THE REPUBLIC OF UGANDA

Registered at the General Post Office for transmission within East Africa as a Newspaper

The Uganda Gazette

THE REPUBLIC OF UGANDA

Published by Authority

Vol. LXXXIX No. 3 **12th January, 1996** **Price: Shs. 500**

CONTENTS PAGE

The Companies Act —Notice 5
Departed Asians' Property Custodian Board—Notice 5
The Trade Marks Act—Registration of applications 5
The Industrial Court Trade Dispute Cause 6-8
Advertisements 8

General Notice No. 3 of 1996.

THE COMPANIES ACT, 1964.

(Cap. 85.)

NOTICE.

PURSUANT to section 20 (3) of the Companies Act, notice is hereby given that Nissan (U) Limited has by special Resolution passed on 1st December, 1995 and with the approval of the Registrar of Companies changed its name to NIS (U) Limited and that such new name has been entered in my Register.

DATED at Kampala this 15th day of December, 1995.

BEN TURYASINGURA,
Assistant Registrar of Companies.

General Notice No. 4 of 1996.

DEPARTED ASIANS' PROPERTY CUSTODIAN BOARD

NOTICE.

The DAPCB has received a claim that Plot No. 33 Martini Road Kampala was given as a donation by the former owners, Himatlal Amulakh Mehta and Babulal Keshavji (as executors to the Estate of Tapu Jeram), to one Muhammad Byaruhanga, by a document dated 10th December, 1974.

Any person who has any evidence to prove or disprove this claim is requested to bring it to the DAPCB as soon as possible. If no evidence to the contrary is received by 31st January 1996, we shall allow Byaruhanga to apply for a vesting order under the Registration of Titles Act, so that he can be registered as proprietor.

Dated at Kampala this 8th day of January,1996.

MUKALAZI KIBUKA,
Executive Secretary.

General Notice No. 5 of 1996.

THE TRADE MARKS ACT.

(Cap. 83).

NOTICE.

NOTICE IS HEREBY GIVEN that any person who has grounds to oppose the registration of any of the marks advertised herein may within sixty days from the date of this *Gazette*, lodge a Notice of opposition on Trade Mark Form No. 6 together with a fee of Shs. 4000 in case of National applicants or US$ 250 in case of Foreign applicants. The period of lodging Notice of opposition may be extended in suitable cases by the Registrar as he thinks fit upon such terms as he may direct. Formal opposition should not be lodged until after reasonable notice has been given by letter to the applicant so that he may have an opportunity to withdraw his application before the expense of opposition proceedings is incurred. Failure to give such notice will be taken into account in considering any application by the opponent for an order for costs if the opposition is uncontested by the applicant. Representations of the marks herein advertised can be inspected at the office of the Registrar of Trade Marks, Parliamentary Buildings, P.O. Box 7151, Kampala.

(21) APPLICATION NO. 19745 IN PART "A".

(52) Class 3.

(54)

SKRAM

(58)

(59)

(64)

(57) *Nature of goods*—Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soap; perfumery, essential oils, cosmetics, hair lotions, dentifrices, and all other goods in this Class.

(73) *Name of applicant*—Thika Wax Works Ltd.

(77) *Address*—Plot 209/5482, Homabay Road, P.O. Box 30185, Nairobi, Kenya.

(74)

(22) *Date of filing application*—11th December, 1995.

K. TUKURATIIRE (MRS.),
Assistant Registrar of Trade Marks.

Kampala,
20th December, 1995.

General Notice No. 6 of 1996.

THE INDUSTRIAL COURT TRADE DISPUTE CAUSE NO. 1/92.

PARTIES:

THE NATIONAL UNION OF CLERICAL, COMMERCIAL AND TECHNICAL EMPLOYEES — Claimants

Vs.

M/s COFFEE MARKETING BOARD LIMITED— Respondents

PART II

PANEL:

ANNA MAGEZI—*President*

STELLA M. NGONZI—*Employers' Representative*

NAGUJJA ZAMZAM—*Workers' Representative*

NSUBUGA-MUSOKE—*Independent Member*

PARTIES REPRESENTATIVES

MR. SSEMAKULA ESQ. OF M/s KITUMBA MUKASA SSEMAKULA & CO. ADVOCATES FOR THE CLAIMANTS

MR. TWINOMUGISHA ESQ. OF M/s SAM KUTEESA AND CO. ADVOCATES FOR THE RESPONDENT

Originally, the disputing parties sought relief from the Industrial Court for declaratory orders respecting the following issues:

(i) That the exercise of redundancy/retrenchment or lay off of the unionized employees of Coffee Marketing Board Limited was wrongly or unlawful.

(ii) That the exercise contravened the terms and conditions of service in force.

(iii) That the parties should negotiate and ensure that proper severance pay is effected.

The original court proceeded to declare the redundancy retrenchment or lay off as justified because it was in response to a crisis forced on the respondent Board. That the retrenchment was a survival strategy in the face of liberalisation policies.

Having validated the retrenchment exercise court generally recommended that in the unavoidable event of carrying out structural adjustment programs these policies or programs needed to be human faced. In this particular instance, sufficient notices were required and an attractive retrenchment package should have been provided.

As to whether the respondent Board contravened the terms and conditions of service, the Court was of the opinion that the non involvement of the union, in the implementation of the retrenchment exercise, contravened and violated the Recognition as well as the Collective Agreement.

In view of the above observations, the original court, therefore, ordered that the parties negotiate in order to ensure that proper severance pay is effected. Thereafter the parties were required to notify court of the outcome of that directive within a specified period of four months from the date of pronouncement of the award.

Subsequently and after a spell of protracted negotiations the parties produced the following report:

(a) That the affected shop stewards were reinstated as per court award;

(b) That the general deficiencies in payments were rectified;

(c) That underpaid leave was properly computed and paid;

(d) That a deadlock had arisen regarding the settlement of terminal benefits.

In order to address the contentious issue arising out of the original orders, to the parties to negotiate and ensure proper payment, and in particular the deadlock expressed in (d) above, the court reconstituted itself with the following panel members:

Mrs Anna Magezi—as Chair;
Ms Stella Ngonzi and Ms Zam Zam Nagujja—as representing the employers and workers respectively, while,
Mr Nsubuga Musoke sat as an independent member.

Thereafter the panel heard the arguments adduced by both counsels representing the claimant union and the respondent Board.

Mr. Ssemakula, the learned counsel representing the claimant, stated that in terminating unionized employees all the provisions of the collective agreement should have been followed. He proceeded to say that whereas the other provisions were honoured, the Board ignored or refused to pay terminal benefits that accrued to the unionized employees as per the provisions of clause 24 (d) of the Collective Agreement. He continued to argue that severance pay under clause 18 could not exclude terminal benefits under clause 24 (d) as those varied provisions catered for different situations.

On the other hand, Mr. Twinomugisha, representing the respondent Board, objected to the payment of benefits under clause 24 (d) in addition to those under clause 18. The learned counsel was of the opinion that the issues at the original trial referred to clause 18 only. That terminal benefits under clause 24 (d) were never raised at the original hearing of the dispute. That therefore the court had no jurisdiction to entertain the claimant's claim under clause 24 (d), as it was never adjudicated upon and was never referred to the parties for scrutiny or review by the Industrial Court.

Further and without prejudice to the foregoing, the learned counsel continued to argue that if payment was to be made under clause 18 as well as 24 (d) that that would amount to double payment. That according to the rules of interpretation of documents and in particular the *ejusdem generis* rule termination and redundancy fall under the same heading, class or category of benefits. That therefore payment should be either severance pay for redundacy or terminal benefits for termination. That as those benefits are interrelated both benefits cannot be sumultaneously paid. He rejected the claimant's counsel's argument that it is only those employees that are dismissed for gross misconduct that do forfeit terminal benefits.

At the conclusion of the above arguments the reconstituted court addressed the issue of jurisdiction first.

A review of the record of proceedings indicated that the original court's order to the parties was to negotiate and

ensure proper implementation of severance pay and other benefits. This was because of the glaring evidence that the retrenchment exercise contravened the Recognition and Collective Agreements. Court noted that terminal benefits fall under clause 24 (d) of the Collective Agreement between the parties.

Therefore, the Board's action to lock out the union from negotiations and active participation in implementing the retrenchment exercise did prejudice the rights of unionized employees who claimed that their benefits were not properly paid. The union demand to participate was found not be vexatious by the original court as was reflected by the order that the parties negotiate to ensure that proper severance pay and other benefits are paid to the unionized employees who had been affected by the retrenchment exercise.

In allowing the parties to re-open negotiations, the original court's order implied that terminal benefits under clause 24 (d) needed to be addressed as well since they formed part and parcel of the collective agreement to be negotiated. It was not possible at that material time for the original court to mention terminal benefits specifically because the retrenchment exercise had been shrouded in an untransparent veil making it difficult to know what exactly was paid or left out. The auditor's report observed that it was difficult to determine the actual amounts paid to each employees (since varied calculations, different schedules and unfamiliar terms were used by the Board). As the parties proceed to implement the court order, to probe what benefits were paid, it was revealed that terminal benefits had not been paid, alongside transport allowance and leave allowance among other benefits.

It was noted during the original trial that while the non unionized staff had received a second round of pay, during the retrenchment exercise, the unionized employees did not. Commenting on this apparent inequity the original court justified the second pay as an adjustment which was necessary so as to mitigate the minimal benefits received by the non unionized staff. The original court went on to say that the unionized employees would benefit from a negotiated settlement instead. This implied that the original court assumed that the unionized employees had automatically received an attractive retrenchment package settled by the collective agreement. At the time the comment was made it was not clearly determined which parts of the collective agreements had been implemented or dispensed with by the respondent Board. Due to the anomalies indicated by the auditors report as well as the evidence on record, however, the original court ordered the parties to ensure proper severance pay and any other rights under the duration of contract. The original court noted that in compliance with the existing agreements trade unions were empowered not only to conclude but also to oversee and ensure the implementation of such agreement. The dispute regarding non payment of terminal benefits arose as the parties probed whether all the provisions of the agreements had been complied with.

The original court was cautious when the respondent Board said that the formula provided by the Terms and Conditions of Service was used to settle the benefits. This is because court noted that unfamiliar terms were used for benefits under clauses 20, 20 and 22. The original court referred to severance pay and severance benefits interchangeably and did not restrict those benefits for clauses 17, 18, or 19 only.

In fact the parties were told to review and ensure the proper severance or temination of a contractual relationship that existed between them. Since the deadlock arose out of such exercise of reviewing exactly what was paid and since terminal benefits under S. 24 (d) are part of the conditions in the agreement the dispute that arose during exercise was rightly referred to the Industrial Court for arbitration. Therefore this reconstituted court has jurisdiction to entertain the matter.

This reconstituted court wishes to observe that the exercise to lay off employees was sometimes referred to as retrenchment/lay off or termination. The court was of the opinion that this confusion could have been accasioned by the fact that retrenchment is a relatively new phenomenon in the established labour relations and is not specifically mentioned or defined in the existing agreements between the parties.

It is instructive to note, however, that in its letters of dismissal the Board used the word "termination" but proceed to settle some of the benefits under the redundancy clause and other benefits under the clauses providing for transport allowances, leave pay, midmonth, etc. All the paid benefits were provided for under the Collective Agreement.

Generally, the provisions of clause 1 (b) of the Collective Agreement also reinforce the assumption of jurisdiction by the reconstituted court. Those provisions of the agreement empower the Industrial Court to settle any difference respecting the interpretation of that agreement.

Having assumed jurisdiction the reconstituted court proceeded to consider the argument as to whether the retrenched employees were also entitled to terminal benefits provided by clause 24 (d) having been paid severance pay under clause 18.

The court was of the considered opinion that the Collective Agreement contained specific terms and conditions as outlined thereunder. The terms entitle the unionized employees to certain benefits. It is evident that it is only those employees who have not been confirmed whose contracts can be terminated at will—without any notice. Confirmed employees on the other hand, enter a collective agreement with the Board that entitles them to several benfits such as termination notices of varying degrees, hours of work, annual leave, sick leave, redundancy, severance pay, lay off, and terminal benefits of service. Each of these benefits appear under a separate category, or heading. Some of those benefits could be affected under Annex B such as when gross misconduct or grievous offenses would result in instant dismissal with loss of benefits.

In considering the agreement raised by Mr. Twinomugisha, the learned counsel representing the respondent Board, that clause 18 substituted payment under clause 24 (d) the court was of the opinion that the two categories of payments were each addressing different situations and not interconnected. The court failed to see that severance pay and terminal benefits fell under the *ejusdem* rule as the two items were not categorised under the same head. While severance pay was under clause 18 terminal benefits were found at clause 24. The clauses were not chronologically ordered either because clause 18 was followed by 19 affecting temporary lay off, 20 absteesism, 21 warnings, 22 suspensions, 23 gross misconduct and 24 as terminal benefits.