REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA.

(Before: Charles P. Chemmuttut, J.,

J.M. Kilonzo & M.M.M. Jahazi, Members.)

CAUSE NO.54 OF 2002.

BAKERY, CONFECTIONERY,

MANUFACTURING & ALLIED WORKERS' UNION.....Claimants.

v.

DAIS BAKERY (1996) LTD.....Respondents.

Issue in Dispute:-

"Recognition Agreement."

G.M. Muchai, National Secretary General, for the Claimants (hereinafter called the Union).

No appearance for the Respondents (hereinafter called the Company).

A W A R D.

The Minister for Labour referred this dispute to the Court for consideration and determination on 3rd July 2002 in accordance with the 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); and his reference, together with the statutory certificate from the Labour Commissioner under Section 14(9)(e) of the Act, were received by the court on 8th July, 2002. The Union submitted its memorandum on 14th April, 2003, but the Company neither filed its reply statement nor appeared, although it was duly and properly notified and served. Accordingly, the case was heard *ex-parte* on 6th August, 2003.

The parties to this dispute appeared before the Court in Cause No.124 of 1999 on the same issue, but the demand for recognition by the Union was rejected as misconceived and untenable. However, the Court observed that the Union was at liberty to pursue its quest for recognition by the Company in accordance with the laid down procedure in the Act. On 11th October, 2000, the Union again approached the company for recognition by serving on it check-off forms under Section 46(1) of the Act, duly signed by majority of the unionisable employees of the Company. The Union also forwarded to the Company a standard or model recognition agreement for its signature, but the latter declined or refused to enter into a recognition agreement on the ground that "all the names listed in the check-off schedule were casual workers" (see Apps I, I(a), (b) and (c), 2, 2(a) and (b) and 3).

On 19th October, 2000, the Union reported a trade dispute to the Minister for Labour in accordance with Section 4(1) of the Act. The Minister accepted the dispute and appointed Mr. J.A. Yidah of Mombasa Labour Office to act as the Investigator (see Apps.4 and 5). On 7th November, 2000, Mr. S.K. Shah, Advocate, of M/S. A.B. Patel & Patel, Advocates, wrote on behalf of

the Company, to the Minister for Labour to the effect that their client (Company) had not refused to accord recognition to the Union, but maintained that all the members who were recruited by the Union were casual workers to whom the law did not apply. Nevertheless, the parties appeared before and made their submissions to the Investigator on 15th February, 2001, and in July, 2001 the Minister released to the parties the following findings and recommendation:-

"FINDINGS.

…… that Ms. Dais Bakery (1996) Limited was incorporated in or around March 1996. Previously it was a sole proprietorship under the name of Dais Bakery and had a recognition agreement with the union. Upon incorporation all the unionisable employees were taken over by the new entity.

…… that by February, 2000 the union had been able to recruit 69 company employees as its members. They duly signed the check-off forms to signify their membership and these were forwarded to the management. The management did not dispute the check off forms but only protested that they were composed of casual workers hence their declining to sign the recognition agreement with the union.

……. that what the management terms as 'casual' are legally not casuals. Most of them work continuously in any given month with the majority having worked for the company for over four years. In any case the management's refusal to recognise the union solely because its employees are casuals lacks legal merit. There is no law that bars casuals from joining a union which in essence negotiates for improvement of their terms of employment. Finally…….. that there is no rival union claiming to represent the same workers. Since the union has met all the legal requirements pertaining to recognition, there is no valid reason why the same should be denied.

RECOMMENDATION.

……. I recommend that the management of Dais Bakery (1996) Limited accord the Bakery Union formal recognition in order to pave way for collective bargaining.

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 declined to meet the Union so as to execute or sign the recognition agreement between them. Under the circumstances, the Union forwarded a Notification of dispute, Form 'A', on 10th August, 2001, through the Chief Industrial Relations Officer, to the Company to countersign it in order that this Court might adjudicate and determine the dispute, but the latter refused to endorse the same. This being the case, the Union had no any other alternative but to petition the Minister to invoke Section 8 of the Act, which he did, as stated at the outset of this award (see Apps. 6, 7, 8, 9, 9(a), 10, 11, and 12).

Mr. Muchai vehemently submitted that the employees who were recruited by the Union as its members comprised of all and only unionisable workforce in the Company's enterprise, having worked for the Company for many years, without any negotiated terms and conditions of service, against which it (Company) has over the years fought to avoid so as to continue exploiting and terming them "casual employees," but using them to provide the desired labour for purposes of production and generation of wealth. This, he said,
amounted to unfair labour practice, if not slavery which is outlawed under Section 73 of the Constitution of Kenya, as the said employees have no means of claiming their share of the wealth jointly created between them, as providers of labour, and the owners of the enterprise, as providers of capital. Finally, Mr. Muchai urged the Court to find that the Company is one of the investors practicing slavery in the country, and to disregard its excuse for not according the Union recognition for collective bargaining and negotiating purposes.

For the foregoing reasons, Mr. Muchai prayed:-

(a) that the Court uphold the findings and recommendation by the Minister as factual and reflective of what existed on the ground;

(b) that this Court may be pleased to order the Company to sign the standard recognition agreement and deposit a copy thereof with the Court, in view of its recalcitrant attitude to honour Court awards, especially the award in Cause No.116 of 1999, and

(c) that this Court may be pleased to order that the effective date of the recognition agreement be 26th October 2000, being the date when the Union first sought recognition from the Company, so as to rightly enable the employees benefit from the fruit of their labour over the period under consideration.

As stated hereinabove, the Company neither filed its reply statement nor appeared, and no reasons were given for its non-appearance. Therefore, there is nothing in rebuttal in this matter; and I have no reason to disbelief the Union's case. However, I do not consider it prudent to give a retrospective award on a recognition dispute such as this one; but I am satisfied that the Union has met the requirements for recognition under Section 5(2) of the Act. In the circumstances, I uphold the Minister's findings and recommendation and order that the Company accord formal recognition to the Union as the sole and right representative of its (Company's) unionisable employees. I also direct that the parties must sign a recognition agreement within **two (2) 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 12th day of November, 2003.

Charles P. Chemmuttut,

JUDGE.