

PAPERS L.A.D. No. 47	
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REPORT OF A COMMISSION OF INQUIRY APPOINTED UNDER THE COMMISSIONS OF INQUIRY ACT (CAP.102) TO INQUIRE INTO THE DISPUTE BETWEEN THE MASAKU COUNTY COUNCIL AND THE KENYA LOCAL GOVERNMENT WORKERS UNION.

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By Gazette Notice No. 3744 of 9th November, 1968 His Excellency Jomo Kenyatta, President of the Republic of Kenya, in exercise of the powers conferred upon him by the aforesaid Act, appointed :

- Mr. John Muchura as Chairman and
- Mr. William Cecil Rodgers as Member

to be a Commission and thereby authorised and directed the said Commission to inquire into and advise on all the matters involved in and leading to the dispute between the Masaku County Council and the Kenya Local Government Workers Union, which was the subject of an Award in the Industrial Court (Cause No. 12 of 1968) and more particularly :

- (a) the allegations made by the Kenya Local Government Workers Union in the dispute ;
- (b) the counter allegations made by the Masaku County Council ascribing political motive to the said Kenya Local Government Workers Union in making its allegations;
- (c) the extent, if any, that the Financial Adviser to the Masaku County Council, Mr. Bhatti, can be held responsible for the matters alleged by the Union, if true;
- (d) the part that politics played in the dispute; and to report the results of such inquiry, the conclusions arrived at and the reasons leading thereto, and to make any recommendations that the Commissioners may consider desirable or necessary.

Mr. S.F. Esland was appointed Secretary of the Commission.

The Commission has complied with the various directions promulgated by His Excellency in the aforesaid Gazette Notice, excepting that extension of time for making this Report was requested and this request was granted by Gazette Notice No. 1/69.

Procedural.

2. The Secretary of the Commission, acting upon the instructions of the Chairman, requested the Masaku County Council and the Kenya Local Government Workers Union to furnish the Commission with memoranda on matters relevant to the Inquiry and these were duly received. Members of the public were invited, by Press notices, to volunteer such evidence as was considered relevant. A large number of witnesses, including the Chairman and Chief Officers of the Masaku County Council and the General Secretary and officials of the Kenya Local Government Workers Union were examined, several on more than one occasion. By the date of appointment of the Commission, Mr. Bhatti had emigrated from Kenya and

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the Commission decided that no useful purpose would be served by attempting to secure his recall in order to give evidence. Throughout the hearing of evidence the County Council and its Chairman were represented by Mr. S.N. Waruhiu, Advocate. During the hearing of what were considered to be more important items of verbal evidence, stenographic of palantypist assistance was obtained and this verbatim record has been retained. The members of the Commission were duly sworn by Mr. Justice A.D. Farrell on 11th December, 1968.

#### Analysis of Evidence.

3. The memorandum of evidence dated 28th November 1968 as submitted by the Kenya Local Government Workers Union (hereinafter referred to as the "Union") was substantially the same as had been submitted to the Industrial Court, but, possibly arising from the criticisms of that Court, had been rather more carefully prepared and was more fully documented. The Masaku County Council (hereinafter referred to as the "Council") continued to rely upon the memorandum as originally submitted to the Industrial Court, although, during the hearing of verbal evidence, a wide variety of additional documents was produced, some voluntarily and others upon the insistence of the Commission. In addition, Mr. Bhatti, before his departure from Kenya, had left a letter addressed to the "Investigating Committee" denying the allegations of the Union, in forthright terms, e.g. "this is a pack of lies", "there can be no greater lie than this", etc. The Commission also had the advantage of reference to the findings of the Industrial Court, which contains a most valuable analysis of the various issues in dispute and which concluded by stating that the Union was "blaming both Mr. Malu and Mr. Bhatti together". The Commission shares this view, although this does not necessarily mean that the allegations of the Union were actuated by political motives.

#### Allegations of Union.

4. The allegations of the Union amounted to 27 in number, or, at least, were contained in 27 paragraphs (or Items) in their memorandum and these varied considerably in relevance and importance. The Commission decided that the first four of these, dealing with the affairs of Meru County Council, with whom Mr. Bhatti had been employed prior to his employment at Masaku in June 1965, were outside their terms of references and these have been ignored. Those referring to Masaku County Council or specifically to Mr. Bhatti or Mr. Malu can most conveniently be considered under six categories, namely : financial stringencies, administrative inefficiencies, relationships with Urban Councils, industrial relations, misuse of funds and abuse of position by the Chairman of Council.

- (a) In a general statement at the conclusion of their Item 5, the Union stated that they had been "led to suspect that there was something wrong going on with the Finances of the Masaku County Council because before Mr. Bhatti went to Masaku, the Council had less complaints of its financial position." That statement is indicative of a gross misunderstanding of the circumstances. Although the financial affairs of the Council are still very far from satisfactory, before Mr. Bhatti's arrival



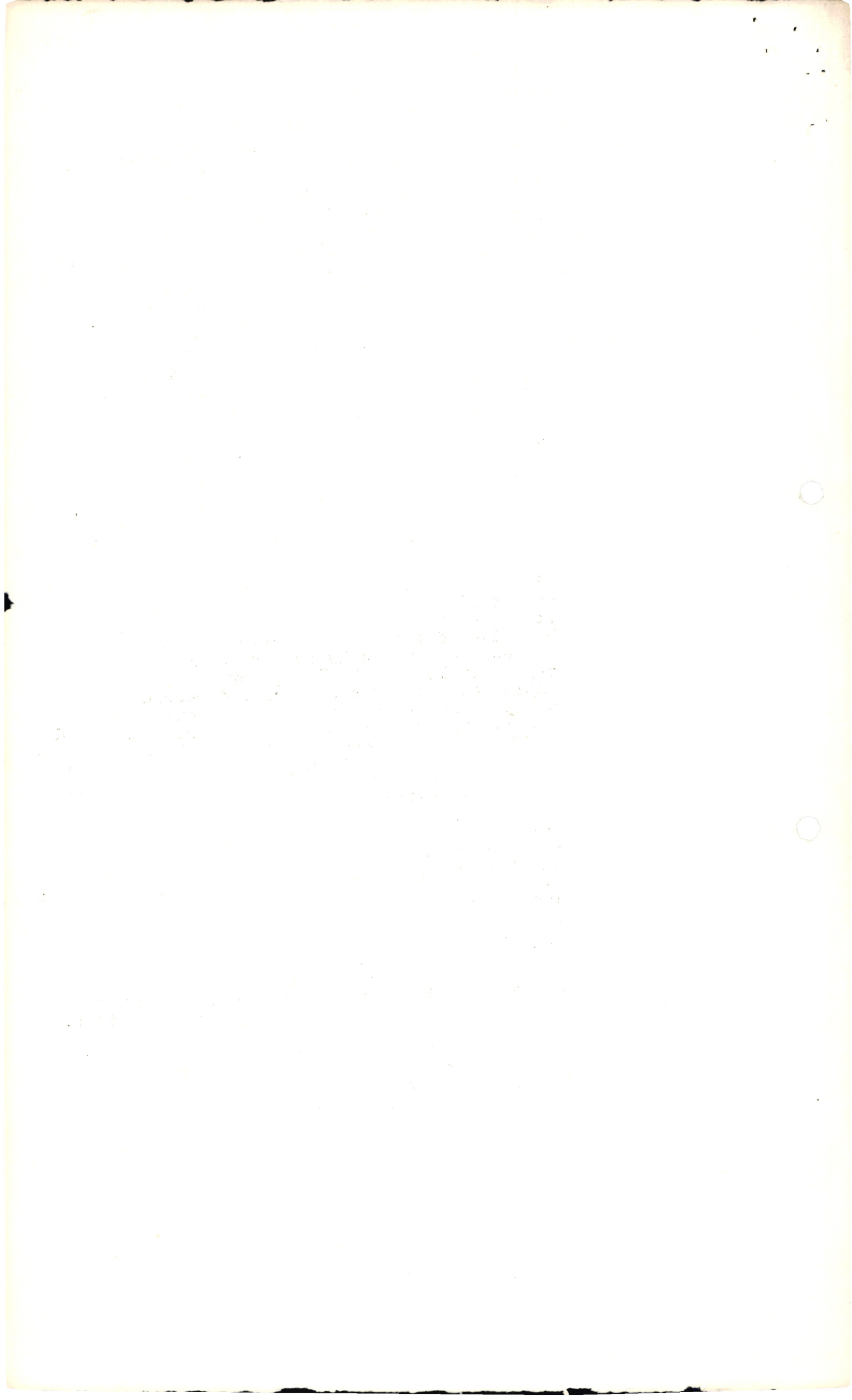
they were certainly as bad and probably even worse, as is indicated by a letter in 1965 from the Permanent Secretary to the Ministry of Local Government (hereinafter referred to as the "Ministry"). In this letter the Council was instructed to live within its means and it may well be that the attempt to introduce a greater amount of financial stringency by the Financial Adviser and the Chairman of Council may have led to their relative unpopularity within the County and not least with the Union membership. This is also commented upon in the Report of the Local Government Commission of Inquiry 1966 (page 43) as follows :

"the very serious position of most counties due largely to rapidly increasing expenditure on services, whilst their income is increasing at a much slower pace ..... It must be understood that revenues of local authorities are strictly limited - they cannot be increased at will and generally speaking there is no prospect of them being increased easily to meet the growing level of expenditure. In the end services must be tailored to suit the size of revenues, rather than the size and quality of services setting the pace and revenues trying to catch up."

- (b) This greater control over expenditure is the probable reason for the complaints by the Union over the delay in implementing the salary increases negotiated between the Union and the Council based upon the Pratt Commission recommendations, when it was necessary for the Council first to obtain Ministry approval for a supplementary estimate. This also is the probable explanation for the large number of Council employees who were declared redundant during the period 1968 - 69. (This does not mean that the Commission necessarily agrees with this action by the Council. Such wholesale dismissal of staff necessarily involved so much human suffering that this type of economy should be the last to be considered and then used only when all other possibilities are exhausted. Moreover, it is customary for such dismissals to be based upon length of service - e.g. last in, first-out - rather than by adopting the somewhat arbitrary yard - stick of over 50 years of age). During the 1967-68 a number of Dispensaries and Health Centres throughout the County had to be closed because of shortage of finance for drugs, but there is evidence that the original estimate of the County had been reduced by the Ministry on the grounds that Masaku was spending much more on drugs than other local authorities. Possibly the County Medical Officer of Health should have been more economical, but the Financial Officer can hardly be blamed.



(c) A number of other complaints by the Union appear to be based upon administrative inefficiencies by junior staff rather than deliberate action by the Financial Adviser. Three of these refer to two delays in payment of salaries (two months and one month respectively); two cases where less than the agreed minimum had been paid and to an unspecified number of cases where housing or housing allowance had not been provided. There was also ineptitude in the procedure for recording the recovery of advances against salaries, but this is hardly very serious. Strictly speaking, the Financial Adviser was accountable for the errors of his subordinate staff, but the Commission takes the view that, with some 4,000 employees, it is difficult to prevent such mistakes completely. More serious was the incompetence shown in dealing with contributions of Council employees to the National Social Security Fund. On the return, identity numbers of employees were omitted and, on instructions from Mr. Bhatti, the employers' contributions were not included. The excuse given was that a recommendation by a conference of Local Authorities at Mombasa had been misunderstood, but the Acting Treasurer eventually agreed that several circulars from the Ministry had been received which had given detailed instructions. As a consequence, not only had the Council to pay a penalty to the Fund, but several employees who had been declared redundant on age grounds had to wait some months to receive benefits from the Fund, which involved considerable personal hardship. There is, however, no substance in the allegation made that vehicles were off the road for several months because of failure to renew policies of insurance. The allegation that there was an unreasonable delay in paying increments to teachers who had obtained higher qualifications also appears to be an example of administrative incompetence. On 23rd October 1967 a cheque for Shs.21,785/35 was drawn to meet this liability but payment had not been made to the teachers concerned by the following February. At first this delay was denied, but the Acting Treasurer eventually admitted that the cash was kept in a drawer of the desk belonging to the Salaries Officer, Mr. Johnson Wanbua, who is stated to have paid teachers as they called on other matters against signatures on a sheet of paper. The completed document could not be produced. Teachers are normally paid by bank remittance and it is not understood why these comparatively small amounts could not have been included with the normal salary payments. Various allegations were made regarding the misuse of Council funds on purchase of materials and, although no specific offences could be proved, it seems clear to the Commission that the entire Tender procedure of the Council requires to be overhauled and strengthened to prevent abuse. One particular instance will be mentioned later.





- (d) One allegation refers to a temporary loan from County Council Funds to Masaku Urban Council and this raises the entire issue of relationships between the County Council and Urban Councils within the County area. This particular allegation regarding the loan of Shs. 40,000 in April 1967 is based on a misinterpretation of Regulation 225 of the Local Government Regulations 1963, and, although it is agreed that the wording is far from being explicit, the transaction appears to have been quite in order. However, the general financial relationships between the County and the Urban Council are more far-reaching. The Union contend that Mr. Bhatti, as Financial Adviser to the County Council, was required also to check and supervise the accounts of Masaku Urban Council and Athi River Urban Council, under Regulation No. 130(1) and (2) of the Local Government Regulations 1963 also Part XXII third schedule, Part II, sub-sections 4, 5, and 16. That is a faulty interpretation of these Regulations which contain no such requirements; but 117 (1) and (2) is more relevant. This states that "the council of a county division may, with the approval of the Minister and with the consent of the Council of the county within which it is situated and subject to such conditions as to the manner of carrying out the duties of the Office as that county council may specify and shall, if so directed by the Minister, appoint its own clerk and other officers; and may pay to such officers such salaries, emoluments and allowances as the urban or area council may determine with the approval of the Minister." If this procedure has not been followed, then the clerk and the other officers of the county council shall ..... act as clerk and officers respectively of every county division within the county ....." This procedure was certainly not carried out in the case of Masaku County Council prior to the absconding of Mr. Dildah Singh, its former Clerk-Treasurer who succeeded in embezzling over Shs. 300,000. However, since this breach of the Regulations was apparently condoned by the Ministry, it may be unfair to blame Mr. Bhatti for failing to exercise vigilance over the accounts of that Urban Council until 25th May, 1967 when a brief inspection of financial records at Masaku Urban Council by a Ministry official showed clearly that the accounts were certainly not in order. This visit was followed up by a letter to the Clerk to the Council from the Ministry on 26th May giving instructions that the financial records should be put right. The Clerk gave such an assurance in a letter dated 30th May, but nothing appears to have been done. The Clerk-Treasurer of Masaku Urban Council absconded early in June 1967, leaving a deficit in excess of Shs. 300,000. Had the instructions of the Ministry been carried out, it is just possible that the defalcation may have been detected and Mr. Dildah Singh been apprehended. Apparently there had been no audit of the Urban Council since 1961 and no final accounts since 1962. Letters



from the Ministry dated 11th July, 1967 and 25th November 1967 addressed to the Clerk to the Council state very clearly the responsibilities of County Council officers in relation to the affairs of the Urban Councils within the County area, but no letters in explanation of their failure to accept such responsibilities appear to have been received. Even while giving evidence before the Commission, the Chairman, Clerk and Treasurer of the County continued to assert that they could not have exercised supervision over the finances of the Urban Councils until expressly instructed by the Ministry to do so.

The position as regards the Athi River Urban Council is more clear-cut. After the secondment of the County Council of Mr. Johnston Wambua as Clerk-Treasurer to Athi River Urban Council in October 1966, there can not be the slightest doubt that the Financial Adviser was required by Regulation 117 to check the accounts of this Urban Council. Had such supervision been effective, he might have prevented and should certainly have detected a defalcation of Shs.11,447 in May 1967. Unfortunately, little more can be said of this matter in this Report, since the case against Mr. Wambua is still sub judice, excepting to ask why Mr. Wambua, after charges had been made against him, had been treated so much more generously than had Mr. Mwanja.

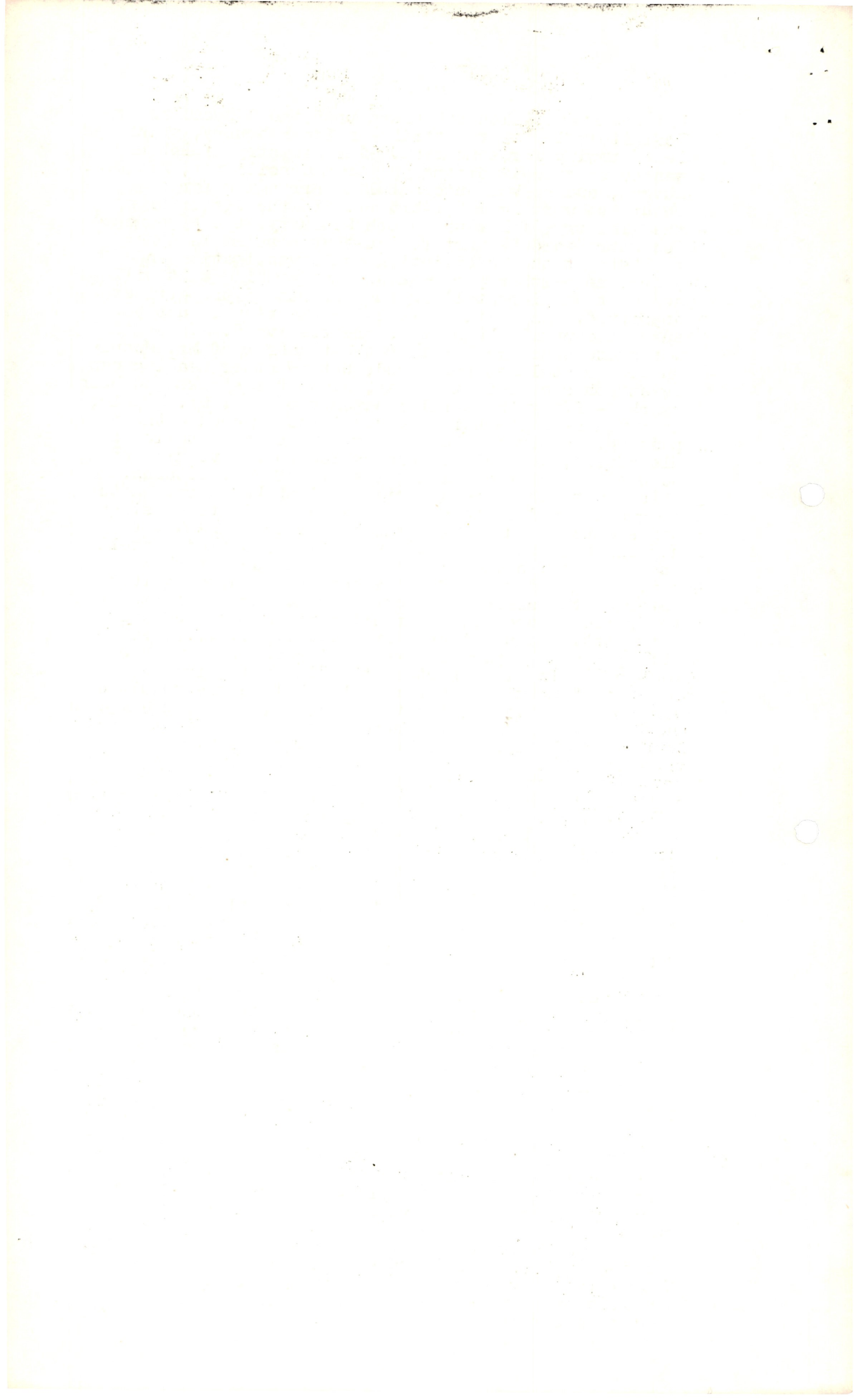
- (e) The Union made a number of allegations against the Council regarding their handling of industrial relations, in particular Items 23 to 27 and these seem to provide the kernel of the overall dispute, involving also Mr. Bhatti and Mr. Malu. Although the Union was certainly not blameless, the Council must accept the major part of the blame for the industrial unrest which culminated in two spontaneous strikes within a few days of each other in February, 1968. The ostensible reason for the first strike was the refusal of Council to discuss with the Union the removal of Mr. Bhatti, but, although the situation is somewhat confused, there can be little doubt that the dilatory attitude of the Council in dealing with correspondence from the Union was also a contributory cause. There is evidence that the Union wrote to the Council on 13th March 1967 requesting that a meeting of the Joint Staff Committee should be convened to discuss the Re-grading of Staff, but no reply was received. A further request for such a meeting was made in a letter dated 17th August 1967, but the Clerk to Council, apparently acting upon the instructions of the Chairman, replied on 23rd August 1967 refusing the request. A further letter was sent by the Union on 17th September 1967, but no reply seems to have been sent by Council. There was then a gap in correspondence until after a General Meeting of the Machakos Branch of the Union on 6th January 1968, when a number of resolutions appear to have been passed and these are mentioned in the Union's letter dated 8th January 1968. In addition to "Regrading of Salaries", new issues were raised, "Removal of Mr. Bhatti", "Housing for employees" and "Victimisation and intimidation

of Staff by Councillors". There appears to have been substance in the complaint over non-provision of housing, but no evidence has ever been produced regarding the alleged victimisation. More important was the demand for Mr. Bhatti's removal and a large proportion of the Union's memorandum attempts to provide justification for this demand. As previously suggested, Mr. Bhatti appears to have been linked with Mr. Malu in these accusations and it may be that the Union realised then the undesirability of openly appearing to be trying to remove a democratically elected Chairman of Council, but this is merely conjecture and is mentioned for want of a better explanation. So far as Mr. Bhatti is concerned, he appears to have been blamed for delay in implementation of a salary award and for a large number of employees having been declared redundant( as previously mentioned) while at the same time there appeared to be wasteful and improper expenditure of Council Funds. Furthermore, because Mr. Musau, the Clerk and Mr. Mutala, then Acting Treasurer, appear to be relatively weak as persons, it may be that Mr. Bhatti was regarded as the "strong man" on the staff of the Council, who was impeding the activities of the Union. Whatever the facts, which are certainly far from clear, the Council consistently refused to discuss with the Union the issue of Mr. Bhatti's dismissal. Although much can be argued in defence of this point of view, the Commission considers that on balance and not merely using hindsight, it would have been wiser to have listened to any arguments which could be advanced by the Union in support of their demand. The Commission is, however, unable to trace any precedents for listening to a case for dismissal of a manager, excepting where a fairly clear case exists of violence or abuse towards employees. Partly because of this refusal and partly because of other grievances, the Union threatened strike action if a meeting of the Joint Staff Committee was not held to discuss all four grievances listed in the letter dated 8th January, 1968. Mr. Mutala, Acting Treasurer, signed a Staff Posting Order on 1st February whereby, among other transfers, Mr. Gregory Mwanja, the Union Branch Secretary, was transferred in a lower appointment to Yatta on one day's notice. Mr. Mutala, in evidence stated that this particular transfer had been under consideration for some time, but the Commission doubts this statement, particularly in view of the fact that Mr. Mwanja's replacement was instructed to take over the new duties before his leave had expired. All employers are entitled to transfer staff to other duties, but normally allow reasonable time for a smooth handover and, particularly when the new duties are at a considerable distance away, give adequate notice for the change of residence. Also, while Union officials are not sacrosanct, most employers are careful not to allow any possible charges of victimisation to be made or of impeding the Union in carrying out their function. In the view of the Commission this was definitely a panic measure deliberately intended to weaken the



Union and one which rebounded upon the Council as it definitely led to the strike on 2nd February, which had been brewing for some time. The Ministry of Labour wasted no time in arranging for a Conciliator, Mr. J.S. Muigai, and he was successful in arranging for a return to work on 6th February. In the letter from the Ministry of Labour on 6th February, the Permanent Secretary said "I must repeat that nothing is done to obstruct the conciliation and investigation and therefore neither party should do anything that will appear to be forestalling the efforts of the officer appointed. Activities affecting the issues must be suspended until the matters are resolved". This did not state specifically that the transfer of Mr. Mwanja should be at least postponed, but no other meaning can be attached and, in any case, since the strike had been sparked-off by the earlier attempt to post Mr. Mwanja, it would seem the height of folly to proceed with the posting. However, when Mr. Mwanja refused to leave his office, the police were called to remove him and he was also charged with the theft of G.P.T. stamps. This led to the second strike on 14th February. After conviction and sentence on this charge in the Resident Magistrate's Court, Mr. Mwanja appealed and "at the hearing (before the Chief Justice and Justice Farrell) State Counsel quite properly did not support the conviction and we had no hesitation in quashing it." Later on the official report says "we are satisfied that the person responsible for bringing the proceedings had very little sense of proportion..... In our opinion the proceedings ought never to have been brought." In his report to the "Investigating Committee" mentioned earlier, but before the result of the Appeal, Mr. Bhatti attempted to explain the campaign against himself "as a measure of revenge against having their Branch Secretary, Mr. Mwanja, convicted in the Court." This statement is complete nonsense because the Union campaign against Mr. Bhatti had commenced much earlier, but Mr. Bhatti openly admits and in fact boasts to have instigated what can only be described as a malicious prosecution, totally without foundation. No check had been made for two years of the G.P.T. stamps from which the theft was alleged to have been made and they were, in fact, stored in a safe of which Mr. Bhatti held the key. During the strike, Mr. Malu is claimed to have told the Press that he also supported the charge against Mr. Mwanja. This should be sufficient to describe the state of industrial relations in Masaku but for the fact that, despite letters to the Council from Conciliator extending from 16th March to 26th August, 1968, no attempt was made by the Council to try to resolve their differences with the Union and, to this date, it is understood that there has been no meeting of the Joint Staff Committee despite several attempts by the Union to have this convened. The Commission will comment upon this further when the question of politics is examined.

- (f) Finally there are the allegations concerning the misuse of Council funds. Firstly there is the case of Mr. Johnson Wambua, while an officer of the Council and not a registered cattle dealer, who was allowed to purchase 150 head of cattle from the Simba Enali ranch of Council and to negotiate the re-sale to Kenya Meat Commission. While there was no financial loss to Council, the evidence showed serious financial irregularities which could be indicative of such matters occurring on a wider scale. In brief, Mr. /9...

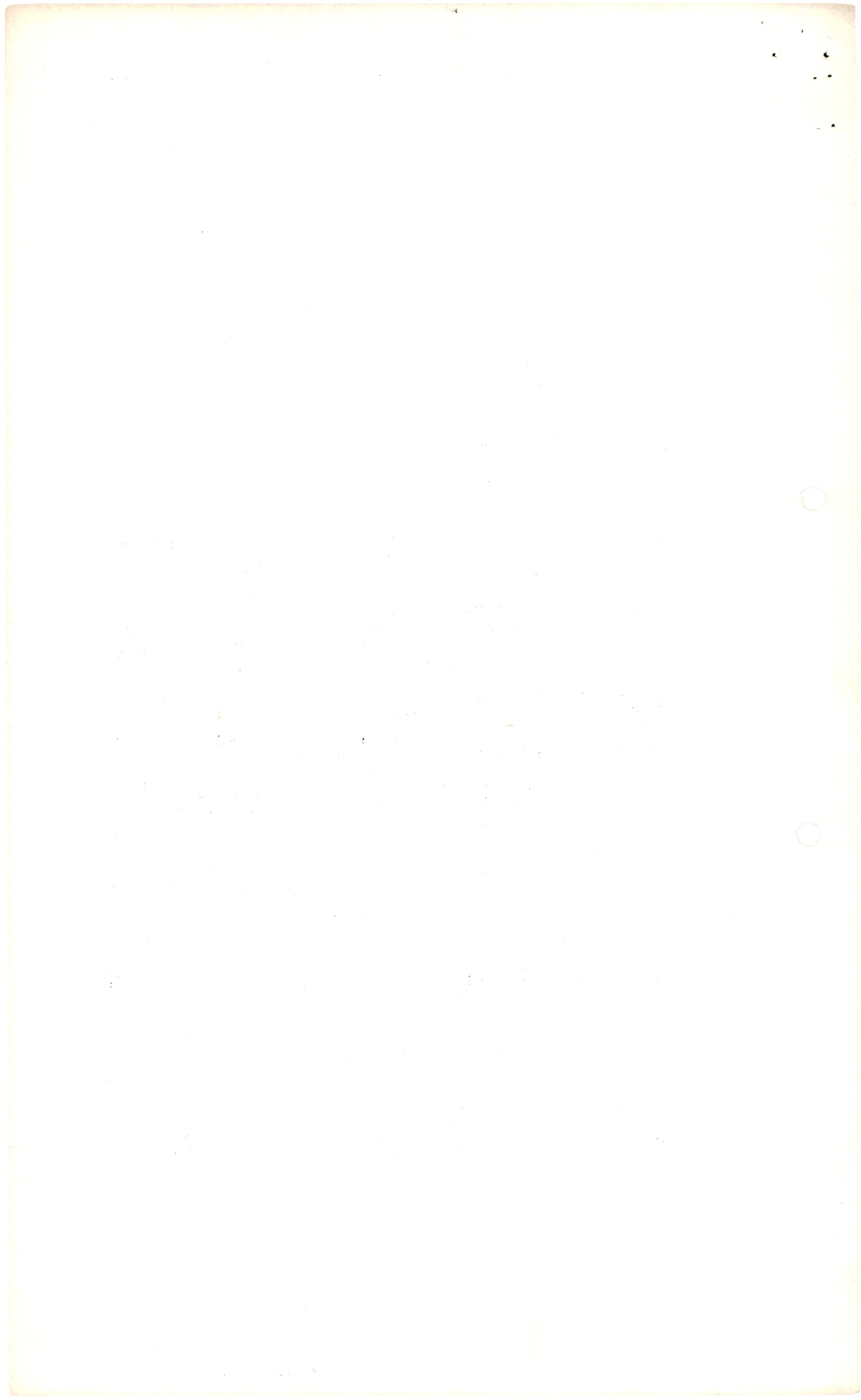


Wanbua gave as Security for the purchase a cheque drawn by Mr. Varma, a local shopkeeper, for Shs.30,000/-. This cheque was handed to Mr. Mutala, who gave a whole variety of explanations as to what happened thereafter. At first he stated that the cheque had been banked, but on being questioned as to his action when the cheque bounced or was countermanded, he stated that he was mistaken. He then said it was in his pocket for five days, then corrected himself to say it was in the drawer of his desk. The correct financial procedure was to hand this to the Receipts Cashier who banked every day and this man was in the office next to Mr. Mutala. It seems clear that Mr. Mutala doubted the authenticity of the cheque (and Mr. Varma did countermand this to his Bank during the transaction) and must have been very relieved when Mr. Wanbua gave his cash in exchange after selling the cattle at a personal profit - this being the only loss to the Council. Since this transaction was widely known at the time, the Commission cannot help wondering how the profit was shared. Although it would seem that paragraph 137 (4) of the Local Government Regulations 1963 was possibly not specifically intended to cover such a transaction, this certainly seems applicable and read as follows :

"Any profits, fees and rewards which may have accrued to such officer, or which may accrue to him, by reason of such bargain, contract of arrangement shall be deemed to have accrued or to accrue to him for and on behalf of the Local authority and may be recovered by the local authority before any court of competent jurisdiction."

The other allegations concern Mr. Malu personally. It was stated that he purchased a tractor from the Council at a price of Shs. 3,000/- although another bid of Shs.8,000/- had been submitted, but there is no proof that this higher tender had, in fact, been received. Mr. Malu admits to having ploughing done at his farm in April 1967 by a Council tractor, but denies that 45 acres were involved. Although the Clerk to the Council had issued instructions that Councillors and officers obtaining services from the Council must pay cash in advance, Mr. Malu paid Shs. 300/- in August for services performed in April. There is no question of criminal charges against Mr. Malu but the Commission takes the view that these constituted most imprudent actions by the Chairman of the Council, who thus laid himself open to charges that he was using his official position in advancement of his own personal interests. Mr. Malu, not merely as Chairman of Council; but also as a Member of Parliament, must have read the Report of the Local Government Commission of Inquiry 1966 and this includes the statement (page 56) that "In the interests of any member it should only be in exceptional cases and then only when properly authorised that any member should allow his private requirements to become involved in the use of Council property."





(g) The final group of allegations deals with what might best be described as abuse of power by Mr. Malu, Chairman of Council. Reference has been made already to the personal interventions by Mr. Malu in dealings with the Union and these acts can hardly be described as being in the best interests of harmonious industrial relations. Rightly or wrongly, the Union alleges that, in these actions, Mr. Malu was being advised by Mr. Bhatti, already described as "the strong man" in the Council's administration. It is probably for this reason that Mr. Malu and Mr. Bhatti together are blamed as individuals for the continued frustration suffered by the Union because of failure to have their grievances settled or even negotiated in the normal manner. Even when reference of the Trade Dispute to the Industrial Court had been approved by the Minister for Labour, this was opposed by Mr. Malu, although the Clerk to the Council had previously stated that "We must abide by the Ministry decision to take the matter to the Industrial Court". At the Special Meeting of Council on 20th February, 1968, convened to discuss the causes of the strikes, Mr. Malu also appears to have been unduly autocratic in refusing to allow discussion by Councillors on the issue of the removal of Mr. Bhatti linked with the misuse of Council funds, although this has been frequently stated by Council to have been the major cause of these strikes. Whatever the merits or demerits of discussing this issue in Joint Staff Committee, surely it was appropriate for members of Council to attempt to ascertain whether there was any foundation for the Union allegations. The Chairman's ruling that this issue was not on the Agenda is more than questionable. In "East African Standard" for 17th February, 1968, the Clerk to the Council is quoted as having said that "the Council will be meeting on Tuesday to decide finally what they would do in respect of Mr. Bhatti," but this was ruled out of order by Mr. Malu. This matter will be mentioned again when the question of possible political interference is examined. Several specific allegations by Union against Mr. Malu have already been dealt with at least one of these, Mr. Malu can also be accused of having abused his powers as Chairman of Council. In January 1967, the Clerk to Council had the instruction that all services rendered by Council to members and officers should be on a cash basis and, in evidence, Mr. Musau agreed that this directive should have applied equally to the Union. Yet, on the ploughing at his farm, Mr. Malu refused that payment was not made until four months later. In December 1967, Council resolved that Assistant Education Officers should be appointed within the County, which was contrary to the instruction from the Ministry that such appointments should be appointed without the approval of the Ministry so long as the Council remained in existence. When the Clerk to Council advised that this was illegal, the Chairman instructed the Clerk to inform him to proceed with appointments. The Clerk produced a forcefully worded letter to the Permanent Secretary to the Ministry. "Strong exception is taken that the Assistant Education Officers were appointed without the approval of the Ministry". Despite this, the Clerk to Council, Acting Treasurer did



being very efficient and seemed to be lacking in strength of character, the Local Government Regulations make it abundantly clear that members of Council (including the Chairman) must not interfere in the administrative functions of their officers. This is also referred to in the Report of the Local Government Commission of Inquiry 1966 as follows :- "We are satisfied that in certain cases some members of local authorities are in the habit of exceeding their place of responsibilities in local government ..... It is important to stress that no members should interfere within the area of management reserved for the executive action of a Chief Officer."

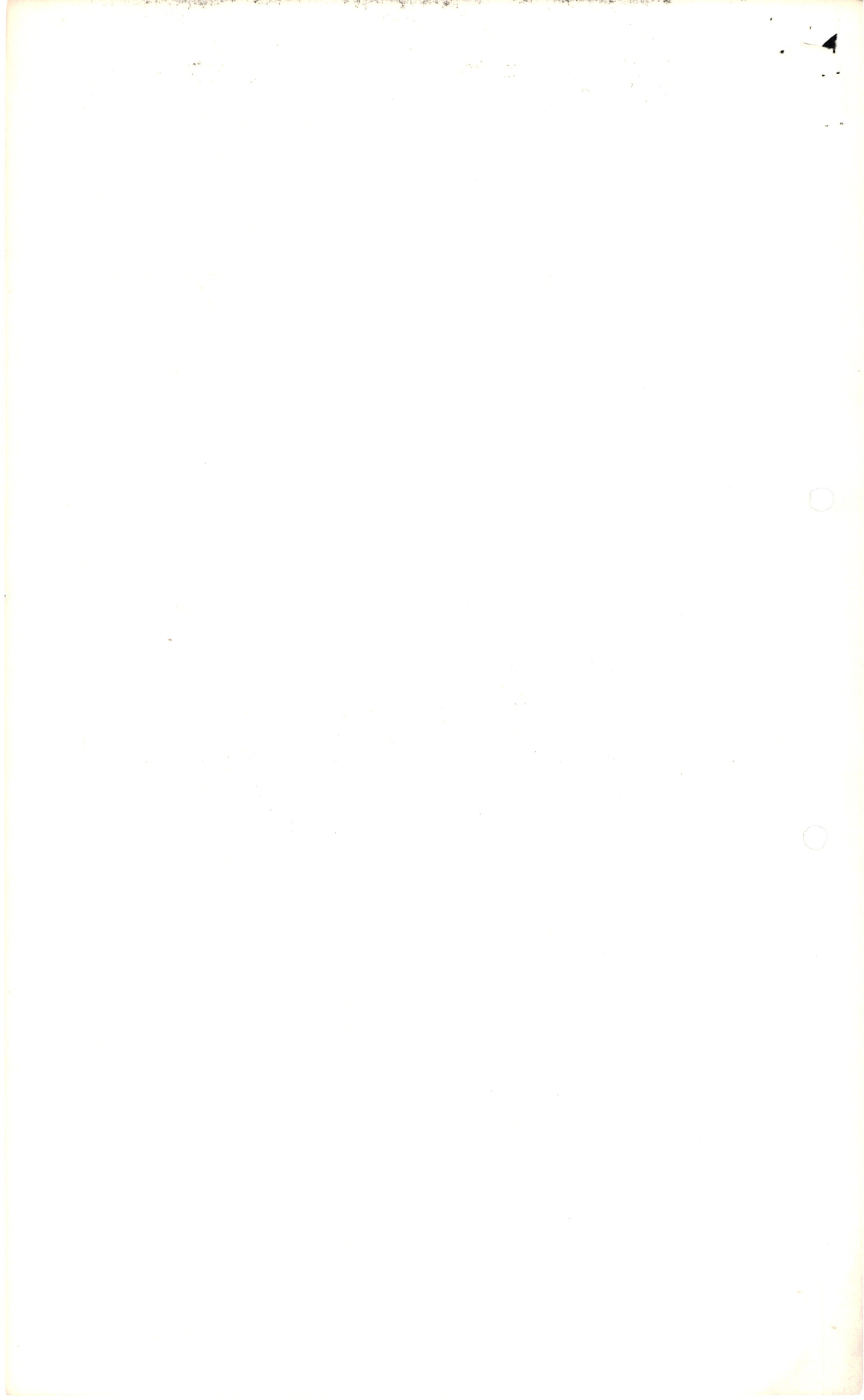
5. Conclusions :

The Commission was instructed to inquire more particularly into the following matters :

- (a) the allegations made by the Kenya Local Government Workers Union in the dispute ;
- (b) the counter allegations made by the Masaku County Council ascribing political motive to the said Kenya Local Government Workers Union in making its allegations ;
- (c) the extent, if any, that the Financial Adviser to the Masaku County Council, Mr. Bhatti, can be held responsible for the matters alleged by the Union, if any ;
- (d) the part that politics played in the dispute.

For convenience of presentation, item (c) the extent of Mr. Bhatti's responsibility, will be taken before item (b) the counter-allegations of the Council. In addition, because of the close inter-relationship between the first and third as listed above, and also between the second and fourth, they will be treated jointly, in order to avoid repetition and overlapping.

- (a) the allegations of the Union have already been examined at considerable length as providing the foundation for this Inquiry and it was not possible to avoid drawing certain conclusions in that examination and also hinting at others. Although in a number of cases, the Union allegations were unfounded, irrelevant or without adequate evidence in support, the Commission takes the view that the Union have been justified in bringing forward their general case as a matter of public importance. Although the Commission does not support the Union in having taken strike action (in fact, the Union leaders state that these were "mass withdrawals" by employees : in other words unofficial strikes) there is no doubt that their various allegations against the Council on industrial relation matters were justified. There were a number of allegations of administrative inefficiency and financial irregularity which have been proved, but these are not considered by the Commission to be very serious excepting for the relationship between the County Council and the two Urban Councils. This has been examined at some length in the proceeding section because



of its importance, which does not yet seem to have been fully realised by the Chairman of Council and the Chief Officers. Even as recently as the hearing in the Industrial Court, the spokesman for the Council is reported as having said that : "The Respondents refuted the allegations that the Athi River Urban Council had allowed their finances to run into heavy losses. There had been no financial loss at Athi River." Although the legal basis for the Union's allegation in this respect was unsound and despite the fact that the Ministry had already acted, the Union was justified in making the general accusation. Reference has already been made to the Union's allegations on misuse of funds and abuse of power. Although the analysis of evidence in this Report has dealt only with such cases as seemed to be well-founded, it is considered in these allegations also that the Union had sufficient justification.

(b) The extent of Mr. Bhatti's personal responsibility is difficult to assess absolutely, largely because he was not available to give verbal evidence. In his written submission to the "Investigating Committee" already mentioned, he is very apt to pass the blame for inefficiencies and irregularities to junior staff or the Acting Treasurer. The latter is blamed for the incompetence shown in dealing with the return of National Social Security contributions, but here Mr. Bhatti is quite untruthful and he was wholly to blame for his stubborn attitude throughout. Also on the sale of 150 cattle to Mr. Johnson Wanbua, Mr. Bhatti states that this was handled entirely by the Acting Treasurer, although Mr. Bhatti could hardly fail to have known of this highly irregular transaction. In any case, it is clearly stated in Local Government Regulations that, when a Financial Adviser is appointed, he is accountable for the work of the Treasurer's Department and for the finances of the Council generally. More serious is his share of responsibility for the financial losses in the two Urban Councils. This is stated very clearly in a letter to Mr. Bhatti from the Ministry dated 11th July 1967, from which extracts are taken as follows : "despite the undertaking given by the Clerk in his letter of 30th May, the records (of Masaku Urban Council) are not upto date ..... I must draw the Council's attention to the provisions of the Local Government Regulations 1963 which deals with the officers of Urban and Area Councils ..... It is not necessary to point out to the Chief Financial Officer his responsibilities" Furthermore, the Commission considers that if Mr. Bhatti had shown a little more alacrity in complying with Ministry instructions to examine the financial records of the Urban Council, sufficient prima facie evidence might have been obtained to make possible the apprehension of Mr. Dildah Singh before his abscondment to India. On industrial relations, it seems clear that Mr. Bhatti, as the "strong man" of the Council's administration, played a leading part and was probably the principal



adviser to the Chairman of Council. It has already been mentioned that Mr. Bhatti boasted of having secured the prosecution of Mr. Mwanja, which action certainly triggered-off the second strike. Whether these allegations were sufficient to warrant his removal from his post may be a moot point, but certainly seem to have warranted examination by members of Council.

- (c) In their submission to the Industrial Court, which was repeated to the Commission, the Council attempted to dispose of the various allegations of the Union by making the counter-allegation that they were politically inspired. In the findings of the Industrial Court, it is stated that "It was most unfortunate that politicians had involved themselves in this matter and one faction held the view that if Mr. Bhatti was removed from his post, it would bring the downfall of the present Chairman, Mr. Malu." The Commission had studied this issue most carefully and can state categorically that there is no evidence whatever of involvement by politicians until at least after the second strike. Since strikes are still considered to be matters of public importance in Kenya, it is hardly likely that prominent politicians in the County area could avoid making pronouncements about the strike whether for or against the County. Because of his personal involvement in industrial relations on behalf of the County, it is equally unlikely that Mr. Malu could avoid having his name linked with the dispute and some measure of blame attached. Similarly, embezzlement of a sum exceeding Shs. 300,000.00 does not happen every day and when this concerns public funds, it is hardly strange that a Parliamentary question was asked. In fact, it is surprising that no Member asked the Speaker for time to debate this loss of funds as a matter of national importance. However, the dispute does not appear to have entered the political arena until after the refusal of the Chairman of Council to allow debate at the Special Meeting on matters which definitely had led to the strike. As already stated, the Commission believes that this decision was procedurally incorrect and, in thus stifling legitimate discussion, was fundamentally unwise. When it appears that suitable corrective action is no longer possible within a Council, it is almost inevitable that this should lead to political agitation from without. The next, abortive, meeting of Council supports this view, when a number of Councillors demonstrated their opposition to Mr. Malu by organising an absence from the Meeting so that a quorum could not be obtained. There is no evidence that this act was inspired by politicians and it seems probable that it was, in fact, quite spontaneous by the Councillors themselves.





- (d) As already stated, there is no evidence that politics played any part in the dispute as such, but, eventually and certainly from March, the affairs of Masaku County Council, when the allegations of the Union became more widely known, appear to have become an issue of political controversy. In this the name of Mr. Malu as an individual, was included, largely because, by exceeding his statutory powers, he had largely identified himself with the Council, which, for a variety of reasons which have already been commented upon, had become highly unpopular throughout the County area.

6. Recommendations.

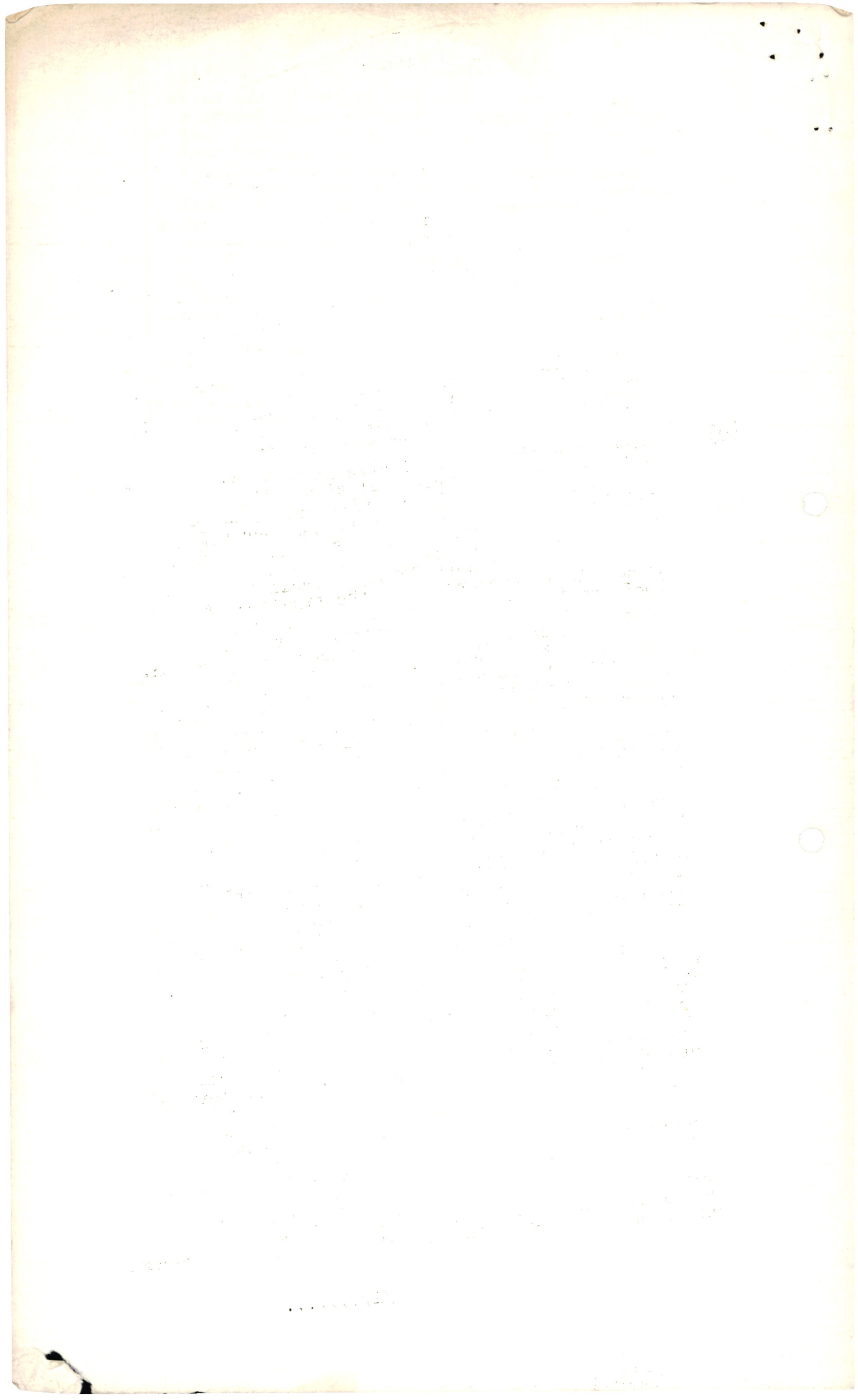
- (a) The Commission considers that the affairs of Masaku County Council will not be restored to anything approaching normality unless and until there is a new Chairman of Council. A prominent public figure must, like Caesar's wife, be above suspicion and this, unfortunately, is not the case with Mr. Malu. By using his official position to his own personal advantage, however trivial the detailed instances, he has forfeited the confidence of the country. By antagonising the Union in his mishandling of industrial relations, he had lost the support of Council employees. By assuming almost dictatorial powers, he has become personally associated with the various examples of incompetence and dishonesty within the Council which have been mentioned in this Report. Accordingly the Commission recommends that he be asked to resign his appointment as Chairman of Council, but permitted to continue as a Councillor if he so desires.
- (b) The Commission has very carefully considered the responsibility of the Clerk and the Treasurer. Neither were very truthful as witnesses and attempted to prevaricate wherever possible. They can hardly be considered very efficient in the positions which they hold and both were involved in several of the irregularities mentioned in this Report. Both are certainly weak as individuals and could easily be dominated by the more forceful personality of the Chairman and, possibly, the former Financial Adviser. In most cases, their reluctance to answer questions in forthright manner appears to have been due to a desire to shield Mr. Malu rather than themselves, and they certainly appeared to be afraid of him, as was the only other officer to give evidence. Taking the view that under a new Chairman they may conduct their duties more correctly and possibly with somewhat greater efficiency, the Commission considers that they should continue in office, but the Ministry is requested to provide them with as much support as the staffing position allows.

- (c) Because of the low state of industrial relations in the County, the Council should, subject to Ministry approval, arrange to appoint an Industrial Relations Officer as early as possible in order to advise the Council upon methods of improving industrial relations and negotiations with the Union. The Ministry of Labour should also be asked to advise upon such appointment.
- (d) The Commission would like to make certain general recommendations concerning improvements to financial administration which, although based upon investigations into Masaku County Council, may also be relevant to other local authorities. Similar recommendations were made in the Report of the Local Government Commission of Inquiry 1966 and have been accepted in principle by Government, as stated in Sessional Paper No. 12 of 1967, but the present recommendations are intended to be rather more specific.
- (i) The Local Government Regulations 1963 contain a tortuous mass of verbiage and could, with advantage, be re-written in a clearer, simpler and abbreviated form in which the more essential principles could be found with less difficulty than at present so that there could be no excuse for anyone concerned with Local Government attempting to plead ignorance of these requirements. Such a code of Regulations would then require supporting by means of Model By-laws arranged in logical groups, dealing in greater detail with particular areas.
- (ii) The inspectorate in the Ministry of Local Government requires to be at least doubled in strength, so that more adequate supervision of local government financial affairs can be made possible. The existing understaffing (even on too small an establishment) may well be due to parsimony on the level of salaries currently being offered and it is recommended that salary scales be made adequate to attract suitable staff.
- (iii) Because of shortage of fully experienced inspectors in the Ministry, it is also recommended that when senior staff are proceeding on inspections, they should each be accompanied by junior, semi-trained staff. By delegating part of the more routine or straightforward duties on inspection, there would be some economy in the time of senior staff, but, even more important, this would provide a valuable form of on-job training to junior staff.
- (iv) After examining the Annual Abstract of Accounts of Masaku County Council for 1965, 1966, 1967, the Commission is convinced that the method of preparing and presenting accounting information requires to be completely revised. The present format appears to be based upon elementary book-keeping techniques with no knowledge of modern skills in presenting consolidated accounts.



At present the layman can derive little useful information regarding the financial position of the Council and the process of audit must be tedious. It is, therefore, recommended that a Working Committee be appointed consisting of a person of the calibre of Mr. John Mwangi, C.A. (who served upon the 1966 Commission) a Senior Inspector from the Ministry of Local Government and, possibly a staff member from the Kenya Institute of Administration, who would be invited to devise a simpler and clearer method of preparing Local Authority accounts in a standardised form. This greater clarity, however, must not involve any departure from basic principles of accounting. The intention is to replace an ox-cart by a modern, streamlined motor-vehicle, but not by a wheelbarrow. If the same presentation were employed on Annual Estimates, a ready-made basis for Budgetary Control would be provided and central accounts could be superimposed for audit purposes. There would also be economies in training and supervising accounts staff.

- (v) Since the dispute originated in problems arising from industrial relations, the Commission has considered ways and means of eliminating, or at least reducing such difficulties not only at Masaku, but in other local authorities where problems are similar. Investigation into the affairs of Masaku County Council have shown (and this is supported by the findings of the 1966 Commission) that statutory and other obligations of the local authority to provide primary education, health services, roads repairs and many other services, necessarily involves the authority in expenditure beyond its income. The deficit is adjusted by draining capital reserves (where these still exist) and by Government grants. This is undesirable, but, apparently, must continue to be accepted for some time to come. If, however, the employees of these local authorities, simply because their employers are in financial deficit, are required as a consequence to continue to earn less than the going rate for their services, that would be unjust. But, under the present circumstances, normal negotiations between the Councils and the Union are just not possible, because of the necessity to have any additional expenditure approved by the Ministry, who, in turn, require Treasury approval to pass supplementary estimates. If this can be accepted as a fair statement of the present unsatisfactory position, it is recommended that early consideration be given to the formation of a Local Government Arbitration Tribunal, with very carefully drawn terms of reference, which would have powers to consider wage demands by employees of any local authority after there had been negotiations between the Union and the Council concerned. The award of the Tribunal should be final and, where the Council was in financial deficit, the amount of Government grant should be increased by the amount involved. Terms of reference and procedures generally could be considered by a Joint Committee composed of representatives drawn from the Ministries of Local Government, Finance and Labour, also from the Association of Local Government



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