



REPUBLIC OF KENYA
THE PRESIDENCY
MINISTRY OF DEVOLUTION AND PLANNING

CIRCULAR NO: *NGOB2904/2016/ED*

APRIL 21, 2016

TO ALL:

1. CHAIRPERSONS OF NGOS
2. ACCOUNTING OFFICERS/CEOS/CDs
3. HUMAN RESOURCES DIRECTORS/MANAGERS/OFFICERS

ISSUANCE OF WORK PERMIT TO EXPATRIATES IN ACCORDANCE WITH THE NGOS CO-ORDINATION ACT, 1990 CAP 134 LAWS OF KENYA, THE NGOS CO-ORDINATION REGULATIONS, 1992 AND THE KENYAN CITIZENSHIP AND IMMIGRATION ACT, 2012 IN THE NGOS SECTOR

The issuance of work permit to expatriates working within the charitable sector is provided for under Section 17 of the NGOs Co-ordination Act, 1990 CAP 134 Laws of Kenya read together with Regulation 28 of the attendant Regulations of 1992 and Regulation 20 of the Kenyan Citizenship and Immigration Act, 2012.

Under Section 17: *application for work permits in respect of prospective employees of a registered Non-Governmental Organization and make recommendation to the Principal Immigration Officer for the issuance of the permit to the applicant.*

Under Regulation 28: *Any registered organization wishing to obtain entry permits in respect of prospective employees shall, where -*

(a) the services of such employees are necessary for the proper function of the organization; or

(b) no persons with comparable skills are available locally; or

(c) such employees will contribute towards the training of Kenyans to obtain scientific, technical and managerial skills, apply in writing to the Principal Immigration Officer through the Board for the issuance of the required permits.

The Board has noted the following:

1. There are expatriates working in the charity sector without valid work permits in total contravention of Kenyan Citizenship and Immigration Act 2012 and provisions of Section 17 of the NGOs Co-ordination Act 1990 and regulation 28 of NGOs regulations of 1992.
2. There are expatriates within the sector that are holding work permits that have not been obtained in accordance with the provision of NGOs Co-ordination Act, 1990 and the Kenyan Citizenship and Immigration Act, 2012.
3. International staff earn 4 times more than what Kenyan nationals earn for the same job with comparable skills and qualifications. In addition, International staff get other benefits that aren't available to the Kenyan Nationals i.e. International staff get an average of 30 days leave, accommodation allowances, health insurance and children's education paid for by the organization; These commonly form part of expatriate packages that are not available to local staff.
4. A growing trend of career expatriates who have made a habit of hopping from one organization to the other in exploitation of R. 28 (a).
5. An exponential growth in the number of foreign volunteers within the charity sector. A summation of the allowances and benefits accruing to the said volunteers has been found to be equivalent to or slightly more than the salaries of a regular staff employed in an NGO.
6. Expatriates are often too quick to dismiss dual salary systems as a non-issue and the subject of wage disparities is a taboo topic in the charity sector. But our research tell us a different story and we have to address this emerging differential treatment and disparities between international and local staff.

In view of the foregoing and for purposes of ensuring compliance with both the provisions of The Kenyan Citizenship and Immigration Act 2012, NGOs Co-ordination Act 1990 and NGOs regulations 1992, the Chairpersons, CEOs, Head of Personnel of NGOs are required to ensure strict compliance with the aforementioned legislations and in specific ensure that expatriates are only employed where;

- There are *no persons with comparable skills available in the country. Take note that the Board shall not issue any recommendations unless and until it is proven and/or demonstrated that there are no Kenyans with the skills required available in the job market.*

- *Such employees will contribute towards the training of Kenyans to obtain scientific, technical and managerial skills for a specified period of time. Take note that, No recommendation shall be issued to any expatriate without evidence of a Kenyan understudy in line with R. 28 (c)*

In addition, the following must be noted and complied with;

- Any expatriate without a valid work permit and/or whose work permit or special pass has expired and is found in the employment of and/or working for any NGO, sufficient legal redress shall be sanctioned to such an individual and the NGO in accordance with the provisions of the Kenyan Citizenship and Immigrations Act 2012 and the NGOs Co-ordination Act, 1990.
- The Board shall only issue recommendations to volunteers whose organizations have demonstrated that equal number of Kenyans have been afforded volunteer opportunities in other countries/organizations.
- Boards of Directors and Head of personnel are required to immediately initiate the process of harmonizing the salary discrepancies between International and local staff employed in the same category with comparable skills and qualifications.

IN CONCLUSION, the Chairpersons of NGOs, the Board Secretary of NGOs, CEOs, Country Directors, and the Head of Human Resource must ensure strict compliance with the provisions of the aforementioned legislations and the contents of this circular.

Fazul Mahamed
EXECUTIVE DIRECTOR

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