



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA.

(Before: Charles P. Chemmutut, J.,

J.C. Odaga & J.M. Kilonzo, Members.)

CAUSE NO.42 OF 2002.

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL INSTITUTIONS,

HOSPITALS & ALLIED WORKERS.....Claimants.

- v -

COAST GYMKHANA CLUB.....Respondents.

Issue In Dispute:-

“Wrongful dismissal of Jimmy Mulwa” (hereinafter called grievant).

No appearance for the Claimants (hereinafter called the Union).

M. Onyango (Mrs.), Executive Officer, F.K.E., for the Respondents (hereinafter called the Club).

A W A R D.

The Minister for Labour referred this dispute to the Court for consideration and determination on 7th May, 2002 in exercise of the powers vested in 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 14th May, 2002. The dispute was then listed for mention on 30th May, 2002 and the parties were notified to attend. On this occasion Messrs. Mwari S. Njiru and L.W. Kariuki, who appeared for the parties respectively, were directed to submit or file their respective written memoranda or statements on or before 1st July and 1st August, 2002, respectively and the dispute was fixed for hearing on 17th September, 2002. The dispute was, however, brought up for another mention on 24th June, 2002, when Mr. J.N. Namasake appeared for the Club but there was no appearance for the Union. Despite the absence of the latter, the parties were granted an extension to submit or file their respective written memoranda or statements on or before 8th July and 8th August, 2002, and the dispute was fixed for hearing at Mombasa on 12th September, 2002. The Union submitted their memorandum on 16th July, 2002 but the Club did not file their reply thereto.

On 29th August 2002, Mr. Namasake informed the Court at Mombasa that the matter would be amicably settled by the parties and that a memorandum of settlement would be forwarded to it (Court) while still in Mombasa for an award by consent on 12th September, 2002. On this day, Mr. Namasake sent to us an unsigned memorandum of settlement hereof, through Mrs.

Onyango who had come to appear before the Court on a different matter. However, Mrs. Onyango promised to have it signed by the representatives of the parties, after which she would file it in Court for purposes of an award by consent, but she has not done so to-date. It also came to our knowledge subsequently that Mr. Namasake had advised Mr. Mwari S. Njiru for the Union not to travel to Mombasa for the hearing of the dispute on 12th September, 2002 because the matter would be amicably settled, but the Union have since denied any knowledge of such a settlement. Hence this *ex-parte* award in favour of the Union, in default of a reply statement and on the ground that Mr. Namasake intentionally misled both the Court and the Union.

In his written submission, Mr. Mwari S. Njiru stated that the grievant was initially employed by the Club on 1st January, 1980 as a casual worker; and he was verbally confirmed as a bar waiter on 7th March 1980, at a consolidated salary of Kshs.900/= per month. The grievant was elected a shopsteward in 1993, and he was dismissed on 31st March, 1995, for *inter alia*, failure to respond to warning letters, insubordination, malingering, absenteeism, e.t.c., after serving the Club for 15 years. At the time of his dismissal as aforesaid, he was earning a monthly salary of Kshs.2,190/=, plus a house allowance of Kshs.500/=.

Consequently, the Union reported a trade dispute to the Minister for Labour who accepted the same and appointed Mr. J.N. Mwanzia of Mombasa Labour Office to act as the Investigator. In his report, which was released to the parties on 24th July, 1997, the Minister found that the allegations levelled against the grievant were unjustified and amounted to victimisation; and his dismissal was, therefore, equally unjustified and wrongful. In the circumstances, the Minister recommended that the grievant's dismissal be reduced to normal termination of service, with full terminal benefits; and, in addition, he should be paid four (4) months' salary for wrongful dismissal.

The Minister finally appealed to the parties to accept the recommendation as a basis of settlement of the dispute. It would appear that the Union accepted the recommendation but the Club rejected it. Hence this dispute for consideration and determination.

Mr. Njiru, therefore, urged the Court to find that the dismissal of the grievant was unjustified and wrongful, and prayed that he be paid his terminal dues, amounting to Kshs.52,507.50, made up as follows:-

1. Four(4) months' salary in lieu of notice. - Kshs.8,760.00
2. Ten(10) months' *pro-rata* leave. - " 2,250.00
3. Ten(10) months' leave traveling allowance. - " 875.00
4. Fifteen(15) years' terminal benefits. - " 41,302.50
5. Public Holidays - " 720.00
6. Under payment of house allowance:
 - (a) January-December 1993:
 $855-500=355 \times 12$ Kshs.4,260.00
 - (b) January-December 1994:
 $985-500=485 \times 12$ " 5,820.00
 - (c) January-December 1995:
 $1125-500=625 \times 12$ " 7,500.00 - " 17,580.00
7. Four(4) months' salary, being compensation for wrongful dismissal.

	Kshs. 8,760.00
Total	Kshs.80,247.00
Less	“ 27,740.00
Net Pay	Kshs.52,507.50

As stated hereinabove, Mr. Namasake misled both the Court and the Union that the matter would be settled and he did not even file his reply statement to the memorandum of the Union nor appeared in Court. The case was investigated by the Ministry of Labour whose findings and recommendation were that the dismissal of the grievant was unjustified and wrongful and that the same be reduced to normal termination of service, with full terminal benefits; and, in addition, he be paid four (4) months' salary as compensation for wrongful dismissal. Accordingly and as prayed for by the Union, the demand is allowed *ex-parte*, and the Club is ordered to pay the terminal dues and compensation to the grievant as shown hereinabove, and I so award.

On consultation, the Members of the Court concur with this decision.

DATED and delivered at Nairobi this 8th day of October, 2002.

Charles P. Chemmutut,

JUDGE.