

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KAKAMEGA
CAUSE NO. E007 OF 2024

**KENYA UNION OF PRE-PRIMARY
EDUCATION TEACHERS CLAIMANT**

-VERSUS-

**COUNTY PUBLIC SERVICE BOARD
OF VIHIGA 1ST RESPONDENT**

**COUNTY SECRETARY
COUNTY GOVERNMENT
OF VIHIGA 2ND RESPONDENT**

**SALARIES AND REMUNERATION
COMMISSION..... INTERESTED PARTY**

(BEFORE HON. JUSTICE DAVID NDERITU)

JUDGMENT

I. INTRODUCTION

1. The claimant, a duly registered trade union, commenced this cause through its representative Mr. Samuel A. Opiyo by way of a statement of claim dated 22nd March 2024 seeking for the following reliefs –

- 1. THAT this honourable court be pleased to order the respondents to immediately regularise the terms and***

conditions of employment for the grievants herein to the applicable Schemes of Service of ECDE teachers respecting the SRC approved salaries with effect from 1st July 2023.

2. THAT the grievants be paid the salary increment of 10% awarded by National Government to public officers with effect from 1st July 2023.

3. THAT this honourable court do order that all statutory deductions made be remitted to the relevant bodies every month such deductions are made and for avoidance of doubt, the unremitted statutory deductions be remitted forthwith.

4. THAT the respondents be ordered to pay the grievants herein gratuity at the rate of 31 percent of the total basic pay for the 3 years under served under contract.

5. THAT costs of this suit be provided for by the respondents.

2. As it is the procedure, the statement of claim was accompanied with a verifying affidavit and a witness statement by Samuel A. Opiyo, a list of documents, and copies of the listed documents.
3. The respondents entered appearance and filed a reply to the claim dated 18th December 2024 through the County Attorney. The respondents also filed a list and bundle of documents. The claim is denied in its totality.
4. The interested party was initially represented by Miss Bikambo but subsequently appointed Mr. Wahome Murakaru to appear for it.

5. By consent, the cause was canvassed by way of written submissions. Mr. Opiyo for the claimant filed written submissions dated 22nd April 2025, Miss Shijenje for the respondents filed submissions dated 19th March 2025, and Mr. Wahome for the interested party filed submissions dated 22nd May 2025.

II. PLEADINGS

6. In the statement of claim it is pleaded that county governments are mandated under ***Section 15 of Part II of the 4th Schedule of the Constitution*** to employ and pay Early Childhood Development Education (ECDE) teachers across the Republic.
7. It is further pleaded that ***Section 38 of the Early Childhood Education Act*** provides that teachers who offer services in that sector shall be paid in accordance with the scheme advised and circulated by the interested party but that the respondents have failed, refused, and or neglected to apply and implement a circular issued by the interested party in August 2023. The interested party is accused of not enforcing the said circular.
8. It was further pleaded that the interested party is obligated in ensuring that the said teachers/grievants are remunerated in accordance with its guidelines yet the respondents have failed, refused, and or neglected to pay the grievants as advised by the interested party.
9. It is pleaded that the foregoing circumstances have resulted in the grievants earning far less than what they are entitled to and below

the advisory circular issued by the interested party on 10th August 2023.

10. The claimant attached to the statement of claim letters of contract, letters of appointment of grievants into permanent and pensionable terms, pay-slips, and certificate of referral of the dispute to a conciliator dated 4th March 2024, alongside witness statement, and a list of the grievants.
11. The respondents pleaded that the grievants were initially engaged on a three-year contract by the County Government of Vihiga in January 2021. It was pleaded that the grievants were not entitled to the terms advised by the interested party as at the time of the contract but after the expiry of the initial contracts the County Government of Vihiga could not upgrade the grievants to the SRC-advised scheme due to budgetary constraints as implementation of the same would have pushed the employer to violate various provisions of the ***Public Finance Management Act*** and more so ***Section 107(2)*** thereof and ***Regulation 25(1) of the Public Finance Management (County Governments) Regulations.***

III. SUBMISSIONS

12. Mr. Opiyo for the claimant submitted that the claimant filed this cause for and on behalf of its 764 members who are ECDE teachers recruited by the 1st respondent to work for the County Government of Vihiga. It is further submitted that the interested

party advises on the remuneration of the said teachers as per **Article 234 of the Constitution**. The list of the names of the grievants was filed with the statement of claim.

13. It is submitted that the grievants initially served on a fixed three-year term contract from 1st January 2021 but from 1st September 2023 their terms were converted to permanent and pensionable. It is further submitted that while the interested party vide a circular dated 10th August 2023 advised on improvement of the salaries of persons serving in the categories of the grievants, the respondents failed, refused, and or neglected to adjust the salaries of the grievants accordingly.
14. It is submitted that the refusal and or failure by the respondents to act in accordance with the advisory from the interested party is illegal and unlawful and no reasonable and or probable cause has been advanced therefor. It is submitted that the conduct of the respondents offends **Section 38 of the Early Childhood Education Act** and **Section 13(1) of the Salaries and Remuneration Commission Act**. It is further submitted that the respondents have violated the labour rights of the grievants under **Article 41(2)(b) of the Constitution**.
15. It is further submitted that on 1st May 2023 the President of the Republic decreed a 10% increment of the salaries of all public servants to cushion them against the effects of the Covid-19 pandemic.

16. It is further submitted that the grievants are entitled to gratuity at 31% of the basic pay for the initial period of the three-year contract as the same was a term thereof.
17. It is submitted that the claimant made all efforts to have the matter resolved before filing the same in court and reported the same to the Ministry under ***Section 62 of the Labour Relations Act*** and finally the conciliator filed in court a report in favour of the claimant dated 28th June 2024. It is submitted that the respondents refused to take part in the conciliation.
18. The court is urged to allow the claim as pleaded with costs.
19. Miss Shijenje for the respondents isolated two issues for determination by the court – *Whether the claimant is entitled to the reliefs sought? And; Who should pay costs?*
20. On the first issue, it is submitted that the claim is based on the scheme of service for ECDE teachers for County Governments. It is submitted that chapter one paragraph 1.8 of the said scheme provides that –
‘The Scheme of service will become operational upon adoption by individual County Governments. However, the County Governments will implement the same upon the availability of financial resources. On implementation, all trained and qualified ECDE Teachers will join the Scheme, on the condition that they meet the set minimum requirements.’
21. It is submitted that the respondents were not financially capable of implementing the above scheme due to lack of budget. It is

submitted that the County Government of Vihiga has reached the upper limit of expenditure on salaries and there is no room for implementation of the scheme for the grievants and any such expenditure shall offend various provisions of the **Public Finance Management Act**.

22. It is submitted that any vacancies filled during the pendency of this cause are those that had been budgeted for and no new offices or vacancies or positions have been created and or filled as alleged by the claimant.
23. It is submitted that the grievants are not entitled to the salary increment advised by the interested party as they are not public officers within the National Government.
24. Counsel for the interested party isolated three issues for determination –
 - i. *Whether the 1st interested party party’s advice communicated letter Ref. No: SRC/TS/29(81) dated 10th August, 2023 on the remuneration and benefits for public officers in the county government is binding;*
 - ii. *Whether there was a 10% presidential salary increment for all public servants effective 1st July, 2023. And whether the ECDE Teachers are entitled to this increment; and*
 - iii. *Whether the 1st interested party has failed in its mandate to enforce its advisory on remuneration.*
25. On the first issue, it is submitted that the “advice” by the interested party as envisaged under **Article 230(4)(d) of the**

Constitution is and has been held by the courts to be binding. Counsel cited the Court of Appeal decision in **Teachers Service Commission V Kenya Union of Teachers (KNUT) & 3 Others (2015) eKLR** in support of that argument. This decision by the Court of Appeal was affirmed by the Supreme Court in **Muthuri & 4 Others V National Police Service Commission & 2 Others (2023) KESC 52 (KLR) eKLR**. Further, counsel submitted that the foregoing position was again upheld and affirmed by the Court of Appeal in **Salaries Remuneration Commission V National Hospital Insurance Fund Management Board & 2 Others (2024) KECA 419 (KLR)**.

26. It is thus submitted that the advice by the interested party of 10th August 2023 is binding on all county governments and the same is certainly binding on the respondents herein.
27. On the second issue, it is submitted that the claimant failed to prove that the grievants were entitled to the alleged 10% salary increment via an alleged presidential decree or directive. It is submitted that no government circular, legal notice or gazette notice, executive order or decree, or any other binding documentary evidence was availed in support of the said claim. It is submitted that other than the interested party, no other person or body is legally and constitutionally authorised to advise on remuneration and salaries in the public sector.
28. In essence therefore, the interested party supports the increment of the remuneration of the grievants based on its advisory of 10th

August 2023 but vehemently objects to the other 10% increment based on unsupported and unsubstantiated allegations of presidential directive or decree.

IV. ISSUES FOR DETERMINATION

29. The court has carefully and dutifully gone through the pleadings filed, the documentary evidence tendered from both sides, and the written submissions by the claimant, the respondents' and interested party's counsel. The following issues commend themselves to the court for determination -

- a) Whether the cause by the claimant has merits?*
- b) Whether the claimant is entitled to the reliefs sought for and on behalf of the grievants?*
- c) Who should bear the costs of the cause?*

V. MERITS OF THE CAUSE

30. The dispute between the parties is rather straightforward as summarized in the foregoing paragraphs. The claimant is a duly registered trade union and filed this cause for and on behalf of its members listed as grievants in the pleadings. Basically, the claimant is seeking for payment of enhanced remuneration for the grievants based on a circular issued by the interested party on 10th August 2023, a further 10% based on a presidential proclamation allegedly issued in May 2023, and gratuity for the initial three-year contract that concluded before they were

engaged on permanent and pensionable terms with effect from 1st September 2023.

31. In summary, the court finds and holds that the grievants are entitled to the increment as advised by the interested party as communicated in a circular dated 10th August 2023.
32. As correctly submitted by counsel for the interested party, advisories and circulars issued by the interested party are not mere communication or correspondences. Such circulars and notices on the remuneration payable to public servants and officers have the force of the law and are lawfully binding. This is the position capsulated by the Court of Appeal in ***Teachers Service Commission V Kenya Union of Teachers (KNUT) 3 Others (supra)***, a position affirmed by the Supreme Court in ***Muthuri & 4 Others V National Police Service Commission & 2 Others (supra)***. The Court of Appeal reaffirmed the same holding in ***Salaries and Remuneration Commission V National Hospital Insurance Fund Management Board & 2 Others (supra)***.
33. The advisory of 10th August 2023 to all county governments was binding on the County Government of Vihiga, the employer, based on ***Article 230(5) of the Constitution***.
34. On the additional 10% increment allegedly declared by the President on 5th May 2023, no evidence was availed by the claimant in support of the same. No binding circular, notice, or law was cited in support of this claim and the same is for

dismissal without much ado. Kenya is a democracy governed by the rule of law meaning that every administrative action or directive must be founded on the law. The claimant failed to prove that the grievants were entitled to such alleged benefit.

35. The court has gone through copies of the three-year term contracts issued to the grievants that were expiring on 31st August 2023 that gave way to the permanent and pensionable terms with effect from 1st September 2023. The said contracts were not objected to by the respondents and there was nothing to object as the terms on the gratuity were clear, unambiguous, and specific. The grievants were entitled to gratuity at 31% of the basic salary at the end of the contract term.
36. It is unfortunate that the respondents and the County Government failed, refused, and or neglected to attend conciliation before and even after this cause was filed in court. This culminated in the County Labour Officer Vihiga issuing a certificate of unresolved trade dispute that was filed in court by the claimant.
37. The court has so far said enough in demonstrating that the claim as filed has merits and orders shall issue as hereunder. For avoidance of doubts and to eliminate any further complexities or protracted litigation or arguments, the remuneration recommended by the interested party shall apply to the grievants as from 1st September 2023 when they gained permanent and pensionable status.

VI. RELIEFS & ORDERS

25. This claim is allowed in the following terms –

- a) A declaration be and is hereby issued that the grievants are entitled to the remuneration recommended by the interested party in the circular issued on 10th August 2023.*
- b) That the grievants are entitled and shall be paid the recommended salaries in arrears as from 1st September 2023 to date.*
- c) The grievants are entitled to and shall be paid gratuity for the three-year term contracts that ended on 31st August 2023 at the rate of 31% of the last basic salary under those contracts.*
- d) The claimant shall calculate and tabulate the amounts due and payable to each grievant in items (b) and (c) above and file in court and serve the same upon the respondents within 30 days of this judgment.*
- e) Costs of the cause to the claimant.*

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT
KAKAMEGA THIS 4TH DAY OF DECEMBER, 2025.**

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**DAVID NDERITU
JUDGE**