



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**

**KENYA AT NAIROBI**

**CAUSE 1315 OF 2013**

**UNION OF NATIONAL RESEARCH AND**

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

**VERSUS**

**KENYA MEDICAL RESEARCH**

**INSTITUTE (KEMRI).....RESPONDENT**

**JUDGMENT**

1. The claimant herein in its memorandum of claim filed on 19<sup>th</sup> August 2013 averred that in February 2012 through a letter dated 29<sup>th</sup> February, 2012, the Government gave instruction to the Permanent Secretaries of Ministries of Public Health and Sanitation and Medical Services for payment of extraneous allowances. The directive was a follow up to another government circular dated 12<sup>th</sup> January, 2012 on the same subject matter.
2. Pursuant to the circular, the claimant approached the respondent and a joint meeting took place but no agreement was reached by the parties. A committee was therefore co-opted consisting of health representatives and union shop floor representatives to look into the issue. The co-opted committee recommendation was that the respondent's management should pay all the employees in the institution the stipulated extraneous allowance and that the on –call emergency allowance stipulated be paid to KEMRI clinics operated.
3. Due to the demand by the respondent's employees for the implementation for the extraneous allowance, the claimant issued a 30 days strike notice to the Minister to press for the full and speedy implementation. The Minister acknowledged the strike notice and intervened by appointing a conciliator.
4. The respondent through its letter dated 2<sup>nd</sup> November, 2012 addressed to the Chief Industrial Relations Officer promised to abide by the Ministry's recommendations.
5. The claimant therefore submitted that the respondent failed to honour their promise to implement the Minister's recommendations that its employees be paid the harmonized allowance in line with Government circular. The respondent on its part contended that by virtue of section 5 of the State Corporations Act, the respondent as with other state corporations, exercise their functions with the consent of the Minister and subject to such limitations and conditions as may be imposed by the

Treasury.

6. Further sections 11 and 12 of the Act dealing with annual estimates and expenditure has the effect of tying the hands of the respondent in respect of negotiating terms and conditions of employees in a sustainable manner. In reference to the two circulars, the respondent stated that they were not forwarded to it by the parent ministry as was the standard procedure.

7. The claimant, respondent and KEMRI centre for Clinical Research – Health Centre constituted a sub-committee to pursue the matter and also do a fact finding analysis in different health institutions. The sub-committee made a recommendation that extraneous and on call emergency allowances be paid to all respondent's staff as stipulated in the circular where the respondent's clinics are in operation and where the respondent's staff are accredited to public institutions.

8. It was the respondent position that in so far as it was a research institute there was no rationale behind having a policy in respect of emergency call allowance for its doctors. The respondent therefore submitted that the two circulars subject of this litigation did not make direct or implied reference to the respondent's doctors as beneficiaries of emergency call allowance.

9. The respondent further contended that the two circulars were specific to hospitals and health facilities including Kenyatta Hospital and Moi Teaching and referral hospital. The two hospitals were specifically advised to liaise with Treasury for funding on the said allowances. No such advice was directed to the respondent. According to the respondent, it was not a hospital or a health facility.

10. The respondent further denied it had agreed to abide by the circulars. According to the respondent its Director confirmed commitment to settlement of the matter through conciliation.

11. The co-opted committee in its recommendations noted that the respondent was a Health Parastatal mandated to carry out Human Health related Research. Further, the respondent handled patients and clinical specimens as well as highly infectious disease outbreaks. It therefore cannot be gain said that the respondent's core staff for carrying out its mandate are doctors and health workers. The two circulars over which this dispute is about concerned allowances for doctors and public health workers.

12. The fact that the parent Ministry did not communicate the application of the circulars to the respondent's employees is an administrative omission which cannot be used as a reason to deprive the respondent's workers benefits enjoyed by their compatriots in the same industry.

13. The court therefore directs that the respondent implements the two Government circulars on its employees affected by the circular and further that the accrued arrears be budgeted for and paid in the succeeding financial year in line with Treasury's fiscal policy and financial apportionments for other Government's recurrent expenditure.

14. It is so ordered.

Dated at Nairobi this 31<sup>st</sup> day of March 2017

**Abuodha J. N.**

**Judge**

Delivered this 16<sup>th</sup> of June 2017

**Abuodha J. N.**

**Judge**

**In the presence of:-**

Otieno for the Claimant

Ouma for the Respondent.

**Abuodha J. N.**

**Judge**