



IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI.

(Present: Charles P. Chemmutut, J.,

M.A. Warrakah & M.M. Jahazi, Members.)

CAUSES NOS.118 OF 1999 & 59 OF 2000.

KENYA UNION OF COMMERCIAL, FOOD & ALLIED WORKERS.....Claimants.

v.

BIRKING INDUSTRIAL SERVICES (BIS) LTD.....Respondents.

Issues in Dispute:-

“Unlawful lock-out and dismissal of 102 employees” (hereinafter called the grievants), namely:-

1. Eluicx B. Sibi.
2. Nicholas Ouma.
3. Thomas Nyaga.
4. Mutinda.
5. Mwangi Gatguki.
6. Mulwa Nzesi.
7. Vincent Mwinzi.
8. Geofry Wafula.
9. Mureri.
10. Charlice Lisalitsa.
11. Mathias Adagi.
12. James Mburu.
13. Patrick Ominde.
14. Joseph Owino.
15. James Oirere.
16. Ikwara Joseph.
17. Enos Linyerera.
18. Mutune.
19. Peter Onyango.
20. John Ojan’g.
21. Peter Omollo.
22. Simion Mbeja.
23. Onyango.
24. Sar Guracha.
25. Elisha Okwemba.
26. J.N. Kaloki.

27. **Musili Kimbu.**
28. **Kamuti Musya.**
29. **Bonface Kanuna.**
30. **Diba Ali.**
31. **Batton Makokha.**
32. **Joel.**
33. **Hagai Murundu.**
34. **Gal Galo.**
35. **Alexanda Simanjala.**
36. **Peter Imbira.**
37. **John Obwoka.**
38. **Rianga.**
39. **Helron Ngere.**
40. **Joseph Kiberenge.**
41. **Amos Kuboka.**
42. **Samuel Maina.**
43. **James Nguyo.**
44. **Muthui Ngala.**
45. **Mwangi.**
46. **Daniel Musembi.**
47. **Mutuko.**
48. **Hezbon Asuza.**
49. **Chrispinus Ekisia.**
50. **Daniel Mwaniig.**
51. **Daniel Akhusama.**
52. **John Maina Ndungu.**
53. **Nahason Wang'ombe.**
54. **Dickson Achando.**
55. **Abner Obwoge.**
56. **Thomas Otwoma.**
57. **Amuhango Ananda.**
58. **Sichenga.**
59. **James Okumu.**
60. **Samuel Chimbiro.**
61. **Andrew Kanyi.**
62. **Kalui.**
63. **Onyango Choro.**
64. **Fredrick Wasike.**
65. **Dina Musembei.**
66. **Wilfred Masibo.**
67. **Chulu Kimanzi.**
68. **Philip Malelu.**
69. **Francis Karau.**
70. **Musaa.**
71. **Washington Osilo.**
72. **Francis Munene.**
73. **Samuel Rashid.**
74. **Fred Abantu.**
75. **John K. Maina.**
76. **Josphat Ongaya.**
77. **Paul Musembei.**
78. **Sylas Okeyo.**
79. **Solomon Maina.**
80. **Sylvester Juma.**
81. **Hardson Chigadi.**
82. **Waswa Edward.**
83. **Josphat Okondo.**
84. **Stephine Obondi.**
85. **Robert Mutua.**
86. **Kimuele Kuma.**
87. **Peterson Onyambu.**
88. **Mwangi Kamau.**
89. **Kivuti Ngunu Mundu.**
90. **Peter Munubi Omollo.**
91. **Peter Okoth.**
92. **Fred Omondi.**
93. **Vincent Mulusa.**

94. Francis Okello.
95. Mutwambutu Kanambiu.
96. Stanly Kunja.
97. Ongoro Ondieki.
98. Stephen Onudo.
99. Pichot Mokaya.
100. Jamin Shitika.
101. Samuel Oyugi.
102. Evans Kuria.”

T.T.M. Aswani, Esq., Advocate, for the Claimants (hereinafter called the Union).

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

A W A R D.

The Notification of Dispute, Form ‘A’, dated 9th December, 1998, together with the statutory certificates from the Labour Commissioner and the Minister for Labour under Section 14(9) (e) and (f) of the Trade Disputes Act, Cap.234, Laws of Kenya (which is hereinafter referred to as the Act) were received by the Court in respect of Cause No.118 of 1999 on 25th November, 1999. As regards Cause No.59 of 2000, the Minister for Labour referred the same to the Court for consideration and determination on 23rd May, 2000, under powers vested in him by Section 8 of the Act, and it was received by the Court on 24th May, 2000. The disputes were, however, consolidated as they involved the same parties and common questions of fact and law. The Union submitted its memoranda on 21st March and 20th November, 2000 respectively, and the Company filed its reply statements on 31st May and 21st December, 2000 respectively. Consequently, the disputes suffered several adjournments for one reason or another; and on 5th September, 2003, the matter was, by mutual agreement of the parties’ representatives, i.e. Miss Callen Masaka, Advocate, holding brief for Mr. T.T.M. Aswani, for the Union and Mr. S. Kibera, Advocate, of M/S. Njoroge, Nyagah & Co., Advocates, for the Company, fixed for hearing on 22nd and 26th September, 2003. On 22nd September, 2003, Mr. Aswani appeared for the Union, but there was no appearance for the Company and no reasons were given for M/S. Njoroge, Nyagah & Co., Advocates’ inability to appear during the hearing of this case. The matter was, therefore, heard *ex-parte*.

The Company, which provides guards’ services mainly to Kenya Breweries Ltd., is alleged to have unlawfully locked-out 97 of the grievants when they complained of underpayment of wages and dismissed the other 5 grievants on account of unsubstantiated charges against them. The learned counsel for the Union, Mr. Aswani, submitted that the grievants had genuine grievances but the Company did not listen to them.

With the foregoing brief submission, the learned counsel for the Union prayed that the grievants be paid their terminal benefits, amounting to a total of Kshs.22,514,956.10, as shown in the attached detailed schedule of claim or demand, which forms part of this award.

Since the claim or demand by the Union, on behalf of the grievants, stands unchallenged, I award as prayed for hereinabove and order accordingly.

On request for individual written opinion or advice in this case, the Members of the Court were unable to render the same.

DATEDand delivered in Nairobi this 29th day of July, 2004.

Charles P. Chemmuttut,

JUDGE.