



**KENYA BUILDING, CONSTRUCTION, TIMBER, FURNITURE & ALLIED  
INDUSTRIES EMPLOYEES' UNION v WANDIA CONSTRUCTION CO.  
LTD (Cause 116 of 2000) [2001] KEELRC 6 (KLR) (8 March 2001) (Award)**

*KENYA BUILDING, CONSTRUCTION, TIMBER, FURNITURE & ALLIED INDUSTRIES  
EMPLOYEES' UNION v WANDIA CONSTRUCTION CO. LTD [2001] eKLR*

Neutral citation: [2001] KEELRC 6 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 116 OF 2000  
CP CHEMUTTUT, J  
MARCH 8, 2001**

**BETWEEN**

**KENYA BUILDING, CONSTRUCTION, TIMBER, FURNITURE & ALLIED  
INDUSTRIES EMPLOYEES' UNION ..... CLAIMANT**

**AND**

**WANDIA CONSTRUCTION CO. LTD ..... RESPONDENT**

**AWARD**

Issue in Dispute:-

Wrongful dismissal of:-

1. Ayub Mukhoka.
2. Christopher Mbilo.
3. Peter Matanyi.
4. Fambian Mukovi.

1. This dispute was referred to the Court for adjudication and determination by the Minister for Labour on 3<sup>rd</sup> October 2000, in exercise of the powers conferred upon him by Section 8 of the Trade Disputes Act, Cap.234, Laws of Kenya (which is hereinafter referred to as the Act). The reference, together with the statutory certificates from the Minister himself and the Labour Commissioner under Section 14, subsection (9) (e) and (f) of the Act, were received by the Court on 17<sup>th</sup> October 2000, and the dispute was listed for mention on 10<sup>th</sup> November 2000. On this occasion, Mr. Julius Maina and Mr. G.N. Waweru, Advocate, who appeared for the parties respectively, were directed to submit or file their



respective written memoranda or statements on or before 1<sup>st</sup> December, 2000 and 5<sup>th</sup> January 2001; and by mutual consent of the parties, the dispute was fixed for hearing to-day, i.e. 8<sup>th</sup> March, 2001. Mr. Maina for the Union submitted his memorandum on 1<sup>st</sup> December 2000, but Mr. Waweru for the Company neither filed his reply statement thereto nor has he appeared to-day, and the matter is, therefore, heard ex-parte.

2. In his ex-parte submission, Mr. Wambua stated that the Company are a construction concern or undertaking and are, therefore, bound by the Regulation of Wages (Building Construction Industry) Order, Legal Notice No.70 of 1994. The four employees (hereinafter called the grievants) were engaged on 3<sup>rd</sup> April 1990, 16<sup>th</sup> October 1990, 16<sup>th</sup> January 1996 and 1<sup>st</sup> February 1991, at a daily rate of Kshs.100/=, Kshs.100/=, Kshs.80/= and Kshs.100/= respectively. The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> grievants were employed as masons while the 3<sup>rd</sup> grievant was engaged as a manual worker, and all were laid off or terminated on 19<sup>th</sup> September, 1997 allegedly on account of lack or reduction of work. At the time of their lay off or termination, the grievants were earning Kshs.200/=, Kshs.200/=, Kshs.90/= and Kshs.200/= per day respectively.
3. Mr. Wambua submitted further that the grievants served the Company with clean employment records, but their services were terminated by the Company as aforesaid without paying their redundancy benefits. He said that the parties attempted to settle the matter at their own level, but no settlement was reached due to the intransigent attitude of the Company. Consequently, the Union reported a formal trade dispute to the Minister for Labour, who accepted the dispute and appointed Mr. J.N. Ndiho of the Ministry of Labour Headquarters to act as the Investigator. In his subsequent report which was released to the parties on 31<sup>st</sup> January 2000, the Minister recommended that “the grievants be paid their redundancy benefits” in terms of the aforementioned Order; and in addition, “they should be paid 2 months salary as compensation for loss of employment”.
4. The Minister finally appealed to the parties to accept the recommendation as a basis of settlement of the dispute (see App.I). The Union accepted the recommendation but it would appear that the Company rejected it. Hence this dispute for adjudication and determination.
5. For the foregoing reasons, Mr. Wambua prayed that the Court may award to the grievants their entitlements in terms of the said Order as follows:-

Ayub Mukokha – (3.4.90 – 19.9.97: 7 yrs)

1. Notice 2 months (52 days x 200/=) - Kshs.10,400.00
2. Leave 2 yrs (52 days x 200/=) - “ 10,400.00
3. Services 7 yrs x 15 days (105 days x 200/=) - “ 21,000.00
4. Compensation 2 months (52 x 200/=) - “ 10,400.00
5. Tools allowance 45/= x 12 months x 7 years - “ 3,780.00

Total =

Kshs.55,980.00

Peter Matanyi - (16.10.90 – 19.9.97: 7 yrs)

1. Notice 2 months (52 days x 200/=) - Kshs.10,400.00
2. Leave 2 yrs x 26 (52 days x 200/=) - “ 10,400.00
3. Service 7yrs x 15 days (105 days x 200/=) - Kshs.21,000.00



4. Compensation 2 months (52 days x 200/=) - “ 10,400.00
  5. Tools allowance 45/= x 12 x 7yrs - “ 3,780.00
- Total = Kshs.55,980.00 Christopher Mbilo - (16.1.96 – 19.9.97 : 1 yr)

1. Notice 1 month (26 days x 1851.20) - Kshs. 1,851.20
  2. Leave 1 yr 8 months (20monthsx21/4x45 days)- “ 3,204.00
  3. Service 1 yr x 15 - “ 1,068.00
  4. Compensation 2 months - “ 3,702.40
  5. Underpayments 951.20 x 20 months - “ 9,024.00
  6. House allowance 16.15 x 26 x 20 months - “ 8,398.00
- Total = Kshs.37,247.00

Fabian Mukovi - (1.2.91 – 19-9-97: 6yrs)

1. Notice 2 months - Kshs.10,400.00
  2. Leave 2 years - “ 10,400.00
  3. Service 6 yrs x 15 days - “ 18,000.00
  4. Compensation 2 months - “ 10,400.00
  5. Tools allowance 45/=x12monthsx6yrs - “ 3,240.00
- Total = Kshs.52,440.00

6. Since the Company have neither filed their reply statement to the Union’s memorandum nor have they appeared to-day during the hearing of the dispute, the demand is allowed as prayed for hereinabove by the Union. I, therefore, order the Company to pay the same within thirty(30)days from the date of this award.

Members- We concur.

**DATED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF MARCH, 2001.**

**CHARLES P. CHEMMUTTUT,**

**JUDGE.**

