FEDERATION OF KENYA EMPLOYERS
The Voice of Employers

PRESS STATEMENT ISSUED FOLLOWING THE FKE MANAGEMENT BOARD MEETING HELD ON FEBRUARY 24,2023

Members of the Press

Thank you for joining us this afternoon as we hold this press briefing on the state of the employment and Labour market, from an employers' perspective. The Management Board of the Federation of Kenya Employers, FKE, has just held its first meeting this year. The meeting discussed the state of the Labour sector, issues affecting employers, the government's policy directions, and their impact on creating a conducive business environment that attracts investment and growth of enterprises while creating jobs in Kenya.

We wish to state as follows:

PART I: BY DR. HABIL OLAKA, NATIONAL PRESIDENT,FKE

1. STATE OF THE LABOUR SECTOR: EMPLOYMENT OUTLOOK FOR KENYA REMAINS GLOOMY.

The high cost of doing business, high cost of living, rising interest rates, the war in Ukraine and the prolonged dry weather continue to adversely affect the economic activity in our country.

Businesses in Kenya are struggling and many of them are either closing shop or on the verge of closing shop in Kenya. For example, the Flower sector has reported that 8 companies closed shop in Kenya in the last 2 years due to high cost of business; many retail stores have closed down including the small businesses; we have many empty retails business spaces; the drought has brought our agriculture sector to its knees; over 11 companies listed on the Nairobi Security Exchange have issued profit warnings in the last 2 years; the weak shilling and high costs of imports of raw materials are affecting our manufacturing; we have also seen several multinationals closing shop in Kenya while others continue to scale down their presence in Kenya as they opt for better production locations.

We urge the Government to embrace social dialogue in a bid to create an enabling environment for foreign direct investment (FDI), which is critical in easing the growing youth unemployment in the country.

We support the government's effort to widen the tax base and generate more tax revenues to fund the bottom-up economic development plan. However, we are concerned with the unintended adverse effect the initiatives have on the business environment and livelihood of citizens.

The policy needs to help spur increased production and consumption thereby spurring business activity while creating formal income opportunities for the masses. As income rises, majority will enter into tax paying brackets and pay taxes. In addition, when enterprises generate more revenues and profits, the taxes they pay will increase.

Increase in business operating costs, will likely increase informality and shrink the formal wage employment as many businesses especially the MSMEs will not be able to afford the costs associated with operating in the formal employment sector.

The President's agenda of jobs should be at the core of the government policy. Any policy action that is detrimental to jobs both in the short-term and in the long-term, no matter how well intentioned may be, should be avoided. We call upon the government to work with the employers to reduce the tax wedge on Labour. The current high Labour costs are unsustainable.

The high cost of living remains the greatest challenge Kenya faces and may morph into a social crisis of monumental level. We appeal to the executive and parliament to address this matter by involving all stakeholders in the process of developing policies that reduce poverty and enhance economic growth. \

2. BUSINESS ENVIRONMENT

Lastly on the state of the business environment, the employers are appealing to the government to provide a stable, predictable and less costly operating environment. The government need to commit to long-term development plans and to give adequate time for businesses to adjust their budgets when policies are introduced in the labour sector.

We also call upon the government to work towards removing the red-tape and barriers to business operations, productivity and growth. Kenya can benefit from the many trade deals and integration efforts such as the African Continental Free Trade Area Agreement only if the Kenyan businesses are competitive.

We look forward to working collaboratively with the government as we jointly seek mutually agreeable win-win solutions to the challenges we face in the employment and Labour sector and the economy as a whole.

3. NSSF REFORMS NEED TO ADDRESS THE PERTINENT ISSUES RAISED BY EMPLOYERS

Embracing social dialogue is key in the journey towards the attainment of a sustainable universal social protection system. This requires involvement of all stakeholders in the labour sector to ensure establishment of a viable funding mechanism for the universal social security.

Only 15% of the country's wage employment is in the formal sector. Formal workers and formal Employers should therefore not solely shoulder the Government's burden of funding the universal social protection system.

As you are aware the country has not been able to fully implement the

NSSF Act since its enactment in 2013. The challenges and concerns around the Act have resulted into court cases.

The Federation maintains that the issues hindering the full implementation of the NSSF Act 2013 have not been addressed. They can be resolved through meaningful social dialogue, stakeholders' engagement and listening to one another.

It is critical that the entire implementation structure of the NSSF Act 2012 is put in place before commencement. We also appeal to the Government to embrace more dialogue in resolving NSSF issues. Let the parties engage in good faith and get an agreeable way forward that will move our beautiful country ahead on establishment of the universal social protection system in Kenya. The employers are aware that the litigation system is adversarial, and they only take it as a last resort, when the other party completely refuses to either have a meaningful engagement or engage in good faith.

{Let me Call upon the Executive Director to highlight the issues employers have raised on NSSF Act 2013 and our proposal on resolving them.}

PART II: THE PRESS STATEMENT ON NSSF – BY JACQUELINE MUGO, EXECUTIVE DIRECTOR &CEO,FKE

The National President has indicated that employers have pertinent issues with the NSSF Act 2013 that need to be resolved before implementation. Which issues are they and what have we done to get them resolved? We have had this Act in place since 2013, why have we not progressed on resolving the issues? Let me speak to these issues.

First on the issues employers have with NSSF Act 2013: The employers need clarity on what pensionable earnings are; clarity on how to treat gratuity; automatic opting out from tier II for employers with private pensions schemes that are licensed and regulated by RBA to avoid the 2 months waiting period; and clarity on taxing pension benefits: why save for the worker then take 30% away from them when he or she accesses her benefits? This defeats the purpose of saving for pension!

The other issues are: age-Is the NSSF contribution mandatory by employees above 60years of age? For employees who are paid Gratuity instead of joining Company pensions scheme at end of their contract, are employers expected to remit Tier II? The amount will keep increasing for the next fie years. Will the Tier 1 amount which must be contributed to NSSF increase or it is only Tier 2 that will increase within the years which we have an option to contract out

These issues remain unresolved, and it is our hope that they will be resolved before implementation of the NSSF Act 2013.

On what we have done: we have raised these issue with both the ministry of Labour and the NSSF Board since 2014. On Wednesday 22nd February 2023, this week, we met the Cabinet Secretary for Labour, the PS and senior ministry officials and we raised these issues and proposed a way forward on them. The Cabinet secretary promised to have them resolved in 2 weeks. We look forward and hope that this time round they will be resolved.

On why these issues remain unresolved since 2013 when the NSSF Act was enacted: the willingness to meaningful engage and in good faith has been lacking from the government and NSSF Board. We hope that this administration will be different.

Lastly, we ask that in addition to resolving the aforementioned issues, the government reschedules the implementation date to 1st July 2023 to give the employers the opportunity to adjust their budgets and restructure the cashflow to accommodate the new

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NATIONAL PRESIDENT

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