



THE REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO 428 OF 2013

UNION OF NATIONAL RESEARCH AND ALLIED INSTITUTES

STAFF OF KENYA (UNRISK) CLAIMANT

VERSUS

KENYA AGRICULTURAL RESEARCH INSTITUTE (KARI) RESPONDENT

JUDGEMENT

The issues in dispute

1. Failure by the Respondent to revise house rent charges in line with the Ministry recommended Housing; and
2. Refund of accumulated arrears paid in excess of the normal rates.

1. The claim was filed on 28th March 2013 by the claimant, Union of National Research and Allied Institutes Staff of Kenya (UNRISK) against the respondent, Kenya Agricultural Research Institute (KARI). A reply was filed on 23rd September 2013 and denied the claims noting that they have since been delinked from the Ministry of Agriculture in 1989 and have a separate relationship between the Ministry and its employees. Both parties filed written submissions in support of their case.

2. The claimant's case is that the Respondent has failed to revise house rent charges for its 10 staff based at Kakamega from Kshs.3,500.00 to Kshs.2,000.00 per month despite the Ministry of Housing recommendation and further failed to refund the accumulated arrears paid in excess of the normal rates. The respondent, being the entry that carries research in agriculture and veterinary science and forestry has various centres some based in Western Region.

3. The government through circular No. OP 181A vol.XI dated 20th September 2002 issued a *Harmonisation of Terms and Conditions of Service in the Public Service: Revised Rents for Government Houses* which the respondent's management at its centres recommended to the head office to correct the anomaly of overcharging its house rent rates. The Ministry of Lands and Settlement in where the docket fall confirmed the variation of the rent rates. The affected staff whose house rent rates were affected are;

1. Philip Onzere
2. Lazarus Menin
3. Joyce Kenda
4. Jason Ngolo

5. John Ilavonga
6. Joyce Atianyi
7. Christine Lumembe
8. Anthony Mutai
9. Michael Namai
10. Joash Owino

4. The Claimant thus submitted that the Respondent has continued to overcharge the staff living in their houses despite clear recommendation of the Minister revising the same downwards. The claim is that the Court should direct the Respondent to charge the recommended house rents as advised by the Ministry of Public Works in July 2002 and confirmed by the Ministry of Lands and Housing; the 10 employees be refunded Kshs.1000.00 overpaid per month by each from July 2002 to the date of judgement; the Respondent be directed to charge the recommended rent rate; the overpaid rents be remitted within three (3) months; and costs of the suit.

5. The respondent's case is that as a statutory body it has perpetual succession with a Board of Management that administer its property to the exclusion of others. The rent being charged for the houses were adopted from valuation report from the Ministry of Lands and Settlement which was handling rent matters at the implementation of market rate rents. The Respondent is revising its housing policy and the recommendations will be in a report to be approved by the Board of Management. The circular subject of the claim was directed at civil service and not to state corporations.

6. The Respondent also submit that the Ministry revised house rents would apply to staff whose continued presence was required around the clock and essential which is not the case with the listed employees. The employees were directed to pay for the houses or surrender their house allowances and in this case the subject employees received a house allowance. The Respondent is only bound by decisions of its Board of Management and not that of staff. The Respondent manages its houses as revenue generation assets and staff are not entitled to housing as a matter of course rather they are paid their full house allowance and when the Respondent was delinked from the Ministry of Agriculture in 1989, it became autonomous to set its own policies including that of its houses. The claim should be dismissed with costs.

Submissions

7. The Claimant submitted that the President circular harmonised housing terms for staff in the public service but the Respondent has continued overcharging its staff at Kakamega centre. The Ministry of Roads and Public Works in Kakamega advised the Respondent on the houses as well as the Ministry of Lands and Housing that the house rates had changed from kshs.3, 500.00 to kshs.2, 000.00. The Respondent should revise the rent rates from the date of effect and refund all the overpaid rents to the overcharged staff.

8. The Respondent on their part submitted that they are a corporation established under the Science and Technology Act Cap 250 as a research institute under section 12(1) and its functions outlined under section 13. The Respondent as an entity is guided by the Employment Act on staff housing under section 31(1).

9. In this case the subject circular No. OP/18/1A/VIII/141 of 18th June 2001 revising house rents for government houses does not apply to the Respondent as a corporation with a Board of Management and not part of civil service as envisaged under its statute of formation, the Science and Technology Act. The Respondent has since been delinked from the Ministry of Agriculture and granted authority to manage its affairs thus through the Board of Management. The Respondent has control over its policies over assets and other matters through approval by the Board. In this case, the Ministry recommendations over revision of house rent rates do not relate to the Respondent houses. The Respondent has not overcharged the employees over the houses they occupy, these are assets used to generate income and in any event, the subject employees receive their monthly house allowance upon which they should surrender the houses and rely on **Republic versus national Museums of Kenya & 12 Others [2014] eKLR**. in this case there

is no overpayment or requirement to refund any overpayments as this is not an entitlement. In this regard therefore, the suit should be dismissed and costs awarded to the respondent.

Determination

10. The subject of the claim herein is the failure by the Respondent to revise house rent charges in line with that recommended by the Ministry of Housing from Kshs.3, 500.00 to kshs.2, 000.00 through a circular issued on 18th June 2001 vide Presidential Circular No.OP/18/1A/VIII/141 (the Circular) and sent by the Permanent Secretary/Secretary to the Cabinet and head of the Public Service on 20th September 2002.

11. The Circular stated as follows;

Ref. No. OP.181A.Vol.XI

20th September 2002

The Attorney-General

Permanent Secretaries

The Controller and Auditor-General

The Private Secretaries Controller State House

the Secretary, Public Service Commission

The Clerk, National Assembly

The Registrar, High Court of Kenya

The Chairman, Electoral Commission of Kenya

Provincial Commissioners (with sufficient copies for District Commissioners)

The Director-General, National Security Intelligence Service

The Secretary, Teachers Service Commission

HARMONIZATION OF TERMS AND CONDITIONS OF SERVICE IN THE PUBLIC SERVICE: REVISED RENTS FOR GOVERNMENT HOUSES

Attention is invited to Office of the President Circular No.OP/18/1A/VIII/141 of 18th June 2001 in which the new house allowance rates and market rents for government-owned houses were announced.

...

Public servants occupying institutional houses, and whose services have been categorised as essential to the respective institutions thus requiring their 24-hour presence in the institutions, will pay the rents indicated in this circular or surrender their house allowance, whichever is lower. Accordingly, all Public Service Institutions are required to relocate over-housed and under-housed officers to appropriate quarters in order to ensure maximum rent collection.

...

12. The Circular was thus specific to the offices and officers outlined as;

The Attorney-General

Permanent Secretaries

The Controller and Auditor-General

The Private Secretaries Controller State House

the Secretary, Public Service Commission

The Clerk, National Assembly

The Registrar, High Court of Kenya

The Chairman, Electoral Commission of Kenya

Provincial Commissioners (with sufficient copies for District Commissioners)

The Director-General, National Security Intelligence Service

13. The directive was to all Public Servants occupying institutional houses and whose services were essential with required presence in the institution for 24 hours. The condition was however that the house would be provided or the public servant would be required to surrender house allowance, whichever is lower. In this regard, the directive was to take effect for all public servants to either keep the house or the house allowance and not the two. The employer or responsible government department was to provide housing or give house allowance.

14. Both parties agree that the Respondent in this regard is discerned from its formative statute, the Science and Technology Act. The Act sets out the Respondent as;

12. (1) There are hereby established the Research Institutes set forth in the first column of the Forth Schedule

(2) The Minister may on the advice of the Council and after consultation with the appropriate responsible Minister and participating Ministers, by notice in the Gazette, add further Research Institutes to the Fourth and Fifth Schedules and amend any of the provisions therein.

15. Under the Forth Schedule; the respondent, Kenya Agricultural Research Institute is listed as an agricultural Sciences Advisory Research Committee and the responsible Ministry being that of Agriculture. Thus established under section 12 of the Act and stated as such under the Fourth Schedule, how the Respondent was to be incorporated is set out under section 13 of the Act thus;

13. Each Research Institute shall be a body corporate with perpetual succession and a common seal and shall have power to sue and be sued in its corporate name and to acquire, hold and dispose of movable and immovable property for its own purposes. [emphasis added].

16. A *body corporate* is a legal entity in law that has capacity to hold and dispose property, be sued and sue in its own name. in this regard, the Respondent has been sued herein, not as a department of government requiring advice from the office of the Attorney-General but in its own name since it is a *body corporate*. I find thus, the Circular was not directed at the Respondent directly or indirectly. The Respondent is not listed as a recipient of the circular. Even where such directive is to be construed as such, I find no legal basis for such inference, the reason being that the law establishing the Respondent is

specific and without ambiguity.

17. Can the Claimant then claim any house rent revisions under the Circular? Despite the affirmation by the Conciliator through the recommendation made on 7th August 2012 that the Respondent Board of management should deliberate over the Circular; the communication by the Ministry of Roads and Public Works on 8th July 2001; and the Ministry of Lands and Housing on 6th December 2006, the Respondent remains an body corporate with exclusive authority over its assets. In any event the Circular was never directed at them and indeed there was no legal basis for the Circular to be directed as such. The non-inclusion therein is not an error of judgement or an act of omission, it was deliberate. I find no justification to thus imply that this Circular was meant to affect the Respondent with its employees.

18. Are costs payable? a claim such as this should not have arisen. The basis of the claim is far-fetched. There is evidence that the Respondent employee's subjects of the suit are earning their monthly house allowances and are also accommodated by the respondent. even where there is a remote link to the Circular, it was not to apply to public servants who are housed and also getting house allowance. It was either and not both. To thus be housed and received a house allowance is double benefit that has no justification. The law recognises that an employer should provide housing or an allowance thereto thus under section 74(1) (i);

(i) where the employer provides housing, particulars of the accommodation provided and, where the wage rates are deconsolidated particulars of the house allowance paid to the employee;

19. However, the Respondent has not counter-claimed for either the surrender of the houses or the rents worth/due and not paid whichever is greater. Noting the essence of the suit is lacking, the Claimant should pay costs.

In conclusion, the suit is dismissed in its entirety. Costs awarded to the respondent.

Delivered in open Court dated and signed in Nairobi on this 4th day of June 2015.

M. MBARU

JUDGE

In the presence of

Lilian Njenga: Court Assistant

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