



**Manoti v Kenya Revenue Authority; Law Society of Kenya & another
(Interested Parties) (Employment and Labour Relations Cause
E370 of 2021) [2025] KEELRC 2918 (KLR) (28 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2918 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E370 OF 2021
HS WASILWA, J
OCTOBER 28, 2025**

BETWEEN

CLIFF BWOGO MANOTI CLAIMANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

AND

LAW SOCIETY OF KENYA INTERESTED PARTY

SALARIES AND REMUNERATION COMMISSION INTERESTED PARTY

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 10th January 2018 and prays for judgment against the Respondent for these orders: -
 - a. A declaration that the Respondent’s action of not paying the Claimant non-practice allowance is unlawful, wrongful and unfair.
 - b. A declaration that the Respondent’s action of not paying the Claimant a prosecutorial allowance is unlawful, wrongful and unfair.
 - c. A declaration that the Respondent subjected the Claimant to discriminatory and unlawful labour practice by denying them the subject allowances.
 - d. A declaration that the Claimant is entitled to cumulative non-practice and prosecutorial allowance of Kshs. 1,440,000 from the date of employment to the time of leaving employment.



- e. The Respondent to pay non-practice allowance accruing to the Claimant from the date of filing this claim until payment in full and/or the rate of practice allowance shall be as issued by applicable government circulars.
- f. The above sum to earn interest at court rates.
- g. Costs of the cause to be awarded.

Claimant's Case

2. The Claimant avers that the Respondent is a state agency under the *Kenya Revenue Authority Act*, Cap 469 of the Laws of Kenya, with the principal mandate of collecting revenue on behalf of the government of Kenya. By virtue of its establishment, it is guided by the guidelines/directives from the Head of Public Service.
3. The Claimant avers that on 11th June 2010, the then Permanent Secretary in the Ministry of Public Service, Titus Ndambuki CBS issued circular no.MSPS.10/145AVOL.VII/40 titled "Rationalization and Harmonization of the Public Service Legal Subsector Remuneration", directed the Solicitor General to pay a non-practicing allowance of not less than Kshs. 15,000 per month to all legal personnel working in the public service with effect from 1st January 2010.
4. The Claimant avers that vide circular no.MPS.10/5A VOL.III/(78) dated 9th October 2012, the then PS in the Ministry of Public Service advised that legal personnel working in the State Law Office, Office of the Director of Public Prosecutions and the Ministry of Justice, National Cohesion and Constitutional Affairs be paid prosecutorial allowance of not less than Kshs.30,000 per month.
5. The Claimant avers that though the Respondent was affected by the circulars, it failed and/or refused to implement the said circulars and failed to pay him non-practicing and prosecutorial allowance in line with the directives that had been issued and which remained in force during the tenure of his employment.
6. It is the Claimant's case that the Respondent's Legal Services & Board Coordination prepared several memoranda and prepared board papers and advised both the Board of Directors and the Human Resources Department on the need to heed to the circulars and implement them, however, the Respondent refused to implement the said circulars.
7. The Claimant avers that the directive was to the entire public service subsector and the Respondent had no option but to comply with the directive. Thus, the Respondent's failure to pay the Claimant a non-practicing and prosecutorial allowance in line with the circular amounts to unfair labour practice.
8. The Claimant avers that between April 2018 to November 2020, his unpaid non-practicing and prosecutorial allowance amounted to a total of Kshs. 1,440,000.

Respondent's Case

9. In opposition to the claim, the Respondent filed a Statement of Response dated 28th May 2021.
10. The Respondent avers that it had employed the Claimant as an Officer - Litigation KRA "3" on permanent and pensionable terms effective 2nd April 2018 and he served in that capacity until 10th November 2020.
11. The Claimant's role was limited to providing litigation services on matters affecting the Authority that included; drafting pleadings, researching, analysing judgments and rulings, giving advisory opinions among other related activities.



12. It is the Respondent's case that the Claimant's terms of employment, remuneration, benefits, working hours and other terms of employment were clearly spelt out in the letter of appointment. Having read, reviewed and contemplated on the contents of the appointment letter the Claimant proceeded to accept the terms specified therein on 28th February 2018.
13. The Respondent avers that the Claimant was taken through an induction programme wherein he was sensitized on the operations of the Authority, the Departments and their correlation and at the end of the programme he was furnished with the Authority's Code of Conduct and other Human Resources Division Policies. Additionally, the Code of Conduct and all Human Resource Division (HR) Policies are housed in the Authority's intranet (krahub) which is accessible to all staff as they are constantly updated from time to time.
14. The Respondent avers that the Claimant was bound by the terms of his employment contract and any grievances he might have had, ought to have been raised as per HR Policies and channelled to the Human Resources Division.
15. The Respondent admitted that it is bound by the guidelines and directives issued from the Head of Public Service. However, it avers that the two specific Circulars No. MSPS.10/145A VOL.VII/40 & MPS.10/5A VOL III/ (78), are not applicable to it on grounds that: MSPS. 10/145A VOL. VII/40 was specifically addressed to the then Solicitor General, Mr. Wanjuki Muchemi, CBS by the then Permanent Secretary in the Ministry of State for Public Service Mr. Titus M. Ndambuki, CBS; and MSPS. 10/5A VOL.III/ (78) was specifically addressed to the Solicitor General, Director of Public Prosecutions and Permanent Secretary Ministry of Justice, National Cohesion and Constitutional Affairs by the Permanent Secretary in the Ministry of State for Public Service.
16. The Respondent avers that the Claimant failed to inform this court that the said Head of Public Service had given directions on the remuneration package for the Kenya Revenue Authority vide letters dated 16th July 2001 referenced DPM.SAL.COM. 16/1/4A Vol. VI/(16), 25th July 2001 referenced OP.9/17A Vol.11/(81) and Circular Reference No. OP. 18/1A/VIII/141.
17. It is the Respondent's case that by dint of implementation of these circular and letters, all its employees were placed on an 'executive salary scale'. This scale was way above other Government Ministries and State Agencies remuneration and the same keeps being reviewed from time to time, the latest review being in the year 2017, to cater for the negative effects of inflation.
18. The Respondent avers that it was established in 1995 through the *Kenya Revenue Authority Act*. The Act brought together Departments of Customs & Excise, Income Tax, Value Added Tax that were independently reporting to the Minister for Finance and later the Registrar of Motor Vehicles who was reporting to the Minister for Transport and other functions were created to form the Authority.
19. In a bid to enhance efficiency, effectiveness and professionalism in revenue collection, the Respondent embarked on an exercise to attract, recruit and retain experienced and qualified personnel and professionals from the Private Sector (external labour market) at an enhanced remuneration package. As at 1st December 1998 the Respondent had attracted 62 professionals from the external labour market who included the Commissioner General, Chief Legal Officer, Financial Controller among others.
20. The Respondent avers that vide letters dated 28th January 1999, 2nd July 2001, 10th July 2001 and 13th July 2001 to sanction the harmonization of salaries and allowances in the Authority. The Public Service Commission vide letters dated 16th July 2001 referenced DPM. SAL. COM. 16/1/4A Vol. VI/(16), 25th July 2001 referenced OP.9/17A Vol.II/(81) and Circular Reference No. OP. 18/1A/VIII/141



- sanctioned the much enhanced or executive salary scale for all employees in the Authority with a view to align working conditions of the employees to competitive labour market levels or private sector scales.
21. It is the Respondent's case that the circulars relied upon by the Claimant were meant to address inequities that had been created in emerging institutions like the Respondent whose employees were on an enhanced salary scale or 'executive salary scale' as opposed to other Government Ministries and State Agencies. Thus, the two circulars were not applicable to it or addressed it or mention it.
 22. The Respondent avers that the Claimant has failed to demonstrate that the two circulars MSPS.10/145A VOL.VII/40 & Circular No. MPS.10/5A VOL III/ (78) revised or reviewed the letters dated 16th July 2001 referenced DPM.SAL.COM. 16/1/4A Vol. VI/(16), 25th July 2001 referenced OP.9/17A Vol.II/(81) and Circular Reference No. OP.18/1A/VIII/141.
 23. It is the Respondent's case that the Public Service Commission was well aware of the letters dated 16th July 2001 referenced DPM.SAL.COM.16/1/4A Vol. VI/(16), 25th July 2001 referenced OP.9/17A Vol.II/(81) and Circular Reference No. OP.18/1A/VIII/141 and would have specifically addressed the Respondent for the two subsequent circulars, Circular No. MSPS.10/145A VOL.VII/40 & Circular No. MPS.10/5A VOL III/ (78), to also apply to it.
 24. The Respondent avers that it could not implement the two circulars as its salary remuneration scale had been enhanced by the Public Service Commission. This enhanced remuneration for the Respondent's employees created the disparity that the two circulars sought to address by giving a non-practice allowance to Counsel serving in the State Law Office, Office of Director of Public Prosecutions and Ministry of Justice, National Cohesion and Constitutional Affairs.
 25. The Respondent admitted that its the Legal Services & Board Coordination Department prepared a memorandum and board Paper seeking to be brought within the purview of the two circulars nos. MSPS.10/145A VOL.VII/40 and MPS.10/5A VOL III/ (78). However, this was not done as it would have run afoul of the spirit of the two circulars and the letters dated 16th July 2001 referenced DPM. SAL. COM. 16/1/4A Vol. VI/(16), 25th July 2001 referenced OP.9/17A Vol.II/(81) and Circular Reference No. OP. 18/1A/VIII/141.
 26. It is the Respondent's case that the Claimant has failed to appreciate the import of Sections 13 (4) and 16 of the *Kenya Revenue Authority Act*. Specifically, Section 16 which has to be amended by Parliament to accommodate any changes to be effected on its employees' remuneration as reflected in various Gazette Notices.
 27. The Respondent avers that Circular MSPS.10/145A VOL.VII/40 alludes to a Report and advises against review of salaries in isolation, as it would create pressure from other professional cadres whose salaries had not been reviewed since 2005, which does not apply to it.
 28. The Respondent avers that the Salaries and Remuneration Commission's Circular SRC001/09/2012 dated 17th September 2012 further reinforces its position that the allowances were only payable to the legal personnel serving in the State Law Office and the Office of the Director of Public Prosecutions.
 29. The Respondent avers that it did not subject the Claimant to unequal treatment or to unfair labour practice as he was already on an enhanced salary scale and circulars MSPS.10/145A VOL.VII/40 and MPS.10/5A VOL III/(78) were seeking to bring counsel in the three government agencies at par with the remuneration enjoyed by counsel serving in the Respondent's organization.
 30. It is the Respondent's case that based on the letters dated 16th July 2001 referenced DPM.SAL.COM. 16/1/4A Vol. VI/(16), 25th July 2001 referenced OP.9/17A Vol.II/(81) and Circular Reference No. OP.18/1A/VIII/141, no non-practicing and/or prosecutorial allowance was or is due and payable



to the Claimant. Additionally, the Claimant was not a gazetted prosecutor hence he cannot claim prosecutorial allowance.

2nd Interested Party's Case

31. In opposition to the claim, the 2nd Interested Party filed a statement of response dated 5th May 2025.
32. The 2nd Interested Party avers that it is an independent commission established under Article 230 of *the Constitution* and whose core functions are to: set and regularly review the remuneration and benefits of all State officers; and advise the national and county governments on the remuneration and benefits of all other public officers.
33. In addition to the powers and functions set out under Article 230 (4) of *the Constitution*, Section 11 (c) of the SRC Act mandates the 2nd Interested Party to, inter alia: keep under review all matters relating to the salaries and remuneration of public officers; and advise the national and county governments on the harmonization, equity and fairness of remuneration for the attraction and retention of requisite skills in the public sector.
34. The 2nd Interested Party avers that Article 230 (5) of *the Constitution* and Section 12 of the *Salaries and Remuneration Commission Act* place an obligation on it to take the following principles into account when discharging its powers and functions: the need to ensure that the total public compensation bill is fiscally sustainable; the need to ensure that the public services are able to attract and retain the skills required to execute their functions; the need to recognise productivity and performance; transparency and fairness; and equal pay for work of equal value.
35. The 2nd Interested Party avers that non-practice allowance was introduced as a targeted intervention to attract professionals from private practice into the Public Service during periods when certain professional cadres, particularly advocates and doctors, were in critically short supply, and public service basic salaries were not sufficient to compete with private sector compensation.
36. The 2nd Interested Party contends that the import of the 2010 Circular was intended to enhance the non-practice allowance rates as it would not have been prudent to revise the basic salaries for the legal profession in the civil service in isolation of other cadres. This approach was deliberately chosen to address compensation disparities within the legal subsector without disrupting the established salary structure across the broader public service.
37. It is the 2nd Interested Party's case that by focusing on the enhancement of an existing targeted allowance rather than basic salary adjustment, the government sought to improve the remuneration package for legal professionals specifically in the Judiciary, State Law Office and the Ministry of Justice while maintaining the integrity of the civil service compensation framework and avoiding potential ripple effects that would create new disparities across other professional cadres.
38. The 2nd Interested Party avers that following the promulgation of *the Constitution* of Kenya 2010 and the subsequent establishment of the Office of the Director of Public Prosecutions as a constitutionally independent office, the 2nd Interested Party, exercising its constitutional mandate, issued Circular Reference No. SRC/AG/Vol. 1 dated 17th September 2012. They recommended the payment of state counsel allowance to legal personnel in the State Law Office and prosecutorial allowance to legal personnel in the Office of the Director of Public Prosecutions.
39. The 2nd Interested Party avers that the prosecutorial allowance was designed as a targeted benefit exclusively for legal officers serving within the Office of the Director of Public Prosecutions, and is the



equivalent of the state counsel allowance paid to legal officers in the State Law Office. Both allowances recognize the unique constitutional functions of these respective offices.

40. The 2nd Interested Party avers that the differentiated treatment in payment of non-practice allowance and prosecutorial allowance is based on objective and reasonable criteria related to the unique functions and responsibilities of the specified offices and not on any impermissible grounds of discrimination as alleged by the Claimant.
41. It is the 2nd Interested Party's case that the Claimant entered into employment with the Respondent with full knowledge of the terms and conditions offered for the position and cannot now isolate and claim entitlement to allowances specifically designed for and payable to counsel in the Attorney General's Office and Office of the Director of Public Prosecutions without regard to the specific rationale behind these allowances and the distinct statutory functions of those offices.

Evidence in Court

42. The Claimant (CW1) adopted his witness statement dated 4th May 2021 as his evidence in chief.
43. Upon cross-examination, CW1 testified that he accepted the terms of his contract of employment dated 28th February 2018 and that he was not under duress.
44. CW1 testified that during the tenure of his employment, he was not a gazetted prosecutor and neither was he appointed as a State Counsel.
45. The Respondent's witness, Dr. Hillary Patroba (RW1) stated that he is the 2nd Interested Party's Director of Remuneration Services.
46. He adopted his witness statement dated 5th May 2025 as his evidence in chief and produced the Respondent's bundle of documents as his exhibits.
47. During cross-examination, RW1 testified that counsels from KRA used to handle tax matters before the role was taken up by the ODPP.
48. RW1 testified that the 2nd Interested Party has not advised the Respondent on payment of the allowances. He further testified that the allowances were meant to avoid disparity in gross terms.
49. RW1 testified that the prosecutorial function can be delegated outside the ODPP and that the Claimant present tax and custom matters.
50. CW1 testified that he was not given any notice or subjected to a disciplinary hearing. Further, he did not engage in any misconduct.

Claimant's Submissions

51. The Claimant submitted on four issues: whether the Respondent is bound by the Public Service Code of Conduct (2006) as currently revised and known as the Public Service Commission Human Resource Policy, 2016; whether the Respondent was/is bound by the two circulars providing for the non-practicing and prosecutorial allowances; whether the claimant was entitled to grading equivalents as urged for him in the computations for the claimed non-practicing and prosecutorial allowances; and whether the denial of the two allowances by the respondent as claimed by the claimant amounted to discrimination and unfair labour practices.
52. On the first issue, the Claimant submitted that the Public Service Commission is established under Article 233 of *the Constitution* of Kenya. It is mandated under Article 234 to ensure efficient and



- effective public service through the development of human resource in the public service. However, this is limited to certain bodies which the Respondent has not been named as an exempted agency.
53. The Claimant placed reliance in *National Environment Management Authority v Wabwoto & 3 others; Law Society of Kenya & 2 others (Interested Parties)* [2025] KECA 276 (KLR) wherein the Court of Appeal affirmed the findings of the trial court that, in undertaking its human resource functions, the respondent's board must ensure that its decisions are aligned to the general policies, decisions and directives as issued by the PSC from time to time. Moreover, the court highlighted that in the instance the respondent experienced difficulties in implementing such general policies, decisions and directives, the respondent was obligated to seek and obtain from the PSC such specific variations or clarifications and alterations as may be appropriate.
 54. It is the Claimant's submission that in as much as the Respondent conceded to being bound by the guidelines and directives by the Public Service Commission, they are in breach of their mandate to uphold PSC's directives as they failed to implement the provision of the two circulars issued.
 55. On the second issue, the Claimant submitted that it was buttressed in *National Environment Management Authority v Wabwoto & 3 others; Law Society of Kenya & 2 others (Supra)* wherein the learned judge asserted that the Circular of 09.10.2012 on prosecutorial allowance appeared to apply to all lawyers in the public service and for so long as the claimants established that they were in public service with similar professional legal duties. Therefore, they would be entitled to the allowance even without their names being gazetted as prosecutors. The learned judge additionally noted that the use of the terms Prosecutorial Allowance was meant to simply designate the allowance and not to have it paid exclusively to those involved in criminal prosecutions.
 56. The Claimant submitted that he ought to have been paid the non-practicing and prosecutorial allowances noting that the definitions of the two terms should not be interpreted in the strict sense rather than a simple designated allowances for all legal personnel within the public services and not necessarily criminal prosecutors.
 57. On the third issue, the Claimant submitted that gist of the Respondent's letter dated 2nd July 2001 to the Permanent Secretary/Secretary to the Cabinet and Head of the Public Service Dr. Sally J. Kosgei and referenced "Kenya Revenue Authority Harmonization of Salaries and Allowances"; was to address the issue on housing allowances while taking into account the "two-tier salary structure". At no point, did the Respondent expressly or impliedly address the issue regarding the non-practicing and prosecuting allowance for its legal personnel.
 58. In her response vide a letter dated 25th July 2001, the then Permanent Secretary, Secretary to the Cabinet and the Head of the Public Service noted that the two – tier salary structure obtained was not conducive to the smooth management of staff affairs at the Authority.
 59. It is the Claimant's submission that the Court of Appeal in *National Environment Management Authority v Wabwoto & 3 others; Law Society of Kenya & 2 others (Supra)* held that the claimants were entitled to the equivalency in grading with further directions by the court. Ranks, grades or job groups are clearly part of the job description and applicable remuneration as envisioned under section 10(1) of the *Employment Act* pegged on the grading by the circulars. Thus, the respondent had failed to discharge the statutory burden to disprove the equivalency of the job groups or ranks as had been urged for the claimants.
 60. On the final issue, it was submitted that the Claimant is clearly an advocate employed in the public service to perform the duties by public officers whom the circulars in issue applied to. Therefore, he is entitled to the allowances similar to other legal practitioners in the public service for whom the



circulars have been implemented. The Claimant performed duties of equal value like those public officers referred to in the circulars. Moreover, it is unequivocal that the circulars directly applied to the Claimant because the circulars applied to all such officers serving in the legal subsector of the public service.

61. It is the Claimant's submissions that the Respondent violated the equal work, equal pay principle by failing to appreciate the his role thus under-valued his strategic role in revenue collection and failed to remunerate the Claimant at par with his peers in the public service.

Respondent's Submissions

62. The Respondent's submitted on five issues: whether the Claim and the prayers sought offend the principle of sanctity of contracts; whether the Respondent is bound by the directives issued in Circular No. MSPS.10/145A VOL.VII/40 and circular No MPS.10/5AVOL III/78; whether the Claimant was discriminated against; whether the Respondent is entitled to the reliefs sought; and who should bear the costs of the suit.
63. On the first issue, the Respondent submitted that the Claimant entered into a non-equivocal employment agreement with the Respondent. Thus, shifting goal posts and introducing new terms post-employment would not only be prejudicial to the Respondent but also would set a very dangerous precedent and bring uncertainty in contracts by defiling the sanctity of contracts.
64. The Respondent submitted that it is trite that the courts ought not to interfere in contractual disputes as was held by the Court of Appeal in the case of National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another [2001] eKLR that: "A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved." In the instant case, coercion, fraud or undue influence have not been pleaded. It is not in dispute that the parties herein voluntarily entered into the employment contract after being satisfied with the terms therein.
65. On the second issue, the Respondent submitted that the Claimant failed to bring to the attention of this court that by dint of implementation of the circular and letters dated 16th July 2001 and 25th July 2001; all Respondents employees were placed on an 'executive salary scale'. This scale was way above other Government Ministries and State Agencies remuneration and the same keeps being reviewed from time to time the latest review being in the year 2017, to cater for the negative effects of inflation.
66. The Respondent submitted that the two circulars relied upon by the Claimant were meant to address inequities that had been created in emerging institutions like KRA whose employees were on an enhance salary scale or executive salary scale'as opposed to other Government Ministries and State Agencies. Owing to this, the two circulars Circular No. MSPS.10/145A VOL.VII/40 & Circular No. MPS.10/5A VOL III/ (78) were not specifically applicable to the Respondent or addressed it.
67. On the third issue, the Respondent submitted that the Claimant was not given any differential treatment compared to other employees neither has he provided comparators to allege such discrimination. Reliance was placed in Republic v Kenya Unversities and Colleges Central Placement Service Ex parte Adrian Kamotho Njenga [2021] KEELRC 1192 (KLR), the court held: "The Applicant has not established that there was discrimination. Of the Seventy-Five candidates, none has complained of discrimination. Who are the comparators in the discrimination alleged to have taken place in the recruitment process? The Applicant has not shown that the process was discriminatory. He bore the burden of proof, as held in Council of Governors V. Salaries & Remuneration Commission [2018] e-KLR."



68. The Respondent submitted that the Claimant has not demonstrated particularly how he was discriminated against thus failed to discharge its burden of proof when alleging discrimination. It cited the Supreme Court in *Law Society of Kenya v Attorney General & another* [2019] KESC 16 (KLR) it held: “In spite of the commonplace that proof of “indirect discrimination” is difficult, the petitioners ought to have provided sufficient evidence before the Court, to enable it to make a determination. The 1st respondent, by a more positive scheme, went ahead to counter the bare allegations. The petitioners failed, in this regard, to discharge their initial burden of proof.”
69. On reliefs and cost, the Respondent submitted that the Claimant has not met the burden of proof, thus, he is not entitled to the reliefs sought. Additionally, the Claimant should bear the costs of the suit since his assertions are without any basis.

1st Interested Party’s Submissions

70. The 1st Interested Party submitted that the Respondent’s reliance on an alleged “executive salary package” as a justification for non-payment of the prosecutorial and non-practicing allowance is constitutionally deficient. It is a discriminatory exclusion to argue that it could not implement the two circulars as its salary remuneration scale had already been enhanced by the Public Service Commission as it then was and that salaries for its legal personnel were competitive as opposed to the three Government Agencies that were specifically addressed in the two circulars.
71. It is the Interested Party’s submission that Article 27(1) of *the Constitution* states that every person is equal before the law and has the right to equal protection and equal benefit before the law. Therefore, disparities in allowances between legal officers performing similar prosecutorial and advisory functions violates the equal protection clause.
72. The 1st Interested Party submitted that the Respondent ought to have sought clarification from the Public Service Commission as to whether it is bound by the directives issued by the two circulars now that there exists an executive salary package for its staff instead of outrightly dismissing the directives in the circulars which applied to all legal personnel in the employed in the public sector.
73. The 1st Interested Party submitted that not being addressed in a circular is not a valid reason for the Respondent to deny the Claimant Prosecutorial and Non-Practice -allowance if the legal and constitutional basis for these allowances exists. Legal officers working with the Respondent who are admitted as advocates of the High Court of Kenya and perform functions akin to those in the office of the director of public prosecutions or the state law office are equally entitled to these allowances.
74. It is the 1st Interested Party’s submission that these allowances are not discretionary benefits subject to salary negotiations but compensatory entitlements tied directly to the Claimant as an advocate in public service. Non-practicing allowance compensates for the statutory restriction on private practice while the prosecutorial allowance recognizes the special duties of performing legal duties on behalf of the state.
75. The 1st Interested Party submitted that legal officers working in state corporations and statutory public bodies perform functions materially similar to their counterparts in the Office of Director of Public Prosecutions and the State Law Office and they need not be gazetted as prosecutors as was upheld by the the Court of Appeal in *National Environment Management Authority v Wabwoto & 3 others* (supra).
76. The 1st Interested Party submitted that the 2nd Interested Party’s position that the prosecutorial allowance was deliberately and specifically designed as a target benefit exclusively for legal officers serving within the Office of Director of Public Prosecutions and is the equivalent of the state



counsel allowance paid to legal officers in the State Law Office is administratively convenient but constitutionally flawed.

77. The 1st Interested Party further submitted that the argument that the prosecutorial allowance acknowledges the distinctive nature of criminal prosecution performed by counsels from the Office of the Director of Public Prosecution which involves different skill set, responsibilities and professional demands than those faced by legal officers in other institutions including those who occasionally perform prosecutorial functions outside ODPP is biased, unjustified and creates discriminatory disparity among public legal officers performing substantially similar functions.
78. The 1st Interested Party argued that some legal personnel serving in different state agencies have also received special training and have a special skill set to represent the state. For instance, the Claimant and other legal officers working for Respondent are specially trained by Kenya School of Revenue Administration (KESRA) to prosecute tax related offences.
79. The 1st Interested Party submitted that constitutional standard requires equity and parity across comparable roles not selective remuneration which is institutional based. No legal officer should be denied legitimate entitlements because of inaction by their employer to seek clarification from SRC. SRC should promote parity across public legal officers to promote uniformity and motivation in public service in line with their constitutional and statutory mandate.
80. The 1st Interested Party submitted that the Respondent is a public office within the definition under Article 260 of *the Constitution*. Therefore, it is bound by the Public Service Code of Conduct [2006] as revised, known as Public Service Commission Human Resource Policy, 2016 which was more particularly set out in circulars that were issued by the State Department for Public Service.
81. It is the 1st Interested Party's submission that the burden of proof rests on the Respondent to provide the salary scales for the legal officers in other public sector offices including the Office of the Director of Public Prosecutions and the State Law Office who earn similar allowances vis a vis the Claimant's to show that indeed the salary given to the Claimant was enhanced otherwise the same remains mere averment which is unsupported.
82. The 1st Interested Party submitted that unless the Respondent can demonstrate of which they failed to do, that the enhanced salary package explicitly incorporated and replaced these specific allowances and that the Claimant knowingly waived such entitlements, the failure to pay the Claimant these allowances is discriminatory and an infringement of the Claimant's constitutional rights.
83. The 1st Interested Party submitted that the court should allow the Claimant's claim for reasons that: Fair remuneration improves retention and integrity of public officers which serves the wider public interest; It is important to have parity across all public legal officers so as to promote uniformity and equality in the profession; There is a legitimate expectation that similar legal officers in public institutions should receive equal treatment in allowances where their duties are similar; And It is paramount for the court to uphold constitutional values and rights.

2nd Interested Party's Submissions

84. The 2nd Interested Party submitted on two issues: whether circulars No. MSPS.10/145A VOL. VII/40 dated 11th June, 2010 and No. MPS.10/5A VOL. III/ (78) dated 9th October 2012 apply to the Respondent; and whether Non-practice and Prosecutorial Allowances were payable to the Claimant.
85. On the first issue, the 2nd Interested Party submitted that as settled in statutory and administrative law, is that a circular, policy directive or administrative instruction must be construed strictly within the parameters of the authority that issued it and the specific context and sector to which it was directed. In



- other words, circulars cannot, confer rights or entitlements beyond the explicit scope of their intended application.
86. The 2nd Interested Party submitted that Circular No. MSPS.10/145A VOL. VII/40 of 11th June 2010 was directed to legal personnel serving within the Judiciary, the State Law Office, and the Ministry of Justice, National Cohesion and Constitutional Affairs. It aimed to provide non-practice allowance in recognition of the acute challenge in retaining legal professionals in these institutions due to disparities between public service pay and private practice earnings.
 87. Whereas, Circular No. MPS.10/5A VOL. III/ (78) dated 9th October 2012 was a specialized directive confined to advocates serving in the Office of the Director of Public Prosecutions. The justification for this allowance was rooted in the unique constitutional and statutory mandate of the Director of Public Prosecutions, who under Article 157 of *the Constitution* is the sole office vested with the authority to institute and undertake criminal proceedings against any person before any court (other than a court martial). It never intended to apply to legal officers employed in other state corporations such as the Respondent.
 88. It is the 2nd Interested Party's submission that the Respondent's legal staff perform advisory, representational and compliance roles in respect of revenue collection, but they neither discharge nor support prosecutorial functions within the meaning contemplated under *the Constitution* or the said circular.
 89. It was submitted that the Respondent, though a public body, is not part of the institutions expressly contemplated by the circulars. To extend the scope of either of the two circulars to cover the Respondent's employees would not only offend their plain meaning but also amount to usurping the constitutional role of the 2nd Interested Party under Article 230 (4) (b) of *the Constitution*, which vests in the 2nd Interested Party the exclusive mandate to advise on remuneration and benefits of all other public officers.
 90. On the second issue, the 2nd Interested Party submitted that it is not in dispute that the Claimant's contractual relationship with the Respondent commenced on 2nd April, 2018 and terminated on 10th November, 2020. Thus, this Court's determination must be examined within this specific timeframe during which the Claimant served as an Officer – Litigation in the Respondent's Legal Services & Board Coordination Department.
 91. The 2nd Interested Party submitted that between 2nd April, 2018 and 10th November, 2020, the Claimant held the status of a public officer within the meaning of Article 260 of *the Constitution*. Article 230(4)(b) of *the Constitution* mandates the 2nd Interested Party to advise the national and county governments on the remuneration and benefits for all other public officers. Consequently, any determination regarding the Claimant's entitlement to the disputed allowances must be anchored on whether the 2nd Interested Party, being the constitutionally mandated authority, had advised the Respondent on the payment of such allowances to advocates employed within the Respondent's organisational structure.
 92. It was submitted that the 2nd Interested Party has at no point advised the Respondent to pay either non-practice or prosecutorial allowances to advocates in its service and neither has the Respondent sought such advice in line with Article 259 (11) of *the Constitution*. To the contrary, the 2nd Interested Party's consistent position has been that remuneration within the public service must adhere to the principle of equivalent pay for equivalent grades to safeguard internal equity, prevent distortions, and maintain fiscal sustainability of the public wage bill.



93. It cited *Muthuuri & 4 Others v National Police Service Commission & 2 Others* (Petition 15 (E022) of 2021) [2023] KESC 52 (KLR) wherein the Supreme Court clarified that once salaries and benefits have been set pursuant to SRC's advice, any public body desirous of reviewing or extending additional allowances must first submit proposals to SRC for its consideration. The Court held that to proceed otherwise would be "tantamount to usurping the mandate of SRC."
94. The 2nd Interested Party submitted that in the absence of its express advice, non-practice and prosecutorial allowances were not payable to the Claimant. This Court cannot, by judicial fiat, confer benefits that are constitutionally reserved to the exclusive advisory jurisdiction of the SRC.
95. I have examined all the evidence and submissions of the parties herein. The claimant has sought to rely on circulars 10/145 VOL.VII/40 and MSP NO/5A VOL 111(78) dated 11/6/2010 and 9/10/12 to support his claim.
96. I have looked at the 2 circulars:- the 1st circular was addressed to the Solicitor General and it indicated that the PSRRB had agreed to the enhancement of non practising allowance to SL1-SL4, SLS to SL 7 and SL8. The circular was in my view in relation to only officers under the Solicitor General.
97. The next circular of 9-10212 was addressed to the DPP to the Solicitor General and to the PS, Ministry of Justice, Cohesion and Constitutional Affairs. This circular pointed out that there had been reconsidered payment of non practising allowance for State Counsel and Prosecutors as payment of State Counsel/Prosecutorial allowance. The payment followed recommendation of the SRC. The circular in part reads:

Owing to the recommendation of the Salaries and Remuneration Commission approval is hereby granted for the legal personnel in State Law Office, Office of the Director of Public Prosecution and Ministry of Justice, National Cohesion and Constitutional Affairs to be paid State Counsel/Prosecutorial allowance with effect from 1st October 2012 at the following rates:

SLG1-SLG5 Kshs 30,000/-

SLG7-SLG8 Kshs 40,000

SLG9- 50,000/-

98. The issue of payment of these allowances was.....in the ELRC no 547 of 2018 where the learned Judge J. Ongaya held that the two circulars related to all lawyers working in the Public Service. The respondents in 547/2018 appealed the learned judge's decision and vide its judgment in CA no E216 of 2020 the Court of Appeal upheld the High court's findings and stated as follows:

"as regards the Public Service circulars of 1/6/2010 and 9th October 2012, it is not contested that the same orders issued by the PS in the office of the PM and minutes of state for Public Service one Titus M. Ndambuki. His authority to issue the said circular was not challenged. In the circular dated 11th June 2010 addressed to the Solicitor General it was expressed:

"As you are aware, a Consultant has submitted a Report on the Rationalisation and Harmonisation of the Public Service Legal Sub-Sector to the Permanent Public Service Remuneration Review Board.

Arising from the findings of the Report, the Board has advised that it is not prudent to review salaries for the legal personnel in isolation of other public Service Sub-Sectors as this



would create pressure from other professional cadres whose salaries have not been reviewed since 2005.

The Board has also pointed out that the findings of the Consultant pointed to the fact that the pressure for higher salaries for legal personnel is not necessarily due to inadequacy of the current packages but is highly influenced by the inequalities that have been created in emerging Institutions in the Public Service Sub-Sector due to uncontrolled salary levels that may have been adopted when they were established.

In the meantime, the Board has agreed only to enhancement of Non-Practice Non-Practice Allowance as follows."

27. It is clear from the above circular that the consultant's report was submitted to the 3rd Interested parties predecessor which in turn agreed to the enhancement of non-practice allowance. The establishment of the 3rd interested party did not nullify the actions taken by its predecessor and hence the 3rd interested party was clearly bound by the recommendation made by the Permanent Public Service Remuneration Review Board...."

99. The Court of Appeal in effect held that the 2 circulars referred to officers working in the Public Sector. The claimant herein avers that he worked for the respondents and the respondents admit that he was their employee from 2nd April 2018 to 10th November 2020 a period of just about 2 years.
100. He was issued with an appointment letter detailing his remuneration package which he accepted and signed on 28/2/2018. Upon exiting the respondent's service, he filed this claim demanding payment of his non-practising allowance which was never paid during his tenure of service. The claim was filed on 5/5/21.
101. The claimant had exited the service of the respondent on 10th November 2020 if indeed the claimant was entitled to payment of non-practising allowance while working in the public service where the respondent is then it was within his rights to be paid and which the respondent didn't.
102. I therefore find for the respondent and award him his practising allowance not paid at KShs 1,440,000/- less statutory deductions. The respondents will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF OCTOBER 2025.

HELLEN WASILWA

JUDGE

