IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI.

(Coram: Charles P. Chemmuttut, J.,

A.K. Kerich & S.M. Maithya, Members.)

CAUSE NO.8 OF 2000.

TAILORS & TEXTILES WORKERS' UNION.....Claimants.

- v -

NYANZA SPINNING & WEAVING MILLS LTD.....Respondents.

Issue in Dispute:

"Refusal by the employer to recognise the Union".

Jumba Odondi, Industrial Relations Officer, for the Claimants (hereinafter called the Union).

R.M. Muthanga, Executive Officer, F.K.E., 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 17th January, 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), consequent upon a refusal by the Company to accord formal recognition to the Union. 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 18th January, 2000 and the dispute was listed for a mention on 9th February, 2000. On this occasion, Messrs. Odondi and Muthanga, who appeared for the parties respectively, were directed to submit or file their respective memoranda or statements on or before 2nd March and 5th April, 2000, and the dispute was fixed for hearing on 27th April, 2000. The Union belatedly submitted its memorandum on 2nd April, 2000; and in the circumstances, the Company was unable to file its reply statement as directed. On 27th April, 2000, the case was rescheduled for hearing on 19th July, 2000, and the Company was granted an opportunity to file its reply statement on or before 15th May, 2000, which it belatedly did on 8th June, 2000. The Union submitted a supplementary memorandum on 18th July, 2000. The dispute was heard as aforestated, i.e. on 19th July, 2000, but suffered some adjournments thereafter until 31st January, 2001, when the parties made their final submissions.

The Company, which was previously a Government parastatal, known as Mountex, is a textile manufacturing establishment or industry, situated in Nanyuki Municipality in Laikipia District, and it mainly produces Kanga ("leso") and bedsheets. It is stated that before being taken over by the present management of the Company, the said parastatal had been placed under receivership on three occasions due to its inability to meet its financial obligations to its creditors; but after taking over the mill

from the receivers, the Company started with a small labour force and managed to build it up to 530 employees before the strike of 1st March, 1999.

Mr. Odondi submitted that in 1998 the Union recruited 400 out of 530, or 75%, employees of the Company as members and approached the latter for recognition; but after some protracted and abortive meetings and negotiations the Company declined to either accord the Union recognition or effect a check-off on the ground that the signatures on the check-off forms were not genuine or valid. On 20th August, 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 Mr. P.G. Gichuhi of Nanyuki Labour Office to act as the Investigator. On 21st October, 1999, the Minister released to the parties the following findings and recommendation:-

"FINDINGS.

……that between 1st August, 1998 to 1st March, 1999 a total of 427 out of 530 unionisable employees had joined the union and that the union was aggressively seeking for recognition from the Company. On 1st March, 1999, all unionisable employees went on strike for various reasons one of them being the management's failure to recognise the Union. As a result the employer dismissed them with effect from the date of the strike.

……that the union embarked on a serious recruitment of the new employees employed by the management throughout March and April, 1999. As a result, they recruited 317 out of 430 employees. This figure represents 73.7% of the total unionisable employees. In this event, the union has already acquired the necessary simple majority of over 51% in their membership and as such they should be accorded recognition.

RECOMMENDATION.

…….I recommend that the union should be accorded recognition by the company as they have met the necessary statutory condition for recognition".

The Minister finally appealed to the parties to accept the recommendation as a basis of settlement of the matter. The Union accepted the recommendation, but the Company rejected it as incorrect and misleading. Hence this dispute for consideration and determination (see Union Apps. A to P).

Mr. Odondi submitted further that the Union had satisfied the requirements of Section 5(2) of the Act before approaching the Company for recognition, but the latter became extremely hostile and unco-operative; and in the circumstances, dismissed the employees because of their union membership and involvement. He went on to contend that the Company's recalcitrant and obstructive attitude frustrated the employees so much that they resorted to a wildcat strike on 1st March, 1999, but the Company could not countenance such an action and dismissed them en masse.

In conclusion, Mr. Odondi submitted that the Union still maintains more than a simple majority membership of the unionisable employees of the Company, who pay their union dues directly every month. Accordingly, he prayed that the Company accord formal recognition to the Union.

In his submission, Mr. Muthanga strenuously resisted the demand mainly on the grounds that at no time in 1998 or thereafter did the Union approach the Company for recognition or furnished it with check-off forms of the names of the employees who had joined the Union; that the Company could not effect deductions of trade union dues because no check-off forms had been submitted to it, authorising the deductions; that after perusing the list, the Company found that many signatures were false or faked, some names were repeated, other names were not employees of the Company, while majority of them were casuals, and that the Union has never secured or achieved a simple majority of the employees to warrant recognition. He, therefore, maintained that the Union has failed to prove that the check-off forms were served upon the Company; that it (Union) has in its membership a simple majority of the unionisable employees or any members at all, and that the Union's attempt to introduce a list of purported members is unacceptable and uncalled for.

In the circumstances, Mr. Muthanga prayed that the demand be rejected.

This is a demand by the Union under Section 5(2) of the Act, requesting the Court to direct the Company to grant recognition

to it. Under

Section 5(2) of the Act, the conditions precedent for recognition of a union by an employer 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.

The above requirements enjoin the employer to recognise a union according to the criteria laid down thereunder. In broad terms, the criteria require that (i) a union which covers a simple majority of the employees in an establishment or a group of establishments and (ii) there is no rival union claiming recognition or representation ought to be accorded recognition by the employer or employers – i.e. the taking of the employer of all such actions with a view to the carrying on of relevant negotiations with the trade union as might reasonably be expected to be taken by him or them.

In this case, it has not been denied by the Company that the Union is the appropriate one to represent its employees, and that there is no any other rival union claiming recognition or representation from the Company. However, the Company insisted that at no time in 1998 or thereafter did the Union approach it for recognition, or furnished it with check-off forms to effect deduction of union dues. But the Minister's findings are to the contrary. In fact, in its submission to the Investigator, the Company was interested with a fresh check-off list of the employees who joined the Union with effect from 1st March 1999, but not for the year 1998, which was the relevant period for recognition. In my view, therefore, I find no force in their contention that the Union did not serve them with check-off forms in 1998 or thereafter, or that it (Union) had not recruited a simple majority of the unionisable employees as its members. This is an afterthought. As regards the alleged irregularities, it is very clear that the same, if any, fell outside the period for recognition under consideration, and no weight can be attached to them.

I have said elsewhere on several occasions before that some employers in this country resent the emergence of trade unions in their concerns or establishments because they want to dictate terms and conditions of service or employment to their employees. These employers are fighting a battle they cannot win, and the sooner they encourage and recognise the unions the better, otherwise they (employers) will continue to have trouble on their hands. Therefore, the era of employers who deny employees a right to join trade unions of their own choice should be a thing of the past.

In the result, I am satisfied that the Union has fulfilled the requirements under Section 5(2) of the Act. Accordingly, 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 three (3) months* from the date of this award.

Both members of the Court are in full agreement with this decision.

DATED and delivered at Nairobi this 11th day of March, 2003.

Charles P. Chemmuttut,

JUDGE.