

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 448 OF 2010

(Before D.K.N. Marete)

Union Of National Research And Allied Institute Of Kenya (UNRISK)..CLAIMANT

Versus

Kenya Medical Research Institute

.....RESPONDENT

RULING

The claim came to court vide a memorandum of claim dated 23rd April, 2010. The issue in dispute is herein cited as;

‘Refusing by KEMRI Management to sign agreed Collective Bargaining Agreement (CBA)’

The respondent on the other hand opposes the claim and comes up with a counter offer of what she considers a practical and viable Collective Bargaining Agreement (CBA) based on the fact the respondent is a parastatal and state corporation that has to take into consideration government budgetary provisions before any financial undertakings, or at all.

The claimant’s case is that she is a registered trade union with jurisdiction to cover the respondent in terms of the economic activities and the parties have a valid Recognition Agreement duly signed on the 21st February, 2007.

The claimants made and forwarded a proposed Collective Bargaining Agreement to the respondents and the parties have had several meetings and deliberations in which the parties have failed to agree on some of the issues. Subsequently, the claimants reported a formal trade dispute which dispute was thrashed through a conciliator and an agreement made on all issues at conciliation on 15th September, 2009. The claimants wrote to the respondents and suggested 25th September, 2009 as the date of signing the Collective Bargaining Agreement but despite constant references *inter parties*, this has not been done to date. No date has been so far set out for the signing of the said Collective Bargaining Agreement. The claimant therefore prays for orders that;

1. *The respondent be ordered to sign the Collective Bargaining Agreement marked App. UNRISK – 14 within 15 days from the date of this award.*
2. *The costs of this cause be borne by the respondent.*

The respondent on the other hand opposes the claim and submits that her budget is controlled and determined by budgetary allocation from the

national treasury. This is as follows;

- i. *My Lord, this CBA is the first for the parties to negotiate. Secondly, it is crystal clear that*

KEMRI wholly depends on the Government for the purposes of funding. This mean salaries and other allowances are paid from funds provided by treasury.

The Government's budget is on a yearly basis and does not provide for budget lines that are not approved by treasury. In fact treasury only honours payment of money as long as their prior budgetary provision.

- ii. *Section 15(5) of the Industrial Court Act 2011 provides that "In the exercise of its powers under this Act, the Court may be bound by the national wage guidelines on minimum wages and standards of employment that may be issued, from time to time, by the Cabinet Secretary for the time being responsible for finance".*
- iii. *The wages guidelines of 23rd November 2005 were issued by the then Minister for Finance pursuant to this section for the law.*
- iv. *Guideline No, 6 provides that "Treasury would honour wage awards as long as there is a prior budgetary provision. In this respect, wage awards should be integrated within budget framework".*
- v. *Arising from the above it is our considered view that any award that would result to backdating of the effective date would adversely affect the respondent as the government will not provide resources to pay the arrears based on grounds that there was no approved budget provision for the said period.*

She therefore opines that in the current circumstances of underfunding by the government, a case for signing of the Collective Bargaining Agreement is not sustainable and therefore has no commitment to the signing of the agreed Collective Bargaining Agreement. She goes on to make a counter proposal for a Collective Bargaining Agreement and prays that this be accepted and adopted for *inter parties* signing and condonation as Collective Bargaining Agreement.

The issue arising herein is whether this court should order for a signing of the CBA as originally crafted *inter parties* or buy the respondent's position and disallow the claim or go for the abridged CBA by the respondent.

The claimant in her written submissions dated 8th July, 2013 submits on her right to engage in collective bargaining. That on the direction of Hon.

Madzayo, J. the parties engaged and agreed as follows;

1. *The Claimant is a registered trade union with jurisdiction over the Respondents in terms of her economic activities and the parties have a valid Recognition Agreement duly signed which is herein marked Appendix UNRISK 1 signed on the 21st February 2007.*
2. *The Claimants forwarded proposals to the Respondents and meetings and deliberations took place of which the parties failed to agree on some of the issues.*
3. *That, the Claimants thereafter reported a formal trade dispute to the Minister of which the Minister accepted and appointed a Conciliator (Mr. P.N. Macharia) as is evident in a letter dated 1st July 2008 herein marked Appendix UNRISK 2.*
4. *That, during conciliation meetings, the parties managed to agree on all of the issues in dispute as is evident in Appendix UNRISK 3 (a) and (b).*
5. *That, on 15/9/09, the Claimants wrote to the Respondents and suggested 25/9/09 as the date of signing CBA (see App. UNRISK 4).*
6. *That, on 23/9/09, the Respondents wrote and informed the Claimants that the document needs to*

be approved by the Board of Management. (see App. UNRISK 5).

7. That, on 29/9/09, the Claimants wrote to the Respondent requesting for update at the earliest (see App UNRISK 6).
8. That, on 28/10/09, the Claimants further wrote to the Respondent proposing 17/11/09 as the new date for signing the CBA (see App UNRISK 7).

She therefore prays as follows;

1. Sign the Collective Bargaining Agreement (CBA) which is herein marked App. UNRISK – 14 within 15 days from date of the Award.
2. Pay costs of this dispute.

The respondent also came up with her version of the agreement and pray that the same be adopted and ordered by court;

3. The parties held several meetings in an effort to resolve the issues in dispute. The parties agreed on some for the contentious issues as follows:

a. **Leave allowance**

The parties agreed that the current existing figures of leave allowance be increased by Ksh.1,000/= across the board.

This agreement is contained in the minutes of 21st March, 2012. **See app...1**

b. **Commuter allowance**

The parties agreed to add Ksh.500/= across the board on the figures that are currently being paid in addition to harmonization of grades MR1 and MR2 with the government rates. **See APP...2 (see minutes of 14th March 2012 and 21st March, 2012)**

We pray the court to award leave allowance and commuter allowance as agreed in the minutes quoted above.

c. **House allowance**

As already indicated in the claimants prayer in their final submissions, that the rates being paid to be retained, the figure per job group are as follows:

Job group	Amount in Ksh.
MR 1	3,300/=
MR 2	3,500/=
MR 3	3,500/=
MR 4	5,000/=

MR 5	6,000/=
MR 6	6,000/=
MR 7	10,000/=
MR 8	20,000/=
MR 9	20,000/=
MR 10	24,000/=

We pray the court to give an award as per these figures that have also been accepted by the claimant.

d. Basic minimum wages

<i>Job group</i>	<i>Amount in Ksh.</i>
MR 1	9,424/=
MR 2	10,339/=
MR 3	11,283/=
MR 4	16,866/=
MR 5	18,040/=
MR 6	20,610/=
MR 7	30,499/=
MR 8	34,069/=
MR 9	40,835/=
MR 10	47,272/=

We pray the court to award the above figures as basic minimum wages-entry points

Please see APP...3 (salary structure for the whole organization)

e. General Wage increase

- i. *My Lord in the minutes of the meeting held on 14th March, 2012 the claimants after revising their demand came up with 28% for 2 years*
- ii. *The respondent was unable to give any offers as the government had not provided any allocation for a wage increase.*

- iii. *As pointed out under the effective date and duration in this submission at paragraph 7, any arrears emanating from the backdated period will be difficult to pay based on grounds that there was no budgetary provision for the money by the government treasury. It is with this in mind that we are praying the court to give 1st July, 2013 to be the effective date and bearing in mind that this is the first CBA for the parties to negotiate.*
- iv. *My Lord the level of inflation over the whole for this year has been ranging between 3.9% and 5.2%.*
- v. *The employees, on a yearly basis get 3% on top of their salaries to cater for inflation.*
- vi. *It is on this ground we pray the court to award a wage increase based on the inflationary figure of 5% for the 1st year effective 1st July 2013.*

We so pray

f. *Effective date and duration*

- i. *My Lord, this CBA is the first for the parties to negotiate. Secondly, it is crystal clear that KEMRI wholly depends on the Government for the purposes of funding. This means salaries and other allowances are paid from funds provided by treasury.*

The Government's budget is on a yearly basis and does not provide for budget lines that are not approved by treasury. In fact treasury only honours payment of money as long as their prior budgetary provision.

- ii. *Section 15(5) of the Industrial court Act 2011 provides that "In the exercise of its powers under this Act, the Court may be bound by the national wage guidelines on minimum wages and standards of employment, and other terms and conditions of employment that may be issued, from time to time, by the Cabinet Secretary for the time being responsible for finance".*
- iii. *The wages guidelines of 23rd November 2005 were issued by the then Minister for Finance pursuant to this section of the law.*
- iv. *Guideline No. 6 provides that "Treasury would honour wage awards as long as there is a prior budgetary provision. In this respect, wage awards should be integrated within budget framework".*

Please see APP...6 of the respondent's main memorandum.

- v. *Arising from the above it is our considered view that any award that would result to backdating of the effective date would adversely affect the respondent as the government will not provide resources to pay the arrears based on grounds that there was no approved budget provision for the said period.*

It is therefore the respondent prayer that the effective date of this CBA be 1st July 2013 and run for two years.

We so pray.

The Labour Relations Act, 2007 is explicit on recognition of Trade Unions and Collective Bargaining Agreement under S.54 and 57 of the Act respectively. These are not options but accepted legal processes for dealing between trade unions and employers.

In the instant case, the issue of signing or otherwise of the CBA is not negotiable but a legal duty of the

parties. No employer, including a state corporation can oust or excuse itself from the operations of the law. It would not matter how its functions, mandate and operations are financed or budgeted. The law is equal and all round in application. I am therefore inclined to uphold this claim and send the parties to negotiations with a view to updating and refining the contents of the CBA as yet not signed.

In view of the time lapse between the date of the CBA and this dispute I

order as follows;

1. That the parties are awarded thirty days in which to negotiate their opposing positions on the various items of the CBA and agree on these items.
2. That in the absence of consensus into parties per order number 1 above, this court shall rule on the amounts and figure to reign in the circumstances.
3. That the matter be mentioned on 4th November, 2013 to record progress and further directions of court.
4. That the delay and reluctance by the respondent in signing the CBA is an indication of poor industrial relations exercises and must be condemned.

Dated, delivered and signed the 3rd day of October, 2013.

D.K. Njagi Marete

JUDGE

Appearances

1. Zacharia Achacha, Secretary-General UNRISK for the claimant.
2. Muthanga instructed by Federation of Kenya Employers for the Respondent.