

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E481 OF 2023

DR. MARTIN GETE WAWERU.....CLAIMANT

VERSUS

KENYATTA UNIVERSITY.....RESPONDENT

JUDGMENT

1. The Claimant filed a Statement of Claim dated 13th June 2023, challenging the disciplinary proceedings initiated against him by the Respondent. At the time the Claimant approached the Court, he was under suspension pending disciplinary hearing.
2. In the course of these proceedings, the Claimant attended the disciplinary hearing, following which the Respondent decided to reinstate him to employment. Consequently, the Claimant was paid half salary that had been withheld during the period of suspension.
3. Seemingly, the Claimant's reinstatement and payment of the withheld half salary did not resolve the matter. He contended that, despite receiving his salary

for the period of suspension, he was not paid the allowances to which he was entitled.

4. Consequently, on 28th May 2025, the Court directed the parties to file submissions limited to the issue of whether the Claimant is entitled to the allowances claimed for the period of his suspension. The allowances in question are the health risk allowance, extraneous allowance, non-practice allowance, and commuting allowance.

Submissions

5. The Claimant submitted that his suspension did not amount to a termination or dismissal of employment, whether temporary or otherwise, and maintained that the Respondent remained legally obligated to comply with the terms of his contract, including payment of both salary and allowances due.
6. Relying on **Section 71(3) of the Public Service Commission Act**, the Claimant maintained that the Respondent was mandated to pay him half salary and all withheld allowances during the suspension period. He asserted that there was no legal basis or reasonable justification for the Respondent to selectively pay some allowances while withholding others. In support of this position, the

Claimant referred to the case of **Kaharu v Ark Limited [2024] KEELRC 124 (KLR)**.

7. The Claimant urged the Court to find that the Respondent's refusal to pay the withheld allowances constitutes a clear violation of the express provisions of the Public Service Commission Act and is therefore both illegal and unacceptable.
8. On the other hand, the Respondent submitted that allowances are conditional, function-specific, performance-based, and are not payable automatically.
9. The Respondent further contended that the commuting allowance, extraneous allowance, and risk allowance are performance-based by design and accrue only when an employee is physically present and actively performing their duties.
10. Accordingly, the Respondent argued that these allowances do not apply during periods of suspension when the employee is not performing their functions. In support of this position, the Respondent referenced **Pravin Bowry v Ethics & Anti-Corruption Commission [2013] eKLR** and **Kenya Ports Authority v Silas Obengele [2008] eKLR**.

11.The Respondent maintained that the allowances in question are not earned passively or automatically; rather, they are earned through the actual performance of duties and do not accrue during periods of non-performance or absence from work.

Determination

12.It is common ground that, following the Claimant's disciplinary hearing, the Respondent reinstated him to employment and expressly confirmed that he would be paid half of his basic salary which had been withheld during the period of suspension.

13.With respect to the allowances claimed by the Claimant, the Respondent, through a letter dated 15th May 2025, advised him that during his suspension, he was not exposed to patients or other hospital elements that would give rise to a health risk. The Respondent further informed the Claimant that as he was not actively performing his duties, there was no legal basis for the payment of extraneous or non-practice allowances.

14.This position was similarly advanced by the Respondent in its submissions.

15.**Section 71(4) of the Public Service Commission Act** provides as follows with respect to suspension:

"Where a public officer has been suspended but is not dismissed or otherwise penalized under this Act, any salary, allowances, or other benefits withheld pursuant to this section shall be restored to the public officer upon the conclusion of such proceedings."

16. It is not in dispute that the Claimant, being an employee of the Respondent which is a public university, falls within the category of public officers. Consequently, he falls within the scope of the Public Service Commission Act.

17. Further, the Black's Law Dictionary (10th Edition, p.1477) defines the term ***"reinstate"*** as ***"to place again in a former state or position; to restore."***

18. In applying **Section 71(4) of the Public Service Commission Act** and the definition of the term ***"reinstate"*** to the present case, the Court finds that, by virtue of his reinstatement, the Claimant is entitled to all allowances and benefits withheld during his suspension, in addition to his basic salary.

19. The Court further finds the Respondent's justification for withholding the Claimant's allowances to be quite contradictory. Here is why. The Claimant

was paid basic salary during the suspension period despite not performing any duties. The two scenarios are analogous: in both instances, the Claimant was not working. If the Respondent's rationale were applied consistently, it follows that the Claimant would not even have been entitled to half of his basic salary, yet the same was paid. This inconsistency undermines the Respondent's argument for declining to pay the Claimant the allowances withheld during the suspension period.

20. Overall, the Court finds that the Respondent has failed to advance any plausible justification for withholding the Claimant's allowances.

21. Accordingly, the Court hereby directs that the Respondent pays the Claimant all allowances withheld during the period of his suspension.

22. Given that the employment relationship is subsisting, the Court is inclined to order that each party bears its own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 21st day of October 2025.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant

Mr. Muga

For the Respondent

Ms. Kaunda instructed by Mr. Mwangi

Court Assistant

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ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

ORIGINAL