



**Muhsin v Teachers Service Commission (Cause 16 of 2019)  
[2026] KEELRC 118 (KLR) (26 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 118 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 16 OF 2019  
M MBARŪ, J  
JANUARY 26, 2026**

**BETWEEN**

**HAFIDHI MUHSIN ..... CLAIMANT**

**AND**

**TEACHERS SERVICE COMMISSION ..... RESPONDENT**

**RULING**

1. The claimant filed an application dated 2 December 2025 under the provisions of Order 53, Rules 3, 4, 5 and 6 of the Civil Procedure Rules and section 1A, 1B of the *Civil Procedure Act* seeking Orders:

This court does grant the applicant an order compelling the Teachers Service Commission's secretary to compute the claimant's retirement benefits on the basis that his retirement date was 31 August 2018 and to pay the same to him, plus his costs of the Court of Appeal amounting to Ksh. 1,017,300, and the costs of this suit amount to Ksh. 209,496, making a total of Ksh. 1,226,796 plus interest from the date of the award to the date of payment.

2. The affidavit of Yusuf M. Aboubakar supports the application advocate for the claimant and who avers that on 26 July 2024, the Court of Appeal pronounced judgment in respect of the appeal arising from this court and directed the respondent to compute the claimant's retirement benefits on the basis that his retirement date was 31 August 2018 and to pay him costs of the suit.
3. The applicant taxed his appeal costs at Ksh. 1,017,300 and those of this suit to Ksh. 209,496.
4. The claimant wrote to the respondent on 27 September 2024 and 11 November 2025 for payment without success, leading to this application, which should be allowed with costs.
5. In reply, the respondent filed the Replying Affidavit of Mollet Sango, the assistant director in the human resource and development directorate, who avers that the respondent is established under



- article 237 of *the constitution* in the field of technical management, including facilitation, progress and exit from service.
6. The respondent employed the claimant until 30 June 2018 upon attaining the mandatory retirement age. The claimant filed suit disputing his retirement date, which culminated in the Court of Appeal finding in his favour and directing the respondent to compute his benefits on the basis that his retirement date was 31 August 2018.
  7. Sango avers that the Court of Appeal judgment only awarded the claimant's pension upon retirement. There was no order for the payment of salaries for July and August 2018.
  8. Under the law, the respondent's role in the payment of a teacher's benefits is to process Form GP 178, the Pension Claim Form, and provide for the employment history of the teacher, including salary increments and progression during his employment. Upon the claimant's request, the respondent initiated the pension payment process. It prepared and transmitted the necessary forms to the Director of Pensions, who is responsible for the computing and payment of the claim.
  9. Following the Court of Appeal judgment, the respondent prepared a revised pension claim, which was submitted to the Director of Pensions at the National Treasury for computation of the amount payable and processing of payment.
  10. Sango avers that the respondent informed the claimant that his claims had been processed and remitted to the Director of Pensions for processing. This was done through a letter dated 12 December 2024. His benefits upon revision can only be provided by the Director of Pensions, and the respondent has completed the process and documentation for payment.
  11. The failure to pay taxed costs is because, under section 21 of the *Teachers Service Commission Act*, proceedings against the respondent are subject to the *Government Proceedings Act*. The claimant has not obtained or served the Certificate of Order of Costs in line with section 21 of the *Government Proceedings Act* and Order 29 rule 3 of the Civil Procedure Rules.
  12. Both parties attended court and made oral submissions, which were reviewed, and the issues for determination are:
  13. Whether the respondent should compute and pay the claimant's retirement benefits upon retirement on 31 August 2018;
  14. Whether the respondent should pay the due costs for the Court of Appeal at Ksh. 1,017,300, and this court at Ksh. 209,496.
  15. Judgment herein was delivered on 23 April 2021, and the suit was dismissed. Each party to bear its costs.
  16. Dissatisfied, the claimant filed an appeal to the Court of Appeal E102 of 2021. Judgment was delivered on 25 July 2024, allowing the appeal, setting aside the judgment of this court and substituted it with a declaration that the claimant was unlawfully retired earlier than he should have been before attaining the age of 60 years. The Court of Appeal hence directed the respondent to compute his retirement benefits before 31 August 2018, on the basis that his retirement date was 31 August 2018.
- The findings by the Court of Appeal are not in dispute.
17. However, the respondent asserts that they were only directed to compute the pension dues and to pay costs, which dues do not include salary payments from 30 June 2018. The costs must be paid following issuance and service of the Certificate of Order of Costs in line with section 21 of the *Government Proceedings Act* and Order 29 rule 3 of the Civil Procedure Rules.



18. Retirement benefits include all benefits due and owing to the employee upon termination of employment. This includes unpaid salaries and pension dues.
19. Where the respondent paid the claimant his salary up to 30 June 2018, upon the Court of Appeal judgment directing the computation of the retirement dues as at 31 August 2018, the unpaid salaries after 30 June 2018 are due.
20. The respondent filed returns with the Director of Pensions confirming that the claimed last salary was Ksh. 80,242 per month, which amount is due for July and August 2018 pursuant to the Orders of the Court of Appeal in Civil Appeal E102 of 2021.
21. The claimant is entitled to the salary for July and August 2018, amounting to Ksh.  $80,242 \times 2 =$  Ksh. 160,484.
22. On the payment of pensions, indeed, upon retirement from service of a pensionable employee, the *Pensions Act* comes into effect. The employer is required to tabulate the pension dues based on the employee's last salary, in this case, Ksh. 80,242 as at 31 August 2018, and submit to the Director of Pensions to effect the payments.
23. The employer's function is to submit all relevant and necessary records for the employee to the Director of Pensions. The responsibility to pay is on the Director of Pensions, not the employer, where the employee is pensionable under the *Pensions Act*.
24. In this regard, the respondent submitted that the claimant's employment records were based on the Court of Appeal Orders confirming the retirement date as 31 August 2018.
25. The claimant should proceed to seek payment of his pension dues based on the returns submitted by the respondent under GP. 178.
26. On the question of costs, these are not disputed save that the respondent urges the court that it is a government regulated under section 21 of the *Government Proceedings Act*, that it can only pay upon service of the Certificate of Order of Costs in line with section 21 of the *Government Proceedings Act* and Order 29 rule 3 of the Civil Procedure Rules.
27. Indeed, the respondent in the Replying Affidavit of Sango confirms that it is constituted under Article 237(1) of *the Constitution*. Under such provisions, the respondent's mandates include regulating and facilitating teaching performance. Under the constitutive legislation, the *Teachers Service Commission Act*, the respondent is mandated to operate as a body corporate. Such gives the right to sue and be sued in equal measure.
28. The reliance on section 21 of the *Teachers Service Commission Act* cannot shield the respondent from liability to pay costs awarded by the court in proceedings.
29. The demand to be served with a Certificate of Order of Costs in line with section 21 of the *Government Proceedings Act* is unreadable and without any legal basis.
30. Accordingly, the application dated 2 December 2025 is allowed with orders:
  - a. The respondent shall pay the claimant his retirement benefits, including pay for July and August 2018, being Ksh. 160,484.
  - b. The Director of Pensions shall pay pensions dues based on Form GP. 178.
  - c. The respondent shall pay the taxed costs.



- d. For the instant application, costs are awarded to the claimant and shall be taxed by the Taxing officer.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 26<sup>TH</sup> DAY OF JANUARY 2026.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant:

..... and .....

