



**Ngigi v Kenya National Union of Teachers; Teachers Service Commission
(Interested Party) (Employment and Labour Relations Cause
E6549 of 2020) [2025] KEELRC 1978 (KLR) (2 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1978 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E6549 OF 2020**

AN MWAURE, J

JULY 2, 2025

BETWEEN

JOSEPH MUNGAI NGIGI CLAIMANT

AND

KENYA NATIONAL UNION OF TEACHERS RESPONDENT

AND

TEACHERS SERVICE COMMISSION INTERESTED PARTY

RULING

Introduction

1. The Claimant/Applicant filed a Notice of Motion dated 27TH August, 2024, seeking the following orders that:
 1. The Honourable Court be pleased to grant leave to the Claimant/Applicant to adduce new and additional evidence in the form of the circular dated 1st December, 2017 forwarding the Kenya National Union of Teachers (KNUT) Remuneration Packages for KNUT Branch Staff 2017
 2. This Honourable Court be pleased to review a portion of its judgment delivered on 14th March 2024 by allowing the Claimant/Applicant's prayers for terminal dues, service gratuity, and unpaid leave days.
 3. The costs of this Application be provided for.
2. The application is brought under section 16 of the *Employment and Labour Relations Court Act* and Rule 33 of the Employment and Labour Relations (Procedure) Rules, 2016 and all other enabling laws.



Claimant/Applicant's case

3. The Claimant/Applicant avers that he commenced this suit vide a Memorandum of Claim dated 8th December 2020, praying for judgment against the Respondent as follows:
 - a. That the Honourable Court be pleased to order the Respondent to pay the Claimant the following:
 - i. Unremitted pension and WCPS contribution of Kshs.996,037.50/=
 - ii. Service gratuity of Kshs.1,792,816/=
 - iii. Terminal benefits of Kshs.1,372,560/=
 - iv. Unpaid salary for July, August and December of Kshs.603, 243/=
 - v. Leave days commuted into cash Kshs.1,412,846/=
 - b. That costs of this suit be borne by the Respondent
 - c. Interest on the award at court rates from the date of filing this cause in court till payment in full
 - d. Such further orders and/or relief as this court may deem just and fit to award.
4. The Claimant/Applicant avers that this Honourable Court delivered its judgment on 14th March 2024, awarding Kshs. 1,599,280.50 for unremitted pension, WCPS contributions, and unpaid salaries, while declining claims for service gratuity and terminal benefits due to a lack of authentic documentation.
5. The Claimant/Applicant now seeks admission of a circular dated 1st December 2017, containing the Kenya National Union of Teachers (KNUT) Remuneration Packages, which was previously inaccessible due to the Respondent's failure to appear and refusal to furnish the document.
6. The Claimant/Applicant avers that this new evidence, now obtained post-judgment through cooperative officials and after new counsel came on record, is crucial for a just determination and should be admitted in the interest of justice.
7. Despite the Respondent and Interested Party being served with the application, they did not put in a response opposing the application.
8. The application was disposed of through written submissions.

Claimant/Applicant's written submissions

9. The Claimant/Applicant submitted that the application was filed within a reasonable time. The Claimant/Applicant submitted that Rule 33(1)(a) of the Employment and Labour Relations Court (Procedure) Rules, 2016 allows an aggrieved party to apply for a review of a judgment or ruling, within a reasonable time, if they discover new and important evidence that, despite exercising due diligence, was not within their knowledge or could not be produced at the time the decree or order was made.
10. In *Stephen Marira Mwangi V David Njiri Stephen & 7 Others* [2019] KEELC 3843 (KLR), the court held that the Applicants failed to demonstrate due diligence in obtaining key documents during the original proceedings, despite claiming they were in the custody of the 6th to 8th Defendants. The documents in question could have been accessed through reasonable effort, and the Applicants did not



prove they had attempted to obtain them in time. Their attempt to introduce the documents at a later stage—aimed at contesting the Respondent’s title—was deemed untimely, as the matter had already been determined, and such efforts should have been made earlier in the case.

11. The Claimant/Applicant argued that he encountered a dual challenge in accessing the document during the trial since it was not in his possession and was held by a party who failed to appear in court, thereby hindering any attempt to obtain it through legal channels.
12. The Claimant/Applicant submitted that the court should review its earlier judgment because a crucial document, a circular dated 1st December 2017, signed by the Respondent’s Secretary General was not previously presented.
13. The Claimant/Applicant submitted that the circular officially authorized the application of the KNUT Remuneration Packages for KNUT Branch Staff 2017, which the court had earlier disregarded due to the remuneration document itself being unsigned.
14. The Claimant/Applicant contended that had the court seen the signed circular, it would have significantly influenced the determination of terminal dues, service gratuity, and unpaid leave days.
15. The Claimant/Applicant urged this Honourable Court to allow the application as prayed.

The Respondent despite being served with the Application did not file a response.

Analysis and determination

16. The court has considered presented before this Honourable Court. The question is whether the application and the prayers for review of this court’s judgment is merited?
17. The Honourable Chief Justice published new rules for this Honourable Court (ELRC) vide Legal Notice No. 133 dated 16th August 2024, which will be referred to as the Employment and Labour Relations Court (Procedure) Rules 2024. Rule 74(1) of the said Rules provides for review as follows:

“ A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—

- (a) if there is discovery of a new and important matter or evidence which, despite the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;
- (b) on account of some mistake or error apparent on the face of the record;
- (c) if the judgment or ruling requires clarification; or
- (d) for any other sufficient reason.”

18. In *D. J. Lowe & Company Limited V Banque Indosuez* [1998] KECA 108 (KLR), the Court of Appeal observed that the application before it was for review of orders made by Waki, J. on 30th October, 1997. The court emphasized that in review applications based on newly discovered evidence, utmost caution must be exercised, as parties may be tempted to introduce evidence to strengthen a previously weak case. To succeed, an applicant must demonstrate that they were not negligent in presenting all relevant evidence initially. In this case, the payment evidence worth USD 291,857.34 was readily accessible,



showing no diligence on the applicant's part. Consequently, the court found no arguable basis for appeal and dismissed the application with costs.

19. In this instant case, there is a circular from KNUT dated 1st December 2017 which was on the revised Remuneration Schedule 2017 which was to effected from 1st July 2017. Upon perusing and reading the said circular, it was supposed to be accompanied by a revised Remuneration Schedule 2017 showing the specific revised amounts.
20. The court in its judgment dated 14th March 2024 had stated:

“---“The court has noted Claimant is depending on an unsigned document titled “Kenya Union of Teachers (KNUT) Remuneration Packages for KNUT Branch staff”. This is not an authentic document that the court can rely on, to calculate terminal benefits as well as gratuity.”
21. The Applicant has produced a letter signed by Hon. Wilson Sossion as Secretary General of Kenya National Union of Teachers and is dated December 2017. The letter refers to Revised Remuneration that was effected 1st July 2017.
22. The Applicant has not clarified the Revised Remuneration in reference thereto and the formula for calculations of the terminal dues and service gratuity. Apart from the letter from the Secretary General there are no new documents to support the claims for gratuity and terminal dues. The unpaid leave must also be clearly established where by the Applicant should set out days applied for leave but denied by the Respondent. The unpaid leave claimed by the Claimant is from 2013 to 2020. The same is not tenable and there is no documents or new evidence adduced since the judgment was written to show the court erred in not awarding for unpaid leave in the first instance.
23. Similarly, there are no new documents to support the claim for terminal dues since the judgment was delivered.
24. The court is not clear what is service gratuity claimed by the Claimant. There is no evidence produced to support this prayer for service gratuity as well.
25. Having considered the application and the submissions as well as the new copy of the document produced in support of this application which is titled “KNUT Revised Remuneration Schedule” the court is not persuaded this application meets the tenets provided in Section 74 of the Employment and Labour Relations Procedure Rules formerly Section 33 of the aforesaid Rules for Review of court’s judgment. The court therefore finds the Application lacks merit and it is dismissed.
26. Each party will meet their respective costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 2ND DAY OF JULY, 2025.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments



and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

