



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT

AT NAIROBI

CAUSE NO.40 [N] OF 2008

BETWEEN

**TAILORS & TEXTILES WORKERS
UNION.....CLAIMANT**

VERSUS

**ASHTON APPARELS
[EPZ].....RESPONDENT**

RULING

The Court gave an Award on 5th December 2008. We ordered the respondent to sign a Recognition Agreement with the claimant. The respondent did not attend Court or file a memorandum of defence. The Award followed exparte proceedings.

Thereafter we were moved by the respondent to allow it to vacate the Award, allow a memorandum of defence to be filed and served out of time. Although the dispute was initiated under the repealed Trade Disputes Act Cap 234 the Laws of Kenya, we accommodated the respondent and allowed its pleadings out of time.

The claimant made an application to review and set aside orders of 18th February 2010 allowing the respondent to defend. The respondent did not file a reply to this application. At the hearing, we adjourned to allow the respondent an opportunity to file. At the rescheduled date of hearing, the respondent chose not to appear in Court. We heard the claimant's application exparte and vacated the orders made on 18th February 2010. The Award of 5th December 2008 was reinstated.

There was an application subsequently made by the respondent to revisit the orders reinstating the

Award. We rejected the application. The respondent filed a Notice of Appeal, but instead of pursuing its appeal, instructed a new firm of Advocates who filed a Notice of motion dated 22nd February 2011.

That application was argued on 14th April 2011 by Mrs. Fundi for the respondent and M/S Guserwa for the claimant. The application sought to again set aside the Award on record and allow the respondent to defend. We have considered the application, the affidavits in support and reply, and the submissions of Mrs. Fundi and M/S Guserwa. We are persuaded there was ample opportunity given to the respondent to defend the claim, but that opportunity was repeatedly spurned. The respondent thereafter filed a notice of appeal, applied for the certified proceedings and the Court availed these. There is even some evidence that a recognition agreement has been signed, though in unclear circumstances.

We do not see any ground to justify interference with the Award on record. Litigation must come to end. This matter is finalized. We reject the application dated 22nd February 2011.

The members agree, it is so ordered.

Dated and delivered at Nairobi this 6th day of May 2011.

J. LOKWEE
MEMBER

D.K. SIELE
MEMBER

JUSTICE JAMES RIKA

JUDGE.