



Kiwo & 341 others v Teachers Service Commission (Employment and Labour Relations Cause 244 of 2017) [2025] KEELRC 419 (KLR) (13 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 419 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS CAUSE 244 OF 2017
MA ONYANGO, J
FEBRUARY 13, 2025**

BETWEEN

**DANIEL MUGO KIWO 1ST CLAIMANT
JANE W. KEFA 2ND CLAIMANT
SAMUEL KIRWA 3RD CLAIMANT
JOSEPH KEBELLOW 4TH CLAIMANT
RUTH J. KIPROTICH 5TH CLAIMANT
OSCAR CHERUIYOT 6TH CLAIMANT
SALLY CHESACH & 335 OTHERS 7TH CLAIMANT**

AND

TEACHERS SERVICE COMMISSION RESPONDENT

JUDGMENT

1. The Claimants are all employees of the Respondent who at the time material to this suit were serving as teachers in various schools within the former Eldoret Municipality School.
2. The Claimants instituted the suit herein against the Respondent vide a Statement of Claim dated 12th September 2017 seeking the following reliefs:
 - i. A declaration that neglecting to enhance their house allowance is discriminatory
 - ii. Payment of enhanced new house allowances backdated to July 2015
 - iii. Costs of this suit
 - iv. Any other award as the court deems fit to grant in the circumstances.



3. In their Statement of Claim, the Claimants aver that on 20th June 2016, through their union, Kenya National Union of Teachers (KNUT), they entered into a Collective Bargaining Agreement with the Respondent to increase their basic salaries and other allowances including house allowances.
4. They contend that as a result, house allowances were enhanced and have since been paid in three phases.
5. The Claimants aver that Eldoret has five zones in the former Municipality schools namely: Pioneer, Kapsoya, Kibulgeny, Kapyemit and Chepkoilel and that out of the five zones in the former municipality schools, only teachers in 2 Zones (Pioneer and Kapsoya) benefited in the enhanced house allowance increase. They therefore contend that teachers in the other 3 zones were discriminated.
6. It is their case that the discrimination in the payment of their house allowances denied them their right to fair administrative action and caused them anguish and hardship.
7. The Claimants thus Claimed against the Respondent payment of the new house allowances backdated to July 2015.
8. In addition to the Statement of Claim dated 12th September 2017, the Claimants filed:
 - a. A Verifying Affidavit sworn on 13th September 2017 by Daniel Mugo Kiwo on behalf of the other Claimants
 - b. A supporting affidavit sworn on 13th September 2017 by Daniel Mugo Kiwo on his behalf and on behalf of the other Claimants
 - c. Documents under a list of documents dated 12th September 2017, a further list of documents dated 26th September 2018 and a supplementary list of documents dated 28th July 2023.
 - d. Witness statements sworn by Daniel Mugo filed with the Claimants Statement of Claim and the Claimant's further witness statement dated 28th July 2023.
 - e. Claimants affidavit sworn 14th November 2023 by Daniel Mugo Kiwo.
9. In response to the Statement of Claim, the Respondent filed a Memorandum of Response dated 13th October 2017, list of documents dated 24th November 2017, further list of documents dated 31st August 2018 and a Witness Statements by one Zachary Audi dated 31st August 2018.
10. In its Memorandum of Response, the Respondent denied discriminating against the Claimants in respect of payment of enhanced house allowances. According to the Respondent, the Claimants being teachers within Kibulgeny, Kipyemit and Chepkoilel Zones do not belong to the former Eldoret Municipality and are therefore not eligible for payment of the enhanced house allowance.
11. It is the Respondent's case that the instant claim is baseless as it is ill-informed. The Respondent prayed for the dismissal of the Claimants' suit with costs.
12. On 2nd November 2023, the court while appreciating that the issue before it was only on enhancement of house allowance to the Claimants, directed for the suit to proceed by way of affidavits, sworn witness statements, documents filed and written submissions.
13. From the record, the Claimants filed three sets of submissions. They are dated 5th February 2019, 6th February 2019 and 16th November 2023. The Respondent filed its submissions dated 3rd April 2019.



Claimants submissions

14. In their submissions, the Claimants submitted that all the primary schools within Kibulgeny zone, Chepkoilel zone and Kapyemit zone fall within the former Eldoret Municipality Schools as evidenced by the letter dated 25th March 2013 written by the then town clerk municipal council of Eldoret addressed to the Ministry of Education Science and Technology entitled “Handing over of Schools” showing schools that were under the former Eldoret Municipality, all zones and schools that fall therein.
15. The Claimants gave an example of Kibulgeny zone where there are eleven (11) primary schools and submitted that only teachers in Kiptanui Primary Schools receive the enhanced House Allowance while teachers in ten (10) school do not receive it and therefore they are discriminated against. It is the Claimants’ submission that the teachers live in the same neighborhood but others receive higher house allowances despite the fact that they are in the same job group.
16. On the issue of discrimination, the Claimants submit that they have been discriminated in the payment of the enhanced house Allowances as per the Collective Bargaining Agreement (CBA) signed on 26th March 2013 between the Claimants’ union (KNUT) and the Respondent.
17. While demonstrating the said discrimination, the Claimants submitted that with respect to the 1st Claimant herein Mr. Daniel Mugo Kiwo a teacher in Kidiwa Primary School that falls under Kibulgeny Zone, he gets a monthly rental house allowance of Kshs. 13,000/= whereas his counterpart Mr. Birgen Juliana Kiprono a teacher at Hill Primary School within Pioneer zone gets a monthly rental allowance of Kshs.22,000/=. It is submitted that both Kibulgeny zone and pioneer zone were under former Eldoret Municipality and that as such, there is no justification why teachers in the same job group under the same former municipality should get different rental house allowances from the same employer.
18. The Claimants urged the court to make a finding that they have been discriminated against and to allow the prayers sought in the Statement of Claim.

Respondents’ submissions

19. On its part, the Respondent submitted that its witness, Zachary Audi in his Witness Statement dated 31st August 2018, demonstrated to this court that the Respondent has not only correctly paid house allowance to all teachers in its employ, but that specifically, the Respondent has correctly paid house allowance payable to all teachers posted to teach in Kibulgeny, Kapyemit and Chepkoilel within Eldoret Municipality.

Determination

20. The issue that falls for this court’s determination from the pleadings on record are whether the Claimants are entitled to the enhanced house allowance paid to teachers in Eldoret Municipality and if they were discriminated.
21. From the record, on 28th February 2024, the counsel for the Claimants Mr. Mukabane and Counsel for the Respondent Ms. Omusundi appeared before the court and informed the court that parties were negotiating in a bid to settle the matter out of court and had agreed on all issues save for the mode of payment. Counsels sought for one week to record a consent on the matter which prayer was granted by the court.



22. On 7th March 2024, the Claimant's counsel was in court while Ms. Ngere appeared holding brief for Omusundi for the Respondent. Ms. Ngere informed the court that the negotiations had reached a dead end as the Claimants' Counsel wanted the payments to be made to him directly for onward transmission to the Claimants while the Respondent wanted to pay the Claimants through payroll.
23. By an affidavit sworn on 17th May, 2024, Daniel Mugo Kiwo states that the Claimant's wish to have the payments made through their advocates. He listed the reasons for the said position. This being the normal process for payment of decretal sums, the court directs that the Respondent pays the arrears of house allowance through the advocates for the Claimants.
24. Consequently, judgment is entered in favour of the Claimants against the Respondent in the following terms:
 - i. The Respondent is directed to pay the Claimants the enhanced new house allowances which allowances are to be backdated to July 2015 or as has been agreed by the parties.
 - ii. The Claimants are awarded costs of this suit.
 - iii. Decretal sum to be paid through the advocates for the Claimants.
25. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 13TH DAY OF FEBRUARY 2025

MAUREEN ONYANGO

JUDGE

