



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**MISCELLANEOUS APPLICATION NO 7 OF 2017**

**BETWEEN**

**UNION OF RESEARCH AND ALLIED INSTITUTES**

**STAFF OF KENYA [UNRISK].....CLAIMANT**

**VERSUS**

**KENYA MARINE AND FISHERIES**

**RESEARCH INSTITUTE [KMFRI].....RESPONDENT**

**RULING**

1. The Claimant Union prays for an order restraining the Respondent Employer, from effecting stoppage of monthly medical allowance given to Respondent's Employees, under the prevailing Collective Bargaining Agreement, executed and registered between the Parties.
2. The Application is supported by the Affidavit of Zachariah Achacha, sworn on 14<sup>th</sup> March 2017. He explains that clause 5.3.2 of the CBA makes provision for Automatic Out-Patient Medical Allowance. This is payable through the pay roll at the end of every month.
3. The Respondent issued a circular dated 22<sup>nd</sup> February 2017, stopping the monthly medical allowance with effect from 1<sup>st</sup> March 2017.
4. The clause has not been amended. It is not a disputed item in a related Cause Number 186 of 2016, filed before the Court. This cause involves dispute over a succeeding CBA. The Claimant's argument, in a capsule, is that the Respondent has made a unilateral decision, contrary to the negotiating procedure contained in the CBA, and contrary to the Labour Relations Act 2007.
5. The Claimant reported the existence of a trade dispute to the Cabinet Secretary on the issue. The Claimant submits the Respondent has not disclosed all the relevant information on the subject matter, to enable the Claimant effectively represent its Members. A second order is sought through the Application to compel the Respondent to make full disclosure to the Claimant.
6. The Respondent replies that the Claimant is only contesting the procedure on stoppage of the medical allowance. The CBA allows the Employer to effect changes under clause 13. N.H.I.F has a comprehensive inpatient and outpatient medical cover. The CBA only requires the Respondent to inform

the Claimant about the change. N.H.I.F cover is already in place. The medical allowance clause is taking a toll on the Respondent.

**The Court Finds:-**

7. The benefits contained in the CBA are negotiated items. They were given to the Employees, at the collective bargaining forum.

8. There is a procedure in amending the existing CBA. Amendment cannot in the respectful view of the Court, be carried out unilaterally by either Party. It must be through the collective bargaining forum.

9. As the Court understands the Parties, they have a dispute over other collective bargaining subjects in Court, under Cause Number 186 of 2016.

10. Once dispute has arisen over medical allowance, the correct approach would be to amend Pleadings under Cause 186 of 2016, and introduce medical allowance as among the disputed subjects. There is no need to split collective bargaining subjects involving the same CBA, and take them for dispute resolution under different mechanisms. All issues should be canvassed and determined, under one roof. Parties may also wish to consider whether the Salaries and Remuneration Commission should be included in the main dispute. The Respondent is a State Corporation.

11. The Claimant has instead filed a trade dispute at the Labour Ministry, over the single subject of medical allowance, in addition to making this Miscellaneous Application.

12. Weighing the interest of all Parties carefully, the Court makes the following orders:-

***a) The Respondent is restrained from unilaterally stopping monthly medical allowance available to Employees under the existing CBA.***

***b) The Miscellaneous Application filed herein shall be consolidated with Cause Number 186 of 2016.***

***c) The Claimant shall move the Court for appropriate orders under Cause 186 of 2016 with regard to amendments, and considering also the report on the subject matter made to the Ministry of Labour.***

Dated and delivered at Mombasa this 24<sup>th</sup> day of November 2017.

James Rika

Judge