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IN THE INDUSTRIAL COURT OF UGANDA
AT KAMPALA

TRADE DISPUTE CAUSE NO. 1/92

NATIONAL UNION OF CLERICAL,
COMMERCIAL AND TECHNICAL—CLAIMANTS
EMPLOYEES

VS

COFFEE MARKETING BOARD LTD—RESPONDENT
PANEL

MR. ALEXANDER B.N WAIBALE—*President*
MS. RHONA NADDAMBA—*Employers' Representative*
MS. TUUNDE MARY—*Workers' Representative*
MR. LEANDER KOMAKEC—*Independent Member*

Background

On the 27th of November 1996 Justice J. H. Ntabgoba the Principal Judge (as he then was) allowed an application filed in high court by the respondent under misc application No. 66 of 1996 which sought for orders of certiorari and prohibition against this court's award made on 31st August 1995 in Trade Dispute No. 1/92. The ruling went in favour of the respondent. The Order extracted there from was signed by both parties and the registrar of the High Court on the 12th day of March 2002. The order contained the following:

1. An order of certiorari doth issue to quash the award of the Industrial Court made in favour of the retrenched staff of the Coffee Marketing Board on the 31 st August 1995.
2. That the case be remitted to the Industrial Court to follow the correct basis of awarding the retrenched workers' package.
3. The Respondents pay the costs of this application.

In a letter dated 8th May 2002 addressed to counsel for the respondent in reply to his of ref 1550 TMK 318/95 dated

26th April 2002 this Court confirmed that in view of the order issued by the High Court the dispute was still in this court and the parties had to be given an opportunity to be heard particularly on the "correct basis of awarding the retrenched workers' package" as ordered by the High Court.

Consequently, in line with the said order given to this court to resist its decision, the Claimants through M/S Emesu and Company Advocates filed in this court an application for a date to be fixed to dispose of matters outstanding in Industrial Dispute Cause No. 1 of 1992.

Mr. Emesu in his written submission told court that the correct basis of awarding retrenchment package to the 264 workers as directed by the High Court would require this court to apply clause 17 concerning redundancy and clause 18 which gives the method and the items for severance pay to the workers retrenched. He further submitted that the court was under a duty to look beyond clause 18 of the union Agreement of 1992 and apply other clauses that entitle a retrenched worker to receive additional terminal benefits. These include the:

- (i) Wages/salary in lieu of termination notice,
- (ii) leave pay and leave allowances
- (iii) transport allowance and salary arrears.

Mr. Emesu asked court to look at the report of the Auditors of the Respondent M/S Ernest and Young in respect of what was paid to each employee at the time of termination of employment. That the said report showed that the amount which was paid to each of the 264 workers by the Respondent as severance pay was much less than what they were legally entitled to be paid if the correct formula was used. Mr. Emesu referred to clause 18(a) to 18(c) of the Union Agreement of 1992.

Court was further referred to the Employment Act Cap. 219 Sec I which interprets the meaning of wages to include allowances in addition to basic salary. The letter written by the Board Secretary dated 28th November 1995 also takes into consideration the inclusion of various allowances when effecting severance pay to retrenched employees in accordance with the Collective Union Agreement.

Court took note of the formula used in settlement of severance pay in the case of John Lwanga and 3 others VS Coffee Marketing Board Ltd H.C.C.S No 807/96. In this case the respondent consented to pay severance pay to unionized employees using gross monthly pay inclusive of basic salary and all other allowances.

Mr. Emesu for the claimants further submitted that apart from the payment under clause 18(a) to (c) the claimants were entitled to various payments, namely:

- (a) Payment in lieu of Notice of termination under clause 3(a) and 3(b) of the Union Agreement of 1992 as modified by Sec. 25(3) of the Employment Act.

- (b) Leave pay as provided under clause 6(a) of the Union Agreement 1992.
- (c) Transport allowance as provided under clause 16(a) of the Union Agreement 1992 but taking into consideration the absence of cheap transport to the respective home destinations by public means. In the alternative, the claimants pray for payment of transport allowance as provided under Sec. 26 of the Employment Decree 1975 which covers the actual cost of transport of the employee with his family members and property from Kampala to their respective homes.
- (d) Leave traveling allowance as provided for under clause 6(g) of the Union Agreement 1992 and payments due while taking into account the amounts already paid by the Respondent to each claimant using the formula given in Coffee Marketing Board Ltd's terms and conditions of service. The claimants' advocate presented the written submission together with annexure "x".

Mr. Masembe Kanyerezi for the Respondent submitted that the claimants were fully paid all dues due to them at the time of retrenchment. That the proof of payment is contained in the agreement by both parties that was executed after interparte discussions and later filed in court. This agreement is annexed to the submissions and marked "B". Mr. Masembe further submitted that the contents of that agreement cannot be disputed since it made the basis of the award of this court in Part II. The Part II award was based on the negotiated settlement attached and marked "B".

Mr. Masembe submitted that the only contention outstanding between the parties was whether the employees were entitled to be paid under clause 24(d) after being fully paid under clause 18 of the Union Agreement.

On the strength of the decision by Mr. Justice James Ogoola in misc. Application No 647 of 2002 arising out of civil suit 132 of 1998) Tropical commodities and 2 others VS International Credit Bank Limited Mr. Masembe submitted that the contents of what was agreed by the parties prior to the award of court in Part II cannot be varied since there was no fraud or misapprehension of material facts.

Court notes with approval the contention by Mr. Masembe that the outstanding issue was the subject of Part II of the dispute. That it would be wrong to re-open hearing on Part I of the dispute.

On Part II which made the basis of misc application No. 66 of 1996 Mr. Masembe once again submitted that only one issue was to be resolved and that was whether or not the retrenched employees were entitled to additional payment under clause 24(d) of the Union Agreement after being paid under clause 18 of the same agreement. He further submitted that the claimants have never disputed that the Respondent made payment under clause 18 of the Union Agreement. He quoted relevant parts of the ruling of Justice Ntabgoba particularly the fact that workers who were declared redundant by the Board under clause 17 had to be paid their terminal or severance benefits provided for under clause 18 and not under clause 24(d).

He finally told court that the ruling of the Principal Judge closed the proceedings of the disputed in view of the interpretation His Lordship attached to clause 17, 18 and 24(d) of the Union Agreement.

Mr. Masembe in conclusion submitted that since the High Court found clause 24(d) not applicable and the claimants having received payments under clause 18 of the Union Agreement have no further claim against the Respondent. He prayed for dismissal of the claim with costs to the Respondent.

COURT COMMENTS AND DECISION

The court has read carefully the submissions made by both counsel. They have different interpretations of the ruling of Justice Ntabgoba. Both counsel hold, strongly divergent opinions about the ruling. Mr. Emesu for the claimants is of the view that the ruling of the High Court by Justice Ntabgoba in misc application No. 66 of 1996 quashed all proceedings and that this court has a right and duty to hear all claims by the claimants over matters including issues which were not presented in Trade Dispute clause No. 1 of 1992 by the claimants. He cited a good number of authorities.

On the other hand Mr. Masembe Kanyerezi for the respondent is of the opinion that court ought not to entertain any further hearing of the matter. That despite the order made by Justice Ntabgoba there was nothing to hear by this court in view of the interpretation Justice Ntabgoba made with regard to clause 18 and 24(d) of the Union Agreement. Mr. Masembe is of the view that payment having been made under clause 18 and the Judge having found clause 24(d) not applicable, the claimants have no claim against the respondent. He concludes that the ruling of the High Court essentially brought the matter to a close.

Mr. Masembe observed that the High Court remitted the matters back to Industrial Court to follow the correct basis of awarding the retrenched workers' package. He further stated in his submission that the High Court expected this court to follow correct basis in light of the High Court's interpretation of both clauses 18 and 24(d). In support of his arguments Mr. Masembe referred court to Halsburys laws of England volume 2(3) forth edition at paragraph 77 at Pg. 64 which reads as follows:

"where a court makes an order with respect to an award on an application to challenge and award on grounds of a question of law, and the award is varied, the variation has effect as part of the arbitral tribunals award. Where the award is remitted to the tribunal in whole or in part for reconsideration, the tribunal must make a fresh award in respect of the matter remitted.."

This court finds the interpretation of the High Court ruling by both counsels unacceptable. The view of court is that Justice Ntabgoba remitted back the matter to Industrial Court to apply other clauses of the Union Agreement other than clause 24(d) which had been wrongly applied. In this regard the High Court was of the view that some payment was still due to the retrenched workers but the correct basis had to be applied instead of clause 24(d). Court now has to establish whether clause 18 was applied correctly and executively at any one time by the parties. From the ruling of Justice Ntabgoba it is clear that clause 18 was not considered as applicable by court in Part II and instead clause 24(d) was used to give the award to the retrenched workers.

Indeed in the agreement which the parties reached following the directions that were given to the parties by court in Part I, it was agreed by both parties the severance pay was still an outstanding dispute. It was during the hearing of Part II of the dispute that court gave the award under 24(d).

As directed by this High Court, this court will proceed to look at the Union Agreement in order to establish there from if payments made left nothing due to the retrenched employees.

The allegations that the retrenched employees had been fully paid all their dues under clause 18 was made by the counsel for the Respondent. Efforts by this court through communication by letters asking for proof of payment to assist court, in reaching a just decision ended in total failure. One would expect such important payments to be properly recorded and produced when requested for by court.

Under Part II the court made a number of observations. These were:

- (a) That the structural adjustment programmes brought about by liberalization policies in the country needed to be humane.
- (b) That in this particular instance sufficient notices and an attractive retrenchment package were not provided.
- (c) That the parties were ordered to negotiate in order to ensure that proper severance pay is effected.
- (d) That by existing agreements the trade unions were empowered not only to conclude but also to oversee and ensure the implementation of such agreements.

Court notes that lack of participation by the union at the time of retrenchment led to improper calculations of the terminal benefits for the retrenched workers. The anomalies in payments were indicated by the auditors of the Respondent.

Court notes that the claimants filed the claim in the first instance because they were not satisfied with the formula used to calculate their package after retrenchment. The correct formula is embodied in the Union Agreement and the court will apply relevant clauses on the matter before this court as was directed by the High Court.

The question remaining unanswered is whether the respondent paid in full all dues to the retrenched employees as provided for under the Union Agreement? There is no evidence before court to this effect. In fact this is the very reason why Trade Dispute Cause 1 of 1992 was filed in the Industrial Court. The claimants insisted that the correct formula as provided by the Union Agreement was never applied correctly.

Clause 18(d) states - quote: "payment of severance pay will be based upon the individual employee's wages/salary current at the time such redundancy notice is given assessed from the date of an employee's commencement in service with the board".

The claimants' counsel submitted that the formula to be used as per agreement was not followed. He presented the correct formula laid down in the agreement. The said formula is the one that has been used to calculate dues for each claimant of the 264 retrenched workers and this was filed with the submissions and marked "X". Court has already noted that the term wages includes basic pay and allowances. Indeed as evidenced by the Employment Act and index A of the Union Agreement. The word wages under clause 18(d) puts into play other clauses of the agreement which describes types of allowances payable in addition to basic pay. This simply means that the correct basis of awarding the retrenched workers is to give each of them gross pay which includes basic pay plus allowances.

After establishing the gross pay of each employee severance pay is arrived at by looking at the period the employee worked and amount payable would vary in three different categories i.e (a) for over 10 years (b) 5 to 9 years and (c) 1 to 5 years court has looked at the formula given on page 85 of the main application by dated 5th January 2004 claimants asking court to dispose of matters outstanding. This formula is embodied in the Union Agreement and court finds that it is the correct basis on which the calculations must be based.

Before making the award court wish to express its sympathy with the parties for the very long period this matter has taken to get resolved. Court hopes that both parties will cooperate and see the final settlement of this dispute by making correct payments.

Court also observes that the union leadership's desertion of their members at their hour of need is unfortunate and sets a bad precedent for the union movement in Uganda.

Having made the above observations, the court makes the following award.

- (a) That the 264 retrenched workers of the Respondent be paid their severance pay as provided for under clause 18 and other related clauses using the formula laid down in the Union Agreement.
- (b) That the figure established for each retrenched employee be reduced by the amount partly paid at the time of retrenchment.
- (c) That the liquidator of the Respondent do involve the Auditor General's department in verifying the correctness of the formula and the calculations presented to court by claimants found in annexure marked "X" showing the list of employees of the respondent who were retrenched in 1991 and were not fully paid their terminal and service benefits.
- (d) Costs of this Trade Dispute awarded to claimants.

Dated at Kampala this 3rd day of December 2004

Signed by Alexander B. N. Waibale
President Industrial Court

Panalists:

Ms. Rhona Naddamba (*Employers' Representative*)
Ms Tuunde Mary (*Workers' Representative*)
Mr. Leander Komakec (*Independent Member*)

General Notice No. 56 of 2005.

THE COMPANIES ACT, LAWS OF UGANDA, 2000.

(Cap. 110).

NOTICE.

Pursuant to section 19 (4) of the Companies Act notice is hereby given that KIS Auctioneers & Court Bailiffs Ltd has by Special Resolution passed on the 24th day of January, 2005 and with the approval of the Registrar of Companies changed in name to KIS Associates Limited and that such new name has been entered in my register.

DATED at Kampala, this 25th day of January, 2005.

MAUDAH ATUZARIRWE,
Assistant Registrar of Companies.