



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**  
**CAUSE NUMBER 1724 OF 2011**

**BETWEEN**

**TAILORS AND TEXTILES WORKERS UNION..... CLAIMANT**

**VERSUS**

**PREMIER BAG AND CORDAGE LIMITED ..... RESPONDENT**

*Rika*

*J*

**CC. Leah Muthaka**

***Mr. Wycliffe Omondi instructed by the Claimant Union***

**Mr. Ambenge instructed by the Federation of Kenya Employers for the Respondent**

**ISSUE IN DISPUTE: RECOGNITION AGREEMENT**

**AWARD**

1. The Claimant presented the Statement of Claim on 11<sup>th</sup> October 2011, seeking the following orders against the Respondent:-
  - a. The Respondent be compelled by the Court to deduct trade union dues from the Claimant Members who are Respondent's Employees and remit the dues to the Claimant;
  - b. The Respondent be compelled to accord recognition to the Claimant;
  - c. Costs and penalties of this suit be borne by the Respondent; and
  - d. Any other relief the Honourable Court may deem fit to grant.
2. The Respondent filed its Statement of Reply on 15<sup>th</sup> March 2013. The bottom-line in that Reply is that the Claimant Union has not recruited a simple majority of the Respondent's Unionisable Employees, as required under Section 54 of the Labour Relations Act 2007.
3. The dispute was heard on 22<sup>nd</sup> March 2013, through the oral submissions made by Mr. Omondi for the

Claimant and Mr. Ambenge for the Respondent.

4. The Claimant submits that the Respondent has a total 628 Unionisable Employees. This number has been confirmed by the Respondent. Out of these, the Respondent has recruited a total of 404. This represents in excess of the simple majority required under the Law.

5. The Claimant sent the Check-Off Forms to the Respondent on 10<sup>th</sup> and 12<sup>th</sup> August 2010, calling for implementation of the Check-Off System. A copy of the Model Recognition Agreement was later forwarded to the Respondent. In either case, there was no response from the Respondent.

6. The Claimant reported the dispute to the Minister for Labour. The Conciliator called on the Parties to present their submissions and attend a conciliation meeting. The Respondent did not yield to any of the requests.

7. The Claimant urges the Court to order the Respondent to sign the Recognition Agreement, holding that it has recruited at least 63% of the Respondent's Unionisable Employees. The Claimant is the right Union in the Industry, and there are no rival Trade Unions claiming the same collective bargaining unit. The Claimant has satisfied Section 54 of the Labour Relations Act. The Employees have the right to join the Claimant and be represented by the Claimant, under Section 4 of the Labour Relations Act, and ILO Conventions 87 and 98. The Union is entitled to receive trade union dues deducted from its Members by the Respondent

8. No Employees have withdrawn their Membership after recruitment. Past Court cases between the Parties on the subject of recognition, are spent, and not relevant to the current prayers. The Claimant submits that it has filed a verifying affidavit in conformity to Rule 6 of the Industrial Court [Procedure] Rules 2010, but left out the conciliation minutes by oversight.

9. The Respondent concedes there are 628 Employees working at its business. The Check-Off Forms filed by the Claimant contained the names of 305 Employees recruited by the Claimant, not 381 or 404 as interchangeably asserted by the Claimant.

10. Out of the total, 125 withdrew their Membership from the Union. 152 left through natural attrition, retirement, termination, resignation or dismissal. 28 Employees of those recruited by the Claimant Union remain as Members, which is a paltry 4.45% of the total. The Claimant has not raised a simple majority.

11. The Union has not met the requirement of the Labour Relations Act 2007 and the Industrial Relations Charter on recognition which are:-

- The Trade Union must be the rightful Union to represent the employees in the industry or sector in accordance with its Constitution ;
- There must be no rival Union; and
- The Union must have recruited a simple majority of the Unionisable Employees.

The Respondent conceded the Claimant has satisfied the first two conditions, but failed on the last.

12. The different figures given by the Claimant as the number of recruited Employees, in its Statement of Claim, only shows the lack of clarity on the part of the Claimant. The Respondent is categorical that only 28 Employees remain as Members of the Trade Union.

13. The Check-Off Forms availed by the Respondent do not have the identity card numbers of the Employees. They were written by the same person. They were never forwarded to the Respondent. The Statement of Claim was itself not served upon the Respondent, which explains the late filing of the Statement of Reply by the Respondent.

14. The letter inviting the Respondent to the conciliation meeting arrived after the meeting had taken place. The meeting took place on 10<sup>th</sup> June 2011 while the letter inviting the Respondent, was received by

the Respondent on 24<sup>th</sup> June 2011. The recommendations of the Conciliator were therefore made irregularly, and the Respondent wrote a protest letter to the Conciliator, which was not replied to.

15. The Respondent submits further that this dispute has been filed by the Claimant in Court twice, over the past. In both instances, the Claimant withdrew the cases for lack of the requisite simple majority in the membership. Recruitment took place in 2005. Employees have left employment for various reasons. Filing of the case was done without a verifying affidavit, contrary to Rule 6 of the Industrial Court [Procedure] Rules 2010. The Respondent asks the Court to dismiss the case.

*The Court Finds and ORDERS-:*

16. The Check-Off Forms availed to the Court by the Claimant appear to show that the respective Employees were recruited in the year 2010. The letters alleging Employees had resigned from the Union were written in 2004 and 2005.

17. Recruitment of Employees into the Trade Union is a continuous process. In the initial Industrial Court Cause Number 88 of 2002, the Labour Investigator established there were a total of 829 Unionisable Employees working for the Respondent. At the time, the Claimant did not demonstrate it had recruited a simple majority out of this figure. It is not clear which is the second case referred to by the Respondent as having been filed and withdrawn by the Claimant for want of sufficient recruited Members. The Court does not think that the numbers from 2004 and 2005 are the same numbers contained in the Forms of 2010, which form the basis of the current pursuit.

18. The recruitment of 2010 was the subject of the Conciliation Proceedings before the Ministry of Labour. The Conciliator confirmed 381 Employees, out a total of 634 were recruited by the Claimant, representing 60% majority. The total number of Employees and the total number of recruited Employees cannot be static from 2004. The Court is ready to accept the Conciliator's Report of 22<sup>nd</sup> June 2011. The Respondent was asked to submit its submissions before the Conciliator and did not comply.

19. The Court record does not support the submission by the Respondent that it was not served with the Statement of Claim, resulting in a late filing of its Reply. On 27<sup>th</sup> July 2012, Mr. Masese was in Court for the Respondent, when the Court granted the Respondent 21 days to file its Reply. Hearing was fixed for 21<sup>st</sup> September 2012. The dispute was on 21<sup>st</sup> September 2012 adjourned by consent of the two Parties, to 12<sup>th</sup> November 2012. On this date the Respondent had still not filed any Reply, and the Court granted the Respondent another 21 days to comply. Hearing was moved to 13<sup>th</sup> March 2013. On this date there was no reply from the Respondent. Ms. Mumia for the Respondent pleaded with the Court to extend the time by 4 days, to enable the Respondent file its Reply. At no time did the Respondent inform the Court it had not been served with the Summons and the originating Statement of Claim. The Statement of Reply was finally filed on 15<sup>th</sup> March 2013, and hearing concluded on 22<sup>nd</sup> March 2013.

20. The Respondent demonstrated a pattern of non – co-operation on Conciliation as well as during the Court Adjudication. It cannot be right of the Respondent to complain that either outcome is irregular.

21. There is sufficient evidence to show that the Claimant has met the minimum requirements to be granted formal recognition by the Respondent: It is not disputed the Claimant is the relevant Trade Union to represent the Unionisable Employees of the Respondent; and there are no other Trade Unions laying claim to the same collective bargaining unit. The Court is satisfied that the Claimant has continuously recruited from the Respondent's Business, and met the requirements of Section 54 on simple majority. The Claim is supported by the affidavit of the Deputy General Secretary Ezra Odondi Ojuka sworn on 7<sup>th</sup> October 2011. The certificate of conciliation dated 22<sup>nd</sup> June 2011, adequately captures the history of the conciliation.

*The Court Orders-:*

**[a] The Respondent shall sign the Recognition Agreement in favour of the Claimant Union**

**within 30 days of the delivery of this Award;**

**[b] The Respondent shall forthwith deduct trade union dues, and remit to the Claimant, without fail; and**

**[c] No order on the costs.**

**Dated and delivered at Nairobi this 18<sup>th</sup> day of September 2013**

**James Rika**

**Judge**