**REPUBLIC OF KENYA.**

**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI.**

(Before: Charles P. Chemmuttut, J.,

O.A. Wafula & J.M. Kilonzo, Members.)

**CAUSE NO. 22 OF 2007.**

**KENYA UNION OF DOMESTIC, HOTELS,**

**EDUCATIONAL INSTITUTIONS, HOSPITALS**

**& ALLIED WORKERS…………………………………………………Claimants.**

**v.**

**IMANI SCHOOL LTD. ……………………………………………..Respondents.**

**Issue in Dispute:-**

**Refusal by the management to negotiate the following**

**33 Clauses of CBA:-**

**1. Preamble.**
**2. General Terms and Conditions.**
**3. Employees Communication.**
**4. Wages.**
**5. House Allowance and Residential Habitable Housing.**
**6. Hours of Work.**
**7. Overtime.**
**8. Public Holidays.**
**9. Warning System.**
**10. Redundancy.**
**11. Termination of Employment.**
**12. Annual Leave.**
**13. Compassionate Leave.**
**14. Wages.**
**15. Workman Working Uniforms.**
**16. Sick Leave.**
**17. Maternity Leave.**
**18. Certificate of Service.**
**19. Training and Paid Education Leave.**

**20. Transport.**
**21. Food Provision.**
**22. Summary Dismissal.**
**23. Acting Allowance.**
**24. Special Duty Allowance.**
**25. Safari Allowance.**
**26. Tools Allowance.**
**27. Death of an Employee while in Service.**
**28. Long Service Increment.**
**29. Retirement.**
**30. Service Gratuity.**
**31. Allowance to Syce Staff.**
**32. Medical Allowance.**
**33. Effective Date.**

Mr. M.S. Njiru for the Claimants (hereinafter called the Union).

No appearance for the Respondents (hereinafter called the Company).

## A W A R D.

The Minister for Labour and Human Resource Development referred this dispute to the Court for consideration and determination on 5th March, 2007, under powers vested in, or conferred upon, him by Section 8 of the Trade Disputes Act, Cap. 234, Laws of Kenya (now repealed) which is hereinafter referred to as the Act and the reference, together with the statutory certificate from the Labour Commissioner under Section 14(9)(e) of the Act, were received by the Court on 9th March, 2007. The matter was then listed for mention on 3rd April, 2007, when Messrs. M.S. Njiru and Salim Wa Mwawaza, who appeared for the parties respectively, were directed to submit or file their respective memoranda or statements on or before 18th April and 15th May, 2007, and the case was fixed for hearing on 31st May, 2007. Mr. Njiru submitted his memorandum, on behalf of the Union, on 13th April, 2007, and Mr. Gitonga Njeru belatedly filed his reply statement, on behalf of the Company, on 28th August, 2007. Consequently, several adjournments were taken by the parties for purposes of amicable settlement out of Court, but they failed. On 30th October, 2007, Messrs. M.S. Njiru and Gitonga Njeru appeared for the parties respectively, and the matter was fixed by mutual agreement for hearing on 6th February, 2008. On this day, Mr. Njiru appeared for the Union, but there was no appearance for the Company, and no reasons were given for the Company's inability to appear. The dispute was, therefore, heard *ex-parte* on the said date, i.e. 6th Febraury, 2008.

The Union was registered as such under Section 11 of the Trade Unions Act, Cap. 233, Laws of Kenya (also repealed), to represent unionisable employees in the domestic, hotels, educational institutions, hospitals and allied concerns, while the Company, which is a renowned international school was founded by Del Monte Kenya Ltd. in 1969, and incorporated under the Companies Act, Cap. 486, Laws of Kenya.

The parties have a valid recognition agreement which was signed on 17th June, 2003 and had also negotiated and entered into one collective agreement for the period 1st January, 2001 to 31st December, 2002, but the present dispute arose when the Union forwarded its proposals to the Company for negotiation of their next collective agreement for the period 1st January, 2003 to 31st December, 2004. The Company declined to meet the Union for negotiation. In the circumstances, the Union reported a formal trade dispute to the Minister for Labour and Human Resource Development on 19th October, 2004, in accordance with Section 4 of the Act. The Minister accepted the dispute and appointed Mr. J. Nyaga of Thika Labour Office to act as the Conciliator. The Conciliator invited the parties to attend a conciliation meeting on 9th march, 2005, but the management of the Company refused either to attend the meeting or send their counter-proposals. Hence this dispute for consideration and determination.

Mr. Njiru submitted that the Company is able to pay the unionisable employees wage increment for the last 4 years as it has already effected some increments to the senior staff's salaries. Accordingly, he prayed that the Company be ordered to negotiate with the Union collective agreements for the period from 1st January, 2003 to-date.

In his reply, Mr. Njeru traced the historical relationship between the management of the school, especially between Mr. H.L. Gee, the then Administrator and the Union, and submitted that Mr. Gee handled this matter and the recognition agreement single handedly, a procedure that was all wrong because the said recognition agreement, dated 17th June, 2003, was not witnessed by anyone from the school. He, however, pointed out that the Board of management of the school was ready and willing to enter into fresh negotiation with the representatives of the Union and had appointed Messrs. John Gitonga Njeru and Michael Nevil Norman to represent them in all future negotiations.

In the circumstances, Mr. Njeru urged the Court to find, *inter alia*, that:-

(a)  the award if granted in favour of the Union will have far reaching negative financial implications on the school management;

(b)  the recognition agreement signed by Mr. H.L. Gee and the Union does not represent all the wishes of the school management since it was not sanctioned by the school committee;

(c)  there is no proof in writing or by signatures of membership forms to show that the unionisable employees of the Company had joined the Union as its members, and

(d)  the Board of management of the school was not adequately briefed on the past agreement between Mr. Gee and the Union, and it would be unfair to punish them for an act which was not of their own making.

Mr. Njeru, therefore, prayed that the Court refers back the matter to the parties for fresh negotiations, the results of which will be acceptable to the Company so as to promote good working relationship between the parties.

The Union has a valid recognition agreement with the Company which was signed on 17th June, 2003, and the intention of the Legislature in enacting Section 5(2) of the Act (now repealed) was to completely merge the identity of the individual employee into the trade unions, which are for all intents and purposes "Collective Bargaining Agents". Thus, in order to strengthen the trade unions, the Legislature took away the right of an individual employee and entrusted the same to the trade unions, whose responsibilities are, *inter alia*, to:-

(a) undertake the collective bargaining with the employer, or group of employers, on matters connected with the employment, non-employment and terms and conditions of employment;

(b) represent all or any of the employees in any proceedings, and

(c)  give notice of, and declare, a strike in accordance with provisions of the Act, e.t.c.

The Union was duly registered under Section 11 of the Trade Unions Act, Cap. 233, Laws of Kenya and was accorded recognition by the Company to represent all the unionisable employees in its school. In our view, therefore, this is enough to confer *locus standi* on the Union to negotiate with the Company, on behalf of all the unionisable employees, in its school. Accordingly, we **AWARD** and **ORDER** that the Company should negotiate forthwith the Union new terms and conditions of employment or service for all the unionisable employees of in its establishment.

**DATED** and delivered at Nairobi this 20th day of February, 2008.

Charles P. Chemmuttut, MBS.,
**JUDGE.**

O.A. Wafula, **MEMBER.**

J.M. Kilonzo, **MEMBER.**