



IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI.

(Coram: Charles P. Chemmutut, J.,

A.K. Kerich & H.B.N. Gicheru, Members.)

CAUSE NO.30 OF 2001.

KENYA SHIPPING, CLEARING, & WAREHOUSES WORKERS' UNION.....Claimants.

v.

JIHAN FREIGHTERS LTD.....Respondents.

Issue in Dispute:-

“Recognition Agreement.”

James Tongi, Assistant General Secretary, for the Claimants (hereinafter called the Union).

Jacob M. Munyalo, Accountant, for the Respondents (hereinafter called the Company).

FINAL AWARD.

In my interim award in this dispute which I announced on 23rd May, 2003, I decided to establish, through a secret ballot, the exact and true wishes of the employees of the Company regarding their union membership and whether or not the Union has had *bona fide* members amongst them. Accordingly, I directed Mr. J.N. Macharia of the Economic Planning Division (EPD) to undertake this exercise and find out as above, in the presence of both parties' representatives, whether or not the employees wished to belong to the Union.

Consequently, Mr. Macharia conducted the secret ballot and the findings of his report, which was filed in Court on 18th June, 2003, are as follows:-

“a) Out of 25 permanent employees therefore 22 voted. These accounted for 88% of the eligible voters. They therefore represent a majority of all permanent Unionizable employees.

b) Out of the 22 votes cast no one (0) indicated that he/she is a member of the union.

Majority of the employees are therefore not members of the Union.

c) Four (4) out of the 22 votes cast, (constituting 16% of those eligible to vote and 18% of those who voted) indicated that they would like to be members of the Union.

18 out of the 22 votes cast (constituting 72% of those whose eligible to vote and 81% of those who voted) indicated that they would not wish to be members of the union.

Majority of the workers therefore would not wish to join the Union.

d) No ballot was spoilt.”

Consequently, Mr. Macharia concluded that the Union’s **“demand for recognition is defeated, as the majority of workers have indicated through secret ballot that they are neither members of the Union nor are they interested in joining it”**.

It is, therefore, evident from the foregoing findings of the secret ballot that the Union has not achieved or recruited a simple majority, i.e. 51%, of the unionisable employees as their members necessary for recognition by the Company under Section 5(2) of the Trade Disputes Act, Cap.234, Laws of Kenya.

This being the case, the demand for recognition is rejected for now as misconceived.

This decision is not, however, a bar to the Union’s quest for recognition, and on achieving or attaining a simple majority of the unionisable employees as its members, then the Union may report a fresh dispute on the same issue for consideration and determination.

Both members of the Court agree.

DATED and delivered at Nairobi this 2nd day of July, 2003.

Charles P. Chemmutut,

JUDGE.