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International Center for Policy and Conflict

To
Judicial Service Commission

Through
Chairperson
Dr. Willy Mutunga, Chief Justice and President Supreme Court of Kenya

Date: October 3, 2015

RE: COMPLAINT AGAINST JUSTICE NELSON ABUODHA ORDERS TO TEACHERS

Teachers in public schools have been on legal strike since September 2, 2015. The strike was occasioned by failure of Teachers Service Commission (TSC) to obey court orders. The Employment and Labour Relations Court issued the court orders on June 30, 2015 directing the TSC to pay teachers a basic salary increment of 50-60 per cent. The raise is due from July 1, 2013 to June 30, 2017 and was to take effect immediately.

Teachers had gone on strike earlier in January 2015. However, when the court directed them to resume duty as it handles their case, they obliged.

On July 25, 2015, Teachers Service Commission went to the Court of Appeal seeking the court nullification of the Employment and Labour Relations Court decision. Court of Appeal judges directed Teachers Service Commission (TSC) to effect the 50 to 60 per cent increase by August 1 and continue paying until an appeal that the commission has filed before them is heard and determined. On August 2, 2015, Teachers Service Commission filed a petition at the Supreme Court seeking to stop the previous court decision that awarded teachers a salary increment.

On August 24, 2015, The Supreme Court said it had no jurisdiction to rule against the decision by the Court of Appeal. The Teachers Service Commission went back to the Employment and Labour Relations Court seeking to court orders declaring teachers strike illegal. This application was blatant abuse of the court process by the Teachers Service Commission and the office of the Attorney General. Employment and Labour Relations Court declined to stop the ongoing teachers strike. On September 25, 2015 Justice Nelson Abuodha ruled that teachers strike was legal, which was the only issue he was to make determination on. However, he went further to issue orders directing teachers to suspend their strike for 90 days and within 30 days Ministry of Labour constitute a conciliation committee.

Judge decision had the following problems: 1. The fresh application Petition 72 of 2015 filed by Teachers Service Commission and Attorney General was a direct affront and abuse of the court process 2. The judge was fully aware that the Court of Appeal was sized of the matter and had given specific orders to the Teachers Service Commission 3. The judge was aware that Supreme Court had ruled that the dispute was under the jurisdiction of the Court of Appeal 4. The judge knew that Teachers Service