



**Mungai v Embu County Government & 3 others (Employment and Labour Relations Cause E059, E056, E057, E058 & E060 of 2024 (Consolidated)) [2025] KEELRC 2391 (KLR) (29 August 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2391 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E059,  
E056, E057, E058 & E060 OF 2024 (CONSOLIDATED)**

**ON MAKAU, J**

**AUGUST 29, 2025**

**BETWEEN**

**ALFRED KAMAU MUNGAI ..... CLAIMANT**

**AND**

**EMBU COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**THE SALARY & REMUNERATION COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**THE COUNTY SECRETARY, COUNTY GOVERNMENT OF  
EMBU ..... 3<sup>RD</sup> RESPONDENT**

**THE COUNTY FINANCE COMMITTEE MEMBER OF FINANCE EMBU  
COUNTY ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The claimants filed separate suits vide Statements of Claim dated 19<sup>th</sup> December 2024 and they all sought the following reliefs: -
  - a. That there be a declaration that the 2<sup>nd</sup> Respondent’s letter/ circular dated 8<sup>th</sup> September, 2022 was and is unlawful, null and void.
  - b. A declaration that the claimant’s employment rights have been violated by the 1<sup>st</sup> Respondent.
  - c. A declaration that the claimant’s right to Fair Labour Practices as protected under Article 41 of *the Constitution* of Kenya and his right to Fair Administrative Action as protected under Article 47 of *the Constitution* of Kenya have been infringed.
  - d. General damages for the violation of the claimant’s Constitutional and Employment rights.



- e. A declaration that the deduction of Kshs.94,000/- in the claimant's October salary and Ksh.94,000/- in the claimant's November 2024 salary was and is unlawful and that the said sum be refunded.
  - f. A declaration that the intended deduction of Kshs.94,000/- every month from the claimant's salary or deduction of any other sum allegedly for recovery of an undisclosed sum was and is unlawful, null and void.
  - g. Costs of the suit and interests.
2. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents filed a joint statement of response dated 11<sup>th</sup> February 2025 denying the claimants' allegations and prayed for the suit to be dismissed with costs. Subsequently, the 2<sup>nd</sup> respondent filed a Response dated 10<sup>th</sup> March 2025 asserting its constitutional power to advise on remuneration and benefits of public officers including the claimants and averred that the suits herein did not disclose any reasonable cause of action against it and therefore prayed for the same to be dismissed with costs.

### **Facts of the case**

3. The claimants are members of the Embu County Public Service Board, having been appointed on 31<sup>st</sup> July 2019 pursuant to section 58 of the County Government Act. Collectively, the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents are established under the provision of Article 176 of *the Constitution* and under the provisions of the County Government Act. The 2<sup>nd</sup> Respondent is an independent Constitutional Commission established under Article 230 of *the Constitution* whose mandate, among others, is to advise the National and County Governments on the remuneration and benefits for all public officers.
4. The dispute herein relates to the stoppage of payment of a monthly commuter allowance of Kshs.20,000 to the claimants. The said benefit was advised by the SRC vide letter/circular dated 10<sup>th</sup> July 2013 Ref No.SRC/TS/CGOVT/3/61 (52) to all County Governments. The said allowance was in addition to the gross salary for the chairperson and members of CPSBs including those serving on part-time basis.
5. According to the initial SRC circular Ref No.SRC/TS/CGOVT/3/61 dated 13<sup>th</sup> June 2013 the gross package to the chairperson and members of the CPSB serving on full-time basis was divided into 60 percent as basic salary and 40 percent allowances. The part-time members were only entitled to sitting allowance, accommodation allowance and mileage allowance.
6. According to the SRC, the commuter allowance of Kshs.20,000 was payable to the chairperson and members, including those on part-time until the County Government procured vehicles for pool transport, as members of the CPSB were not entitled to official cars. The claimant averred that they were never allocated any vehicles by the County Government and maintained that the drastic decision to stop the allowance and recover the allowance paid was unlawful as it was made without according them prior notice and hearing.
7. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents admitted the said recovery process but denied any wrong doing as they were only complying with the directives of the Auditor General, County Assembly, Senate and the SRC. They further averred that the claimants were on full-time basis and under the SRC circular Ref No.SRC/TS/CGOVT/3/61 (49) dated 8<sup>th</sup> December 2017, they were not entitled to commuter allowance. They also averred that the claimants were notified of the recovery recommendations by the County Assembly, vide letter to the Secretary/CEO of the CPSB dated 11<sup>th</sup> June 2024 indicating the amount to be recovered and from which members of the CPSB.



8. During the hearing, all the suits were consolidated under this one and then the documents filed by both sides were produced by consent. The claimant in this suit testified on behalf of all the other claimants while the 2<sup>nd</sup> respondents, and the other respondents called one witness each.
9. The claimant herein, Alfred Kamau Mungai testified as CW1 and basically adopted a written statement dated 19<sup>th</sup> December 2024 as his evidence in chief. He then stated that all the other claimants herein were members of the Embu CPSB while he was the chairman. He further stated that the County Assembly of Embu never consulted the CPSB before recommending that the commuter allowance be recovered from the claimants. They were also not served with the report of the Auditor General or the Senate recommending for the said recovery of commuter allowance, and none was filed in court.
10. On cross examination, he admitted that all the claimants were full time members of the CPSB. He further admitted that a letter dated 29<sup>th</sup> August 2022 written by the secretary of CPSB to the County Secretary made, reference to the implementation of the Audit queries raised by the Auditor General. However, he contended that they were not asked to explain anything to the Auditor General.
11. He admitted that he was given an appointment letter dated 31<sup>st</sup> July 2019 indicating that his terms of service were to be in accordance with the terms set by the SRC. He further admitted that the SRC circular dated 8<sup>th</sup> December 2017, paragraph 3 stated that commuter allowance was not payable to full-time members of the CPSB. However, he contended that the said circular was illegal and discriminatory.
12. He confirmed that they wrote to the SRC on 5<sup>th</sup> August 2022 requesting to continue receiving the commuter allowance but the request was declined vide letter dated 8<sup>th</sup> September 2022. He maintained that the CPSB was never given a copy of the Auditor General's Report by the County Executive and the CPSB never discussed the report with them. He further averred that the CPSB was never summoned to the County Assembly nor was CW1 aware that the Finance Committee of the Assembly discussed the report.
13. He confirmed that clause 1 of the SRC circular dated 8<sup>th</sup> December 2017 set out the gross pay while implementation Note 1 states that 60 percent of the gross pay was the basic salary. He further confirmed that under clause 3 the remuneration for the part-time members of the CPSB was different from that of the full-time members. He also confirmed that under clause 3(a), full-time members were not entitled to commuter allowance, but contended that the earlier SRC circulars of 2013 and 2014 provided for payment of the commuter allowance until vehicles were allocated.
14. On further cross examination, he admitted that clause 5 of the SRC circular of 8<sup>th</sup> December 2017 provided that all the previous SRC circulars had ceased to exist. He maintained that County Government of Embu never provided vehicles to facilitate the claimants to attend work and go back home.
15. Rw1 was Grace Ogembo, SRC's Deputy Director Allowances and Benefits since 2013. She adopted a written statement dated 10<sup>th</sup> March 2025 as her evidence in chief. She clarified that SRC does review of remuneration under four-year cycle. The first was 2013/2017, 2017/2021 and then 2021/2024. She further clarified that the circular dated 8<sup>th</sup> December 2017 was categorical that the previous SRC circulars had ended. She contended that the 2017 circular also did not give full-time members of the CPSB any commuter allowance. She added that even the SRC circular dated 10<sup>th</sup> November 2023 about deconsolidation of salary did not grant the full-time members of the CPSB any commuter allowance.



16. On cross-examination, she contended that both National and County Government are bound by the advice of the SRC on salaries. She admitted that the SRC is bound by *the Constitution* and the law, to act fairly when issuing advice on remuneration. She admitted that there is Allowances Policy Guideline for the Public Service to the effect that public officers who are not entitled to transport vehicle are paid commuter allowance.
17. She confirmed that in 2013, salary was consolidated but commuter allowance of Kshs.20,000 was granted to CPSB members due to the nature of their work. The allowance was payable if there were no pool transport vehicles. She admitted being unaware whether the claimants were provided with pool transport for official duties.
18. She reiterated that the circular dated 8<sup>th</sup> December 2017 in clause 5, stopped any payment advised vide the previous circulars including circular dated 10<sup>th</sup> July 2013 on transport payment. She clarified that the said allowance was necessitated by the fact that the Counties were new and needed time to acquire vehicles to meet the demands. She added that the said allowance was on interim basis and as at 8<sup>th</sup> December 2017 when the earlier circulars were ended, the Counties had acquired vehicles and assigned to the CPSB.
19. She confirmed that Embu CPSB wrote to the SRC on 8<sup>th</sup> August 2022 requesting for continuation of the commuter allowance because it had not been allocated any vehicle but SRC advised that the commuter allowance had been paid under the consolidated pay as advised vide the SRC circular of 8<sup>th</sup> December 2017.
20. RW2 was Prof. Joe Kamaria, ECM Finance Embu County and he also adopted a written statement dated 10<sup>th</sup> March 2025 as his evidence in chief. The statement basically echoed the averments set out in the Response to the claim.
21. On cross examination, he contended that the County has procured vehicles for pool transport that can be allocated to the CPSB if requested. He admitted that there is a Chief Officer Transport and Logistics who is the accounting officer Finance. He further admitted that his written statement never stated that there were pool vehicles for use by the CPSB. He also admitted that he had no evidence that any vehicle was availed to the CPSB but confirmed that the claimants should be facilitated to do their official duties.
22. He confirmed that the claimants were being paid commuter allowance of Kshs.20,000 per month before he became ECM finance in November 2022 and continued paying them until 2024. He contended that the payment was an error and it had to be corrected after a resolution by the County Assembly. He admitted that no action was taken against the officers who made the erroneous payment.
23. He admitted that he did not file any Report by the Auditor General, Senate or the County Assembly on the recovery of the erroneously paid allowance. He confirmed that the claimants were never served with the said Reports.
24. He admitted that he had indicated in document 7 that he was to recover Kshs.608,000 but he had recovered Kshs.846,000 because the period extended beyond what the Auditor General reviewed. He contended that the claimants were consulted before the recovery started and in determining how much would be deducted monthly.
25. He admitted that it was unlawful to deduct more than two-thirds (2/3) of an employee's salary and stated that the payroll Manager was better placed to explain the deductions and whether the commuter allowance of Kshs.20,000 was paid less PAYE. He agreed that, if the PAYE was deducted from the



Kshs.20,000 commuter allowance, the same ought to be factored when recovering the erroneous allowance.

26. He contended that the Commission advised that, the payment of Kshs.20,000 as commuter allowance amounted to double payment. Finally, he stated that money erroneously paid to an officer is recoverable.
27. After the close of the hearing, both sides filed written submissions to sum up their respective cases.

#### **Issues for determination and analysis**

28. Having considered the pleadings, evidence and submissions, there is no dispute that the claimants were appointed as full-time members of the Embu County CPSB on 31<sup>st</sup> July 2019. It is also a fact that their terms of service were to be set by the SRC. There is also no dispute that the SRC advised the County Government on the remuneration and benefits of the chairperson and members of the CPSB vide a circular dated 8<sup>th</sup> December 2017. There is again no dispute that the claimants were paid commuter allowance from the date of the appointment until October 2024 when it was stopped and recovery process commenced.
29. The issues for determination are: -
  - a. Whether the payment of the monthly commuter allowance to the claimants was erroneous and recoverable.
  - b. Whether the respondents violated the claimants' Constitutional rights and fundamental freedoms through the recovery of the commuter allowance from October 2024.

#### **Whether the commuter allowance was erroneous**

30. The claimants were appointed on full time basis vide letters dated 31<sup>st</sup> July 2019 signed by the Governor Embu County. They were to serve for six years with effect from 31<sup>st</sup> July 2019 and they were to receive a monthly gross of Kshs.243,967 – Kshs.340,733 while the vice chairperson and the other members was Kshs.192,150 to Kshs.243,967. The secretary's pay was Kshs.174,300 – Kshs.222,250. Note 1 then clarified that 60 percent of the gross remuneration package constituted the basic remuneration upon which gratuity, pension and insurance would be computed.
31. Paragraph 2 of the circular provided for the remuneration for part-time members of the CPSB being monthly retainer of Kshs.182,500 for the chairperson, Kshs.155,000 for the vice chairperson and Kshs.145,000 for the other members. In addition, they were entitled to a sitting allowance with a ceiling of 8 sittings per month at the rate of Kshs.12,000 for the chairperson, Kshs.10,000 for the vice chairperson and Kshs.8,000 for the other members. They were also entitled to transport (commuter) allowance of Kshs.20,000 per month.
32. The full-time member like the claimants were expressly excluded from sitting allowance and commuter allowance under paragraph 2(a) and paragraph 3(a) of the circular. The rest of the allowances and benefits were the same for both full-time and part-time members of the CPSB.
33. The circular then ended in the following terms: -
  4. "Any benefit and allowance not specified in this letter is not payable unless otherwise advised by the Salaries and Remuneration Commission.
  5. On the effective date of this letter, remuneration and benefits communicated vide letters Ref:No.SRC/TS/CGOVT/3/61/(52) dated 10<sup>th</sup> July, 2013, Ref:No.SRC/TS/



CGOVT/3/61 dated 13<sup>th</sup> June, 2013 and Circular Ref:No.SRC/TS/CGOVT/3/61 (84) dated 31<sup>st</sup> July, 2014, advice, letters and/or circulars on remuneration package for full time and part time Members of CPSB cease to apply.

6. The remuneration and benefits advised herein will be payable to fulltime and part time members of CPSB with effect from when the new Board is constituted in 2018.”
34. The above excerpt clearly stated that the previous advice on remuneration and benefits for full-time and part-time CPSB members conveyed vide letter dated 13<sup>th</sup> June 2013, 10<sup>th</sup> July 2013 and 31<sup>st</sup> July 2014 ceased to apply on the effective date which was indicated as the date when new Board was constituted in 2018. Paragraph 4 was categorical that no other benefit and allowances was payable to the CPSB members except what was specifically advised in the letter.
35. There is no denial that the claimants were paid monthly commuter allowance of Kshs.20,000 from the time of appointment until October 2024 when it was stopped and recovery process commenced. Having considered the evidence on record, I find that the payment of the monthly commuter allowance of Kshs.20,000 to the claimants was contrary to the express advice by the SRC as conveyed vide the letter Ref.No.SRC/TS/CGOVT/3/61 Vol.IV (49) dated 8<sup>th</sup> December 2017.
36. This court, Court of Appeal and the Supreme Court have all agreed that the advice by the SRC on remuneration of Public Officers is binding on both National and County Governments. In *Teachers Service Commission (TSC) v Kenya Union of Teachers (KNUT) & 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.”
37. As regards the recovery of the commuter allowance paid to the claimants, there is a letter by the County secretary of Embu County Government dated 18<sup>th</sup> April 2016 seeking clarification on payment of commuter allowance since no official transport was provided to the Board either individually or collectively. The SRC responded by letter dated 12<sup>th</sup> May 2016 advising the County secretary to assign the CPSB with pool vehicles and cease paying the transport allowance of Kshs.20,000, since the same was meant to last until pool cars were procured by the County Government. By another letter dated 23<sup>rd</sup> May 2016, to the Secretary Embu County Government, the SRC stated that “payment of the allowance should therefore continue until transport for the Board is provided.”
38. There is no doubt that all the above letters made reference to the SRC advice on remuneration and benefits conveyed vide the letter/circular dated 10<sup>th</sup> July 2013. The said letter/circular was one of those discontinued by the letter/circular dated 8<sup>th</sup> December 2017. Therefore, I find that the circular dated 10<sup>th</sup> July 2013 together with all incidental letters/circulars advising on the transport/commuter allowance, ceased to exist from 2018 and the circular dated 8<sup>th</sup> December 2017 took effect.
39. Although the secretary/CEO of the Embu CPCB wrote to the SRC on 5<sup>th</sup> August 2022 requesting for continuation of the payment of Transport/commuter allowance, the SRC responded by letter dated 8<sup>th</sup> September 2022 clarifying that the gross monthly remuneration package for full-time CPSB members as advised vide the circular dated 8<sup>th</sup> December 2017 was inclusive of commuter allowance. In the circumstances, I am satisfied by the explanation given by the respondents that the transport/



commuter allowance paid to the claimants was erroneous and is recoverable because it amounted to double payment of commuter allowance.

40. An employer is mandated to recover an amount paid to an employee in error or wages in excess of his salary. Section 19 (1)(e) of the [Employment Act](#) provides for recovery of payment from an employee including: -

“any amount paid to the employee in error as wages in excess of the amount of wages due to him.”

41. It must however be clarified that the amount to be recovered must not violate the 2/3 rule. Section 19(3) of the Act provides that: -

“Without prejudice to any right of recovery of any debt due, and notwithstanding the provisions of any other written law, the total amount of all deductions which under the provisions of subsection (1), may be made by an employer from the wages of his employee at any one time shall not exceed two-thirds of such wages or such additional or other amounts as may be prescribed by the Cabinet Secretary either generally or in relation to a specified employer or employee or class of employers or employees or any trade or industry.”

42. Besides, as the claimants contended, the tax deducted from the same allowance must be taken into account when making the recovery and RW1 agreed.

### **Violation of Constitutional Rights**

43. The claimant's alleged that they were discriminated from other officers because they were denied commuter allowance. They further alleged that the procedure followed before commencing recovery of the commuter allowance was not fair as they were not consulted.

44. However, there is documentary evidence on record showing that there were correspondences between the County Secretary and the SRC, and also between the CPSB through its secretary and the SRC on diverse dates up to 8<sup>th</sup> September 2022 whereby the SRC maintained that the transport allowance was on interim basis pending procurement of pool cars for the CPSB. It further clarified that the salary advised vide the circular dated 8<sup>th</sup> December 2017 was gross package inclusive of commuter allowance.

45. In view of the foregoing evidence that the claimants' remuneration under the circular dated 8<sup>th</sup> December 2017 was inclusive of commuter allowance, the alleged discrimination has not been proved. I further find that the recovery was not commenced before consulting the claimants since there is evidence of correspondences between the SRC and the County Secretary, and also the secretary to the CPSB about the payment of the commuter allowance. Consequently, I find and hold that the claimants have not proved by evidence that their rights and fundamental freedoms in [the Constitution](#) were violated by the respondents.

### **Reliefs**

46. In view of the finding that the payment of commuter allowance to the claimants was erroneous and that their rights were not violated by the respondents, I find that the claimants have failed to prove their case on a balance of probability. Consequently, I dismiss the suits with costs. For avoidance of doubt the money recoverable must take into account any tax deducted before payment and the 2/3 rule under section 19(3) of the [Employment Act](#).

**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**

