IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI.

(Before: Charles P. Chemmuttut, J., H.B.N. Gicheru & A.K. Kerich, Members.)

CAUSE NO.80 OF 2000.

KENYA BUILDING, CONSTRUCTION, TIMBER, FURNITURE &

ALLIED INDUSTRIES EMPLOYEES' UNION..................................Claimants.

- v -

SAT JOINTERS LTD..Respondents.

Issue in Dispute:-

"Recognition".

W.D. Wambua for the Claimants (hereinafter called the Union).

J.D. Wakiaga, Advocate, of Wakiaga & Co., Advocates, for the Respondents (hereinafter called the Company).

A W A R D.

This dispute was referred to the Court for consideration and determination by the Minister for Labour on 19th July, 2000, 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 Minister's reference, together with the statutory certificate from the Labour Commissioner under Section 14(9) (e) of the Act, were received by the Court on 21st July, 2000. The Union submitted their written memorandum on 4th September, 2000, and the Company filed their reply statement on 13th September, 2000. The dispute was heard on 5th April, 2001.

The Company are a limited liability concern, dealing mainly with the manufacture of sewing machines, furniture stands, cabinets and all types of joinery works, and the Union are seeking recognition from them on the following grounds:-
(i) that in 1999 they recruited majority of the unionisable employees of the Company as their members;
(ii) that there is no rival trade union claiming representation or recognition, and
(iii) that they are the sole and appropriate Union to represent the employees of the Company as it was constitutionally their (employees') right to join a trade union of their own choice.

Mr. Wakiaga, the learned counsel for the Company denied that the Union was the relevant one to represent the employees in the establishment in view of the fact that they were an engineering-oriented industry; and in the circumstances, the Company refused to accord recognition to the Union for the following reasons:-

(a) that the Union have at no time recruited a simple majority of the employees as their members;
(b) that the Union have from time to time only recruited the Company's casual employees;
(c) that all the unionisable employees have refused to join the Union because they were satisfied with their terms and conditions of service and did not need any union to represent them, and
(d) that the Union have never served or furnished the Company with a check-off list containing particulars of the employees' membership.

Mr. Wambua stated that after fulfilling the aforestated conditions, the Union approached the Company for recognition but the latter declined to
accord them recognition. Consequently, 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 Mr. J.N. Ndiho of Ministry of Labour Headquarters to act as the Investigator. On 3rd December, 1999, the Minister released to the parties the following findings and recommendation:-

"FINDINGS.

The management failed to submit a written memorandum but they submitted verbally to the investigator who visited them twice. The (Company) operates as a furniture making industry which the (Union) is the properly constituted union that can represent the industrial interest of the employee.

…………the management have got a total labour force of 33 employees and 30 casual/contract employees. Five (5) of the permanent employees are in managerial category leaving out 28 as unionisable employees…….. on unspecified date, the union recruited 38 employees, 14 of them being casuals. It is evident that out of the total unionisable labour force of 28 permanent unionisable employees, the union had recruited 24 of them which represents 86% of the total membership.

Finally,……….. there is no rival union which is claiming to represent the same employees.

RECOMMENDATION.

……………..I recommend that the claimants should be accorded formal recognition to pave way for collective bargaining agreement".

The Minister finally appealed to the parties to accept the recommendation as a basis of settlement of the dispute. The Union accepted the recommendation, but the Company rejected it as misleading and improperly obtained. Hence this dispute for consideration and determination (see Union Apps.1, 2 and 3).

In the circumstance, Mr. Wambua prayed that the Company accord formal recognition the Union.

In a nutshell, Mr. Wakiaga vehemently opposed the demand mainly on the grounds that all the unionisable employees of the Company, except nine (9) of them, have denied being members of the Union; that on perusal of the check-off list, the Company found that most of the signatures were either forged or obtained by fraud; that some of the employees have since withdrawn their membership from the Union, and that currently the Company have only 60 employees, inclusive of casuals and contractors, and none has any intention to join the Union.

Accordingly, Mr. Wakiaga prayed that the demand for recognition by the Union be rejected as untrue, baseless, frivolous and vexations.

This matter was fully investigated and the findings were (i) that the Union had recruited 24 out of 28, or 86%, unionisable employees of the Company as their members, (ii) that they were the sole and appropriate Union to represent the employees of the Company, and (iii) that there was no rival union claiming representation or recognition. I have, therefore, no doubt in my mind that in 1999, which was the relevant period for recognition, the Union fulfilled the conditions precedent for recognition of a union by an employer under Section 5(2) of the Act, which are:-
(a) that the trade union has in its membership a simple majority of employees eligible by virtue of the union's constitution to join that particular union in a particular undertaking, or a group of undertakings, and
(b) that there is no rival union claiming to represent such employees.

Therefore, I find no force in the contention by the Company to the contrary for, in my view, it amounts to an afterthought to deny the Union recognition.

In the result, I am satisfied that the Union have fulfilled the requirements under Section 5(2) of the Act for recognition. Under the circumstance, I uphold the Minister's findings and recommendation, and award that the Company accord formal recognition to the Union, and the parties must sign a recognition agreement *within two (2) months* from the date of this award.

Both members of the Court concur with this decision.

DATED and delivered at Nairobi this 18th day of March, 2003.

Charles P. Chemmuttut,

JUDGE.