



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO 1651 OF 2012

TAILORS AND TEXTILES WORKERS UNION.....CLAIMANT

VS

ARAX MILLS LIMITED.....RESPONDENT

RULING

Introduction

1. The dispute in this case initiated by a Statement of Claim dated 14th September and filed in Court on 14th September 2012 has to do with refusal by the Respondent to sign a Recognition Agreement. The Respondent filed a Reply on 18th December 2012.
2. The matter then went for conciliation but the Respondent failed to attend meetings convened by the Conciliator. In a report dated 28th May 2012, the Conciliator recommended recognition of the Claimant to pave way for collective negotiations.
3. When the matter came before the Court on 26th April 2013, I formed the opinion that it had not received adequate attention at the conciliation stage. I therefore referred it back to the Conciliator and directed both parties to participate in the conciliation proceedings. Pursuant to this, the Conciliator filed another report dated 17th June 2013 in which he found that the Claimant had not satisfied the conditions for recognition.

The Claimant's Case

4. According to the Claimant, the Respondent initially traded as Gopitex Knitwear Mills Limited before changing its name to Arax Mills Limited. Gopitex Knitwear Mills Limited had a Recognition Agreement and a Collective Bargaining Agreement with the Claimant. Upon change of name, the Respondent retained majority of employees who were members of the Claimant.
5. The Respondent's management subsequently refused to recognise and deal with the Claimant on the ground that Arax Mills Limited was a different entity from Gopitex Knitwear Limited. The Claimant accused the Respondent of terminating the employment of the Claimant's members in a bid to diminish union presence in the Respondent's establishment.
6. The Claimant claims to have recruited 95% of the Respondent's unionisable employees. The Respondent however refused to deduct union dues and to recognise the Claimant prompting the Claimant

to report a trade dispute to the Minister for Labour under Section 62 of the Labour Relations Act, 2007.

7. The Respondent however failed to attend conciliation meetings and did not submit any memorandum. The Conciliator eventually recommended that the Respondent signs a Recognition Agreement with the Claimant within 14 days from 28th May 2012. The Claimant thereafter forwarded a model Recognition Agreement to the Respondent and sought a meeting with the Respondent's management. The Claimant's officials were however locked out of the Respondent's premises.

8. The Claimant seeks the following prayers:

- a. That the Respondent be directed to sign a Recognition Agreement with the Claimant;
- b. That the parties be directed to engage in negotiation towards conclusion of a Collective Bargaining Agreement;
- c. That the services of the employees previously employed by Gopitex Knitwear Mills Limited and now employed by the Respondent be deemed to be continuous;
- d. That the Respondent be punished for failing to attend conciliation meetings;
- e. That the costs of this case be awarded to the Claimant.

The Respondent's Case

9. In its Reply, the Respondent denies having initially traded as Gopitex Knitwear Mills Limited and states that the two companies are distinct legal entities with no legal association in assets, liabilities or contractual obligations. The Respondent further denies that the employees of Arax Mills Limited are the same as those who worked at Gopitex Knitwear Mills Limited. The Respondent states that majority of the employees who worked at Gopitex Knitwear Mills Limited were freshly employed by the Respondent under new terms of service.

10. The Respondent declined to deal with the Claimant as there was neither a Recognition Agreement nor a Collective Bargaining Agreement between the parties. The Respondent denied terminating the employment of union members.

The Conciliator's Report

11. In the Respondent's submissions filed on 18th February 2013, the Respondent denied receiving invitation to attend conciliation meetings. As a result, when the matter came before me on 26th April 2013, I referred it back to the Conciliator and directed the parties to cooperate.

12. The Conciliator, R.A.O Litaba filed a report dated 17th June 2013. The Claimant submitted before the Conciliator that it had recruited into its membership all the unionisable employees of the Respondent and was therefore entitled to recognition.

13. The Respondent on the other hand submitted that although the Claimant had approached the Respondent's employees to join the union, it had not achieved a simple majority. In this regard, the check off list submitted by the Claimant contained names of persons who were not in the Respondent's employment, some denied ever joining the union while others had resigned. The Claimant had not therefore met the threshold for recognition.

14. According to the Conciliator's report, there were 13 permanent employees and 25 casuals in the Respondent's employment. Only one person appeared on both the check off list submitted by the Claimant and the Muster Roll submitted by the Respondent. 11 out of 25 casuals appeared on both lists. Overall, the Conciliator found that the Claimant did not have a simple majority of the Respondent's

unionisable employees as its members and did not therefore qualify for recognition for purposes of collective bargaining.

Determination

15. Section 54(1) of the Labour Relations Act sets out the conditions for recognition of a trade union for purposes of collective bargaining as follows:

(1) An employer, including an employer in the public sector, shall recognise a trade union for purposes of collective bargaining if that trade union represents the simple majority of unionisable employees.

16. In its final submissions filed on 24th April 2014, the Claimant takes issue with the Conciliator's report dated 17th June 2013 since the same Conciliator had given the opposite verdict in a report dated 28th May 2012. However, the Court noted that in issuing the first report, the Conciliator did not have the benefit of the Respondent's submissions. On its part, the Respondent submits that it was not aware of the conciliation meetings in the first instance since notices thereof were not duly served.

17. The threshold for recognition set out in Section 54(1) of the Labour Relations Act, 2007 is a matter of evidence and any trade union seeking recognition under this provision must demonstrate that it has recruited a simple majority of the unionisable employees of the employer from which the union seeks recognition.

18. Recruitment of union members is evidenced by duly signed check off forms which must be compared with the list of employees supplied by the employer. In the instant case, there seems to be no correlation between the names on the check off forms submitted by the Claimant and those on the Muster Roll supplied by the Respondent.

19. The Court therefore agrees with the Conciliator that as at the time of forwarding the check off forms, the Claimant had not attained a simple majority as required under the Labour Relations Act, 2007. The Conciliator's recommendations are therefore upheld and the Claimant's case is dismissed with no order for costs. Upon compliance with the law, the Claimant is at liberty to seek recognition afresh.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 17TH DAY OF SEPTEMBER 2014

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JUDGE

Appearance:

Mr. Omondi (Union Representative) for the Claimant

Mr. Kimamo Kuria for the Respondent