



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**PETITION NO. 15 OF 2014**

**JOEL NJOROGE WANYOIKE.....PETITIONER**

**v**

**TEACHERS SERVICE COMMISSION..... 1<sup>ST</sup> RESPONDENT**

**TSC COUNTY DIRECTOR, NAKURU.....2<sup>ND</sup> RESPONDENT**

**DIRECTOR OF STAFFING, NAIROBI.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. For determination is an application presented by the Petitioner dated 5 April 2016 seeking review of the judgment delivered on 20 November 2015.
2. In the review application, the Petitioner has posed some 4 questions which need clarification,
  - (i) Whether he is entitled to full pay from date of interdiction up to date of reinstatement.
  - (ii) Whether he is entitled to annual pay rise on 1 July 2014 and 1 July 2015.
  - (iii) Whether he is entitled to transfer allowance.
  - (iv) Whether he is entitled to salary arrears for January, February, and March 2016 up to date of ruling.
3. The Respondents filed Grounds of Opposition to the review application on 3 May 2016 (morning of the date when the application was argued).
4. The review jurisdiction of the Court is predicated on rule 32 of the Employment and Labour Relations Court (Procedure) Rules, 2010 (the Rules have since been amended after the hearing of the application in a way limiting the Court's review jurisdiction).
5. The provisions then in place gave this Court wider latitude than that granted to the High Court under the Civil Procedure Rules.

In the judgment which the Petitioner seeks to clarify, the Court found and declared that

- (a) the demotion and transfer of the Petitioner to Litein High School was unfair

(b) the interdiction of the Petitioner was premature

(c) the Respondents violated the Petitioner's right as a public officer to due protection from demotion without due process of law as envisaged by Article 236 of the Constitution.

7. After the findings and declaration, the Court ordered that the Petitioner be reinstated to his previous work station or such equivalent station at the grade/position at the material time.

8. In the Court's considered view, the import and logical consequence of the Court's findings, declaration and orders is that the *status ante* prevailing before the interdiction and/or demotion should prevail.

9. In simple terms, the Petitioner is entitled to the statutory or contractual entitlements, benefits and rights which accrued or were to accrue but for the demotion and interdiction.

10. These would include full pay from date of interdiction to reinstatement; annual pay rise on the incremental date(s) of 1 July; transfer allowance if transferred to a new station and salary arrears.

12. Although the Respondents counsel Mr. Anyuor submitted that the Petitioner had not set out in his primary pleadings an entitlement to pay during interdiction, annual pay rise(s) and transfer allowance, in the Court's humble view, those entitlements logically and legally flow and accrue as a result of the Court's findings, declarations and orders (Mr. Anyuor disclosed in oral submissions that Petitioner had been moved to 1<sup>st</sup> Respondent's Headquarters in Nairobi).

13. In the event, the Court finds that the application for review on the ground of clarification succeeds, and the Court answers the questions posed in the positive. It is so ordered.

14. Before laying down its pen, the Court is of the firm view that the questions posed by the Petitioner should have been resolved by the parties without needlessly taking up precious judicial time.

15. Each party to bear own costs.

**Delivered, dated and signed in Nakuru on this 19<sup>th</sup> day of September 2016.**

**Radido Stephen**

**Judge**

**Appearances**

For Petitioner        Ms. Wachira instructed by Leina Morintat & Co. Advocates

For Respondents    Mr. Anyuor instructed by Stella Rutto, Advocate

Court Assistant     Mwangi S