



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NYERI**

**CAUSE NO. 168 OF 2016**

**DADSON MAINA & 33 OTHERS.....CLAIMANTS**

**VERSUS**

**THE BOARD OF MANAGEMENT NYERI PRIMARY SCHOOL.....RESPONDENT**

**RULING**

1. The Claimants moved the court for the enforcement of a judgment decreed by the court (Ongaya J.) on 15<sup>th</sup> December 2017. The interpretation of the order of stay is what precipitated the notice of motion dated 31<sup>st</sup> October 2018 and amended on 7<sup>th</sup> November 2018. In the order of stay, in the material part of the order, the Court stated as follows:-

THAT there be a stay of execution pending Appeal, subject to the Respondent making budgetary allocation for the payment of the full decretal sums, and to do so by 01.07.2018 or in the next government budget.

2. The order was conditional on a step being taken. The Respondent was to make a budgetary allocation for the payment of the full decretal sums by 1<sup>st</sup> July 2018 or in the next Government budget. In this case, the Claimants assert that the Respondent did not make any allocation by 1<sup>st</sup> July 2018 and therefore are in breach as it was not made in the next government budget. In December 2017, the Government budgetary cycle was midstream and was to lapse on 30<sup>th</sup> June 2018. The order for the budgetary allocation by 1<sup>st</sup> July 2018 therefore meant the Respondent had to make a budgetary allocation by 2018/2019 financial year or in the alternative by the next Government budget, the next budget is due on 1<sup>st</sup> July 2019 and will cover the 2019/2020 financial year. In this regard, the Respondent has not breached the order of the court as the next government budget is yet to be made and urge the Respondent to ensure the court order is complied with so that come 1<sup>st</sup> July 2019 there is no need for an application for enforcement. My reading of the order is that failing such budgetary allocation the stay will stand vacated as the condition given by the court will not have been met. I will dismiss the application by the Claimants with an order that each party bears their own costs.

It is so ordered.

**Dated and delivered at Nyeri this 13<sup>th</sup> day of December 2018**

**Nzioki wa Makau**

**JUDGE**