achieve simple majority of the unionisable employees for purposes of recognition. Hence this dispute for consideration and determination (see Union Anns. 8-14).

In conclusion, Mr. Wamboye maintained that the Union still commands more than a simple majority membership of the unionisable employees of the Company. Accordingly, he prayed that the Company be ordered to accord formal recognition to the Union.

In reply, Mrs. Onyango for the Company admittedly averred that the Company, which is a limited liability concern incorporated in Kenya and whose main activity is general commercial printing, was first approached for recognition by the Union in February, 1997. But when the management of the Company sought confirmation from the employees, they all denied having registered as members of the Union, and they subsequently confirmed their denials in writing (see Company App. I.). On 27<sup>th</sup> January 1998, the employees also wrote to the Union denying that they ever signed any check-off forms (see Company App. 2). In the circumstances, the Company was unable to effect the check-off or sign a recognition agreement with the Union.

Mrs. Onyango pointed out that the check-off form which was signed by the employees in February 2002 was belated and irrelevant as it was signed long after this dispute was reported. In any case, the Company never received the said check-off form. She vehemently denied that the management of the Company threatened the employees with dismissal on the ground of union membership.

In the circumstances, Mrs. Onyango prayed that the demand for recognition by the Union be rejected for lack of a simple majority of the unionisable employees as members of the Union.

The conditions precedent for recognition of a union by an employer under Section 5(2) of the Act are:-

(i) that the trade union has in its membership a simple majority of the employees eligible by virtue of its constitution to join that particular union in a particular undertaking or a group of undertakings, and

(ii) that there is no rival union claiming to represent such employees.

These requirements enjoin an employer or a group of employers to recognise a union according to the criteria laid down thereunder – i.e. (i) that a union which recruits a simple majority of the employees in an establishment or a group of

establishments and (ii) that there is no rival union claiming recognition or representation, ought to be accorded recognition by the employer or employers. In this case, it has not been denied by the Company that the Union is the right or appropriate one to represent its unionisable employees, and that there is no rival union claiming recognition or representation of the Company's unionisable employees. But Mrs. Onyango asserted that at no time, either in 1997 or thereafter, did the Union attain or secure a simple majority, or 51%, of the unionisable employees as its members for purposes of recognition by the Company.

On careful perusal of the parties' submissions and the annexures, I find that the Union has a strong case for recognition by the Company. In my view, it is unbelievable that the employees, who had joined the Union as members, were to withdraw from the Union one year later on the ground that their signatures were forged. I have no doubt in my mind that the Company engaged, through threats, coercion, intimidation and even victimization, in dissuading its employees from joining the Union, and also frustrated efforts by the Union to recruit its members. Hence, the withdrawals. In the circumstances, I find no force in the Company's contention that the Union did not recruit a simple majority of unionisable employees as its members for purposes of recognition.

In the result, and on the balance of probabilities, I am satisfied that the Union has fulfilled the requirements under Section 5(2) of the Act for recognition by the Company. Accordingly, I uphold the Minister's findings and recommendation, and award that the Company accord formal recognition to the Union and sign a recognition agreement with it (Union) within **two (2) months** from the date of this award.

Both members who constituted the coram with me in this case are in full agreement with this decision.

**DATED** and delivered at Nairobi this 24<sup>th</sup> day of January, 2006.

Charles P. Chemmutut MBS.  
**JUDGE.**

A.B. Ongaro,  
**MEMBER**

P.M. Osero,  
**MEMBER**