



**Kenya Union of Pre-Primary Education Teachers v Meru County Public Service Board & another;  
Salaries and Remuneration Commission & another (Interested Parties) (Employment and  
Labour Relations Cause E014 of 2024) [2025] KEELRC 1975 (KLR) (3 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1975 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E014 OF 2024  
ON MAKAU, J  
JULY 3, 2025**

**BETWEEN**  
**KENYA UNION OF PRE-PRIMARY EDUCATION TEACHERS ..... CLAIMANT**  
**AND**  
**MERU COUNTY PUBLIC SERVICE BOARD ..... 1<sup>ST</sup> RESPONDENT**  
**COUNTY SECRETARY MERU COUNTY GOVERNMENT .. 2<sup>ND</sup> RESPONDENT**  
**AND**  
**SALARIES AND REMUNERATION COMMISSION ..... INTERESTED PARTY**  
**PUBLIC SERVICE COMMISSION ..... INTERESTED PARTY**

*(Before Hon. Justice Onesmus N Makau on 3rd July, 2025)*

**JUDGMENT**

**Introduction**

1. The claimant is a registered trade union with the mandate to represent, protect and promote the interests of ECDE Teachers in Kenya. The 1<sup>st</sup> respondent is the board which employs workers in Meru county government, while the 2<sup>nd</sup> respondent is the head of public service in Meru County Government. The 1<sup>st</sup> interested party (SRC) is an independent commission created by *the Constitution* to among other things advise County governments on the remuneration and benefits for the public officers in the county public service. The 2<sup>nd</sup> interested party (PSC) is an independent commission created by *the constitution* to among other things, determine appeals emanating from the decisions of 1<sup>st</sup> respondent.
2. By a statement of claim dated 17<sup>th</sup> May 2024, the claimant seeks the following reliefs: -



- a. That this Honourable Court do order the 1st Respondent under the supervision of the SRC, (1<sup>st</sup> Interested Party herein), to appropriately grade and pay the grievants herein in accordance with the Applicable Schemes of Service for the ECDE Teachers.
  - b. That this Honourable Court do order the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to pay the grievants herein the salary difference between the actual salary as per appropriate job groups and the actual salary they have been subjected to with effect from 1<sup>st</sup> July 2023.
  - c. That a declaration be issued that the grievants are entitled to annual leave.
  - d. That this honorable court do issue order for payment of pro-rated annual leave for the period from August 2016 to date.
  - e. That the Respondents be ordered to pay the grievants the 10 percent salary increase calculated from the SRC-advised Basic Salary for the grievants with effect from 1<sup>st</sup> of July 2023.
  - f. That a declaration that Salaries and Remuneration Commission failed in its mandate to enforce its advisory on remuneration resulting in the violations complained of in the instant case.
  - g. That a declaration that the Public Service Commission through its decision dated 13<sup>th</sup> March 2024 and communicated under cover letter REF: PSC/CAP/12/047/2024(11), dated 15<sup>th</sup> March 2024, failed in its mandate to consider the Appeal before it on merit.
  - h. That a declaration be issued that the Public Service Commission has mandate to handle any appeal arising, not only from expressly written decision of the County Public Service but from acts of omission or commission by the County Public Service which constitutes violations of the terms and conditions of service of any aggrieved public officer.
  - i. That costs of this suit be provided for by the Respondents.
3. The 1<sup>st</sup> respondent never filed any response to the statement of claim, but the 2<sup>nd</sup> respondent filed a response to the claim dated 9<sup>th</sup> September 2024 denying all the accusations by the claimant. It further averred that the suit is incompetent and prayed for its dismissal with costs.
  4. The 2<sup>nd</sup> interested party never filed any response, but the 1<sup>st</sup> respondent filed a statement of response dated 8<sup>th</sup> November 2024, admitting that it advised the county governments on the remuneration and benefits of ECDE teachers vide letter Ref: NO. SRC/TS/29(81) dated 10<sup>th</sup> August 2023 and the advice is mandatory and binding on all the county governments, including the respondent herein. As such it prayed the court to compel the respondents to implement the said advice by paying the ECDE teachers the salaries and allowances set out in the circular. However, it took issue with the alleged 10 percent salary increment given by the President on 1<sup>st</sup> May 2023 and put the claimant to strict proof. Finally, it denied any wrongdoing and prayed for the claim against it to be dismissed with costs.
  5. During the hearing, the claimant's General Secretary Mr. Samuel Opiyo, testified as CW 1, while the 2<sup>nd</sup> respondent, Dr. Kiambi Atheru, testified as RW 1. The rest of the parties never called any witnesses.

## Evidence

6. CW 1 adopted his written statement dated 17<sup>th</sup> May 2024 as his evidence and produced a bundle of six (6) documents as exhibits. He stated that the claim is brought on behalf of 255 grievants who are members of the claimant in the respondent's workforce. He stated that the grievants were appointed



- on permanent and pensionary terms by letters dated 17<sup>th</sup> August 2016 and confirmed by letters dated 19<sup>th</sup> May 2020.
7. He testified that all the grievants were placed in Job Group D regardless of whether they held certificates, diplomas or degrees. Some were given job title of Care Givers and others Senior Support Staff. They also receive the same salary being basic salary of Kshs.19,220, house allowance of Kshs. 2,750 and commuter allowance of Kshs.3,000/= totaling to gross monthly pay of Kshs.24,970.
  8. He stated that, in January 2021, the council of governors approved Scheme of service for the ECDE teachers to be adopted by all the counties with effect from 1<sup>st</sup> July 2021, but the respondents have to date failed to do so.
  9. Again, on 1<sup>st</sup> May 2023, during the Labour day celebrations, the Head of State announced a 10 percent salary increase to all the public officers but the grievants were excluded while the rest of the respondents' staff were awarded the same.
  10. Further by a letter dated 10<sup>th</sup> August 2023, the SRC advised all the county governments through the respective county secretaries and secretaries to the county public service board on the remuneration and benefits payable to public officers in the county public service. The SRC circular advised on the remuneration to be paid to certificate, diploma and degree holders in graduated scales.
  11. The salary scale for certificate (JG G) is Kshs.23,700 – 31,450, diploma (JG H) Kshs.26,900 – 35,380, and degree (JG K) Kshs.39700 – 52960. House allowance and commuter allowance for certificate (JG G) is Kshs.3,850 and 4000 for diploma (JG H) Kshs.5,000 and Kshs.4,000 and for degree (JG K) Kshs.8,133 and 5,000 respectively. Accordingly, the gross pay for certificate (JG G) is Kshs.34,450 – 42200, diploma (JGH) Kshs.46700 – 56,690 and degree (JG K) Kshs.61,200 – 74,460.
  12. He stated that the said basic structure in the circular dated 10<sup>th</sup> August 2023 is the same for the county executive but the ECDE teachers were given an appointment letter giving them basic salary of Kshs.10,380 which later increased to Kshs.19,220, housing and commuter allowances of Kshs.2,750 and Kshs.3,000 respectively, totaling to Kshs.24,970.
  13. He contended that the implementation note 7 advised that ECDE teachers be placed in the remuneration structure advised in the circular. He denied the respondents case that a CBA is required between the claimant and the county government before the SRC advise is implemented.
  14. On cross examination he admitted that the appointment letter for the ECDE teachers placed them in Job Group D. He further admitted that SRC circular provided for minimum basic salary of Kshs.16,870 for Job Group D and a maximum of Kshs.19,200 while cluster 3 (former municipalities) house allowance of Kshs.2,750. However, he contended that even if the ECDE teachers in job group D were receiving the pay advised by the SRC, the same was only for the certificate holders.
  15. He admitted that the same matter in this suit was in the claimant's appeal before the PSC case No. E047 of 2023, but the appeal was struck out because its jurisdiction was only exercisable where there is a decision by the county public service board. He admitted that he never engaged the respondents in writing though he visited the 1<sup>st</sup> respondent's officer but got no chance to talk to him.
  16. He admitted that the claimant has no Recognition Agreement with the county government of Meru. He admitted that the respondent has employed many ECDE teachers, but only 255 are members of the claimant union. He admitted that some of the grievants may have died and others left employment. He contended that the claimant did not require written authority from its members to sue.



17. He contended that the respondents have discriminated against grievants with respect to terms and conditions of service by placing all of them under job Group D regardless of their academic qualifications, which is not the case for other employees. He admitted that he never wrote any complaint to the respondents about the discrimination, but he further contended that the grievants are the only employees who are not given leave although they are paid leave travelling allowance at the end of the year.
18. He maintained that the President gave a 10 percent salary increment to all public officers but admitted that he did not have any documentary evidence of the same. He contended that the SRC circular dated 10<sup>th</sup> August 2023 applied to the county executive, which includes staff of the arm of the county government employed by the county public service board.
19. He accused the SRC of failure to enforce its circular on remuneration and benefits in favour of the ECDE teachers. He contended that the qualification of ECDE teacher is a certificate or diploma, or degree plus registration by TSC and admitted that the claimant has not indicated the academic qualification for each grievant. He further admitted that the SRC circular does not offer payment according to academic qualifications but job groups.
20. Finally, he contended that he has filed a circular from the council of governors (Document 5) on the schemes of service for ECDE teachers, but admitted that it does not mention academic qualifications.
21. RW 1 adopted his written statements dated 15<sup>th</sup> January 2025 as his evidence and produced two documents as exhibits. In brief, he testified that the 1<sup>st</sup> respondent advertises position of ECDE teacher as job group D and then appoints them in the same job group. The current salary is as advised by the SRC circular, being basic Kshs.19,220, housing Kshs.2750 and commuter allowance Kshs.3,000. He denied that there are ECDE teachers in Meru with diplomas and degrees.
22. He denied the alleged discrimination and averred that they have never received any complaint from the ECDE teachers on the same or on denial of annual leave. They have also not received any complaint letter from the claimant about discrimination and it has never sought audience with the respondents.
23. As regards the 10 percent salary increment by the president, he stated that no circular was received from the government about the same. He contended that any salary increment, including the claim by the claimants, will raise the wage bill from 48 percent to 50 percent. He contended that the counties are required by the Controller of Budget to reduce their wage bill to 35 percent.
24. On cross-examination, he maintained that the respondents make advertisements for ECDE teachers with certificates and TSC registration and appointments are in job group D. He stated that he was not sure whether there are diploma ECDE teachers employed in the county because upon advertisement, the candidates who applied had certificates only.
25. He admitted that circular (document 5) talks of schemes of service for ECDE teachers for recruitment and career progression, but he denied ever seeing the said schemes of service. He added that the said schemes of service has not been produced as an exhibit besides they have frozen new appointments due to wage bill challenges.
26. He maintained that ECDE teachers were graded job group D and are being paid according to the SRC circular. He denied having seen the SRC circular but maintained that ECDE teachers are employed with a certificate qualification. He contended that no ECDE teacher had made any application to the county HR MAC for upgrading after getting a diploma or degree.



27. He admitted that the SRC circular in issue applies to ECDE teachers just like the other county employees. He clarified that the Kshs.144,000,000/= wage increase is just the 10 percent salary increase allegedly given by the president and not the one claimed under the SRC circular.
28. After the hearing, both sides filed written submissions.

### **Issues for Determination and Analysis**

29. I have carefully considered the pleadings, evidence and submissions. It is common ground that by the letter Ref: NO. SRC/TS/29(81) dated 10<sup>th</sup> August 2023, by the SRC addressed to all County Governors, all County Secretaries and all Secretaries of County Public Service Boards, advised County Governments on the remuneration and allowances for public officers (non-state officers) in the County Governments. The issues for determination are:
  - a. whether the Claimant lacks the locus standi to bring this suit on behalf of the grievants for want of a recognition agreement.
  - b. Whether the suit is prematurely before the Court for failure to exhaust internal mechanism.
  - c. Whether the respondents are bound to pay the their ECDE teachers the remuneration and allowances as per the SRC advice conveyed vide the letter Ref: NO. SRC/TS/29(81) dated 10<sup>th</sup> August 2023.
  - d. Whether the respondents are bound to pay the ECDE teachers 10% salary increment awarded by the President on during labour day celebrations on 1<sup>st</sup> May 2023.
  - e. Whether the Claimant is entitled to the reliefs sought.

### **Whether the claimant lacks Locus standi to bring this suit**

30. The 2<sup>nd</sup> respondent averred that the claimant lacks the locus standi to sue on behalf of the grievants herein because it has no Recognition Agreement with the respondents. This is not the first time such controversy has found itself in the court corridors. In the case of Modern Soap Factory v Kenya Shoe and Leather Workers Union (Civil Appeal No 37 of 2019) the Court of Appeal held that:

“ 16. Article 41 of *the Constitution* of Kenya on labour relations protects the right of every person to fair labour practices and the right, among others, to join a trade union, which in turn has the right to determine its activities. Article 258 of *the Constitution* on enforcement of *the Constitution* provides in Article 258(2)(d) that an association acting in the interest of one or more of its members may institute proceedings where *the Constitution* is contravened or threatened with contravention...

17. We can see no reason therefore to fault the conclusion by the Judge that the respondent has locus standi to institute the claims on behalf of its members. That said, whether an employee is a member of a union is a question of fact. Where there is a contest as to whether an employee is a member of a union, evidence would be required to settle that question. It is not a matter that is amenable for determination on the basis of a preliminary objection. (see Mukisa Biscuits Manufacturing co. Ltd v West End Distributers Ltd [1969] EA 696)



18. A recognition agreement is defined under Section 2 of the *Labour Relations Act* as an agreement in writing made between a trade union and an employer, group of employers or employers' organisation regulating the recognition of the trade union as the representative of the interests of unionisable employees employed by the employer or by members of an employers' organisation. It is a bilateral agreement between a trade union and an employer on the basis of which the trade union engages with the employer regarding the terms and conditions of employment of its members. It is not the basis upon which the trade union represents its members in court. As the learned Judge correctly stated, the two roles are distinct.”

31. The above decision binds this court and therefore I reject the objection by the 2<sup>nd</sup> respondent and find that the claimant has the locus standi to bring this suit on behalf of its members, to agitate for their labour rights.

### **Whether the suit is prematurely before the Court.**

32. There is no dispute that the claimant filed an appeal before the PSC challenging the failure by the respondents to implement the SRC advice conveyed vide the letter Ref: NO. SRC/TS/29(81) dated 10<sup>th</sup> August 2023. The PSC declined jurisdiction on ground that there was no decision made by the CPSB on the said advice by the PSC and struck out the appeal. The claimant never challenged the decision by the SRC but instead brought the instant suit accusing the respondents of discrimination against the grievants. The suit is further agitating for the grievants' constitutional right to fair labour practices including the right to fair remuneration as guaranteed under Article 41 of *the Constitution* and section 38 of the *Early Childhood Education Act*, 2021.

33. Having considered the totality of the dispute and the circumstances of the case, I am satisfied that this court has jurisdiction to determine the suit. The suit involves violation of a right protected in the Bill of Rights which can best be resolved by the court as it enjoys unlimited original jurisdiction to determine employment and labour relations disputes by dint of Article 162(2)(a) and 165(5) of *the Constitution* read with section 12 of the *Employment and Labour Relations Court Act*. Besides, the parties have subjected themselves before the court by filing pleadings, prosecuting them and invited the court to render a judgment on the matter.

34. Again, this court cannot just sit and fold its hands when there is a dispute falling within its jurisdiction simply because the public organs clothed with administrative powers to adjudicate over it, fail to perform the statutory functions or because of some legal technicalities. I gather support from the case of *Fleur Investments Limited v Commissioner of Domestic Taxes & another* [2018] eKLR where the court held that:

“... Whereas courts of Law are enjoined to defer to specialized Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under *the Constitution* and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly.”



**Whether the respondents are bound to pay ECDE teachers as per the SRC advice dated 10<sup>th</sup> August 2023.**

35. The 2<sup>nd</sup> respondent contended that the advice by the SRC was subject to adoption by the employer and conclusion of a CBA between the employer and the claimant union. However, the claimant averred that the advice on remuneration and allowances by the SRC was binding on all the county governments including the respondents. To fortify its case, the claimant filed a letter dated 22<sup>nd</sup> September 2023 written to it by the CEO of the SRC stating that the SRC had intended that its advice conveyed vide the letter Ref: NO. SRC/TS/29(81) dated 10<sup>th</sup> August 2023 shall apply to the ECDE teachers employed by the county governments including Meru County Government.

36. The letter stated as follow:

“Kenya union of pre-primary Education Teachers

Nyambene house ...

Box 10376 – 00400

NAIROBI

Email...

Attn: Samuel A. Opiyo

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Reference is made to the above matters relating to the remuneration and benefits for the ECDE Teachers.

The Salaries and Remuneration Commission has issued advice to the County Governments Ref. No. SRC/TS/29(81) (copy attached) on the remuneration and benefits for public officers including the ECDE Teachers for implementation in the third remuneration review cycle.

The advice communicated in the said circular supersedes any previous advice issued by the Commission on the remuneration and benefits of ECDE teachers. This conclusively resolves the dispute before the court [sic] the remuneration and benefits for ECDE Teachers.

In view of this, SRC proposes that suit under reference be marked as settled.

...”

37. The SRC supported the above contention by the claimant by pleading in its Response to the Statement of Claim that its advice in the letter Ref: NO. SRC/TS/29(81) dated 10<sup>th</sup> August 2023 applies to the ECDE teachers and binds the respondents to pay the ECDE teachers the salaries and allowances as per the said advice. It then prayed that the respondents be ordered to implement the ECDE teachers’ remuneration structure in accordance with its advice issued vide its circular dated 10<sup>th</sup> August 2023 Ref: NO. SRC/TS/29/81.

38. I will not belabor this point because the controversy over the binding nature of the advice made by the SRC on remuneration and benefits for public officers is now well settled. In Teachers service



commission (TSC) v Kenya National union of teachers & 3 others[2015] eKLR the Court of Appeal held that:

“Having regard to the mischief that the institutionalization of SRC under *the Constitution* was intended to cure the principles of public finance and fiscal responsibility, the budgetary process and the complexity of salaries and benefits determination for public officers, I hold that the advice of the SRC under Article 230(4) (b) on remuneration and benefits determined for public officers is binding on the national and county governments and any power or function exercised without that advice is invalid.”

39. The above decision was affirmed by the Supreme Court in the case of Muthuuri & 4 others v National Police Service Commission & 2 others [2023] KESC 52 (KLR) (Civ). Consequently, I find and hold that the advice given by the SRC vide the letter Ref: NO. SRC/TS/29(81) dated 10<sup>th</sup> August 2023 is binding on all the county governments including the respondents herein. The said advice is not a mere suggestion but it is automatically binding and must be complied with by the respondents with or without any collective bargaining agreement. Consequently, the respondents herein are bound to implement the SRC advice conveyed vide the letter Ref: NO. SRC/TS/29(81) dated 10<sup>th</sup> August 2023 by paying the ECDE teachers according to the salaries and allowances structure therein.

### **Salary increment of 10 percent awarded by the president**

40. The claimant alleged that the Head of State awarded public officers a 10 percent salary increment during labour day celebration on 1<sup>st</sup> May 2023. However, it did not produce any documentary evidence to support that allegation. Even the president made such declaration, the same would amount to nothing because there is no legal basis upon which the head of state can lawfully determine the salary of public officers. Such power is only donated to the SRC by Article 230 of *the Constitution* and the SRC Act. Consequently, the claim for salary increment ordered by the President of Kenya is neither here nor there.

### **Reliefs**

41. The claimant made several prayers against the respondents and also the interested parties. I must agree with the 2<sup>nd</sup> respondent that the reliefs sought are, with due respect, vague and lacking precision. I would encourage trade unionists to seek legal service whenever they are drafting pleadings on technical matters instead filing vague pleadings. Never the less I have tried my best to decipher what I can gather from the said vagueness.
42. As regards the claims against the respondents, I find that the claimant is entitled to the prayer that the 1<sup>st</sup> respondent is bound to implement the SRC advice conveyed vide the letter Ref: NO. SRC/TS/29(81) dated 10<sup>th</sup> August 2023 by paying the ECDE teachers as per the salaries and allowances structure therein. The effective date is 1<sup>st</sup> July 2023.
43. The 2<sup>nd</sup> respondent contended that the ECDE teachers are all placed under Job Group D and the salaries and allowances paid to them totaling to Kshs. 24,970 is more than what is advised by the SRC the letter Ref: NO. SRC/TS/29/81 dated 10<sup>th</sup> August 2023. The claimant denied that allegation and contended that there are Schemes of Service of ECDE teachers passed by the Council of Governors but the respondents did not implement the same. The said schemes of service are in the custody of the respondents but they withheld the same from the court. The court is entitled to infer that they failed to produce the same because they contained information that was against their case.



44. In that regard, I order the respondents to fully implement the SRC advice conveyed vide the letter Ref: NO. SRC/TS/29/81 dated 10<sup>th</sup> August 2023 by paying the ECDE teachers the salaries and allowances structure therein. The respondents are further ordered to pay the grievants salary arrears, if any, that has accrued from the effective date. In carrying out the implementation, the respondent may seek guidance from the SRC and PSC, and also from the Council of Governors with respect to the Schemes of Service.
45. The claimant prayed for declaration that the grievants are entitled to annual leave and the respondents did not dispute the same. Consequently, I award the said declaration as prayed. However, the claim for payment of pro-rata leave from August 2016 lacks particulars and supporting evidence and, as such it must fail.
46. I will not make any orders against the interested parties because they were not joined as defendants to the suit. It is not right for a party to avoid joining a person or entity as a defendant in a suit and then pray for direct orders against the person or entity. If a claimant desires that a court of law should issue a decree against any person or entity, it is only fair that the person or entity be joined as a defendant and not an interested party.

### **Conclusion**

47. I have found that the claimant has the locus standi to bring this suit on behalf of the grievants. I have also found that the suit is not prematurely before the court. Further I have found that the respondents are bound to implement the SRC advice conveyed vide the letter Ref: NO. SRC/TS/29(81) dated 10<sup>th</sup> August 2023 by paying the ECDE teachers salaries and allowances as per the structure in the said advice. Finally, I have found that the claimant is entitled to the reliefs highlighted above. Consequently, I enter judgment for the claimant as follows:
  - a. The respondents be and are hereby ordered to fully implement the SRC advice conveyed vide the letter Ref: NO. SRC/TS/29/81 dated 10<sup>th</sup> August 2023 by paying the ECDE teachers the salaries and allowances as per the structure therein. The respondents are further ordered to pay the grievants salary arrears, if any, that have accrued from the effective date.
  - b. Declaration be and is hereby made that the grievants are entitled to annual leave.
  - c. The claimant is awarded costs of the suit plus interest to be paid by the respondents.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 3RD DAY OF JULY, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

