



**Bakery, Confectionery, Manufacturing, & Allied Workers' Union v Deepa Industries Ltd  
(Cause 50 of 2001) [2003] KEIC 26 (KLR) (Employment and Labour) (11 June 2003) (Award)**

*BAKERY, CONFECTIONERY, MANUFACTURING, & ALLIED  
WORKERS' UNION v DEEPA INDUSTRIES LTD [2003] eKLR*

Neutral citation: [2003] KEIC 26 (KLR)

**REPUBLIC OF KENYA  
IN THE INDUSTRIAL COURT AT NAIROBI  
EMPLOYMENT AND LABOUR  
CAUSE 50 OF 2001  
CP CHEMUTTUT, J, JM KILONZO & AK KERICH, MEMBERS  
JUNE 11, 2003**

**BETWEEN**

**BAKERY, CONFECTIONERY, MANUFACTURING, & ALLIED WORKERS'  
UNION ..... CLAIMANT**

**AND**

**DEEPA INDUSTRIES LTD ..... RESPONDENT**

**AWARD**

1. Issue in Dispute:-

“Wrongful dismissal/redundancy of twenty two (22) employees (hereinafter called the grievants), namely:-

1. Pauline Mwikali Munyeke.
2. Grace Muthoni Kariuki.
3. Sammy Kioko.
4. Jeremia Wambua Matatu
5. Auguster Mbatha Ndunda.
6. Susan Mutiga.
7. Millicent Odhiambo.
8. Rebecca Wanjiru Ndung'u.



9. Godfrey Mbaluka.
10. Fabian Munyambu Mavili.
11. Virginia Njoki Kiiru.
12. Stella Kavindu Ngoma.
13. Julius Nthakyo Mutevu.
14. John Migwi Mwangi.
15. Elena Wambui Ritho.
16. Paul Thitu Mwinzi.
17. John Nthengo Musau.
18. Annah Lucy Ochuchi.
19. Agnes Syombua Utingi.
20. Peter Ambani.
21. Rose Achila.
22. Juma Chacha.

G.M. Muchai, National Secretary General, for the Claimants (hereinafter called the Union).

M. Onyango (Mrs.), Executive Officer, F.K.E., for the Respondents (hereinafter called the Company).

#### **Award.**

2. The Notification of Dispute, Form 'A', dated 22<sup>nd</sup> 3. February, 2001, together with the statutory certificates from the Labour Commissioner and the Minister for Labour under Section 14(9)(e) and (f) of the Trade Disputes Act, Cap. 234, Laws of Kenya (which is hereinafter referred to as the Act), were received by the Court on 10<sup>th</sup> May, 2001. The dispute was listed for mention on 15<sup>th</sup> 4. June, 2001, when Messrs. Dan Mwangure and L.W. Kariuki, who appeared for the parties respectively, were directed to submit or file their respective written memoranda or statements on or before 30<sup>th</sup> July and 31<sup>st</sup> August 2001, and the dispute was fixed for hearing on 27<sup>th</sup> . September, 2001. The dispute was consequently adjourned on a couple of occasions for lack of written memoranda or statements. Consequently, however, Mr. Muchai for the Union submitted his memorandum on 5<sup>th</sup> 6. February, 2002, and Mrs. Onyango for the Company filed her reply statement on 24<sup>th</sup> April, 2002. The dispute was heard on 25<sup>th</sup> April, 27<sup>th</sup> June, 24<sup>th</sup> July, and 23<sup>rd</sup> 7. September, 2002. The Union called Mr. John Nthengo Musau (C.W.I) to depone on its behalf, but the Company did not call any witness to testify on its behalf.
3. At the commencement of the hearing of this dispute, it was established that grievant No.I, Ms. Pauline Mwikali Munyeke, had died or passed away, while the last three grievants, Nos.20, 21 and 23, i.e. Mr. Peter Ambani, Ms. Rose Achila and Mr. Juma Chacha, are management staff and still in employment, leaving the 18 grievants, Nos. 2 to 19, who are affected by this case.
4. On the conclusion of the hearing of the dispute on 23<sup>rd</sup> 8. September, 2002 as aforesaid, the parties were advised by the Court to once again explore the possibility of an amicable settlement in view of the fact that the grievants lost their jobs or were declared redundant for reasons beyond the control



of the Company, i.e. due to a serious shortage and rationing of power and water. The parties met on 4<sup>th</sup> October, 2002, when the Union proposed, inter alia, 9. that the management of the Company should reinstate all the 18 grievants back to their positions without any loss of benefits and/or seniority; that half of the period when the grievants were out of employment be treated as leave without pay but with continuity of service and the other half be paid for on the basis of their earnings as at June, 2000; that upon resumption of duty, the grievants be given all the corresponding increases so that their rates of pay would be at the same level with their colleagues in the factory; that the grievants should be allowed to report for normal duties on Monday 7<sup>th</sup> 10. October, 2002, and that the Management of the Company should convert the redundancy action taken against the first grievant, the late Ms. Pauline Mwikali Munyeke to termination of contract and pay to her dependants her terminal dues for the years of services, days worked and the same compensation as proposed for the other grievants in terms of the collective agreement in force at the material time.

5. But on the other hand, the management of the Company proposed that the grievants should collect their dues as at 30<sup>th</sup> 11. June, 2000, which were deposited with the Labour Officer, Industrial Area, Nairobi, to their credit; that the grievants are not entitled to any other compensation; that the grievants should forward or make fresh applications for re-employment, and the Company agreed to offer them fresh employment as follows:-

1<sup>st</sup> January, 2003 - 5 (3 ladies and 2 men)

1<sup>st</sup> February, 2003 - 5 (3 ladies and 2 men)

1<sup>st</sup> March, 2003 - 4 (2 ladies and 2 men)

1<sup>st</sup> 12. April, 2003 - 4 (2 Ladies and 2 men), and that the Company would pay the dependants of the deceased, Ms. Pauline Mwikali Munyeke, her terminal dues which was deposited with the Labour Officer as stated hereinabove.

6. In a nutshell, the case of the Union was that the grievants were declared redundant by the Company in order to “kill” the numerical strength of the Union or to curb its activities; and under the circumstances, the grievants should be reinstated unconditionally, without loss of their wages and benefits, and also with continuity of service.
7. On the contrary, the management of the Company stated that the grievants were declared redundant due to a serious shortage and rationing of power and water in 2000, and that they are willing to re-employ them afresh.
8. Fortunately, it is not necessary to go into the merits of the detailed submissions by the parties as the Company has agreed to re-employ, or to take back, the grievants. It has further agreed that the period of their absence will be treated as a break in service and leave without pay. On going through the submissions of the parties and the evidence on the record, however, I find that the services of the grievants were not declared redundant or terminated for ulterior motives but due to forced circumstances or reasons beyond the control of the Company, i.e. a serious shortage and rationing of power and water. I do not, therefore, see how they can be re-employed with retrospective effect or their services treated as continuous as no instance of arbitrary or whimsical action in this respect on the part of the management of the Company has been shown. I do not doubt the plea of the Company that the grievants were declared redundant because of the serious shortage and rationing of power and water at the material time; and if the Company wanted to be vindictive it would not have offered to re-employ them. The very fact that the Company is offering to re-employ the grievants shows its bona fide. Therefore, the allegations by the Union that the grievants were declared redundant by the Company in order to “kill” the numerical strength of the Union or to curb its activities are totally untrue and false.



9. In the result, I award and order as follows:-

- (i) That the grievants should collect their dues which were deposited with the Labour Officer, Industrial Area, Nairobi, to their credit.
- (ii) That the period of their absence on account of redundancy be treated as a break in service and leave without pay.
- (iii) That since the period of the grievants' re-employment, i.e. between 1<sup>st</sup> January and 1<sup>st</sup> April, 2003, has since lapsed, all the 18 grievants be re-employed forthwith on presenting themselves to the Company.
- (iv) That the late Ms. Pauline Mwikali Munyeke's terminal dues, which was deposited with the Labour Officer, Industrial Area, Nairobi, to her credit, be paid or released to her legal representative or next of kin. Both members of the Court concur with this decision.

**DATED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF JUNE, 2003.**

**CHARLES P. CHEMMUTTU,**

**JUDGE.**

