



REPUBLIC OF KENYA.

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI.

CAUSE NO. 89 OF 2006.

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

v.

KENYA NJERU COFFEE ESTATE.....Respondents.

Issue in Dispute:-

“Failure to pay redundancy benefits to the Eighty Four (84) employees” (hereinafter called the grievants), namely:-

1. Geoffrey Ndunda.
2. Kariuki Mungai.
3. Kamau Thumbi.
4. Mwangi Kariuki.
5. Joseph Muiru.
6. Ndungu Marekta.
7. John Muiruri Gitau.
8. Peter Murigi Kinuthia.
9. Kinuthia Wainaina.
10. Ngendo Njogu.
11. Mary Wathuku Guchu.
12. Hana Muthoni.
13. Grace Wangari Mburu.
14. Agnes Mutave.
15. Esther Wanjiru.
16. Sabeth Mutune.
17. Tabitha Wanza.
18. Margret Ndal.
19. Paulina Wanjiru.
20. Mwathe Nunguti.
21. Peter Nduati.
22. Peter Kariuki.
23. Joseph Kamau Mwangi.
24. John Mburu.
25. Joseph Kariuki.
26. Joseph Mwaura.
27. John Ngugi.
28. Patrick Njoroge.
29. John Mwangi
30. Cece Mwangi.
31. Stephen Kimani.
32. Danson Muvaka.
33. Paul Mwangi.

34. Samwel Ngoru.
35. Sichau Kirema.
36. Danson Njane.
37. Peter N. Guchu.
38. John Muthoka.
39. Jeremia Muinde.
40. Joyce Wamuhu.
41. Syokau Muli.
42. Nyiva Mbevi.
43. Kanini John.
44. Jane Waithira.
45. Lucy Wanjiku.
46. Esther Wanjiru.
47. Muthoni Kironji.
48. Margaret Waruiru.
49. Waithira Mburu.
50. Mary Wairimu.
51. Sovia Nduku.
52. Hanna Njeri.
53. Jane Muthoni.
54. Mary Njeri.
55. Alice Wambui.
56. Alice Ndungu.
57. Felista Mumbi.
58. Mary Njoki.
59. Martha Waithira.
60. George Ngigi.
61. Peter Gitangu.
62. Syokau Musyimi.
63. Philip Kimweri.
64. Kabaka Mangeri.
65. Kimeu Kiilu.
66. Mandiu Nduve.
67. Makau Mbai.
68. Clement Mwaniki.
69. Nzina Musee.
70. Kiseli Wambua.
71. Isaack Njuguna.
72. Kamande Kimani.
73. Patrick Kariuki.
74. Bernard Kimuhu.
75. Joseph Ngigi.
76. Johnson Karanja.
77. James Nduati Mwangi.
78. James Njoroge.
79. Marrison A. Omokoto.
80. Bernard Waweru.
81. Francis Muturi.
82. John Thuo.
83. Stanley Muchoki.
84. Jane Nyambura.

Mr. Issa Wafula, National Organising Secretary, for the Claimants (hereinafter called the Union).

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

A W A R D.

The Minister for Labour and Human Resource Development referred this dispute to the Court for consideration and determination on 13th September, 2006, under powers vested in, or conferred upon, 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

certificate from the Labour Commissioner under Section 14(9)(e) of the Act, were received by the Court on 27th September, 2006. The dispute was then listed for mention on 17th October, 2006, and the parties were notified to attend. Mr. Hezron Owalo appeared on behalf of the Union, but there was no appearance for the Estate. Despite non-appearance of the representative of the Estate, however, the parties were directed to submit or file their written memoranda or statements on 17th November and 15th December, 2006, respectively, and the dispute was fixed for hearing on 7th February, 2007. The parties were again notified of this arrangement and advised to comply and attend. The Secretary General, Mr. Francis Atwoli, submitted his memorandum, on behalf of the Union, on 7th November, 2006, but the Estate did not file its reply statement thereto as directed hereinabove. On 7th February, 2007, the Deputy General Secretary of the Union, the late Mr. Francis K. Waweru, appeared for the Union, and Mr. Njoroge Kiarii, Advocate, held brief for Mr. Mbiyu Kamau, Advocate, of M/S. Mbiyu Kamau & Co., Advocates, for the Estate; and with the mutual agreement of the parties, the dispute was rescheduled for hearing on 11th April, 2007, and the learned counsel for the Estate was ordered to file his reply statement on or before 23rd February, 2007. On 11th April, 2007, the representatives of the parties did not appear and the case was stood over generally. On this day, however, the Managing Director of the Estate, Mr. Harris Kibathi Thuo, filed a replying affidavit to the submission by the Union. On 19th April, 2007, the Union moved the Court for a mention of the dispute to fix a convenient date for hearing. The matter was then listed for another mention on 16th May, 2007, and the parties were again notified to attend. Mr. Issa Wafula appeared for the Union, but there was no appearance for the Estate. Notwithstanding the absence of the Estate's representative, the dispute was fixed for hearing on 19th June, 2007, and the parties were yet again notified to appear. On this day, Mr. Wafula appeared for the Union, but there was no appearance for the Estate, and no reasons were given for their absence. In the circumstances, the dispute was heard *ex-parte* on the said date, i.e. 19th June 2007, but it was adjourned for final submission to 25th September 2007 to enable Mr. Wafula file a supplementary submission on the actual claim by and entitlement to each grievant. Mr. Wafula submitted his tabulation on 31st August, 2007, and he made his final submission on 25th September, 2007.

Incidentally, Mr. James Njoroge, No. 78, was inadvertently included in the list of the grievants, while the name of Ms. Esther Wanjiru, No. 15, was repeated at No. 46. Therefore, the total number of grievants, who are the subject of this dispute are 82.

The Union is registered as such under Section 11 of the Trade Unions Act, Cap. 233, Laws of Kenya, to represent employees in the agricultural sector, while the Estate which is situated at Thika, is an agricultural concern or entity that grows and processes coffee for export market and local sales. The Union and the Kenya Coffee Growers and Employers Association, of which the Estate is a member, have a valid recognition agreement and have also negotiated and entered into several collective agreements which regulate the terms and conditions of service of the unionisable employees of the Association.

Mr. Wafula submitted that between 1988 and 1989, the Estate experienced some problems in paying its employees their monthly wages or salaries, and in 1989/1990, the arrears of their wages had accumulated for more than 5 months. On 9th October, 1989, the Estate declared the grievants redundant, without paying them the following redundancy dues:-

- (a) salary arrears for 5 months and 6 days;
- (b) salary arrears for the period between 1988 and 1989;
- (c) house allowance, and
- (d) redundancy benefits.

On 7th October, 1991, the Union reported a formal trade dispute to the Minister for Labour in accordance with Section 4 of the Act. The Minister accepted the dispute and attempts to settle the matter under the chairmanship of at least three conciliators failed allegedly due to recalcitrant and obstinate attitude of the management of the Estate. (see Union Apps. 1 to 13).

Mr. Wafula contended that the management of the Estate had formed a habit of deliberately refusing to pay the grievants their wages and other benefits in complete or utter disregard and violation of the labour laws and the collective bargaining

agreements in force. In the circumstances, Mr. Wafula prayed that an award be made or entered against the Estate for the amounts shown in the attached annexures A and B, which form part of this award.

As stated hereinabove, the Managing Director of the Estate, Mr. Harris Kibathi Thuo, Swore an affidavit to the submission by the Union, *inter alia*, as follows:-

“(a) That the submission relate to claims arising way back in the year 1988, which were amicably resolved by the then Labour Officer attached to Murang’a office, and the grievants’ dues were paid in full.

(b) That the claims are an outright duplication of the claims that were settled as hereinabove.

(c) That the grievants have not come to this Court with clean hands as they have concealed material facts.

(d) That since some of the grievants are deceased, letters of administration pertaining to the deceased estates be obtained by the next of kin in accordance with the succession law to enable them pursue the interests of the deceased.

(e) That the grievants are not and have never been members of the Union, nor have I ever been a member of the same Union; and hence there is a misjoinder of parties.

(f) That I would like to be accorded an opportunity to cross-examine on oath the process server who alleged to have served the summons as the same have never been served upon me.”

Besides the aforementioned affidavit sworn by the Managing Director of the Estate, Mr. Harris Kibathi Thuo, which amount to bare statements without any supporting evidence of payment to the grievants, neither the counsel for the Estate nor Mr. Thuo himself appeared despite being notified severally to attend and no reasons were given for their non-appearance. The demand by the Union, on behalf of the grievants, stands unchallenged. In the circumstances, we **AWARD** that the management of the Estate pay to the grievants the following amounts or claims as shown or indicated in the last column of the said attached annexures A and B of the submission by the Union, which form, as stated hereinabove, part of this award:-

Annexure A (Permanent employees).

<u>Name:</u>	<u>Amount payable:</u>
1. Geofrey Ndunda.	Kshs.12,746/=.
2. Kariuki Mungai.	” 44,033/=.
3. Kamau Thumbi.	” 12,906/=.
4. Mwangi Kariuki.	” 35,126/=.
5. Joseph Muiru.	” 37,982/=.
6. Ndungu Marekta.	” 11,883/=.
7. John Muiruri Gitau.	” 6,696/=.
8. Peter Murigi Kinuthia.	” 21,501/=.
9. Kinuthia Wainaina.	” 21,501/=.
10. Ngendo Njogu.	” 10,046/=.
11. Mary Wathuku Guchu.	” 10,046/=.
12. Hana Muthoni.	” 10,046/=.
13. Grace Wangari Mburu.	” 10,046/=.
14. Agnes Mutave.	” 6,103/=.
15. Esther Wanjiru.	” 19,783/=.
16. Sabeth Mutune.	” 19,783/=.
17. Tabitha Wanza.	” 6,103/=.
18. Margret Ndal.	” 19,783/=.
19. Paulina Wanjiru.	” 19,783/=.
20. Francis Muturi.	” 32,643/=.
21. John Thuo.	” 24,732/=.
22. Jane Nyambura.	” 7,103/=.
23. Stanley Muchoki.	” 28,383/=.

Annexure B (seasonal employees).

<u>Name:</u>	<u>Amount payable.</u>
1. Mwathie Nunguti.	Kshs. 6,874/=.

2. Peter Nduati.	”	6,874/=.
3. Peter Kariuki.	”	6,251/=.
4. Joseph K. Mwangi.	”	6,874/=.
5. Joseph Kariuki.	”	6,874/=.
6. Joseph Mwaura.	”	6,874/=.
7. John Ngugi.	”	6,874/=.
8. Patrick Njoroge.	”	6,251/=.
9. John Mwangi.	”	6,251/=.
10. Cece Mwangi.	”	6,874/=.
11. Stephen Kimani.	”	6,874/=.
12. Danson Muuka.	”	6,874/=.
13. Paul Mwangi.	”	6,251/=.
14. Samuel Ngoru.	”	6,874/=.
15. Sichau Kirema.	”	6,874/=.
16. Danson Njane.	”	6,874/=.
17. Peter N. Guchu.	”	6,251/=.
18. John Muthoka.	”	6,251/=.
19. Jeremiah Muinde.	”	6,874/=.
20. Joyce Wamuhu.	”	7,496/=.
21. Joseph Ngigi.	”	5,343/=.
22. Jane Waithira.	”	5,343/=.
23. Mary Njeri.	”	24,138/=.
24. Mary Njoki.	”	7,496/=.
25. Syokau Muli.	”	7,496/=.
26. Nyiva Mbevi	”	6,874/=.
27. Kanini John.	”	6,874/=.
28. Lucy Wanjiru.	”	6,874/=.
29. Esther Wanjiku.	”	6,874/=.
30. Muthoni Kironji.	”	6,874/=.
31. Margaret Waruiru.	”	6,253/=.
32. Waithira Mbuku.	”	6,253/=.
33. Mary Wairimu.	”	6,253/=.
34. Sovia Nduku.	”	6,253/=.
35. Hanna Njeri.	”	6,874/=.
36. Jane Muthoni.	”	6,874/=.
37. Alice Wambui.	”	7,496/=.
38. Alice Ndungu.	”	6,874/=.
39. Felista Mumbi.	”	6,874/=.
40. Martha Waithira.	”	6,874/=.
41. George Ngigi.	”	6,874/=.
42. Peter Gitangu.	”	6,874/=.
43. Syokau Musyimi.	”	6,874/=.
44. Philip Kimweri.	”	6,874/=.
45. Kabaka Mangeri.	”	6,874/=.
46. Kimeu Kiilu.	”	6,874/=.
47. Mandiu Nduve.	”	6,253/=.
48. Makau Mbai.	”	6,253/=.
49. Clement Mwaniki.	”	6,253/=.
50. Nzina Musee.	”	6,253/=.
51. Kiseli Wambua.	”	6,253/=.
52. Isaack Njuguna.	”	6,253/=.
53. Kamande Kimani.	’	6,253/=.
54. Patrick Kariuki.	”	7,496/=.
55. Bernad Kimuhu.	’	7,496/=.
56. Johnson Karanja.	”	7,496/=.
57. James NduatiMwangi	”	7,496/=.
58. Marrison A.Omokoto	”	7,496/=.
59. Bernard Waweru.	”	7,496/=.

Finally, we **ORDER** that these entitlements be paid to the grievants within **sixty (60) days** from the date of this award.

DATED and delivered at Nairobi this 17th day of October, 2007.

JDUGE

O.A Wafula,

MEMBER.

J.M. Kilonzo,

MEMBER.