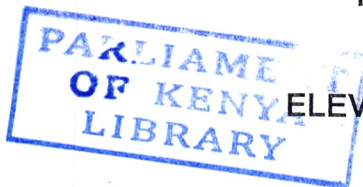


REPUBLIC OF KENYA



THE KENYA NATIONAL ASSEMBLY



ELEVENTH PARLIAMENT – THIRD SESSION

DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND

TECHNOLOGY

REPORT ON THE PETITION BY THE RETIRED TEACHERS REGARDING UNPAID PENSION DUES (1997 GROUP)



*paper laid by Hon. Libian Cherop
Chairperson Dept. Comm. on
Research & Technology
15.04.2015 (M/W)*

CLERK'S CHAMBER
PARLIAMENT BUILDINGS
NAIROBI

APRIL, 2015

TABLE OF CONTENTS

1.0 PREFACE	3
1.1 Committee Membership	3
2.0 Executive Summary	5
3.0 ACKNOWLEDGEMENT	8
4.0 BACKGROUND	9
1.3 Committee Proceedings	10
1.4 Judgment of the High Court	14
1.5 Appeal	14
1.6 Cost of the Suit	15
1.7 Challenges Faced	15
5.0 COMMITTEE'S OBSERVATIONS	17
6.0 COMMITTEE'S RECOMMENDATIONS	19

Annexes

Correspondences

High Court Ruling HCCC No.65/06

Hansard Proceedings

1.0 PREFACE

On behalf of the Members of the Departmental Committee on Education and pursuant to the provisions of Standing Order No. 199, it is my pleasure and duty to present to the House, the Committee's Report on retired teachers unpaid pension and salary arrears for retired teachers for the period between 1st July 1997 and 30th June 2007.

1.1 Committee Membership

The Departmental Committee on Education, Research and Technology was constituted by the House on Thursday, 16th May, 2013 pursuant to the provisions of Standing Order No. 216 comprising the following Members: -

1. The Hon. Sabina Chege, M.P. (Chairperson)
2. The Hon. Julius Melly, M.P. (Vice Chairperson)
3. The Hon. (Prof.) Hellen Sambili, M.P.
4. The Hon. (Dr.) Wilber Ottichilo, M.P.
5. The Hon. Harrison Kombe, M.P.
6. The Hon. Yusuf Chanzu, M.P.
7. The Hon. Joseph Manje, M.P.
8. The Hon. Rose Mitaru, M.P.
9. The Hon. Anthony Kimaru, M.P.
10. The Hon. Jacob Macharia, M.P.
11. The Hon. Mary Seneta, M.P.
12. The Hon. Joseph M'eruaki, M.P.
13. The Hon. Dr. Susan Chebet, M.P.
14. The Hon. Eric Keter, M.P.
15. The Hon. Cecilliah Ng'etich, M.P.
16. The Hon. Mohamed Huka, M.P.
17. The Hon. Moses Injendi, M.P.
18. The Hon. Muriuki Njagagua, M.P.
19. The Hon. Kenneth Okoth, M.P.
20. The Hon. Geoffrey Odanga, M.P.
21. The Hon. (Dr.) Christine Ombaka, M.P.
22. The Hon. Jared Opiyo, M.P.
23. The Hon. Michael Kiso, M.P.
24. The Hon. Halima Ware Duri, M.P.
25. The Hon. Dorcas Kedogo, M.P.
26. The Hon. Ibren Nasra, M.P.
27. The Hon. Richard Makenga, M.P.
28. The Hon. Silverse Anami, M.P.
29. The Hon. Steven Kariuki, M.P.

1.2 Committee Mandate

The Departmental Committee on Education, Research and Technology was established by Standing Order No. 216 of the Standing Orders of the National Assembly and mandated, amongst other things,

- a. *Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- b. *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
- c. *study and review all legislation referred to it;*
- d. *study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- e. **investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;**
- f. *to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve , except those under Standing Order 204 (Committee on Appointments); and*
- g. *Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*



2.0 Executive Summary

In 1997 the Government and Kenya National Union of Teachers signed an agreement whereby teachers were given salary awards as per legal notice No.534 of 1997.

The award was to be implemented in five phases with effect from 1st July 1997 through Teachers Service Commission circular No.13/97 of 24th November 1997. The first phase was paid in 1997 as agreed but four phases were not paid. The four phases ought to have been paid in 1998, 1999, 2000 and 2001.

The Minister in the Legislative Supplement No.62 on 24th September 2002 revoked the remuneration of teachers' order of 2007.

On 21st February 2003 in the Legislative Supplement No.10, and after re-negotiation with the Kenya National Union of Teachers, the Minister reinstated the 'Principal Order' and as per the renegotiations, the order was to be implemented in ten years.

The period for implementation was reduced to six years commencing 1st July 2003 and finally five (5) years due to improved performance of the economy. This was not fully implemented by 30th June 2007.

The retired teachers presented a petition to Parliament on 23rd March, 2012 under the auspices of the Retired Teachers (1997) Group who retired between July 1997 and 2007. They were totaling to 52,338 teachers and are beneficiaries of Legal Notice No. 534 of 11th November 1997 and also

judgment and decree holders of HCCC No.65/06 and Court of Appeal Case No. 300/09. **(See annex 1)**

The matter was raised in Parliament during different sittings by the following Members :-

- i. On 23rd June, 2010 – The Hon. Danson Mungatana and The Hon. Olago Oluoch, M.P
- ii. On 7th December, 2010 – The Hon. Silas Ruteere and The Hon. James Maina Kamau.
- iii. On 1st November, 2011 – The Hon. John Pesa, Hon. William Kabogo, Hon. Njoroge Baiya and Hon. Martha Karua.
- iv. 22nd February, 2012 – The Hon. John Pesa, Hon. Bonny Khalwale, M.P, Hon. Olago Oluoch, M.P, Hon. Martha. Karua, Hon. Gitobu Imanyara and Hon. David Koech raised the same issue on payments.

(See annex of Hansard Proceedings on the said dates)

The 10th Parliament approved 3.34 billion out of the 16 billion that was required. However, the teachers were not paid since Treasury was waiting for the legal opinion from the Attorney General.

On 6th December, 2012, the Attorney General wrote to the then Chairperson of the Committee on Education, Research and Technology, Hon. David Koech informing him that he had resolved as a custodian of rule of law and order and defender of public interest to seek a judicial intervention as requested. He wrote to the Teacher Service Commission seeking precise information on the following issues for the purposes of filling an appropriate application in court.

- The number of teachers who retired between the years 1998 to 2003.
- The amount each earned as at the time of retirement; and
- The amount each would have been earning upon retirement if the agreement had been implemented in single phase.

On 11th February, 2014 the Retired Teachers again petitioned the 11th Parliament. The Teachers cited the Court rulings of NAKURU HCCC 65 OF 2006 and NAKURU CIVIL APPEAL NO. 300 OF 2009.

The Committee therefore undertook to meet all the stakeholders and resolve the issue once and for all. The Committee held several sittings to deliberate on the issue of the Retired Teachers and came up with recommendations.

3.0 ACKNOWLEDGEMENT

The Committee sincerely wishes to thank the Offices of the Speaker and the Clerk for the National Assembly for the necessary support and service accorded to the Members to ensure the Committee executes its mandate accordingly.

I thank all Members of the Committee for their patience, sacrifice, hard work and more importantly, their objectivity. I further thank the Committee Secretariat for its commitment and due diligence.

It is my pleasant duty and privilege, on behalf of the Departmental Committee of Education, Research and Technology, to present this report on the retired teachers unpaid pension dues.

Signed

**(HON. SABINA CHEGE, MP
(CHAIRPERSON)**

Date:

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4.0 BACKGROUND

The matter for the retired teachers was brought to the Committee following a request for statement by the Hon. Kigo Njenga where the matter was subsequently referred to the Committee for its inquiry. The Committee undertook to carry out the inquiry where several meetings were held with all the parties involved in a bid to seek a solution to the matter.

In 1997 the Government and Kenya National Union of Teachers signed an agreement whereby teachers were given salary awards as per legal notice No.534 of 1997.

The award was to be implemented in five phases with effect from 1st July 1997 through TSC circular No.13/97 of 24th November 1997. The first phase was paid in 1997 as agreed but four phases were not paid. The four phases ought to have been paid in 1998, 1999, 2000 and 2001.

The minister in the Legislative Supplement No.62 on 24th September 2002 revoked the remuneration of teachers' order of 2007.

On 21st February 2003 in the Legislative Supplement No.10 and after re-negotiation with the Kenya National Union of Teachers, the then Minister reinstated the 'Principal Order' and as per the renegotiations, the order was to be implemented in ten years.

The period for implementation was reduced to six years commencing 1st July 2003 and finally five years due to improved performance of the economy. This was not fully implemented by 30th June 2007.

The retired teachers' grievance is that their Pensions and Retirement Benefits were computed on the basis of the only implemented phase.

The retired teachers who were in service from 1st July 1997 to 30th June 2007 filed a suit No.HC.C.C.65 against the Commission at the High Court in Nakuru, Civil Suit number H.C.C.C 65 of 2006 in which they sought for a declaration that they were entitled to the retirement benefits inclusive of all benefits provided for in the 1997 agreement between the Government of Kenya and the Kenya National Union of Teachers (KNUT).

1.3 Committee Proceedings

The Committee on Education, Research and Technology held several sittings during which Members were informed that: -

- i. The government of Kenya and the Kenya National Union of Teachers (KNUT) entered into an agreement in 1997 on the teachers' salaries. The increment was to be implemented in five phases starting from 1st July 1997. The agreement was gazette under Legal notice No. 534.
- ii. Only one payment was done but the other phases were not implemented. The Minister revoked the remuneration of teachers' order of 1997 but was later reinstated. With the improved economy, the implementation was reduced to 5years and it was fully implemented by July, 2007 to the serving teachers but not the retirees.
- iii. The retired teachers who were in service between 1st July 1997 and 30th June, 2007 filed a civil suit demanding for retirement benefits

entitlements provided for in the 1997 agreement. The High Court made a ruling on 23rd October, 2008 that the Commission process pension based on salaries agreed upon in 1997. The Commission had an outstanding bill of Kshs. 765.2 million as the cost of the case.

- iv. The High court ruled in favor of the retired teachers on 23rd October 2008. The government appealed against the decision of the court ruling and the court finally dismissed the appeal on 12th November 2010;
- v. The amount that the teachers were claiming was 42 billion which comprised Kshs. 8.2 billion as Salary arrears and Kshs. 33 billion as pension dues. In its judgment, the court did not cite any figure as payment for the teachers but only referred to the Legal Notice No. 534 which was subsequently varied and rescheduled.
- vi. The figure of Kshs 16 billion that was given by the Director of Pensions should not have been used as a basis by the court. However, the payments should have been computed on the entitlement of the retired teachers up to the time of Legal Notice No. 534.
- vii. The office of the Attorney General was not able to determine the actual amount owed to the retired teachers and the number of teachers covered by the ruling.
- viii. The Government requested the Supreme Court seeking advice on how to compute the pension dues owed to each of the teachers.
- ix. The Controller of Budget would raise an objection should the Government proceed to pay the retired teachers since such

expenditure ought to be authorized by the Office of the Controller of Budget;

- x. TSC had lost the case with costs both at the High Court and Court of Appeal. The Court of Appeal ruled that it was incumbent upon TSC to reflect the increment in the pay slip as per the last pay.
- xi. The Court further ruled that TSC release Pay slip to the Pensions Department for every entitled retiree.
- xii. The Court should have clarified on the manner of computation of payment of the retirees. The figure raised by the retired teachers' advocate was unprecedented, which was close to Kenya shillings one billion.
- xiii. The National Treasury was ready to pay Kshs. 16.7 billion to the retired teachers as per the High Court ruling in the case filed by the retired teachers. The figure was agreed between the Treasury and TSC which was to be paid in phases of five years. The meeting was informed that the retired teachers would be paid 3.3 billion annually.
- xiv. The National Treasury had budgeted for the payment of retired teachers (1997) group in the FY 2014/2015.
- xv. The AG's office had been appearing in court in all the hearings to represent TSC. With respect to the submission of the particular names of the retired teachers on the issue of the retired teachers' names, the lawyer noted that offices of AG, TSC and Director of Pensions had all the names. In addition, the advocates concluded by saying no additional name/names of the retired teachers were included and the amount was totaling 42.3 billion.

xvi. The Legal representative for the teachers disagreed with the colossal sum of the pension and salary arrears projected by the National Treasury at Kshs. 151 billion.

Members were further informed that: -

- (i) The pension was computed on the last paid salary and the TSC had not given the office of the Controller of Budget the actual figures for Treasury to release the funds.
- (ii) Paying the retired teachers their salary arrears and pensions at once would amount to Sh23 billion hence the need for negotiations to be done with the retired teachers group 1997 for payments to be done in phases.
- (iii) The retired teachers' pensions could not be pegged on to their salaries at retirement because they had not been adjusted to the amount negotiated through the 1997 agreement) of between 150 and 200 per cent.
- (iv) The Commission was given a bill of Ksh. 382,600,000 being the cost of the case at the High Court and further cost of Ksh. 382,600,000 as the cost of appeal. In total, the Commission had an outstanding bill of Ksh. 765,000,000 payable to the teachers' advocates. The Commission had sought direction from the Attorney General on the status of the outstanding Advocate's fee amounting to Ksh. 765,200,000.
- (v) On 25th August, 2014, the Attorney General and the Cabinet Secretary of the National Treasury made commitment to resolve this matter once and for all. However, it was considered that the

Controller of Budget, who was in charge of approving any withdrawal of public funds be consulted for concurrence and further advise on the matter.

1.4 Judgment of the High Court

The High Court entered judgment on the 23rd October 2008 for the retired teachers based on the agreement dated 11th October 1997 as read with the Teacher Service Commission circular No. 13197.

The High Court therefore made a ruling that ordered the Commission to process pension based on the salaries agreed upon in 1997 as contained in the Legal Notice number 534 of 11th November 1997.

The finding of the High Court turned on the construction of Section 10(1) of the Pensions Act.

1.5 Appeal

The Government appealed against the decision of the High Court arguing that the interpretation of the law adopted by the High Court amounted to exercise of legislative power by the court.

The Appeal was heard on 30th September 2010 and judgment delivered on 12th November 2010 which dismissed the appeal. The Court of appeal in its decision agreed with the finding of the High Court and held that TSC had a contractual duty to ensure that all additional agreed salary was reflected in

the final salary and that what should have reflected on the pay slip was what was contractually due to the retired teachers as per the agreement.

TSC was called upon to compute the 'final salary' of the affected retirees in a manner that incorporates all the terms under the agreement between the Parties and accordingly advise the Director of pensions.

1.6 Cost of the Suit

The Commission was given a bill of Ksh. 382,600,000 as the cost of the case at the High Court and a further cost of Ksh. 382,600,000 as the cost of appeal. The Commission has an outstanding bill of Ksh. 765,200,000 in total payable to the teachers' advocates.

1.7 Challenges Faced

The following challenges still remain despite the actions undertaken by all the Government departments.

1. Pension claims must reflect the actual salary earned and not presumed. Since the salary was not actually earned, no acceptable documents (in accordance to the Pensions Act Cap 189) are available to support the retirees' subsequent pension claims as demanded by both Kenya National Audit Office (KENAO) and the Director of Pensions.
2. The National Treasury has since projected the sums payable at Ksh. 151 billion to pay pension arrears and salary arrears.

3. If the Court Order was fully implemented, teachers who retired between 1/7/97 and 30/6/2007 paid their dues based on the Legal Notice NO. 534 of 1997, teachers who retired after 30th June 2007 would earn less pension than the former.
4. Teachers who were in service in 1997 and are still in the service are likely to make claims on salary adjustment to attain parity of treatment whereby the wage bill will escalate tremendously.

5.0 COMMITTEE'S OBSERVATIONS

- (i) The resolution reached by the 10th Parliament for payment of Kshs 3 billion has not been implemented to-date. In regard to the Court ruling, the Committee was concerned about lack of clarity in the declarations towards the retired teachers. Further, the High Court ruling in Nakuru under suit No.HC.C.C.65 had not included details of payment based on the Legal notice No. 534 of 1997.
- (ii) Though Section 10 of the Pensions Act provided that retired workers should be paid according to their last salary before retirement, the Court in their consideration ruled that the salary be paid based on the agreement of 1997 per Legal Notice No. 534 and Teachers Service Commission (TSC) circular 13/97. Consequently, the Commission Secretary had been sued for contempt of Court for allegedly failing to implement the Court Order. (See Annex)
- (iii) The Office of the Attorney General has the responsibility to advise the government on the issue of pension for the retired teachers. On 8th April, 2014, the Committee had directed the parties involved in the matter i.e the Office of the Attorney General, the Teachers Service Commission, the National Treasury and the retired teachers stakeholders to meet on 20th May, 2014 and come up with the way forward on the matter and report back to the Committee on 17th June, 2014. However, the Meeting didn't take place because the Attorney General didn't avail himself in the meeting.
- (iv) The Deputy Solicitor General in her letter addressed to the Counsel for the retired teachers and copied to the Chairperson of the Education Committee had expressed her unwillingness to continue

participating in the matter. The Committee expressed its displeasure with the content and tone of the letter.

- (v) The Attorney General's Office was delaying in fast tracking the resolution of the matter and through continued litigation had incurred a lot of expenses on legal fees which was not prudent use of public money. The retired and elderly teachers have continued to languish in abject poverty and most of them had died over the years.
- (vi) Lack of funds from the Treasury, unclear Court directive on the matter and lack of guidance from the Attorney General's office and the Teachers Service Commission was to be blamed for failure to pay the retired teachers group (1997).

6.0 COMMITTEE'S RECOMMENDATIONS

From the meetings held with the concerned parties, the Committee recommended that: -

- (i) The rulings of the High Court of 23rd October, 2008 as upheld by the Court of Appeal on 12th November 2010 be respected and Court orders be obeyed accordingly.
- (ii) The figure of Kshs 151 billion brought in by the by Controller of Budget to the Attorney General dated 8th August 2012 be discarded forthwith as it is grossly incorrect. Instead the figure of Kshs 42 billion provided for by the Retired Teachers Lawyer be implemented.
- (iii) The figure for pension be paid immediately from the Pensions Department starting with Kshs 16.7 billion which the Controller of Budget and the Cabinet Secretary of the National Treasury unequivocally indicated that was readily available then enter into an agreement on how to pay the balance.
- (iv) The Ministry to consider adjusting the monthly pensions accordingly and immediately. The salary arrears amounting to Kshs 8.2 billion be budgeted for settlement.

MINUTES

MINUTES OF THE 77TH SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD ON THURSDAY 17TH DECEMBER, 2014 IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.30AM

PRESENT

1. Hon. Julius Melly, M.P - Ag. Chairperson (Chairing)
2. Hon. Mary Seneta, M.P - Ag. Vice Chairperson
3. Hon. Yusuf Chanzu, M.P
4. Hon. Silverse Anami, M.P
5. Hon. Eric Keter, M.P
6. Hon. Rose Mitaru, M.P
7. Hon. Steven Kariuki, M.P.
8. Hon. Dorcas Kedogo Luvalitsa, M.P
9. Hon. Harrison Kombe, M.P
10. Hon. Michael Kisoj, M.P
11. Hon. Cecilia Ng'etich, M.P
12. Hon. Mohamed Huka, M.P.

APOLOGY

1. Hon. Sabina Chege, M.P. - Chairperson
2. Hon. Joseph Manje, M.P.
3. Hon. Jacob Macharia, M.P
4. Hon. Kenneth Okoth, M.P
5. Hon. Ibren Nasra Ibrahim, M.P
6. Hon. Moses Injendi, M.P
7. Hon. Geoffrey Makokha Odanga, M.P.
8. Hon. Muriuki Njagagua, M.P
9. Hon. (Dr.) Susan Chebet, M.P
10. Hon. Jared Opiyo Odhiambo, M.P
11. Hon. Halima Ware Duri, M.P

ABSENT

1. Hon. Anthony Kimaru, M.P
2. Hon. (Prof.) Hellen Sambili, EGH, M.P
3. Hon. Joseph M'eruaki, M.P
4. Hon. (Dr.) Wilber Ottichillo, M.P
5. Hon. (Dr.) Christine Ombaka, M.P
6. Hon. Makenga Richard Katemi, M.P.

IN ATTENDANCE

National Assembly Secretariat

1. Ms. Leah Wanjiru - First Clerk Assistant
2. Mr. John Mugoma - Third Clerk Assistant
3. Mr. Jimale Mohamed - Third Clerk Assistant
4. Ms. Colleta Sigilai - Legal Counsel

Office of the Controller of Budget

1. Mr. Josephat Waithaka J. Gakuo - Principle Auditor
2. Mr. Waweru Tuti - Legal Officer

Office of the Attorney General

1. Mr. Mwangi Njoroge - Deputy Chief Litigation Counsel

Teachers Service Commission

1. Mr. Simeon Omare - Ag. Senior Deputy Director
2. Mrs. Josephine Maundu - Deputy Human Resource Manager

Retired Teachers (1997) Group

1. Mr. D.M. Kimatta - Legal Counsel for the Retired Teachers

MIN.NO.DC.D/383 /2014: PRELIMINARIES

The Chairperson called the meeting to order at 10.40am with a prayer. The Chairperson then proceeded to welcome Honorable Members and officials present to the meeting and asked those present to introduce themselves.

The Chairperson then gave the following communication;

- I. The meeting was a follow up to the previous meeting held on 11th December, 2014 regarding the issue of Retired Teachers.
- II. That various state office who were invited before the committee were to attend the meeting in person and not to sent representatives as they did.
- III. The Cabinet Secretary for the National Treasury was appearing before the Health Committee the same time Education Committee was sitting.
- IV. The Controller of Budget was disposed and won't appear before Committee though she sent a representative.
- V. Members learnt from the media that the A.G referred the matter again to Supreme Court.

MIN.NO.DC.D/384 /2014: ADOPTION OF THE AGENDA

The Chairperson introduced the agenda as follows:

1. Preliminaries
 - i. Prayers
 - ii. Chairperson Remarks
 - iii. Adoption of the agenda.

2. Meeting with the office of the Attorney General, the Office of Controller of the Budget, the Teachers Service Commission and Counsel to the Retired Teachers (1997)
3. Any other Business
4. Date for the next Sitting

MIN.NO.DC.D /385/2014: MEETING WITH THE OFFICE OF THE ATTORNEY GENERAL, THE OFFICE OF CONTROLLER OF THE BUDGET, THE TEACHERS SERVICE COMMISSION AND COUNSEL TO THE RETIRED TEACHERS (1997).

Submissions from the Teachers Counsel

- I. The Counsel thanked Committee Members for the effort it has made to solve the Retired Teachers issues.
- II. That if the Government is not willing to pay retired teachers, it should come out clearly on the issue.
- III. The Counsel was not served with the Court Order which is against the law.
- IV. That on different occasions, the Attorney General promised to pay the Retired teachers and up to know they haven't been paid there dues.
- V. The Parliament should act and protect the Retired Teachers.

Submissions from the Representative from the Office the Attorney General

- I. That the isn't new in the Courts and that the retired teachers counsel will be served with the application.
- II. The mattered was to be ruled on by Supreme Court in December.

Members Observations

- I. On the issue of Retired Teachers, Members noted that the Controller of the Budget, the Attorney General and the Secretary Teachers Service Commission would have appeared in person before the Committee so that the issue of retired teachers can finalized and teachers paid their dues.
- II. The Government should come out clearly on the issue of teachers pension specifically the 1997 Group.
- III. The Attorney General is the impediment to the process of paying the Retired Teachers their dues.

Way forward.

- I. The Committee should write a Report on the Retired Teachers issue and table the report in the House.
- II. The Committee should write a protest letter to the Attorney General for severally failing to appear before the Committee .

MIN.NO.DC.D /386/2014: ANY OTHER BUSINESS

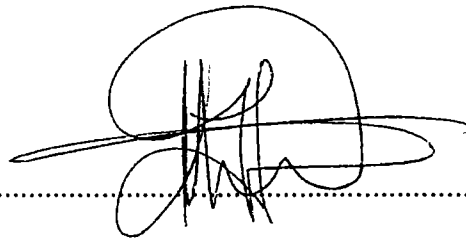
Members raised the following issues under A.O.B;

- I. The Cabinet Secretary should be clear on the following issue of school fees so that come next year, parents are not charged extra school fees.
- II. The ranking of school should be maintained. However, the Government should improve on the ranking by considering other factors like co-curricular activities, management of schools and discipline.
- III. The Ministry should also consider the issue of Schools Management Board who have not been appointed hence crippling the activities of the schools.
- IV. Registration of schools should be fast track so that pupils can be in position to sit for examinations. For example Bridge International Academies.
- V. Hon. Joseph Manje, M.P travelled to India for medication and Committee Members should support him. Members present agreed unanimously to contribute Ksh. 10000/= each for Hon. Manje. The money was to be given to Hon. Mary Seneta, M.P. who will communicate to Members the day they will pay a visit to Hon. Manje.

MIN.NO.DC.D /387/2014: ADJOURNMENT AND DATE OF NEXT SITTING

There being no any other business, the meeting was adjourned at 12.00 noon.

Signed.....



HON JULIUS K. MELLY, M.P

(Ag. CHAIRPERSON)

Date.....

29/1/2015

MINUTES OF THE 76TH SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD ON THURSDAY DECEMBER 11TH, 2014 IN 5TH FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 9:30 AM

PRESENT

1. Hon. Julius Melly,MP - Vice Chairperson (Chairing)
2. Hon. Mary Seneta, M.P - Ag. Vice Chairperson
3. Hon. (Dr.) Wilber Ottichilo, M.P
4. Hon. (Dr.) Christine Ombaka, M.P
5. Hon. Yusuf Chanzu, M.P
6. Hon. Rose Rwamba Mitaru, M.P
7. Hon. Moses Injendi, M.P
8. Hon. Njagagua Muriuki, M.P
9. Hon. Geoffrey Makokha Odanga, M.P
10. Hon. Eric Keter, M.P
11. Hon. Joseph Meruaki, M.P

ABSENT WITH APOLOGY

1. Hon. Sabina Chege, M.P - Chairperson
2. Hon. Joseph Manje, M.P
3. Hon. Jacob Macharia, M.P
4. Hon. Cecilia Ng'etich, M.P
5. Hon. Harrison Kombe, M.P
6. Hon. Mohamed Adan Huka, M.P
7. Hon. Kedogo Dorcas Luvalitsa, M.P
8. Hon. Michael Kisoi Munyao, M.P

ABSENT

1. Hon. Anthony Kimaru, M.P
2. Hon. (Dr.) Susan Chebet, M.P
3. Hon. (Prof.) Helen Sambili, M.P
4. Hon. Silverse Lisamula Anami, M.P
5. Hon. Ibren Nasra Ibrahim, M.P
6. Hon. Halima Ware Duri, M.P

7. Hon. Richard Makenga, M.P
8. Hon. Steven kariuki, M.P.
9. Hon. Opiyo Jared Odhiambo, M.P
- 10.Hon. Kenneth Okoth, M.P

IN ATTENDANCE

National Assembly

		Designation
1.	Ms. Leah Wanjiru -	First Clerk Assistant
2.	Mr. Jimale Mohamed -	Third Clerk Assistant
3.	Mr. Mugoma John -	Third Clerk Assistant
4.	Ms. Coletah Sigilai -	Legal Counsel

Office of the Controller of Budget

1.	Mrs. Agnes Odhiambo -	Controller of Budget
2.	Josephat W.J.Gakuo -	Principal Auditor

Teachers Service Commission (TSC)

1.	Mr. Gabriel Lengoiboni -	CEO/Secretary (Teachers Service Commission)
2.	Mrs. Josephine Maundu -	DHRD/TSC
3.	Ms. Stella Rutto -	Legal officer TSC

National Treasury

Mr. M.J Obonyo -	C.I.O - Pensions Department
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Retired Teachers

1.	Mr. Joseph M.N Mwenja -	National Chairman – Retired Teachers
2.	Mr. David Kamani -	V. Chairman - Retired Teachers
3.	Mr. Gedraf M.Kimatta -	Secretary - Retired Teachers
4.	Mr. Simon Kamau Mbugua -	Treasurer - Retired Teachers

5. Mr. John Mukoi Zac - Member/ Gatundu/Thika Coordinator
6. Mr. D.M Kimatta - Advocate – Retired Teachers (Claimants)

MIN.NO.DC.D/378/2014: PRELIMINARIES

The Chairperson called the meeting to order at 10.20a.m and requested Hon. Mary Seneta to pray. The Chairperson then welcomed the visitors to the meeting and followed by a round of introductions. The Chairperson informed that the meeting was a follow up over the progress made in releasing the payment of the retired teachers group 1997. He further notified that the Controller of Budget was to convene a meeting with all stakeholders concerned and report back to the Committee in three weeks' time on the modalities of payment of Sh16.7 billion.

MIN.NO.DC.D/379/2014: MEETING WITH THE CONTROLLER OF BUDGET, ATTORNEY GENERAL, THE NATIONAL TREASURY AND THE TEACHERS SERVICE COMMISSION and THE RETIRED TEACHERS GROUP 1997

The Controller of Budget in her submission informed the meeting as follows:-

- a) The meeting took place on 11th November, 2014 with all stakeholders as directed by the Committee on 30th October 2014. The following offices met to deliberate on the matter of the retired teachers.
 - I. Office of the Controller of Budget
 - II. Teachers Service Commission
 - III. Kenya Audit Office
 - IV. Treasury/ Pensions office
 - V. Advocate of the Retired Teachers
- b) The Attorney General's Office had moved to Supreme court for interpretation on the issue of the retired teachers.
- c) The AG was to help us understand the last salary to unbundle the stalemate.
- d) Teachers Service Commission should request breakdown of the Sh16.7 billion from the National Treasury.
- e) The Retired Teachers are willing to negotiate with the government on the issue of salary arrears.

- f) The National Treasury should confirm availability of fund so as no financial implications is witnessed during payment.

The Pensions Department

Representative of the Office of Pensions informed the Committee that shilling 16.7b was available and was meant for pension and not salary arrears.

The Advocate for the Retired Teachers

There was no case that had been filed currently by the AG's office at the Supreme Court regarding the Retired teachers and the AG should prove it to the Committee whether the case was moved to the Supreme Court.

Committee's Concerns

- ~~a) Member raised concern over the Attorney General office's move to Supreme Court seeking for further interpretation.~~
- b) The Committee registered its displeasure and disappointment with the AG and the Cabinet Secretary of the National Treasury from snubbing the meeting.

Way forward

1. The Committee resolved to meet the Cabinet Secretary of the National Treasury, Attorney General, CEO Teachers Service Commission and Controller of Budget on Wednesday, 17th December 2014. The Committee directed the officials to appear before the Committee in person on deliberation in regard to the retired teachers' issue.
2. The Committee further directed The National Treasury and the TSC prepare payment schedule and list of the retired teachers respectively.
3. The Committee further stressed that the Retired Teachers be paid with immediate effect.

MIN.NO.DC.D/380/2014: CONSIDERATION OF THE PROPOSED AMMENDMENTS TO THE KNEC (Amendment) BILL, 2014 BY HON. MOHAMED SHIDIYE,MP and HON. EMMANUEL WANGWE,MP

Proposed amendments for HON. MOHAMED SHIDIYE, M.P

10A (1) the council shall not set and conduct national examination at primary level of education.

(2) A pupil who completes education at primary level may undertake education at secondary school without being subjected to an academic national examination or any test related to admission of the pupil to a secondary school.

(3) No person shall administer any test related to admission of a pupil to a secondary school.

Recommendation: Rejected

Justification: The Committee did not agree with the amendment due to difficulty in implementation at the current era. The committee stated that the government should ensure equal distribution of facilities to all schools across the country and promote quality of education.

Proposed amendments for HON. EMMANUEL WANGWE, MP

(2) Section 48 of Kenya National Examination Council Act, 2012 is amended in by inserting a new subsection immediately after subsection (2) as follows-

(3) Despite paragraph (h), no examination fees or other examination charges shall be levied from Kenyan citizens in respect of –

(a) the Kenya Certificate of Primary Examination or its equivalent; and

(b) the Kenya Certificate of Secondary Education Examination or its equivalent.

Recommendation: Agreed to

Justification: The committee agreed to the amendment which will give legal backing.

MIN.NO.DC.D/381/2014: ANY OTHER BUSINESS

The following issues were raised:

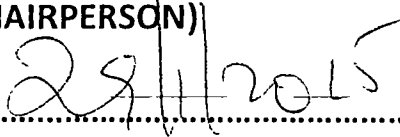
1. The Committee recommends that Ranking of schools be maintained by the government.
2. Members raised concern over the allegations of corruption during marking of school KCPE and KCSE exams.

MIN.NO.DC.D/382/2014: ADJOURNMENT

There being no any other business, the chairperson adjourned the meeting at 11.22am.

Signed.....

(CHAIRPERSON)

Date.....

MINUTES OF THE 67TH SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD ON THURSDAY, 30TH OCTOBER, 2014 IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT

- | | | |
|---------------------------------------|---|-----------------------------|
| 1. Hon. Julius Melly,MP | - | Vice Chairperson (Chairing) |
| 2. Hon. Mary Seneta, M.P | - | Ag. Vice Chairlady |
| 3. Hon. (Prof.) Helen Sambili, M.P | | |
| 4. Hon. (Dr.) Wilber Ottichilo, M.P. | | |
| 5. Hon. (Dr.) Susan Chebet, M.P | | |
| 6. Hon. (Dr.) Christine Ombaka, M.P | | |
| 7. Hon. Yusuf Chanzu, M.P | | |
| 8. Hon. Mohamed Adan Huka, M.P | | |
| 9. Hon. Rose Rwamba Mitaru, M.P | | |
| 10. Hon. Opiyo Jared Odhiambo, M.P | | |
| 11. Hon. Kedogo Dorcas Luvalitsa, M.P | | |
| 12. Hon. Moses Injendi, M.P | | |
| 13. Hon. Cecilia Ng'etich, M.P | | |
| 14. Hon. Harrison Kombe, M.P | | |
| 15. Hon. Kenneth Okoth, M.P | | |
| 16. Hon. Michael Kiso Muniyao, M.P | | |
| 17. Hon. Silverse Lisamula Anami, M.P | | |
| 18. Hon. Njagagua Muriuki, M.P | | |
| 19. Hon. Geoffrey Makokha Odanga, M.P | | |
| 20. Hon. Eric Keter, M.P | | |
| 21. Hon. Ibren Nasra Ibrahim, M.P | | |
| 22. Hon. Halima Ware Duri, M.P | | |
| 23. Hon. Richard Makenga, M.P | | |
| 24. Hon. Joseph Meruaki, M.P | | |
| 25. Hon. Steven kariuki, M.P. | | |

ABSENT WITH APOLOGY

- | | | |
|------------------------|---|-------------|
| Hon. Sabina Chege, M.P | - | Chairperson |
|------------------------|---|-------------|

ABSENT

1. Hon. Anthony Kimaru, M.P
2. Hon. Joseph Manje, M.P
3. Hon. Jacob Macharia, M.P

IN ATTENDANCE

National Assembly

- | | | |
|------------------------|---|-----------------------|
| 1. Ms Leah Wanjiru | - | First Clerk Assistant |
| 2. Mr. Jimale Mohamed | - | Third Clerk Assistant |
| 3. Mr. Mugoma John | - | Third Clerk Assistant |
| 4. Ms. Caroline Njue | - | Research officer |
| 5. Ms. Coletah Sigilai | - | Legal Counsel |
| 6. Mr. Stanley Lagat | - | Sergeant At Arm |

Office of the Controller of Budget

- | | | |
|------------------------|---|--------------------|
| 1. Mrs. Agnes Odhiambo | - | Director |
| 2. Josephat W.J.Gakuo | - | Principal Auditor |
| 3. Mary Owi | - | Personal Assistant |

Teachers Service Commission (TSC)

- | | | |
|---------------------------|---|---|
| 1. Mr. Gabriel Lengoiboni | - | CEO/Secretary (Teachers Service Commission) |
| 2. Mrs. Josephine Maundu | - | DHRD/TSC |
| 3. Mr. Simon Omase | - | Ag DDP TSC |
| 4. Mr. Allan M. Sitima | - | Senior Legal Counsel, TSC |

MIN.NO.DC.D/339/2014: PRELIMINARIES

The Chairperson called the meeting to order at 10.20 a.m and requested Hon. Mary Seneta to pray. The Chairperson then welcomed the visitors to the meeting followed by a round of introductions. The Chairperson conveyed apologies from the Office of the Attorney General. He further informed the meeting that the meeting was a follow up meeting where it was resolved that the Office of Controller of Budget be invited to a meeting to discuss the issue of the unpaid dues owed to the retired teachers (1997) group.

MIN.NO.DC.D/340/2014: MEETING WITH THE CONTROLLER OF BUDGET, ATTORNEY GENERAL, THE NATIONAL TREASURY AND THE TEACHERS SERVICE COMMISSION

The Controller of Budget in her submission informed the meeting as follows:-

- Lack of funds from the Treasury, unclear court directive on the matter and lack of guidance from the Attorney General's office and the Teachers Service Commission was to be blamed for failure to pay the retired teachers group (1997).
- Section 10 of the Pensions Act provided that retired workers should be paid according to their last salary before retirement.

- c) Pension was computed on the last paid salary and the TSC had not given the office of the Controller of Budget the actual figures for Treasury to release the funds.
- d) Paying the retired teachers their salary arrears and pensions at once would amount to Sh23 billion hence the need for negotiations to be done with the retired teachers group 1997 for payments to be done in phases.
- e) The retired teachers' pensions could not be pegged on to their salaries at retirement because they had not been adjusted to the amount negotiated through the 1997 agreement) of between 150 and 200 per cent.
- f) A meeting between the office of the Controller of Budget, TSC, the AG's office, a representative of the retired teachers and the Director of Pensions would be reconvened to help resolve the impasse and ensure the teachers are paid.

SUBMISSIONS FROM THE SECRETARY TO THE TEACHERS SERVICE COMMISSION

The TSC Secretary Mr. Gabriel Lengoiboni informed the Members that;

- a) The commission had been unable to compute what the retired teachers could have earned at the time of retirement due to a negotiated pay rise towards which the government had only paid a single installment, leaving four unpaid.
- b) The Commission was given a bill of Ksh. 382,600,000 being the cost of the case at the High Court and further cost of Ksh. 382,600,000 as the cost of appeal. In total, the Commission had an outstanding bill of Ksh. 765,000,000 payable to the teachers' advocates. The Commission had sought direction from the Attorney General on the status of the outstanding Advocate's fee amounting to Ksh. 765,200,000.
- c) On 25th August, 2014, the Attorney General, Cabinet Secretary of the National Treasury made commitment to resolve this matter once and for all. However, it was considered that the Controller of Budget, who was in charge of approving any withdrawal of public funds be consulted for concurrence and further advise on the matter.

Way forward

The Committee directed the Office of the Controller of the Budget to convene a meeting with all the stakeholders concerned and report back to the Committee in three weeks time with a way forward on the matter.

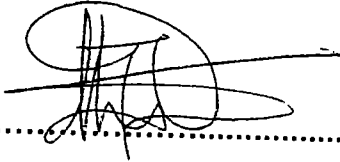
MIN.NO.DC.D/3 41/2014: ANY OTHER BUSINESS

1. Members were reminded on the visit to Mombasa for the report writing to consider the reports that were pending before the Committee.
2. The Chair also reminded Members that the Committee was scheduled to undertake vetting exercise for the nominee for Chairperson of Teachers Service Commission (TSC) Dr. Lydia N. Nzomo scheduled for 11th November, 2014. The

Chairperson further informed Members that as per the directive of the Speaker the Committee was expected to table its report before the House latest 13th November, 2014.

MIN.NO.DC.D/342/2014: ADJOURNMENT

There being no any other business, the chairperson adjourned the meeting at 11.50am.



Signed.....

(CHAIRPERSON)

Date..... 8/12/2014

MINUTES OF THE 53RD SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD ON THURSDAY AUGUST 25TH, 2014 IN MINI CHAMBER 1ST FLOOR, AT COUNTY HALL, PARLIAMENT BUILDINGS AT 2:30 PM

PRESENT

- | | | |
|--------------------------------------|---|---------------------------------------|
| 1. Hon. Julius Melly,MP | - | Vice Chairperson (Chairing) |
| 2. Hon. (Prof.) Helen Sambili, M.P | | |
| 3. Hon. Mohamed Adan Huka, M.P | | 10. Hon. Geoffrey Makokha Odanga, M.P |
| 4. Hon. Rose Rwamba Mitaru,M.P | | 11. Hon. Eric Keter, M.P |
| 5. Hon. (Dr.) Susan Chebet,M.P | | 12. Hon. Ibren Nasra Ibrahim, M.P |
| 6. Hon. Opiyo Jared Odhiambo, M.P | | 13. Hon. Halima Ware Duri, M.P |
| 7. Hon. Kedogo Dorcas Luvalitsa, M.P | | 14. Hon. Richard Makenga, M.P |
| 8. Hon. (Dr.) Wilber Ottichilo, M.P | | 15. Hon. Jacob Macharia, M.P |
| 9. Hon. Moses Injendi, M.P | | 16. Hon. Yusuf Chanzu,M.P |
| | | 17. Hon. Joseph Meruaki, M.P |
| | | 18. Hon. Joseph Manje, M.P |

APOLOGY

- | | | |
|---------------------------|---|-------------|
| 19. Hon. Sabina Chege,M.P | - | Chairperson |
|---------------------------|---|-------------|

ABSENT

- 20.Hon. Anthony Kimaru, M.P
21. Hon. Cecilia Ng'etich, M.P
- 22.Hon. Harrison Kombe, M.P
- 23.Hon. Kenneth Okoth, M.P
- 24.Hon. Michael Kisoi Munyao, M.P
- 25.Hon. Silverse Lisamula Anami, M.P
- 26.Hon. Mary Seneta, M.P
- 27.Hon. (Dr.) Christine Ombaka, M.P
- 28.Hon. Njagagua Muriuki,M.P

IN ATTENDANCE

National Assembly

Designation

- | | | |
|------------------------|---|-----------------------|
| 1. Ms Leah Wanjiru | - | First Clerk Assistant |
| 2. Mr. Jimale Mohamed | - | Third Clerk Assistant |
| 3. Mr. Mugoma John | - | Third Clerk Assistant |
| 4. Ms. Caroline Njue | - | Research officer |
| 5. Ms. Coletah Sigilai | - | Legal Counsel |
| 6. Mr. Stanley Lagat | - | Sergeant At Arm |

The National Treasury

- 7. Mr. Henry Rotich - Cabinet Secretary
- 8. Mr. Shem Nyakutu - Ag. Director of Pension

Attorney General Office

- 9. Prof. Githu Muigai - Attorney General
- 10. Mr. Njee Muturi - Solicitor General (AG. Office)
- 11. Ms. Muthoni Kimani - Senior Deputy Solicitor General

Teachers Service Commission (TSC)

- 12. Mr. Gabriel Lengoiboni - CEO/Secretary(Teachers Service Commission)
- 13. Mr. Allan M. Sitima - Senior Legal Counsel, TSC
- 14. Mr. C.O. Anyuor - Advocate, TSC
- 15. Mr. Jonathan Muriu - Ag. Deputy Director, TSC

Retired Teachers

- 16. Mr. Joseph M.N Mwenje - National Chairman – Retired Teachers
- 17. Mr. David Kamau - V. Chairman - Retired Teachers
- 18. Mr. Gedraf M.Kimatta - Secretary - Retired Teachers
- 19. Mr. Simon Kamau Mbugua - Treasurer - Retired Teachers
- 20. Mr. John Mukoi Zac - Member
- 21. Mr. D.M Kimatta - Advocate – Retired Teachers (Claimants)

MIN.NO.DC.D/234/2014: PRELIMINARIES

The Chairperson called the meeting to order at 2.50p.m and thereafter a word of prayer was said. The Chairperson then welcomed the visitors to the meeting followed by a round of self- introductions.

MIN.NO.DC.D/235/2014: MEETING WITH THE OFFICE OF THE ATTORNEY GENERAL, THE NATIONAL TREASURY, TSC and THE RETIRED TEACHERS (1997) GROUP

The Chairperson informed the Members that the meeting was as a result of follow up of earlier meetings regarding the unpaid dues for the Retired teachers (1997) group. The meeting was called to make attempts to conclude the matter.

Submissions by the Attorney General

The AG informed the Members as follows:-

- a) The retired teachers lodged a case before the High court Nakuru in 2006 in which they sought for declaration that they were entitled to the retirement benefits inclusive of all benefits provided in the 1997 agreement between the Government and TSC;
- b) The office of the Attorney General was not able to determine the actual amount owed to the retired teachers and the number of teachers covered by the ruling;
- c) The Government requested the Supreme Court seeking advise on how to compute the pension dues owed to each of the teachers.
- d) The Controller of Budget would raise an objection should the Government proceed to pay the retired teachers since such expenditure ought to be authorized by the Office of the Controller of Budget;
- e) The High court ruled in favor of the retired teachers in 28th November 2008.
- f) The government appealed against the decision of the court ruling and the court finally dismissed the appeal on 12th November 2010;

Submissions by Teachers Service Commission

The TSC CEO/ Secretary informed the Members that;

- a) TSC had lost the case with cost both at the high court and court of appeal. The court of appeal ruled that it was incumbent upon TSC to reflect the increment in the pay slip as per the last pay.
- b) The court further ruled that TSC release Pay slip to the Pensions Department for every entitled retiree.
- c) The Secretary noted that the court should have clarified on the manner of computation of payment of the retirees. The figure raised by the retired teachers' advocate was unprecedented, which was close to Kenya shillings one billion.

Submissions by Cabinet Secretary of the National Treasury

The Cabinet Secretary notified the Members that;

- a) The National Treasury was ready to pay Kshs. 16.7 billion to the retired teachers as per the high court ruling in the case filed by the retired teachers.
- b) The figure was agreed between the Treasury and TSC which was to be paid in phases of five years. The meeting was informed that the retired teachers would be paid 3.3billion annually.
- c) The National Treasury had budgeted for the payment of retired teachers (1997) group in the FY 2014/2015.

Submissions by Retired Teachers Lawyer

The lawyer informed the meeting that;

- a) The AG's office had been appearing in court in all the hearings to represent TSC. With respect to the submission of the particular names of the retired teachers on the issue of the retired teachers' names, the lawyer noted that offices of AG, TSC and Director of Pensions did have all the names. In addition, the advocates concluded by saying no additional name/names of the retired teachers were included and the amount was totaling 42.3 billion.
- b) The Legal representative of the teachers disowned the colossal sum of the pension and salary arrears projected by the National Treasury at Kshs. 151 billion.

Committee's Concerns

- a) In regard to court ruling the Members were concerned about lack of clarity in the declarations towards the retired teachers.
- b) The Committee further noted that the ruling had not included details of payment ~~based on the Legal notice No. 534 of 1997;~~
- c) Ownership of the issue of the retired teachers was raised by Members and action taken towards the implementation of the Committee's directions;

Way forward

The Committee noted that the matter had dragged on for a long time hence the need to conclude it by: -

- a) Re- Computation of the pension dues to reflect actual figure as both the Government and the retired had varied figures mainly on the number of teachers to be paid. The actual number of teachers should also be ascertained;
- b) The Controller of Budget should also be invited in the next meeting so as to look at the issue of authorization of expenditure on the matter.

MIN.NO.DC.D/236/2014: ANY OTHER BUSINESS

No other business arose.

MIN.NO.DC.D/237/2014: ADJOURNMENT

There being no any other business, the chairperson adjourned the meeting at fifty minutes past six O'clock.

Signed.....

(CHAIRPERSON)

Date..... 2/10/2014

MINUTES OF THE 50TH SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD ON THURSDAY AUGUST 14TH 2014 IN BOARD ROOM, 9TH FLOOR, HARAMBEE PLAZA, PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT

- | | | |
|---------------------------------------|---|---------------------------------------|
| 1. Hon. Sabina Chege, M.P | - | Chairperson |
| 2. Hon. Julius Melly, MP | - | Vice Chairperson (Chairing) |
| 3. Hon. (Prof.) Helen Sambili, M.P | | |
| 4. Hon. Mohamed Adan Huka, M.P | | |
| 5. Hon. Rose Rwamba Mitaru, M.P | | |
| 6. Hon. (Dr.) Susan Chebet, M.P | | |
| 7. Hon. Opiyo Jared Odhiambo, M.P | | |
| 8. Hon. Kedogo Dorcas Luvalitsa, M.P | | |
| 9. Hon. (Dr.) Wilber Ottichilo, M.P | | |
| 10. Hon. Moses Injendi, M.P | | |
| 11. Hon. Geoffrey Makokha Odanga, M.P | | |
| 12. Hon. Eric Keter, M.P | | |
| 13. Hon. Kenneth Okoth, M.P | | |
| | | 14. Hon. Ibren Nasra Ibrahim, M.P |
| | | 15. Hon. Halima Ware Duri, M.P |
| | | 16. Hon. Michael Kisoi Munyao, M.P |
| | | 17. Hon. Richard Makenga, M.P |
| | | 18. Hon. Jacob Macharia, M.P |
| | | 19. Hon. Silverse Lisamula Anami, M.P |
| | | 20. Hon. Mary Seneta, M.P |
| | | 21. Hon. (Dr.) Christine Ombaka, M.P |
| | | 22. Hon. Njagagua Muriuki, M.P |
| | | 23. Hon. Yusuf Chanzu, M.P |
| | | 24. Hon. Joseph Meruaki, M.P |

ABSENT

- 25. Hon. Anthony Kimaru, M.P
- 26. Hon. Cecilia Ng'etich, M.P
- 27. Hon. Harrison Kombe, M.P
- 28. Hon. Joseph Manje, M.P

IN ATTENDANCE

National Assembly

- | | | |
|-----------------------|---|-----------------------|
| 1. Ms Leah Wanjiru | - | First Clerk Assistant |
| 2. Mr. Jimale Mohamed | - | Third Clerk Assistant |
| 3. Mr. Mugoma John | - | Third Clerk Assistant |
| 4. Caroline Njue | - | Research officer |

Attorney General's Office

- | | | |
|-----------------------|---|-------------------|
| 5. Mr. Njee Muturi | - | Solicitor General |
| 6. Mr. Mwangi Njoroge | - | D.C.L.C |

Teachers Service Commission (TSC)

- 7. Mrs. Josphine Maundu - DHRM/D
- 8. Mr. Simeon Omare - Ag SDDP
- 9. Mr. Allan M. Sitima - Legal Counsel

Retired Teachers (1997)

- 10. Mr. D.M Kimatta - Advocate – Retired Teachers
- 11. Mr. Gedraf M.Kimatta - Secretary
- 12. Mr. Joseph M.N Mwenje - Chairman
- 13. Mr. David Kamau - Vice Chairman

MIN.NO.DC.D/221/2014: PRELIMINARIES

The Chairperson called the meeting to order at 10.35am and thereafter a word of prayer was said. The Chairperson welcomed the visitors and was followed by a round of introductions.

MIN.NO.DC.D/222/2014: MEETING WITH THE OFFICE OF THE ATTORNEY GENERAL, THE NATIONAL TREASURY, TSC and THE RETIRED TEACHERS (1997) GROUP

The meeting had been convened in order for the Committee to get an update on the progress made by the Office of the Attorney General Office, the National Treasury (Directorate of Pensions), the Teachers Service Commission and the Retired Teachers in resolving the issue of delayed pension dues owed to the retired teachers. During the previous meeting held with the team, the Committee had directed them to meet on 2nd July, 2014 in order to resolve the matter.

The Committee was informed that the Office of the Attorney had failed to make the concerned parties to meet. In addition, the Deputy Solicitor General in a letter addressed to the advocate for the Retired Teachers and copied to the Chairperson of the Committee had expressed her unwillingness to continue participating in the matter. The Committee expressed its displeasure with the content and tone of the letter. In addition, the Committee noted that the role of the Office of the Attorney was not only of neutral arbiter but also to advise the Government on the matter.

Committee's concerns/ observations

- a) The Committee noted that the AG's office has the responsibility to advise the government on the issue of pension for the retired teachers.
- b) Members raised an issue on a resolution reached during the 10th parliament for payment of Ksh. 3 billion which is yet to be paid to the retired teachers.
- c) The committee was concerned over the amount raised by the advocate of the Retired Teachers that amounted to 42.3 billion and the formula used to arrive at.
- d) Members observed that TSC could only process pension claims and decisions for payment are done by The National Treasury through the office of the Director of Pensions.
- e) The Members noted that AG's office had withdrawn from the case and advised TSC to take the matter to the Supreme Court.

Way forward

The Committee resolved to meet the Cabinet Secretary of the National Treasury, Attorney General and the Teachers Service Commission's Secretary on Monday, 25th August 2014. The Committee directed the officials to appear before the Committee in person on deliberation vis-à-vis the retired teachers' issue.

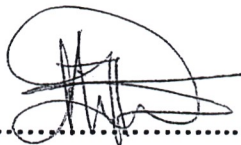
MIN.NO.DC.D/223/2014: ANY OTHER BUSINESS

The Committee raised concern over the inhabitable nature of the Board Room on Harambee Sacco Plaza. The Committee noted that the lifts had on several occasions broken down hence posing a safety hazard to the Members. The Committee observed that the matter ought to be raised with the Speaker of the National Assembly to be cascaded to Parliamentary Service Commission.

MIN.NO.DC.D/224/2014: ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 12.55 p.m.

Signed.....



Hon. Julius K. Melly, MP

(Ag. CHAIRPERSON)

Date.....

2/10/2014

MINUTES OF THE 30TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
EDUCATION, RESEARCH AND TECHNOLOGY HELD ON TUESDAY JUNE 17TH,
2014 AT COMMITTEE ROOM, 4TH FLOOR, CONTINENTAL HOUSE,
PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT

- | | |
|---------------------------------------|------------------|
| 1. Hon. Sabina Chege, M.P - | Chairperson |
| 2. Hon. Julius Melly, MP - | Vice Chairperson |
| 3. Hon. Rose Rwamba Mitaru, M.P | |
| 4. Hon. Dr. Susan Chebet, M.P | |
| 5. Hon. Mohamed Adan Huka, M.P | |
| 6. Hon. Opiyo Jared Odhiambo, M.P | |
| 7. Hon. Kedogo Dorcas Luvalitsa, M.P | |
| 8. Hon. Joseph Manje, M.P | |
| 9. Hon. Cecilia Ng'etich, M.P | |
| 10. Hon.(Prof.) Hellen Sambili, M.P | |
| 11. Hon.(Dr.) Wilber Ottichilo, M.P | |
| 12. Hon. Moses Injendi, M.P | |
| 13. Hon. Geoffrey Makokha Odanga, M.P | |
| 14. Hon. Eric Keter, M.P | |
| 15. Hon.(Dr.) Christine Ombaka, M.P | |
| 16. Hon. Richard Makenga, M.P | |
| 17. Hon. Michael Kisoi Munyai, M.P | |
| 18. Hon. Silverse Lisamula Anami, M.P | |
| 19. Hon. Mary Seneta, M.P | |
| 20. Hon. Halima Ware Duri, M.P | |
| 21. Hon. Njagagua Muriuki, M.P | |

ABSENT WITH APOLOGY

22. Hon. Joseph M'eruaki, M.P
23. Hon. Kenneth Okoth, M.P

ABSENT

24. Hon. Anthony Kimaru, M.P
25. Hon. Ibren Nasra Ibrahim, M.P
26. Hon. Harrison Kombe, M.P
27. Hon. Yusuf Chanzu, M.P
28. Hon. Jacob Macharia, M.P

Observer (pursuant to S.O 95)

Hon. CPA Francis Kigo Njenga, M.P

IN ATTENDANCE:

National Assembly

- | | | |
|--------------------------------|---|-----------------------|
| 1. Ms Leah Mwaura | - | First Clerk Assistant |
| 2. Mr. Jimale Mohamed | - | Third Clerk Assistant |
| 3. Mr. Mugoma John | - | Third Clerk Assistant |
| 4. Mr. Muyodi Meldaki Emmanuel | - | Third Clerk Assistant |
| 5. Mr. Agnes Leara | - | Hansard |

ATTORNEY GENERAL'S OFFICE

- | | | |
|-----------------------|---|----------|
| 1. Ms. Muthori Kimani | - | SDSG/DOJ |
|-----------------------|---|----------|

TSC

- | | | |
|----------------------|---|----------------|
| 2. Mr. Simon Omare | - | Ag .SDDP - TSC |
| 3. Mr. Joseph Maundu | - | DHRM/D - TSC |

Retired Teachers 1997 Group

- | | | |
|-------------------------------|---|-----------------------------------|
| 4. Mr. Joseph M.W. Mwenja | - | Chairman |
| 5. Mr. David K Kimani | - | Vice Chairman |
| 6. Mr. Simon Peter Kamau | - | Treasurer (Plaintiff no.1) |
| 7. Mr. Gedraf M. Kimatta | - | Secretary |
| 8. Mr. John M. Z Kinyanjui | - | Member |
| 9. Mr. Dominic M. Kimatta | - | Advocate for the Retired teachers |
| 10. Mr. Stephen G. Kanai | - | Plaintiff no. 19 |
| 11. Mr. Patrick Wakima Mwangi | - | Plaintiff no. 2 |
| 12. Mr. Karanja Waweru | - | Plaintiff no.12 |
| 13. Ms. Linar C Maritim | - | Plaintiff no.13 |

MIN.NO.DC.D/132/2014: PRELIMINARIES

The Chair called the meeting to order at 10:45 am and a word of prayer was said by the Hon. Moses Injendi, M.P. The Chairperson welcomed the team to the meeting and a round of introductions was done.

MIN.NO.DC.D/133/2014: CONFORMATION OF MINUTES FROM THE PREVIOUS SITTINGS

Minutes of the 19th, 20th, 21st 22nd and 23rd as the true record of the proceedings.

MIN.NO.DC.D/134/2014: MATTERS ARISING

1. Under minute no. DCD/98/ 2014

Members noted that budget allocation particularly the 30 per cent increment on capitation of pupils under the Free Primary Education needed to be further enhanced because parents continued to shoulder more burden in ensuring their children get quality education. The Committee however noted that the increment was a step in the right direction.

2. Increase in the budgetary allocation for Kenya Institute of Curriculum-Development had been by 500 Million and not 600 Million.

MIN.NO.DC.D/135/2014: STATEMENT REQUESTED ON PENSION DUES OWED TO RETIRED TEACHERS (1997) GROUP

The meeting was a follow up meeting following the direction given by the Committee during a sitting to discuss the unpaid dues owed to retired teachers of 1997. The Office of the Attorney General was tasked to convene a meeting with the other stakeholders in order to resolve the matter amicably.

The Deputy Solicitor General informed the Committee that the meeting scheduled on 4th June 2014 didn't take place because the retired teachers did not avail themselves in the said meeting. The Deputy Solicitor General further said the case with the retired teachers had been filed at the Supreme Court.

Mr. Dominic M. Kimatta an Advocate for the retired teachers informed the Committee that the retired teachers availed themselves however they could not participate in the said meeting since the Office of the Attorney General sent a junior officer to represent them in the meeting.

Committee Observation and Resolutions

The committee observed that the Attorney General's office should fast track the resolving the matter as continued litigation had continuously incurred a lot of expenses through legal fees and that it was not good use of public money. The retired teachers

** kept the matter and before
only 2 officers from treasury
at AG came and BSC was not present*

who were in their sunset years had continued to languish in abject poverty and most of them had died over the years.

The Committee directed the Office of the Attorney to reconvene another meeting and report back to the Committee by 1st July, 2014.

MIN.NO.DC.D/136/2014: ANY OTHER BUSINESS

The Committee noted the following issues as contained in the B& AC report on Budget Estimates for FY 2014/15. That:-

- (i) The B& AC did not put into considerations on the Committee's recommendations when making their final report to the House. There was need to engage the Ministry with a view to ensuring efficiency/ efficacy in the programmes implemented by the Ministry especially the free Sanitary towels programme;
- (ii) The delay in disbursement of FPE funds had continued to affect the implementation of the programme. The Ministry should ensure that the disbursement is done timely; and
- (iii) Maseno and Egerton University received the lowest allocations of 40 million hence there was need to review the allocation noting that Egerton, for instance had stalled projects since 1995. The Committee requested the Members of the Committee who were also Members of the B & AC to request the B&AC to reconsider the allocations.

MIN.NO.DC.D/137/2014: ADJOURNMENT

There being no other business the meeting adjourned at 1 o'clock.

Signed.....

(CHAIRPERSON)

Date.....26/6/14.....

ANNEXES

D/Committee

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raise with the chair

Cons

18/11/14

REPUBLIC OF KENYA



OFFICE OF THE CONTROLLER OF BUDGET

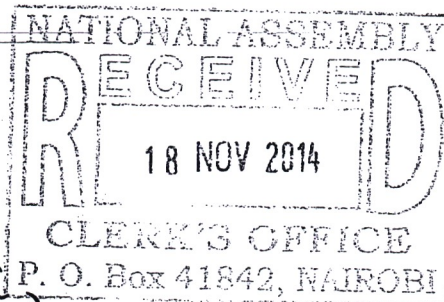
Bima House, 12th Floor
Harambee Avenue
Fax. 020 221 1920
Email: cob@cob.go.ke

P.O. Box 35616 - 00100, Nairobi
Tel. 2211068, 0716274922, 318939

Ref. COB/KNA/002 1(15)

18th November, 2014

Mr. Justin Bundi, CBS
The Clerk
National Assembly
Parliament Building
NAIROBI



Ms Leah Mwaara
Please inform
the Committee.
Ann 19/11

Dear Mr. Bundi,

**RE: REPORT TO DEPARTMENTAL COMMITTEE ON EDUCATION,
RESEARCH AND TECHNOLOGY ON THE WAY FORWARD ON PENSION
DUES FOR RETIRED TEACHERS (1997-2003)**

The above captioned matter and the meeting held on 30th October, 2014 refer.

As directed by the National Assembly Departmental Committee on Education, Research and Technology, we convened a meeting on 13th November, 2014, of all the stakeholders with a view of charting a way forward in this matter. However, two stakeholders being, the National Treasury and the Attorney General were not represented at the meeting.

The Parties held discussions but did not reach any resolutions. This was due to the weighty decisions that were to emanate from the deliberations with huge budgetary implications and which are bound to have an impact on resource allocation and have legal ramifications. Consequently, it was agreed that the meeting be postponed to a later date to allow for representation by the office of the Attorney General and the National Treasury.

In light of the aforementioned, it was resolved that another meeting be convened in which all the stakeholders will be represented. The proposed meeting is scheduled for 20th November, 2014 at our office, Bima House, 12th floor, at 10.00 a.m.

We therefore, request for extension of time in which to table our report to enable the parties have exhaustive and conclusive deliberations. In this regard we request to submit our report on or before **8th December, 2014.**

Yours *Sincerely,*

Agnes Odhiambo

Agnes Odhiambo (Mrs)
CONTROLLER OF BUDGET

D/Chambers

693

618

REPUBLIC OF KENYA



OFFICE OF THE CONTROLLER OF BUDGET

BIMA HOUSE, 12TH FLOOR
HARAMBEE AVENUE
P.O. BOX 35616 - 00100
NAIROBI

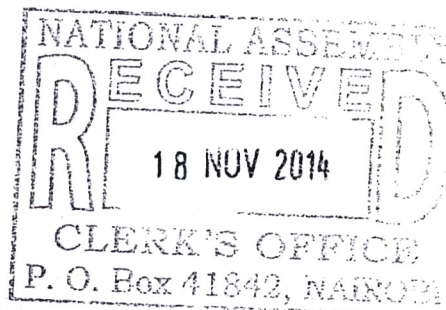
TEL 020-318939
020-2163116
FAX 020 2211920

Ref. COB /AG/002/1(10)

14th November, 2014

Hon. (Prof.) Githu Muigai, MP
Attorney General
Attorney General's Chambers
P. O. Box 40112 - 00100
NAIROBI

Dear Mr. Bundi,



**RE: CONSULTATIVE MEETING TO DISCUSS THE PROPOSED
WAY FORWARD ON PENSION DUES FOR RETIRED
TEACHERS (1997-2003).**

The above captioned matter and our letter Ref No. COB/PENSION/002/1 (1) dated 5th November, 2014 refers. (Copy attached for ease of reference).

As directed by the National Assembly Departmental Committee on Education, Research and Technology, we convened a meeting with all the stakeholders. However, your office was not represented having sent apologies.

Due to the weighty decisions that were to emanate from the discussions which have legal ramifications, it was agreed that resolutions from the meeting could not be reached without a representative of the office of the Attorney General.

Consequently, it was agreed that another meeting be convened in which you will be represented.

The purpose of this letter therefore, is to request you to appoint a representative at a senior level to attend a meeting scheduled for **20th November, 2014** at our office, **Bima House, 12th floor**, at **10.00 am**.

We look forward to your participation in the resolution of this matter which has been outstanding for a long time.

Yours *Sincerely,*



Agnes Odhiambo (Mrs)
CONTROLLER OF BUDGET

Encls

CC: **Mr. Justin Bundi**
The Clerk
National Assembly
NAIROBI

D/Account

685 610

REPUBLIC OF KENYA



OFFICE OF THE CONTROLLER OF BUDGET

Bima House, 12th Floor
Harambee Avenue
Fax. 020 2211920
Email: cob@cob.go.ke

P.O. Box 35616 - 00100, Nairobi
Tel. 2211068, 0716274922, 318939

Ref. COB/PENSION/002/1 (2)

November 14, 2014

Mr. Henry K. Rotich
Cabinet Secretary
P O Box 30007-00100
The National Treasury
NAIROBI

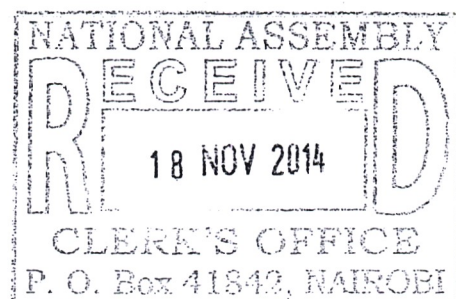
Mr. Edward R. O. Ouko, CBS
Auditor General
Kenya National Audit Office
P.O Box 30084 - 00100
NAIROBI

Mr. Gabriel Lengoiboni
Secretary/Chief Executive Officer
Teachers Service Commission
P O Box 49416-00100
NAIROBI

Ms. Anne Mugo
Director of Pensions
Pensions Department
The National Treasury
NAIROBI

Ms Leah Mwarua

Please note & inform the Chamber of Pensions



Dear Mr. Bundi,

610

SECOND CONSULTATIVE MEETING TO DISCUSS THE PROPOSED WAY FORWARD ON PENSION DUES FOR RETIRED TEACHERS (1997-2003).

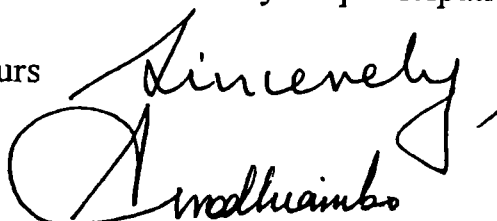
Reference is made to the meeting held on 13th November, 2014 between the Controller of Budget, Secretary, Teachers Service Commission (TSC), representatives from the Kenya National Audit Office, TSC team, Directorate of Pensions, and a representative of the Retired Teachers, to discuss pertinent issues on the unpaid pension dues for the Retired Teachers (1997-2003).

Due to the weighty decisions that were to emanate from the discussions which have legal ramifications and huge budgetary implications, the members present unanimously agreed that another meeting be convened in which the ~~Attorney General and the Cabinet Secretary, National Treasury~~ will be represented as key stakeholders.

Subsequently, all members are invited to attend the second consultative meeting scheduled to take place on **Thursday 20th November, 2014** at our office, **Bima House, 12th floor, at 10.00 am.**

We look forward to your participation.

Yours



Agnes Odhiambo (Mrs)
CONTROLLER OF BUDGET

CC: **Mr. Justin Bundi, CBS** ✓
The Clerk
National Assembly
NAIROBI

387



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

THE NATIONAL ASSEMBLY
RECEIVED
28 OCT 2014
DIRECTOR COMMITTEE SERVICE

Your Ref: KNA/EDUC/CORR/2014/ (122)

27th October, 2014

Our Ref: AG/CONF/6/B/62 Vol II

Mr. Justin Bundi, CBS
Clerk of The National Assembly
Parliament Buildings
NAIROBI

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ple deaf
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28/10*

Dear

Sabina Chege

MEETING WITH THE DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY

I refer to your letter ref. no. KNA/EDUC/CORR/2014/(122) dated 23rd October, 2014 inviting us to appear before the Departmental Committee on Education, Research and Technology on 30th October, 2014.

I wish to inform you that the Hon. Attorney-General is scheduled to attend a Cabinet meeting on 30th October, 2014 and I am scheduled to attend a meeting of the of the East African Sectoral Council on Legal and Judicial Affairs on 29th October to 1st November, 2014 in Arusha, Tanzania where my personal attendance is mandatory, thus we shall not be in a position to honor the committee's invitation.

Please convey our apologies to the committee which we hold in high regard. We shall be ready to appear before at any other alternative mutually agreed date.

Yours

[Signature]
[Signature]

NJEE MUTURI
SOLICITOR-GENERAL

*Received
28/10
keali*

Copy to:

Hon Githu Muigai, E.G.H., S.C.
Attorney General

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112 - 00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555 / 0732529995
E-MAIL: info.statelawoffice@kenya.go.ke. WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILESELASSIE AVENUE
P.O. Box 56057-00200, Nairobi- Kenya TEL: Nairobi 2224029 / 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001 : 2008 Certified



Hon. Sabina Chege, MP
Chairperson
Education, Research and Technology Committee
Parliament Buildings
NAIROBI



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

2014
pls deep
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AG/CONF/9/29/1 VOL. 1

8th August 2014

12/8

Your Ref: DMK/CIV/K/2438

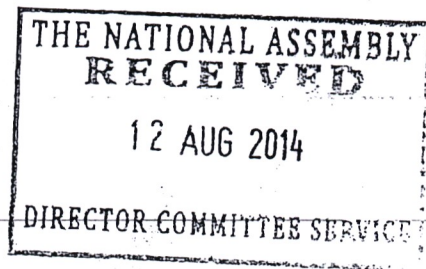
Kimatta & Co. Advocates

Equator Hse, 1st Floor, Entrance B

Room 6

P.O. Box 3300-20100

NAKURU



Dear Sir

RE: NAKURU HCCC NO.65 OF 2006 – SIMON P. KAMAU & 19 OTHERS VS. TEACHERS SERVICE COMMISSION - MEETING ON THE NON PAYMENT OF OUTSTANDING PENSION DUES TO RETIRED TEACHERS 1997 GROUP

We refer to the above matter and your letter dated 4th August 2014. We are surprised with the tone and contents therein. During the meeting of 4th July 2014 the role of the Office of the Attorney General as mediator in this matter was clarified as being a neutral facilitator for the parties to meet to pursue a settlement. TSC and the National Treasury (the defendants in the case) requested for time to consult and report back to our office. You agreed to that request that parties meet again on 22nd July 2014 to report on any progress. By the 22nd July 2014 our office had not received any report or update in the matter.

On 22nd July 2014 at 9.00 a.m. I was directed to represent the Attorney General at a function in the Judiciary and expected that the parties would meet and report any progress. That morning the TSC was engaged before Parliament on budget matters and by the time they came at (1.00 p.m.) you had already left. I fail to understand the basis on which you have personalised this matter, as if I am a defendant who is liable to pay.

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112 - 00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555 / 0732529995
E-MAIL: info.statelawoffice@kenya.go.ke. WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILESELASSIE AVENUE
P.O. Box 56057-00200, Nairobi- Kenya TEL: Nairobi 2224029 / 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001 : 2008 Certified



Further, I wish to remind you that I am not in charge of the TSC or the Director of Pensions. Our office does not supervise independent offices we only act as counsel like yourself. I only offered my services as a mediator in good faith and hoped the same would be reciprocated by everybody. Unfortunately you have expressed your concerns particular and cast serious aspersions and innuendos on me personally it follows therefore that under our professional code of conduct it is not possible for me to continue rendering any services in the matter. I am disqualifying myself from handling this matter any further. You should direct any further communication to the respective parties.

~~By a copy of this letter the Chairlady, Parliamentary Education Committee is notified and requested to explore another alternative to resolve the matter without my professional input.~~

Yours faithfully



Muthoni Kimani, MBS
Senior Deputy Solicitor General
FOR: ATTORNEY GENERAL

Copy to:

1. Hon. Attorney General
2. Solicitor General
3. ✓ **Hon. Sabina Chege**
Chairlady, Parliamentary Education Committee
National Assembly
NAIROBI

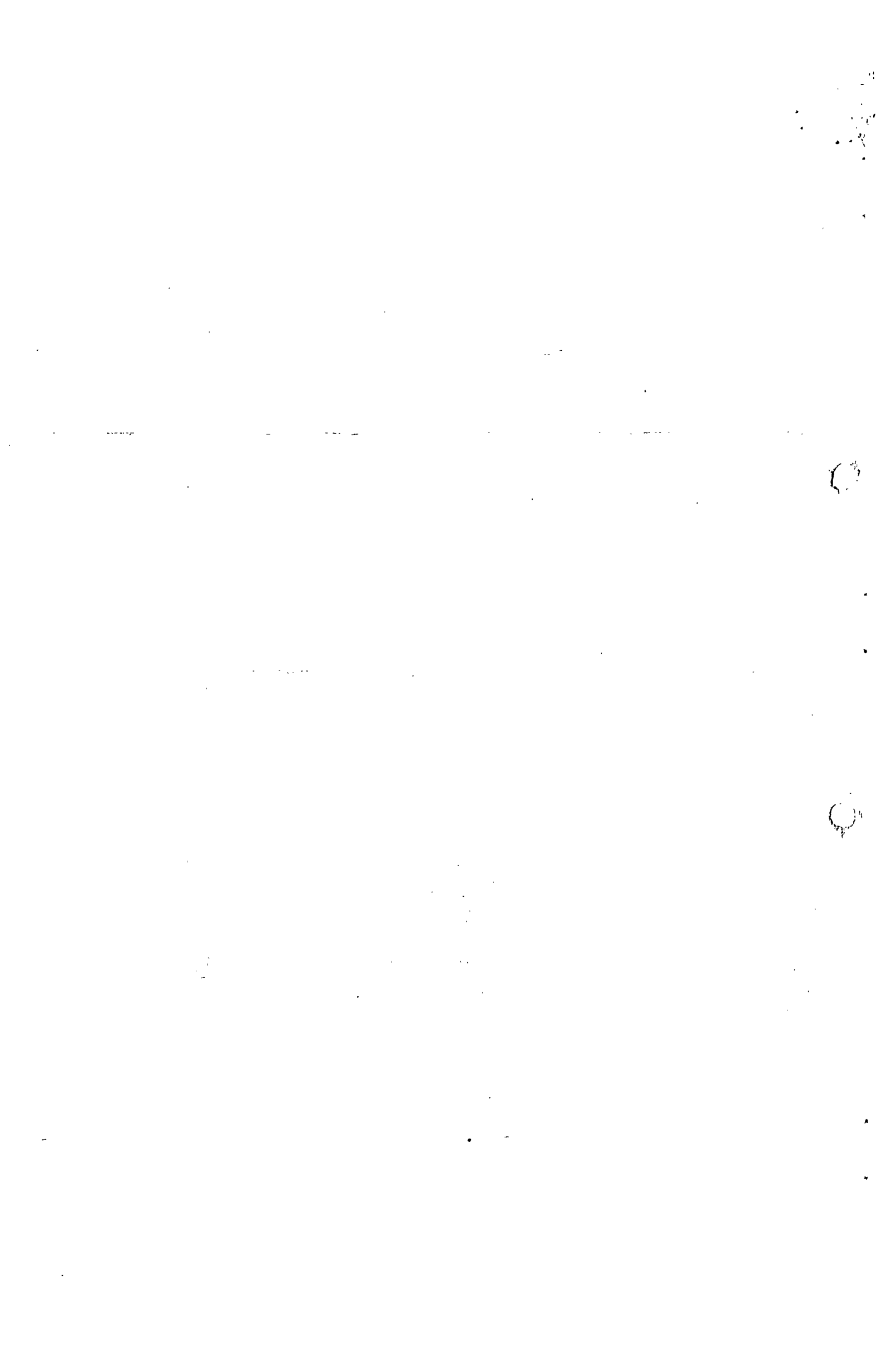
4. **Mr. Gabriel Lengoiboni, EBS**
Secretary/Chief Executive
Teachers Service Commission
NAIROBI

5. **Dr. Kamau Thugge, EBS**
Principal Secretary
The National Treasury
NAIROBI

6. **Mrs. Agnes N. Odhiambo**
Controller of Budget
P.O. Box 35616-00100
NAIROBI

7. **Edward R.O. Ouko, CBS**
Kenya National Audit Office
P.O. Box 30084-00100
NAIROBI

8. Deputy Registrar
High Court of Kenya
NAKURU



8

IN THE COURT OF APPEAL
AT NAKURU

(CORAM: KEIWUA, ONYANGO OTIENO & NYAMU, JJ.A.)

CIVIL APPEAL NO. 300 OF 2009

BETWEEN

TEACHERS' SERVICE COMMISSION.....APPELLANT

AND

SIMON P. KAMAU & 19 OTHERSRESPONDENTS

*(Being an appeal from the judgment and decree of the High Court of
Kenya at Nakuru (Maraga, J.) dated 23rd October, 2008
in*

H.C.C.C. No. 65 of 2006)

JUDGMENT OF THE COURT

This is an appeal from the judgment of the superior court (*Maraga, J.*) delivered on 23rd October, 2008.

The factual background is that the respondents are all retired teachers and were prior to their retirement employees of the appellant and members of the Kenya National Union of Teachers, hereinafter called "the Union". On the other hand, the appellant is a body corporate with perpetual succession with power to sue and be sued and it was at all times the national employer of the respondent as stipulated in the Teachers Service Commission Act.

In the superior court, the twenty respondents instituted a suit against the appellant *H.C.C.C. No. 65 of 2006* and also sought leave to institute the suit on their own behalf and on behalf of all the other retired teachers.

The heart of the dispute is that following protracted negotiations between the appellant and the teachers, an agreement relating to a remuneration

package for all teachers was signed which package was to be effective after 1st July, 1997. The package included serving teachers and who were on leave pending retirement or final termination of appointment or after that date. Pursuant to the agreement, the appellant gazetted the salary package incorporating salary increments and other benefits as set out therein.

As regards the twenty named respondents, at the point of retirement their salaries were calculated in such a way that the salary covered the first phase of the agreement but the anticipated lump sum payment was not reflected in the final salary for the purpose of calculation of pension, hence the suit filed in the superior court because pension calculations to be were as per the relevant law, required to be based on the "last salary."

The appellant's main contention is that the implementation of the enhanced remuneration as per the agreement was done in phases and that at the time of their retirement, the plaintiffs benefited from the 1997 phase which then constituted the only logical and legal basis for the calculation of pension awardable in terms of **section 10** of the Pensions Act. After a full hearing the superior court found for the respondents and granted the prayers sought in the plaint hence this first and final appeal to this Court.

The Defendant relies on nine grounds of appeals as follows:

1. *The learned Judge erred in law and fact in failing to appreciate that the claim before him was for unpaid pension and retirement benefits and not for unpaid salaries*
2. *The learned Judge erred in law and fact in failing to recognize that a claim for unpaid Pensions and Retirement benefits could only be maintained as a against the Director of Pensions pursuant to*

Section 3 of the Pensions Act and not the Teachers Service Commission.

3. The learned Judge erred in law and in fact by ordering the computation and payment of unpaid Pensions and Retirement Benefits on the basis of salaries that Respondents never earned an order, *per-in curium* or contrary to the Pensions Act.
4. The learned Judge gravely erred in failing to establish that the Leave Order Obtained through Nakuru Miscellaneous Application 497 of 2005 allowing the respondents to commence a representative suit on behalf of their purported colleagues was advertised as required in order that the outcome thereof would affect and/or apply to all they purported to represent.
5. The learned Judge so gravely and seriously erred in law when he constructed Section 10(1) of the Pensions Act in a manner that amounted to amending it.
6. The learned Judge further erred in law and in fact when he proceeded to apply his misconstruction of the said Section 10(1) to the facts of the case leading him to the obvious erroneous conclusion of the matter.
7. That the learned Judge erred in law and in fact when he failed to appreciate that upon filling up the pension form and forwarding them together with all other supporting documents to the Director of Pensions, the Teachers Service Commission was *functus officio* in matters (sic) Pensions and Retirement Benefits.
8. The learned Judge also erred in law and fact when he failed to appreciate that the only claim that could be sustained as against the Teachers Service Commission subject to limitation was, if at all, a claim for unpaid salaries.
9. The learned Judge erred in law and in fact when he misdirected himself and gave a judgment whose net effect was to order the computation and awarding of Pensions and Retirement Benefits based on salaries that were never earned."

The above grounds notwithstanding, in his submissions, counsel for the appellant, Mr. Bosire summarized and argued the grounds as under:

1. That the suit was filed against the wrong party.
2. That the superior court misapplied the applicable law.
3. That the order was incapable of compliance on execution.
4. That leave to file a class action had lapsed at the time the suit was commenced.

In his submissions Mr. Bosire, respondent contended that the true nature of the claim related to retirement benefits and pension and as a result the proper defendant should have been the Director of Pensions and or the Attorney General. In this regard he relied on section 3 of the Pensions Act.

He further contended that the unpaid salary increments fell outside the provisions of *section 10* of the Pensions Act in that the provision states that the pension granted under the section should not exceed the full pensionable emoluments drawn by an employee at the date of his retirement. The Act, he submitted, did not cover any anticipated or promised increments and therefore the court was in error in giving a clear provision a purposeful meaning, when the provision was not ambiguous. For this reason the superior court misapplied the law and/or misdirected itself on the relevant or applicable law. In particular, counsel contended that the proper claim should have been against the appellant for unpaid salaries. Since the claim covered pensions the respondents had failed to join the proper party namely the Director of Pensions or the Attorney General and as a result the judgment and decree obtained were not capable of compliance or execution.

Finally the learned counsel urged the Court to note that the suit was filed four months after leave to institute the class action whereas the

respondents had been given 21 days to institute the suit and therefore failure by the respondents to comply with the terms of the order for leave was fatal to the suit and the appeal.

Mr. Kimatta, learned counsel for the respondents submitted that the linchpin of his clients case was that negotiations between the Union and the Teachers Service Commission were protracted and culminated in the signing of the 1997 Agreement which incorporated salary increments and other benefits, which due to hard economic times facing the government at the time, were agreed to be paid in phases and that only the 1997 phase was implemented hence the dispute.

Mr. Kimatta submitted that the respondents and other retirees numbering 50,000 nationwide were entitled to all the benefits as clearly stipulated in the agreement.

Pursuant to the agreement the respondents were awarded a lump sum package on top of their existing salaries and that the agreement embraced salaries and other benefits and the benefits were reflected in a conversion table and also duly gazetted. The learned counsel demonstrated that the actual position was set out in a letter dated 24th November, 1997 which made reference to Legal Notice 534 of 11th November, 1997 and which the Commission addressed *inter alia* to all Provincial Directors of Education which stated that the increase on salaries and allowances had been spread over a period of five years ending on 1st July, 2001 and further confirmed that the benefits applied to the respondents and by a subsequent agreement between the Government of Kenya and the Union signed on 24th May, 2003 by the representatives of both parties it was agreed as under:-

"(i) That the payment of the agreed package be effected within six (6) years with an initial instalment of Kshs.4 billion beginning July, 2003 with other payments being paid in equal instalments of Kshs.4.9 billion.

(ii) That after a period of one year from the date the two parties will meet again to review and see whether the agreed period can be reduced further to five years depending on the growth of the national economy."

Mr Kimatta added that the filing of the suit outside the period set out in the leave order was never raised in the superior court and did not form part of the grounds of appeal. He concluded his submission by stating that the prayers as set out in the plaint and in particular prayer (c) covered unpaid salaries and other benefits

On our part we have given the matter anxious consideration. At the outset it is clear to us that the agreement between the two parties speaks for itself as material, both as regards the benefits covered and the description of those entitled to benefits. It is clear to us that the agreement covered serving teachers and retirees involved. The latter group includes the plaintiffs and those they represent. We note that the agreed lump sum salary and other benefits were duly converted in terms of the grades of the teachers involved. For this reason we find no merit in the appellant's argument that the Commission did discharge its contractual obligation as per the agreement by only reflecting the 1997 phase on the salary slips of the retirees. In terms of the agreement we hold that plaintiff had a contractual right to have the additional salary reflected in the final salary. What should have been reflected on the pay slip was what was contractually due to the plaintiffs as per the agreement. We hold that the agreement became part and parcel of the retirees contract of service with the appellant. The entitlement was sufficiently clear

and we need not strain the language of the agreement to come to this conclusion. As a court of law we cannot rewrite the agreement for the parties and our cardinal duty is to enforce the bargain struck by the parties and not to thwart it either.

We are of the view that since the last salary as appertains to the plaintiffs and others could not be ascertained in terms of **section 10** as at the date of retirement without reflecting the additional unpaid salary which responsibility lay with the Commission as an employer, the starting point was to ascertain the last salary as per the agreement. For this to be done, the plaintiffs had to sue the Commission as the employer ~~for the award of lump sum payment~~ which is what the plaintiffs did. It was incumbent upon the Commission to reflect the increment in the pay slip as the last pay and release the payslips to the Pensions Department to every entitled respondent retiree. With respect, the appellant counsel's argument put the cart before the horse! The horse is the Commission and the cart is the Director of Pension. The suit clearly places the horse first (i.e. the Commission) and the cart (second i.e. Director of Pensions) and this is what the plaintiffs did in suing the Commission.

On the issue of compliance with the order we find that since the superior court had awarded all the benefits as per the agreement, the same covered the salaries as well and this is the meaning we attach to the order as regards prayer (c) in the plaint. On the ground nearly all the other benefits were calculated as a percentage of the salary and this is clearly borne out by the conversion table. In this regard we wish to adopt the natural meaning of the words used in the agreement and the words used include *inter alia* a lump sum salary award.

Concerning the effect of noncompliance with the order for leave to institute the suit, we note that this was never raised in the superior court or raised as a ground of appeal before us since no leave had been sought to raise it, we say no more on this. Even if it was properly raised, we find that since this was a procedural point we could not have allowed it to defeat the ends of justice, in view of our statutory duty to act justly as embraced by **sections 3A** and **3B** of the Appellate Jurisdiction Act. We would on the peculiar facts before us, decline the invitation for us to act as exhorted by the appellant.

As regards what is to be regarded as the last salary, we repeat that it is up to the Commission to ~~work it out and thereafter ask the plaintiffs and other~~ affected retirees to present the proper working said documentation to the Director of Pensions. We must however point out that it is not the function of a court of law to add additional words to a statute or an Act of Parliament whose provisions are unambiguous. The superior court should not have added the words "*or supposed to be drawn by him at the date of his retirement*". It would have been sufficient to find that the court was in the circumstances, in its role of interpreting or construing the provision, entitled to impose fair standards of decision making. In this regard we endorse Lord Scarman's holding in the case of *Council of Civil Service Unions v The Minister for Civil Service [1984]* A.C. 374 that where Parliament delegates power, there is an implied duty of fairness attached to all administrative acts. According to the agreement between the parties, the respondents and other retirees, had earned the lump sum salary awarded and this additional increment should have been reflected in their pay slips as the "*last salary*". The dictates of fairness in the circumstances of the case demanded this construction. In this regard we

further endorse Lord Mustill's holding in the case of Doody v Secretary of State for Home Department [1993] 3 ALL E.R. 92 to the effect that where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair. Again in the House of Lords case Pearlberg vs Varty (Inspector of Taxes) [1972] IWKR 534th the House of Lords (now Supreme Court) held inter-alia:-

"as Parliament is not presumed to act unfairly the courts may be able in suitable cases (perhaps always) to imply an obligation to act with fairness."

The respondents are not claiming what they did not earn and therefore entitled to receive from the appellant. The collective agreement, referred to in this judgment, did individually form part of the contract of service of the respondents and those they represent, with their employer. Common sense demands this interpretation since any other view would not give effect to the agreement between the parties and would not make sense. In this regard we would like to adopt the words of wisdom of Lord Goddard CJ in the case of Barnes v Janvis [1953] 1 WLR 649 where he stated:-

"A certain amount of common sense must be applied in construing statutes. The object of the Act has to be considered."

Again in interpreting unambiguous statute we wish to re-echo the holding of Lord Simon of Ghaisdale in the case of Maunsell vs Olins & another [1975] AC 373 at page 391 where he stated:-

"..... In statute dealing with ordinary people in their everyday lives, the language is presumed to be used in its primary ordinary sense, unless this stultifies the purpose of the statute, or otherwise produces some injustice, absurdity, anomaly or contradiction in which case some secondary ordinary sense may be preferred, so

as to obviate the injustice, absurdity, anomaly or contradiction or fulfil the purpose of the statute ..."

In the circumstances, the invitation by Mr Bosire, learned counsel, to disregard the agreement between the parties would give rise to injustice to the respondents. The meaning of the phrase "last salary" should include the effect of the agreement signed by the parties.

We therefore hold that the last salary should be computed in a way that incorporates all the terms of the agreement between the parties. In the result we uphold the superior court's judgment. The appeal is accordingly dismissed with costs to the respondents.

Dated and delivered at Nakuru this 12th day of November 2010.

M. OLE KEIWUA

.....
JUDGE OF APPEAL

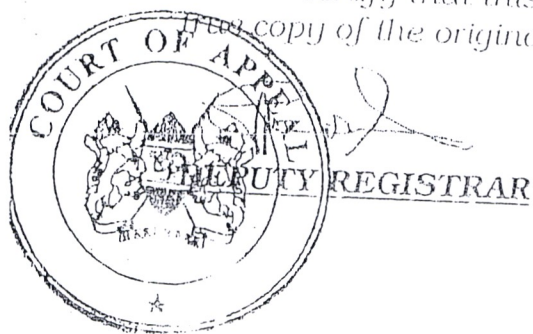
J. W. ONYANGO OTIENO

.....
JUDGE OF APPEAL

J. G. NYAMU

.....
JUDGE OF APPEAL

*I certify that this is a
true copy of the original.*



(7)

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO, 65 OF 2006

SIMON P. KAMAU & OTHERS..... PLAINTIFF

VERSUS

TEACHER SERVICE COMMISSION..... RESPONDENT

JUDGMENT

This is a representative or class-action. Leave to institute it was granted to the plaintiffs in Nakuru HC Misc. Appl. No. 497 of 2005. The 20 plaintiffs, who are retired teachers, claim in their plaint that, at the material time, they were all employees of the Teachers Service Commission (the defendant) and that they were all members of the Kenya National Union of Teachers (the union). They further claim that following protracted negotiations between their union and the defendant, on 11th October 1997, an agreement was reached between the union and the defendant to increase the teachers' salaries country-wide. The salary increments were based on percentages applicable to various categories.

The agreement, which was published in Gazette Notice No. 534 of 1997, was to apply to all the teachers, including those on leave

pending retirement and those in the process of being retired, but who were in the service of the defendant as at 1st July 1997.

In breach of the said agreement, the plaintiffs claim that the defendant refused and/or neglected to add to their retirement benefits the increments as a result of which they have suffered loss. In paragraph 8 of the plaint, they have given particulars of the losses suffered by each of them. They therefore claim a declaration that they, and all the retired teachers they represent, are entitled to retirement benefits ~~calculated on the basis of the entire salary~~ increments of 1997 and an order compelling the defendant to pay them the shortfall in the form of lump sum payment and the monthly pension.

In its defence, the defendant admits the negotiations culminating the salary increment of the teachers but aver that the increment was implemented in phases and the plaintiffs having retired in 1997 they were only entitled to the 1997 phase which formed the basis of calculation of their pension.

The parties called one witness each. For the plaintiff, Simon Peter Kamau Mbugua, the first plaintiff, testified on his own behalf and on behalf of all the plaintiffs and the teachers they represent. His

testimony was that upon attaining the retirement age of 55 years each retiring teacher is paid a lump sum of pension and monthly pension sums based on his last salary. He said on his retirement on 31st December 1999, he was paid a lump sum of Kshs.677,655/- and has since been getting a monthly pension of Kshs:8,470.70. Both of these payments were based on his salary with only one increment implemented. He said if the total increment he was entitled to had been implemented, both his lump sum payment and the monthly pension could have been much higher. He produced several documents in support of their case which I will refer to later in this judgment. He concluded that the same happened to the other plaintiffs and all the teachers who retired before all the phases were implemented and prayed for judgment to be entered in their favour as prayed in the plaint

The defendant called its Chief Human Resource Officer, Reuben Anyasi, DWF. He admitted that the plaintiffs were employees of the defendant at the time of the salary increment. He testified that before one retires from the employment of the defendant one is given one year's notice of retirement showing one's last date of work and requiring one to return several documents to the defendant. On the basis of the returned documents the defendant then prepares Form GP 178 showing the history of the teacher's

24
service and the last salary earned. It is then forwarded together with the returned documents to the Pension Department in the Ministry of Finance.

It was Mr. Anyasi's testimony that after that the employer/employee relationship between the teacher and the defendant is terminated and any queries the teacher may have on his pension are to be directed to the Director of Pensions. If there is any query on the documents forwarded to the Pensions Department, he said it is that Department that seeks clarification from the defendant. In his view therefore, this suit does not disclose any or any reasonable cause of action against the defendant and is bad in law. He said, it should have been filed against the Pension Department. Because the Government was not able to pay the increments at once he said it was agreed that the increment be paid in phases and they did not have retrospective effect. He concluded that the unimplemented phases could therefore not apply to the plaintiffs or their ilk who had retired.

In cross examination, Mr. Anyasi admitted that the negotiations and the agreement were between the union and the defendant and that the Pensions Department was not party to either of them. He also admitted that the plaintiffs' retirement benefits and pension

were based on the last salary earned by each and did not take into account the unimplemented phases of the increment. He conceded that the agreement, Ex. 9, has no qualification that once a teacher retires he loses the benefits under that agreement.

After the evidence, counsel for the parties filed written submissions. In his submissions, counsel for the plaintiffs argued that had the Government been able to pay the increased salary at once the plaintiffs' terminal benefits and pension could have been much higher than what they are now. He dismissed the defence claim that this suit should have been filed against the Pensions Department arguing that the villain is the defendant which failed to advise the Pensions Department of the plaintiffs' correct salaries and had it done that this suit could not have been filed.

On his part counsel for the defendant submitted that the plaint does not disclose any or any reasonable cause of action as the plaintiffs' claims are vague and unintelligible. Without prejudice to that he submitted that upon submission of the plaintiffs' documents to the pensions department the defendant became *functus officio*. After that, according to him, claims by any aggrieved persons should be lodged against the Director of Pensions under Section 3 of the Pensions Act. The defendant, he said, is therefore non-sued. And

on the basis of the clause 'TO WHOM APPLICABLE' in the TSC Circular No. 13/97 the unimplemented phases did not apply to the plaintiffs.

From these submissions and the pleadings in this case two main issues arise for determination. They are whether or not the defendant, having submitted the plaintiffs' documents to the Director of Pensions, is *functus officio* and therefore non-suited and whether or not the unimplemented phases should have been taken into account in calculating the plaintiffs' pension and retirement dues. The determination of the second issue will dispose of the first one. I will therefore start with the second one.

I have perused the pleadings and considered these submissions along with the evidence on record. It is not in dispute that following protracted negotiations between the union on behalf of the plaintiffs and other teachers in the country on the one hand and the defendant on the other, on 11th October 1997, the defendant agreed to increase the teachers' salaries with effect from 1st July 1997 as stated in L.N. No. 534 of 1997. It is also not in dispute that the plaintiffs were employees of the defendant at the material time entitled to the salary increment. What has caused the problem giving rise to this suit is clause 3 of that agreement which relates to

R 7

the implementation of the terms of that agreement. To get the import of the issue at hand let us read the relevant part of the agreement. It reads:-

**“MEMORANDUM OF AGREEMENT BETWEEN THE
GOVERNMENT OF THE REPUBLIC OF KENYA
AND THE KENYA NATIONAL UNION OF
TEACHERS (K.N.U.T.)**

Following intensive and very frank negotiations between the Government of the Republic of Kenya and the Kenya National Union of Teachers as directed by His Excellency the President, Hon. Daniel T. Arap Moi, on the occasion of Moi Day on the 10th October, 1997, it has been agreed as follows:-

1. That the Government accepts the recommendations of the Teachers Service Remuneration Committee (1997) submitted to the Minister for Education on 2nd July, and
2. The Minister for Education will prepare a remuneration Order directing that the remuneration of teachers shall be determined in accordance therewith, and
3. The recommendations embodied in the remuneration order will be implemented over a period of five (5) years with effect from 1st July, 1997, as per the schedule annexed hereto, and
4. The remuneration of Teachers order made on 25th September, 1997, by the Minister for Education and published as Legal Notice No.180 of 1997 shall be revoked.”

Pursuant to clause 2 of this agreement the Secretary of the Teachers Service Commission issued a circular--TSC CIRCULAR NO. 13/97 which set out the new salaries of the teachers and categorically stated:

"TO WHOM APPLICABLE

The new conditions of service apply to all teachers in the service under Teachers Service Commission on or after 1st July, 1997 including those on leave pending retirement or final termination of appointment on or after that date."

As already stated the newly negotiated salary package was gazetted in Legal Notice No 534 of 1997. The defendant's contention, as is clear from paragraph 5 of the defence, is that "at the time of their retirement, the plaintiffs benefited from the 1997 phase which then founded the only logical and legal basis for the calculation of [their] pension...."

I cannot accept this contention. As I have already stated it is not in dispute that the plaintiffs were employees of the defendant at the material time entitled to the salary increment. It was DW1's evidence that the reason for staggering the payment of the agreed salary increment was because of financial constraints on the part of the Government. If the Government had money it could have implemented the increment at once and had that happened the plaintiffs' salary at the time of their retirement

could have included the entire increment in which case the defendant would have submitted to the Pensions Department the plaintiffs' last salary slips reflecting the entire increment. That did not happen as the plaintiffs retired in 1997 when only one phase had been implemented. Does that deprive them of their entitlement before retirement? I think not.

It is true that **Section 10(1)** of the **Pensions Act** and **Regulation 20(1)** thereof provide for a retiree's last pay as the basis for the calculation of his gratuity and pension. The **Section 10(1)** of the **Pensions Act** reads:

"A pension granted to an officer under this Act shall not exceed the full pensionable emoluments drawn by him at the date of his retirement."

Regulation 20(1)(a) thereof reads

"For the purpose of computing the amount of the pension or gratuity of an officer who has had a period of not less than three years' pensionable service before his retirement—

(a) in the case of an officer who has held the same office for a period of three years immediately preceding the date of his retirement, the full annual pensionable emoluments enjoyed by him at the date in respect of that office shall be taken"

A superficial perusal of these provisions would give one an impression that the defendant acted within the law by calling for

and submitting to the Pensions Department, inter alia, the plaintiffs' last pay slips. That is, however, not correct. On the facts of this case those provisions should be given an interpretation that will do justice to both parties.

Statutes should not be given pedantic interpretations that end up causing injustice. I concur with what the authors of Francis Bennion's "Statutory Interpretation", 3rd Edition stated at F.614 that:

"It is a principle of legal policy that law should be just, and that court decisions should further the ends of justice. The court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislature intended to observe this principle. The court should therefore strive to avoid adopting a construction that leads to injustice."

In this case the relevant part of Section 10(1) of the Pensions Act should therefore be interpreted as though it stated that "the [plaintiff's] pensionable emoluments drawn or supposed to be drawn by him at the date of his retirement." To interpret it otherwise will obviously cause injustice to the plaintiffs.

While the duty to pay remuneration is far from being the employer's only duty under the contract of employment, it is certainly the central element and basic obligation of the employer. It is not a privilege that the employer accords an employee. Remuneration is the employee's constitutional right. Section 70 of our Constitution makes that explicitly clear. It states:-

"Whereas every person in Kenya is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all the following, namely—

- (a).....
- (b).....
- (c) Protection for the privacy of his name and other property and from deprivation of property without compensation."

Property includes choses in action, money gratuity and/or pension.

The Government should be the role model by being the first obeyer of the law. Otherwise what moral duty will it have to

enforce the same law it has itself transgressed against errant employers seeking to oppress their employees?

In this case the Government cannot be allowed to run away from what it had clearly contracted in writing to pay to the plaintiffs. That it had no money to pay the teachers at once does not alter the fact that it had committed itself to the increment. The fact remains that the plaintiffs and those they represent were, before their retirement, entitled to the full increment only that some of it was to be paid at a later stage. Therefore for purposes of the calculation of their gratuity and pension, I find that the defendant should have advised the Pensions Department of the plaintiffs' correct salary entitlements. If the defendant had done that the correct salaries the plaintiffs were entitled to could have formed the basis of their gratuity and pension calculations and this suit could have been averted. The defendant having provided erroneous information it cannot be heard to claim that it is *functus officio*. In the circumstances I hold that it is accordingly liable.

The plaintiffs have particularized their claims in paragraph 8 of the plaint. In response the defendant made a general denial of those claims and in his evidence DWI did not in any way

dispute those particulars. In the circumstances those claims remain unchallenged and the plaintiffs are therefore entitled to judgment as claimed.

In the result I grant the declarations that the plaintiffs and all the other retired teachers covered by the agreement dated 11th October 1997 between the defendant and the teachers' union KNUF as read with the TSC Circular No. 13/97, are entitled to their retirement benefits being based on the entire salary increment contained in that agreement and Circular. On the basis of that increment I order the defendant to pay or to liaise with the Pensions Department to pay to the plaintiffs and those they represent the unpaid gratuity and pension dues to date and base all their future pension payments on the entire salary increment of 1997 as per the particulars stated in paragraph 8 of the plaint. The plaintiffs shall have the costs of this suit.

DATED this 23rd day of October, 2008.



D.K. MARAGA

JUDGE.

OFFICE OF THE DEPUTY PRIME MINISTER
AND MINISTRY OF FINANCE

10

Telegraphic Address: "FINANCE", Nairobi

Telephone: Nairobi 2252299

When replying please quote:

Ref No.

and date

REF: EPN/1/92/10 (TSC)



THE PENSIONS DEPARTMENT

THE TREASURY

P.O. Box 20191-00200

NAIROBI, KENYA

24 June, 2011, 20

Mr. Josephat W. J. Gakuo
Principal Auditor
Kenya National Audit Officer
Nairobi

RE: PENSION DUES FOR RETIRED TEACHERS (1997-2003)
NAKURU HIGH COURT CIVIL CASE NO. 65 OF 2006
& NAKURU COURT OF APPEAL NO. 300 OF 2009

As you may be aware, the captioned Court cases filed at the Nakuru High Court and the Court of Appeal sitting in Nakuru were both ruled in favour of the retired teachers who had sued the Teachers Service Commission over non-payment of all the instalments of the Salary Agreement signed with the Kenya National Union of Teachers (KNUT) in 1997. The Agreement was gazetted under *Legal Notice No. 534/1997*. An extract of the Legal Notice and Copies of the two Court Rulings are appended.

A meeting was held with the TSC in December 2010 to agree on how to implement the Court Rulings. A copy of the Report of the meeting, which was forwarded to the PS/Treasury, is appended. The total budgetary implication was estimated at KShs.16.7 Billion.

On 27th May 2011 the Director of Budget confirmed that the amount would be paid in five instalments starting in the Financial Year 2011/12 up to Financial Year 2015/16.

In FY 2011/12, a sum of KShs.3.34 billion was included in the CFS Pensions Budget for the purpose.

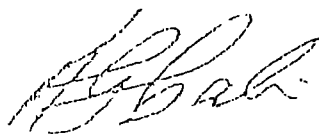
Listed below are the proposed instalments: -

YEAR REPIRED	NO. OF TEACHERS	TOTAL ARREARS KSHS	PAYABLE IN FY
1998-1999	11,098	4,216,560,932.81	11/12
2000	5,068	3,558,564,542.19	12/13
2001	4,537	3,784,891,500.00	13/14
2002	4,927	3,826,478,906.25	14/15
2003	1,603	1,274,741,414.06	15/16
<u>TOTAL</u>	<u>31,082</u>	<u>16,661,237,295.31</u>	

The Purpose of this letter is to brief you so that you: -

- prepare your team for the work involved in revising the teachers' claims. and,
- consider and give your concurrence that we can request the TSC to forward GP 178 forms with only the details in Items 1 to 11 and Item 18 requiring completion. Other details are already held in our files.

We propose to initiate the payment process in mid-July 2011 when the CFS Budget for FY 2011/12 will be released for expenditure. All payments will be made through the Pensions Management Information System (PMIS) for necessary audit trail and to ensure only eligible teachers are paid. I will discuss the way forward with you before then, once you have had time to review the details herein.



Anne K. Mugo, MBS

SUMMARY - ESTIMATE TEACHERS PENSION ARREAR ARISING FROM LEGAL NOTICE NO. 534/1997

Year Retired	No. of Teachers	Monthly Pen. Arrears	Lumpsum Arrears	Total Arrears Kshs	Kpounds
1997	3849	-	-	-	-
1998	5019	805,079,882.81	429,375,937.50	1,234,455,820.31	61,722,791
1999	6079	1,887,754,612.50	1,094,350,500.00	2,982,105,112.50	149,105,256
2000	5068	2,176,597,729.69	1,381,966,812.50	3,558,564,542.19	177,928,227
2001	4537	2,224,111,500.00	1,560,780,000.00	3,784,891,500.00	189,244,575
2002	4927	2,144,510,156.25	1,681,968,750.00	3,826,478,906.25	191,323,945
2003	1603	674,863,101.56	599,878,312.50	1,274,741,414.06	63,737,071
TOTAL	31,082	19,912,916,982.81	6,748,320,312.50	16,661,237,295.31	833,061,864.77

1998-1999	11,098	2,692,834,495	1,523,726,438	4,216,560,933	11/12	210,828,047
2000	5,068	2,176,597,730	1,381,966,813	3,558,564,542	12/13	177,928,227
2001	4,537	2,224,111,500	1,560,780,000	3,784,891,500	13/14	189,244,575
2002	4,927	2,144,510,156	1,681,968,750	3,826,478,906	14/15	191,323,945
2003	1,603	674,863,102	599,878,313	1,274,741,414	15/16	63,737,071

5. Installments: 3134bn. p.a. 91912:916,982.81 6748,320,312.50 16661,237,295.31 833,061,864.77

ESTIMATE TEACHERS PENSION ARREARS ARISING FROM LEGAL NOTICE NO. 534/1997

Appendix 2

ESTIMATE OF LUMP SUM DUE

Cadre	Year	Retired Teachers	Prd of Service	1997 Salary	Salary Due	Lumpsum Paid	Lumpsum Due	Lumpsum Arrears
P2/P3/P4 Teachers								
	1997	542	300	3771	3771	151,311,375.00	151,311,375.00	
	1998	847	300	3771	4704	199,627,312.50	249,018,000.00	49,390,687.50
	1999	1,014	300	3771	5700	238,987,125.00	361,237,500.00	122,250,375.00
	2000	845	300	3771	6579	199,155,937.50	347,452,437.50	148,297,500.00
	2001	800	300	3771	7353	188,550,000.00	367,650,000.00	179,100,000.00
	2002	920	300	3771	7353	216,832,500.00	422,797,500.00	205,965,000.00
	2003	267	300	3771	7353	62,928,562.50	122,703,187.50	59,774,625.00
		5,335				1,257,392,812.50	2,022,171,000.00	764,778,187.50
P1 Teachers								
	1997	2,566	300	5484	5484	979,496,500.00	879,496,500.00	
	1998	3,372	300	5484	6771	1,155,753,000.00	1,426,988,250.00	271,235,250.00
	1999	4,052	300	5484	8250	1,388,823,000.00	2,089,312,500.00	700,489,500.00
	2000	3,379	300	5484	9731	1,158,152,250.00	2,055,065,562.50	896,913,312.50
	2001	3,024	300	5484	10995	1,036,476,000.00	2,078,055,000.00	1,041,579,000.00
	2002	3,284	300	5484	10995	1,125,591,000.00	2,256,723,750.00	1,131,132,750.00
	2003	733	300	5484	10995	251,235,750.00	503,718,437.50	252,472,687.50
		20,410				6,995,527,500.00	11,289,350,000.00	4,293,822,500.00
JG 'K' to 'R' Teachers								
	1997	641	300	7722	7722	309,362,625.00	309,362,625.00	
	1998	800	300	7722	9097	386,100,000.00	494,850,000.00	108,750,000.00
	1999	1,013	300	7722	12012	488,899,125.00	760,509,750.00	271,610,625.00
	2000	844	300	7722	14105	407,335,500.00	744,091,500.00	336,756,000.00
	2001	713	300	7722	15354	344,111,625.00	684,212,625.00	340,101,000.00
	2002	723	300	7722	15354	348,937,875.00	693,808,875.00	344,871,000.00
	2003	603	300	7722	15354	291,022,875.00	578,653,875.00	287,631,000.00
		5,337				2,575,769,625.00	4,265,489,250.00	1,689,719,625.00
		31,082					Total Lumpsum Arrears	6,748,320,312.50

*1/2 Salaries used for estimate

ESTIMATE OF MONTHLY PENSIONS DUE

Cadre	Year	Retired Teachers	Prd of Service	1997 Salary	Salary Due	No. of months up to 31.12.10	Monthly Pensions Paid	Monthly Pensions Due	Monthly Pension Arrears
P2/P3/P4 Teachers									
	1997	542	300	3771	3771	162	306,405,534.38	306,405,534.38	
	1998	847	300	3771	4704	150	374,301,210.94	466,908,750.00	92,607,539.06
	1999	1,014	300	3771	5700	138	412,252,790.63	623,134,687.50	210,881,896.88
	2000	845	300	3771	6579	126	313,670,601.56	547,239,164.06	233,568,562.50
	2001	800	300	3771	7353	114	268,683,750.00	523,901,250.00	255,217,500.00
	2002	920	300	3771	7353	102	276,461,437.50	539,066,812.50	262,605,375.00
	2003	267	300	3771	7353	90	70,794,632.81	138,041,095.94	67,246,463.13
		5,335					2,022,569,957.81	3,144,697,284.38	1,122,127,326.56
P1 Teachers									
	1997	2,566	300	5484	5484	162	1,780,980,412.50	1,780,980,412.50	
	1998	3,372	300	5484	6771	150	2,167,036,875.00	2,675,602,968.75	508,566,093.75
	1999	4,052	300	5484	8250	138	2,395,719,675.00	3,604,064,062.50	1,208,344,387.50
	2000	3,379	300	5484	9731	126	1,824,089,793.75	3,236,728,260.94	1,412,638,467.19
	2001	3,024	300	5484	10995	114	1,476,978,300.00	2,961,228,375.00	1,484,250,075.00
	2002	3,284	300	5484	10995	102	1,435,126,525.00	2,877,322,781.25	1,442,194,256.25
	2003	733	300	5484	10995	90	282,640,218.75	566,671,992.19	284,031,773.44
		20,410					11,362,573,800.00	17,702,598,853.13	6,340,025,053.13
JG 'K' to 'R' Teachers									
	1997	641	300	7722	7722	162	626,459,315.63	626,459,315.63	
	1998	800	300	7722	9097	150	723,937,500.00	927,843,750.00	203,906,250.00
	1999	1,013	300	7722	12012	138	843,350,990.63	1,311,879,318.75	468,528,328.13
	2000	844	300	7722	14105	126	641,553,412.50	1,171,944,112.50	530,390,700.00
	2001	713	300	7722	15354	114	490,359,065.63	975,002,990.63	484,643,925.00
	2002	723	300	7722	15354	102	444,895,790.63	884,606,315.63	439,710,525.00
	2003	603	300	7722	15354	90	327,400,734.38	650,985,609.38	323,584,875.00
		5,337					4,097,956,809.38	6,549,721,412.50	2,451,764,603.13
		31,082						Total Monthly Pensions Arrears	9,912,916,982.81

Total No. of Teachers	31,082	GRAND TOTAL - LUMP SUM & MONTHLY ARREARS						16,661,237,295.31
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SUMMARY- ESTIMATE TEACHERS PENSION ARREAR ARISING FROM LEGAL NOTICE NO. 534/1997

Year Retired	Monthly Pen. Arrears	Lumpsum Arrears	Total Arrears Kshs	Kpounds
1997	2,699,955,534.38	1,333,311,375.00	4,033,266,909.38	201,363,345
1998	3,246,747,578.13	1,732,665,375.00	4,981,412,953.13	249,070,648
1999	3,632,627,475.00	2,105,871,000.00	5,738,498,475.00	286,924,924
2000	2,765,096,282.81	1,755,616,687.50	4,520,712,970.31	226,035,649
2001	2,224,111,500.00	1,560,780,000.00	3,784,891,500.00	189,244,575
2002	2,144,510,156.25	1,681,968,750.00	3,826,478,906.25	191,323,945
2003	674,863,101.56	599,878,312.50	1,274,741,414.06	63,737,071
TOTAL	17,389,511,628.13	10,770,091,500.00	28,160,003,128.13	1,408,000,156.41

ESTIMATE TEACHERS PENSION ARREARS ARISING FROM LEGAL NOTICE NO. 534/1997

Appendix 4

ESTIMATE OF LUMP SUM DUE

Cadre	Year	Retired Teachers	Prd of Service	1997 Salary	Salary Due	Lumpsum Paid	Lumpsum Due	Lumpsum Arrears
P2/P3/P4 Teachers*								
	1997	642	300	3771	7353	151,311,375.00	295,039,125.00	143,727,750.00
	1998	047	300	3771	7353	199,627,312.50	389,249,437.50	189,622,125.00
	1999	1,014	300	3771	7353	238,907,125.00	465,996,375.00	227,009,250.00
	2000	045	300	3771	7353	199,155,937.50	388,330,312.50	189,174,375.00
	2001	000	300	3771	7353	100,550,000.00	367,650,000.00	179,100,000.00
	2002	920	300	3771	7353	216,832,500.00	422,797,500.00	205,965,000.00
	2003	267	300	3771	7353	62,928,562.50	122,703,187.50	59,774,625.00
		5,335				1,257,392,013	2,451,765,938	1,194,373,125
P1 Teachers								
	1997	2,566	300	5404	10995	879,496,500.00	1,763,323,125.00	883,826,625.00
	1998	3,372	300	5404	10995	1,155,753,000.00	2,317,196,250.00	1,161,443,250.00
	1999	4,052	300	5404	10995	1,388,823,000.00	2,784,483,750.00	1,395,660,750.00
	2000	3,379	300	5404	10995	1,156,152,250.00	2,322,006,562.50	1,165,854,312.50
	2001	3,024	300	5404	10995	1,036,476,000.00	2,076,055,000.00	1,039,579,000.00
	2002	3,204	300	5404	10995	1,125,591,000.00	2,256,723,750.00	1,131,132,750.00
	2003	733	300	5404	10995	251,235,750.00	503,708,437.50	252,472,687.50
		20,410				6,995,527,500	14,025,496,875	7,029,969,375
JG 'K' to 'R' Teachers								
	1997	641	300	7722	15354	309,362,625.00	615,119,625.00	305,757,000.00
	1998	800	300	7722	15354	386,100,000.00	767,700,000.00	381,600,000.00
	1999	1,013	300	7722	15354	488,899,125.00	972,100,125.00	483,201,000.00
	2000	044	300	7722	15354	407,335,500.00	809,923,500.00	402,588,000.00
	2001	713	300	7722	15354	344,111,625.00	684,212,625.00	340,101,000.00
	2002	723	300	7722	15354	348,937,875.00	693,808,875.00	344,871,000.00
	2003	603	300	7722	15354	291,022,875.00	578,653,875.00	287,631,000.00
		5,337				2,575,769,625	5,121,518,625	2,545,749,000
		31,082					Total Lumpsum Arrears	10,770,091,500.00

*P2 Salaries used for estimates

ESTIMATE OF MONTHLY PENSIONS DUE

Cadre	Year	Retired Teachers	Prd of Service	1997 Salary	Salary Due	No. of months up to 31.12.10	Monthly Pensions Paid	Monthly Pensions Due	Monthly Pension Arrears
P2/P3/P4 Teachers*									
	1997	642	300	3771	7353	162	306,405,534.38	597,454,228.13	291,048,693.75
	1998	047	300	3771	7353	150	374,301,210.94	729,842,695.31	355,541,484.38
	1999	1,014	300	3771	7353	138	412,252,790.63	803,843,746.68	391,590,956.25
	2000	045	300	3771	7353	126	313,670,601.56	611,620,242.19	297,949,640.63
	2001	000	300	3771	7353	114	268,683,750.00	523,901,250.00	255,217,500.00
	2002	920	300	3771	7353	102	276,461,437.50	539,066,812.50	262,605,375.00
	2003	267	300	3771	7353	90	70,794,632.81	138,041,085.94	67,246,453.13
		5,335					2,022,569,958	3,943,770,061	1,921,200,103
P1 Teachers									
	1997	2,566	300	5404	10995	162	1,700,980,412.50	3,570,729,323.13	1,869,748,910.63
	1998	3,372	300	5404	10995	150	2,167,036,875.00	4,344,742,968.75	2,177,706,093.75
	1999	4,052	300	5404	10995	138	2,395,719,675.00	4,803,234,468.75	2,407,514,793.75
	2000	3,379	300	5404	10995	126	1,824,089,793.75	3,657,160,335.94	1,833,070,542.19
	2001	3,024	300	5404	10995	114	1,476,978,300.00	2,961,228,375.00	1,484,250,075.00
	2002	3,204	300	5404	10995	102	1,435,128,525.00	2,877,322,701.25	1,442,194,256.25
	2003	733	300	5404	10995	90	282,640,218.75	566,671,992.19	284,031,773.44
		20,410					11,362,573,800	22,781,090,250	11,418,516,450
JG 'K' to 'R' Teachers									
	1997	641	300	7722	15354	162	626,459,315.63	1,245,617,240.63	619,157,925.00
	1998	800	300	7722	15354	150	723,937,500.00	1,439,437,500.00	715,500,000.00
	1999	1,013	300	7722	15354	138	843,350,990.63	1,676,872,715.63	833,521,725.00
	2000	044	300	7722	15354	126	641,553,412.50	1,275,628,512.50	634,075,100.00
	2001	713	300	7722	15354	114	490,359,065.63	975,002,990.63	484,643,925.00
	2002	723	300	7722	15354	102	444,895,790.63	884,606,315.63	439,710,525.00
	2003	603	300	7722	15354	90	327,400,734.38	650,985,609.38	323,584,875.00
		5,337					4,097,956,809	8,148,151,884	4,050,195,075
		31,082					Total Lumpsum Arrears	17,389,911,628.13	
Total No. of Teachers		31,082		GRAND TOTAL - LUMP SUM & MONTHLY-ARREARS		20,160,003,128.13			

FIRST SCHEDULE

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Teachers Grade	Present salary	New salary w.e.f. 1-7-97 Kf p.a.	New salary w.e.f. 1-7-98 Kf p.a.	New salary w.e.f. 1-7-99 Kf p.a.	New salary w.e.f. 1-7-2000 Kf p.a.	New salary w.e.f. 1-7-2001 Kf p.a.

	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.
U.T. teachers with/without												
K.C.P.E.	1,125	1,416	1,638	2,052	2,142	2,591	2,595	3,255	3,045	3,825	3,084	4,248
U.T. with K.J.S.E./K.C.E. Div. IV/ K.C.S.E. "D" plain and below	1,332	2,075	1,932	3,009	2,539	3,921	3,063	4,755	3,597	5,588	3,996	6,219
U.T. with K.C.E. Div. I-III K.C.S.E. C-U/T K.A.C.E./K.C.S.E. D+ and above	1,648	2,505	2,418	3,393	3,164	4,263	3,834	5,295	4,506	6,249	5,194	7,078
Pt teacher	1,206	1,776	1,752	2,574	2,292	3,378	2,775	4,060	3,255	4,725	3,420	4,728
Pt teacher	1,416	2,361	2,052	3,287	2,691	4,149	3,345	5,160	3,825	6,084	4,248	6,786
Pt teacher	1,732	2,799	2,496	3,751	3,273	4,704	3,937	5,700	4,653	6,879	5,166	7,353
Pt teacher	2,217	4,227	3,105	5,484	3,921	6,771	4,890	8,250	5,754	9,721	6,408	10,695
A.T.S. (Untrained teachers trained technical teacher	2,799	5,322	3,771	6,854	4,704	8,197	5,700	10,536	6,579	12,438	7,353	13,485
Graduate teacher/trained certificate technical teacher /trained diploma technical teacher /II/ diploma teacher (previously SI diploma) A.T.S. II	4,192	8,084	5,313	7,722	6,558	9,897	7,980	12,012	9,420	14,106	10,944	15,360

6

HON. NJERU GITHAE
MINISTER OF FINANCE
TREASURY
NAIROBI

HON. MINISTER OF EDUCATION
NAIROBI

HON. ATTORNEY GENERAL AG'S CHAMBERS
NAIROBI

TO MEMBERS OF PARLIAMENT
THROUGH THE SPEAKER
NATIONAL ASSEMBLY
NAIROBI

Dear Sir,

RE: RETIRED TEACHERS
NAKURU HCCC NO.65 OF 2006 AND COURT OF APPEAL
NO.300 OF 2009

Honourable members of parliament, we bring this petition to you seeking for your intervention in the above quoted cases as the judgment referred to are supposed to be settled.

The History of our case goes back to the year 1997 when the Government increased our salary by between 150% to 200% according to legal notice NO.534. 11th November 1997. The Government had no money to settle the increments at once and sought to liquidate the money by yearly installments. These were not honoured and hence our going to court where the case has gone through the following stages.

We note with great concern that though the judgment was awarded for both unpaid lump sum salary and pension, the defendant TSC has not bothered to calculate and release to us the unpaid salary which stand at ksh.8.2Billion. Though the director of pension has calculated unpaid pension for the period 1997 to 2003. She is yet to calculate pension for the period 2004 to present despite the order of the court of 19th December, 2011

We wish to draw your attention to section 21(3) of the government proceedings Acts as well as the ruling and order of the court dated 19th December. This order must be obeyed. Kindly note that the decretal sum continue to accrue interest at court rates till payment in full

On 19th December, 2011 the High Court sitting in Nakuru issued an order directing the release of the money provided for in the current budget to us through our Advocate. Further in the said order Justice Emukule gave the Director of Pensions 90 days within which to calculate the entire outstanding pension between the years 2004 to date, this has not been done

On the 23rd April 2012 Justice W. Ouko issued an order of mandamus against Teachers' Service Commission to comply with the judgment by firstly releasing the kshs 3.34 billion provided for in the current budget together with party & party costs in the sum of kshs. 382,600.000/=. we have served the necessary orders upon your office, teachers service commission and the director of pensions for compliance but nothing has been due to date.

The decree holders in this case are retired senior citizens, all the matters in the High Court have been finalized and that is no other application pending. There is however a reference on the taxed costs in the Court of Appeal Bill of costs pending for hearing. this has nothing to do with the current payment.

As you are well aware the minister of finance has on more than two occasions confirmed that kshs 3.34 billion is ready for release and all that they are waiting for is a letter of clearance from the Attorney Generals office. we wish to therefore appeal to you in exercise of your good office to take necessary action to release the funds provided for in the current budget, immediately to avoid the same being returned to the Exchequer.

Finally we wish to remind your good office that the entire decretal sum must be paid in through our Lawyers as per the order of the court of 19th December, 2011 as well as Section 21(3) of the Government proceedings Acts.

We have waited for the money for 14 years. We are senior citizens who desperately need the money to meet our daily needs especially medical.

The Minister of Finance has on several occasions promised parliament to at least release the money factored in the current budget. This has not been done despite every effort by our Lawyers.

We appeal to you through this petition to uphold the rule of law and have the said funds released to us as ordered by the court.

We are therefore by way of this memorandum with all humility we can muster Issuing a notice that by the end of May 2012. If we shall not have received our money we shall be left with no other alternative other than to come and camp here in parliament building in our thousands until we are fully paid all our claims as decreed and ordered by court.


Joseph M.N. Mwenja

RETIRED TEACHERS (1997) GROUP-CHAIRMAN
DATED 8TH MAY 2012

C.C.
OUR LAWYERS,
KIMATTA AND CO. ADVOCATES,
P.O BOX 3300,
NAKURU

KIMATTA & CO.
ADVOCATES

12

MR KUI KIMATTA
LL.B(HONS) NBI

EQUATOR HOUSE (ABOVE FORMER UCHUMI SUPERMARKET)
1ST FLOOR ENTRANCE B ROOM 6
P.O. BOX 3300-20100 NAKURU - KENYA
TEL/FAX: (254) 0716-138921
Email: kimattalegals@gmail.com

BRANCH OFFICE
WINDSOR HOUSE, UNIVERSITY WAY
2ND FLOOR, ROOM 1
P.O. BOX 40100 - 00100
NAIROBI - KENYA
TEL: (020) 2226607 - FAX: (020) 313082

OUR REF: DMK/CIV/K/2438/2012 YOUR REF: AG/TSC/5/06 DATE: 24/01/2013

The Hon. Attorney General
Attorney General's Chambers
P.O. Box 40112-00100
NAIROBI

Dear Sir,

RE: NAKURU HCCC NO. 65 OF 2006
SIMON P. KAMAU & OTHERS -VS- TEACHERS SERVICE
COMMISSION

Please refer to the above quoted case, various correspondence as well as my numerous visits to your office, the Treasury, TSC as well as the office of the Controller of the budget. Do also refer to the letter from the controller of budget dated August, 8th 2012 as well as the letter from the treasury to your office dated 2nd December, 2012 as well as yours of 6th December, 2012.

Kindly do also refer to the various debates in parliament as well as your undertaking to our clients and the court that your office and your client do respect the rule of law and are prepared to honour and respect court judgment and orders.

We wish to further urge you to consider the age of this litigation as well as the age of our clients the decree holders.

On our part considering what has been happening between your office and the various government departments it is very clear that there is lack of transparency and openness in this matter. In our humble opinion it is clear that the government in general through it's agents had decided with impunity to take our clients round in circles till they die or abandon the pursuit of execution of this judgment.

Time and again small issues that are no issues have been created to keep the matter pending.

.../2

Orders of the court have been treated by your client with total contempt.

How would the government explain the letter by the controller of the budget dated August, 8th 2012 ?

A look at the Plaintiff in this case clearly demonstrates and unequivocally our clients claim as supported by paragraph 8 of the plaintiff in Hccc No. 65 of 2006.

The 1997 agreement was fully complied with by the government by July, 2007 save for what was not paid to our client which was pleaded in the plaintiff as unpaid lumpsum salary. This is a single figure that does not increase and at all times stood at **Kshs.8.2Billion**.

Our clients are content with this figure and no more. The other additional salary arrears sited in the letter of 8/8/2012 do not belong to our client.

As to the Pension arrears the judgment and our clients claim are on record.

Your client made calculation for 31,000 teachers for the period 1997 to 2003. A copy of the same was given to our office, your office and the court.

Though in our previous letters we have clearly stated that our total claim is Kshs. 42Billion inclusive of both unpaid salary and pension, your departments keep on inflating these figures. Can somebody explain this is happening.

We wish to reiterate that our claim is simple and to the point. Kindly have it released forthwith. Finally a judgment of the court only deals with the litigants in the case and not other outside or potential claimants.

The government can pay this money in installments with our consultation as the budget has provided for year 2011/2012 and 2012/2013.

If it is the government policy that it has no intention of complying with the court judgment then your office on behalf of your clients should write us accordingly so that we can advise our clients of this position. Let there be no more unnecessary excuses. The matter continue to accrue more expense and unnecessary interest.

The last page of your letter of 6/12/2012 has again created a new handle. Kindly address the issue to bring this matter to an end. Both the treasury and the money in view of the last page of your said letter.

It was pointless for your office to sanction payment with the left hand while in the right hand you are talking of going to court for an interpretation that in our view is merely an excuse to keep this matter hanging as long as possible.

On the issue of party and party costs we fail to understand why the same has yet to be released to us. Upon the dismissal of the reference the money should have been released to us as this in our view calls for no interpretation and has no contradiction. In any event the same was based on a figure of **Kshs.16.7Billion** a figure that has never been in dispute.

We trust that this letter will cause the government through your office to quickly and concussively bring this matter to an end to releasing the funds that have already received both parliamentary and cabinet approval.

By a copy of this letter all relevant offices are notified of our clients position.

Yours faithfully
KIMATTA & CO. ADVOCATES

D. M. KIMATTA

/iwk

1. The Controller of the Budget
Office of Controller of Budget
NAIROBI Att: Mrs. Adhiambo
2. The Director of Pensions
Ministry of Finance
NAIROBI Att: Mrs. Mugo
3. The Permanent Secretary
Ministry of Finance
NAIROBI Att: Mr. Kinyua
4. The Secretary
Teachers Service Commission
NAIROBI Mr. Gabriel Lengoiboni
5. The Chairman
Parliamentary Committee, Budget
National Assembly
NAIROBI Att: Mr. Koech
6. The Secretary to the Cabinet
Office of the President
NAIROBI Att: Mr. Francis Kimemia
7. The Prime Minister
Prime Minister's Office
NAIROBI Att: Mr. Raila Odinga
8. The Deputy Registrar
High Court of Kenya
NAKURU

2

RETIRED TEACHERS (1997) GROUP.

PETITION TO THE SPEAKER OF THE NATIONAL ASSEMBLY IN
RESPECT OF NON PAYMENTS OF OUTSTANDING PENSION DUES TO
RETIRED TEACHERS (1997) GROUP (1997-2007).

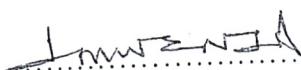
We the Plaintiffs on behalf of the retired teachers covered by judgement of Nakuru H.C.C.C No. 65/2006 of the High Court and Nakuru Civil Appeal case No. 300 of 2009 and beneficiaries of several court orders which have been ruled in our favour and never implemented do hereby wish to draw this petition to the August House with a strong belief and conviction that the Honourable Members in their fortitude and wisdom will address the above issue with compassion and open mind and come to our rescue since we have exhausted all avenues available marshalled and expended all resources at our disposal to no avail.

Aware that quite a number of our members and their beneficiaries have gone to their maker, we feel and consider ourselves neglected by the authorities concerned. We ask ourselves what crime we have committed to warrant this kind of treatment. The officers charged with the responsibility of enforcing court orders are putting hurdles at every turn little realizing the physical Anxiety and mental Anguish they are occasioning to the senior citizens indeed the crop of leadership we have in this Country today went through the hands of the old men and women who are made to undergo untold suffering and hardship at the hands of the said officers.

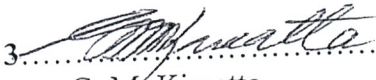
The office of the Attorney General, the TSC, the Pensions Department and Controller of Budget are in league in trying to do all they can to make the payment of the claim appear impossible to settle by inflating the figures from the ones reported in Parliament on 7th December 2010 by the Minister of Education which reads 42Bn. to astronomical figure of 151 Bn. These officers are hell bent to make sure that the payments are delayed or not honoured all together despite the judgement and the subsequent court orders. Thus portraying the highest degree of impunity.

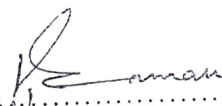
By petitioning the 11th Parliament, we take cognisance of the fact that you are the only Institution that we can appeal to and expect sympathetic response to our predicament. In fact the 10th Parliament exhaustively discussed our issue and went to the extent of passing a motion that we should be paid our dues immediately. This being the second petition we have every hope and anticipation that our issue will receive sympathetic attention and that this time round the August House will invoke all the relevant authority to have this matter resolved once and for all even if it means censuring all the officers who are dilly dallying and frustrating the settlement of this claim. Please, please Honourable members come to our rescue for we look upon you to save the situation as the last resort.

Parliamentary Proceedings attached.

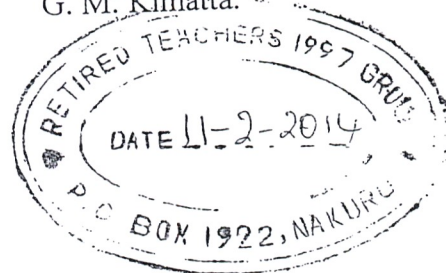
1. 
Joseph M.N. Mwenja.

2. 
David K. Kimani.

3. 
G. M. Kimatta.

4. 
S.P. Kamau.

5. 
Karanja Waweru.



Executive Committee for and on behalf of the Retired Teachers (1997) Group.
The decree holders.

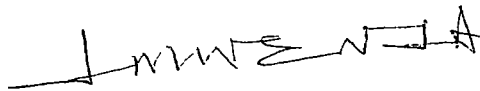
Retired Teachers (1997) Group,
P.O. BOX 1922-20100,
NAKURU.

11th February 2014.

Hon. Sabina Wanjiru Chege,
M.P Murang'a constituency.

Enclosed herein is the retired teachers' petition to the Speaker of the 11th Parliament through you. We have also enclosed all our supporting documents relating to this case indexed 1-14. We have the faith and trust that this is the only Institution that we can appeal to and expect justice, as contained in the National Anthem and we quote "JUSTICE BE OUR SHIELD AND DEFENDER".

Yours Faithfully,



Joseph M.N.Mwenja,
Chairman for and on behalf of
Retired teachers & decree holders.

D.D/Committees

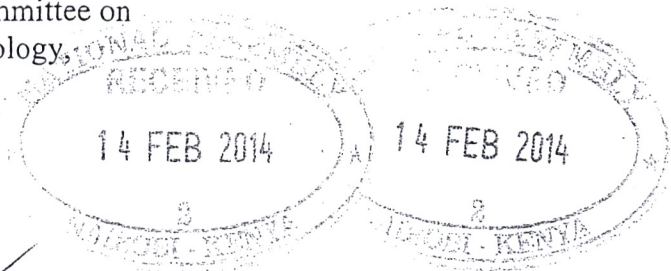
Retired Teachers (1997) Group Office,
P.O. Box 1922-20100,
NAKURU.
13th February 2014.

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Hon. Sabina Chege M.P,
Chairperson –Departmental Committee on
Education, Research and Technology,
Parliament Building,
NAIROBI.



'Thro'

The Clerk National Assembly ✓
NAIROBI.

Dear Hon Chege,

RE PENSION DUES FOR RETIRED TEACHERS

1. NAKURU HCCC 65 OF 2006-SIMON P KAMAU &19 OTHERS VS. TEACHERS SERVICE COMMISSION.
2. NAKURU CIVIL APPEAL NO 300 OF 2009 TEACHERS SERVICE COMMISSION VS. SIMON P KAMAU &19 OTHERS.

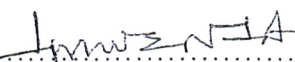

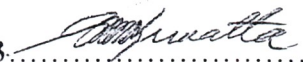
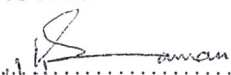


We the plaintiffs on behalf of the retired teachers covered by the above two mentioned judgements and beneficiaries of several court orders , which have been ruled in our favour and never implemented ,do hereby wish to humbly make this formal application to appear before your committee in order to.

- a) Present all the relevant documents relating to the case for your perusal.
- b) Shed light on the subject of non-payment of the pension dues to the decree holders.

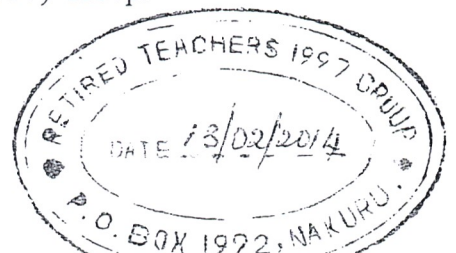
We fall under the category of old members of the society whose rights are enshrined in the constitution part 3 section 57.

We hope and trust that you will exercise your legal and constitutional mandate and have compassion on these senior citizens and give us a hearing.

Yours faithfully

1.  Joseph M.N. Mwenja. 0722-636223	2.  David K. Kimani.	3.  G. M. Kimatta.
4.  S.P. Kamau.	5.  Karanja Waweru.	6.  Patrick W. Mwangi

Executive Committee for and on behalf of the Retired Teachers (1997) Group.
The decree holders.



Retired Teachers (1997) Group Office,
P.O. Box 1922-20100,
NAKURU.
13th February 2014.

Hon. Sabina Chege M.P. ✓
Chairperson –Departmental Committee on
Education, Research and Technology,
Parliament Building,
NAIROBI.

‘Thro’

The Clerk National Assembly
NAIROBI.

Dear Hon Chege,

RE PENSION DUES FOR RETIRED TEACHERS

1. **NAKURU HCCC 65 OF 2006-SIMON P KAMAU &19 OTHERS VS. TEACHERS SERVICE COMMISSION.**
2. **NAKURU CIVIL APPEAL NO 300 OF 2009 TEACHERS SERVICE COMMISSION VS. SIMON P KAMAU &19 OTHERS.**

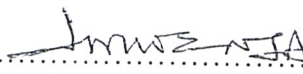

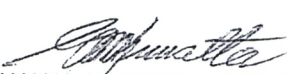
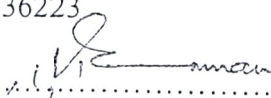

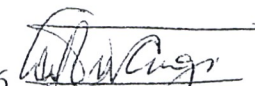
We the plaintiffs on behalf of the retired teachers covered by the above two mentioned judgements and beneficiaries of several court orders, which have been ruled in our favour and never implemented, do hereby wish to humbly make this formal application to appear before your committee in order to.

- a) Present all the relevant documents relating to the case for your perusal.
- b) Shed light on the subject of non-payment of the pension dues to the decree holders.

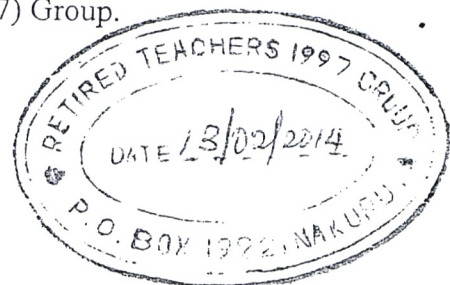
We fall under the category of old members of the society whose rights are enshrined in the constitution part 3 section 57.

We hope and trust that you will exercise your legal and constitutional mandate and have compassion on these senior citizens and give us a hearing.

Yours faithfully

1. 	2. 	3. 
Joseph M.N. Mwenja. 0722-636223	David K. Kimani.	G. M. Kimatta.
4. 	5. 	6. 
S.P. Kamau.	Karanja Waweru.	Patrick W. Mwangi

Executive Committee for and on behalf of the Retired Teachers (1997) Group.
The decree holders.



CONFIDENTIAL

MINISTRY OF FINANCE



THE PENSIONS DEPARTMENT
THE TREASURY
P.O. Box 20191-00100
NAIROBI, KENYA

Telegraphic Address: "FINANCE", Nairobi

Telephone: Nairobi 252299

When replying please quote

Ref. No.
and date

....., 20.....

REF: EPN/1/92/10 (TSC)

21 DECEMBER 2010

Mr. S. M. Kavisi, OGW
Ag. Secretary/Chief Executive
Teachers Service Commission
Nairobi

21 DEC 2010

RE: PENSION DUES FOR RETIRED TEACHERS (1997-2003)
NAKURU COURT OF APPEAL CASE NO. 300 OF 2009

Further to discussions held with your team on 30 November 2010, we have revised the estimate for the captioned award and arrived at a figure of KShs.16.7 billion as per the appended schedules.

However, The Treasury has directed that we await interpretation by the Attorney General's office before further action herein. We will keep you updated on new developments.

Anne K. Mugo, MBS

cc. PS/Treasury

- for information.

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SUMMARY- ESTIMATE TEACHERS PENSION ARREAR ARISING FROM LEGAL NOTICE NO. 534/1997

Appendix 1

Year Retired	No. of Teachers	Monthly Pen. Arrears	Lumpsum Arrears	Total Arrears Kshs	Kpounds
1997	3849	-	-	-	-
1998	5019	805,079,882.81	429,375,937.50	1,234,455,820.31	61,722,791
1999	6079	1,887,754,612.50	1,094,350,500.00	2,982,105,112.50	149,105,256
2000	5068	2,176,597,729.69	1,381,966,812.50	3,558,564,542.19	177,928,227
2001	4537	2,224,111,500.00	1,560,780,000.00	3,784,891,500.00	189,244,575
2002	4927	2,144,510,156.25	1,681,968,750.00	3,826,478,906.25	191,323,945
2003	1603	674,863,101.56	599,878,312.50	1,274,741,414.06	63,737,071
TOTAL	31,082	9,912,916,982.81	6,748,320,312.50	16,661,237,295.31	833,061,864.77

Total 1997 to 1999

4,216,560,932.81

Total 2002 to 2003

5,101,220,320.31

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ESTIMATE TEACHERS PENSION ARREARS ARISING FROM LEGAL NOTICE NO. 534/1997

ESTIMATE OF LUMP SUM DUE

Appendix 2

Cadre	Year	Retired Teachers	Prd of Service	1997 Salary	Salary Due	Lumpsum Paid	Lumpsum Due	Lumpsum Arrears
P2/P3/P4 Teachers*								
	1997	642	300	3771	3771			
	1998	847	300	3771	4704	151,311,375.00	151,311,375.00	
	1999	1,014	300	3771	5700	199,627,312.50	249,018,000.00	49,390,687.50
	2000	845	300	3771	6579	238,987,125.00	361,237,500.00	122,250,375.00
	2001	800	300	3771	7353	199,155,937.50	347,453,437.50	148,297,500.00
	2002	920	300	3771	7353	188,550,000.00	367,650,000.00	179,100,000.00
	2003	267	300	3771	7353	216,832,500.00	422,797,500.00	205,965,000.00
		5,335				62,928,562.50	122,703,187.50	59,774,625.00
						1,257,392,812.50	2,022,171,000.00	764,778,187.50
P1 Teachers								
	1997	2,566	300	5484	5484			
	1998	3,372	300	5484	6771	879,496,500.00	879,496,500.00	
	1999	4,052	300	5484	8250	1,155,763,000.00	1,426,988,250.00	271,235,250.00
	2000	3,379	300	5484	9731	1,388,823,000.00	2,089,312,500.00	700,489,500.00
	2001	3,024	300	5484	10995	1,158,152,250.00	2,055,065,562.50	896,913,312.50
	2002	3,284	300	5484	10995	1,036,476,000.00	2,078,055,000.00	1,041,579,000.00
	2003	733	300	5484	10995	1,125,591,000.00	2,256,723,750.00	1,131,132,750.00
		20,410				251,235,750.00	503,708,437.50	252,472,687.50
						6,995,527,500.00	11,289,350,000.00	4,293,822,500.00
JG 'K' to 'R' Teachers								
	1997	641	300	7722	7722			
	1998	800	300	7722	9897	309,362,625.00	309,362,625.00	
	1999	1,013	300	7722	12012	386,100,000.00	494,850,000.00	108,750,000.00
	2000	844	300	7722	14106	488,899,125.00	760,509,750.00	271,610,625.00
	2001	713	300	7722	15354	407,335,500.00	744,091,500.00	336,756,000.00
	2002	723	300	7722	15354	344,111,625.00	684,212,625.00	340,101,000.00
	2003	603	300	7722	15354	348,937,875.00	693,808,875.00	344,871,000.00
		5,337				291,022,875.00	578,653,875.00	287,631,000.00
						2,575,769,625.00	4,265,489,250.00	1,689,719,625.00
		31,082						
							Total Lumpsum Arrears	6,748,320,312.50

*P2 Salaries used for estimate

ESTIMATE OF MONTHLY PENSIONS DUE

Cadre	Year	Retired Teachers	Prd of Service	1997 Salary	Salary Due	No. of months up to 31.12.10	Monthly Pensions Paid	Monthly Pensions Due	Monthly Pension Arrears
P2/P3/P4 Teachers*									
	1997	642	300	3771	3771	162	306,405,534.38	306,405,534.38	
	1998	847	300	3771	4704	150	374,301,210.94	466,908,750.00	92,607,539.06
	1999	1,014	300	3771	5700	138	412,252,790.63	623,134,687.50	210,881,896.88
	2000	845	300	3771	6579	126	313,670,601.56	547,239,164.06	233,568,562.50
	2001	800	300	3771	7353	114	268,683,750.00	523,901,250.00	255,217,500.00
	2002	920	300	3771	7353	102	276,461,437.50	539,066,812.50	262,605,375.00
	2003	267	300	3771	7353	90	70,794,632.81	138,041,085.94	67,246,453.13
		5,335				90	2,022,569,957.81	3,144,697,284.38	1,122,127,326.56
P1 Teachers									
	1997	2,566	300	5484	5484	162	1,780,980,412.50	1,780,980,412.50	
	1998	3,372	300	5484	6771	150	2,167,036,875.00	2,675,602,968.75	508,566,093.75
	1999	4,052	300	5484	8250	138	2,395,719,675.00	3,604,064,062.50	1,208,344,387.50
	2000	3,379	300	5484	9731	126	1,824,089,793.75	3,236,728,260.94	1,412,638,467.19
	2001	3,024	300	5484	10995	114	1,476,978,300.00	2,961,228,375.00	1,484,250,075.00
	2002	3,284	300	5484	10995	102	1,435,128,525.00	2,877,322,781.25	1,442,194,256.25
	2003	733	300	5484	10995	90	282,640,218.75	568,671,992.19	284,031,773.44
		20,410				90	11,362,573,800.00	17,702,598,853.13	6,340,025,053.13
JG 'K' to 'R' Teachers									
	1997	641	300	7722	7722	162	626,459,315.63	626,459,315.63	
	1998	800	300	7722	9897	150	723,937,500.00	927,843,750.00	203,906,250.00
	1999	1,013	300	7722	12012	138	843,350,990.63	1,311,879,318.75	468,528,328.13
	2000	844	300	7722	14106	126	641,553,412.50	1,171,944,112.50	530,390,700.00
	2001	713	300	7722	15354	114	490,359,065.63	975,002,990.63	484,643,925.00
	2002	723	300	7722	15354	102	444,895,790.63	884,606,315.63	439,710,525.00
	2003	603	300	7722	15354	90	327,400,734.38	650,985,609.38	323,584,875.00
		5,337				90	4,097,956,809.38	6,548,721,412.50	2,450,764,603.13
		31,082							
							Total Monthly Pensions Arrears	9,912,916,982.81	
Total No. of Teachers		31,082							
GRAND TOTAL - LUMP SUM & MONTHLY ARREARS								16,661,237,295.31	

CONFIDENTIAL

P.O. Box 1922-20100
NAKURU
26th February 2013

MEMORANDUM TO THE ATTORNEY GENERAL IN RESPECT OF DELAYED PAYMENTS
OF THE RETIRED TEACHERS' EMOLUMENTS.

1. NAKURU HCCC NO65/2006 SIMON P KAMAU & 19 OTHERS VS. TEACHERS SERVICE COMMISSION.
2. NAKURU CIVIL APPEAL NO 300 OF 2009-TEACHERS SERVICE COMMISSION VS. SIMON P KAMAU & 19 OTHERS.

We refer to several assurances regarding the above subject matter, following candid and frank discussions on this grave matter. You have on several occasions made serious commitments and undertaking to use your good office to have this claim settled once and for all. Of great concern is a letter you wrote to the chairperson of Parliamentary Departmental Committee on Education Research and Technology whereby you assured the committee that you will seek Judicial intervention by filing an application in court after receiving specific details about the implementation of the package contained in legal notice 534 gazetted on 11th November 1997. We find this position most absurd and misleading due to the fact that you assured us on 18th July 2012 in your chambers that there was no legal issue regarding the payment and that you had advised the Government to comply with the Judgements and Court orders and pay the dues without further delay. Further more the Appellate Court judgement is very clear even to a layman that there would be not further interpretation.

As the custodian of the rule of law and defender of public interest you are duty bound to exercise your authority to have the dues paid immediately. Refer to a letter we wrote to you on 7th September 2012 and copied to the Controller of Budget and our lawyer Kimatta & Co advocates. Another one written to the Controller of Budget and copied to you and our lawyer. On 3rd October 2012 we wrote to the minister for Finance and copied to you, the Controller of Budget and our lawyer. (Attached herein are the copies of the said letters) It is apparent that you are playing a hide and seek game whose motive is not clear to us. However what is crystal clear to us is that the highest degree of impunity is evident in as far as this issue is concerned. We wish to point out that we have run out of patience and will result to any available means even if it means camping at your office until all our dues are paid, even if it means some dying while waiting for payment. We trust and believe that this money will be paid with immediate effect and that this memorandum will reach the offices concerned as far as this issue is concerned.

Yours faithfully

Joseph M.N Mwenja
Chairman R.T 1997 Group

C.C. 

1. The Permanent Secretary
Ministry of Finance
NAIROBI
2. The Secretary to the Cabinet
Office of the President
3. Controller of Budget
NAIROBI
4. Kimatta & Company Advocates
NAKURU

(9)

Retired Teachers (1997) Group Office
P.O. Box 1922-20100
NAKURU
7th September 2012

The Hon. Attorney Generals Chambers
P.O. Box: 40112-00100
NAIROBI

Dear Sir,

RE: PENSION DUES FOR RETIRED TEACHERS 1997-2003

NAKURU HCCC NO 65 OF 2007-SIMON P. KAMAU & 19 OTHERS VS TEACHERS
SERVICE COMMISSION

NAKURU CIVIL APPEAL NO 300 OF 2009-TEACHERS SERVICE COMMISSION
VS SIMON P. KAMAU & 19 OTHERS

We refer to our first visit to your office on 18th July 2012 where you met the Executive Committee members who sought assistance from you as far as their pension dues were concerned. You later addressed all the other teachers in your chambers and promised to facilitate a meeting between ourselves, our lawyer and the Minister and P.S Finance week beginning 23rd July 2012 for the purpose of facilitating full payments of our long awaited dues.

Having waited for a fortnight and failed to get a word from you as promised we decided to call again in your office on 1st August 2012. While in Nairobi you prevailed upon our lawyer to request us not to come and meet you in your office because you had made arrangements for the release of the money before 3rd August 2012 because the money had been budgeted for our payment in 2011/2012 and 2012/2013 financial budget.

Having seen that no money was forthcoming as again promised by you we made a third visit to your office on 5th September 2012 and personally met you. In your address to us you referred us to a letter you had written to the Controller of Budget and that the matter was within her knowledge. We took the letter to her and held a discussion. She told us that she had written to you on 8th August 2012 and you had not responded to that letter and until you did that there was little she could do. She promised to communicate with you and give us a feed back on or before 24th September 2012. This purely left the ball in your court. If the law office cannot be able to assist the poor Retired Teachers to get their rightfully earned money and the court having ordered that the money be released, we shall be left with no other alternative but to seek for audience from the office of the Prime Minister. We expect to get this money in the next 14 days from the date of this letter.

We fall under the category of old members of the society whose rights are enshrined in the constitution Part 3 Section 57

By withholding the payments of our dues for whatever reason and taking into consideration the legal hurdles that we have gone through and surmounted is tantamount to consigning us to serfitude and total denial of our fundamental human rights at our sunset years.

Kindly sir, we are asking you to exercise your legal and constitutional powers and have compassion on these senior citizens and use your good office to facilitate the payment of all our dues.

Yours faithfully

Joseph M.N. Mwenja
Chairman
For and on behalf of
The retired teachers (1997) group

C.C
The Controller of Budget
Office of the controller of Budget
Bima House
NAIROBI

Kimatta & Co Advocates
Equator House
P.O. Box 3300-20100
NAKURU

Retired Teachers (1997) Group Office
P.O. Box 1922-20100
NAKURU
7th September 2012

The Controller of Budget
Bima House 12th floor
Harambee Avenue
NAIROBI

Dear,

RE: PENSION DUES FOR RETIRED TEACHERS (1997-2003)

Reference is made to our visit in your office on 5th September 2012 where we were warmly welcomed by you and your staff. It is gratifying to note that we were accorded very high respect as representatives of hundreds of Retired Teachers who had travelled from all over the country to look for their pension emoluments which they believe is being withheld unjustifiably some where within the corridors of power.

After candid and lengthy deliberations it was amicably agreed that a response to your letter dated 8th August 2012 addressed to the Attorney General would be sought immediately in order to hasten the authorization of payments of decretal sum to the applicants in terms of section 21(3) of the Government proceedings Act. It was further agreed that even if the whole amount cannot be disbursed immediately, then the budgeted allocation of kshs3.34billion for the year 2011/2012 and kshs 3.6 billion for the year 2012/13 should be paid without further delay.

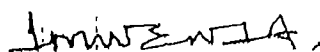
We also agreed that since the judgement in reference covers the teachers who retired between: 1st July 1997 and 30th June 2007 the question of capturing other Retired Teachers who do not follow in this bracket or other cadres of public service and the Police service does not arise.

Legal Notice No 534 of 11th November 1997 is very explicit on who should be covered by this package. We concluded our discussions by you promising that you will do all in your power to get the payment processed and disbursed as soon as you get legal response from the Attorney General. To show your commitment and compassion to our cause, you asked for our contact for ease of communication. We fixed 24th September 2012 as our scheduled meeting day in the event of nothing tangible coming out of the meeting of 5th September 2012.

At the end of it all you authorized your P/A to accompany us to assure the Retired Teachers who had converged outside your office that you would act in as far as payments of their dues was concerned on or before 24th September 2012. After she had delivered your message hundreds of the Retired Teachers went away a satisfied lot with one message of hope and expectations to the rest of the members throughout the Republic.

On behalf of the Retired Teachers who are beneficiaries of the judgments and Court orders and who are very hopeful of a positive outcome arising from our visit to your office, we are very confident that you will exercise your constitutional mandate to have the dues released without much ado. Any other delay will cause untold suffering and mental anguish to the retirees concerned. We are asking for what legally and rightfully belongs to us. PLEASE PAY US NOW

Yours faithfully



Joseph M.N Mwenja
Chairman
For and on behalf of
The retired teachers (1997) group

C.C.
The attorney general
P.O. Box 40112-00100
NAIROBI

Kimatta & Co Advocates
Equator House
P.O. Box 3300-20100
NAKURU

Retired Teachers (1997) Group office
P.O. Box 1922-20100
Nakuru
3rd October 2012

Hon Robinson Njeru Githae, EGH, M.P.,
Minister for Finance,
Ministry of Finance,
Treasury Building,
Nairobi.

RE PENSION DUES FOR RETIRED TEACHERS (1997-2003)

- a) NAKURU HCCC NO 65 OF 2006 SIMON P KAMAU & 19 OTHERS VS. TEACHERS SERVICE COMMISSION.
- b) NAKURU CIVIL APPEAL NO 300 OF 2009-TEACHERS SERVICE COMMISSION VS SIMON P KAMAU & 19 OTHERS.

We refer to a letter addressed to you by us on 8th May 2012 and copied to the Minister for Education, Attorney General and to all members of Parliament through the Speaker of the National Assembly.

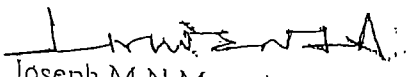
The genesis of our letter is the non payment of our long awaited emoluments which is long overdue, having gone through all the legal procedures and culminating in the judgement of the High Court and the Court of Appeal in our favour. We instituted a judicial review having awaited for payment to no avail, and obtained court orders, compelling the defendant to hasten the payments to avoid legal consequences. To date no payment has been effected despite the fact that we have even obtained an order of Mandamus to that effect.

We are aware of an alleged legal hitch which is severally cited by the Controller of Budget which we believe by now has been addressed by the Attorney General and hence we do not find any plausible reason why our dues cannot be disbursed immediately through our lawyer as provided for by section 21(3) of the Government Proceedings Act. It is also worthy noting that this matter has been exhaustively discussed in Parliament on several occasions and conclusive decisions regarding payments arrived at.

On 12th June 2012 Parliament went a step further and passed a motion sponsored by the Hon. John Pesa M.P. for Migori, directing that a decretal sum of 17.6 billion be paid to the affected teachers without further ado. Sir we are left wondering what has caused the delay of our payments. Being senior citizens who have immensely contributed to the development of education policies and programmes in this Republic, we would like to impress upon you that the claimants are elderly men and women most of whom are on medication as a result of myriad ailments on account of their advanced age.

Failing to honour court orders and releasing their unpaid dues is causing them untold physical suffering and mental anguish with devastating results. Please be passionate enough and facilitate the release of our dues forthwith. The buck stops with you

Yours faithfully


Joseph M.N Mwenja
Chairman
Retired teachers (1997) Group

The Hon. Attorney General
P.O. Box 40112-00100
NAIROBI

The Controller of Budget
Bima House 12th floor
Harambee Avenue
NAIROBI

Kimatta & Co Advocates
Equator House
P.O. Box 3300-20100
NAKURU

OFFICE

23/03/2012

5

Speaker
National Assembly
NAIROBI

We the plaintiffs on behalf of the Retired Teachers wish to appeal to the Parliamentary Committee on Education to summon the following

1. Minister for Finance
2. P.S Finance
3. Attorney General

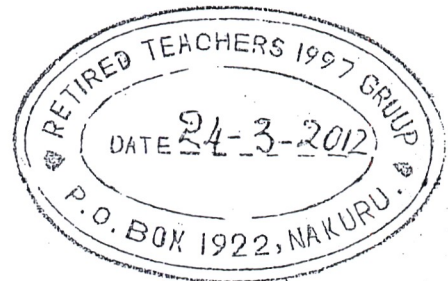
To show cause to the committee as to why they have failed to settle our dues following numerous Court orders and promises to Parliament.

Yours faithfully

1. SIMON P KAMAU
2. PATRICK W. MWANGI
3. JOSEPH M.N MWENJA
4. AMOS K THUO
5. DAVID KAMAU
6. GEDRAPH MKIMATTA
7. MARY T.N WAINAINA
8. ROBERT GITAU
9. MARY NDUNG'U
10. KENNETH A.N WANG'OMBE
11. MAGDALINE A.OMONDI
12. KARANJA WAWERU
13. LINAH C MARITIM
14. CYRUS W.G WAMBIA
15. ROP RERIMOI DICK
16. MATHEW NAIBEI
17. GEORGE K KIBIDI
18. JOHN KIMANI NJOROGE
19. STEPHEN GICHUKI KANAI
20. ANN TUMOM LIVINGSTONE

Simon P Kamau
.....
Patrick W Mwangi
.....
Joseph M.N Mwenja
.....
Amos K Thuo
.....
David Kamau
.....
Gedraph Mkimatta
.....
Mary T.N Wainaina
.....
Robert Gitau
.....
Mary Ndung'u
.....
Kenneth A.N Wang'ombe
.....
DECEASED
Magdaline A. Omondi
.....
Karanja Waweru
.....
Linah C Maritim
.....
Cyrus W.G Wambia
.....
Rop Rerimoi Dick
.....
DECEASED
Mathew Naibei
.....
George K Kibidi
.....
John Kimani Njoroge
.....
Stephen Gichuki Kanai
.....
.....

For and on behalf of all
Retired Teachers represented in this matter



OPEN LETTER TO ALL HON. MEMBERS OF PARLIAMENT

We the retired teachers under the auspices of retired teachers 1997 Group who retired between July 1997 and 2007 numbering 52,338 who are beneficiaries of Legal Notice No.534 of 11th November 1997 and also judgement and decree holders of HCCC No. 65/06 and Court of Appeal Case No.300/09 do hereby wish to thank you most profoundly for having taken keen interest in this teachers case, right from the judgement delivered in our favour, in the High Court at Nakuru on 23rd October 2008 and subsequent judgement in the Court of Appeal sitting in Nakuru, which upheld the Superiors Court judgement on 12th November 2010.

It is gratifying to note that on 15th April 2010 barely a month after judgement, Hon. John Pesa M.P for Migori asked the Minister for Education to state the Ministry's position on the dues of thousands of teachers who retired between 1997 and 2007 and are yet to receive money as ordered by the High Court. He also asked why the TSC deliberately refused to implement court order issued by the High Court in Nakuru.

We also note with great satisfaction and appreciation that all along you have stood by us in the struggle of looking for our lost money. As a testimony of your concern and commitment to our struggle, the question on delayed payments of our dues has been asked several times on different occasions in the August house. The highlights of this question and answer session began immediately the judgement of the civil suit No 65/06 was delivered on 23rd October 2008.

Just to quote some of the dates when this matter was raised in parliament, the following honourable members raised this issue since it could not be raised by all of you.

23rd June 2010-Hon Mungatana and Hon. Olago raised the retirees issue in parliament

7th Dec. 2010-Hon. Pesa Hon.Rutere, Hon James Maina Kamau raised this issue.

1st Nov. 2011- Hon.Pesa, Hon Kabogo, Hon Njoroge Baiya and Hon. M. Karua raised the payment issue.

8th Nov. 2011- Hon. Pesa, Hon Kabogo, Hon. M. Karua raised the payment issue.

22nd Feb 2012-Hon. Pesa, Hon B. Khalwale, Hon. Olago, Hon.M.Karua, Hon. G. Imanyara and Hon. Koech raised the same issue on payments.

The Hon. Koech confirmed to parliament that as a committee and together with the entire parliament, you approved the Kshs. 3.34 billion for our [[payment and this was out of Kshs.16 billion plus what we required. In answer the Minister for Finance promised as an honourable member and a gentleman to undertake to go to the office of the Attorney General's and wait for legal opinion so that this matter moves ahead. He even said the money is there.

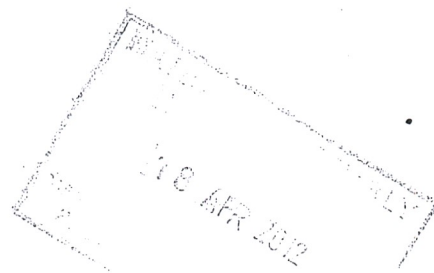
Hon. Members these retired teachers are passing away at an alarming rate because of poor health due to lack of funds to buy drugs and for their families upkeep. Yet a lot of their money is lying somewhere. We are therefore appealing to you to continue being our voice as our sons and daughter until we get all these dues. We fear the money might be returned to the Treasury which will cause more delay and suffering to the claimants and their dependants and beneficiaries. We shall forever remain grateful and pray that the Almighty GOD gives all of you good health, sound mind and bless all your FUTURE undertakings. We promise to stand by you during the general elections because you have always stood with us during the hour of our need.

Written and compiled by the plaintiffs for and on behalf of all others.

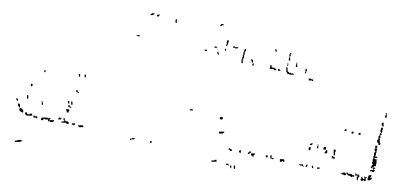
SIGNED: J.M.N. Mwenja - CHAIRMAN RETIRED TEACHERS (1997) GROUP

13-04-2012.

1. HON. BENJAMIN KIPKIRUI LANGAT
MEMBER OF PARLIAMENT - AINAMOI
2. HON. SALLY JEMNGETICH KOSGEI
MEMBER OF PARLIAMENT - ALDAI
3. HON. EDWIN OCHIENG YINDA
MEMBER OF PARLIAMENT - ALEGO/USONGA
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MEMBER OF PARLIAMENT - AMAGORO
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MEMBER OF PARLIAMENT - BAHARI
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7. HON. ASMAN ABONGOTUM KAMAMA
MEMBER OF PARLIAMENT - BARINGO WEST
8. HON. WILLIAM C. KIPKORIR
MEMBER OF PARLIAMENT - BARINGO NORTH
9. HON. CHARLES CHERUIYOT KETER
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10. HON. CHRISTOPHER MOGERE OBURE
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12. HON. BEATRICE CHERONO KONES
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14. HON. OGINGA, OBURU
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15. HON. ABABU NAMWAMBA
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16. HON. BIFWOLI WAKOLI SYLVESTER
MEMBER OF PARLIAMENT - BUMULA
17. HON. ABDI NASIR NUH
MEMBER OF PARLIAMENT - BURA



18. HON. FRANKLIN BETT
MEMBER OF PARLIAMENT - BURET
19. HON. OPARANYA, WYCLIFFE AMBETSA
MEMBER OF PARLIAMENT - BUTERE
20. HON. ALFRED BWIRE ODHIAMBO
MEMBER OF PARLIAMENT - BUTULA
21. HON. GITOBU IMANYARA
MEMBER OF PARLIAMENT - CENTRAL IMENTI
22. HON. KAJEMBE, RAMATHAN SEIF
MEMBER OF PARLIAMENT - CHANGAMWE
23. HON. ISSAC KIPRONO RUTTO
MEMBER OF PARLIAMENT - CHEPALUNGU
24. HON. JOSHUA SEREM KUTUNY
MEMBER OF PARLIAMENT - CHERANGANY
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29. HON. RUTO, SAMOEI WILLIAM K
MEMBER OF PARLIAMENT - ELDORET NORTH
30. HON. PERIS CHEPCHUMBA
MEMBER OF PARLIAMENT - ELDORET SOUTH
31. HON. FERDINAND NDUNGU WAITITU
MEMBER OF PARLIAMENT - EMBAKASI
32. HON. ELIJAH KIPTARBEI LAGAT
MEMBER OF PARLIAMENT - EMGWEN
33. HON. WILBER OTTICHILO KHASILWA
MEMBER OF PARLIAMENT - EMUHAYA



34. HON. SUGOW, AHMED ADEN
MEMBER OF PARLIAMENT - FAFI
35. HON. PAUL OTUOMA NYONGESA
MEMBER OF PARLIAMENT - FUNYULA
36. HON. MUTAVA MUYIMI
MEMBER OF PARLIAMENT - GACHOKA
37. HON. DHADHO GADDAE GOGHANA
MEMBER OF PARLIAMENT - GALOLE
38. HON. FRANCIS S. K. BAYA
MEMBER OF PARLIAMENT - GANZE
39. HON. MUNGATANA, DANSON BUYA
MEMBER OF PARLIAMENT - GARSEN
40. HON. KENNETH, PETER
MEMBER OF PARLIAMENT - GATANGA
41. KENYATTA UHURU
MEMBER OF PARLIAMENT - GATUNDU SOUTH
42. HON. MIDIWO, WASHINGTON JAKOYO
MEMBER OF PARLIAMENT - GEM
43. HON. KARUA, MARTHA WANGARI
MEMBER OF PARLIAMENT - GICHUGU
44. HON. PETER NJOROGE BAIYA
MEMBER OF PARLIAMENT - GITHUNGURI
45. HON. JOHN MBADI NGÓNGÓ
MEMBER OF PARLIAMENT - GWASI
46. HON. KHANIRI, GEORGE MUNYASA
MEMBER OF PARLIAMENT - HAMISI
47. HON. NTOITHA M"MITIARU
MEMBER OF PARLIAMENT - IGEMBE NORTH
48. HON. FRANKILIN MITHIKA LINTURI
MEMBER OF PARLIAMENT - IGEMBE SOUTH
49. HON. HAJI YUSUF MOHAMMED
MEMBER OF PARLIAMENT - LIARA
50. HON. BONI KHALWALE (DR.)

Signature:
P. O. Box 41842 NAIROBI
178 APR 2022

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51. HON. KUTI, MOHAMMED. ABDI
MEMBER OF PARLIAMENT - ISIOLO NORTH
52. HON. ABDUL BAHARI ALI
MEMBER OF PARLIAMENT - ISIOLO SOUTH
53. HON. WILLIAM KABOGO GITAU
MEMBER OF PARLIAMENT - JUJA
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MEMBER OF PARLIAMENT - KACHELIBA
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MEMBER OF PARLIAMENT - KAJIADO CENTRAL
57. HON. SAITOTI. GEORGE
MEMBER OF PARLIAMENT - KAJIADO NORTH
58. HON. SAMUEL KAZUNGU KAMBI
MEMBER OF PARLIAMENT - KALOLENI
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MEMBER OF PARLIAMENT - KATHIANI
68. HON. CHEPKITONY, LUCAS KIPKOSGEI
MEMBER OF PARLIAMENT - KEIYO NORTH
69. HON. JACKSON KIPLAGAT KIPTANUI
MEMBER OF PARLIAMENT - KEIYO SOUTH
70. HON. EVANS BULIMO AKULA
MEMBER OF PARLIAMENT - KHWISERO
71. HON. STANLEY MUNGA
MEMBER OF PARLIAMENT - GITHUNGURI KIAMBAA
72. HON. PHILIP KYALO KALOKI
MEMBER OF PARLIAMENT - KIBWEZI
73. HON. NEMESYUS WARUGONGO
MEMBER OF PARLIAMENT - KIENI
74. HON. JAMLECK IRUNGU KAMAU
MEMBER OF PARLIAMENT - KIGUMO
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MEMBER OF PARLIAMENT - KIHARU
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MEMBER OF PARLIAMENT - KILOME
79. HON. DAVID ESELI SIMIYU
MEMBER OF PARLIAMENT - KIMILILI
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81. HON. DAVID MWANIKI NGUGI
MEMBER OF PARLIAMENT - KINANGOP
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85. HON. HASSAN ALI JOHO
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MEMBER OF PARLIAMENT - KISUMU RURAL

87. HON. SHABBIR AHMED SHAKEEL AHMED
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MEMBER OF PARLIAMENT - KISUMU TOWN WEST

89. HON. NGILU. CHARITY KALUKI
MEMBER OF PARLIAMENT - KITUT CENTRAL

90. HON. ISAAC MULATYA MUOKI
MEMBER OF PARLIAMENT - KITUI SOUTH

91. HON. CHARLES MUTISYA NYAMAI
MEMBER OF PARLIAMENT - KITUI WEST

92. HON. RICHARD MOMOIMA ONYONKA
MEMBER OF PARLIAMENT - KITUTU CHACHE

93. HON. WALTER NYAMBATI
MEMBER OF PARLIAMENT - KITUTU MASABA

94. HON. JULIUS KIPYEGON KONES
MEMBER OF PARLIAMENT - KONOIN

95. HON. ZAKAYO KIPKEMOI CHERUIYOT
MEMBER OF PARLIAMENT - KURESOI

96. HON. MACHAGE WILFRED GISUKA
MEMBER OF PARLIAMENT - KURIA

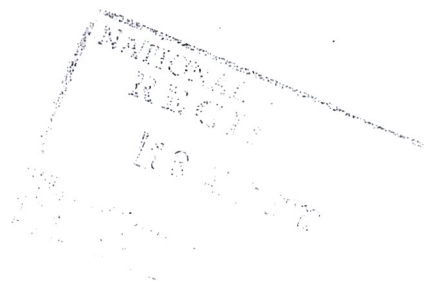
97. HON. WEKESA. NOAH MUHALANGANGÁ
MEMBER OF PARLIAMENT - KWANZA

98. HON. MAALIM FARAH
MEMBER OF PARLIAMENT - LAGDERA

99. HON. KIUNJURI, FESTUS MWANGI
MEMBER OF PARLIAMENT - LAIKIPIA EAST

18 APR 2012

100. HON. NDIRITU MURIITHI
MEMBER OF PARLIAMENT - LAIKIPIA WEST
101. HON. JOSEPH LEKUTON
MEMBER OF PARLIAMENT - LAISAMIS
102. HON. ABU MOHAMED CHIABA
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MEMBER OF PARLIAMENT - LARI
106. HON. MWALIMU MASUDI MWAHIMA
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107. HON. PETER MUNGAI MWATHI
MEMBER OF PARLIAMENT - LIMURU
108. HON. JUDAH KATOO METITO
MEMBER OF PARLIAMENT - LOITOKITOK
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110. HON. ATANAS MANYALA KEYA
MEMBER OF PARLIAMENT - LURAMBI
111. HON. VICTOR KIOKO MUNYAKA
MEMBER OF PARLIAMENT - MACHAKOS TOWN
112. HON. AMASON KINGI JEFFAH
MEMBER OF PARLIAMENT - MAGARINI
113. HON. GIDION KIOKO MBUVI
MEMBER OF PARLIAMENT - MAKADARA
114. HON. PETER L.N. KIILU
MEMBER OF PARLIAMENT - MAKUENI
115. HON. SHITANDA, PETER SOITA
MEMBER OF PARLIAMENT - MALAVA
116. HON. MAITHA GIDEON MUNGARO



- MEMBER OF PARLIAMENT - MALINDI
117. HON. HUSSEIN MOHAMED ABDIKADIR
MEMBER OF PARLIAMENT - MANDERA CENTRAL
118. HON. MOHAMED HUSSEIN ALI
MEMBER OF PARLIAMENT - MANDERA EAST
119. HON. MOHAMED, MUHAMUD MAALIM
MEMBER OF PARLIAMENT - MANDERA WEST
120. HON. EMILIO MUREITHI KATHURI
MEMBER OF PARLIAMENT - MANYATTA
121. HON. MBAU, ELIAS PETER
MEMBER OF PARLIAMENT - MARAGWA
122. HON. KILIMO, LINAH JEBT
MEMBER OF PARLIAMENT - MARAKWET EAST
123. HON. BOAZ KIPCHUMBA KAINO
MEMBER OF PARLIAMENT - MARAKWET WEST
124. HON. MBAI, BENSON ITWIKU
MEMBER OF PARLIAMENT - MASINGA
125. HON. CLEMENT MUCHIRI WAMBUGU
MEMBER OF PARLIAMENT - MATHIOYA
126. HON. EMPRAIM MWANGI MAINA
MEMBER OF PARLIAMENT - MATHIRA
127. HON. CHIRAU ALI MWAKWERE
MEMBER OF PARLIAMENT - MATUGA
128. HON. WERE, DAVID AOKO
MEMBER OF PARLIAMENT - MATUNGU
129. HON. KAJWANG', GERALD OTIENO
MEMBER OF PARLIAMENT - MBITA
130. HON. MUTULA KILONZO
MEMBER OF PARLIAMENT - MBOONI
131. HON. JOHN PESA DACHE
MEMBER OF PARLIAMENT - MIGORI
132. HON. HELLEN JEPKEMOI SAMBILI
MEMBER OF PARLIAMENT - MOGOTIO

133. HON. JOSEPH NGANGA KIUNA
MEMBER OF PARLIAMENT - MOLO
134. HON. DAVID K. KOECH
MEMBER OF PARLIAMENT - MOSOP
135. HON. MOHAMUD MOHAMED ALI
MEMBER OF PARLIAMENT - MOYALE
136. HON. OMAR MBWANA ZONGA
MEMBER OF PARLIAMENT - MSAMBWENI
137. HON. FRED CHESEBE KAPONDI
MEMBER OF PARLIAMENT - MT. ELGON
138. HON. OLWENY, PATRICK AYIECHO
MEMBER OF PARLIAMENT - MUHORONI
139. HON. KABANDO WA KABANDO
MEMBER OF PARLIAMENT - MUKURWEINI
140. HON. BENJAMIN JOMO WASHALI
MEMBER OF PARLIAMENT - MUMIAS
141. HON. KILONZO, JULIAS KIEMA
MEMBER OF PARLIAMENT - MUTITO
142. HON. BALALA, MOHAMMED NAJIB
MEMBER OF PARLIAMENT - MVITA
143. HON. DANIEL MUTUA MUOKI
MEMBER OF PARLIAMENT - MWALA
144. HON. ANDREW CALIST MWATELA
MEMBER OF PARLIAMENT - MWATATE
145. HON. PETER NJUGUNA GITAU
MEMBER OF PARLIAMENT - MWEA
146. HON. MUSYOKA, STEPHEN KALONZO
MEMBER OF PARLIAMENT - MWINGI NORTH
147. HON. MUSILA, DAVID
MEMBER OF PARLIAMENT - MWINGI SOUTH
148. HON. JOHN MICHAEL NJENGA MUTUTHO
MEMBER OF PARLIAMENT - NAIVASHA
149. HON. LEE MAIYANI KINYANJUI

NAIWA
18 APR 2012
Signature:
P. O. ENOCH PAIRONI

- MEMBER OF PARLIAMENT - NAKURU TOWN
150. HON. OKEMO, CHRYSANTHUS
MEMBER OF PARLIAMENT - NAMBALE
151. HON. NTIMAMA, WILLIAM RONKORUA OLE
MEMBER OF PARLIAMENT - NAROK NORTH
152. HON. NKOIDILA OLE LANKAS
MEMBER OF PARLIAMENT - NAROK SOUTH
153. HON. JEREMIAH NGAYU KIONI
MEMBER OF PARLIAMENT - NDARAGWA
154. HON. JOSHUA ORWA OJODE
MEMBER OF PARLIAMENT - NDHIWA
155. HON. GITHAE ROBINSON NJERU
MEMBER OF PARLIAMENT - NDIA
156. HON. JAPHET M. KAREKE MBIUKI
MEMBER OF PARLIAMENT - NITHI
157. HON. FRANCIS CHACHU GANYA
MEMBER OF PARLIAMENT - NORTH HERRING
158. HON. SILAS MURUKI RUTEERE
MEMBER OF PARLIAMENT - NORTH Imenti
159. HON. WILFRED MORIASI OMBUI
MEMBER OF PARLIAMENT - NORTH MUGIRANGO/BORABU
160. HON. POLLYINS OCHIENG ANYANGO
MEMBER OF PARLIAMENT - NYAKACH
161. HON. FREDRICK OTIENO OUTA
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162. HON. ROBERT ONSARE MONDA
MEMBER OF PARLIAMENT - NYARIBARI CHACHE
163. HON. SAMSON KEGENGO ONGERI
MEMBER OF PARLIAMENT - NYARIBARI MASABA
164. HON. PETER EDICK OMONDI ANYANGA
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165. HON. ESTHER MURUGI MATHENGE
MEMBER OF PARLIAMENT - NYERI TOWN

166. HON. ERASTUS KIHARA MUREITHI
MEMBER OF PARLIAMENT - OL' KALAU
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MEMBER OF PARLIAMENT - OTHAYA
168. HON. MARTIN OTIENO OGINDO
MEMBER OF PARLIAMENT - RANGWE
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170. HON. LUKA KIPKORIR KIGEN
MEMBER OF PARLIAMENT - RONGAI
171. HON. DALMAS ANGANGO OTIENO
MEMBER OF PARLIAMENT - RONGO
172. HON. CECILY MUTITU MBARIRE
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173. HON. WYCLIFFE MUSALIA MUDAVADI
MEMBER OF PARLIAMENT - SABATIA
174. HON. EUGENE LUDOVIC WAMALWA
MEMBER OF PARLIAMENT - SABOTI
175. HON. HUSSEIN TARRY SASURA
MEMBER OF PARLIAMENT - SAKU
176. HON. RAPHAEL LAKALEI LETIMALO
MEMBER OF PARLIAMENT - SAMBURU EAST
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MEMBER OF PARLIAMENT - SAMBURU WEST
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MEMBER OF PARLIAMENT - SHINYALU
179. HON. LENNY MAXWELL KIVUTI
MEMBER OF PARLIAMENT - SIAKAGO
180. HON. WILSON MWOTINY LITOLE
MEMBER OF PARLIAMENT - SIGOR
181. HON. WETANGULA, MOSES MAKISA
MEMBER OF PARLIAMENT - SIRISIA
182. HON. JOYCE CHERONO LABOSO

18 APR 2012

Signature: _____
P. O. Box _____

- MEMBER OF PARLIAMENT - SOTIK
183. HON. MURUNGI, KIRAITU
MEMBER OF PARLIAMENT - SOUTH IMENTI
184. HON. MANSON NYAMWEYA
MEMBER OF PARLIAMENT - SOUTH MUGIRANGO
185. HON. MARGARET WANJIRU KARIUKI
MEMBER OF PARLIAMENT - STAREHE
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MEMBER OF PARLIAMENT - SUBUKIA
187. HON. SHABAN, NAOMI NAMSI
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189. HON. ALEX MUTHENGI MBURI MWIRU
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190. HON. MUNYA PETER GATIRAU
MEMBER OF PARLIAMENT - TIGANIA EAST
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MEMBER OF PARLIAMENT - TIGANIA WEST
192. HON. KOSGEY, HENRY KIPRONO
MEMBER OF PARLIAMENT - TINDERET
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MEMBER OF PARLIAMENT - TURKANA CENTRAL
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MEMBER OF PARLIAMENT - TURKANA NORTH
195. HON. JOSEPHAT NANOK KOLI
MEMBER OF PARLIAMENT - TURKANA SOUTH
196. HON. AGGREY JAMES ORENGO
MEMBER OF PARLIAMENT - UGENYA
197. HON. CYPRIAN OJWANG OMOLLO
MEMBER OF PARLIAMENT - URIRI
198. HON. YUSUFU KIFUMA CHANZU
MEMBER OF PARLIAMENT - VIHIGA

199. HON. DANSON MWAZO MWAKULEGWA
MEMBER OF PARLIAMENT - VOI
200. HON. IBRABIM ELMI MOHAMED
MEMBER OF PARLIAMENT - WAJIR EAST
201. HON. HUSSEIN GABBOW MOHAMMED
MEMBER OF PARLIAMENT - WAJIR NORTH
202. HON. MAHAMUD MUHUMED SIRAT
MEMBER OF PARLIAMENT - WAJIR SOUTH
203. HON. ADAN KEYNAN WEHLIYE
MEMBER OF PARLIAMENT - WAJIR WEST
204. HON. WEKESA B.A. SAMBU
MEMBER OF PARLIAMENT - WEBUYE
205. HON. JAMES ONDICHO GESAMI
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206. HON. GUMO, FREDRICK OMULO
MEMBER OF PARLIAMENT - WESTLANDS
207. HON. THOMAS LUHINDI MWADEGHU
MEMBER OF PARLIAMENT - WUNDANYI
208. HON. KILONZO CHARLES MUTAVI
MEMBER OF PARLIAMENT - YATTA
209. HON. YAKUB MOHAMMAD DOR
210. HON. NYAMWEYA GEORGE OMARI
211. HON. ABDALLA AMINA ALI
212. HON. MUSIKARI KOMBO
213. HON. JOE NYAGA

DATED AT NAKURU THIS 17th DAY OF April 012

RECEIVED BY _____ (Signature _____)

ON BEHALF OF ALL THE HONOURABLE MEMBERS OF PARLIAMENT.

1042 NAT

17

DELAY IN PAYMENT OF RETIREMENT BENEFITS
TO RETIRED TEACHERS

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, on 14th February, this year the Member for Migori Mr. John Pesa sought a Ministerial Statement from the Acting Minister for Finance on the delay in payment of retirement benefits to teachers who had retired between 1987 and 2003. In particular, he wanted the Minister to address the following issues:

(a) Delay in payment of Kshs3.34 billion in the current financial year to the concerned retired teachers.

(b) The number of teachers whose revised pension details have been prepared by the Teachers Service Commission and submitted to the Pensions Department for payment out of the 32,082 retired teachers that were due to benefit from the total amount of Kshs16.7 billion.

52,338
CORRECT NO.
- 42 B.N. CORRECT
SUM.

(c) Failure to effect the retired teachers' payments before the court case.

Mr. Speaker, Sir, the Government allocated Kshs3.34 billion in the Consolidated Fund Pensions budget for the Recurrent Financial Year 2011/2012 to pay revised pension to teachers who retired between 1997 and 2003. The teachers have, however, not been paid those dues owing to a legal query raised by the Controller of Budget which required the guidance and opinion of the Attorney-General. My Ministry has, therefore, formally sought for guidance from the Attorney-General. Payment will be effected after receipt of the feedback from the Attorney-General.

Secondly, Mr. Speaker, Sir, from the foregoing, none of the pension claims for the 31,082 retired teachers due to benefit from the court award have been submitted to the pensions department by the Teachers Service Commission (TSC). The process had to be halted following the query from the Controller of Budget. The two institutions; the TSC and the Pensions Department, have already agreed on the modalities of processing payments which will commence as soon as the legal hitch is cleared and the Controller of Budget approves the withdrawal of funds from the Consolidated Fund.

Lastly, it may be noted that payment of teachers' retirement benefits did not fall under the indicated category of white elephants. The teachers had already been paid their pensions based on the last salary they earned before retirement. They subsequently went to court to have their salary matter adjudicated since the 1997 salary agreement captured in the Legal Notice No.534 of 1997 had not been honoured by the Government then in office. It may be noted that in the year 2003 the Government negotiated another agreement with the teachers and which has been fully implemented. The court therefore entered judgment in the teachers' favour which is now under implementation pending resolution of the legal hitch.

Mr. Speaker, Sir, if I may add, I am very sympathetic to the suffering of these retired teachers. It is actually embarrassing that after so many years, they have not received their pension. Some may even have died without receiving their pension. Therefore, this matter needs to be expedited as soon as we receive the opinion from the Attorney-General.

Under the Pensions Act, it says that teachers are to be paid on the last salary earned but this was a court award. The Controller of Budget just wants the interpretation

that the court award superseded the provisions of the Pensions Act. Once that is received, we are going to pay. The money is there.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. The Minister has told us that there was a court ruling. We know that the Attorney-General is not an appellant institution. Is he in order to refuse to act according to the orders of the court and purport to wait for the opinion of the Attorney-General as if the Attorney-General is a member of the Court of Appeal?

Mr. Speaker: Order! Let the Minister respond to that point of order. The Minister is able. He is a lawyer himself.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, as I said, this is merely a legal technique. Under the new dispensation, any amounts of money must be authorized by the Controller of Budget. The Controller of Budget said she will not approve any withdrawal of this amount until she gets a legal opinion from the Attorney-General.

Unfortunately, what happened is that during the canvassing of this court case, no mention was indicated of the Pensions Act. So it was like the Pensions Act was not canvassed when the court was giving this award. That is where the legal technicality is.

Mr. Speaker, Sir, I am sure we are going to sort out this so that we follow the law. This is a new dispensation and we must follow the Constitution.

Mr. Olago: On a point of order, Mr. Speaker, Sir. The Ministry of Finance and the Director of Pensions are known to dishonor court orders. This is not the first time. There are two cases which have come before this House; Msebi Oyuka and another one, who had to go through court to get their pensions. Surely, do we have to let these people who have served this country go to court to get their dues? Is it in order in these circumstances for the Minister to disregard the court order like hon. Khalwale was saying, and come to the House to start the arguments afresh when the court order is clear?

Mr. Speaker: Order, Member for Kisumu Town West! That does not pass for a point of order! You have asked a question!

Member for Gichugu, please, proceed!

We will allow three requests for clarification and we will take the Member for Gichugu first. I am sorry Member for Migori!

Minister, please, take notes.

Ms. Karua: Mr. Speaker, Sir, you will recall that in December the Minister for Finance undertook before this House to pay the retired teachers all their pensions before Christmas. The undertaking has been breached. It is now almost two months later. The Minister claims that they are waiting for an opinion from the Attorney-General. These are internal workings of the Government. Why did the Minister ensure that whatever communication they needed from the Attorney-General was delivered in good time so that he could give a comprehensive answer today? Where is documentary evidence that there are these internal queries that are preventing this payment?

Mr. Pesa: Mr. Speaker, Sir, this question was first asked through the Ministry of Education. Later on when they failed to answer, it was referred to the Ministry of Finance. It appears we are still heading to another Ministry which I think is very unfortunate to these teachers who are really suffering.

As has been said by one of the Members here; Ms. Martha Karua, the Ministry undertook before the 15th of December---

Mr. Speaker: Order, Member for Migori! We are under pressure. We must respect the rules. If the Member for Gichugu has said something why do you want to repeat it? Make a new point!

Mr. Pesa: Mr. Speaker, Sir, I just wanted to know from the Minister, using the collective responsibility within the Government, could he tell this House when they are going to pay these teachers their dues?

Mr. Imanyara: Mr. Speaker, Sir, the Minister says the money is available for paying the teachers, given that he has already failed in an undertaking to pay them by December, can he give this House an assurance that upon leaving this House this afternoon he will go and deposit that money in an interest-bearing account in the name of the Attorney-General and the TSC so that we can see he means what he says?

Mr. Speaker: We will give some latitude so that we accommodate the chair of the Committee on Education, Science and Technology.

Member for Mosop, you are the last one!

Mr. Koech: Mr. Speaker, Sir, I want to confirm to this House that as a Committee and together with the entire Parliament, we approved the Kshs3.3 billion for payment to these teachers. This is Kshs3.3 billion out of Kshs16 billion plus that the teachers require. It is absurd that we are coming to the end of the financial year before they receive this money.

Mr. Speaker, Sir, the Minister has indicated that he is waiting for the legal opinion from the Attorney-General who is within the country; I do not believe he is outside the country. Have you given him the time frame and when is it that you expect him to report back so that you are able to pay the teachers?

Mr. Speaker: Minister, please, respond. Try and be concise.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, Ms. Martha Karua asked whether the Minister has breached his undertaking. The Minister for Finance has not breached the undertaking to pay the teachers before Christmas. Instructions were made to pay but this requires the authority of the Controller of Budget. That is where the hitch came; the Treasury gave instructions that the amount should be paid. Under the new dispensation, any amount to be withdrawn has to be approved by the Controller of Budget. That is the time she raises issues. She just wants a confirmation that the court order supersedes the Pensions Act. Once that is done, it will be paid. The money is there and has been budgeted. In fact, every year we will be paying Kshs3.6 billion so that we meet the full amount of Kshs16 billion as awarded by the court.

The evidence is there. I have all these letters from the Attorney-General. Even as late as yesterday, we sent a reminder.

Mr. Speaker: Table the letters!

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I even went ahead just to make sure that the Attorney-General does not say that they never received the letters. I have copies of the delivery letters here to show that--

Mr. Speaker: Kindly, table the letters!

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, yes, I will. I just like to assure this House that the moment we got this legal

hitch sorted out, the teachers will be paid. We are sympathetic. We do not want any teacher to die before he has enjoyed his enhanced pension.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. You assure this House that you deposit this money in an interest bearing account, so that the teachers can be guaranteed to get this money when the Attorney-General gives this legal opinion.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, it is chicken and egg story. We cannot even pay that money to a joint account because it requires the approval of the Controller of Budget. So, it is really which comes first. The issue is that I undertake to go to the Attorney-General's office myself and wait for a legal opinion from his office, so that this matter moves ahead. As I said, we really want to pay. An undertaking has already been given. We intend to comply with that undertaking.

Mr. Speaker, Sir, I undertake to go to the Attorney General office to seek his legal opinion on this.

Mr. Pesa: On a point of order, Mr. Speaker, Sir. I beg for your indulgence. Could the Minister come back here in two weeks to give us his findings?

Mr. Speaker: What did you say? Say that again!

Mr. Pesa: Could the Minister consult the Attorney-General and bring a report to this House within two weeks?

Mr. Speaker: Order, Member for Migori, I am satisfied with the commitment made by the Minister to the House. The Minister knows that a commitment to this House is a very serious matter because it can have dire consequences if there is no compliance or discharge of that commitment. He knows that only too well. Perhaps, you want to confirm that you are aware that consequences will follow if you do not honour your commitments to the House.

The Minister for Nairobi Metropolitan Development (Mr. Githae): Mr. Speaker, Sir, I am an honourable Member of Parliament and a gentleman. It will be done. I also know the consequences of not fulfilling my undertaking. I hereby table the delivery note from the Attorney-General showing we sent the letters and also our reminders to the Attorney-General.

Mr. Speaker: Fair enough! Member for Migori, you should be satisfied with that. I can confirm from the position of the Speaker that the Member for Ndia is a gentleman. But the consequences will follow whether or not he is a gentleman.

(Laughter)

Mr. Pesa: Mr. Speaker, Sir, I oblige.

Mr. Speaker: Hon. Members, we want to move to the next order!

BILL

Second Reading

THE LAND REGISTRATION BILL

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the concern and everybody shares the concern of the hon. Members but I would like to assure you that a Statement will be made by the Minister as soon as possible. The reason for this is that work is ongoing. It is just a matter of giving information to the House. That is why I was suggesting Thursday, next week and by that time, I am sure the airport will be operational. However, I still remain a little bit cautious on giving the time. But I can give confirmation in the afternoon after immediate consultation if that is okay with you.

The Temporary Deputy Speaker (Prof. Kaloki): I think that is fair enough. Let us allow the Minister to consult the relevant Ministry. Mr. Shakeel can also liaise with the Minister who will pass the information to the Clerk when the Ministerial Statement will be issued in the House.

Mr. Chanzu: On a point of order, Mr. Temporary Deputy Speaker, Sir. The reason why the hon. Members here are insisting it should have been earlier than that is that we also have in mind that the Minister here has been a Minister in that Ministry. He just left that Ministry recently. So, he should be able to assist us to get this information. That is to add on to the issue of collective responsibility.

The Temporary Deputy Speaker (Prof. Kaloki): With that Mr. Minister, I think you can even share some highlights if you get permission from the relevant Ministry this afternoon because they are your colleagues. Or, somebody can come and give the status of what is happening with the airport closure. Could you try and seek that information and then you come to the House?

The Minister for Environment and Mineral Resources (Mr. Mwakwere): Mr. Temporary Deputy Speaker, Sir, I will do just that.

Mr. Temporary Deputy Speaker (Prof. Kaloki): That is fair enough, Mr. Shakeel. He has taken the matter for this afternoon. He should be able to consult and if the Minister is out of the country he should come and---

An hon. Member: This afternoon?

The Temporary Deputy Speaker (Prof. Kaloki): This afternoon. That is what he is saying.

Next Order!

MOTION

PAYMENT OF DUES TO RETIRED TEACHERS

THAT, noting that the Government has not paid teachers who retired between 1997 and 2003 their dues in revised pension funds amounting to Kshs17.6 billion; aware that the Minister for Finance on 22nd February 2012 informed the House that the money had not been paid due to a query by the Controller of Budget, which required the guidance and opinion of the Attorney-General; further aware that Kshs3.34 billion has been factored in the 2011/2012 Budget and risks being returned to the Treasury at the end of the Financial Year; noting that the Minister stated that the payment of these funds will be affected as soon as the Attorney General renders an opinion; mindful that the delay has caused the parties untold pain and suffering, this House urges the Government to pay retired teachers their dues without further delay.

(Mr. Pesa on 30.5.2012)

(Resumption of Debate interrupted on 30.5.2012)

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Pesa had already moved the Motion.

Mr. Chanzu, please, proceed.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I stand to support this Motion and I want to congratulate Mr. John Pesa for bringing it.

This Motion arises out of payments which were due to teachers who retired between 1997 and 2003, which is a long time ago. Considering that these teachers, apart from the money they are demanding in retirement benefits, ordinarily are not paid adequately - some or a majority of them when they retire peg a lot of hope on their retirement benefits - it would have been important for the Government to have incorporated this Kshs17.6 billion into its Budgets from 2003 when the NARC Government took over power. I think by now they would have cleared this.

Mr. Temporary Deputy Speaker, Sir, it is sad that the Government does not take seriously matters to do with teachers' pay. I remember in the year 2001/2002 the Government promised to increase salaries. There was an agreement that was entered into for the Government to pay enhanced salaries to teachers but that was not done. The failure to pay resulted in many strikes. When you find the Government is not willing to pay dues to retired teachers, as in this case, sometimes there is a lot of suspicion that it is not really lack of money; it is because of Government's reluctance to attend to matters to do with teachers.

The Motion says that there was an issue that was raised and that the Minister for Finance on 22nd of February 2012 informed the House that the money had not been paid due to a query by the Controller of Budget. From 22nd February up to now--- We are now in June; I do not know how long it takes for the office of the Attorney-General to give an opinion on a single matter, considering that there are many issues he is supposed to be dealing with. One single issue has taken too long. It is high time this opinion was given quickly, as money has been factored into the Budget, Kshs3.34 billion, which should be paid to the teachers. We are getting to the close of the financial year. This is now June and at the end of this month this financial year will be closing. Therefore, it is important that one, we pass this Motion and two, steps are taken to fast track the implementation of the resolution that we are going to pass. I am sure that the Members will be passing the Motion and then the implementation of the resolution should be done fast, so that the money does not go back to the Treasury at the end of the financial year.

Mr. Temporary Deputy Speaker, Sir, education is very important in a developing country like this. We talk about Vision 2030. If we cannot encourage the teaching fraternity through this kind of payment, then we are de-motivating them meaning that we cannot achieve what we are supposed to achieve under Vision 2030.

The reluctance of the Government to attend to matters to do with education has also been seen just in the last few weeks, where the Government is not releasing money for free primary education and free secondary education, yet it is a commitment that the Government gave. It should not just wait for people to go to the streets, teachers to go on strike, and Members of Parliament to come here and raise issues for it to act. It is a core

responsibility of the Government to take care of education in the country, if we really mind about the welfare of our children, the future of this country and we want to achieve what we promise, particularly during campaign period. In our manifestos and during campaigns we make promises, we are elected but when we come to performance we do not perform. This is where the Government has really failed. I think it is very important. At the time when the teachers started claiming Kshs17.6 billion the Budget of the country was hardly Kshs200 billion. However, today we are talking of a Budget of over Kshs1.4 trillion. I think it is Kshs1.4 trillion this year. So, in terms of proportion the money that the teachers are demanding is not a lot.

Mr. Temporary Deputy Speaker, Sir, I am also suggesting that when the Government pays this money they should pay it with interest, which has accrued on the money for all this time. I am happy that the Assistant Minister for Education is here. In fact, even before this Motion is passed, you should be discussing with the Treasury to keep this money aside, so that once we pass this Motion the money is released, just as you were saying the money for the free primary education and free secondary education is going to be released today. I hope it will be released today, or were you saying it because these issues are before the House?

Otherwise, this is a good Motion and I think the Government should act on it. We have many people in this country who have worked for the Government, including civil servants. We keep bringing Questions here on a piece meal basis. I think the Government should take seriously these matters and be able to pay and clean up. Pay those who are owed monies by the Government, as retirement benefits, so that as we forge ahead, we should not have these complaints arising from time to time.

With those few remarks, I beg to support.

~~Mr. Koech:~~ Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to contribute to this very important Motion. Allow me first to sincerely thank my colleague hon. Member for Migori, Mr. John Pesa, for bringing this Motion. This Motion is urging the Government to pay retired teachers. These are Kenyans who have served this Government diligently. I want to repeat, diligently. This is because it is very rare to find an individual serving for up to 31 or 35 years. Therefore, we are talking of people who started working a long time ago. We are talking of people who have made the country what it is today. Who is who in Kenya today must have gone through teachers. Apart from the very elderly in this House, the majority of us went through the hands of these teachers.

Whatever we are enjoying today, whether you are the Head of State, the Prime Minister, Minister, Member of Parliament, Controller of Budget or the Attorney-General, all of you are in your positions courtesy of these teachers.

Mr. Temporary Deputy Speaker, Sir, many professionals who are moving this country forward went through these teachers either directly or indirectly. It is unfortunate then to see the Government setting aside only Kshs3.34 billion to be given to these people.

Mr. Temporary Deputy Speaker, Sir, that money is already allocated; it is there in the Treasury and what are we being told? For the last one year because we are hardly three weeks to the end of the financial year, that the Controller of Budget is awaiting the opinion of the Attorney-General of the Republic of Kenya. The Attorney-General is a Kenyan and he went through school in Kenya. The Controller of Budget went through

school in Kenya. All of us in this House went through school in our country and, therefore, I want to urge my colleagues that all of us unanimously pass this Motion and we expect the Government to act immediately and release this money before the end of this financial year which is hardly three weeks to the end.

We must, as we release this money, make sure that the teaching profession is made attractive and protected as such for the benefit of this country. If you want to fight poverty in this nation and move this country forward, we must ensure that the teacher is motivated. We must make sure that the teaching profession is made more attractive. This is what South Koreans have done so that today they are what they are because they have made this profession one of the best. We must ensure that we do not allow teachers to carry out demonstrations. For those of us who have the background of teaching, there is what we call hidden curriculum that our children learn from observation and seeing. The more the teachers demonstrate, the more the students learn the negative part of what we do not expect them to learn and, therefore, you will be seeing many more demonstrations in future because children think that if a teacher has demonstrated, then who are they not to do so? So, we should be in a country where we provide what is needed and necessary on time to avert this kind of crisis.

Looking at the money that was awarded to the teachers, they were awarded Kshs17.6 billion. In the last financial year, the Ministry of Finance has allocated them Kshs3.34 billion and we are saying that this money should be released immediately. In the Printed Estimates that we are going through today, the said Ministry again has provided another Kshs3.3 billion meaning that if the Ministry of Finance continues providing in bits, it will take another five to six years for these teachers to enjoy the full privilege of this one. So, the gratuity, the lump sum that they are supposed to get is being delayed and so is the pension and monthly payment. Most of these teachers, for the information of the House, are getting Kshs6,000 every month. Once this is fully implemented, it might give them over Kshs10,000 which can make them stay comfortably wherever they are.

So I now want to urge the Government to ensure that come next year, let us provide for the lump sum that is balanced so that we deal with this case once and for all. I want to thank the teachers of the Republic of Kenya for the good work they are doing. We want to urge them to even do much better. I want to urge the Government to commit itself to all the proposals that they have made. Under Vision 2030, the Government has indicated, in black and white, that they will be employing 28,000 teachers every year to take care of the shortage. In this financial year, what have they provided for? They have provided for 10,000. Where is the 18,000 committed by the Government? Is this Government committed to ensuring that the child of the poor also enjoys the benefits of education so that in future we see the son of a peasant dining with the son of a king in this country? It is only through education that we can bridge this gap.

With those remarks, I want to fully support this Motion.

The Minister for Public Works (Mr. Obure): Mr. Temporary Deputy Speaker, Sir, thank you for giving me the opportunity to make a contribution on this Motion. I want to thank Mr. Pesa for raising this matter and bringing it to the Floor of this House because it is a matter which touches on the welfare of a section of Kenyans; Kenyans who deserve to be accorded their rights. To my understanding, this was a negotiated package amounting to Kshs17.6 billion. During the negotiations, the Government

committed itself to paying out this amount. At the time this group of teachers were active employees of the Government, they were entitled to receive this benefit. Some of them retired in between but in my opinion that does not make any difference. An agreement was reached to pay in four installments. The first installment was paid. If the Government had all the funds to pay these teachers at the time, indeed, they would have been paid and there would be no issue to talk about today.

*[The Temporary Deputy Speaker
(Prof. Kaloki) left the Chair]*

*[The Temporary Deputy Speaker
(Mr. Koech) took the Chair]*

Mr. Temporary Deputy Speaker, Sir, therefore, we are talking about this issue today because the Government did not have the money to pay the teachers in full. This is the only reason the matter is here. I am also aware that teachers went to court in Nakuru and the Government lost. The ruling was that the Government pays out this money. The Government made an appeal to the High Court and again the High Court made a ruling that the Government should pay out this money to the teachers. Therefore, the fact that this money has not been paid up to this moment is an indication of the level of impunity on the part of the Government. Therefore, the Government should have honoured the ruling of the court, in my opinion, and the issue of referring this matter to the Attorney-General should not even arise.

Our understanding is that this Financial Year, 2011/2012, a sum of Kshs3.34 billion is available to be paid to the teachers. We are now coming to the end of the financial and the money will go back to the Treasury for re-voting. I think this is a terrible thing to happen at a time when the individuals concerned, the retired teachers are facing severe challenges; they are suffering. I am, therefore, appealing to the people in the Treasury and the Ministry of Education to take the necessary measures to ensure that these teachers are paid before the end of this financial year which is three weeks away. This is a case of bureaucracy and the country as a whole suffers because a few people in positions in the Government do not see the need to discharge their functions and obligations.

Therefore, I want to support this Motion and urge the Government to pay this money to the teachers without any further delay. In fact, this money should be paid before the end of this financial year.

With those few remarks, I beg to support.

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, I stand to support this Motion. Teachers are respected all over the world except in Kenya. Teachers in Kenya are given a very raw deal. Health workers are given a very raw deal yet these are our driving forces.

It is a shame that the President of Rwanda is asking for 10,000 teachers. If we cannot pay our teachers here, let them go to Rwanda because that is where they have been respected and they will be paid more than here. Here in this country, we are treating them as beggars; as those who have no rights and there is an old saying that those who have everything are the ones who deny others everything.

National Security for the support they have given to this Bill throughout the process. I also wish to congratulate the Legal Department in Parliament for facilitating the drafting of this Bill.

Mr. Temporary Deputy Speaker, Sir, I have walked a very long journey since 2004 to ensure that NACADA is anchored in the law. I am, therefore, very grateful to all the members who have supported this process for the last six years.

With those few remarks, I beg to support.

(Question put and agreed to)

*(The Bill was accordingly read
the Third Time and passed)*

*[The Temporary Deputy Speaker
(Mr. Njuguna) left the Chair]*

*[The Temporary Deputy Speaker
(Mr. Imanyara) took the Chair]*

MOTION

PAYMENT OF DUES TO RETIRED TEACHERS

THAT, noting that the Government has not paid teachers who retired between 1997 and 2003 their dues in revised pension funds amounting to Kshs.17.6billion; aware that the Minister for Finance on 22nd February 2012 informed the House that the money had not been paid due to a query by the Controller of Budget which required the guidance and opinion of the Attorney General; further aware that Kshs.3.34 billion has been factored in the 2011/2012 budget and risks being returned to the Treasury at the end of this Financial Year; noting that the Minister stated that payment of those funds will be effected as soon as the Attorney General renders an opinion; mindful that the delay has caused the parties untold pain and suffering; this House urges the Government to pay the retired teachers their dues without further delay.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. John Pesa! Is he out on official business? I understand the hon. Mover of this Motion is away on official parliamentary business. So, the Chair defers the consideration of this order to such other time as will enable the Member to move it, when he comes back from parliamentary business.

(Motion deferred)

Next Order!

QUESTIONS BY PRIVATE NOTICE
NON-PAYMENT OF RETIREMENT BENEFITS TO
RETIRED TEACHERS FROM 1997-2007
Tuesday, 1st November, 2011

Mr. Pesa: Mr. Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

(a) How much money has been set aside to pay retirement benefits to teachers who retired between 1997 and 2007, following the dismissal of an appeal (Civil Appeal Case No. 300 of 2009) filed by the TSC against a judgment of the High Court in Nakuru in 1997 (HCCC No. 65 of 2006) awarding retirement benefits to the teachers?

(b) Can the Minister confirm that the money set aside will be adequate to pay all the benefits to the teachers and, if not, when will the balance of the benefits be paid?

(c) Can the Minister confirm that all the due benefits will be paid using the normal Government system, through the Treasury?

The Assistant Minister for Education (Prof. Olweny): Mr. Speaker, Sir, I beg to reply.

(a) I am not in a position to give information regarding the money set aside to pay retirement benefits for teachers who retired between 1997 and 2007. The Ministry of Finance, which is mandated to pay teachers pensions as per the Pensions Act, Cap. 189, is better placed to provide the information.

(b) Following my answer to part "a" above, part "b" does not arise.

(Mr. Kabogo stood up in his place)

Mr. Speaker: Order, Mr. Kabogo! Allow the Assistant Minister to finish giving his answer.

The Assistant Minister for Education (Prof. Olweny): As for part "c," pensions and other due benefits to the retired teachers are normally paid using the Government system. The Teachers Services Commission (TSC) processes documents for retired teachers and forwards them to the Director of Pensions in the Treasury for payment of retirement benefits.

Thank you, Mr. Speaker, Sir.

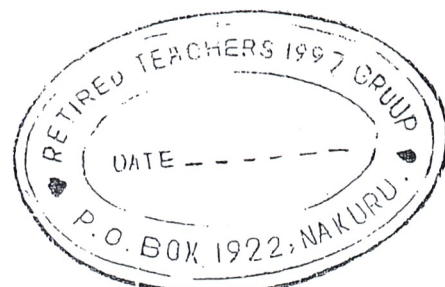
Mr. Kabogo: On a point of order, Mr. Speaker, Sir. I was trying to save the House some time because the Assistant Minister is misleading the House. The same Assistant Minister, on the 7th of December, 2010, answered the same Question on pension in this House, and I would like him to have a look at the Hansard because I have a copy. This Assistant Minister has answered this Question before, and even said in the House what action the Ministry was taking because of the pension of these teachers. So, he is misleading the House. Is he in order?

(Mr. Kabogo laid a document on the Table)

Mr. Speaker: Assistant Minister, perhaps you should look at the HANSARD.

Prof. Olweny: Mr. Speaker, Sir, at that time, the process was still with the TSC, and after the court case was finalized, the TSC processed the papers, passed them to the Treasury and it is the responsibility of the Treasury to pay the pensions.

Tuesday, 1st November, 2011



(Mr Kabogo stood up in his places)

Mr. Speaker: What is it, hon. Member for Juja?

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. The Minister did not address Himself to my point of order. What I am only saying simply is this: He answered; he even quoted the case, that he was aware that it had been settled. He even went ahead to say that the Ministry of Finance had a meeting on the 30th of August. So, he is avoiding my point of order. He is misleading the House! I would urge the Chair to have a look at that Question so that you find what I am saying is relevant.

Mr. Speaker: Let the Minister look at it first.

(Prof. Olweny perused the document laid on the Table by hon. Kabogo)

Prof. Olweny: Mr. Speaker, Sir, if you look at the Hansard, let us go to part "b." I will read it to the House.

"(b) An urgent meeting was held on 30th November, 2010 between the TSC and the Treasury's Department of Pensions. It was resolved that the 1997 schedule be implemented by adjusting the pension benefits based on the salaries of the retirees and be paid at respective dates of their retirement. The budgetary implications for the balance of lump sum (gratuity) and the monthly pension arrears for 30,000 retired teachers are being worked out by the Director of Pensions---

Not Ministry of Education. Director of Pensions!

"---and the report will then be submitted to the Deputy Prime Minister and Minister for Finance---

Not Minister for Education!

"---for consideration and payment approval."

Not Minister for Education! So, the issue is with the Minister for Finance and not with my Ministry. All other details that you want of my colleagues are with the Pensions Department, which you can get from the Minister for Finance.

Mr. Baiya: On a point of order, Mr. Speaker, Sir. these are teachers and the Ministry of Education clearly is the one in charge of teachers; it has handled this matter before even in the Question. Even if the Ministry of Finance comes in, it is as an agent on behalf of the Ministry of Education; you are still the principal! Can you, therefore, tell this House what you are doing to actually liaise with the Ministry of Finance and own up? Are you in order to attempt to escape your obligation?

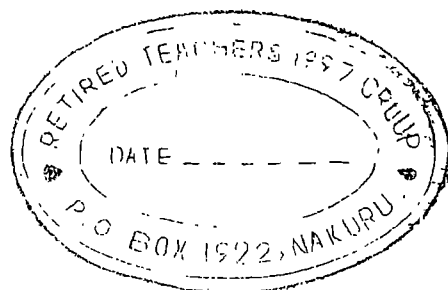
Prof. Olweny: Mr. Speaker, Sir. these persons – the people we are talking about – are not teachers. These ones are retirees who were employees of the TSC but at this time, they are not our employees; they are not teachers!

Ms. Karua: On a point of order, Mr. Speaker, Sir. The Question relates to teachers. The Minister has said he does not have information of the payment and that they are with the Ministry of Finance. Is it in order to ask that you direct that part of the Question to go to the Ministry of Finance so that we can get a complete answer for these retired teachers who are suffering?

Mr. Kabogo: On a point of order, Mr. Speaker, Sir

Mr. Speaker: From a similar perspective or a different one?

Tuesday, 1st November, 2011



Mr. Kabogo: It is on a similar perspective, Mr. Speaker, Sir.

Mr. Speaker: If it is a similar perspective, you can carry on because I will give directions just now.

Mr. Kabogo: Mr. Speaker, Sir, my point of order was very simple. The Minister is saying he is not in a position to answer part "b" of this Question because it relates to another Ministry and I am saying that the Minister himself answered this bit. So, that is my point of order. He did answer; he attended to the matter and he is now escaping whereas at that time, he did address the matter. Is he in order to tell the House that he cannot address this matter?

Mr. Speaker: Order! Order! Order, hon. Member for Juja! Even as much as you are getting so passionate over the matter, the Minister actually read the answer he gave on the Hansard, and in that answer, he says that the Treasury has the details in terms of quantum of payments and it is the Treasury, through the Pensions Department, that will effect payment. He is not resigning from that; he is merely repeating it!

Mr. Pesa: On a point of order, Mr. Speaker, Sir. While it may be in order to channel this Question to the Minister for Finance, when the Minister was answering this Question, in his last statement, he gave a commitment to teachers in this House and he stated as follows: "I promise here that we are going to do our best to ensure that, that payment is done as soon as possible."

So, Mr. Speaker, Sir, he assured us in this House. He did not tell us that he was going to refer the Question to the other Minister! In the spirit of collective responsibility, this is a very sensitive issue and I expect the Minister to have consulted and come up with an answer.

(Several hon. Members stood up in their place)

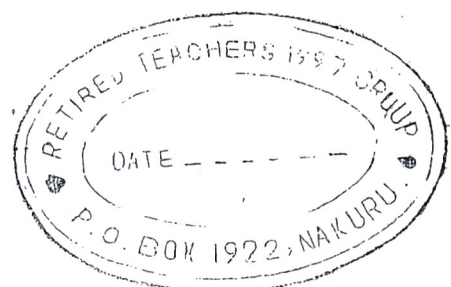
Mr. Speaker: Order! Order! This matter, to me, appears straight forward.

However hard you push this Minister – even if you put a gun against his head – he does not have the capacity to pay this pension. So, the answer is for us to direct this Question to the Deputy Prime Minister and Minister for Finance to come and indicate how far he has gone with ensuring that the requisite pension is paid, and I so direct!

(Applause)

(Question deferred)

Tuesday, 1st November, 2011



RETIRED TEACHERS (1997) GROUP
PRESS RELEASE:

Our attention has been drawn to the press report on budgetary allocation on the 2011/2012 budget and wish to comment as follows:-

As retired teachers we wish to protest the statement by the Minister of Finance UHURU KENYATTA who claimed that the 3.3 Bn. meant to pay part payment of the unpaid Lumpsum salary based in the High Court Civil Case No. 65 of 2006 and Court of Appeal No. 300 of 2009 was meant to cushion us from the Current Economic challenges is to insult our intelligence and integrity and to demean us because we are not begging, but demanding what is rightfully ours economic challenges notwithstanding.

In December 2010, the Minister for Education promised parliament that the Judgement in the two cases would be settled by June 2011. In an answer to a question raised by Hon. John Pesa M.p for Migori on 7th December 2010, the Minister for Education said that the retired teachers Arrears, from 1997 to 2007 alone amounted to 8,215,217,388, Pension pay out was 13,204,822,875 and Monthly Pensions 20,689,850,540 shillings; totaling to 42,109,890,803. (refer the parliamentary proceeding Hansard of 7-12-2010).

We would like the Minister to clarify how the figure of 3.34 Bn was arrived at and to whom it is payable. This payment has been partly paid without CONSENT for US or our lawyers M/s Kimatta & Co. Advocates. As a result of non-settlement of the whole claim we are instructing our lawyer to institute a Judicial Review Proceedings against the Director of Pensions.

We retired teachers (1997) therefore demand for immediate payment of the entire decretal sum together with interest forthwith including Adjustment of our Monthly Pensions. We also wish to assure all our fellow colleagues that we will ensure that every single penny is paid. We therefore ask for calm and patience during the period of recovery.

Joseph M.N Mwenja,
CHAIRMAN,
RETIRED TEACHERS (1997) GROUP.

NATIONAL ASSEMBLY OFFICIAL REPORT

Tuesday, 8th November, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPERS LAID

QUESTIONS BY PRIVATE NOTICE

PAYMENT OF RETIREMENT BENEFITS TO TEACHERS BY TSC

Mr. Pesa: Mr. Speaker, Sir, I beg to ask the Deputy Prime Minister and Minister for Finance the following Question by Private Notice:

- (a) How much money has been set aside to pay retirement benefits to teachers who retired between 1997 and 2007, following the dismissal of an appeal (Civil Appeal Case No. 300 of 2009) filed by the TSC against a judgment of the High Court in Nakuru in 1997 (HCCC No. 65 of 2006) awarding retirement benefits to the teachers?
- (b) Can the Minister confirm that the money set aside will be adequate to pay all the benefits to the teachers and, if not, when will the balance of the benefits be paid?
- (c) Can the Minister confirm that all the due benefits will be paid using the normal Government system, through the Treasury?

Mr. Speaker, Sir, I seek your indulgence that I kindly read this Question.

Mr. Speaker: Order, Member for Migori! I know that it is discretionary for a Member to read a Question if need be, but this Question is appearing on the Order Paper for the fourth time. Even Kenyans have been apprised of this Question. Even as I proceeded to the House this afternoon, there was emphasis given to your Question, that the Member for Emuhaya and the Member for---

Mr. Pesa: Mr. Speaker, Sir, I stand guided.

Mr. Speaker: In fact, they were read out. So, Minister proceed and answer!

The Assistant Minister, Office of the Deputy Prime and Ministry of Finance

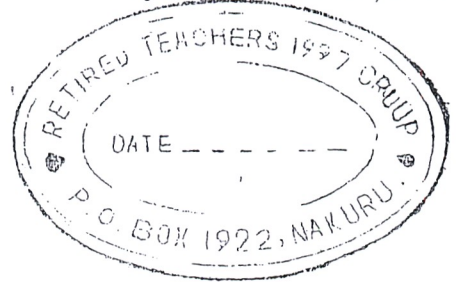
(Dr. Oburu): Mr. Speaker, Sir, I beg to reply. This Question was first directed to the Ministry of Education and then it was re-directed to my Ministry.

- (a) The Government has set aside Kshs3.34 billion in the current 2011/2012 Financial Year's Budget towards payment of additional retirement benefits to teachers following the court award.
- (b) The retirement benefits due to the teachers will be paid within the next four years. The payments will be made in five phases or installments beginning with those who retired first.
- (c) I confirm that all the benefits will be paid using the normal Government system through the Treasury and that the payments will be made to the respective bank accounts of the retired teachers affected by the court award.

Mr. Pesa: Mr. Speaker, Sir, the Assistant Minister says that the rest of the money will be paid in the next five years. However, we need to know that amount so that we see the magnitude and why it has to drag for five years.

Dr. Oburu: Mr. Speaker, Sir, it is estimated that the total amount of money to be paid is Kshs16.7 billion and it is to be paid to about 31,082 teachers.

Tuesday, 8th November, 2011



Mr. Kabogo: Mr. Speaker, Sir, the Assistant Minister has now said that there is Kshs3.3 billion. You will note that most of the teachers who retired are elderly and sick. Others are deceased. Could he confirm by what date all these teachers will be paid, including the beneficiaries of the departed teachers?

Dr. Oburu: Mr. Speaker, Sir, the Teachers Service Commission (TSC) prepares all the details of the teachers. They give us how much is due to each of them and they will be paid on first retired-first served basis. They will be paid by the Treasury as soon as we get that submission from the TSC.

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. You know that "as soon as possible" for this Government could be as soon as 2014. I asked for a specific answer. By what time will the money be paid? Asking for information from the Ministry of Education is not an easy process!

Mr. Speaker: Very well. Your point is made. Dr. Oburu, when?

Dr. Oburu: Mr. Speaker, Sir, I said that we have not got the revised pension for the teachers who are to be paid from the TSC. As soon as we get it, I can promise you that within one week of receiving it, we shall dispatch the money.

Mr. Koech: Mr. Speaker, Sir, this issue of pension has taken cycles until the teachers had to go to court. Now they have provided for Kshs3.3 billion and the Assistant Minister says he is yet to receive the details from TSC. Is he in order not to tell us a specific date now that this issue has been on for quite a long time?

Dr. Oburu: Mr. Speaker, Sir, this matter was before the court with the Ministry of Education; it was not with the Treasury. So, it is upon the Ministry of Education who were ordered to pay to prepare all the revised pensions so that immediately we receive them---

Mr. Mwangi: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead the House? Last week, the Minister for Education did not answer this Question adequately. He said that it was to be answered by the Minister in charge of finance. If he was here last week, he would have heard the Minister for Education saying that it was his job to answer this Question.

Mr. Speaker: Order, Member for Kiharu! I do not find any substance in your point of order.

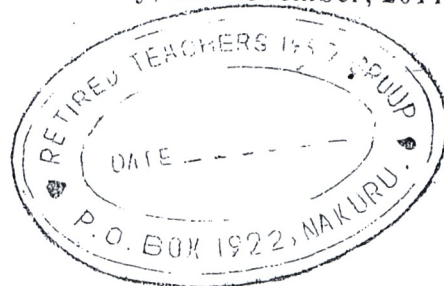
Ms. Karua: Mr. Speaker, Sir, may I begin by thanking the Assistant Minister for confirming that there is Kshs3.3 billion. Knowing that the Government is one and there is collective responsibility and we do not need teachers pushed from one Ministry to another for an answer, now that you have the funds and the Ministry has the records, could he undertake that by 15th December, 2011, he will have liaised with the Ministry of Education and the teachers will receive their money in time for Christmas?

Dr. Oburu: Mr. Speaker, Sir, I concur and I will endeavour to do that.

Mr. Njuguna: Mr. Speaker, Sir, now that the teachers have been waiting for their rightful dues for the last 14 years, could the Assistant Minister consider reducing the payment period, so that the suffering teachers will start benefitting from their dues immediately?

Dr. Oburu: Mr. Speaker, Sir, we had actually considered paying this amount of Kshs16 billion in two tranches. It is just because of the pressures that we have of the

Tuesday, 8th November, 2011



implementation of the new Constitution, the General Election which is next year and so on, that is what has pushed us. However, as soon as our finances improve, we will do our best to reduce the period of repaying these families.

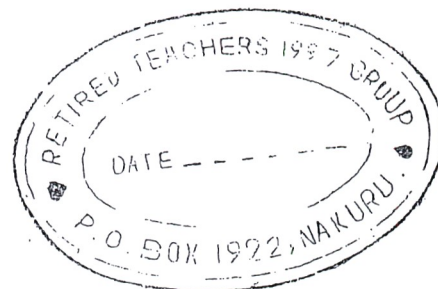
Mr. Kiptanui: Mr. Speaker, Sir, this pension that has to be paid to teachers of Kshs3.3 billion is for those teachers who retired between 1997 and 2007. We have teachers who retired in 2008, 2009, 2010 and this year. How much money has the Assistant Minister set aside for those teachers?

Dr. Oburu: Mr. Speaker, Sir, actually the dates he has given are wrong. The matter which was before court was for teachers who retired between 1997 and 2003, not 2007. The ones who retired later on are not the subject of the dispute because they are being paid their pension every month.

Mr. Pesa: Mr. Speaker, Sir, I want to thank the Assistant Minister for committing in this House that he will pay the first tranche by 15th December, 2011. Could he also confirm that when he pays the first tranche he will pay all those teachers their arrears by 15th December, 2011?

Dr. Oburu: Mr. Speaker, Sir, there is what is called gratuity and the pension. That is what we will pay by 15th December, 2011.

Tuesday, 8th November, 2011



NATIONAL ASSEMBLY OFFICIAL REPORT

Thursday, 15th April, 2010

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Question No. 135

NON-PAYMENT OF DUES TO RETIRED

TEACHERS BETWEEN 1997 AND 2007

Mr. Pesa asked the Minister for Education:-

(a) to state the Ministry's position on the dues of thousands of teachers who retired between 1997 and 2007 and are yet to receive money running into millions of shillings as was

ordered by the High Court is;

(b) why the Teachers Service Commission (TSC) deliberately refused to implement court orders issued by the High Court sitting in Nakuru in 1997 soon after the negotiated salary deal

between the Government and the Kenya National Union of Teachers (KNUT); and,

10 Thursday, 15 April, 2010(P)

(c) whether he could state the position of the Pensions Department and Treasury on the matter and also indicate how much interest will be paid on these monies, considering that the

affected teachers have incurred expenses in the hope of being paid by the Government.

Mr. Speaker: Order, hon. Members! Before the Minister rises to respond to this Question, I have the following communication to make.

COMMUNICATION FROM THE CHAIR

QUESTION NO. 135 IS NOT SUBJUDICE

Mr. Speaker: On Tuesday, 13th April, 2010, Question No. 135 by the Member for Migori, the Hon. John Pesa, was listed on the Order Paper seeking an answer from the Minister

for Education as follows-

(a) what is the Ministry's position on the dues of thousands of teachers who retired between 1997 and 2007 and are yet to receive money running into millions of shillings as was

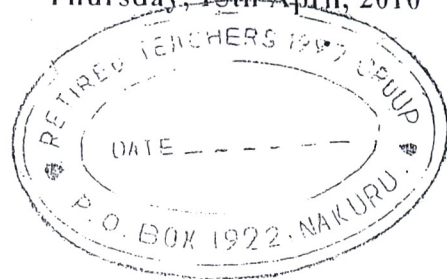
ordered by the High Court two years ago;

(b) why the Teachers' Service Commission (TSC) has deliberately refused to implement court orders issued by the High Court sitting in Nakuru in 1997. soon after the negotiated salary

deal between the Government and the Kenya National Union of Teachers (KNUT); and,

(c) whether the Minister could state the position of the Pensions Department and the Treasury on the matter and also indicate how much interest will be paid on these monies, considering that the affected teachers have incurred a lot of expenses in the hope of being paid by the Government.

Thursday, 15th April, 2010



In response to the question, the Assistant Minister for Education, Prof. Ayiecho Olweny, informed the House that the matter is still pending in the Court of Appeal, having been lodged by the Government on 28th October, 2008, and it would, therefore, be *sub judice* to discuss the matter in the House before a ruling is delivered. The Assistant Minister then laid some documents on the Table in support of his proposition, that the matter is before the Court of Appeal.

Hon. Members, the *sub judice* rule finds expression in Standing Order No. 80, and in particular, Standing Order No. 80(4) imposes a duty on a Member claiming that a matter is *sub*

judice to provide the requisite evidence. It states, and I quote-

“A Member alleging that a matter is *sub judice* shall provide evidence to show that paragraphs (2) and (3) are applicable.”

Hon. Members, I have carefully scrutinised the documents tabled by Prof. Olweny in support of his claim that the matter is in court. These documents, purporting to be a record of

appeal do not indicate that they have, in fact, been filed in court in as much as they do not bear a

court stamp nor do they have a case number. The only substantive document among those tabled

is the judgement of the High Court sitting in Nakuru in Civil Case No. 65 of 2006, Simon P.

Kamau & Others vs. Teachers Service Commission which, if anything, is evidence that the

matter was concluded by the court. No pleadings have been tabled by the Assistant Minister as

required. Consequently, there is no evidence that an appeal was lodged in court on 28th October,

2008, as claimed by the Hon. Olweny. In addition, and more importantly, the purported record of

appeal tabled by the Assistant Minister dated 5th November, 2009 does not accord with the date

he claims an appeal was lodged in the Court of Appeal.

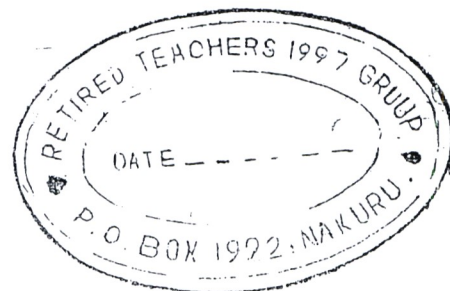
11 Thursday, 15 April, 2010(P)

Hon. Members, in the light of the foregoing, it is my considered view that the Assistant Minister has not passed the requisite test as provided for in Standing Order No. 80 and as expounded in my previous communications. I, therefore, direct the Minister to proceed and

answer the question asked by the member for Migori.

Thank you.

Thursday, 15th April, 2010



(Applause)

The Assistant Minister for Education (Prof. Olweny): Thank you, Mr. Speaker, Sir. Mr. Speaker, Sir, in that case, I beg the indulgence of the Chair and the House so that I go and organize another approach to deal with the Question.

Mr. Speaker: Mr. Pesa, do you have any reaction to the Assistant Minister's request for accommodation?

Mr. Pesa: Mr. Speaker, Sir, this is a very weighty matter for this country. Could you kindly allow me to donate my time to my lawyer, hon. Olago, on this matter?

Mr. Speaker: Agreed, but, Mr. Pesa, in this House, hon. Members represent themselves as they conduct business!

(Laughter)

They are not represented by counsel! But your sentiments have been noted. I know that it is a weighty matter---

(Mr. Pesa stood up in his place)

Please, resume your seat, Mr. Pesa! It is a weighty matter and urgent in its nature. It is also significant to note that it has been pending before the House for two months or so, this being

the fifth time that it is appearing on the Order Paper. So, Mr. Assistant Minister, will you, please,

take this brief very seriously and ensure that you are ready with your answer on Tuesday at 2.30

p.m., notwithstanding the possibility that the House may adjourn.

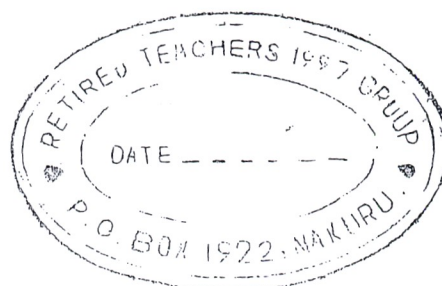
Further, I direct that you furnish the hon. Member with details of immediate action to remedy the situation, even before you come to the House to answer this Question, and, that you

do so within the next 14 days. I will monitor the hon. Member to confirm that you have complied

with this direction.

The hon. Member for Lari!

Thursday, 15th April, 2010



NATIONAL ASSEMBLY OFFICIAL REPORT

Tuesday, 7th December, 2010

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

NON-PAYMENT OF DUES TO RETIRED

TEACHERS BETWEEN 1997/2007

Mr. Pesa: Mr. Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

(a) Is the Minister aware that an appeal (Civil Appeal NO. 300 of 2009) filed by the Teachers' Service Commission (TSC) against a judgment of the High Court sitting in Nakuru in 1997 (H.C.C.C.No.65 of 2006), that teachers who retired between 1997 and 2007 be paid their unpaid pension and retirement benefits, was dismissed on 12th November, 2010?

(b) What urgent measures is the Minister now taking to settle the unpaid pension and retirement benefits due to the affected retired teachers?

The Assistant Minister for Education (Prof. Olweny): Mr. Speaker, Sir, I beg to reply.

(a) Yes. I am aware that an appeal filed by the Teachers' Service Commission (TSC) against a judgment of the High Court in Nakuru in 2006. that teachers who retired between 1997 and 2007 be paid their unpaid pension and retirement benefits, was dismissed on 12th November, 2010 by the Court of Appeal in Nakuru.

(b) An urgent meeting was held on 30th November, 2010 between the TSC and the Treasury's Department of Pensions. It was resolved that the 1997 schedule be implemented by adjusting the pension benefits based on the salaries of the retirees and be paid at respective dates of their retirement. The budgetary implications for the balance of lumpsum (gratuity) and the monthly pension arrears for 30,000 retired teachers are being worked out by the Director of Pensions and the report will then be submitted to the Deputy Prime Minister and Minister for Finance for consideration and payment approval.

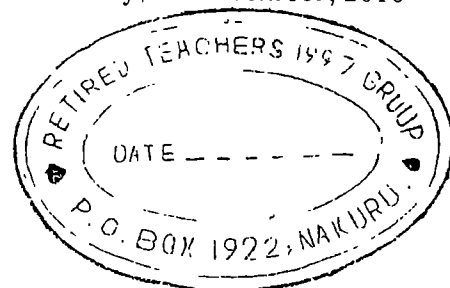
Mr. Pesa: Mr. Speaker, Sir, I want to thank the Assistant Minister for, at least, indicating to the teachers outside there that he is now concerned about their plight. I am sure the amount involved here is quite big. Could the Assistant Minister indicate the amount of money involved? I also request him to consider talking to the Deputy

9 Tuesday, 7th December, 2010

Prime Minister and Minister for Finance so that this money, if it cannot be paid now, is put in the next Supplementary Budget.

Prof. Olweny: Mr. Speaker, Sir, the amount involved is quite substantial. The retired teachers' salary arrears from 1997 to 2007 alone amounts to Kshs8,215,217,388. The pension payout will be the total lumpsum paid, that is. Kshs13,204,822,875. The monthly pension to those retired teachers will total Kshs20,689,850,540. It is quite a substantial amount of money. My Ministry will put a request to the Deputy Prime Minister and Minister for Finance to include this in the Supplementary Estimates next year, but if it is not possible, then we shall insist that in the next Financial Year, this must be settled and done away with.

Tuesday, 7th December, 2010



Mr. Ruteere: Mr. Speaker, Sir, these teachers served the country and there was an agreement between them and the Government in 1997. The Government failed to honour its part and they retired without what was due to them. Today, they live in poverty because they are not paid an adequate pension and they do not have salaries that they deserve to go home with. Could the Assistant Minister tell us how soon this is going to happen because---

Mr. Speaker: Order! This is Question Time! Do not justify why you are asking the Question.

Mr. Ruteere: Mr. Speaker, Sir, could the Assistant Minister tell us how soon, this is going to happen?

Prof. Olweny: Mr. Speaker, Sir, I have said that the Director of Pensions is working out the details which he will then forward to the Deputy Prime Minister and Minister for Finance, who will then effect the payment. From my Ministry, we can only put pressure for them to do it as fast as possible. I promise here that we are going to do our best to ensure that, that payment is done as soon as possible.

Mr. James Maina Kamau: Mr. Speaker, Sir, considering that the teachers have suffered for a long time and they continue to suffer, could the Assistant Minister tell this House whether that money is going to be paid with some interest, because obviously the money should have been paid 14 years ago and it has not been paid?

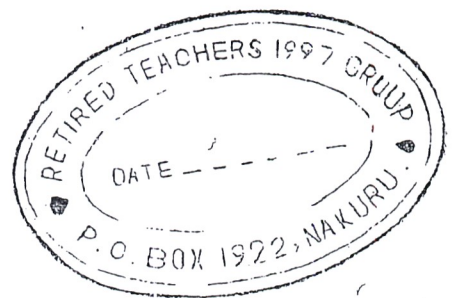
Prof. Olweny: Mr. Speaker, Sir, that is an interesting request. The courts did not give us that order of paying with interest.

Mr. Olago: On a point of order, Mr. Speaker, Sir. You have heard the Assistant Minister say that the court did not give the order that the sum be paid with interest. But he must be aware that in the judgment of the Court of Appeal, the court said that judgment is given in respect of the teachers with interest at court rates. Is it in order for the Assistant Minister to mislead the House?

Prof. Olweny: Mr. Speaker, Sir, if that is what the court said, then the Deputy Prime Minister and Minister for Finance, will go by the court ruling.

Mr. Pesa: Mr. Speaker, Sir, with the assurance from the Assistant Minister that he will ask the Deputy Prime Minister and Minister for Finance to include this in the next budgetary estimates and if he does not then it will be put in next year's Budget, I am satisfied.

Tuesday, 7th December, 2010



NATIONAL ASSEMBLY OFFICIAL REPORT

Thursday, 1st July, 2010

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

Next Question by Mr. John Pesa!

Question No. 135

NON-PAYMENT OF DUES TO RETIRED
TEACHERS BETWEEN 1997 AND 2007

Mr. Pesa asked the Minister for Education:-

(a) if he could state what the Ministry's position on the dues of thousands of teachers who retired between 1997 and 2007 and are yet to receive money running into millions of shillings as was ordered by the High Court two years ago;

(b) why the Teachers Service Commission (TSC) deliberately refused to implement Court Orders issued by the High Court sitting in Nakuru in 1997 soon after the negotiated salary deal between the Government and the Kenya National Union of Teachers (KNUT); and,

(c) whether he could state the position of the Pensions Department and Treasury on the matter and also indicate how much interest will be paid on these monies, considering that the affected teachers have incurred a lot of expenses in the hope of being paid by the Government.

Mr. Pesa: Mr. Deputy Speaker. Sir, I have stood for the eighth time to ask this Question on the Floor of the House bearing in mind that many teachers who have served this country very dedicatedly are eagerly waiting for this answer.

The Assistant Minister for Education (Prof. Olweny): Mr. Deputy Speaker, Sir, I think---

Mr. Deputy Speaker: I think you should answer why you want us to come back to this---

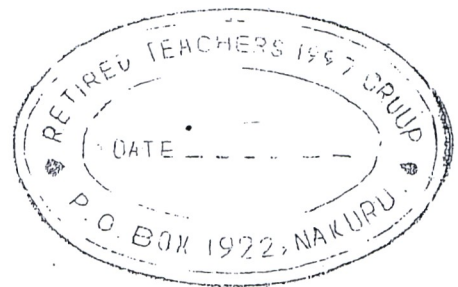
The Assistant Minister for Education (Prof. Olweny): Mr. Deputy Speaker, Sir, I think we were waiting for a ruling from the Chair today, given the fact that other papers were given to the Chair in regard to this Question.

Mr. Deputy Speaker: Did the Chair indeed give an undertaking of giving a ruling on the same today?

The Assistant Minister for Education (Prof. Olweny): Yes, an undertaking was made that a ruling will be made based on the papers that we submitted.

Mr. Deputy Speaker: Fair enough! While finding out the facts of the same, let us move on to the next Question by Mr. Adan Keynan!

Thursday, 1st July, 2010



2

1 Wednesday, 23rd June, 2010 (P)
NATIONAL ASSEMBLY
OFFICIAL REPORT
Wednesday, 23rd June, 2010

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

Question No. 135

NON-PAYMENT OF DUES TO RETIRED
TEACHERS BETWEEN 1997 AND 2007

Mr. Pesa asked the Minister for Education:-

(a) what the Ministry's position is on the dues of thousands of teachers who retired between 1997 and 2007 and are yet to receive money running into millions as was ordered by the High Court two years ago,

(b) why the Teachers Service Commission (TSC) has deliberately refused to implement court orders issued by the High Court sitting in Nakuru in 1997 soon after the negotiated salary deal between the Government and the Kenya Union of Teachers (KNUT); and,

(c) whether he could state the position of the Pensions Department and the Treasury on the matter and also indicate how much interest will be paid on these monies considering that the affected teachers have incurred a lot of expenses in the hope of being paid by the Government.

Mr. Speaker: Fair enough! Minister for Education!

The Minister for Education (Prof. Ongeru): Mr. Speaker, Sir, I beg to reply. When this Question was put before the House for answering, there were some facts that were not laid before this House on the question of the *sub judice* rule concerning this matter. With your indulgence, I intend to lay on the Table of this House the relevant documents indicating and substantiating that the rule of *sub judice* would still apply on this matter.

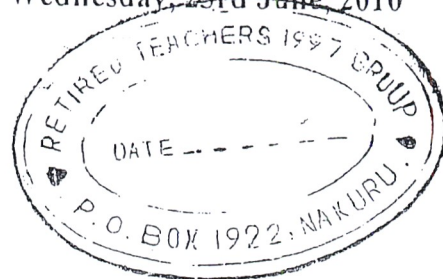
Mr. Olago: On a point of order, Mr. Speaker, Sir. In view of what has been said by the hon. Member for Migori, if it is the view of the Minister that the order given by the Chair should be reversed, then he must comply strictly with the provision of Standing Order No. 79(2) which says:-

"It shall be out of order to introduce an argument on any specific question upon which the House has taken a decision during the same Session, except upon a Motion to rescind that decision made with the permission of the Speaker."

So, is it in order for the Minister to proceed to request that the decision be rescinded without making a formal application to the Chair?

Mr. Speaker: Order, Mr. Olago! This is a matter that can be resolved easily. As a matter of fact, hon. Members, the Minister had drawn my attention to this matter. The only problem that the Minister has got into is that he appears to be asking the Chair to revisit the ruling that I had earlier made but that is not the indication the Minister made to me. The indication that the Minister made to me is that he wants to make a fresh claim for the *sub judice* rule to apply in which case you will be able to distinguish that from Standing Order No. 79. It is a new claim, Mr. Olago. From the communication I have

Wednesday, 23rd June 2010



received, he wants to make that claim on a different basis. His Assistant Minister made

the claim on the basis that there was a High Court case, but the Minister is making the claim on the basis that there is a Court of Appeal case. So, it will be a different claim.

Mr. Olago: On a point of order. Mr. Speaker, Sir. I do not want to appear like I am arguing with the Chair but my understanding of the Standing Orders is that if it is the view of the Minister to raise this issue again, then he is substantively contradicting what the Chair had ruled. So, to that extent he must comply with Standing Order No.79.

Mr. Speaker: Order, the hon. Member for Kisumu Town West. You do not appear to have taken notice of what I said. That ruling was on the basis of a claim for *sub judice* premise on the High Court Case. This is a new claim that there is in fact a Court of Appeal case and not a High Court case, My finding that the matter was not *sub judice* was on the basis of the facts that were laid on the Table of the House by the Assistant Minister. The only document that he laid before the House was a judgement of the High Court. If you have a judgement in a case, it means that the case is finalized. However, now the claim is on the basis of a new case which is in the Court of Appeal. It may be related to the High Court case but the pleadings relating to the Court of Appeal would not necessarily be the same as the High Court case and in this case, the judgement that was laid on the Table by the Assistant Minister.

Mr. Olago: I am guided, Mr. Speaker, Sir.

Mr. Speaker: Thank you. It is good to explain to lawyers so that they know where they are.

Mr. Minister, you may then proceed on that basis.

The Minister for Education (Prof. Onger): Mr. Speaker, Sir, I may now invite the hon. Members to look at Standing Order No.80 (2) which says:-

"A matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination."

Standing Order No.80 (3) (c) says:-

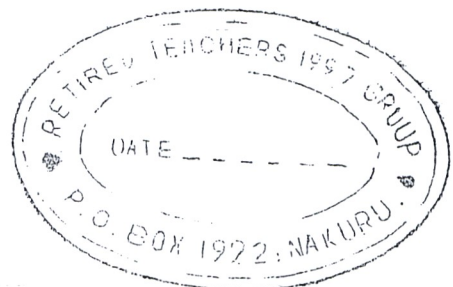
"Civil proceedings shall be deemed to be active when arrangements for hearing such as setting down a case for trial, have been made, until the proceedings are ended by judgment or discontinuance."

Standing Order No.80 (3) (d) says:-

"appellate proceedings whether criminal or civil shall be deemed to active from the time when they are commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgment or discontinuance."

I wish to inform this House that indeed there was a civil suit which was brought against the Teachers' Service Commission in the High Court in Nakuru. It was adjudicated up and a verdict given. Because of the adverse effects that the TSC stood to reap out of that court proceeding and the court judgment, it was, therefore, necessary for the TSC through the Attorney- General to make an appeal in the Court of Appeal. That appeal was launched in the Court of Appeal and the matter has been laid down for hearing on 29th September and 1st October, 2010. I will lay all the papers on the Table. If I proceed to answer this Question, it will definitely be prejudicial to the TSC because

Wednesday, 23rd June, 2010



there are many issues that are tied up to that court ruling that will obviously auger very badly for that until this matter is fully heard and determined by the appellate court. Thank you, Mr. Speaker, Sir.

Mr. Mungatana: On a point of order, Mr. Speaker, Sir. First, I want to appreciate the preparedness of the Minister. We appreciate that as a House. But still on the same Standing Order 80(5), it says: "Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the House or a Committee." The point of order I am drawing here is that there are thousands of teachers who were affected, by this. In a way, the Government can make pronouncements in terms of policy not necessarily delving into the matters that are pending before the court. We want to know what the Ministry's position is on the thousands of teachers who retired between 1997 and 2007. It is a policy issue. So I was requesting if you can revoke your powers under Standing Order No.80(5) to allow the Minister to speak on the policy matters so that the teachers who have retired including those from very many parts of the country can know what their fate is. It would help us move one step forward. This Question has drawn a lot of interest from all of us. That is why we want the Minister to say something on policy.

Mr. Speaker: Mr. Minister, do you want to react to that at all before I give my direction on the matter?

The Minister for Education (Prof. Onger): Mr. Speaker, Sir, given the dimension of this problem, it would not add value at this stage in time. The matter before the Court of Appeal is very weighty and has far reaching implications on both the pronounced policy and the level at which this matter was renegotiated. Therefore, there are grey areas that do need the court of appeal to determine the direction. In as far as the policy issue is concerned, we thought the matter had been put to rest until this issue came up in the Court of Appeal. They raised issues that were far reaching in terms of cost to the Government. The Government went back through the TSC, through the Office of the Attorney-General to appeal against this ruling. I think in fairness to both parties, it is only fair that the Court of Appeal is given the opportunity to look at the pros and cons of these matters and be able to adjudicate on the matter. Then thereafter if there are any other issues arising, then we will be able to deal with them as policy issues as a Government. So my indulgence to the Chair this afternoon is to request that, indeed, this matter is *sub judice* and it is before the court of appeal. It may be information that may not have been availed to the Speaker at the time of making the ruling under Standing Order Number 79-

Mr. Speaker: Order, Mr. Minister! Do not revisit that issue. This is a new claim.

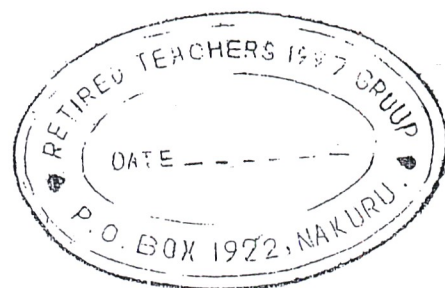
The Minister for Education (Prof. Onger): Thank you, Mr. Speaker, Sir.

Mr. Speaker: I will deal with it as such. So I order that this Question be deferred to Thursday next week at 2.30 p.m. It will appear on the Order Paper and I will give my finding on claim.

(Question deferred)

Order, hon. Members! I am afraid the next Questions, because this is an allotted day, will have to be deferred because we must move to the next business not later than 3.30 p.m. So we are not doing very well.

Wednesday, 23rd June, 2010



DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY

ADOPTION OF THE REPORT ON THE RETIRED TEACHERS PENSION (1997 GROUP)

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3	Hon Rose Kwamba Mitaru mp.	
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