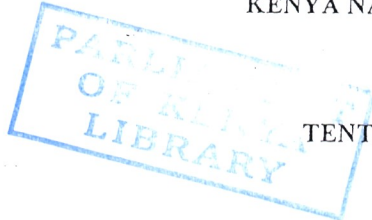




No. _____
 Date _____
 P. C. A. _____

KENYA NATIONAL ASSEMBLY



TENTH PARLIAMENT

Approved
 Nyagah DS
 16/06/011

REPORT

OF

THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

ON THE ORDINARY QUESTION NUMBER 626

BY HON. WILLIAM KABOGO, M.P.

ON THE DISMISSAL OF TWO HUNDRED AND FIFTY (250) WORKERS OF THIKA

MUNICIPAL COUNCIL

Clerk's Chambers,
 Parliament Buildings,
NAIROBI.

May 2011

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PREFACE

Mr. Speaker Sir,

The Departmental Committee on Labour and Social Welfare is a departmental committee established under Standing Order No. 198. It is mandated to:

- a) 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;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;
- c) To study and review all legislation referred to it;
- d) To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) To investigate, inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to them by the House or a Minister; and,
- f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In executing its mandate, the Committee oversees the following Government Ministries:

- i. Ministry of Labour
- ii. Ministry of Youth Affairs and Sports
- iii. Ministry of Gender, Children and Social Development
- iv. Ministry of State for National Heritage and Culture
- v. Ministry of State for Special Programmes

The Committee is mandated to consider the following issues;

Labour; Trade Union Relations: National manpower policy and development: Promotion of self employment in micro and small enterprise: National Social Security Fund (NSSF): National Productivity Centre: Gender: Children and Social Development Policies Mainstreaming: Women Enterprise Development Fund: Coordination of volunteer services: Social welfare for Vulnerable Groups: Community Development Programmes: Institutions for Children's Care and Development: Culture and National Heritage: Disaster Management Policies and Programmes: Coordination of resettlement and mitigation programme for Internally Displaced Persons (IDPs): Youth Affairs and Sports among others.

The following are the Members of the Committee.

1. The Hon. Sophia Abdi Noor, M.P. - **Chairperson**
2. The Hon. Lenny Kivuti, M.P. - **Vice - Chairperson**

3. The Hon. Elijah K. Lagat, M.P.
4. The Hon. Joseph Oyugi Magwanga, M.P.
5. The Hon. Alfred B. Odhiambo, M.P.
6. The Hon. Clement Waibara, M.P.
7. The Hon. Aden Keynan, M.P.
8. The Hon. Gideon Konchella, M.P.
9. The Hon. Jackson Kiptanui, M.P.
10. The Hon. Pollyns Ochieng, M.P.
11. The Hon. Charles Keter, M.P.

The Terms of Reference

The Speaker referred the Ordinary Question Number 626 by the Hon William Kabogo M.P. for Juja Constituency on the Dismissal of two hundred and fifty (250) Thika Municipal Council Workers to the relevant Departmental Committee, after the Deputy Prime Minister and Minister for Local Government gave an unsatisfactory answer to the House when the question had been deferred twice and the members requested the Speaker's intervention for the matter to be referred to the relevant Departmental Committee.

The Departmental Committee on Local Authorities after deliberations and consideration then forwarded the Question to the Departmental Committee on Labour and Social Welfare on March 01, 2011 as the Question was a matter of the Labour force because it concerned the unlawful dismissal of Workers.

The Departmental Committee on Labour and Social Welfare thereon embarked on interrogating the policy, its implementation and the process on the employment of Municipal Council workers of Thika.

The Committee resolved to hold meetings with the Ministry of Labour, Ministry of Local Government, Thika Municipal Council Clerk, the Honourable William Kabogo M.P. and the relevant individuals.

The Committee held meetings with officers of the relevant Government Ministries and other persons who made submissions, on the employment of council workers and any other adduced evidence on the employment and dismissal of the Thika Municipal Council workers and other council workers in Kenya.

Evidence and submissions

The Committee received submissions and evidence from the following:-

- (i) Minister for Labour;
- (ii) The Deputy Prime Minister and Minister for Local Government;
- (iii) Current Thika Town Clerk;
- (iv) Former Thika Town Clerk;

- (v) The Hon. William Kabogo M.P;
- (vi) Representatives of the dismissed workers

General Observations;

During the meetings held to discuss the matter of dismissal of 250 Thika Municipal Council Workers the Committee on a broad perspective observed that:-

The former and current Town Clerk, Thika Municipal Council contravened the Employment Act 2007 Sections 36, 28 (1)(a), 35 (5) and 88(1).

The Thika Municipal Council defied summons to appear before the Ministry of Labour to try and resolve the issue of the 250 workers

The Thika Municipal Council deposits Kshs9,250,104.50 terminal benefits owed to the 250 employees with the Labour Office for the onward transmission to the workers.

The 52 employees were hired through the normal recruitment process in 2008 when the Deputy Prime Minister and Minister for Local Government gave authority.

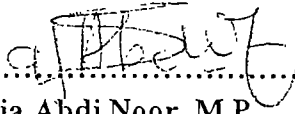
Acknowledgement

I wish to express my appreciation to Members of the Committee who sacrificed time to attend all the meetings that were held. The Committee is grateful to the Speaker of the Kenya National Assembly and the Office of the Clerk, for facilitating the Committee meetings.

The Committee observations and findings in this Report are based on the submissions and evidence received during the meetings.

Mr. Speaker,

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Labour and Social Welfare to table this Report and commend it to the House for adoption pursuant to provisions of the National Assembly Standing Order 181.

Signed.......... Date.....

Hon. Sophia Abdi Noor, M.P.

Chairperson

DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

1.0.0. INTRODUCTION

The Kenya National Assembly Standing Order No. 198 (e) mandates the Departmental Committee on Labour and Social Welfare 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.

1.0.1. TERMS OF REFERENCE

The Speaker referred the Ordinary Question Number 626 by the Hon William Kabogo M.P. for Juja Constituency on the unlawful dismissal of two hundred and fifty (250) Thika Municipal Council Workers to the relevant Departmental Committee on Tuesday February 01, 2011.

The Deputy Prime Minister and Minister for Local Government gave an unsatisfactory answer to the House when the question was deferred twice. The House requested the Speaker to refer the Question to the relevant Departmental Committee. The Departmental Committee on Local Authorities after deliberations resolved that the Question was a labour matter and the Departmental Committee on Labour and Social Welfare was well placed to thoroughly scrutinize it.

The question read as follows;-

The Member for Juja Constituency Mr. William Kabogo to ask the Deputy Prime Minister and Minister for Local Government;

- a) *Whether he is aware that Thika Municipal Council unlawfully terminated the services of 250 workers in November 2008, all of whom had worked for over 5 years;*
- b) *Why several orders from Thika Labour Office to reinstate the employees have been ignored; and,*
- c) *Whether he could also explain why the council advertised the vacant posts on 11th November 2008 and immediately filled them with persons related to councillor?*

The Committee resolved to hold hearings to receive evidence and submissions in respect of implementation of the foregoing. The Committee held meetings at Parliament Buildings with the following:-

- (i) Member of Parliament for Juja Constituency and Representatives of the Dismissed workers on March 15, 2011;
- (ii) Municipal Council of Thika on March 16 and 29, 2011
- (iii) Minister for Labour on March 16 and 29, 2011;
- (iv) The Permanent Secretary Ministry of Local Government on April 12, 2011.

- (v) The Deputy Prime Minister and Minister for Local Government on Tuesday May 10, 2011.

2.0.0. THE DISMISSAL OF TWO HUNDRED AND FIFTY (250) WORKERS FROM THIKA MUNICIPAL COUNCIL

2.0.1. SUBMISSIONS/EVIDENCE

2.0.2. Submissions by Hon. William Kabogo, MP. and representatives of the dismissed workers

The Member of Parliament for Juja Constituency, Hon. William Kabogo, M.P, the representatives of the dismissed workers appeared before the Committee on March 15, 2011 and informed the Committee that:-

- i. The employees were not given letters of engagements at the time when they were taken in by the Municipal Council of Thika.
- ii. Most of the two hundred fifty (250) workers had worked for over three years yet they were dismissed.
- iii. The employees' salaries were being subjected to statutory deductions.
- iv. When the employees launched their complains with the Labour Office about their dismissal, several letters were written and orders were given in the letters from the Ministry of Labour.
- v. The Labour Commissioner and Provincial Labour Officer in Nyeri directing that the workers be reinstated or be paid their redundancy dues but no action was taken.
- vi. The Current Thika Municipal Council Town Clerk (Mr. Felix Mbiuki) was the treasurer then at the time when the employees were dismissed, while Mr. Z. N. Kariuki was the then Thika Municipal Council Town Clerk.
- vii. The Hon. William Kabogo, M.P. visited the Deputy Prime Minister and Minister for local Government, Hon. Musalia Mudavadi, M.P. to discuss the dismissal of the two hundred and fifty (250) Thika Municipal Council employees.

2.0.3. Submissions by the Minister for Labour

The Minister for Labour, Hon. John Munyes, M.P, appeared before the Committee on March 16, 2011 and the Assistant Minister for Labour Hon.Sospeter Ojamong, M.P. on March 29, 2011 and informed the Committee that:-

- i. It is true that the two hundred and fifty (250) former employees of the Thika Municipal Council reported to the District Labour Office Thika, that their services were terminated on November 05, 2008. The Labour officer received the workers and interviewed them of the reasons why they were terminated. They averred that their services had been terminated on grounds of redundancy (lay off).
- ii. The officer analyzed their verbal submission and the records availed by them and established that the employees were being paid at the end of the month and not daily. It was then established that their contracts were monthly based.
- iii. Casual employees according to the Employment Act 2007, means “ a person whose engagement provide for his payment at the end of each day and who is not engaged for longer period of a number of continuous working days which amount in the aggregate to the equivalent of not less than one month or performs work which cannot be reasonably expected to be completed within a period, or number of working days amounting in the aggregate to the equivalent three months or more the contract of service shall be deemed to be one where wages are paid monthly.
- iv. In accordance with the legal provision of Employment Act 2007, the labour office formed the opinion that the two hundred and fifty (250) employees were actually monthly paid employees and not casuals as the council alleged. The Labour Office on November 24, 2008 wrote to the council informing them that the workers referred to were entitled to terminal benefits as a result of the layoff (redundancy). The redundancy benefits for the two hundred and fifty (250) employees amounted to Kshs9,250,104.50 and included:-
 - a) Notice of pay
 - b) Accrued leave
 - c) Severance pay
- v. A demand notice was written by the Labour Office to Thika Municipal Council to pay but they ignored the notice.
- vi. A charge sheet was prepared for the purposes of prosecuting the council for the recovery of the terminal benefits on behalf of the affected employees.
- vii. The workers have not gone back to the District Labour Office – Thika to pursue the same. In the absence of the workers who were claimants the Labour office could not refer the matter to court.
- viii. A prosecution file with the necessary charges was filed in the Industrial Court of Kenya under Case No. L57 of 2011 on the 28th day of March 2011 against the Town

Clerk Thika Municipal Council. The matter would be coming before Court no. 4 of the Industrial Court for mention on 7th day of April 2011.

- ix. A contract of employment can be verbal according to the Employment Act of 2007. The law is clear, and since councils have Industrial Relations Officers and Human Resource departments, they should not compromise on the law.
- x. With the new laws, even casual workers are allowed to form unions which can fight for their rights.
- xi. The trend of employing casuals has brought a lot of challenges for the Ministry of Labour. Some companies are employing casuals to avoid paying all the allowances that come along with permanent employment. Companies in Kenya like some tea estates, the Hotels industry and the Export Processing industries flout the employment laws.
- xii. The Ministry is facing the following challenges, in dealing with the issue:
 - Unemployment among many Kenyans.
 - Understaffing in the Ministry of Labour; the Ministry has only ninety six (96) labour officers.

2.0.4. Submissions by the Town Clerk, Thika Municipal Council Clerk.

The Town Clerk, Thika Municipal Council, Mr. Felix Mbiuki appeared before the Committee on March 16 and March 29, 2011 under Oath informed the Committee that:-

- i. In November 2008 two hundred and fifty (250) casual workers/occasional workers were terminated.
- ii. The employees had worked for varying periods ranging from, three years, four years and even some six (6) months.
- iii. The workers who were dismissed were in engineering, social services and Public health and environment departments. The engineering department is charged with unclogging the drainage systems, the social services department is charged with cleaning the streets and the public health department collects the garbage.
- iv. The statutory deductions for the employees were not paid prior to year 2008. The National Social Security Fund came in the year 2008 and informed the Clerk that the payments were due and that is when the statutory deductions were effected.
- v. Between the period of year 2000 to 2007 there were no deductions until 2008 when NSSF and NHIF asked for deductions. The Council would submit the statutory deductions at the end of the month and they did so to access LATF

- vi. To get new employees, the Municipal Council must do an annual budget which is then approved by the Deputy Prime Minister and Minister for Local Government. If the budget is approved, the Municipal Council goes ahead to advertise the positions. The other recruiting procedures of short listing, interviews and selection are followed.
- vii. In the year 2008/09 vacancies arose and the budget request was approved to recruit fifty two (52) employees by the Deputy Prime Minister and Minister for Local Government. On getting the approval, the Thika Municipal Council did an internal advertisement on November 11, 2008 and fifty two (52) employees were recruited among them six (6) of the dismissed casuals got employed on permanent and pensionable basis.
- viii. The Thika Municipal Council requested the Deputy Prime Minister and Minister for Local Government to allow them to recruit more casuals and fifty (50) casuals were recruited in February 2011. The process of recruitment was through balloting, whereby the council through an advertisement invited the people to the Thika Stadium where they balloted and whoever got a yes was recruited.
- ix. The current Town Clerk, Thika Municipal Council Mr. Felix Mbiuki was posted to Thika in the year 2010. The Town Clerk Municipal Council of Thika who was there before Mr. Felix Mbiuki were Mr. Geoffrey Kasore and Mr. Z. N. Kariuki. Mr. Geoffrey Kasore worked as the Town Clerk for a period of five (5) months but is currently under interdiction. Mr. Z.N. Kariuki is currently the Director of Social Services in the City Council of Nairobi.
- x. The Thika Municipal Council did not ignore communications from Thika Labour Office because the employees were occasional workers, casuals and not permanent employees; there was no budgetary provision to cater for their employment.
- xi. The Thika Municipal Council did not give any letters of engagement because they were casuals and there were no payroll numbers or payslips.
- xii. The Town Clerk would accrue the payment (wages) up to the end of the month, compile them and pay the employees. The master payroll was filled by the sectional head who signed to prove that the workers were there and the same document was used to verify the payment vouchers.

2.0.5. Submissions by the former Clerk, Thika Municipal Council

The former Town Clerk Thika Municipal Council Mr. Z. N. Kariuki appeared before the Committee on March 29,2011 under Oath informed the Committee that:-

- i. He was the Town Clerk of the Thika Municipal Council from December 2007 to September 2009, after which he joined the City Council of Nairobi.
- ii. When he took over office in Thika Municipal Council as the Town Clerk, he discovered that there were employees who were there on casual basis.
- iii. He did the budget in year 2008/2009 requesting to be allowed to employ, he was only granted fifty (52) employees. When the advertisement was made, some of the casuals applied and they were recruited.
- iv. He didn't know the number of years that the workers had worked. They were called casuals but there was an arrangement to pay them fortnightly or monthly. The employees did not have any letters of engagement.
- v. The employees do not qualify to be called casuals according to the Employment Act 2007 Section 18.

2.0.6. Submissions by the Permanent Secretary Ministry for Local Government

The Permanent Secretary Ministry for Local Government, Mr. Karega Mutahi appeared before the Committee on April 12, 2011 and informed the Committee that:-

- i. The two hundred and fifty (250) workers were classified as casuals throughout their employment.
- ii. The Minister for Local Government sent auditors to Thika Municipal Council to ascertain the issue of the 250 casual workers and they found out that the workers were employed on ward basis. The auditors could not get any records on the dismissed employees.
- iii. The auditor did not get the master rolls but he got the payrolls. The workers were paid out of operational money and there was no evidence of a budget approved by the Minister for their employment
- iv. The Permanent Secretary and the Ministry is dealing with a case of illegal payments as the Municipal and County Councils are not allowed to employ anyone without the approval from the Minister for Local Government.
- v. The statutory deductions was irregular as some of the deductions were made from money allocated for Kazi Kwa Vijana (KKV) as was discovered by the auditors.
- vi. The Permanent Secretary confirmed that it is the same situation across the Councils. They have been acting irregularly and flouting the Labour Laws. It is a very serious

issue in all the Local Government sectors hence the need to have a policy on the same.

- vii. That for a long time, the main body that carried out local authorities audit was the inspectorate, under Cap 2 (16) of the Local Authorities Act. As the councils grew the inspectors continued auditing the accounts, yet most of them are not qualified auditors. When the current Permanent Secretary took over office, he posted internal auditors seconded from the Ministry of Finance to audit the Kazi kwa Vijana (KKV) and in the process, the auditors have been able to realize that there is an anomaly in the councils especially on casual employment.
- viii. The Minister for Local Government evoked Audit Act cap 265 and the councils that are found to have misused any money, the officers involved are surcharged.
- ix. The Local Government employees are not civil servants and any financial obligation goes to the council.
- x. The Permanent Secretary offered to look into the matter of paying the workers their dues and offered to consult the Attorney General on what action should be taken against the Clerk of the Thika Municipal Council.
- xi. The roles between the Local Authority Inspectorate and Audit functions were separated. The auditors scrutinize expenditure while inspectors deal with systems and management issues.
- xii. The Key observations and weakness were identified in the management of Local Authorities through an audit that was done on Human Resource management, that there are irregular employment and lack of transparency in promotions, non compliance with human resource policies, regulations and rules.
- xiii. The Audit Report recommended that the Permanent Secretary should ensure continuous audit of Human Resource Management and follow up of approved recommendations.
- xiv. The Local Authorities should have proper authority to recruit and promote staff in regard to budgeting allocations and that Human Resource policies, rules, regulations should be strictly followed.

2.0.7. Submissions by the Deputy Prime Minister and Minister for Local Government.

The Deputy Prime Minister and Minister for Local Government Hon Wycliffe Musalia Mudavadi M.P. appeared on Tuesday May 10, 2011 and informed the committee that the Ministry has a major concern that revolve around the issue of casual employees in Local

Authorities. Many cases have been reported across the country where the following have emerged namely;-

- i. Councils have been employing staff without following the Employment Act requirement.
- ii. Many people have been engaged without formal appointment letters e.g. Cases where councillors are said to have engaged their own relatives and supporters at ward level and forced Clerks to put them in the payroll.
- iii. Many cases have emerged and this has been going on for a long time but only highlighted when auditors carried out audits.
- iv. The Ministry has cases where husbands and wives, brothers and sisters, sons and daughters of Councillors and senior officers, etc all work in one council.
- v. There are cases of junior staff engaged as casuals for as long as ten years.
- vi. Pensions funds have reported cases where they receive contributions without names of the contributors. Some of such names are feared to belong to staff who may be classified as casuals.

2.0.8. Remedial actions taken by the Deputy Prime Minister and Minister for Local Government.

The Deputy Prime Minister and Minister for Local Government have taken the following actions;-

- i. A circular letter has been sent out to all councils requiring them to adhere to employment laws.
- ii. Where staff have been engaged for long periods, councils have been asked to see how best to formalize their employment.
- iii. Auditors and inspectors who visit councils will start paying special attention to issues of staff.
- iv. In the case of Thika Municipal Council, a decision was taken to have all those who have been engaged for long periods of time to be paid their dues.
- v. The matter has been discussed with the Town Clerk and the Council has already instructed their lawyers to apply for the settlement of the matter out of court.

- vi. The Ministry Auditors have carried out the audit and have recommended payment of dues to those concerned.
- vii. The Ministry recommends that once the matter is out of court the Labour Officer and the Municipal Council should reconcile their figures and payment be made to the affected workers
- viii. The Ministry will continue to follow up issues relating to workers' rights and taking appropriate action.
- ix. Thirteen employees of the 250 who were dismissed are now been permanently employed by the Council through advertisement, competitive process and short listing.

3.0.0 OBSERVATIONS

The Committee observed that:-

- i. The workers were employees of the Thika Municipal Council as is evidenced by some letters written by the Council confirming that the particular people are employees of the Thika Municipal Council.
- ii. The workers were being paid on a monthly basis as evidenced in the Municipal Council of Thika payment voucher numbers 245 of 2008, 277 of 2004, 459 of 2005.
- iii. The employees were paying statutory deductions as evidenced by submitted provisional Member Statement Accounts and the deductions started earlier than year 2008
- iv. The employees do not qualify to be called casuals according to the Employment Act 2007 Section 18.
- v. The former and current Thika Municipal Council Clerk failed to comply with section 36 of the Employment Act 2007 as read together with section 88 (1) of the same Act, by failing to grant notice of termination to the employees and failing to pay one month in lieu of notice amounting to Kshs1,860,642.00.
- vi. The former and current Town Clerk Thika Municipal Council failed to comply with the requirement of section 28 (1) of the Employment Act 2007 read together with section 88 (1) of the same Act by failing to grant leave or pay for leave amounting to kshs.3,395,236.50.
- vii. The former and current Town Clerk Thika Municipal Council failed to comply with the requirements of section 35 (5) of the Employment Act 2007 as read together with

section 88 (1) of the same Act by failing to pay severance pay for the years that the employees had worked amounting to Kshs3,395,236.50.

- viii. That the Thika Municipal Council defied summons to appear before the Ministry of Labour to try and resolve the issue of the 250 workers
- ix. Further investigations need to be carried out to establish complains of nepotism across all the county councils.
- x. The flouting of the Employment Law is widespread in many of the councils.
- xi. The Ministry of Labour is understaffed as there are only ninety six (96) labour officers to ensure that the Labour laws are adhered to in the Country fully.
- xii. The flouting of the Employment Law is also widespread in Tea estates, Export Processing Zones, Hotel Industry, Sisal Industries, Salt Mining Industries as was alluded to the Committee by the Minister for Labour.

4.0.0. RECOMMENDATIONS

The Committee Recommends that:-

- i. The former and current Town Clerk, Thika Municipal Council be charged in the Industrial Court for contravening the Employment Act 2007 Sections 36, 28 (1)(a), 35 (5) and 88(1).
- ii. The Thika Municipal Council provide Kshs9,250,104.50 terminal benefits owed to the two hundred and fifty (250) employees with the Labour Office for the onward transmission to the workers. Pending the industrial court judgement.
- iii. The Council should ensure that the Employment Act 2007 is adhered to at all times.
- iv. The Ministry of Local Government should ensure strict compliance and take measures to stop flouting of the Employment Law in all the councils.
- xiii. Further investigations be done to establish complains of nepotism across all the County and Municipal Councils
- v. The Minister for Labour takes immediate action on all companies flouting the Employment law such as the Tea estates, Export Processing Zones, Hotel Industry, Sisal Industries, Salt Mining Industries etc.

5.0.0. APENDIXES/NNEXES

List of annexes as attached:-

- i. Brief from the Ministry of Local Government on ordinary question number 626.
- ii. Brief from the Ministry of Labour indicating the actions the Ministry had taken and the following attachments:
 - Industrial Court summons , cause no.L57 of 2011
 - Labour department charge sheet
 - Letter from the Labour Office to Thika Municipal Council final demand notice for workers to be paid terminal benefits
 - Municipal Council of Thika workers's remuneration of service payment
 - Letter from casual workers to the Labour Commissioner Nairobi on the meeting with the Provincial Labour Officer, Nyeri.
 - Letter from the Labour Office to the Provincial Labour Commissioner directing the Commissioner to prefer criminal charges against the Thika Town Clerk
 - Letter from the Ministry of Labour to the Provincial and District Labour Officers directing them to compute all terminal dues and forward the same to the Thika Municipal Council for payment
- iii. Submissions made by Hon. William Kabogo, MP. and representatives of the dismissed workers including,``
 - A letter from casual workers to the Minister for Labour requesting for the intervention of the Minister for Labour on their dismissal.
 - A letter from casual workers to the Labour Commissioner on their meeting with the Provincial Labour Commissioner Nyeri.
 - A letter from the workers to the Permanent Secretary seeking assistance for direction.
 - Municipal Council of Thika workers remuneration of service payment.
 - Letter from the Ministry of Labour on delay of payment of the workers final dues.
 - Letter from the Ministry of Labour to the Thika Municipal Council asking the Clerk to deposit the terminal dues of the workers with the Labour Officer.
 - Letter from the Ministry of Labour asking the terminal dues of workers to be computed.
 - Letter from the Ministry of Labour directing the Provincial Labour Officer to prefer criminal charges against the Clerk of Thika Municipal Council.
 - Letter from the Provincial Labour Officer to the Town Clerk direction that he complies with the ministry's requirements.
 - Letter from the Ministry of Labour to the Provincial Labour officer directing him to look into the matter of the dismissal of the employees using employment Law.

- Letter from COTU (Central Organisation of Trade Unions) to the Labour Commissioner requesting that he looks into the matter of the dismissed workers.
- Letter from Kenya Anti Corruption Commission to the dismissed workers on alleged mismanagement at the Thika Municipal Council.
- Provisional Members Statement of Account for NSSF (National Social Security Fund).
- Letters of recommendations to the dismissed Thika Municipal Council employees by Thika Municipal Council.

MINUTES OF THE SIXTY FOURTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY MARCH 15, 2011 IN COMMITTEE ROOM SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 2.30 PM

MEMBERS PRESENT

Hon. Sopnia Aodi Noor, M.P. - Chairperson
Hon. Jackson Kiptanui, M.P.
Hon. Charles Keter, MP.
Hon. Joseph Magwanga, M.P.
Hon. Alfred Odhiambo, M.P.
Hon. Pollyns Ochieng, M.P.

ABSENT WITH APOLOGY

Hon. Gideon Konchella, M.P.
Hon. Elijah Lagat, M.P.
Hon. Lenny Kivuti, M.P. - Vice Chairperson

ABSENT

Hon. Clement Waibara, M.P.
Hon. Aden Keynan, M.P.

IN – ATTENDANCE – NATIONAL ASSEMBLY

John Wanyioke – Clerk Assistant
Caroline Kinyua – Third Clerk Assistant

MIN 17/2011 EVIDENCE BY THE MEMBER OF PARLIAMENT FOR JUJA, HON. WILLIAM KABOGO, ORDINARY QUESTION 626 (DISMISSAL OF 250 EMPLOYEES FROM THIKA MUNICIPAL COUNCIL) – REFERRED TO THE COMMITTEE

The Member of Parliament for Juja, Hon. William Kabogo M.P. accompanied by:- Ms Mary Nyambura and Mr J. Kimani. Informed the Committee that:-

Most of the 250 workers had worked for over three years yet they were dismissed. Several letters were written from the Ministry of Labour, the Labour Commissioner and Provincial Labour Officer in Nyeri directing that the workers be reinstated but no action was taken.

The Current Town Clerk (Mr. Felix Mbiuki) was the treasurer at the time when these employees were dismissed.

The Hon. William Kabogo, M.P. visited the Deputy Prime Minister and Minister for local Government, Hon. Musalia Mudavadi, MP. to discuss the dismissal of the employees. The Minister alluded to Hon. Kabogo, M.P. that he was misled while answering the question and that the employees can be paid and retired quietly but cannot be engaged again.

The Committee heard that the employees were not given letters of engagements at the time when they were taken in by the Municipal Council.

MIN 18/2011

PAPERS LAID

The following Papers were laid by Hon. William Kabogo, M.P. during the course of the evidence:-

1. Parliamentary Question no. 626
2. Answer from the Deputy Prime Minister and Minister for Local Government (Hon. Musalia Mudavadi, EGH, MP.)
3. Municipal Council of Thika Workers Remuneration of Service Payment
4. Advertisement for vacant posts by Thika Municipal Council November 11 2008.
5. Letter from workers to the Minister for Labour dated 17th November 2008 informing the Minister that the Council has planned to terminate them unfairly.
6. Letter from COTU (Central Organization of Trade Unions) on December 10, 2008 to the Labour Commissioner requesting for the case to be investigated.
7. Letter from the Ministry of Labour on December 16, 2008 to Provincial Labour Officer directing that he/she handles the matter conclusively using the new labour laws.
8. Letter from the Provincial Labour Officer on December 24, 2008 to Town Clerk asking that the workers be reinstated.
9. List of corruptly enrolled workers on January 5, 2009.
10. Letter from Kenya Anti Corruption Commission (KACC) on January 26, 2009 to Mulwa and Juma (Dismissed employees) on alleged mismanagement at Thika Municipal Council.
11. Letter from the Ministry of Labour on January 27, 2009 to provincial Labour Officer on L.D. 64 Case Meshack Juma and 249 others versus Municipal Council of Thika asking that criminal charges be preferred against the employer.
12. Letter from the Casual Workers on February 27, 2009 to Labour Commissioner on their meeting with Provincial Labour Officer Central Province (Nyeri).
13. Letter from the Ministry of Labour on March 04 2009 to Provincial/ District Labour Officers asking them to compute the workers terminal dues.
14. Letter from the Ministry of Labour on March 17, 2009 to Thika Municipal Council on Workers grievances – Terminal benefits to (250) two hundred and fifty ex-workers of Thika Municipal Council Final Demand Notice.
15. Letter from Ex workers on April 08, 2009 to Permanent Secretary, Ministry of Labour asking for his direction.
16. Letter from the Ministry of Labour to Provincial Labour Officer/ District Labour Officer on April 21, 2009 on Workers complaints and payment of final dues Bernard Muiruri and 249 others versus Municipal Council of Thika.

MIN 19/2011

ADDITIONAL INFORMATION

The Committee directed the Hon William Kabogo M.P. to submit the following documents to the Committee:-

- Copies of NSSF cards of the employees
- Copies of payslips.
- Copies of statements from NSSF showing their contributions.
- A list relating the group of employees who were dismissed to those that were employed (in terms of positions held.)
- Copies of pension returns
- Copies of statements of NHIF returns

MIN 20/2011

ADJOURNMENT

And there being no other business, the Chairperson thanked all the Members and adjourned the meeting at thirty minutes past three o'clock.

Signed
Chairperson

MINUTES OF THE SIXTY FIFTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON WEDNESDAY MARCH 16, 2011 IN COMMITTEE ROOM SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

MEMBERS PRESENT

Hon. Sophia Abdi Noor, M.P. - Chairperson
Hon. Jackson Kiptanui, M.P.
Hon. Pollyns Ochieng, M.P.
Hon. Elijah Lagat, M.P.
Hon. Charles Keter, MP.

ABSENT WITH APOLOGY

Hon. Lenny Kivuti, M.P. - Vice Chairperson
Hon. Joseph Magwanga, M.P.
Hon. Alfred Odhiambo, M.P.
Hon. Gideon Konchella, M.P

ABSENT

Hon. Clement Waibara, M.P.
Hon. Aden Keynan, M.P.

IN – ATTENDANCE – NATIONAL ASSEMBLY

John Wanyioke – Clerk Assistant
Caroline Kinyua – Third Clerk Assistant

PRAYERS

MIN 21/2011 OPENING REMARKS BY THE CHAIRPERSON TO THE WITNESSES

The Chairperson read the following to the witnesses

Hon. Members, The Clerk to Thika Municipal Council and other Officers appearing to give evidence on Question No 626, by The Member for Juja Hon William Kabogo M.P. which was referred by the Speaker to the relevant Committee concerning the termination of 250 (two hundred and fifty) workers services by Municipal Council of Thika.

I would like to appraise the witnesses before us on the modalities and the Law of Parliament relating to his/her/their appearance and the evidence he/she/they will give.

All witnesses appearing before us are doing so pursuant to provisions of the National Assembly (Powers & Privileges) Act, Cap 6, Laws of Kenya. The following are the requirements of the law on the witnesses and their evidence:-

- i. This Committee has the power to order your attendance now and in the future. Your failure to attend would constitute an offence punishable before the Courts of Law.

- ii. All witnesses may give their evidence on Oath. The Oath would be administered by the Secretary of the Committee.
- iii. Should evidence given be found for any reasons to be false, or a lie, then that would constitute an offence punishable before the Courts of law.
- iv. Should any witness or anybody else attempt to influence any Member of this Committee or the Secretariat by inducements for whatever reasons to gain favour, influence or stop the proceedings, if detected would constitute an offence punishable before the Courts of Law.
- v. All witnesses and the evidence given here are not open for any questioning by any other authority, at any other place and may not be repeated by the witnesses outside this Sitting. Should it be detected that a witness is being subjected to harassment so as to divulge the evidence or inducements are being given to witnesses, Members of the Committee or the Secretariat to procure the same, then, the perpetrators of such activities would be committing an offence punishable before Courts of Law.
- vi. The details of this Sitting including the evidence given by all witnesses will only be released by the Committee in a report to Parliament. Anybody therefore making any revelations in whatever form would be guilty of an offence punishable before the Courts of Law.

THANK YOU

MIN 22/2011 ADMINISTRATION OF OATH

The three officers took the OATH as under and swore that;-
The evidence they will give to the Parliament, Departmental Committee on Labour and Social Welfare Question No 626 by The Member for Juja Hon William Kabogo M.P. which was referred by the Speaker to the relevant Committee concerning the termination of (two hundred and fifty) 250 workers services by Municipal Council of Thika shall be the Truth and nothing but the Truth. So help me god

MIN23/2011 EVIDENCE BY CLERK, THIKA MUNICIPAL COUNCIL, ORDINARY QUESTION NO 626 ON THE DISMISSAL OF 250 EMPLOYEES FROM THIKA MUNICIPAL COUNCIL, REFFERED TO THE COMMITTEE

Mr Felix Mbiuki - Thika Municipal Council Clerk accompanied by
Mr John Gichahi – Municipal Treasurer and
Mr Solomon Nganga – Establishment Officer informed the Committee that:-

Termination and recruitment of new employees since 2008 to date (March 2011)
In November, 2008 250 casual workers/occasional workers were terminated. The employees had worked for varying periods ranging from four years, three years and even some six months.

To get new employees, the Municipal Council must do an annual budget, which is then approved by the Deputy Prime Minister and Minister for Local Government. If the

budget is approved, the Council goes ahead to advertise the positions, and the other recruiting procedures of short listing, interviews and selection are followed.

In the year 2008/09 vacancies arose and the budget request was approved by the Deputy Prime Minister and Minister for Local Government. On getting the approval, the Thika Municipal Council did an internal advertisement on November 11, 2008 and 52 employees were recruited, among them six of the dismissed casuals got employed on permanent and pensionable basis.

The Thika Municipal Council requested the Deputy Prime Minister and Minister for Local Authorities to allow them to recruit more casuals and fifty casuals got recruited last month (February 2011). The process of recruitment was through balloting, whereby the council through an advertisement invited people to the Thika Stadium where they balloted and whoever got a yes was recruited.

Positions held by the employees who were dismissed

The workers who were dismissed were in engineering, social services and Public health and environment departments. The engineers department is charged with unclogging the drainage systems, the social services department is charged with cleaning the streets and the public health department collects the garbage.

Statutory Deductions

The statutory deductions for the employees were not paid prior to year 2008.

The National Social Security Fund (officers) came in year 2008 and informed the Clerk that the payments were due and that is when the statutory deductions were effected.

Holders of the Clerk's position from 2008 to date (March 2011)

The current Clerk, Mr. Felix Mbiuki was posted to Thika in year 2010. The Clerk who was there before Mr. Mbiuki was Mr. Jonson Kasore and had stayed for a period of five (5) months only and is currently under interdiction. The Clerk who was there before Mr. Kasore was Mr. Johnson Kariuki and he is currently the Director of Social Services in the Nairobi City Council.

MIN 24/2011

PAPERS LAID

The Committee declined the document that was laid before it, as it had conflicting information. At one time, the Clerk informed the Committee that the employees were not employees of the Thika Municipal Council and at another time that they were employees. Further the Clerk contradicted himself by saying that the employees were dismissed in November 2008 and in another occasion that they were dismissed in December 2008.

MIN 25/2011

ADDITIONAL INFORMATION

The Committee directed that the Clerk goes back to his Council and he would be summoned back by the Committee and that he was expected to give the correct information and avail the following documents:-

1. Breakdown of the numbers of years that each employee worked
2. The position that each of the dismissed employee held.
3. Position held by each of the new employees
4. The correct date of when the employees were dismissed

MIN 26/2011

ADJOURNMENT

And there being no other business, the Chairperson thanked all the Members and adjourned the meeting at 11.30 o'clock.

Signed
Chairperson

MINUTES OF THE SIXTY SIXTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON WEDNESDAY MARCH 16, 2011 IN COMMITTEE ROOM SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 2.30 PM.

MEMBERS PRESENT

Hon. Sophia Abdi Noor, M.P. - Chairperson
Hon. Jackson Kiptanui, M.P.
Hon. Pollyns Ochieng, M.P.
Hon. Elijah Lagat, M.P.
Hon. Charles Keter, MP.
Hon. Gideon Konchella, M.P

ABSENT WITH APOLOGY

Hon. Lenny Kivuti, M.P. - Vice Chairperson
Hon. Joseph Magwanga, M.P.
Hon. Alfred Odhiambo, M.P.

ABSENT

Hon. Clement Waibara, M.P.
Hon. Aden Keynan, M.P.

IN – ATTENDANCE – NATIONAL ASSEMBLY

John Wanyioke – Clerk Assistant
Caroline Kinyua – Third Clerk Assistant

MIN 27/2011 EVIDENCE BY MINISTER FOR LABOUR, ORDINARY QUESTION NO 626 DISMISSAL OF 250 EMPLOYEES FROM THIKA MUNICIPAL COUNCIL, REFERRED TO THE COMMITTEE

Hon. John Munyes, MP. – Minister for Labour accompanied by
Philomena Koech – Director of Administration
Patrick K. Mwangi – Deputy Secretary/ Administration
Isaiah B. K – Senior Deputy Labour Commissioner and
Joseph A. Yidali – Deputy Labour Commissioner informed the Committee that:-

It is true that the 250 former employees of the Thika Municipal Council reported to the District Labour Office Thika that their services were terminated on November 05, 2008. The Labour officer received the workers and interviewed them of the reasons why they were terminated. They averred that their services had been terminated on grounds of redundancy (lay off).

The officer analyzed their verbal submission and the records availed by them established that the employees were being paid at the end of each month and not on a daily basis. It was then established that their contracts were monthly based.

Meaning of a casual employee

Casual employees according to the Employment Act 2007, defines it as “ a person whose engagement provide for his payment at the end of each day and who is not engaged for longer period of a number of continuous working days which amount in the aggregate to the equivalent of not less than one month or performs work which cannot be reasonably expected to be completed within a period, or number of working days amounting in the aggregate to the equivalent three months or more the contract of service shall be deemed to be one where wages are paid monthly.

Terminal Benefits

In accordance with the legal provision of Employment Act 2007, the labour office formed the opinion that the 250 employees were actually monthly paid employees and not casuals since they were not paid on a daily basis as the council alleged. The Labour Office on November 24, 2008 wrote to the council informing them that the workers referred to were entitled to terminal benefits as a result of the layoff (redundancy) which the council ignored and up to date they have not been paid their redundancy benefits as follows:

- Notice of pay
- Accrued leave
- Severance pay

The Labour Office calculated the above terminal benefits for the 250 employees which amounted to Kshs9,250,104.50 and a demand notice was written to council on the same which it ignored. A charge sheet was prepared for the purposes of prosecuting the council for the recovery of the terminal benefits on behalf of the affected employees. However the matter was not filled in court due to the workers opting to pursue the matter on their own and outside court.

Up to date the workers have not gone back to the District Labour Office Thika to pursue the same. In the absence of the workers who were claimants the Labour office could not refer the matter to court.

(a letter written to the Ministry by the workers had stated that they were poor and could not afford a lawyer and had requested the Ministry's assistance)

Part b and c of the question

The Ministry of Local Government is well placed to explain part (b) and (c) of the question, since the employees are in their establishment.

MTN 28/2011

PAPERS I ATT

The Committee declined the following documents that were laid before it as they did not meet the set criteria. The documents lacked the Ministry's logo, the date and the Minister's signature.

- Report on dismissal of the 250 Thika Municipal Council employees
- Letter from the Provincial Labour Office to The Thika Town Clerk written on 24th December 2008 on Dismissal of the 250 employees

- Letter from the Ministry's of Labour to Town Clerk written on 17th March 2009 on Workers Grievances - terminal benefits to (250) two hundred and fifty ex-workers of Thika Municipal Council final demand.

MIN.29/2011

ADDITIONAL INFORMATION

The Committee directed that the Minister goes back to his ministry and he would be summoned back further he was expected to come with all the necessary information and documents and the officers who were directly involved with the case.

MIN 30/2011

ADJOURNMENT

And there being no other business, the Chairperson thanked all the Members and adjourned the meeting at thirty minutes past three o'clock.

Signed
Chairperson

MINUTES OF THE SIXTY SEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY MARCH 22, 2011 IN COMMITTEE ROOM SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.30 AM.

MEMBERS PRESENT

Hon. Sophia Abdi Noor, M.P. - Chairperson
Hon. Charles Keter, M.P.
Hon. Gideon Konchella, M.P.
Hon. Jackson Kiptanui, M.P.
Hon. Joseph Magwanga, M.P.
Hon. Pollyns Ochieng, M.P.
Hon. Alfred Odhiambo, M.P.

ABSENT WITH APOLOGY

Hon. Elijah Lagat, M.P.
Hon. Lenny Kivuti, M.P. - Vice Chairperson

ABSENT

Hon. Clement Waibara, M.P.
Hon. Aden Keynan, M.P.

IN – ATTENDANCE – NATIONAL ASSEMBLY

John Wanyioke – Clerk Assistant
Caroline Kinyua – Third Clerk Assistant

PRAYERS

MIN 31/2011 CONFIRMATION OF THE PREVIOUS MINUTES

Minutes of the fifty ninth, sixtieth, sixty first, sixty second and sixty third sittings were confirmed by the Members present and signed by the Chairperson.

MIN 32/2011 MATTERS ARISING

Programme of Business

The Committee's sought to know the progress of their trip to Spain and France. The Committee was informed that the letters were not approved by the Clerk. The Committee expressed their disappointment with the refusal of approval for their trips and directed that new letters be written for the Clerk's approval.

Information from Ministries

There is need to do a follow up of the papers and /or information that is laid to the Committee by the ministries. Further that when asking for additional information, the Committee should also give a timeline of when the information should be delivered. That

way the Committee will be in a better position to appraise the House on matters of the ministries.

Attendance

The chairperson recommended the Members for the improved attendance of the Committee meetings. The Members however, agreed that apart from attending the meetings, there was need for them to keep time.

Ministry

The Committee directed that letters be done to all the ministries under the Committee's jurisdiction asking that the Committee be involved in the activities of the ministries for better and smooth jurisdiction and for better support.

MIN 33/2011 HOUSEKEEPING

Programme of calling/recalling witnesses in regard to Parliamentary Question 626 by Hon. William Kabogo.

The Committee resolved to have the following witnesses on the dates indicated:-

WITNESS	DATES	TIME
Clerk of Thika Municipal Council	Tuesday March 28, 2011	10.00 am
Former Clerk, Thika Municipal Council (Current Social Services Officer, Nairobi)	Tuesday March 28, 2011	10.00 am
Former Clerk Thika Municipal Council (On interdiction)	Tuesday March 28, 2011	10.00 am
Minister for Labour and Human Resource Development	Tuesday March 28, 2011	12 noon
Minister for Local Authorities	Thursday March 31, 2011	10.00 am

Further, following postponement of deliberations with the Minister for Labour due to his busy schedule, and his request to be slotted in the Month of April, the Committee resolved to meet with Him on Friday April 01, 2011, at 10.00 am to deliberate on the National Social Security Fund (NSSF) restructuring programme and housing projects.

Budget Workshop at Naivasha

The Committee resolved to have Hon. Joseph Magwanga, MP. and Hon. Elijah Lagat, MP represent the Committee in the workshop, and if they will not be available, Hon. Jackson Kiptanui, MP. and Hon. Pollyns Ochieng, MP. Who will be representing other Committees will as well represent the Labour Committee.

MIN 34/2011

ADJOURNMENT

And there being no other business, the Chairperson thanked all the Members and adjourned the meeting at twenty minutes past eleven o'clock.

Signed
Chairperson

MINUTES OF THE SIXTY NINTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY MARCH 29, 2011 IN COMMITTEE ROOM SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

MEMBERS PRESENT

Hon. Sophia Abdi Noor, M.P. - Chairperson
Hon. Pollyns Ochieng, M.P.
Hon. Charles Keter, MP.

ABSENT WITH APOLOGY

Hon. Lenny Kivuti, M.P. - Vice Chairperson
Hon. Joseph Magwanga, M.P.
Hon. Alfred Odhiambo, M.P.
Hon. Jackson Kiptanui, M.P.
Hon. Elijah Lagat, M.P.
Hon. Gideon Konchella, M.P

ABSENT

Hon. Clement Waibara, M.P.
Hon. Aden Keynan, M.P.

IN – ATTENDANCE – FRIEND OF THE COMMITTEE

Hon. William Kabogo, MP.

IN – ATTENDANCE – NATIONAL ASSEMBLY

John Wanyioke – Clerk Assistant
Caroline Kinyua – Third Clerk Assistant

MIN: 39/2011

OPENING REMARKS BY THE CHAIRPERSON TO THE WITNESSES

The Chairperson read the following to the witnesses:

Hon. Members, the Clerk to Thika Municipal Council and other Officers appearing to give evidence on Question No. 626, by the Member for Juja Hon. William Kabogo, MP. which was referred by the Speaker to the relevant Committee concerning the termination of 250 (two fifty) workers by the Thika Municipal Council.

I would like to appraise the witnesses before us on the modalities and Law of Parliament relating to his/her their appearance and the evidence he/she/they will give.

All witnesses appearing before us are doing so pursuant to provisions of the National Assembly (Powers & Privileges) Act, Cap 6, Laws of Kenya. The following are the requirements of the law on the witnesses and their evidence:-

This Committee has the power to order your attendance now and in future. Your failure to attend would constitute an offence punishable before the Courts of Law. All witnesses may give their evidence on oath. The oath would be administered by the Secretary of the Committee.

Should evidence given be found for any reasons to be false, or lie, then that would constitute an offence punishable before the Courts of Law.

Should any witness or anybody else attempt to influence any Member of this Committee or the Secretariat by inducements for whatever reasons to gain favour, influence or stop the proceedings, if detected would constitute an offence punishable before the Courts of Law.

All witnesses and the evidence given here are not open for any questioning by any other authority, at any other place and may not be repeated by the witnesses outside this sitting. Should it be detected that a witness is being subjected to harassment so as to divulge the evidence or inducements are being given to witnesses, Members of the Committee or the secretariat to procure the same, then, the perpetrators of such activities would be committing an offence punishable before Courts of Law.

The details of this sitting including the evidence given by all witnesses will only be released by the Committee in a report to Parliament. Anybody therefore making any revelations in whatever form would be guilty of an offence punishable before the Courts of Law.

MIN: 40/2011

ADMINISTRATION OF OATH

The six officers took the Oath as under
Mbiuki F. S. – Town Clerk, Thika Municipal Council
Z. N. Kariuki – Director of Social Services and Housing, City Council of Nairobi
Solomon Ng'ang'a – Establishment Officer
Obadiah Mbindyo – Accountant
Mary Maina – Accountant and
John Gicaci – Town Treasurer swore that:

The evidence they would give to the Parliament, Departmental Committee on Labour and Social Welfare Question no. 626 by the Member of Parliament for Juja Hon. William Kabogo, MP. which was referred by the Speaker to the relevant Committee concerning

the termination of 250 (two hundred and fifty) workers services by Municipal Council of Thika would be the truth and nothing but the truth.

MIN: 41/2011

EVIDENCE BY THE CLERK, THIKA MUNICIPAL COUNCIL,
ORDINARY QUESTION 626 (DISMISSAL OF 250 EMPLOYEES
FROM THIKA MUNICIPAL COUNCIL) – REFERRED TO THE
COMMITTEE

Mbiuki F. S. – Town Clerk, Thika Municipal Council accompanied by:-
Z. N. Kariuki – Director of Social Services and Housing, City Council of Nairobi
Solomon Ng'ang'a – Establishment Officer
Obadiah Mbindyo – Accountant
Mary Maina – Accountant
John Gicaci – Town Treasurer, informed the Committee that:-

Municipal Council of Thika terminated the services of all casual workers between the month of November and December 2008. The workers were employed on contractual basis as and when need arose. They worked for a period of between one month and three years.

The Council did not ignore communications from Thika Labour Office because the employees were occasional workers, casuals and not permanent employees and there was no budgetary provision to cater for their employment.

The council advertised for 52 posts on November 11, 2008 through an approved budget for 2008/2009 by the Ministry for Local Government. The posts were filled through a competitive process and therefore it is not possible to establish their relationship with the councillors. Out of the 52 employees recruited, nine were employed from the 250 casuals.

The Municipal Council did not give any letters of engagement because they were casuals and there were no payroll numbers or payslips.

Between the period of year 2000 – 2008, there were no deductions until 2008 when NSSF and NHIF asked for deductions. The Council would submit the statutory deductions at the end of the month and they did so to access LATF.

The Clerk would accrue the payment (wages) up to the end of the month, compile them and pay the employees. The master payroll is filled by the sectional head who signs to prove that the workers were there and the same document is used to verify the payment vouchers.

Currently there are more 50 workers whose approval for employment was given by the Deputy Prime Minister and Minister for Local Government in January 2011 and are engaged for a period of three months.

MIN: 42/2011 EVIDENCE BY FORMER CLERK FOR THIKA MUNICIPAL COUNCIL, ORDINARY QUESTION 626 (DISMISSAL OF 250 EMPLOYEES FROM THIKA MUNICIPAL COUNCIL) – REFERRED TO THE COMMITTEE

Mr. Z. N. Kariuki - Former Clerk of Thika Municipal Council informed the Committee that:

He was the Clerk of the Thika Municipal Council from December 2007 to September 2009, after which he joined the City Council of Nairobi.

When he took over in Thika Municipal Council, he discovered that there were employees who were there on casual basis.

He did the budget in year 2008/2009 requesting to be allowed to employ, he was only granted 52 employees and the approval could not take the other 200, so they were laid off. When the advertisement was made, some of the casuals applied and they were recruited.

He didn't know the number of years that the workers had worked. They were called casuals but there was an arrangement to pay them fortnightly or monthly. The employees did not have any letters of engagement.

The employees do not qualify to be called casuals according to the Employment Act 2007 Section 18.

MIN: 43/2011 PAPERS LAID

The following documents were laid before the Committee:-

- i. Letter from Thika Municipal Council to the Clerk National Assembly dated March 28, 2011.
- ii. List showing employees, the department where they worked and the years when they were employed by the Thika Municipal Council and when they left.
- iii. Summaries of the lists in (b) above.
- iv. The document submitted was not satisfactory as they did not have Identity Card Numbers of the employees so the Committee wouldn't ascertain for sure whether they were the real employees.

MIN: 44/2011 COMMITTEE OBSERVATIONS

The Committee observed that when the witnesses were asked whether according to Employment Act 2007 Section 18 whether the employees were casuals or permanent they confirmed that the employees were permanent.

MIN: 45/2011

ADJOURNMENT

And there being no other business, the Chairperson thanked all the Members and adjourned the meeting at thirty minutes past eleven o'clock.

Signed
Chairperson

MINUTES OF THE SEVENTIETH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY MARCH 29, 2011 IN COMMITTEE ROOM SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 12 NOON.

MEMBERS PRESENT

Hon. Sophia Abdi Noor, M.P. - Chairperson
Hon. Pollyns Ochieng, M.P.
Hon. Charles Keter, MP.

ABSENT WITH APOLOGY

Hon. Lenny Kivuti, M.P. - Vice Chairperson
Hon. Joseph Magwanga, M.P.
Hon. Alfred Odhiambo, M.P.
Hon. Jackson Kiptanui, M.P.
Hon. Elijah Lagat, M.P.
Hon. Gideon Konchella, M.P.

ABSENT

Hon. Clement Waibara, M.P.
Hon. Aden Keynan, M.P.

IN – ATTENDANCE – FRIEND OF THE COMMITTEE

Hon. William Kabogo, MP.

IN – ATTENDANCE – NATIONAL ASSEMBLY

John Wanyioke – Clerk Assistant
Caroline Kinyua – Third Clerk Assistant

MIN: 46/2011 EVIDENCE BY MINISTER FOR LABOUR, ORDINARY QUESTION 626 (DISMISSAL OF 250 EMPLOYEES FROM THIKA MUNICIPAL COUNCIL) – REFERRED TO THE COMMITTEE

The Assisant Minister for Labour Hon. Sospeter. Omojong' M.P. accompanied by:-
Dr. Sammy Nyambari – Labour Commissioner
J. A Yidoh – Deputy Labour Commissioner
S.M. Kiraguri – Provincial Labour Officer, Nyeri informed the Committee that:

Further to the meeting held on Wednesday March 16, 2011 between the Minister of Labour and the Departmental Committee on Labour and Social Welfare the following actions have been taken:

A prosecution file with the necessary charges was filed in the Industrial Court of Kenya under Cause No. L57 of 2011 on the 28th day of March 2011 against the Town Clerk of Thika Municipal Council. The matter would be coming before court no. 4 of the Industrial Court for mention on 7th day of April 2011.

The Minister gave apologies for the current District Labour Officer, Thika who had a case in the court at the same time as the meeting time. He further informed the Committee that the current Provincial Labour Officer was the Thika District Labour Officer at the time when the case was there and he was the one who handled the case so he best placed to answer the questions.

A contract of employment can be verbal according to the Employment Act of 2007. The law is clear, and since councils have Industrial Relations Officers and Human Resources departments, they should not compromise on the law.

With the new laws, even casual workers are allowed to form unions which can fight for their rights.

The trend of employing casuals has brought a lot of challenges for the Ministry. The reasons as to why they have the employees as casuals is to avoid paying all the allowances that come along with permanent employment. Most of the big companies in Kenya like the tea estates, the hotels and the Export processing Zones industries flout the employment law.

The Ministry is facing the following challenges, in dealing with the issue:

- Unemployment among many Kenyans.
- Understaffing in the Ministry of Labour; the Ministry has only ninety six (96) labour officers and the youngest is forty three years old.

MIN: 47/2011

PAPERS LAID

The following papers were laid before the Committee:-

- 1) A copy of a letter, dated 24th December 2008 addressed to the Town Clerk, Thika Municipal Council on dismissal of 250 employees
- 2) Demand notice from the Provincial Labour Officer, Central Province to the Town Clerk dated 17th March, 2009 requiring him to deposit Kshs9,250,109.50
- 3) Report on the dismissal of the 250 employees of Thika Municipal Council, dully signed by the Hon. Minister for Labour
- 4) A Republic of Kenya Industrial Court of Kenya summon for cause No. L57 of 2011 (Labour Commissioner – Complainant versus The Town Clerk, Municipal Council of Thika - Respondent) dated 28th March 2011.
- 5) Charge sheet from the Labour Department to the Town Clerk Municipal Council of Thika dated 28 March 2011.
- 6) Letter from the Ministry of Labour to Town Clerk, Municipal Council of Thika dated 24th December 2008 on Dismissal of the 250 employees.

- 7) Letter from the Provincial Labour Officer to Town Clerk Municipal Council of Thika dated 17th March 2009 on workers grievances terminal benefits to 250 (two hundred fifty) ex-workers of Thika Municipal Council final demand notice
- 8) Municipal Council of Thika workers remuneration of service payment
- 9) Letter from the Casual Workers to Labour Commissioner dated 27th February 2009 on their meeting with the Provincial Labour Officer Nyeri. Letter from the Ministry of Labour to the Provincial Labour Officer dated 27th January 2009 on L.D 64 case Meshack Juma and 249 others versus Municipal Council of Thika.
- 10) Letter from the Ministry of Labour to the Provincial Labour Officer/ District Labour Officer dated 4th March 2009 on 250 workers of Thika Municipal Council.
- 11) Letter from the Ministry of Labour to Provincial Labour Officer on workers grievances over 200 workers versus Municipal Council of Thika.

MIN 48/2011 COMMITTEE OBSERVATIONS

The Committee observed that most of the big companies like the tea estates, the hotels and the export processing zones flout the employment law, and it was very important that the Committee deals with this particular case so as to stop the unlawful practise.

MIN: 49/2011

ADJOURNMENT

And there being no other business, the Chairperson thanked all the Members and adjourned the meeting at thirty minutes past three o'clock.

Signed
Chairperson

MINUTES OF THE EIGHTY FIRST SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY APRIL 12, 2011 IN COMMITTEE ROOM SECOND FLOOR, PARLIAMENT BUILDINGS AT 10.00 AM.

MEMBERS PRESENT

Hon. Sophia Abdi Noor, M.P. - Chairperson
Hon. Lenny Kivuti, M.P. - Vice Chairperson
Hon. Pollyns Ochieng, M.P.
Hon. Jackson Kiptanui, M.P.
Hon. Joseph Magwanga, M.P.
Hon. Elijah Lagat, M.P.

ABSENT WITH APOLOGY

Hon. Charles Keter, MP.
Hon. Gideon Konchella, M.P.
Hon. Alfred Odhiambo, M.P.

ABSENT

Hon. Clement Waibara, M.P.
Hon. Aden Keynan, M.P.

IN – ATTENDANCE – NATIONAL ASSEMBLY

John Wanyoike – Clerk Assistant
Caroline Kinyua – Third Clerk Assistant

PRAYERS

MIN 81/2011 EVIDENCE BY THE PERMENANY SECRETARY MINISTRY FOR LOCAL GOVERNMENT, ORDINARY QUESTION NO 626 (DISMISSAL OF 250 EMPLOYEES FROM THIKA MUNICIPAL COUNCIL) – REFERRED TO THE COMMITTEE

Prof. Karega Mutahi Permenany Secretary Office of the Deputy Prime Minister and Ministry of of Local Government accompanied by:-
Dominic W. Mbugua – Chief Internal Auditor
Amb. P.R.O Owade – Secretary Local Authorities
Mugambi J. Nyaga – Senior Asst. Director HRM informed the Committee that:

Nearly all the councils are in a similar situation as that of Thika Municipal Council on the issue of casuals. That the 250 workers were classified as casuals throughout their employment.

The Minister for Local Government sent auditors to Thika Town Council to ascertain the issue and they found out that the workers were employed on ward basis.

The auditors went to Thika Municipal Council and they could not get any records on the dismissed employees. Instead, they were informed that the employees were employed on council ward basis.

The auditors did not get the master rolls but got the payrolls.

The workers were paid out of operational money and there was no evidence of a budget approved by the Minister for their employment.

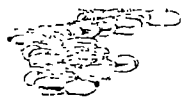
MIN: 82/2011 COMMITTEE CLARIFICATIONS

The Committee sought the following;-

- Whether the Permanent Secretary and auditor were concerned with AIA (Appropriation In Aid).
- The people were employees and if they can be appreciated by the council and were even given letters of introduction as employees of the council, and were having statutory deductions then how can the council claim that they are not employees?
- How did the council operate and couldn't understand how the auditor is unable to extract more information regarding employees who were paid a lot of money by the Council.
- How the Permanent Secretary could justify the presence of auditors, since they could not point out the irregularities, before and until the issue was raised by the employees?

The Permanent Secretary in clarifying the above informed the Committee the following;-

- The Permanent Secretary and the Ministry is dealing with a case of illegal payments as the County Councils are not allowed to employ anyone without the approval from the Minister for Local Government.
- The issue on statutory deductions was irregular as some of the deductions were made from money allocated for Kazi Kwa Vijana (KKV) as was discovered by the auditors.
- The Permanent Secretary confirmed that it is the same situation across the Councils. They have been acting irregularly and flouting the Labour Laws. It is a very serious issue in all the Local Government sectors hence the need to have a policy on the same.
- For a long time, the main body that carried out local authorities audit were inspectors, under Cap 2 (16). As the councils grew the inspectors continued auditing the accounts yet most of them are not qualified auditors.
- When the current Permanent Secretary took over office, he posted internal auditors seconded from the Ministry of Finance to audit the KKV and in the



process, the auditors have been able to realize that there is an anomaly in the councils especially on casual employment.

- The Minister evoked Audit Act cap 265 and the councils that were founded to have misused any money, the officers involved are surcharged.
- Local Government employees are not civil servants and any financial obligation goes to the council.
- The Permanent Secretary requested the Committee to wait for the auditor to conclude his audit report which would be submitted in a fortnight.
- The Permanent Secretary offered to look into the matter of paying the workers their dues and offered to consult the Attorney General on what action should be taken against the Clerk of the Thika Municipal Council.

MIN: 83/2011 ADDITIONAL INFORMATION

The Committee directed that the Permanent Secretary submits the below additional Information by Friday April 15, 2011 and the audit report within a fortnight:-

- i. A copy of the circular on financial audit
- ii. Correspondences to the councils by the auditors asking for information
- iii. Audit report of the Thika Municipal Council
- iv. A written document from the Permanent Secretary with all the information that he had given to the Committee.

MIN: 84/2011

ADJOURNMENT

And there being no other business, the Chairperson thanked all the Members and adjourned the meeting at fifteen minutes past eleven o'clock.

Signed
Chairperson

MINUTES OF THE EIGHTY NINETH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY MAY 10, 2011 IN THE COMMITTEE ROOM SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 12.00 PM.

MEMBERS PRESENT

Hon. Sopnia Abdi Noor, M.P. - Chairperson
Hon. Pollyns Ochieng, M.P.
Hon. Joseph Magwanga, M.P.
Hon. Charles Keter, MP.
Hon. Jackson Kiptanui, M.P.
Hon. Alfred Odhiambo, M.P.
Hon. Elijah Lagat, M.P.

ABSENT WITH APOLOGY

Hon. Lenny Kivuti, M.P. - Vice Chairperson
Hon. Gideon Konchella, M.P.

ABSENT

Hon. Clement Waibara, M.P.
Hon. Aden Keynan, M.P.

IN – ATTENDANCE – NATIONAL ASSEMBLY

John Wanyoike – Clerk Assistant
Caroline Kinyua – Third Clerk Assistant

PRAYERS

MIN 137/2011 EVIDENCE BY THE DEPUTY PRIME MINISTER AND MINISTER FOR LOCAL GOVERNMENT, ORDINARY QUESTION NO 626 (DISMISSAL OF 250 EMPLOYEES FROM THIKA MUNICIPAL COUNCIL) – REFERRED TO THE COMMITTEE

The Hon Musalia Mudavadi, MP – Deputy Prime Minister and Minister for Local Government accompanied by;-
Prof. Karega Mutahi – Permanent Secretary
Mugambi Nyaga – DHRM
D.W. Mbugua – Internal Auditor

Informed the Committee that:

The Ministry has a major concern that revolve around the issue of casual employees in Local Authorities. Many cases have been reported across the country where the following have emerged;-

- i. Councils have been employing staff without following the Employment Act requirement.
- ii. Many people have been engaged without formal appointment letters e.g. Cases where councillors are said to have engaged their own relatives and supporters at ward level and forced Clerks to put them in the payroll.
- iii. Many cases have emerged and this has been going on for a long time but only highlighted when auditors carried out audits.
- iv. The Ministry has cases where husbands and wives, brothers and sisters, sons and daughters of Councillors and senior officers, etc all work in one council.
- v. There are cases of junior staff engaged as casuals for as long as ten years.
- vi. Pensions funds have reported cases where they receive contributions without names of the contributors. Some of such names are feared to belong to staff who may be classified as casuals.

Remedial actions taken

- i. A circular letter has been sent out to all councils requiring them to adhere to employment laws.
- ii. Where staff have been engaged for long periods, councils have been asked to see how best to formalize their employment.
- iii. Auditors and inspectors who visit councils will start paying special attention to issues of staff.
- iv. In the case of Thika Municipal Council, a decision was taken to have all those who have been engaged for long periods of time paid their dues. This matter has been discussed with the Clerk and the Council has already instructed their lawyer to apply for settlement of the matter out of court.
- v. The Ministry Auditors have carried out the audit and have recommended payment of dues to those concerned.
- vi. The Ministry recommends that that once the matter is out of court the Labour Officer and the Municipal Council reconcile their figures and payment be made to the affected staff.
- vii. The Ministry will continue to follow up issues relating to workers' rights and taking appropriate action.
- viii. The Committee heard that some twenty seven names were not appearing in the master rolls so it was not easy to confirm whether they worked for the Council. There were no documents found to verify that they were employees of the council hence they may not be paid.
- ix. That thirteen employees were permanently employed by the Council.
- x. That eleven employees were within the definition of casuals

MIN 138/2011

ADJOURNMENT

And there being no other business, the Chairperson thanked all the Members and adjourned the meeting at thirty minutes past one o'clock.

Signed
Chairperson
