



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISUMU

CAUSE NO. E073 OF 2025

KENYA COUNTY GOVERNMENT WORKERS UNION.....**CLAIMANT**

VERSUS

COUNTY GOVERNMENT OF MIGORI.....**1ST**

RESPONDENT

MIGORI COUNTY PUBLIC SERVICE BOARD.....**2ND**

RESPONDENT

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

RULING

Background

1. On 10th August 2023, the Interested Party issued Circular Ref. No. SRC/TS/29(81) to all Counties advising that employees in Job Groups CPSB 13-17 be paid a commuter allowance of Kshs. 3,000/-. Following the issuance of this circular, the ECDE Teachers Association for Migori County wrote to the Governor of Migori County by a letter dated 26th June 2023 requesting a review of their commuter allowance from Kshs. 802/- to Kshs. 3,000/-. The Association subsequently followed up the request through another letter dated 26th February 2024 addressed to the Chief Officer, Migori County, imploring him to effect the review. When no response was forthcoming, the Association sent a reminder on 2nd May 2024 to the Migori County Secretary, requesting that the revised allowance be incorporated in the budgetary allocation for the 2024/2025 financial year commencing in July 2024. Further reminders were issued on 30th September 2024, 18th November 2024 and 28th January 2025, all of which appear to have elicited no response.

2. Consequently, the Claimant instituted the present suit on 21st October 2025 seeking to enforce the review. The 1st and 2nd Respondents filed their responses on 26th October 2025,

while the Interested Party filed its response on 29th October 2025. Pursuant to directions issued on 28th October 2025, the Claimant filed its submissions on 28th November 2025 and the Interested Party filed theirs on 13th February 2025, while the Respondents did not file any submissions. The matter was thereafter slated for judgment on 16th March 2026.

The Application

3. Before the Court could retire to prepare the judgment, however, the Respondents sought to halt the delivery of the same through an application dated 6th March 2026, which now falls for determination. In the application, the Respondents contend that they have already complied with the directive issued by the Interested Party, as evidenced by a letter dated 26th November 2025, and that the suit should therefore be marked as settled. They also seek costs of the application. The application is supported by the grounds on its face and the supporting affidavit sworn by Mr. Quinto Abayo of the Migori County Attorney's Office. He deposes that the Respondents did not participate in the proceedings because the Claimant served the pleadings using the wrong email address. In particular, he states that service was

effected through the address ***info@migori.go.ke*** instead of ***county044attorneyoffice@gmail.com***, which he maintains is the correct email address. Notwithstanding the foregoing, he avers that the Respondents have since complied with the prayers sought by the Claimant, thereby effectively settling the matter, and consequently urge the Court to mark the suit as settled.

4. The Claimant opposes the application through a replying affidavit sworn on 11th March 2026 by its General Secretary, Mr. Roba Sharu Duba. He deposes that the Claimant initially attempted to serve submissions through the email address indicated in the notice of appointment of advocates, namely ***044attorneyoffice@gmail.com***, but received a non-delivery notification. As a result, the Claimant accessed the official website of the County Government of Migori and obtained the email address ***info@migori.go.ke***, which it then used to serve the documents. On that basis, the Claimant contends that the email address ***county044attorneyoffice@gmail.com*** now relied upon by

the Respondents is a new address introduced merely to explain their failure to participate in the proceedings.

5. The Claimant further argues that the letter relied upon by the Respondents does not state that its members working as ECDE teachers in Migori County will be paid the commuter allowance of Kshs. 3,000/- as stipulated in the circular. In its view, the letter therefore offers no guarantee of compliance and does not resolve the issues raised in the suit. Additionally, the Claimant maintains that the application constitutes yet another delaying tactic, noting that the letter relied upon by the Respondents has been in their possession since 26th November 2025 but was only produced at this late stage. It is also pointed out that the said letter is not addressed to the Claimant.

6. When the application came up for hearing on 12th March 2026, Counsel for the Respondents indicated that they had received the replying affidavit and sought additional time to file a supplementary affidavit. The Court granted them three days to do so and deferred the Ruling to 18th March 2026. In compliance with that direction, the Respondents filed a

supplementary affidavit sworn on 12th March 2026 by Mr. Oscar Olima, the Migori County Head of Public Service. He deposes that, through an internal memo dated 23rd February 2026 (attached to the supplementary affidavit) issued in response to the Interested Party's Circular Ref. No. SRC/TS/24/6/VOL. II (124) dated 31st October 2025, the Respondent had already taken significant administrative steps toward implementing the Interested Party's directives. According to him, the memo indicates that the requisite salary adjustments had already been effected in the February 2026 payslips in compliance with the Interested Party's guidelines. He further asserts that the implementation applies to all county public service staff, including ECDE teachers who are members of the Claimant.

Disposition

7. The issue that is for determination is whether the circular by the Interested Party has been implemented. Notwithstanding the assertions by the Respondents, there is no evidence the circular has been given effect. All we have are lofty statements of intent replicated in internal memos and letters

issued purportedly in response to the Circular. If the Respondents genuinely intend for the Claimant to be alert to the implementation of the Circular, there would be direct communication with the Claimant. The letter dated 26th November 2025 is not addressed to the Claimant. This is despite the fact that the Claimant wrote on 26th June 2023 requesting a review of the commuter allowance from Kshs. 802/- to Kshs. 3,000/- per the SRC Circular, followed up with another letter dated 26th February 2024, a reminder dated 2nd May 2024 and further reminders dated 30th September 2024, 18th November 2024 and 28th January 2025, all of which appear to have elicited no response. It is therefore doubtful the letter of 26th November 2025 is genuinely geared toward resolving the impasse.

8. The Court is minded to order immediate compliance with the SRC Circular Ref. No. SRC/TS/29(81) of 10th August 2023 for all the ECDE Teachers under the Claimant in Machakos County and Migori County. The said circular to be implemented with arrears payable from October 2025. Proof of implementation of the Circular must be filed in Court

within the next 30 days given the payrolls for the month of March are about to close. Mention for compliance will be on 20th April 2026.

9. The Respondents are to pay the Claimant the costs of this Application since they forced the Claimant to initiate the suit to effect a lawful benefit for the members of the Claimant.

It is so ordered.

Dated and delivered at Kisumu this 18th day of March

2026

**Nzioki wa Makau, MCI Arb.
JUDGE**