



REPUBLIC OF KENYA.

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI.

(Coram: Charles P. Chemmutut, J.,

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

CAUSE NO. 101 OF 2006.

BENORI AGENCIES & SERVICES LTD.....Applicants.

v.

BAKERY, CONFECTIONARY,

MANUFACTURING & ALLIED WORKERS' UNION.....Respondents.

and.

CANDY KENYA LTD.....Interested Party.

Issue in Dispute:-

“Refusal by the company to sign recognition agreement with the union.”

No appearance for the Applicants (hereinafter called the second Company).

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

No appearance for the Interested Party (hereinafter called the first Company).

INTERPRETATION OF THE AWARD.

The Court announced its decision in this dispute on 29th November, 2007, wherein it awarded and ordered “that Candy Kenya Ltd. accord formal recognition to the Union as the sole and appropriate representative of the unionisable employees in its concern, and the parties should sign a formal recognition agreement **within three (3) months** from the date of this award for purposes of collective agreement”.

On 14th December, 2007, M/S. Perez Odero & Co., Advocates, filed, on behalf of the second Company, i.e Benori Agencies & Services Ltd., an application for interpretation of the award under Section 16(5) of the Trade Disputes Act, Cap. 234, Laws of Kenya (now repealed), mainly on the following grounds:-

- (a) that most of the employees were not interested in joining the Union;
- (b) that the employees' signatures were forged;

- (c) that some of the employees had withdrawn their membership from the Union;

- (d) that many employees were casuals, and

- (e) that the Union did not recruit a simple majority for purposes of recognition.

The learned counsel also alleged that the second Company was formed in 1999 as a business concern or entity, and in 2002, it was incorporated into a limited liability company and this fact, particularly the date, was not fully addressed during the hearing of the dispute.

We have carefully read the said application for interpretation, together with the memorandum, titled "Appeal for Interpretation," in support thereof, and we find no merit in them. It is too late in the day for the learned counsel to raise these issues. In any case, the same issues were fully considered by the Investigator, whose report is on the record, and by the Court during the hearing of the dispute. Furthermore, the documents on the record speak for themselves, especially the certificate of incorporation which belies the assertion by the learned counsel that the second Company was incorporated in 2002. In fact, the second Company was indeed incorporated on 9th February, 2006. The question of the second Company having been formed as a business entity in 1999 was not canvassed during the hearing of the dispute, and no documentary proof was availed to the Court by the learned counsel.

In our view, therefore, the application for interpretation of the award amounts to an appeal against the award of the Court; and in the circumstances, the same is summarily rejected as untenable, frivolous, vexatious and an abuse of the Court process.

Accordingly, the first Company is **ORDERED** to implement the award immediately.

DATED and given at Nairobi this 13th day of February, 2008.

Charles P. Chemmutut, MBS.,

JUDGE.

J.M. Kilonzo,

O.A. Wafula,

MEMBER.

MEMBER.