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Approved
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REPUBLIC OF KENYA



NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT –FIFTH SESSION – 2017

THE DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON THE PUBLIC PETITION BY THE FAMILY OF MOHAMED BAKARI ON NEGLIGENCE BY THE MOMBASA HOSPITAL AND FAILURE TO ATTEND TO A PATIENT.

Paper laid by the
Chairperson DC-Health
on 01/02/2017
@Gumbi

CLERK'S CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

JANUARY, 2017

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ABBREVIATIONS

CCTV	-	Closed Circuit Television
Dr.	-	Doctor
ICU	-	Intensive Care Unit
MP	-	Member of Parliament
PIC	-	Preliminary Inquiry Committee

CHAIRPERSON'S FORWARD

The Petition was tabled before the House pursuant to Standing Order No. 225 (2)(a) by the Hon. Sumra Irshadali, MP, on behalf of the Petitioner, Family of Mr. Mohamed Bakari on 23rd August, 2016.

In considering the petition, the Committee invited and held meetings with the Hon. Sumra Irshadali, MP, who presented the petition on behalf of the petitioners, the family of Mr. Mohamed Bakari and the Management of the Mombasa Hospital. The Ministry of Health submitted their comments vide its letter Ref.: MOH/ADM/NA/01/93 Vol. III dated 19th October, 2016. The meetings were aimed at responding to issues raised by the petitioners.

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Health, to table its Report on the Petition by the family of Mr. Mohamed Bakari on negligence by the Mombasa Hospital and failure to attend to a patient pursuant to Standing Order 199 (6).

(HON. DR. RACHAEL NYAMAI, MP)

CHAIRPERSON, DEPARTMENTAL COMMITTEE ON HEALTH

EXECUTIVE SUMMARY

This report details the consideration and response to the prayers sought by the family of Mr. Mohamed Bakari on negligence by the Mombasa Hospital and failure to attend to a patient through Hon. Sumra Irshadali, MP.

Pursuant to Standing Order 227 (1), the petition was referred to the Departmental Committee on Health on 23rd August, 2016 for consideration and preparation of a report within 60 days. The Committee considered the petition pursuant to the provisions of Standing Order 227 (1) and (2).

In considering the petition, the Committee held 2 meetings in which it invited the Hon. Sumra Irshadali, MP, who presented the petition on behalf of the petitioners. The Committee also conducted an inspection visit at the Mombasa Hospital where it held a meeting with the hospital's management and the family of Mr. Mohamed Bakari. The Ministry of Health presented its comments on the petition vide its letter Ref: MOH/ADM/NA/01/93 Vol. III dated 19th October, 2016.

The petitioners had prayed that the National Assembly through the Departmental Committee on Health:-

- i) Causes an immediate probe into the matter and establish why the Mombasa Hospital failed to attend to Mr. Mohamed Bakari;
- ii) Ensures the establishment of mechanisms to guarantee that patients with emergency cases are attended to within the shortest time possible on arrival at any health facility be it public or private;
- iii) Ensures that the petitioner's plight is addressed; and
- iv) Makes any other order or direction that it deems fit in the circumstances of the case.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee Mandate

The Committee on Health is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to, inter alia;

- 1. Investigate and inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments’.**
2. Study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
3. Study and review all legislation referred to it;
4. Study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
5. 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;
6. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and
7. Make reports and recommendations to the House as often as possible, including recommendation or proposed legislation.

1.2 Oversight

In executing its mandate, the Committee oversees the following government Ministries, departments and/or agencies, namely:

- i. The Ministry of Health
- ii. The Kenyatta National Hospital
- iii. The Moi Teaching and Referral Hospital
- iv. National Hospital Insurance Fund
- v. Kenya Medical Supplies Agency
- vi. The National Aids Control Council
- vii. Kenya Medical Research Institute
- viii. Kenya Medical Training College

1.3 Committee Membership

The Committee comprises the following Members:-

1. **Hon. Dr. Rachel Nyamai, M.P.** - Chairperson
2. **Hon. Dr. Robert Pukose, M.P.** - Vice Chairperson
3. Hon. Dr. Naomi Shaban, M.P.

4. Hon. Dr. Enock Kibunguchy, M.P.
5. Hon. Dr. James Nyikal, M.P.
6. Hon. Dr. James Gesami, M.P.
7. Hon. Dr. Eseli Simiyu, M.P., CBS
8. Hon. Fred Outa, M.P.
9. Hon. Alfred Sambu, M.P.
10. Hon. John Nyaga Muchiri, M.P., HSC
11. Hon. Alfred Agoi, M.P.
12. Hon. David Karithi, M.P.
13. Hon. Dr. Dahir Mohamed, M.P.
14. Hon. Dr. James Murgor, M.P.
15. Hon. Dr. Patrick Musimba, M.P.
16. Hon. Eng. Stephen Mule, M.P.
17. Hon. Dr. Stephen Wachira, M.P.
18. Hon. Dr. Susan Musyoka, M.P.
19. Hon. Hassan Aden Osman, M.P.
20. Hon. James Gakuya, M.P.
21. Hon. Kamande Mwangi, M.P.
22. Hon. Leonard Sang, M.P.
23. Hon. Michael Onyura, M.P.
24. Hon. Mwinga Gunga, M.P.
25. Hon. Paul Koinange, M.P.
26. Hon. Raphael Milkau Otaalo, MP
27. Hon. Zipporah Jesang, MP
28. Hon. Robert Mbui, MP
29. Hon. Jared Opiyo, MP

1.4 Committee Secretariat

Ms. Esther Nginyo	-	Clerk Assistant
Mr. Dennis Mogare Ogechi	-	Clerk Assistant
Ms. Ruth Mwhaki Gakuya	-	Clerk Assistant
Ms. Sande Marale	-	Research & Policy Analyst
Ms. Marlene Ayiro	-	Legal Counsel

1.5 List of Recommendations

From the evidence adduced and the observations made, the Committee made the following determinations on the prayers of the petitioners:

- i. **Prayer #1:** Causes an immediate probe into the matter and establish why the Mombasa Hospital failed to attend to Mr. Mohammed Bakari;

Committee Response: The Committee in respect of this prayer conducted investigations

in which the patient family and the Mombasa Hospital management gave evidence. Arising from the information submitted, it was found that there was no evidence to suggest that Mombasa Hospital had failed to attend to Mr. Mohammed Bakari.

- ii. **Prayer #2:** Ensures the establishment of mechanisms to guarantee that patients with emergency cases are attended to within the shortest time possible on arrival at any health facility be it public or private;

Committee Response: The Committee in respect of this prayer takes note that Clause 7(1) of the Health Bill gives every person the right to emergency medical treatment which shall include –

1. pre-hospital care;
2. stabilizing the health status of the individual; or
3. arranging for referral in cases where the health provider does not have facilities or capability to stabilize the health status of the victim.

Clause 7 of the Health Bill also provides penalties to non-compliant medical institutions with a fine not exceeding 3 million shillings.

The Committee however notes that there are policy, legislative and regulatory gaps hindering the effective provision of Emergency and Referral Services, and directs the Ministry of Health to provide within 90 days of tabling of this report a policy framework defining:

- a) The conditions that give rise to emergency treatment
- b) The scope of emergency care
- c) Professional indemnity in the provision of emergency treatment
- d) Financing mechanisms for emergency health services

- iii. **Prayer #3:** Ensures that the Petitioner's plight is addressed

Committee Response: Since the Ministry of Health through the Kenya Medical Practitioners and Dentists Board had also directed that the Preliminary Inquiry Committee of the Board to convene to also look into the matter, the family of Mr. Mohamed Bakari should lodge a formal complaint to the Board. The findings of the Board should be provided to the Committee as soon as it determines the matter.

- iv. **Prayer #4:** Makes any other order or direction that it deems fit in the circumstances of the case.

Committee Response:

The Committee further directs the Ministry of Health, in collaboration and consultation with the county governments, to:

- a) Map the capacity of all health facilities in the counties to provide emergency and referral services;
- b) Establish and disseminate emergency and referral protocols and guidelines

1.6 Adoption of the Report

We, Members of the Departmental Committee on Health, have pursuant to Standing Order 199 adopted this Report on a Petition by the Family of Mr. Mohamed Bakari on Negligence by the Mombasa Hospital and Failure to attend to a patient and affixed our signatures (Annex 2) to affirm our approval and confirm its accuracy, validity and authenticity on 26th January, 2016.

1.7 Acknowledgement

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings. I also wish to express my appreciation to the Honorable Members of the Committee who, with commitment, participated in the activities of the Committee and preparation of this Report.

2.0 BACKGROUND INFORMATION

1. The right of Kenyan citizens to petition public authorities and Parliament is a right conferred by the Constitution under Articles 37 and Article 119 of the Constitution, by the Petition to Parliament (Procedure) Act, and, by the Standing Orders of the National Assembly. The right to petition is an essential citizen participatory tool that allows for direct intervention by Parliament on issues relating to the promotion and protection of the rights of citizens.
2. An emergency is defined as a health threat of sudden onset which is beyond the capacity of the individual/community to manage, is life-threatening, or will lead to irreversible damage to the health of the individual/community if not addressed
3. Article 43(2) of the Constitution provides that persons cannot be denied health care in an emergency situation. As such, the Constitution requires that the health system be organised in such a manner that clients receive emergency health services at the nearest health facility regardless of ownership.
4. On 18th August, 2016, Hon. Sumra Irshadali Mohammed, MP, Embakasi South Constituency, tabled a public petition before the House on behalf of the family of Mr. Mohamed Bakari. The petition addressed the alleged negligence and failure to attend to a patient by Mombasa Hospital.
5. According to the petition, Mr. Bakari, on a date not specified, was rushed to a certain private hospital known as Safi Hospital following the ingestion of a suspected poisonous substance. He was subsequently referred to Mombasa Hospital on the basis that the said hospital was inadequately equipped to handle the particular case.
6. On arrival at Mombasa Hospital, the management of the hospital is alleged to have informed the patient's guardian that an initial deposit of KShs. 300,000 was required in order to access services and/or admission at the hospital. The family raised KShs. 100,000 but the doctors are said to have declined treatment, only accepting to attend to the patient following the direct intervention of an influential and philanthropic person. In the meantime, the patient is said to have laid helpless in an ambulance for more than five hours.
7. The petitioners therefore prayed that the National Assembly, through the Departmental Committee on Health:-
 - i. Causes an immediate probe into the matter and establish why the Mombasa Hospital failed to attend to Mr. Mohammed Bakari.

- ii. Ensures the establishment of mechanisms to guarantee that patients with emergency cases are attended to within the shortest time possible on arrival at any health facility be it public or private;
- iii. Ensures that the Petitioner's plight is addressed; and
- iv. Makes any other order or direction that it deems fit in the circumstances of the case.

3.0 SUBMISSIONS AND EVIDENCE

The Committee held a meeting on 13th October, 2016 with Hon. Sumra Irshadali, MP who presented the petition on behalf of the petitioners. Further, the Committee conducted an inspection visit to Mombasa Hospital on 14th October, 2016 where it met with the hospital management as well as the family of Mr. Mohamed Bakari.

3.1 Meeting with Hon. Sumra Irshadali, MP

Hon. Irshadali Sumra, MP appeared before the Committee on 13th October, 2016 and informed it that:

1. Hospitals violate the rights of patients by failure to offer emergency medical attention. A case in point being the Mombasa Hospital where he was involved in trying to secure emergency treatment for Mr. Mohamed Bakari and faced a lot of frustration.
2. Mr. Mohamed Bakari was rushed to Safi Hospital, a private health facility in Mombasa, on 9th August, 2016 following his ingestion of a poisonous substance.
3. Following an assessment at Safi Hospital, his condition was found critical and he was referred to Mombasa Hospital since the facility did not have the capacity to handle his condition.
4. On arrival at the Mombasa Hospital, a private facility, the hospital management informed the guardian that it needed a deposit of Kshs. 300,000 prior to admission or receiving any medical attention.
5. Despite the family managing to raise Kshs. 100,000, the facility's doctors declined to attend to the patient as he lay in an ambulance for more than five hours.
6. The patient was only attended to after an influential philanthropist went to the hospital and pleaded with the management after promising to settle the resultant bill.
7. The philanthropists paid a total of Kshs. 500,000 to have the patient discharged after treatment.
8. He therefore urged the Committee to:
 - a) Probe the Mombasa hospital with a view to establishing why the facility denied Mr. Mohamed Bakari emergency treatment.
 - b) Ensures establishment of mechanisms to guarantee that patients with emergency conditions are attended to within the shortest time possible upon arrival at any health facility, be it private or public.

3.2 Meeting with the Mombasa Hospital Management

The Committee made an inspection visit on 14th October, 2016 at the Mombasa Hospital to establish the facts about the petition. The Members visited the following areas at the facility:

- i. The Reception Area
- ii. The Triage
- iii. Emergency Room
- iv. The Pharmacy
- v. The Laboratory
- vi. The Intensive Care Unit

The Committee reconvened in the Hospital's board room where the hospital officials briefed it on the issues pertinent to the petition.

3.2.1 Presentation by Ms. Selina Ambitho, Director of Nursing, Mombasa Hospital

Ms. Selina Ambitho, Director of Nursing, Mombasa Hospital, appeared before the Committee and informed it that:-

1. The client, Mr. Mohamed Bakari, was referred to the Mombasa Hospital from another facility, Safi Hospital, on 9th August, 2016. He arrived at around 5.30 pm aboard an AAR ambulance.
2. The patient was moved to the emergency room immediately for management.
3. The patient was assessed and attended to by Dr. Macharia Emmanuel, a resident doctor at the facility.
4. Dr. Sood Mohamed, a physician was later called in and together with other personnel did all in their power to save life.
5. The patient was later transferred to ICU under Dr. Sood Mohamed, where his condition was managed and he was later transferred to a general ward.
6. Within 2 to 3 days, the patient was discharged after recovery.

3.2.2 Presentation by Dr. Macharia Emmanuel, Resident Doctor, Mombasa Hospital

Dr. Macharia Emmanuel, Resident Doctor, Mombasa Hospital appeared before the Committee and informed it that:

1. On assessment, he found the patient to have been in a semi-comatose state.
2. He immediately informed Dr. Sood Mohamed because of the emergency nature of the case and the fact that ICU admission was impending.
3. Dr. Sood Mohamed, the consultant, came in and attended to the patient at the emergency room and later transferred him to the ICU for further management.

3.2.3 Presentation by Dr. Sood Mohamed, Admitting Doctor, Mombasa Hospital

Dr. Sood Mohamed, Admitting Doctor, Mombasa Hospital appeared before the Committee and informed it that:

1. On the material day, he was informed of the emergency by Dr. Macharia Emmanuel and rushed to the emergency room where he found the patient frothing at the mouth.
2. He then organized for a transfer to the ICU for continued management of the patient.
3. He later interviewed the patient on why he was poisoning himself. The patient opened up and gave details of the reasons for self-poisoning. He was later taken through counselling, treated and, upon recovery, discharged from hospital.

3.2.4 Presentation by Mr. Abbas Nasser, Administrator, Mombasa Hospital

Mr. Abbas Nasser, Administrator, Mombasa Hospital appeared before the Committee and informed it that:

1. The allegation that the patient stayed in the ambulance for 5 hours before being attended to was false. He produced CCTV footage which showed that the patient was attended to immediately upon arrival at Mombasa Hospital.

The CCTV footage further showed that on 9th August, 2016:

- a) The ambulance ferrying the patient arrived at Mombasa Hospital at 5.30 pm.
 - b) The patient was received at the Mombasa Hospital's Accident and Emergency Department from an AAR ambulance at 5.31 pm.
 - c) The patient was wheeled out of the emergency room at 6.52 pm into the hospital's ICU at 6.53 pm.
 - d) The patient was admitted into the ICU at 6.54 pm.
 - e) The influential philanthropist was seen engaging hospital staff at 6.20 pm.
2. On the allegation that Ksh 100,000 was offered by the family before the patient was attended to, he stated that the family never offered any cash before the patient was attended to instead a philanthropist offered to pay Ksh 300,000 but did so after discharge of the patient. He emphasized that treatment continued as the accounts department sought means of ensuring that ultimately payment would be made for services rendered.

3.3 Presentation by Ms. Zainab Yassin and Ms. Aisha Mohamed, relatives to Mr. Mohamed Bakari

Ms. Zainab Yassin and Ms. Aisha Mohamed, relatives to Mr. Mohamed Bakari appeared before the Committee and informed it that:

1. They both escorted the patient from Safi Hospital to Mombasa Hospital in the ambulance.
2. When still at Safi Hospital, a phone call was made and Mombasa Hospital demanded Ksh 300,000 to accompany the patient.
3. They arrived at the hospital at around 5pm.
4. The patient was immediately transferred to the emergency room for attention. They paid Ksh 2,000 immediately.

5. They were then informed that the patient required ICU admission and required to make a payment of Ksh 300,000 before such admission was made.
6. The oxygen used in the ambulance continued to be used for the patient while in emergency room and the ambulance crew was told to wait since, if the money was not raised, they would leave with the patient. This delayed the ambulance at Mombasa Hospital.
7. The patient stayed in the emergency room for about 3 hours.
8. He was then transferred to ICU at around 7.30 pm.

3.4 Submission by the Ministry of Health

The Ministry of Health submitted its response in regards to the petition vide its letter Ref: MOH/ADM/NA/01/93 Vol. III dated 19th October, 2016 in which it stated that:-

- i. Other than the petition in question, there had been no complaint that had been lodged with the Ministry or its regulatory agencies. Upon receipt of the petition, the Ministry had referred the matter to Kenya Medical Practitioners and Dentists Board for investigation;
- ii. The Board had written to Mombasa Hospital to respond to the allegations and to submit treatment documents for reference during investigations. The Board was also making efforts to get in touch with Mr. Bakari Mohamed or his family;
- iii. Upon receipt of submissions, the Board would convene the Preliminary Inquiry Committee (PIC) which is mandated to conduct inquiries into complaints. On completion of investigations, a report would be submitted to the Departmental Committee on Health;
- iv. The Health Bill currently in Parliament provides mechanisms for treatment of emergencies in both public and private hospitals.

4.0 COMMITTEE OBSERVATIONS

The Committee made the following observations from evidence adduced in meetings, that:-

1. The issue of denial of emergency treatment was rampant across the country hence the need to address such concerns not only with respect to Mombasa Hospital but with a view to give policy direction on the matter.
2. Prior to being referred to Mombasa Hospital, the patient was attended to at a certain private facility known as Safi Hospital.
3. The petitioner's claims especially on time taken to attend to the patient upon arrival at the hospital were largely discounted by the CCTV footage evidence.
4. The CCTV evidence closely corroborated the patient's records as obtained from AAR ambulance and the Mombasa Hospital;
5. The patient, Mr. Mohamed Bakari, arrived at Mombasa Hospital by ambulance at approximately 5:30 pm on 9th August, 2016. CCTV evidence showed the patient being received at the Mombasa Hospital's Accident and Emergency Department from an AAR

- ambulance at 5:31 pm. The CCTV further showed the patient being wheeled into the hospital's ICU at 6:52pm.
6. From the evidence adduced, the patient received prompt treatment at the hospital's Accident and Emergency Department and was received at the hospital's ICU within at least one and a half hours of his arrival at the hospital.
 7. Records obtained from the hospital indicated that the hospital received its first payment of Kshs. 100,000 for services rendered on 12th August, 2016, three days after the patient had been admitted at the ICU. The patient was discharged on 15th August, 2016, with the second and final payment of Kshs. 300,000 being made to the hospital on 18th August, 2016.
 8. There was need to protect health facilities as the law protects patients in need of emergency treatment but exposes the facilities offering such emergency treatment.

5.0 COMMITTEE RECOMMENDATIONS

In response to the prayers by the petitioner, the Committee recommends that:-

- i. **Prayer #1:** Causes an immediate probe into the matter and establish why the Mombasa Hospital failed to attend to Mr. Mohammed Bakari;

Committee Response: The Committee in respect of this prayer conducted investigations and found no evidence to suggest that Mombasa Hospital had failed to attend to Mr. Mohammed Bakari.

- ii. **Prayer #2:** Ensures the establishment of mechanisms to guarantee that patients with emergency cases are attended to within the shortest time possible on arrival at any health facility be it public or private;

Committee Response: The Committee in respect of this prayer took note that Clause 7(1) of the Health Bill gives every person the right to emergency medical treatment which shall include –

1. pre-hospital care;
2. stabilizing the health status of the individual; or
3. arranging for referral in cases where the health provider does not have facilities or capability to stabilize the health status of the victim.

Clause 7 of the Health Bill also provides penalties to non-compliant medical institutions with a fine not exceeding 3 million shillings.

The Committee however noted that there are policy, legislative and regulatory gaps hindering the effective provision of Emergency and Referral Services, and directs the

Ministry of Health to provide within 90 days of tabling of this report a policy framework defining:

- a. The conditions that give rise to emergency treatment
- b. The scope of emergency care
- c. Professional indemnity in the provision of emergency treatment
- d. Financing mechanisms for emergency health services

iii. Prayer #3: Ensures that the Petitioner's plight is addressed

Committee Response: Since the Ministry of Health through the Kenya Medical Practitioners and Dentists Board had also directed that the Preliminary Inquiry Committee of the Board to convene to also look into the matter, the family of Mr. Mohamed Bakari should lodge a formal complaint to the Board. The findings of the Board should be provided to the Committee as soon as it determines the matter.

iv. Prayer #4: Makes any other order or direction that it deems fit in the circumstances of the case.

Committee Response:

The Committee further directs the Ministry of Health, in collaboration and consultation with the county governments, to:

- a) Map the capacity of all health facilities in the counties to provide emergency and referral services;
- b) Establish and disseminate emergency and referral protocols and guidelines

Signed:Date: 31/01/2017

(HON. DR. RACHAEL NYAMAI, MP)

CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON HEALTH

DC-H: DEPARTMENTAL COMMITTEE ON HEALTH


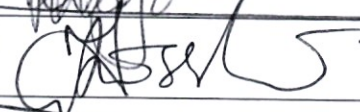

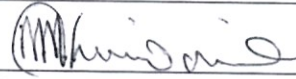
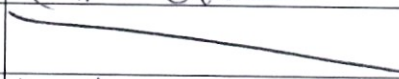
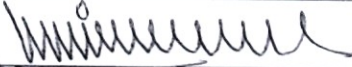
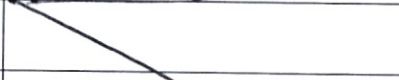


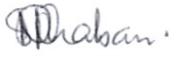



ATTENDANCE REGISTER



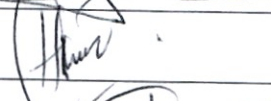


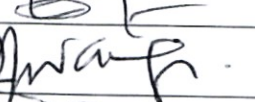




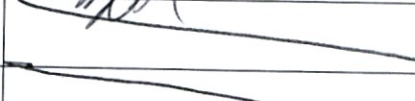





AGENDA:

1. CONSIDERATION AND ADOPTION OF THE FOLLOWING REPORTS:
 - a) REPORT ON PETITION REGARDING DIRECT EMPLOYMENT OF GRADUATE NURSES BY THE PUBLIC SERVICE COMMISSION.
 - b) REPORT ON PETITION REGARDING THE ALLEGED BRUTAL MURDER OF THE LATE COSMAS MUTUNGA AT THE KENYATTA NATIONAL HOSPITAL
 - c) REPORT ON PETITION REGARDING THE ALLEGED DETENTION OF THE BODY OF THE LATE BERRETTA RERI BY THE MANAGEMENT OF THE NAIROBI WOMEN'S HOSPITAL
 - d) REPORT ON PETITION REGARDING ALLEGED NEGLIGENCE BY THE MOMBASA HOSPITAL AND FAILURE TO ATTEND TO A PATIENT
 - e) REPORT ON THE GOVERNMENT CHEMIST AGENCY BILL (LEGISLATIVE PROPOSAL)
2. BRIEFING BY THE PARLIAMENTARY BUDGET OFFICE ON THE SUPPLEMENTARY BUDGET

DATE: 26/01/2017

VENUE: 4th floor conf.

	NAME	SIGNATURE
1.	Hon. Dr. Rachel Nyamai, M.P. Chairperson	
2.	Hon. Dr. Robert Pukose, M.P. Vice Chairperson	
3.	Hon. Alfred Agoi, M.P.	
4.	Hon. David Karithi, M.P.	
5.	Hon. Dr. Dahir Mohamed, M.P.	
6.	Hon. Dr. Enock Kibunguchy, M.P.	
7.	Hon. Dr. James Murgor, M.P.	
8.	Hon. Dr. James Nyikal, M.P.	
9.	Hon. Dr. James Gesami, M.P.	
10.	Hon. Dr. Naomi Shaban, M.P.	
11.	Hon. Dr. Patrick Musimba, M.P.	
12.	Hon. Eng. Stephen Mule, M.P.	
13.	Hon. Dr. Stephen Wachira, M.P.	

14.	Hon. Dr. Susan Musyoka, M.P.	
15.	Hon. Fred Outa, M.P.	
16.	Hon. Hassan Aden Osman, M.P.	
17.	Hon. James Gakuya, M.P.	
18.	Hon. John Nyaga Muchiri, M.P., HSC	
19.	Hon. Dr. Eseli Simiyu, CBS, M.P.	
20.	Hon. Kamande Mwangi, M.P.	
21.	Hon. Leonard Sang, M.P.	
22.	Hon. Michael Onyura, M.P.	
23.	Hon. Mwinga Gunga, M.P.	
24.	Hon. Paul Koinange, M.P.	
25.	Hon. Raphael Milkau Otaalo, MP	
26.	Hon. Zipporah Jesang, MP	
27.	Hon. Alfred Sambu, M.P.	
28.	Hon. Robert Mbui, MP	
29.	Hon. Jared Opiyo, MP	

MINUTES OF THE 2ND SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY 26TH JANUARY 2017 IN THE 4TH FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00AM.

PRESENT

1. **The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)**
2. **The Hon. Dr. Robert Pukose, M.P. (Vice-Chairperson)**
3. The Hon. David Karithi, M.P.
4. The Hon. Jared Opiyo, M.P.
5. The Hon. Dr. Naomi Shaban, M.P.
6. The Hon. Dr. Enoch Kibunguchy, M.P.
7. The Hon. Dr. Eseli Simiyu, CBS, M.P.
8. The Hon. Hassan Aden Osman, M.P.
9. The Hon. James Gakuya, M.P.
10. The Hon. Fred Outa, M.P.
11. The Hon. John Nyaga Muchiri, M.P.
12. The Hon. Robert Mbui, M.P.
13. The Hon. Michael Onyura, M.P.
14. The Hon. Mwinga Gunga, M.P.
15. The Hon. Kamande Mwangi, M.P.
16. The Hon. Leonard Sang, M.P.
17. The Hon. Raphael Milkau Otaalo, M.P.

ABSENT WITH APOLOGY

1. The Hon. Dr. James Murgor, M.P.
2. The Hon. Dr. Stephen Wachira, M.P.
3. The Hon. Dr. James Nyikal, M.P.
4. The Hon. Dr. James O. Gesami, M.P.
5. The Hon. Dr. Dahir D. Mohamed, M.P.
6. The Hon. Alfred Agoi, M.P.
7. The Hon. Stephen M. Mule, M.P.
8. The Hon. Paul Koinange, M.P.
9. The Hon. Zipporah Jesang, M.P.
10. The Hon. Dr. Patrick Musimba, M.P.
11. The Hon. Dr. Susan Musyoka, M.P.
12. The Hon. Alfred Sambu, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY SECRETARIAT

1. **Ms. Esther Nginyo - Third Clerk Assistant.**
2. **Mr. Dennis Mogare - Third Clerk Assistant.**

3. Ms. Ruth Mwhiki - Third Clerk Assistant.
4. Mr. Joash Kosiba - Fiscal Analyst

MIN.NO. DCH 006/2017: PRELIMINARIES.

The Chairperson called the meeting to order at 10.30 am and a prayer was said by Hon. Dr. Robert Pukose, M.P.

MIN.NO. DCH 007/2017: CONFIRMATION OF MINUTES

Minutes of the 95th Sitting held on Tuesday 22nd November, 2016 at 11.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. Fredrick Outa, M.P. and Hon. Leonard Sang, M.P. respectively.

Minutes of the 97th Sitting held on Thursday 29th November, 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. David Kariithi, M.P. and Hon. Raphael Milkau Otaalo, M.P. respectively.

Minutes of the 98th Sitting held on Thursday 1st December 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. Fredrick Outa, M.P., and Hon. Michael Onyura, M.P. respectively.

Minutes of the 99th Sitting held on Tuesday 6th December, 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. Kamande Mwangi, M.P. and Fredrick Outa, M.P. respectively

Minutes of the 100th Sitting held on Wednesday 7th December, 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. Mwinga Gunga, M.P. and Hon. Kamande Mwangi, M.P. respectively.

Minutes of the 101st Sitting held on Thursday 8th December 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. Michael Onyura, M.P., and Hon. Raphael Milkau Otaalo, M.P. respectively.

MIN.NO.DCH 008/2017: CONSIDERATION AND ADOPTION OF REPORTS.

The Committee considered the following reports:

- i. **REPORT ON A PETITION BY KENYA STUDENT NURSES CHAPTER OF THE NATIONAL NURSES ASSOCIATION OF KENYA REGARDING THE DIRECT EMPLOYMENT OF DEGREE NURSES BY THE PUBLIC SERVICE COMMISSION.**

The report was adopted after being proposed by the Hon. Leonard Sang, M.P., and Seconded by the Hon. Raphael Milkau Otaalo, M.P.

ii. REPORT ON THE CONSIDERATION OF THE PETITION REGARDING ALLEGED DETENTION OF THE BODY OF BERETTA RERI BY THE MANAGEMENT OF NAIROBI WOMENS HOSPITAL.

The report was adopted after being proposed by the Hon. David Kariithi, M.P. and seconded by the Hon. Mwinga Gunga, M.P.

iii. REPORT ON THE PUBLIC PETITION BY THE FAMILY OF MOHAMED BAKARI ON NEGLIGENCE BY THE MOMBASA HOSPITAL AND FAILURE TO ATTEND TO A PATIENT.

The report was adopted after being proposed by the Hon. Mwinga Gunga, M.P., and seconded by the Hon. John Nyaga Muchiri, M.P.

iv. REPORT ON THE CONSIDERATION OF THE PETITION REGARDING THE PETITION BY THE HON. JOHN MATI, M.P THE ALLEGED BRUTAL MURDER OF THE LATE COSMAS MUTUNGA AT THE KENYATTA NATIONAL HOSPITAL.

The report was adopted after being proposed by the Hon. Robert Mbui, M.P. and seconded by the Hon. Leonard Sang, M.P.

MIN.NO.DCH 009/2017:

BRIEF ON THE ANALYSIS OF THE FIRST SUPPLEMENTARY ESTIMATES FOR THE FINANCIAL YEAR 2016/2017 FOR THE MINISTRY OF HEALTH

The Committee was taken through the Brief from the Parliamentary Budget office by Mr. Joash Kosiba, Fiscal Analyst and informed as follows:

1. The Constitution of Kenya 2010 in Article 223 provided that the national government may spend money that had not been appropriated only in two specific occasions namely: it the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; and money has been withdrawn from the Contingencies Fund.
However, these expenditures must be regularized through Parliamentary approvals within two months after withdrawal of the money as stipulated in Article 223 (2&3) of the CoK, 2010.
2. The first supplementary expenditure estimates for the FY 2016/17 were submitted to the National Assembly on Thursday 1st December 2016. The supplementary budget came at a time when the Health sector was facing a crisis of serious industrial unrests which have paralyzed service delivery in all public health institutions across the country.

3. The collective bargaining agreement (CBA) signed between the Ministry of Health (MoH) and Kenya Medical Practitioners, Pharmacists, and Dentists' Union (KMPDU) in June 2013 was the basis of the current industrial action by doctors, pharmacists and dentists. The CBA which was to remain in force for a period of two years effective from 1st July 2013 had since come to haunt the government as it has paralyzed service delivery in the public health sector with serious ramifications on health and economic well-being of Kenyans.
4. The CBA had not been registered in industrial court as required by labour laws due to several legal technicalities and constitutional flaws and therefore its implementation in its current form was likely to face serious hurdles. Any agreement reached between the government and the union was also likely to have financial implications for both the national and county governments which had to be catered for through a revised budget for the FY 2016/17 or a new budget for the FY 2017/2018

Overview of the Overall Expenditure Estimates Totals

5. The gross approved expenditure estimates for the Ministry of Health in the FY 2016/17 was Ksh. 60.269 billion comprising of Ksh. 28.990 billion for current expenditures and Ksh. 31.279 billion for capital expenditures.
6. The proposed supplementary estimates I for the FY 2016/17 adjusted the approved expenditure estimates to Ksh. 60.453 billion representing an overall increase of Ksh. 183.957 million in the budget of the Ministry of Health.
7. The overall approved current expenditures estimates for the Ministry of Ksh. 28.990 billion had been adjusted upwards by Ksh. 464.963 million to Ksh. 29.455 billion while the overall approved capital expenditure estimates of Ksh. 31.279 billion had been adjusted downwards by Ksh. 281.006 million to Ksh. 30.998 billion.
8. The overall approved gross current expenditures estimates for the Ministry of Health of Ksh. 28.990 billion had been adjusted upwards by Ksh. 464.963 million to Ksh. 29.455 billion.
9. In terms of economic classification, the downward revision of current expenditures estimates were: Compensation to employees adjusted upwards by Ksh. 286.275 million from the approved Ksh. 5.72 billion to Ksh. 5.434 billion; and Other recurrent which had been adjusted downwards by Ksh. 2.16 million from the approved Ksh. 196.618 million to Ksh. 194.457 million.
10. The upward revision of the current expenditures estimates were: Use of goods and services which has been increased by Ksh. 303.399 million from the approved Ksh. 1.542 billion to Ksh. 1.845 billion; and Current transfers to government agencies which has been increased by Ksh. 450 million from the approved Ksh. 21.530 billion to Ksh. 21.980 billion
11. The overall approved gross capital expenditure estimates for the Ministry of Health of Ksh. 31.279 billion had been slightly adjusted downwards by Ksh. 281.006 million to Ksh. 30.998 billion.
12. The proposed supplementary capital expenditures estimates affected all the five programmes under implementation by the Ministry of Health. The estimates proposed to increase the total gross expenditures estimates for the following programmes and vote heads:
 - (i) National Referral & Specialized Health Services Programme: - The gross capital expenditure estimate for this programme was increasing by Ksh. 5.457 billion from

Ksh. 7.032 billion to Ksh. 11.325 billion. The significant increase was attributed to an increase in expenditure estimates for managed equipment services – hire of medical equipment for 98 hospitals whose expenditure estimate was increasing by Ksh. 5.1 billion from Ksh. 4.5 billion to Ksh. 9.6 billion.

- (ii) Health Research and Development Programme:- The gross capital expenditure estimates for this programme was increasing by Ksh. 100 million from Ksh. 209 million to Ksh. 309 million. The increase was attributed to increased allocation for construction of building tuition blocks at KMTC from Ksh. 140 million to Ksh. 240 million

13. The following were other votes heads which had an increase in allocation of capital expenditure estimates:

- (i) Kenya Health Sector Support Project (KHSSP): The approved gross capital expenditure estimate for this vote head was increasing by Ksh. 50 million from Ksh. 3.422 billion to Ksh. 3.472 billion
- (ii) Tuberculosis Round 6: - The approved gross capital expenditure estimate for this vote head was increasing by Ksh. 260.63 million from Ksh. 1.008 billion to Ksh. 1.269 billion.
- (iii) Clinical Waste Disposal Project:- The approved gross capital expenditure estimate for this vote head was increasing by Ksh. 860 million from Ksh. 40 million to Ksh. 900 million
- (iv) Expansion of Ileho Health Centre (KIDDP):- The approved gross capital expenditure estimate for this vote head had been allocated by Ksh. 20 million. There was no allocation for the vote head in the approved expenditure estimate.
- (v) Free Maternity Programme (Strategic Intervention):- The approved gross capital expenditure estimate for this vote head was increasing by Ksh. 1.498 billion from approved expenditure estimate of Ksh. 4.298 billion in the approved expenditure estimates to Ksh.5.796 billion in the supplementary expenditure estimates. The significant increase may be attributed to the expansion of the free maternity programme and the recently launched “Linda Mama Programme”
- (vi) Procurement of Ambulances: - The Ministry was set to benefit from Smith and Ouzman (popularly referred to as “chicken gate scandal”) compensation. The compensation of Ksh. 43.746 million had been has been budgeted for procurement of ambulances.
- (vii) Provision of Medical Equipment for Msambweni Hospital: There is a new allocation of Ksh. 100 million for provision of medical equipment.
- (viii) Capacity Building Support to Kisii Hospital Cancer Centre: - There was a new allocation of Ksh. 15.2 million for capacity building.

14. The supplementary expenditure estimates proposed to reduce the total gross capital expenditures estimates for the following programmes and vote heads:

- (i) General Administration, Planning and Support Services: - The gross capital expenditure estimate for this programme was reducing by Ksh. 4.173 billion from Ksh. 9.94 billion to Ksh. 5.767 billion .

- (ii) Preventive, Promotive and RMNCAH: The gross capital expenditure estimate for this programme was reducing by Ksh. 1.454 billion from the approved Ksh. 6.061 billion to Ksh. 4.608 billion.
 - (iii) Health Policy, Standards and Regulations: - The gross capital expenditure estimate for this programme was reducing by Ksh. 211 million from the approved Ksh. 8.038 billion to Ksh. 7.827 billion.
15. The following were some of the capital expenditure estimates votes heads which had been adjusted downwards:
- (i) East Africa's Centres of Excellence for Skills and Tertiary Education: - The gross capital expenditure estimate for this vote head had been reduced by Ksh. 279.63 million from the approved Ksh. 365 million to Ksh. 85.370 million.
 - (ii) Kenyatta National Hospital- Construction of Buildings: - The gross capital expenditure estimate for this vote head had been reduced by Ksh. 100 million from the approved Ksh.150 million to Ksh. 50 million. Another approved expenditure estimate of Ksh. 150 million for construction had been reduced by Ksh 99.5 million to Ksh. 50.5 million. These reductions were likely to significantly affect development projects being undertaken at KNH.
 - (iii) Health Sector Development (Reproductive Health and HIV/AIDS) Commodity: The gross capital expenditure estimate for this vote head had been reduced by Ksh.115 million from the approved Ksh. 385 million to Ksh. 269.5 million.
 - (iv) Program for Basic Health Insurance Subsidy: The gross capital expenditure estimate for this vote head had been reduced by Ksh. 210 million from the approved Ksh. 700 million to Ksh. 490 million.
 - (v) Wajir District Hospital: The gross capital expenditure estimate for this vote head had been reduced by Ksh. 200 million from the approved Ksh. 250 million to Ksh. 50 million.
 - (vi) Kenya Medical Supplies Authority: - The gross capital expenditure estimate for this vote head had been reduced by Ksh. 2.125 billion from the approved Ksh. 3.125 billion to Ksh. 1 billion. The reduction had been necessitated by a reduction in grants from development partners and is likely to affect operation at KEMSA.
 - (vii) Moi Teaching and Referral Hospital (MTRH):- The gross capital expenditure estimate for this vote head had been reduced to zero from Ksh. 364.021 million following a reduction in development partner support. This reduction affected specialized materials and supplies for Academic Model Providing Access project.
 - (viii) East Africa Public Laboratory Networking Project: The gross capital expenditure estimate for this vote head had been reduced by Ksh. 534.965 million to Ksh. 200 million from Ksh. 734.965 million. The reduction had been necessitated by reduction in external development partner support.
 - (ix) Upgrade of Health Centres in Slums (Strategic Interventions):- The gross capital expenditure estimate for this vote head had been reduced by Ksh. 116.052 million from approved Ksh, 500 million to Ksh. 383 .947 million.

- (x) Roll out of Universal Health Coverage: - The gross capital expenditure estimate for this vote head had been reduced by Ksh. 1 billion from the approved Ksh. 1.3944 billion to Ksh. 394.4 million.
16. In terms of economic classification, the downward revision of capital expenditures estimates were: Acquisition of non-financial assets which had been revised downwards by Ksh. 317.386 million from the approved Ksh. 1.564 billion to Ksh. 1.246 billion; and capital grants to government agencies which had been adjusted downwards by Ksh. 577.356 million from the approved Ksh. 15.405 billion to Ksh. 14.828 billion.
17. The upward adjustment in capital expenditures estimates affected only other development which had been adjusted upwards by Ksh. 613.736 million from the approved Ksh. 14.309 billion to Ksh. 14.923 billion.
18. There was an adjustment in all the MTEF budget programmes for the Ministry of Health in the supplementary expenditures estimates I for the FY 2016/17.

SALIENT ISSUES

The following were some of the salient issues arising from the analysis of the supplementary expenditure estimates for vote 1081 Ministry of Health:

1. Compliance with the Legal Provisions: - The Constitution, the Public Finance Management Act 2012 and the Public Finance Management (National Regulations) 2015 sets the legal threshold for a supplementary budget estimates. Regulation 40 (9) of the PFM (National Government) Regulations 2015 provides that In approving any estimates under sections 43 and 44 of the Act, the National Assembly approval shall not exceed ten (10) percent of the approved budget estimates of a program or Sub-Vote unless it is for unforeseen and unavoidable need as defined in section 21 of the Act. The changes in the following programmes do not meet the legal requirement:
- (a) Preventive, Promotive and RMNCAH recurrent expenditure estimates proposed total deduction of 23.98 percent exceeds the 10 percent limit and some of the items proposed for changes are neither unforeseen nor unavoidable.
 - (b) Preventive, Promotive and RMNCAH development expenditure estimates proposed total increase of 22.34 percent exceeds the 10 percent limit and some of the items proposed for changes are neither unforeseen nor unavoidable.
 - (c) The re-allocation of current expenditure estimates under Preventive, Promotive and RMNCAH programme to defray capital expenditures contravenes Section 43(1b) of the PFM Act, 2012 which states that accounting officer may reallocate funds from the authorized use but may not reallocate funds where the funds are appropriated for capital expenditure except to defray other capital expenditure.
 - (d) National Referral & Specialized Services Programme development expenditure estimates proposed total increase of 77.60 percent exceeds the 10 percent limit and some of the items proposed for changes such as increased allocation to Managed Equipment Services are neither unforeseen nor unavoidable.
 - (e) Health Research and Development Programme development expenditure estimates proposed total increase of 47.96 percent exceeds the 10 percent limit and some of

the items proposed for changes such as increased allocation to KMT of Ksh. 100 million for construction of classroom are neither unforeseen nor unavoidable.

2. Introduction of new budget Items: The proposed introduction of new budget items such Procurement of Ambulances; Provision of Medical Equipment for Msambweni Hospital and Capacity Building Support to Kisii Hospital Cancer Centre contravenes Regulation 40 (8) PFM (National Government) which requires budget allocations for new policy options and service delivery initiatives to be only be considered when introduced in the annual estimates. Furthermore these new budget items are neither unforeseen nor unavoidable.
3. Managed Equipment Services Programme: - The significant increase is in expenditure estimates for managed equipment services – hire of medical equipment for 98 hospitals by Ksh. 5.1 billion from Ksh. 4.5 billion to Ksh. 9.6 billion raises doubts as proper planning for the implementation of the programme. Furthermore proposed allocation of Ksh. 100 million to Msambweni Hospital for purchase of medical equipment may lead to double expenditures if Msambweni is one of the 98 hospitals benefiting from the Managed Equipment Services Programme
4. Othaya Hospital Upgrading Project: - The new allocation of Ksh. 300 million to pay for pending bills for Othaya Hospital Upgrading Project does not qualify for supplementary since it was neither unforeseen nor unavoidable. It also contravenes Regulation 40 (8) of the PFM (National Government) Regulation 2015 which requires budget allocations for new policy options and service delivery initiatives to be only be considered when introduced in the annual estimates
5. Kenyatta National Hospital (KNH):- The reductions in capital expenditures estimates for KNH construction of buildings are likely to hamper development projects at the hospital and impede effective service delivery.

Committee Observations and Resolutions

The Committee observed that:

- a. The salient issues arising from the First Supplementary Estimates raised serious concerns in regard to the Ministry's utilization of the 2016/2017 budget:
- b. The supplementary estimates presented itself as a revised budget and did not serve the purpose of a supplementary budget given that it failed to comply with the Public Finance Management Act 2012 and the Public Finance Management (National Regulations) 2015.

Committee Resolutions

The Committee resolved that the Cabinet Secretary for Health should appear before the Committee on 2nd February to Clarify on the following:

- a. The rationale of increasing the free maternity fund by Kshs. 1.498 billion considering that there were allegations of diversion of funds from free maternity for financial year 2015/2016;
- b. Whether the free maternity fund disbursement was being done through the National Hospital Insurance Fund as previously proposed by the Committee;
- c. The rationale for allocating Kshs. 100 million for medical equipment to Msambweni Hospital whereas the hospital is a beneficiary of the managed equipment service;

- d. The facilities/counties that will benefit from the ambulances that are budgeted for with the compensation of Kshs. 43.746 million from Smith and Ouzman.
- e. The rationale for additional allocation of Kshs. 5.1 billion to the MES project and the MES implementation status as at January 2017.
- f. Justification for the allocation of Kshs. 200 million for nutrition;
- g. How the reduction of the allocation to the Kenyatta National Hospital going to affect development projects being under taken by the hospital;
- h. The total allocation for the construction of Othaya Hospital to date;
- i. Provide justification on each of the item affected by the supplementary estimates especially those which are beyond the legal threshold of 10%.

MIN.NO. DCH 010/2017: ANY OTHER BUSINESS

1. Doctors Strike

The Committee noted the ongoing industrial unrest in the Health sector which had paralyzed services in public hospitals and resolved that the CBA signed with the Doctors be availed to the Committee on Tuesday 31st January 2017 for scrutiny. The Committee would thereafter make a decision on how to proceed with the matter.

2. Managed Equipment Service Project

The Committee noted that there was need to conduct and audit of the MES project to ascertain value for money given that the Project had been allocated a substantial amount of funds since inception and the First supplementary estimates had further proposed an additional 5.1 billion allocation for the project.

The Committee resolved that a request be made to the Auditor General’s Office for a special performance Audit of the project.

MIN.NO. DCH 011/2017: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.05 pm.

SIGNED:

**HON (DR.) RACHAEL NYAMAI, M.P.
CHAIRPERSON**

DATE: 31 / 01 / 2017

MINUTES OF THE 80TH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON FRIDAY, 14TH OCTOBER, 2016, IN THE MOMBASA HOSPITAL BOARDROOM, MOMBASA AT 10.00 AM.

PRESENT

1. **The Hon. Dr. James Murgor, M.P.** **Acting Chairperson**
2. The Hon. Alfred Agoi, M.P.
3. The Hon. Dr. Dahir D. Mohamed, M.P.
4. The Hon. James Gakuya, M.P.
5. The Hon. Fred Outa, M.P.
6. The Hon. Raphael Milkau Otaalo, M.P.
7. The Hon. Dr. James Nyikal, M.P.
8. The Hon. Michael Onyura, M.P.
9. The Hon. Robert Mbui, M.P.
10. The Hon. Kamande Mwangi, M.P.
11. The Hon. David Karithi, M.P.

ABSENT WITH APOLOGY

1. **The Hon. Dr. Racheal Nyamai, M.P.** **(Chairperson)**
2. **The Hon. Dr. Robert Pukose, M.P.** **(Vice Chairperson)**
3. The Hon. Dr. Naomi Shaban, M.P.
4. The Hon. Dr. Stephen Wachira, M.P.
5. The Hon. Dr. Patrick Musimba, M.P.
6. The Hon. Dr. Eseli Simiyu, CBS, M.P.
7. The Hon. Dr. Susan Musyoka, M.P.
8. The Hon. Jared Opiyo, M.P.
9. The Hon. Dr. Enoch Kibunguchy, M.P.
10. The Hon. John Nyaga Muchiri, M.P.
11. The Hon. Hassan Aden Osman, M.P.
12. The Hon. Stephen M. Mule, M.P.
13. The Hon. Mwinga Gunga, M.P.
14. The Hon. Leonard Sang, M.P.
15. The Hon. Paul Koinange, M.P.
16. The Hon. Zipporah Jesang, M.P.
17. The Hon. Dr. James O. Gesami, M.P.
18. The Hon. Alfred Sambu, M.P.

IN ATTENDANCE

Mombasa Hospital

1. Dr. Macharia Emmanuel
2. Maria Brayanze

3. Jamila Jeizan
4. Dr. Sood Mohamed
5. Abbas Nasser
6. Dr. Kwilich Micheni
7. Dr. Esther Getambu
8. Salina Ambitho

Petitioner's Team

1. Zainab Yassin
2. Aisha Mohamed

Ministry of Health

Dr. Isaq Odongo

National Assembly Secretariat

- | | | |
|-------------------------|---|-------------------------------|
| 1. Ms. Esther Nginyo | - | Third Clerk Assistant. |
| 2. Mr. Dennis M. Ogechi | - | Third Clerk Assistant. |
| 3. Mr. Adan Guliye | - | Third Clerk Assistant. |
| 4. Ms. Marlene Ayiro | - | Legal Counsel |
| 5. Dr. Christine Sagini | - | Researcher |
| 6. Mr. Simon Muinde | - | Audio Recording Officer |
| 7. Mr. Albert Atunga | - | Serjeant-At-Arms |
| 8. Mr. Adams Janam | - | Office Attendant |

MIN.NO. DCH 332/2016: PRELIMINARIES.

The Acting Chairperson called the meeting to order at 10.21 am and a prayer was said by the Hon. David Karithi, M.P. He thereafter invited those present to introduce themselves.

MIN.NO. DCH 333/2016: MEETING WITH THE MOMBASA HOSPITAL MANAGEMENT AND THE PETITIONER'S RELATIVES REGARDING A PETITION BY HON. IRSHADALI SUMRA, M.P. ON NEGLIGENCE BY THE MOMBASA HOSPITAL AND FAILURE TO ATTEND TO A PATIENT.

The acting Chairperson stated that the purpose of the meeting was to receive submissions from the Mombasa Hospital with regard to a petition on negligence by the Hospital and failure to attend to a patient presented to the National Assembly by the Hon. Irshadali Sumra, M.P.

It was then resolved that the members take a tour of the Mombasa Hospital before settling for deliberations. The Members visited the following areas at the facility:

1. The Reception Area

2. The Triage
3. Emergency Room
4. The Pharmacy
5. The Laboratory
6. The Intensive Care Unit

The meeting reconvened and the Chairperson asked the hospital officials to brief the Committee on the issues pertinent to the petition.

Presentation by Ms. Selina Ambitho, Director of Nursing, Mombasa Hospital

Ms. Selina Ambitho, Director of Nursing, Mombasa Hospital, appeared before the Committee and informed it that:

1. The client, Mr. Mohamed Bakari, was referred to the Mombasa Hospital from another facility, Safi Hospital, on 9th August, 2016. He arrived at around 5.30 pm aboard an AAR ambulance.
2. The patient was moved to the emergency room immediately for management.
3. The patient was assessed and attended to by Dr. Macharia Emmanuel, a resident doctor at the facility.
4. Dr. Sood Mohamed, a physician was later called in and together with other personnel did all in their power to save life.
5. The patient was later transferred to ICU under Dr. Sood Mohamed, where his condition was managed and he was later transferred to a general ward.
6. Within 2 to 3 days, the patient was discharged after recovery.

Presentation by Dr. Macharia Emmanuel, Resident Doctor, Mombasa Hospital

Dr. Macharia Emmanuel, Resident Doctor, Mombasa Hospital appeared before the Committee and informed it that:

1. On assessment, he found the patient to have been in a semi-comatose state.
2. He immediately informed Dr. Sood Mohamed because of the emergency nature of the case and the fact that ICU admission was impending.
3. Dr. Sood Mohamed, the consultant, came in and attended to the patient at the emergency room and later transferred him to the ICU for further management.

Presentation by Dr. Sood Mohamed, Admitting Doctor, Mombasa Hospital

Dr. Sood Mohamed, Admitting Doctor, Mombasa Hospital appeared before the Committee and informed it that:

1. On the material day, he was informed of the emergency by Dr. Macharia Emmanuel and rushed to the emergency room where he found the patient frothing at the mouth.
2. He then organized for a transfer to the ICU for continued management of the patient.
3. He later interviewed the patient on why he was poisoning himself. The patient opened up and gave details of the reasons for self-poisoning. He was later taken through counselling, treated and, upon recovery, discharged from hospital.

Presentation by Mr. Abbas Nasser, Administrator, Mombasa Hospital

Mr. Abbas Nasser, Administrator, Mombasa Hospital appeared before the Committee and informed it that:

1. The allegation that the patient stayed in the ambulance for 5 hours before being attended to was false. He produced CCTV footage which showed that the patient was attended to immediately upon arrival at Mombasa Hospital.

The CCTV footage further showed that on 9th August, 2016:

- a) The ambulance ferrying the patient arrived at Mombasa Hospital at 5.30 pm.
 - b) The patient was received at the Mombasa Hospital's Accident and Emergency Department from an AAR ambulance at 5.31 pm.
 - c) The patient was wheeled out of the emergency room at 6.52 pm into the hospital's ICU at 6.53 pm.
 - d) The patient was admitted into the ICU at 6.54 pm.
 - e) The influential philanthropist was seen engaging hospital staff at 6.20 pm.
2. On the allegation that Ksh 100,000 was offered by the family before the patient was attended to, he stated that the family never offered any cash before the patient was attended to instead a philanthropist offered to pay Ksh 300,000 but did so after discharge of the patient. He emphasized that treatment continued as the accounts department sought means of ensuring that ultimately payment would be made for services rendered.

Presentation by Ms. Zainab Yassin and Ms. Aisha Mohamed, relatives to Mr. Mohamed Bakari

Ms. Zainab Yassin and Ms. Aisha Mohamed appeared before the Committee and informed it that:

1. They both escorted the patient from Safi Hospital to Mombasa Hospital in the ambulance.
2. When still at Safi Hospital, a phone call was made and Mombasa Hospital demanded Ksh 300,000 to accompany the patient.

3. They arrived at the hospital at around 5pm.
4. The patient was immediately transferred to the emergency room for attention. They paid Ksh 2,000 immediately.
5. They were then informed that the patient required ICU admission and required to make a payment of Ksh 300,000 before such admission was made.
6. The oxygen used in the ambulance continued to be used for the patient while in emergency room and the ambulance crew was told to wait since, if the money was not raised, they would leave with the patient. This delayed the ambulance at Mombasa Hospital.
7. The patient stayed in the emergency room for about 3 hours.
8. He was then transferred to ICU at around 7.30 pm.

MEMBERS' OBSERVATIONS

Members observed that:

1. There was need to protect private facilities as the law protects patients in need of emergency treatment but exposes the private facilities offering such emergency treatment.
2. The Ministry of Health was finalizing external referral guidelines to streamline such referrals.
3. The petitioner's claims especially on time taken to attend to the patient upon arrival at the hospital are largely discounted by the CCTV footage evidence.

MIN.NO. DCH 334/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.58 pm.

SIGNED:

**HON (DR.) RACHAEL NYAMAI, M.P.
CHAIRPERSON**

DATE: 31 / 01 / 2017

MINUTES OF THE 79TH SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY, 13TH OCTOBER, 2016, IN THE 2ND FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT AT 10.00 AM.

PRESENT

1. **The Hon. Dr. Racheal Nyamai, M.P.** (Chairperson)
2. The Hon. Dr. James Murgor, M.P.
3. The Hon. Dr. Eseli Simiyu, CBS, M.P.
4. The Hon. James Gakuya, M.P.
5. The Hon. Jared Opiyo, M.P.
6. The Hon. Dr. Enoch Kibunguchy, M.P.
7. The Hon. John Nyaga Muchiri, M.P.
8. The Hon. Fred Outa, M.P.
9. The Hon. Zipporah Jesang, M.P.
10. The Hon. Dr. James O. Gesami, M.P.
11. The Hon. Raphael Milkau Otaalo, M.P.
12. The Hon. Dr. James Nyikal, M.P.
13. The Hon. Michael Onyura, M.P.
14. The Hon. Leonard Sang, M.P.
15. The Hon. Paul Koinange, M.P.
16. The Hon. Robert Mbui, M.P.
17. The Hon. Kamande Mwangi, M.P.
18. The Hon. David Karithi, M.P.

ABSENT WITH APOLOGY

1. **The Hon. Dr. Robert Pukose, M.P.** (Vice Chairperson)
2. The Hon. Alfred Agoi, M.P.
3. The Hon. Dr. Naomi Shaban, M.P.
4. The Hon. Dr. Stephen Wachira, M.P.
5. The Hon. Dr. Patrick Musimba, M.P.
6. The Hon. Dr. Susan Musyoka, M.P.
7. The Hon. Hassan Aden Osman, M.P.
8. The Hon. Stephen M. Mule, M.P.
9. The Hon. Mwinga Gunga, M.P.
10. The Hon. Dr. Dahir D. Mohamed, M.P.
11. The Hon. Alfred Sambu, M.P.

IN ATTENDANCE

Friend to the Committee

Hon. Irshadali Sumra, M.P.

Individual Petitioner

Mr. Bakari Yasin

National Assembly Secretariat

- | | | |
|-------------------------|---|-------------------------------|
| 1. Ms. Esther Nginyo | - | Third Clerk Assistant. |
| 2. Mr. Dennis M. Ogechi | - | Third Clerk Assistant. |
| 3. Ms. Marlene Ayiro | - | Legal Counsel |

MIN.NO. DCH 328/2016: PRELIMINARIES.

The Chairperson called the meeting to order at 10.26 am and a prayer was said by Hon. Jared Opiyo, M.P. She thereafter invited those present to introduce themselves.

MIN.NO. DCH 329/2016: MEETING WITH THE HON. IRSHADALI SUMRA, M.P. REGARDING HIS PETITION ON NEGLIGENCE BY THE MOMBASA HOSPITAL AND FAILURE TO ATTEND TO A PATIENT.

The Chairperson stated that the purpose of the meeting was to receive submissions from the Hon. Irshadali Sumra, M.P. with regard to his petition on negligence by the Mombasa Hospital and failure to attend to a patient. She then invited the Hon. Irshadali Sumra, M.P. to make his presentation.

Presentation by the Hon. Irshadali Sumra, MP

Hon. Irshadali Sumra, MP appeared before the Committee and informed it that:

1. Hospitals violate the rights of patients by failure to offer emergency medical attention. A case in point being the Mombasa Hospital where he was involved in trying to secure emergency treatment for Mr. Mohamed Bakari and faced a lot of frustration.
2. Mr. Mohamed Bakari was rushed to Safi Hospital, a private health facility in Mombasa, on 9th August, 2016 following his ingestion of a poisonous substance.
3. Following an assessment at Safi Hospital, his condition was found critical and he was referred to Mombasa Hospital since the facility did not have the capacity to handle his condition.
4. On arrival at the Mombasa Hospital, a private facility, the hospital management informed the guardian that it needed a deposit of Kshs. 300,000 prior to admission or receiving any medical attention.
5. Despite the family managing to raise Kshs. 100,000, the facility's doctors declined to attend to the patient as he lay in an ambulance for more than five hours.
6. The patient was only attended to after an influential philanthropist went to the hospital and pleaded with the management after promising to settle the resultant bill.

7. The philanthropists paid a total of Kshs. 500,000 to have the patient discharged after treatment.
8. He therefore urged the Committee to:
 - a) Probe the Mombasa hospital with a view to establishing why the facility denied Mr. Mohamed Bakari emergency treatment.
 - b) Ensures establishment of mechanisms to guarantee that patients with emergency conditions are attended to within the shortest time possible upon arrival at any health facility, be it private or public.

MEMBERS' OBSERVATIONS

1. The issue of denial of emergency treatment was rampant across the country hence the need to address such concerns not only with respect to Mombasa Hospital but with a view to give policy direction on the matter.
2. The facility refused to heed the pleading of a Member of Parliament implying that ordinary Kenyans could be receiving worse treatment.

RESOLUTIONS

The Committee resolved that there was need to get the Mombasa Hospital's side of the story then chart the way forward.

MIN.NO. DCH 330/2016: ANY OTHER BUSINESS

1. The Committee expressed displeasure with the manner in which the Ministry of Health top officials failed to attend meetings or sent junior officers to represent it in serious meetings.
2. It was indicated that the Chairperson and the Vice Chairperson would not be able to attend an inspection visit to Mombasa that was scheduled from the 13th to 16th October, 2016 due to other engagements and it was resolved that the Hon. Dr. James Murgor, M.P. be the acting Chairperson during the visit.

MIN.NO. DCH 331/2016: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.55 pm.

SIGNED: 

**HON (DR.) RACHAEL NYAMAI, M.P.
CHAIRPERSON**

DATE: 31 / 01 / 2017

Approved
28/8/16

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT
(FOURTH SESSION)

PUBLIC PETITION

Mohamed Bakari
Please attend.

ANNEX 3

**BY THE FAMILY OF MR. MOHAMED BAKARI ON NEGLIGENCE BY THE
MOMBASA HOSPITAL AND FAILURE TO ATTEND TO A PATIENT**

I, the **UNDERSIGNED**, on behalf of family of the Mr. Mohamed Bakari and concerned Kenyans,

DRAW the attention of the House on the following: -

- i. **THAT**, Article 26(1) of the Constitution provides for the right to life while Article 43(1) (a) provides for the right to highest attainable standard of health for every citizen;
- ii. **THAT**, some hospitals continuously violate the rights of patient by failure to provide emergency medical attention;
- iii. **THAT**, in the recent past, Mr. Mohamed Bakari was rushed to Safi Hospital, which is a private hospital, following an emergency whereby he had ingested some poisonous substance;
- iv. **THAT**, following an assessment at the Safi Hospital the patient who was in critical condition, was referred to Mombasa Hospital since the facility did not have adequate facility and drugs to handle such kind of emergency;
- v. **THAT**, on arrival at the Mombasa Hospital, a private, the hospital management informed the guardian that they had to make an initial deposit of Kenya Shillings Three Hundred Thousand prior access of any service and/or admission;
- vi. **THAT**, the family and friends were able to raise Ksh.100,000, however the doctors declined to attend to the patient, in the meantime the patient lay helpless in an ambulance for more than five hours;
- vii. **THAT**, the patient was only attended to after an influential and philanthropic person visited the hospital and pleaded with the management;

PUBLIC PETITION

**BY THE FAMILY OF MR. MOHAMED BAKARI ON NEGLIGENCE BY THE
MOMBASA HOSPITAL AND FAILURE TO ATTEND TO A PATIENT**

viii. **THAT**, the matter presented in this petition is not pending before any tribunal or court of law.

THEREFORE your humble Petitioners pray that the National Assembly, through the Departmental Committee of Health: -

- i. Causes an immediate probe into the matter and establish why the Mombasa Hospital failed to attend to Mr. Mohamed Bakari;
- ii. Ensures the establishment of mechanisms to guarantee that patient with emergency cases are attended to within the shortest time possible on arrival at any health facility be it public or private;
- iii. Ensures that the Petitioner's plight is addressed; and
- iv. Makes any other order or direction that it deems fit in the circumstances of the case.

And your **PETITIONERS** will ever pray.

PRESENTED BY:



HON. SUMRA IRSHADALI MOHAMED, MP
MEMBER FOR EMBAKASI SOUTH CONSTITUENCY

DATE: 12/8 / 2016