

THE CONSTITUTION OF KENYA
(Article 251)

NATIONAL ASSEMBLY STANDING ORDERS
(Standing Order 230)

PETITION FOR REMOVAL OF SARAH JEPKEMBOI CHUMO SEREM AS CHAIRPERSON OF THE SALARIES AND REMUNERATION COMMISSION AND THE REMOVAL OF DANIEL OGUTU,SELLESTINE KIULUKU, SERAH KINYUA, RTD BRIG SAMUEL NDURURI, ISAIAH KUBAI, JACQUELINE MUGO, ANN ELIZABETH OWUOR, PETER OLOO ARINGO, JASON NAMASAKE, JOSEPH KINYUA, TITUS NDAMBUKI AND WANJUKI MUCHEMI AS MEMBERS OF THE SALARIES AND REMUNERATION COMMISSION.

TO: THE NATIONAL ASSEMBLY,
MAIN PARLIAMENT BUILDINGS,
NAIROBI.



I, **MITHIKA LINTURI**, Member of Parliament for Igembe South and a citizen of the Republic of Kenya from Meru County do hereby petition for the removal of office of Sarah Jepkemboi Chumo Serem as Chairperson of the Salaries and Remuneration Commission and the removal of Daniel Ogutu, Sellestine Kiuluku, Serah Kinyua, Rtd Brig Samuel Ndururi,Isaiah Kubai, Jacqueline Mugo, Ann Elizabeth Owuor, Peter Oloo Aringo, Jason Namasake, Joseph Kinyua, Titus Ndambuki and Wanjuki Muchemi as members of the Salaries and Remuneration Commission on the following grounds-

1. Serious violation of the Constitution;
2. Serious violation of the law;
3. Gross misconduct in the performance of functions;
4. Incompetence.

Paper laid
By Hon. Linturi, M.P.
Today, Thursday
May 2, 2013.
[Signature]
2/5/13

The facts constituting the grounds are as follows-

1. **THAT** the aforesaid Chairperson and members of the Salaries and Remuneration Commission, in issuing Gazette Notice No 2886 of 2013 seriously violated the Constitution by breaching-

- (a) section 6 of the Sixth Schedule of the Constitution which preserves the rights and obligations of the government subsisting immediately before the effective date (Parliament being an important arm of the national Government, the proprietary rights of the offices of Parliament subsisting under the National Assembly Remuneration Act are protected as there was no express provision in the Constitution on 27th August 2010 negating the remuneration payable under the Act as required by section 6 of the Sixth Schedule to the Constitution);
- (b) section 7 of the Sixth Schedule of the Constitution which provides that all law in force immediately before the effective date continues in force and shall be read with the alterations, adaptation, qualifications and exceptions necessary to bring it into conformity with this Constitution by purporting to amend and/or repeal the National Assembly Remuneration Act and the Parliamentary Pensions Act;
- (c) Article 94 of the Constitution which vests legislative power in Parliament and exclusively empowers Parliament to amend or repeal an Act of Parliament and Gazette Notice No 2886 of 2013 cannot purport to amend the National Assembly Remuneration Act and repeal the Parliamentary Pensions Act without giving rise to constitutional anarchy given that the letter and spirit of Article 116(3) of the Constitution contemplates that the remuneration of Members of Parliament be determined through an Act of Parliament and not through a Gazette Notice;
- (d) the whole of Chapter Seven (7) of the Constitution which provides for representation of the people by using education as a major factor of job evaluation of the office of Member of Parliament and thereby ranking that

office lowly yet the Constitution provides that Members of Parliament are elected State Officers and not appointed by virtue of educational qualifications;

- (e) Article 127(6)(a) & (e) of the Constitution by infringing on the Constitutional mandate of the Parliamentary Service Commission which is responsible for providing services and facilities to ensure the efficient and effective functioning of Parliament and performing other functions necessary for the well-being of the members and staff of Parliament;
- (f) the doctrine of legitimate expectation which is at the root of the constitutional principle of rule of law embodied in Article 10 of the Constitution, and requires '*regularity*', '*predictability*' and '*certainty*' in government's dealings with the public. When the election process began with the resignation in August 2012 of public officers wishing to contest seats in the general elections all through to the conduct of the party nominations in January 2013 almost up to voting day on 4th March, 2013, the representation or promise made to the aspirants by the Commission (direct and implied) was that the salaries and benefits for Members of Parliament were those existing in the National Assembly Remuneration Act and Parliamentary Pensions Act and aspirants altered their original position based on this legitimate expectation. The rule of law requires that the Salaries and Remuneration Commission should have expressed their intention before the election process began with the resignation of public officers in August 2012. Further, former Members of Parliament who contested seats in the general elections had legitimate expectations of various pension emoluments based on the provisions of the Parliamentary Pensions Act which the Chairperson and members of the Salaries and Remuneration Commission have purported to repeal;
- (g) the provisions of the preamble to the Constitution that recognize a Government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law;

- (h) the provisions of Article 1(2) of the Constitution which requires respect for the democratically elected representatives of the people as these representatives manifest the sovereign power of the people exercised through them;
- (i) the provisions of Article 3(1) of the Constitution that obligate every person to respect, uphold and defend the Constitution;
- (j) the national values and principles set out in Article 10 of the Constitution including sharing and devolution of power, rule of law, human dignity, equity, social justice, inclusiveness, human rights, non-discrimination, good governance, integrity, transparency and accountability;
- (k) the provisions of Article 41 of the Constitution providing for fair labour practices including the right not to reduce a persons salary to the persons disadvantage;
- (l) the provisions of Article 43 of the Constitution that provide for social security;
- (m) the provisions of Articles 94,95, 96, 117 and 124 of the Constitution by purporting to limit the sittings of Parliament to four times a week in execution of its mandate;
- (n) the provisions of Article 230 (5)(b) of the Constitution that require public services to be able to attract and retain the skills required to execute their functions;
- (o) the provisions of Article 230 (5)(c) of the Constitution that require recognition of productivity and performance;
- (p) the provisions of Article 230 (5)(d) of the Constitution that require transparency and fairness. The Commission has acted unfairly against Members of Parliament, Members of the County Assemblies and Governors;

- (q) the provisions of section 32 of the Sixth Schedule to the Constitution that protect the pension payable to holders of constitutional offices;
 - (r) the provisions of Articles 1, 2, 10, 27, 40, 43, 47, 94, 127 and 230 of the Constitution by carrying the entire process in a discriminatory manner and nature
2. **THAT** although the provisions of Article 249(2)(a) of the Constitution require the Salaries and Remuneration Commission to be subject to the Constitution **and the law**, the aforesaid Chairperson and members of the Salaries and Remuneration Commission, in issuing Gazette Notice No 2886 of 2013 seriously violated the provisions of the existing laws by-
- (a) disregarding the provisions of the National Assembly Remuneration Act (*Cap 5. Laws of Kenya*) particularly sections 2,3,4 and 5 of the Act;
 - (b) ignoring the values and principles set out under section 11 of the Salaries and Remuneration Commission Act;
 - (c) disregarding the guiding principles set out under section 12(1) and (2) of the Salaries and Remuneration Commission Act,2011and treating Members of the National Assembly in a degrading and discriminatory manner;
 - (d) disregarding the provisions of the Parliamentary Pensions Act particularly Part I and Part II of the First Schedule and the Second Schedule;
 - (e) disregarding the provisions of the Appropriations Acts 2012 and 2013 which had already authorized the remuneration of Members of Parliament;
 - (f) disregarding the provisions of the Parliamentary Service Act;

- (g) disregarding the provisions of the Standing Orders of both Houses which provide that Parliamentary Committees shall regulate their own meetings.
- (h) purporting to amend, vary and or repeal the provisions of the appropriation Act, the National Assembly Remuneration Act, sections 2, 3, 4 and 5 of the Parliamentary Pensions Act and the Pensions Act amongst other laws.
- (i) being ignorance and negligence of the fact that the Supplementary Appropriation Act, No. 3 of 2013 already provides for the expenditures of the above State Officers.
- (j) acting in bad faith and intends to prejudice the role and function of the County Representatives, Speakers, Senators, Women Representatives, Members of the National Assembly and Governors.
- (k) failing to take into account the reports of previous Commissions namely Akiwumi Commission recommendations and the Cockar Report showing an open bias and bad faith.
- (l) failing to provide all relevant documents leading up to the setting of salaries including the job evaluation reports as provided under Article 35

NOW THEREFORE your humble petitioner prays that the National Assembly finds-

1. **THAT** the Chairperson of the Salaries and Remuneration Commission, Sarah Jepkemboi Chumo Serem and the members of the Salaries and Remuneration Commission Daniel Ogutu, Sellestine Kiuluku, Serah Kinyua, Rtd Brig Samuel Ndururi, Isaiah Kuba, Jacqueline Mugo, Ann Elizabeth Owuor, Peter Oloo Aringo, Jason Namasake, Joseph Kinyua, Titus Ndambuki and Wanjuki Muchemi, have jointly and severally contravened the aforementioned provisions of the Constitution and of the law;

2. **THAT** in contravening the Constitution and the Law, the Chairperson and Members of the Salaries and Remuneration Commission have jointly and severally, committed acts of gross misconduct in the performance of their functions;
3. **THAT** the Chairperson and Members of the Salaries and Remuneration Commission are jointly and severally incompetent;
4. **THAT** the said Chairperson and Members of the Salaries and Remuneration Commission be removed from office on the aforesaid grounds.

Dated the 17th APRIL 2013



HON MITHIKA LINTURI,
Member for Igembe South.