



**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI.**

**(Before: Charles P. Chemmutut, J.**

**A.K. Kerich & J.M. Kilonzo, Members.)**

**CAUSE NO.24 OF 2002.**

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

**v**

**BROOKE BOND KENYA LTD.....Respondents.**

**Issue in Dispute:-**

**“Wrongful termination of service of Mr. John Omondi”, (hereinafter called the grievant).**

F.K. Waweru, Deputy General Secretary, for the Claimants (hereinafter called the Union).

L.W. Kariuki, Senior Executive Officer, F.K.E., for the Respondents (hereinafter called the Company).

**A W A R D.**

In this case the Union is seeking unconditional reinstatement of the grievant without loss of his benefits for the period he has been out of employment, but the Company opposes the demand on the ground that the grievant allowed his wife to stock illegal brew, known as “chang'aa”, in the Company’s house which was allocated to him.

The Union is registered as such under Section II of the Trade Union Act, Cap.233, Laws of Kenya, to represent employees in the plantation and agricultural industry or sector on matters relating or pertaining to their terms and conditions of employment, while the Company, which owns large tea plantations in Kericho and Limuru and also deals with the growing, processing and marketing of tea, is a member of the Kenya Tea Growers Association with which the former entered into a recognition agreement. The parties have also negotiated or concluded several collective agreements, which are renewable or reviewable every two years, on terms and conditions of employment for the Company’s unionisable employees, the latest of which will expire on 31<sup>st</sup> December, 2003.

The grievant was employed by the Company at its Kerenga Engineering Unit on 1<sup>st</sup> April 1993 and was terminated on 9<sup>th</sup> April 1998 for allowing his wife to brew for consumption illicit brew, known as “chang'aa”, in the Company’s house which was allocated to him. The police were informed but they did not prefer any charges against him. The parties endeavoured to settle the matter at their own level but failed. Consequently, the Union reported a formal trade dispute to the Minister for Labour who accepted it and appointed Mr. J.W. Kimani of Kericho Labour Office to act as the Investigator. On 15<sup>th</sup> April 1999, the Minister released his report to the parties in which he established that the Company had been trying to curb the brewing and selling of illicit brew, which was rampant in its estates, by issuing public notices warning against the vice; but the

grievant did not appear to have taken the warning seriously and he was, therefore, terminated on disciplinary grounds for the said offence on payment of two (2) months' salary in lieu of notice and earned leave. The Minister, however, recommended that in view of his clean or unblemished employment record, the grievant "deserved a little bit more in his discharge", i.e. "an extra two (2) months' salary by way of compensation".

The Minister finally appealed to the parties to accept the recommendation as a basis of resolving the dispute. It would appear that the Union did not accept the recommendation. Hence, this dispute for consideration and determination (see Union Apps I and 2).

On 21<sup>st</sup> March 2002, the Minister for Labour referred this dispute to the Court for consideration and determination in accordance with the powers vested in him under 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 26<sup>th</sup> March 2002. The dispute was then listed for mention on 18<sup>th</sup> April 2002, when Mr. J.N. Namasake appeared for the Company but there was no appearance for the Union. Notwithstanding the absence of the representative of the Union, however, the parties were directed to submit or file their respective memoranda or statements on or before 17<sup>th</sup> May and 17<sup>th</sup> June 2002, and the dispute was fixed for hearing on 23<sup>rd</sup> July 2002. The parties belatedly submitted or filed their respective memorandum and reply statement on 11<sup>th</sup> June, 2002 and 29<sup>th</sup> July, 2002, and the dispute was heard on 7<sup>th</sup> August, 2002.

Mr. Waweru submitted that the grievant was severely punished for an offence he did not commit because he was on duty when his wife was found in possession of the illicit brew, i.e. "chang'aa". In the circumstances, he prayed that the grievant be reinstated to his job without loss of wages and benefits.

In reply, Mr. Kariuki submitted that on 7<sup>th</sup> April 1998 at 9.30 a.m., the Assistant Chief of Kiptetan Sub-location, accompanied by his security personnel, carried out a surprise raid at Kerenga Engineering Unit under his jurisdiction, whereat he found some "chang'aa" in the grievant's house, and his wife who was in the house was arrested and the management of the Company was informed. The grievant and the shopsteward were summoned from the factory to witness the seizure of the "chang'aa" from the grievant's house. On being questioned why he allowed his wife to stock the illicit brew, the grievant was unable to give any satisfactory reasons and he was terminated.

Mr. Kariuki submitted further that brewing and drinking "chang'aa" had become a menace in the Company's premises, leading to an alarming rate of incidences of fighting and damage to property; and in order to stamp out this menace, the Company issued appeals and warnings through meetings and notices to the employees, which were prominently posted on the Notice Boards, to desist from the practice. The employees were warned that whoever would brew or allowed brewing or consumption of "chang'aa" in his house would face disciplinary action. But the grievant and his wife apparently ignored the management warnings and took them for granted. The grievant never even cared to warn his wife not to brew or allow consumption of "chang'aa" in his house. Mr. Kariuki went on to argue that no company worth its name would allow brewing and drinking of "chang'aa" in its housing estate, otherwise her labour force would ultimately be reduced to zombies. He pointed out that the Company had allocated the house to the grievant as its employee, and it was his responsibility to ensure compliance of the Company's rules and regulations in its usage. These rules and regulations, he said, are normally explained to each resident employee by the Unit management upon being allocated a Company house. The employee would, therefore, take responsibility of his visitors and relatives whose conducts were dubious and questionable. In the circumstances, the grievant was responsible for the "chang'aa" stored by his wife in the house allocated to him. But instead of dismissing him summarily, the Company took a lenient action by terminating his services.

Finally, Mr. Kariuki urged the Court to find that the Company would lose control over the activities taking place within its property if the employees get the impression that no action would be taken against them for any violation of its rules and regulations, especially with regard to discipline, law and order; that in his report, the Minister for Labour found the grievant guilty of the alleged offence; that the Company has lost faith in the grievant, and that the terminal dues for the grievant have already been deposited with the Ministry of Labour.

During the hearing of this dispute, however, Mr. Kariuki informed the Court that the Company was willing and ready to reinstate the grievant to his job without pay.

Fortunately, the Company has in this dispute agreed to reinstate the grievant to his job, and the question for consideration is whether the grievant is entitled to back wages and other benefits. As regards these entitlements, I find that the case has taken over 4 years to be disposed of, and this delay cannot be attributed to either the Union or the Company. It has delayed due to investigation machinery or procedure. Consequently, I am of the view that it would not be equitable and proper to burden the Company with heavy financial commitment to the grievant for the long period for which it were not responsible. In my considered opinion, therefore, I award that the grievant be reinstated to his job, with continuity of service from the date of his wrongful termination, and also be paid 10 months' wages as compensation, based on the last pay which he was earning at the time when he was wrongfully terminated. The rest of the period shall be treated as leave without pay.

Both members of the Court concur with this decision.

**DATED** and delivered at Nairobi this 22<sup>nd</sup> day of August, 2002.

**Charles P. Chemmutut,**

**JUDGE.**