

## LEGAL DEVELOPMENTS UPDATE

27<sup>th</sup> September 2010

### 1. NEW NHIF RATES:

#### Follow up on CH Bulletin of 30/8/10:

The Industrial Court had halted implementation of the new NHIF rates to await determination of a case filed by the Central Organization of Trade Unions (COTU). The workers' body moved to court accusing NHIF of allegedly revising the rates without consultations with COTU or its social partners. The new rules are pegged on one's monthly income and not a flat rate for all workers as was the case before.

Industrial Court Judge James Rika who was sitting in Mombasa on Monday (27/9/10) ruled that the applicants' case was 'baseless'. The new rates which were gazetted in June will now become effective from 1<sup>st</sup> October 2010.

COTU has convened a meeting to take place this Friday (1/10/10) and will revert to their drawing board to establish how to halt the implementation of the new controversial NHIF rates. The options available to COTU and FKE include:

- the right to strike afforded to the body under Chapter 4, Article 41(2) (d) of the current Constitution; and
- COTU Secretary General Francis Atwoli has stated that COTU and the Federation of Kenya Employers (FKE) will seek a Judicial Review (JR) of the decision in the High Court.

Point of interest: See the recent decision below in **RE THE CITY COUNCIL OF NAIROBI *EX PARTE* KENYA TAXI CABS ASSOCIATION [2010] EKLK**. This decision may be relevant if the COTU & FKE pursue a JR approach.

#### PREVIOUS NHIF RATE

Currently, all workers pay a mandatory contribution of KES 320 per month.

#### NEW NHIF RATES

GROSS INCOME (KES)	CONTRIBUTION (KES)
< 5,999	150
6,000 to 7,999	300
8,000 to 11,999	400
12,000 to 14,999	500
15,000 to 19,999	600
20,000 to 24,999	750
25,000 to 29,999	850

30,000 to 49,999	1,000
50,000 to 99,999	1,500
Over 100,000	2,000
Self employed (special)	500

**2. APPOINTMENTS:**

- a) Jane Moraa Adogo has been appointed as Secretary of the Capital Markets Tribunal effective 13/09/10;
- b) Four new appointments to the Capital Markets Tribunal (details gazetted); and
- c) Approximately 48 District Magistrates II (Prof) appointed under Section 69 (repealed) Constitution of Kenya - effective from 1<sup>st</sup> July 2010.

**3. PARLIAMENT:**

Parliament convenes on 28/9/10 after a month's break.

**4. CASE/S OF THE WEEK:**

**a) RE THE CITY COUNCIL OF NAIROBI *EXPARTE* KENYA TAXI CABS ASSOCIATION [2010] ECLR**

High Court at Nairobi

R. P. V. Wendo

Date: 20/9/2010

The Applicants contended that their legitimate expectation that the City Council would abide by the law in making the changes to the By-Laws regarding taxi cabs was breached. The court found in their favour stating that the doctrine of legitimate expectation was all about an administrative body charged with making decisions affecting the rights of others, acting fairly.

Further, it held that the imposition of rules without prior warning to the stakeholders was unfair, unreasonable and punitive of the Applicants.

It was on this basis that the court granted the Kenya Taxi Cabs Association's motion against the City Council quashing its decision (an order of certiorari quashing the decision of the City Council of Nairobi).

**b) SYNER-MED PHARMACEUTICALS LTD V GLAXO GROUP LIMITED [2010] ECLR**

Court of Appeal at Nairobi

Omolo, Onyango Otieno & Aganyanya

Date: 11/6/2010

The Court of Appeal in June this year, allowed a pharmaceutical company, Syner-Med Pharmaceuticals Ltd (applicant) to continue marketing its recently registered drug pending the outcome of an appeal. The company is involved in a legal battle with Glaxo Group Ltd (respondent) over the use of a trade name of an antibiotic drug.

The trade mark suit before the High Court was provoked after the applicant applied for the registration of a drug designated as 'SYNERCEF' in April, 2006. At the time the applicant applied to the Registrar of Trade Marks, the respondent had registered its antibiotic drug in the trade name of 'ZINACEF' in 1983.

The Court stated that "in the circumstances of this case, we think the balance of convenience requires that we maintain the status quo prevailing before the judgment proposed to be appealed against so that while the applicant's application for the registration of its trade mark is held in abeyance pending the hearing and determination of the proposed appeal, the applicant shall be entitled to continue marketing its product until the outcome of the appeal is known."

**c) NANCY AYEMBA NGAIRA V ABDI ALI [2010] EKLK**

High court at Mombasa

J.B Ojwang J

Date: 11/6/2010

The High Court in June this year held that a person who enjoyed actual ownership, beneficial ownership, possessory ownership or any other categories of ownership, may for practical purposes, be much more relevant than the person whose name appeared in the certificate of registration of a motor vehicle.

Note: this was a Negligence Suit brought against two individuals, the driver and owner of a matatu where ultimately Justice Ojwang allowed the appeal and entered judgment In favour of the Applicant and ordered that the two defendants should bear liability jointly and severally in the amounts that were awarded by the Magistrate's court in its judgment.

**Haanee Khan**