



Ethics and Anti-Corruption Commission v Murage & another (Anti-Corruption and Economic Crimes Civil Suit E001 & E002 of 2023 (Consolidated))
[2025] KEHC 7570 (KLR) (Anti-Corruption and Economic Crimes) (4 June 2025) (Judgment)

Neutral citation: [2025] KEHC 7570 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES
CIVIL SUIT E001 & E002 OF 2023 (CONSOLIDATED)

LM NJUGUNA, J

JUNE 4, 2025

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

ROBERT THEURI MURAGE 1ST DEFENDANT

DORRIS NAFULA SIMIYU 2ND DEFENDANT

JUDGMENT

1. The Plaintiff herein brought the two suits against the Defendants pursuant to Section 11 (j) of the Ethics and Anti- Corruption Commission Act, 2011 for the recovery of Ksh.20,318,000 and Ksh.18,862,000 against the 1st and the 2nd Defendants respectively, as irregularly and fraudulently received allowances under several heads, to wit, extraneous, facilitation, taskforce/ committee and other undefined allowances. The Plaintiff sought the following orders against the Defendants:
 - a. A declaration that the sum of Ksh 20, 318,000 and Ksh 18,862,000 was fraudulently embezzled by the 1st and 2nd Defendants respectively, from the National Treasury and Planning.
 - b. An order directing payment to the Plaintiff of Ksh 20,318,000 and Ksh 18,862,000 fraudulently embezzled from National Treasury and Planning by the Defendants
 - c. In the Alternative and without prejudice to the foregoing, an order for forfeiture of Ksh 11,078,601 held at Equity Bank Account No. 012010029xxxxand Ksh. 8, 953,988.74 held at National Bank, account No. 0124303186xxxxx by the 1st and 2nd Defendants, respectively, in partial fulfillment of the judgment sum in paragraph (a) above.



- d. Further and without prejudice to the foregoing, payment of a sum of Ksh 11, 239, 398, 17 and Ksh; 9,908,011.26 by the 1st and the 2nd Defendants, respectively to the Plaintiff being the balance outstanding upon satisfaction of prayers (c) above
 - e. Costs of the suits
 - f. Interests on (b) (c) and (d) above, at court rates from the date the causes of action arose until payment in full
 - g. Any other order or further reliefs that the court may deem fit to grant.”
2. In the Plaints filed in the suits herein, the Plaintiff avers that, on or about the months of July 2022, it received reports alleging embezzlement of public funds and irregular payments from the National Treasury and Planning and abuse of office against the Defendants.
 3. That the Plaintiff commenced investigations into the allegations into the Defendants’ personal accounts which revealed that the Defendants fraudulently, illegally and irregularly received public funds as allowances for purported official duties that were undated and overlapped, use of a wrong allowance payment rate, unspecified allowances and receipt of allowances without approval of the Salaries and Remuneration Commission (SRC).
 4. The Plaintiff further avers that analysis of payment vouchers from the National Treasury and Planning for the period between January 2020 and 30th June 2022, established that the Defendants irregularly and fraudulently received allowances amounting to Ksh. 20,318,000 and Ksh. 18, 862,000 respectively, which were disguised as task force/committee, extraneous, entertainment and other undefined allowances.
 5. That owing to the Defendants’ fraudulent, illegal and irregular receipt of the said allowances, the Defendants are liable for misappropriating and/or embezzling public funds belonging to the National Treasury and Planning. The Plaintiff contends that the Defendants have been unjustly enriched to the tune of their respective amounts at the expense of the National Treasury and Planning, to the detriment of the public and as such, they are both personally liable for the loss attributable to fraudulent and corrupt conduct.
 6. The Defendants filed their respective statements of defences dated 20th February 2023 and 17th March 2023 respectively, in which they have denied the allegations in the Plaints.
 7. Without prejudice to the foregoing, the Defendants have averred that at no time did the Plaintiff inform them that complaints had been filed against them; or that they were under investigations; or that they were required to explain the sources of or justify the existence of the funds in their accounts.
 8. Further to the above, the Defendants contend that they were neither contacted nor interviewed prior to the Plaintiff obtaining the order in ACEC Misc. Civil Application No. E036 Of 2022 or in the Chief Magistrate’s Court Misc. Criminal Application No. E 2292 of 2022. They have denied the particulars of fraud and illegality attributed to them.
 9. Further and without prejudice, the Defendants admit receiving letters dated 11th January 2023 and 13th January 2023 from the Plaintiff which demanded not the sums claimed in the Plaintiff, which letters they contend, were not only an afterthought but the demands were made and issued in total violation of the notice contemplated in Sections 23, 26, 27, 28 and 55(2) (b) of the ACECA Act.



10. The two matters were consolidated on the 20th March, 2024 with 001 Of 2023 as the lead file. At the hearing, the Plaintiff called two witnesses whereas on the part of the Defendants, both of them testified but they did not call any witnesses.
11. PW1, Jennifer Gitari who works at Salaries and Remuneration Commission as a Principal Officer, Allowances and Benefits, adopted her witness statement dated the 6th November, 2023 in which she has set out the functions of the Salaries and Remuneration Commission under Article 230 of the Constitution as follows;
 1. To set and regularly review the remuneration and benefits of all state officers.
 2. To advise the National and County Governments on the remuneration and benefits of all other public officers.
12. It was her evidence that the case herein relates to the following allowances namely;
 1. Taskforce allowance
 2. Special duty allowance
 3. Extraneous allowance
 4. Entertainment allowance
 5. Meal allowance
13. On the Taskforce allowance, it was her evidence that the same is contained in the circular issued by the Ministry of Devolution and Planning to all Cabinet Secretaries dated the 2nd September, 2013 and it guides on who should constitute the same, how members should be appointed, their terms of reference, the duration of their assignment and the outputs. That it also provides that an officer should not be appointed to more than one Taskforce at any given time.
14. She further stated that the SRC later issued its own circular on the issue dated the 16th December, 2015 which was to take effect immediately and it superseded any other guideline on the issue. That the said circular guided that payment of allowances to Taskforce team members will only be made upon advice of the SRC after prior request from the appointing authority.
15. On Special Duty Allowance, she stated that the same is guided by the criteria prescribed in Clause 15 of the Public Service Commission Human Resource Manual of 2016, which guides on the terms and conditions of service of Public Officers.
16. On the Extraneous Allowance, it was her evidence that the same is defined in the PSC Manual as an allowance paid to Officers who are called upon to undertake extra responsibilities in addition to their normal duties, and therefore, work over and after the official hours on a continuous basis. That in regard to this allowance, the same was guided by government circulars that were issued before the establishment of SRC, and which are still in force, but SRC circular advised that officers involved in the Budget making process be paid extraneous Allowance.
17. She further stated that the letter by the SRC was addressing a request from the National Treasury dated the 20th November, 2020 where they had requested for payment of Task force allowance for officers involved in the Budget- making process but upon deliberation of the request, the Commission noted that it was inconsistent with framework for payment of Task force allowances and advised that it be paid as extraneous allowance.



18. In X-examination, she stated that the SRC sets the allowances for State Officers but for other entities including private entities, their duty is to advise. That the letter dated the 20th November 2020 was on allowances for National Treasury officials working on the Supplementary Budget of 2020/2021 and the medium term estimates, and they advised that the allowance be paid as extraneous allowances. That it was possible for someone to be paid both extraneous allowance and the Taskforce allowance but the same has to be authorized, but any such payment made without the advisory is an illegal and irregular payment.
19. PW2, Paul Macharia Mugwe who is a certified public Accountant stated that he investigated the case relating to irregular payments to the First Defendant who was paid and received funds under the categories set out at paragraph 12 hereinabove, between January 2020 and June 2022. He adopted his witness statement dated the 18th January, 2023 as part of his evidence and produced several documents in support of the Plaintiff's case.
20. It was his evidence that the irregularity in the Taskforce and Committee allowance is that their payments did not follow the SRC guidelines contained in the letter dated the 2nd September, 2013 issued by the Ministry of Planning and Devolution. Further, that these allowances are payable for 20 days and a Task force is limited to 15 members, and if one earns Taskforce allowance, he should not earn overtime allowance and retreat allowance.
21. That the 1st Defendant was paid Taskforce allowance, extraneous allowance, entertainment allowance and other unspecified allowances which is contrary to the SRC Guidelines. That, besides, he was paid Taskforce allowance on a monthly basis instead of on daily basis from the month of January 2020 to May 2020 at the rate of Ksh 40,000 per month. That in addition, he was paid another Ksh, 180,000 as Taskforce allowance in the same month of May 2020.
22. On the extraneous allowances paid to the 1st Defendant, he stated that the same were paid in violation of the SRC letter dated the 22nd April, 2021, in which SRC declined the Treasury's request. That he received allowances despite the fact that they had been declined by SRC hence no approval; that there was duplication of the allowances; that he was not entitled to extraneous allowance, and by virtue of his Job Group, he was not entitled to entertainment allowance as the allowance is for public officers in Job Group T, U and V.
23. On the allowances received by the 1st, Defendant that were not clear on why they were paid and the activities for which they were paid, the Defendant received a total of Ksh. 2,330, 000. That in addition, he was paid meal allowance which he was not entitled to.
24. In cross-examination PW2 stated that he investigated a case of embezzlement of funds at the National Treasury by the 1st Defendant herein, and that he did not interview the 1st Defendant until 2023. That in the course of his investigations, he interviewed several Treasury staff including the Treasury PS at the time and a Mr. Mutanya who was also being investigated on similar allegations as the Defendants herein, and that out of the 56 names in the internal memo, only four people have been investigated in the matter.
25. Juliet Kamene Kavala who testified as PW3 stated that she investigated the case of the 2nd Defendant and adopted her witness statement dated the 18th January, 2023. Her evidence as contained in her witness statement is materially the same as that of PW1. It was her evidence that the 2nd Defendant received allowances totaling to Ksh. 18,862,000 in the form of facilitation, extraneous and other allowances which she was not entitled to, as the same were not approved by SRC. She stated that in the course of her investigations she invited the 2nd Defendant to her office for an interview vide a letter dated the 12th January, 2023 and the 2nd Defendant went to her office on the 13th January, 2023.



26. She stated that she did not know whether the Principal Secretary formed a committee to look into the payments to the 2nd Defendant and other staff, and she was not aware that the National Treasury found out that there were no improprieties in the payments.
27. The First Defendant testified as DW1 and adopted his witness statement dated the 29th May 2023 as his evidence in Chief. He stated that he was sued for allowances that many of them received but only the second Defendant and himself were sued. He stated that the allowances were lawfully and regularly paid to them for the work they did as a committee and they never requested for the allowances. He stated that some of those allowances were paid to him when he was in Job Group K and others related to the time he was in job group I.
28. In Cross - examination, he stated that the Plaintiff gave him an opportunity to explain himself. He admitted that only public officers in Job Groups T, U and V are entitled to entertainment allowance by the nature of their duties and that Job Group K is not one of the Job groups the manual has listed for payment of entertainment allowance but he referred to a memo dated the 20th July 2020 by the Deputy Accountant General which requested the Treasury's Chief Finance officer to offer a standing imprest for official entertainment for officers in Account's division for the Financial year 2019/2020.
29. The 1st Defendant also admitted that there is no allowance called facilitation allowance and stated that he has never been paid facilitation allowance.
30. The 2nd Defendant who testified as DW2 adopted her witness statement as her evidence in Chief and stated that the allowances were paid to them legally for the work they did at Treasury for the period in issue. That only four of them were brought to court and she was not called upon to explain how she received the funds, but was only summoned to give her statement on the 16th January, 2023. That some of the documents relied on by the Plaintiff were duplicated amounting to Ksh. 2,700,000 and some of the vouchers amounting to Ksh. 1,690,000 do not have her name. She asked the court to find that she was discriminated against, by being brought to court and not others.
31. In cross-examination she admitted that the amounts computed by the Plaintiff are true but the documents are different. That her name is not in the list of the members of Ad-hoc committee and that among those members, none of them is a member of Salaries and Remuneration Commission and that the Commission was not involved in the investigations. She admitted that approvals were required for payment of allowances for the activities of the Treasury. She confirmed that there is no allowance called facilitation allowance.
32. On further cross-examination she admitted that she was paid allowances for reconciliation of National Treasury financial statements and it is not a Budget making process and that no approval was sought for the payments. Further, she admitted that she was paid allowances for reconciliation of motor vehicle leasing expenditure and yet it was not part of Budget making and no approval was given for payment of that allowance.

Plaintiff's Submissions

33. The Plaintiff submitted that the 1st Defendant fraudulently and illegally received a total of Ksh.20,318,000 purported to be allowances paid as follows;
 - a. Taskforce and committee allowance..... Ksh. 1, 820,000
 - b. Extraneous allowance..... Ksh.14, 763, 000
 - c. Entertainment allowance..... Ksh. 785,000



- d. Unspecified allowances..... Ksh.2,330,000
 - e. Meal allowance..... Ksh 620,000
34. That the 2nd Defendant was fraudulently and illegally paid Ksh. 18,862,000 in allowances as follows;
- a. Extraneous allowance.....Ksh. 6,980,000
 - b. Facilitation allowance.....Ksh.10,002,000
 - c. Other allowances..... Ksh. 1,880,000
35. The Plaintiff referred to various vouchers representing the irregular payments to the two Defendants between January 2020 and July 2022 and submitted that the allowances were paid without approval by SRC and those paid upon approval, if any, were illegally paid beyond the rates stipulated by SRC contrary to the advice, authority and/or recommendation given by SRC, the circulars and the Public Service Human Resource policies and procedures Manual governing such payments.
36. The Plaintiff identified six issues for determination as follows;
- a. Whether the SRC advice on payment of allowances is binding.
 - b. Whether the amount of Ksh. 20,318,000 was illegally and fraudulently paid to the 1st Defendant.
 - c. Whether the amount of Ksh. 18,862,000 was illegally and fraudulently paid to the 2nd Defendant.
 - d. Whether the Defendants received the amounts in their accounts twice for the same voucher number, otherwise known as duplicated voucher.
 - e. Whether the Defendants are liable to refund the allowances paid that went against the advice of the SRC.
 - f. Who should bear the costs of the suit.
37. On whether the advice by SRC is binding, the Plaintiff cited the case of Salaries and Remuneration Commission vs. National Hospital Insurance Fund Management Board & Others (civil appeal No. 156 of 2016), the case of Ethics and Anti- Corruption Commission vs Esther Wangechi Ngeru ACEC Suit No. E004 of 2023 and that of Teachers Service Commission vs Kenya Union of Teachers (KNUT) & others in which the courts stated that the advice is binding.
38. On whether the amounts paid to the Defendants was illegally and fraudulently paid, the Plaintiff submits that, from its investigations, it found that the Defendants received the said amounts and referred to various vouchers in their Trial bundle which shows that the Defendants were paid the claimed amounts.
39. In its further submissions, the Plaintiff made reference to the Salaries and Remuneration Commission circulars on payment of Taskforce allowances dated the 2nd August, 2013, and 16th December 2015. The National Treasury letter dated the 20th November, 2020 and the response dated the 22nd April, 2021.
40. On the amounts received by the 2nd Defendant for alleged “duplicated vouchers” and vouchers where her name is not listed, the Plaintiff submitted that the computation of the amounts was based on the amounts received in her account as analyzed by investigators, and therefore, the computations are correct and based on what the investigator was seeing in the accounts as credited amounts.



41. On whether the Defendants are liable to refund the amounts, the Plaintiff urged the court to be guided by the case of Salaries and Remuneration Commission & another Vs. Parliamentary Service Commission & 15 Others; Parliament & 4 Others (Interested Parties) (2020) eKLR.
42. On the part of the Defendants, four issues were identified for determination;
 - a. Whether the allowances paid to the Defendants were regular.
 - b. Whether the Defendants were entitled to the allowances paid.
 - c. Whether the Plaintiff gave any notice to the Defendants as provided for in the Anti-Corruption and Economic Crimes Act to explain the source or the purpose for which the allowances were paid prior to freezing their bank accounts.
 - d. Whether the employer of the Defendants deems the payment of the impugned allowances as regular or not.
 - e. Whether the Defendants were the only two employees paid the said allowances.
 - f. Whether the Plaintiff is entitled to the claim and recovery of the amounts claimed in the Plaint.
 - g. Who is to pay the costs of the suit and interest?
43. On whether the allowances were regularly paid to the Defendants, it was submitted that the same were made within the law and the Defendants were paid amongst other officers of the National Treasury after being appointed to various Committees by the Accounting Officer through the Head of the Accounting Unit. That the payments were made in compliance with the amount set for members of Taskforces by the letter dated 2nd August, 2013 by the then Cabinet Secretary, Ministry of Devolution and Planning, which was expanded to include members of committees by the letter of Salaries and Remuneration Commission of 16th April, 2014.
44. On whether the Defendants were entitled to the allowances, it was submitted that the defendants performed the duties they were assigned within terms of reference which were given to them by the appointing Authority, and the payments were made with approval by heads of department including the Accounting officer, which approval could not have been given if the Defendants had not performed their duties as instructed.
45. On whether the Plaintiff issued valid notices to the Defendants prior to freezing their bank accounts, the Defendants cited the provisions of Sections 26 and 35 of the Anti- Corruption and Economic Crimes Act which requires notices to the person the Commission is investigating and the giving of a report of their investigations to the Director of Public Prosecutions with a recommendation that the Commission may have.
46. The Defendants further contend that at no time did the Plaintiff notify them of the investigations nor did the Plaintiff seek any information from them to assist in the investigations. The court was asked to find that the Plaintiff violated the Rights of the Defendants in this matter, in that, the Plaintiff's actions were in breach of Articles 47 and 50 of the Constitution, Sections 26, 35, and 55(2) (b) of the Anti-Corruption and Economic Crimes Act and Section 13 of the Public Service (Values and Principles) Act.
47. As to whether the Defendants' employer deems the payment of the allowances as irregular or not, an ad hoc Committee was established to inquire into allegations levelled against the National Treasury Officials by the EACC and in it's report that was presented to then PS through an internal memo dated



the 25th January, 2022, the committee found that the Defendants were not culpable for any loss of public funds and that all payments made to them were legally approved.

48. On why the Defendants were the only members of staff who were brought to court, the Defendants have cited Article 27 of the Constitution that provides that every person is equal before the law and has the right of equal protection and equal benefit of the law and has urged the court to find that they were discriminated against as they were the only ones who were brought to court.
49. On whether the Plaintiff is entitled to claim and recover the money from the Defendants, it was submitted that, it is not, for the reason that the SRC set the amount payable for the Taskforce and committee allowances; no explanation was given on how the amounts claimed were arrived at; the claims of embezzlement and abuse of office were not proven; the causation of discrimination was not dislodged, and that the National Treasury did not and has not to-date reported any loss of Public funds arising from the payments of allowances to the Defendants.

Analysis And Determination

50. This court has considered the Pleadings that have been filed in this case, the evidence that was adduced by the parties, the submissions and the cited cases in support of their respective positions. In my considered view, the following are the issues for determination: -

1. Whether the Salaries and Remuneration Commission's advice on payment of allowances is binding.
2. Whether the amounts claimed by the Plaintiff from the Defendants were illegally and fraudulently paid to them.
3. Whether the Defendants are liable to refund the allowances paid to them that went against the advice by the SRC.
4. Whether the Plaintiff gave the Defendants any notices as provided for in the Anti-corruption and Economic Crimes Act, to explain the source or the purpose for which the allowances were paid.
5. Whether the Defendants' employer deems the payment of the impugned allowances irregular.
6. Whether the Defendants were discriminated against by being brought to court.
7. Who is liable to pay cost of the suit?

51. On the first issue, and as submitted by the Plaintiff, the advice by the Salaries and Remuneration Commission is binding. The Court of appeal in the case of Salaries and Remuneration commission vs National Hospital Insurance Fund, Management Board & others (Civil Appeal No. 156 of 2016) at paragraph 60 stated:-

“.....the advice given by the SRC is binding. The advice is binding because to hold otherwise would render the functions of SRC, under Article 230 (5) idle. It would render SRC ineffective and irrelevant; it will introduce a discretionary concept of pick and choose in Kenya's governance structure.”

52. On the second issue, the two Defendants were employees of the National Treasury who were alleged to have been paid allowances irregularly and illegally between the month of June 2020 and June 2022. The



Plaintiff received a report of embezzlement of public funds and irregular payments of money from the Treasury and Planning which money was alleged to have been paid into the Defendants bank accounts. Following the report, they carried out investigations into the alleged embezzlement of the funds.

53. According to PW2 and PW3, the Defendants were paid and received funds in the form of allowances as listed in paragraph 32 herein above. In its evidence, the Plaintiff referred to, and produced the following Circulars;
- a. The circular dated the 2nd August, 2013 from the Cabinet Secretary, Ministry of Devolution and Planning, on payment of Taskforce allowances
 - b. The Circular dated the 16th April, 2014 from the Salaries and Remuneration Commission on payment of Task force allowances and remuneration of Commissions of Inquiry, Tribunals, Boards and Committees appointed by the Government
 - c. Circular dated the 16th December, 2015 from SRC on allowances to members of Committees, Taskforces, Tribunals, and Commissions of Inquiry in the Public service
 - d. A letter dated the 20th November, 2020 from the National Treasury and Planning on allowances for the National Treasury Officers working on the FY 2020/2021 supplementary Budgets and the FY 2021/2022 and the medium term Budget.
 - e. Letter dated the 22nd April, 2021 from the SRC on allowances for the National Treasury Officials working on the FY 2020/2021 Supplementary Budgets and the FY 2021/2022 and medium term Budgets.
54. The circular dated the 2nd August, 2013 which was on payment of Taskforce allowances had given guidelines on the payment of Taskforce allowance as follows:-
- | Category | Rate |
|---------------------------|---------------|
| Chairperson..... | 5,000 per day |
| Members..... | 4,000 per day |
| Secretarial Staff..... | 2,000 per day |
| Driver/support staff..... | 1,000 per day |
- These guidelines were to take effect from 1st September, 2013.
55. The circular dated the 16th April, 2014 was done to advise the Public service on how to compensate members of a Taskforce, Commissions of inquiry, Tribunals, Boards and committees constituted in the Public service, and it essentially confirmed the rates that were given by the Cabinet Secretary for Devolution in the circular dated the 2nd August, 2013. The circular superseded any other circular on the subject matter.
56. However, though the circular dated the 16th December, 2015, made reference to the one dated the 2nd August, 2013 and the letter dated the 16th April, 2014 on the guidelines on the rates payable to the members of Taskforces/Committees/Tribunals/ Boards and Commissions of ad-hoc or temporary nature constituted in the Public Service from time to time, the SRC advised that payment of allowances to such teams will only be made upon advice by the SRC.
57. In the circular, the SRC went further to caution all the Appointing Authorities and Accounting Officers to strictly adhere to the requirements and ensure that there was adequate justification for constituting such committees/Taskforces/ Tribunals or commissions of enquiries. The circular took



effect immediately and superseded any other guidelines previously issued to the service on the matter. This, therefore, means that this circular superseded the one dated the 16th April, 2014 as it was the later one in time.

58. My reading and understanding of the above circulars is that for any payment of the allowances for members of Taskforces/Committees/Tribunals and/or Commissions of Enquiries to be made, the same requires the advice of the SRC.
59. This court has carefully gone through the various payment vouchers for the payments that were made to the Defendants herein, and I can confirm that none of the payments were made upon advice by SRC.
60. Further to the Circular dated the 16th December, 2015, the SRC did another circular dated 22nd April, 2021, which was in response to the letter dated the 20th November, 2020 by the National Treasury which made reference to their letter dated the 22nd April, 2020 in which the National Treasury had sought approval for compensation to the officers who were involved in preparation of the Budget in the FY 2019/2020. In the letter dated 22nd April, 2021, the SRC declined to grant the request by the National Treasury and observed that the request is inconsistent with the framework of the Taskforce allowances as provided by the SRC. The SRC advised the Treasury to pay Taskforce allowance to its staff involved in the Budget making process, an extraneous allowance effective 1st August, 2020 as follows;

Job Group Extraneous ..All Ksh per month

U 75,000

T 60,000

S 50,000

P, Q, R 40,000

M & N 30,000

K & N 20,000

G, H & J 15,000

F & below 10,000

61. These rates were to apply to the National Treasury officers who were members of the stated Budget Committee and not to any other allowances or Budget Committee. According to the evidence on record, none of the two Defendants was a member of that particular Budget Committee.
62. Further to the above, the Defendants in their evidence admitted that there is no allowance known as facilitation allowance under the Public Service Commission Human Resources manual, yet, looking at some of the payments that were made to them, some of it fell under this category and quite an amount of money was paid to each of them under that head. The court has also noted that some of the allowances were not specified and yet they received those sums. The court is also curious how the Defendants were members of so many Committees with overlapping duties and one cannot help but wonder how they were managing to deliver the services in addition to their normal duties.
63. In the case of the first Defendant, he was paid entertainment allowance when he knew very well that he was not entitled to the same by virtue of his job group. He admitted in evidence that it is only those staff who were in job Groups T, U and V who were entitled, yet, he was not in any of those job Groups at the material time. This, therefore, means that the Defendants in receiving the allowances knew or had every reason to believe that they were not entitled to them but they went ahead and received the money.



64. They also knew that the payments were not approved by SRC as the same went against the advice given by SRC vide its circulars, which the Defendants were aware of, or which they ought to have been aware of as they are public Servants. Having that in mind, this court would not hesitate to find that the Defendants received the allowances fraudulently and illegally. I so find.
65. From the above analysis and having made a finding that the advice by the SRC is binding, this court comes to the inevitable conclusion that the allowances that were paid to the Defendants were irregularly and unlawfully paid to them. This court is not therefore persuaded by the Defendants contention that the payments were made within the law.
66. Further, this court having made a finding that the allowances paid to the Defendants were irregularly and illegally made, it thus follows that they are both liable to refund the funds back to the Government.
67. As to whether the Defendants were given notices by the Plaintiffs to explain the sources of the funds or the reasons the money was paid, on record are the letters that were issued to them before the cases were filed and they were also invited to the offices of the Plaintiff to record their statements. They both admitted in evidence that they were given a chance to explain themselves before the case was filed.
68. On whether the employer of the Defendants deemed the payments as irregular or not; in my considered view, this is neither here nor there. The employer is the one who made the payments contrary to the advice by the SRC, which advice is binding and they knew pretty well that the payments were being made irregularly and illegally and no one would have expected them to conclude otherwise. In any event, the investigations by the Plaintiff were made by a body that was impartial with a view to establishing whether or not the payments were legally made to the Defendants.
69. On whether the Defendants were discriminated against, the evidence on record is that they were not the only ones who were brought to court. The Plaintiff may not have sued all the members of staff who benefitted from the payment of the allowances, but that alone cannot be interpreted as being discriminatory against the Defendants herein. The Plaintiff was at liberty to decide who among the members of staff to sue, depending on the evidence that they obtained against them. It is not within the mandate of this court to make such a finding on whether the Defendants herein were discriminated against or not, and especially with the scant evidence available to this court.
70. On who should bear the costs of the suit, it is trite that costs follow the event. The Plaintiff having succeeded in its case, is entitled to the costs.
71. In the end, this court finds that the Plaintiff has proved its case on a balance of probability and makes the following Orders in respect to the First Defendant:-
 - a. A declaration is hereby issued that the sum of Ksh 20,318,000.00 was fraudulently embezzled from National Treasury and Planning
 - b. An order directing payment by the 1st Defendant of Ksh. 20,318,000.00 fraudulently embezzled from the National Treasury and Planning.
 - c. An order is hereby issued forfeiting the sum of Ksh. 11, 078, 601.00 held at Equity Bank account number 012010029xxxxin partial fulfillment of the judgment sum in paragraph (a) above.
 - d. An order is hereby issued for payment of a sum of Ksh 9,239,398.17 to the Plaintiff being the balance outstanding upon satisfaction of prayer (c) above.



- e. Interest on (b), (c) and (d) above at court rates from the date this cause of action arose until payment in full.
- f. The Plaintiff is awarded the costs of the suit.

72. In respect to the second Defendant the following orders are made:-

- a. A declaration is hereby issued that the sum of Ksh. 18,862,000 was fraudulently embezzled from the National Treasury and Planning.
- b. An order is hereby issue directing payment by the second Defendant of Ksh 18, 862,000 fraudulently embezzled from the National Treasury and Planning.
- c. An order is hereby issued forfeiting the sum of Ksh.8, 953,988.74 held at National Bank limited account Number 0124303186xxxxx to the Plaintiff in partial fulfillment of the judgment in paragraph (b) above.
- d. An order is hereby issued for payment of Ksh. 9,908,011.26 to the Plaintiff being the balance outstanding upon satisfaction of prayers (c) above.
- e. Interest on (b), (c) and (d) above at court rates from the date the cause of action arose until payment in full.
- f. The Plaintiff is awarded the costs of the suit.

73. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 4TH DAY OF JUNE 2025.

.....

L.M. NJUGUNA

JUDGE

In the presence of:-

Miss Cynthia Gichuki for the Plaintiff

And holding brief for Miss Kisabei

Mr. Gichuki for the Defendant

Court Assistant - Adan

