



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: WARSAME. J. MOHAMMED & KANTAI, J.J.A.)

CIVIL APPLICATION NO. NAI. 190 OF 2015

BETWEEN

THE TEACHERS SERVICE COMMISSIONAPPLICANT

AND

KENYA NATIONAL UNION OF TEACHERS (KNUT)1ST RESPONDENT

KENYA UNION OF POST PRIMARY

EDUCATION TEACHERS (KUPPET).....2ND RESPONDENT

AND

THE SALARIES AND REMUNERATION

COMMISSION (SRC)1ST INTERESTED PARTY

THE HON. THE ATTORNEY GENERAL2ND INTERESTED PARTY

(Being an application for stay of execution of the Judgment and Orders of the Employment and Labour Relations Court of Kenya at Nairobi (Nduma Nderi, J) dated on June, 2015

in

Industrial Court Petition No. 3 of 2015)

RULING OF THE COURT

By Notice of Motion dated 9th July, 2015 the applicant, Teachers Service Commission, has approached this Court *inter alia* under **Rule 5 (2) (b)** of this **Court's Rules** seeking in the main that we grant a stay of execution of the Judgment and Orders of the Employment and Labour Relations Court in Nairobi Petition No. 3 of 2015 and all other consequential orders issued in furtherance of the Judgment. It is contended by the applicant that the intended appeal has considerable chances of success and is therefore arguable. Also that if the judgment is implemented the intended appeal would be rendered nugatory. That position is supported by the 1st and 2nd interested parties.

The 1st and 2nd respondents are of the opposite view and therefore oppose the application contending that the learned Judge acted within his mandate and determined the issue submitted to him by the parties. The learned Judge held inter alia that the Collective Bargaining Agreement duly signed by the parties be registered with the Court in terms of **Section 60(1) of the Labour Relations Act, 2007** within 30 days of the date of the Judgment which was delivered on 30th June, 2015.

We observe that implementation of the Judgment as ordered by the learned Judge is due next week. It is within our powers in a situation Like the one before us to balance the interests of the parties within the law.

Upon our consideration of the Motion, the affidavits, the submissions of learned counsel and the Law and considering the circumstances currently obtaining in this matter we make the following orders:

1. A conditional stay of execution of the Judgment delivered on 30th June, 2015 is hereby granted on the following terms:
 - i) the applicant and the interested parties herein shall implement the increment ordered by the Judge in respect only of basic salary with immediate effect from 1st August, 2015.
 - ii) thereafter the applicant shall continue to pay the increment ordered above until the hearing and final determination of the appeal.
 - iii) we here by stay implementation of the Judgment in respect of arrears of salary and all allowances ordered by the Judge until hearing and determination of the appeal.
2. The applicant and the interested parties shall file and serve their respective appeals within the next fourteen days.
3. Parties thereafter to file and exchange respective written submissions within seven days of service the first party being the applicant and the interested parties and thereafter the respondents within seven days of service.
4. Written submissions be limited to twenty pages font 12 double-space.
5. The appeal shall be heard on 22nd September, 2015.
6. The Deputy Registrar of the Employment and Labour Relations Court is hereby ordered to supply certified proceedings and Judgment to the respective parties by or before 29th July, 2015.
7. Costs of the Motion shall abide the appeal.

Dated and Delivered at Nairobi this 23rd day of July, 2015.

M.WARSAME

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JUDGE OF APPEAL

J. MOHAMMED

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JUDGE OF APPEAL

S. OLE KANTAI

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JUDGE OF APPEAL

FURTHER ORDER:

In default of implementation of the Order on payment of increased salary the Motion shall stand dismissed with costs.

Dated this 23rd day of July, 2015.

M.WARSAME

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JUDGE OF APPEAL

J. MOHAMMED

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JUDGE OF APPEAL

S. OLE KANTAI

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JUDGE OF APPEAL

I certify that this a true copy of the original.

DEPUTY REGISTRAR