



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT**  
**AT MOMBASA**  
**CAUSE NUMBER 3 OF 2015**  
**BETWEEN**  
**TAILORS AND TEXTILES WORKERS UNION.....CLAIMANT**  
**VERSUS**  
**MOMBASA APPARELS [EPZ] LIMITED.....RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Mr. J.D. Oduor Advocate instructed by J.D. Oduor & Company Advocates for the Claimant*

*Mr. Makokha and Ms. Opolo Advocates, instructed by the Federation of Kenya Employers for the Respondent*

---

**ISSUE IN DISPUTE: RECOGNITION AGREEMENT**

**AWARD**

**[Rule 27 [1] [a] of the Industrial Court [Procedure] Rules 2010]**

1. The Claimant filed its Statement of Claim on 14<sup>th</sup> January 2015. It sought the following Orders against the Respondent:-
  - a. Reinstatement of all Employees illegally, unjustifiably and unlawfully locked out, without loss of terms and conditions of service, including the salaries from the date of the action.
  - b. The Respondent to deduct and remit Trade Union Dues from all Employees who have signed the Check-Off Forms.
  - c. The Respondent to sign Recognition Agreement with the Claimant Union.
  - d. Costs to the Claimant.

2. The Respondent replied through a Statement of Response, filed on the 20<sup>th</sup> February 2015.

3. Parties were able to agree through the Conciliation of the County Labour Office, on reinstatement of Employees and deduction of Trade Union Dues. The Court recorded consent on these two issues on 29<sup>th</sup> January 2015. It was directed the remainder of the dispute, restricted to Recognition and Costs, goes for trial. It was later agreed the dispute is considered and disposed of fully, on the strength of the Parties' Pleadings, Documents and Submissions on record, in accordance with Rule 21 of the Industrial Court [Procedure] Rules 2010. Parties confirmed the filing of their Submissions on 30<sup>th</sup> October 2015.

4. The Conciliation Report filed in Court was accompanied by the Parties' Memorandum of Agreement. The Memorandum specifies Parties were unable to agree, whether Recognition should be considered on the strength on the number of Unionisable Employees working for the entire Mombasa Apparels EPZ Limited, or those working for UNIT 2. The Respondent operates 3 Units all in Mombasa, albeit at different locations within Mombasa. Recruitment of Employees by the Claimant was confined to Unit 2.

#### Claimant's Case

4. The Claimant states it is a Registered Trade Union, and the Respondent a Textile and Garment Industry, registered and regulated under the AGOA Act, Export Processing Zone Act, and the Companies Act Cap. The Claimant has its Registered Office in Nairobi, while the Respondent is based in Mombasa. According to the Claimant, the Respondent is a Unit of the Ashton Apparels EPZ [Limited] which has a Recognition Agreement with the Claimant.

5. The Claimant recruited 2118 of the Respondent's Unionisable Employees out of a total of 2,400 Unionisable Employees working for the Respondent. The Check-Off Forms, together with a Draft Recognition Agreement were forwarded by the Claimant to the Respondent for the Respondent's action, through a letter dated 17<sup>th</sup> December 2014.

6. The Respondent did not act on the Recognition Agreement and the Forms. It instead locked out all Employees who signed the Forms, replacing them with new Employees, alleging the contracts of the old Employees had lapsed. The Claimant states the Respondent acted contrary to Article 36 and 41 of the Constitution, Section 4 and 5 of the Labour Relations Act, and ILO Convention 87 and 98.

7. The Claimant submits the Unit has 1,756 Unionisable Employees. It has recruited 1,327. It has met the simple majority required under Section 54 [1] of the Labour Relations Act. Under Section 54 [2] of the Act, the Claimant Union argues it should be deemed to have recruited Unionisable Employees employed 'by a Group of Employers.' Unit 2 is a 'Sector' within the Respondent's Organization. There is no rival Union claiming the same Unit. The Claimant states it has also recruited in Unit 2 and 3. In total it has recruited 4,806 out of the total of 6,245 of all Unionisable Employees working for the Respondent.

#### Respondent's Case

8. The Respondent states it is a separate legal entity from Ashton Apparels EPZ Limited. The Check-Off Forms submitted to the Respondent have 3054 names, yet the Claimant's position is that the Claimant has recruited 2118 Employees. Some of the signatures in the Forms were forged. Others were not names of Respondent's Employees. Other names belonged to Management Staff, not eligible to join the Union. 723 names submitted to the Respondent did not belong to its Employees; 868 Employees signed the Check-Off Forms more than once; and 38 were in Management. The Respondent states Unit 1 [Jomvu] has 1916 Unionisable Employees; Unit 2 [Changamwe] 1756; and Unit 3 [Mtwapa] 1962, making a total of 5,916. These Units are not independent Units, but Production Units.

9. The Respondent submits the Claimant has not recruited a simple majority of the Respondent's Unionisable Employees to be granted Recognition under Section 54 of the Labour Relations Act. The Respondent urges the Court to dismiss the Claim.

*The Court Finds:-*

10. The Claimant Union has not satisfied the Court it has recruited a simple majority of the Unionisable Employees working for the Respondent, to be granted recognition. In its Closing Submissions, the Claimant states it recruited 1,327 out of a total of 1756 Unionisable Employees. These numbers are different from the Statement of Claim, which gives recruited Employees as 2118 out of a total of 2,400.

11. The Claimant approached the entire recruitment process from a mistaken view of 'Units' and 'Sectors.' A 'Production Unit' in the same Enterprise cannot be a 'Sector.' The 3 Units of Mombasa Apparels EPZ Limited are not 'Sectors,' capable of having their separate Recognition Agreements and Collective Bargaining Processes. These Units are created by the Management to suit the operations of the Business. They are not separate legal or business entities, with different Employees, meriting separate terms and conditions of employment. The letters of employment given to the Employees are issued by one Employer: Mombasa Apparels EPZ Limited. The Claimant completely misapplies the law, in its characterization of the Units as separate Employers, and the Respondent as a '*Group of Employers.*' There is only one Employer, the Respondent herein.

12. The Draft Recognition Agreement forwarded by the Claimant Union to the Respondent referred to the Union and the Company. It did not refer to the Union and Management of Unit 2. It does not refer to Units at any Clause. It refers to '*interest of Workers who are in the Company.*' It does not refer to Workers who are in Unit 2.

13. The Claimant Union has not shown the Court that there are Employees in the disparate Units, belong to different trades. The Units would only in the view of the Court be considered as separate collective bargaining units, if they are engaged in different trades within their overall textile and garment industry.

14. To grant Recognition with each Unit, would mean the Respondent is compelled to negotiate with the Claimant Union separately, with the possibility that Employees performing the same roles in the Respondent's 3 Units have different terms and conditions of service. This is not in keeping with the principle of industrial stability. It would disorganize the Respondent and impose on the Respondent the burden of multiple negotiations, over the terms and conditions of Employees who are similarly placed.

15. In the ***Industrial Court of Kenya at Nairobi, Appeal Number 1 of 2010 between Kenya Union of Export, Import and Allied Workers Union v. Registrar of Trade Unions & Another***, the Court discussed the meaning of the terms 'Sector' and 'Industry.' It was held the terms are frequently used interchangeably, to denote group of companies which operate in the same segment of the economy, or share similar business types.

16. The Court suggested the terms should not be used interchangeably as they do not mean the same thing. 'Sector' refers to a large segment of the national economy. There are hardly more than 20 Sectors of the Kenyan economy. The term refers to one of the few general segments of the economy within which a group of Companies can be categorized, e.g. the Financial Sector.

17. 'Industry' denotes more specific grouping of Companies with highly similar business activities, and results from the breaking of Sectors into these defined groups. Within the Financial Sector, we have Asset Management, Life Insurance, and Banking as 'Industries.' Within the 'Industries' are to be found various 'trades.' Our Trade Unions are based on the concept of '*industrial trade unionism,*' the idea being that there should be one Trade Union representing a specific industry. But as pointed in ***Appeal Number 1 of 2010***, there are no clear lines drawn in our Trade Union Movement, with certain Trade Unions representing entire 'Sectors,' and others straddling multiple 'industries.'

18. Textiles and Garments would in the view of the Court be an 'Industry' within the Manufacturing 'Sector.' Unit 2 of the Respondent Company could therefore never be a 'Sector' or even an 'Industry,' to be considered for recognition separate from the other Units. A 'Sector,' within the understanding of labour economics cannot be a 'Section or Unit,' in a Company. The Unit has not even been shown to comprise a 'Trade,' populated by Employees with a community of interests, distinguishable from the

other Employees of the Respondent, so as to justify separate representation.

19. The Claimant Union states it has a Recognition Agreement with Ashton Apparels EPZ Limited, and that the Respondent is a Unit of this Company. If the Respondent is a Unit, and the Court is convinced this is not the case, why would the Claimant have left out the Employees of the Respondent while entering into recognition with Ashton Apparels EPZ Limited? If these 2 Companies are related, and carrying on the same business within the same Industry, why not have one Recognition Agreement and subsequent Collective Bargaining Processes? The reference by the Claimant to the Respondent as a Unit, and misperception of Units within the Respondent Company to be separate legal or business entities, muddles the Claimant's search for recognition.

20. Adding to this confusion is the revelation by the Claimant, in its Closing Submissions that the Claimant is currently recruiting in the other 2 Units. The number of Unionisable Employees recruited, is given as 4,806, out of 6,245 Unionisable Labour Force. If this is the case, and the simple majority has been achieved with regard to the entire Company, why then seek recognition in installments? Why dismember the Respondent, which is a single entity, and seek to enter into recognition with the resultant shreds? ***The Court is persuaded the Claim is without merit. It is premature. It is dismissed with costs to the Respondent.***

Dated and delivered at Mombasa this 26<sup>th</sup> day of February, 2016.

James Rika

Judge