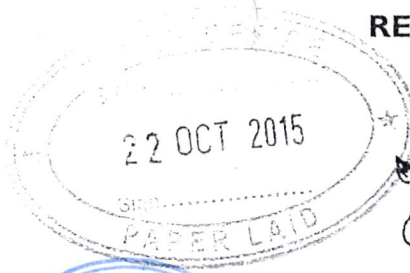


REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION – 2015

*Paper laid  
Hon. Asnan Karasaa  
Chair, Administration and  
Security or Thursday  
22<sup>nd</sup> Oct 2015  
[Signature]*

DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY

REPORT ON THE PETITION BY MR. SIMON KATEE ON BEHALF OF JUHUDI COMMUNITY SUPPORT CENTRE SEEKING THE REMOVAL OF MAJOR (RTD.) MUIU SHADRACK MUTIA AS A COMMISSIONER OF THE NATIONAL POLICE SERVICE COMMISSION

DIRECTORATE OF COMMITTEE SERVICES,  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
**NAIROBI**

OCTOBER, 2015

*V. 95-*



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## 1.0 PREFACE

On behalf of the Departmental Committee on Administration and National Security and pursuant to the provisions of Standing Order No. 230, it is my pleasant privilege and honour to present to the House the Report of the Committee on the Petition by Mr. Simon Katee on behalf of Juhudi Community Support Centre seeking the removal of Major (Rtd.) Muiu Shadrack Mutia as a Commissioner to the National Police Service Commission

The petition was tabled before the House pursuant to Standing Order No. 225 (2)(b) by the Honourable Speaker of the National Assembly on behalf of Mr. Simon Katee and Juhudi Community Support Centre, on Thursday 8<sup>th</sup> October, 2015.

### 1.1 Mandate of the Committee

The Committee is established pursuant to the provisions of Standing Order No. 216 with the following terms of reference:-

- (i) study and review all legislation referred to it;*
- (ii) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- (iii) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- (iv) to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
- (v) to study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- (vi) to 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 or a Minister;*

The Committee under Standing Order No. 227 is mandated to consider petitions committed to it by the House.

### 1.2 Committee Membership

The Committee comprises of the following Members:-

1. The Hon. Asman Kamama, MGH, OGW, MP - **Chairperson**
2. The Hon. Alois M. Lentoimaga, MP- **Vice Chairperson**
3. The Hon. Ababu Namwamba, EGH, MP
4. The Hon. Joseph Lekuton, MP
5. The Hon. Alice Wahome, MP

6. The Hon. Zakayo K. Cheruiyot, MP
7. The Hon. Timothy W. Wetangula, MP
8. The Hon. Patrick Ole Ntutu, MP
9. The Hon. Ali Isaack Shaaban, MP
10. The Hon. Samuel Moroto, MP
11. The Hon. Humphrey Njuguna, MP
12. The Hon. Francis K. Mwangangi, MP
13. The Hon. Rashid J. Bedzimba, MP
14. The Hon. David Gikaria, MP
15. The Hon. Mohamed Shidiye, MP
16. The Hon. Jane Machira, MP
17. The Hon. Regina Nthambi Muia, MP
18. The Hon. Ibrahim Abdi Saney, MP
19. The Hon. Joseph O. Ndiege, MP
20. The Hon. (Maj. Rtd.) John K. Waluke, MP
21. The Hon. Wanjiku Muhia, MP
22. The Hon. Akuja Protus Ewesit, MP
23. The Hon. Joseph M. Kahangara, MP
24. The Hon. Ahmed Abdikadir Ore, MP
25. The Hon. Grace Kiptui, MP
26. The Hon. George Theuri, MP
27. The Hon. James Bett, MP
28. The Hon. Benard Shinali, MP

### 1.3 Committal and Consideration of the Petition

Pursuant to Standing Order 227(1), the petition was referred to the Departmental Committee on Administration and National Security for consideration and preparation of a report within 14 days, pursuant to Standing Order 230 (3) and (4).

The Committee proceeded with the consideration of the petition by holding three sittings to consider the prayers. The Committee complied with the Constitutional and legal requirements when considering the petition. It ensured that public participation and openness in carrying out the proceedings was adhered to. Notifications inviting the public to submit memoranda were placed in the mainstream print media, in tandem with the law.

### 1.4 Committee Observations

The Committee made the following observations:

1. Commissioner Major (Rtd.) Shadrack Mutia Muiu fell ill in February 2013 when he suffered a stroke while on official duty in the United Kingdom and has been absent from duty since then. This situation has hampered the Commission from executing its mandate.
2. Commissioner Major (Rtd.) Shadrack Mutia Muiu's doctors wrote to the Commission on several occasions from March 2013 to February 2014 seeking extended medical leave for the Commissioner.
3. As a follow up to his health status, the Commission on November 29<sup>th</sup>, 2013 requested for a medical report from Commissioner Major (Rtd.) Shadrack Mutia Muiu's doctors, which was not submitted. A reminder letter dated February 27<sup>th</sup>, 2014 was sent to the Commissioner's doctors but no response was received.
4. During a Commission Board meeting on February 21<sup>st</sup>, 2014, Commissioner Major (Rtd.) Shadrack Mutia Muiu was placed on sick leave with effect from July 1<sup>st</sup>, 2013 as the Commission pursued his case with relevant authorities, including the Director of Medical Services, to determine his suitability for continued service in the Commission.
5. In a letter Ref. No. OP/CAB.1/108A, the Chief of Staff and Head of the Public Service requested Commissioner Major (Rtd.) Muiu Shadrack Mutia to consider vacating office voluntarily in the spirit of Article 251 of the Constitution. The Head of Public Service noted that the Commission was engaged in extensive police reforms programmes including vetting which demanded long hours of working which the commissioner was not able to undertake. However, the Commissioner did not heed the advice.
6. The National Police Service Commission (Amendment) Act amended the Second Schedule to the National Police Service Commission Act (No. 30 of 2011) to revise the quorum of members from five members to six members to include the four members appointed under Article 246 (2) (a) (i) and (iii) of the Constitution and the two of the members appointed under Article 246 (2) (b) and (c) of the Constitution. This therefore includes the Inspector General of the National Police Service and both the Deputy Inspectors-General of the National Police Service to constitute quorum unlike previously when they were *ex-officio* members. In addition, Major (Rtd.) Commissioner Muiu Shadrack Mutia forms part of the statutory quorum as he was appointed under Article 246 (2) (a) (ii) of the Constitution and his continued absence affects the functions of the Commission and the police reform agenda.

7. The death of the Vice-Chairperson Esther Chui-Columbini in November 2014 created a vacancy in the Commission and this has been further compounded by the prolonged absence of Commissioner Major (Rtd.) Muiu Shadrack Mutia.
8. Section 8 (1) of the National Police Service Commission Act provides that the office of the chairperson or a member (of the Commission) shall become vacant if the holder dies. When this happens, Section 9(1) provides that the President shall appoint a replacement in accordance with Section 6 which provides for the procedure of the appointment which is to be used also in the replacement.
9. Article 251 of the Constitution provides for the grounds for removal from office for a member of a Commission or an independent office holder. Article 251 (1) (b) provides that a member of a Commission (other than an ex officio member), or the holder of an independent office, may be removed from office for gross misconduct, whether in the performance of the member's or office holder's functions or otherwise. Article 251 (1) (c) provides for the removal from office based on physical or mental incapacity to perform the functions of office.

### **1.5 Response to the prayers in the petition**

The petitioners had prayed that the National Assembly through the Departmental Committee on Administration and National Security:-

1. Resolves that the petition discloses grounds for removal of the Commissioner Major (Rtd.) Muiu under Article 251 (b) and (c) of the constitution;
2. Recommends to His Excellency the President to form a tribunal to investigate the Commissioner.

In response to the above prayers, the Committee made the following recommendations: -

1. That it finds that the petition has disclosed grounds for the removal of Major (Rtd.) Muiu Shadrack Mutia as a Commissioner to the National Police Service Commission as set out in Article 251(1) (b) and (c) of the Constitution.
2. That the President appoints a tribunal in accordance with Article 251 (4) (b) of the Constitution as read together with Article 251(5) of the Constitution to investigate the matter expeditiously, report on the facts and make a binding recommendation to the President.
3. That the President expeditiously initiates the process of replacement of the deceased Commissioner Esther Chui-Columbini as required under section 9

of the National Police Service Commission Act (No. 30 of 2011), in accordance with section 6 of the Act.

### **1.6 Adoption of the Report**

We Members of the Departmental Committee on Administration and National Security have pursuant to Standing Order 199 adopted this report on the Petition by Juhudi Community Support Center seeking the removal of Major (Rtd.) Muiu Shadrack Mutia as a Commissioner to the National Police Service Commission and affix our signatures to confirm our approval and confirm its accuracy, validity and authenticity today 22<sup>nd</sup> October, 2015 as per the attached list (Appendix I).

### **1.7 Acknowledgement**

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

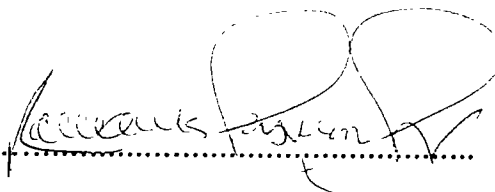
The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to this Committee. Their efforts made the work of the Committee and the production of this Report possible.

I take this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work, which enabled the Committee to complete the tasks within the stipulated period.

The Committee is also grateful to all the witnesses who made submissions and presentations before the Committee during the meetings. Their contributions gave the Committee the much needed insights into the issues raised in the petition and possible solutions.

Finally, on behalf of the Committee, and pursuant to Standing Order 230 (4), it is my pleasant duty to table in the House the Report of the Departmental Committee on Administration and National Security on its consideration of the Petition by Mr. Simon Katee on behalf of Juhudi Community Support Center seeking the removal of Major (Rtd.) Muiu Shadrack Mutia as a Commissioner of the National Police Service Commission.



Signed.......... Date..... 22/10/15.....

**Hon. Asman Kamama, MGH, OGW, MP**  
**Chairman, Departmental Committee on Administration and National Security**

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## 2.0 BACKGROUND INFORMATION

Article 37 and 119 of the Constitution provides that any person has the right to petition Parliament to consider any matter within its authority as contemplated in Articles 94 and 95 of the Constitution, including enactment, amending or repealing any legislation.

The grounds for the removal of a Commissioner are set out in Article 251(1) of the Constitution which provides as follows—

*251. (1) A member of a commission (other than an ex officio member), or the holder of an independent office, may be removed from office only for—*

*(a) serious violation of this Constitution or any other law, including a contravention of Chapter Six;*

*(b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;*

*(c) physical or mental incapacity to perform the functions of office;*

*(d) incompetence; or*

*(e) bankruptcy.*

Further, Article 251(2) of the Constitution provides that a person desiring the removal of a member of a Commission or a holder of an independent office on any ground specified in Article 251(1) may *present a petition* to the National Assembly setting out the alleged facts constituting that ground.

Subsequently, under Article 251(3) of the Constitution, the National Assembly is mandated to consider the petition and, if it is satisfied that it discloses a ground under clause (1), it shall send the petition to the President.

After the President receives the Petition, Article 251(4) of the Constitution provides that the President—

*(a) may suspend the member or office holder pending the outcome of the complaint; and*

*(b) shall appoint a tribunal in accordance with clause (5).*

Finally, as provided by Article 251(6) of the Constitution, the tribunal shall investigate the matter expeditiously, report on the facts and make a binding

recommendation to the President, who shall act in accordance with the recommendation within thirty days.

The Petition by Mr. Simon Katee on behalf of Juhudi Community Support Center was tabled in the House was tabled before the House on Thursday 8<sup>th</sup> October, 2015 pursuant to Standing Order No. 225 (2) (b).

Pursuant to House rules, the petition was referred to the Committee on Thursday 8<sup>th</sup> October, 2015 for consideration and preparation of a report within 14 days. The Committee considered the petition pursuant to the provisions of Standing Order 230.

The petitioners wished to **draw the attention of the House to the following matters** regarding the National Police Service Commission in the exercise of its powers or in the performance of its functions;

1. That one Commissioner Major (Rtd.) Muiu Shadrack Mutia was appointed to the National Police Service Commission under Article 246 (2) (a) (ii) of the Constitution, being one of the two retired police officers, and representing the Administration Police Service;
2. That Commissioner Major (Rtd.) Muiu has consistently failed, neglected and/or refused to attend to his duties and/or perform his duties as a Commissioner for the past two years;
3. That his continued absence has negatively affected the operations of the Commission thereby denying the Commission the chance to make informed decisions particularly with regards to the Administration Police;
4. That there exists information in the public domain of the continued inability by Commissioner Major (Rtd.) Muiu to attend to his duties as a Commissioner due to physical incapacity to perform his functions or his failure, neglecting or refusal to attend to his duties as a Commissioner;
5. That Commissioner Major (Rtd.) Muiu may be removed from office pursuant to Article 251 (1) (b) and/or (c) of the Constitution for gross misconduct and/or physical and mental incapacity to perform the functions of the office, respectively.
6. That the police reform agenda is in danger of stalling following the absence of Commissioner Major (Rtd.) Muiu given his background as a former police officer with the Administration Police;
7. That the crisis of quorum at the National Police Service Commission is further compounded by the demise of Esther Chui-Columbini more than two years ago - with the vacancy yet to be filled - and the retirement of Deputy Inspector General of Police, Grace Kaindi, in Spetember 2015;
8. That based on the aforesaid, the petitioner suspects that the Commission's operations have been seriously hampered by the continued absence of the

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Commissioner and is therefore unable to attend to the efficient oversight and administration of the National Police Service.

The petition enumerates grounds for removal of the Commissioner as follows:

1. That Commissioner Major (Rtd.) Muiu has consistently failed, neglected and/or refused to attend to his duties and/or perform his duties as a Commissioner for the past two years;
2. That this has resulted in the Commission's transaction of business without the required composition and thereby denying the Commission the chance to make informed decisions particularly with regards to the Administration Police;
3. That there exists information in the public domain of the continued inability by Commissioner Major (Rtd.) Muiu to attend to his duties as a Commissioner due to physical incapacity to perform his functions or his failure, neglecting or refusal to attend to his duties as a Commissioner;
4. That Commissioner Major (Rtd.) Muiu may be removed from office pursuant to Article 251 (1) (b) and/or (c) of the Constitution for gross misconduct and/or physical and mental incapacity to perform the functions of the office, respectively.
5. That the police reform agenda is in danger of stalling following the absence of Commissioner Major (Rtd.) Muiu given his background as a former police officer with the Administration Police;
6. That the operations of the National Police Service Commission have been seriously hampered by the continued absence of the Commissioner and is therefore unable to attend to the efficient oversight and administration of the National Police Service.

### 3.0 SUBMISSIONS

Having been seized of the Petition, the Committee commenced its consideration by holding meetings to consider the petition.

#### 3.1 Meeting with the Petitioner

The Committee held a meeting with the petitioners on 21<sup>st</sup> October, 2015. During the meeting the petitioners informed the Committee that they noticed the matter of Commissioner Major (Rtd.) Muiu's absence from office in the daily newspapers. Upon further inquiries and research, the petitioners established that the Commissioner was absent from duty for an extended period. As Kenyans who works in the civil society, the petitioners saw it as their patriotic duty to petition the National Assembly to commence the process of replacement of the Commissioner.

The petitioners noted with concern that the National Police Service Commission had been lacking quorum when holding meetings. They regretted that important programmes of the Commission such as vetting of Police Officers had been slowed down due to the limited number of Commissioners. The petitioners further warned that the vetting exercise was likely to remain unfinished as the country approaches the 2017 general elections. They also stated that the continued absence of Commissioner Major (Rtd.) Muiu would stall the police reform process.

The petitioners noted that they were not in a position to access minutes of the National Police Service Commission sittings, to ascertain the absence of Commissioner Major (Rtd.) Muiu, due to the sensitive nature of the matters under deliberation. They explained that upon the formation of the tribunal, the evidentiary standard required would be much higher and at this stage, all evidence necessary would be submitted to the tribunal.

Finally, the petitioners disclosed that given his continued absence from office with no official explanation, Commissioner Major (Rtd.) Muiu may be removed from office pursuant to Article 251 (1) (b) and/or (c) of the Constitution for gross misconduct and/or physical and mental incapacity to perform the functions of the office, respectively.

### **3.2 Meeting with the Major (Rtd.) Muiu Shadrack Mutia**

In the spirit of natural justice, the Committee reached out to Commissioner Major (Rtd.) Muiu Shadrack Mutia vide a letter (Ref No. NA/DC.A/ANS/2015(66) with a view to having a meeting on the matters raised in the petition. The letter was delivered to the National Police Service Commission offices but was later returned to the National Assembly since the Commission had no means of getting in touch with the Commissioner.

Upon further follow up, the Committee contacted the Commissioner via phone and despite several attempts, the Commissioner did not honour the invitation to appear before the Committee.

### **3.3 Submission by the National Police Service Commission**

The Committee received submissions from the National Police Service Commission with respect to the petition. In their submission, the Commission expressed its concurrence with the petitioners on the following:

1. That one Commissioner Major (Rtd.) Muiu Shadrack Mutia was appointed to the National Police Service Commission under Article 246 (2) (a) (ii) of the Constitution, being one of the two retired police officers, and representing the Administration Police Service;
2. That Commissioner Major (Rtd.) Muiu has consistently failed, neglected and/or refused to attend to his duties and/or perform his duties as a Commissioner for the past two years;
3. That this has resulted in the Commission's transaction of business without the required composition and thereby denying the Commission the chance to make informed decisions particularly with regards to the Administration Police;
4. That there exists information in the public domain of the continued inability by Commissioner Major (Rtd.) Muiu to attend to his duties as a Commissioner due to physical incapacity to perform his functions or his failure, neglecting or refusal to attend to his duties as a Commissioner;
5. That based on the foregoing, Commissioner Major (Rtd.) Muiu may be removed from office pursuant to Article 251 (1) (b) and/or (c) of the Constitution for gross misconduct and/or physical and mental incapacity to perform the functions of the office, respectively.
6. That the police reform agenda is in danger of stalling following the absence of Commissioner Major (Rtd.) Muiu given his background as a former police officer with the Administration Police;
7. That lack of quorum at the National Police Service Commission is further compounded by the demise of Esther Chui-Columbini more than two years ago - with the vacancy yet to be filled - and the retirement of Deputy

Inspector General of Police, Grace Kaindi, in September 2015;

8. That based on the aforesaid, the Commission's operations have been seriously hampered by the continued absence of the Commissioner and is therefore unable to attend to the efficient oversight and administration of the National Police Service;

The Commission noted that in an attempt to resolve this matter, it had engaged in various correspondence on his illness with relevant agencies including the Director of Medical Services, the Commissioner's physicians, the National Treasury and more recently, the Chief of Staff and Head of Public Service seeking the way forward. Copies of the various correspondence were attached to the submission.

The Commission expressed its desire to have the matter addressed conclusively.

### **3.4 Submission of Memoranda**

By close of business on Monday, 19<sup>th</sup> October, 2015 the Committee had received two memoranda from the public on the matter of the petition seeking the removal of Commissioner Major (Rtd.) Muiu Shadrack Mutia as a Commissioner of the National Police Service Commission. However, both statements were not under oath as specified in the public notification and were therefore not admissible. The two submissions were from:

1. Mr. George Musai Mbunda, OGW, HSC – A retired Administration Police Officer
2. Mr. Robert Muriithi – An Administration Police Officer

### **4.0 COMMITTEE OBSERVATIONS**

The Committee made the following observations:

1. Commissioner Major (Rtd.) Shadrack Mutia Muiu fell ill in February 2013 when he suffered a stroke while on official duty in the United Kingdom and has been absent from duty since then. This situation has hampered the Commission from executing its mandate.
2. Commissioner Major (Rtd.) Shadrack Mutia Muiu's doctors wrote to the Commission on several occasions from March 2013 to February 2014 seeking extended medical leave for the Commissioner.
3. As a follow up to his health status, the Commission on November 29<sup>th</sup>, 2013 requested for a medical report from Commissioner Major (Rtd.) Shadrack Mutia Muiu's doctors, which was not submitted. A reminder letter dated February 27<sup>th</sup>, 2014 was sent to the Commissioner's doctors but no response was received.

4. During a Commission Board meeting on February 21<sup>st</sup>, 2014, Commissioner Major (Rtd.) Shadrack Mutia Muiu was placed on sick leave with effect from July 1<sup>st</sup>, 2013 as the Commission pursued his case with relevant authorities, including the Director of Medical Services, to determine his suitability for continued service in the Commission.
5. In a letter Ref. No. OP/CAB.1/108A, the Chief of Staff and Head of the Public Service requested Commissioner Major (Rtd.) Muiu Shadrack Mutia to consider vacating office voluntarily in the spirit of Article 251 of the Constitution. The Head of Public Service noted that the Commission was engaged in extensive police reforms programmes including vetting which demanded long hours of working which the commissioner was not able to undertake. However, the Commissioner did not heed the advice.
6. The National Police Service Commission (Amendment) Act amended the Second Schedule to the National Police Service Commission Act (No. 30 of 2011) to revise the quorum of members from five members to six members to include the four members appointed under Article 246 (2) (a) (i) and (iii) of the Constitution and the two of the members appointed under Article 246 (2) (b) and (c) of the Constitution. This therefore includes the Inspector General of the National Police Service and both the Deputy Inspectors-General of the National Police Service to constitute quorum unlike previously when they were *ex-officio* members. In addition, Major (Rtd.) Commissioner Muiu Shadrack Mutia forms part of the statutory quorum as he was appointed under Article 246 (2) (a) (ii) of the Constitution and his continued absence affects the functions of the Commission and the police reform agenda.
7. The death of the Vice-Chairperson Esther Chui-Columbini in November 2014 created a vacancy in the Commission and this has been further compounded by the prolonged absence of Commissioner Major (Rtd.) Muiu Shadrack Muiu.
8. Section 8 (1) of the National Police Service Commission Act provides that the office of the chairperson or a member (of the Commission) shall become vacant if the holder dies. When this happens, Section 9(1) provides that the President shall appoint a replacement in accordance with Section 6 which provides for the procedure of the appointment which is to be used also in the replacement.
9. Article 251 of the Constitution provides for the grounds for removal from office for a member of a Commission or an independent office holder. Article 251 (1) (b) provides that a member of a Commission (other than an *ex officio* member), or the holder of an independent office, may be removed from office for gross misconduct, whether in the performance of the member's or office holder's



functions or otherwise. Article 251 (1) (c) provides for the removal from office physical or mental incapacity to perform the functions of office.

## 5.0 COMMITTEE RECOMMENDATIONS

Having considered the matters raised in the petition, the Committee recommends that:

1. The petition has disclosed grounds for the removal of Major (Rtd.) Muiu Shadrack Mutia as a Commissioner to the National Police Service Commission as set out in Article 251(1) (b) and (c) of the Constitution.
2. The President appoints a tribunal in accordance with Article 251 (4) (b) of the Constitution as read together with Article 251(5) of the Constitution to investigate the matter expeditiously, report on the facts and make a binding recommendation to the President.
3. The President expeditiously initiates the process of replacement of the deceased Commissioner Esther Chui-Columbini as required under section 9 of the National Police Service Commission Act (No. 30 of 2011), in accordance with section 6 of the Act.



MINUTES OF THE 51<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON WEDNESDAY 21<sup>ST</sup> OCTOBER, 2015, IN THE COMMITTEE ROOM, 2<sup>ND</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

1. The Hon. Asman Kamama, MGH, OGW, MP - Chairperson
2. The Hon. Francis Mwangangi, MP
3. The Hon. Samuel Moroto, MP
4. The Hon. Benard Shinali, MP
5. The Hon. Humphrey Njuguna, MP
6. The Hon. Protus Akuja Ewesit, MP
7. The Hon. Joseph Ndiege, MP
8. The Hon. Ahmed Abdikadir Ore, MP
9. The Hon. Shaaban Ali Isaack, MP
10. The Hon. Joseph Kahangara, MP
11. The Hon. Ibrahim Abdi Saney, MP
12. The Hon. Timothy Wetangula, MP
13. The Hon. David Gikaria, MP
14. The Hon. (Maj. Rtd.) J. K. Waluke, MP
15. The Hon. Zakayo Cheruiyot, MP
16. The Hon. George Theuri, MP
17. The Hon. Grace Kiptui, MP

ABSENT WITH APOLOGY

1. The Hon. Alois Lentoimaga, MP - Vice-Chairperson
2. The Hon. Mohamed Shidiye, MP
3. The Hon. Rashid Bedzimba, MP
4. The Hon. Jane Machira, MP
5. The Hon. Patrick Ole Ntutu, MP
6. The Hon. Regina Nthambi Muia, MP
7. The Hon. Ababu Namwamba, MP
8. The Hon. Wanjiku Muhia, MP
9. The Hon. James Bett, MP
10. The Hon. Joseph Lekuton, MP
11. The Hon. Alice Wahome, MP

## IN-ATTENDANCE - NATIONAL ASSEMBLY

1. Mr. Leonard Machira - First Clerk Assistant
2. Mr. Mohamed Boru - Third Clerk Assistant
3. Ms. Hellen Lokwang - Third Clerk Assistant
4. Mr. Eugene Apaa - Research & Policy Analyst III
5. Mr. Salem Lorot - Legal Counsel

### MIN.NO.188 /ANS/2015 - PRELIMINARIES

The Chairperson called the meeting to order at 10.20a.m with a word of prayer.

### MIN.NO.189/ANS/2015 - CONFIRMATION OF MINUTES

The agenda item was rescheduled to the next meeting.

### MIN.NO.190/ANS/2015 - MEETING WITH PETITIONERS SEEKING THE REMOVAL OF COMMISSIONER MAJOR (RTD.) MUIU SHADRACK MUTIA AS A COMMISSIONER OF THE NATIONAL POLICE SERVICE COMMISSION

The Committee was taken through the issues raised in the petition by the petitioner. The petitioners informed the Committee that they came across the matter of Commissioner Major (Rtd.) Muiu's absence from office in the daily newspapers. Upon further inquiries and research, the petitioners established that the Commissioner was absent from duty for an extended period. As Kenyans who works in the civil society, the petitioners saw it as their patriotic duty to petition the National Assembly to commence the process of replacement of the Commissioner.

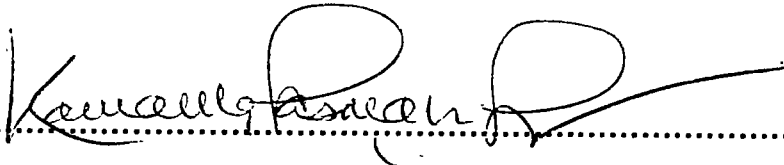
The petitioners noted with concern that the National Police Service Commission had been lacking quorum when holding meetings. They regretted that important programmes of the Commission such as vetting of Police Officers had been slowed down due to the limited number of Commissioners. The petitioners further warned that the vetting exercise was likely to remain unfinished as the country approaches the 2017 general elections. They also stated that the continued absence of Commissioner Major (Rtd.) Muiu would stall the police reform process.

The petitioners noted that they were not in a position to access minutes of the National Police Service Commission sittings, to ascertain the absence of Commissioner Major (Rtd.) Muiu, due to the sensitive nature of the matters under deliberation. They explained that upon the formation of the tribunal, the evidentiary standard required would be much higher and at this stage, all evidence necessary would be submitted to the tribunal.

Finally, the petitioners disclosed that given his continued absence from office with no official explanation, Commissioner Major (Rtd.) Muiu may be removed from office pursuant to Article 251 (1) (b) and/or (c) of the Constitution for gross misconduct and/or physical and mental incapacity to perform the functions of the office, respectively.

MIN.NO.191/ANS/2015 - ADJOURNMENT

There being no other business, the meeting was adjourned at 11.40pm. The next meeting will be held on notice.

Signed.....  
(Chairperson)

Date..... 22 / 10 / 2015



MINUTES OF THE 52<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
ADMINISTRATION AND NATIONAL SECURITY HELD ON THURSDAY, 22<sup>ND</sup>  
OCTOBER, 2015 AT WINDSOR HOTEL AT 10.00 A.M.

PRESENT

1. The Hon. Asman Kamam, MGH, OGW,MP - Chairperson
2. The Hon. Alois Lentoimaga, MP - Vice-Chairperson
3. The Hon. David Gikaria, MP
4. The Hon. Grace Kiptui, MP
5. The Hon. (Maj. Rtd.) J. K. Waluke, MP
6. The Hon. Patrick Ole Ntutu, MP
7. The Hon. Ibrahim Saney, MP
8. The Hon. Mohamed Shidiye, MP
9. The Hon. Joseph Kahangara, MP
10. The Hon. Benard Shinali, MP
11. The Hon. Joseph Ndiege, MP
12. The Hon. Samuel Moroto, MP
13. The Hon. Francis Mwangangi, MP
14. The Hon. Alice Wahome, MP
15. The Hon. Zakayo Cheruiyot, MP
16. The Hon. Jane Machira, MP
17. The Hon. Humphrey Njuguna, MP
18. The Hon. George Theuri, MP
19. The Hon. Ababu Namwamba, MP
20. The Hon. Shaaban Ali Isaack, MP

ABSENT WITH APOLOGY

1. The Hon. Regina Muia, MP
2. The Hon. Wanjiku Muhia, MP
3. The Hon. James Bett, MP
4. The Hon. Joseph Lekuton, MP
5. The Hon. Rashid Bedzimba, MP
6. The Hon. Abdikadir Ore, MP
7. The Hon. Protus Akuja, MP
8. The Hon. Timothy Wetangula, MP

IN-ATTENDANCE – NATIONAL ASSEMBLY

1. Mr. Leonard Machira - First Clerk Assistant

- |                       |   |                           |
|-----------------------|---|---------------------------|
| 2. Mr. Mohamed Boru   | - | Third Clerk Assistant     |
| 3. Ms. Hellen Lokwang | - | Third Clerk Assistant     |
| 4. Mr. Eugene Apaa    | - | Research & Policy Analyst |
| 5. Mr. Salem Lorot    | - | Legal Counsel             |
| 6. Ms. Farida Ngasura | - | Audio Supervisor          |

**MIN.NO.192/ANS/2015** - **PRELIMINARIES**

The Chairperson called the meeting to order at 10.00 a.m. with a word of prayer. The Members were informed of the importance of this report writing retreat given that the issue at hand has affected the operations of the National Police Service Commission. The Committee was informed that a letter inviting Major (Rtd.) Muiu Shadrack Mutia to appear before the Committee had been returned since there was no way of establishing contact with him. The Committee was also informed that attempts had been made to reach out to Commissioner Major (Rtd.) Muiu but despite this, the Commissioner did not give an indication that he would honour the invitation to appear before the Committee. The Commissioner had also not given any submissions to the Committee.

**MIN.NO.193/ANS/2015** - **CONFIRMATION OF MINUTES**

The minutes of the 51<sup>st</sup> sitting were confirmed as a true record of the proceedings of the meeting, having been proposed and seconded by Hon. David Gikaria and Hon. Grace Kiptui respectively.

**MIN.NO.194/ANS/2015** - **ADOPTION OF THE REPORT**

The Committee adopted the report of the petition seeking the removal of Commissioner Major (Rtd.) Muiu Shadrack Mutia as a Commissioner of the National Police Service Commission subject to the following additional observations and recommendations:-

**Committee Observations**

1. Commissioner Major (Rtd.) Muiu fell ill in February 2013 when he suffered a stroke while on official duty in the United Kingdom and has been absent from duty since then. This situation is unsustainable as the Commission has to continue executing its mandate.
2. Commissioner Major (Rtd.) Muiu's doctors wrote to the Commission on several occasions from March 2013 to February 2014 seeking extended medical leave for the Commissioner.



3. As a follow up to his health status, the Commission on November 29<sup>th</sup>, 2013 requested for a medical report from Commissioner Major (Rtd.) Muiu's doctors of which the Commission did not receive a response. A reminder letter dated February 27<sup>th</sup>, 2014 was sent to the Commissioner's doctors and no response was received.
4. During a Commission Board meeting on February 21<sup>st</sup>, 2014, Commissioner Major (Rtd.) Muiu was placed on sick leave with effect from July 1<sup>st</sup>, 2013 as the Commission pursued his case with relevant authorities, including the Director of Medical Services, to determine his suitability for continued service in this Commission.
5. In a letter Ref. No. OP/CAB.1/108A, the Chief of Staff and Head of the Public Service requested Commissioner Major (Rtd.) MuiuShadrackMutia to consider vacating office voluntarily in the spirit of Article 251 of the Constitution. The Head of Public Service noted that the Commission was engaged in extensive police reforms programmes including vetting which demanded long hours of working that the commissioner was not able to undertake. However, the Commissioner did not heed the advice.
6. The National Police Service Commission (Amendment) Act amended the Second Schedule to the National Police Service Commission Act (No. 30 of 2011) to revise the quorum of members from five members to six members to include the four members appointed under Article 246 (2) (a) (i) and (iii) of the Constitution and the two of the members appointed under Article 246 (2) (b) and (c) of the Constitution. This therefore included the Inspector General of the National Police Service and both the Deputy Inspectors-General of the National Police Service to constitute quorum unlike previously when they were ex-officio members. In addition, Major (Rtd.) Commissioner MuiuShadrackMutia forms part of the statutory quorum as he is appointed under Article 246 (2) (a) (ii) and his continued absence affects the functions of the Commission and the police reform agenda.
7. The death of the Vice-Chairperson Esther Chui-Columbini in November 2014 has created a vacancy in the Commission and this has been further compounded by the prolonged absence of Commissioner Major (Rtd.) MuiuShadrackMuiu.

8. Section 8 (1) of the National Police Service Commission Act provides that the office of the chairperson or a member (of the Commission) shall become vacant if the holder dies. When this happens, Section 9(1) provides that the President shall appoint a replacement in accordance with Section 6 which provides for the procedure of the appointment which is to be used also in the replacement.

### **Committee Recommendations**

1. That it finds that the petition has disclosed grounds for the removal of Major (Rtd.) Muiu Shadrack Mutia as a Commissioner to the National Police Service Commission as set out in Article 251(1) (b) and (c) of the Constitution.
2. That the President appoints a tribunal in accordance with Article 251 (5) of the Constitution to investigate the matter expeditiously, report on the facts and make a binding recommendation to the President.
3. That the President expeditiously initiates the process of replacement of the deceased Commissioner Esther Chui-Columbini as required under section 9 of the National Police Service Commission Act (No. 30 of 2011), in accordance with section 6 of the Act.

However, the Hon. Zakayo Cheruyiot, MP expressed his dissenting opinion with respect to the Committee recommendations and stated that:

1. The Commissioner Major (Rtd.) Muiu is still on medical sick leave and thus he should not be removed from the Commission;
2. The Administrative procedures under the Civil service Code Of Regulations which provides for the establishment of a medical board to determine the suitability of retention or otherwise of the Commissioner has not been exhausted.
3. The letter by the Chief of Staff and Head of Public Service fell short of exhausting the aforementioned avenues.

**MIN.NO.195/ANS/2015**

- **ADJOURNMENT**

There being no other business the meeting was adjourned at 12:15pm. The next meeting will be held on notice.

Signed .....

Chairperson

Date.....

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**Appendix I**

**Adoption List**

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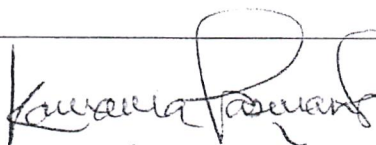
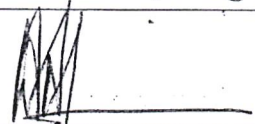


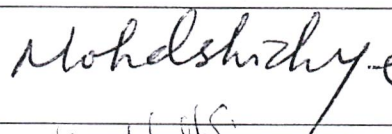
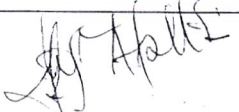
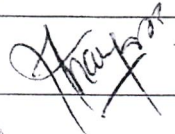



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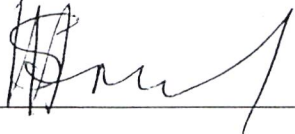

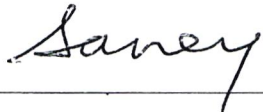
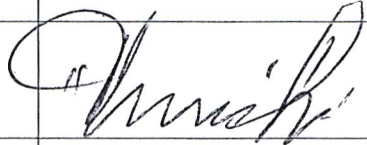
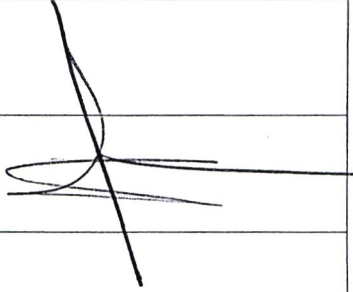
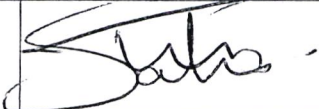
We Members of the Departmental Committee on Administration and National Security have pursuant to Standing Order 199 adopted this report on the Petition by Simon Katee on behalf of Juhudi Community Support Centre seeking the removal of Major (Rtd.) Muiu Shadrack Mutia as a Commissioner to the National Police Service Commission and affix our signatures to confirm our approval and confirm its accuracy, validity and authenticity today 22<sup>nd</sup> October, 2015 as per the attached list (Appendix I).

DATE: 22<sup>nd</sup> October

TIME: 10:00

VENUE: Windsor Hotel

S/NO.	NAME	SIGNATURE
1.	The Hon. Kamama Asman, MGH,OGW,MP – <b>Chairperson</b>	
2.	The Hon. Alois M. Lentoimaga, MP – <b>Vice-Chairperson</b>	
3.	The Hon. Ababu Namwamba, EGH, MP	
4.	The Hon. Alice Wahome, MP	
5.	The Hon. Joseph Lekuton, MP	
6.	The Hon. Mohamed Shidiye, MP	
7.	The Hon. Jane Machira, MP	
8.	The Hon. Joseph Kahangara, MP	
9.	The Hon. Zakayo K. Cheruiyot, MP	
10.	The Hon. James Bett, MP	
11.	The Hon. Patrick Ole Ntutu, MP	
12.	The Hon. Shaaban Ali Isaack, MP	
13.	The Hon. Grace Kiptui, MP	

14.	The Hon. Samuel Moroto, MP	
15.	The Hon. Benard Shinali, MP	
16.	The Hon. Humphrey Njuguna, MP	
17.	The Hon. Francis K. Mwangangi, MP	
18.	The Hon. Rashid J. Bedzimba, MP	
19.	The Hon. Ibrahim Abdi Saney, MP	
20.	The Hon. Joseph O. Ndiege, MP	
21.	The Hon. Regina Nthambi Muia, MP	
22.	The Hon. (Maj. Rtd.) John K. Waluke, MP	
23.	The Hon. Akuja Protus Ewesit, MP	
24.	The Hon. Ahmed Abdikadir Ore, MP	
25.	The Hon. David Gikaria, MP	
26.	The Hon. Timothy W. Wetangula, MP	
27.	The Hon. Wanjiku Muhia, MP	
28.	The Hon. George Theuri, MP	



**Appendix II**

**Dissenting List**

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The following Members of the Departmental Committee on Administration and National Security have pursuant to Standing Order 199 dissented this report on the Petition by Simon Katee on behalf of Juhudi Community Support Centre seeking the removal of Major (Rtd.) Muiu Shadrack Mutia as a Commissioner to the National Police Service Commission.

DATE: -----

TIME: -----VENUE: -----

S/NO.	NAME	SIGNATURE
1.	The Hon. Kamama Asman, MGH,OGW,MP – <b>Chairperson</b>	
2.	The Hon. Alois M. Lentoimaga, MP – <b>Vice-Chairperson</b>	
3.	The Hon. Ababu Namwamba, EGH, MP	
4.	The Hon. Alice Wahome, MP	
5.	The Hon. Joseph Lekuton, MP	
6.	The Hon. Mohamed Shidiye, MP	
7.	The Hon. Jane Machira, MP	
8.	The Hon. Joseph Kahangara, MP	
9.	The Hon. Zakayo K. Cheruiyot, MP	<i>Law</i>
10.	The Hon. James Bett, MP	
11.	The Hon. Patrick Ole Ntutu, MP	
12.	The Hon. Shaaban Ali Isaack, MP	
13.	The Hon. Grace Kiptui, MP	

14.	The Hon. Samuel Moroto, MP	
15.	The Hon. Benard Shinali, MP	
16.	The Hon. Humphrey Njuguna, MP	
17.	The Hon. Francis K. Mwangangi, MP	
18.	The Hon. Rashid J. Bedzimba, MP	
19.	The Hon. Ibrahim Abdi Saney, MP	
20.	The Hon. Joseph O. Ndiege, MP	
21.	The Hon. Regina Nthambi Muia, MP	
22.	The Hon. (Maj. Rtd.) John K. Waluke, MP	
23.	The Hon. Akuja Protus Ewesit, MP	
24.	The Hon. Ahmed Abdikadir Ore, MP	
25.	The Hon. David Gikaria, MP	
26.	The Hon. Timothy W. Wetangula, MP	
27.	The Hon. Wanjiku Muhia, MP	
28.	The Hon. George Theuri, MP	

**Appendix III**

**Submission by the National Police Service Commission**



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Website: www.npsc.go.ke  
Email: info@npsc.go.ke  
Tel. No. 020 2186053/61

P.O Box 47363 - 00100  
5<sup>th</sup> Floor, Sky Park Plaza  
Woodvale Close, Westlands  
NAIROBI

Our Ref: NPSC/1/29/12/VOL.I/21

Date: 19<sup>th</sup> October 2015

Mr. Justin Bundi, CBS  
Clerk of the National Assembly  
Parliament Building  
P O Box 41842-00100  
NAIROBI



① D. Mutia  
FA  
Sela  
21/10

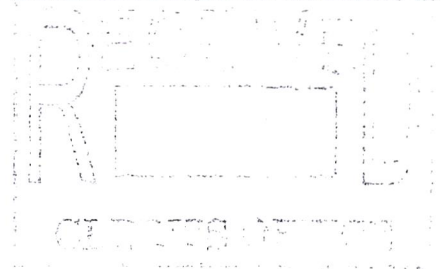
Dear

RE: PETITION SEEKING THE REMOVAL OF MAJOR (RTD.) MUIU SHADRACK MUTIA AS A COMMISSIONER TO THE NATIONAL POLICE SERVICE COMMISSION

Please refer to your letter No. NA/DC.A/ANS/2015/(65) of October 13<sup>th</sup> 2015 in which you sought for the position of the Commission in respect of the above petition.

The Commission concurs with the petitioner on the following stated facts that:-

- (i) One Commissioner Major (Rtd.) Muiiu Shadrack Mutia was appointed to the National Police Service Commission under Article 246 (2) (a) (ii) of the Constitution being one of two retired police officers, and representing the Administration Police Service;
- (ii) Commissioner Major (Rtd.) Muiiu has consistently failed, neglected and /or refused to attend to his duties and or perform his duties as a Commissioner for the past two years and three months being consistently missing from the public or public limelight undertaking his duties;
- (iii) This has resulted to the Commission's transaction of business without the required composition and thereby depriving the Commission in taking more informed decisions particularly about the Administration Police Service;
- (iv) There exists information in the public domain of the continued inability of Commissioner Major (Rtd.) Muiiu to attend to his duties as a Commissioner owing to physical incapacity to perform his functions of the office or in the alternative is due to his failure, neglecting or refusal to attend to his duties as a Commissioner;







- (v) Based on the foregoing, Commissioner Major (Rtd.) Muiu may be removed from office pursuant to Article 251(1) (b) and/or (c) of the Constitution respectively for gross misconduct and/or physical and mental incapacity to perform the functions of his office;
- (vi) The police reform agenda is in danger of stalling following the absence of Commissioner Major (Rtd) Muiu given his background as a former police officer with the Administration Police in the constitutional requirement as aforesaid;
- (vii) The lack of quorum at the National Police Service Commission is further compounded by the demise of Esther Chui Colombini about two years ago which vacancy is yet to be filled and the retirement of Deputy Inspector General of Police Grace Kaindi in September 2015;
- (viii) Based on the aforesaid, we wish to state that the Commission's operations have been seriously hampered by the two year absence of the Commissioner and is therefore unable to attend to the efficient oversight and administration of the National Police Service;
- (ix) This Commission in an attempt to resolve the above matter has engaged in various correspondence on his illness with the relevant agencies including the Director of Medical Services, his Physicians, the National Treasury and lately with the Chief of Staff and Head of Public Service seeking advice on the way forward. Copies of correspondence to that effect are hereby attached for ease of reference.

In conclusion therefore, the Commission would be most appreciative to have this matter addressed conclusively.



Johnston M. Kavuludi, EBS, HSC  
Chairperson

Encl.....





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Tel No. 0202186053/61

P.O Box 47363 - 00100  
5<sup>th</sup> Floor, Sky Park Plaza  
Woodvale Close, Westlands  
NAIROBI

Our Ref: NPSC/1/3/1/VOL. II (8)

Date: 18<sup>th</sup> December, 2014

Amb. Dr. Monica Juma, MBS  
Principal Secretary  
Ministry of Interior and  
Coordination of National Government  
Harambee House  
NAIROBI

Dear *Balorzi,*

RE: APPOINTMENT OF COMMISSIONERS TO THE NATIONAL POLICE SERVICE  
COMMISSION

---

Reference is made to our letters dated 17<sup>th</sup> January 2014 and 12<sup>th</sup> February 2014 ref. NPSC/SEC/12/Vol.1 and NPSC/1/3/9/Vol. II/129 respectively regarding the subject matter.

In our aforesaid correspondence, the Commission reported the passing on of the Vice Chair of the Commission, Mrs. Esther Chui Colombini, on 25<sup>th</sup> November 2014.

The Commission, in the letters, also highlighted the continued inability of Commissioner Major (Rtd.) Shadrach Muiu to attend to his duties as a Commissioner due to physical incapacity to perform the functions of the office which is anchored at Article 251 (1) (c) of Constitution.

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Regarding Commissioner Major (Rtd) Shadrach Muiu, the Commission has engaged in various correspondence on the matter of his illness with relevant agencies including the Director of Medical Services, the Commissioner, his physicians and the Treasury with a view to finding a way forward. Enclosed are the following letters on the same:

1. 29<sup>th</sup> November 2013 - Letter to the Commissioner's physicians seeking a Medical report on the health status of the Commissioner.
2. 10<sup>th</sup> February 2014 - Letter to the Treasury requesting the stoppage of the Commissioner's salary in line with the public service provisions on sick leave.
3. 27<sup>th</sup> February 2014 - Letter to the Commissioner's physicians reminding them of the request for a medical report on the health status of the Commissioner.
4. 15<sup>th</sup> April 2014 - Letter to the Commissioner's physicians informing them that the Commissioner's matter had been forwarded to the Medical Board.
5. 29<sup>th</sup> May 2014 - Letter to the Commissioner informing him to expect communication to appear before the Medical Board.

The Commission has further engaged on this matter with the Chief of Staff and Head of the Public Service vide the following letters and the matter of requesting the Commissioner to voluntarily retire from office under section 8 (b) of the National Police Service Commission Act was sought.

6. 23<sup>rd</sup> June 2014 - Letter from the Chief of Staff and Head of the Public Service inviting the Commissioner to retire voluntarily from office.
7. 18<sup>th</sup> August 2014 - Letter from Mr. Stephen Kirogo, EBS in the office of the Chief of Staff and Head of Public Service indicating that the Commissioner be accorded an

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opportunity to be heard in the matter before the Commission proceeds with any proposed action; in effect contradicting the Chief of Staff and Head of Public Service in his letter ref OP/CAB.1/108A dated 23<sup>rd</sup> June 2014, copy attached at folio 8 of the enclosures .

8. 23<sup>rd</sup> August 2014 –

Letter from the Commission to Mr. Stephen Kirogo, EBS in the office of the Chief of Staff and Head of Public Service setting the record straight, that the matters regarding the Commissioner's health had been handled according to due process.

Pursuant to the Commissioner's failure to appear before the Medical Board, the office of the Chief of Staff in the letter dated 23<sup>rd</sup> June 2014 requested the Commissioner to voluntarily retire from office.

Meanwhile, the Commission's operations have been seriously hampered by the absence of the two Commissioners and have often given rise to the legal and Constitutional challenges from various quarters including officers who have been vetted and found unsuitable to remain in office.

In light of the foregoing we request your office to liaise with the office of the Chief of Staff and Head of Public Service to initiate the process of filling the vacancies pursuant to section 9 read together with section 6 of the National Police Service Commission Act.

The Chief of Staff and Head of Public Service requested the Commissioner to resign as per the letter at folio 8 of the enclosures, due to the Commissioner's 17-month absence from duty due to physical incapacity as a result of poor health and the Commissioner's failure to appear before a duly constituted Medical Board.

In the event that the Commissioner has not resigned, we request that the process under Article 250 of the Constitution be initiated for his removal, on the ground of physical incapacity so as to pave way for his replacement.





In light of the above, we request the your office to liaise with the Chief of Staff and Head of the Public Service to fill the vacancies as provided for under section 9 of the National Police Service Commission Act so that His Excellency the President appoints a replacement in accordance with section 6 of the said Act taking into account sub-section 14.

For your kind information and guidance, the procedure of Appointment of Commissioners is enumerated in a document enclosed herewith labeled "Annexure 1".

Therefore, specifically, the Commission requests your office to liaise with the appointing authority to:

1. Declare the vacancies of one or two Commissioners, as the case may be, of the National Police Service Commission
2. Constitute the recruitment and selection panel as provided under section 9 read with section 6 of the National Police Service Commission Act to conduct the process of filling the vacancies.
3. Issue a notice to the recruitment and selection panel to convene and undertake the process of filling the vacancies.

In conducting the process of filling the vacancies, please note that the late Mrs. Esther Chui-Columbini was appointed pursuant to Article 246 (a) (iii) of the Constitution, which provides that he or she shall be a person of integrity who has served the public with distinction. Commissioner Major (Rtd) Shadrach Muiu was appointed to the Commission under Article 246 (a) (ii) of the Constitution being one of the two retired police officers, and representing the Administration Police Service. Therefore in seeking the replacements and in keeping with the requirements of gender, regional and ethnic balancing, the replacement for Mrs. Esther Chui-Columbini ought to be a person of the female gender and from either the Central or Nairobi regions while the replacement for Major (Rtd) Shadrach Muiu ought to be a person of the male gender and from the North Eastern region. Alternatively, the lady can be from North Eastern and the male from Central or Nairobi regions.

For your further guidance, please note that the lady to be appointed would qualify for the position of the Vice Chairperson of the Commission since the law provides that the Commissioners would appoint the Vice Chairperson, and that

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the Vice Chairperson must be of the gender opposite from that of the Chairperson.

The Commission therefore urges the appointing authority and selection panel conducting the process of recruitment to take these matters into consideration along with the need for geographical, regional, gender and ethnic balancing while selecting the replacements.

We look forward to your continued support and prompt action.

Yours Sincerely,



JOHNSTON KAVULUDI EBS, HSC  
CHAIRPERSON





Website: [www.npsc.go.ke](http://www.npsc.go.ke)  
Email: [info@npsc.go.ke](mailto:info@npsc.go.ke)  
Tel No. 0202186053/61  
NAIROBI

P.O. Box 47363 - 00100  
5<sup>th</sup> Floor, Sky Park Plaza  
Woodvale Close, Westlands

Our Ref: 2012039057/0005/60

Date: 22<sup>nd</sup> August, 2014

Chief of Staff and Head of Public Service  
The Presidency  
Executive Office of the President  
P.O. Box 40530-00100  
NAIROBI

ATT. Mr. Stephen K. Kirogo, EBS

RE: STOPPAGE OF SALARY AND ALLOWANCES AND CONVENING OF A  
MEDICAL BOARD- COMMISSIONER MAJOR (RTD) SHADRACK MUTIA  
MUIU P/NO. 2012039057

This has reference to your letter No. OP/CAB.55/1/1 of August 18<sup>th</sup> 2014 on the above subject.

We wish to advise that contrary to the contents of your letter, this Commission followed due process in arriving at the decision to place Commissioner Mutia on sick leave as provided for in the prevailing GOK Service Regulations. This was after his Doctors declined to provide a Medical Report on his health status to the Commission as requested in our letters Ref. No. NPSC/0005/2012039057/35 of November 29<sup>th</sup>, 2013 and Ref. No. 2012039057/40 of February 27<sup>th</sup>, 2014. Copies are attached for ease of reference. Our letter No. 2012039057/0005(47) of April 15<sup>th</sup>, 2014 is also relevant, a copy of which is also attached.

In addition, the appointing authority was duly kept posted on the matter and that is why the Commissioner ended up being advised to opt for voluntary resignation by The Chief of Staff and Head of Public Service himself through a letter Ref No. OP/CAB.1/108A of June 23<sup>rd</sup>, 2014 which was copied to this Commission. A copy is attached for your ease of reference.



In view of the above, we wish therefore to indicate that the matter is actually in the hands of the Commissioner as advised by the Chief of Staff and Head of Public Service.

Kindly take necessary action and keep us posted.



OJANGO OMUMU  
CS/CHIEF EXECUTIVE OFFICER

Encl...







THE PRESIDENCY  
 EXECUTIVE OFFICE OF THE PRESIDENT  
 CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

Telegraphic Address  
 Telephone: +254-20-2227436

STATE HOUSE

P.O. Box 40530-00100

When replying please quote

OP/CAB.1/108A

23<sup>rd</sup> June, 2014, Nairobi, Kenya

Ref. No. ....  
 and date

CONFIDENTIAL



Major (Rtd) Shadrack Muiu  
 Commissioner  
 National Police Service Commission  
NAIROBI

Dear

RE: VOLUNTARY RESIGNATION FROM OFFICE

The above matter refers.

My office is in receipt of correspondence from the Chairman of National Police Service Commission regarding your health and subsequent service at the Commission.

While on official bench marking tour of Europe in February 2013, you fell ill and you have since been on medical attention which has prevented you from assuming office on fulltime basis. Your doctors have consistently recommended that you be allowed to stay off duty, be given light duties and sometimes be allowed to work half day.

Consequently, the Commission is engaged on extensive Police Reforms including vetting which demands long hours of working which you cannot engage on. In the spirit of Article 251 of the Constitution and in the interest of the Commission and yourself, we write to implore upon you to consider vacating from the office voluntarily so that you may concentrate on medication.

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I will be happy to hear from you as soon as practicable and sincerely wish you God's blessings.

Yours

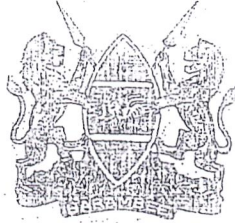
JOSEPH K KINYUA, CBS  
CHIEF OF STAFF AND HEAD OF PUBLIC SERVICE

cc. Mr. Johnston M. Kavulundi, EBS  
Chairperson  
National Police Service Commission  
NAIROBI



CONFIDENTIAL

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# NATIONAL POLICE SERVICE COMMISSION

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 5<sup>TH</sup> FLOOR SKYPARK BUILDING  
 WOODVALE CLOSE WESTLANDS  
 NAIROBI

Our Ref: NPS/C/0005/2012039057/44

Date: 26<sup>th</sup> March 2014

The Directorate of Medical Services  
 Ministry of Health  
 P O Box 30016  
 NAIROBI

**RE: APPOINTMENT OF MEDICAL BOARD  
 COMMISSIONER SHADRACK MUTIA MUIU P/NO. 2012039057**

The National Police Service Commission is a body corporate established under Article 246 of the Constitution of Kenya. The Commission became operational through Gazette Notice No. 95 of 3<sup>rd</sup> October 2012.

Commissioner Shadrack Mutia Muiu P/No. 2012039057 is one of the Commissioners of the National Police Service Commission appointed under Article 246 (a) (ii) of the Constitution and in accordance with the provisions of the National Police Service Commission Act No. 30 of 2011.

In February 2013, the Commissioners left for a three (3) weeks benchmarking tour to Sweden, United Kingdom and Germany. It is while in the United Kingdom that Commissioner Muiu fell sick and was admitted to hospital for a number of days after which he was flown back into the country on February 23<sup>rd</sup> 2013 and taken to Nairobi Hospital where he was further admitted and discharged on February 28<sup>th</sup> 2013. He underwent several medical tests after which it was confirmed by the doctors to have suffered a stroke. Since then, he has been attending clinic and receiving medical treatment and physiotherapy from Dr. M. N. Wanyoike MBChB., M. Med Physician/ Cardiologist of Prime Care Heart Clinic of Post Office Box 19562-00200 KNH, Nairobi.

His doctors have been writing to the Commission regularly in the last ten (10) months advising and recommending for the Commissioner to be allowed off duty due to his health condition. The following are the details of the letters from his doctors and a report on his health condition:-

- i) March 19<sup>th</sup>, 2013 – letter from Dr. Martin N. Wanyoike informing the Commission of the two weeks off duty.



- ii) April 13<sup>th</sup>, 2013 – letter from Dr. Martin N. Wanyoike requesting the Commission to give light duties to the Commissioner and to allow him work for half day.
- iii) June 12<sup>th</sup>, 2013 – letter from Dr. Martin N. Wanyoike recommending light duties for the next three (3) months.
- iv) October 1<sup>st</sup> 2013 – letter recommending off duty for one (1) month with effect from October 2<sup>nd</sup> 2013.
- v) November 3<sup>rd</sup> 2013 – letter recommending off duty for one (1) month with effect from November 3<sup>rd</sup> 2013.
- vi) December 2<sup>nd</sup> 2013 – letter recommending off duty for six (6) weeks with effect from December 4<sup>th</sup> 2013.
- vii) February 11<sup>th</sup> 2014 – letter recommending off duty for four (4) weeks effective February 11<sup>th</sup> 2014.

As a follow up on his health status the Commission on November 29<sup>th</sup>, 2013 in a letter Ref No. NPSC/0005/2012039057/35 requested for a current medical report from his Doctors which todate has not been responded to. A reminder letter Ref No. 2012039057/40 of February 27<sup>th</sup> 2014 was sent to his Doctors and no response has been received todate.

In view of the foregoing and in accordance with the provisions of the prevailing GOK staff Rules and Regulations as contained in Section N(8) clause (1) (i) of the COR, the Commission placed him on sick leave with effect from July 1<sup>st</sup> 2013.

Pursuant to the above, the Commission, in its meeting of February 21<sup>st</sup> 2014, resolved that the Director of Medical services be requested to convene a medical board to determine his suitability for continued service with the Commission.

The purpose of this letter therefore is to request that you proceed and convene a medical board and advise the Commission accordingly.

A copy of a report in respect of his medical condition by his doctors which was submitted to the Commission dated February 27<sup>th</sup> 2013 and copies of the above referenced letters from his doctors are hereby attached for your perusal and ease of reference.

We shall appreciate to receive your report early.



OJANGO OMUMU  
CS/CHIEF EXECUTIVE OFFICER

Encl...



## NATIONAL POLICE SERVICE COMMISSION

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NAIROBI

Cur Ref: NP&C/0005/2012039057/42

Date: 16<sup>th</sup> February, 2014

The Principle Secretary  
The National Treasury  
P.O. Box 30007-00100  
NAIROBI

REF: SICK LEAVE FOR COMMISSIONER SHADRACK MUTIA MUTU P/NO.  
2012039057

The continued absence of Commissioner Shadrack Mutiu due to his prolonged sickness was discussed in the Board Meeting of February 21<sup>st</sup> 2014 and it was resolved that he be placed on sick leave with effect from July 1<sup>st</sup>, 2013 as the Commission pursues his case with the relevant authorities including the Director of Medical Services to determine his suitability for continued service in this Commission. His sick-leave is therefore as follows:-

1. July 1<sup>st</sup> - September 31<sup>st</sup> 2013 - be on full salary
2. October 1<sup>st</sup> - December 31<sup>st</sup> 2013 - be on ½ salary
3. January 1<sup>st</sup> - June 30<sup>th</sup> 2014 - be on nil salary

However, since he has been on full salary up to date as shown above his salary should therefore be stopped w.e.f March 1<sup>st</sup> 2014 to avoid further overpayment within the current leave year.

This is in accordance with the provisions of the prevailing GOK staff Rules and Regulations as contained in section N(8) Clause (1)(i) of the COR.

Please take necessary action and keep this office informed.

A handwritten signature in black ink, appearing to read 'Ojango Omumu'.

OJANGO OMUMU  
CS/CHIEF EXECUTIVE OFFICER



