REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

INDUSTRIAL COURT AT NAIROBI

CAUSE 27 OF 2007

TAILORS & TEXTILES WORKERS' UNION …….....……Claimants.

v

UNITED ARYAN (EPZ) LTD……Respondents.

Issue in Dispute:-

"**Recognition Agreement".**

Mr. Charles N. Ngatia, Director of Industrial Relations & Research, for the Claimants (hereinafter called the Union).

Mr. K.K. Nyakundi, Advocate, holding brief for Mr. Charyl Onindo, Advocate, of M/S Kariuki Muigua & Co., Advocates, for the Respondents (hereinafter called the Company).

A W A R D.

The Union was registered as such under Section 11 of the Trade Unions Act, Cap. 233, Laws of Kenya, to represent unionisable employees in the textiles and garments sector, while the Company, which deals with textile garments for export, was established under the Export Processing Zones Act, Cap. 517, Laws of Kenya. In January, 2004, the Union sought recognition from and forwarded the check-off forms to the Company on the following grounds:-

(i) that in 2003, the Union recruited 1,373 out of 1,800, or 76.3%, unionisable employees as its members, and

(ii) that it is the sole and appropriate or rightful Union to represent the interests of the unionisable employees, and there is no rival trade union claiming representation or recognition (see App. 1A).

On 20th May, 2003, the Union also forwarded a model recognition agreement to the Company and requested for deduction of union dues, but the latter alleged that some names in the list were duplicated, while others were not its employees, e.t.c. (see App. I B).

In the circumstances, the Union reported a formal trade dispute to the Minister for Labour on 9th July, 2003, in accordance with Section 4 of the Trade Disputes Act, Cap. 234, Laws of Kenya (which is hereinafter referred to as the Act). The Minister accepted the dispute and appointed Mr. P.M. Wamoto of Ministry of Labour Headquarters to act as the Investigator, but his appointment was withdrawn and Mr.

J.N. Ndiho of Nyayo House Labour Office was appointed to act instead or as such. On 6th July, 2006, the Minister released his report to the parties in which he found and recommended as follows:-

"**FINDINGS.**

…… the Management deals with the production of garments for export …… the Union is the right organization constituted to represent the industrial interest of the employees in the employment of United Aryan EPZ Ltd.

……. there arose a dispute on the authenticity of the employees who were recruited by the Union. …….. out of 1366 employees recruited, the Management was able to identify the names of 414 employees who were unknown to them and another 134 employees whose names had been duplicated.

….. since the time the union submitted the check-off list to the management and after verification of the names, the management had consistently asked the union to submit employees' details such as the employment cards and the identity card numbers. Although it is not a requirement to provide the employees details in the standard check-off list, the Management had the right of demanding the same with a view of establishing proof that only genuine employees join the union. The failure by the union to provide the details therefore leaves a lot to be desired.

Finally …….. out of 1,366 employees recruited 548 employees were either unknown or their names had been duplicated. The remaining balance of 818 employees out of a total labour force of 2,235 constitutes 37% membership which is less than the required simple majority.

RECOMMENDATIONS.

…… I recommend that the claimant union should not be accorded formal recognition until they attain the required simple majority."

The Minister finally appealed to the partied to accept the recommendation as a basis of settlement of the dispute, but it would appear that the management of the Company accepted the recommendation, while the Union rejected it (see Apps. 3, 4, 5 and 6).

In view of the foregoing, the General Secretary of the Union, Mr. William M. Akech, raised and forwarded, through the Minister for Labour, a Notification of Dispute, Form 'A', dated 30th June, 2006, to the management of the Company for their counter-signature to enable the Court adjudicate and determine the matter. The management of the Company declined and/or refused to countersign the notification of the dispute. This being the case, the Minister for Labour invoked his powers vested in, or conferred upon, him by Section 8 of the Act, and referred this dispute to Court for consideration and determination. The Minister's reference, together with the statutory certificate from the Labour Commissioner under Section 14(9)(e) of the Act, were received by the Court on 13th March, 2007. The dispute was then listed for mention on 3rd April, 2007, and the parties were notified to attend. On this occasion, Mr. Ngatia appeared for the Union, but there was no appearance for the Company. Despite the absence of the latter, however, the parties were directed to submit or file their respective written memoranda or statements on or before 19th April, and 9th May, 2007, and the dispute was fixed for hearing on 6th June, 2007. Mr. Ngatia submitted his memorandum, on behalf of the Union, on 20th April, 2007, and Mr. Onindo belatedly filed his reply statement, on behalf of the Company, on 29th May, 2007. On 6th June, 2007, Messrs. Ngatia and Onindo appeared for the parties respectively; but on this day, Mr. Ngatia applied for adjournment of the case to enable him peruse the reply statement of the Company. Mr. Onindo concurred, and accordingly the dispute was fixed for hearing, and was in fact heard, on 3rd July, 2007.

Mr. Ngatia submitted that the Union actually recruited 1,412 out 1,800, or 78.4%, unionisable employees as its members, but the Company unnecessarily kept on demanding more particulars which are properly in its (Company's) possession and also blatantly refused to deduct their union dues, contrary to Section 45

of the Act, Part III of the Industrial Relations Charter, ILO Conventions Nos. 87 and 98 and Section 80 of the Constitution of Kenya. He maintained that the Union has complied with Section 5(2) of the Act because (a) it has recruited more than a simple majority of the unionisable employees of the Company, and (b) there is no rival trade union claiming to represent such employees.

Accordingly, Mr. Ngatia prayed that the Company accord formal recognition to the Union forthwith.

The learned counsel for the Company, Mr. Nyakundi, strongly opposed the demand for recognition, *inter alia*, on the following grounds:-

(a) that the Union recruited 1,239 and not 1,373 unionisable

employees of the Company as its members.

(b) that out of the aforementioned 1,239 names, 78 were duplicated, 38 were not in the employment of the Company, and 152 were unknown. Therefore, after deducting the aforesaid number of the employees, the Union had a total of 977, or 39%, members in the employment of the Company;

(c) that the Company could neither recognize the Union nor effect deduction of Union dues because it had not attained a simple majority of the unionisable employees in accordance with the provisions of Section 5(2) of the Act;

(d) that, on demand, the Union has failed to furnish the Company with the particulars of the alleged members of the Union, and

(e) that the Company did not infringe the provisions of the labour laws and the ILO Conventions.

In the circumstances, the learned counsel for the Company prayed that the demand for recognition by the Union be rejected as premature, frivolous, vexatious and scandalous.

This matter was fully investigated and the Minister found that the Union was the appropriate one to represent the interests of the unionisable employees of the Company, but the Union was denied recognition allegedly for lack of a simple majority. In their submission to the Investigator, the management stated that the Company had a "labour force of 2,235 employees", but no evidence then and in these proceedings has been adduced by the management of the Company to show that at the material time, i.e in 2003, when the Union sought recognition, the Company had 2,235 employees in its establishment. Furthermore, the report does not even categorize how many of the "labour force of 2,235 employees" were unionisable and in the management cadre. The Minister's report is, therefore, unreliable and shoddy, and the Court rejects it.

On very careful consideration of the submissions by the parties, we have no doubt in our minds that in 2003, which was the relevant period for recognition, the Union fulfilled the requirements of Section 5(2) of the Act for recognition by the Company by recruiting 1,373 out of 1,800, or 76.3%, unionisable employees as its members. In the circumstances, we **AWARD** that the Company accord formal recognition to the Union as the sole and appropriate representative of its unionisable employees. We also **ORDER** that the parties should sign a formal recognition agreement within **two (2) months** from the date of this award for purposes of collective bargaining.

DATED and delivered at Nairobi this 19th day of September, 2007.

Charles P. Chemmuttut, MBS.,

JUDGE.

J.M. Kilonzo, O.A. Wafula,

MEMBER. **MEMBER.**