

IN THE INDUSTRIAL COURT OF KENYA

CAUSE NO. 433(N) OF 2009

UNION OF NATIONAL RESEARCH INSTITUTES

STAFF OF KENYA (UNRISK)CLAIMANT/APPLICANT

VERSUS

KENYA INDUSTRIAL RESEARCH &

DEVELOPMENT INSTITUTE (KIRDI).....RESPONDENT

RULING

The application before me for determination is a Notice of Motion dated 28th January, 2014 and filed in court on the same day. It is made under Section 13 of Industrial Court Act, rules 30 and 31 of Industrial Court (Procedure) Rules and any other enabling provisions of the law. The application is supported by a Memorandum signed by Zacharia Achacha, the Secretary General of the Claimant Union, the Union of National Research and Allied Institutes Staff of Kenya (UNRISK). The application seeks the followings orders:

1. **THAT**, the Hon. Court confirms the order by consent dated 4th November 2009 as consented.
2. **THAT**, the Hon. Court issues a decree for the sum of Kshs.3,175,200.00/= for the purposes of execution.
3. **THAT**, the cost of this application be paid by the Respondent.
4. Any other or further relief that the Hon Court deems just.

In the Memorandum in support of the Notice of Motion the Claimant states as follows:

The Claimant and the Respondent signed a Collective Bargaining Agreement (CBA) on 23rd July 2008. Among the items agreed in the CBA was house allowance for the Respondent's employees effective from 1st July 2008. The Respondent did not effect house allowance rates agreed for its employees based in Kisumu Region. The Claimant filed suit to enforce the same following which the parties signed a consent dated 4th November, 2009. The consent was adopted as the award of the court on the same date. The consent was in the following terms:

- “1.The Respondent to effect payment of the new rates of House Allowance to the unionisable employees with effect from 31st January, 2010.**
- 2. The Respondent to effect payment of the House Allowance arrears to the aforesaid employees covering the period 1.7.08 – 31.12.09 during the last quarter of the 2009/2010 financial year”.**

The Respondent however failed to comply with the consent in respect of its employees based in Kisumu.

After unsuccessfully trying to persuade the Respondent to implement the court order the Claimant filed Cause No. 948 of 2011 which was transferred to Kisumu and registered as cause No. 52 of 2013 seeking enforcement of the house allowance clause in respect of its employees in Kisumu.

Justice Wasilwa ruled that the matter was fully determined in Cause No. 433(N) of 2009 and what is left is for the claimant to file a relevant application on the same file and seek execution of the decree. It is on the basis of the decision of Justice Wasilwa that the claimant filed this present application.

The Respondent in the Replying Affidavit of JAIRUS OMBUI, the Assistant Director for Human Resource Management sworn on 24th February, 2014 and filed in court on 26th February 2014, admits at paragraph 6 thereof that the court awarded uniform rates of house allowance but the Respondent implemented house allowance as per Government mode of paying house allowance based on regions. He further depones that the matter was litigated by the court in Kisumu and is res judicata. Mr. Ombui further states in the affidavit that the Respondent does not deny the existence of a court order but in a meeting held on 25th March, 2009 the parties agreed to implement the house allowance clause when funds are available and that the same was subsequently effected. Mr. Ombui further states in the affidavit that the CBA did not specifically mention house allowance of employees in Kisumu and that house allowance is determined through Government Policy.

On 19th May 2014 when the application came up for hearing the parties were directed to proceed by way of written submissions. The parties thereafter filed submissions in which they substantively expounded on the issues in the memorandum in support of the Notice of Motion and the Replying Affidavit.

I have considered the application, the court record and the pleadings filed in respect of the application by the parties as well as the written submissions.

There is no dispute that the Claimant Trade Union and the Respondent which is a State Corporation entered into a Collective Bargaining Agreement which was signed on 23rd July 2008. The agreement was subsequently registered by this court as RCA No. 198 of 2008 and certificate to that effect issued on 9th September 2008. House allowance is provided for at Clause 5.3(c) of the CBA as follows:

5.3 (c) House Allowance

All employees married and unmarried shall be paid monthly automatic House Allowance as contained in the below table through the payroll.

RATES FOR HOUSE ALLOWANCE

JOB GROUP GRADE	AFTER INCREMENT
IR.15	70,000
IR.14	55,000
IR.13	55,000
IR.12	50,000
IR.11	45,000
IR.10	28,800
IR.9	24,000
IR.8	24,000
IR.7	12,500

IR.6	7,800
IR.5	7,000
IR.4	7,000
IR.3	6,000
IR.2	5,500
IR.1	5,000

The effective dates, 1st July 2008.

From the documents filed in court and the parties submissions my understanding is that the Respondent implemented the agreements, but for the employees in Kisumu the house allowance clause was not implemented. The employees in Kisumu were paid what the Respondent refers to as “as per Government Policy”.

The Respondent has in the Replying Affidavit stated several conflicting positions. First they admit signing the collecting Bargaining Agreement. They also admit that they entered into a consent order. They further admit not paying the staff in Kisumu the house allowance in the CBA agreeing at a meeting held on 25th March 2009 to implement the house allowance when funds become available.

In contradiction to the position stated above, the Respondent states that it does not determine house allowance of employees in Kisumu region or any other region, but pay them the house allowance determined by the Government through Government Circular on housing. To confirm this position the Respondent referred the court to a Government Circular dated 18th June 2001. The circular referred to, I may point out, is long before the Collective Agreement was entered into on 23rd July, 2008, and does not explain why the house allowance in the CBA was implemented in respect of employees in Nairobi but not those in Kisumu. The Respondent further stated that the list of employees referred to by the claimant Union is not the correct one, but annexes a list of employees in Kisumu as at December 2012, a date which is not relevant to the period referred to in the dispute.

The Respondent has not contested the tabulation of house allowance claimed by the Claimant. It states that it implemented the house allowance clause but does not state when or give figures that were paid in compliance with the CBA. Having signed the Collective Agreement Voluntarily and attended court for its registration, and having entered into a consent award adopted by the court on 4th November 2009, further, having not applied for setting aside of either the registration of the Collective Agreement or the consent award, the Respondent is duty bound to implement the award. This was confirmed by Justice Wasilwa in her ruling in Kisumu Cause No. 52 of 2013.

For the foregoing reasons I order that the Respondent pays to the employees named in the claimant’s Appendix 5 the sum of Kshs.3,175,200 as tabulated therein. Should any employee who is named in the list not be in employment now, the money should be paid to the claimant Union for onward transmission to the employee.

Should the Respondent fail to make payment within 30 days from today the Claimant is hereby authorized to extract and execute the decree in the said sum of Kshs.3,175,200/= together with interest from the date of the consent award of the court on 4th November, 2009. A copy of the list of employees

and the amount payable to each of them is annexed to this ruling for the avoidance of doubt.

Read in open Court this 25th day of September, 2014

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

REPUBLIC OF KENYA

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LIST OF EMPLOYEES AND AMOUNT PAYABLE

S/NO	NAME	JOB GROUP	AMOUNT IN (ARREARS)
1	Peter Onyinge	1	40,800.00
2	Steven Oyieke	1	40,800.00
3	Henry Kadenge	3	74,400.00
4	Alice Atieno	3	74,400.00
5	Harun Mudalia	3	74,400.00
6	Peter Okuku	5	84,000.00
7	Sarah Awinyo	6	79,200.00
8	Charles Adedo	6	43,200.00
9	Oore Boniface	7	108,000.00
10	Peter Galia	7	108,000.00
11	Julius Ogola	7	108,000.00

12	Shem Ossi	7	108,000.00
13	Joshua Kungu	7	216,000.00
14	Jeckton Kisera	7	60,000.00
15	Ogolo Odhiambo	7	108,000.00
16	Eunice Anyango	8	216,000.00
17	Luke Ogweni	8	96,000.00
18	Duncan Mugeru	8	96,000.00
19	Chris Njongu	8	96,000.00
20	Benjamin Onyango	9	96,000.00
21	Samwel Warui	9	96,000.00
22	H. Lumadede	9	96,000.00
23	Elisha Onyango	9	96,000.00
24	John Githaiti	9	96,000.00
25	John O. Achacha	10	264,000.00
26	Joel Abere	10	96,000.00
27	Japheth Anuro	10	192,000.00
28	Francis Obong'o	10	192,000.00
29	S. Oyuga	11	120,000.00
		TOTAL	3,175,200.00

Read in open Court this 25th day of September, 2014

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

Zacharia Achacha for Claimant

Gacharia holding brief for Guserwa for Respondent

