



County Assembly of Embu v Salaries and Remuneration Commission (Petition E016 of 2023) [2025] KEELRC 2393 (KLR) (29 August 2025) (Judgment)

Neutral citation: [2025] KEELRC 2393 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
PETITION E016 OF 2023**

ON MAKAU, J

AUGUST 29, 2025

IN THE MATTER OF: ARTICLES 2, 3,19, 20 (5), 21, 22 (1) & (2), 23, 26, 27, 41, 174, 177, 186, 189, 195, 196, 212, 226(1), 229 AND 257 OF THE CONSTITUTION OF KENYA, 2010. AND IN THE MATTER OF: THE FOURTH SCHEDULE TO THE CONSTITUTION OF KENYA ON DEVOLVED POWERS AND FUNCTIONS OF THE COUNTY GOVERNMENT. AND IN THE MATTER OF: THE CONSTITUTIONAL AND STATUTORY FUNCTIONS OF THE MEMBERS OF COUNTY ASSEMBLIES AND DEMOTION IN THEIR JOB GROUP FROM D4 TO D5. AND IN THE MATTER OF: ARTICLE 230 (1) OF THE CONSTITUTION OF KENYA AND SECTION 12 OF THE SALARIES AND RENUMERATION COMMISSION ACT, 2011.

AND IN THE MATTER OF: GAZETTE NOTICE NO.10350 OF 9TH AUGUST 2023 ON THE THIRD REMUNERATION AND BENEFITS REVIEW CYCLE FOR STATE AND PUBLIC OFFICERS FOR THE PERIOD 2023/2024 AND 2024/2025

IN THE MATTER OF: RIGHT TO EQUAL PROTECTION AND EQUAL BENEFIT OF THE LAW.

BETWEEN

THE COUNTY ASSEMBLY OF EMBU PETITIONER

AND

THE SALARIES AND REMUNERATION COMMISSION RESPONDENT

JUDGMENT

Introduction

1. The petitioner is a County Assembly established under Article 176 and 177 of *the Constitution* as read with Section 7 of the County Government Act (CGA). The respondent is an Independent Constitutional Commission established under Article 230 of *the Constitution* and mandated to set and



regularly review the remuneration and benefits of all State officers, and advise the National and County Governments on the remuneration and benefits of all other public officers.

2. The petitioner brought the petition herein dated 17th November 2023 challenging the respondents' three circulars Ref No.SRC/TS/29 (96), SRC/ADM/11 (156), and SRC/ADM/11 (157) and prayed for the following reliefs: -
 - i. That this Honourable Court be pleased to Declare that the review and revision of job Grades of state and public offices by the Salaries and Remuneration Commission, is an administrative action to which the provisions of Article 47 of *the Constitution* of Kenya, 2010 and the provisions of the Fair Administrative Actions Act, 2015, apply.
 - ii. That this Honourable court be pleased to Declare that SRC circulars SRC/TS/29 (96), SRC Circular Ref No.SRC/ADM/II (156) and SRC/ADM/11 (157) with regard to Members of the County Assembly of Embu, are unconstitutional to the extent that they demote the petitioner's members to a lower job grade D5 to D4 and reduce their pay and compensation by reducing and removing some of their benefits, unilaterally and without any due process in violation of the provisions of Articles 10, 27 (1) & (2), 41 and 47 of *the Constitution* of Kenya, 2010.
 - iii. That this Honourable court be pleased to grant an order of Certiorari to call to this court and quash SRC Circulars SRC/TS/29 (96), SRC Circular Ref No.SRC/ADM/II (156) and SRC/ADM/11 (157), containing the Third Remuneration and Benefits Review for state officers in the County Assembly of Embu.
 - iv. That this Honourable court be pleased to Declare that the refusal and failure to approve payment of Non-practicing Allowance for professionals working in the County Assembly of Embu, is unconstitutional and amounts to discrimination under the provisions of Article 27 (1)(2)(3) and (4) of *the Constitution* of Kenya.
 - v. That this Honorable court does grant such other orders and direction that it deems fit in the circumstances.
 - vi. That costs be provided.
3. The petition is supported by an Affidavit sworn on 20th March 2023 by the speaker of the petitioner, one Hon.Josiah Muriithi Thiriku and it is opposed by the respondent vide a Replying Affidavit sworn by its CEO, one Anne R.Gitau, on 8th May 2024. The petition was disposed of by written submissions after an attempt to negotiate settlement flopped.

Facts of the case

4. By a letter dated 30th July 2021, the respondent wrote to all the County Assemblies Speakers and Members of the County Assemblies (MCAs) through the Chief Executive officer (CEO) of the County Assemblies Forum, communicating the results of the job evaluation grading for the roles of state officers in the County Assemblies. Only two roles were graded, County Assembly Speaker Job Grade E3 and MCA Job Grade D4.
5. It seems that the matter was not settled and by letter dated 27th February 2023, the secretary General of the County Assembly forum wrote to the respondent requesting for review of Job evaluation Grades for state officers in the County Assemblies. A response was done on 15th May 2023 vide Ref No.SRC/TS/31 (34) communicating the results of job evaluation grading for six roles. The speaker was placed



- under Grade E4, Deputy speaker E1, Leader of Majority D5, Leader of Minority D5, MCA D4 and External Member of County Assembly Service Board D4.
6. By a circular Ref No.SRC/ADM/11(156) DATED 7TH August 2023, to all the accounting officers in three arms of Government, parastatals and other public entities, the SRC communicated a review and advice on allowances in the public service. By the said circular three allowances for public officers in both National and County Governments were scrapped including Retreat allowance, sitting allowance for Members of institutional internal committees, and Task force allowance to members of internal institution task forces. The said allowances were scrapped because they were deemed to amount to double compensation as it was in addition to the basic salary.
 7. The circular also, provided a Schedule of Daily subsistence allowance payable on both local and foreign travel but banned payment of DSA for locations within 50KM radius of the officer's duty station.
 8. On the same date, the respondent issued another circular Ref No.SRC/ADM/11 (157) about the same allowances, but with respect to the state officers in both National and County Governments. Retreat allowance, sitting allowance for institutional internal committees, and task force allowance to members of internal institution task forces were scrapped for being double compensation as it paid in addition to the basic salary. The circular also repeated the same advice on DSA as in the circular for public officers.
 9. By a letter to the respondent dated 6th October 2023, the County Assemblies Forum requested the respondent to issue an official communication to the County Assemblies Service Boards on the job evaluation grading results for purpose of implementation and in response, the respondent issued the Circular Ref.No SRC/TS/29 (96) dated 7th November 2023 to all Clerks of County Assemblies. The circular referred to the earlier circular Ref No.SRC/TS/31(34) dated 15th May 2023 which had been copied to all the clerks of County Assemblies. In the November circular the same grading was repeated namely, Speaker E4, Deputy Speaker E1, Leader of Majority and Minority D5, MCA D4 and External CASB Member D4.
 10. The petitioner's case is that the respondent's circular SRC/TS/29(96) of 7th November 2023 demoted the MCAs from job grade 5 as per SRC circular SRC/ADM/CIR/1/13 VOL II (127) (equivalent to Job Group P in the civil service), to Job grade D4 (equivalent to job Group N in the Civil service). It averred that the said demotion has adversely affected the MCAs' welfare as their benefits have been lowered from their previous earning and further there is no provision given for any allowances on foreign travel.
 11. It further faulted the removal of sitting allowances for internal institutional committees and task forces contending that the said review was unfair, unreasonable, unjustified, oppressive, unlawful and manifestly unconstitutional. Besides, it was argued that the demotion was done unilaterally without due process and justification as the role of the petitioner and its members of representation, legislation, and oversight under Article 185 of *the Constitution* and the applicable statute has not changed. That, it is unlawful to change the terms of service and benefits in the tenure of their term. The demotion is also discriminatory since other equivalent positions in the public service have not been demoted and their terms of service reduced.
 12. In view of the foregoing matters, the petitioner averred that respondents' action are unconstitutional, null and void for violating Article 10,27 (1)(2)(3)(4) and 47 of *the Constitution*. Further that, the actions by the respondent undermine the provision of services and the realization of the objectives of devolution contrary to Article 73 of *the Constitution*.
 13. The respondent's case on the other hand was that the role of MCA had consistently been evaluated and graded at Job Grade D4 over the years and at no particular time has it been elevated to Job Grade



- D5. It averred that DSA is facilitative allowance and the same amount may be paid across a number of job grades as it happens in Job Grades D4, D5, E1 and E2 (Job group P, Q, and R). The same happens to Job Grades E3, E4 and E5 (Job Groups S and T) and also in Job Grade F1 and F2 (Job Group U and V) respectively.
14. The respondent contended that its circular Ref.No.SRC/ADM/CIR/1/13/VOL.III (127) dated 18th December 2014 never changed the grading for MCA to D5 but merely harmonized the DSA rates for MCA with those of officers in Job Grade D5 (Job Group P). As such, the MCA retained job grade D4 but became entitled to the same DSA with officers in Job Grade D5.
 15. The respondent further averred that an error was made in circular SRC/ADM/11(157) dated 7th August 2023 when it indicated the DSA for Job Grade D4 to be Kshs.11,200 which was for the lower Job Group N instead of Job Group P where the MCA had previously been placed for allowances purposes. It further averred that it rectified the said error vide circular Ref No.SRC/ADM/11 (186) dated 11th December 2023 which reinstated the correct DSA for state officers including MCAs, in Job Grade D4, to Kshs.14,000, (for Job Group P) which aligned it to their previous placement for allowances purposes. As such, the circular Ref SRC/ADM/11 (186) dated 11th December 2023 is being implemented by all the County Assemblies.
 16. As regards the sitting allowances, the respondent averred that after comprehensive evaluation of the roles, responsibilities, remuneration and benefits for all state officers, it was evident that the nature and scope of responsibilities of Members of Parliament and MCAs involves sitting in the plenary sessions. As such, it averred that additional sitting allowances in addition to the gross monthly remuneration package would amount to double compensation.
 17. With respect to Non-practice allowance, the respondent averred that in the discharge of its mandate, it takes into account the principles set out under Article 230 (5) of *the Constitution* and section 12 of the SRC Act, existing Government regulations, and established policies. Consequently, it denied that it failed, without justification, to approve payment of Non-practicing allowance to professionals in the County Assembly public service when it approved payment to their fellow professionals in the County and National Government public service who are rendering similar services.
 18. Finally, the respondent averred that the petition does not meet reasonable precision test established by the Court in *Anarita Karimi Njeru v Republic* (1979) KLR. Consequently, it prayed for the suit to be dismissed with costs.

Issues for determination

19. Having considered the petition, Affidavits and written submissions, the following issues fall for determination: -
 - a. Whether the petition meets the competence threshold.
 - b. Whether the respondent violated the Constitutional rights of the state and public officers working for the petitioner.
 - c. Whether reliefs sought are merited.



Competency threshold

20. The respondent contended that the petition fell below the reasonable precision test enunciated by the court in *Anarita Karimi Njeru v Republic (1979)* eKLR. In the said case, the court held that: -

“We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”

21. I have perused the petition herein and it is evident that the petitioner has set out its grievances and the provisions that are alleged to have been violated including Article 27 and 47 of *the Constitution*. The petitioner has also pleaded with clarity, how the said provisions have allegedly been violated under paragraph 45 of the petition. In the circumstances, it is clear from the pleadings, what the petitioner is complaining about, the provisions of *the Constitution* that has allegedly been violated by the respondent, and the manner in which they have been violated. Consequently, I find that the petition meets the competence threshold established by the Court in *Anarita Karimi Njeru* case, *supra*.

Violations

22. In *Monica Wangu Wamwere & 5 Others v Attorney General (2023)* KESC 3 (KLR), the Supreme Court held that: -

“66. The two superior courts below were of the unanimous view that a petitioner bears the burden to prove his/her claim of alleged threat or violation of rights and freedoms to requisite standard of proof, which is on a balance of probabilities. We affirm this judicial stand point bearing in mind that such claims are by nature civil causes.”

23. Accordingly, in this case, the burden is upon the petitioner to prove by evidence that the respondent, vide the impugned circulars, demoted the role of MCA from Job Grade D5 to D4, and that the demotion was done unlawfully and led to reduction of remuneration and benefits. It was further petitioner’s burden to prove by evidence that the scrapping of the allowances was done contrary to the law.

24. I have considered the Affidavits filed by both sides. The claim of alleged demotion was based on the respondents circular Ref No.SRC/ADM/CIR/1/13 VOL.III (127) dated 18th December 2014 which according to the petitioner, placed the MCA under Job Grade D5. However, the respondent maintained that the role of MCA was always graded under D4 in all the previous job evaluation cycles.

25. I have perused the respondent’s circular Ref No. SRC/ADM/CIR/1/13 VOL.III (127) and copied it below: -

“Corrigendum On The Circular For Review Of Allowances In The Public Service

Reference is made to the SRC circular Ref No. SRC/ADM/CIR/1/13 VOL.III (126) dated 10th December 2014 on the above subject.

The Salaries and Remuneration Commission would like to inform you that the attached Appendix (Table 5) on page 8 of 8 of the Circular has been replaced by the Appendix attached herein. All other items remain as per the Circular referred.



Chairperson”

26. The Appendix (Table 5) attached to the above corrigendum indicated the job Grade and the equivalent Job Group for all the state officers including the MCA at Grade D4 (Job Group P). The respondent contended that the said corrigendum was for purposes of harmonizing DSA but did not in any way affect the grading of the jobs placed under the same DSA bracket.
27. The petitioner did not produce the Job evaluation grading for the first and second review cycle to rebut the respondent’s allegations that the role of MCA had consistently been graded D4 in the 1st, 2nd and 3rd review cycle. Surprisingly, it produced a lengthy document of 56 pages titled Job Description For State Officer In The County Assemblies dated February 2023, prepared by Catharway Limited following a consultancy with the CAF. On page 4 of the document, the role of MCA is indicated as Grade D4. It is therefore interesting to see the petitioner bring this suit to challenge the grading of MCA at Grade D4 yet it always knew that MCA was graded D4 in a process that involved stakeholder engagement including the CAF both in writing and joint meetings.
28. Having considered the foregoing matters, I find that the petitioner has not placed before this court any evidence to prove that MCAs were demoted from Job Grade D5 to D4 by the respondent vide circular Ref No.SRC/TS/29 (96) dated 7th November 2023. On the contrary, I hold that there is evidence to prove that the role of MCA has consistently been graded D4 in the SRCs 1st, 2nd and 3rd review cycle and the County Assembly Forum welcomed that grading in all its correspondences cited above. Consequently, the petitioner’s member did not suffer any loss or violation as a result of the said circular.
29. As regards the scrapping of Retreat allowance, sitting allowances for internal institutional committees and Task force allowance for internal institution task forces, the respondent explained that paying the said allowances in addition to gross pay amounted to double compensation to the concerned officers. According to the respondent, the tasks undertaken in retreats, internal committees and internal task forces were in furtherance of their core business.
30. The petitioner alleged that the scrapping of the said allowances was without basis. Having considered the circular Ref No.SRC/ADM/11 (156) and SRC/ADM/11 (157) I find that there was basis for scrapping the same and the circulars communicated the same, namely, that the allowances amounted to double compensation to the concerned officers.
31. As regards the DSA, the respondent explained that the impugned circular indicated the DSA for Grade D4 as Kshs.11,200 but clarified that, the error was corrected by a subsequent circular Ref No.SRC/ADM/11/ (186) dated 11th December 2023. The said circular indicated the DSA for job Grade D4 as Kshs.14,000 and it replaced the previous circular of 7th August 2023.
32. As regards the alleged failure to approve payment of Non-practicing allowance for professionals in the County Assembly public service without any basis or justification, the respondent averred that no evidence was tendered to substantiate that allegation. I agree with the respondent on that averment and add that the petitioner merely made that allegation in paragraph 44 of the petition but pleaded no particulars and adduced no evidence to prove the same.
33. Having considered the material before the court, I find that the petitioner has failed to prove by evidence that the respondent has by the impugned circulars violated *the Constitution* and the rights of the petitioner’s members. It has also not proved that the respondent has refused to approve payment of non-practising allowances to professionals in the County Assembly public service without any basis or justification.



Reliefs

34. In view of the foregoing conclusion, I find that the petitioner has failed to prove its case on a balance of probability and as such it is not entitled to the reliefs sought. Consequently, I dismiss the petition with costs

DATED, SIGNED AND DELIVERED AT NYERI THIS 29TH DAY OF AUGUST, 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.

ONESMUS N MAKAU

JUDGE

