



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI.

(Before: Charles P. Chemmutut, J.,
A.K. Kerich & H.B.N. Gicheru, Members.)

CAUSE NO. 66 OF 2000.

PRIVATE SAFARIS (E.A.) LTD. Applicants.

v.

KENYA GAME, HUNTING & SAFARIS

WORKERS' UNION Respondents.

Issues in Dispute:-

- 1. Termination of Abud Mohammed Mittwan.**
- 2. Reduction of his wages from Kshs.34,775/= to Kshs.27,000/=.**

A. O. Ambenge, Senior Executive Officer, F.K.E., for the Applicants (hereinafter called the Company).
J.M. Ndolo, General Secretary, for the Respondents (hereinafter called the Union).

INTERPRETATION OF THE AWARD.

In the last paragraph of its award, which was announced on 11th October, 2002, the Court stated as follows:-
“In the result, I AWARD and ORDER that the termination of the grievant on disciplinary grounds be reduced to normal termination of service and he be paid Kshs.360,388.00, being his terminal benefits as demanded at page 7 hereinabove; and in addition, the grievant be paid Kshs. 208,650.00 being compensation equivalent to six (6) months’ salary for loss of employment, (i.e. Kshs.34,775/= x 6), making a total of Kshs.569,038.00; in full and final settlement of his terminal dues. The said amount is, however, subject to the usual lawful statutory deductions” (see Company App. I).

The items demanded by the Union at page 7 of the award were:-

(a) Underpayment of salary in May 1997: Kshs.27,000/= - Kshs.20,000/=	Kshs.7,000.00
(b) Fixed allowances (June-September 1997) Kshs. 14,775/=x4 months	” 59,100.00
(c) October, 1997 ½ salary (including fixed allowances).	” 17,387.00
(d) One months’ pay in lieu of notice (including fixed allowances).	” 34,775.00
(e) 25 days <i>pro rata</i> leave	” 33,475.00
(f) Gratuity: Kshs.34,775/=x10 years’ service x 18 days for every completed year of service:- 30 days	” <u>208,650.00</u>
Total	<u>Kshs.360,388.00</u>

On 3rd April, 2003, the company presented an application for interpretation of the award under Section 16(5) of the Trade Disputes Act, Cap. 234, Laws of Kenya (which is hereinafter referred to as the Act). Consequently, the application for interpretation of the award suffered some adjournments, and the Union belatedly filed its reply statement on 12th May, 2006. The matter was heard on 6th July, 2006.

Mr. Ambenge submitted that the aforementioned items at page 7 of the award were different from the following prayer by the Union at page 5 of its main memorandum:-

- “1. The wage that was reduced from his salary for all months that was not paid.
2. The Claimant member should be paid balance of his wages that he was not paid during the period of wrongful suspension.
3. Since the termination was wrongful, the Claimant prayer to this Court is to reinstate the Claimant member to his job and be paid compensation for all the period he was out of employment due to such wrongful termination.” (see Company App. 2).

He pointed out that the Union did not specify the amount due to the grievant as tabulated at page 7 of the award, and it also did not pray for calculation of the terminal dues to be inclusive of house allowance and other allowances, nor did it pray for payment of gratuity. Mr. Ambenge stated that the Company’s terms and conditions of employment for its staff did not include gratuity as it has a pension scheme, and gratuity is also not provided for by the laws governing the industry or any other labour legislation. He alluded to the parties’ first collective agreement which was before the Court for determination under Cause No. 88 of 1999, wherein one of the issues for determination in the dispute was gratuity, which the Company has opposed on the ground that it has a pension scheme which serves the same purpose as gratuity and that the award of gratuity would constitute a double payment of the same benefit. In this case, Mr. Ambenge said, the grievant has already been paid his benefits in accordance with the rules of the Pension Scheme (see Company Apps. 3).

Mr. Ambenge referred to the definitions of the words “salary” or “wages” or “pay” and “remuneration” in the award and contended that their interpretation therein by the Court was inconsistent or contrary to the provisions of Sections 5 and 9 of the Employment Act, Cap. 226, Laws of Kenya, and rules 3, 4 and 6 of the Regulation of Wages (General) Order, under the Regulation of Wages and Conditions of Employment Act, Cap. 229, Laws of Kenya. He contended further that the award was also inconsistent with the provisions of Section 16(4) of the Act. In the circumstances, Mr. Ambenge prayed that the award be rectified by excluding gratuity and amending the figure of Kshs.569,038.00 to read Kshs. 282,913.25, made up as follows:-

(a) Underpayment of salary in May, 1997.	Kshs.7,000.00
(b) Fixed allowances (June to 15 th September 1997).	” 51,712.50
(c) October 1997 ½ salary including fixed allowances.	” 17,387.50
(d) One months basic salary in lieu of notice.	” 27,000.00

(e) 15.75 days pro rata leave (based on basic salary and 9 months leave for 1997).	" 17,813.25
(f) Compensation equivalent to six (6) months basic salary.	<u>" 162,000.00</u>
Total	<u>Kshs. 282,913.25</u>

In a nutshell, Mr. Ndolo vehemently opposed the application for interpretation mainly on the ground that the late grievant appeared before the Court during the hearing of the case to clarify certain amounts due to him, but the Company did not challenge him, and that it was late in the day, after his demise, to contest the award of the Court. Mr. Ndolo, urged the Court to uphold its award and direct the Company to pay the balance of the decretal amount to the widow of the late grievant.

It is true that the late grievant appeared in Court and clarified to the full satisfaction of the Court the dues owed by the Company to him. The Company did not challenge him. Hence the said award. I, therefore, agree with Mr. Ndolo that it was too late in the day to contest the award after the demise of the grievant. The definitions of the words "salary" or "wages" or "pay" and "remuneration" were only meant to illustrate what was due to the late grievant. In my view, therefore, the award is not inconsistent with the law.

The result is that this application for interpretation fails. The late grievant is, therefore, entitled to the payment of Kshs.569,038.00, less the amount of Kshs.280,000.00 admittedly paid by the Company towards his terminal dues in this case. The Company is, therefore, ORDERD to pay forthwith the balance of Kshs.289,038.00, less lawful statutory deductions, if any, to the widow of the late grievant in terms of the award.

DATED and **ORDERD** at Nairobi this 24th day of May, 2007.

Charles P. Chemmutut, MBS.,
JUDGE.