IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI.

(Before: Charles P. Chemmuttut, J.

H.B.N. Gicheru & A.K. Kerich, Members.)

CAUSE NO.56 OF 2000.

KENYA PLANTATION & AGRICULTURAL WORKERS' UNION .....Claimants.

- v -

NATIONAL SEED QUALITY CONTROL SERVICE (now KENYA PLANT

HEALTH INSPECTORATE SERVICE (KEPHIS).....Respondents.

Issue in Dispute:-

"Redundancy of Messrs:-

(1) Mumelo Masolo. (2) Zadock Iramwenya.

(3) Owino Olale. (4) Hezron Iramwenya.

(5) Onsongo Maeba. (6) Lomini Anomat.

(7) Ondanga Isaki. (8) Ekwe Nawatoa."

(hereinafter called the grievants).

Sebastian V. Odanga for the Claimants (hereinafter called the Union).

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

A W A R D.

The Minister for Labour referred this dispute to the Court for consideration and determination on 23rd May 2000, in exercise of the powers conferred on 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 certificates from the Labour Commissioner and the Minister himself under Section 14, subsection (9)(e) and(f) of the Act, were received by the Court on 24th May, 2002. The dispute was then listed for mention on 14th June 2000, when Mr. F.K. Waweru, Deputy General Secretary, appeared for the Union but there was no appearance for the firm. In the circumstances, the matter was listed for another mention on 4th July 2000, and the parties were duly notified. On this occasion, Mr. Sebastian Odanga appeared for the Union, but again there was no appearance for the firm. The dispute was, therefore, listed for a further mention on 19th July 2000, when Messrs. Noan Odari and Moses Bosire, Advocate, of Kiangoi & Co., Advocates, who appeared for the parties respectively, were directed to submit or file their respective written memoranda or statements on or before 4th and 25th August 2000, and the dispute was fixed for hearing on 27th September 2000. The Union belatedly submitted its memorandum on 29th August 2000, but the firm did not file any reply statement thereto. On 27th September 2000, Messrs. Waweru and Bosire appeared for the parties respectively, and by mutual agreement of the parties, the dispute was listed for yet a further mention on 13th October 2000. However, on 6th October 2000, the Court rescheduled the case for mention on 25th October 2000, and the parties were notified accordingly. There was no appearance for the parties on the said date and the matter was, therefore, stood over generally. On 10th November 2000, the Union moved the Court for a mention of the case with a view to fixing a suitable or convenient date for hearing. Consequently, on 20th November 2000, the dispute was listed for another mention on 1st December 2000, to fix a suitable or convenient date for hearing, and the parties were advised that their representatives "should attend punctually". On 29th November 2000, the learned counsel for the firm, Mr. Bosire, acknowledged receipt of my letter, Ref. 56/2000, dated 20th November 2000, advising the parties as stated hereinabove, but he regrettably informed the Court that he would not be available on 1st December 2000, as he had another case to attend to. He, however, suggested that he would be available for the hearing of this case on any date between 1st and 28th February 2001. On 1st December 2000, there was again no appearance for the parties; and notwithstanding their absence, the firm was ordered to file its reply statement on or before 5th January 2001, and the dispute was fixed for hearing on 11th April 2001. On 4th December 2000, the parties were informed of this arrangement, and the learned advocates for the firm were warned that the hearing of the dispute as aforestated would proceed *ex-parte* in default of their reply statement. On 20th December 2000, the learned counsel for the firm, Mr. Bosire, acknowledged receipt of my said letter dated 4th December 2000, the contents of which he noted. The firm did not file its reply statement as ordered hereinabove; and surprisingly by his letter, Ref. KARI/18, dated 10th April 2001, the learned counsel for the firm, Mr. Bosire, apologetically informed the Court that he would not be available to attend Court on 11th April 2001 "due to a very pressing personal problem" and that he had "a doctor's appointment on the said date". In its considered opinion and wisdom, the Court found no valid reason in Mr. Bosire's communication for the postponement of the hearing of this case as he did not even state why he had failed to file his reply statement to the memorandum of the Union as ordered hereinabove. In my view, the request for adjournment amounted to dilatory tactics; and I, therefore, rejected it and the case was heard *ex-parte* on 11th April, 2001.

Mr. Odanga submitted that the Union was registered under Section 11 of the Trade Union Act, Cap.233, Laws of Kenya, to represent all unionisable employees in the plantation and agricultural industry or sector on matters relating to their terms and conditions of employment, while the firm is an agricultural research centre, under the umbrella of Kenya Agricultural Research Institute (KARI). He stated further that the said centre also grows crops such as maize and potatoes and rears cattle. In March 1998, the firm changed its name to Kenya Plant Health Inspectorate Service (KEPHIS).

The present dispute arose when the firm refused to pay to 30 of its employees, who had continuously worked for it for over 5 years, their wages for the period between August 1996 to March 1997; and when the Union intervened, the firm decided to convert the terms and conditions of service of the employees from permanent to casual terms and conditions of employment. 22 employees signed the new contracts of service, binding them to casual terms and conditions of employment, while the grievants refused to do so for fear of losing their past employment benefits. Meanwhile, the Union reported an informal dispute to the District Labour Officer at Nakuru, and during their informal meeting held on 24th September 1997, the parties were unable to resolve the dispute. On 29th May 1997, the Union reported a formal trade dispute to the Minister for Labour, who took cognizance of the same, and, pursuant to Section 7 of the Act, appointed Mr. J.N. Njugu of Nakuru Labour Office to act as the Investigator. In his subsequent investigation report, which was released to the parties on 7th January 1999, the Minister found, inter alia, that the grievants, who had worked for the firm between 1981 and 1997," were housed at the center"; and although the firm was authorized to engage casual employees for a period of three months, the grievants were "no longer casuals". Accordingly, the Minister recommended that the grievants "be reinstated back to their jobs without loss of benefits" and "the period they have been out should be treated as leave without pay". He finally appealed to the parties to accept the recommendation as a basis of settlement of this dispute. The Union accepted the recommendation but the firm rejected it. Hence, this dispute for decision. (Union Apps I to 17).

Mr. Odanga submitted further that most of the grievants had continuously worked for the firm for over 5 years, and enjoyed certain benefits afforded to permanent employees, e?.??g?.? provision of housing, monthly contributions to National Social Security Fund (which is hereinafter referred to as NSSF), e?.t?.?c.(Union App.18). He pointed out that all the grievants, except the second one, who as an expert welder hired from A.D.C. farm, Ngata (Union app.19), were watchmen who, for over 5 years, guarded strategic points or locations of the firm, e.??g?.? buildings, stores, e?t?c?. Therefore, the nature of their work or employment was not casual but permanent.

In the circumstances, Mr. Odanga urged the Court to uphold the Minister's recommendations; or, in the alternative, prayed that

the grievants be paid their terminal benefits as stipulated or computed in App.20 of the Union's submission.

Since the learned advocates for the firm neglected or refused to file their reply statement in this matter and also failed to appear during the hearing thereof, I have no reason to disbelieve the Union's case. It is clear from the Minister's findings that the grievants had worked for the firm between 1981 and 1997 and that they were "no longer casuals".

Considering their respective employment periods with the firm, and also taking into account the record of their contributions and remittances to NSSF by the firm, I am firmly persuaded that the grievants had continuity of service of employment, and are entitled to either of the reliefs prayed for by the Union. The grievants lost their employment over 6 years ago, and it is too late in the day to thrust them on an unwilling employer. In the circumstances, therefore, I refuse to reinstate them to their former jobs, but award that each be paid the following terminal benefits as computed and prayed for by the Union in App.20 of their submission:-

1. MUMELO MASOLO

a) 30 days notice for 5 years service – 30x120.00 daily rate
- 3600.00

b) Accumulated leave pay for 5 years – (10x5) x 120.00

- Shs.6000.00

c) Unpaid overtime - (42 x 4 x 12) x 5 x 13.30 hr rate

- Shs. 134064

d) 6 months salary – (Compensation for loss of employment

- 6x3120 – Shs. 18720.00

Total Shs. 162,384/=

2. ZADOCK IRAMWENYA

a) 45 days Notice for 10 years – 45 x 175 daily rate

- Shs.7875.00

b) Accumulated leave pay for 10 yrs – (10x10)x175

- Shs.17500.00

c) 6 months salary – Compensation for loss of employment

- 6 x 4550
- Shs.27300.00

Total Shs. 52,675/=

3. OWINO OLALE

a) 45 days notice for 12 yrs - 45x120 daily rate
- Shs.5400.00

b) Un paid overtime - (42x4x12)x12x13.30 hr rate
- Shs. 321,753.60

c) 6 months salary - compensation for loss of employment

- 6 x 3120 – Shs. 18,720.00

Total Shs.345,837/=

4. HEZRON IRAMWENYA

a) 45 days notice for 15 years – 45x120 daily rate

- Shs.5400.00

b) Accumulated leave pay for 15 years – 10x15x120

- Shs.18,000

c) Unpaid overtime – (42x4x12) x 15x13.30 hr rate

- Shs.402192.00

d) 6 months salary - compensation for loss of employment

- 6x3120 – 18720.00

Total Shs.444,312/=

5. ONSONGO MAEMBA

a) 45 days notice for 16 years – 45 x 120 - Shs. 5400.00

b) Accumulated leave pay for 16 years - (10x16)x120

- Shs.19,200.00

c) Unpaid overtime for 16 years - (42x4x12)x16x13.30 hr rate

- Shs.429,004.80

c) 6 months salary-compensation for loss of employment

- 6x3120 – Shs.18,720

Total Shs.472,424/80

6. LOMINI ANOMAT

a) 30 days notice for 5 years- 30 x 120 – Shs. 3600.00

b) Accumulated leave for 5 years – (10x5)x120 – Shs. 6000.00

c) Unpaid overtime – (42x4x12) x5x13.30 – Shs.134,064.00

d) 6 months salary-compensation for loss of employment

- 6 x 3120 – Shs.18720.00

Total Shs. 162,384/=

7. ODANGA ISAKI

a) 30 days notice for 4 years – 30 x 120 daily rate

- Shs. 3600.00

b) Accumulated leave pay for 4 years – 10x4x120 – Shs.4800.00

c) Unpaid overtime – (42x4x12)x4x13.30 hr rate – Shs.107,251.20

d) 6 months salary-compensation for loss of employment

- 6 x 3120 – 18720

Total Shs.134,371/=

8. EKWE NAWATON

a) 30 days notice for 5 years – 30x120 – Shs. 3600.00

b) Accumulated leave pay for 5 years – 10x5x120 – 6000.00

c) Unpaid overtime – (42x4x12)x5x13.30 hr rate

- Shs.134,064.00

d) 6 months salary-compensation for loss of employment

- 6 x 3120 - 18720

Total Shs. 162,384/=

The two members of the Court concur with this decision.

DATED and delivered at Nairobi this 19th day of June, 2002.

Charles P. Chemmuttut,

JUDGE.