

PARLIAMENT
OF KENYA
LIBRARY

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

PETITION NO. 193 OF 2013

Handwritten notes:
Jal/CP/1/MJ (1)
16 APR 2013
16/4/13

IN THE MATTER OF ARTICLE 19, 20, 21, OF LEGAL NOTICE NO. 6 OF 2006

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLE 1, 2, 10, 19, 20, 21, 22, 23, 24, 27, 47, 50,
94, 127, 159(1)(2), 160, 232, 237 249, 250, 258(1) (2)(c) 259(1)(3) OF THE
CONSTITUTION OF KENYA (2010)

AND

IN THE MATTER OF THE NATIONAL ASSEMBLY REMUNERATION ACT

AND

IN THE MATTER OF PENSIONS ACT

AND

IN THE MATTER OF APPROPRIATION ACT

IN THE MATTER OF GAZETTE NOTICE NO.....OF 2013

AND

IN THE MATTER OF THE DOCTRINE OF LEGITIMATE EXPECTATION

AND

IN THE MATTER OF PARLIAMENTARY SERVICE COMMISSION ACT

AND

IN THE MATTER OF SALARIES AND REMUNERATION COMMISSION ACT

BETWEEN

JUSTUS KARIUKI MATE.....PETITIONER

VERSUS

THE SALARIES AND REMUNERATION COMMISSION.....1ST RESPONDENT
ATTORNEY GENERAL.....2ND RESPONDENT

Handwritten notes and stamp:
Stamp: RECEIVED...
Signature: Kimukoi
3-4ip

CERTIFICATE OF URGENCY

I, **EVANS ONDIEKI** an advocate of this Honourable Court do hereby certify that the application filed herewith is extremely urgent and ought to be heard ex-parte at the earliest opportunity on the grounds that

- (a) The Gazette Notice purports to amend, vary and/or repeal the provisions of the Appropriation Act, The National Assembly Remuneration Act, The Pensions Act among other Laws
- (b) The Gazette Notice prejudices the role and function of County Representatives, Speakers, Senators, Women Representatives, Member of the National Assembly and Governors
- (c) It is in the interest of justice that the issues raised are adjudicated upon expeditiously
- (d) The Gazette Notice No of 2013 offends the basic structure, letter , objects, purport and spirit of the constitution and other laws

Dated this 15th day of

APRIL

2013



Ondieki & Ondieki Advocates
Advocates for the Petitioner

DRAWN & FILED BY:

ONDIEKI & ONDIEKI ADVOCATES
CORNER HOUSE FLOOR M3
MAMA NGINA STREET
P O BOX 5803-00100
NAIROBI

TO BE SERVED UPON

THE SALARIES AND REMUNERATION COMMISSION
NAIROBI

THE HON ATTORNEY GENERAL
SHERIA HOUSE
P O BOX 40112
NAIROBI

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

PETITION NO. 193 OF 2013

IN THE MATTER OF ARTICLE 19, 20, 21, OF LEGAL NOTICE NO. 6 OF 2006

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THE SALARIES AND REMUNERATION COMMISSION.....1ST RESPONDENT

CHAMBER SUMMONS

(Under Article 19, 20, 21 of Legal Notice No 6 of 2006, Article, 21, 22, 23, 159, 165 of the Constitution, International good practice, Order 40 rule 1, 2, 3 of the Civil Procedure Rules (Cap 21) and all other enabling legal provisions of the law)

Let all Parties appear before the Judge in Chambers on 18th day of April 2013 in the forenoon or soon thereafter as Counsel for the Petitioner/Applicant may make an application for Orders that

- 1 THAT the Honourable Court be pleased to certify that this application as extremely urgent and hear it ex-parte at the first instance
- 2 THAT the Honourable Court be pleased to issue conservatory orders temporarily suspending the operationalisation of the Gazette Notice No VOL CXV-NO 33 of 2013 and/or issue temporary orders restraining the first Respondents, their agents, servants or whosoever from implementing and/or enforcing and/or from doing anything prejudicial to the Salaries of the County Representatives, Speakers, Senators, Women Representatives, Member of the National Assembly and Governors until this application is heard inter-partes
- 3 THAT the Honourable Court be pleased to issue conservatory orders restraining the 1st Respondents by themselves, their agents, servants or whosoever from implementing the provisions of Gazette Notice No VOL CXV-NO 33 2013 and/or doing anything prejudicial to the Salaries of County Representatives, Speakers, Senators, Women Representatives, Member of the National Assembly and Governors until Petition herein is heard and determined
- 4 The Honourable Court be pleased to issue any such further orders it may deem just and convenient in the circumstances of this case
- 5 Costs

WHICH APPLICATION is based on the following grounds and the annexed affidavit of **JUSTUS KARIUKI MATE**.


- (a) Gazette Notice No VOL CXV-NO 33 of 2013 is invalid, illegal and void
- (b) The Gazette Notice purports to amend, vary and/or repeal the provisions of the Appropriation Act, The National Assembly Remuneration Act, and The Pensions Act among other Laws
- (c) The Gazette Notice prejudices the role and function of County Representatives, Speakers, Senators, Women Representatives, Member of the National Assembly and Governors

- (d) It is in the best interest of justice that operationalisation of Gazette Notice No VOL CXV-NO 33 of 2013 be suspended
- (e) It is in the interest of justice that the issues raised are adjudicated upon expeditiously
- (f) The Gazette notice no VOL CXV-NO 33 of 2013 offends article 230 (5) (a), (b), (c) and (d) of the constitution as read with articles 1 and 94 of the constitution

Dated this 15th day of

APRIL

2013



Ondieki & Ondieki Advocates
Advocates for the Petitioner

DRAWN & FILED BY:
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TO BE SERVED UPON

THE SALARIES AND REMUNERATION COMMISSION
NAIROBI

THE HON ATTORNEY GENERAL
SHERIA HOUSE
P O BOX 40112
NAIROBI

NB "If any party served does not appear at the time and place above mentioned such order will be made and proceedings taken as the court may think just and expedient".

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS

PETITION NO. 193 OF 2013

IN THE MATTER OF ARTICLE 19, 20, 21, OF LEGAL NOTICE NO. 6 OF 2006

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VERSUS

THE SALARIES AND REMUNERATION COMMISSION.....1ST RESPONDENT
ATTORNEY GENERAL.....2ND RESPONDENT

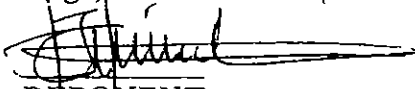
SUPPORTING AFFIDAVIT

I, **JUSTUS KARIUKI MATE** of Post Office Box 102106 – 00101 JAMIA in the Republic of Kenya do hereby make oath and state as follows;

1. **THAT** I am an adult of sound mind and the Speaker of Embu County Assembly therefore competent to swear this affidavit.
2. **THAT** I am fundamentally and adversely affected by Legal Notice No... of 2013 as follows:-
 - (i) The Gazette Notice undermines the County Representatives, Members of the national Assembly, Senators, Women Representatives and Governors to execute their mandate effectively and competently.
 - (ii) The offices of Speakers, County Representatives, Speakers, Senators, Women Representatives, Member of the National Assembly and Governors are too demanding and they require reasonable remuneration commensurate to their duties and responsibilities which are taxing in nature.
 - (iii) The Gazette Notice No VOL.CXV-NO. 33 of 2013 offends the principles and values of article 230 as read with article 1 and 94 of the Constitution as shown by the exhibit herein attached and marked “**JKM 1**”.
3. **THAT** the actions of the 1st Respondent exceed its mandate accorded to them by article 230 of the Constitution.
4. **THAT** the 1st Respondent should have published the Notice after presenting the proposals to the National Assembly to facilitate harmonization with other existing laws. Further, the commission ought to have published the statutory instrument before the Elected Leaders ventured into these elective positions in the first place.
5. **THAT** the purported rationalization of Salaries for State Officers is unreasonable in a democratic society and cannot be justified taking all the circumstances into account.
6. **THAT** the Gazette Notice No VOL.CXV-NO. 33 of 2013 offends clause 32 of the Sixth Schedule to the Constitution which protects Pension Funds for Elected Leaders.
7. **THAT** the Honourable Court needs to intervene to adjudicate whether the Salaries and Remuneration Commission can purport to alter the Provisions of a Parliamentary Statute without recourse to Parliament.
8. **THAT** I am informed by my Advocates on record which information I verily believe to be true that, the 1st Respondent's actions are null and invalid as they offend article 94, 2(4), 127 of the Constitution.
9. **THAT** I am aware that the Primary duty of the first Respondent under articles 10, 230, 249 (1) (2) of the Constitution is to observe democratic values and principles and promote constitutionalism.
10. **THAT** I am aware that article 250 (8) of the Constitution protects remuneration of constitutional Commissions including the Parliamentary Service Commission under article 248(2) (d) of the Constitution and there was no justification to breach this provision.
11. **THAT** I swear this affidavit in support of the Chamber Summons herein.

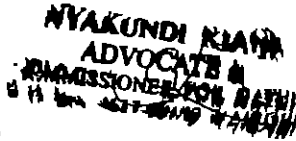
12 THAT what is deponed to herein is true to the best of my knowledge, information and belief

SWORN by the said
JUSTUS KARIUKI MATE


DEPONENT

At NAIROBI this 15th day of APRIL 2013

BEFORE ME


NYAKUNDI KIANA
ADVOCATE &
COMMISSIONER FOR OATHS

COMMISSIONER FOR OATHS

DRAWN & FILED BY:

ONDIEKI & ONDIEKI ADVOCATES
CORNER HOUSE FLOOR M3
MAMA NGINA STREET
P O BOX 5803-00100
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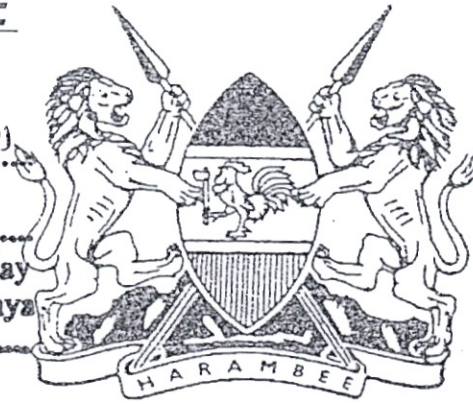
THE SALARIES AND REMUNERATION COMMISSION
NAIROBI

THE HON ATTORNEY GENERAL
SHERIA HOUSE
P O BOX 40112
NAIROBI

SPECIAL ISSUE

HIGH COURT
LIBRARY
MILIMANI

This is the exhibit marked "JKM11"
referred to in the annexed affidavit
of JUSTUS KARIUKI MAH
sworn before me this 15th day
of APRIL 2013 at Nairobi, Kenya
82
COMMISSIONER FOR OATHS



THE KENYA GAZETTE

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GAZETTE NOTICE NO 2885

THE CONSTITUTION OF KENYA

REMUNERATION AND BENEFITS OF STATE OFFICERS IN THE EXECUTIVE

IN EXERCISE of the powers conferred by Article 230 (4) (a), the Salaries and Remuneration Commission has set the remuneration and benefits of State Officers in the Executive as follows:

REMUNERATION AND BENEFITS OF STATE OFFICERS IN THE EXECUTIVE

| State Officer | Gross Monthly Remuneration Package (KSh.) |
|--|---|
| President of the Republic of Kenya | 1,237,500 x 103,125 p.a. – 1,340,625 x 103,125 p.a. – 1,443,750 x 103,125 p.a. – 1,546,875 x 103,125 p.a. – 1,650,000 |
| Deputy President | 1,051,875 x 87,656 p.a. – 1,139,531 x 87,656 p.a. – 1,227,188 x 87,656 p.a. – 1,314,844 x 87,656 p.a. – 1,402,500 |
| Cabinet Secretary Attorney-General Secretary to the Cabinet Chief of Defence Forces | 792,000 x 66,000 p.a. – 858,000 x 66,000 p.a. – 924,000 x 66,000 p.a. – 990,000 x 66,000 p.a. – 1,056,000 |
| Principal Secretary Vice-Chief of the Defence Forces Commander, Kenya Army Director-General (NIS) Inspector-General, National Police Service | 655,875 x 54,656 p.a. – 701,531 x 54,656 p.a. – 765,188 x 54,656 p.a. – 819,844 x 54,656 p.a. – 874,500 |
| Director of Public Prosecutions Commander, Kenya Air force Commander, Kenya Navy | 640,681 x 30,509 p.a. – 671,190 x 30,509 p.a. – 701,698 x 30,509 p.a. – 732,207 x 30,509 p.a. – 762,715 x 30,509 p.a. – 793,224 x 30,509 p.a. – 823,732 x 30,509 p.a. – 854,241 |
| Deputy Inspector-General, Kenya Police Service Deputy Inspector-General, Administration Police Service | 532,500 x 25,357 p.a. – 557,857 x 25,357 p.a. – 583,214 x 25,357 p.a. – 608,571 x 25,357 p.a. – 633,929 x 25,357 p.a. – 659,286 x 25,357 p.a. – 684,643 x 25,357 p.a. – 710,000 |
| Registrar of Political Parties | 532,500 x 35,500 p.a. – 568,000 x 35,500 p.a. – 603,500 x 35,500 p.a. – 639,000 x 35,500 p.a. – 674,500 x 35,500 p.a. – 710,000 |

Notes:

- (i) A serving State Officer whose remuneration and benefits were set for the position they are holding before the establishment of the Salaries and Remuneration Commission by the relevant authority as provided by law, where such remuneration is above the set remuneration herein shall retain such remuneration.

- (ii) A serving State Officer whose remuneration and benefits were set for the position they are holding by the Salaries and Remuneration Commission on interim basis before this Gazette Notice, where the remuneration is above the set remuneration herein, shall retain such remuneration at fixed levels unless reviewed by the Salaries and Remuneration Commission.
- (iii) New State Officers shall join at the minimum and those currently earning below the total gross minimum remuneration set herein, shall join the scale at the appropriate level.
- (iv) State Officers whose current remuneration levels fall within the structure shall join the structure at the next immediate progression point.
- (v) Unless otherwise specifically stated in this Gazette Notice, all allowances are herein consolidated and capped at forty per centum (40 per cent) of the set total gross remuneration.
- (vi) All other allowances and benefits not specified in this Gazette Notice cease to be payable.
- (vii) Additional benefits accruing to the President and the Deputy President shall be reviewed by the Salaries and Remuneration Commission from time to time.
- (viii) The salary structure existing before this Gazette notice ceases to apply forthwith.

(a) *Benefits*

The following benefits shall apply to the State Officers serving in the Executive:

- (i) Accommodation and Subsistence Allowance: Retain the existing rates pending review by the Salaries and Remuneration Commission.
- (ii) Airtime: Retain the existing rates pending review by the Salaries and Remuneration Commission.
- (iii) Security: To be provided as advised by the Inspector-General, National Police Service.
- (iv) Official car: Chauffeur driven official car; or as reviewed by the Salaries and Remuneration Commission.
- (v) Medical Scheme: The medical cover shall be provided per family for self, spouse and up to four children below twenty five years fully dependent on the State Officer as follows:

| | |
|------------|-----------------|
| Inpatient | KSh. 10 million |
| Outpatient | KSh. 300,000 |
| Maternity | KSh. 150,000 |
| Dental | KSh. 75,000 |
| Optical | KSh. 75,000 |

The State Officers in the Defence Forces shall retain the existing medical scheme arrangement.

- (vi) Retirement Benefits.—A State Officer serving on Permanent and Pensionable terms shall join a contributory pension scheme and contribute at the rate of 7.5% of basic salary with the employer's contribution at the rate of 15% of basic salary.

A State Officer serving on fixed term shall serve on contract and be paid a service gratuity at the end of the term at the rate of 31% of annual basic pay for every year served.

- (vii) *Group Life Assurance*.—Officers shall be covered for a value equivalent to three times annual basic salary.
- (viii) *Work Injury Benefit (WIBA)*.—Work Injury Benefits Act shall apply where applicable.
- (ix) *Group Personal Accident*.—State Officers serving in the Executive shall be covered for a value equivalent to up to three times annual basic salary where applicable.
- (x) *Home, Utilities and Attendants*.—The President and Deputy President shall be housed by the State and provided with all commensurate home utilities and attendants, subject to review by the Salaries and Remuneration Commission from time to time.

Effective date: 1st March, 2013.

Dated the 28th February, 2013

SARAH SEREM,

Chairperson, Salaries and Remuneration Commission.

GAZETTE NOTICE NO. 2886

THE CONSTITUTION OF KENYA

REMUNERATION AND BENEFITS FOR STATE OFFICERS IN PARLIAMENT

IN EXERCISE of the powers conferred by Article 230 (4) (a), the Salaries and Remuneration Commission has set the remuneration and benefits of State Officers in Parliament as follows:

REMUNERATION AND BENEFITS OF ALL STATE OFFICERS IN PARLIAMENT

| <i>State Officer</i> | <i>Gross Monthly Remuneration Package (KSh.)</i> |
|---|--|
| Speaker of the National Assembly Speaker of the Senate | 990,000 x 82,500 p.a. – 1,072,500 x 82,500 p.a. – 1,155,000 x 82,500 p.a. 1,237,500 x 82,500 p.a. – 1,320,000 |
| Deputy Speaker of the National Assembly Deputy Speaker of the Senate | 792,000 x 66,000 p.a. – 858,000 x 66,000 p.a. – 924,000 x 66,000 p.a. 990,000 x 66,000 p.a. – 1,056,000 |

| State Officer | Gross Monthly Remuneration Package (KSh.) |
|---------------------------------|---|
| Leader of Majority Party | 532,500 x 44,375 p.a. – 576,875 x 44,375 p.a. – 621,250 x 44,375 p.a. – 665,625 |
| Leader of the Minority Party | x 44,375 p.a. – 710,000 |
| Chairpersons of Committees | |
| Members of Speakers Panel | |
| Chief Whips | |
| Minority Whips | |
| Member of the National Assembly | |
| Member of the Senate | |

Notes:

- Members of Parliament and all other Parliamentary State Officers shall join the remuneration structure at the minimum point and progress to the maximum over the term period.
- Unless otherwise specifically stated in this Gazette Notice, all allowances have been consolidated and capped at forty per centum (40 per cent) of the set total gross remuneration package.
- All other allowances and benefits not specified in this Gazette Notice cease to be payable.

(a) Special Parliamentary Duty Allowance:

Members of Parliament who have additional responsibilities as listed below shall be paid an additional allowance as may be apportioned by the Parliamentary Service Commission up to a maximum of KSh.150,000 per month.

- Leader of Majority Party;
- Leader of the Minority Party;
- Chairperson of Committees;
- Members of Speakers Panel;
- Chief Whips; and
- Minority Whips.

(b) Committee Sitting Allowances:

Members of Parliament and Senate who serve in Committees shall be paid Committee Sitting Allowance as follows:

- Chairperson, KSh.10,000 per day of meeting (s) subject to a maximum of 4 days per week and a maximum of KSh. 160,000 per month.
- Vice-Chairperson, KSh. 8,000 per day of meeting (s) subject to a maximum of 4 days in a week and a maximum of KSh. 128,000 per month.
- Member, KSh. 5,000 per day of meeting (s) subject to a maximum of 4 days in a week and a maximum of KSh. 80,000 per month.

(c) Other Allowances and Benefits:

The following benefits shall apply to Parliamentary State Officers:

- Accommodation and Subsistence Allowances.*—to be paid at existing rates pending review by the Salaries and Remuneration Commission.
- Security.*—To be provided as advised by the Inspector-General, National Police Service.
- Afleave Allowance.*—shall be paid to Members of Parliament per week of travel(s) up to a maximum of 52 weeks in one calendar year for the journeys between Nairobi and their Constituencies at AA rates or as reviewed by the Salaries and Remuneration Commission from time to time.
- Medical Scheme.*—Annual Medical cover shall be provided per family for self, spouse and up to four children below twenty five years, who are fully dependent on the Members of Parliament and all other Parliamentary State officers as follows:

| | |
|------------|-----------------|
| Inpatient | KSh. 10 million |
| Outpatient | KSh. 300,000 |
| Maternity | KSh. 150,000 |
| Dental | KSh. 75,000 |
| Optical | KSh. 75,000 |
- Retirement Benefits.*—Gratuity scheme at the rate of 31% of annual basic pay, shall be paid at the end of the term and shall not be pensionable.
- Group Life Assurance.*—State Officers shall be covered for a value equivalent to three times their annual basic salary.
- Work Injury Benefit (WIBA).*—Work Injury Benefits Act shall apply.
- Group Personal Accident.*—Members of Parliament and other Parliamentary State officers shall be covered for a value equivalent to up to three times their annual basic salary.
- Home, Utilities and Attendants.*—Speakers of the Senate and National Assembly shall be housed by the State and provided with all commensurate home utilities and attendants subject to review by the Salaries and Remuneration Commission from time to time.

Effective date: 1st March, 2013.

Dated the 28th February, 2013.

SARAH SEREM,
Chairperson, Salaries and Remuneration Commission.

GAZETTE NOTICE NO. 2887

THE CONSTITUTION OF KENYA
REMUNERATION AND BENEFITS OF STATE OFFICERS IN THE CONSTITUTIONAL
COMMISSIONS AND INDEPENDENT OFFICES

IN EXERCISE of the powers conferred by Article 230 (4) (a), the Salaries and Remuneration Commission has set the Remuneration and Benefits of State Officers in the Constitutional Commissions and Independent Offices as follows:

REMUNERATION AND BENEFITS OF STATE OFFICERS IN THE CONSTITUTIONAL
COMMISSIONS AND INDEPENDENT OFFICES

| State Officer | Gross Monthly Remuneration Package (KSh.) |
|--|---|
| Auditor General | 792,000 x 37,714 p.a. – 829,714 x 37,714 p.a. – 867,429 x 37,714 p.a. – 905,143 x 37,714 p.a. – 942,857 x 37,714 p.a. – 980,571 x 37,714 p.a. – 1,018,286 x 37,714 p.a. – 1,056,000 |
| Chairperson, Independent Electoral and Boundaries Commission Chairperson, Commission for the Implementation of the Constitution | 792,000 x 52,800 p.a. – 844,800 x 52,800 p.a. – 897,600 x 52,800 p.a. – 950,400 x 52,800 p.a. – 1,003,200 x 52,800 p.a. – 1,056,000 |
| Controller of Budget | 655,875 x 31,232 p.a. – 687,107 x 31,232 p.a. – 718,339 x 31,232 p.a. – 749,571 x 31,232 p.a. – 780,804 x 31,232 p.a. – 812,036 x 31,232 p.a. – 843,268 x 31,232 p.a. – 874,500 |
| Vice Chairperson, Independent Electoral and Boundaries Commission Vice-Chairperson, Commission for the Implementation of the Constitution | 655,875 x 43,725 p.a. – 699,600 x 43,725 p.a. – 743,325 x 43,725 p.a. – 787,050 x 43,725 p.a. – 830,775 x 43,725 p.a. – 874,500 |
| Chairperson, all other Constitutional Commissions; Member, Independent Electoral and Boundaries Commission Member, Commission for the Implementation of the Constitution | 640,681 x 42,712 p.a. – 683,393 x 42,712 p.a. – 726,105 x 42,712 p.a. – 768,817 x 42,712 p.a. – 811,529 x 42,712 p.a. – 854,241 |
| Vice Chairperson, all other Constitutional Commissions Members, all other Constitutional Commissions | 532,500 x 35,500 p.a. – 568,000 x 35,500 p.a. – 603,500 x 35,500 p.a. – 639,000 x 35,500 p.a. – 674,500 x 35,500 p.a. – 710,000 |
| Secretary of Constitutional Commission | 526,058 x 25,055 p.a. – 551,113 x 25,055 p.a. – 576,167 x 25,055 p.a. – 601,222 x 25,055 p.a. – 626,277 x 25,055 p.a. – 651,332 x 25,055 p.a. – 676,386 x 25,055 p.a. – 701,441 |

Notes:

- (i) New State Officers and those currently earning below the total gross minimum remuneration set herein, shall join the scale at the appropriate level.
- (ii) A serving State Officer whose remuneration and benefits were set for the position they are holding before the establishment of the Salaries and Remuneration Commission by the relevant authority as provided by law, where such remuneration is above the set remuneration herein shall retain such remuneration.
- (iii) A serving State Officer whose remuneration and benefits were set for the position they are holding by the Salaries and Remuneration Commission before this Gazette Notice, where the remuneration is above the remuneration set herein, shall retain such remuneration at fixed levels unless reviewed by the Salaries and Remuneration Commission.
- (iv) State Officers whose current remuneration levels fall within the structure shall join the structure at the next immediate progression point.
- (v) Unless otherwise specifically stated in this Gazette Notice, all allowances are herein consolidated and capped at forty per centum (40 per cent) of the set total gross remuneration.
- (vi) All other allowances and benefits not specified in this Gazette Notice cease to be payable.
- (vii) A part time State Officer shall, notwithstanding (vi) above, retain the existing remuneration level pending revision by Salaries and Remuneration Commission.
- (viii) The salary structure existing before this Gazette notice ceases to apply forthwith.

(a) *Duty Facilitation Benefits:*

The following benefits shall apply to the State Officers in Constitutional Commissions and Independent Offices.

- (i) *Airtime* – Retain the existing rates and subsequently as reviewed by Salaries and Remuneration Commission.
- (ii) *Security* – To be provided as advised by the Inspector General, National Police Service
- (iii) *Official car* – Chauffeur driven official car; or as reviewed by the Salaries and Remuneration Commission.

(b) *Other Benefits:*

- (i) *Medical Scheme* – The State Officers in Constitutional Commissions and Independent Offices shall be entitled to full medical cover per family for themselves, spouse and up to four children below twenty five years and fully dependent on the State Officer as follows:

| | |
|------------|-----------------|
| Inpatient | KSh. 10 million |
| Outpatient | KSh. 200,000 |
| Maternity | KSh. 150,000 |
| Dental | KSh. 75,000 |
| Optical | KSh. 75,000 |

- (iii) *Retirement Benefits*.—A State Officer serving on Permanent and Pensionable terms shall join a contributory pension scheme and contribute at the rate of 7.5% of basic salary with the employer's contribution at the rate of 15% of basic salary.
- A State Officer serving on fixed term shall serve on contract and be paid a service gratuity at the end of the term at the rate of 31% of annual basic pay for every year served.
- (iii) *Group Life Assurance*.—State Officers shall be covered for a value equivalent to three times their annual basic salary.
- (iv) *Work Injury Benefit (WIBA)*.—Work Injury Benefits Act shall apply.
- (v) *Group Personal Accident*.—State Officers in Constitutional Commissions and Independent Offices shall be covered for a value equivalent to up to three times their annual basic salary.

Effective date 1st March, 2013.

Dated the 28th February, 2013

SARAH SEREM,
Chairperson, Salaries and Remuneration Commission.

GAZETTE NOTICE NO. 2888

THE CONSTITUTION OF KENYA

REMUNERATION AND BENEFITS OF STATE OFFICERS SERVING IN THE COUNTY GOVERNMENT

(IN EXERCISE OF THE POWERS CONFERRED BY ARTICLE 230 (4) (a), THE SALARIES AND REMUNERATION COMMISSION HAS SET THE REMUNERATION AND BENEFITS OF STATE OFFICERS IN THE COUNTY GOVERNMENT AS FOLLOWS:

REMUNERATION AND BENEFITS OF STATE OFFICERS SERVING IN THE COUNTY GOVERNMENT

| | |
|--------------------------------|---|
| State Officer | Gross Monthly Remuneration Package (KSh.) |
| County Governor | 640,681 x 53,390 p.a. – 694,071 x 53,390 p.a. – 747,461 x 53,390 p.a. – 800,851 x 53,390 p.a. – 854,241 |
| Deputy County Governor | 161,250 x 38,438 p.a. – 49,688 x 38,438 p.a. – 538,125 x 38,438 p.a. – 576,563 x 38,438 p.a. – 615,000 |
| Speaker of the County Assembly | 225,000 x 18,750 p.a. – 243,750 x 18,750 p.a. – 262,500 x 18,750 p.a. – 281,250 x 18,750 p.a. – 300,000 |
| Member of the County Assembly | 79,200 x 6,600 p.a. – 85,800 x 6,600 p.a. – 92,400 x 6,600 p.a. – 99,000 x 6,600 p.a. – 105,600 |

Notes:

- (i) A State Officer joining the Public Service at the County Government shall adopt the minimum entry point of the respective remuneration scales.
- (ii) Unless otherwise specifically stated in this Gazette Notice, all allowances have been consolidated and capped at forty per centum (40 per cent) of the set total gross remuneration package.
- (iii) All other allowances and benefits not specified in this Gazette Notice cease to be payable.

(a) Additional Allowances and Benefits:

The following additional allowances shall apply to State Officers serving in the County Government:

- (i) Governor Allowance: To be paid at the rate of KSh. 80,000 per month
- (ii) Deputy Governor Allowance: To be paid at the rate of KSh. 64,000 per month

(iii) County Assembly Committee Sitting Allowance: To be paid to a County Representative as follows:

- 1. Chairperson: KSh. 5,000 per day of meetings for a maximum of 4 days in a week, subject to a maximum of KSh. 80,000 per month
- 2. Vice Chairperson: KSh. 4,000 per day of meetings for a maximum of 4 days in a week, subject to a maximum of KSh. 64,000 per month
- 3. Member: KSh. 3,000 per day of meetings for a maximum of 4 days in a week, subject to a maximum of KSh. 48,000 per month

(b) Other Allowances and Benefits:

The following allowances and benefits shall apply to the State Officers in the County Government as applicable:

- (i) Accommodation and Subsidy Allowances – To be paid at the existing rates applicable in the Public Service pending review by the Salaries and Remuneration Commission.
- (ii) Airtime – Airtime shall be provided as follows:

| | | |
|---|-------------------------|----------------------|
| 1 | Governor | KSh 10 000 per month |
| 2 | Deputy Governor | KSh 7 500 per month |
| 3 | County Assembly Speaker | KSh 5 000 per month |

- (iii) Security To be provided as advised by the Inspector General National Police Service where applicable
- (iv) Official car Chatterer driven official car for Governor and Deputy Governor or as may be reviewed by the Salaries and Remuneration Commission
- (v) Medical Scheme Annual Medical cover shall be provided per family for self spouse and up to four children below twenty five years who are fully dependent on the County State Officer as follows

Governor

| | |
|------------|----------------|
| Inpatient | KSh 10 million |
| Outpatient | KSh 300 000 |
| Maternity | KSh 150 000 |
| Dental | KSh 75 000 |
| Optical | KSh 75 000 |

Deputy Governor

| | |
|------------|---------------|
| Inpatient | KSh 5 million |
| Outpatient | KSh 150 000 |
| Maternity | KSh 50 000 |
| Dental | KSh 25 000 |
| Optical | KSh 25 000 |

County Assembly Speaker County Representative and County Executive Officer

| | |
|------------|---------------|
| Inpatient | KSh 1 million |
| Outpatient | KSh 100 000 |
| Maternity | KSh 50 000 |
| Dental | KSh 20 000 |
| Optical | KSh 20 000 |

- (vi) Retirement Benefits A County State Officer shall serve on contract and be paid a service gratuity at the end of the term at the rate of 31% of annual basic pay for every year served
- (vii) Group Life Assurance County State Officers shall be covered for a value equivalent to three times their annual basic salary
- (viii) Work Injury Benefit (WIBA) Work Injury Benefits Act shall apply
- (ix) Group Personal Accident State Officers in County Government shall be covered for a value equivalent to up to three times their annual basic salary
- (x) Home Utilities and Attendants A County Governor shall be housed by the State and provided with all commensurate home utilities and home attendants subject to review by Salaries and Remuneration Commission from time to time

Effective Date 1st March 2013

Dated the 28th February 2013

SARAH SEREMI
 Chairperson Salaries and Remuneration Commission

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS

PETITION NO. 193 OF 2013

IN THE MATTER OF ARTICLE 19, 20, 21, OF LEGAL NOTICE NO. 6 OF 2006

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLE 1, 2, 10, 19, 20, 21, 22, 23, 24, 27, 47, 50,
94, 127, 159(1)(2), 160, 232, 237 249, 250, 258(1) (2)(c) 259(1)(3) OF THE
CONSTITUTION OF KENYA (2010)

AND

IN THE MATTER OF THE NATIONAL ASSEMBLY REMUNERATION ACT

AND

IN THE MATTER OF PENSIONS ACT

AND

IN THE MATTER OF APPROPRIATION ACT

IN THE MATTER OF GAZETTE NOTICE NO.....OF 2013

AND

IN THE MATTER OF THE DOCTRINE OF LEGITIMATE EXPECTATION

AND

IN THE MATTER OF PARLIAMENTARY SERVICE COMMISSION ACT

AND

IN THE MATTER OF SALARIES AND REMUNERATION COMMISSION ACT

BETWEEN

JUSTUS KARIUKI MATE.....PETITIONER
VERSUS

THE SALARIES AND REMUNERATION COMMISSION.....1ST RESPONDENT

PETITION

TO THE HONOURABLE JUDGE OF THE HIGH COURT

The humble Petition of **JUSTUS KARIUKI MATE**

- 1 The Petitioner is an adult of sound mind and for the purpose of this Petition his address of service shall be care of Ondieki and Ondieki Advocates, Corner House, M3 Mama Ngina Street, P O Box 5803-00100, NAIROBI
- 2 The 1st Respondent is a Constitutional Body established under Article 248 (2) (h) as read with article 249 and 250 of the Constitution
- 3 The 2nd Respondent is Chief and Principal legal Adviser of the Republic of Kenya and is sued in his representative capacity as the protector and promoter of the Rule of law and Public Interest as contemplated by article 156 of the Constitution
- 4 The Petitioner avers that the 1st Respondent has breached the Constitution and the law by purporting to vary, amend and/or change a legislative framework enacted by Parliament within the meaning of article 94 of the Constitution
- 5 The Petitioner avers that Parliament acting under article 94 of the Constitution enacted the National Assembly Remuneration Act, the Pensions Act The Appropriation Act which have defined the various remunerations for various state officers The Appropriation Act contains the salaries of all officers
- 6 The Petitioner avers that the 1st Respondent have breached the law and the Constitution by purporting to amend, vary and/or repeal sections of the -
 - (i) Article 230 clause 5 (a), (b), (c), and (d) of the constitution as read with article 1, 94 of the constitution
 - (ii) The Petitioner contends that the mandate donated to the 1st Respondent by article 230 (4) (a) of the Constitution is not absolute as it is expected to be an objective review done in good faith
 - (iii) The Petitioner avers that in execution of their mandate, the First Respondent totally disregarded the principles and values under article 230 (5) of the constitution to the prejudice of the petitioner
 - (iv) National Assembly Remuneration Act particularly sections 2, 3, 4 as read with the First Shedule and second schedule and as amended in 2012
 - (v) The Parliamentary Pensions Act (Chapter 196) Laws of Kenya sections 2, 3, 4, and 5
 - (vi) The Parliamentary Service Commission Act

- (vii) The Salary and Remuneration Commission particularly section 11 which defines the functions of the Commission to among other things to inquire into and advise on the salaries and remuneration to be paid out of public funds
- (viii) The Commission ignored the fact that the Supplementary Appropriation Act, 2013 Act No 3 of 2013 already provides for the expenditure of the approved Salaries
- (ix) The Commission also ignored a critical factor that Devolution is a major component of the development agenda and for top notch professionals to relocate their families to the devolved governments, there is need for proper remuneration commensurate to the challenges and unique circumstances posed by devolution

7. The petitioner avers that the following rights have been denied, violated, infringed and/or threatened

The Salary Commission has gazetted VOL CXV-NO 33 of 2013 the effect of which it fundamentally changes the letter and spirit of the principles and values of Devolution

- i) The Constitution particularly article 1, 2, 10, 94, 127, and 230 of the Constitution
- ii) It offends the National assembly Remuneration Act, the Pensions Act, the Parliamentary Service Commission Act
- iii) It offends the doctrine of legitimate expectation under article 10 of the Constitution and violates the principles of equity, justice and fairness

The re-elected Members of the national Assembly had a legitimate expectation of earning Ksh 810,000/=

- iv) The State Laws Misc Amendment Act of 2012 recommended that the Recommendations by the 1st Respondent ought to go through Parliament
- v) The Salaries Commission did not take into account the reports of previous Commissions
 - a) Akwumi Commission recommendations
 - b) Cockar Report
- vi) The Gazette Notice was published at the beginning of March a few days before the elections which shows that the 1st Respondent acted in bad faith

vii) The Salaries Commission cannot amend an act of Parliament through an internal Memo and/or circular and/or statutory instrument.

How the rights and fundamental freedoms have been denied, violated, infringed and/or threatened.

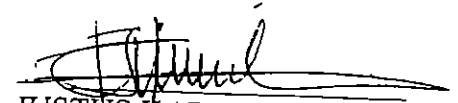
8. The Gazette Notice has far reaching implications of the performance of the state officers.
9. The actions of the 1st Respondent are in breach of article 1, 2, 10, 230 of the Constitution.
10. The Respondents have breached the rights of the Petitioner by purporting to amend, vary, change and/or repeal the basic values and principles of THE VARIOUS Acts of Parliament and by extension the Constitution.
11. The 1st Respondent violated the rights of the Petitioners under article 1, 2, 10,, 27, 40, 43, 47, 94, 127 and 230 of the constitution by carrying out a process that was discriminatory nature.
12. The actions of the 1st Respondent are in breach of the express provisions of the Constitution to wit Article 1, 2, 10, 94, 127 and 230 of the Constitution and clause 32 of the 5th Schedule.
13. The rights that have been denied, violated, infringed and/or threatened by the 1st Respondent are so fundamental that they cannot be taken away.
 - (i) The right to legitimate expectation under article 10 of the Constitution and clause 32 of the 6th Schedule violates the basic structure of the Constitution.

14. **REASONS WHEREOF** the Petitioner prays for the following orders and declaration.

- a. A declaration that the fundamental rights and freedoms of the Petitioner, County Representatives, Speakers, Senators, Women Representatives, Member of the National Assembly and Governors have been violated, infringed, breached and/or denied.
- b. A declaration that Legal Notice No VOL.CXV-NO. 33 of 2013 published in February 2013 is invalid, illegal, null and void and of no effect whatsoever.
- c. A declaration that the Salary and Remuneration Commission has no constitutional or legal power to amend, vary, change, repeal and/or do away with an act of Parliament.
- d. A declaration that the Salaries Commission can only recommend but not make a determination of new salaries.
- e. Costs be provided for.

Dated this 15th day of APRIL

2013


JUSTUS KARIUKI MATE
PETITIONER

LODGED in the Registry at Nairobi this day of

2013

Deputy Registrar
High Court of Kenya

DRAWN & FILED BY
ONDIEKI & ONDIEKI ADVOCATES
CORNER HSE, M3 FLOOR
MAMA NGINA STREET
P O. BOX 5803-00100
NAIROBI.

TO BE SERVED UPON

THE SALARIES AND REMUNERATION COMMISSION
NAIROBI

THE HON ATTORNEY GENERAL
SHERIA HOUSE
P O BOX 40112
NAIROBI

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

PETITION NO. 193. OF 2013

IN THE MATTER OF ARTICLE 19, 20, 21, OF LEGAL NOTICE NO. 6 OF 2006

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 1, 2, 10, 19, 20, 21, 22, 23, 24, 27, 47, 50, 94, 127, 159(1)(2), 160, 232, 237 249, 250, 258(1) (2)(c) 259(1)(3) OF THE CONSTITUTION OF KENYA (2010)

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BETWEEN

JUSTUS KARIUKI MATE.....PETITIONER

VERSUS

THE SALARIES AND REMUNERATION COMMISSION.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

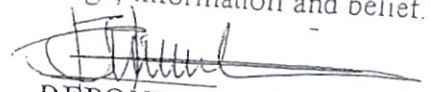
SUPPORTING AFFIDAVIT

I, **JUSTUS KARIUKI MATE** of Post Office Box 102106 – 00101 JAMIA in the Republic of Kenya do hereby make oath and state as follows;

1. **THAT** I am an adult of sound mind and the Speaker of Embu County Assembly therefore competent to swear this affidavit.
2. **THAT** I am fundamentally and adversely affected by Legal Notice No... of 2013 as follows:-
 - (i) The Gazette Notice undermines the County Representatives, Members of the national Assembly, Senators, Women Representatives and Governors to execute their mandate effectively and competently.
 - (ii) The offices of Speakers, County Representatives, Speakers, Senators, Women Representatives, Member of the National Assembly and Governors are too demanding and they require reasonable remuneration commensurate to their duties and responsibilities which are taxing in nature.
 - (iii) The Gazette Notice No VOL.CXV-NO. 33 of 2013 offends the principles and values of article 230 as read with article 1 and 94 of the Constitution as shown by the exhibit herein attached and marked “JKM 1”.
3. **THAT** the actions of the 1st Respondent exceed its mandate accorded to them by article 230 of the Constitution.
4. **THAT** the 1st Respondent should have published the Notice after presenting the proposals to the National Assembly to facilitate harmonization with other existing laws. Further, the commission ought to have published the statutory instrument before the Elected Leaders ventured into these elective positions in the first place.
5. **THAT** the purported rationalization of Salaries for State Officers is unreasonable in a democratic society and cannot be justified taking all the circumstances into account.
6. **THAT** the Gazette Notice No VOL.CXV-NO. 33 of 2013 offends clause 32 of the Sixth Schedule to the Constitution which protects Pension Funds for Elected Leaders.
7. **THAT** the Honourable Court needs to intervene to adjudicate whether the Salaries and Remuneration Commission can purport to alter the Provisions of a Parliamentary Statute without recourse to Parliament.
8. **THAT** I am informed by my Advocates on record which information I verily believe to be true that, the 1st Respondent’s actions are null and invalid as they offend article 94, 2(4), 127 of the Constitution.
9. **THAT** I am aware that the Primary duty of the first Respondent under articles 10, 230, 249 (1) (2) of the Constitution is to observe democratic values and principles and promote constitutionalism.
10. **THAT** I am aware that article 250 (8) of the Constitution protects remuneration of constitutional Commissions including the Parliamentary Service Commission under article 248(2) (d) of the Constitution and there was no justification to breach this provision.
11. **THAT** I swear this affidavit in support of the Petition herein.

12 THAT what is deponed to herein is true to the best of my knowledge, information and belief.

SWORN by the said
JUSTUS KARIUKI MATE


DEPONENT

At NAIROBI this 15th day of APRIL 2013

BEFORE ME
NYAKUNDI KIAGE
ADVOCATE &
COMMISSIONER FOR OATHS
P O Box 5817-00100 NAIROBI

COMMISSIONER FOR OATHS

DRAWN & FILED BY:
ONDIEKI & ONDIEKI ADVOCATES
CORNER HOUSE FLOOR M3
MAMA NGINA STREET
P.O. BOX 5803-00100
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TO BE SERVED UPON

THE SALARIES AND REMUNERATION COMMISSION
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