



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**  
**AT KISUMU**

**CAUSE NO. 334 OF 2015**

*(Before Hon. Justice Mathews N. Nduma)*

**UNIVERSITY ACADEMIC STAFF UNION.....CLAIMANT**

**=VERSUS=**

**MASINDE MULIRO UNIVERSITY OF SCIENCE &**

**TECHNOLOGY (MMUST).....RESPONDENT**

**JUDGMENT**

1. The Claimant Union filed this suit on behalf of its member,

Dr. Alice Owano (the grievant) whose husband was taken ill and was admitted at Agakhan Hospital Kisumu as an emergency case with a swollen stomach and severe lower abdomen pain, and was diagnosed with serious blockage of the large intestines.

2. The Claimant prays for Judgement against the Respondent for a sum of Kshs.1,035,000 towards settlement of part of Dr. Alice Owano's medical expenses.

3. The Claimant further seeks a refund from the Respondent to the grievant medical expenses her deceased husband incurred at the Agakhan Hospital being Kshs.2,500,000.

4. The claim is perused on the following facts –

(i) The Claimant signed a Collective Bargaining Agreement (CBA) with the Respondent on 19<sup>th</sup> May, 2012 for the period running from 1<sup>st</sup> July, 2010 to 30<sup>th</sup> June, 2012 which agreement is still in force to date by virtue of article 45 of the said Collective Bargaining Agreement.

(ii) That in terms of article 25 of the said Collective Bargaining Agreement, the Respondent was sound to provide a non-contributory medical scheme to the Claimant's members working at the Respondent's University, their spouses and dependent children within Kenya.

(iii) That the Respondent was to meet hospital charge above and above the National Hospital Insurance Funds contribution.

5. It is not in dispute that the grievant's husband was admitted at Agakhan Hospital Kisumu on 10<sup>th</sup>

October, 2013 as an emergency case.

6. It is also not in dispute that the grievant reported the admission of the husband to the Respondent on 28<sup>th</sup> October, 2013. An interim bill of Kshs.1,707,843.17 was forwarded for settlement at the same time.

7. The Respondent's medical officer by a memo dated 1<sup>st</sup> November, 2013 acknowledged receipt of the information to the fact that Dr. Thomas Mulusa (grievant's spouse) had been hospitalized 18 days after he had been admitted.

8. It is also not in dispute that the grievant's husband subsequently died and at the time of death the grievant had incurred further hospital charges as set out in the statement of claim.

9. The Respondent does not dispute the amount of medical fee incurred, but questions the failure by the grievant to follow what the Respondent refers to as 'Mandapay' procedure which according to the Respondent is a condition precedent before the Respondent pays or reimburses hospital bills on behalf of its staff.

10. It is not in dispute also that the Registrar of administration of the Respondent Mr. R. C. Atamba wrote a letter to the grievant dated 26<sup>th</sup> May 2014, produced in court. The letter reads as follows:-

**"RE: MEDICAL CLAIM: LATE T. MULUSA**

Reference is made to the above medical claim. This is to inform you that you will be refunded Kshs.1,035,000/= (One million and thirty five thousand Kenya Shillings only) being 50% of the bill.

*Please, complete the relevant forms for processing."*

11. Subsequently, by a letter dated 1<sup>st</sup> July, 2014 by Registrar (PR&I) and Secretary to the University Management Board the Respondent wrote to the grievant informing her that the University Management Board at its 330<sup>th</sup> meeting held on 23<sup>rd</sup> June, 2014 decided that the request by the grievant for refund of medical expenses incurred on the treatment of her late husband was to be referred back to council for resolution.

12. Meanwhile the grievant had filled the requisite claim form on 28<sup>th</sup> May, 2014 to the Medical Officer of the Respondent. The said officer approved payment of refund of Kshs.1,035,000 to the grievant in terms of the approval by the Registrar Administrator aforesaid. The document was submitted in court at page 109 of the statement of claim.

13. By a letter dated 11<sup>th</sup> December 2014, signed for Registrar (Admin) by one Benard Ooko, the Respondent wrote to the grievant informing her the following:-

**"RE: REIMBURSEMENT OF MEDICAL EXPENSES**

*The above subject matter refers.*

This is to inform you that your request was not approved. This is because you did not follow the laid down procedures by getting a referral letter."

14. The grievant made concerted effort detailing her loss of husband and attendant financial distress caused by the unpaid bills to the Respondent to heed their contractual obligation to refund the hospital bills.

15. Indeed, the hospital had withheld the body of the deceased for a while until the grievant got donations from well wishers to defray some to the outstanding bill. The plea by the grievant did not move the

Respondent to change their position not to pay the hospital bill.

16. The Respondent prays the court to find that the grievant flouted the laid down procedure by the Respondent by not getting a referral letter and not reporting timeously the hospitalization of the husband and therefore is not entitled to the prayers sought and that this suit be dismissed with costs.

### **Determination**

17. The issue for determination in this matter is whether the Claimant is entitled to the refund of Medical Bill by the Respondent as claimed in this suit.

18. The Respondent basis its refusal to refund the acknowledged medical bill on a memorandum dated 1<sup>st</sup> April 2011 written by the Deputy Vice Chancellor (A & F) to all members of staff whose contents the court summarises as follows:-

- i. The memo was titled Provision of Health Services to Staff and their Defendants.
- ii. It reminded staff that the Respondent catered for health services for Legal dependants who are eighteen (18) years and below.
- iii. That a prior approval for those above 18 years is required so that they are included on the list of dependants.
- iv. That all cases of emergency admissions MUST be reported to the University Medical Officer or the Clinic Staff immediately.
- v. That **A REFERRAL LETTER** from the Medical Officer shall be required for any other case of consultation or admission in an appointed hospital.
- vi. University will not be bound to honour any bills incurred by a staff outside the above procedure.

19. It is common cause that the husband of the grievant was “taken seriously ill and was admitted at Agakhan Hospital Kisumu as an emergency case” as pleaded under paragraph 4 of the Memorandum of Claim. This averment is not denied by the Respondent in the Memorandum of Defence filed on 9<sup>th</sup> February, 2016. As a matter of fact the particulars of the admission are admitted under paragraph 6 of the Memorandum of Defence in which is acknowledged that the letter from the hospital indicated that the spouse had been admitted since 10<sup>th</sup> October, 2013.

20. The court finds that it is a proven fact that the spouse of the grievant was admitted on Emergency basis.

21. A plain reading of the circular dated 1<sup>st</sup> April, 2011 to the staff relied on by the Respondent to dishonour payment of hospital bills in respect of the spouse of the grievant shows a referral letter was not required in respect of *“all cases of emergency admissions.”*

22. The only requirement in the circular in respect of “emergency admissions” is that they must be reported to the University Medical Office or the Clinic Staff immediately.

23. It is common cause that the grievant reported the admission to the Respondent 18 days after the admission. However, this was not relied upon by the Respondent as a basis of their refusal to honour the payment.

24. The only basis for the refusal in the letter sent to the grievant dated 11<sup>th</sup> December, 2014 by Mr. Benard Ooko was said to be failure to follow “laid down procedure by getting a referral letter.”

25. It is the court's considered finding upon a plain interpretation of the governing circular that no such requirement existed in respect of 'all emergency admissions'. It's a proved fact that the grievant's spouse was admitted on emergency basis, and the Respondent wrongly, and unlawfully refused, and or failed to reimburse the medical expense incurred by the grievant.

26. Furthermore, the Respondent had approved vide its adhoc committee reimbursement of 50% of the medical bill in the sum of Kshs.1,035,000. The approval was confirmed by the medical officer Dr. P. O. Wanguche, who also approved the application form and sought further approval by the Deputy Vice Chancellor (A & F) by a letter dated 20<sup>th</sup> May, 2014. The Deputy Vice Chancellor approved the payment on 23<sup>rd</sup> May, 2014 as seen in appendix 5 to the memorandum of defence.

27. To this extent, and in addition to the finding by the court that the Respondent had no right to decline payment of the claim, the Respondent is estopped by his own conduct aforesaid not to honour its commitment to the detriment and loss of the grievant.

28. The Claimant had relied on the promise and actual commitment by the Respondent in writing that it would reimburse medical bills in respect of herself and her spouse and other dependants lawfully incurred upon admission on emergency basis.

29. The claimant relied on the circular itself and the particular approval of the claim and incurred heavy financial expense in paying hospital bills in the expectation that same would be refunded by the Respondent to her loss and detriment. **See Black's law dictionary which defined estoppel as –**

“a bar or impediment raised by law which precludes a man from alleging or from denying a certain fact or state of facts in consequence of his previous allegation or denial or conduct or admission or in consequence of a final adjudication of the matter in a court of law”

30. This is a classic case of promissory estoppel and it adds to the unequivocal decision by the court that the claimant's case is merited.

31. Consequently, the court enters judgment in favour of the grievant in the sum of kshs.1,035,000 being the approved 50% of the incurred bill as approved by the Respondent in the letter dated 20<sup>th</sup> May, 2014 and produced as exhibit 5 to the memorandum of response.

### **Damages**

32. The Claimant did not adduce oral evidence in this matter and had not pleaded in an elaborate manner particulars of loss and damage that would warrant the court to award the grievant general damages in respect of the now determined breach of contractual obligation by the Respondent.

33. Accordingly, the court finds that the claim for payment of general damages has not been proved on a balance of probabilities and the same is dismissed.

34. Equally, the claim for payment of Kshs.2,500,000 in prayer C of the memorandum of claim has not been proved and is dismissed.

35. In the final analysis, judgment is entered in favour of the grievant as against the Respondent in the sum of Kshs.1,035,000 (One Million and Thirty Five Thousand).

36. The amount is payable with interest at court rates from the date of approval by the Respondent on 23<sup>rd</sup> May, 2014 until payment in full.

37. The Respondent to pay costs of the suit.

**Judgment Dated, Signed and delivered this 14thDay of December, 2017**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances:-**

Otieno, Ragot for Claimant

Federation of Kenya Employers for Respondents

CC. Chrispo Aura