IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI.

(Before: Charles P. Chemmuttut, J.,

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

CAUSE NO.60 OF 2000.

KENYA SHOE & LEATHER WORKERS' UNION…….Claimants.

- v -

G. KIHARA CUSHION MAKERS……Respondents.

Issue in Dispute:-

"Recognition Agreement".

Joseph Bolo, National Secretary General, for the Claimants (hereinafter called the Union).
J.M. Njenga, Advocate, of J.M. Njenga & Co., Advocates, for the Respondents (hereinafter called the firm).

A W A R D.

The firm is a partnership, registered under the Business Names Act, and it is situated at Kariobangi in Nairobi. It engages mainly in the making and repairs of cushions and upholstery for cars, vans, lorries, e.?t.?c.?

Mr. Bolo submitted that the Union sought recognition from the firm on the following grounds:-

(a) that in February 1997, the Union had recruited 10 out of 12, or 83.3%, unionisable employees as its members, and that in February 2001, the Union membership stood at 17 out of 25, or 68%;

(b) that there was no rival union claiming representation or recognition from the firm, and

(c) that the Union was the sole and rightful or appropriate one to represent the employees of the firm on matters pertaining to terms and conditions of employment.

But the learned counsel for the firm, Mr. Njenga, averred that, though the Union might be the rightful and appropriate one to represent the interests of the unionisable employees of the firm and that there was no rival union claiming representation, it (Union) had not recruited or achieved a simple majority of the firm's unionisable employees to be accorded formal recognition by the firm. Hence the latter refused to recognize the Union.

On 7th April 1997, the Union reported a formal trade dispute to the Minister for Labour in accordance with Section 4 of the Trade Disputes Act, Cap.234, Laws of Kenya (which is hereinafter referred to as the Act). The Minister accepted the dispute and, under Section 7 of the Act, appointed Mr. J.N. Kinyua of Nairobi Central Labour Office to act as the Investigator. Consequently, the Minister released his report to the parties on 30th October 1998 in which he found, *inter alia,* that the Union was the most appropriate to represent the employees of the firm and that there was no rival union claiming representation. The Minister found further that the firm employed 25 graded and ungraded artisans, but there was no proof that the Union had recruited 10 of them as its members. Furthermore, the Union neither presented to the firm any check-off forms duly signed by the employees to prove their membership nor did it (Union) show the same to the Investigator despite several

requests. Therefore, the Union did not have any *bona fide* members in the firm's establishment; and, in any case, 10 out of 25 unionisable employees did not constitute a simple majority for purposes of recognition. In the circumstances, the Minister recommended that, for the time being, the Union should not be accorded recognition, but that it should embark on an active recruitment drive and seek recognition a fresh.

The Minister finally appealed to the parties to accept the recommendation as a basis of resolving the dispute. The firm accepted the recommendation, but the Union rejected it on the ground that the same was tribally biased and did not reflect the true picture on the ground (see Union Apps. I, 3 and 4). Hence, this dispute for consideration and determination.

On 23rd May 2000, the Minister for Labour referred this dispute to the Court for consideration and determination under powers vested in him by Section 8 of the Act. The reference, together with the statutory certificate from the Labour Commissioner under Section 14, subsection 9(e) of the Act, were received by the Court on 24th May 2000, and the dispute was listed for mention on 14th June 2000. Subsequently, the Union submitted its memorandum on 26th July 2000 and the firm filed its reply statement on 6th October 2000. The dispute also suffered several adjournments on the application or at the request of the parties jointly or severally. The case was finally heard on 30th April 2002.

In his short submission, Mr. Bolo contended that the Union had fulfilled all the conditions for recognition and still commands or enjoys a simple majority of the unionisable employees but the firm has been unco-operative and continues to mistreat its employees by, for example, paying them the lowest wages in the country (see Union App. 2). He pointed out that the employees have a constitutional right to join a union of their own choice, and participate in union activities. Therefore, by recognizing the Union, the firm would find it easier to negotiate one collective bargaining agreement for all the unionisable employees' terms and conditions of their services, rather than dealing with them individually. Mr. Bolo, however, conceded during the hearing of the dispute that " the Union did not forward the check-off forms to the firm for fear that the employees would be victimised". However, he urged the Court to award a formal recognition the Union forthwith.

In a nutshell, the firm resisted the demand mainly on the ground that the Union did not recruit or achieve a simple majority of the firm's unionisable employees as its members, and that the Minister's findings and recommendation were based on sound, legal and factual grounds. The learned counsel for the firm, Mr. Njenga, averred that the Union failed or refused to forward or present any check-off forms to either the firm or the Investigator in spite of several requests and also failed to prove that it had *bona fide* members in the firm's establishment. He also strongly denied, *inter alia*, the Union's allegations of mistreatment of and low pay to the employees and tribalism in this matter, and prayed that the demand for recognition by the Union be rejected for lack of simple majority.

Admittedly, the Union did not serve the firm with the check-off forms as required under Section 46 of the Act. It did not also produce the same to the Investigator despite several requests; and this being the case, it was impossible to establish that the Union had fulfilled the conditions for recognition under Section 5(2) of the Act as alleged. On this short ground and the clear breach of the law as stated hereinabove, I uphold the Minister's findings and recommendation.The demand by the Union for recognition is, therefore, rejected for now as incompetent and baseless.

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

DATED and delivered at Nairobi this 21st day of August, 2002.

Charles P. Chemmuttut,
JUDGE.