



IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI.

(Before: Charles P. Chemmutut, J.,

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

CAUSE NO. 156 OF 2005.

KENYA ENGINEERING WORKERS' UNION..... Claimants.

v.

ATHI RIVER STEEL PLANT LTD. Respondents.

Issue in Dispute:-

“Recognition Agreement”.

Joseph A.N. Omolo, Industrial Relations Officer, for the Claimants (hereinafter called the Union).

Martin R. Munyu, Advocate, of M/S. Iseme, Kamau & Maema, Advocates, for the Respondents (hereafter called the Company).

A W A R D.

This dispute was referred to the Court for adjudication and determination by the Minister for Labour & Human Resource Development on 16th December, 2005, in accordance with the powers vested in, or conferred upon, him by Section 8 of the Trade Disputes Act, Cap. 234, Laws of Kenya (which is hereinafter referred to as the Act); and his reference, together with the statutory certificate from the Labour Commissioner under Section 14(9)(e) of the Act, were received by the Court on 22nd December, 2005. The dispute was then listed for mention on 14th February, 2006, when Mr. Omolo appeared for the Union, but there was no appearance for the Company. However, notwithstanding the absence of the Company's representative, the Union was directed to submit its memorandum on or before 6th March, 2006 and the Company was ordered to file its reply statement thereto on or before 31st March, 2006. Mr. Omolo for the Union belatedly submitted his memorandum on 15th March, 2006, and the learned counsel for the Company, Mr. Munyu, filed his main reply statement thereto on 30th May, 2006 and a supplementary submission on 9th August, 2006. Meanwhile, the dispute suffered several intervening adjournments to give the parties an opportunity to explore the possibility of an amicable settlement out of Court. The parties were, however, unable to agree, and the dispute was eventually heard on 28th March, 2007.

The Company, which started its operations between 1997 and 1998, is a limited liability concern, dealing mainly with the manufacture of steel products and alloy casting; and the Union, which was registered as such under Section 11 of the Trade Unions Act, Cap. 233, Laws of Kenya, is seeking recognition from the company on the following grounds:-

- (i) that in 1997, it recruited all the 15 unionisable employees of the Company as its members;
- (ii) that there is no rival union claiming representation or recognition from the Company, and
- (iii) that it is the sole and appropriate Union to represent the interests of the employees of the Company as it is their (employees') constitutional right to join a trade union of their own choice.

The learned counsel for the Company, Mr. Munyu, denied that the Union was the relevant one to represent the employees of

the Company in view of the fact that the latter is a construction-oriented establishment; and in the circumstances the Company refused to accord recognition to the Union, mainly for the following reasons:-

(a) that the Union has at no time recruited a simple majority of the Company's employees as its members;

(b) that the Union has from time to time only recruited the Company's casual workers;

(c) that most of the unionisable employees have since left the Company, and

(d) that the Union has never served or furnished the Company with a proper check-off list, containing the particulars of the unionisable employees' membership.

Mr. Omolo submitted that after fulfilling the aforementioned conditions, the Union approached the Company for recognition, but the latter declined to accord it recognition. Consequently, the Union reported a formal trade dispute to the Minister for Labour & Human Resource Development in accordance with Section 4 of the Act. The Minister accepted the dispute and appointed Mr. J.B. Okwaba of Machakos Labour Office to act as the Investigator; and on 28th July, 2003 the Minister released to the parties the following findings and recommendation:-

"FINDINGS

..... the nature of the respondents business is of steel manufacturing and therefore the claimants are the appropriate union which is registered to represent the interest of the workers.

At the time the company was undertaking installation of electrical induction furnaces which had employed 40 workers ... (who) had joined the union and were fully paid members.

..... the workers were being paid on weekly basis and hence were not casuals as alleged.

Finally, there is no rival union which is seeking recognition and the claimants had recruited more than 51% of the unionisable employees.

RECOMMENDATION.

..... I recommend that the claimants be accorded formal recognition".

The Minister finally appealed to the parties to accept the recommendation as a basis of settlement of the dispute. The Union accepted the recommendation but the Company rejected it as misleading and improperly obtained (see Union Apps. 1 to 13 and Company Anns. 1 to 7).

Mr. Omolo submitted that the management of the Company was unco-operative and anti-union; and in the circumstances, he urged the Court to award formal recognition to the Union.

In a nutshell, the learned counsel for a Company, Mr. Munyu, vehemently opposed the demand on the aforesaid brief grounds at page 4 hereinabove, and prayed that the demand for recognition by the Union be rejected as untrue, contradictory and baseless.

This matter was full investigated and the findings were (i) that the Union had recruited more than a simple majority of the unionisable employees as its members; (ii) that the Union was the sole and appropriate one to represent the employees of the Company, and (iii) that there was no rival union claiming recognition or representation. We have carefully perused the submissions of the parties and the appendices or annexures attached thereto, and we have no doubt in our mind that in 1997, which was the relevant period for recognition, the Union fulfilled the conditions precedent for recognition of a union by an employer under Section 5(2) of the Act, which are:-

(a) that the trade union has in its membership a simple majority of employees eligible by virtue of the union's constitution to join that particular union in a particular undertaking, or a group of undertakings, and

(b) that there is no rival union claiming to represent such employees.

Therefore, we find no force in the contention by the learned counsel for the Company, Mr. Munyu, to the contrary for, in our view, it amounts to an afterthought to deny the Union recognition. We would perhaps not be wrong in presuming that the Trade Unions Act, Cap. 233, Laws of Kenya, and the Act (Trade Disputes Act, Cap. 234, Laws of Kenya) have been framed keeping in view the provisions of the I.L.O. Conventions Nos. 87 and 98, and especially the undertakings given under Article

11, i.e. the right to organize freely, of Convention No. 87.

In the result, we are satisfied that the Union has fulfilled the requirements under Section 5(2) of the Act for recognition. Accordingly, we uphold the Minister's findings and recommendation, and award that the Company accord formal recognition to the Union forthwith, and the parties must sign a recognition agreement within **two (2) months** from the date of this award for purposes of collective bargaining.

DATED and delivered at Nairobi this day 12th of June, 2007.

Charles P. Chemmutut, MBS.,
JUDGE.

J.M. Kilonzo,
MEMBER.

O.A. Wafula,
MEMBER.