



REPUBLIC OF KENYA



**Njoroge & 36 others v University of Nairobi (Cause E378 of 2023 & E458 of 2022  
(Consolidated)) [2025] KEELRC 797 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 797 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E378 OF 2023 & E458 OF 2022 (CONSOLIDATED)**

**S RADIDO, J  
MARCH 13, 2025**

**BETWEEN**

**KAHIGA PAUL NJOROGE ..... 1<sup>ST</sup> CLAIMANT  
DOMNIC MUNENE MBOGO ..... 2<sup>ND</sup> CLAIMANT  
NJENGA PETER NGANGA ..... 3<sup>RD</sup> CLAIMANT  
NEWTON AKUNGA MORIASI ..... 4<sup>TH</sup> CLAIMANT  
ALFRED LIHANDA KAHU ..... 5<sup>TH</sup> CLAIMANT  
JAMES OPONDO OKERE ..... 6<sup>TH</sup> CLAIMANT  
JOHN MURIITHI MURIMI ..... 7<sup>TH</sup> CLAIMANT  
MIZPAH MUTISO NDAMBUKI ..... 8<sup>TH</sup> CLAIMANT  
KIPROP BETT PHILIP ..... 9<sup>TH</sup> CLAIMANT  
NGUGI SAMUEL NDUNGU ..... 10<sup>TH</sup> CLAIMANT  
RUTO MATHEW KIPRONO ..... 11<sup>TH</sup> CLAIMANT  
OSUSU MICHOLUS OKARI ..... 12<sup>TH</sup> CLAIMANT  
DERE SAMSON OMOLLO ..... 13<sup>TH</sup> CLAIMANT  
NICHOLAS MUIRURI MWANGI ..... 14<sup>TH</sup> CLAIMANT  
HENRY GATHIMBA MWANGI ..... 15<sup>TH</sup> CLAIMANT  
IBRAHIM ORINA BIBAO ..... 16<sup>TH</sup> CLAIMANT  
GILBERT A ESIARANDA ..... 17<sup>TH</sup> CLAIMANT  
KENNEDY OTIENO ORAYO ..... 18<sup>TH</sup> CLAIMANT  
CALVIN MBERA NYARENCHI ..... 19<sup>TH</sup> CLAIMANT**



WILBERFORCE JOSEPH ALI .....	20 <sup>TH</sup> CLAIMANT
OGANGA BERNARD O .....	21 <sup>ST</sup> CLAIMANT
OMER MAURICE OWINO .....	22 <sup>ND</sup> CLAIMANT
RONALD FRANCIS NYABENDE .....	23 <sup>RD</sup> CLAIMANT
RONALD LUBIDU KIDAHA .....	24 <sup>TH</sup> CLAIMANT
EDWARD MWANZA MUTHANGYA .....	25 <sup>TH</sup> CLAIMANT
FREDRICK WANDERA OYUGI .....	26 <sup>TH</sup> CLAIMANT
NYABUTO OGOTI MONDA .....	27 <sup>TH</sup> CLAIMANT
PETER OUTA OBAT .....	28 <sup>TH</sup> CLAIMANT
MIRA DANIEL MURIUKI .....	29 <sup>TH</sup> CLAIMANT
WANYAMA RAPHAEL JAMES .....	30 <sup>TH</sup> CLAIMANT
PROTUS O EGESA .....	31 <sup>ST</sup> CLAIMANT
RICHARD K BIWOTT .....	32 <sup>ND</sup> CLAIMANT
WANGUI FLAVIAN MAINA .....	33 <sup>RD</sup> CLAIMANT
KIMAGA DANIEL M .....	34 <sup>TH</sup> CLAIMANT
EDEWA HENRY OKARWA .....	35 <sup>TH</sup> CLAIMANT
ELISA VANSON K KAREGA .....	36 <sup>TH</sup> CLAIMANT

AND

UNIVERSITY OF NAIROBI ..... RESPONDENT

AS CONSOLIDATED WITH

CAUSE E458 OF 2022

BETWEEN

FRANK ESEVWE ..... CLAIMANT

AND

UNIVERSITY OF NAIROBI ..... RESPONDENT

### JUDGMENT

1. The 36 Claimants sued the University of Nairobi (the Respondent) on 15 May 2023, and they stated the Issue in Dispute as:

**Wrongful and unjustified deduction of house allowance.**

2. The Respondent filed a Response and Counterclaim on 8 June 2023.



3. On 7 December 2023, the Principal Judge ordered that this Cause be consolidated with Nairobi Cause No. E458 of 2022, Frank Esevwe v University of Nairobi.
4. On 11 December 2024, the parties appeared before the Deputy Registrar who directed them to appear before this Court on 3 February 2025.
5. When the Cause was called out on 3 February 2025, the Respondent despite being aware of the session did not attend. The Claimant proposed that the Cause be heard on the basis of the record and submissions to be filed and the Court directed the filing and exchange of submissions.
6. The Claimants filed their submissions on 4 February 2025, and the Respondent on 13 February 2025.
7. The Claimants identified the Issues for Determination as:
  - i. Whether the Respondent's unilateral reduction of the Claimants' house allowance was lawful?
  - ii. Whether the Claimants are entitled to the remedies sought?
8. The Respondent set out the Issues for the Court's examination as:
  - i. Whether the subject matter of house allowance Kshs 17,013/- is a right or a benefit to the Claimants?
  - ii. Whether the Claimants were entitled to a house allowance Kshs 17,013/- duly negotiated by a Union they are not subscribing to its membership?
  - iii. Whether the Claimants were heard before the contested house allowance Kshs 17,013/- was adjusted to 15% of basic salary in line with principle of house allowance set out in the minimum Wage Order and decided Court cases?
  - iv. Whether the Claimants are required to refund public funds paid to them in error above the 15% of basic salary in line with principle of house allowance set out in minimum Wage Order?
9. The Court has considered the pleadings, evidence and submissions.

### **Res judicata**

10. The Respondent contended in its Response that the Cause was res judicata because the factual and legal issues arising had been the subject of adjudication and determination on 19 May 2022 in Nairobi Cause No. 511 of 2016, Frank Esevwe & 57 Ors v University of Nairobi.
11. The parties did not place the pleadings in Nairobi Cause No. 511 of 2016 before the Court. The Claimants however filed a copy of the judgment with their submissions.
12. The issue in dispute therein can be gleaned from paragraphs 6 and 7 of the judgment:
  6. The respondent has since issued notices to the Claimants that it will reduce house allowances from Ksh (Kenya Shillings) 17,013 to Kshs 10,317 with effect from March 1, 2016. The claimants have been earning a house allowance of Kshs 17,013 and the reasons for the reduction is not given or justified.
  7. Under the agreement between the respondent and the trade union, parties had agreed that house allowance be paid at Ksh 20,416 but the respondent paid Ksh 17,013 and before they could claim the underpayments, the new notice to further reduce the allowance was issued.....



13. Paragraph 7 of the judgment suggests that central to the dispute was an agreement reached on 19 March 2014 between the Respondent and a trade union to the effect that house allowance be set at Kshs 20,416/- and not Kshs 17,013/-.
14. The Court's findings before the fashioning of appropriate orders were outlined in the following paragraphs:
  53. In this regard, the claimants claim outside the letters of appointment as drivers, the applicable Regulation of Wage Orders for a house allowance that is above 15% of their basic wage is not lawful and in this regard is not justified.
  54. Ultimately, there is no evidence that the SRC approved any salary increase or a review to the house allowance as alleged by the claimants. The same body has the mandate to review, harmonise and determine the cycle of salaries in public service and recommend a review.
  55. Since the orders of February 16, 2017, have applied herein to allow for hearing of the suit on the merits, any payments done in this regard shall suffice and revert to a house allowance at 15% of the due basic wage unless revised under a CBA under which the claimants are beneficiary as members or under agency.
15. The gravamen of the Claimants' claim in the present Cause was set out in the following paragraphs:
  - 5: On or about June 2022 the respondent issued the claimant with letters and or notices allegedly reducing house allowance to resonate with an alleged court order (attached herein and marked as DRIVERS 2 are copies of the sample notices and letters issued).
  6. The claimants aver that they were never served with the alleged court order but have taken liberty to get a copy of the court's decree (attached herein and marked as DRIVERS 3 is a copy of the court's decree in Cause No. 511 of 2016, Frank Esevwe & 57 Ors v University of Nairobi).
  7. The claimants aver that there exists no such order authorising the Respondent to reduce house allowance.
  8. It thus follows that the claimants' house allowance ought to remain as it were in the employment and appointment letters without any deduction effected upon that aspect of pay.
  9. The Claimants aver that as drivers their monthly house allowance is pegged at Kshs 17,013 and has been that way since they were employed by the Respondent (attached herein and marked as DRIVERS 4 are copies of pay slips for the month of May 2022).
16. The Claimants action was precipitated by letters dated 21 June 2022 from the Respondent that were in the following terms:

Implementation of Cause No. 511 of 2016 Court Ruling (Frank Esevwe & 57 Others vs University of Nairobi)

Subsequent to the Court ruling delivered on May 19, 2022, for Cause No. 511 of 2016 involving Frank Esevwe & 57 others versus University of Nairobi, you being one of the parties, this is to inform you that the University has taken steps to comply with the Court order.

Please note in this respect therefore that your house allowance has been adjusted payable at the rate of fifteen per cent (15%) of your basic salary with effect from the date of this letter.



17. From the above, it is not in doubt that the Respondent's decision evinced through the letters dated 21 June 2022 was in furtherance of its interpretation of the directions given by the Court in paragraph 55 of the judgment.
18. The Claimants interpreted the letters as constituting a fresh cause of action of unilateral variation of terms and conditions of service contrary to the demands of section 10(5) of the *Employment Act*, 2007.
19. In this Court's view, the decision of the Respondent through the letters dated 21 June 2022 was contingent on the Court's judgment delivered on 19 May 2022 and did not constitute a fresh cause of action since the Court had already declared itself on the legality of variation of the house allowance.
20. The conclusions hereinabove make it unnecessary to discuss each of the related Issues identified by the parties.

### **Unilateral variation of a term of a contract**

21. Section 10(5) of the *Employment Act*, 2007 places fetters on the unilateral variation of certain terms and conditions of employment and these include remuneration and other benefits.
22. The variation was based on a direction by the Court in its judgment delivered on 19 May 2022. The Court directed:

.... Any payments done in this regard shall suffice and revert to a house allowance at 15% of the due basic wage unless revised under a CBA under which the claimants are beneficiary as members or under agency.
23. The decision by the Respondent was purportedly made on the strength of a Court order and, therefore, is not subject to section 10(5) of the *Employment Act*, 2007.
24. If the Claimants were not satisfied with the finding, the appropriate option would have been to appeal to the Court of Appeal. It is not open to this Court to revisit, recall or review the finding.

### **Counterclaim**

25. The Respondent counterclaimed against the Claimants for what was pleaded:
  3. The Claimant states that on various date in or about/before 2014 - 2015, the Respondents were erroneously paid house allowance resulting into some drivers earning more house allowances than their basic pay wage.
  4. That the accounting error resulted in wage overlaps among drivers and thus need to be corrected in line with the *Employment Act*.
  5. The Claimant therefore seeks the overpayment as a counter claim recovery from the Respondents as highlighted here below:-

.....
26. It is clear that the Counterclaim seeks payments pleaded to have been made in 2015 or before. The instant Cause was filed in Court on 11 May 2023 and the Counterclaim on 8 June 2023, more than 3 years after the alleged cause of action accrued.
27. The Counterclaim is caught up by the limitation prescription of 3 years in section 90 of the *Employment Act*, 2007 and is for dismissal.



### **Conclusion and Orders**

28. The Causes and Counterclaim are both dismissed.

29. None of the parties have succeeded. Each party to bear own costs.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 13<sup>TH</sup> DAY OF MARCH 2025.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Claimant Omongo Gatune & Co. Advocates

For Respondent Fredrick Collins Omondi, Director Legal & Corporate Services

Court Assistant Wangu

