



*Approved for tabling,
Bal SMA
19/2/15*

*Paper laid on 19.2.15
by Hon. B. Nene.
Khw*

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON
THE PETITION REGARDING UNLAWFUL DISMISSAL OF MR. VITALIS
OMONDI OTHUON FROM NATIONAL WATER CONSERVATION
AND PIPELINE CORPORATION

February, 2015

Clerk's Chambers
Parliament Buildings
NAIROBI

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1.0 PREFACE

On behalf of the Departmental Committee on Labour and Social Welfare and pursuant to the provisions of Standing Order No.227 (2), it is my pleasure and duty to present the Committee's Report on the petition regarding unlawful dismissal from National Water Conservation and Pipeline Corporation of Mr. Vitalis Omondi Othuon

1.1 The Committee membership

The Departmental Committee on Labour and Social Welfare was constituted on Thursday 16th May 2013 and comprise of the following members:

1. Hon. David Were, MP - **Chairperson**
2. Hon. Tiyah Galgalo, MP - **Vice Chairperson**
3. Hon. Janet Teyiaa, MP
4. Hon. Peris Tobiko, MP
5. Hon. John Ndirangu Kariuki, MP
6. Hon. Winnie Karimi Njuguna, MP
7. Hon. Janet Nangabo, MP
8. Hon. John Serut, MP
9. Hon. Samuel Gichigi, MP
10. Hon. Elijah Lagat, MP
11. Hon. Cornelly Serem, MP
12. Hon. Abdi Noor Ali, MP
13. Hon. Daniel Wanyama, MP
14. Hon Regina Nyeris, MP
15. Hon. Wesley Korir, MP
16. Hon. Kinoti Gatobu, MP
17. Hon. Elijah Mosomi Moindi, MP
18. Hon. James Onyango K'Oyoo, MP
19. Hon. Omondi John Ogutu, MP
20. Hon. Aisha Jumwa Karisa, MP
21. Hon. Patrick Wangamati, MP
22. Hon. Rose Museo Mumo, MP

23. Hon. Silvanice Onyango Osele, MP
24. Hon. Mustafa Idd, MP
25. Hon. Nyasuna Gladys Wanga, MP
26. Hon. John Owuor Onyango Kobado, MP
27. Hon. Mwanyoha Hassan Mohammed, MP
28. Hon. Mlolwa Jones Mwangogo, MP

1.2 Mandate of the Committee

As set out in Standing Order 216 (5), the Committee is mandated to:-

- a) *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) *Study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
- c) *Study and review all legislation referred to it;*
- d) *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;*
- e) *Vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and*
- f) *Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

1.3 Consideration of the Petition

The Committee met the Petitioner, Mr. Vitalis Omondi Othuon and the Managing Director National Water Conservation and Pipeline Corporation and received submissions from the Secretary Public Service Commission, Ethics and Anti-Corruption Commission and the Attorney General.

1.4 Committee Observations

The Committee observed that:-

1. The Petitioner was employed by the National Water Conservation and Pipeline Corporation (NWPC) on 5th November, 2008 on contract terms however his services were terminated on 4th January 2011.
2. The Petitioner sued the NWPC at the Industrial Court seeking the following prayers:
 - (a) The Claimants (Petitioner's) employment with Respondent (NWPC) was permanent and pensionable;
 - (b) A declaration that his dismissal was unlawful;
 - (c) The respondent be ordered to reinstate the Petitioner; and
 - (d) That the respondent to re-engage the Petitioner for work comparable
 - (e) that which the Petitioner held before reinstatement

Alternative prayers were:-

- (a) Terminal dues
 - (b) Interest on terminal dues
 - (c) Statutory deductions
 - (d) The claimant to be issued with certificate of service
 - (e) The respondent to pay legal cost
3. The Court heard and determined the case and the petitioner was awarded Ksh.1,633,886.80 as compensation for salary of days worked; leave days unutilized and 12 months compensation for not having been placed on permanent and pensionable terms as per his alternative prayers.
4. The petitioner was paid by NWPC his dues as ordered by the Court thus the matter between the petitioner and his former employer had been concluded by the Court.
5. Re-instatement was a prayer in the Petitioner's pleadings, however the Court did not grant the prayer.
6. The Petitioner misled the Committee that the Court awarded him an Order for reinstatement whereas there was no such order in the Court judgment.
7. In relation to the allegation of alleged corruption and malpractices by the NWPC, the Petitioner did confirm to the Committee that investigation were pending in EACC and that he is a key witness to the Commission.
8. The Petitioner's claim had been heard and judgment delivered accordingly, hence the Committee will be sitting on an appeal against the said judgment.

1.5 Committee Recommendations

The Committee made the following recommendations; That:-

1. This Petition does not disclose grounds for gross violation of the fundamental rights and freedom under the Constitution of Kenya.
2. The claim of reinstatement by the Petitioner is unmerited since the issues between the Petitioner and the National Water Conservation and Pipeline Corporation(NWCPC) have been fully adjudged by a competent Court and therefore the Committee dismisses it.
3. The Committee advises the petitioner to seek remedy from relevant body, if he is dissatisfied by the decision of the Industrial Court.
4. The Committee urges the Ethics and Anti-Corruption Commission to hasten the investigation of the allegations of corruption against the officials of the NWCPC.

1.6 ACKNOWLEDGEMENTS

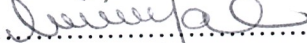
The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate.

I take this opportunity to thank all Members of the Committee for their patience, sacrifice, endurance and commitment to Public Service under tight schedules which enabled us to complete the task within the stipulated period.

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

On behalf of the Departmental Committee on Labour and Social Welfare and pursuant to the provisions of Standing Order No.227 (2), it is my pleasure and duty to present the Committee's Report on the Petition by Mr. Vitalis Omondi Othuon regarding his unlawful dismissal from the National Water Conservation and Pipeline Corporation.

Thank you.

SIGNED.......... DATE..... 4/12/2014

Hon. Tiyah Galgalo, MP

(Vice Chairperson)

Departmental Committee on Labour and Social Welfare

2.0. PETITION BY MR. VITALIS OMONDI OTHUON REGARDING HIS UNLAWFUL DISMISSAL FROM THE NATIONAL WATER CONSERVATION AND PIPELINE CORPORATION

2.1 INTRODUCTION

Pursuant to Standing Order 225 (2) (b), the Speaker of the National Assembly conveyed to the House that he had received a petition by Mr. Vitalis Omondi Othuon, regarding his unlawful dismissal from the National Water Conservation and Pipeline Corporation.

The petitioner was allegedly dismissed from service on 4th January, 2012 after unearthing some malpractices and mismanagement at the National Water Conservation and Pipeline Corporation that led to financial loss. The Industrial Court found the termination to have been unlawful and illegal in its ruling on 14th June, 2013.

Pursuant to Standing Order 227 (2), the petition (No. 057 of 2014) was committed to the Departmental Committee on Labour and Social Welfare on 16th October, 2014.

2.2 TERMS OF REFERENCE

The petitioner prayed that Parliament:

1. Resolves that this petition discloses grounds for gross violation of the fundamental rights and freedom under the Constitution of Kenya and wastage of public resources by the Corporation.
2. Recommend to his Excellency the President under Article 132, (a),(b) and (c) to direct and assign the Cabinet Secretary, Ministry of Environment, Water and Natural Resources to investigate the Corporations management for:
 - a) Abuse of office, manifest injustice, unlawful, oppressive and unfair official conduct and recommend reinstatement of the petitioner to the Public Service without loss of benefits.
 - b) Financial, malfeasance in the Corporation and provide a clear audit report on pending bills and contingent liabilities as a result of litigations that threatens loss of approximately Kshs.1 billion to the tax payer.

2.3 COMMITTEE MEETINGS

The Committee met the Petitioner, Mr. Vitalis Omondi Othuon and the Managing Director National Water Conservation and Pipeline Corporation and received submissions from the Secretary Public Service Commission, Ethics and Anti-Corruption Commission and the Attorney General.

2.4 MEETING WITH THE PETITIONER MR.VITALIS OMONDI OTHUON

The Petitioner, Mr. Vitalis Omondi Othuon, appeared before the Committee on 28th October, 2014 and informed the Committee that:-

1. He is a holder of a Bachelor of Commerce Degree in Finance and Master's Degree in Economics from the University of Nairobi, a Certificate in International Health Systems Research from the Great Lakes University of Kisumu and a prospective PhD Student in Economics, University of Nairobi, School of Economics.
2. He joined the Department of Defense working within the Defence Forces Canteen Organization from July 2000 until November 2008. During his tenure at the Defence Forces Canteen Organization, he got partial Sponsorship to pursue his Master's programme from the year 2002 to 2005.
3. On July 4th 2008, the National Water Conservation and Pipeline Corporation advertised for a Vacancy placed in the Daily Nation, inviting applications for the position of Principal Internal Auditor and he responded. On September, 17th 2008 he was invited for an interview.
4. Following his successful interview, the Corporation offered him employment on 5th November 2008(**Appendix 1**) whereby, he received a letter of offer of Employment on Permanent and Pensionable terms subject to completion of one year probation. He was designated as head of internal audit division reporting functionally to the Board Risk and Audit Committee and administratively to the Managing Director.
5. He officially reported on November 24th 2008 and after a few days he realized that indeed the Institution had no proper governance system that would safeguard public resources. Even though the Corporation had proper systems of internal control, including being ISO- 2008; 9001 certified, due to weak governance the system was not being adhered to.

6. Between June to September 2009, he carried out an internal audit review of the payment system and was shocked that huge expenditures could not be supported. After a series of inquiries with the Managing Director, he escalated the concerns to the Board Chairman, Prof. Shitote, who immediately, launched investigations and summoned a full board of Directors, for a meeting on 24th September 2009.
7. However, on the night of 24th September 2009, fire burnt down the Corporation's administration Block destroying vital accounting records. Subsequently, the Board of Directors was disbanded, and a new board gazetted, including a new Managing Director, Eng. Ogut around November 2009.
8. The new Board of Directors, declared him as the best employee of the year during a colorful staff party held at Pan Afric Hotel in December 2009.
9. However, in mid 2010, following lapses within the Corporation's Procurement, and after a series of consultations with the Managing Director, it became apparent that, the use of Quotation 146 was abused. Due to his incessant request to have the procurement records availed to him for verification, he became a target for removal from employment.
10. He swiftly, liaised with the then, Ag Director, Ethics and Anti-Corruption Commission, Dr John Mutonyi, who not only, arranged for his security, but also, officially moved in to the Corporation to investigate. Following, extensive media coverage, Parliamentary Departmental Committee on Lands and Natural Resources also launched investigations, submitting their Report on April 2011.
11. The Ethics and Anti- Corruption Commission, in their annual report published in Kenya Gazette, dated 15th July, 2011 recommended the prosecution of the Corporation's Managing Director, and two other officers. The Public Procurement Oversight Authority also upon investigations corroborated the procurement irregularities, under Quotation 146.
12. During the 5th Risk and Audit Committee Meeting held on 30th August, 2011, the Chairperson, Faith Karemi Njeru, said "Internal Audit Department received praise from, the Parliamentary Committee on Lands and Natural Resources for their exhibited good work and declared the Committees' unwavering support for the department".

13. A similar meeting of the Board's Risk and Audit Committee was held on 8th December, 2011, where the minutes of the meeting held on 30th August, 2011 were confirmed. On 16th December, 2011 the Full Board met ostensibly to review the contracts of the General Managers, together with his confirmation which had delayed for three years. Amazingly despite him being available, he was not called to this meeting.
14. On December 22, 2011, he was given a show cause letter(**Appendix 2**) by the Managing Director with the following offenses:
- (II) Giving misleading information to the Board by alleging that the Managing Director changed the Scheme of service to disqualify him from the interviews for the post of Chief Internal Auditor contrary to the code of regulations COR 11.15(iii)
 - (III) Lack of commitment towards achievement of set Performance Contract Targets contrary to COR 11.22)i.
 - (IV) Inability to execute duties in his Department as per schedule of responsibilities contrary to the COR 11.22) iii.
 - (V) That his performance and professionalism as Principal Internal Auditor was below the Corporations' expectations contrary to Section 11.22(iii).
15. The Show cause letter further stated that the Board noted that such misconduct on his part could attract disciplinary action with resultant consequences. However, before the above action was taken, he was required to show cause why disciplinary action should not be taken against him on account of the above offenses. His Responses if any, was to reach the Managing Director on or before 27th December, 2011. On December 1st, 2011 during a board meeting of Human Resources Committee, his services had already been terminated and even during the minutes of the Board meeting held on 16th December, 2011, he had been terminated. It was very clear that indeed, his termination was pre-destined and pre-meditated through subterfuge operations by the Management.
16. On December, 23rd 2011, he wrote to the Managing Director (**Appendix 3**) requesting for documentary evidence on the said allegations to enable him to respond effectively. On 3rd January, 2012, the Board was disbanded, but the Managing Director was not affected.
17. On 4th January 2012, he received his termination letter (**Appendix 4**) from the Managing Director. On 6th January 2012, he wrote to the Permanent Secretary, Ministry of Water & Irrigation and on 8th January 2012 wrote to the Head of Public Service, and copied to the following offices:-

- (I) PS, Finance -Mr. Joseph Kinyua
- (II) PS, Office of the Prime Minister
- (III) PS, Public Service
- (IV) Inspector-General of State Corporations.
- (V) PS, Ministry of Justice and Constitutional Affairs
- (VI) Office of the Ombudsman
- (VII) Executive Director, Water Appeals Board

18. However, with no immediate response (**Appendix 5**) he moved to the Industrial Court on 25th January, 2012 under case 99 of 2012. On 15th November, 2012, during the hearing, the Corporation's Head of Human Resources, brought to Court fictitious registers of attendance, alluding that he was always absent for duty whereby absenteeism was not part of the issues in my show cause letter. The Hon. Judge saw the mischief and expunged the register from the proceedings. The Managing Director who was to perform his appraisal terminated his job after the Board was dissolved. In its ruling (**Appendix 6**), it was not lost to the Court that the termination was illegal and manifestly without basis.

19. After the judgment and cognizant of Article 236 and 234 of the Constitution of Kenya 2010, he had written to various government offices seeking reinstatement into the Public Service but to no avail.

20. He concluded that to the best of his knowledge, the process of his removal from the public service based on available evidence, remains unconstitutional, unlawful, and manifestly, without any basis, and it was his supplication that Parliament looks into the petition and be satisfied that it discloses reasonable grounds for his unlawful dismissal from public service, and gross violations of his constitutional rights, and advice the appropriate authorities to reform the Corporation towards good governance practices enhancing value to its stakeholders, and to the Kenyan people. Therefore he sought for reinstatement into the Public Service.

2.5 MEETING WITH THE MANAGING DIRECTOR, NATIONAL WATER CONSERVATION AND PIPELINE CORPORATION

The Managing Director, National Water Conservation and Pipeline Corporation, Mr. Evans Ngibuini appeared before the Committee on 30th October, 2014 and informed the Committee that:-

1. The Petitioner was employed by the National Water Conservation and Pipeline Corporation on 5th November, 2004 as a Principal Internal Auditor.

2. He was issued with a Notice vide letter Ref. No. NWPCPC/HRA/3141/(49) (**Appendix 2**) dated 21st December, 2011 to show cause why disciplinary action should not be taken against him for the following allegations:-
 - (i) Giving misleading information to the Board by alleging that the Managing Director changed the scheme of service to disqualify him from the interviews for the post of Chief Internal Auditor contrary to the Corporation's Code of Regulations. (COR) 11.25 (iii).
 - (ii) Lack of commitment towards achievement of set performance Contract Targets contrary to (COR) 11.22(i)
 - (iii) Inability to execute duties in his department as per schedule of responsibilities contrary to section 11.22(ii)
 - (iv) That his performance and professionalism as a Principal Internal Auditor was below the Corporation's expectations contrary to section 11.22(ii)
3. He responded to the show cause letter (**Appendix 3**) vide his unreferenced letter dated 27th December, 2011. The petitioner's explanation was found unsatisfactory and his services were terminated vide letter Ref: NWC/HRA/FIL/CON.3141(7) dated 4th January, 2012.
4. He was dissatisfied with the dismissal and proceeded to file a case against the Corporation under Industrial Court Cause No.99 of 2012 Vitalis Omondi Othuon Versus National Water Conservation and Pipeline Corporation and sought the following reliefs:-
 - I. Terminal dues;
 - II. Interest on terminal dues;
 - III. Any other statutory entitlements;
 - IV. Issuance of Certificate of Service; and
 - V. Cost of the claim;
5. The matter proceeded to full hearing and after hearing both parties, the Honourable Court delivered its judgement on 14th June, 2013 ruling that the Corporation pay the petition Kshs.1, 633,886.80 being damages for wrongful dismissal.
6. The Corporation adhered to the Court's ruling by paying the petitioner the awarded damages on 14th March, 2014 thus discharging his claims against the Corporation.
7. The legal position on the Court's judgement was that; the case was heard and determined by a Court of competent jurisdiction and settled in line with the judgement of the Court. The Court only ordered the Corporation to pay the

claimant damages for wrongful dismissal and at no time did it order reinstatement. The claimant did not appeal against the Courts judgement but opted to take the amount awarded to him as damages. In law, this means that he cannot seek any other relief from any other arm of the government as this would amount to adjudicating a case that has been heard and determined by a Court of competent jurisdiction.

3.0 COMMITTEE OBSERVATIONS

The Committee discussed the petition and observed that:-

1. The Petitioner was employed by the National Water Conservation and Pipeline Corporation (NWCPC) on 5th November, 2008 on contract terms however his services were terminated on 4th January 2011.
2. The Petitioner sued the NWCPC at the Industrial Court seeking the following prayers:
 - (f) The Claimants (Petitioner's) employment with Respondent (NWCPC) was permanent and pensionable;
 - (g) A declaration that his dismissal was unlawful;
 - (h) The respondent be ordered to reinstate the Petitioner; and
 - (i) That the respondent to re-engage the Petitioner for work comparable
 - (j) that which the Petitioner held before reinstatement

Alternative prayers were:-

- (f) Terminal dues
 - (g) Interest on terminal dues
 - (h) Statutory deductions
 - (i) The claimant to be issued with certificate of service
 - (j) The respondent to pay legal cost
3. The Court heard and determined the case and the petitioner was awarded Ksh.1,633,886.80 as compensation for salary of days worked; leave days unutilized and 12 months compensation for not having been placed on permanent and pensionable terms as per his alternative prayers.
 4. The petitioner was paid by NWCPC his dues as ordered by the Court thus the matter between the petitioner and his former employer had been concluded by the Court.
 5. Re-instatement was a prayer in the Petitioner's pleadings, however the Court did not grant the prayer.
 6. The Petitioner misled the Committee that the Court awarded him an Order for reinstatement whereas there was no such order in the Court judgment.

7. In relation to the allegation of alleged corruption and malpractices by the NWCPC, the Petitioner did confirm to the Committee that investigation were pending in EACC and that he is a key witness to the Commission.
8. The Petitioner's claim had been heard and judgment delivered accordingly, hence the Committee will be sitting on an appeal against the said judgment.

4.0. COMMITTEE RECOMMENDATIONS

The Committee made the following recommendations:- That;

1. This petition does not disclose grounds for gross violation of the fundamental rights and freedom under the Constitution of Kenya.
2. The claim of reinstatement by the Petitioner is unmerited since the issues between the Petitioner and the National Water Conservation and Pipeline Corporation(NWCPC) have been fully adjudged by a competent Court and therefore the Committee dismisses it.
3. The Committee advises the petitioner to seek remedy from relevant body, if he is dissatisfied by the decision of the Industrial Court.
4. The Committee urges the Ethics and Anti-Corruption Commission to hasten the investigation of the allegations of corruption against the officials of the NWCPC.

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ANNEX A- MINUTES

MINUTES OF THE 95TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD AT PROTECTION HOUSE SECOND FLOOR ON 4TH DECEMBER AT 10.00 A.M.

PRESENT

1. Hon. Tiyah Galgalo, MP- Vice Chairperson -Interim Chair
2. Hon. John B. Serut, MP
3. Hon. Winnie Njuguna, MP
4. Hon. Dan Wanyama, MP
5. Hon. Samuel Gichigi, MP
6. Hon. Rose Museo Mumo, MP
7. Hon. George Muchai, MP
8. Hon. Peris Tobiko, MP
9. Hon. Kinoti Gatobu, MP
10. Hon. Regina Nyeris, MP
11. Hon. James Onyango K'oyoo, MP
12. Hon Cornelly Serem, Mp
13. Hon. Janet Teyiaa, MP
14. Hon. Wesley Korir, MP
15. Hon. John Omondi Ogutu, Mp
16. Hon. Janet Nangabo, MP
17. Hon. Jones Mlolwa, Mp
18. Hon. John Ndirangu Kariuki, MP

APOLOGIES

1. Hon. David Were, MP - Chairperson
2. Hon. Mustafa Idd, MP
3. Hon. Mwanyoha H. Mohammed, MP

ABSENT

1. Hon. John Owuor Onyango Kobado, MP
2. Hon. Elijah Mosomi Moindi, MP
3. Hon. Abdinoor Mohamed Ali, MP
4. Hon. Gladys Wanga, MP
5. Hon. Elijah Lagat, MP
6. Hon. Patrick Wangamati, MP
7. Hon. Silvanice Onyango Osele, MP
8. Hon. Aisha Jumwa Karisa, MP

NATIONAL ASSEMBLY SECRETARIAT

- | | |
|---------------------------|------------------------------------|
| 1. Erick Nyambati | Third Clerk Assistant (Lead Clerk) |
| 2. Abdirahman Gele Hassan | Third Clerk Assistant |
| 3. Ella Kendi Mwenda | Third Clerk Assistant |
| 4. Clarah Kimeli | Legal Counsel I |
| 5. Simon Muinde | Hansard Officer |

MINUTE NO 300/2014 PRELIMINARIES.

The meeting was called to order at 10.20 a.m. and prayers were said by the Chairperson.

MINUTE NO.301 /2014 CONFIRMATION OF THE MINUTES.

Confirmation of the minutes of the 79th to 94th sittings were deferred to the next meeting

MINUTE NO.302/2014 ADOPTION OF REPORTS.

Upon deliberations the Committee agreed on the observations and recommendations of the following two reports;

1. Petition regarding recruitment of top managers at the Unclaimed Financial Assets by Mr Erick Barare.
2. Petition regarding the unlawful dismissal of Mr.Vitalis Omondi Othuon from National Water Conservation and Pipeline Corporation.

Consequently the two reports were unanimously adopted.

MINUTE NO.303/2014 PETITION REGARDING THE REMOVAL OF THE CHAIRPERSON NATIONAL GENDER AND EQUALITY COMMISSION.

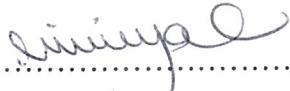
The Chairperson informed the members that the House had extended the period of investigation and reporting matters regarding the aforesaid petition by 14 days from 3rd December, 2014.

The members resolved to invite the following to provide more information regarding the petition before finalizing on the report.

1. Ms.Kagwiria Mbogori the Chairperson Kenya National Commission on Human Rights on Tuesday 9th December, 2014.
2. Hon.Francis Ole Kaparo the Chairperson National Cohesion and Integration Commission Tuesday 9th December, 2014.
3. Mr. Otiende Amollo the Chairperson Commission on Administrative Justice on 11th Thursday December 2014.

MINUTE NO.304/2014 ADJOURNMENT.

The meeting was adjourned at 12.40 p.m.

Signed..... 

Hon. Tiyah Galgalo, MP
(Vice-Chairperson)


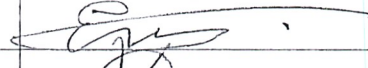
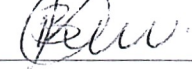






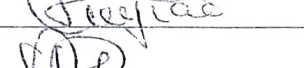

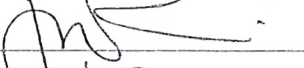

Date..... 4/12/2014

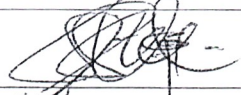
DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

ATTENDANCE LIST

DATE..... 4TH DECEMBER 2014.....

AGENDA..... ADOPTION OF REPORTS ON (1) PETITION REGARDING REZROIMENT IN TOP MANAGERS AT THE UNCLAIMED FINANCIAL ASSETS BY MR ERIC URISA
 PETITION REGARDING THE UNLAWFUL DISMISSAL OF VITALIS OMWIDI
 OTHERS FROM NATIONAL WATER CONSERVATION AND PIPELINE CORPUS

NO	NAME	SIGNATURE
	Chairperson	
2	Vice-Chairperson Hon Tiyah Gaiyato Ali	
3	HON ELIJAH MOSOMI MOINDI	
4	Hon. Kinoti Gatabu Boniface	
5	HON JOHN B. SERUT	
6	Hon John Ndirango	
7	Hon John Ndirango	
8	Hon. JAMES MLOLWA	
9	Hon Winnie Nyungu	
10	HON JANET TETIAI	
11	Hon. PERES LOBILLO	
12	HON. JAMES O. K'OYOO	
13	Hon. Rose Moseo Numo	
14	Hon Janet Nangabo	
15	Hon Conolly Serem	

17	How SAMUEL CICHIGI	
18	hon Wesley Kono	Thank.
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ERIC NYAMBATI

FOR CLERK NATIONAL ASSEMBLY

ANNEX 1



National Water Conservation & Pipeline Corporation

"Water is Life"

Telephone: Nairobi 556600/1/2/3, 531044/6
Fax: 531049

Chairman's Office
Dunga Road
P.O. Box 30173, 00100 GPO
Nairobi,
Kenya

When replying please quote

Ref. No. NWC/FAD/FIL/45

5TH November, 2008

Vitalis Omondi Othuon
P O Box 42015-00100
NAIROBI

Dear Sir,

OFFER OF APPOINTMENT

Following your application for employment and your subsequent interview with this Corporation I am pleased to inform you that you are hereby offered employment with National Water conservation & Pipeline Corporation (NWCCPC) on the following terms:-

DESIGNATION: Principal Internal Auditor

SALARY: Your salary at the commencement of your appointment will be in the Salary Scale NWC 9 viz K£. 49107 x 1116 - 52455 x 1674 - 55803 x 2232 - 60267 x 3348 - 73659 p.a. and you will enter the scale at **K£49,107p.a.**

STATION: You will be based at the National Water Conservation & Pipeline Corporation's head quarters.

DUTIES: Your duties will be outlined by your Head of Division.

MEDICAL Cover: You will be a member of the Staff Medical Scheme, which covers self, one spouse and four children below 22 years.

LEAVE: You will be entitled to 30 days annual leave, which must be utilized within the financial year (1st July to 30th June) except where permission is granted by the Managing Director to carry forward such leave to the following year. Permission to carry forward leave to the following year must be sought at least

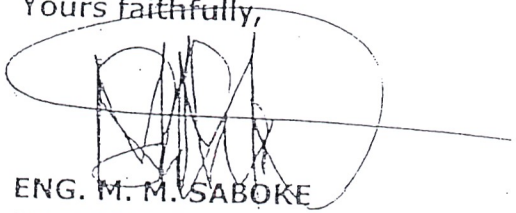
Your attention is drawn to the fact that it is a condition of your employment with the Corporation that any confidential information, which may come into your possession by virtue of your appointment, must be treated as such and may not be divulged without proper authority. This also relates to all such information, which has not already been made public officially.

This appointment is subject to your being certified medically fit by a Medical Practitioner/Medical Institution accepted by this Organization as specified in the attached form.

The medical Certificate should be presented prior to your taking up this appointment.

If you accept this offer of appointment on conditions and terms set out above, kindly sign and return the duplicate for further action.

Yours faithfully,



ENG. M. M. SABOKE
MANAGING DIRECTOR

I hereby accept the appointment subject to terms of this letter. I confirm that I will be able to take up the appointment on 24/11/08 Signature Emmanuel date 7/11/08

The offer will be valid for 14 days from the date of this letter and if not accepted within that period, it will automatically cease, unless there is mutual agreement to the contrary in writing.

ANNEX 2

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National Water Conservation & Pipeline Corporation

Managing Director's Office
Dunga Road
P.O. Box 30173, 00100
Nairobi,
Kenya

"Water is Life"

Telephone: Nairobi 556600/1/2/3, 531044/6
Fax: 531049

When replying please quote

Ref. No. NWPC/HRA/SFIL/3141/(49)

21st December, 2011

Mr. Vitalis Omondi,
Principal Internal Auditor,
P/No. 3141.
NAIROBI.

NOTICE TO SHOW CAUSE

Reference is made to the Full Board meeting held on 16th December, 2011 which among other issues deliberated on your case.

The following issues were noted:-

- That you gave misleading information to the Board by alleging that the Managing Director changed the Scheme of Service to disqualify you from the interviews for the post of Chief Internal Auditor contrary to the Code of Regulations (COR) 11.15(iii).
- That you lack commitment towards achievement of set Performance Contract Targets contrary to COR 11.22 (i).
- Your inability to execute duties in your Department as per schedule of responsibilities contrary to the COR 11.22 (iii) and
- That your performance and professionalism as Principal Internal Auditor is below the Corporation's expectations contrary to Section 11.22 (iii).

The Board further noted that such misconduct on your part can attract disciplinary action with resultant consequences.

However, before the above action is taken, you are required to show cause why disciplinary action should not be taken against you on account of the above offences.

P. O.

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Your response if any, should reach the Managing Director on or before 27th December, 2011 at 2.00 p.m.



Musiega Assava

For: MANAGING DIRECTOR

ANNEX 3

ANNEX 3

FROM : PRINCIPAL INTERNAL AUDITOR
TO : PRINCIPAL HUMAN RESOURCES OFFICER
REF : NWC/IA/FIL/8/21
DATE : December 23, 2011

SUBJECT: NOTICE TO SHOW CAUSE

I acknowledge receipt of your letter referenced NWCPC/HRA/SFIL/3141/(49) dated 21st December, 2011 with shock and disbelief. However having meticulously gone through the contents of the aforementioned letter, it seems that the allegations raised are premeditated, descriptive and malicious.

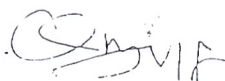
To enable me respond on the issues raised, please kindly provide me with the following pertinent records and documents as espoused by the Constitution and the Employment Act.

Please also take note that I have duly instructed my legal counsel to study the contents of the letter and the unfolding events regarding my Employment in the Corporation with a view to seeking legal redress at an opportune time. I therefore request for the following documents:-

1. Board Paper and Minutes where you purport that I provided misleading information to the Board.
2. Copy of signed Performance Contract between myself and the Managing Director financial years, 2010/2011 and 2011/2012.
3. Copy of schedule of internal audit responsibilities that I have failed to execute.
4. Copy of my Performance appraisals for the financial years 2009/2010, 2010/2011. Duly signed by the Managing Director.
5. Systems audit reports from Kenya National Audit Office for the periods, 2008/2009, 2009/2010, 2010/2011 and 2011/2012

Your Swift action will highly be appreciated.

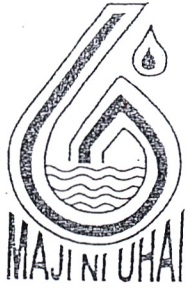
Regards,



Vitalis Omondi

Cc. MANAGING DIRECTOR

ANNEX 4



ANNEX 4

National Water Conservation & Pipeline Corporation

Managing Director's Office
Dunga Road
P.O. Box 30173, 00100
Nairobi,
Kenya

"Water is Life"

Telephone: Nairobi 556600/556601/556602/556603/556604/556605/556606/556607/556608/556609/556610
Fax: 531049

When replying please quote

NWC/HRA/FIL/CON.3141/(7)

4th January, 2012

Ref. No.

Mr. Vitalis Omondi Othuon,
National Water Conservation &
Pipeline Corporation,
P.O. Box 30173 – 00100,
NAIROBI.

Dear Sir,

RE: TERMINATION OF SERVICE

We acknowledge receipt of your Memo Ref. NWC/IA//FIL/8/21 dated December 23, 2011 and letter dated December 27th 2011 whose contents have been noted and regret to inform you that the same is found to be unsatisfactory and unacceptable.

The Corporation hereby terminates your service with effect from 4th January, 2012 in accordance with Clause 11.25 of the Code of Regulations (C.O.R.) and Section.44 of the Employment Act. You will be paid your one (1) month's salary in lieu of notice period plus accrued leave.

You will be required to prepare and submit a Handing Over report, fill and return the attached O.T. 113 Service Hand Form, clearance form and surrender any Corporation property which may be in your possession.

Finally, on behalf of the Board and Management, I wish to thank you most sincerely for your past services and wish you well in your future endeavours.

Yours faithfully,

Eng. P. A. OGUT, OGW (Ms)
MANAGING DIRECTOR

Encls.

RECEIVED
GENERAL MANAGER
NWCPC
JAN 10 2012

ANNEX 5

REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO. _____ OF 2012

VITALIS OMONDI OTHUONGRIEVANT/CLAIMANT

VERSUS

NATIONAL WATER CONSERVATION &
PIPELINE CORPORATION.....

RESPONDENT



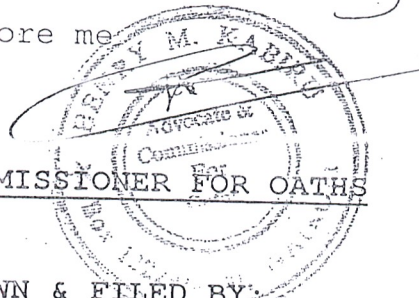
AFFIDAVIT

I, VITALIS OMONDI OTHUON a resident of Nairobi and of Post Office Box Number 10722 - 00200 Nairobi in the Republic of Kenya do make oath and state as under:-

1. THAT, I am one the Grievant/Claimant in this cause hence competed to swear this affidavit.
2. THAT, there is no other suit pending and that there have been no previous proceedings in any court between the Grievant/Claimant and the Respondent over the same subject matter.
3. THAT, I have read the averments in this Memorandum of Claim and confirm the contents thereof as true and accurate.
4. THAT, I have instructed the law firm of M/S Albert Momanyi Makori & Co. Advocates to pursue this claim on my behalf to its logical conclusion.
5. THAT, what is herein above deponed to is true to the best of my knowledge, information and belief save where otherwise stated and sources disclosed as true

by the said VITALIS OMONDI OTHUON
this 25th day of January, 2012

Before me



COMMISSIONER FOR OATHS

A handwritten signature in black ink, appearing to read "Vitalis Othun".

Deponent

DRAWN & FILED BY:
ALBERT MOMANYI MAKORI & CO. ADVOCATES
3RD FLOOR, REHEMA HOUSE
KAUNDA STREET
P.O. BOX 59421 - 00200
NAIROBI (Our Ref: AMM/LD/2/12/V00)

ANNEX 6

ANNEX 6

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

CAUSE NO. 99 OF 2012

VITALIS OMONDI OTHUON.....CLAIMANT
VERSUS

NATIONAL WATER CONSERVATION & PIPELINE CORPORATION.....RESPONDENT

JUDGEMENT

The judgement I delivered on 14th June 2013 had errors on paragraph 1 and 10. An application was made by the Claimant on 26th June 2013 for Review to correct these errors apparent on the face of the record. The Respondent's counsel Miss Jemutai consented to the review when she appeared with Mr. Ongicho for the Claimant on 27th June 2013. I now proceed to review the decision and deliver the corrected version.

1. The Claim was filed on 25th January 2012. In it, the Claimant sought the resolution of the following issue:-
 - i. unlawful summary dismissal.
2. Mr. Ongicho appeared for the Claimant while Mr. Malonza appeared for the Respondent. The Claimant testified on 15th November 2012 that he was employed by NWCP. He relied on all the documents which were filed. He was employed 5th November 2008 as Principal Internal Auditor and the Letter is annexed as an

ANNEX 6

18. Failing to confirm the Claimant did not aid the Respondent in any way. It only demonstrates the lack of professionalism in the Management of the Respondent at the time.
19. Though the Claimant should have been confirmed, he was not. There were attendant consequences. He did not benefit from being a member of the pension scheme. I hold that though failure to confirm him was gross mismanagement, the remittances of pension contributions cannot be ordered now. He will recover for this under the compensation I will award him.
20. In the final result, I find that the Claimant is entitled to remedies as the issues framed in (i) and (ii) above. What remedies is he exactly entitled to? I award him
- i. salary for days worked in 2012 – Kshs. 15,979.33
 - ii. 12 months compensation – 1,438,140.00/-
 - iii. leave days unutilised – Kshs. 179,767.50
- Total Kshs. 1,633,886.80/-**
21. He is entitled to a Certificate of Service in compliance with the Employment Act 2007.