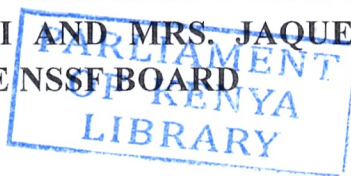


PARLIAMENTARY STATEMENT REGARDING THE REVOCATION OF MR. FRANCIS ATWOLI AND MRS. JAQUELINE MUGO'S APPOINTMENT AS MEMBERS OF THE NSSF BOARD



Pursuant to Standing Order 44 (2) (C) Hon. Chris Wamalwa, Member of Parliament for Kiminini Constituency, requested for a statement from the Chairperson of the Departmental committee on labour and social welfare regarding the retirement of the National Social Security Fund (NSSF) Board the COTU representative Mr. Francis Atwoli and Federation of Kenya Employers representative, Mrs. Jaqueline Mugo.

The Hon. Member stated that the removal of Mr. Atwoli and Mrs. Mugo from the NSSF Board of Trustees was unprocedural and requested the Departmental committee on labour and social welfare to inquire into and report on the following:

1. The section of the Act or any other related law that the Cabinet Secretary is using to justify the decision;
2. Whether the reasons for the unprocedural retirement have anything/relationship to alleged corruption within the NSSF Board; and
3. Plans if any to reinstate/reverse the retirement of COTU and FKE representatives to the Board

RESPONSE

Mr. Chairperson Sir, I beg to reply as follows:

Background and information:

FKE and COTU are part of the membership of the NSSF Board of Trustees under section 6 (d) (i) and (ii) of the NSSF Act, respectively.

Mrs. Mugo and Mr. Atwoli served on the Board of Trustees under the NSSF Act, Cap 258 and continued to serve on the said Board following the enactment of the NSSF Act, 2013.

Following a report from the Chairman of the NSSF Board of Trustees, Mrs. Mugo and Mr. Atwoli had failed to attend meetings and were not acting in the best interests of the Fund as prescribed by the NSSF Act the Cabinet Secretary revoked their appointment as members of the Board.

1. **The section of the Act or any other related law that the Cabinet Secretary is using to justify the decision**
 - Section 8 of the NSSF Act sets out the grounds upon which a Trustee may be removed from office by the Cabinet Secretary.

- Under section 8 (3) (i), a Trustee may be removed from office if he or she has been absent from three consecutive meetings of the Board without the permission of the chairperson and is unable or has neglected to furnish any plausible reason for his/her absence;
- Under section 8 (3) (iv) a Trustee may be removed from office if he is otherwise unable or unfit to discharge his responsibilities under section 10(3) of this Act.
- Under section 10 (3) a Trustee is required to act in the best interests of the Fund, show commitment and due diligence in serving the Board, ensure good governance and practices within the Board ensure effective administration and implementation of the Act.
- The Cabinet Secretary was informed by the Chairman of the Board that the representatives of FKE and COTU to the Board had failed to attend meetings and had failed to furnish any plausible reasons as required under section 8 (3) (b) (i) as shown in **Appendix 1**
- The Cabinet Secretary was informed that the representatives of FKE and COTU to the Board had not been conducting themselves in accordance with the Act. FKE and COTU were duly represented in the Board and were key in the development of the NSSF Act, 2013 by virtue of being social partners and key stakeholders in the labour sector, being the representatives of employers and employees as shown in **Appendix II** which shows their participation in the development of the Act, but have not supported implementation of the same.

Following the report that the representatives of FKE and COTU to the Board were not acting in accordance with the Act, the Cabinet Secretary revoked their appointment as members of the Board of Trustees through gazette Notice No. 4880 of 18th July, 2014.

2. Whether the reasons for the unprocedural retirement have anything/relationship to alleged corruption within the NSSF Board

The removal of the representatives of FKE and COTU from the Board was not unprocedural and was not related to corruption in the NSSF. As explained above, the Cabinet Secretary followed due procedure and acted within the law. Mrs. Mugo and Mr. Atwoli were removed from the NSSF Board on the grounds set out in the Act.

3. Plans if any to reinstate/reverse the retirement of COTU and FKE representatives to the Board

The Cabinet Secretary did not contravene the Constitution or any law. Even though the members of the Board who were serving at the commencement of the NSSF Act, 2013 were saved by the transitional clause, it does not preclude the Cabinet Secretary from

removing from office a Trustee who acts contrary to the provisions of the Act and the Cabinet Secretary acted within the law when he revoked the appointment of the representatives of FKE and COTU from the Board of Trustees. The removal was not unprocedural or unlawful or a violation of the Constitution or any other law.

Section 6 (2) (b) of the State Corporations Act also provides that the Cabinet Secretary can remove a member of a Board from office if the member is absent for three consecutive meetings without the permission of the Cabinet Secretary while section 6 (2) (e) gives the Cabinet Secretary powers to remove a member from office if the member conducts himself in a manner deemed by the Cabinet Secretary to be inconsistent with the membership of the Board.

Mrs. Mugo and Mr. Atwoli have gone to court to challenge their removal from the Board of NSSF and the matter is still pending as shown in **Appendix III**. The Cabinet Secretary is awaiting the decision of the court.

The Cabinet Secretary is committed to reform the NSSF to ensure good co-operate governance and that contributors' funds are protected.



Hon. Samwel Kazungu Kambi

CABINET SECRETARY

**MINUTES OF THE 165th MEETING OF THE BOARD OF TRUSTEES
NATIONAL SOCIAL SECURITY FUND HELD ON 10 MARCH, 2014 IN
THE BOARDROOM, 3RD FLOOR, SOCIAL SECURITY HOUSE,
NAIROBI AT 7.30 A.M.**

Present

Mr. Adan D. Mohamed	-	Chairman
Mr. Ali Noor Ismail	-	Member
Mr. Mutua Kilaka	-	Member
Mr. Andrew Muigai	-	Member
Eng. Erastus Mwongera	-	Member
Ms. Veska Kangogo	-	Member
Mr. Cornelius Nyang'un	-	Member

In attendance

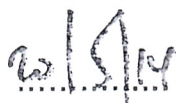
Mr. Richard Langat	-	Acting Managing Trustee
Mr. Austin Ouko	-	Manager Legal

Absent without apology

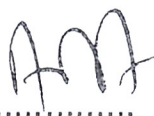
Mrs. Jacqueline Mugo	-	Member
Mr. Francis Atwoli	-	Member



Secretary



Date



Chairman



Date

MIN.612/BOT/2014– ADOPTION OF THE AGENDA

The Chairman called the meeting to order at 7.45 a.m. and welcomed the members.

The Chairman informed the Board that the High Court had delivered a ruling on the Fund's application for the Court to vacate or vary its orders of 17th January 2014 regarding the Fund's Board meetings. The Court vacated its orders generally with one exception, namely, that pending the determination of the dispute between the Central Organisation of Trade Unions and the Cabinet Secretary Ministry of Labour Social Security and Services, there be no disbursements of monies with respect to Tassia II. As a law abiding corporate the Board would adhere to the ruling, however, management was urged to further defend the ruling in Court as Tassia II is one of the Fund's investments and therefore it should be discussed.

The Chairman reminded the Board of the provisions of Section 10 (3) of the National Social Security Fund Act, No. 45 of 2013 that requires Trustees to act in the best interest of the Fund, in good faith and exercise due diligence in conduct of the affairs of the Board and demonstrate commitment in serving the Board.

Due to Trustee Francis Atwoli's persistent absence he instructed management to draft a letter to the Central Organisation of Trade Unions to nominate a new Trustee who will be committed to serving in the Board.


The agenda for the meeting was adopted as circulated subject to including the following additional items:

- (i) Progress report on Implementation of the NSSF Act No. 45 of 2013.
- (ii) Trustees Commitment to the Fund and conflict of interest.


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Secretary


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Date


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Chairman


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Date

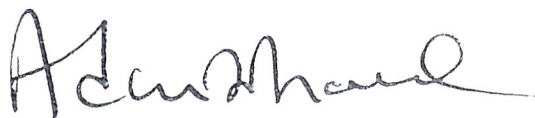
Signed for distribution.



RICHARD K. LANGAT
CEO/MANAGING TRUSTEE

Confirmed at the meeting

DATE: 22/5/14



ADAN MOHAMED
CHAIRMAN

DATE: 29/5/14

29



Secretary

22/5/14

Date



Chairman

29/5/14

Date

**MINUTES OF THE 166th MEETING OF THE BOARD OF TRUSTEES
NATIONAL SOCIAL SECURITY FUND HELD ON 29 MAY, 2014 IN
THE BOARDROOM, 3RD FLOOR, SOCIAL SECURITY HOUSE,
NAIROBI AT 7.30 A.M.**

Present


Mr. Adan D. Mohamed	-	Chairman
Mr. Ali Noor Ismail	-	Member
Mr. Mutua Kilaka	-	Member
Mr. Andrew Muigai	-	Member
Eng. Erastus Mwongera	-	Member
Ms. Veska Kangogo	-	Member
Mr. Cornelius Nyang'un	-	Member


In attendance

Mr. Richard Langat	-	CEO/Managing Trustee
Mr. Austin Ouko	-	Manager Legal

Absent without apology

Mrs. Jacqueline Mugo	-	Member
Mr. Francis Atwoli	-	Member


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Secretary


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Date

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Chairman

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Date