



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**

**PETITION NUMBER 23 OF 2013**

**IN THE MATTER OF THE TEACHERS SERVICE COMMISSION ACT, 2012**

**AND**

**THE STRIKE BY THE KENYA NATIONAL UNION OF TEACHERS**

**(KNUT)**

**BETWEEN**

**THE TEACHERS SERVICE COMMISSION.....APPLICANT**

**VERSUS**

**THE KENYA NATIONAL UNION OF TEACHERS.....1ST RESPONDENT**

**WILSON SOSSION.....2ND RESPONDENT**

**MUDZO NZILI.....3RD RESPONDENT**

**RULING**

**Background**

1. On 26th June 2013 the Applicant filed a Petition together with a Notice of Motion under Certificate of Urgency seeking orders to restrain the Kenya National Union of Teachers (KNUT) and its members from continuing with a nationwide strike called by the Union on 25th June 2013. When the matter came before me on 26th June 2013, I certified it urgent and directed the Applicant to serve the Union and set an *inter partes* hearing for 28th June 2013. I also granted leave to the Applicant to serve KNUT by substituted service. At the hearing of the application, there was no appearance for the Union.

2. Upon hearing the Applicant the Court issued the following orders:

- a. The Petitioner and the Respondent are directed to decamp from their hard line positions and proceed to the negotiating table in good faith. For the avoidance of doubt, these negotiations shall be limited to rationalisation of remuneration due to the Respondent's members under Legal Notice No. 534 of 1997 and Legal Notice Number 16 of 2003. The negotiation meetings shall be convened by the Cabinet Secretary for Labour.
- b. The parties are directed to report the outcome of these negotiations to this

Court at 9.00 am on Monday, 15th July 2013;

c. The teachers are directed to report back to work by 8.00 am on Tuesday, 2nd

July 2013. Any strike beyond this time shall be unprotected and illegal;

d. In order to preserve industrial peace, the parties and/or their members and/or agents and/or servants and/or sympathisers are restrained from commenting on this matter outside the confines of the negotiations hereby ordered.

3. As it turned out, the strike was not called off and on 2nd July 2013, the Applicant filed a Notice of Motion under Certificate of Urgency seeking leave of the Court to commence contempt proceedings against the Respondents.

4. This application went before my sister Mbaru J on 8th July 2013 who, having formed the opinion that the Respondents were aware of the Court Order issued on 1st July 2013 granted leave and directed that the matter be mentioned before me within 24 hours for further directions.

5. On 9th July 2013, Mr. Mwangi Njoroge for the Applicant and Mr. Mbaluto for the Respondents appeared before me. At this appearance, Mr. Njoroge told the Court that the Applicant wished to withdraw the application to commence contempt proceedings against the Respondents in good faith believing that the Respondents would comply with the Court Order issued on 1st July 2013 within the next 24 hours. Mr. Njoroge further told the Court that the issue of service had been resolved since personal service of the Court Order had been effected on the Respondents. At this appearance, the Court reminded the Respondents, through their Counsel, that the Court Order was still in force.

6. The strike was still not called off and on 10th July 2013, Mr. Njoroge for the Applicant and Mr. Chacha Odera for the Respondents appeared before me and there being no objection from Counsel for the Respondents, I granted leave to the Applicant to commence fresh contempt proceedings. By agreement of the parties, the substantive application was served on Counsel for the Respondents.

### **The Applicant's Application**

7. The Applicant's application which was filed on 10th July 2013 seeks the following orders:

a) That the Court do find that the 1st, 2nd and 3rd Respondents are in contempt of court for disobedience of the orders of this Court issued on 1st July 2013.

b) That upon grant of prayer (a) above, the Court do impose the penalty of a fine of Kshs. 20,000,000 (Kenya Shillings Twenty Million) against the 1<sup>st</sup> Respondent and in default of payment of such fine all movable and immovable assets of the 1st Respondent including land and buildings be attached and sold in execution of this order to satisfy the penalty for contempt.

c) That upon grant of prayer (a) above the Court do issue an order that the 2nd and 3<sup>rd</sup> Respondents be committed to civil jail for a period of 6 months.

d) That the Court be pleased to issue an order restraining or prohibiting the 1st, 2nd and 3rd Respondents and all members of the 1st Respondent from engaging in activities that would further the strike called by the Kenya National Union of Teachers by statements issued in private or through the Media, inciting teachers to engage in or continue with the teachers strike called by the KNUT which is the subject matter of the petition herein. At the time of writing this Ruling, the strike had in fact come to an end rendering this particular prayer superfluous.

e) That all teachers who have not reported to work be deemed to be in contempt of court and that upon submission of their particulars by the respective heads of their institutions they be fined a sum of Kshs.10,000 which fine should in any event be deducted from their emoluments or dues held by the Applicant and submitted to the Court.

f) That the 1st, 2nd and 3rd Respondents do meet the costs of this application.

### **The Applicant's Submissions**

8. Mr. Njoroge for the Applicant submitted that the Respondents have been fully aware of the orders of the Court issued on 1st July 2013. Counsel recalled that on 26th June 2013, he appeared before the Court *ex parte* seeking orders to stop the strike. With leave of the Court, the application was served on the Respondents by substituted service through advertisement in the Nation and Standard Newspapers. The Respondents did not appear for the *inter partes* hearing of the Applicant's application on 28th June 2013. The hearing nevertheless proceeded and the Court issued its orders of 1st July 2013. Pursuant to the court orders issued on 1st July 2013, the Deputy President went on air and made a passionate plea to the teachers to go back to work.

9. On 2nd July 2013, the 2nd and 3rd Respondents, representing the 1st Respondent made the following unsavoury comments on the ongoing strike:

***“last week's was just a rehearsal.....this is a battle we must win....the court's decision is futile...not even the President can call off the strike.”***

11. The Respondents therefore maintained their hard line stand in spite of the court order. Mr. Njoroge told the Court that the Respondents were aware of the court order even before 8th July 2013 when personal service was effected on the 2nd and 3rd Respondents. In their replying affidavits, the 2nd and 3rd Respondents had not denied the fact that they were aware of the court order before 8th July 2013.

12. Personal service was effected on 8th July 2013 and the 2nd and 3rd Respondents received court process on their own behalf and on behalf of the 1st Respondent. On 9th July 2013, Counsel for the Applicant withdrew the application dated 2nd July 2013 to allow a window of opportunity for the Respondents to comply with the court order. By 10th July 2013, when the current application was filed the Respondents had not complied with the court order.

13. Mr. Njoroge further submitted that the Applicant had bent over backwards to accommodate the Respondents who instead had continued to call press conferences and demonstrate on the streets. He asked the court to take notice that at the time of the hearing of the application, the Respondents were yet to comply with the court order.

14. On the issue of the the National Executive Council of the 1st Respondent having declined to call off the strike, Counsel submitted that a Trade Union registered under the law cannot be the one to direct its members to disobey a court order. KNUT as a body corporate was liable to obey the court order and was responsible for the acts of its officials. If the Union is guilty of contempt, then the 2nd and 3rd Respondents are equally guilty.

15. Referring to the KNUT Constitution, Counsel told the Court that according Article IX the total membership of the National Executive Council was forty members and quorum for meetings as per Article XI was one third. It was therefore possible for the National Chairman and the Secretary General to convene a meeting of the National Executive Committee for purposes of calling off the strike pursuant to the court order issued on 1st July 2013. The two officials should have notified the teachers to go back to work.

### **The Respondents' Reply**

16. In opposing the application, Mr. Chacha Odera for the Respondents submitted that the Respondents were not disrespectful to the Court and had not disobeyed any of its orders. He accused the Applicant of introducing a new case with new orders.

17. Making reference to the Petition and Notice of Motion filed by the Applicant on 25th June 2013, Counsel told the Court that the orders sought by the Applicant were directed at the members of the Kenya National Union of Teachers, not the Union or its officials.

18. According to the report of the Cabinet Secretary for Labour filed in Court on 12th July 2013, both the Applicant and the Respondents submitted to a conciliation meeting as ordered by the Court. However, the meeting did not make any headway since the Conciliator insisted that Legal Notices number 534 of 1997 and 16 of 2003 be vacated. Mr. Odera took issue with the fact that the invitation letters exhibited by the Applicant were not signed by the Cabinet Secretary for Labour.

19. With regard to the order regarding the strike, Counsel submitted that it was directed at the teachers and since the order had a default clause that is to say, that the strike beyond 2nd July 2013 would be unprotected and illegal, the remedy as between the Applicant as an employer and the teachers as employees lay in disciplinary proceedings. There was no order requiring the Respondents to call off the strike. Further, the grounds on which the Applicant's application is based have nothing to do with incitement.

20. Mr. Odera told the Court that majority of the teachers had not been paid their salaries for June 2013 and the few who had received their salaries had Kshs. 10,000 deducted from these salaries. This amounted to contempt of court on the part of the Applicant. According to Counsel, the Union and its members were being compelled by the Applicant to negotiate out of fear.

21. On service of the court order, Mr. Odera submitted that personal service was effected on 8th July 2013 and the affidavit of service dated 9th July 2013 did not show the efforts made by the process server between 1st and 8th July 2013. The Applicant should have applied for leave to serve the order by substituted service. According to Counsel, the Applicant's attempt at service was casual. The question of knowledge of a court order cannot be inferred especially where no efforts to effect service have been made. The documents attached by the Applicant to prove the allegations of breach of the court order by the Respondents were all dated before 8th July 2013.

22. With regard to the order to the parties to maintain industrial peace, Mr. Odera took issue with a press statement on Government offer to teachers issued by the Applicant's Chief Executive Officer, Gabriel Lengoiboni. Counsel told the Court that the press statement had served to disturb industrial peace thus compromising negotiation of a settlement and inciting the teachers who are members of KNUT to stay out of class.

23. On the Applicant's prayer that the teachers who are members of KNUT be penalised by a fine of Kshs. 10,000 each, Mr. Odera submitted that no teacher had been named and no leave had been sought for any of them to be found in breach of the court order. To punish unnamed teachers who are not part of these proceedings would amount to mob justice.

### **Affidavit of Service Sworn on 2nd July 2013**

24. In making the Applicant's final reply, Mr. Njoroge introduced an affidavit of service sworn by Alex Mutua on 5th July 2013 which though on the court record, had not been served on the Respondents. Having heard submissions from both sides, I decided to admit the affidavit subject to Counsel for the Respondents having an opportunity to file a further affidavit in reply. This necessitated adjournment of the proceedings to 17th July 2013.

25. In response to the affidavit of service sworn by Alex Mutua on 2nd May 2013, the Respondents filed three affidavits sworn by Wilson Sossion, David Kiproop Kimeli and Ephraim

Muregi. Kimeli, who is a Security Guard manning the front entrance to KNUT House deponed that he did not encounter any person by the name Alex Mutua on 2nd July 2013. He produced the visitors' book which would have captured Alex Mutua's details if he had indeed visited KNUT House on 2nd July 2013.

26. Ephraim Muregi who is the Branch Chairman for Nairobi deponed that on 2nd July 2013 he never went to KNUT House and could not therefore have been served with court process on behalf of the Union. At any rate he was not authorised to receive court process on behalf of the Union.

27. In response to the three further affidavits filed by the Respondents, Mr. Njoroge for the Applicant submitted that the extract of the visitors' book for KNUT House for 2nd July 2013 was unreliable as it showed only 9 visitors to the building and the last entry was made at 11.21 AM, yet Alex Mutua deponed that he visited the building at 11.43 AM. Counsel added that personal service on the Respondents had been difficult in the past and this is the reason why they applied for substituted service when they first appeared in Court on 26th June 2013.

### **Applicant's Closing Submissions**

28. In winding up the Applicant's submissions, Mr. Njoroge reiterated that the 2nd and 3rd Respondents were officials of the 1st Respondent with power to summon the National Executive Council to call off the strike. They could not therefore argue that the court order was not directed to them. They were responsible for the management of the 1st Respondent as well as obeying orders directed at the 1st Respondent.

29. Yet, even after personal service was effected on the 2nd and 3rd Respondents, 6 days lapsed before they took any action to convene the National Executive Council. Moreover, no invitation letters to the meeting of the National Executive Council or minutes of the meeting were produced. On the issue of incitement by the 2nd and 3rd Respondents to the teachers to remain on strike, Counsel submitted that this was an integral part of the Applicant's case.

30. With regard to the press statement issued by the Applicant's Chief Executive Officer, Gabriel Lengoiboni, Counsel told the Court that it was issued on 10th July 2013 at the close of negotiations to notify members of the Kenya Union of Post Primary Education Teachers (KUPPET) the other union representing teachers the outcome of the negotiations. The allegation that this incited members of KNUT was therefore unfounded.

31. On the Respondents' complaint that the Applicant had deducted Kshs. 10,000 from some of their members' salaries, Mr, Njoroge submitted that no evidence was rendered in support of this allegation.

### **The Law on Contempt of Court**

32. Having analysed the submissions by the parties, I will now set out the law on contempt of court. The power of the Court to punish for contempt is donated by

Section 5(1) of the Judicature Act which provides as follows:

***(5)(1) The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of Justice in England and that power shall extend to upholding the authority and dignity of Subordinate Courts.***

## **Jurisdiction of the Industrial Court to Punish for Contempt**

33. Although the jurisdiction of the Industrial Court to punish for contempt of court was not challenged by any of the parties, I will take the opportunity to rule on this issue. The Industrial Court as currently constituted is created under Article 162(2)(2) which provides as follows:

***(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-***

***(a) employment and labour relations; and***

***(b) the environment and the use and occupation of, and title to, land.***

34. The plain reading of this provision is that the Industrial Court, being a superior court with the status of the High Court, has similar powers to those assigned by the High Court in all matters arising out of employment and labour relations.

35. The term 'High Court' in Section 5(1) of the Judicature Act would therefore include the Industrial Court and the Environment and Land Court established under Article 162(2) of the Constitution. That clears any doubts on the jurisdiction of this Court to punish for contempt of court.

## **Why do Courts Punish for Contempt of Court?**

36. Black's Law Dictionary (Ninth Edition) defines contempt of court as:

***“Conduct that defies the authority or dignity of a court. Because such conduct interferes with the administration of justice, it is punishable usually by fine or imprisonment.”***

37. In the case of **Johnson Vs Grant , 1923 SC 789 at 790** Lord President Clyde sated that:

***“...The law does not exist to protect the personal dignity of the judiciary nor the private rights of parties or litigants. It is not the dignity of the court which is offended. It is the fundamental supremacy of the law which is challenged.”***

38. The reason why courts will punish for contempt of court then is to safeguard the rule of law which is fundamental in the administration of justice. It has nothing to do with the integrity of the judiciary or the court or even the personal ego of the presiding judge. Neither is it about placating the applicant who moves the court by taking out contempt proceedings. It is about preserving and safeguarding the rule of law. A party who walks through the justice door with a court order in his hands must be assured that the order will be obeyed by those to whom it is directed.

39. A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this Court will not be the one to open that door. If one is dissatisfied with an order of the court, the avenues for challenging it are also set out in the law. Defiance is not an option.

40. In the case of **Kenya Tea Growers Association Vs Francis Atwoli and 5 Others [2012] eKLR** Lenaola J cited with approval the case of **Clarke and Others Vs Chadburn & Others [1985] 1All E.R (PC), 211** in which the court observed that:

***“I need not cite authority for the proposition that it is of high importance that orders of the courts should be obeyed, willful disobedience to an order of the court is punishable***

*as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal....even if the Defendants thought that the injunction was improperly obtained or too wide in its terms, that provides no excuse for disobeying it. The remedy is to vary or discharge it.”*

41. As was held in the case of Econet Wirelss Ltd Vs Minister for Information & Communication of Kenya & Another [2005] eKLR

*“Where an application for committal for contempt of court orders is made the court will treat the same with a lot of seriousness and urgency and more often will suspend any other proceedings until the matter is dealt with and if the contempt is proven to punish the contemnor or demand that it is purged or both. For instance an alleged contemnor will not be allowed to prosecute any application to set aside orders or take any other step until the application for contempt is heard. The reasons for this approach are obvious- a contemnor would have no right of audience in any court of law unless he is punished or purges the contempt.”*

### **Personal Service Versus Knowledge**

42. I will now deal with the issue of service of the orders issued by this Court on 1st July 2013. It is the Respondents' case that they were not served with the said orders until 8th July 2013. They could not therefore be accused of being in contempt of orders they were not aware of.

43. The Applicant on the other hand told the Court that prior to 8th July 2013, attempts to effect service on the Respondents were thwarted by the Respondents themselves. This is what the contested affidavit of service sworn by Alex Mutua on 2nd July 2013 sought to advance.

44. The importance of personal service in contempt proceedings, which are quasi-criminal in nature need not be overemphasised.

45. The **Halsbury's Laws of England (Fourth Edition) Volume 9 at page 37** provide as follows:

*“As a **general rule**, no order of court requiring a person to do or abstain from doing an act may be enforced unless a copy of the order has been served personally on the person required to do or abstain from doing the act in question.”*[Emphasis added]

46. Similarly, the explanatory notes in Order 52 Rule 3(1) of the England Supreme Court Practice Rules which are applicable in our jurisdiction provide that:

*“No order will **normally** be issued for the committal of a person unless he has been personally served with the order, disobedience to which is said to constitute the contempt, or, if, the order is directed to a group of persons or a corporation, some appropriate member has been personally served.”*[Emphasis added]

47. In my view, the words **“general rule”** and **“normally”** in these provisions are instructive. To my mind, the import here is that in the normal scheme of things, personal service in matters of contempt is a requirement. However, if a man were to barricade himself or go into a bunker from where he issues communication to the effect that he in fact knows about the existence of a court order and will not obey it, surely the lack of personal service would not nullify an otherwise competent application for committal for contempt of court.

48. To that extent I agree with the ruling by Lenaola J in the case of Basil Criticos Vs Attorney General and 8 Others [2012] eKLR that :

*“...the law has changed and as it stands today knowledge supersedes personal*

***service.....where a party clearly acts and shows that he had knowledge of a Court Order, the strict requirement that personal service must be proved is rendered unnecessary”***

49. In a news article appearing in the Daily Nation of Tuesday, July 2, 2013 which was annexed to the supporting affidavit of Gabriel Lengoiboni as ‘GL3’, the 1st Respondent, KNUT is reported to have termed the court decision as **“futile”** while the 2nd Respondent, Wilson Sossion was quoted as saying **“Last week’s was just a rehearsal”** and the third Respondent, Mudzo Nzili is reported to have stated **“This is a battle we must win. We are appealing to the teachers that when we start tomorrow, they should not give in.”**

50. Apart from general denial in the replying affidavits sworn by the 2nd and 3rd Respondents on 12th July 2013 and the submission by their Counsel that newspaper reports have low probative value, the Respondents did not deny the words attributed to them in this article.

### **Contempt Post Personal Service**

51. It is not in dispute that the court order was personally served on the 2nd and 3rd Respondents on 8th July 2013 and even when the National Executive Council met on 14th July 2013, they resolved that the strike would continue as if they were oblivious of the existence of the orders issued by this Court on 1st July 2013.

52. From the foregoing I find that the three Respondents were aware of the orders of this Court issued on 1st July 2013 as far back as 2nd July 2013 and were in fact personally served on 8th July 2013. That settles the question of service.

### **Standard of Proof**

53. I will now examine whether the allegations of contempt of court against the Respondents have been proved to the required standard. The standard of proof in matters of contempt of court is well established.

54. In the case of **Mutitika Vs Baharini Farm Limited [1985] KLR 229, 234** the Court of Appeal held that:

***“In our view, the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...The standard of proof beyond reasonable doubt ought to be left where it belongs, to wit, in criminal cases. It is not safe to extend it to an offence which can be said to be quasi-criminal in nature.”***

55. In the replying affidavits sworn by Wilson Sossion and Mudzi Nzili, the Respondents sought to demonstrate that they were not in contempt of court. Apart from the issue of service, they advanced the argument that in fact none of the court orders were addressed to them and they could not therefore be in contempt.

56. On the order requiring the parties to decamp from their hard line positions and proceed to the negotiating table in good faith, Sossion and Nzili deponed that they had led the National Officials of the 1st Respondent in various negotiation meetings called by the Applicant notwithstanding that the meetings were not convened by the Cabinet Secretary for Labour, as ordered by the Court.

57. Sossion and Nzili further deponed that they cannot be held accountable for compliance with the order requiring the teachers to go back to work by 8.00 am on Tuesday, 2nd July 2013 because it was not directed at them but to teachers at large. This averment begs the question: who called out the teachers to go on strike and who was responsible for calling them back to

class?

58. The Court was referred to various provisions of the Constitution of the Kenya National Union of Teachers as Revised on 8th December 2010.

59. Article VI on Designations and Duties of National Officers provides that:

***“The National Chairman shall preside at all conferences Advisory Councils, National Executive Council and may preside over any meetings, at which the chairman will be present, enforce observation of the Constitution and rules of the Union and perform such duties as by usage and custom pertain to his office. In the case of an equality of votes at any meeting except of Trustees, the Chairman shall have, in addition to his/her normal vote, a “Casting Vote”.”***

***“The Secretary General shall issue notices of all conferences and meetings and prepare the agenda of all meetings, attend all Annual Delegates Conferences, Special Conferences and all meetings of the National Executive Council and other Executive Committee and record the Minutes and shall perform such other duties as prescribed by the National Executive Council or Delegates' Conferences. He shall be responsible for ensuring due compliance by the Union with the provisions of the Labour Relations Act, 2007 and all Regulations made thereunder. He shall function as the Chief Executive Officer of the Union, by being the Chief Spokesman of the Union.”***

60. With regard to strikes, Article XVI (2) & (3) provides that:

***“In no case shall cessation of work be threatened or take place without the sanction of the National Executive Council of the Union.”***

***“In the event of a strike called with the instructions of the National Executive Council, no one shall call off the strike unless duly authorized by the National Executive Council which fact shall be conveyed by the Secretary General to the Branches concerned.”***

61. From the foregoing provisions of the 1st Respondent's Constitution, it is obvious that the teachers did not just go on strike. They were called out by their Union through its organs and officials. The same organs and officials were duty bound to call the teachers back to back work upon their knowledge of the existence of the orders of this court issued on 1st July 2013. The fact that the order to go back to work was addressed to the teachers does not take away the responsibility of the Respondents to ensure compliance.

62. In the Mutitika Case (supra) the Court held that:

***“A person one who, knowing of an injunction, or an order of stay willfully does something, or causes others to do something, to break the injunction or interfere with the stay is liable to be committed for contempt of court as such person has by his conduct obstructed justice.”***

63. Even assuming that the Respondents got to know of the court order on 8th July 2013 when personal service was effected, there was no explanation on the part of the 2nd and 3rd Respondents as to why they took a whole six days to convene the National Executive Council if indeed they took the orders of the Court seriously.

64. Even worse, when the National Executive Council finally met on 14th July 2013, they took a decision to carry on with the strike knowing fully well that the Court had outlawed it on 1st July 2013. There was no evidence that Sossion and Nzili dissented from the decision taken by the National Executive Council. In the absence of such evidence, the Court came to the conclusion that both officials were part and parcel of the decision taken by the National Executive Council,

which decision flew right in the face of the orders of this Court issued on 1st July 2013.

65. I therefore find that the 1st, 2nd and 3rd Respondents jointly and severally knowingly and willfully disobeyed the orders of this Court issued on 1st July 2013 and hereby cite them for contempt of court.

**The Teachers**

66. Before pronouncing penalty on the 1st, 2nd and 3rd Respondents, I will address the issue of the teachers who remained on strike beyond 2nd July 2013. The Applicant asked the Court to deem teachers who did not report to work as directed to be in contempt of court and to impose a fine of Kshs. 10,000 on each one of them. However, no names of these teachers were submitted to the Court and the Court does not issue orders at large. I therefore find no basis for granting the Applicant's prayer in this regard.

**Penalty**

67. Having cited the three Respondents for contempt of court, I impose penalty as follows:

a) The 1st Respondent, that is to say the Kenya National Union of Teachers (KNUT) shall pay a fine of Kshs. 5,000,000 (read Five Million Kenya Shillings). The said fine shall be recovered by the Teachers Service Commission from union dues deducted on behalf of KNUT and paid to court within the next 30 days from the date of this Ruling.

b) The 2nd Respondent that is to say, Wilson Sossion shall pay a fine of Kshs. 500,000 (read Five Hundred Thousand Kenya Shillings) and in default the said Wilson Sossion shall be committed to civil jail for 30 days. This penalty takes effect immediately.

c) The 3rd Respondent that is to say, Mduzo Nzili shall pay a fine of Kshs. 500,000 (read Five Hundred Thousand Kenya Shillings) and in default the said Mduzo Nzili shall be committed to civil jail for 30 days. This penalty takes effect immediately.

Orders accordingly.

**DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22ND DAY OF JULY 2013**

**LINNET NDOLO**

**JUDGE**

**In the Presence of:**

.....for Applicant

.....for Respondents

.....2nd Respondent

..... 3rd Respondent