



REPUBLIC OF KENYA



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County Government of Kirinyaga & another v Njagi (Employment and Labour Relations Appeal E034 of 2024) [2025] KEELRC 2428 (KLR) (12 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2428 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E034 OF 2024
ON MAKAU, J
SEPTEMBER 12, 2025

BETWEEN

COUNTY GOVERNMENT OF KIRINYAGA 1ST APPELLANT

KIRINYAGA COUNTY SECRETARY 2ND APPELLANT

AND

HON. PETER NDAMBIRI NJAGI RESPONDENT

JUDGMENT

1. By a Memorandum of Appeal dated 5th November 2024, the Appellant sought for setting aside of the Judgment of the Trial Court on the following grounds: -
 - a. That the Learned Trial Magistrate erred in law and in fact by awarding the Respondent housing allowance to the tune of Kshs.5,700,000= despite the Respondent having been paid in accordance with the gazette consolidated pay.
 - b. That the Learned Trial magistrate erred in law and in fact by ignoring the fact that the consolidated and the deconsolidated salary for the position of the Respondent has remained the same in the gazette Notices providing for the salaries of Deputy Governors and thus paying the housing allowance as directed by the Judgment would in effect go over and above the gazette and legal salary payable to the Respondent.
 - c. That the Trial Magistrate erred in law and in fact in finding that the Respondent was entitled to a housing allowance over and above his consolidated salary of Kshs.621,250=.
 - d. That the Trial Magistrate erred in law and in fact in finding that the Respondent was entitled to a housing allowance despite the Salaries and Remuneration Commission directives that the housing benefit was to be strictly either a leased aboard or a house built by the county.



- e. That the Trial Magistrate erred in law and in fact by failing to find that the Respondent's residence was not leased thus not falling within the housing benefit to be taken care of by the Appellants pursuant to the Salaries and Remuneration Commission's directives.
- f. That the Learned magistrate erred in law and in fact and considered irrelevant facts in arriving at the Judgment of 15th October, 2024 in its entirety.

Background

2. The Respondent was elected as the Deputy Governor on 9th August 2017 and was sworn into office on 21st September 2017. By virtue of his position as a State Officer his remuneration and benefits were set by the Salaries and Remuneration Commission [SRC] including housing benefit. By Circular Ref.SRC/TS/CGOVT/3/61 Vol.IV [45] the SRC clarified that a Deputy Governor is entitled to provision of official residence or in the alternative a leased house of Kshs.90,000= per month until official residence was constructed. The period of leasing residence for Deputy Governor was initially to end on 30th June 2019 but upon request, it was extended to 30th June 2022 by the Circular dated 20th may 2019.
3. The Respondent served his whole term up to August 2022 without being provided with a leased residence and upon demand for the rent in lieu, the Appellant refused to pay. He then filed suit in the Lower Court.
4. During the hearing the Respondent's evidence was that he was entitled to housing benefit during his term of office. He contended that the SRC clarified to all County Governments that a Deputy Governor was entitled to an official residence or a leased premises of Kshs.90,000= rent. The Respondent was never provided any official residence or leased house and he was not paid anything for housing. Therefore, he prayed for housing benefit or allowance as per the SRC advice. He denied that his salary of Kshs.621,000= included house allowance.
5. Mr. John Nyandika Nyatika was the only defence witness and he confirmed that the Respondent was indeed the Deputy Governor Kirinyaga County from 2017 to 2022 and that he was paid the salary recommended by the SRC which remained the same from 2017 – 2022.
6. He further contended that the gross salary to the respondent was inclusive of house allowance and he was not entitled to Kshs.90,000/= housing benefit per month as that would amount to double payment. He averred that the Respondent was not allowed to pay any amount outside the gazette notice. He maintained that the Respondent was paid house allowance/housing benefit as part of his gross salary of Kshs.621,250.
7. After considering the evidence and submissions presented by both sides, the trial court [Hon. Mutuku, CM] concluded that the provision of housing was a statutory obligation and the Claimant was entitled to housing allowance for the entire period of service of 60 months using a monthly rate of Kshs.90,000= the court assessed the amount due as Kshs.5,700,000=.
8. The Appellant was aggrieved and brought this Appeal. The Appeal was canvassed by written submission. The Appellant submitted that the Respondent was paid in compliance with Gazette Notice 6518 of 2017 dated 7th July 2017 which provided for a gross pay of Kshs.621,250.
9. It was submitted that the genesis of house allowance for Deputy Governors was Constitutional Petition No.328 of 2016 Council of Governors v Salaries and Remuneration Commission where the court held that Deputy Governors were state officers and therefore entitled to house allowance like any other state



- officers. Accordingly SRC issued a circular about house allowance for the Deputy Governors but never published any gazette notice as promised to enable the Appellant act on the said circular.
10. It was submitted that without a gazette notice the Appellant was not able to implement the “SRC circular on Deputy Governor housing allowance. For emphasis reliance was placed on Kenya County Government Workers Union vs Salaries and Remuneration Commission & 4 Others [2024] KEELRC] 2843[KRL] where the court held that any payment without a gazette advice by SRC is null and void.
 11. It was further submitted that as per the Gazette Notice No.6518 of 2017, the Respondents salary was gross meaning that it was inclusive of house allowance. It was argued that following the decision in Kenya Magistrates’ and Judges Association Vs. SRC & Judicial Service Commission [2019] KEELRC 277 [KLR] which declared as unlawful the failure by the SRC to itemize allowances paid to state officers, the SRC published a Gazette Notice No.8794 of 2022 which itemized the salary for Deputy Governors of Kshs.621,250 to include house allowance.
 12. It was admitted that indeed the SRC advised counties to provide official house or leased house for the Deputy Governors, however it was submitted that no money was supposed to be paid to the Deputy Governor directly. It was further submitted that the Appellant set aside land and commenced the construction of the Deputy Governor’s residence but there was no legal underpinning for the same. Finally it was submitted that the Respondent opted to live in his own residence and did not provide any evidence before the court that he lived in a rented house.
 13. The Respondent, on the other hand, submitted that house allowance is a right under section 31 of the *Employment Act* which requires an employer to provide at his own expense, reasonable housing accommodation for his employee either at or near the place of work, or pay to the employee sufficient sum, as rent, in addition to wages or salary to enable the employee obtain reasonable accommodation.
 14. It was submitted that, the SRC clarified vide Circular dated 25th August 2017 [Page 55 of the Record] that the Respondent was entitled to an official residence or leased premises for a rent capped at Kshs.90,000 per month. It was reiterated that the Appellant never provided the Respondent with either an official residence or a leased one contrary to the express circulars by the SRC which entitled the Respondent to the said housing benefit and extended it to 30th June 2022.
 15. Reliance was placed on the case of Hillary Chongwony v County Government of Bungoma [2022] KEELRC 3833 [KLR] which was on all fours with the instant case. Finally it was submitted that the trial court sought guidance from the above precedents and correctly concluded that the Appellant was bound to pay Kshs.90,000 the Respondent housing benefit of Kshs.90,000= per month. Therefore the court was urged to dismiss the Appeal with costs.

Analysis

16. This being a first Appeal, the court’s mandate is to re-evaluate the evidence adduced before the trial court, and make its own conclusion, noting that it did not see the witnesses when they gave their testimonies. This is the view taken by the court of Appeal in *Selle v Associated Motor Boat Company Ltd* [1968] EA 123 where it held thus: -

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon which the Court of Appeal acts are that the court must consider the evidence, evaluate itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this



respect. In particular, the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally."

17. Guided as above, I have carefully considered the evidence on record and also the submissions filed in this Appeal. The following issues fall for determination –
 - a. Whether the Appellant was bound by the SRC's advise to provide the Respondent with official residence or a leased one.
 - b. Whether the failure by the Appellant to provide housing benefit to the Respondent entitled him to payment of Kshs.90,000= per month.
 - c. Whether the award of Kshs.5,700,000= by the trial court should stand.

SRC's Advise on Housing Benefit

18. There is no dispute that the court, in Petition 383 of 2016, Council of Governors v SRC, held that Deputy Governors were entitled to house allowances just like any other state officers. It is further a fact that the SRC issued a Circular to all County Secretaries, being Ref.No.SRC/TS/CGOVT/3/61 Vol.IV[45] dated 25th August 2017, advising Counties on Housing Benefit for designated State Officers in the County including Deputy Governors.
19. The Circular advised Counties to provide official residence or a house leased by the County Government for a rent not exceeding Kshs.185,000 in Nairobi, Mombasa and Kisumu and Kshs.90,000/= in other counties. The Circular advised Counties to prioritize funds for construction of the official residences in the 2018/2019 Budget cycle and that the deadline for leasing residences was 30th June 2019.
20. The said deadline was extended to 30th June 2022 vide SRC Circular to the Counties Ref No.SRC/TS/COG/6/61/48 Vol.II [64] dated 20th May 2019. The Appellant never complied with the deadline, and as at the time the Respondent left office, he was never provided with the housing benefit or paid money in lieu.
21. The jurisprudence emerging from our courts is that the advice by the SRC to both National and County Governments, on remuneration and benefits of state or public officers is binding and must be complied with. I gather support from the Teachers service commission [TSC] v Kenya National union of teachers & 3 others [2015] eKLR where the Court of Appeal held that:

“Having regard to the mischief that the institutionalization of SRC under *the Constitution* was intended to cure the principles of public finance and fiscal responsibility, the budgetary process and the complexity of salaries and benefits determination for public officers, I hold that the advice of the SRC under Article 230[4] [b] on remuneration and benefits determined for public officers is binding on the national and county governments and any power or function exercised without that advice is invalid.”
22. Accordingly, I find that Circulars by the SRC on the Housing Benefits for the State Officers in Counties and Deputy Governors dated 25th August 2017 and 20th May 2019 were not mere suggestions or recommendations to the Appellant but they were legally binding on it. It follows that the Appellant's allegation that the Respondent's salary of Kshs.621,250= included housing wase contrary to the said binding SRC's advice and therefore null and void.



Entitlement to Kshs.90,000 for Housing

23. I have already observed that the circular dates 25th August 2017 and 20th May 2019 advised the Appellant to provide the Respondent with an official residence constructed by the Appellant or leased for a rent capped at Kshs.90,000= per month. There is evidence that the Appellant neither provided the Respondent with an official residence nor leased house as advised by the SRC from September 2017 to August 2022 when he exited the office.
24. In Petition No.328 of 2016, Supra, the court held that County Deputy Governors are entitled to housing benefits just like any other state officer. Again, in Hillary Chongwony v County Government of Bungoma, Supra, Keli J held that the Deputy Governor was entitled to Kshs.90,000= per month from the date of taking office to the date of exit being sixty months. Consequently, I agree with the two decisions above, that the Respondent was entitled to payment of Kshs.90,000= per month, being the equivalent of the monthly housing benefit as advised by the SRC in Circular dated 25th August 2017 and extended by the Circular dated 20th May 2029.
25. The Appellant had the option of allocating an official residence or leased house for monthly rent capped at Kshs.90,000=. It failed to do so for sixty months. The failure to exercise the above two options entitled the Respondent to compensation equaling to the monthly rent of Kshs.90,000= advised by the SRC.

Interference with an Award of Kshs.5,700,000

26. An award by the trial court should not be interred with on Appeal unless certain thresholds are met. In *Butt v Khan* [1978] eKLR, the Court of Appeal held that: -

“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the Judge proceeded on wrong principles, or that he misapprehended the evidence in some material aspect, and so arrived at a figure which was either inordinately high or low.”
27. In the instant case, the trial court based the award of housing benefit on Circulars by the SRC and was also guided by binding precedents. The award was grounded on straight forward evidence adduced by the parties and therefore it must stand.

Conclusion

28. I have found that the advice by the SRC on the housing benefit for the Deputy Governors contained in the Circulars dated 25th August 2017 and 20th May 2019 were binding on the Appellant. I have further found that the failure by the Appellant to provide the Respondent with official residence or leased house as advised by the SRC entitled the Respondent to payment of Kshs.90,000 per month for his whole term of office. Finally, I have found that the award of Kshs.5,700,000 to the Respondent by the trial court was supported by the evidence on record and it must stand. Consequently, I find no merits in the Appeal and dismiss it with costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS 12TH DAY OF SEPTEMBER, 2025.

ONESMUS N MAKAU

JUDGE

Order



This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 [3] of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

