



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 118 OF 2016

BETWEEN

**UNION OF NATIONAL RESEARCH AND ALLIED
INSTITUTES STAFF OF KENYA [UNRISK].....CLAIMANT**

VERSUS

1. PROF. PHILIP BIJEON
2. YERI ISRAEL KOMBE
3. KEMRI-WELLCOME TRUST RESEARCH PROGRAMME
4. KENYA MEDICAL RESEARCH INSTITUTE.....RESPONDENTS

RULING

1. The Claimant Union filed an Application on 21st December 2018, asking that the 1st and 2nd Respondents be “ *ordered to show cause why they cannot be cited for contempt of Court over the specific performance orders in the decree of the Court issued on 12th April 2018.*” It is sought also, to have the Respondents “*summarily ordered to honour orders [a], [b] [c] [d] [e] and [f] of the Decree and sign the Parties’ Collective Bargaining Agreement.*”

2. Judgment delivered on 9th March 2018 comprised the following orders:

- a) General Wage Increment of 8.5% over a period of 4 years.
- b) 1st Respondent [3rd Respondent above] shall pay commuter allowance commensurate with the rate payable to Employees of the 2nd Respondent [4th Respondent above] in similar job groups.
- c) 1st Respondent [3rd Respondent] shall pay its Employees medical risk allowance at the same rate applicable to Employees of the 2nd Respondent [4th Respondent] in similar job groups.
- d) Gratuity allowed at 10% of the gross pay.
- e) General Wage Increment and Gratuity shall be effective from 1st July 2013.
- f) Commuter allowance and medical risk allowance shall be effective from July 2015.
- g) No order on the costs.

3. Supported by the Affidavit of Claimant’s Authorized Representative Zacharia Achacha sworn on 18th December 2018, the Application alleges that the Respondents did not honour the above orders, despite having received a copy of decree, as extracted by the Claimant Union. The 1st and 2nd Respondents herein are Accounting Officers of the original Respondents.

4. The Respondents oppose the Application through an Affidavit sworn by Hillary Ondatto, Head of Human Resources of the 3rd Respondent.

5. The Respondents' position is that upon delivery of Judgment, they put their heads together and realized they had complied with the Judgment, even before its delivery. They sought to address this with the Claimant, but were unsuccessful.

6. There was wage increment as ordered, for the period 2012-2018. Commuter allowance had been adjusted in accordance with the Judgment. An Archivist working for the 4th Respondent earned consolidated salary of Kshs. 83,932. The same grade, working for the 3rd Respondent, earned a consolidated salary of Kshs. 118,801. Deconsolidated, both were paid Kshs. 8,500 in commuter allowance. Similarly medical risk allowance of Kshs. 3,000 was payable to Clinical Officers across board. These positions are supported by Unionizable Employee Payment Schedules, attached to the Affidavit of Hillary Ondatto.

7. The Application was heard on 20th June 2019. Parties in general underscored the contents of their respective Affidavits sworn pursuant to the Application.

The Court Finds:-

8. At the end of the submissions, Mr. Otieno for the Claimant conceded that the Employees have enjoyed considerably improved remuneration. He appeared to concede that the Respondents have indeed adjusted general wages and allowances in favour of the Employees. He submitted that the Court did not give an order to the Respondents to pay higher wages, but that the Court ordered these increments be included in the Parties' Collective Bargaining Agreement. According to Mr. Otieno, what has been paid by the Respondents is not recognized by the law.

9. This concession by Mr. Otieno, viewed against the standards of proof in an Application for contempt of Court, and seen also against the pay records exhibited by the Respondents, severely weakens the Claimant's pursuit of contempt proceedings.

10. In other words, the Claimant has not established that contempt has taken place, and the Respondents have shown substantial compliance with the Judgment on record. The Claimant ought to have brought evidence of non-compliance, directly contradicting the payment records exhibited by the Respondents, to have any chance of nailing the Accounting Officers of the Respondents, for contempt of Court.

11. The Parties ought however, to keep dialoguing, to bring the adjustments made, on the salaries and allowances of the Employees, clearly rooted and recognized within the CBA document. Lack of adequate exchange of information, within the established industrial relations machinery, creates space for doubt and misunderstanding resulting in unnecessary litigation. It is not lost on the Court that the Respondents indicated they were appealing the decision of the Court, even as they now indicate, somewhat persuasively, that they have always been compliant, even before the Judgment was delivered. Why was evidence of already implemented pay increment, not brought to the attention of the Court at the trial?

IT IS ORDERED: -

a) The Application filed by the Claimant Union on 21st December 2018, is declined.

b) No order on the costs.

Dated and delivered at Mombasa this 20th day of September 2019.

James Rika

Judge