

TEACHERS SERVICE COMMISSION

Telephone: Nairobi 2892000
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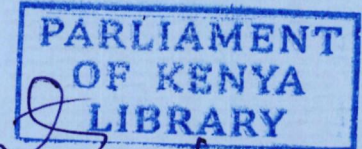
When replying please quote
Ref. N°:
CS/TSC/76/VOL.IV



TSC HOUSE
KILIMANJARO ROAD
UPPER HILL
PRIVATE BAG- 00100
NAIROBI, KENYA

3rd October, 2019.

Clerk of the National Assembly
Clerk's Chambers,
Parliament Buildings
P.O Box 41842-00100
NAIROBI



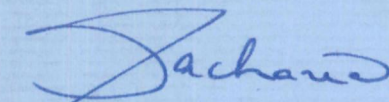
① Done
4/10/19

Att: Serah M. Kioko


REQUEST FOR A STATEMENT ON INTERDICTION OF TEACHERS AND VIOLATION OF TRADE UNION RIGHTS

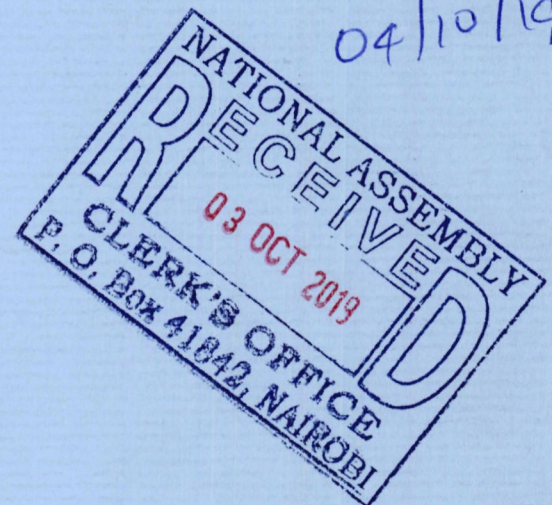
Reference is made to your letter dated 26th September, 2019 on the above matter.

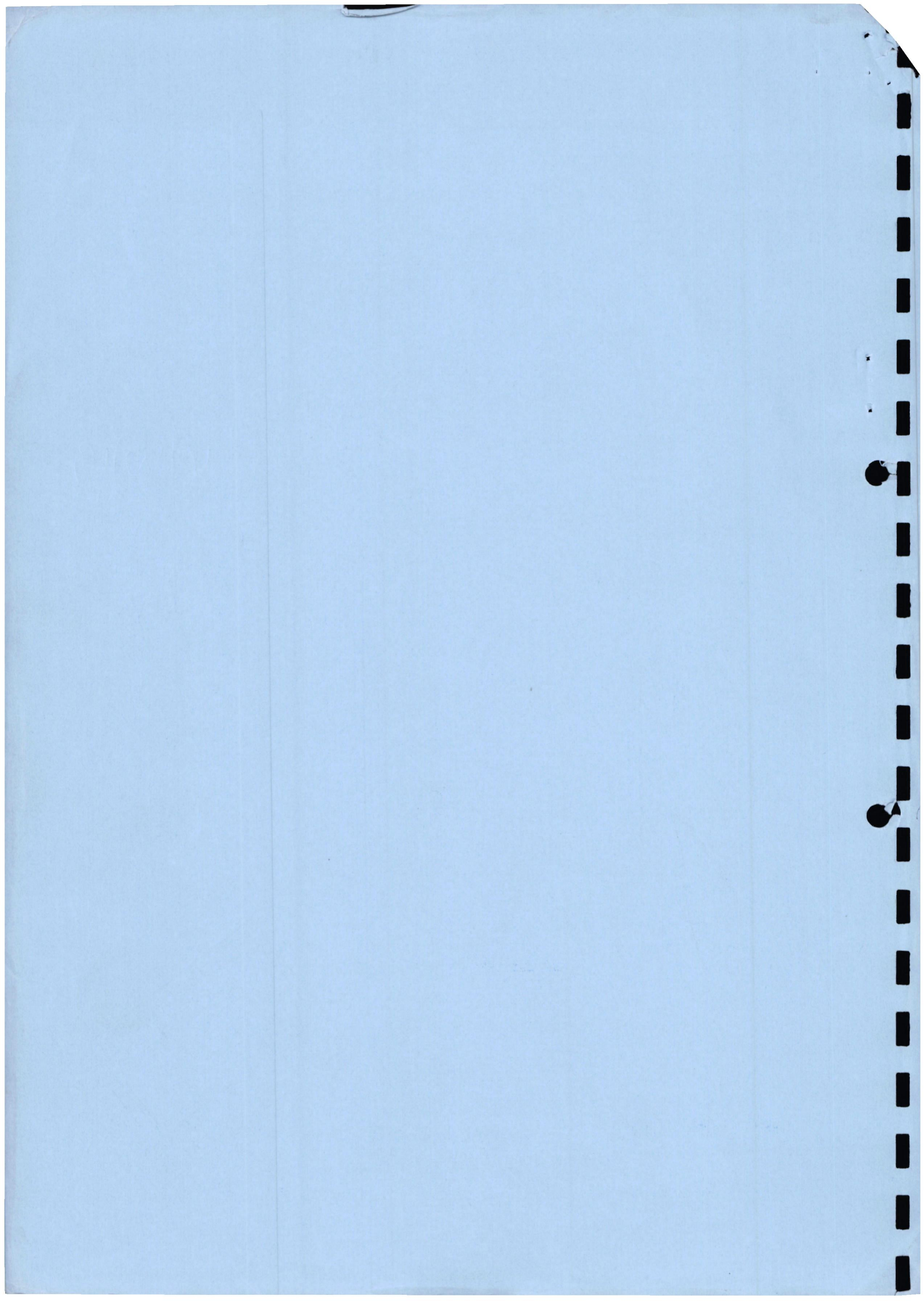
Attached, herewith, please find a statement on interdiction of teachers for your consideration.


**DR NANCY NJERI MACHARIA, CBS
SECRETARY/CHIEF EXECUTIVE**

② MURUNGA
please deal
FA
04/10/19

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 NOV 2019	DAY: THURSDAY
TABLED BY: Hon. Julius Nelly Chair, Committee on Education	
CLERK AT THE TABLE: Lemuna Mwangi	





TEACHERS SERVICE COMMISSION




A STATEMENT ON TEACHERS INTERDICTED FOR DISRUPTING APRIL, 2019
COMPETENCY BASED CURRICULUM TRAININGS FOR HEADTEACHERS AND GRADES 1-4
PRIMARY EDUCATION TEACHERS:

A QUESTION RAISED BY THE MEMBER OF PARLIAMENT FOR HOMA-BAY TOWN
CONSTITUENCY,
HON. PETER OPONDO KALUMA.

Presented by

DR. NANCY NJERI MACHARIA, CBS,
SECRETARY/CHIEF EXECUTIVE
TEACHERS SERVICE COMMISSION

3RD OCTOBER, 2019

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	21 NOV 2019
	DAY: THURSDAY
TABLED BY:	Hon. Jairo Njiru Chair, Committee on Edu
CLERK-AT THE TABLE:	Lemuna Masey

A. BACKGROUND
LEGAL FRAMEWORK UNDERPINNING TSC OPERATIONS

1. The Teachers Service Commission is established under **Article 237 (1)** of the Constitution with the overall mandate of teacher management. Specifically, Article **237 (2)** of the Constitution mandates the Commission to, *inter alia*, register trained teachers; and exercise disciplinary control over teachers.
2. In addition to the functions set out in **Article 237** of the Constitution, the Teachers Service Commission Act. No. 20 of 2012 (TSC Act) mandates the Commission to, among other things, formulate policies to achieve its mandate; and monitor the conduct and performance of teachers in the teaching service.
3. Pursuant to **section 47** of the TSC Act, the Commission has published the Code of Regulations for Teachers which is applicable to all registered teachers and provides for, among other things, “management and administration of the function of discipline of those in the teaching service.”
4. In developing the Code of Regulations for Teachers (2015) (hereinafter the **CORT**), the Commission strictly adhered to the provisions of the Constitution that underscores the principle of public participation and the provisions of Statutory Instruments Act, 2010, which govern the process of developing subsidiary legislations.
5. Every clause in the **CORT** was discussed, negotiated and agreed upon by all stakeholders in the Education sector.

As required by law, the provisions of the COR being a delegated legislation was extensively interrogated by the Parliamentary Departmental Committee on Education and Research and the Committee on Delegated Legislation of the 11th Parliament.

The same was approved by the then Parliament and gazetted as Legal Notice No 196 of 2015.

EMPLOYMENT & LABOUR RELATIONS

(i) Relationship between TSC and Teachers in its employment

6. Fundamentally, every individual teacher in the employment of the Commission has personal contract of service with the Commission. The contract of service between TSC and every teacher in its employment is governed by the provisions of the Employment Act, 2007.
7. A teacher who subscribes to a trade union does so on the basis of his/her employment relationship with the Commission. Thus, it is a teacher's employment which provides the teacher with the opportunity to subscribe to, found and/or belong to a trade union.

(ii) Relationship between TSC and Teacher Unions

8. The relationship between the Commission and the teacher unions is premised on the provisions of Article 41 of the Constitution, the Labour Relations Act, 2007, Recognition Agreements and Collective Bargaining Agreements.
9. To this end, TSC has a Recognition Agreement with **Kenya National Union of Teachers (KNUT)** and the **Kenya Union of Post Primary Education Teachers (KUPPET)**.

To foster cordial industrial relations in the teaching service, TSC has signed a **Collective Bargaining Agreement (CBA)** for the period **2017-2021** with the teacher unions.

10. The CBA and Recognition Agreements read together with **Part VIII** of the Labour Relations Act, 2007 give specific guidelines for handling disputes in a peaceful, coherent, structured and organized manner.

The said legal instruments further prescribe in detail procedural steps for declaring a dispute between the Commission and Teacher unions.

TEACHING SERVICE AND THE EDUCATION SECTOR

The Principle of complementarity in service delivery

11. The Teaching service is a sub-sector of the Education Sector. Whereas **section 15** of the Fourth Schedule to the Constitution of Kenya vests education policy and curricula, among others, with the national government, **Article 237** of the Constitution vests the management and administration of the teaching service on the Commission.
12. As agencies of government, in discharging their respective constitutional mandates, the Ministry of Education and the Teachers Service Commission have at all times demonstrated the principle of complementarity to ensure success of all educational programmes.
13. We underscore that the Commission has a **DUTY** under the Constitution and the law to ensure that education curriculum, as developed and designed by the Ministry of Education, is fully and successfully implemented in all schools for the benefit of our children, our future. At the center of implementation of education curriculum is the teacher.

The New Education Curriculum (Competency-Based Curriculum)

14. It is common knowledge that the national government, through the Ministry of Education, is in the process of phasing out the 8-4-4 Education System with Competency-Based Curriculum following a series of research and activities geared towards the same. Just to highlight but a few: -

- (a) In 2016, the Ministry of Education conducted a countrywide Needs Assessment on the education curriculum change in Kenya. This led to the development of Basic Education Curriculum Framework 2017.
- (b) In 2018 the Ministry of Education developed the Basic Education Framework on the Competency-Based Curriculum and piloted the New Curriculum countrywide in Pre-Primary 1 (PP1); Pre-Primary 2 (PP2); Grade 1; Grade 2; and Grade 3.
- (c) In January, 2019 the Ministry of Education rolled out the New Curriculum in all lower primary schools (PP1, PP2, Grade 1, Grade 2, and Grade 3).

15. For the success of the implementation of the New Curriculum the Commission is under DUTY to ensure in-service training of teachers in pedagogy to undertake teaching of the New Curriculum to our children.

The KNUT's concern on training of Teachers

16. After the roll out of the New Curriculum, the KNUT conducted a "research" on "**Teacher preparedness for the implementation of the Competency-Based Curriculum in Pre-Primary and Lower Primary Grades in Kenya.**" The KNUT released the report of its "research" on 18/3/2019. The Report made the following conclusions, among others:

- (a) *The implementation of the Competency-Based curriculum was hurriedly done before the majority of the teachers were trained on its contents and teaching methods.*
- (b) *The data suggested that inadequate training of teachers will hinder most of them from obtaining a solid base of essential knowledge of the Competency-Based Curriculum.*
- (c) *Most Pre-Primary, Grade One, Two, and Three teachers have not been trained on the CBC.*

TRAINING OF TEACHERS FOR THE FULL AND SUCCESSFUL IMPLEMENTATION OF THE NEW CURRICULUM

i) TSC's mandate to train teachers for the full and successful implementation of the New Curriculum

17. TSC and Ministry of Education undertook elaborate plans to train teachers of all cadre and Senior Government officials in the Education Sector to ensure successful implementation of the New Curriculum. In playing the complementarity role to ensure and facilitate successful implementation of the New Curriculum, the Commission:

- (a) Co-ordinated the training of 181 Master Trainers comprising its own officers and officers from the wider Ministry of Education between 8/4/2019 and 12/4/2019 as summarized in the table below:

Table: Training of Master Trainers

S/NO.	ORGANIZATION	MASTER TRAINERS
1.	Ministry of Education (QASOs)	40

2.	Teachers Service Commission	20
3.	Kenya Institute of Curriculum Development	79
4.	Kenya Institute of Special Education	10
5.	Kenya National Examinations Council	20
6.	Directorate of Primary Education	12
TOTAL		181

Source: Teachers Service Commission, 2019

(b) Using the Master Trainers, further trained a total of **2,485** trainers between **15/4/2019** and **19/4/2019** in **42** training centres distributed countywide. These included **1,165** Curriculum Support Officers (CSOs), and **1,320** CBC Champion teachers.

(c) Organized countrywide training for **ALL** teachers both in public and private service on Competency-Based Curriculum between **23/4/2019** and **26/4/2019**. The training which was conducted by the CSOs and Champion teachers in **119** zones targeted a total of **120,320** teachers as follows: **22,830** Head teachers; **68,490** teachers in public Primary Schools; and **30,000** teachers in private Primary Schools.

18. During countrywide training of teachers, it was imperative to train ALL Head teachers in their dual roles as **classroom teachers** and as the **supervisors and evaluators of the implementation of curriculum.**

✓ ii) **Disruption of the CBC training by a few teachers who subscribe to the KNUT**

19. On 23/4/2019 during the 1st day of the CBC training, some 245 teachers who constituted Headteachers, Deputy Headteachers, Senior teachers, assistant teachers and KNUT Branch Executive Secretaries in some branches in 14 Counties boycotted or gained entry into training venues and disrupted, incited, physically restrained, assaulted and/or caused total chaos by forcefully and violently chasing away teachers who were peacefully undergoing the training.

20. These counties include *Kajiado, Kakamega, Bungoma, Kitui, Machakos, Kilifi, Taita-Taveta, Homa-bay, Garissa, Siaya, Kisii, Nyamira, Vihiga, and Kwale*. No disturbance or boycott of the CBC training was experienced in the remaining 33 Counties where 100% attendance of teachers was recorded at the training centers.

21. We note that:

- (a) The total number of teachers who were targeted for the April, 2018 training were 120,320 as indicated in paragraph 19 (c) herein above and only 258 teachers attempted to derail the process. This constitutes 0.2%.
- (b) Cases of disruption of training were reported in 14 out of the 47 counties. This constitutes 29.8%.
- (c) Teachers identified for the training were those that were actually teaching the lower primary where the New Curriculum is currently under implementation. This is the lot of teachers whom the KNUT's Report of 18/3/2019 had observed needed to be trained so as to gain a solid base of essential knowledge of the Competency-Based curriculum.



(d) ALL Head teachers were targeted for the training to equip them with knowledge, competencies and skills for implementation and supervision of the New Curriculum as provided for under **regulation 42(2)** of the Code of Regulations for Teachers.

(e) The primary intention of teachers who boycotted or gained entry into training venues and disrupted, incited, restrained, and/or chased away teachers who had had been invited to attend the training was to disadvantage learners under their care since they had made up their minds not to teach the New Curriculum and hence wanted their colleagues to join them.

iii) Consequences of the disruption of the CBC training

22. In accordance with the provisions of the Code of Regulations for Teachers, the Commission, through its various County Directors issued “**show cause**” letters to ALL teachers who were positively identified to have engaged in professional misconduct by boycotting, disrupting, inciting, restraining, assaulting and/or attacking and chasing away their colleagues (including those in the private sector) who were attending the CBC training.

23. Regrettably, a host of teachers identified to have engaged in disrupting the CBC training were Headteachers whose cardinal duty, aside from actual teaching, is supervision and evaluation of the implementation of the institutional curriculum.

24. Upon considering the teachers’ responses to the “**show cause**” letters, the respective TSC County Directors formed the opinion that the teachers had a case to answer. Accordingly, the County Directors issued letters of interdiction to the affected teachers.

B. RESPONSE TO THE HON. PETER OPONDO KALUMA, MP.

QUESTION (a)

Why did TSC take action against the 280 teachers who were responding to their union's call for action, as provided for by Article 41 of the Constitution without procedurally engaging the union on this matter?

25. It is not true that the Commission interdicted **Two Hundred and Eighty (280)** teachers who boycotted and/or disrupted the **April, 2019** training on CBC. The fact is that the Commission interdicted a total of **Two Hundred and Forty-Five (245)** teachers in the whole Country translating to **0.076%** of the teaching force in public service.
26. TSC as an **employer** and **regulator** of the teaching service has a cardinal duty, solemn obligation, constitutional and statutory mandate to protect the interest of learners who are minors. TSC is compelled by **Articles 43 (f)** and **53 (b)** of the Constitution to ensure that learners access quality basic education. The Constitution further proclaims under **Article 53 (2)** that where a matter involves a child, the best interest of the child must take precedence.
27. Secondly, TSC as an **employer** and **regulator** of the teaching service has a constitutional mandate to safeguard the integrity, nobility and the dignity of the teaching service by faithfully and objectively enforcing the provisions of the legal framework regulating the conduct of teachers both in private and public service.
28. The Commission has a solemn duty to adhere to and fully implement the provisions of all law and regulations applicable in the teaching service as legislated and passed by Parliament for the purpose.

29. It is in this regard that upon receiving allegations touching on the professional misconduct of some of our teachers, the Commission commenced impartial investigations to establish the veracity of the allegations. The investigations revealed that some of the teachers acted contrary to the provisions of the **Third Schedule** of the Teachers Service Commission Act, 2012; **regulation 140** of the Code of Regulations for Teachers; **Part II** of the Code of conduct and Ethics for Teachers; and the **Public Officer Ethics Act**.

30. The teachers were thereafter subjected to a fair, impartial and transparent disciplinary process on a case-by-case basis as provided for in their respective contracts of employment and the Code of Regulations for Teachers based on the merits of each case; level of responsibility in the professional misconduct; and evidence presented.

31. The Commission did not engage the KNUT in this regard for reasons that:

- a) The KNUT did not and to-date has not declared a dispute relating to the matter as provided under the Recognition Agreement, the Collective Agreement and the Labour Relations Act;
- b) The KNUT has no legal mandate to issue parallel instructions to employees without invoking the grievance handling procedure which entails declaration of a formal dispute as per the law;
- c) The issue involving discipline of employees forms the core mandate of an employer. The law only allows a union official to accompany an employee who is a member of the union at the time of the disciplinary hearing;

- d) In organizing and funding the training sessions, the Commission was partly responding to the stakeholders' (including the unions) calls for thorough training of teachers to facilitate the rolling out of the New Curriculum.
- e) The KNUT Secretary General is a member of the CBC National Steering Committee and should have had the union's reservations dealt with at the committee level instead of misleading teachers to disrupt a programme that the National Steering Committee had sanctioned.

QUESTION (b)

Why has TSC failed to deduct and remit union dues for the months of July and August 2019, contrary to provisions of the labour laws and ILO Convention No. 98 on the protection and rights of trade unions, thus crippling the operations of the Kenya National Union of Teachers, to the detriment of teachers?

32. The Commission has carefully considered the question and respectfully submits to the House that the information sought therein is subject of litigation and pending in Court being **Nairobi ELRC Petition Number 158 of 2019: Kenya National Union of Teachers vs. Teachers Service Commission.**
33. In the said Petition, KNUT has sued the Commission for alleged refusal to deduct union dues for the months of **July and August 2019**. The Petition together with two applications are scheduled for hearing on **15th October, 2019** as per the attached hearing Notice dated **27th September, 2019**.

34. Accordingly, pursuant to standing Order Number 89, the Commission humbly requests the House to defer the said question with a view to upholding the *sub judice Rule*. *Appendix 1 is a copy of the Hearing Notice.*

QUESTION (c)

Why has TSC refused to comply with the conditions of the Collective Bargaining Agreement (CBA) for 2017-2021 and ILO Convention 95 prohibiting withdrawal of earnings by workers, through the introduction of two parallel payrolls, one for non-KNUT members who benefit from the CBA and another for those not benefiting from the CBA, yet the benefits of the CBA are for all teachers in the teaching service and sufficient funding has been appropriated by the National Assembly for these payments?

35. The Commission has also carefully considered the parameters of question Number (c) and respectfully submits to the House that the information sought therein is also subject of an active litigation and is pending in Court being the same **Nairobi ELRC Petition Number 158 of 2019: Kenya National Union of Teachers vs. Teachers Service Commission.**

36. In the said Petition, KNUT has sued the Commission for alleged introduction of two payrolls claiming the same to be illegal and contrary to ILO Conventions. Again, the Petition together with two applications are scheduled for hearing on **15th October, 2019** as per the attached hearing Notice dated **27th September, 2019.**

37. Once again, pursuant to standing Order Number 89, the Commission humbly requests the House to defer the said question with a view to upholding the *sub judice Rule*. *Appendix 1 is a copy of the Hearing Notice.*

QUESTION (d)

Why is the TSC refusing to comply with court orders, particularly by formulating and implementing Career Progression Guidelines (CPG) AND Teacher Professional Development (TPD) guidelines contrary to the provisions of the Statutory Instruments Act, 2013 and the code of regulations for teachers, to the detriment of teachers?

38. The Commission has also carefully considered the scope of question Number (d). The question seeks to establish why TSC has allegedly failed to comply with Court Orders relating to implementation of Career Progression Guidelines and Teacher Professional Development Guidelines (TPD).
39. Unfortunately, the Commission is again unable to conclusively address the question at this point in time as the same is also subject of active litigation pending hearing in court being Nairobi ELRC Petition Number 151 of 2018: Teachers Service Commission vs. Kenya National Union of Teachers
40. In the said Petition, KNUT has filed an Application for contempt against TSC for alleged disobedience of Orders of the Court. The Application is set for hearing on 17th October, 2019 as per the attached contempt of court application (Appendix 2).
41. Once more, pursuant to standing **Order Number 89**, the Commission humbly requests the House to defer the said question with a view to upholding the *sub judice Rule*.

CONCLUSION

42. In submitting this Statement, the Commission wishes to make a passionate appeal to Members to note that in discharging its mandate, TSC:
- a) Lays emphasis on professional conduct and integrity of teachers as role models for learners who are of early ages.
 - b) Plays a pivotal complementarity role in the Education Sector, especially in Curriculum implementation. The implementation of the New Education Curriculum has steadily taken off and every one of us is bound to support the same as it dictates Kenya's future.
 - c) Reiterates the need for all leaders and institutions of government to operate in concert to protect the right of our children to quality education. Any act which compromises the quality of education and breeds indiscipline in institutions of basic learning ought to be condemned by all in equal measure and thrust.
43. Finally, the Commission wishes to take this opportunity to appreciate the support and guidance it has received in the past from the Departmental Committee on Education and Research and the National Assembly as a whole in the pursuit of its mandate.

THANK YOU.

APP I

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI
ELRC PETITION NO. 158 OF 2019

IN THE MATTER OF: ARTICLES 10, 22, 36, 41, 47, 159, 232 & 237 OF THE
CONSTITUTION OF KENYA

AND

IN THE MATTER OF: THE LABOUR RELATIONS ACT (2007) & TEACHERS
SERVICE COMMISSION ACT (2012)

AND

IN THE MATTER OF: COLLECTIVE BARGAINING AGREEMENT NO. 282 OF
2016

BETWEEN

KENYA NATIONAL UNION OF TEACHERS PETITIONER

AND

TEACHERS SERVICE COMMISSION RESPONDENT/APPLICANT

The Hon. Attorney General,
State Law Office,
Sheria House,
Harambee Avenue,
P.O. Box 40112 - 00100,
NAIROBI.

SMS Advocates, LLP.
I & M Bank House, 7th Floor,
2nd Ngong Avenue,
P.O. Box 37330 - 00100,
NAIROBI.

SMS ADVOCATES LL
RECEIVED
30 SEP 2019
Sign:.....Time:.....
P. O. Box 37330 - 00100, NAIROBI

HEARING NOTICE

TAKE NOTICE that Respondent's/ Applicant's Application dated 26/9/2019 has been set for Hearing on 15/10/2019 at 9.00 a.m. in the forenoon or soon thereafter at the Employment & Labour Relations Court at **NAIROBI**.

FURTHER TAKE NOTICE that in default of your attendance on the said date and time by yourselves or any other person authorized by law to act on your behalf, the Court may proceed and give further directions your absence notwithstanding.

Dated at Nairobi this 27th day of September 2019.

OYUCHO TIMON
ADVOCATE FOR THE APPLICANT

DRAWN AND FILED BY: -

Oyucho Timon,
Advocate,
TSC House, Kilimanjaro Road,
Off Mara Road,
Private Bag-00100,
NAIROBI.

SMS ADVOCATES LL
RECEIVED
01 OCT 2019
Sign:.....Time: 10:32AM
P. O. Box 37330 - 00100, NAIROBI

LSK/2019/07176
Email: tsclegalservices@gmail.com
Mobile No. +254 0722 860 301

copy
APP II

EMPLOYMENT AND LABOUR
RELATIONS COURT
ACCOUNTS
2019
RECEIVED
O. Box 47606
NAIROBI, KENYA

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NUMBER 151 OF 2018

IN THE MATTER OF ARTICLES 53(1)(b), 53(2), 41(1),(5), 159(1) &(2), 230(4)& (5) and
237 of THE CONSTITUTION OF THE REPUBLIC OF KENYA 2010

AND

IN THE MATTER OF LABOUR RELATIONS ACT (2007)

AND

IN THE MATTER OF TEACHERS SERVICE COMMISSION ACT, 2012

AND

IN THE MATTER OF THE CODE OF REGULATIONS FOR THE TEACHERS

AND

IN THE MATTER OF THE COLLECTIVE AGREEMENT NO. 282 OF 2016

AND

IN THE MATTER OF THE NOTICE OF WITHDRAWAL OF LABOUR BY KENYA
NATIONAL UNION OF TEACHERS (KNUT) W.E.F.2ND JANUARY, 2019

BETWEEN

TEACHERS SERVICE COMMISSION.....PETITIONER

VERSUS

KENYA NATIONAL UNION OF TEACHERS (KNUT).....RESPONDENT

*Served in court
21/8/2019.*

AND

TEACHERS SERVICE COMMISSION.....1ST CONTEMNOR

THE SECRETARY/CHIEF EXECUTIVE OFFICER

TEACHERS SERVICE COMMISSION.....2ND CONTEMNOR

AND

THE CHAIRPERSON OF THE TEACHERS SERVICE

COMMISSION3RD CONTEMNOR

AND

MINISTRY OF LABOUR & SOCIAL PROTECTION.....1ST INTERESTED PARTY

CERTIFICATE OF URGENCY.

I, HILLARY SIGEI an advocate of the High Court of Kenya practicing as such in the firm of SMS Advocates LLP do hereby certify this matter as extremely urgent and deserving a hearing on priority basis for the following reasons:

- a) That on 12th July 2019 this Honourable court gave a judgment and made orders *inter alia* ;
 - i. Setting aside the transfer of Union Officials beyond the geographical limits of the branch they are elected to serve.
 - ii. That the contemnors shall undertake teacher promotion in accordance with the provisions of the CORT and schemes of service with respect to all unionisable teachers.
 - iii. That transfer of teachers shall be undertaken in accordance with the provisions of the Code of Regulation for Teachers (CORT);
 - iv. Stay of the implementation of career progression guidelines issued under circular No. 7 of 2018; TSC/ADM/192A/VOL.IX/37 of 2nd May, 2018.
- b) That the orders were made by the court for immediate compliance by all the parties to the proceedings.
- c) The 1st contemnor, in contempt of the orders of this court, has placed an

advertisement in the dailies inviting applications from suitably qualified candidates to fill the position of Head teacher and deputy head teacher II in utter disobedience of the contrary to the provisions of the CORT .

- d) That the list of the Union Officials whose transfer had been set aside by this Honourable Court have not been rerouted or retransferred as per the order to be within their geographical limits of representation.
- e) That it is trite law that court orders are not made in vain but are meant to be obeyed and the contemnors herein have intentionally ignored to implement the court orders of this Honourable Court issued on 12th July 2019.
- f) That the dignity and integrity of the Court is under attack and continues to be prejudiced by the contemnor's actions.
- g) There is reasonable apprehension that if the trend of flagrant unlawful actions and directives by the contemnors are not stopped immediately, it will propagate illegalities contrary to the orders of this Honorable court.

DATED at **NAIROBI** this 27th day of August 2019.

.....
SMS ADVOCATES, LLP
ADVOCATES FOR THE APPLICANT

DRAWN & FILED BY:-
 SMS ADVOCATES, LLP
 I & M BANK HOUSE, LEFT WING, 7TH FLOOR,
 2ND NGONG AVENUE,
 P.O Box 37330-00100,
NAIROBI.

TO BE SERVED UPON;
 Oyucho Timon,
 TSC House, Kilimanjaro Road,
 Off Mara Road,
 Private Bag- 00100.
NAIROBI

EMPLOYMENT AND LABOUR
RELATIONS COURT
ACCOUNTS
AUG 2019
RECEIVED
Box 47606 - 00100

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NUMBER 151 OF 2018

IN THE MATTER OF ARTICLES 53(1)(b), 53(2), 41(1),(5), 159(1) &(2), 230(4)& (5) and
237 of THE CONSTITUTION OF THE REPUBLIC OF KENYA 2010

AND

IN THE MATTER OF LABOUR RELATIONS ACT (2007)

AND

IN THE MATTER OF TEACHERS SERVICE COMMISSION ACT, 2012

AND

IN THE MATTER OF THE CODE OF REGULATIONS FOR THE TEACHERS

AND

IN THE MATTER OF THE COLLECTIVE AGREEMENT NO. 282 OF 2016

AND

IN THE MATTER OF THE NOTICE OF WITHDRAWAL OF LABOUR BY KENYA
NATIONAL UNION OF TEACHERS (KNUT) W.E.F.2ND JANUARY, 2019

BETWEEN

TEACHERS SERVICE COMMISSION.....PETITIONER

VERSUS

KENYA NATIONAL UNION OF TEACHERS (KNUT).....RESPONDENT

AND

TEACHERS SERVICE COMMISSION.....1ST CONTEMNOR

THE SECRETARY/CHIEF EXECUTIVE OFFICER

TEACHERS SERVICE COMMISSION.....2ND CONTEMNOR

AND
 THE CHAIRPERSON OF THE TEACHERS SERVICE
 COMMISSION3RD CONTEMNOR
 AND
 MINISTRY OF LABOUR & SOCIAL PROTECTION.....1ST INTERESTED PARTY

NOTICE OF MOTION

(Under Article 159 (2) (d) of the Constitution, Section 1A (3) of the Civil Procedure Act, Section 5(1) and (2) of the Judicature Act No. 16 of 1967 as well as all other enabling provisions of the Law)

TAKE NOTICE that the Honourable Court will be moved on the Day of 2019 at 9.00 O 'clock in the forenoon or so soon thereafter as Counsel for the Applicants may be heard upon their application for orders:-

1. THAT this Honourable Court be pleased to cite and punish by issuance of order of committal against the 1st and 2nd contemnors for disobeying the judgment by this Honourable Court on 12th July , 2019 directing *inter alia*;
 - a. Setting aside transfer of Union Officials beyond the geographical limits of the branch, they are elected to serve.
 - b. That transfer of teachers shall be undertaken in accordance with the provisions of the Code of Regulation for Teachers (CORT);
 - c. That the 1st contemnor shall undertake teacher promotion in accordance with the provisions of the Code of Regulation for Teachers (CORT) and schemes of service with respect to all unionisable teachers;
 - d. Stay of the implementation of career progression guidelines issued under circular No. 7 of 2018; TSC/ADM/192A/VOL.IX/37 of 2nd May, 2018.
2. THAT the cost of this application be borne by the contemnor.

WHICH APPLICATION is based on the following grounds, the annexed affidavit of **WILSON SOSSION** and such further grounds to be adduced at the hearing thereof;

- a) THAT on 12th July 2019 this Honourable court gave a judgment and made orders

including;

- v. Setting aside the transfer of Union Officials beyond the geographical limits of the branch they are elected to serve.
 - vi. That the contemnors shall undertake teacher promotion in accordance with the provisions of the CORT and schemes of service with respect to all unionisable teachers.
 - vii. That transfer of teachers shall be undertaken in accordance with the provisions of the Code of Regulation for Teachers (CORT);
 - viii. Stay of the implementation of career progression guidelines issued under circular No. 7 of 2018; T5C/ADM/192A/VOL.IX/37 of 2nd May, 2018.
- b) **THAT** the orders were made by the court for immediate and compliance by all the parties.
 - c) **THAT** the 1st contemnor has placed an advertisement in the dailies inviting applications from suitably qualified candidates to fill the position of Head teacher and deputy head teacher II contrary to the provisions of the CORT and the orders of this court.
 - d) **THAT** the list of the Union Officials whose transfer had been set aside by this Honourable Court has not rerouted or retransferred as per the order to be within their geographical limits of representation.
 - e) **THAT** the contemnors herein has failed, neglected and/or ignored to implement the court orders of this Honourable Court issued on 12th July 2019.
 - f) **THAT** concerted efforts have been made by the applicants to have the contemnors comply with notice of the present action in vain
 - g) **THAT** it is trite law that court orders are not made in vain but are meant to be obeyed.
 - h) **THAT** the dignity and integrity of the Court is under attack and continues to be prejudiced by the contemnor's actions.
 - i) **THAT** consequently there is no other way of enforcing the orders other than through the Courts.
 - j) **THAT** the orders have not been set aside and or varied by any competent court and

are in force.

k) **THAT** it is in the interest of justice and preservation of the rule of law that this Honourable Court intervenes and punishes the contemnor for contempt.

DATED at **NAIROBI** this 27th Day of August 2019

.....
SMS ADVOCATES LLP,
ADVOCATES FOR THE APPLICANTS

DRAWN AND FILED BY:-

SMS ADVOCATES LLP,
I & M BANK HOUSE,
7TH FLOOR, LEFT WING,
2ND NGONG AVENUE
P.O. BOX 37330-00100

NAIROBI. info@smsadvocates.co.ke

Tel. 020-4445059/ 2738060

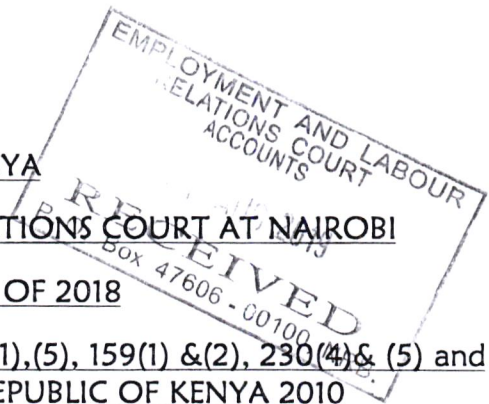
Practice No. LSK/2017/1075, ADM. NO. P105/6622/07

TO BE SERVED UPON:-

Oyucho Timon,
TSC House, Kilimanjaro Road,
Off Mara Road,
Private Bag- 00100.

NAIROBI

NOTE: *If any party served does not appear at the time and place above-mention, such orders will be made and proceedings taken as the court may think just and expedient.*



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

PETITION NUMBER 151 OF 2018

IN THE MATTER OF ARTICLES 53(1)(b), 53(2), 41(1),(5), 159(1) &(2), 230(4) & (5) and 237 of THE CONSTITUTION OF THE REPUBLIC OF KENYA 2010

AND

IN THE MATTER OF LABOUR RELATIONS ACT (2007)

AND

IN THE MATTER OF TEACHERS SERVICE COMMISSION ACT, 2012

AND

IN THE MATTER OF THE CODE OF REGULATIONS FOR THE TEACHERS

AND

IN THE MATTER OF THE COLLECTIVE AGREEMENT NO. 282 OF 2016

AND

IN THE MATTER OF THE NOTICE OF WITHDRAWAL OF LABOUR BY KENYA NATIONAL UNION OF TEACHERS (KNUT) W.E.F.2ND JANUARY, 2019

BETWEEN

TEACHERS SERVICE COMMISSION.....PETITIONER
VERSUS

KENYA NATIONAL UNION OF TEACHERS (KNUT).....RESPONDENT
AND

TEACHERS SERVICE COMMISSION.....1ST CONTEMNOR

THE SECRETARY/CHIEF EXECUTIVE OFFICER
TEACHERS SERVICE COMMISSION.....2ND CONTEMNOR

AND

THE CHAIRPERSON OF THE TEACHERS SERVICE
COMMISSION3RD CONTEMNOR

AND

MINISTRY OF LABOUR & SOCIAL PROTECTION.....1ST INTERESTED PARTY

SUPPORTING AFFIDAVIT

I WILSON SOSSION a male adult of sound mind residing in Nairobi within the Republic of Kenya and of P.O. BOX 30407-00100 Nairobi do hereby make oath and state as follows;

1. THAT I am the Secretary General of the Interested party, the Kenya National Union of Teachers and duly authorized and competent to swear this supporting affidavit on behalf of the Interested party.
2. THAT the respondent is a Trade Union duly registered by the Registrar of Trade Unions, under the Labour Relations Act No. 4 of 2017 Laws of Kenya carrying on trade union activities within the Republic of Kenya with the mandate of both a trade union and professional organization whose membership is derived from among members of the teaching fraternity across the Republic of Kenya.
3. THAT on 12th July 2019 this Honourable court gave its judgment and made orders including;
 - i. Setting aside the transfer of Union Officials beyond the geographical limits of the branch they are elected to serve.
 - ii. That the contemnors shall undertake teacher promotion in accordance with the provisions of the Code of Regulation for Teachers (CORT) and Schemes of Service with respect to all unionisable teachers.
 - iii. That transfer of teachers shall be undertaken in accordance with the provisions of the Code of Regulation for Teachers (CORT);
 - iv. Stay of the implementation of career progression guidelines issued under circular No. 7 of 2018; TSC/ADM/192A/VOL.IX/37 of 2nd May, 2018.
4. THAT the orders were made by the court for immediate and full compliance by all the parties.
5. THAT the 1st contemnor on 20th August 2019 placed an advertisement in the dailies inviting applications from suitably qualified candidates to fill the position of Head teacher and deputy head teacher II contrary to the provisions of the CORT and in express blatant disregard of the orders of this court that stayed. (attached and marked "WS-1" is a copy of the advert)

6. **THAT** contrary to the court orders, the contemnors have not re-transferred letters to branch union officials to serve outside their geographical limits of representation (**attached and marked “WS-2” is a list of the transferred branch officials**).
7. **THAT** the contemnors have continued with the implementation of Career progression Guidelines in utter disregard of the court orders to stay the same.
8. **THAT** the list of the Union Officials whose transfers had been set aside by this Honourable Court have not rerouted or retransferred as per the order to be within their geographical limits of representation.
9. **THAT** the contemnors have continued with the implementation of career progression guidelines being circular No. 7 of 2018 Ref No. TSC/ADM/192A/VOL.IX/37 OF 02/05/2018, a mockery to this honorable court's orders.
10. **THAT** concerted efforts have been made by the applicants to have the contemnors comply with notice of the present action in vain instead, the contemnors released a press statement whose contents are in utter disregard of the judgment. (**Attached and marked “WS-3” is a copy of letter asking the contemnors to comply with the orders, press statements of the respective parties**).
11. **THAT** the contemnors herein have failed neglected and/or ignored to implement this Honourable Court's orders of 12th July, 2019.
12. **THAT** notwithstanding this Court's orders, the contemnor continues to prejudice our rights and make a mockery of this Honourable court resulting to making the judgment and the directive of this Honourable Court useless.
13. **THAT** I am advised by our advocates on whose information I verily believe to be true that;
- a. Court orders are not made in vain but are meant to be obeyed
 - b. When Court orders are disobeyed the dignity and integrity of this Honourable court is prejudiced.

- c. A court order remains in force until it is lifted by the court by way of review and or appeal, which has happen in the present circumstances.
- d. There is no other way of enforcing the orders other than through the Courts.
- e. The orders have not been set aside and or varied by any competent court and are in force.

14. **THAT** I believe it is in the interest of justice and preservation of the rule of law that this Honourable Court intervenes and cites as well as punishes the contemnors for contempt of Court.

15. **THAT** what is stated herein is true according to my knowledge, information and belief, save wherein otherwise stated.

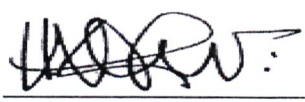
SWORN at **NAIROBI** by the said;

WILSON SOSSION

This 27th day of August 2019

BEFORE ME:


COMMISSIONER FOR OATHS.



DEPONENT.

DRAWN & FILED BY:-
 SMS ADVOCATES LLP,
 I & M BANK HOUSE,
 LEFT WING, 7TH FLOOR,
 2ND NGONG AVENUE,
 P.O BOX 37330-00100
 Email; info@smsadvocates.co.ke,
NAIROBI

TO BE SERVED UPON:-

Oyucho Timon,
TSC House, Kilimanjaro Road,
Off Mara Road,
Private Bag- 00100.

NAIROBI



TEACHERS SERVICE COMMISSION

INVITATION TO NATIONAL TENDER

Teachers Service Commission invites tenders from interested and eligible firms to tender for the service below:

S/NO	TENDER NO	TENDER DESCRIPTION	BID SECURITY (KSHS)	CATEGORY
1.	TSC/T/013/2019-2020	Maintenance of Staff Toilets, Kitchens and Associated Drainage System at TSC House	N/A	Reserved Groups only

Detailed Tender documents may be obtained from Supply Chain Management Services Division, TSC House 2nd floor Podium Wing, Kilimanjaro Road, during normal working hours upon payment of non-refundable fee of Kshs.1,000.00 (One Thousand Shillings) payable to Teachers Service Commission at National Bank of Kenya Account No. 01001000905000, Harambee Avenue Branch or Bankers Cheque and present the bank slip to TSC Cash office for official receipt. A mandatory site visit is scheduled on 28th August 2019 at 10:00am at TSC Head Quarters.

Interested bidders may also download free of charge the same tender documents from TSC website: www.tsc.go.ke or www.tenderservice.com and forward their particulars or records to procurement@tsc.go.ke. The particulars should include: Name of the firm, the address and Tender Name and Number.

The complete bid documents in plain sealed envelope marked with tender name and reference number should be addressed to:

The Secretary
Teachers Service Commission
TSC House, Upper Hill, Kilimanjaro Road
Private Bag, 00100 NAIROBI

and be deposited in the Tender Box located on 3rd Floor, Podium Wing on or before 4th September, 2019 at 9:00am. Tenders will be opened immediately thereafter at the same venue in the presence of the tenders or their representatives who choose to attend.

COMMISSION SECRETARY/CHIEF EXECUTIVE



TEACHERS SERVICE COMMISSION

VACANCIES FOR HEADTEACHER, DEPUTY HEADTEACHER II AS PER THE PROVISIONS OF THE CAREER PROGRESSION GUIDELINES FOR TEACHERS

The Teachers Service Commission is a Constitutional Commission established under article 237 of the Constitution. Pursuant to its mandate, the Commission is inviting applications from suitably qualified candidates to fill the vacant posts of Headteacher, Deputy Headteacher II as per the Provisions of the CAREER PROGRESSION GUIDELINES FOR TEACHERS.

Interested candidates, who meet the required qualifications, should make their applications online through the TSC Web - www.tsc.go.ke so as to be received on or before 10th September 2019.

S/NO	ADVERT NO	VACANCIES	T - SCALE	POSTS
1.	4/2019	Headteacher - (Grade C5)	10	2310
2.	5/2019	Deputy Headteacher II - (Grade C4)	9	3733

NB: Shortlisted candidates for the adverts will be required to present the following documents during interviews:

- Certificate of Good Conduct.
- Clearance Certificate by Higher Education Loans Board.
- Clearance Application from EACC.
- Clearance Certificate from a Credit Reference Bureau.
- KRA Tax Compliance Certificate.

TSC is an equal opportunity employer. Persons with Disabilities are encouraged to apply. For details on the Job Description, Requirements for Appointment and Duties and Responsibilities applicants are asked to refer to the TSC Web - www.tsc.go.ke.

COMMISSION SECRETARY/CHIEF EXECUTIVE



P.O. Box 1125-30100, Eldoret, Kenya | Tel: 0788 232 004 | Website: www.uoeld.ac.ke

OFFICE OF THE DEPUTY VICE-CHANCELLOR (ACADEMIC AND STUDENTS' AFFAIRS)
FIRST SEMESTER 2019 / 2020 ACADEMIC YEAR

OPENING DATES:

New Students (1st Years)

Reporting and Registration Orientation: Monday, September 2nd, 2019
Commencement of lectures: Wednesday, September 4th - Sunday, September 8th, 2019
Monday, September 9th, 2019

Students joining University of Eldoret Town Campus, please report to the Town Campus situated at MUSCO Towers, Eldoret.

Information for KUCCPS 1st Year Students (2018 K.C.S.E. Students)
All new students are advised to download and print their admission letters and admission requirements from the University of Eldoret website - www.uoeld.ac.ke.

All Continuing Students (2nd, 3rd, 4th & 5th Years)

Reporting and registration: September 5th & 6th, 2019. (TO BE DONE ONLINE)
Commencement of lectures: Monday, September 9th, 2019

HELB LOANS

Enquiries regarding loans and bursaries from the Higher Education Loans Board (HELB) may be done through the HELB website - www.helb.co.ke

ACCOMMODATION

The University has limited space for accommodation which will be provided to G.S.S.P 1st Year students (KUCCPS placed) only on "first come, first served basis".

FEES

All semester fees MUST be paid before students are registered. Payment can be made to the below bank account:

NATION BANK

Note:
Students will be required to bring the bank pay-in slips during registration for receipting.

Deputy Vice-Chancellor (Academic & Students' Affairs)
University of Eldoret
P.O. Box 1125-30100
Eldoret

website: www.uoeld.ac.ke email: dvcasa@uoeld.ac.ke tel: 0774 249 532

University of Eldoret is ISO 9001:2015 Certified



**THE PRESIDENCY
MINISTRY OF INTERIOR AND COORDINATION
OF NATIONAL GOVERNMENT**

COUNTY COMMISSIONER, MARSABIT COUNTY

TENDER NOTICE

Tenders and pre-qualification's are invited for the supply & delivery of the under listed goods and services to the government ministries, departments and institutions within the above named county "on as and when required basis" for the financial years ending 2019 /2020 and 2020/2021.

NO	TENDER NUMBER	ITEM DESCRIPTION	TARGET
1	Mbv/1/2019/2021	Supply /Delivery of Petrol, Oil, Lubricants, Wood fire, and Gas	TARGET
2	Mbv/2/2019/2021	Supply /Delivery of Tyres, Tubes and Batteries for Motor Vehicles And Motor Cycles	OPEN
3	Mbv/3/2019/2021	Supply /Delivery of Cereals, Pulses and Miscellaneous Foodstuff	OPEN
4	Mbv/4/2019/2021	Supply /Delivery of Office Stationeries	OPEN
5	Mbv/5/2019/2021	Repair and Services of Government Motor Vehicles and Motor Cycles	OPEN
6	Mbv/6/2019/2021	Supply /Delivery of Office Furniture and related items	OPEN
7	Mbv/7/2019/2021	Supply /Delivery Computers, Toner, Cartridges and Other Computer Accessories	OPEN
8	Mbv/8/2019/2021	Provision of Transport Services	OPEN
9	Mbv/9/2019/2021	Pre-Qualification Contractors for Building & Maintenance Works to Govt Buildings	OPEN
10	Mbv/10/2019/2021	Supply /Delivery of spare part for Government Motor Vehicles and Motor Cycles	OPEN
11	Mbv/11/2019/2021	Supply/ Delivery of Electrical Items	OPEN
12	Mbv/12/2019/2021	Supply /Delivery of sport uniform and other sport accessories	OPEN

Tender documents with detailed specifications can be obtained from the office of the respective Sub County Supply Chain Management Office of the said under mentioned sub counties upon payment of non-refundable fee of Kshs. 1,000 (one thousand shillings) only in cash to the respective Sub County National Treasury Office from Monday to Friday during normal working hours. Or they can be downloaded on the Official Mygov website: www.mygov.go.ke free of charge.

- Bidders Must Attach Valid Copies of The Following Documents:
- Business Registration /Incorporation Certificate
 - Current Business Permit
 - Confidential Business Questionnaire Dully Filled
 - KRA Pin Certificate
 - Valid Tax Compliant Certificate
 - National Construction Authority Certificate
 - Petrol other petroleum product valid license from Energy Regulatory Authority

Price quoted must be net inclusive of all government taxes and remain firm for ninety (90) days after the closing date. Completed tender documents in plain sealed envelope separate for each tender bearing No indication of the sender and only marked clearly tender number should be deposited in the tender box at the entrance of respective Deputy County Commissioner's Office.

- County Commissioner Marsabit County P.O.Box 1- 60500 Marsabit
- Deputy County Commissioner Marsabit Central Sub County P.O.Box 1- 60500 Marsabit
- Deputy County Commissioner Moyale Sub County P.O.Box 1- 60700 Moyale
- Deputy County Commissioner Marsabit North (Makonis) Sub County P.O.Box 126- 60500 Marsabit
- Deputy County Commissioner Marsabit South (Jisajishi) Sub County P.O.Box 230- 60500 Marsabit
- Deputy County Commissioner North Horr Sub County P.O.Box 344 - 60500 Marsabit
- Deputy County Commissioner Sololo Sub County P.O.Box 60500 Marsabit
- Deputy County Commissioner Loiyangalani Sub County P.O.Box 60500 Marsabit

So as to reach them on or before 11th September, 2019 at 11:00 am Tenders will be opened immediately thereafter in the presence of tenders or representatives who choose to attend at the respective Deputy County Commissioner's boardroom.

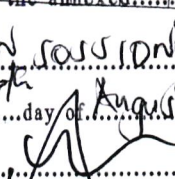
MAMLA M. DIMA
FOR COUNTY COMMISSIONER
MARSABIT COUNTY

This is the exhibit marked **HC-1**
affidavit
referred to in the annexed.....
of **WILSON SASSION** sworn
me this **27th** day of **August**, 20**19**.....
at Nairobi.
Advocate/Commissioner for Oaths

LIST OF DELOCALIZED KNUT OFFICIALS

Sl. No.	NAME	BRANCH	POSITION	ISC NO.	CURRENT SCHOOL	JOB GROUP	PHONE NUMBER
1	Onesmus M. Mainga	Nzau	Chairman	297297	Merrueshi Pry Sch	M	0721722548
2	Joseph N. Musyimi	"	Treasurer	277562	Sir. Ramson Pry Sch	AT54	0720346179
3	Julius M. Matula	"	BEC Member	369552	Lesenkayo Pry Sch	L	0724596963
4	Benjamin M. Nzioka	"	Kessha Rep.	352972	Kyuso Boys	N	0721221172
5	Christopher Kangogo	Chepkoiel	Asst. Exec. Secretary	380808	Kongelai Pry Sch	L	0726032056
6	Kibet Kosgei	"	BEC Member	343883	Kaptain Pry Sch	K	0722948872
7	Benjamin Kirongo	"	Asst. Treasurer	218545	Kapchilla Pry Sch	K	0721777115
8	Job Simba Ochoki	Gucha	Asst. Exec Secretary	421827	Kambutu Pry Sch	M	0716169347
9	Mogaka Monari	"	BEC Member	284397	Aomo Pry Sch	M	0721995828
10	Naftaji Kiplimo Mibei	Wareng	Chairman	327925	Koibatek Pry Sch	K	0722290737
11	Moses Kimeli Sialah	"	BEC Member	268589	Chemursai Pry Sch	K	0721267744
12	Patrick W. Sibeti	Bungoma North	Chairman	419125	Munani Sec. Sch	D3	0722595516
13	Moses Wanyonyi Satia	"	Treasurer	263782	Tapach Pry Sch	M	0723681973
14	Josiah Alusa	"	Kessha Rep.	313078	Kakiimba Sec Sch	P	0722810311
15	Dennis Kariuki	Kirinyaga	Vice Treasurer	314675	Maselele Pry Sch	N	0722396615
16	Mary Wanjiku Mwai	"	Women Rep.	267103	Kunene Pry Sch	L	0721443339
17	David C. Gachoki	"	BEC member	286247	Nchoroivoro Sch	L	0712346530
18	Grace Njeri Njuguna	"	Women Rep.	246794	Riaki Pry Sch	J	0721443033
19	Isaac Cituuru	"	Vice Chairman	319352	Maitha Pry Sch	K	0721742609

This is the exhibit marked NC-2 referred to in the annexed affidavit declaration sworn of WIKSON JOSSON before me this 27th day of August, 2019 at Nairobi.


 Advocate/Commissioner for Oaths

NO	NAME	BRANCH	POSITION	IC NO.	CURRENT SCHOOL	JOB GROUP	MOBILE NUMBER
20	Eustace Mbogo	Embu	Treasurer	252402	Njuri Pry Sch	L	0724-150101
21	Cianka G. Limbere	Nyambene	Treasurer	219863	Kiaga Pry Sch	M	0726981103
22	James K. Mwambia	"	Asst. Chairman	257496	Mihango Pry Sch	GAT 1	0729209775
23	Ikuathu J. M. Kobia	"	Asst. Exec. Sec	380488	Kagio Pry Sch	M	0712309335
24	Mercy C. Kiambati	"	Woman Rep.	219851	Gikandu Pry Sch	M	0725493243
25	Wallace M. Laria	"	BEC Member	338759	Kyanika Pry Sch	C5	0726758191
26	James M. Wambua	Kitui	Treasurer	243052	Kirimahiga Pry Sch	AT2	0721383158
27	Jean Njeri Macharia	Meru South	BEC Member	254925	Chief Petro Sec Sch		0713 270789
28	Lucyline K. Ndebu	"	"	384561	Itara Pry Sch	M	0728 794049
29	Kenneth K. Kite	Keiyo	Asst. Treasurer	377775	Eldoret G.K Pry	L	0723708228
30	Nehemia K. Chepsoi	"	BEC Member	377764	Chepkosom Pry	L	0725244516
31	Samuel Kobogy	"	SWA Chairman	247831	Drys Farm Pry	K	0710754354
32	Ngunga Obel Joshua	Vihiga	Vice Chairman	325816	Kamunyogole Pry	L	0723395362
33	Asava Adisa Emmy	"	Asst. Treasurer	340446	Namawanga Pry	C5/L	0720680004
34	Mageni David K.	"	BEC Member	284365	Shikoho Pry Sch	C5/L	0703230889
35	Egesa Cossam	"	KNUT BFF	326423	Ndengelwa Pry	L	0721280952
36	Kememwa Alexander	"	Kepscha Rep.	299915	Magawa Pry Sch	C5	0721234946
37	Charles K. Limo	Eldoret West	Kessha Rep.	358149	St. Michaels Kipsomba	N	

N/O	NAME	BRANCH	POSITION	ISCHNO.	CURRENT SCHOOL	JOB GROUP	MOBILE
38	David Koeh Bor	Nandi East	Asst. Treasurer	344421	Savani Pry Sch		0710358898
39	Patrick K. Munuhe	Nyeri	Chairman	267584	Mikinduri Pry Sch	L	0721612219
40	George Mureithi	"	Kepsha/BEC Gakawa	235832	Rutuba Pry Sch	L	0722642341
41	Morrison Gikuri	"	B.E.C - Mathira C.	249640	Gatondo Pry Sch	K	0721711323
42	Charles M. Ndururi	"	B.E.C - MUN.	409874	Gikindu Pry Sch	M	0725845478
43	David Ruto	Sotik	Chairman	221034	Matunda Sch	C5	07244465673
44	Kenduiywo Athenus	"	BEC Member	415763	Kipketer Pry Sch	C5	0723427977
45	Pauline Tonui	"	Treasurer	231527	Nyaisa SDA	C5	0725289573
46	Richard Rono	"	Asst. Exec Sec	332097	Bimbiniyet Sch	C5	0724880196
47	Rose Kitur	"	BEC Member	321071	Mosesema Sch	C5	0725407414
48	Charles Oyolla Palla	Kisumu West	Asst. Exec Sec	187426	Shikunga Sch	C5	0725741539
49	Enos Obudho	"	Treasurer	283421	Chunge Sch	C5	0713199099
50	Hesbon N. Nyamu	Kilifi	Vice Chairman	184183	Mvundeni Pry	M	0722661428
51	Meshack K. Bungei	Nandi South	Vice Chairman	406387	Kakamega	L	0720409160
52	Franklin M. Muguna	Meru Central	Asst. Treasurer	249256	Tetu DEB Solio - Kieni	Snr HT	0729143155
53	Nathan K. Ikinyira	"	Vice Chairman	269827	Muthitwa Pry Sch	K	0720719748
54	Evangeline K. Gichuru	"	Women Rep.	253566	Kuthumula Pry Scho		0720983536
55	Charles K. Muriithi	"	BEC Member	341392	Kathuniri Pry Sch	M	0720221295

ID	NAME	BRANCH	POSITION	ISINO.	CURRENT SCHOOL	JOB GROUP	PHONE NUMBER
56	Philemon Kimutai Yator	Marakwet	Kepsha Rep.	231227	Bartolimwo Pry Scho	M	0728422159
57	Otieno Lucy Oloo D.	Nyando	Women Rep	217808	Nyamiobo DOK Pry	K	0720150855
58	Erick Onyango Wadegu	"	BEC Member	318508	Maranda Pry Sch	L	0725772707
59	Simon Onyango Ouma	"	Kepsha Rep	233821	Mabinju Pry Scho	C5/L	0711823308
60	Chiteri Shadrack W.	Mumias	BEC Member	316562	Got Nyabondo	M	0725219388
61	Mary Muyekho	"	Women Rep.	341770	Kimwanga Special Sch	L	0713016125
62	Benson Oranga	"	BEC Member Post Pry	267587	Emusire High Sch	N	0708451723
63	Benson Odipo	Bondo	Kessha Rep	362720	Ndiru Sec Sch	N	0711954598
64	Syengo Mbithuka	Mutomo	KNUT BBF Chairman	259017	Masalani Pry Sch	C3	0710286199
65	Boniface Ndeti	"	BEC Member	214417	Kyua Pry Sch	L	0726022244
66	Stephen Mutuku Nzangi	Makueni	BEC Member	297298	Ndome Pry Sch	L	071164439
67	Steve Maena	Rachuonyo	BEC Member	343034	Bugo DOK Nyamira	L	0718395412
68	John Ogunya	"	BEC Member	226725	Senta DEB Kisii	L	0720755812
69	Peter Mboya	"	BEC Member	226726	Tonga DEB Nyamira	L	0713430274
70	Fredrick O. Chiai	Rarieda	Chairman	250089	Marindi Pry Sch	H(AT5 IV)	0711973411
71	David Musyoki Muema	"	BEC Member	199625	Mtwa Mwaki Sch	C5	0712612291
72	Jackson Musyoka	Mbooni	BBF Rep.	339371	Boniface Mganga Pry	M	0722902607



No.	NAME	BRANCH	POSITION	ISC NO.	CURRENT SCHOOL	JOB GROUP	PHONE NUMBER
73	Sylas K. Mundui	Koibatek	Chairman	267307	Esageri AIC Boarding	G	0722876693
74	James Barsagau	"	BEC Member	329960	JK Moi Pry Sch		0721432460
75	Joshua K. Rotich	Nandi North	BEC Member	366878	Kimaran Pry Sch	C5	0723496318
76	John Kennedy Onyango	Migori	Executive Secretary	248379	Opanga Pry Sch	M	0726461575
77	Kenneth K. Kite	Keiyo	Asst. Treasurer	377775	Eldoret GK Prison Pry	L	0723708228
78	Nehemia K. Chepsoi	"	BEC Member	377764	Chepkosom Pry Sch	L	0725244516
79	Samuel Kibogy	"	KNUTSWA Chairman	247831	Drys Farm Pry	K	0710754354
80	Roba Karayu	Moyale	BEC Member	216865	Badana Pry Sch	C5-L	0728521627
81	Peter K. Mwithi	Tharaka	Chairman	332245		K	0720632421
82	David K. Mugao	"	Treasurer	249075			0721495216
83	John Mwinja	"	Vice Chairman	340173	Namuri Pry	AT5 4	0724498690
84	David Mutiga	"	Asst. Secretary	421338	Lisa Hola Sch for Deaf	M	0727669437
85	Job Siriba Ochoki	Gucha	Asst. Secretary	421827	Kamtudi Pry Sch	M	0756165015
86	Roba Karayu	Isiolo	BEC member	216865	Badana Pry Sch	M	0728521627

19



KENYA NATIONAL UNION OF TEACHERS

Bankers: KENYA COMMERCIAL BANK
STANDARD CHARTERED BANK
EQUITY BANK (K)
Auditors: OMWENGA ONYANCHA & CO.

Mobile: 0710 600981 0710 600988
0733 600860 0701 139446
SMS: 22551
Email: knut@knut.or.ke
Website: www.knut.or.ke

Address all Correspondence to:
The Secretary General
P.O. Box 30407, 00100
NAIROBI - KENYA

KNUT/TSC/60/60/2019

July 15, 2019

Dr. Nancy Njeri Macharia, CBS,
Secretary/Chief Executive Officer,
Teachers Service Commission,
Private Bag,
NAIROBI.

This is the exhibit marked "W.C-3" referred to in the annexed affidavit of Wilson W. Kosgei sworn before me this 27th day of August 2019 at Nairobi. Advocate/Commissioner for Oaths

Dear Nancy,

PETITION NO.151 OF 2018:

TEACHERS SERVICE COMMISSION (TSC) VS KENYA NATIONAL UNION OF TEACHERS (KNUT):

The above subject matter refers

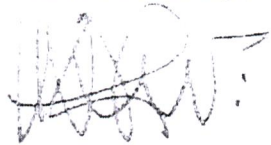
Following the **July 12th, 2019 Court Ruling** which cleared all outstanding issues between us and you, we hereby write to ask you to urgently convene a meeting to discuss the implementation of orders of the Labour Relations Court as regards teacher promotions, redeployment of union officials who had been transferred to schools outside their branches, performance appraisal tools and teacher professional development programme among other issues as directed by the Employment and Labour Relations Court.

Further, urgently organize to promote all deserving teachers particularly those with new qualifications without any further delay.

KNUT is ready to sit with you so as to customise any good provisions to the three Schemes of Services as directed by the court.

Also ensure that the third phase of the Collective Bargaining Agreement is fully implemented as it is **LAW** for all teachers who stand to benefit.

Yours sincerely,



(HON. WILSON SOSSION)
SECRETARY GENERAL
K.N.U.T.

Hon. Ukur Yatani,
The Cabinet Secretary,
Ministry of East African Community,
Labour and Social Protection,
P. O. Box 40326-00100,
NAIROBI.

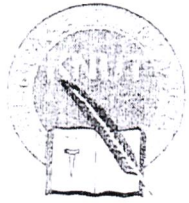
Hon. Prof. George Omore Magoha,
Cabinet Secretary,
Ministry of Education Science & Technology,
P. O. Box 30040 - 00100,
NAIROBI

Dr. Francis Atwoli, NOM (DZA), EBS, MBS,
Secretary General
Central Organization of Trade Unions (COTU (Ke)),
P. O. Box 13000-00200,
NAIROBI.

Dr. Lydia Nzomo,
Chairperson,
Teachers Service Commission,
Private Bag,
NAIROBI.

The National Chairman,
K.N.U.T.

The National Treasurer,
K.N.U.T.



HEAD OFFICE
KNUT HOUSE
MFANGANO STREET

KENYA NATIONAL UNION OF TEACHERS

Bankers: KENYA COMMERCIAL BANK
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EQUITY BANK (K)
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Mobile: 0710 800981, 0710 800982
0713 600880, 0701 139446
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Email: knut@knut.or.ke
Website: www.knut.or.ke

Address all Correspondence to
The Secretary General
P.O. Box 80410, 00100
NAIROBI - KENYA.

KNUT/PRESS/88/6/2019

August 2, 2019

PRESS STATEMENT BY THE SECRETARY GENERAL OF KENYA NATIONAL UNION OF TEACHERS (KNUT) – HON. WILSON SOSSION ON FRIDAY AUGUST 2, 2019:

THE APPLICATION OF TWO PAYROLLS IN PUBLIC TEACHING SERVICE ILLEGAL

It is shock and total disbelief that Teachers Service Commission (TSC) has arbitrary introduced two payrolls in the Public Teaching Service contrary to internationally established norms in the Human Resource Management.

The Commission argues that the ruling of the Employment and Labour Relations Court on July 12th, 2019 necessitated preparation of two parallel payrolls in order to comply with the Court ruling without disadvantaging teachers who are not KNUT members.

This is total lies. There can't be two parallel payrolls in standard Human Resource Management. This is supported by Justice Byram Ongaya's ruling, and I quote: **"Thus Section 3(1) of the Employment Act (2007) provides that the Act shall apply to all employees employed by any employer under a contract of service and Section 3(2) therefore provides that the Act binds the Government."**

The Commission states that it discontinued the Schemes of Service for Teachers and adopted Career Progression Guidelines (CPGs) in 2017 to enable implementation of the Job Evaluation and the 2017-2021 CBA.

The Union would wish to point out that there is no way the Commission could substitute the Schemes of Service for CPGs as the Schemes are anchored in the Code of Regulations for Teachers whereby Section 4 of the CBA states that the Code shall for an integral part of the CBA, therefore no party can purport to change any provision in the CBA without due consultation with other parties.

Section 3.2 of the CBA states that the Agreement shall remain in force for a period of four years with effect from **1st July, 2017 to 30th June, 2021**. Furtherance to this, Section 3.3 states that the CBA shall remain in force and bind all parties until a new Agreement is negotiated.

Section 21.1 of the CBA states that in the event that any provisions of the Agreement are to be modified after the Agreement has been signed, the modification shall be by mutual consent of parties, made in writing and signed by the authorized representatives of the parties.

Notwithstanding Sub-section 21.1, any variation and/or amendment of the Agreement affecting remuneration and benefits to teachers shall be subjected to the Salaries and Remuneration Commission's advice.

Therefore, it is illegal and totally out of tune for TSC to claim that the Commission discontinued Schemes of Service and adapted CPGs. Whom did they consult as per the provisions of the CBA? It is important to note that the CBA was anchored on the Constitution (2010), TSC Act (2012) and the Labour Relations Act (2007). All these statutes are still intact and legally applicable. Besides, the CBA was deposited in the Employment and Labour Relations Court.

This in essence means that neither TSC nor Unions can purport to change the existing provisions in the CBA before consulting other parties.

It is also important to note that the Instruments of CPGs were developed in 2017 long after the CBA was signed, therefore the tools were never agreed upon as per Public Participation Act (2013), and worse still, the CPGs were not development in concurrence with Statutory Instruments Act (2013). Any management tool developed or created in Public Service which is not in consistence with the Statutory Instruments Act, and accordingly approved by Parliament is illegal.

It is misinformation and quite misleading that all the serving 300,000 teachers in the Public Service were promoted with effect from July 1st, 2017 when the implementation of the CBA commenced. There are no records with teachers to prove the promotions to that effect. Banding teachers and switching them left-right-and-centre in Job Groups doesn't amount to promotion.

One would be tempted to ask, what tools did they use to promote teachers and yet the CPGs were yet to be developed?

TSC claims that under CPGs the salary grades have been expanded such that a teacher will enjoy more annual incremental credit within a grade. This is a lie. **(Read document attached).**

It is also a lie that 96,000 teachers formerly designated as P1 and who were promoted to B5 with effect from July 1st, 2017 will not be promoted under Common Cadre to C1 on July 1st, 2020. This is because promotion of teachers who are members of KNUT shall strictly be as per the provisions of the Schemes of Service.

It is worth noting that the Schemes of Service which have been used since time memorial guarantee upgrading of this cadre of teacher. **(Read document attached).**

If the Schemes of Service are fully implemented as directed by the court without discrimination, over 103,600 teachers who include Head teachers, Deputy Head teachers and Senior teachers will greatly benefit because of their seniority, experience, acquisition of high academic and professional papers, merit and ability. All these are set out in the Schemes of Service.



(HON. WILSON SOSSION)
SECRETARY-GENERAL
K.N.U.T

TEACHERS SERVICE COMMISSION



THE IMPLICATIONS OF THE JUDGEMENT OF JUSTICE
NYIRIA ONGAYA DATED 12/7/2019 ON TEACHER
PROMOTION, CAREER PROGRESSION, PROFESSIONAL
DEVELOPMENT AND APPRAISAL

On **31st December, 2018**, the Teachers Service Commission filed a Petition at the Employment and Labour Relations Court at Nairobi, after the Kenya National Union of Teachers (KNUT) issued a strike notice to take effect from **2nd January, 2019**. In calling the strike, KNUT was opposing current promotion model, Career Progression Guidelines, Teacher Professional Development Programmes and Teacher appraisal system.

On **12th July, 2019**, the Court issued its judgement touching on the above outlined issues. After studying the implication of the ruling on various aspects of teacher management and the ongoing implementation of the 2017-2021 Collective Bargaining Agreements, the Commission immediately applied to the court to stay its orders to allow for appeal. The stay was not granted.

On **30th July 2019**, the Teachers Service Commission ran the July payroll for all the teachers in its employment. However, owing to the

Court ruling of 12th July 2019 on the issues outlined above, several challenges have been experienced particularly in the preparation of the teachers' payroll and implementation of the Kshs 54 Billion 2017- 2021 CBA.

Arising from the Judgment, KNUT has maintained that all its members should be promoted in accordance with the Schemes of Service (SoS) which were last revised in 2007. It is important to note that the Commission discontinued SoS and adopted Career Progression Guidelines (CPGs) in 2017 to enable implementation of the Job Evaluation and the 2017-2021 CBA signed between TSC and Unions in 2016.

In view of the Court ruling and the position taken by the KNUT, the Commission wishes to explain the following:

1. Benefits of Career Progression Guidelines in teacher promotion

The Career Progression Guidelines were developed in 2017 after a Job Evaluation in the teaching service was carried out and CBAs signed in October 2016. The Guidelines are considered superior because they enabled the implementation of the Job Evaluation and the Collective

Bargaining Agreement that were signed in 2016. The Guidelines outline the descriptions, specifications, and competencies for each job.

Prior to the implementation of CPGs, the Commission was promoting teachers using three Schemes of Service. Crucially, application of schemes of service did not, and cannot, guarantee automatic promotion since it is subject to availability of vacancies, among other factors.

The second key benefit is that all the serving 300,000 teachers were promoted with effect from 1st July 2017 when the implementation of the CBA commenced. Moreover, under the Career Progression Guidelines teacher promotion can be accelerated without the requisite three years' service in a grade which was the case in the Schemes of Service.

Third, under the CPG the salary grades have been expanded such that a teacher will enjoy more annual incremental credits within a Grade.

In view of the foregoing it has become impossible to implement the CBA without the Career Progression Guidelines.

2. Impact of the Court Ruling on Teacher Promotion

The immediate consequence of the Court ruling with regard to teacher promotion is that some major promotional benefits that had been achieved through the CPG have been lost. Specifically, under the CPG,

96,000 teachers formerly designated as P1 and who were promoted to B5 with effect from 1st July 2017 will not be promoted under common cadre to C1 on 1st July 2020. This is because promotion of teachers who are members of the KNUT shall strictly be as per the provisions of the Schemes of Service.

3. Implications of the Judgment on the Payroll

The judgement of the ELRC, has necessitated preparation of two parallel payrolls in order to comply with the Court ruling without disadvantaging teachers who are not KNUT members. In this regard, the payroll for teachers who are not KNUT members has factored in implementation of Phase Three of the 2017-2021 CBA. Their payslips will, therefore, reflect the enhanced pay in line with their grades.

The payroll for KNUT members has not factored in Phase Three of the CBA because the Court ordered that their terms be based on the Schemes of Service and not CPG. This will apply to 103,624 teachers who also include Head teachers, Deputy Head teachers and senior teachers. Inevitably, this will also lead to KNUT members losing all the benefits embedded in the CPG as an implementation tool for the CBA. In addition, reversal of grades and full recovery of the previously enhanced salaries and allowances since 1st July 2017 shall be effected.

4. Conclusion

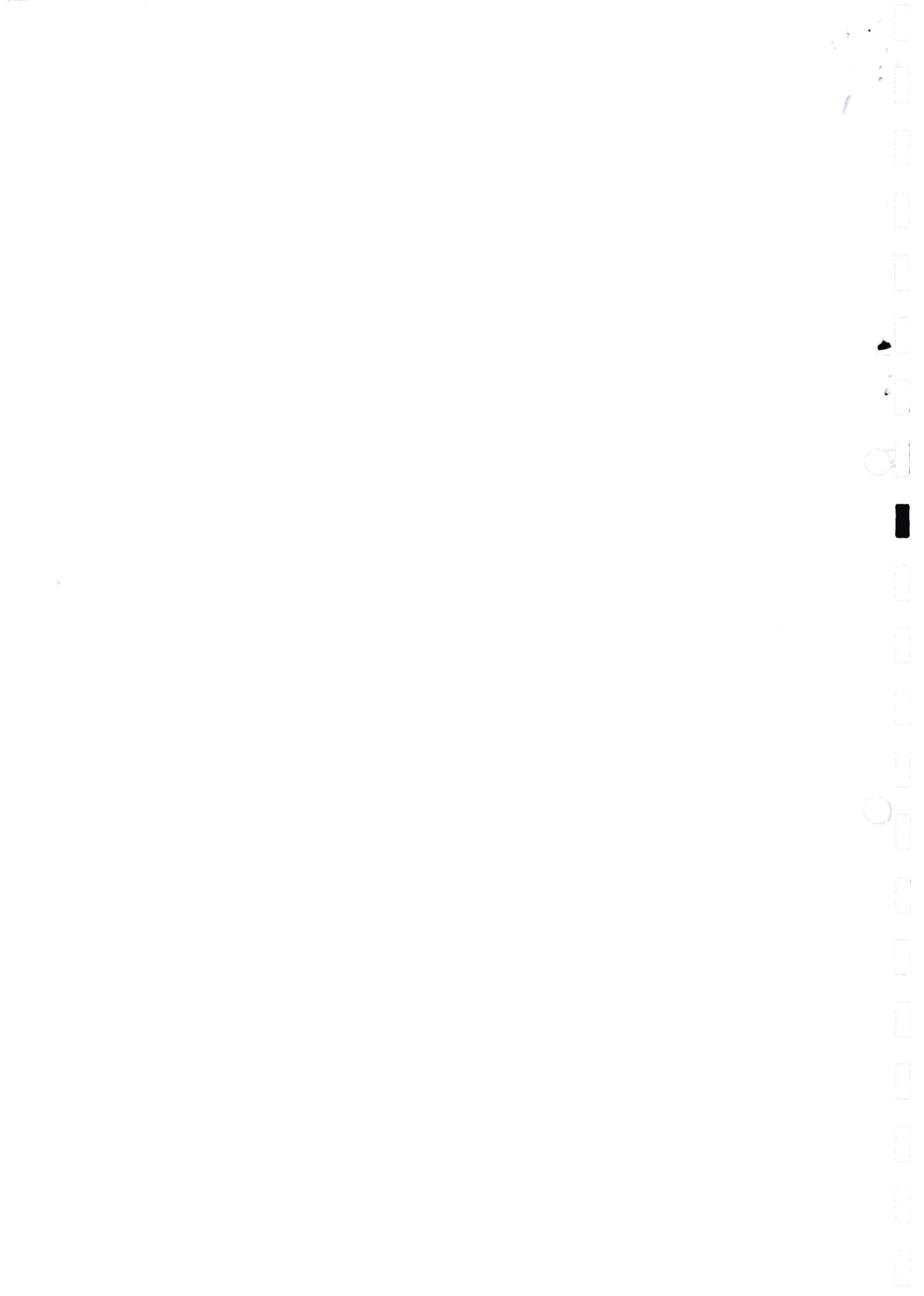
In conclusion, the Commission wishes to inform all teachers and other stakeholders that it is committed to continuous improvement of terms and conditions of service for all teachers in the public service. This was the essence of the Job Evaluation and the 2017-2021 CBAs.



KIHUMBA KAMOTHO

CORPORATE COMMUNICATIONS

Teachers with queries can channel them through cba@tsc.go.ke



EMPLOYMENT AND LABOUR
RELATIONS COURT
ACCOUNTS
13 SEP 2019
RECEIVED
P.O. Box 47606 - 00100, NRB.

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI
PETITION NO. 151 OF 2018

IN THE MATTER OF IN THE MATTER OF ARTICLES 53(1) (b), 53 (2), 41 (1), (5), 159
(1) & (2), 230 (4) & (5) and 237 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF LABOUR RELATIONS ACT (2007)

AND

IN THE MATTER OF THE TEACHERS SERVICE COMMISSION ACT, 2012

AND

IN THE MATTER OF THE CODE OF REGULATIONS FOR TEACHERS

AND

IN THE MATTER OF THE COLLECTIVE AGREEMENT NO. 282 OF 2016

AND

**IN THE MATTER OF THE NOTICE OF WITHDRAWAL OF LABOUR BY KENYA
NATIONAL UNION OF TEACHERS (KNUT) W.E.F. 2ND JANUARY, 2019**

BETWEEN

TEACHERS SERVICE COMMISSION APPLICANT

VERSUS

THE KENYA NATIONAL UNION OF TEACHERS (KNUT) RESPONDENT

AND

TEACHERS SERVICE COMMISSION 1ST CONTEMNOR

THE SECRETARY/CHIEF EXECUTIVE OFFICER

TEACHERS SERVICE COMMISSION 2ND CONTEMNOR

THE CHAIRPERSON OF THE TEACHERS SERVICE

COMMISSION 3RD CONTEMNOR

AND

CABINET SECRETARY FOR LABOUR

& SOCIAL PROTECTION INTERESTED PARTY

REPLYING AFFIDAVIT

SMS ADVOCATES LL
RECEIVED
13 SEP 2019
[Signature]
P.O. Box 47606 - 00100, NAIROBI

1

SMS ADVOCATES LL
RECEIVED
Sign: _____
P.O. Box _____



I, DR NANCY NJERI MACHARIA of P.O. PRIVATE BAG – 00100, NAIROBI and a resident of Nairobi do hereby make oath and state as follows: -

1. **THAT** I am the Secretary/Chief Executive Officer of the Teachers Service Commission, the Petitioner/Respondent herein, and I am by virtue of my position conversant with the matters and circumstances giving rise to this matter; hence competent and duly authorized to make and swear this Affidavit on behalf of all the alleged Contemnors.
2. **THAT** I have perused, read and understood the contents, tenor and purport of the Notice of Motion dated 27/8/2019, together with the Supporting Affidavit of even date sworn by Mr. Wilson Sossion together with the annexures thereto.
3. **THAT** further, the issues of law set out in the Notice of Motion and the Supporting Affidavit have been explained to me by Oyucho Timon, Counsel on record for the Petitioner; and in response to thereof, I wish to reply as follows:
4. **THAT** the alleged 1st Contemnor is a Constitutional Commission established under Article 237 of the Constitution of Kenya with its principal objectives and functions set out thereunder; and under the Teachers Service Commission Act, No. 20 of 2012; being to undertake all teacher management functions that include Recruitment, Employment and assignment of teachers for service in public schools.
5. **THAT** the alleged 2nd Contemnor, the Chief/Executive Officer and Secretary to the alleged 1st Contemnor, is charged with the statutory duty of, *inter alia*, executing decisions of the alleged 1st Contemnor.
6. **THAT** the alleged 3rd Contemnor, the Chairperson of the alleged 1st Contemnor, is the head of the Commission charged with the duty of providing policy direction for the execution of its constitutional and statutory mandates.
7. **THAT** indeed, it is true that on the 12/7/2019, this Court renders its Judgment in the matter herein and issued various orders therein. [*Annexed hereto and marked "NNM - 1" is a copy of the Judgement dated 12/7/2019*].
8. **THAT** Orders (c) and (d) which the Respondent/Applicant herein alleges to have been held in contempt by the alleged Contemnors set out as follows:

"(c) The institutional administrators or heads of institutions (principals or head-teachers) or teachers performing roles of a head of institution one way or the other are unionisable employees under the recognition agreement in place and are entitled to participate as candidates or voters and to be elected and appointed as trade union officials in accordance with the respondent's constitution and the relevant provisions of the Labour Relations Act, 2007; and where they are so elected or appointed and serving as respondent's officials, they will therefore be liable to be