



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO 232 OF 2017**  
**KAARA JOSEPH GITHINJI.....CLAIMANT**  
**VERSUS**  
**TEACHERS SERVICE COMMISSION.....RESPONDENT**  
**RULING**

1. This application is brought by the Claimant by Notice of Motion dated 8<sup>th</sup> February 2017, seeking the following orders:

- a. An order directing the Respondent to pay the Claimant his full monthly salary and allowances;
- b. An order restraining the Respondent from further withholding the Claimant's allowances and deducting his salary in recovery of Special School Allowance.

2. The application which is supported by the Claimant's affidavit sworn on 8<sup>th</sup> February 2017 is premised on the following grounds:

- a. The Claimant is a teacher at Joy Town Special Secondary School where he has been teaching since 1<sup>st</sup> June 2012;
- b. Following the Claimant's deployment to the special school, the Respondent revised his salary to include an allowance called Special School Allowance payable to all teachers deployed to teach in special schools;
- c. The Claimant continues to teach in the special school, however without any valid reason, the Respondent stopped paying the special school allowance from November 2016 and in December 2016 started recovering the allowances already paid to the Claimant;
- d. The Claimant is entitled to the Special School Allowance by virtue of the return to work formula dated 5<sup>th</sup> July 2013 executed by the Teachers Service Commission and the Kenya Union of Post Primary Education Teachers.

3. In a replying affidavit sworn by the Respondent's Acting Senior Director, Human Resource Management and Development, Simeon Omare on 28<sup>th</sup> February 2017, it is deponed that on 11<sup>th</sup> July 2013, the Respondent entered into an agreement with the Kenya Union of Post Primary Education Teachers to increase the amount payable as special school allowance to Kshs. 10,000 effective 1<sup>st</sup> July

2013.

4. Omare further depones that by letter dated 11<sup>th</sup> May 2016, the Principal, Joy Town Secondary School informed the Respondent that the Claimant was erroneously drawing special school allowance since he had no training in special education. Following this letter, the Respondent cross checked its records and satisfied itself that the Claimant was indeed drawing special school allowance erroneously as he had no training in special education.

5. The Respondent therefore stopped paying the Claimant special school allowance and commenced recovery of the allowances paid to the Claimant with effect from 5<sup>th</sup> June 2012 when he started teaching at the special school. On this account, the Respondent raised a salary overpayment notification in the sum of Kshs. 297,401.40.

6. The Claimant's prayers in this application constitute both mandatory and prohibitive injunctive orders. The conditions for granting of such orders were well stated in the famous case of ***Giella v Cassman Brown & Company Limited [1973] EA*** as follows:

- a. An applicant must show a *prima facie* case with a probability of success;
- b. An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages;
- c. If the Court is in doubt, it will decide the application on the balance of convenience.

7. As far as mandatory injunctions are concerned, the law is clear that they will only be granted in exceptional circumstances (see ***Robai Kadili Agufa & another v Kenya Power & Lighting Co. Ltd [2015] eKLR***).

8. This application turns on the question whether the Claimant is entitled to a special school allowance. In issue are the varying interpretations assigned to the relevant provisions of the Code of Regulations for Teachers on payment of special school allowance and the import of Clause 3 of the return to work formula dated 5<sup>th</sup> July 2013.

9. To my mind, these are matters to be canvassed at the main hearing not at the interlocutory stage.

10. The Claimant's application is therefore declined with costs in the cause. The interim orders granted on 9<sup>th</sup> February 2017 are vacated.

11. It is so ordered.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE 2017**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Kingori for the Claimant

Mr. Oyucho for the Respondent