



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

**BETWEEN**

**UNION OF NATIONAL RESEARCH AND**

**ALLIED INSTITUTES STAFF OF KENYA (UNRISK).....CLAIMANT**

**VERSUS**

**KEMRI-WELLCOME TRUST RESEARCH PROGRAMME.....1<sup>ST</sup> RESPONDENT**

**KENYA MEDICAL RESEARCH INSTITUTE (KEMRI).....2<sup>ND</sup> RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Zachariah Achacha, Secretary General for the Claimant*

*Miss Beatrice Opolo Advocate, instructed by the Federation of Kenya Employers*

*[FKE], for the Respondents*

**JUDGMENT**

1. The Claimant Union filed its Statement of Claim, on 12<sup>th</sup> February 2016. The Claimant and the 2<sup>nd</sup> Respondent signed a Collective Bargaining Agreement (CBA), on 25<sup>th</sup> August 2014. The CBA covered the period 1<sup>st</sup> July 2013 to 30<sup>th</sup> June 2017. Registration of the CBA took place, after Judgment on disputed items was delivered in ***Industrial Court of Kenya at Nairobi, Cause Number 448 of 2010 (between the Claimant and the 2<sup>nd</sup> Respondent herein)***. The 1<sup>st</sup> Respondent, according to a Report filed by Central Planning and Monitoring Unit, does not have its own CBA with the Claimant, but relies on the CBA between the Claimant and the 2<sup>nd</sup> Respondent.

2. The Claimant Union states Parties failed to agree on 9 items in their negotiations. In the course of the proceedings they reached settlement on 5 items. Left for the adjudication of the Court are 4 items, namely:-

- a) General Wage Increase.
- b) Commuter Allowance.
- c) Medical Risk Allowance.
- d) Gratuity.

3. Central Planning and Monitoring Unit (CPMU) filed its Report on 30<sup>th</sup> October 2017. The Report was availed to Parties.

4. On 31<sup>st</sup> October 2017, it was agreed by the Parties that the 4 outstanding items are resolved on the basis of Parties' Pleadings, Submissions, and Report of the CPMU. They confirmed filing of Submissions, on 11<sup>th</sup> December 2017.

**Claimant's Submissions:-**

**5. (a) General Wage Increase**

The Claimant submits that according to CPMU Report, the 1<sup>st</sup> Respondent has 2 annual increments of wages. The first is given in January at 5%, and the other in July at 3.5%. The Claimant urges the Court to grant all Employees 10% increment annually.

**(b) Commuter Allowance**

The Claimant adopts table 6 of CPMU Report on commuter allowances. The rate agreed in the CBA between the Claimant and the 2<sup>nd</sup> Respondent, is Kshs. 3,500 per month for Job Groups MR1 and MR2. The Claimant submits this rate should be adjusted and adopted accordingly with regard to all Employees.

**(c) Medical Risk Allowance**

The Claimant urges the Court to grant the rates shown at Table 7 of the CPMU Report. These rates are currently being paid by the 2<sup>nd</sup> Respondent to Claimant's Members. They ought to apply to all Members working for both Respondents.

**(d) Gratuity**

The Claimant accepts 1<sup>st</sup> Respondent's gratuity rate of 10% of the gross salary.

**Respondents' Submissions:-**

**6. (a) General Wage Increase**

The Respondents submit 1<sup>st</sup> Respondent grants Claimant's Members a wage increment of 8.5% annually. CPMU Report shows Consumer Price Indices of 32.54% 8.14% annually. An increment of 8.14% would suffice.

**(b) Commuter Allowance**

The Respondents submit 1<sup>st</sup> Respondent's Employees are paid consolidated wages. Commuter allowance will be rewarded once wages are reviewed. The current system should be retained.

**(c) Medical Risk Allowance**

Medical Risk Allowance is a feature of the consolidated wages paid to Employees. The CPMU Report produced a table of this allowance, which is paid by the 2<sup>nd</sup> Respondent. 2<sup>nd</sup> Respondent's system is different from that of the 1<sup>st</sup> Respondent.

**(d) Gratuity**

The Respondents submit that the Claimant has agreed to gratuity pegged on 10% of the gross pay.

**The Court Finds:-**

7. From the Submissions filed by the Parties, gratuity pay is no longer a disputed item. The Respondents shall pay gratuity based on 10% of the gross pay.

8. The disputed items are General Wage Increase, Commuter Allowance, and Medical Risk Allowance. Parties do not also, agree on effective dates.

**9. General Wage Increase**

The Claimant Union initially demanded 30% wage increment per year. This would translate to 120%, over a period of 4 years. If the demand of 30% wage increment per year is granted, this would result in a total additional wage bill of Kshs. 548,187,305. The CPI rate over the 4 years is 32.54%, or 8.14% yearly. If wage increment is based on CPI of 8.14% yearly, it would result in additional wage bill of Kshs. 108,555,638. The Court notes the Claimant has climbed down to a demand of 10% wage increment per year, over the 4 year period. There is not a significant gap between the CPI rate, and the rate of 8.5% annually, available to Employees of the 1<sup>st</sup> Respondent. ***The Court awards wage increment at 8.5%, per annum, over a period of 4 years.***

**10. Commuter Allowance**

The 2<sup>nd</sup> Respondent pays its Employees, who are Members of the Claimant Union, Commuter Allowances shown at Table 6, of CPMU Report. These allowances were made effective from July 2015. The Claimant submits under CBA RCA 225 of 2014 between the Claimant and the 2<sup>nd</sup> Respondent, Commuter Allowance was set at Kshs. 3,500 monthly for Job Group MR1 and MR2. It was not made clear to the

Court why the rate agreed under the CBA, was not implemented. Instead, the different rates appear to have been offered, and accepted, with effect from July 2015. The 1<sup>st</sup> Respondent submits it pays consolidated wages. Commuter Allowance will be rewarded once wages are reviewed. The Court is not able to discern why Commuter Allowance as paid to the Employees of the 2<sup>nd</sup> Respondent, should not apply to the Employees of the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent has not demonstrated that Commuter Allowance is paid as part of a consolidated package. The Court does not understand 1<sup>st</sup> Respondent's submission, that, "*Commuter Allowance will be rewarded once wages are reviewed.*" ***It is ordered that Commuter Allowance is paid to Employees of the 1<sup>st</sup> Respondent, commensurate with the rate payable to Employees of the 2<sup>nd</sup> Respondent in similar Job Groups.***

#### **11. Medical Risk Allowance**

The submission of the 1<sup>st</sup> Respondent with regard to Medical Risk Allowance, is similar to its submission on Commuter Allowance. The 2<sup>nd</sup> Respondent has in pace this Allowance, as shown in CPMU Report, Table 7. The 1<sup>st</sup> Respondent submits it pays consolidated wages. Employees working for both Respondents are governed by the same Recognition Agreement, and CBA existing between the Claimant Union and the Respondents. The compensatory regime ought be the same at the two Institutions, to avoid industrial disharmony. During conciliation, it was noted that Employees working under Trust Programme (1<sup>st</sup> Respondent), enjoyed inferior terms and conditions of service, than those employed by KEMRI (2<sup>nd</sup> Respondent). There was consensus on need to harmonize allowances. The Conciliator pointed out that existing pay structure, discriminates against 1<sup>st</sup> Respondent's Employees and violates Section 5 of the Employment Act 2007. ***It is ordered that the 1<sup>st</sup> Respondent shall pay its Employees Medical Risk Allowance, at the same rate applicable to Employees of the 2<sup>nd</sup> Respondent, in similar Job Groups.***

IN SUM, IT IS ORDERED:-

- a) General Wage Increment allowed at 8.5% per annum over a period of 4 years.***
- b) 1<sup>st</sup> Respondent shall pay its Employees Commuter Allowance, commensurate with the rate payable to Employees of the 2<sup>nd</sup> Respondent in similar Job Groups.***
- c) 1<sup>st</sup> Respondent shall pay its Employees Medical Risk Allowance, at the same rate applicable to Employees of the 2<sup>nd</sup> Respondent in similar Job Groups.***
- d) Gratuity is allowed at 10% of the gross pay.***
- e) General Wage Increment and Gratuity, shall be effective from 1<sup>st</sup> July 2013.***
- f) Commuter Allowance and Medical Risk Allowance shall be effective from July 2015.***
- g) No order on the costs.***

**Dated and delivered at Mombasa this 9<sup>th</sup> day of March 2018.**

**James Rika**

**Judge**