



Kiwo & 341 others v Teachers Service Commission (Employment and Labour Relations Cause 244 of 2017) [2025] KEELRC 1903 (KLR) (27 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1903 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS CAUSE 244 OF 2017**

MA ONYANGO, J

JUNE 27, 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 & 335 OTHERS & 335
OTHERS 7TH CLAIMANT**

AND

TEACHERS SERVICE COMMISSION RESPONDENT

RULING

1. Judgment in this suit was delivered on 13th February, 2025, wherein this court ordered as follows:
 - 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.
2. Vide an application dated 4th March, 2025, the Respondent seeks review of the said judgment on grounds that there is discovery of new and important evidence which despite the exercise of due diligence, was not within the knowledge of the Respondent.



3. The Application is supported by the grounds on its face and the affidavit of Mollet Sango the Applicant's Acting Director of Human Resource Management and Development.
4. The application is brought under section 16 of the *Employment and Labour Relations Court Act*, Rule 74 of the Employment and Labour Relations Court (Procedure) Rules, 2024 and all other enabling provisions of the law.
5. Ms. Mollet Sango deposes that contrary to the averments in the affidavit of Daniel Mugo Kiwo sworn on 17th May, 2024 to the effect that the Claimant's wish to be paid the decretal sum through their advocate, the Claimants have written to the Respondent requesting to be paid directly to their individual pay point bank accounts.
6. She further deposes that the Secretary General of the Kenya National Union of Teachers (KNUT) has also written to the Respondent stating that the Claimants being members of the union have lodged a complaint with the union on the direction to pay the decretal sum to the advocate.
7. The letters from the employees to the Respondent requesting to be paid directly through their salary accounts have been appended as exhibits to the affidavit. The letter from the union containing a list of the names of the Claimants who approached the union has also been appended to the affidavit.
8. The affiant expresses fears that the issue is likely to cause industrial action hence this application.
9. The Claimants vehemently oppose the application through the replying affidavit of Daniel Mugo Kiwo, the 1st Claimant in which he denies that the Claimants requested to be paid directly. He deposes that templates were sent to the Claimants through their heads of stations directing the affected teachers to write and sign letters requesting to be paid directly. Further, that the Claimants met and restated their desire to be paid through the advocate following which a joint letter was written by the Claimants to the Respondent to that effect. A copy of the said letter dated 26th February, 2025 and accompanied by a list of 192 names and signatures is annexed to the affidavit as Exh. "DM-1". In the letter the Claimants state that some of their colleagues have been threatened with unspecified consequences including transfer to remote areas and stagnation in terms of promotions should they not write and send the letters to the Respondent.
10. The Claimants filed a further affidavit sworn on by the Claimants namely-
 1. JAne W. Kefa
 2. Sally Chsanch,
 3. Oscar Cheruiyot,
 4. Joseph K. Kebellow,
 5. Jane Njuguna
 6. Leonara Achieng
 7. Phillipine Maiyo
 8. Florence Eliga
 9. Teresa Wanyonyi
 10. Martha Choge



11. In the Further affidavit they state that they have instructed the 1st to 7th Claimants to sign a consent with the advocate to the effect that payment should be made through the advocate.
12. From the contents of the affidavits from both parties, it is apparent that there is a problem over the payment of the decretal sum. I will therefore not go into the technicalities of determining the application which in my view is not the proper way to resolve the impasse that is evident in documents and averments in the affidavits on record.
13. The role and objective the court is to do justice to all without undue recourse to legal technicalities. It is clear that there are fears and/or concerns by some of the Claimants over whether they will receive their entitlement from the judgment.
14. The only reason why payments arising from decisions of courts are made through advocates is because an advocate has a lien over the decretal sum until the advocate's fees are paid.
15. The court notes that in this case, due to the number of Claimants involved, a few of them were chosen to act on behalf of all the Claimants in a representative capacity. The court further notes that after the judgment was delivered in favour of the Claimants divisions have emerged among the Claimants over the disbursement of the decretal sum.
16. In order to address the interests of all parties concerned the court makes the following orders:
 - i. That counsel for the Claimants files his bill of costs within the next 14 days,
 - ii. That the bill of costs be fixed for taxation before the taxing master within 30 days of filing,
 - iii. That if there is an agreement in respect of fees between the Claimants and their advocate the same be filed together with the Bill of Costs,
 - iv. That the decretal sum be paid to the Claimants directly in their salary accounts,
 - v. That the amount in the Bill of Costs together with the taxed costs, increased by one-half as provided in the Advocates Remuneration Order or the fees agreed between the Claimants and their Advocate, if any, be divided equally among all the Claimants and be withheld by the Respondent from the sums due to the Claimants for onward transmission to the Advocate by the Respondent,
 - vi. That once confirmed, the decretal sum together with advocates fees be paid within 90 days.
17. The judgment of this court is accordingly reviewed.
18. A date for mention to confirm compliance with these directions shall be taken at the time of delivery of this ruling.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 27TH DAY OF JUNE 2025

MAUREEN ONYANGO

JUDGE

