



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**JUDICIAL REVIEW NO. 18 OF 2012**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF  
MANDAMUS**

**IN THE MATTER OF JUDGMENT IN NAKURU HCCC NO. 65 OF 2006**

**BETWEEN**

**SIMON P. KAMAU & 19 OTHERS.....PLAINTIFFS/RESPONDENTS**

**VERSUS**

**TEACHERS SERVICE COMMISSION.....DEFENDANT/APPLICANT**

**IN THE MATTER OF**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE DIRECTOR, PENSIONS DEPARTMENT.....RESPONDENT**

**EX-PARTE:SIMON P. KAMAU AND 19 OTHERS.....SUBJECTS**

**VERSUS**

**THE DIRECTOR, PENSIONS DEPARTMENT.....RESPONDENT**

**RULING**

1. On the 16<sup>th</sup> May 2014, this Honourable Court, (Justice M. J. Anyara Emukule) issued an order committing the Teachers Service Commission Secretary, one Mr. Gabriel Lengoiboni to civil jail after finding him guilty of contempt of legitimate court orders by failing to pay the Applicants salary arrears, and consequential pensions based on the last salaries accrued under the Collective Agreement of 1997 with the Teachers Union (KNUT) declared to be due and payable per the court orders, and sentenced him to six months detention at Kamiti Maximum Prison for a period of six months.
2. The sentence was however suspended in terms of section 15 of the Criminal Procedure Code, Chapter 75 Laws of Kenya, for a period of 90 days to enable the Commission (TSC) Secretary to take all steps to comply with the said orders, commencing with the orders of 23<sup>rd</sup> April, 2012 and

issued on the 24<sup>th</sup> April, 2012.

3. The said Court order directed that in default of compliance, the Inspector-General of Police to apprehend and escort the said Gabriel Lengoiboni, the Commission Secretary of the Teachers Service Commission to Kamiti Maximum Prison for detention for the period of six months as aforesaid.
4. Thereafter after the 90 days period, by an application dated the 11<sup>th</sup> August, 2014 by Mr. Sitima Advocate for the Teachers Service Commission Secretary sought extension of the suspended order to enable the secretary initiate negotiations with government departments with a view to come up with the payments. Upon hearing all the parties concerned, the court duly suspended the implementation of the committal order. The court was informed that in a meeting in August 2014 where all relevant G.O.K. departments were represented, a commitment was made that the 16.7 billion shillings was secured and would be paid by December, 2014. This was not done.
5. On the 19<sup>th</sup> January 2015, it was reported in this court that no money had been released despite budgetary allocations having been made. The court after hearing passionate pleas by both the Attorney General's representative and the TSC Secretary Advocate, a further extension was granted to the 15<sup>th</sup> February, 2015.
6. It is noted that during the hearing, the Attorney General's representative Mr. Nguyo made it categorically clear that the money would be available, and sought time to await opening of Parliament in early February 2015, and prayed for extension upto the 15<sup>th</sup> February, 2015. Despite serious objection by the Applicants, this court, after considering the magnitude and the public interest of the matter, and to give the state time to secure and release the money, the court extended the time of suspension of the committal orders as stated above.
7. In the meantime, from the date the order under consideration was issued, it was stated by the Applicant that the Respondents applied to the Supreme Court of Kenya for an order of stay of these proceedings to further defeat the Applicants quest for justice. A bench of five Supreme Court Judges rejected the application and declined to stay these proceedings. It is urged that the respondent action to go to the Supreme Court was a sign of bad faith, and a lack of seriousness on the matter of the retired teachers and their plight.
8. Today, the parties have come to court once again. For the Applicants, Mr. Kimatta Advocate urged this court not to extend the suspension of the committal orders again as the respondents had been given enough time, and have come to court with nothing in its hands as a sign of good will. I am urged to discharge the suspension, noting that the applicants have been in court for 17 years during which time several of them have died without tasting the fruits of their litigation as no serious offer has been given by the state despite the many promises and meetings.
9. To go back to the proceedings of 15<sup>th</sup> January 2015, the Attorney-General's representative as well as the TSC Secretary Advocate, all agreed that the Applicants ought to be paid their dues, and that failure to do so, urged the court to take any necessary steps it would deem fit.
10. Mr. Sitima for the TSC Secretary has urged me to extend the suspension for an unspecified period and to take Judicial notice of the nature of the matter that involves several Government departments, Attorney-General's Office and the Teachers Service Commission. He urged that the TSC Secretary does not generate income or pay pensions, and that his role is to facilitate the payment which, it is claimed, he has done by preparing the necessary paper work. Several undertakings to pay have been given but suffice to say all have not come to fruition.
11. On the part of the Attorney-General, nothing substantial was presented to this court. Indeed, M/s Khatambi, learned State Counsel had nothing to say save to pray for an extension of the suspension.

12.I have considered all submissions by the learned Advocates for the various parties. The Applicants have an order from this court and they have indicated that their only hope lies with the court. They have indeed been waiting for 17 years, and now 8 months since the committal orders were issued in May, 2014.

13.It is the Applicants constitutional right to be paid for the work and service they gave to the country, and indeed the court gave a judgment in their favour in Hccc No. 65 of 2006. Under section 1A and 1B of the Civil Procedure Act, and Article 159 of the Kenya Constitution 2010, this court is mandated to handle matters expeditiously. Justice cuts both ways, from the top to the bottom. It is a double wedged sword. Court orders legally obtained must be obeyed by all irrespective of position or status. I am alive to the fact that the TSC Secretary may be doing the best he is able to as seen from the numerous meetings held since the orders were issued. But that is not enough. Meetings and negotiations have borne no fruit. Judgment was delivered in the Applicants' favour in 2006. For how long should this court continue extending the suspension order? Litigation must come to an end.

14.The respondents were given a last chance to come up with the payment on the 15<sup>th</sup> January, 2015. As stated above, nothing has been put on the table, not even, part of the said Kshs.16.7 billion.

15.Consequently, this court having been given no good reasons to persuade it to further extend the suspension, and being sensitive to the nature of the matter and the plight of the Applicants, and for justice to be seen to be done, I have no option but to lift the suspension orders issued on the 16<sup>th</sup> May, 2014 by this court. I therefore direct that the Acting Inspector-General of Police to apprehend and escort the said TSC Secretary Gabriel Lengoiboni, to Kamiti Maximum Prison for detention for a period of six months. This is in conformity with the court orders issued on the 16<sup>th</sup> May, 2014.

16.The matter will be mentioned before this court on the 2<sup>nd</sup> March, 2014 to confirm compliance.

**Delivered, dated and signed at Nakuru this 20<sup>th</sup> day of February, 2015**

**JANET MULWA**

**JUDGE**

**Ruling dated and signed in open court in the presence of:**

**Mr. Kimatta for Applicants**

**Mr. Sitima with Mr. Anyuor for Respondents**

**M/s Khatambi for the Attorney-General**

**Mwai - Court Clerk**

**Mr. Sitima:**

I wish to apply for certified copies of the proceedings and Ruling, if possible to be supplied immediately. It is now 12.30 pm. I also apply for stay of the court orders by at least five days.

**JANET MULWA**

**JUDGE**

**Mr. Kimatta:**

An order of stay makes the court order a joke. No merit in application. It will be further delay.

**Court:**

1. The Ruling to be typed and certified and given to the Respondents' Advocate by 2.30 pm today.
2. Application for stay of the court orders is declined.

**JANET MULWA**

**JUDGE**

**20.2.2015**