



**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. Before me is an application dated the 18<sup>th</sup> March 2015 and filed under Certificate of Urgency. The urgency as argued is that there are orders issued by this court for the arrest and committal to civil jail of the Applicant, and that the orders are in force and may be effected any time. It is these orders that the Applicant and Contemptnor seeks to stay pending the hearing and determination of the substantive application.

2. I have heard Advocate Mr. Nyamodi for the Contemptnor that he seeks an order to Review and set

aside the orders of mandamus made on the 23<sup>rd</sup> April, 2012 and issued on the 24<sup>th</sup> April, 2012 that he submitted were issued pursuant to an alteration or variation of the substantive decree of the court in the Judgment in HCCC No. 65 of 2006 that gave rise to these Judicial Review proceedings. It is submitted that the Contemptnor complied with the said decree that decreed in Relief (b) .... provide that on the basis of the increment, the defendant to pay or liaise with the Pensions Department to pay, that the obligation to the Defendant was either to pay or liaise with the Pension Department to pay. The Applicant has urged that during the hearing, it will be urged that it is beyond the Contemptnors ability to pay the colossal sums as ordered by the court. The order for the Contemptnor to pay is said to be a material variation of the decree in the suit. It is further urged that the Contemptnor has liaised with the Director of Pensions and all other stakeholders who would make payment possible.

3. The court notes that the substantive motion seeks to review the orders of mandamus with a view to setting the said orders aside.

The Applicant seeks for interim orders of stay of execution or enforcement of its orders issued on the 23<sup>rd</sup> April 2012, 16<sup>th</sup> May 2014, 20<sup>th</sup> February 2015, 2<sup>nd</sup> March 2015 and 12<sup>th</sup> May 2015 pending the hearing and determination of the application.

4. I have considered the application and arguments by counsel.

I am satisfied that the application dated 18<sup>th</sup> March 2015 brought under certificate of urgency is urgent. I am persuaded that the interim orders sought are merited.

I therefore grant prayer 1, 2 and 6.

5. The Applicant shall serve all parties in these proceedings for interpartes hearing on the 28<sup>th</sup> May, 2015.

**Dated, signed and delivered at Nakuru this 19<sup>th</sup> day of March, 2015**

**JANET MULWA**

**JUDGE**

**In the presence of:**

Nyamodi & Gumbo for the Contemptnor/Applicant

Court clerk - Omondi