



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA MOMBASA**

**(BIMA TOWERS)**

**CAUSE NO. 238 OF 2013**

**KENYA BUILDING, CONSTRUCTION, TIMBER,  
FURNITURE & ALLIED INDUSTRIES EMPLOYEES UNION.....CLAIMANT**

**v**

**GALAXY TIMBER COMPANY LTD.....RESPONDENT**

**JUDGMENT**

1. Kenya Building, Construction, Timber, Furniture & Allied Industries Employees Union (Union) signed a Memorandum of Agreement on Matters of Recognition and Negotiating Procedures (recognition agreement) with Galaxy Timber Company Ltd (Respondent) on 10 January 2011.
2. By signing the recognition agreement the Respondent accorded the Union full recognition to represent the interest of workers employed by the Respondent on conditions and terms of employment. The recognition agreement also provided for collective bargaining and collective grievances.
3. Around 12 July 2011 the Union wrote to the Respondent seeking conclusion of a Collective Bargaining Agreement. The Respondent through an Accountants' consultancy, Bhatt & Bhatt Consultants responded seeking certain details and fixing a meeting for 14 July 2011. The Respondent appeared to doubt the Union membership. A meeting apparently took place but no agreement was reached.
4. The Union reported a trade dispute to the Cabinet Secretary for Labour on 27 September 2011 and a Conciliator was appointed. In the letter reporting the trade dispute, some 35 clauses were listed as being in issue.
5. The Conciliator gave his report dated 16 July 2012 and recommended that the Respondent did not have reasons to refuse to conclude a Collective Bargaining Agreement and advised the Union to move to court. He also found the issue of union membership was not relevant.
6. On 31 July 2013, the Union lodged a Memorandum of Claim in Court and it stated the issue in dispute as *refusal by the company to negotiate a Collective Bargaining Agreement comprising 35 clauses*.
7. The Respondent was served and it filed a Response on 30 September 2013 through an auditor Anand G. Bhatt.
8. On 5 December 2013, a hearing date was fixed for 12 March 2014 in the presence of Mr. Bhatt for the Respondent. Because the Union was not represented, the Court directed the Deputy Registrar to notify it

of the hearing date. On the hearing date, the Cause proceeded in the absence of the Respondent who was aware of the hearing date. Further hearing took place on 27 March 2014.

9. The Union's Assistant Branch Secretary gave sworn testimony and produced various documents (Collective Bargaining Agreements with other employers in the sector in which the Respondent operates).

10. The starting point in determining the minimum terms and conditions of the Respondent's employees is the Regulation of Wages (Timber and Sawmilling Trades) Order or the Regulation of Wages (Furniture, Boat, Door and Window Making Industries) Order which are specific and if none of the two is favourable or applicable, the Regulation of Wages (General)(Amendment) Order.

11. The Union did not plead nor suggest that the Respondent's employees were being paid wages or serving on terms and conditions of service below the gazetted minimum wages and conditions of service.

12. On this basis, it would be safe for the Court to assume that the Respondent has been complying with the irreducible minimum statutory standards.

13. The dispute before Court then is one which is ordinarily reserved for the parties' autonomy. Section 57 of the Labour Relations Act has placed a positive duty upon employers to conclude a Collective Agreement with a trade union which it has granted recognition.

14. But the Act does not provide for what happens when the parties disagree or do not conclude such Collective Agreement. The Act only requires that a collective agreement should be concluded within a reasonable time and a collective agreement may provide for conciliation and or arbitration.

15. However section 12(1)(b) of the Industrial Court Act suggest that where employers and trade unions have a dispute, the Court has the power to intervene. But as to judicial intervention as to the contents of a collective agreement the statutes appear not to have an express provision.

16. In this regard, the Court ought to tread very cautiously when called upon to adjudicate on the terms and conditions which should make part of a Collective Agreement. It must consider the economic interests of employers and social justice to the workers bearing in mind the Court is not an economic or wages expert.

17. The relationship between unions and employers is one of good faith. Sound labour relations and industrial peace all require good faith. Where it is shown that one party is not acting in good faith, the Court would be at liberty to intervene.

18. In the present case, the Respondent was seeking to introduce the issue of membership to forestall negotiations with the Union on the terms and conditions of service/Collective Agreement. There was already a recognition agreement in place and this issue was not relevant. In any case, the Respondent did not seek to have the recognition agreement revoked.

19. Further, it did not cooperate with the Concilator. It did not make any counter proposals in response to the proposals by the Union. All these point to lack of good faith.

20. The present Cause was poorly drafted. The Union did not place before Court the terms and conditions of service offered by the Respondent to its members. It is on this basis that the Court allowed the Union to produce further documents where terms and conditions of service had been agreed with employers in the same industry/sector as the Respondent is engaged in.

21. The Union produced Memorandum of Agreement between the Timber Industries Employers Association and Kenya Building, Construction, Timber, Furniture and Allied Industries Employees Union in the matter of Minimum Rates of Wages and Terms and Conditions of Employment in the Timber industry for the period 2011 to 2013 and for the period 2013 to 2015.

22. The Court was not told whether the Respondent is/was a member of the Association.

23. But these types of association-industry wide collective agreements have been used before. They avoid having multiple individual collective agreements with individual employers.

24. These agreements serve to set industry wide standards and improve on the minimum wages and conditions of employment provided for in various Regulation of Wages Orders.

25. The agreement between the Union and the Employers Association for the period 2013 to 2015 made provision for all the 35 issues which the Union had stated as in issue and the rates set include for Mombasa.

26. As a standard setting agreement for the industry, the Court finds and holds that the rates of wages and terms and conditions of employment set out in the 2013 agreement shall be applicable to the Union's members employed by the Respondent and that the same become effective from 1 July 2013 until 30 June 2015.

27. For clarity, the parties are at liberty to incorporate the said terms and conditions in a collective agreement between themselves or sign a Memorandum binding themselves to the industry wide collective agreement, but before then the terms and conditions will apply from the dates mentioned hereinabove in paragraph 26.

28. Each party to bear its own costs.

**Delivered, dated and signed in open Court in Mombasa on this 30<sup>th</sup> day of May 2014.**

**Radido Stephen**

**Judge**

**Appearances**

Ms. Chege, Legal Officer

Kenya Building, Construction, Timber, Furniture & Allied Industries Employees Union      for Union

Mr. Bhatt, Auditor(absent during hearing)      for Respondent