



KENYA NATIONAL UNION OF TEACHERS

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CONTEMPT OF THE COLLECTIVE BARGAINING AGREEMENT (CBA) BETWEEN TSC AND KNUT BY THE TEACHERS SERVICE COMMISSION:

Our attention has been drawn to the continued running of two (2) payroll by the Teachers Service Commission at the close of July 2020 payroll and exclusion of members of the Kenya National Union of Teachers from benefitting in the 3rd and 4th Phases of the Collective Bargaining Agreement (CBA), despite the CBA being signed, deposited in Court and certificate issued and Parliament appropriating 54 billion shillings to finance the pay to all teachers.

We wish to state that teachers are governed through the constitution, the TSC Act, the Labour Relations Act and the CBA in line with the International Labour Organization (ILO) standards and all other international instruments which prohibit labour discrimination.

Implementing pay structures of the CBA applies to all employees of the TSC duly registered, employed and assigned duties in all schools by the TSC.

While negotiating the CBA, we negotiated for benefits under Section 13 (5) of the TSC Act for all registered teachers and not members of KNUT. Any negotiated terms apply to all registered teachers under employment of the TSC. We can never negotiate exclusive terms for our members.

The CBA Clause 4 recognises both the Code of Regulations (COR) for Teachers and the Code of Conduct and Ethics for Teachers as instruments of governing

teachers and I quote "**The Code of Regulations and Code of Conduct for Teachers shall form an integral part of this Agreement**" end of quote.

The input of the Code of Regulations is that Privileges and Rights of teachers are clearly outlined and it is LAW. Teachers Terms and Conditions of Service shall only **LEGALLY** be regulated through the Code of Regulations.

Any new parameters of Managing/Controlling teachers must be contained in the Code of Regulations for teachers and consequently taken through Parliament and adopted in the Code of Regulations. As long as it is not in the Code of Regulations then it is not law and it cannot affect teachers terms whatsoever. CPG has never been discussed nor agreed between us and TSC and neither is it contained in the code of regulations nor has it been approved by parliament.

The Teachers Service Commission therefore cannot ignore the Code of Regulations and develop other parameters and issue circulars to manage teachers and that is why the purported Career Progression Guidelines (CPG) which are not contained in the Code of Regulations have been declared Null and Void by the Employment and Labour Relations Court and the Circular of 2nd May, 2018 bringing it into force without negotiating with Unions and without taking the guidelines through Parliament was nullified.

Any continued application of the same by TSC is not only Contempt of the Court Directives but a violation of Clause 4 of the CBA by TSC and a declaration that it has decided to manage teachers outside the Code of Regulations.

Part 12 of the CBA and I quote "**Parties agree that Career Progression in the teaching service shall be implemented as provided under Part VI of the Code of Regulations for Teachers**" end of quote. Part VI of the Code of Regulations therefore fully recognises the Schemes of Services as tools to manage promotional progression of teachers. Nowhere does it mention CPG.

In the ruling of Byram Ong'aya, TSC was ordered to align the Schemes of Services to the pay structures of the CBA. The TSC has gone against Clause 12 of the CBA to purport to undertake promotion of teachers using Career Progression Guidelines which have been nullified by the Court and therefore technically illegal and not contained in the Code of Regulations for Teachers.

Clause 19 of the CBA is very clear on non-discrimination and I quote "**Parties to this Agreement shall be bound by the provision under regulation 16 of the Code of Regulation for teachers on Non Discrimination**" end of quote. TSC has gone against this clause by running two payrolls for the last 12 months.

Part 16 of the Code of Regulations for Teachers states and I quote:- "**The Commission shall not discriminate on any ground against any person in respect to employment**" end of quote.

We wish to state as follows:-

1. TSC should not engage in unnecessary confusion of the CBA pay structure implementation by seeking to abolish the recognition and rewarding of new academic qualifications by sneaking in the Career Progression Guidelines which have been nullified by the Employment and Labour Relations Court and further not contained in the Code of Regulation for Teachers.

Attempting to abolish the Schemes of Services is merely an attempt to abolish recognition of new academic qualifications which teachers have undertaken and spent a lot of their resources on. **THIS IS THE AGENDA OF TSC, NEVER TO RECOGNISE ACADEMIC PAPERS OF TEACHERS WHICH ARE FULLY RECOGNISED BY THE SCHEMES OF SERVICES.**

2. That the CBA signed between KNUT and TSC on 25th July, 2016 clearly outlines the pay structure of all the teachers under employment of the TSC and must all be paid without any discrimination whatsoever as provided for in the Labour Relations Act 5(1), the CBA Section 19, the Code of Regulations for Teachers Section 16 and the ILO Convention Section 95.

We remind TSC of the Principal of **"Equal Pay for Equal Value of Work Done"** and that teachers are not Union employees but merely members of the Union exercising their constitutional rights and should not be victimised through discrimination. They are employees of TSC entitled to be unionised.

3. The employer should not misinterpret the provisions of the Labour Relations Act, Section 2 to mean that the Byram Ong'aya ruling referred to the exclusion of KNUT members from benefitting from the CBA.

The definition of the Act defines **"Unionisable Employees"** to mean employees eligible for membership of a trade union.

In this case eligible members of KNUT are all teachers under employment in the teaching service. Deliberate misinterpretation of the Court Judgement No. 151 to punish KNUT and its membership is wrong.

4. Nowhere did the Employment and Labour Relations Court under the ruling No.151 direct TSC not to implement the 3rd and 4th Phase of the CBA for KNUT members.

The interpretation of TSC and subsequently implementation of two payrolls is mischievous, naughty and mere contempt of the Employment and Labour Relations Court to defeat the good judgement.

5. For the last thirteen (13) months, the execution of 2 payrolls and the instructions to KNUT members to renounce membership of KNUT through an illegal digital platform that has been suspended by the Employment and Labour Relations Court constitutes brazen and blatant attack on the labour rights of teachers who have chosen to be members of KNUT.

This indeed is a blackmail strategy to force teachers out of KNUT and silence the strong voice of KNUT.

6. We demand that **all the money appropriated to pay teachers be paid to all teachers under the employment of TSC as contained and signed in the CBA without exclusion of any teacher in regard to their affiliation to any specific Union.** We are aware

that seven (7) billion of the 54 billion remains in suspense at the TSC awaiting members of KNUT to renounce membership in order to be paid. This is a primitive strategy of attacking unions.

7. TSC should respect the labour rights of KNUT and cease interfering with the membership register at the payroll and ensure strict remittance of Union dues to the Union as provided for under Section 49 of the Labour Relations Act by all members.
8. TSC should ensure the Agency Fee in favour of KNUT is gazetted and implemented to protect the Trade Union Rights of KNUT. It was fundamentally wrong for TSC to **ASSIST** the gazetting and implementation of Agency Fee for KUPPET from May 2018 and has continued to frustrate the gazetting of Agency Fee for KNUT and further shifting the blame to the Ministry of Labour. KUPPET's enjoyment of the Agency Fee was strongly aided and supported by the TSC and exclusion of KNUT is a product of blackmail by the TSC.

Finally, we wish to state that KNUT is an experienced global Union of many years and is highly desirous of peaceful industrial relations in the teaching service, employment and retention of well-motivated, well paid teachers enjoying unified and equal terms and conditions of service managed under the strict terms of the Constitution, TSC Act, Code of Regulations for Teachers and the CBA.

TSC therefore cannot elect to operate outside all these instruments and engage in a futile attempt to finish off KNUT and silence its members.

It must choose the part of Compliance with the law and conducting its business within the law and not outside the law.

Even with these attacks, KNUT shall not give up even an inch of what is right to all teachers and we shall not be shut down from being a free, vibrant and independent trade Union.

An injury to one is an injury to all. Non-payment of CBA benefits even to one teacher is an injury to the entire teaching fraternity. We call upon the Cabinet Secretary, Ministry of Labour – Hon. Simon Chelugui to immediately take over the matter before it deteriorates into serious industrial unrest and put TSC to order in the management of teachers.



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