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**THE NATIONAL ASSEMBLY**  
**ELEVENTH PARLIAMENT**  
**THIRD SESSION (2015)**

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**THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL  
AFFAIRS**

**REPORT**

**ON THE PETITION FOR THE REMOVAL FROM OFFICE OF THE  
CHAIRPERSON & VICE CHAIRPERSON OF THE ETHICS AND  
ANTI-CORRUPTION COMMISSION**

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**CLERK'S CHAMBERS,  
PARLIAMENT BUILDINGS,  
NAIROBI.**

**APRIL, 2015**

## TABLE OF CONTENTS

<b>No.</b>		<b>Page</b>
1.	List of appendices.....	1
2.	Preface.....	2
3.	Executive Summary.....	6
4.	Background.....	8
5.	Submissions by the Petitioner, Mr. Geoffrey Oriaro.....	11
6.	Submissions by Mr. Mumo Matemu.....	14
7.	Submissions by Ms. Irene Keino.....	31
8.	Submissions by Mr. Michael Mubea.....	44
9.	Submissions by Mr. Halakhe Waqo.....	47
10.	Submissions by the Commission on Administrative Justice.....	49
11.	Issues for determination.....	50
12.	Recommendations.....	55

## LIST OF APPENDICES

### Appendix No.

1. Minutes of Committee sittings;
2. Mr. Geoffrey Oriaro's Petition;
3. Supreme Court Petition No 12 of 2013 – Trusted Society of Human Rights Alliance –vs- Mumo Matemu and others;
4. EACC file movement register for January, 2014;
5. Letter of appointment of Mr. Michael Mubea by EACC;
6. Letter dated 9<sup>th</sup> September, 2014 by Ms. Irene Keino and Prof. Jane Onsongo to H.E. the President;
7. Letter by Ms. Irene Keino and Prof Jane Onsongo recanting the letter dated 9<sup>th</sup> September, 2014;
8. Letter dated 26<sup>th</sup> March, 2015 purportedly written by Mr. Mumo Matemu;
9. Mr. Mumo Matemu's written submissions;
10. Correspondence and other documents relating to alleged fraud on Plot 1/287 - Nairobi;
11. Ms. Irene Keino's written submissions;
12. Written submissions by the Commission on Administrative Justice;
13. A report of the Departmental Committee on Justice and Legal Affairs of the 10<sup>th</sup> Parliament declining to approve the appointment of EACC nominees for Commissioners;
14. Press release and letter by Prof. Jane Onsongo on her resignation as Commissioner

## **1. PREFACE**

**Hon Speaker,**

On behalf of the Departmental Committee on Justice and Legal Affairs, and pursuant to provisions of Standing Order 199(6), it is my pleasant privilege and honour to present to this House the report of the Committee on the Petition for removal from Office of **Mr. Mumo Matemu**, Chairperson, Ethics and Anti-Corruption Commission (EACC) and **Ms. Irene Keino**, the Commission's vice chairperson.

### **1.1. Mandate of the Committee**

The Committee derives its mandate from Standing Order No. 216(5) which provides as follows:-

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
- c) To study and review all legislation referred to it;*
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;*
- e) To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister; and*
- f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.*

The Second Schedule of the Standing Orders on Departmental Committees further states the subjects which the Committee is supposed to deal with while discharging its mandate. The subjects are as follows:-

- (a) Constitutional affairs;
- (b) The administration of law and Justice, including the Judiciary, public prosecutions, elections, ethics, integrity and anti-corruption; and

(c) Human rights.

### **1.2. Committee Membership**

The Committee was constituted on Thursday, 16th May, 2013 and comprises the following:-

1. Hon. Samuel Chepkong'a, M.P. – Chairperson
2. Hon. Priscilla Nyokabi, M.P. – Vice Chairperson
3. Hon. Njoroge Baiya, M.P.
4. Hon. Muriithi Waiganjo, M.P.
5. Hon. Ndirangu Waihenya, M.P.
6. Hon. Florence Kajuju, M.P.
7. Hon. Kang'ata Irungu, M.P.
8. Hon. Benson Mutura, M.P.
9. Hon. John Njoroge Chege, M.P.
10. Hon. William Cheptumo, M.P.
11. Hon. Mohamed Abdi Haji, M.P.
12. Hon. Kangongo Bowen, M.P.
13. Hon. Sammy Koech, M.P.
14. Hon. Moses Cheboi, M.P.
15. Hon. Paul Bii, M.P.
16. Hon. Charles Gimose, M.P.
17. Hon. Johanna Ng'eno, MP.
18. Hon. Boniface Otsiula, M.P.
19. Hon. David Ouma, M.P.
20. Hon. Neto Agostinho, M.P.
21. Hon. Kaluma Peter, M.P.
22. Hon. Fatuma Ibrahim Ali, M.P.
23. Hon. Ben Momanyi Orari, M.P.
24. Hon. T. J. Kajwang', M.P.
25. Hon. (Bishop) Mutua Mutemi, M.P.
26. Hon. Olago Aluoch, M.P.
27. Hon. (Dr.) Christine Oduor Ombaka, M.P.
28. Hon. Munuve G. Mati, M.P.
29. Hon. Mwamkale William Kamoti, M.P.

### **1.3. Petition for the removal from office of Mr. Mumo Matemu as the Chairperson, Ethics and Anti-Corruption Commission (EACC) and Ms. Irene Keino as the Commission's vice chairperson**

By a petition dated 12<sup>th</sup> March, 2015, Mr. Geoffrey Oriaro, an Advocate of the High Court of Kenya petitioned the National

Assembly for the removal from office of Mr. Mumo Matemu and Ms. Irene Keino as the chairperson and member respectively of the Ethics and Anti-Corruption Commission (EACC). The Petition was premised on Article 251 of the Constitution of Kenya and Standing Order 230.

The petition was conveyed to the House by the Speaker on 19<sup>th</sup> March, 2015 where he directed the Committee to investigate the matter and submit a report to the House within fourteen (14) days in line with the Standing Orders.

#### **1.4. Public participation in the vetting process**

Article 118(1) of the constitution of Kenya provides as follows:-

*‘Parliament shall:-*

- (a) Conduct its business in an open manner, and its sittings and those of its Committees shall be in public*
- (b) Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees”*

In line with Article 118 (1) of the constitution, the Committee through notices in the local daily newspapers (the Daily Nation and Standard) invited the public to submit memorandum on the petition for the purposes of its hearing and decision making.

The following members of the public submitted memoranda all opposing the removal of Mr. Matemu and Ms. Keino from Office:-

- (a) Mr. Samuel Mwangi;
- (b) Mr. Peterlis Charles Mboya; and
- (c) Mr. Nicholas Magotswi Simani

The Committee considered all the memoranda before arriving at findings and recommendations.

#### **1.5 Sittings of the Committee**

The Committee held five (5) sittings in the course of the vetting process. The first sitting was held on 2<sup>nd</sup> April, 2015 while the last sitting where the Committee adopted this report was held on 21<sup>st</sup> April, 2015.

While conducting the hearing, the Committee was guided by the Constitution of the Republic of Kenya, the National Assembly Standing Orders, the Public Appointments (Parliamentary Approval) Act, Chapter 136, the Judicial Service Act No. 1 of 2011 and common conventions, practices and usages.

#### **1.6. Acknowledgement**

The Chairperson wishes to thank and commend Committee Members for their devotion and commitment to duty which made the interrogation of the Petition and production of this report a success. The Committee on the other hand wishes to thank the Office of the Speaker and Clerk of the National Assembly which provided overall guidance and technical support without which its work would have been in vain.

**Hon. Speaker Sir,**

On behalf of the Committee, I now wish to table this report in the House.

SIGNED.....

**Hon. Priscilla Nyokabi, MP  
(Vice Chairperson)**

**Departmental Committee on Justice and Legal Affairs**

DATE..... 21<sup>st</sup> APRIL 2015 .....

## 2.0

### EXECUTIVE SUMMARY

Pursuant to Article 251 of the Constitution of Kenya 2010 and Standing Order, 230, Mr. Geoffrey Oriaro, and Advocate of the High Court of Kenya petitioned the House for the removal of Mr. Mumo Matemu and Ms. Irene Keino as chairperson and vice chairperson of the Ethics and Anti-Corruption Commission (EACC). He based his petition on the following grounds:-

- (a) Serious violation of the constitution of Kenya;
- (b) Serious violation of the Ethics and Anti-Corruption Commission Act, the Anti-Corruption and Economic Crimes Act and the Penal Code;
- (c) Gross misconduct in the performance of their functions; and
- (d) Incompetence.

Having considered provision of Articles 73, 75, 76, 125, 161, 171, 172, 173, 245 and 251 of the Constitution of Kenya; and having considered the provisions of the Ethics and Anti-Corruption Commission Act, and Standing Order 230, the Committee reports to the House that the Petition discloses grounds for the removal from office of the following members of the Commission: Mr. Mumo Matemu and Ms. Irene Keino and recommends to the House as follows:-

- (i) That the House resolves that the Petition herein together with the materials in its support be sent to His Excellency the President pursuant to Article 251 of the constitution;
- (ii) That the House resolves that His Excellency the President appoints a tribunal to deal with the matter in accordance with Article 251(5) of the Constitution.
- (iii) That considering the matters to which the Petition herein relates, the House resolves that His Excellency the President suspends the Commissioners herein pending the determination of the tribunal.

The Committee apportions blame to both the Commissioners and the Secretariat for the poor performance by the Commission. Its hands over the removal of the secretariat from office are however tied since the Petition before it is for the removal of two Commissioners only.

The report was adopted by a majority eighteen (18) Members with Hon. Tom J. Kajwang' dissenting.

3. **BACKGROUND**

Mr. Geoffrey Oriaro's petition is based on Article 251 of the Constitution of Kenya and Standing order 230 which outlines the removal process. Article 251 of the Constitution provides for the removal from office of Members of Commissions and holders of Independent Offices as follows:-

***(1) A member of a commission (other than an ex officio member), or the holder of an independent office, may be removed from office only for:-***

- (a) serious violation of this Constitution or any other law, including a contravention of Chapter Six;***
- (b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;***
- (c) physical or mental incapacity to perform the functions of office;***
- (d) incompetence; or***
- (e) bankruptcy.***

***(2) A person desiring the removal of a member of a commission or of a holder of an independent office on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.***

***(3) The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the President.***

***(4) On receiving a petition under clause (3), the President:-***

- (a) may suspend the member or office holder pending the outcome of the complaint; and***
- (b) shall appoint a tribunal in accordance with clause (5).***

***(5) The tribunal shall consist of:-***

- (a) a person who holds or has held office as a judge of a superior court, who shall be the chairperson;***

- (b) *at least two persons who are qualified to be appointed as High Court judges; and*
- (c) *one other member who is qualified to assess the facts in respect of the particular ground for removal.*

*(6) The tribunal shall investigate the matter expeditiously, report on the facts and make a binding recommendation to the President, who shall act in accordance with the recommendation within thirty days.*

*(7) A person suspended under this Article is entitled to continue to receive one-half of the remuneration and benefits of the office while suspended.*

The role of the Committee is therefore to interrogate the Petition and report on whether it discloses one or more grounds set out under Article 251 (1).

While interrogating the Petition, the Committee was also guided by Article 10 and 95 (5) of the Constitution of Kenya which provide as follows:-

***Article 10. (1) - The National values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them:-***

- (a) applies or interprets this Constitution;*
- (b) enacts, applies or interprets and law; or*
- (c) makes or implements public policy decisions*

***(2) The national values and principles of governance include:-***

- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;*
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non discrimination and protection of the marginalized;*
- (c) good governance, integrity, transparency, and accountability; and*
- (d) sustainable development*

***Article 95. (5) - The National Assembly:-***

- (a) reviews the conduct in office of the President, the Deputy President and other state officer and initiates the process of removing them from office; and**
- (b) Exercises oversight of state organs.**

The Committee was further guided by Sections 16 and 17 of the Ethics and Anti-Corruption Commission Act which makes provisions on the appointment and removal from office of the Commission's Chief Executive Officer (CEO)/Secretary.

There is no provision in the Constitution of Kenya or the Standing Orders requiring the Petitioner to proof grounds on which he relies to remove persons from office beyond reasonable doubt.

**4.0. CONSIDERATION OF A PETITION FOR REMOVAL FROM OFFICE OF MR. MUMO MATEMU, EACC CHAIRPERSON AND MS. IRENE KEINO, VICE CHAIRPERSON**

**4.1. SUBMISSIONS BY MR. GEOFFREY ORIARO, THE PETITIONER**

Mr. Geoffrey Oriaro appeared before the Committee on 2<sup>nd</sup> April, 2015 at 10.20 a.m. and shed light on his petition.

**Issues raised in the Petition**

By a Petition dated 12<sup>th</sup> March 2015, Mr. Geoffrey Oriaro petitioned the House to remove the two Commissioners from office on the similar grounds of:-

- (a) Serious violation of the Constitution;
- (b) Serious violation of the Ethics and Anti-Corruption Commission Act, The Anti-Corruption and Economic Crimes Act and the Penal Code;
- (c) Gross misconduct in the performance of functions; and
- (d) Incompetence.

**Facts constituting grounds for removal from office of Mr. Mumo Matemu, Commission chairperson**

Mr. Oriaro relied on a letter dated 9<sup>th</sup> September, 2014 addressed to the President and allegedly authored by Commissioners Irene Keino and Prof. Jane Onsongo. The letter stated as follows:-

- (a) Mr. Matemu was secretly involved in a meeting with a suspect of the Anglo-Leasing Scandal, Mr. Deepak Kamani which violates:-
  - (i) Article 10 (National Values and Principles of Governance), Article 73 (Responsibilities of Leadership); Article 75 (Conduct of State Officers) and Article 232 (Values and principles of public service) of the Constitution;
  - (ii) Section 11 of the Ethics and Anti-Corruption Commission Act (Additional functions of the Ethics and Anti-Corruption Commission);

- (iii) Section 46 (abuse of Office) of the Anti-Corruption and Economic Crimes Act; and
  - (iv) Sections 99 (Officers charged with administration of property of a special character or with special duties not to act where they have a private interest); 101 (Abuse of Office) and 127 (Breach of trust) of the Penal Code.
- (b) Mr. Matemu has publicly declared that he joined the Commission to make money and not to fight corruption which violates Article 10 (National Values and Principles of Governance), Article 73 (Responsibilities of Leadership); Article 75 (Conduct of State Officers) and Article 232 (Values and principles of public service) of the Constitution;
- (c) Mr. Matemu habitually interferes with operational matters including requesting for particular investigation files through unofficial methods and short-circuiting the office of the CEO in order to establish the status of investigations in those specific files. This violates Article 10 (National Values and Principles of Governance), Article 73 (Responsibilities of Leadership); Article 75 (Conduct of State Officers) and Article 232 (Values and principles of public service) of the Constitution;
- (d) Mr. Matemu has failed to exercise leadership and judgment in directing the Commission to achieve its strategic goals based on its core values. This violates Article 10 (National Values and Principles of Governance), Article 73 (Responsibilities of Leadership); and Article 232 (Values and principles of public service) of the Constitution;
- (e) Mr. Matemu has failed to consult and inform Members of the Commission about important matters occurring at the Commission, with the result that press releases and media briefs have been communicated and conferences held, without discussion or communication to Members of the Commission and the CEO. This violates Article 10 (National Values and Principles of Governance), Article 73 (Responsibilities of Leadership); and Article 232

(Values and principles of public service) of the Constitution;

- (f) Mr. Matemu has adopted a poor leadership style leading to low staff morale, high levels of indiscipline and failure by the Commission to achieve its strategic goals. This violates Article 10 (National Values and Principles of Governance), Article 73 (Responsibilities of Leadership) and Article 232 (Values and principles of public service) of the Constitution; and
- (g) Mr. Matemu fuels inter-personal wars within the Commission in violation of Article 10 (National Values and Principles of Governance), Article 73 (Responsibilities of Leadership); and Article 232 (Values and principles of public service) of the Constitution;
- (h) By a letter dated 9<sup>th</sup> March 2015 by Mr. Matemu to Mr. Michael Mubea, the Deputy Chief Executive Officer of EACC and a Memo of the same date by Mr. Matemu to Mr. Halakhe Waqo, CEO EACC. The two documents purported to interdict the Deputy CEO and withdraw all his benefits including his security detail. Mr. Oriaro argues that the two documents under the hand of Mr. Matemu violated:-
  - (i) Article 47 (fair Administrative Action) and Article 10 of the Constitution by not affording Mr. Mubea a fair hearing and referencing resolutions that were never made with the knowledge of the CEO;
  - (ii) Section 11 (6) Ethics and Anti-Corruption Act, as Mr. Matemu is a non-executive Commissioner;
  - (iii) Section 10 (1) (Abuse of Office) of the Penal Code, by withdrawing the security detail of Mr. Mubea arbitrarily;
  - (iv) The Ethics and Anti-Corruption Commission Human Resources Manual, August 2013, provides the CEO with the responsibility of interdicting staff and that staff are to continue to receive House and Commuter allowances in full in addition to their Medical benefits while on interdiction.
- (i) Undisclosed evidence that before the arraignment in Court of the Kamanis on Anglo-Leasing related cases, Mr.

Matemu called for the Anglo-Leasing files and plucked out important evidence before returning them to the Secretariat of the EACC. This led to the differences between him and the Deputy CEO when he found out that there were duplicate files.

- (j) MOUs entered into by EACC with “institutions notorious in corruption” including the County Government of Nairobi which compromise the Commissions impartiality.

### **Facts constituting grounds against Ms. Irene Keino**

The Petitioner cited the following as facts constituting grounds for the removal of Ms. Keino from office:-

- (i) On 20<sup>th</sup> February 2015, the Chairperson of the Commission on Administrative Justice (CAJ) received a letter from a member of Staff of the National Social Security Fund (NSSF) indicating that Ms. Keino is doing business with NSSF through Lulu East Africa Limited and Eco Plant Limited;
- (ii) Ms. Keino and Prof. Jane Onsongo authored the letter dated 9<sup>th</sup> September 2014 to the President detailing various accusations against Mr. Matemu. The two Commissioners have not denied authoring the letter and instead admitted that they were misled into writing it. Their gullibility makes them unfit to hold the office;
- (iii) The further claim by Ms. Keino and Prof. Onsongo that the issues raised in the letter to the President dated 9<sup>th</sup> September 2014 were “resolved”. The matters raised in the letter touch on the integrity of the Chairperson and cannot be resolved among the Commissioners.
- (iv) MOUs entered into by EACC with “institutions notorious in corruption” including the County Government of Nairobi which compromise the Commissions impartiality.

Mr. Oriaro’s petition is annexed hereto as appendix 2.

### **4.2. SUBMISSIONS BY MR. MUMO MATEMU, CHAIRPERSON, ETHICS AND ANTI-CORRUPTION COMMISSION (EACC)**

## **Introductory**

When he was sworn into office to commence work at the Ethics and Anti-Corruption Commission (EACC), he was warned severally that *“the day that you start dealing with grand corruption will be the day you kick start the process of losing your job.”*

Although he did not rubbish this warning, he did not expect to see the sort of things he was seeing lately, including this petition, i.e.

- (i) Attempts to cause legislative inroads into the independence of the Commission through amending the EACC Act so as to make the Commission legally unable to properly oversight and supervise certain officers within the EACC.
- (ii) The filing of this petition in apparent reaction to action taken by the Commission against a single employee;
- (iii) After the Commission commenced the action against one of its employees, a petition addressed to the H.E. the President surfaced without evidence of how it was transmitted.
- (iv) Two days later another petition which almost wholly draws on the first document on a word for word, cut and paste basis was submitted and tabled in the National Assembly.
- (v) By Sunday of the same week the contents of the petition were highlighted in the media, followed a series of media sensationalization of Commission matters, and leakage of confidential documents.

The petition can be divided into three parts namely:-

- (i) The part that is wholly based on hearsay, as it relates to matters alleged by other parties and later recanted; the materials in this part cannot form the basis of a petition;
- (ii) The part that relates to the interdiction of a member of staff of the Commission. This part was a matter of Industrial and Labour Relations Court, if indeed it could not be resolved internally.
- (iii) Some of the issues raised in the petition touch on the ongoing case which is at the Supreme Court relating to his appointment as the chairperson of EACC. To this extent this petition is

therefore a nullity and should be dismissed as the same offends the sub-judice rule. See attached copy of the appeal in the Supreme Court marked as appendix 3.

A scrutiny of the petition and the documents submitted *visa vis* the requirements of Standing Order 230 indicate that most of the attached documents are attributable to third parties other than the petitioner.

**Issues raised in the petition against himself as the Chairperson of EACC**

**(i) Secretly engaged in meetings with architects of Anglo-Leasing scam in particular Mr. Kamani**

He does not remember ever meeting the 'Mr. Kamani' referred to in the Petition and he doesn't know who 'Mr. Kamani' is. He has no recollection of any personal interactions or engagements with persons who have been charged in the Anglo-leasing scandal and who carry their surname Kamani. The following persons who have been accused in the Anglo-Leasing Scandal have the Surname Kamani: *Deepak Kamani, Rashmi Kamani and Chamanlal Kamani*. He does not know which of the three is referred to as Mr. Kamani.

**(ii) Habitually interferes with operational matters including requesting for particular investigation files through unofficial methods and short-circuiting the office of CEO, in order to establish the status of investigations in those specific files**

- (a) The Commission as contemplated under Article 79 of the Constitution is established under the section 3 of the Ethics and Anti-Corruption Act of 2011 consisting of the Chairperson and two members as per section 4 of the Act. The Commission is mandated to investigate in line with Article 252(1) and Section 11(1) of the EACC Act and it appoints a secretariat to assist in carrying out that function;
- (b) The secretariat undertakes its tasks as an agent of the Commission. The Commission therefore cannot be accused of interfering with the work of an agent. The activities done by the secretariat are done under powers of the Commission. The Commission therefore must

know what the Secretariat, which is an agent of the Commission, is doing. This is done through oversight and supervision as the Commission cannot be ignorant of matters happening in the Commission or matters being handled by its members of staff.

- (c) The Commission is, under Article 252(1) (c) as read with Section 18(2) of the EACC Act, mandated to recruit or appoint staff to facilitate the Commission's discharge of its mandate. Such members of staff including the CEO are responsible to the Commission in the performance of their duties. The supervision of the discharge by the Secretariat staff of the functions donated by the Commission cannot be construed to be interference.
- (d) The exercise of oversight by the Commission upon activities of the staff is a responsibility that Commissioners and the Chairperson must discharge. Section 11(6)(a) of the EACC Act provides that the Commissioners shall ensure that the Commission and its staff, including the Secretary perform their duties to the highest standards possible in accordance with this Act. The import of this provision is that when it comes to performance of duties, all members of staff including the CEO are supervised by the Commissioners. This is done through a number of ways. As part of the oversight, the Commission has established an Operations Committee chaired by the Vice Chairperson of the Commission which in liaison with the Chairperson, oversees the day to day operations of the Commission.
- (e) In addition to (d) above, the Commission has also established a management tool known as 'the Plenary'. Plenary meetings are chaired by the Commission Chairperson and attended by other members of the Commission and senior members of staff. The Chief Executive Officer (CEO), the Deputy Chief Executive Officer (DCEO), the Directors and Heads of Departments participate and report directly to the Commission. The CEO and all the other officers who attend the plenary report directly to the Commission on functions relating to their mandate. At the plenary, the Commission can make resolutions and direct specific actions to be taken directly by the officers concerned. The Commission can

directly issue sanctions to any officer who is in default of or is complacent of the expected level of discharging their duties. In doing all these, the Commission does not need permission or concurrence of the CEO or any other member of staff.

- (f) Under the Section 11(6)(e) of the EACC Act, Commissioners are mandated to deal with reports of conduct amounting to maladministration, including but not limited to delay in the conduct of investigations and unreasonable invasion of privacy by the Commission or its staff. To determine such conduct by any of the Commission's staff including the CEO, the Chairperson and the Chair of the Operations Committee may directly engage with staff and inquire into the status of investigations or any other matter.
- (g) The Commission was in the process of conducting a full scale file audit exercise. The same was initiated by the Commission because it wants to establish the status on delayed investigations and other functions and programmes of the Commission. This was necessitated by numerous concerns by the Commission on Administrative Justice (CAJ), Members of Parliament, the Public and the media. Towards this end, a Committee has been established to conduct the file audit. This can never be interference but a function of the Commission.
- (h) The Chairperson is the Commission's spokesperson and in that capacity, he on behalf of the Commission engages stakeholders including Parliament and the public on operational matters of the Commission. For this reason, it is expected that the Chairperson is kept abreast and well versed with all Commission matters including operational matters. He may require a relevant member of staff to directly provide a report to him regarding the status of investigations or other functions and activities of the Commission, in order to effectively engage the media.
- (i) The Petitioner had not stated facts or any evidence to support the allegation of interference for me to know what he perceives to constitute "interference". The above cannot be construed to constitute interference

with functions of the Commission, because such operational matters are the very mandate vested in the Commission under the law.

The Petitioner was wrong in making the following assumptions:-

- (a) The assumption that the staff of the Commission including the CEO are an autonomous entity called Secretariat who can ignore the oversight by the Commission of their operations and operate on their own;
- (b) The assumption that Commissioners who as per section 7(2) of the EACC Act, are serving on a full time basis, have no role at all in the execution of the functions vested in them collectively and in particular the functions vested under Article 252(1) of the Constitution and Section 11(1) of the EACC Act; The law therefore envisaged a situation where the Commissioners will oversight the Secretariat on one hand and on the other the Secretariat was to frequently report to the Commissioners and seek guidance, directions and instructions and decisions.
- (c) The assumption that despite serving on full time basis the Commissioners have no role in the day to day administration and management of the functions of the Commission yet they are required under 11(6) (a) of the EACC Act to ensure that the Commission and its staff, including the CEO, perform their duties to the highest standards possible in accordance with this Act;
- (d) It is instructive to note that Section 16(6) of the EACC Act compels the CEO to be accountable to the Commission. The Section provides that "*The Secretary shall, in the performance of the functions and duties of office, be responsible to the Commission*". This explains why the threshold of oversight by the Commission must be very high.
- (e) The wrongful assumption that in the current institutional structure of EACC, the Commission is the equivalent of the defunct Advisory Board of the Kenya Anti-Corruption Commission (KACC). The further wrongful assumption that Investigations are an exclusive preserve of the secretariat and that in seeking to oversight

investigations, which is about the most critical role of the Commission, the Commissioners are interfering or meddling into the affairs of the secretariat.

**(iii). Interfering with evidence in Anglo leasing investigation files leading to loss of important documents obtained through Mutual Legal Assistance.**

He had never called for, or received any of the investigation files on Anglo-Leasing cases. The file movement register in his office was clear confirmation. Copies of the relevant pages of the register are attached and marked as appendix 4. He had never handled or saw any exhibits thereon either. For clarity purposes, he attended and co-chaired Anglo-Leasing briefing sessions with the Director of Public Prosecutions. In the said briefings which were also attended by EACC investigators and ODPP prosecutors, they only received executive reports from investigators. The reports included matrix of exhibits to be relied upon but the exhibits were never brought to the briefings.

The Commission has in place elaborate mechanisms for ensuring integrity and safety of information including investigation files. There are for example file movement registers for tracking movement of files within the Commission at the all stages.

The allegation of loss of documents was part of several complaints touching on mishandling of files by some members of staff. It is for this reason that that the Commission launched an audit exercise on all its investigation matters to establish if any officer may have been involved in compromising investigations. The ongoing investigations into the conduct of Deputy CEO are part of the Commission's action on allegations of mishandling files made against the Deputy CEO. How this allegation against him was changed and now leveled against the Chairperson remains a mystery. No documents were or can indeed possibly be lost under the Chairperson.

**(v). Declared in public that he joined the Commission to make money and not to fight corruption**

As the Chairperson of EACC, he had firmly focused on offering leadership and strategic direction in the war against corruption. He had remained faithful to his oath of office. He had never uttered such a statement to any person. This was a reckless allegation for

which he sought the Committee to summon the petitioner so that he could cross examine him on oath.

**(vi). Failed to exercise leadership and judgment in directing the Commission to achieve its strategic goals based on its core values**

The Commission was firmly focused on its mandate with the Chairperson and Members of the Commission working together as a team. Under his leadership and direction, the Commission achieved a number of milestones including the development of the 1<sup>st</sup> EACC Strategic Plan 2013- 2018.

Under his leadership, the Commission held numerous Commission meetings and made key resolutions on policy and operational matters aimed at ensuring efficient and effective implementation of the Strategic Plan. The Commission had since embarked on the process of tracking the implementation of the resolutions, but there was serious resistance. This tracking was done in a retreat attended by Commissioners and fully sponsored by the Commission. The Commission had demanded full implementation of Commission resolutions.

**(vii). Failing to consult and inform the commissioners about important matters occurring at the Commission, with the result that press releases and media briefs and conferences are held without discussion and communication with Commissioners and the CEO**

The Commission works as a team and has in place various Committees chaired by individual commissioners and comprise co-opted members of staff. Each commissioner, in discharging the affairs of his respective Committees, works in close liaison with the Chairperson of the Commission who provides leadership, guidance and direction to all the Committees.

The CEO sits in the Commission Committees and in his capacity as the Secretary to the Commission, he sits in all Commission meetings where Commission matters are discussed including important policy, operational and administrative issues.

The Chairperson is the spokesperson of the Commission and is mandated to speak on behalf of the Commission. The Chairperson regularly consults Commissioners and where necessary the CEO,

on important matters of the Commission before making public pronouncements. The Petitioner did not refer to or produce a press release in support of his assertion.

**(viii). Adopted a poor leadership style leading to a low staff morale, high levels of indiscipline and failure of the Commission of the Commission to achieve its strategic goals**

The Commission had not failed in achieving its strategic goals as enshrined in its Strategic Plan. Effective war against corruption involves various actors including EACC, DPP and the Judiciary.

He was sworn into office at a time when the Commission was experiencing severe challenges. Members of staff were resigning due to low morale. Under his leadership, the Commission had been able to undertake the following to address the challenges he found:-

- a) Finalization of the first Strategic Plan in March 2014. In the first phase of implementation, significant achievements were made in the areas of asset recovery, enforcement including conclusion of investigation in most of the Anglo-leasing cases as well as preventive services. The Commission was keen to finalize a number of high profile cases and in particular, those relating to the Geothermal Development Company, Mumias Sugar Company, Karen Land Investigations, Nairobi City County treasury and the Chickengate' scandal.
- b) Regional expansion by establishing additional Commission offices in Kisumu, Malaba, Eldoret, JKIA, Machakos, Nyeri, Isiolo, Mombasa and Malindi.
- c) Established institutional structures necessary for effective implementation of the expanded mandate of the Commission under the Constitution, the Leadership and Integrity Act, 2012 and the EACC Act;
- d) Enhancing institutional capacity of the Commission by recruiting over 200 additional staff;
- e) Development of a new Human Resource Manual and policies aimed at boosting staff morale and motivation.
- f) The Commission was now finalizing a policy on car loans and mortgage facilities, to improve staff welfare.

Through the Commission's Strategic Leadership and policy Direction the Commission had also achieved the following:-

- a. The Commission developed the external vetting framework for persons' seeking elective and appointive positions.
- b. The Commission re-organized the departments, directorates and regional offices to infuse energy and jump start the commission's operations. A specific Directorate to deal with Ethics and Leadership was put in place.
- c. The Commission started negotiations with the Salaries and Remuneration Commission (SRC) on the terms and conditions of service for EACC, state officers and all staff.
- d. The Commission embarked on the development of the general code of conduct for state officers based on Leadership and Integrity Act 2012. The same had been gazetted.
- e. The Commission set up standing committees; namely Risk and Audit, Operations and Finance and Planning, Human resource and training. The committees have been meeting as scheduled.
- f. The process of developing a charter through a consultant to enable better definition of roles and functions of the Commission and secretariat had begun in earnest.
- g. The Commission initiated the County advisory program which has been launched in 18 Counties so far. This was to create awareness and educate county governments on preventive strategies and sought to hold Governors accountable for county funds and developments.
- h. Anti-Corruption Risk Assessment and Corruption County Ranking was launched on request from H.E. the President during the National Leadership and Integrity Conference, to conduct risk assessments for all the 47 counties and develop corruption rankings for the 47 counties.

Under his stewardship, the Commission continues to take seriously matters related to conduct and performance of duty by members of the Commission and all staff. So far, the Commission had developed

the Specific Leadership and Integrity Code contemplated under Section 37 of the Leadership and Integrity Act and all State Officers in the Commission have signed and committed to it as required;

Regarding staff discipline, the Commission had at all times enforced the Code of Conduct for Members and Employees of the Commission provided under the Third schedule to the EACC Act. The Commission also developed internal rules and regulations on staff discipline and the same are strictly enforced.

As part of the Commission's resolve to ensure that all members of staff uphold and maintain high standards of integrity in the performance of their duties, the Commission recently interdicted the Deputy CEO in charge of Technical Services following serious allegations touching on his integrity in the discharge of his duties. Investigations have since been launched and are expected to be completed by 10<sup>th</sup> April 2015.

**(ix). Fuelled interpersonal wars within the Commission**

The Chairperson had always remained a unifying factor at the Commission. As expected of entities performing oversight functions, the Commission was bound to make decisions that may be unpopular. As the Commission steered the fight against corruption, there were other forces aiming their guns at the fight and sometimes attempting to use the Commission's staff.

It is expected that there are external forces that attempt to interfere with the unity of the Commission by seeking to divide members so that the Commission does not function effectively. It must be these forces that are behind the purported letter to the President and the Commission cannot rule out that they are behind this petition. The Commissioners having realized schemes to divide them are making every effort to resist such attempts.

The Commission is mandated to receive complaints from members of the public regarding the conduct of its staff and deal with such reports. It is not expected that a member of staff under investigation will resist oversight as was the case in the matter of interdiction of the Deputy CEO.

**(x). irregularly interdicted the Deputy CEO**

The Petitioner was a stranger to the matters relating to the interdiction of the DCEO. This was an internal management matter within the Commission which was normal in public institutions. It cannot be a ground for a petition at all. He, as a lawyer can offer legal services to the DCEO if the matter should end up at the Industrial and Labour Relations Courts.

Under the Section 11(6)(d) of the EACC Act, the Commissioners are mandated to deal with reports, complains of abuse of power; impropriety and other forms of misconduct on the part of the commission or its staff; The Commissioners, while executing this particular function, would be in order, if they engage directly with any concerned member of staff just in the same way as with the CEO; especially where matters of serious breaches are concerned.

The Commission received intelligence information from within and outside the Commission that there were serious integrity challenges surrounding the discharge of duties by the Deputy CEO who was in charge of all the technical directorates including Investigations. Some of the allegations included:-

- (a) Irregularly conducting an out-of-court settlement in respect of mega corruption cases in particular Anglo-leasing cases, without first briefing and seeking the approval or consent of the Commission.
- (b) Possible collusion with third parties to irregularly discharge a charge and transfer of the Integrity Centre building.

The Deputy CEO's interdiction was necessary to pave way for investigations in line with best practice and the law and there is no basis to allege malice on the part of the Commission. This was an internal management issue which is being handled within the Commission. This will never be a ground for removal of the Chairperson from office. The DCEO's contract of service was signed with the Commission. See the attached copy of DCEO's contract marked as appendix 5. The Commission, as an appointing authority, therefore has powers to interdict him.

The interdiction was done by the Commission in exercise of its functions under section 11(6) (e) of the Act. In executing this function, the Commissioners are not required by law to consult any member of staff on how to deal with such reports that under Section 11(6) (d) amount to abuse of power, maladministration and delay in

the conduct of investigations; The question one ask is what if the allegations were leveled against the CEO, who then is supposed to be consulted by the Commissioners before issuance of the interdiction.

Noting Mr. Mubea acts as CEO whenever the Secretary/CEO is away, it is possible that some of the alleged acts of impropriety, if true, could have occurred when he was the CEO in an acting capacity. This is why the Commission considered executing his letter of interdiction rather than delegating to the CEO to execute. The Interdiction of the DCEO therefore cannot be construed to amount to violation of Article 47 of the Constitution. He will not be denied the opportunity for due process.

There are matters which are grave to the extent that an officer is immediately interdicted from office so that evidence is not tampered with. The DCEO had access to the files which were the subject of allegations of misconduct on his part. There was therefore need to ensure that those files were not compromised. Given the seriousness of the allegations it was necessary to immediately delink the DCEO from dealing with those files. The DCEO therefore was interdicted and soon thereafter he was served with a letter enumerating the allegations against him. The action was pursuant to a resolution that was passed in the Commission meeting that was held on 9<sup>th</sup> March, 2015 where upon it was resolved that any member or officer of the Commission who will be found to have engaged in malpractices or with whom allegation of misconduct were leveled against shall step aside for investigations to be conducted.

In the case of the DCEO, Procedure was followed as he was given an opportunity to respond to the allegations. An impartial committee was constituted under Section 14(2) of the EACC Act to carry out the investigations whereupon the DCEO will be accorded a fair hearing. Subsequent actions in relation to the interdiction and formation of the Committee have been done through the CEO. The Committee working on the implementation of the Human Resource Manual, which is extensively relied upon by the Petitioner, is yet to table its final report for the Commission's consideration.

**(xi) Executing Memoranda of Understanding (MOU) with institutions that are notorious in corruption**

The Commission is empowered under section 11(3) of the EACC Act to cooperate and collaborate with other State Organs and agencies in the prevention and investigation of corruption. It is on this basis that the Commission partnered with agencies in both the private and public sector to enhance the prevention of corruption;

However, such partnerships are between EACC and the agencies and not with their individual officers. The partnerships do not in any way hinder the Commission from enforcing the law against any office of the partnering agencies who engages in corruption;

In respect to the Memorandum of Understanding between the EACC and the Nairobi City County Government, Article 10 of the MoU provides that *the MoU shall not in any way affect or override any investigation that EACC may lawfully initiate against any person in the service of the County Government in the discharge of its mandate the Anti-Corruption and Economic Crimes Act, EACC or any other relevant laws;*

The Commission however, lately realized that the Memoranda of Understanding, which were entered into following advisory programmes offered to County Governments and other entities, could be misconstrued and misinterpreted by some of its key stakeholders. As a result, the advisory programme for County Governments has since been reviewed so that no such MoUs are executed. Going forward, the Commission has adopted the signing of County Corruption Prevention Action Plans with individual County Governments. So far the Commission has conducted County advisory Programmes in 18 Counties.

**(xii) Letter dated 9<sup>th</sup> September, 2014 addressed to H.E. the President seeking his removal from Office**

The letter was signed by Commissioners Ms. Irene Keino and Prof. Jane Onsongo who had since recanted it. The two informed him that they wrote the letter on instructions from Mr. Halakhe Waqo, the CEO and Mr. Michael Mubea, Deputy CEO who told him they would provide evidence on the cited grounds before the letter is transmitted to H.E. the President. They however failed to provide the evidence leading to the recanting of the letter though the letter reached State House. He did not know how the letter was transmitted to State House.

**(xiii) Position of Prof. Jane Onsongo at the Commission**

On 31<sup>st</sup> April, 2015, the media reported that Prof. Jane Onsongo had resigned from the Commission. This came as a surprise to him since on 1<sup>st</sup> April, 2015, he received a letter from Prof requesting for normal leave. He later heard through the media that the Prof had left the country.

**(xiv) Relationship between Commissioners and the Secretariat**

He admitted that the relationship between the Commissioners and the Secretariat was not good and that the Commission would be developing management tools to address the situation.

The Petitioner prays that the petition be dismissed on the following grounds:-

**(a) The Petition is made in bad faith and is fatally defective**

The Petitioner has borrowed and/or relied heavily from the purported letter dated 9<sup>th</sup> September, 2014 by the Two Commissioners to His Excellency the President. These are not matters which are within his personal knowledge. Secondly, the said letter has since been recanted by the Commissioners vide their letter dated 15<sup>th</sup> January, 2015 and as such it ought not to be relied upon. The letter dated 9<sup>th</sup> September, 2014 is annexed as appendix 6 while a copy of letter dated 15<sup>th</sup> January, 2015 is annexed hereto as appendix 7.

It is evidently clear that the Petitioner is being used by other people who have ulterior motives. This explains why the Petitioner is unable to state facts beyond general allegations, thus rendering the petition defective. The Petitioner has further failed to produce evidence or to provide particulars in respect of the violations. This again is enough ground to pronounce the Petition incurably defective.

Of grave concern is that the Petitioner is attaching irrelevant but confidential documents of the Commission which were either stolen or irregularly obtained. This amounts to a possible criminal conduct on the part of the petitioner.

Article 251(1) of the Constitution provides for the circumstances where a member of the commission can be removed. These include:-

- a) Serious violation of the constitution or any other law including contravening of chapter six.*
- b) Gross misconduct, whether in the performance of the members' or office holder's function or otherwise.*
- c) Physical or mental incapacity to perform functions of office.*
- d) Incompetence*
- e) Bankruptcy*

The Petitioner ought to have provided facts to support each of the above allegations, and evidence to support these malicious allegations. In the absence of the facts and evidence, this Committee would be unable to form an opinion on mere statements.

The Petition is fatally defective as the Petitioner ought to have set out with a reasonable degree of precision; the provisions of the Constitution allegedly violated by the Chairperson in relation to them and the manner of their violation. It is not enough to allege violation without particularizing the details and the manner of such violations, and then proceed to merely recite the law. The Petitioner herein has alleged the contravention of a number of articles of the Constitution but has failed to adduce evidence to demonstrate how the alleged violations were committed.

In the absence of particulars, facts and information on the alleged violations, the petitioner has not specifically set out the nature of his petition under the relied articles of the Constitution so as to enable the Chairperson, EACC to know the nature and extent of the case that he is required to respond to.

**(b) It is the responsibility of Parliament to protect institutions and State officers therein from malicious allegations**

It is in the interest of this honorable House to protect Institutions and State Officers running them and should not be used by individuals who are disgruntled because of actions and decisions made by the Commission in enhancing the fight against corruption.

It is instructive that this purported Petition is brought to the House when the Commission had intensified its war against corruption and suspects had been arraigned in Court to answer to various corruption charges. As an example, he took the lead in coming up with a strategy for fast tracking the finalization of the five Anglo-Leasing cases. He personally co-chaired with the DPP the briefing sessions on the progress of investigations, gave directions to the teams and briefed the public.

The mandate of the Commission and the fight against corruption is a unique undertaking which one has to have a personal resolve to undertake despite the associated risks including people who seek to protect unearned income and stolen public money. It is expected that suspects and perpetrators of this vice will use all means available including actual threats, Physical harm, discrediting the Commission through media campaigns and other actions such as this petition, maligning people's names, employing diversionary tactics all these with a view to frustrate the Commission's work. This Committee should stand firm and protect the Commission. He was committed in the war against Commission and with the necessary support from the stakeholders the Commission shall succeed.

- c) **Disbanding the Commission based on frivolous and unsubstantiated allegations will amount to an acquittal to Anglo-leasing and other major corruption cases which are either under active investigation or prosecution is ongoing.**

Section 4 of the EACC Act provides that ***"The Commission shall consist of a chairperson and two other members..."***. And as per paragraph 5 to the Second Schedule, "The quorum for the conduct of business at a meeting of the Commission shall be two thirds of all the members of the Commission" and by seeking to remove two members of the Commission, the petition is cleverly attempting to render the Commission legally incapable of executing its mandate.

When this Commission was constituted in 2012, two members of the Commission joined the Commission earlier than him. During the period he had not joined the Commission, applications were filed in court seeking to stop any of the Commission's functions including investigation on the account that the Commission was not properly constituted. As a result, investigations and prosecutions were often paralyzed. This is due to the legal requirement that everything done by the EACC is done by the authority of the Commission. This

is what the Petitioner and to a larger extent, the perpetrators of corruption, suspects and the accused persons are seeking to achieve through a non-judicial process.

From a close scrutiny on the way the Petition has framed his prayers in the petition, it is clear that the intention is to cleverly and wittingly frustrate active investigations into major scandals and also facilitate acquittals of suspects who have been arraigned in court in major cases such as the Anglo-Leasing Scandal. This is aimed to be achieved first by disbanding the Commission and then filing of applications in court to acquit and or seek injunctions into ongoing investigations on account that there is no Commission to undertake such functions. When this Committee is faced with situations of such blatant abuse of the process by the Petitioner, it should be guided by public good and take into account the consequences of disbanding the entire Commission.

The Petition is being filed at a time when the Commission has scaled up the war on corruption and a number of high profiles cases are under active investigations. The forces behind the petitioner are determined to have the Commission disbanded so as to frustrate and/or slow down the war against corruption.

He has experienced all manner of strange moves in the discharge of his duties. After alleging that he met “Mr. Kamani” and other strange allegations, he has now seen that there was an attempt to forge a letter using his digital signature. See attached copy of the letter dated 26<sup>th</sup> March, 2015 purportedly signed by him marked as appendix 8. Fortunately, he had withdrawn the digital signature in November 2014 after it was used on a document without his authority.

Mr. Matemu’s written submissions are attached as appendix 9.

### **3.3. SUBMISSIONS BY MS. IRENE KEINO, VICE CHAIRPERSON, ETHICS AND ANTI-CORRUPTION COMMISSION (EACC)**

#### **Background**

#### **The Constitution of Kenya 2010**

In carrying out its activities Parliament is guided by *inter alia* Articles 1(1), 2(1), 3 (1) and 10(1) of the Constitution of Kenya 2010. It is pertinent to reproduce the provisions of Article 1(1), 2(1) and 3(1) of the Constitution of Kenya 2010.

Article 1(1) on Sovereignty of the people:-

- 1. (1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.**

Article 2(1) on Supremacy of the Constitution

- 2. (1) This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government.**

Article 3(1) on Deface of the Constitution

- 3. (1) Every person has an obligation to respect, uphold and defend this Constitution.**

Article 10 on National values and principles of governance;

**1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—**

- (a) applies or interprets this Constitution;**
- (b) enacts, applies or interprets any law; or**
- (c) makes or implements public policy decisions.**

**(2) The national values and principles of governance include—**

- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;**
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, nondiscrimination and protection of the marginalized**
- (c) good governance, integrity, transparency and accountability;**
- (d) sustainable development**

The acquisition of information held by any person is firmly anchored under the provisions of Article 35 of the Constitution as read together with section 80 of the Evidence Act, Cap 80 Laws of Kenya. The provisions of Article 35 and section 80 are reproduced as follows:-

**Access to information**

**35. (1) Every citizen has the right of access to—**  
**(a) information held by the State; and**  
**(b) information held by another person and required for the exercise or Protection of any right or fundamental freedom.**

In the conduct of any proceedings, the Constitution dictates that the principles of natural justice should be observed and adhered to; in particular the right to fair hearing under Article 50 of the Constitution as follows:

***“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”***

The Constitution abhors the admission of illegally obtained evidence under Article 50 (2) (4) in the following aphorism -:

***“Evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair, or would otherwise be detrimental to the administration of justice.”***

**The Evidence Act, Cap 80 Laws of Kenya**

Certified copies of public documents.

**80. (1) every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his**

*official title, and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.*

Letters annexed to the Petition were obtained by Mr. Oriaro Geoffrey who is not a Commissioner or in any way associated with the Ethics and Anti-Corruption Commission (EACC). The Letters relied on; bear the tag “*confidential*”. The process of acquiring public documents by any person has a legal underpinning as avowed under Article 35 of the Constitution as read together with section 80 of the Evidence Act as outlined above. It is therefore logical to categorically assert that the documents were illegally obtained which has an effect of violating and/ or infringing on the Respondents right to fair trial guaranteed by Article 50 of the Constitution of Kenya 2010.

The use of illegally obtained evidence is clearly forbidden by Article 50 (2) (4) of the Constitution of Kenya. **Halsbury’s Laws of England** Vol. 17 4<sup>th</sup> Edition at page 211 buttresses this point as follows:-

*“In general, the prime requirement of anything sought to be admitted in evidence is that it is of sufficient relevance. What is relevant (namely what goes to the proof or disproof of a matter in issue) will be decided by logic and human experience, and facts may be proved directly or circumstantially. But while no matter should be proved which is not relevant, some things which are relevant by the normal tests of logic may not be proved because of exclusionary rules of evidence. Such matters are inadmissible. Admissible evidence is thus that which is (1) relevant and (2) not excluded by any rule of law or practice...”*

Warsame J. eschewed the admission and/or use of illegally obtained evidence in the case of **Baseline Architects Limited & 2 Others Vs National Hospital Insurance Fund Board Management** [2008] eKLR where he opined as follows:-

*“In conclusion it is my humble view the documents were obtained in an illegal manner/means with the tacit support of the employees of the applicant or through the office of the Attorney General. Such a conduct is disturbing to public interest and is a manifestation of betrayal by public officers with a mandate to safeguard the general interest of the*

*public. I do not think the parties who gave out the said documents were aware/understand that public duty and employment comes with a corresponding obligation to always and as far as possible to safeguard public documents from adverse parties. That is a fundamental duty on all employees of the applicants. It appears there has been an abdication of that duty on the part of the persons who gave away such vital and important documents to the respondents.*

The Petitioner should have adhered to the provisions of the Constitution as read together with the Evidence Act to acquire the public documents. Sufficing to say that the admission of the letters by the Committee to prove the allegations in the Petition will be contrary to the mandatory exclusion rule under Article 50(2) (4) of the Constitution and therefore an infringement and violation of the Respondents right to a fair trial which is guaranteed under Article 50 of the Constitution.

Pursuant to Article 25, the right to a fair trial is a right; it can never be limited by any law. The section states as follows:-

*“Despite any other provision in this constitution, the following rights and fundamental freedoms shall not be limited:-*

- a) freedom from torture and cruel, inhuman or degrading treatment or punishment;*
- b) freedom from slavery and servitude;*
- c) The right to a fair trial; and*
- d) the right to an order of habeas corpus.*

From the foregoing, Parliament and in particular the Departmental Committee on Justice and Legal Affairs has a duty to uphold the Constitution in carrying out its respective activities including the consideration of this Petition. The Committee must animate the following provisions in its consideration of the Petition before it.

### **Response to the Petition**

The allegations as outlined in the Petition are generic in nature and are glaringly unsubstantiated. The Committee cannot rely on mere allegations to arrive at its decision. In the case of **Sawe Vs Republic [2003] KLR 364** the court held that:

***“Suspicion however strong cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt”.***

This position was similarly adopted in the case of **Kipkering Arap Koske vs Republic (1949) 16 EACA, 135** where it was held, inter alia, that;

***“In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt.”***

The Petition so far as it relates to Geoffrey Oriaro is made on the following grounds:

- (a) Serious violation of the Constitution,
- (b) Serious violation of the EACC Act, ACECA and Penal Code;
- (c) Gross misconduct in the performance of my functions as
- (d) Incompetence.

The petition does state which sections of the constitution have been violated and how, what acts of conduct of Ms. Irene Keino are alleged to have violated the constitution, how does one determine the performance of Ms. Irene Keino's office, what performance indices did the Petitioner use to determine the Commission's performance, who has the oversight role over EACC, whether EACC reports to Parliament and what acts have been shown as incompetence on the part of Ms. Keino.

The Petitioner makes no specific charge against the Vice Chair and the Petition as it is void of any factual specifics and or depositions against Ms. Irene Keino. The Petitioner provides no proof that Vice Chair is associated with the companies he alludes to.

The Petitioner seems to represent Mr. Mubea's issues which can be thrashed out before the Employment and Labour Relations Court and is not a ground warranting Vice Chair's removal. It is to be noted the Ethics and Anti-Corruption Commission has formally made its Constitutional Report to the National Assembly as required by Article 254 of the Constitution. The underlying intrigue of this matter is aimed at stalling and handicapping the Commission in respect of Anglo Leasing, Karen Land and Integrity Centre issues.

**(i) Allegations that she unlawfully did business with the National Social Security Fund (NSSF) through Lulu East Africa Ltd and Eco Plant Ltd**

*Acquisition of NSSF Houses*

On 20<sup>th</sup> February, the Commission on Administrative Justice (CAJ) received a letter from a member of staff from National Social Security Fund (NSSF) indicating that Ms. Keino was doing business with NSSF through Lulu East Africa, a company associated with her. The business involves the management of parking lot near Laico Regency hotel, where the company is reportedly receiving revenue of approximately Ksh.500,000.00 daily.

She reported the matter to CAJ to investigate the matter so that she could clear her name. The Departmental Committee on Justice and Legal Affairs also wrote to EACC and CAJ over the same matter. CAJ sent two investigators a Mr. Nguli and Mr. Leki who took her statements and documents on the matter.

The burden of proof on whether she is associated with the Company vests in the Petitioner who should have provided registration documents for the company. He however failed to do so and she can conclude that the Petitioner is out to malign her without evidence.

She is aware that the Petitioner and Mr. Michael Mubea worked at Aden, Wetangula law firm, between these periods: Petitioner (2004-2007) and Mubea (2007-2011). She is also aware that investigations, the Commission is conducting on Mubea relate to transactions of Integrity Centre Building and Anglo leasing. She is further aware that the legal firms that acted for the integrity Centre transactions were Oraro and Aden, Wetangula, Machoka. To her mind, this presents a conflict of interest. Mubea and the Petitioner used to work for Aden, Wetangula law firm.

It easy to see the common thread as to who is behind this Petition with the only discernible motive being to silence the Vice-Chair on the investigations regarding Integrity Centre. She was threatened by some lawyers in town to leave Integrity Centre matter alone and concentrate on other corruption matters.

The letter by NSSF staff also indicated that another company Eco Plant, which is managed by a Mr. Matemu Nzatu, had been awarded contracts by the NSSF including subdivision of titles and planning in the NSSF Tassia II Project. This company had been associated amongst other people Ms. Irene Keino and a staff member of the

NSSF, Gideon Kyengo, whose wife is a senior officer at EACC. The letter further indicates that through the wife of Kyengo, members of the Commission have been assisted to acquire houses at NSSF.

She was appointed on 11 May, 2012 and was sworn in 27<sup>th</sup> September 2012. She earned salary arrears of over Kshs 3.5m. which she used to purchase a flat in Embakasi from NSSF. Her secretary Violet Rahedi, inherited two houses at NSSF Tassia II from her late husband. She services her mortgage monthly. She is the one who advised her to purchase the flat situated in Phase 5, Embakasi.

She wrote to the CEO to introduce herself to the managing trustee of NSSF which would constitute support documents to indicate her ability to service the mortgage scheme. She put in an application with supporting documents and paid the application fee Kshs.1000.00. She also paid the 10% of 610,000 and legal fees of Kshs.107,000.00. She never used the Kyengos to get her allocated the flat. She has never met Mr. Kyengo in her life. Investigations on Tassia II commenced in August 2013, and whilst she purchased the houses in March 2013. She was servicing a mortgage loan monthly and all transactions are above board.

#### *Eco Plan Management Ltd*

She has no knowledge of any company known as Eco Plant Ltd. The Petitioner should have provided details of this company from the registrar of companies to prove his allegations. She however had a company called Eco- Plan Management Limited that deals in spatial planning and environmental management. The company was registered in 2004.

She is a registered urban planner and National Environment Management Authority (NEMA) expert. When she was appointed to EACC on 11<sup>th</sup> May 2012. She resigned as a Director of Eco-Plan Management Ltd on 22<sup>nd</sup> May of the same year and transferred her shares to one Timothy Morogo.

She was aware that the named Nzatu was not a director of Eco Plan Management Ltd neither are the Kyengos'. She has never met Gideon Kyengo in her life.

#### *Kilimani Plot*

She reiterated that she was a registered Spatial Planner and NEMA expert from 2002 till to-date. Her annual subscriptions are paid but

she does not pay for practising subscriptions because she is a state officer who is barred from practising.

The correspondence attached to the petition was removed from a file of the National Land Commission. Upon receiving information through a confidant one Diana Chebet that a cartel was registering a parcel of land along Lenana Road in her name, she informed the DCEO and CEO who advised that she writes to the Director CID, EACC CEO, Kenya Railways CEO and Kenya Railways pension fund for further action. She obliged. Letters written to the effect and absolving her from any liability are annexed hereto as appendix 10. The CID took her statement and provided an Inquiry No 140/2014.

She stated that the Petitioner obtained the land documents from Mr. Halakhe Waqo, EACC Chief Executive Officer (CEO) and Mr. Michael Mubea, Deputy CEO. The CEO subsequently recalled the file from the Land's CEO to conduct the investigations.

Both the CEO and his Deputy show immaturity and dishonesty in using documents from an official government file and to purport that she was involved in the land fraud is total disrespect to her as a Commissioner and they lack integrity, national values and violated the Government Secrets Act.

It is regretted that the petitioner didn't verify if these were forged documents or not. It therefore looks like the petitioner was used as a median to transport this petition to parliament. As an experienced spatial planner, the said documents seem fake or forged e.g.

- the minutes from the council are partially attached and do not reflect true minutes approved by the planning committee at city hall
- The letter from lands recommending the ground report and signed by Steve Tumbo. It is important to note that Steve Tumbo was a colleague of mine at the university during the Master's degree program and he has since passed away in 2005, a matter that I stated in my statements noting that he couldn't have done the letter.

**(ii) Letter Dated 9<sup>th</sup> September 2014 to His Excellency the President**

The DCEO and CEO informed Prof Onsongo and herself that they had intelligence information and evidence on the chairperson

meeting with suspects whom EACC was investigating and also trying to get information on investigation of files before they are completed.

She agreed that in as far as they (DCEO & CEO) bring evidence against the chairperson they shall then take up the matter. The two commissioners on waiting from 9<sup>th</sup> September 2014 to 15<sup>th</sup> January 2015, for evidence which was not forth coming, held a meeting with the Chairperson and told him about the letter and apologized. They agreed that in good faith, they needed to show solidarity and support the chair in the fight against corruption and recanted the earlier letter written.

It was a shocker to her and Commissioner Jane Onsongo that the day the Commission interdicted Mubea (DCEO), was the same day the letter was forwarded to State House for removal of the chairperson. She was convinced that Mr. Halakhe and Mr. Mubea were responsible for the transmission of the letter to the President.

**(iii) Interdiction of Mr. Michael Mubea, Deputy Chief Executive Officer (DCEO)**

The Commission interdicted Mubea DCEO in a Commission meeting held on 9<sup>th</sup> of March 2015 due to malpractices and integrity issues. The meeting comprised of the CEO and the three Commissioners. All Commissioners resolved that Mr. Mubea be interdicted for 30 days as investigations are conducted.

The Commission constituted a team comprising of two members of the CID, and one member from PSC and LSK and two EACC staff for the purposes of the investigations.

**(iv) The current file management system in place at EACC**

The current file management system is that all investigations files are submitted at the report Centre. The Investigation Director then allocates a file to an Investigation Officer. Once the Investigating Officer finishes with the file forwards it to the DCEO who may decide to raise issues and return the file or forwards the file to the Legal Director.

After the Legal Director finishes with the file, he forwards it back to the DCEO for finalizing and forwarding to CEO for onward transmission to the DPP. The system is not transparent, is a one man show and lacks integrity. The current system is not able to determine timelines for staff for each file thus inefficient.

After realizing the short comings in the file system, the Commission took action by conducting a file audit in February 2015, which showed the status of files in the Commission. The justification by the Commission to undertake the file audit springs from its oversight role on the secretariat as stated in Section 11 (6)(a) of the EACC Act.

**(6) The functions of the Commissioners shall be to—**

**(a) assist the Commission in policy formulation and ensure that the Commission and its staff, including the Secretary perform their duties to the highest standards possible in accordance with this Act;**

**Section 11(6)(d)**

**(d) deal with reports, complains of abuse of power; impropriety and other forms of misconduct on the part of the Commission or its staff; and**

**Section 11(6)(e)**

**(e) deal with reports of conduct amounting to maladministration, including but not limited to delay in the conduct of investigations and unreasonable invasion of privacy by the Commission or its staff.**

The decision to conduct file audit was in addition to the public outcry that corruption was increasing and from the several meetings held with the Commission and the Parliamentary Legal Committee.

There are several cases where the Commission has delayed to complete investigations of files such as GDC, Karen land, Judiciary cases, NSSF, IEBC, county cases e.g. Kilifi, Embu, Garissa, Isiolo, Nyeri, Nairobi county, Kisumu, Nandi etc. The Commission has given the two Commissioners oversight roles:-

- Commissioner Keino oversee Risk and Audit Committee as well as Investigations and legal departments
- Commissioner Onsongo oversees Preventive Services, Ethics and Leadership and support functions

- The Chairperson has the entire oversight of the organization

She was therefore tasked to oversee the file audit exercise for only investigation and legal files in February 2015. The Commission also decided to keep a close scrutiny of the operations of the organization and this was where the Secretariat resisted attempts for oversight and she started receiving negative depiction of her personal integrity in both print and electronic media.

From the initial reports from the file audit and intelligence, she came across the following which she quickly communicated to the Commission:-

(a) That the DCEO, Mubea, wrongfully withheld information regarding investigation touching on the Integrity Centre Building and/or influenced the closing of the investigation file without due regard to procedures, practice and concurrence or approval of the Commission.

(b) It is important to find out if the Government received the total amount of the debt on this building? Was the public cheated?

(c) How was the building transferred from DPF, to Raveck, and from Raveck to Tegus Limited?

(d) Was there impropriety, forgery in the transfer of the building from DPF, to Raveck, and from Raveck to Tegus Limited as asserted by the Investigator?

(e) Why was the investigation and all relevant documents taken over by the Director of Investigation and the investigator told to close investigation and has since been transferred to Malava to start a satellite office not bequeathing his experience?

**Note:**

The lease documents show that the owners of Integrity Centre building have links to the following firms Michael, Daud Advocates and Aden, Wetangula & Makoka Advocates. Mr. Micheal Mubea (DCEO) once worked with Aden, Wetangula Law firm from 2007-2011 and that the Petitioner Geoffrey Oriaro also worked at the same firm between the years 2004-2007.

**(v) Anglo Leasing Contracts**

That the DCEO participated in the communications during the period of November 2014, relating to negotiations with suspects in the Anglo- leasing cases without first seeking approval from the Commission. That the DCEO concealed documents and information from the Commission relating to investigations on Anglo- leasing. These are the companies that were involved:-

- Sound Day Corporation,
- Apex Finance, Globetel Incorporation,
- Midland Finance and Security.

After all this, the Commission held a meeting with the CEO in attendance to deliberate on the conduct of the DCEO. The Commission resolved to interdict the DCEO and constituted a inter agency committee comprising of 2 members from CID, PSC, LSK and two Commission staff.

**(vi) Drama at EACC after the Interdiction of Mr. Michael Mubea by the Commission**

The Commission interdicted Mr. Mubea on 9<sup>th</sup> March, 2015. The Chairperson instructed the CEO to implement the interdiction. The CEO on 10<sup>th</sup> March wrote to the Chairperson revoking the interdiction. On the same day, the Chairperson sent a Memo to CEO to implement the interdiction of Mubea. The Commission also released a public notice stating that any public member dealing with Mubea will be doing so at his own peril.

On 13<sup>th</sup> March 2015, the Chairperson got a call from State House from Mr. Abdi Kadir Advocate instructing him to lift Mubea's interdiction. The other two Commissioners protested and told the Chair that it could happen. In the evening of the same day EACC was called to Harambee House to impress on them that H.E.'s directive was to return Mubea to work.

On 16<sup>th</sup> March, 2015 the Commission established an Inter-agency Committee to investigate the conduct of Mubea DCEO and the Committee was given 25 days within which to complete the report. The 1<sup>st</sup> Interim report was due on 24<sup>th</sup> March and 2<sup>nd</sup> on 31<sup>st</sup> March, the final on 10<sup>th</sup> April 2015.

**(vii) EACC CEO Corruption list**

The Commission presented a list to the Justice and Legal Affairs Committee on 19<sup>th</sup> Feb 2015, while Halakhe presented another list to the Executive without following due procedure (tabling it at the commission for approval, assigning the commission seal and signing of the report by the commissioners and secretariat).

The Commission held a meeting which it requested the CEO to table the report he submitted to the Executive and why he didn't let the commission know. He stated that submission of the list was urgent.

Ms. Irene Keino's written submissions are annexed hereto as appendix 11.

**3.4. SUBMISSIONS BY MR MICHAEL MUBEA, DEPUTY CHIEF EXECUTIVE OFFICER (DCEO), ETHICS AND ANTI-CORRUPTION COMMISSION (EACC)**

He is an Advocate by profession and joined EACC in January, 2013 from private practice where he had worked with the firm of Wetangula, Adan and Makokha Advocates as a salaried partner before going solo.

**(i) Allegations that he tampered with files and or interfered with investigations**

He was interdicted as the Deputy Chief Executive Officer in March, 2014. No reason was given for his interdiction. Upon inquiring to know the reasons, he was informed that it was because he tampered with evidence in the Anglo-leasing cases. He denied having engaged in any negotiations for the settlement of Anglo-leasing cases without knowledge and consent of the Commission and could not do so unless there was a firm offer from suspects.

All correspondence is done on behalf of the Commission. He shared a letter on a proposal for out of court settlement on the Anglo-Leasing cases with the Commission which advised him to negotiate with suspects and see what comes out of the negotiations.

He denied ordering closure of the file in the investigation relating to change of ownership in the Integrity Centre which houses the Commission. Though he marked on a letter to the Director of

Investigations in this matter that the same be closed, he did not mean that it indeed be closed and that this was just a recommendation from which he expected a response. The response never forth came. It is the Legal Department which was mandated to analyze evidence and advise on closure of files and the Director of Public Prosecution (DPP) must be involved.

(ii) **Allegation that the he was behind the transfer of Kipsang' Sambai, investigating Officer of the unlawful acquisition of Integrity Centre to Malaba Boarder Post**

He stated that there were vacancies at the Commission and Mr. Kipsang' applied for a position above the one he held. He was successful after interview and was promoted and transferred to Malaba Boarder Post. The transfer was not intended to interfere with investigations in the ownership of Integrity Centre.

He further stated that he was in charge of technical services at EACC and that transfer of property was not within the purview of his jurisdiction and that if at all there was transfer of the property, the same was done at Deposit Protection Fund and not EACC.

(iii) **Link between himself, the firm of Wetangula, Adan and Makokha Advocates and Mr. Geoffrey Oriaro, the Petitioner**

He denied that the firm of Wetangula, Adan and Makokha was involved in the transfer of ownership of Integrity Centre. The transfer took place in the year 2013, March whereas he joined the Commission in January of the same year. He further stated that he was not aware that Mohamed Thabit Tuwei who was Director at Revack Ltd, one time owner of Integrity Centre Building was a brother-in-law of Adan, a partner in the firm of Wetangula, Adan and Makokha Advocates. The matter of transfer was under investigation and he advised the Committee to wait for the outcome of the investigations and pass a verdict.

He admitted working at the firm of Wetangula, Adan and Makokha Advocates until the year 2007 when he set up his own firm. He did not know if the Petitioner Mr. Oriaro ever worked at the same firm since he never saw him while working there.

He did not know whom EACC paid rent to for occupation of the Integrity Centre and did not know the current registered

proprietors of the building. If at all there was change of ownership, the process took place at DPF and not EACC.

(iv) **Allegation that he was the face behind the petition for the removal of the chairperson and vice chairperson of EACC from office**

He denied that he was the face behind the petition for removal of Mr. Mumo Matemu and Ms. Irene Keino from office and neither had he even read the petition. He stated that he only knew the Petitioner Mr. Geoffrey Oriaro as an Advocate and not at personal level and that he could not have used him to present the petition to the National Assembly. He did not know how Mr. Oriaro obtained information and documents he used in the petition. He added that he had nothing to benefit from the petition in the event the two Commissioners were removed as he was contented with his current position.

He did not write the letter dated 9th September, 2014 addressed to the President and signed by Ms. Irene Keino and Prof. Jane Onsongo seeking the removal of Mr. Matemu from Office on which the petition revolves, neither was he consulted and involved. He never transmitted the letter to the President at State House and believed he was being crucified because of the firm stand he had taken on Anglo – Leasing investigations. He had not seen or read the letter.

(v) **Relationship between the Secretariat and Commissioners**

The secretariat's relationship with Commissioners in the recent times has been acrimonious. This has been occasioned by the firm position him and the CEO have taken on the Anglo-Leasing investigations. In particular, the Commission Vice Chairperson Ms. Irene Keino has told him to go slow on the Anglo leasing and Geothermal Development Corporation (GDC) investigations. His differences with Ms. Keino are work related and not personal.

The bad relationship between the Commissioners and the Secretariat has impeded the fight against corruption. He was ready to leave the Commission if his departure would enhance service delivery.

**3.5. SUBMISSIONS BY MR. HALAKHE WAQO, CHIEF EXECUTIVE OFFICER (CEO)/SECRETARY, ETHICS AND ANTI-CORRUPTION COMMISSION**

**(i) Relationship between the Secretariat and Commissioners and Commissioners against fellow Commissioners**

The relationship between the Secretariat and Commissioners against fellow Commissioners was acrimonious and impeded the Commission's work. For instance, when Mumo Matemu joined the Commission, he was after changing the Commission setup targeting Ms. Irene Keino as the Vice Chairperson. This never worked.

The chairperson while on leave and was supposed to have left the vice chairperson in charge still attended Commission meetings which was suspect. The other Commissioners expressed concern at his actions.

Towards the end of December, 2014, Ms. Keino and Prof. Onsongo mended fences and started fighting the Chairperson. By their letter dated 9th September, 2014, the two wrote to the President seeking the removal of the chairperson from office but later recanted the letter. He did not conspire with the two Commissioners to write the letter, neither could he have done so. He however at one time heard the Commissioners say that they had written to the President and a response was not forthcoming.

Mr. Matemu in some instances took over the work of the secretariat. There was a case where a Cabinet Secretary, who was to be investigated at the Commission, ignored an invite to appear and record a statement but instead wrote to Mr. Matemu challenging the invite. Instead of Mr. Matemu marking the letter to the CEO for action, he engaged other Commissioners in determining action on the letter.

**(ii) Allegation that he and his Vice Mr. Michael Mubea were the faces behind the petition for the removal of the Mr. Matemu and Ms. Irene Keino from office.**

He denied conspiring with Mr. Mubea and Mr. Oriaro the Petitioner in drafting the petition and submitting it to the National Assembly. He categorically stated that he did not know Mr. Oriaro and heard

of him for the first time after the Petition had been submitted to the National Assembly.

**(iii) Allegation that he denied Commissioners access to investigation files**

He admitted denying Commissioners access to files and had no regrets for his action. This was because the Commissioners on several occasions called for files especially the ones on Anglo Leasing cases with ulterior motives. He made this known to the Commissioners at a meeting of the full Commission. Furthermore, the practice and procedure at the Commission was that Commissioners were supposed to ask for briefs on files from the CEO and not ask for the files.

File management was also a sensitive matter at the Commission. Some officers were using the files to seek rent from suspects especially on the Anglo-leasing files. One officer was dismissed from the service in this regard while two others were cautioned and transferred to Mombasa and Kisumu respectively. Others were still being investigated and appropriate action would be taken against them once investigations are complete.

Ms. Irene Keino was among the Commissioners opposed to the Anglo leasing and Geothermal Development Corporation (GDC) investigations and told him to go slow on the same. How could he allow her access to investigations files having made her intentions clearly known on some of the files?.

**(iv) Allegation that Commissioners intimidated staff**

On certain occasions, Commissioners intimidated staff to pass particular verdict on matters especially those relating to clearance by the Commission of persons seeking appointment to public office during vetting process.

**(v) Interdiction of Mr. Michael Mubea, Deputy CEO of the Commission**

There was no Commission meeting to discuss Mr. Mubea's interdiction and the purported interdiction by the Chairperson allegedly on intelligence information was irregular. The EACC Act vests powers to deal with staff matters with the CEO and not the chairperson.

As the CEO, he had a duty to protect staff and that's why at one time he reinstated Mr. Mubea to work after the interdiction by the Chairperson. This was a decision he took as the CEO and there was influence from State House.

**(vi) Ownership of Integrity Centre**

He knew the building was owned by Revack Ltd to whom the Commission had been paying rent since its occupation in the year 1998. Revack Company was associated with a former politician Mr. Nicholas Biwott.

He undertook to provide a full report on the ownership of the building in two weeks' time

**(vii) Whether EACC can continue functioning well in view of the current state of affairs in leadership**

With the disharmony and mistrust between Commissioners themselves and Commissioners and Secretariat, the Commission is as good as dysfunctional and there must be a new beginning even if it means him going home.

**(ix) Irregular meetings by the Commission**

By law, the Commission cannot meet without the secretariat. However, the Commission went on to meet in Mombasa without the secretariat on 20th January, 2015 for 3 days. The meeting was essentially for bonding and he was opposed to it but the Commissioners defied him. There were no resolutions from the meeting for the secretariat's implementation.

**3.6. SUBMISSIONS BY THE COMMISSION ON ADMINISTRATIVE JUSTICE (CAJ)**

The Commission on Administrative Justice (CAJ) by its letter dated 14<sup>th</sup> April 2014 annexed as appendix 12 submitted as follows:-

The EACC Deputy Chief Executive Officer, Mr. Michael Mubea earned a salary of Kshs.780,000.00 which was not approved by the National Salaries and Remuneration Commission. An analysis of the salary earned since January, 2014 shows that he earned Kshs.1,231,392.20 above what he should have earned. In this

regard, CAJ finds EACC leadership collectively culpable of negligence for failing to implement the salary structure for EACC staff as advised by SRC.

CAJ further established that Ms. Irene Cheptoo Keino, the EACC vice chairperson purchased houses from the National Social Security Fund (NSSF) in Embakasi. She got information that the houses were available for sale two years and three months after the closing date. NSSF was unable to give accounts and other records on payments made by Ms. Keino towards the purchase of the Houses.

CAJ also noted serious faults in the internal processes of NSSF in the purchase of the houses because it issued a repossession notice of a house to Ms. Keino and later recalled the notice because it was erroneous.

CAJ therefore recommends *inter alia* as follows:-

- (i) EACC should implement the SRC circular on the terms and benefits of Mr. Mubea and recover the Kshs.1,231,392.20 overpaid to him;
- (ii) EACC should expedite completion of cases at NSSF including Tassia II project, the appointments of the NSSF Board and the procurement of CCTV for the NSSF towers.
- (iii) While it cannot be said that EACC staff cannot invest in NSSF, the fact that the vice chairperson purchased houses from NSSF at a time when she was later under investigations by the former leads to CAJ to conclude that it was an unwise decision given the possibility of conflict of interest.

#### **4.0. ISSUES FOR DETERMINATION**

##### **ISSUES RAISED IN THE PETITION**

1. **Whether Mr. Mumo Matemu and Ms. Irene Keino have exhibited gross misconduct in the performance of their functions to warrant their removal from office?.**

The Committee observed that by law, the Commission cannot meet without the secretariat. However, the Commission went on to meet in Mombasa without the secretariat on 20th January, 2015 for 3 days. The meeting was essentially for bonding and the CEO

was opposed to the meeting but the Commissioners defied him. There were no resolutions from the meeting for the secretariat's implementation.

4. **Whether Mr. Mumo Matemu and Ms. Irene Keino are incompetent to warrant their removal from office**

The Committee observed that Mr. Mumo Matemu and Ms. Irene Keino in their capacities as the Chairperson and Vice Chairperson of the Commission had a responsibility to provide leadership for the effective and efficient functioning of the Commission. They had however failed to provide the leadership thereby putting their competence to doubt. The following are instances where their competence is put to question:-

- (i) First and foremost, the Departmental Committee on Justice and Legal Affairs of the 10th Parliament after vetting them found them incompetent to hold office. A report of the Committee is annexed hereto as appendix 13.
- (ii) There is evidence on record that the three Commissioners, i.e. Mr. Matemu, Ms. Keino and Ms. Onsongo have been wrangling and instead of resolving their issues amicably Ms. Keino and Prof. Onsongo wrote to his Excellency the President seeking the removal of Mr. Matemu from office. Article 251 of the Constitution of Kenya outlines the process for the removal of constitutional office holders from office and the process does not entail writing to the President;
- (iii) Ms. Keino has confessed that she and Ms. Onsongo were duped by Mr. Halakhe Wako, Chief Executive Officer (CEO) and Mr. Michael Mubea, Deputy Chief Executive Officer (DCE) into writing and signing a letter for the removal of the Chairperson, Mr. Mumo Matemu from office on understanding that evidence would be subsequently availed and the letter transmitted to the President. The evidence was never availed though the letter was transmitted to the President;
- (iv) After signing the letter as in (iii) above and there was no evidence forthcoming from Mr. Halakhe and Mr. Mubea, they recanted the letter. With their levels of education and professional qualifications (Ms. Keino and Prof. Onsongo) and holding such high profile offices in the country, their action to

write and sign the letter and later recant it for lack of evidence was not expected of them and was unacceptable.

- (v) There is evidence on record that Mr. Matemu and Ms. Keino have been unable to control the Commission and this is manifest in wrangles involving Commissioners themselves and Commissioners and Secretariat. The Secretariat has stated that the Commission as constituted cannot perform, neither is the secretariat willing to work with the Commissioners.
- (vi) There is further evidence on record that confidential documents of the commission leaked out which points out to systematic weaknesses attributed to their failure to manage the Commission.
- (vi) Mr. Matemu and Ms. Keino have not successfully prosecuted high profile cases since they were appointed to office. There is evidence on record that Ms. Keino has been out to protect suspects by telling the secretariat to go slow on the Anglo-Leasing and the Geothermal Development (GDC) investigations.
- (vii) Mr. Metemu appeared before the Departmental Committee on Justice and Legal Affairs on 19<sup>th</sup> February, 2015 and submitted a list of cases under investigation by the Commission. The Committee instructed him to ensure speedy conclusion of investigations. It is inexplicable why he did not ensure the Commission expeditiously investigates matters and hands over the files to DPP for prosecution but instead submitted the list again to the President in confidence. The Commission is now under pressure to conclude investigations within sixty (60) days following a directive from the H.E. the President and the speed at which the Commission is working could compromise investigations in some of the cases.
- (vii) Under their leadership, the Commission executed a Memoranda of Understanding (MOU) with the Nairobi County Government which was notorious in corruption. This is admitted by Mr. Metemu in his submissions. Even if the Commission was empowered by law to enter into partnerships in the fight against corruption, the signing of an MOU with the Nairobi County Government was suspect and also points to the incompetence of the Commissioners. In fact in his

evidence, Mr. Matemu has stated that in future, such MOUs will not be signed.

**ISSUES OTHER THAN THOSE RAISED IN THE PETITION**

**5. Whether the Petition in the Supreme Court relating to the appointment of Mr. Mumo Matemu as the chairperson of EACC renders this Petition null and void?.**

The Committee observed that Supreme Court Petition No 12 of 2013 – Trusted Society of Human Rights Alliance –vs- Mumo Matemu and others related the appointment of Mr. Matemu by the President after approval by Parliament despite the Departmental Committee on Justice and Legal Affairs finding him unsuitable for the Office. The Petition by Mr. Geoffrey Oriaro relates to Mr. Matemu's performance while in office.

The Committee finds that the principle of sub-judice does not apply to Mr. Oriaro's petition as argued by Mr. Matemu since the issues in the Supreme Court and his petition are totally unrelated.

**6. The future of the Commission and its impact in the fight against corruption**

There is evidence on record that the relationship between Commissioners themselves and Commissioners and the Secretariat is acrimonious. Commissioners have accused the Secretariat of rent seeking in files, most notably the Anglo Leasing and Geothermal Development Corporation (GDC) while the Secretariat has accused the Commissioners of the same.

The Committee apportions blame to both the Commissioners and the Secretariat for the poor performance by the Commission. The Committees hands over the removal of the secretariat from office are however tied since the Petition before it is for the removal of two Commissioners only.

Commissioners, Ms. Irene Keino and Prof. Jane Onsongo accuse the Secretariat (Mr. Waqo and Mr. Mubea) of duping them into writing a letter dated 9<sup>th</sup> September, 2014 to the President seeking the removal of Mr. Matemu from office on understanding that, Mr. Mubea and Mr. Waqo would furnish evidence on grounds raised before the letter is submitted to the President.

According to Ms. Keino, they never submitted the evidence though the letter reached the President. Mr. Waqo and Mr. Mubea deny any involvement in the authoring and transmission of the letter to the President and tell the Committee that Ms. Keino and Prof. Onsongo should carry their own cross.

There is evidence on record that Ms. Onsongo and Prof. Onsongo subsequently recanted the letter dated 9<sup>th</sup> September, 2014 and tendered an apology to Mr. Mumo Matemu. It is hard to believe if Mr. Matemu deep in his heart accepted the apology.

The suspension of Mr. Mubea by the Commission and his reinstatement by Mr. Halakhe Waqo the CEO and the subsequent interdiction of the Officer is an indication that the Commission and the Secretariat are at logger heads. It also leads to the question as to who is in charge of the Commission?.

There is evidence on record that Mr. Halakhe Waqo, the EACC, CEO submitted to H.E. the President a list on corruption cases with suspects without following due process i.e. tabling it at the Commission for approval, assigning the Commission seal and signing of the report by the commissioners and secretariat. When tasked by the Committee to explain, he stated that the list was urgently required. The Committee notes it was improper for the CEO to submit the list to State House without involving the Commissioners.

In her press release and letter for resignation dated 31<sup>st</sup> March, 2015 attached as appendix 14 Prof. Jane Onsongo states that the Commission as currently constituted is incapable of discharging its mandate.

From the forgoing, the Committee is convinced that the future of the Commission is bleak and the fight against corruption shall fail. The problems at the Commission are attributable to both the Commissioners and the Secretariat and the two cannot work together.

7. **Whether the removal of two (2) out of three (3) Commissioners from Office will cripple investigation of cases, especially those in which H.E. the President has given the Commission a timeline of sixty (60) days ?.**

The Committee observes that there is an inter-agency team comprising EACC, DPP and other players currently investigating where H.E. the President gave a timeline of sixty (60) days. The Committee is persuaded that this agency can finalize investigations and take appropriate steps towards prosecution of suspects in the absence of two EACC Commissioners.

The Committee also observes that the sixty (60) days timeline given by H.E. the President to conclude investigations is not a legal timeline and can be extended.

#### **5.0. ADOPTION OF THE REPORT AND DISSENT**

This report was adopted by a majority eighteen (18) Members. Hon Tom J. Kajwang' dissented to the report.

#### **6.0. RECOMMENDATIONS**

Having considered provision of Articles 73, 75, 76, 125, 161, 171, 172, 173, 245 and 251 of the Constitution of Kenya; and having considered the provisions of the Ethics and Anti-Corruption Commission Act, and Standing Order 230, the Committee reports to the House that the Petition discloses grounds for the removal from office of the following members of the Commission: Mr. Mumo Matemu and Ms. Irene Keino and recommends to the House as follows:-

- (i) That the House resolves that the Petition herein together with the materials in its support be sent to His Excellency the President pursuant to Article 251 of the constitution;
- (iv) That the House resolves that His Excellency the President appoints a tribunal to deal with the matter in accordance with Article 251(5) of the Constitution.
- (iii) That considering the matters to which the Petition herein relates, the House resolves that His Excellency the President suspends the Commissioners herein pending the determination of the tribunal.

# APPENDIX 1

**MINUTES OF THE 22<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS HELD ON TUESDAY 21<sup>ST</sup> APRIL, 2015 AT 10.00 A.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING**

**AGENDA**

1. Prayers
2. Preliminaries
3. Adoption of the Report on the Petition for the removal from office of the Ethics and Anti-Corruption Chairperson and Vice Chairperson

**PRESENT**

1. Hon. Samuel Chepkonga, M.P. - Chairperson
2. Hon. Priscilla Nyokabi, M.P. - Vice Chairperson (Chairing)
3. Hon. Paul K. Bii, M.P.
4. Hon. Njoroge Baiya, M.P.
5. Hon. John M. Waiganjo, M.P.
6. Hon. Peter Kaluma, M.P.
7. Hon. Charles Gimose, M.P.
8. Hon. Benson Mutura, M.P.
9. Hon. Moses Cheboi, M.P.
10. Hon. Fatuma Ibrahim, M.P.
11. Hon. Dr. Christine Ombaka, M.P.
12. Hon. Mohamed Abdi, M.P.
13. Hon. William Cheptumo, M.P.
14. Hon. Ben Momanyi, M.P.
15. Hon. Mutua Mutemi, M.P.
16. Hon. John Njoroge Chege, M.P.
17. Hon. Florence Kajuju, M.P.
18. Hon. Kangogo Bowen, M.P.
19. Hon. Kang'ata Irungu, M.P.
20. Hon. Tom J. Kajwang', M.P.
21. Hon. David Ochieng, M.P.
22. Hon. Olago Aluoch, M.P.
23. Hon. Ndirangu Waihenya, M.P.
24. Hon. Boniface Otsiula, M.P.

**ABSENT WITH APOLOGIES**

1. Hon. Kamoti Mwamkale William, M.P.
2. Hon. Johanna Ngeno, M.P.
3. Hon. Neto Agostinho, M.P.
4. Hon. Munuve Mati John, M.P.
5. Hon. Sammy Koech, M.P.

### **IN ATTENDANCE**

Mr. George Gazemba - Senior Clerk Assistant  
Ms. Mary L. Lemerelle - Clerk Assistant III  
Mr. Ronald Walala - Clerk Assistant III

### **MIN.NO.101. JLA/2015** - **PRAYERS**

The meeting was called to order at 10:00 A.M with a word of prayer from the Vice-Chairperson.

### **MIN.NO.102 JLA/2015** - **PRELIMINARIES**

The Committee received new evidence by way of a letter by Prof. Jane Onsongo on reasons for her resignation. The Committee also received evidence by way of letter from the Commission on Administrative Justice on investigations relating to EACC officials Ms. Irene Keino included.

### **MIN.NO.103 JLA/2015** - **ADOPTION OF MINUTES**

The minutes of the 9<sup>th</sup> April 2015, and 14<sup>th</sup> April, 2015 were adopted as a true record of the proceedings.

That the decision taken on 14<sup>th</sup> April, 2015 was based on no new evidence and not guided by any minutes as required. The minutes of 9<sup>th</sup> April, 2015 were not presented for adoption to guide the decision and the decision that was purportedly made on the 14<sup>th</sup> April, 2015.

That in view of the unprocedural issues affecting the decision of 14<sup>th</sup> April, 2015, the Committee decided that the decision made thereon was null and void.

### **MIN.NO.104 JLA/2015** **ADOPTION OF THE REPORT**

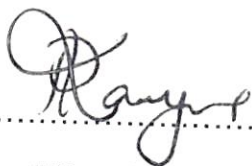
The Committee adopted the report of Mombasa 9th April 2015 as proposed by Hon. Boniface Otsiula and seconded by Hon. Irungu Kang'ata with amendments whereby recommendations touching on staff were expunged because the petition did not touch on them. The amendment was guided by Article 50 of the Constitution and was moved by Hon. Irungu Kang'ata and seconded by Hon. John Njoroge Chege.

The report was adopted by a majority where 18 voted for while 4 voted against the recommendations. Hon. Tom. J. Kajwang dissented.

### **MIN.NO.105 JLA/2015 ADJOURNMENT OF THE MEETING**

The meeting was adjourned to 1:30 P.M

Signed.....

A handwritten signature in cursive script, appearing to read 'Randy', written over a dotted line.

(Vice-Chairperson)

Date.....

21ST APRIL 2015

## MEMBERS ATTENDANCE


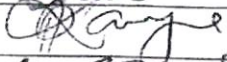
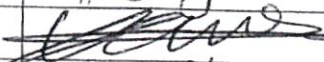

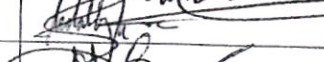

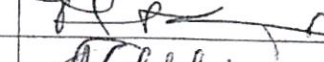
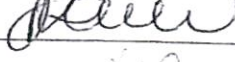
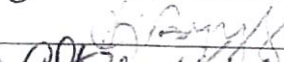



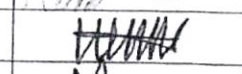
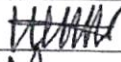




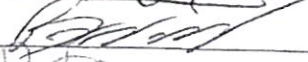




### DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

TIME: 10.00 A.M


VENUE: MAIN PARLIAMENT BUILDINGS

DATE: 21 APRIL 2015

AGENDA: CONSIDERATION OF THE EACC REPORT & FAIR ADMINISTRATIVE ACTION BILL

S/No.	NAMES	SIGNATURE
1.	SAMUEL K. CHEPKENGE	
2.	PRISCILLA N YOKABI	
3.	Ivungi Kangata	<del></del>
4.	Mohammed Abasi Hasi	<del></del>
5.	Whitney Ndungu	<del></del>
6.	Fahma Ibrahim	
7.	TLOES CHOBOK	<del></del>
8.	FLORENCE KAJUJU	
9.	Ajoke Biluwa	
10.	CHRISTINE OMBAKA	
11.	I. J. Kayunga	<del></del>
12.	PETER KAMUNA	<del></del>
13.	Bishop R. Mutemi	<del></del>
14.	HON CHARLES G. GIMOSE	
15.	J. Olago Amos	
16.	Kangogo Bowen	
17.	John Njoroge	
18.	Paul K. Bii	
19.	BENSON MUIRA	
20.	BEN O. MUMATI	
21.	Faita M. Wainaina	
22.	DAVID OCHUNJI	<del></del>
23.	BONGOLE OTSILA	<del></del>

24.		
25.		
26.		
27.		
28.		
29.		

  
George Gazemba  
For the Clerk of the National Assembly

## **APPENDIX 2**

REPUBLIC OF KENYA

*D/ Legal*  
*pse Procure*  
*Carra*

IN THE MATTER OF:

ARTICLE 251 OF THE CONSTITUTION OF KENYA

*12/3/15*

-AND-

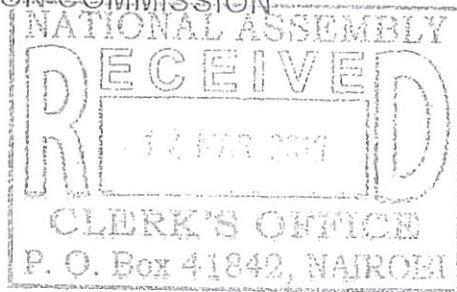
IN THE MATTER OF:

NATIONAL ASSEMBLY STANDING ORDER No. 230

PETITION FOR REMOVAL OF MUMO MATEMU AND IRENE KEINO AS  
CHAIRPERSON AND MEMBER RESPECTIVELY OF THE ETHICS AND ANTI-  
CORRUPTION COMMISSION

To:

THE NATIONAL ASSEMBLY  
MAIN PARLIAMENT BUILDINGS  
NAIROBI



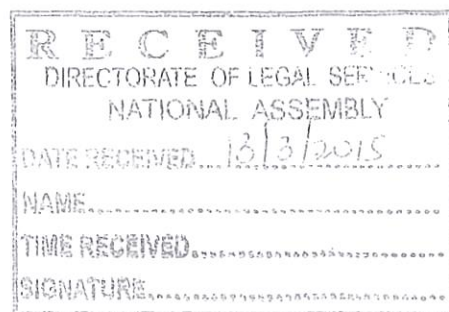
I, ORIARO GEOFFREY, a citizen of the Republic of Kenya from Nairobi County and an Advocate of the High Court of Kenya do hereby petition for the removal from office of MR. MUMO MATEMU as Chairperson of the Ethics and Anti-Corruption Commission and for the removal of MS. IRENE KEINO as a Member of the said Commission.

I take great interest in matters governance generally and corruption in particular. In that connection, I interact with many actors in that field including staff of the Ethics and Anti-Corruption Commission. The matters set out in this my petition and affidavit are from the said interactions.

This Petition, so far as it relates to MR. MUMO MATEMU, is made on the following grounds:-

1. Serious violation of the Constitution;
2. Serious violation of the Ethics and Anti-Corruption Commission Act, the Anti-Corruption and Economic Crimes Act, and the Penal Code;
3. Gross misconduct in the performance of his functions as Chairperson of the Commission; and
4. Incompetence.

The facts constituting the above grounds are as follows:-



A. By a letter dated 9<sup>th</sup> September 2014 authored by the other two Members of the Commission, namely Ms. Irene Keino and Prof. Jane Onsongo, and addressed to His Excellency the President of the Republic of Kenya, the Hon. Uhuru Kenyatta, the two Members detailed, *inter alia*, the following accusations against Mr. Mumo Matemu: letters

- i. That Mr. Mumo Matemu was secretly involved in meeting a suspect of the Anglo Leasing scandal, a Mr. Kamani, during the investigations of the scandal;

This fact constitutes a violation of the following provisions of the Constitution:

- i. Article 10, which binds all State organs, State officers, public officers and all persons, in applying or interpreting the Constitution, in enacting, applying or interpreting any law, or in making or implementing public policy decisions, to apply National Values and Principles of Governance set out in the said Article. The values and principles which have not been applied in meeting Mr. Kamani include the following: patriotism, the rule of law, good governance, integrity, transparency and accountability;
- ii. Article 73(1)(a) as to the requirement that authority assigned to a State officer be exercised in a manner that, *inter alia*:
- a. is consistent with the purposes and objects of the Constitution;
  - b. brings honour and dignity to the office; and
  - c. promotes public confidence in the integrity of the office.

The meetings with Mr. Kamani are inconsistent with the purposes and objects of the Constitution, disgrace the office held by Mr. Mumo Matemu, and erode public confidence in the integrity of the office he holds.

- iii. Article 73(2) (b), in that Mr. Mumo Matemu is, as a result of the said meetings, incapable of objectivity and impartiality in decision making. Additionally, such meetings lead to the irresistible inference that decisions made with regard to Mr. Kamani in the investigation of the Anglo Leasing scandal have been influenced by, *inter alia*, favouritism, other improper motives and corrupt practices;
- iv. Article 73(2)(c), as the meetings negate the constitutional requirement that public service should be based solely on the public interest, demonstrated by honesty in the execution of duties, declaration of conflicts of interest, accountability for to the public for decisions and actions and discipline and commitment in service of the people;
- v. Article 75(1), as the conclusion is that Mr. Mumo Matemu has not conducted

himself so as to avoid:

- a. conflict between his personal interests and public or official duties;
  - b. compromising any public or official interest in favour of his personal interest; and
  - c. demeaning the office he holds; and
- vi. Article 232, which requires that the values and principles of public service include high standards of professional ethics, impartial provision of services, accountability and transparency.

The fact also constitutes a violation of the Ethics and Anti-Corruption Commission Act in that the meetings amount to the adoption of a method of work or procedures that may be conducive to corrupt practices, contrary to Section 11(1)(j) of the said Act;

The fact further is a contravention of the Anti-Corruption and Economic Crimes Act in that the holding of meetings with Mr. Kamani amounts to abuse of office under Section 46 of the Act.

The fact is also a contravention of the following provisions of the Penal Code:

- i. Section 99 as to conflict of interest by a person employed in the public service and charged with administrative duties of a special character;
- ii. Section 101 as to abuse of office; and
- iii. Section 127 as to breach of trust.

- ii. That Mr. Mumo Matemu has declared in public that he joined the Commission to make money and not to fight corruption;

This particular fact constitutes a violation of the following provisions of the Constitution: Articles 10, 73(1)(a), 73(2)(b) and (c), 75(1), and 232 relating to honesty, integrity, transparency, accountability *eiusdem generis*. [Details of the manner in which these provisions of the Constitution have been violated are similar to those set out in the previous fact.]

- iii. That Mr. Mumo Matemu habitually interferes with operational matters, including requesting for particular investigation files through unofficial methods and short circuiting the office of the Chief Executive Officer, in order to establish the status of investigations in those specific files;

This fact constitutes a violation of the following provisions of the Constitution: Articles 10, 73(1)(a), 73(2)(b) and (c), 75(1), and 232. [Details of the manner in which these provisions of the Constitution have been violated are similar to those set out above.]

- iv. That Mr. Mumo Matemu has failed to exercise leadership and judgment in directing the Commission to achieve its strategic goals based on its core values;

This fact constitutes a violation of the following provisions of the Constitution:

- i. Article 10 as to National Values and Principles of Governance, particularly the following values and principles: patriotism, the rule of law, good governance, integrity, transparency and accountability;
- ii. Article 73(1)(a) as to the requirement that authority assigned to a State officer be exercised in a manner that, *inter alia*:
  - a. is consistent with the purposes and objects of the Constitution;
  - b. brings honour and dignity to the office; and
  - c. promotes public confidence in the integrity of the office.
- iii. Article 232 as to the values and principles of public service, including accountability and transparency.

- v. That Mr. Mumo Matemu has failed to consult and inform Members of the Commission about important matters occurring at the Commission, with the result that press releases, media briefs have been communicated, and conferences held, without discussion with, and communication to, Members of the Commission and the Chief Executive Officer of the Commission;

This fact constitutes a violation of the following provisions of the Constitution:

- i. Article 10 as to National Values and Principles of Governance, particularly the following values and principles: patriotism, the rule of law, good governance, integrity, transparency and accountability;
- ii. Article 73(1)(a) as to the requirement that authority assigned to a State officer be exercised in a manner that, *inter alia*, promotes public confidence in the integrity of the office; and
- iii. Article 232 as to the values and principles of public service, including accountability and transparency.

- vi. That Mr. Mumo Matemu has adopted a poor leadership style leading to low staff morale, high levels of indiscipline, and a failure for the Commission to achieve its strategic goals based on its core values;

This fact constitutes a violation of the following provisions of the Constitution:

- i. Article 10 as to National Values and Principles of Governance, particularly the

following values and principles: patriotism, the rule of law, good governance, integrity, transparency and accountability;

- ii. Article 73(1)(a) as to the requirement that authority assigned to a State officer be exercised in a manner that, *inter alia*, promotes public confidence in the integrity of the office; and
- iii. Article 232 as to the values and principles of public service, including accountability and transparency.

vii. That Mr. Mumo Matemu has fuelled inter-personal wars within the Commission;

This fact constitutes a violation of the following provisions of the Constitution:

- i. Article 10 as to National Values and Principles of Governance, particularly the following values and principles: patriotism, the rule of law, good governance, integrity, transparency and accountability;
- ii. Article 73(1)(a) as to the requirement that authority assigned to a State officer be exercised in a manner that, *inter alia*, promotes public confidence in the integrity of the office; and
- iii. Article 232 as to the values and principles of public service, including accountability and transparency.

B: By a letter dated 9<sup>th</sup> March 2015 authored by Mr. Mumo Matemu and addressed to Mr. Mubea, Mr. Mumo Matemu purported to interdict Mr. Mubea for a period of 30 days pending investigations. By an Internal Memo of the same date addressed to Mr. Halakhe D. Waqo, the Commission's Chief Executive Officer, Mr. Mumo Matemu notified Mr. Waqo that a resolution had been made to interdict Mr. Michael Mubea, the Commission's Deputy Chief Executive Officer and Secretary in charge of Technical Services.

In the letter addressed to Mr. Mubea notifying him of his purported interdiction, Mr. Mumo Matemu:

- i. Asked Mr. Mubea to hand over any matters and files that he was currently handling to Mr. Mumo Matemu;
- ii. Informed Mr. Mubea that he would be paid half salary with immediate effect and that he would also cease to enjoy other benefits that accrued to him by reason of his physical presence in the office. (These benefits include Mr. Mubea's security detail);

- iii. Informed Mr. Mubea of the immediate suspension of his e-mail account and communication system;
- iv. Made reference to (undisclosed) "intelligence reaching the Commission" which had allegedly strongly suggested that there were integrity challenges surrounding the discharge of Mr. Mubea's duties.

These facts constitute a violation of the following provisions of the Constitution:

- i. Article 47, in that Mr. Mubea was not afforded any opportunity to be heard before the purported interdiction, and he therefore was denied the fundamental right to administrative action that is lawful, reasonable and procedurally fair;
- iii. The Ethics and Anti-Corruption Act in that as a non-executive Chairperson of the Commission, Mr. Mumo Matemu is supposed to be delinked from the day-to-day operations of the Commission including the handling and custody of the Commission's files;

The facts also constitute a violation of the Ethics and Anti-Corruption Commission Act in that:

- iii. Under Section 11(6) of the Act, Mr. Mumo Matemu's functions as a Commissioner include assisting the Commission in policy formulation, ensuring staff performance and giving strategic direction to the Commission, but the functions do not extend to powers of interdiction, which is the responsibility of the Secretary of the Commission as its Chief Executive Officer and accounting officer, and as the person responsible for carrying out of the decisions of the Commission, day-to-day administration and management, and supervision of other employees of the Commission;

The facts also constitute a violation of Section 101 (1) of the Penal Code in that:

- iv. The withdrawal of Mr. Mubea's security detail by Mr. Mumo Matemu, a public officer, amounts to an "arbitrary act prejudicial to the rights of" another public officer. The said act was arbitrary whether viewed by itself or in the light of Mr. Mumo Matemu's failure to afford Mr. Mubea the opportunity to be heard, particularly given the obvious security risks associated with the work of anti-corruption officers.

In the Internal Memo, Mr. Mumo Matemu:

- i. Claimed that the purported resolution was made "[f]ollowing the Special Commission held... [on] 9<sup>th</sup> March, 2015"; and
- ii. Asked Mr. Waqo to oversee the implementation of the purported decision to interdict Mr. Mubea.

These facts constitute a violation of the following provisions of the Constitution:

- i. Article 10 so far as they relate to honesty and integrity, in that the Special Commission held on 9<sup>th</sup> March 2015 did not receive any report on Mr. Mubea, and did not discuss or resolve that he be interdicted; clearly, the Chairperson summoned the Chief Executive and his Deputy as a "set up" since he merely handed the suspension letter to the Deputy Chief Executive without any discussions. To latter claim that the suspension was discussed with the Chief Executive is a lie, contrary to the letter and spirit of Article 10.

The facts also amount to gross misconduct and incompetence on the part of Mr. Mumo Matemu in the performance of his functions as Chairperson of the Commission in that section 9.20.5 of the Ethics and Anti-Corruption Commission Human Resource Manual, August 2013, provides that the responsibility to interdict any employee of the Commission is on the Secretary/Chief Executive Officer, and that during the period of interdiction an employee will "continue to receive house allowance, commuter allowance and medical benefits at full entitlement".

\*\*\*\*\*

ms Irene Keino (10-3)??

This Petition, so far as it relates to Oriaro Geoffrey, is made on the following grounds:-

1. Serious violation of the Constitution;
2. Serious violation of the Ethics and Anti-Corruption Commission Act, the Anti-Corruption and Economic Crimes Act, and the Penal Code;
3. Gross misconduct in the performance of his functions as Chairperson of the Commission; and
4. Incompetence.

The facts constituting the above grounds are as follows:-

- A. On 20<sup>th</sup> February 2015, the Chairperson of the Commission on Administrative Justice received a letter from a member of staff of the National Social Security Fund (NSSF) indicating that Ms. Irene Keino is doing business with the NSSF through Lulu East Africa, a company associated with her. The business involves the management of a parking lot near the Laico Regency Hotel, where the company is reportedly receiving a revenue of approximately KShs. 500,000/= daily.
- B. The letter by the NSSF staff member also indicated that another company, Eco Plant, which is managed by a Mr. Matemu Nzatu, has been awarded contracts by the NSSF including environmental impact assessment, subdivision of titles

and planning in the NSSF's Tassia II Project. This company has been associated with, amongst other people, Ms. Irene Keino and a staff member of the NSSF, Mr. Gideon Kyengo, whose wife is a senior officer at the Ethics and Anti-Corruption Commission. The letter further indicates that through the wife of Mr. Gideon Kyengo, Members of the Commission have been assisted to acquire housing at the NSSF.

- C. By a letter dated 9<sup>th</sup> September 2014 authored by Ms. Irene Keino, a Member of the Commission, and Prof. Jane Onsongo, another Member of the Commission, and addressed to His Excellency the President of the Republic of Kenya, the Hon. Uhuru Kenyatta, the two Members detailed, *inter alia*, the various accusations against Mr. Mumo Matemu:
- D. At no time have the Vice-Chair, Irene Keino MBS and Commissioner Prof. Jane Onsongo denied the accuracy and truthfulness of the issues they raised in their said letter, rather, initially, they claimed that they had been 'misled' into writing the letter without stating who had misled them. In the first place, this admission alone of being misled, the Vice-Chair, Irene Keino MBS, and Professor Jane Onsongo ipso facto make them unfit to hold the high offices they hold. In their letter inexplicably dated, 14<sup>th</sup> January 2015 to the Chairperson, the two claim that the issues in their earlier letter had been "resolved." These are not issues which can be amicably resolved between the Chairperson on the one hand and the Vice-Chairperson and Commissioner Prof. Onsongo on the other hand. They are issues of integrity calling for the establishment of a Tribunal to investigate the same. The attempt by the Vice-Chair and Commissioner Prof. Onsongo make both guilty of attempted cover up to protect the Chairperson.
- E. H.E. the President has publically voiced concerns with the levels of corruption in the Country. The war against corruption must begin by ensuring that Members of the Commission, like Caesar's wife, are above suspicion.
- F. The current moves against the Deputy Chief Executive (and the Chief Executive) must be seen in the context of the arraignment in Court of the Kamani. In the days before the arraignment, the Chairperson called for the Anglo Leading files. When the files returned to the Secretariat, important evidence, including evidence obtained in Foreign Countries through Mutual Legal Assistance had been plucked out of the files. The Chairperson feigned ignorance insisting that he returned the files to the Secretariat in the condition in which they had been taken to him, which was obviously a lie. Significantly, the Chairperson became visibly agitated on learning that there was a duplicate file with the plucked out evidence. This was the genesis of the Chairperson's demands for investigation files to be availed to him. He further unfairly criticized the Deputy Secretary of running parallel investigations for simply having taken the precaution of keeping a duplicate file. The Chairperson continues to exhibit unusual interest in the Kamani's calls for investigation. Is he doing all these for free?

G. The Commissioners and in particular the Chairperson are engineering execution of MOU's with institutions notorious in corruption matters including County Government of Nairobi which will clearly result in compromising the Commission's impartiality and capacity to investigate the same institutions.

Your humble Petitioner therefore prays that the National Assembly finds as follows:

1. THAT MR. MUMO MATEMU, Chairperson of the Ethics and Anti-Corruption Commission, has contravened the aforementioned provisions of the Constitution and of the law, and has grossly misconducted himself in the performance of his functions as the Chairperson of the said Commission and/or is incompetent to continue holding the office of Chairperson of the Commission;

2. THAT MS. IRENE KEINO, a Member of the Ethics and Anti-Corruption Commission, has contravened the aforementioned provisions of the Constitution and of the law, and has grossly misconducted herself in the performance of her functions as a Member of the said Commission and/or is incompetent to continue holding the office of Member of the Commission;

3. THAT MR. MUMO MATEMU and MS. IRENE KEINO, in contravening the Constitution and the law, and in grossly misconducting themselves and/or otherwise exhibiting incompetence in the performance of their respective offices, are unfit to continue holding the said offices and should be forthwith removed from office on the aforesaid grounds.

DATED at NAIROBI this

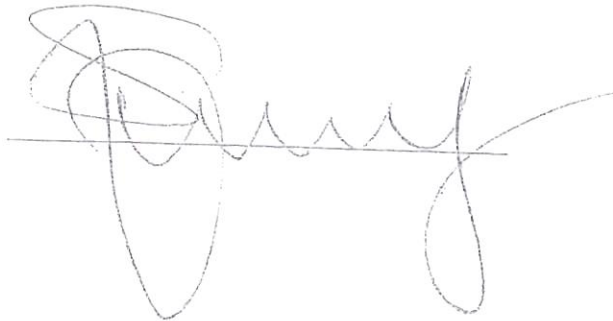
12<sup>th</sup> day of March 2015

PETITION concerning: REMOVAL OF MUMO MATEMU AND IRENE KEINO AS CHAIRPERSON AND MEMBER RESPECTIVELY OF THE ETHICS AND ANTI-CORRUPTION COMMISSION

Name of Petitioner

Signature/Thumb Impression

ORIRO GEOFFREY



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*Handwritten notes:*  
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has serious  
relating to  
have a look  
and give  
26/8/13



**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

Telegraphic address: "Personnel", Nairobi  
Telephone: Nairobi 2732090  
Mobile: 0723202888/0787880580  
Fax: 2243524  
Email: info@odpp.go.ke



NSSF Building, Block 'A'  
19<sup>th</sup> Floor  
P.O. BOX 30701 - 00100  
NAIROBI  
KENYA

When Replying please quote

Ref. No. : ODPP/CAM/013/5/129(2)

23<sup>rd</sup> August, 2013

Mr. Halakhe D. Waqo, ACI Arb.  
Secretary/Chief Executive Officer  
Ethics and Anti-Corruption Commission  
P.O. Box 61130 - 00200  
**NAIROBI**

Dear Mr. Waqo,

**RE: INQUIRY INTO ALLEGATIONS OF CORRUPTION AGAINST PC  
THOMAS E. MUSUNGU, A POLICE OFFICER BASED AT KILGORIS  
DIVISIONAL CRIMINAL INVESTIGATIONS OFFICE  
EACC/KSM/OPS/INQ/1/2012**

I write in reference to the above captioned matter and to acknowledge receipt of your transmittal letter Ref. No. EACC.6/27/2 Vol. IV/(161) dated 16<sup>th</sup> August, 2013 forwarding the above mentioned duplicate inquiry file and your Report and recommendations under Section 11(i) (d) of EACC Act as read with Section 35 of ACECA, 2003.

I note that both the letter and the Report are signed by the Secretary/CEO of the Commission, alone. I further observe that since 5<sup>th</sup> August 2013, the Ethics and Anti-Corruption Commission has a substantive Chairman in office.

Under Section 4 of the EACC Act, the Commission shall consist of a Chairperson and two other members appointed in accordance with Article 6(3) of the Constitution. Under Section 16(7)(c) the duties of the Secretary include, among others, the carrying out of the decisions of the Commission. Under paragraph 9 of the Second Schedule enacted pursuant to section 15 of the EACC Act (Procedure for the Commission), all instruments made by and decisions of the Commission shall be signified under the hand of the Chairperson and the Secretary.

Accordingly, it is my view that the Report which communicates the recommendations of the Commission to the Director of Public Prosecutions ought to be under the hand of both the Chair and the Secretary. This is important for us to avoid any possible legal challenges.

I, therefore, return herewith your above-captioned Duplicate File for your necessary action in accordance with the above mentioned provisions of the Law. However, if you hold a contrary opinion, I would be glad to receive and consider it.

Yours Sincerely,



**KERIAKO TOBIKO, CBS, SC**  
**DIRECTOR OF PUBLIC PROSECUTIONS**

CC: Mr. Mumo Matemu  
Chairman  
Ethics and Anti-Corruption Commission  
P.O. Box 61130 – 00200  
**NAIROBI**

IN THE MATTER OF PETITION TO PARLIAMENT ACT  
CHAPTER 7C LAWS OF KENYA

AND

IN THE MATTER OF PETITION FOR REMOVAL OF MUMO MATEMU AND IRENE  
KEINO AS COMMISSIONERS OF THE ETHICS AND ANTI CORRUPTION  
COMMISSION AN INDEPENDENT COMMISSION ESTABLISHED UNDER SECTION  
3 OF THE ETHICS AND ANTI CORRUPTION COMMISSION ACT CAP 65A LAWS OF  
KENYA PURSUANT TO ARTICLE 79 OF THE CONSTITUTION OF KENYA 2010

VERIFYING AFFIDAVIT

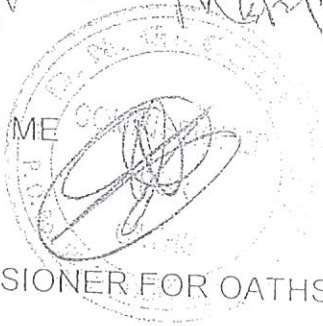
I ORIARO GEOFFREY, a resident of Nairobi and of P.O. Box 46113 – 00100 Nairobi do  
make oath and state as follows:

1. THAT I am the Petitioner in this petition and therefore competent to swear this affidavit.
2. THAT I have read the averments contained in the petition filed herewith and I verify that to the best of knowledge based on the information that I have received they are true. A bundle of some of the documents relevant to the matters pleaded in the Petition is annexed hereto and marked "OG1."
3. THAT the facts deposed herein are true and within my personal knowledge save as to those based on information sources and grounds whereof have been disclosed.

SWORN BY THE SAID  
ORIARO GEOFFREY at Nairobi  
this 12<sup>th</sup> day of March, 2015)

BEFORE ME

COMMISSIONER FOR OATHS



Please and give a report  
28/01/2015

HARRISON MUNENE MURIUKI  
GRAPHIC AND COMIC ARTIST,  
NIZETU COMICS AND PUBLISHERS.  
nizetucomics@gmail.com  
0720 612 698

③ DD-ETPA

MUMO MATEMU, MBS.  
CHAIRPERSON  
ETHICS AND ANTI-CORRUPTION  
COMMISSION (EACC).



10<sup>TH</sup> OF JANUARY, 2015.

Please review and provide a report as required.

28/1/15

Dear Sir,

RE: DONATION OF 500 COMIC BOOKS IN THE FIGHT AGAINST CORRUPTION

Corruption has been a very big issue in our country; especially in it's adverse effects on Kenya's economic growth. But there has been pro-active actions, where the government and the EACC having put in effort to fight corruption using all means they deem necessary, including involving the citizens and asking them to help curb it.

It is with this in mind that I offer my talents for use in this noble cause. I am a Cartoonist and Graphics designer, and together with a team of two others I published my first comic book going by the name 'LadyKiura' and its title is 'the fighting corruption story' in 2011. I printed 3,000 copies and over the 2 year period I have sold it in Nairobi and in Kirinyaga County where I come from. I made 2 more reprints of the same comic and was left with a remainder of about 600 copies last year, out of which I opt to donate 500 copies, in my own small way as a contribution towards the fight against corruption.

Art has its place in the shaping and evolving of society, and I believe as an artist my job is already cut out. Our hope in giving is to inspire the idea that dealing with corruption is not a 'its their job not ours' mindset, rather, its a continuous social undertaking that all kinds of talent, and individuals of all levels in society can, and should undertake. We are making a serialization of the comic story and are working on the next comic book that is broader and deeper and hope to have a much bigger impact, to be ready by March 1st, 2015.

We here at Nizetu pride ourselves with our work and you are more than welcome Sir, to enquire more about us. We donate the comic books trusting that they will be of service in any areas of your choosing. We thank you for reading this.

① Commr (Prof Oniang'o)

With much regards,

Harrison Muriuki  
Proprietor, Nizetu comics and publisher

You may wish to evaluate the value in this offer.

② DPs

27/01/15

Noted. Please see attached memo suggesting the way forward.

③ DPs  
Please find a report  
29/01/15

2/2/15

*Handwritten scribbles and initials in the top left corner.*



**MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES  
OFFICE OF THE CABINET SECRETARY**

Telegrams: "LABOUR", Nairobi  
Tel: +254(0)2729800  
Fax: +254(0)2722202  
Email: cabinetsecretary@labour.goke

Social Security House  
Block 'A' Eastern Wing  
Bishops Road, Milimani  
P.O. Box 40326-00100  
Nairobi

Ref: MLSSS 45/1

06 FEB 2015

6<sup>th</sup> February, 2015

**Mr. Michael K. Mubea**  
Ethics & Anti-Corruption Commission  
Integrity Centre  
**NAIROBI**

**RE: REQUEST TO FACILITATE INVESTIGATIONS**

The above matter refers.

I acknowledge receipt of your letter dated 30 January, 2015 inviting me to appear before you on 12<sup>th</sup> February, 2015 on matters touching on appointments of two members of the Board of Trustees, of National Social Security Fund namely; Ms. Veska Jepkemboi Kangogo and Mr. Andrew Gichamba Muigai.

I wish to state that as a Cabinet Secretary in charge of Ministry of Labour, Social Security and Services, I did exercise powers given to me as per the provisions of the National Social Security Fund Act No. 45 of 2013. The said two Trustees qualified to be appointed to the Board of National Social Security Fund as any other citizen of this country and have served in that capacity diligently to-date.

Therefore, I find your summons for me to appear before you lacking in good faith and driven by malice. Nonetheless, the scheduled date is not convenient for me and will communicate another date in due course.

**HON. SAMWEL K. KAMBI**  
**CABINET SECRETARY**

CC: **H.E. Hon. Uhuru Kenyatta, CGH**  
President of the Republic of Kenya &  
Commander-in-Chief of the Defense Forces  
State House  
**NAIROBI**

**Mr. Justin B. Muturi**  
The Speaker of the National Assembly  
**NAIROBI**

**Mr. Mumo Matemo**  
Chairman  
Ethics & Anti-Corruption Commission  
**NAIROBI**

*Handwritten notes and signatures:*  
V/char  
Comm  
for review. Revert  
with your Comm.  
news  
12/02/15  
cc - CEO  
for aml brief  
*[Signature]*

*[Large handwritten signature or scribble across the bottom right area.]*



MINISTRY OF LABOUR, SOCIAL SECURITY AND SERVICES  
OFFICE OF THE CABINET SECRETARY

Telegrams: "LABOUR", Nairobi  
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Social Security House  
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Ref: MLSSS 45/1

01 FEB 2015

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CABINET SECRETARY

CC: H.E. Hon. Uburn Kenyatta, CGH  
President of the Republic of Kenya &  
Commander-in-Chief of the Defense Forces  
State House  
NAIROBI

Mr. Justin B. Maturi  
The Speaker of the National Assembly  
NAIROBI

Mr. Mumo Matemo,  
Chairman  
Ethics & Anti-Corruption Commission  
NAIROBI

*Michael  
Comm*

*for review. Reword  
with your commu-  
nication*

*Rahim  
12/02/15*

*cc - CEO  
pse and brief*



## ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Valley Rd. /Milimani Rd. Junction) P.O. Box 61130 -00200, NAIROBI, Kenya  
TEL.: 254 (020) 2717318/ 310722, MOBILE: 0729 888881/2/3  
Fax: 254 (020) 2719757 Email: eacc@integrity.go.ke Website: www.eacc.go.ke

When replying please quote:

Our ref. EACC. 7/10/1 (149)

30<sup>th</sup> January, 2015

Hon. Samuel Kazungu Kambi  
Cabinet Secretary for Labour  
NSSF Building  
Nairobi

CABINET SECRETARY  
MINISTRY OF LABOUR, SOCIAL  
SECURITY AND SERVICES

2 - FEB 2015 *JKP*

RECEIVED

P. O. Box 40326 - 00100, NAIROBI - KENYA

Dear Sir,

**RE: REQUEST TO FACILITATE INVESTIGATIONS**

The Commission is investigating a matter touching on the appointments of Ms. Veska Jepkemboi Kangongo and Mr. Andrew Gichamba Muigai as members of the National Social Security Fund Board of Trustees.

To facilitate our investigations, the Commission would like to seek clarification from you regarding this appointment. We request you to appear at the Ethics and Anti-Corruption Commission's offices at Integrity Centre on the 12<sup>th</sup> February, 2015 at 10.00am.

In this regard, we request you to bring along the following information/documents:

1. The identification and process of appointment of the two individuals to the Board;
2. Guidelines/regulations followed in the appointments;
3. Any other relevant information.

Yours faithfully,

  
Michael K. Mubea  
Deputy Secretary/CEO Technical Services  
DR. SECRETARY/CHIEF EXECUTIVE OFFICER  
*1/11/15*

Tukome, she Ufisadi, Tuijenge Kenya

MS. IRENE KEINO

Prof. Jane Onsongo

Ethics Anti-Corruption Commission

Box 61130-00200

NAIROBI

9<sup>th</sup> September, 2014

HE Hon Uhuru Kenyatta CGH

The President of the Republic of Kenya

Office of the President

NAIROBI

Dear

**RE: SEEKING THE REMOVAL OF THE CHAIRPERSON OF THE ETHICS ANTI  
CORRUPTION COMMISSION DUE TO INCOMPETENCE AND NON  
PERFORMANCE**

---

The Ethics Anti-Corruption Commission was established pursuant to Article 79 of the Constitution.

Mandate and Functions are:

Roles of commission EACC Act 2011 Section 11 (6)

- a) Assist the commission in policy formulation and ensure that the commission and its staff, including the secretary perform their duties to the highest standards possible.
- b) Give strategic direction to the commission in the performance of its functions as stipulated in the act.
- c) Establish and maintain strategic linkages and partnerships with other stakeholders in the rule of law and other governance sector.
- d) Deal with reports, complains of abuse of power, impropriety and other forms of misconduct on the part of the commission or its staff.
- e) Deal with reports of conduct amounting to maladministration including but not limited to delay in the conduct of investigations and unreasonable invasion of privacy by the commission or its staff.

Two commissioners namely Ms. Irene Cheptoo Keino, MBS and Prof. Jane Kerubo Onsongo were sworn in to office on 27<sup>th</sup> September 2012 after a competitive interview and vetting process. The Chairperson was later sworn in almost a year later on 5<sup>th</sup> August 2013.

When we assumed office the Commission was underperforming in several areas having been without leadership since September 2011. The staff morale was extremely low and many senior staff had resigned. The desperate situation needed urgent intervention. We therefore embarked on the following actions:

## INTERVENTIONS BY COMMISSIONERS FROM 27<sup>TH</sup> SEPTEMBER 2012 TO 5<sup>TH</sup> AUGUST 2013

### 1. Sought Legal Opinion from the Attorney General

The Commission in order to revamp the operations of the new institution, we decided to seek the legal opinion of the Attorney General on the legality of the two commissioners' undertaking the operations of the commission in the absence of the chairperson. The legal advice of the Attorney General was that we could embark on revamping the Commission without any legal hurdles.

### 2. Election of the Vice Chairperson of the Commission

In the First commission meeting held on 27<sup>th</sup> September 2012 we elected the Vice chairperson to be Ms. Irene Keino.

### 3. Developed a Road Map to guide the transition period

The Commission drew up a roadmap of the intended activities of the commission in the first year of business.

### 4. Recruitment of the Chief Executive and Deputy Secretaries

The Commission commenced the recruitment of the Chief Executive/Secretary of the Commission and the Deputy Secretary Technical Services and Deputy Secretary Support in December 2012 and they reported in January 2013. A recruitment committee comprising of nominees from Public Service Commission, Association of Professional Societies, Attorney General, National Anti-Corruption Steering Committee and the two Commissioners prepared the interview tools, score sheets and minutes of all deliberations.

### 5. Vetting Framework for elected and Executive Government Appointees

The commission developed the external vetting framework for persons' seeking elective and appointive positions. We mobilized resources that saw over 18,000 vetting forms received by EACC both in the regional and Integrity Centre offices. The vetting forms were analyzed and data captured in the EACC database before the law was changed to transfer the services to IEBC.

### 6. Reorganization of Departments and Directorates and Regional office

The commission re-organized the departments, directorates and regional offices to infuse energy and jump start the commission's operations after a lull period of one year (transition period).

### 7. Technical Transitional committees

The commission established technical transitional committees to guide the transition process of the commission during the transition of the institution from Kenya Anti-Corruption Commission to Ethics Anti-Corruption Commission.

### 8. Negotiations with Salaries Remunerations Commission (SRC)

We started negotiations with SRC on the terms and conditions of service for EACC state officers and all staff through several correspondence and meetings. We held several meeting with H.E and the Deputy President on the need to remunerate

the commission shall be  
duty.

9. Regional Office Expansion program

We started the process of regional office expansion and officially launched the Eldoret regional office in February 2013 and made proposals for opening of Machakos, Isiolo, Nakuru regional office. To-date none of these offices have been opened partly due to lack of vision and strategic leadership from the chairperson.

10. Job Evaluation

The commission initiated the advertisement for the expression of interest for the job evaluation to map out the skills requirement, establishment and structure of the new EACC. The exercise was completed on September 2013 but the implementation of the Job Evaluation Report has stalled due to lack of proper leadership.

11. Vetting Framework (Tool)

In line with the requirements of section 33 of the EACC Act, we developed the vetting policy, procedures and guidelines (vetting tool) for the Ethics Anti-Corruption Commission staff transiting from Kenya Anticorruption Commission (KACC). This tool has since been borrowed heavily by other institutions including the National Police Service Commission for the vetting of the police officers.

12. Vetting of Kenya Anti-Corruption Commission staff and preparation of the vetting report

The commission prepared the Vetting Tool taking into consideration the input of all staff. The EACC Vetting Tool was subjected to stakeholder validation in compliance with the law. All former KACC employees were vetted using the tool. Therefore transition of all KACC staff to Ethics Anti-Corruption Commission was after finalisation of this process.

13. National Leadership and Integrity Conference

The Commission through its Kenya Leadership Integrity Forum organised the National Leadership and Integrity Conference in coordination with its stakeholder and it was graced by both H.E The President and Deputy President on 12<sup>th</sup> June 2013. This provided an opportunity to present the EACC's accomplishments so far and seek government support in solving the challenges it faced in the fight against graft.

14. Workshop on the Leadership and Integrity Act 2012

The commission held a seminar in Mombasa on the leadership and integrity Act 2012 to start the process of developing regulations for operationalization of the Act. So far the regulations have been forwarded to Parliament for the necessary consultations, input and subsequent approval.

15. The EACC Strategic Plan

The commission commenced the process of developing the EACC strategic Plan 2013-2018 in March 2013. An inception workshop was conducted at KICC where all senior staff were invited to comment and initiate the strategic planning process. This process was completed in December 2013 and plan was launched by your H.E. President and Deputy President on 18<sup>th</sup> March 2014.

16. Code of Conduct for State officers and Code of Conduct for EACC staff

The commission embarked on the development of the general code of conduct for state officers based on Leadership and Integrity Act 2012. This process stalled after the chairperson assumed office and to date state officers have not signed a code of conduct as required by law.

17. Abridged version of the Code of Conduct of the Leadership and Integrity Act 2012.

The commission embarked on the development of a simplified version of the code of conduct for state officers. The thought around the development of an abridged version of the code of conduct was to make it easier for all state officers when referring to the code during duty. We had planned to host all cabinet secretaries and request all of them to sign the code witnessed by H.E. and Deputy President. This idea would then have been cascaded downwards to all ministries. The Chairperson has frustrated further progress in this area.

18. Proposed Amendments to the Anti-Corruption Economic Crime Act 2003 and the Ethics Anti-Corruption Commission Act of 2011.

We worked on the draft amendments to ACECA 2003 and EACCA 2011. At the moment the miscellaneous Bill which host the EACC proposed amendments is awaiting the President to accent to it. The Chair sponsored some members of parliament from his community to frustrate this vital amendments. We are aware that he is using the Chairman of LSK to write to you objecting the signing of this Bill.

19. Established Standing Committees

We set up the EACC standing committees: namely Risk and Audit, Operations and Finance and Planning and all have been meeting as scheduled.

---

20. Acquisition of the EACC Headquarters and Disposal of EACC Karen Plot

We started the process of acquiring office premises for EACC headquarters in January 2013. We have since put more effort in ensuring the government allocates extra budget to facilitate this initiative. We have indeed obtained Treasury approval of the same through the CEO. The Chairperson is has not shown his support for this noble idea.

21. Staff Corporate open Day

We organized a staff corporate open day for all staff on 14<sup>th</sup> June 2013 to enhance inclusiveness and obtain comments and ownership of the change management process to revamp the institutional culture that had been greatly affected by the long transition.

22. Commission Charter

We have since developed a draft commission charter and sought the secretariat's assistance on sourcing for a consultant to prepare one for the commission.

Operational Matters

23. Court Cases

We fast tracked investigations and a number of high profile personalities were charged in Court.

#### 24. County Advisory Program

We initiated the County advisory program which was launched in a number of counties. This was basically to create awareness and educate county governments on preventive strategies and sought to hold Governors accountable for county funds and developments.

#### 25. Anti-Corruption Survey on Risk Assessment and Corruption County Ranking

Following your request your H.E. the President, during the National Leadership and Integrity Conference, to conduct risk assessments for all the 47 counties and develop corruption rankings for the 47 counties. We are pleased to report that this was done and a report presented to both H.E. the President and Deputy President.

### CHALLENGES

We wish to bring to your attention our displeasure in the leadership of the Chairperson of Ethics and Anti-Corruption Commission attributable to incompetence, lack of desire to fight corruption and lack of vision. This is detailed below:

- The commission is currently investigating Anglo Leasing Contracts and the entire Secretariat is focused on this. We are however disappointed to inform you that the Chairperson is secretly engaged in meeting the architects of the scam i.e. Mr. Kamani.
- Since the Chairperson joined the commission matters to do with Charterhouse Bank have resurfaced. As we speak now a case has been filed against the Commission and we are not sure that the Chairperson is not involved.
- To date one cannot identify and thus quantify any achievement related to his leadership.
- A number of policies have been pending, though we had started the process of formulation policies on: Security, partnership, information management, conciliation, mediation and negotiation. This is mainly due to lack of strategic leadership and harmony.
- Failure to consult and inform commissioners on the ongoing in the commission e.g. press releases, media briefs and conferences where important commission issues are communicated yet they have not been discussed and communicated to the Commissioners and the CEO.
- Failure to brief the commission on regional and international linkages like the East African Association of Anticorruption Authorities (EAACA) in which he served as president, Association of African Anticorruption Authorities (AAACA), Association of Commonwealth Anticorruption Authorities (ACAA); yet these are important activities that the commission should be informed and involved as good practice.
- Poor leadership style leading to low staff morale, a lot of falsehoods circulating in the press about senior management some of which maybe originating from the commission.

- High levels of staff indiscipline since there seems to be a leadership vacuum
- Low performance in the core mandate of the commission
- Several commission resolutions remain unimplemented due to staff apathy and no mechanism for follow up.
- Standing committee meetings and recommendations are not well mainstreamed into commission meeting.
- He severally interferes with operational matters and the motive is sinister. For instance he requests for certain investigation files through unofficial methods to request for status on investigations. He avoids to request for a status on a file through the CEO. We have since requested the CEO to put in controls that will curtail the interference.
- He fails to foster unity but fuels interpersonal wars in an effort to divide and rule
- Poor corporate communication and confidential matters are leaked to media for reasons we don't understand.
- Failure to exercise leadership and judgment in directing the commission to achieve its strategic goals based on its core values.
- He has an insecure personality where he thinks everybody is after his seat (chairperson) thus the need to go on a negative smear campaign on all senior staff and fellow commissioners.
- His leadership style is "divide and rule" whereby he has a different personal relationship with fellow commissioners and senior staff which creates disunity and infighting.
- He has used gutter press to defame and malign the image of senior staff and commissioners and as a result the Commission is viewed negatively.
- He is using Members of parliament to fight the Commission.
- He has declared in public that he joined the Commission to make money and not fight corruption.
- He is using staff to file petitions against the Commissioners and threatening to fire senior Commission staff.

#### HUMBLE REQUEST

Your Excellency we know your desire to fight corruption and we assure you, that we are together in this. However we are facing serious challenges and we are worried that the man at the helm has only one agenda which is to make money and bring the institution down. The purpose of this communication is to let you know that all is not well at the Commission and the fight against corruption has been slowed down. Any intervention from your office is most welcome.

Yours Sincerely

Ms. Irene Keino, MBS

Prof. Jane Onsongo-PhD

Signature




Date

9/9/2014

0 February 2015

The Chairman  
Commission on Administrative Justice  
Nairobi.

Dear Sir,

Relationship between EACC and NSSF Regarding The Tassia Estate  
Probe

I have read the recent press reports regarding the above and the earlier lamentations by the COTU Secretary General on the slow rate in investigating the Tassia issue. I am a member of staff of NSSF and hope that this will not cause me untold hardships if it comes to light. Sir, I have been agonizing in my soul on where to take this information as my otherwise obvious destination (the EACC) is not a safe place for my information as they are an interested party. It has just dawned that the CAJ is another good avenue for me to communicate. What a God send avenue?

The issues raised by your office before the parliamentary committee is a fact. There are certain EACC commissioners who do business with the Fund and cover up or at least delay the investigations against NSSF because of their selfish interest. Not only have the said commissioners been bribed with houses but they are also doing business such as running the parking lot near Grand Regency. The managing trustee of NSSF Richard Langat with his officers Gideon Kyengo, Matemu Nzatu and Moses Chesoto conspired and gave Lulu East Africa Company to run the parking lot near Grand Regency. The owners include a Mr. Ruto, Mr. Kandie and a commissioner of Eacc. They make about 500,000 kshs per day from the parking lot.

Another company called Eco plant associated with a commissioner of Eacc has also been given by Matemu Nzatu jobs by such as environmental assessment, title subdivision and planning for several projects including the infamous Tassia II project. This is also worth several millions.

Langat, Kyengo, Nzatu and Chesoto have formed a clique of fleecing NSSF and making sure that EACC does not investigate them. Kyengo's wife is a senior officer at the commission and has helped the commissioners to get housing at NSSF. They boast that they are untouchable because of the close association with the commission.

Sir in addition to the above I am sure there are other underhand deals that your good office can unearth regarding the management of nssf and eacc commissioners.

Please save this country from impunity and rot.

Concerned NSSF staff

Cc

1. Chariman EACC
2. Director CID
3. Director Public Prosecutions

05348  
release quote  
34939/68

LR. 1/285

P.O. Box 30069, NAIROBI

7th May, 1988

and date

✓ Director of City Planning,  
P.O. Box 30075,  
NAIROBI.  
Director of Surveys,  
P.O. Box 30046,  
NAIROBI.

5.7.87

Handwritten notes and stamps, including "DCP" and "A" in a box.

RE: NAIROBI: PROPOSED SUBDIVISION AND CONSOLIDATION  
PLOTS: L.R. No. 1/285/287

I refer to the Managing Director of Kenya Railway's letter ref. K/P/Nairobi/16 dated 3rd March, 1988 addressed to you and copied to me on the above subject. Please let me have your comments/recommendations as soon as possible.

(F.W.S. MWITHUKIA)  
For: COMMISSIONER OF LANDS

AKW/TN.

405

20

8/3/88

A. F. C. J. (69)

for: DIRECTOR OF CITY PLANNING AND ARCHITECTURE.  
ASSISTANT DIRECTOR (T)

J. M. MANASSEH (MRS)

*Manasseh*

I have however, attached a copy of the said letter as requested.

your office.  
May 1988 which you have referred to had been sent to me from  
this as to inform you that the letter Ref: 34969/66 of the

1988 in connection with the above subject.  
I refer to your letter of Ref: 34969/68 of 25th November,

REF: NAIROBI PROPOSED SUBDIVISION AND CONSOLIDATION - PLOTS  
T.R. NOS. 1/285&287.

Commissioner of Lands,  
P.O. BOX 30089,  
NAIROBI.

Date: 29th March, 1989.

George,  
CITY PLANNING AND ARCHITECTURE DEPARTMENT  
P.O. BOX 1219/PLOTS T.R. NOS. 1/285.

Survey & Photogrammetry  
(General)  
PLANNING AND ARCHITECTURE



SSION

CITY HALL  
P.O. BOX  
NAIROBI  
KENYA

69

MINISTRY OF LANDS

DEPARTMENT OF PHYSICAL PLANNING  
ARDHI HOU  
1st NGONG AVENUE  
P.O. Box 450  
NAIROBI  
Date: 20th July, 2007

Telegrams: "URBANPLAN", Nairobi  
Telephone: Nairobi 718050  
When replying please quote

REF: PPD/42/24/M/11/55

Commissioner of Lands,  
P.O. Box 40159 - 00100,  
NAIROBI.

RE: CHANGE OF USER FROM RESIDENTIAL TO MULTI-DWELLING  
UNITS (FLATS ON L.R. NO./287

I refer to your letter ref: 34969/72 of 25th September, 2007.

I visited the site and observed the following:-

- i) The site has an old individual dwelling house in the compound
- ii) It is next to a tarmarked road
- iv) Most of infrastructural facilities are available
- v) The neighbourhood character is changing to residential flats and offices. The property is opposite invesco offices.

The change of user is recommended on the ground that maximum value of the land will be realized. Besides plentiful infrastructural facilities, it will match the change of character of the area.

Given the rapid change of use to flats and offices the increased population may overstretch the current infrastructure. There is need to upgrade them.

S.N. TUMBO  
FOR: DIRECTOR OF PHYSICAL PLANNING

C.C. Irene Keino,  
P.O. Box 458997 - 00100,  
NAIROBI.

Director of City Planning,  
P.O. Box 30075, NAIROBI.



# MINISTRY OF LANDS

All correspondence  
Should be addressed to:-  
Director of Surveys

Telegrams: "Surveys"  
Head Office: Ardhi House  
Telephone: 2718050  
Fax: 2717553  
E-mail sok@gti.co.ke

Field Headquarters, Ruaraka  
Telephone: 8562902/8562968

Our Ref: CPC/Vol.12/45

Survey of Kenya,  
P.O. Box 30046-00100  
NAIROBI.

Date: 22<sup>nd</sup> November 2007

The Commissioner of Lands,  
P.O. Box 30089,  
NAIROBI.

RE: CHANGE OF USER FROM RESIDENTIAL TO MULTI-DWELLING  
UNITS (FLATS) ON L.R. NO. 1/287 – KILIMANI

Reference is made to your letter Ref. No. 34969/72 dated 25<sup>th</sup> September 2007 on the  
above subject.

Please note that this office has no objection to the proposal subject to the plot NOT  
constituting part of the disputed public utility land/allocation.

Ref. No. F/R 55/131

  
S.W. Kamau  
For: DIRECTOR OF SURVEYS

(Survey & Photogrammetry)  
K.S.I.P. A.I.S.K  
CITY PLANNING AND ARCHITECTURE



CITY HALL  
P.O. BOX 3  
NAIROBI  
KENYA

Mr. Muthembwa CITY PLANNING AND ARCHITECTURE DEPARTMENT

DC/ARCH/DC/2208/L.R. 1/285 & 287.

11th July, 1988.

The Commissioner of Lands,  
P.O. Box 30089,  
NAIROBI.



RE: SUB-DIVISION OF L.R. 1/285 & 287.

Your letter dated 7th May 1988 refers.

We have received the above proposal and we have commented on the same and informed the applicant.

*J. Manasseh*

J. M. MANASSEH (MRS).  
ASSISTANT DIRECTOR (T)  
FOR: DIRECTOR OF CITY PLANNING & ARCHITECTURE.

CC:- Kenya Railways,  
P.O. BOX 30079,  
NAIROBI.

CKM/mwm.

file 44423

16

Director of City Planning,  
P.O. Box 30075,  
NAIROBI.

RE: NAIROBI PROPOSED SUBDIVISION AND CONSOLIDATION  
MOTORISTS L.A.R. No. 1/225/207

Your letter ref. 34959/46 dated 7th May, 1988 refers.

Please let me have a copy of the said letter to  
enable me proceed with the processing of the  
application.

F. W. S. MWITHUKIA

(F. W. S. MWITHUKIA)  
FOR: COMMISSIONER OF LANDS

AKW/TN.

c.c.

Kenya Railways,  
P.O. Box 30079,  
NAIROBI.

Director of Surveys  
NAIROBI

The Director of Physical Planning  
NAIROBI

RE: PROPOSED AMALGAMATION OF L.R. 555.1/285 and 1/287  
LENANA ROAD - KILIMANI

---

I have received an application for amalgamation of the above  
two plots.

Please favour me with your comments on the proposal.

KARURI F. S

KARURI F.S.,  
For COMMISSIONER OF LANDS

Yours

F.34969

Kenya Railways

64

44423:  
34969



phone: Ext.  
grams:  
se. quote  
K/R/NAIROBI/16

Managing Director's Office

P.O. Box 30079,

NAIROBI

2nd March, 1988

The Director of City planning,  
P.O. Box 30075,  
NAIROBI

57

8 MAR 1988

The Director of Physical planning,  
P.O. Box 45025,  
NAIROBI

65

The Director of surveys,  
P.O. Box 30046,  
NAIROBI

Dear Sir,

NAIROBI : PROPOSED SUBDIVISION AND  
CONSOLIDATION PLOTS : LR.No.1/285 & 287

I attach hereto two prints of my drawing LP No.1005 showing the above proposals.

Please consider the scheme and forward your early recommendations to the Commissioner of Lands to enable him to accord his covering approval.

Encl:

Yours faithfully,

ENG. G. K. GUCHU  
(Eng. G.K. Guchu)  
for MANAGING DIRECTOR

C.C. The Commissioner of Lands,  
P.O. Box 30089,  
NAIROBI.

Hereto attached two prints of the above plan for the favour of your approval at your earliest convenience.

  
for (Eng. G.K. Guchu)  
MANAGING DIRECTOR

Plan at

1st NGONG AVENUE

P.O. Box 45025

NAIROBI

15th March, 1988

Commissioner of Lands,  
P.O. Box 30089,  
NAIROBI.

RE: NAIROBI: PROPOSED SUBDIVISION AND CONSOLIDATION  
PLOTS: LR. NO. 1/2850287

I am in receipt of a letter ref: K/F/Nairobi/16 of  
3rd March, 1988 from Kenya Railways copied to me among  
others on the above issue.

Note that I have no objection to the proposed subdivision  
and consolidation on Plots: LR. No. 1/2850287.

Enclosed please find the Scheme plan for your further  
action.

(J. Brinda-Obuya)  
For: DIRECTOR OF PHYSICAL PLANNING

C.O. Managing Director (Att. Eng. G.K. Gachu)  
Kenya Railways,  
P.O. Box 30079,  
NAIROBI.

The Director of City Planning,  
& Architecture,  
P.O. Box 30075,  
NAIROBI.

The Director of Surveys,  
P.O. Box 30046,  
NAIROBI.

JOO/mb:

94

Director of City Planning,  
P.O. Box 30075,  
Nairobi.  
Director of Surveys,  
P.O. Box 30046,  
Nairobi.

67

RE: NAIROBI: PROPOSED SUBDIVISION AND CONSOLIDATION  
PLOTS: L.R. No. 1/255/287

Reference to the Planning Director of Kenya Railway's  
letter ref. L/P/Nairobi/15 dated 3rd March, 1968  
addressed to you and copied to me on the above  
subject. Please let me have your comments/recommendations  
as soon as possible.

T. W. S. MWITHUKIA

(T. W. S. MWITHUKIA)  
COMMISSIONER OF LANDS

RMW/TH.

RM P.P.A 2



71

2203

THE PHYSICAL PLANNING ACT (CAP 286)  
REF: CPD/PIS/003946/1/287/RWM/sng

SERIAL NO. ....

APPLICATION REG. NO. 3742

**NOTIFICATION OF APPROVAL OF DEVELOPMENT PERMISSION**

~~Subdivision~~  
~~Subdivision & amalgamation~~  
~~Amalgamation~~  
Change of use from residential to multi-dwelling units (Flats)  
~~Extension of use~~  
~~Extension of use~~

Irene Keino

P.O. Box 45897-00100  
NAIROBI

application, numbered as above, submitted on 25/04/2007  
ing permission for Change of User of L.R. No. 1/287  
e in Lenana Road Kilimani

approved by the Town Planning Committee held on 25/07/2007  
item 72

Subject to the following/appended conditions:  
Submission of satisfactory building plans within one year and completion  
of construction within two years otherwise the approval lapses.

Payment of revised rates as will be determined by the Chief Valuer City  
Council of Nairobi.

Payment of revised ground rent as will be determined by the Commissioner  
of Lands.

Subject to the plot not constituting part of the disputed public utility  
Land/allocations.

Subject to compliance with sections 36, 41 and 52 of the Physical Planning  
Act.

Subject to compliance with the approved zoning policy.  
Subject to relevant surrender along Lenana road being effected and  
reed plans submitted upon submission of the building plans.

CITY COUNCIL OF NAIROBI  
City Planning Department  
Development applications approved  
by City Council of Nairobi  
On: 25/7/07  
Signature: *R. W. Muroki*  
Date: 25/7/07  
Assistant Director  
POLICY IMPLEMENTATION SECTION  
City Planning & Architecture Department

Signed 17/8/2007  
Name: R.W. MUROKI  
For: Director

the Director of Physical, Nairobi  
the Commissioner of Lands, Nairobi  
the Director of Survey, Nairobi  
the Land Registrar, Nairobi

SP20

Please assist with file number  
Returns  
P. Adip's L.O. PL 50  
17/09/07



REPUBLIC OF KENYA

## MINISTRY OF LANDS

Telegrams: "LANDS", Nairobi  
Telephone: Nairobi 718050-9

DEPARTMENT OF LANDS  
1<sup>st</sup> NGONG AVENUE  
OFF NGONG ROAD  
P. O. Box 30089  
NAIROBI

When replying please quote

Ref: 34969/72

Date: 25/9/2007

The Director of Surveys,  
NAIROBI.

The Director of Physical Planning,  
NAIROBI.

RE: CHANGE OF USER FROM RESIDENTIAL TO MULTI-DWELLING  
UNITS (FLATS) ON L.R. NO. 1/287- KILIMANI.

The Director of City Planning vide letter ref. CPD/PIS/003946/1/287/RWM/sng dated 17<sup>th</sup> August, 2007 has approved the above transaction.

Kindly favour me with your comments/recommendations.

S. P. N.

S. P. N. GATHONGO  
For: COMMISSIONER OF LANDS.

C.C.

Irene Keino,  
P. O. Box 458997 - 00100,  
NAIROBI.

Please pay Kshs. 3,000.00 to the Director of Physical Planning as inspection fees.



C.L. Approved  
 D.C.L. 19/2/08  
 S.A.C.L. Recommended 25/1/08  
 A.C.L. (on leave)  
 S.L.O - P.I.N. A. - Forwarded and recomm  
for

AUTHORITY FOR CHANGE OF USER

1. Parcel No/Locality. LR. NO. 11257 - Nairobi
  2. Acreage 1.021 Acres (ha)
  3. Name of Registered Owner The General Manager of The E.A  
& Harbours (62)
  4. Term of Lease Freehold
  5. Recommendations:
    - a. Council Director of City planning approved the c  
of user (71)
    - b. Planning Director of physical planning recommend  
change of user (74)
    - c. Survey Director of Survey has no objection to  
the proposal (75)
    - d. District Land Officer N/A
  6. Ground Report (77) The site has an old one private dwelling  
with most infrastructural facilities. The neighbourhood is  
changing to Flats and offices.
  7. Newspaper advertisement (78)
  8. Existing User Residential (OPDH)
  9. Proposed User Multi-dwelling Units (Flats)
  10. Recommendation by L.O. In view of the above I recommend  
the change of user subject to the conditions stip  
by Director of City planning (71)
- Name Mbuni J.N. Signature (Signature) Designation L.O.  
 Date 30/1/2008

Recommended by the ADVISORY  
Committee 18/2/08



Republic of Kenya

MINISTRY OF LANDS

Telegrams "LANDS", Nairobi  
Telephone: Nairobi 02718050  
When replying please quote

DEPARTMENT OF LANDS  
1<sup>ST</sup> NGONG AVENUE  
OFF NGONG ROAD  
P.O. Box 30089  
NAIROBI.

Ref: 34969/77

Date: 11<sup>th</sup> November 2008

Irene Keino  
P. O. Box 45897 - 00100  
NAIROBI

PROPOSAL FOR CHANGE OF USER FROM RESIDENTIAL TO MULTI-DWELLING UNITS (FLATS) ON LR NO. 1/287 KILIMANI NAIROBI

The above subject matter refers.

I am please to inform you that the government has approved your application subject to the following conditions:-

1. Surrender the existing title in exchange for a new one reflecting the new user
2. Forward to this office a new deed plan duly signed and sealed by the Director of Surveys
3. Payment of Kshs.5,000/= being approval fees
4. Payment of legal fees as it will be assessed by this office and communicated to you later
5. Payment of revised ground rent as it will be assessed by the government Valuer and communicated to you later.

  
S. K. Mburugu  
For: COMMISSIONER OF LANDS

c.c.  
Director of Surveys NAIROBI

The Director of City Planning NAIROBI



## ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Valley Rd. /Milimani Rd. Junction) P.O. Box 61130 -00200, NAIROBI, Kenya  
TEL: 254 (020) 2717318/ 310722, MOBILE: 0729 888881/2/3  
Fax: 254 (020) 2719757 Email: eacc@integrity.go.ke Website: www.eacc.go.ke

When replying please quote:

10<sup>th</sup> March 2015

CONFIDENTIAL

The chairman,  
Ethics and Anti- Corruption Commission (EACC)  
Nairobi

Dear Sir,

RE: MICHAEL MUBEA - D/CEO TECHNICAL SERVICES

Your letter of the 9<sup>th</sup> March 2015 which you handed to the above named officer in my presence and the presence of the Vice Chair, Irene Keino and the Commissioner Jane Onsongo and your subsequent memo to myself on the same date refers.

In your memo, you have quoted the 'Special Commission Meeting' of 9<sup>th</sup> March 2015. However, in the said Commission meeting, nothing on or about Mr. Mubea was discussed (*see attached the agenda items*). I was hearing allegations against my deputy for the first time at the point you invited I and ~~himself to your office while you were already seated with the Two~~ Commissioners. You did not spell out the specifics despite Mr. Mubea asking you for the same and you to uphold the rule of law. Let me say at the outset, that Mr. Mubea's work has been outstanding and clearly demonstrated in among other projects, the Anglo Leasing investigations which was in abeyance for over ten (10) years. This is a fact you know only too well.

As the Chief Executive Officer (CEO) of the Commission who receives all intelligence reports, I am not at all aware of the alleged intelligence. I am also surprised that intelligence reports to the Commission would bypass me as the CEO and come to you directly.

Under Article 47 of the constitution, the commission must confront Mr. Mubea with the specifics of the allegations and accord him the opportunity to respond before any action can be taken against him. In this connection suspending him for the thirty (30) days on allegations of integrity issues is already adverse and damaging to his reputation and it exposes the commission to action.

*Tukomeshe Ufisadi, Tuijenge Kenya*

CONFIDENTIAL

Mr. Chairman, your letter is also general regarding the special interagency committee which as he CEO am not privy to. Who is to appoint this committee and from which agencies.

On procedural matters, it is the role of the chair to give direction on such matters and not issue appointment, suspension, interdiction or even dismissal letters to the staff as this the role of the CEO as the Chair is not the executive officer. I am not aware when the law was amended to make the Commission Chairman (refer sect. 11. (6) of EACC Act 2011 - *attached*) to be the executive officer replace the office of the Secretary / Chief Executive Officer who is also the accounting officer of the commission (refer Sec16 (7) of EACC Act 2011 - *attached*) as this your action deems.

I have also come to understand that you instructed the administrative officials of the Commission to remove security, means of transport form the said officer and deny access to the office by the officers working in the D/CEO's office thereby rendering them squatters from their work station. If Mubea is under investigations, these staff members are not and are entitled to their work stations and service to the Commission.

Mr. Chairman in discharge of this course of action, you did not consider to consult my office or the Human Resource Management Office. You have not also referred to the 'Ethics and Anti-Corruption Commission Human Resource Manual, August 2013' Section 9.20.5 (*attached*) that stipulates clearly steps taken in interdicting an officer and benefits of an interdicted officer while under interdiction.

Given the foregoing and since I am in charge of the day to day running of the Commission according to the Act, I find it had to enforce and therefore do not support your action to interdict Mr. Mubea.

By a copy of this letter I am directing the officer to report on duty and continue with his work.

Thank you for your support.

Halakhe D. Waqo  
Secretary / Chief Executive Officer

CC  
Michael M. Mubea,  
D/CEO Technical Services



Encl

MUJIBUWAH, MRS

This is further to request you to ensure that the security of Commission files, documents, information, and any other Commission property in possession of the said officer is not compromised.

Kindly oversee the implementation of this decision as summarized in the attached copy of the letter with immediate effect and on behalf of the Commission.  
Following the Special Commission meeting held today the 9<sup>th</sup> March, 2015, the Commission made a resolution to interdict the above officer pending investigations pertaining to his integrity.  
Reference is made to the above matter.

SUBJECT: GROSS MISCONDUCT / INTERDICTION OF THE DEPUTY CHIEF EXECUTIVE OFFICER-MR. MICHAEL MURBA.

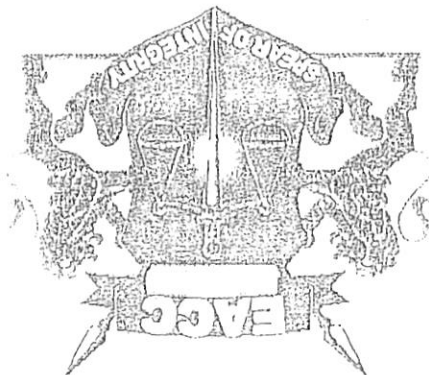
Date: 9<sup>th</sup> March, 2015

CONFIDENTIAL

From: Chairperson

To: Halakhe D. Wago, ACIARB - Secretary/CEO

INTERNAL MEMO





## ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Valley Rd. /Milimani Rd. Junction) P.O. Box 61130 -00200, NAIROBI, Kenya  
TEL.: 254 (020) 2717318/ 310722, MOBILE: 0729 888881/2/3  
Fax: 254 (020) 2719757 Email: eacc@integrity.go.ke Website: www.eacc.go.ke

When replying please quote:

Ref: CON 1/Vol. 1/09/2015

9<sup>th</sup> March, 2015

Mr. Michael Mubea

P.O BOX 55976-00200

NAIROBI

**CONFIDENTIAL**

Dear Sir,

RE: GROSS MISCONDUCT / INTERDICTION

Intelligence reaching the Commission has strongly suggested that there are integrity challenges surrounding the discharge of your duties as Deputy Secretary Technical Services. Some of these challenges have resulted in ridicule to the Commission and negative media publicity hence tainting its image.

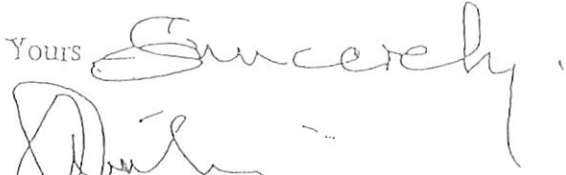
The integrity challenges if established, would amount to gross misconduct and would attract dismissal from the Commission. However, in the interest of fairness to yourself and to the Commission, it has been decided an investigation be conducted by a special inter-agency committee to be appointed for that purpose.

In order to allow for this investigation it has been decided that you be and are interdicted from exercising the duties of your office for thirty (30) days from the date of this letter pending finalization of the investigation. Upon completion of the investigations, depending on the outcome thereof, the Commission will address you appropriately.

*Tukomeshe Ujisadi, Tujenge Kenya*

While on interdiction, you will be paid half salary. The commission will expect that you adhere to the following as well:


- That you will cease to enjoy other benefits that accrue to you because of your physical presence in the office
- You must co-operate in the investigations and if requested, attend investigatory interviews
- Your work email account and communication system will be suspended
- Hand over any matters/files that you are currently handling to the chairperson.

Yours *Sincerely,*  
  
MUMO MATEMU, MBS  
CHAIRPERSON

ACKNOWLEDGEMENT

~~RECEIVED~~ RECEIVED UNDER  
PROTEST

I ..... Of P.O BOX ..... hereby  
Acknowledge receipt of this letter.

Signed  ..... Date 9/3/15 .....



## AGENDA FOR 13<sup>TH</sup> SPECIAL COMMISSION MEETING

1. Review and update on high profile corruption cases.
  - a. "Chicken Scandal"
  - b. Finance Director, Nairobi City County
  - c. Karen Land
  - d. Geothermal Development Corporation
  - e. Mumias Sugar Company
  - f. Vihiga County
  - g. Goodyear Tyres
2. Update on current Annual Procurement Plan and execution/implementation of the same.
3. Performance evaluation and targets for the Chief Executive Officer and DCEO - Technical Services, for 2013/2014 and the current year.
4. Tracking of implementation of Commission Resolutions.
5. Deliberations on the Commission's external communication strategy and the impact thereof.
6. Brief on the National Anti-Corruption Policy.
7. Update on exit pay for former management of the defunct KACC.
8. Consideration of Notice of Termination of EACC tenancy at Integrity Centre building.

Halakhe D. Waqo, ACI Arb

*Ethics and Anti-Corruption Commission Act*

7. Term of office

- (1) The chairperson and members of the Commission shall be appointed for a single term of six years and are not eligible for re-appointment.
- (2) The chairperson and members of the Commission shall serve on a full time basis.

8. Oath of Office

Before assuming office, the chairperson and members of the Commission shall take and subscribe to an oath of office as prescribed under the First Schedule.

9. Vacancy

The office of the chairperson or a member shall become vacant if the holder

- (a) dies;
- (b) resigns from office, by a notice in writing addressed to the President;
- (c) is convicted of a felony and sentenced to imprisonment;
- (d) is absent from three consecutive meetings of the Commission without good cause; or
- (e) is removed from office under any of the circumstances specified in Article 2 of the Constitution.

10. Filling of Vacancy

- (1) Where a vacancy occurs in the membership of the Commission, the President shall appoint a replacement in accordance with the procedure provided for under this Act.
- (2) A member appointed under subsection (1) shall serve the Commission for a single term of six years.

11. Additional functions of the Commission

- (1) In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the Commission shall—
  - (a) in relation to State officers—
    - (i) develop and promote standards and best practices in integrity and anti-corruption;
    - (ii) develop a code of ethics;
  - (b) work with other State and public offices in the development and promotion of standards and best practices in integrity and anti-corruption;
  - (c) receive complaints on the breach of the code of ethics by public officers;
  - (d) investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption or violation of codes of ethics or other matter prescribed under this Act or any other law enacted pursuant to Chapter Six of the Constitution;
  - (e) recommend appropriate action to be taken against State officers or public officers alleged to have engaged in unethical conduct;

*Ethics and Anti-Corruption Commission Act*

- (f) oversee the enforcement of codes of ethics prescribed for public officers;
- (g) advise, on its own initiative, any person on any matter within its functions;
- (h) raise public awareness on ethical issues and educate the public on the dangers of corruption and enlist and foster public support in combating corruption but with due regard to the requirements of the Anti-Corruption and Economic Crimes Act, 2003 as to confidentiality;
- (i) subject to Article 31 of the Constitution, monitor the practices and procedures of public bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices; and
- (j) institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures.

[Corrigenda K.G.S. 18 of 16 March 2012.]

- (2) Any person who contravenes subsection (1) (i) commits an offence.

[Corrigenda K.G.S. 18 of 16 March 2012.]

- (3) The Commission may cooperate and collaborate with other State organs and agencies in the prevention and investigation for corruption.

- (4) The Commission shall have all powers necessary or expedient for the efficient and effective execution of its functions, under the Constitution, this Act or any other written law.

- (5) The Commission may request and obtain professional assistance or advice from such persons or organizations as it considers appropriate.

- (6) The functions of the Commissioners shall be to—

- (a) assist the Commission in policy formulation and ensure that the Commission and its staff, including the Secretary perform their duties to the highest standards possible in accordance with this Act;
- (b) give strategic direction to the Commission in the performance of its functions as stipulated in this Act;
- (c) establish and maintain strategic linkages and partnerships with other stakeholders in the rule of law and other governance sector;
- (d) deal with reports, complains of abuse of power; impropriety and other forms of misconduct on the part of the commission or its staff; and
- (e) deal with reports of conduct amounting to maladministration, including but not limited to delay in the conduct of investigations and unreasonable invasion of privacy by the Commission or its staff.

- (7) The Commissioners shall meet at least once every quarter or as often as the need arises for the execution of their functions.

## 12. General principles

In fulfilling its mandate, the Commission shall, in addition to the values and principles under Article 10 of the Constitution, observe the following principles—

- (a) accommodate the diversity of Kenyan people;

- (b) impartiality and gender equity; and
- (c) the rules of natural justice.

### 13. Powers of the Commission

(1) The Commission shall have all powers generally necessary for the execution of its functions under the Constitution, this Act, and any other written law.

(2) Without prejudice to the generality of subsection (1), the Commission shall have the power to—

- (a) educate and create awareness on any matter within the Commission's mandate;
- (b) undertake preventive measures against unethical and corrupt practices;
- (c) conduct investigations on its own initiative or on a complaint made by any person, and
- (d) conduct mediation, conciliation and negotiation.

### 14. Committees of the Commission

(1) The Commission may establish committees for the effective discharge of its functions.

(2) The Commission may co-opt into the membership of committees established under subsection (1) other persons whose knowledge and skills are found necessary for the functions of the Commission.

(3) Any person co-opted into the Commission under subsection (2) may attend the meetings of the Commission and participate in its deliberation, but shall have no power to vote.

### 15. Procedure for the Commission

(1) The business and affairs of the Commission shall be conducted in accordance with the Second Schedule.

(2) Except as provided in the Second Schedule, the Commission may regulate its own procedure.

### 16. Secretary to the Commission

(1) The Commission shall, through an open, transparent and competitive recruitment process, and with the approval of the National Assembly, appoint a suitably qualified person to be the Secretary to the Commission.

(2) A person shall be qualified for appointment as the Secretary of the Commission if the person—

- (a) is a citizen of Kenya;
- (b) possesses a postgraduate degree from a university recognised in Kenya;
- (c) has had at least ten years proven experience at management level;
- (d) has experience in any of the following fields—

- (i) ethics and governance;
- (ii) law;
- (iii) public administration;
- (iv) leadership;
- (v) economics;
- (vi) social studies;
- (vii) audit;
- (viii) accounting;
- (ix) fraud investigation;
- (x) public relations and media; or
- (xi) religious studies or philosophy;

(e) meets the requirements of Chapter Six of the Constitution.

(2) The Secretary shall be a State officer and shall serve on such terms and conditions as the Commission may determine.

(3) Before assuming office, the Secretary shall take and subscribe to the oath of office set out in the First Schedule.

(4) The Secretary shall hold office for one term of six years and shall not be eligible for reappointment.

(5) The Commission shall cause the vacancy in the office of the Secretary to be advertised at least three months before the expiry of the incumbent's term.

(6) The Secretary shall, in the performance of the functions and duties of office, be responsible to the Commission.

(7) The Secretary shall be—

- (a) the chief executive officer of the Commission;
- (b) the accounting officer of the Commission; and
- (c) responsible for—
  - (i) carrying out of the decisions of the Commission;
  - (ii) day-to-day administration and management of the affairs of the Commission;
  - (iii) supervision of other employees of the Commission;
  - (iv) the performance of such other duties as may be assigned by the Commission.

#### 17. Removal from office of the Secretary

(1) The Secretary may be removed from office by the Commission for—

- (a) inability to perform functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour; or

9.20.4.2 Where an employee deserts duty or his whereabouts are unknown, the show cause letter will be addressed to the employee's last known contact address by registered mail and he will be given twenty one (21) days to respond.

#### **9.20.5 Interdiction**

9.20.5.1 Interdiction is a procedure applied on serious disciplinary cases that require investigations involving any breach of the rules and regulations in order to allow establishment of fact(s) of the case.

9.20.5.2 The employee shall be interdicted from exercise of his/her duties by the Secretary/Chief Executive Officer pending determination of the case.

9.20.5.3 This formal disciplinary punishment will be applied to major disciplinary offences. An employee who is on interdiction will be paid not less than 50% of his basic monthly salary less any statutory deductions. During this period the employee will continue to receive house allowance, commuter allowance and medical benefits at full entitlement.

9.20.5.4 While on interdiction, the employee will be required to report to his supervisor and sign a register at least once a month.

9.20.5.5 In the event the employee fails to report as instructed, the interdiction will automatically be translated to suspension.

9.20.5.6 Interdictions shall not exceed three (3) months, within which time investigations should be completed and disciplinary action determined.



#### **9.20.6 Suspension**

9.20.6.1 Where an employee has been charged with a criminal offence other than a traffic offence or investigations have commenced, the employee shall be suspended from exercise of his duties by the Secretary/Chief Executive Officer pending determination of the case.

9.20.6.2 Suspensions shall not exceed three (3) months, within which investigations are completed and action determined.

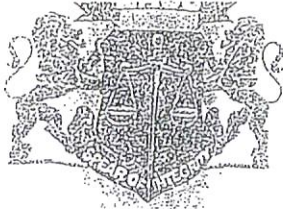
9.20.6.3 The Commission shall have the discretion to finalize such a case administratively, separate from the court process, if it is of the view that the offence amounts to gross misconduct and injurious to its interest or image.

9.20.6.4 While on suspension, an employee will not be entitled to any salary but will receive house allowance and medical benefits.



MEMORANDUM OF  
UNDERSTANDING BETWEEN  
THE ETHICS AND  
ANTI-CORRUPTION COMMISSION  
(EACC) AND THE NAIROBI CITY  
COUNTY GOVERNMENT (NCCG)  
ON COMBATING AND  
PREVENTING CORRUPTION,  
ECONOMIC CRIME AND  
UNETHICAL PRACTICES IN THE  
NCCG



DECEMBER 2013



## DEFINITION OF TERMS

In this MOU, the following terms will be interpreted to mean the following:

1. **ACECA** – Anti-Corruption and Economic Crime Act, 2003
2. **Assets Recovery**- shall mean the process of restoration of illegally acquired assets/wealth.
3. **Contracted parties** – means persons contracted by NCCG to provide services and goods.
4. **EACC** – Ethics and Anti-Corruption Commission established by section 3 of the Ethics and Anti-Commission Act 2011 pursuant to Article 79 of the Constitution.
5. **IEC**-Information, Educations and Communication.
6. **ITP** – Integrity Testing Programme.
7. **Intelligence**- shall mean processed information that can be shared on mutual basis by the parties.
8. **Investigations**- shall mean inquiries into a complaints, report or information on commission or omission of an act specifically prohibited by the law or regulations enforceable by the two parties.
9. **Lifestyle Audit**- shall mean study of staff's living standards to see if it is consistent with their reported income.
10. **NCCG** – means Nairobi City County Government.
11. **MOU** – means this agreement between the two Parties
12. **Oversight Committee** – the Chairperson of the EACC and Governor of NCCG and comprises their appointed officers.
13. **Parties** – means EACC and NCCG.

- 
- 
14. **Prevention-** Corruption prevention is detection and elimination of the causes and conditions of corruption.
  15. **Secretariat** - Comprises of the technical officers and contact persons from the two agencies.
  16. **Staff** - means an employee of NCCG.
  17. **Vetting** - means a process of determining the suitability of a NCCG employee on account of competence, integrity and ethics.



MEMORANDUM OF UNDERSTANDING BETWEEN THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) AND THE NAIROBI CITY COUNTY GOVERNMENT (NCCG) ON COMBATING AND PREVENTING CORRUPTION, ECONOMIC CRIME AND UNETHICAL PRACTICES AT NCCG

PARTIES

This Memorandum of Understanding (MOU) is entered into this 16<sup>th</sup> day of *August*, 2013 between:-

A. The Nairobi City County Government, established pursuant to Article 176(1) of the Constitution, hereinafter referred to as "NCCG" which expression shall where the context permit include its successors in title;

AND

B. Ethics and Anti-Corruption Commission, a Commission established pursuant to Article 79 of the Constitution of Kenya 2010 and operationalized under the Ethics and Anti-Corruption Commission Act, No. 22 of 2011, hereinafter referred to as "EACC" which expression shall where the context permit include its successors in title.

PREAMBLE

The objective of this MOU is to establish, strengthen and operationalize a cooperation framework between the parties on:



1. Combating and preventing corruption, economic crime and unethical practices;
2. Promotion of ethics and integrity; and
3. Creating a mutually beneficial relationship that will assist in controlling corruption, economic crime and unethical conduct in management of the affairs of the NCCG.

This MOU therefore sets out the framework and modalities for collaboration between EACC and NCCG.

WHEREAS EACC and NCCG are bodies corporate with different mandates, both parties recognize that combating and preventing corruption, economic crime and unethical practices is critical and mutually beneficial to both parties and the country at large.

**RECOGNIZING:**

1. The importance of integrity among officers under the employ of NCCG which is entrusted to provide public services to citizens, investors and other stakeholders within Nairobi County;
2. That the negative effects and cost of corruption are certainly considerable and that corruption has detrimental effects on staff morale and discharge of public services at the NCCG and the Kenyan economy in general;
3. That perceived failures in addressing corruption quickly and effectively will erode public trust in the NCCG;
4. Given the unique position of Nairobi as the Capital City of Kenya, the tolerance of corruption in NCCG could negatively impact on devolution in general and development of the county and NCCG in particular; and



5. That EACC has the constitutional and legal mandate to combat corruption and unethical practices in Kenya, and has the expertise and experience in investigation and prevention of corruption and unethical conduct.

THE PARTIES HEREBY AGREE TO COLLABORATE, and cooperate under the terms and conditions set forth in this Memorandum of Understanding herein.

**Article 1**  
**PURPOSE AND SCOPE OF THE MOU**

The purpose of this MOU is to set out a Framework of cooperation between EACC and NCCG in the prevention, detection and punishment of corruption and economic crime and ensure improvement of service delivery in the County.

**Article 2**  
**AREAS OF COLLABORATION**

NOW, THEREFORE, the parties on the basis of mutual respect, equality and mutual benefit intend, as appropriate and within the scope of their respective mandates, to undertake to co-operate closely and consult with each other on a regular basis and therefore agree on the following:

**2.1 Corruption Prevention and Capacity Building**

To enhance effectiveness and efficiency in service delivery, inculcate attitude and behaviour change, and enhance an ethical



culture, the Parties shall collaborate in the following areas among others:

### *2.1.1 Systems Review, Advisories, Training and Awareness*

- a. Undertake systems reviews and audit of NCCG;
- b. Sensitization and awareness on corruption and attitude change for staff and stakeholders;
- c. Joint specialized training on specific areas on leadership, integrity, ethics, anti-corruption and good governance among others for EACC and NCCG staff;
- d. Development and dissemination of Information Education Communication (IEC) materials on areas of mutual concerns;
- e. Capacity building on corruption risk assessments; and
- f. Benchmark best practices in integrity and ethics for NCCG including setting up Integrity Award Scheme, Anti -corruption committees and mainstreaming corruption prevention strategies in the county government.

### *2.1.2 Vetting*

The objective of vetting shall be to assess an individual's suitability for employment or continued employment with NCCG.

The parties shall collaborate in the development and application of an appropriate vetting framework.

### *2.1.3 Lifestyle Audits and Asset Recovery*

The objective of the lifestyle audits shall be to detect and deter corrupt practices and recover unexplained assets.



Collaboration will entail developing a framework; building capacity; and undertaking lifestyle audits for NCCCG staff.

## 2.2 Detection and Investigation of Corruption

### 2.2.1 Investigations

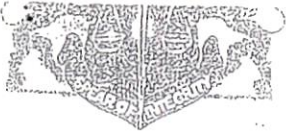
The parties shall establish mechanisms for synergy in conducting investigations and enabling successful prosecution of corruption offences and economic crimes at two levels:

- a. Investigations on corruption offences and economic crime as per the EACC mandate; and
- b. Internal investigations targeting members of staff who engage in corruption and economic crimes.

### 2.2.2 Intelligence Gathering

Intelligence is a critical element in fighting corruption and enhancing compliance with anti-corruption laws and the parties shall collaborate at three levels:

- a. Intelligence gathering geared on detection of corruption and economic crimes;
- b. Intelligence gathering on corruption and economic crimes and unethical behaviour by staff members and clients of NCCCG; and
- c. Intelligence gathering to support life style audits and investigations on NCCCG staff and contracted agents or parties.



### *2.2.3 Integrity Testing Programme*

The EACC and NCCG shall carry out joint Integrity Testing Programme on allegations of corruption and economic crimes, and unethical practices by employees of the NCCG. The objectives of integrity testing are to:

- a. Determine whether or not a particular officer is likely to engage in corrupt and unethical practices;
- b. Deter NCCG officers from engaging in corruption by increasing the actual and perceived risk of being detected;
- c. Encourage NCCG officials to disclose and report instances when they are exposed to or tempted to engage in corruption and other unethical conduct;
- d. Identify and address systemic weakness and loopholes in operations and service delivery; and
- e. Identify and recognize officers of integrity.

### *2.2.4 Exchange of Information and Disclosure*

~~There shall be, for purposes of implementation of this MOU, constant consultations and exchange of information and disclosures on areas of mutual interest.~~

### *2.3 Remedial Measures and Punishment*

The parties shall collaborate in:

- a. Enabling successful prosecution of investigated cases,
- b. Asset recovery;
- c. Effective administrative action on cases of corruption and unethical conduct; and
- d. Any other action intended to facilitate punishment and appropriate remedial action.



provided that each party shall ensure that such officers must be persons of high integrity.

- 3.4 The Secretariat shall implement the decisions of the Oversight Committee and provide periodic reports on implementation progress. The Secretariat shall submit reports on a quarterly basis to the oversight Committee.
- 3.5 The parties shall designate contact persons to facilitate communication between the parties.

#### Article 4

#### FUNDING OF ACTIVITIES UNDER THE MOU

Each party shall bear the costs of implementing the MOU.

#### Article 5

#### MONITORING AND EVALUATION FRAMEWORK

The two parties shall agree on terms of monitoring and evaluation of the programmes in the collaboration framework. Evaluations to assess progress and impact of the collaboration shall be conducted periodically as agreed upon by the parties.

#### Article 6

#### COMMUNICATION

Communication to the public on matters relating to the implementation of this MoU and the outcomes thereto may be done jointly through a communiqué.



#### Article 7

#### DISPUTE RESOLUTION

Where difficulties, disagreements or doubts arise between the parties regarding the implementation or interpretation of this MoU, the Oversight Committee shall endeavor to resolve the matter by mutual agreement. The Oversight Committee will facilitate communication between the parties on any matter affecting the implementation of the MoU.

#### Article 8

#### REVIEW AND AMENDMENTS OF THE MOU

If any party to this MoU desires that there be an amendment/review of the provisions set forth herein, then such party shall communicate formally to the other party indicating the area(s) for review.

The Oversight Committee shall meet to consider and provide direction on the proposed amendments/review. If agreed upon, then such amendments/review shall be incorporated into the MoU and signed by the parties.

#### Article 9

#### COMMENCEMENT AND TERMINATION

##### 9.1 Commencement

This MoU comes into force and shall bind each party from the date of signature.



### 9.2 Termination

In the event that termination of this MoU is sought, the Party seeking to terminate this MoU shall serve a notice of intention to terminate in writing, to the other Party. The Oversight Committee shall meet to consider the request and give direction. In the case where termination is agreed upon, then such termination shall become effective on the first day of the third month following the date of agreement.

### Article 10

#### INVESTIGATIONS BY EACC UNDER ACECA, EACC ACT, LEADERSHIP AND INTEGRITY ACT

The provisions of this MoU shall not in any way affect or override any investigations that EACC may lawfully initiate against any person in the service of NCCG in the discharge of its mandate under the Anti-Corruption and Economic Crimes Act (ACECA), Ethics and Anti-Corruption Commission Act, No. 22 of 2011 or under any relevant laws.

IN WITNESS WHEREOF the undersigned, being the duly authorized representatives of the parties hereto have signed this Memorandum of Understanding:

Mumo Matemu, MBS  
CHAIRPERSON  
ETHICS & ANTI-CORRUPTION  
COMMISSION

H.E. Dr. Evans Kidero  
GOVERNOR  
COUNTY GOVERNMENT OF  
NAIROBI

DATE 16<sup>th</sup> Dec 2013

DATE 16/12/13



Witnessed by:

For EACC:

*[Handwritten signature]*

Name:

H. D. WAQO

Designation

SEC/CEO

DATE.....

16/12/2013

For: NCCG

LILIAN W. NDEGWA

Name:

*[Handwritten signature]*

Designation

COUNTY SECRETARY

DATE.....

16/12/13

END

# APPENDIX 3

AG/CP/MS/165/12



**REPUBLIC OF KENYA**  
**IN THE SUPREME COURT OF KENYA AT NAIROBI**  
**PETITION NO. 12 OF 2013**



TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE.....PETITIONER

AND

- MUMO MATEMU.....1<sup>ST</sup> RESPONDENT
- THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT
- MINISTER FOR JUSTICE AND CONSTITUTIONAL AFFAIRS.....3<sup>RD</sup> RESPONDENT
- DIRECTOR OF PUBLIC PROSECUTIONS.....4<sup>TH</sup> RESPONDENT
- THE KENYA SECTION OF INTERNATIONAL COMMISSION OF JURISTS.....5<sup>TH</sup> RESPONDENT
- KENYA HUMAN RIGHTS COMMISSION.....6<sup>TH</sup> RESPONDENT

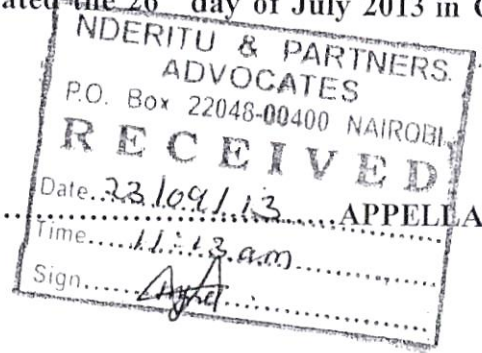
- 10

(Appeal from the judgment of the Court of Appeal at Nairobi. (Kihara Kariuki PCA, Ouko, Kiage, Gatembu Kairu and Murgor, JJA) dated the 26<sup>th</sup> day of July 2013 in Civil Appeal No. 290 of 2012)

BETWEEN

MUMO MATEMU.....APPELLANT

AND

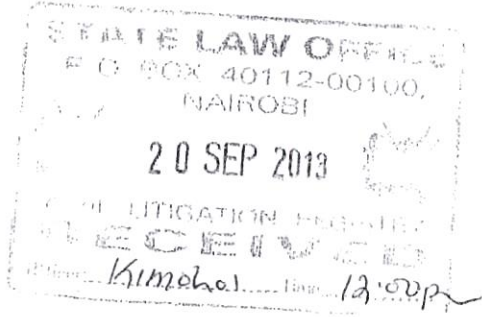


- TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE.....1<sup>ST</sup> RESPONDENT
- THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT - 20
- MINISTER FOR JUSTICE AND CONSTITUTIONAL AFFAIRS.....3<sup>RD</sup> RESPONDENT
- DIRECTOR OF PUBLIC PROSECUTIONS.....4<sup>TH</sup> RESPONDENT
- THE KENYA SECTION OF INTERNATIONAL COMMISSION OF JURISTS.....5<sup>TH</sup> RESPONDENT
- KENYA HUMAN RIGHTS COMMISSION.....6<sup>TH</sup> RESPONDENT

**GROUND OF OBJECTION TO THE PETITION**  
*(Under Rule 11 of the Supreme Court Rules, 2012)*

**TAKE NOTICE** that MUMO MATEMU, the 1<sup>st</sup> Respondent herein, shall oppose the Petition dated 30<sup>th</sup> August 2013 on the following grounds:

1



1. With regard to *Ground 1* of the Petition filed herein, the 1<sup>st</sup> Respondent contends that the Learned Judges of the Court of Appeal fell into no error or misdirection of law in adopting the precision and particularization of pleadings standard set out in the case of *Anarita Karimi Njeru vs Republic (1979) KLR 154*, since this standard, being an established precedent, has attained the force of substantive law in Kenya, and no sufficient or other cause was shown by the Petitioner why the Court of Appeal should depart from the said standard.
2. With regard to *Ground 2* of the Petition filed herein, the 1<sup>st</sup> Respondent contends that the Learned Judges of Appeal correctly evaluated the Petition and Amended Petition as filed by the Petitioner in the High Court and properly weighed the particulars provided therein — 10 as against the requirements set out in the *Anarita Karimi Njeru* case and thus the Court of Appeal fell into no error by finding and in holding, as they did, that the Petition was not pleaded with sufficient precision and particularity and as such this omission went to the substance of the Petition and Amended Petition filed in the High Court and was not just a matter of form.
3. With regard to *Ground 3* of the Petition filed herein, the 1<sup>st</sup> Respondent contends that the Learned Judges of Appeal properly directed themselves to the nature and extent of *Article 159 (2) (d)* of the Constitution and clearly appreciated that without adherence to rules that go to the substance of the Petitioner's claim as filed in the High Court, then the Petitioner could not hide under the provisions of *Article 159 (2) (d)* to maintain and prosecute an — 20 otherwise baseless claim. In essence therefore *Article 159 (2) (d)* does not exempt parties from complying with set rules of procedure which go to the substance of the claim.
4. With regard to *Ground 4* of the Petition filed herein, the 1<sup>st</sup> Respondent contends that the Learned Judges of Appeal fell into no error or misdirection of law in making their analysis of the doctrine of separation of powers and reviewing the extent of the applicability of the said doctrine. To this end, the Learned Judges of Appeal carefully and extensively reviewed the applicability of the doctrine of separation of powers in light of the facts before them and before the High Court and thereby arrived at the correct decision in this regard.

5. With regard to *Ground 5* of the Petition filed herein, the 1<sup>st</sup> Respondent contends that the Learned Judges of Appeal fell into no error or misdirection of law by applying the proper standard of the applicability of Article 73 of the Constitution to the given facts before them and before the High Court and properly found:

*" (a) Liberty, it has been said, finds no refuge in the jurisprudence of doubt. A court in doubt is not at liberty to arrive at a conclusion which is unsupported by the material before it." (Page 14 of the Judgement of the Court of Appeal)*

*" (b) It is a fundamental tenet of the rule of law that evidence, whether real, documentary, circumstantial or presumptive, is the basis of any judicial decision. This is why judicial decisions are not founded on a toss of the coin." (Page 14 of the Judgement of the Court – 10 of Appeal)*

6. With further regard to *Ground 5* of the Petition filed herein, the 1<sup>st</sup> Respondent contends that the Learned Judges of Appeal properly embarked on their own independent exercise of reviewing the facts that had been laid by the High Court to determine whether or not any matter on record would throw any shadow of doubt on the suitability of the 1<sup>st</sup> Respondent under Article 73 of the Constitution and the Learned Judges of Appeal properly found that no basis had been laid before the High Court to challenge the suitability of the 1<sup>st</sup> Respondent for appointment as Chairperson of the Ethics and Anti-Corruption Commission.
7. With regard to *Ground 6* of the Petition filed herein, the 1<sup>st</sup> Respondent contends that the Learned Judges of Appeal fell into no error or misdirection of law in fashioning the "*fact dependent objective test*" nor was the formulation of the said test a "*frolic*" of the Judges of Appeal but was a test developed through extensive submissions of all parties thereon before the Court of Appeal. The said test was properly fashioned and developed in an attempt to set the parameters within which the High Court could check or test the functions of the other organs of government without offending the doctrine of separation of powers or micromanaging the other organs of government. - 20

- 8. With further regard to *Ground 6* of the Petition filed herein, the 1<sup>st</sup> Respondent contends that in fashioning the “*fact dependent objective test*” the Learned Judges of Appeal appreciated that the adoption of any other test, especially one based on subjectivity e.g. sufficiency or otherwise of debate in the house, would lead to an absurd, unwarranted or untenable result.
- 9. With regard to *Ground 7* of the Petition filed herein, the 1<sup>st</sup> Respondent contends that the Learned Judges of Appeal fell into no error or misdirection of law and did not purport to shift or lower the burden imposed on the various organs of appointment as required by law but rather, in their Judgement, attempted to set out clear parameters within which the High Court can intervene in the appointment process in order that the various organs of appointment retain their various constitutional and statutory mandates to conduct their roles without micromanagement or undue interference in the process by the High Court. — 10
- 10. With regard to *Ground 8* of the Petition filed herein, the 1<sup>st</sup> Respondent contends that the Learned Judges of Appeal fell into no error or misdirection of law in holding and finding that the High Court erred in making the findings that that it did as it is quite clear that the High Court itself held that any conclusive findings of fact against the 1<sup>st</sup> Respondent would be determined by “*appropriate legal proceedings tailored for that purpose*” and further held that the High Court is “*not in a position to make any findings whether these allegations are proved or not*” and the Court of Appeal was therefore correct in finding that the foregoing findings clearly contradicted the final findings of the High Court. — 20
- 11. With regard to *Ground 9* of the Petition filed herein, the 1<sup>st</sup> Respondent contends that the Learned Judges of Appeal fell into no error or misdirection of law in holding that the material before the High Court was untested to justify the High Court in arriving at the findings that it did regarding the 1<sup>st</sup> Respondent.
- 12. With overall regard to all the Grounds of the Petition filed herein, the 1<sup>st</sup> Respondent contends that the Learned Judges of Appeal fell into no error or misdirection of law in

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upholding the 1<sup>st</sup> Respondent's Appeal in the Court of Appeal and reversing the decision of the High Court in its entirety.

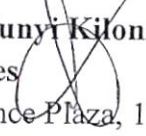
**IN VIEW OF THE FOREGOING** the question or issue framed by the Petitioner for this Honourable Court's determination does not lie or arise and /or can only be answered by this Honourable Court in the negative and, as such, the 1<sup>st</sup> Respondent prays that this Honourable Court declines to grant the various reliefs sought by the Petitioner and that the Petition herein be dismissed with costs for the present Petition, costs of the Appeal in the Court of Appeal and costs of the proceedings in the High Court being awarded to the 1<sup>st</sup> Respondent.

Dated at Nairobi this 19<sup>th</sup> day of September 2013.

.....  
**SISULE MUNYI KILONZO & ASSOCIATES**  
**ADVOCATES FOR THE 1<sup>ST</sup> RESPONDENT**

- 10

**Drawn and filed by:**

  
**Sisule Munyi Kilonzo & Associates**  
**Advocates**  
Reinsurance Plaza, 13<sup>th</sup> Floor  
Taifa Road  
P.O Box 1392-00606  
**Nairobi**

**To be served Upon**

1. **C.B. Mwangela & Co,**  
**Advocates**  
Mercantile House, 2nd Floor  
Koinange Street  
P.O. Box 8841-00200,  
**Nairobi**

- 20

2. **The Hon. Attorney General**  
State Law Office  
Sheria House  
Nairobi
  
3. **The Director of Public Prosecutions**  
NSSF Building, Block A  
19th Floor  
P.O. Box 30701-00100  
Nairobi
  
4. **Nderitu & Partners**  
Advocates  
12 Ralph Bunche Road  
P.O. Box 22048-00400  
Nairobi
  
5. **Gordon Ogola & Associates,**  
Advocates  
Geoffrey Kamau Way  
P.O. Box 17580-20100  
Nakuru

- 10

**APPENDIX 4**

# ~~2014~~ JANUARY 2014

## CHAIR PERSONS OFFICE

7/1/2014	Complaint Against EAEC. EAEC/100/6/38	D/GEO	7/1
16/1/2014	EAEC 7/12/1 Rapid Result Initiative	Records	16/1/14
28/3/2014	EAEC. 6/2/3/1/1 - Security Contract	GEO	2/1/3
12/4/2014	EAEC. 6/11/3 - Kenya Airports Authority	Records	11/4
15/4/2014	EAEC. 7/10 - integrity leadership letter Development of NACP	V.C	15/4/14
23/4/2014	EAEC <sup>inv.</sup> 6/463 - Ministry of Youth Affairs	Records	23/4/14
23/4/2014	EAEC/inv. 6/1/4.02.111 National Aids Council (closed)	Records	23/4/14
24/4/14	2013/2014 Half Yearly National Budget Implementation Review report	PA - Pjumbi	24/4/14
	letter from: C Budget - dated 11/4/14		
	letter from: Negotiation dated 18/4/2014	PA - Pjumbi	
24/4/14	Consultative Meeting b/w EAEC & SAC	CEO	24/4/14
	"	V/Chair	
	"	Coun. Prof. Ombogo	
	Kenya Railways Pensioners Association	CEO	24/4/14
letter by	by: Robert Azaria		

EACC RECORDS

10.3.14

EACC. 6/9/3

AIMW

11/3

11.3.14

EACC. 6/7/1 vdt. III

San

12.3.14

EACC. 6/8

RAC

EACC. 6/16/3

RAC

EACC. 6/25/1 vdt. IV

RAC

28/3

EACC. 6/1/5 vdt. V

RAC

19/3

RACC. INV. 6/14/2 vdt. IV (163)

CEO

17/3

EACC. 6/15/1

RAC

13.3.14

EACC. 6/27/1 vdt. II

AIMW

17/3

EACC. 6/2/4

AIMW

20/3

EACC. 6/20

AIMW

20/3

EACC. 6/20/1 vdt. III

AIMW

17/3

17.3.14

EACC. 6/2/3/1

Chairman

20/3

EACC. 6/27/1 vdt. II

Legal

20/3

18.3.14

EACC. 6/20/1 vdt. III

DIMW

20/3

EACC. 6/27 vdt. V

AIMW

20/3

EACC. 6/1/5 vdt. V

AIMW

21/3

EACC. 6/14/2

RAC

CEO

EACC. 6/26

AIMW

24/4

EACC. 6/18/2

RAC

18/3

19.3.14

EACC. 6/17

CEO

31/3

letter from county Assembly  
Chairman Gishu on (ELAOWAS)

CEO

20.3.14

EACC. 6/19/1 vdt. II

RAC

28/3

EACC. 6/25/1 vdt. III

RAC

28/3

EACC. 6/27 vdt. V

RAC

28/5

# APPENDIX 5



MM

JD  
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## ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Valley Rd. /Milimani Rd. Junction) P.O. Box 61130 -00200, NAIROBI, Kenya  
TEL.: 254 (020) 2717318/ 310722, MOBILE.: 0729 888881/2/3  
Fax: 254 (020) 2719757 Email: eacc@integrity.go.ke Website: www.eacc.go.ke

When replying please quote:

EACC.2/6/ (45)

16<sup>th</sup> January, 2013

Mr. Michael Kamau Mubea

P.O. Box 55976-00200

NAIROBI

Dear Sir,

**RE: OFFER OF EMPLOYMENT: DEPUTY SECRETARY – OPERATIONS**

---

Following your application and successful interview for the position of **Deputy Secretary - Operations**, the Ethics and Anti-Corruption Commission (EACC), is pleased to offer you the post on the following terms and conditions;

**1. POSITION**

You will be engaged as the Deputy Secretary - Operations

**2. NATURE OF APPOINTMENT**

The appointment will be for **Five (5) years** renewable by mutual consent and subject to the consideration and approval of the Commission.

**3. REPORTING**

You will be responsible to the Secretary/Chief Executive Officer

#### 4. PROBATION

Your employment will be subject to a probationary period of six (6) months. During the probation period, the contract may be terminated by either party without notice.

#### 5. DUTIES AND RESPONSIBILITIES

You will be reporting to the Secretary/CEO and will discharge the following functions;

- Supervise and monitor all the investigative and legal functions of the Commission
- Monitor, track and report on the nature of complaints /reports received at the Complaints Centre, number of cases taken up for investigations, cases pending under investigation, inquiry files forwarded to the Directorate of Public Prosecutions for prosecution or other action, active cases pending in court and the final outcome in the court cases.
- Liaise with the Witness Protection Agency to ensure that witnesses in corruption and economic crimes cases are given the sufficient legal protection
- Receive, review and keep a record of all rulings and judgments made in favor of or against the EACC and advise the Commission on any changes required to improve efficiency.
- Design relevant training programmes and oversee their implementation to enable the commission execute its mandate under Article 252(1)(b) of the Constitution of Kenya 2010.
- Design and oversee a training programme on Forensic Investigations for all investigators and Lawyers of EACC
- Oversee the establishment of an efficient case and file management system including the setting up of a Central Registry and three other Sub- registries for the storage and retrieval of all reports received, cases under investigations, files forwarded to the DPP, active cases in court and the rulings/judgments
- Co-ordinate the activities of the Complaints Centre, Investigations and Legal Services, to ensure seamless flow of information and enhanced cohesion in their daily activities. In performing this particular function, the Deputy CEO will work closely with the respective heads of departments.
- Prepare consolidated monthly, quarterly and annual reports on all reports received, action taken, cases investigated, the cases referred to the DPP, and the outcomes thereof.
- Carry out legal research and conduct continuous comparative analysis of past and emerging anti-corruption jurisprudence at both domestic and international level.
- Oversee the filing of suits on behalf of the Commission and ensure the Commission is effectively represented in court.
- Perform any other functions that may be assigned by the Commission.

## 6. PERFORMANCE MEASURES

In addition to the duties and responsibilities detailed in this letter of appointment detailed Key Tasks will be agreed between you and the Secretary/CEO, and your performance will be reviewed and appraised regularly and documented by the Management.

## 7. PLACE OF WORK

You will be based at the Integrity Centre but you will be expected to undertake field assignments as and when they arise.

## 8. REMUNERATION PACKAGE

### (a) Basic Salary

Your gross salary per month shall be **Kshs.500,000.00** fixed.

### (b) Allowances

House Allowance	:	Kshs.70,000 per month
Extraneous Allowance	:	Kshs.60,000 per month
Responsibility Allowance	:	Kshs.50,000 per month
Entertainment Allowance	:	Kshs.60,000 per month
Domestic Servant Allowance	:	Kshs.40,000 per month

### (c) Leave

You will be entitled to an annual leave of 30 days per year.

### (d) Other Benefits

Appointment to this position also attracts other benefits as follows:

- |                     |   |  |
|---------------------|---|--|
| (i) Leave Allowance | : | Kshs.50,000 per year                   |
| (ii) Transport      | : | To be provided with official transport |

- (iii) Telephone Provision : Two telephone handsets and up to Kshs.20,000 airtime per month and a house landline of Kshs.8,000 per month
- (iv) Service Gratuity : At the expiry of the contract, you will be paid Service gratuity at the rate of 30% of basic salary.
- (v) Club Membership : One Club Membership up to Kshs.400,000/=
- (vi) Medical Insurance Cover broken down as follows:
- In-patient : Kshs.8 million
  - Out-patient : Kshs.250,000
  - Dental : Kshs.80,000
  - Optical : Kshs.80,000
  - Maternity : Kshs.200,000
- (vii) Group Life Assurance and Group Personal Accident Covers will be arranged based on your basic salary.
- (viii) Air travel
- (a) While on official duties outside the country, you will be paid Subsistence Allowances at the prevailing rates applicable at the Commission.
  - (b) You shall be entitled to use Business class – KQ and First Class – British Airways.
- (ix) Acting Capacity
- It will be payable in accordance with the relevant Government Circular and Regulation of Acting Appointment.

## 9. REMOVAL FROM OFFICE

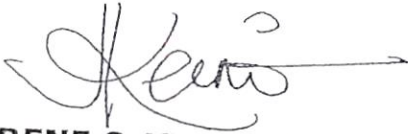
Removal from office will be in accordance with Section 17 of the Ethics and Anti-Corruption Act.

**10. PREMATURE TERMINATION OF CONTRACT OR ABOLITION OF OFFICE**

In the event of a premature termination of this contract and abolition of office in a manner not envisaged under the Ethics and Anti-Corruption Act, you will be paid full remuneration for un-expired balance of the contractual term.

**Note:** The above terms are interim pending advice from the Salaries and Remuneration Commission.

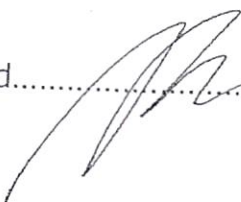
Yours sincerely,



**IRENE C. KEINO, MBS  
VICE CHAIRPERSON**

**ACCEPTANCE**

I Michael Mubeq of P.O. Box 55976-00200 NBI  
hereby accept/decline the above offer as per the terms and conditions stipulated herein.

Signed  Date 15-1-2013



## **APPENDIX 6**

s. Irene Keino  
of. Jane Onsongo  
Ethics Anti-Corruption Commission  
Box 61130-00200  
NAIROBI  
9<sup>th</sup> September, 2014

HE Hon Uhuru Kenyatta CGH  
The President of the Republic of Kenya  
Office of the President  
NAIROBI

Dear

**RE: SEEKING THE REMOVAL OF THE CHAIRPERSON OF THE ETHICS ANTI  
CORRUPTION COMMISSION DUE TO INCOMPETENCE AND NON  
PERFORMANCE**

---

The Ethics Anti-Corruption Commission was established pursuant to Article 79 of the Constitution.

Mandate and Functions are:

Roles of commission EACC Act 2011 Section 11 (6)

- a) Assist the commission in policy formulation and ensure that the commission and its staff, including the secretary perform their duties to the highest standards possible.
- b) Give strategic direction to the commission in the performance of its functions as stipulated in the act.
- c) Establish and maintain strategic linkages and partnerships with other stakeholders in the rule of law and other governance sector.
- d) Deal with reports, complains of abuse of power, impropriety and other forms of misconduct on the part of the commission or its staff.
- e) Deal with reports of conduct amounting to maladministration including but not limited to delay in the conduct of investigations and unreasonable invasion of privacy by the commission or its staff.

Two commissioners namely Ms. Irene Cheptoo Keino, MBS and Prof. Jane Kerubo Onsongo were sworn in to office on 27<sup>th</sup> September 2012 after a competitive interview and vetting process. The Chairperson was later sworn in almost a year later on 5<sup>th</sup> August 2013.

When we assumed office the Commission was underperforming in several areas having been without leadership since September 2011. The staff morale was extremely low and many senior staff had resigned. The desperate situation needed urgent intervention. We therefore embarked on the following actions:

## INTERVENTIONS BY COMMISSIONERS FROM 27<sup>TH</sup> SEPTEMBER 2012 TO 5<sup>TH</sup> AUGUST 2013

### 1. Sought Legal Opinion from the Attorney General

The Commission in order to revamp the operations of the new institution, we decided to seek the legal opinion of the Attorney General on the legality of the two commissioners' undertaking the operations of the commission in the absence of the chairperson. The legal advice of the Attorney General was that we could embark on revamping the Commission without any legal hurdles.

### 2. Election of the Vice Chairperson of the Commission

In the First commission meeting held on 27<sup>th</sup> September 2012 we elected the Vice chairperson to be Ms. Irene Keino.

### 3. Developed a Road Map to guide the transition period

The Commission drew up a roadmap of the intended activities of the commission in the first year of business.

### 4. Recruitment of the Chief Executive and Deputy Secretaries

The Commission commenced the recruitment of the Chief Executive/Secretary of the Commission and the Deputy Secretary Technical Services and Deputy Secretary Support in December 2012 and they reported in January 2013. A recruitment committee comprising of nominees from Public Service Commission, Association of Professional Societies, Attorney General, National Anti-Corruption Steering Committee and the two Commissioners prepared the interview tools, score sheets and minutes of all deliberations.

### 5. Vetting Framework for elected and Executive Government Appointees

The commission developed the external vetting framework for persons' seeking elective and appointive positions. We mobilized resources that saw over 18,000 vetting forms received by EACC both in the regional and Integrity Centre offices. The vetting forms were analyzed and data captured in the EACC database before the law was changed to transfer the services to IEBC.

### 6. Reorganization of Departments and Directorates and Regional office

The commission re-organized the departments, directorates and regional offices to infuse energy and jump start the commission's operations after a lull period of one year (transition period).

### 7. Technical Transitional committees

The commission established technical transitional committees to guide the transition process of the commission during the transition of the institution from Kenya Anti-Corruption Commission to Ethics Anti-Corruption Commission.

### 8. Negotiations with Salaries Remunerations Commission (SRC)

We started negotiations with SRC on the terms and conditions of service for EACC state officers and all staff through several correspondence and meetings. We held several meeting with H.E and the Deputy President on the need to remunerate

the commission staff due to the  
duty.

#### 9. Regional Office Expansion program

We started the process of regional office expansion and officially launched the Eldoret regional office in February 2013 and made proposals for opening of Machakos, Isiolo, Nakuru regional office. To-date none of these offices have been opened partly due to lack of vision and strategic leadership from the chairperson.

#### 10. Job Evaluation

The commission initiated the advertisement for the expression of interest for the job evaluation to map out the skills requirement, establishment and structure of the new EACC. The exercise was completed on September 2013 but the implementation of the Job Evaluation Report has stalled due to lack of proper leadership.

#### 11. Vetting Framework (Tool)

In line with the requirements of section 33 of the EACC Act, we developed the vetting policy, procedures and guidelines (vetting tool) for the Ethics Anti-Corruption Commission staff transiting from Kenya Anticorruption Commission (KACC). This tool has since been borrowed heavily by other institutions including the National Police Service Commission for the vetting of the police officers.

#### 12. Vetting of Kenya Anti-Corruption Commission staff and preparation of the vetting report

The commission prepared the Vetting Tool taking into consideration the input of all staff. The EACC Vetting Tool was subjected to stakeholder validation in compliance with the law. All former KACC employees were vetted using the tool. Therefore transition of all KACC staff to Ethics Anti-Corruption Commission was after finalisation of this process.

#### 13. National Leadership and Integrity Conference

The Commission through its Kenya Leadership Integrity Forum organised the National Leadership and Integrity Conference in coordination with its stakeholder and it was graced by both H.E The President and Deputy President on 12<sup>th</sup> June 2013. This provided an opportunity to present the EACC's accomplishments so far and seek government support in solving the challenges it faced in the fight against graft.

#### 14. Workshop on the Leadership and Integrity Act 2012

The commission held a seminar in Mombasa on the leadership and integrity Act 2012 to start the process of developing regulations for operationalization of the Act. So far the regulations have been forwarded to Parliament for the necessary consultations, input and subsequent approval.

#### 15. The EACC Strategic Plan

The commission commenced the process of developing the EACC strategic Plan 2013-2018 in March 2013. An inception workshop was conducted at KICC where all senior staff were invited to comment and initiate the strategic planning process. This process was completed in December 2013 and plan was launched by your H.E. President and Deputy President on 18<sup>th</sup> March 2014.

16. Code of Conduct for State officers and Code of Conduct for EACC staff

The commission embarked on the development of the general code of conduct for state officers based on Leadership and Integrity Act 2012. This process stalled after the chairperson assumed office and to date state officers have not signed a code of conduct as required by law.

17. Abridged version of the Code of Conduct of the Leadership and Integrity Act 2012.

The commission embarked on the development of a simplified version of the code of conduct for state officers. The thought around the development of an abridged version of the code of conduct was to make it easier for all state officers when referring to the code during duty. We had planned to host all cabinet secretaries and request all of them to sign the code witnessed by H.E. and Deputy President. This idea would then have been cascaded downwards to all ministries. The Chairperson has frustrated further progress in this area.

18. Proposed Amendments to the Anti-Corruption Economic Crime Act 2003 and the Ethics Anti-Corruption Commission Act of 2011.

We worked on the draft amendments to ACECA 2003 and EACCA 2011. At the moment the miscellaneous Bill which host the EACC proposed amendments is awaiting the President to accent to it. The Chair sponsored some members of parliament from his community to frustrate this vital amendments. We are aware that he is using the Chairman of LSK to write to you objecting the signing of this Bill.

19. Established Standing Committees

We set up the EACC standing committees: namely Risk and Audit, Operations and Finance and Planning and all have been meeting as scheduled.

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20. Acquisition of the EACC Headquarters and Disposal of EACC Karen Plot

We started the process of acquiring office premises for EACC headquarters in January 2013. We have since put more effort in ensuring the government allocates extra budget to facilitate this initiative. We have indeed obtained Treasury approval of the same through the CEO. The Chairperson is has not shown his support for this noble idea.

21. Staff Corporate open Day

We organized a staff corporate open day for all staff on 14<sup>th</sup> June 2013 to enhance inclusiveness and obtain comments and ownership of the change management process to revamp the institutional culture that had been greatly affected by the long transition.

22. Commission Charter

We have since developed a draft commission charter and sought the secretariat's assistance on sourcing for a consultant to prepare one for the commission.

Operational Matters

23. Court Cases

We fast tracked investigations and a number of high profile personalities were charged in Court.

#### 24. County Advisory Program

We initiated the County advisory program which was launched in a number of counties. This was basically to create awareness and educate county governments on preventive strategies and sought to hold Governors accountable for county funds and developments.

#### 25. Anti-Corruption Survey on Risk Assessment and Corruption County Ranking

Following your request your H.E. the President, during the National Leadership and Integrity Conference, to conduct risk assessments for all the 47 counties and develop corruption rankings for the 47 counties. We are pleased to report that this was done and a report presented to both H.E. the President and Deputy President.

### CHALLENGES

We wish to bring to your attention our displeasure in the leadership of the Chairperson of Ethics and Anti-Corruption Commission attributable to incompetence, lack of desire to fight corruption and lack of vision. This is detailed below:

- The commission is currently investigating Anglo Leasing Contracts and the entire Secretariat is focused on this. We are however disappointed to inform you that the Chairperson is secretly engaged in meeting the architects of the scam i.e. Mr. Kamani.
- Since the Chairperson joined the commission matters to do with Charterhouse Bank have resurfaced. As we speak now a case has been filed against the Commission and we are not sure that the Chairperson is not involved.
- To date one cannot identify and thus quantify any achievement related to his leadership.
- A number of policies have been pending, though we had started the process of formulation policies on: Security, partnership, information management, conciliation, mediation and negotiation. This is mainly due to lack of strategic leadership and harmony.
- Failure to consult and inform commissioners on the ongoing in the commission e.g. press releases, media briefs and conferences where important commission issues are communicated yet they have not been discussed and communicated to the Commissioners and the CEO.
- Failure to brief the commission on regional and international linkages like the East African Association of Anticorruption Authorities (EAACA) in which he served as president, Association of African Anticorruption Authorities (AAACA), Association of Commonwealth Anticorruption Authorities (ACAA); yet these are important activities that the commission should be informed and involved as good practice.
- Poor leadership style leading to low staff morale, a lot of falsehoods circulating in the press about senior management some of which maybe originating from the commission.

- High levels of staff indiscipline since there seems to be a leadership vacuum
- Low performance in the core mandate of the commission
- Several commission resolutions remain unimplemented due to staff apathy and no mechanism for follow up.
- Standing committee meetings and recommendations are not well mainstreamed into commission meeting.
- He severally interferes with operational matters and the motive is sinister. For instance he requests for certain investigation files through unofficial methods to request for status on investigations. He avoids to request for a status on a file through the CEO. We have since requested the CEO to put in controls that will curtail the interference.
- He fails to foster unity but fuels interpersonal wars in an effort to divide and rule
- Poor corporate communication and confidential matters are leaked to media for reasons we don't understand.
- Failure to exercise leadership and judgment in directing the commission to achieve its strategic goals based on its core values.
- He has an insecure personality where he thinks everybody is after his seat (chairperson) thus the need to go on a negative smear campaign on all senior staff and fellow commissioners.
- His leadership style is "divide and rule" whereby he has a different personal relationship with fellow commissioners and senior staff which creates disunity and infighting.
- He has used gutter press to defame and malign the image of senior staff and commissioners and as a result the Commission is viewed negatively.
- He is using Members of parliament to fight the Commission.
- He has declared in public that he joined the Commission to make money and not fight corruption.
- He is using staff to file petitions against the Commissioners and threatening to fire senior Commission staff.

#### HUMBLE REQUEST

Your Excellency we know your desire to fight corruption and we assure you, that we are together in this. However we are facing serious challenges and we are worried that the man at the helm has only one agenda which is to make money and bring the institution down. The purpose of this communication is to let you know that all is not well at the Commission and the fight against corruption has been slowed down. Any intervention from your office is most welcome.

Yours Sincerely

Ms. Irene Keino, MBS

Prof. Jane Onsongo-PhD

Signature



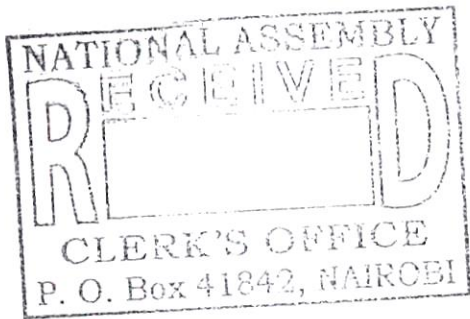

Date

9/9/2014

**APPENDIX 7**

IRENE C. KEINO  
Vice-Chairperson  
Ethics & Anti-Corruption  
Commission  
P.O Box 61130  
Nairobi

PROF. JANE ONSONGO  
Commissioner  
Ethics & Anti-Corruption  
Commission  
P.O Box 61130  
Nairobi



15<sup>th</sup> January, 2015

**MUMO MATEMU, MBS**  
Chairperson  
Ethics & Anti-Corruption Commission  
P.O Box 61130-00100  
**NAIROBI**

Dear

**RE: PURPORTED LETTER TO THE PRESIDENT FOR YOUR  
REMOVAL FROM OFFICE AS THE CHAIRPERSON OF THE  
ETHICS AND ANTI-CORRUPTION COMMISSION**

---

We refer to the above matter

This is to bring to your attention of the purported letter sent to His Excellency the President of Kenya for your removal from office as the Chairperson of the Ethics and Anti-Corruption Commission (EACC). The said letter is allegedly signed by us.

We wish to state that the letter was never discussed in the Commission meeting and the same was never dispatched by us.

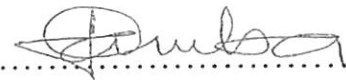
The issues raised therein are no longer current or valid. We therefore disassociate ourselves from the said letter and irrevocably recant the sentiments in the said letter attributable to us.

We further confirm that as commissioners we work closely and have a cordial working relationship. We are also committed in discharging our functions in accordance with our mandate including functions spelt out under Section 11(6) of the Ethics and Anti-Corruption Commission Act.

As a result we have been able to produce results and we shall continue to do so.



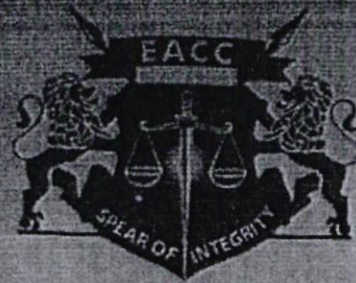
.....  
**IRENE KEINO**  
**VICE CHAIRPERSON, EACC**



.....  
**PROF. JANE ONSONGO**  
**COMMISSIONER, EACC**

## APPENDIX 8

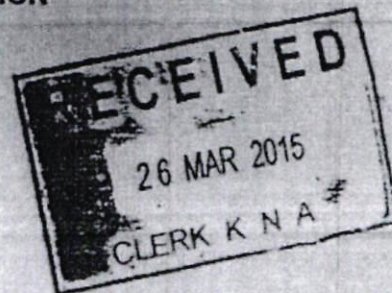
MM VII



Integrity Centre,  
Millennium Valley Road, Nairobi  
P.O. Box 61130-00200,  
Nairobi, Kenya  
Tel: (020) 2717318; 2720722;  
2100312 / 3; 4997000  
Mobile: 0729 888881/2/3; 0736  
896600/33  
Fax: (020) 2719757  
Email: [eacc@integrity.go.ke](mailto:eacc@integrity.go.ke)

## ETHICS AND ANTI-CORRUPTION COMMISSION

The Clerk Kenya National Assembly  
Parliament Buildings  
P.O box 41842- 00100  
Nairobi Kenya  
Email [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)  
Tel (254-2)2221291 or 2848000  
Fax (254) 2243694  
Website [www.parliament.go.ke](http://www.parliament.go.ke)



26<sup>th</sup> March, 2015.

*Dear Clerk*  
**RE: EACC/DOC/KNA/16/2015**

Am in receipt of your letter dated 25<sup>th</sup> march, 2015 acknowledging receipt of my letter **REF: EACC/DOC/KNA** and the confidential doc annexed.

I noted with concern the matters raised by you emanating from the committee members about sacred cows. I have chosen to address each matter separately.

This is true that we opened an inquiry for Geothermal Development Cooperation on allegations of corruption in the procurement of rigs. **EACC/FI/INQ/70/2014** amounting to 5.6 Billion Shillings.

The parliament under house committee of PIC also ventilated on the matter. After reviewing the attached document from Public Investment Committee, as a commission we felt that the legal frame work under the loan agreement conditions and some provisions of the 2005 Public Procurement Disposal Act were applicable in the procurement of the extra drilling rig.

This guided my commission to omit GDC from your list and shared the same to state house in our detailed brief recently.

Hope this will serve well to the members.

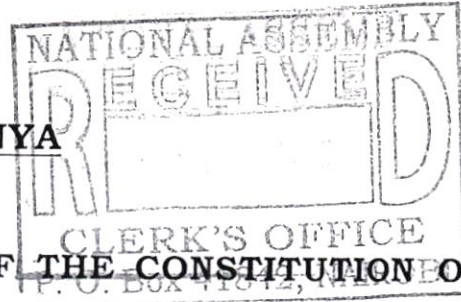
Thanks.

**MUMO MATEMU, MBS  
CHAIRPERSON**

*Tukomeshe Ufisadi, Tuijenge Kenya*

**APPENDIX 9**

REPUBLIC OF KENYA



IN THE MATTER OF:           ARTICLE 251 OF ~~THE CONSTITUTION OF~~  
KENYA

-AND-

IN THE MATTER OF:           NATIONAL ASSEMBLY STANDING ORDER  
NO. 230

SUBMISSIONS BY MR MUMO MATEMU, THE CHAIRPERSON ETHICS AND ANTI- CORRUPTION COMMISSION IN RESPONSE TO THE PETITION BY ORIARO GEOFFREY DATED 12<sup>TH</sup> MARCH 2015 FOR THE REMOVAL OF MR. MUMO MATEMU, THE CHAIRPERSON, AND A MEMBER MS IRENE KEINO, OF ETHICS AND ANTI- CORRUPTION COMMISSION

---

INTRODUCTION

When I was sworn into office to commence work at the Ethics and Anti-Corruption Commission (EACC), I was given a warning severally that “the day that you start dealing with grand corruption will be the day you kick start the process of losing your job.”

Although I did not rubbish this warning, I did not expect to see the sort of things I am seeing lately, including this petition, i.e.

- (i) Attempts to cause legislative inroads into the independence of the Commission through amending the EACC Act so as to make the Commission legally unable to properly oversight and supervise certain

officers within the EACC (**see a copy of the attached Memorandum by His Excellency the President returning the subject Bill to Parliament marked “MM I”**).

- (ii) The filing of this petition in apparent reaction to action taken by the Commission against a single employee;
- (iii) After the Commission commenced the action against one of its employees, hardly a day passes and a “petition” addressed to the H.E. the President surfaces without evidence of how it was transmitted.
- (iv) Two days later another petition which almost wholly draws on the first document on a word for word, **CUT AND PASTE** basis is filed in parliament.
- (v) By Sunday of the same week the contents of the petition were splashed in the media. Thereafter followed a series of media sensationalization of Commission matters, and leakages of confidential documents.

When I peruse the petition which I only just received on 30<sup>th</sup> March, 2015 I find that as relates to myself, it can be divided into three parts, i.e.

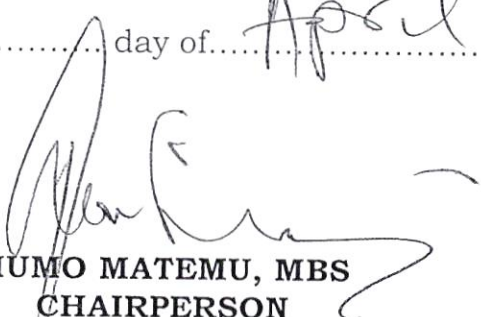
- (A) The part that is wholly based on hearsay, as it relates to matters alleged by other parties and later recanted; the materials in this part cannot form the basis of a petition.
- (B) The part that relates to the interdiction of a member of staff of the Commission. This part, I would submit, is a matter for Industrial and Labour Relations Court, if indeed it cannot be resolved internally.

(C) Some of the issues raised in the petition touch on the ongoing case which is at the Supreme Court relating to my appointment as the chairperson of EACC. To this extent this petition is therefore a nullity and should be dismissed as the same offends the sub-judice rule. **(see attached copy of the appeal to the Supreme Court – Marked as MM II).**

It is my submission that as indicated by the Legal Counsel of the National Assembly on 18/03/2015 ***“A scrutiny of the petition and the documents submitted vis a vis the requirements of Standing Order 230 indicate that most of the attached documents are attributable to third parties other than the petitioner.”***

I would therefore ask that this Committee finds that the document placed before it does not meet the standards required of a petition for removal of a member of the Constitutional Commission.

Dated at Nairobi this.....1<sup>st</sup>..... day of.....April.....2015.

  
**MUMO MATEMU, MBS  
CHAIRPERSON**  
**ETHICS AND ANTI-CORRUPTION COMMISSION**

**PART 1: ISSUES RAISED IN THE PETITION AGAINST MYSELF AS THE  
CHAIRPERSON, EACC**

**1. Secretly engaged in meetings with architects of Anglo-Leasing scam  
in particular Mr. Kamani**

I have no recollection of ever meeting the 'Mr. Kamani' referred to in the Petition and I don't know who 'Mr. Kamani' is. I have also no recollection of any personal interactions or engagements with persons who have been charged in the Anglo-leasing scandal and who carry their surname Kamani. The following persons who have been accused in the Anglo-Leasing Scandal have the Surname Kamani: **Deepak Kamani, Rashmi Kamani and Chamanlal Kamani**. I fail to determine which of the three is referred to as Mr. Kamani. The Petitioner has not confronted me with facts or any evidence to support this allegation.

**PRAYER:** I want by this response to formally request for an opportunity to examine the petitioner on Oath in respect of this reckless statement.

**2. (a) Habitually interferes with operational matters including  
requesting for particular investigation files through unofficial  
methods and short-circuiting the office of CEO, in order to  
establish the status of investigations in those specific files.**

i) The Commission contemplated under Article 79 of the Constitution is established under the section 3 of the Ethics and Anti-Corruption Act, 2011 (EACC Act), consisting of the Chairperson and two members as per section 4 of the Act. The Commission is mandated to investigate (Article 252(1) and Section 11(1) of the EACC Act) and it appoints a secretariat to assist in carrying out that function.

- ii) The Secretariat undertakes its tasks as an agent of the Commission. The Commission therefore cannot be accused of interfering with the work of an agent. The activities done by the secretariat are done under powers of the Commission. The Commission therefore must know what the Secretariat, which is an agent of the Commission, is doing. This is done through oversight and supervision as the Commission cannot be ignorant of matters happening in the Commission or matters being handled by its members of staff.
- iii) The Commission is, under Article 252(1) (c) as read with Section 18(2) of the EACC Act, mandated to recruit or appoint staff to facilitate the Commission's discharge of its mandate. Such members of staff including the CEO are responsible to the Commission in the performance of their duties. **The supervision of the discharge by the Secretariat staff of the functions donated by the Commission cannot be construed to be interference**
- iv) The exercise of oversight by the Commission upon activities of the staff is a responsibility that Commissioners and the Chairperson must discharge.
- v) Section 11(6)(a) of the EACC Act provides that the Commissioners shall .....**ensure that the Commission and its staff, INCLUDING the Secretary perform their duties to the highest standards possible in accordance with this Act.**

The law does not say that the Commission '**through the CEO**' but it clearly says that the Commission shall '**.....ensure that the Commission and its staff, INCLUDING the Secretary....**' The

import of this provision is that when it comes to performance of duties, all members of staff including the CEO are supervised by the Commissioners. This is done through a number of ways. As part of the oversight, the Commission has established an Operations Committee chaired by the Vice Chairperson of the Commission which in liaison with the Chairperson, oversees the day to day operations of the Commission.

In addition, the Commission has also established a management tool known as 'the Plenary'. The Plenary meetings are chaired by the Chairperson of the Commission and attended by other members of the Commission and senior members of staff. The CEO, the DCEO, the Directors and Heads of Departments participate and report directly to the Commission. The CEO and all the other officers who attend the plenary report directly to the Commission on functions relating to their mandate.

At the plenary, the Commission can make resolutions and direct specific actions to be taken directly by the officers concerned. The Commission can directly issue sanctions to any officer who is in default of or is complacent of the expected level of discharging their duties. In doing all these, the Commission does not need permission or concurrence of the CEO or any other member of staff.

- vi) Under the Section 11(6)(e) of the EACC Act, **the Commissioners** are mandated *to deal with reports of conduct amounting to maladministration, including but not limited to **delay in the conduct of investigations** ..... **by the Commission or its staff.*** To determine such conduct by any of the Commission's staff including the CEO, the Chairperson and the Chair of the Operations

Committee may directly engage with staff and inquire into the status of investigations or any other matter.

This Committee will be interested to know that the Commission is in the process of conducting a full scale **file audit** exercise. The same was initiated by the Commission because the Commission wants to establish the status on delayed investigations and other functions and programmes of the Commission. This was necessitated by numerous reports and inquiries the Commission was receiving from among others, the Commission on Administrative Justice (CAJ), Members of Parliament, individual members of the Public, through mails and articles on various sections of the media suggesting that there was delay in investigations. This was considered to be a disorganized way of establishing status. The Commission therefore resolved to establish a committee to carry out a comprehensive audit of all files handled by the Commission. This committee is instructively headed by a member of the Commission who also heads operations committee. This can never be interference but a function of the Commission.

- vii) The Chairperson is the spokesperson of the Commission and in that capacity, he on behalf of the Commission engages stakeholders including Parliament and the public on operational matters of the Commission. For this reason, it is expected that the Chairperson is kept abreast and well versed with all matters of the Commission including operational matters. He may require a relevant member of staff to directly provide a report to him regarding the status of investigations or other functions and activities of the Commission, in order to effectively engage the media.

- viii) The Petitioner has not confronted me with facts or any evidence to support the allegation of interference for me to know what he perceives to constitute “interference”.

**The above cannot be construed to constitute interference with functions of the Commission, because such operational matters are the very mandate vested in the Commission under the law.**

**(b) The Petitioner is wrong in making the following assumptions:**

- i) The assumption that the staff of the Commission including the CEO are **an autonomous entity called Secretariat** who can ignore the oversight by the Commission of their operations and operate on their own;
- ii) The assumption that Commissioners who as per section 7(2) of the EACC Act, are serving on a full time basis, have no role at all in the execution of the functions vested in them collectively and in particular the functions vested under Article 252(1) of the Constitution and Section 11(1) of the EACC Act; The law therefore envisaged a situation where the Commissioners will oversight the Secretariat on one hand and on the other the Secretariat was to frequently report to the Commissioners and seek guidance, directions and instructions and decisions
- ix) The assumption that despite serving on full time basis the Commissioners have no role in the day to day administration and management of the functions of the Commission yet they are required under 11(6) (a) of the EACC Act to ensure that the

Commission and its staff, including the CEO, perform their duties to the highest standards possible in accordance with this Act;

It is instructive to note that Section 16(6) of the EACC Act compels the CEO to be accountable to the Commission. The Section provides that "***The Secretary shall, in the performance of the functions and duties of office, be responsible to the Commission***". This explains why the threshold of oversight by the Commission must be very high.

- x) The wrongful assumption that in the current institutional structure of EACC, the Commission is the equivalence of the defunct Advisory Board of the Kenya Anti-Corruption Commission (KACC).
- xi) The wrongful assumption that Investigations is an exclusive preserve of the secretariat and that in seeking to oversight investigations, which is about the most critical role of the Commission, the Commissioners are interfering or meddling into the affairs of the secretariat.

**3. Interfering with evidence in Anglo leasing investigation files leading to loss of important documents obtained through Mutual Legal Assistance**

- (i) I have never called for, or received any of the investigation files on Anglo-Leasing. The file movement register in my office is clear confirmation (**see copies of the relevant pages of the register attached and marked "MM III"**). I have never handled or seen any exhibits thereon either. For clarity purposes I attended and co-chaired Anglo-Leasing briefing sessions with the Director of Public

Prosecutions. In the said briefings which were also attended by EACC investigators and ODPP prosecutors, we only received executive reports from investigators. The reports included matrix of exhibits to be relied upon but the exhibits were never brought to the briefings.

- (ii) This is particular allegation is very strange and it is categorically denied. The Commission has in place elaborate mechanisms for ensuring integrity and safety of information including investigation files. There are for example file movement registers for tracking movement of files within the Commission at the all stages.
- (iii) The allegation of loss of documents is part of several complaints touching on mishandling of files by some members of staff. It is for this reason that that the Commission launched an audit exercise on all its investigation matters to establish if any officer may have been involved in compromising investigations. The ongoing investigations into the conduct of Deputy CEO are part of the Commission's action on allegations of mishandling files made against the Deputy CEO.  
**How this allegation against him was changed and now leveled against the Chairperson remains a mystery. No documents were or can indeed possibly be lost under the Chairperson.**

**PRAYER:** on this particular allegation I wish to seek from this Parliamentary Committee on Justice and Legal Affairs (JLA), issuance of summons to the petitioner for a statement on oath for cross-examination.

**4. Declared in public that he joined the Commission to make money and not to fight corruption**

- (i) As the Chairperson of EACC, I have been firmly focused on offering leadership and strategic direction in the war against corruption. I have remained faithful to my oath of office. I have never uttered such a statement to any person.

**PRAYER:** I again seek from the JLA issuance of summons to the petitioner for statement on oath and cross-examination on this reckless allegation

**5. Failed to exercise leadership and judgment in directing the Commission to achieve its strategic goals based on its core values**

- i) The Commission has been firmly focused on its mandate with the Chairperson and Members of the Commission working together as a team;
- ii) Under my leadership and direction, the Commission has achieved a number of milestones including the development of the 1<sup>st</sup> EACC Strategic Plan 2013- 2018. This is the document which anchors my vision and strategic direction that I and the Commissioners have for the Commission;
- iii) Under my leadership, the Commission has held numerous Commission meetings and made key resolutions on policy and operational matters aimed at ensuring efficient and effective implementation of the Strategic Plan; we have embarked on the process of tracking the implementation of the resolutions, bit I

must say there is serious resistance (**See copies of tracking summary documents marked “MM IV”**). This tracking was done in a retreat attended by Commissioners and fully sponsored by the Commission. The Commission has demanded full implementation of Commission resolutions.

**6. Failing to consult and inform the commissioners about important matters occurring at the Commission, with the result that press releases and media briefs and conferences are held without discussion and communication with Commissioners and the CEO**

- i) The Commission works as a team and has in place various Committees chaired by individual commissioners and comprised of co-opted members of staff. Each commissioner, in discharging the affairs of their respective Committees, works in close liaison with the Chairperson of the Commission who provides leadership, guidance and direction to all the Committees;
- ii) The CEO sits in the Commission Committees and in his capacity as the Secretary to the Commission, he sits in all Commission meetings where Commission matters are discussed including important policy, operational and administrative issues.
- iii) The Chairperson is the spokesperson of the Commission and as such, he is mandated to speak on behalf of the Commission at any time and forum. The Chairperson regularly consults the Commissioners and where necessary the CEO, on important matters

touching on the Commission before making public pronouncements and/or engaging the media and other stakeholders.

**NB:** I would have wanted to see which press statements are being faulted. None has been specifically referred to or attached.

**7. Adopted a poor leadership style leading to a low staff morale, high levels of indiscipline and failure of the Commission of the Commission to achieve its strategic goals**

- i) Contrary to the allegation by the Petitioner, the Commission has not failed in achieving its strategic goals as enshrined in our Strategic Plan that we launched year. Effective war against corruption involves various actors including EACC, DPP and the Judiciary.
- ii) I was sworn into office at a time when the Commission was experiencing severe challenges. Members of staff were resigning from the Commission due to low staff morale and motivation. Under my leadership, the Commission has been able to undertake the following to address the challenges I found at the time of taking office: -
  - a) Finalization of the first Strategic Plan in March 2014. I took charge and prioritized on the finalization of preparation of the Plan. In the first phase of implementation, significant achievements have been made in the areas of asset recovery, enforcement including conclusion of investigation in most of the Anglo-leasing cases as well as preventive services; we are currently pushing investigators to finalize a number of high profile cases and in particular the Geothermal Development

Company, Mumias Sugar, Karen Land Investigations, Nairobi City county treasury, 'Chickengate' scandal and several County reports just to mention a few.

- b) Regional expansion by establishing five additional Commission offices; this programme on expansion has ensured that we now have offices in Kisumu, Malaba, Eldoret, JKIA, Machakos, Nyeri, Isiolo, Mombasa and Malindi.
  - c) Established institutional structures that are necessary for effective implementation of the expanded mandate of the Commission under the Constitution, the Leadership and Integrity Act, 2012 and the EACC Act;
  - d) Enhancing institutional capacity of the Commission by recruiting over 200 additional staff;
  - e) Development of a new Human Resource Manual and policies aimed at boosting staff morale and motivation. For instance members of staff were transited from contractual terms of service to permanent and pensionable terms. Internal promotions to boost staff morale; A committee has been appointed to advise on implementation.
  - f) We are now finalizing a policy on car loans and mortgage facilities, to enhance staff welfare.
- (iv) Through the Commission's Strategic Leadership and policy Direction the Commission has also achieved the following:
- a. **Vetting Framework for elected and Executive Government Appointees:** The Commission developed the external vetting framework for persons' seeking elective and appointive positions.
  - b. **Reorganization of Departments and Directorates and Regional office:** The Commission re-organized the departments,

directorates and regional offices to infuse energy and jump start the commission's operations. A specific Directorate to deal with Ethics and Leadership was put in place.

- c. **Negotiations with Salaries Remunerations Commission (SRC):** The Commission started negotiations with SRC on the terms and conditions of service for EACC state officers and all staff through several correspondence and meetings on the need to remunerate the Commission staff due to the various risks that befall them in the cause of their duty.
- d. **Code of Conduct for State officers and Code of Conduct for EACC staff:** The Commission embarked on the development of the general code of conduct for state officers based on Leadership and Integrity Act 2012. The same has now been gazetted.
- e. **Established Standing Committees:** We have set up the EACC standing committees: namely Risk and Audit, Operations and Finance and Planning, Human resource and training. The committees have been meeting as scheduled.
- f. **Commission Charter:** We commenced the process of developing a Commission charter through a consultant to enable better definition of roles and functions of the Commission and secretariat
- g. **County Advisory Program:** the Commission initiated the County advisory program which has been launched in 18 Counties so far. This was to create awareness and educate county governments

on preventive strategies and sought to hold Governors accountable for county funds and developments.

h. **Anti-Corruption Risk Assessment and Corruption County**

**Ranking:** this was launched following the request from H.E. the President during the National Leadership and Integrity Conference, to conduct risk assessments for all the 47 counties and develop corruption rankings for the 47 counties.

- (v) Under my stewardship, the Commission continues to take seriously matters related to conduct and performance of duty by members of the Commission and all staff. So far, the Commission has developed the Specific Leadership and Integrity Code contemplated under Section 37 of the Leadership and Integrity Act and all State Officers in the Commission have signed and committed to it as required;
- (vi) Regarding staff discipline, the Commission has at all times enforced the Code of Conduct for Members and Employees of the Commission provided under the Third schedule to the EACC Act. The Commission also has developed internal rules and regulations on staff discipline and the same are strictly enforced.
- (vii) As part of the Commission's resolve to ensure that all members of staff uphold and maintain high standards of integrity in the performance of their duties, the Commission recently interdicted the Deputy CEO-Technical Services following serious allegations touching on his integrity in the discharge of his official duties. Investigations have since been launched and are expected to be completed by 10<sup>th</sup> April 2015.
- (viii) Confidentiality agreements have been signed by members of staff.

**8. (a) Fuelled interpersonal wars within the Commission**

- i) The Chairperson has always remained a unifying factor in the Commission. As expected of entities performing oversight functions, the Commission is bound to make decisions that may be unpopular. As we steer the fight against corruption, there are always other forces aiming their guns at the fight and sometimes they attempt to use our staff;
- ii) It is expected that there are external forces that attempt to interfere with the unity of the Commission by seeking to divide members so that we do not function effectively. It must be these forces that are behind the purported letter to the President and we cannot rule out that they are behind this petition too. The Commissioners realized the scheme to divide them and we sat together and resisted such attempts;
- iii) The Commission is mandated to receive complaints from members of the public regarding the conduct of its staff and deal with such reports. It is **NOT** expected that a member of staff under investigation will resist oversight as was the case in the matter of interdiction of the Deputy CEO.

**(b) Irregularly interdicted the Deputy CEO**

- i) The Petitioner is a stranger to the matters relating to the interdiction of the DCEO. This is an internal management matter within the Commission which is normal in public institutions. It cannot be a ground for a petition at all. He, as a lawyer can offer legal services

to the DCEO if the matter should end up at the Industrial and Labour Relations Courts.

- ii) Under the Section 11(6)(d) of the EACC Act, the Commissioners are mandated *deal with reports, complains of abuse of power; impropriety and other forms of misconduct on the part of the commission or its staff;* The Commissioners, in executing this particular function, would be in order, if they engage directly with any concerned member of staff just in the same way as with the CEO; especially where matters of serious breaches are concerned.
- iii) The Commission received intelligence information from within and outside the Commission that there were serious integrity challenges surrounding the discharge of duties by the Deputy CEO who is in charge of all the technical directorates including Investigations. Some of the allegations included:
  - a. Irregularly conducting an out-of-court settlement in respect of mega corruption cases in particular Anglo-leasing cases, without first briefing and seeking the approval or consent of the Commission (**See copies of Communication and bundle of documents attached, Marked 'MM V'**);
  - b. Possible collusion with third parties to irregularly discharge a charge and transfer of the Integrity Centre building; (**See copies of Communication and bundle of documents attached, Marked 'MM VI'**);
- iv) The Deputy CEO's interdiction was necessary to pave way for investigations in line with best practice and the law and there is no basis to allege malice on the part of the Commission. This was an

internal management issue which is being handled within the Commission. This will never be a ground for removal of the Chairperson from office. The DCEO's contract of service was signed with the Commission (**See the attached copy of DCEO's contract, Marked 'MM VII'**); the Commission, as an appointing authority, has powers to interdict.

- v) The interdiction was done by the Commission in exercise of its functions under section 11(6) (e) of the Act. In executing this function, the Commissioners are not required by law to consult any member of staff on how to deal with such reports that under Section 11(6) (d) amount to abuse of power, maladministration and delay in the conduct of investigations; The question one ask is what if the allegations were leveled against the CEO, who then is supposed to be consulted by the Commissioners before issuance of the interdiction.
- vi) Noting **Mr. Mubea acts as CEO whenever the Secretary/CEO is away, it is possible that some of the alleged acts of impropriety, if true, could have occurred when he was the CEO in an acting capacity.** This is why the Commission considered executing his letter of interdiction rather than delegating to the CEO to execute.
- vii) The Interdiction of the DCEO therefore cannot be construed to amount to violation of Article 47 of the Constitution. He will not be denied the opportunity for full due process.
- viii) There are matters which are grave to the extent that an officer is immediately interdicted from office so that evidence is not tampered with.

ix) The DCEO had access to the files which were the subject of allegations of misconduct on his part. There was therefore need to ensure that those files were not compromised. Given the seriousness of the allegations it was necessary to immediately delink the DCEO from dealing with those files. The DCEO therefore was interdicted and soon thereafter he was served with a letter enumerating the allegations against him. The action was pursuant to a resolution that was passed in the Commission meeting that was held on 9<sup>th</sup> March, 2015 where upon it was resolved that any member or officer of the Commission who will be found to have engaged in malpractices or with whom allegation of misconduct were leveled against shall step aside for investigations to be conducted.

- a) In the case of the DCEO, Procedure was followed as he was given an opportunity to respond to the allegations.
- b) An impartial committee was constituted under Section 14(2) of the EACC Act to carry out the investigations whereupon the DCEO will be accorded a fair hearing.
- c) Subsequent actions in relation to the interdiction and formation of the Committee have been done through the CEO.
- d) The Committee working on the implementation of the Human Resource Manual, which is extensively relied upon by the Petitioner, is yet to table its final report for the Commission's consideration.

#### **9. Executing Memoranda of Understanding with institutions that are notorious in corruption matters**

- i) The Commission is empowered under section 11(3) of the EACC Act to cooperate and collaborate with other State Organs and agencies

in the prevention and investigation of corruption. It is on this basis that the Commission has partnered with agencies in both the private and public sector to enhance the prevention of corruption;

- ii) However, such partnerships are between EACC and the agencies and not with their individual officers. The partnerships do not in any way hinder the Commission from enforcing the law against any office of the partnering agencies who engages in corruption;
- iii) In respect to the Memorandum of Understanding between the EACC and the Nairobi City County Government, Article 10 of the MoU provides that **the MoU shall not in any way affect or override any investigation that EACC may lawfully initiate against any person in the service of the County Government in the discharge of its mandate the Anti-Corruption and Economic Crimes Act, EACC or any other relevant laws;**
- iv) The Commission however, lately realized that the Memoranda of Understanding, which were entered into following advisory programmes offered to County Governments and other entities, could be misconstrued and misinterpreted by some of our key stakeholders. As a result, the advisory programme for County Governments has since been reviewed so that no such MoUs are executed. Going forward, the Commission has adopted the signing of County Corruption Prevention Action Plans with individual County Governments. So far the Commission has conducted County advisory Programmes in 18 Counties.

## **PART 2: MY HUMBLE PRAYER**

I humbly submit to this Honourable Committee to dismiss this Petition on the following grounds:

### **1. The Petition is made in bad faith and is fatally defective**

- i. It is my humble submission that this Petition is fatally defective and should not be allowed to stand. The Petitioner has confirmed in the Petition that he is relying on Hearsay from the people he has interacted with. This is again reiterated by the Legal Counsel I of the National Assembly. In his Memo to the Clerk of the National Assembly dated 18<sup>th</sup> March, 2015, the Legal Counsel rightly observes that ***“A scrutiny of the petition and the documents submitted vis-a-vis the requirements of the Standing Order 230 indicate that most of the attached documents are attributable to third parties other than the petitioner”***.
- ii. The Petition has borrowed and/or relied heavily from the purported letter dated 9<sup>th</sup> September, 2014 by the Two Commissioners to His Excellency the President. These are not matters which are within his personal knowledge. Secondly, the said letter has since been recanted by the Commissioners vide their letter dated 15<sup>th</sup> January, 2015 and as such it ought not to be relied upon. **(See copy of attached letter dated 15<sup>th</sup> January, 2015 marked “MM VIII”)**. The Petitioner therefore should be estopped from relying on such a document. I urge this honourable Committee to restrain itself from relying on the said letter.
- iii. It is evidently clear that the Petitioner is being used by other people who have ulterior motives. This explains why the Petitioner is unable to state facts beyond general allegations, thus rendering the petition

defective. It is also my contention that the Petition has failed to produce evidence or to provide particulars in respect of the violations. This again is enough ground to pronounce the Petition incurably defective.

- iv. Of grave concern is that the Petitioner is attaching irrelevant but confidential documents of the Commission which were either stolen or irregularly obtained. This I contend amounts to a possible criminal conduct on the part of the petitioner. This petition therefore is an illegality and this honourable Committee should not be called upon to inquire into a matter based on documents that were illegally obtained.
- v. Article 251(1) of the Constitution provides for the circumstances where a member of the commission can be removed. Which includes:-
  - a) Serious violation of the constitution or any other law including contravening of chapter six.
  - b) Gross misconduct, whether in the performance of the members' or office holder's function or otherwise.
  - c) Physical or mental incapacity to perform functions of office.
  - d) Incompetence
  - e) Bankruptcy

The Petitioner ought to have provided facts to support each of the above allegations, and evidence to support these malicious allegations. In the absence of the facts and evidence, this Committee would be unable to form an opinion on mere statements.

- vi. It is contended that the Petition is fatally defective as the Petitioner ought to have set out with a reasonable degree of precision; the

provisions of the Constitution allegedly violated by the Chairperson in relation to them and the manner of their violation. It is not enough to allege violation without particularizing the details and the manner of such violations, and then proceed to merely recite the law.

- vii. The Petitioner herein has alleged the contravention of a number of articles of the Constitution but has failed to adduced evidence to demonstrate how the alleged violations were committed.
- viii. In the absence of particulars, facts and information on the alleged violations, I reiterate and contend that the petitioner has not specifically set out the nature of his petition under the relied articles of the Constitution so as to enable the Chairperson, EACC to know the nature and extent of the case that he is required to respond to.

## **2. It is the responsibility of Parliament to protect institutions and State officer therein from malicious allegations**

- i. It is in the interest of this honourable House to **protect Institutions and the State Officers running them** and should not be used by individuals who are disgruntled because of actions and decisions made by the Commission in enhancing the fight against corruption.
- ii. It is instructive that this Purported Petition is brought to this Honourable House when the Commission has intensified its war against corruption and persons have been arraigned in Court to answer to various corruption charges. As an example, I took the lead in coming up with a strategy for fast tracking the finalization of the five Anglo-Leasing cases. **I personally co-chaired with the DPP the briefing sessions on the progress of investigations,** gave

directions to the teams and briefed the public (**See attached copy of the Joint ODPP/EACC Statement dated 4<sup>th</sup> February, 2015 marked “MM IX”**)

- iii. The mandate of the Commission and the fight against corruption is a very unique undertaking which one has to have a personal resolve to undertake despite the associated risks including people who seek to protect unearned income and stolen public money. It is expected that suspects and perpetrators of this vice will use all means available including actual threats, Physical harm, discrediting the Commission through media campaigns and other actions such as this petition, maligning people's names, employing diversionary tactics all these with a view to frustrate the Commission's work. This Honourable Committee should stand firm and protect the Commission. I'm Committed in the War against Commission and with the necessary support from the stakeholders the Commission shall succeed.

**3. Disbanding the Commission based on frivolous and unsubstantiated allegations will amount to an acquittal to Anglo-leasing and other major corruption cases which are either under active investigation or prosecution is ongoing.**

- i. Section 4 of the EACC Act provides that *“The Commission shall consist of a chairperson and two other members...”*. And as per paragraph 5 to the Second Schedule, *“The quorum for the conduct of business at a meeting of the Commission shall be two thirds of all the members of the Commission”* by seeking to remove two members of the Commission, the petition is cleverly attempting to render the Commission legally incapable of making decision and executing its mandate.

- ii. When this Commission was being constituted pursuant to the newly enacted Ethics and Anti-Corruption Commission Act, in 2012, two members of the Commission joined the Commission earlier than myself. During that period I had not joined the Commission, there were a number of applications that were filed in court seeking to stop any of the Commission's functions including investigation on the account that the Commission was not fully constituted. This is because it is the Commission as constituted under Section 4 of the EACC Act that makes decisions of the Commission. As a result, investigations and prosecutions were often paralyzed. This is due to the legal requirement that everything done by the EACC is done by the authority of the Commission. This is what the Petitioner and to a larger extent, the perpetrators of corruption, suspects and the accused persons are seeking to achieve through a non-judicial process.
- iii. From a close scrutiny on the way the Petition has framed his prayers in the petition, it is clear that the intention is to cleverly and wittingly frustrate active investigations into major scandals and also facilitate acquittals of suspects who have been arraigned in court in major cases such as the Anglo-Leasing Scandal. This is aimed to be achieved first by disbanding the Commission and then filing of applications in court to acquit and or seek injunctions into ongoing investigations on account that there is no Commission to undertake such functions. When this Committee is faced with situations of such blatant abuse of the process by the Petitioner, it should be guided by public good and take into account the consequences of disbanding the entire Commission.

- iv. The Petition is being filed at a time when the Commission has scaled up the war on corruption and a number of high profiles cases are under active investigations. The forces behind the petitioner are determined to have the Commission disbanded so as to frustrate and/or slow down the war against corruption.
- v. I have experienced all manner of strange moves in the discharge of my duties. After alleging that I met "Mr. Kamani" and other strange allegations, I have now seen that there was an attempt to forge a letter using my digital signature. **(See attached copy of the letter dated 26<sup>th</sup> March, 2015 purportedly signed by me marked "MM X")** Fortunately I had withdrawn the Digital signature in November 2014 after it was used on a document without my authority. **(See a copy of the attached Memo dated 13<sup>th</sup> November, 2014 marked "MM XI")** with the digital signature sample attached.

**FOR WHICH REASONS THEREFORE** I humbly pray for the dismissal of this Petition.

Dated at Nairobi this.....<sup>1<sup>st</sup></sup>.....day of.....<sup>April</sup>.....2015

  
MUMO MATEMU, MBS

**CHAIRPERSON, ETHICS AND ANTI-CORRUPTION COMMISSION**

# APPENDIX 10



149

From the Desk of  
Irene C. Keino, MBS  
Vice-chairperson

21<sup>st</sup> August 2014

*Natid  
Mabiny  
A.S.A.P.*

Mr. Ndegwa Muhoro 'ndc' (K)  
Director  
Criminal Investigations Department  
Mazingira complex, Off Kiambu road  
P.O. Box 30036 00200  
NAIROBI

CONFIDENTIAL

*IP Obwiro  
Pe Aguiru  
Investigate the matter  
urgently and provide a  
status report A.S.A.P.  
A.C.I  
2/9*

Dear

RE: FRAUD INVOLVING PLOT LR. NO. 1/287 – NAIROBI

I have received intelligence information that some people are purporting to transfer the above property into my name at the National Lands Commission.

I wish to confirm that I have never applied for allocation of the said property at any time, nor have I appointed any agent to engage in such an illegality. I therefore request that investigations be urgently undertaken and the culprits brought to book.

Yours

Irene C. Keino, MBS  
VICE CHAIRPERSON

*DE LFIC  
Urgently have  
this complaint  
investigated.  
J/19*

Copy To: Hon. Charity Ngilu, EGH  
Cabinet Secretary  
Ministry of Lands, Housing and Urban Development  
P.O. Box 30089-00100  
NAIROBI.

*CID  
INQUIRY NO  
140/2014 of  
DIV*

Mr. Halakhe Waqo, ACI Arb  
Secretary/Chief Executive Officer  
Ethics and Anti-Corruption Commission  
P.O. Box 61130-00200  
NAIROBI.

Ethics and Anti-Corruption Commission

INTEGRITY CENTRE (Valley Rd. /Milimani Rd. Junction) P.O. Box 61130 -00200, NAIROBI, Kenya

TEL.: 254 (020) 2717318/ 310722, MOBILE: 0729 888881/2/3  
Fax: 254 (020) 2719757 Email: eacc@integrity.go.ke Website: www.eacc.go.ke

CONFIDENTIAL



From the Desk of  
**Irene C. Keino, MBS**  
Vice-chairperson

21<sup>st</sup> August, 2014

**Mr. Mohammud Swazuri, Phd, OGW,**  
Chairperson,  
National Land Commission,  
Ardhi House,  
P.O. Box 44417-00100,  
**NAIROBI**

Dear

**RE: FRAUD INVOLVING PLOT LR. NO. 1/287 – NAIROBI**

I have received intelligence information that some people are purporting to transfer the above property into my name at the National Lands Commission.

I wish to confirm that I have never applied for allocation of the said property at any time, nor have I appointed any agent to engage in such an illegality. I therefore request that investigations be urgently undertaken and the culprits brought to book.

Yours

**Irene C. Keino, MBS**  
**VICE CHAIRPERSON**

**Copy To:** **Hon. Charity Ngilu, EGH**  
Cabinet Secretary  
Ministry of Lands, Housing and Urban Development  
P.O. Box 30089-00100  
**NAIROBI.**

**Mr. Halakhe Waqo, ACI Arb**  
Secretary/Chief Executive Officer  
Ethics and Anti-Corruption Commission  
P.O. Box 61130-00200  
**NAIROBI.**

**Mr. Abdi Mohamud,**  
Director Investigations,  
Ethics and Anti-Corruption Commission,  
P.O. Box 61130-00200,  
**NAIROBI.**

**Ethics and Anti-Corruption Commission**

INTEGRITY CENTRE (Valley Rd. /Milimani Rd. Junction) P.O. Box 61130 -00200, NAIROBI, Kenya

TEL.: 254 (020) 2717318/ 310722, MOBILE: 0729 888881/2/3  
Fax: 254 (020) 2719757 Email: [ea54@integrity.go.ke](mailto:ea54@integrity.go.ke) Website: [www.eacc.go.ke](http://www.eacc.go.ke)



From the Desk of  
**Irene C. Keino, MBS**  
Vice-chairperson

21<sup>st</sup> August, 2014

Eng. M.S.M. Kamau, CBS,  
Cabinet Secretary  
Ministry of Transport & Infrastructure,  
Transcom House,  
P.O. Box 52692-00200,  
**NAIROBI.**

Dear

**RE: FRAUD INVOLVING PLOT LR. NO. 1/287 – NAIROBI**

I have received intelligence information that some people are purporting to transfer the above property into my name at the National Lands Commission.

I wish to confirm that I have never applied for allocation of the said property at any time, nor have I appointed any agent to engage in such an illegality. I therefore request that investigations be urgently undertaken and the culprits brought to book.

Yours

**Irene C. Keino, MBS**  
**VICE CHAIRPERSON**

**Ethics and Anti-Corruption Commission**

INTEGRITY CENTRE (Valley Rd. /Milimani Rd. Junction) P.O. Box 61130 -00200, NAIROBI, Kenya

TEL.: 254 (020) 2717318/ 310722, MOBILE: 0729 888881/2/3

Fax: 254 (020) 2719757 Email: eacc@integrity.go.ke Website: www.eacc.go.ke



## ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Valley Rd. /Milimani Rd. Junction) P.O. Box 61130 -00200, NAIROBI, Kenya  
TEL.: 254 (020) 2717318/ 310722, MOBILE: 0729 888881/2/3  
Fax: 254 (020) 2719757 Email: eacc@integrity.go.ke Website: www.eacc.go.ke

When replying please quote:

Our Ref: EACC.6/16/1 Vol. XXX/(21)

Date: 25<sup>th</sup> August 2014

**Mr. Tom Chavangi**  
CEO/Commission Secretary  
National Land Commission  
Ardhi House, 1st Ngong Avenue, Off Ngong Road  
P.O. Box 44417-00100  
**NAIROBI**

Dear *Chavangi,*

**RE: LAND REFERENCE NO. LR 1/287 – NAIROBI**

This Commission is in receipt of a complaint that touches on purported allocation or registration of the above referenced parcel of land, which is situated in Nairobi.

We request your Commission to furnish us with details concerning the property, to facilitate our enquiry on the matter. Specifically, we wish to have the following information/documents:-

1. The current registered owner,
2. The acreage,
3. History of ownership,
4. Copy of the Title,
5. Copies of the Correspondence and Parcel Files,
6. Applications for Transfer subsisting on the Title, if any,
7. Any other relevant information.

Yours

*Sincerely,*  
*Halakhe D. Waqo*

**Halakhe D. Waqo, ACI Arb**  
**SECRETARY/CHIEF EXECUTIVE OFFICER**

Copy to: 1. **Hon. Charity Ngilu, EGH**  
Cabinet Secretary, Lands, Housing and Urban Development  
P. O. Box 30089-00100  
**NAIROBI**

*Tukomeshe Ujisadi. Tuijenge Kenya*

P. O. Box 30121 - 00100, Nairobi, Kenya  
Tel: +254-020-2215211, 2215796  
Cell: 0728-603581, 0728-603582  
Fax: +254-020-340049/ 224156  
E-mail: md@krc.co.ke  
Website: www.krc.co.ke



Ref: MD/GEN/1

Date: 4<sup>th</sup> September, 2014

**Irene C. Keino, MBS**  
Ethics & Anti-Corruption Commission  
P. O. Box 61130-00200  
**NAIROBI**

Dear

*Ms Keino*

**RE: FRAUD INVOLVING PLOT NO. 1/287 - NAIROBI**

We refer to the above matter and your letter of 28<sup>th</sup> August 2014.

Kindly let us have more details to enable us undertake and or facilitate investigations in the matter.

Yours

*Sincerely*

*Atanas K. Maina*

**Atanas K. Maina**  
**MANAGING DIRECTOR**

Copy to: **Hon. Charity Ngilu, EGH**  
Cabinet Secretary  
Ministry of Lands, Housing and Urban Development  
P.O. Box 30089-00100  
**NAIROBI**

**Mr. Ndegwa Muhoro 'ndc' (K)**  
Director  
Criminal Investigations Department  
**NAIROBI**

**Mr. Halakhe Waqo, ACI Arb**  
Secretary/Chief Executive Officer  
Ethics & Anti-Corruption Commission  
P.O. Box 61130-00200  
**NAIROBI**



# Kenya Railways Staff Retirement Benefits Scheme

Telephone: +254-719314249  
+254-736581370

Email: [admin@kenrailtrust.co.ke](mailto:admin@kenrailtrust.co.ke)

Office of the  
Chief Executive Officer  
P.O. Box 46796- 00100  
Nairobi, Kenya

Ref: ES/Gen/1

September 2, 2014

Mrs. Irene C. Keino  
Vice Chairperson  
Ethics and Anti-Corruption Commission  
P.O. Box 61130-00200  
NAIROBI



Dear

**RE: FRAUD INVOLVING PLOT LR.NO.1/287 - NAIROBI**

We acknowledge receipt of your letter dated August 28, 2014 on the above subject.

We kindly request you to provide more details on the above property and more particularly the actual location and any details to enable us lodge an investigation to the matter.

We thank you for your concern as we wait for your reply.

Yours sincerely,

A handwritten signature in black ink, appearing to be "S. Nyakundi".

**SIMON NYAKUNDI**  
**CHIEF EXECUTIVE OFFICER**

Copy to: The National Land Commission  
P.O. Box 44417  
NAIROBI

Please provide more details on the above property which is alleged to be in the process of being transferred illegally to the above person.



From the Desk of  
**Irene C. Keino, MBS**  
Vice-chairperson

3<sup>rd</sup> September, 2014

**Mr. Simon Nyakundi,**  
Chief Executive Officer,  
Kenya Railways Staff Benefit Scheme,  
P.O. Box 30121-00100,  
**NAIROBI**

**CONFIDENTIAL**

Dear Sir,

**RE: FRAUD INVOLVING PLOT LR. NO. 1/287 – NAIROBI**

I acknowledge receipt of your letter dated 2<sup>nd</sup> September, 2014 regarding the above subject matter.

I have managed to access a few documents from the National Lands Commission and therefore forward to you for further investigations.

As far as the intelligence information I have, the plot is located along Lenana Road.

Yours faithfully,

**Irene C. Keino, MBS**  
**VICE CHAIRPERSON**

**Copy To:** **Mr. Mohammud Swazuri, Phd, OGW,**  
Chairperson,  
National Land Commission,  
Ardhi House,  
P.O. Box 44417-00100,  
**NAIROBI**

**Ethics and Anti-Corruption Commission**

INTEGRITY CENTRE (Valley Rd. /Milimani Rd. Junction) P.O. Box 61130 -00200, NAIROBI, Kenya

TEL.: 254 (020) 2717318/ 310722, MOBILE: 0729 888881/2/3  
Fax: 254 (020) 2719757 Email: eacc@integrity.go.ke Website: www.eacc.go.ke

# CITY COUNCIL OF NAIROBI



71

FORM P.P.A 2

2203

THE PHYSICAL PLANNING ACT (CAP 286)

SERIAL NO. ....

REF: CPD/PIS/003946/1/287/RWM/sng

APPLICATION REG. NO. 3742

## NOTIFICATION OF APPROVAL OF DEVELOPMENT PERMISSION

~~Subdivision~~  
~~Subdivision & Amalgamation~~  
~~Amalgamation~~

Change of use from residential to multi-dwelling units (Flats)  
~~Extension of use~~  
~~Extension of lease~~

Irene Keino

P.O. Box 45897-00100  
NAIROBI

Application, numbered as above, submitted on 25/04/2007  
Development permission for Change of User of L.R. No. 1/287  
in Lenana Road Kilimani

Approved by the Town Planning Committee held on 25/07/2007  
Item 72

Subject to the following/appended conditions:  
Submission of satisfactory building plans within one year and completion  
of construction within two years otherwise the approval lapses.

Payment of revised rates as will be determined by the Chief Valuer City  
Council of Nairobi.

Payment of revised ground rent as will be determined by the Commissioner  
of Lands.

Subject to the plot not constituting part of the disputed public utility  
Land/allocations.

Subject to compliance with sections 36, 41 and 52 of the Physical Planning  
Act.

Subject to compliance with the approved zoning policy.

Subject to relevant surrender along Lenana road being effected and  
deed plans submitted upon submission of the building plans.

CITY COUNCIL OF NAIROBI  
City Planning Department  
Development application approved  
by City Council of Nairobi  
On: 25/7/07  
Signature: *R. W. Muroki*  
Name: R. W. MUROKI  
Date: \_\_\_\_\_  
Assistant Director  
POLICY IMPLEMENTATION SECTION  
City Planning & Architecture Department

17/8/2007 Signed

Name: R. W. MUROKI

For: Director

City Planning & Architecture Department

The Director of Physical, Nairobi  
The Commissioner of Lands, Nairobi  
The Director of Survey, Nairobi  
The Land Registrar, Nairobi

SP20

Please assist with file number  
*R. W. Muroki*  
P. Adip's L.O. P.F.D.



## MINISTRY OF LANDS

All correspondence  
Should be addressed to:-  
Director of Surveys

Telegrams: "Surveys"  
Head Office: Ardhi House  
Telephone: 2718050  
Fax: 2717553  
E-mail sok@gt.co.ke

Field Headquarters, Ruaraka  
Telephone: 8562902/8562968

Our Ref: CPC/Vol.12/45

Survey of Kenya,  
P.O. Box 30046-00100  
NAIROBI.

Date: 22<sup>nd</sup> November 200


The Commissioner of Lands,  
P.O. Box 30089,  
NAIROBI.

**RE: CHANGE OF USER FROM RESIDENTIAL TO MULTI-DWELLING  
UNITS (FLATS) ON L.R. NO. 1/287 - KILIMANI**

Reference is made to your letter Ref. No. 34969/72 dated 25<sup>th</sup> September 2007 on the  
above subject.

Please note that this office has no objection to the proposal subject to the plot NOT  
constituting part of the disputed public utility land/allocation.

Ref. No. F/R 55/131

  
S.W. Kamau  
For: DIRECTOR OF SURVEYS

CLASSIFIED

... 1- Friday 8 am - 5:00 pm ... 2- For Managers - 1.00 P.M. ... CLASSIFIED RATES

... 1- 1000-press, Colour 1,400-press ... 2- 1000-press, Colour 1,600-press ... 3- 1000-press, Colour 1,800-press

... 4- 1000-press, Colour 2,000-press ... 5- 1000-press, Colour 2,200-press ... 6- 1000-press, Colour 2,400-press

... 7- 1000-press, Colour 2,600-press ... 8- 1000-press, Colour 2,800-press ... 9- 1000-press, Colour 3,000-press

... 10- 1000-press, Colour 3,200-press ... 11- 1000-press, Colour 3,400-press ... 12- 1000-press, Colour 3,600-press

... 13- 1000-press, Colour 3,800-press ... 14- 1000-press, Colour 4,000-press ... 15- 1000-press, Colour 4,200-press

... 16- 1000-press, Colour 4,400-press ... 17- 1000-press, Colour 4,600-press ... 18- 1000-press, Colour 4,800-press

... 19- 1000-press, Colour 5,000-press ... 20- 1000-press, Colour 5,200-press ... 21- 1000-press, Colour 5,400-press

... 22- 1000-press, Colour 5,600-press ... 23- 1000-press, Colour 5,800-press ... 24- 1000-press, Colour 6,000-press

... 25- 1000-press, Colour 6,200-press ... 26- 1000-press, Colour 6,400-press ... 27- 1000-press, Colour 6,600-press

... 28- 1000-press, Colour 6,800-press ... 29- 1000-press, Colour 7,000-press ... 30- 1000-press, Colour 7,200-press

... 31- 1000-press, Colour 7,400-press ... 32- 1000-press, Colour 7,600-press ... 33- 1000-press, Colour 7,800-press

... 34- 1000-press, Colour 8,000-press ... 35- 1000-press, Colour 8,200-press ... 36- 1000-press, Colour 8,400-press

NAIROBI AND UP-COUNTRY

PERSONAL NOTICES

A109: Lost
LOST Passport A781459 Jane
LOST passport No. A340501 for Lawrence Mutuku Tel. 020-72-141

A116: Marriage
A cheating partner? Call investigators on 0722-149436

PERSONAL SERVICES

A174: Astrology
Shining Herbs Help All The Problems

A181: Beauty
AISHA girl 4451635
DREAM GIRLS 500/ 0725470708

A202: Entertainment
NEED A FRIEND?
SMS Help#Rafiki to: 5445

A209: Personal
SWIMMING pool services, showers, saunas, fountain equip, USA Jacuzzi, booster & shower pumps

A237: Health Club and Gymnasiums
SWIM Lessons 250344, 0722788063

A265: Medical
STAMMERING/Clutter: 0726471770

A279: Notices
PUBLIC NOTICE
Notice to inform the public that the person whose photograph appears herein ceased to be an employee of Macheo Children's Centre, Thika, with effect from the 2nd April 2007. He is therefore not authorized to transact any business on behalf of the organization.

THE PHYSICAL PLANNING ACT (CAP 285)

COMPLETING OF PART DEVELOPMENT PLAN

NOTICE is hereby given that the above mentioned part development plan was on 22nd March, 2007, completed.

Copies of the part development plan have been deposited for public inspection at the office of the District Physical Planning Officer Eldoret and Waring County Clerk's office.

Any interested person who wishes to make representation in connection with or objection to the above named part development plan may send such representations or objections in writing to be received by the District Physical Planning Officer, P.O. Box 1464, Eldoret, within sixty (60) days from the date of publication of this notice and such representation or objection shall state the grounds on which it is made.

Dated the 3rd April, 2007.
J.K. NGETICH, for Director Physical Planning.

PUBLIC NOTICE

Change of User

The owner of unreserved plot No. 384 located in Industrial Area, Naivasha Municipality is proposing to transfer the use of the land to change the user from industrial to residential subject to approval by the Municipal Council of Naivasha. The minimum site area for residential use is 1000sqm. The owner requests to forward them in writing to the Town Clerk of the date of this notice.

A209: Personal
SWIMMING pool services, showers, saunas, fountain equip, USA Jacuzzi, booster & shower pumps

A557: Apartments Available
GLORY Furn. Apart. 1-3br frms 3740034

A564: Hostels
ALICANTE: bed/Bkfst super & laundry South C 6,500 onwards pm Tel: 0720-131639

A628: Fruits and Vegetables
AVOCADO: we buy also: 0720760654

A871: Miscellaneous
BUNGOMA BIBLE SCHOOL
Rev. Dr. Doris Steadler FOUNDER

EXTENSION OF USER
The owners of plot L.R. No. 209/3346 located along Wangale Road off Masari Road, Parklands propose to extend its user from residential to include a commercial borehole.

CHANGE OF USER
The owners of the property, Registration No. Block 24878 & Block 24788 situated at Happy Valley Estate, Thika Municipality want to change the use of the property from Residential to Religious.

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World's First Mineral RO™

Double Purification Technology
RO - UV or External Membrane
Tap or Borehole
Superior Filters Ltd
Superior House, Makumbi Road, Opp. K. M. P.O. Box 9018, Nairobi 00106 Kenya. Tel: 011 231236, 332876, 231670; Fax: 011 227232

II ACCOMMODATION Terrylor Hotels

GALEXON Hotel executive rooms DSTV steam bath body therapy secure parking. Call 2713210
GLORY Parks B&B 1000 PM 3744747

A829: Domestic Appliances

WE buy old Fridges and offer fridge service Tel: 0722-454691

A878: Mobile Phones

Table with columns for phone models and prices. Includes Nokia, Motorola, LG chocolate, etc.

A822: Computers

BIG Offers! Dell Lat 1.2 GHz 40GB 256MB @ 23000, New Dell Inspiron 130G 1.6GHz 40GB 256MB DVDR @ 25000, Toshiba 1.6GHz 40GB 512MB DVDR @ 24000, HP 2.0GHz 40GB 512MB DVDR 17" @ 24000, Toshiba 1.6GHz DuoCore @ 23000, LGE Nam DVDR @ 23000, Dell Inspiro 1.6GHz 40GB 256MB DVDR @ 23000, HP 2.0GHz 40GB 512MB DVDR @ 24000, Compaq/Dell 2.6GHz @ 25000, 3000/4000MHz @ 26000, 3000MHz @ 25000, 5000MHz @ 26000, 732800MHz @ 10000, 660MHz @ 15000, 1.0GHz @ 14000, 2.8GHz @ 40000, 235MHz @ 33000, 17" monitor, Compaq 17" @ 40000, 15" @ 3000, Analog 15" @ 10000, Branded keyboard @ 3000, Canon quest @ 3000, Revision Plaza @ 3000, Br. Advance Scanare Sc. @ 3000, 318192, 0711-32-487, 0722-583073, 0721356411



REPUBLIC OF KENYA

## MINISTRY OF LANDS

Telegrams: "LANDS", Nairobi  
Telephone: Nairobi 718050-9

When replying please quote

Ref: 34969/72

DEPARTMENT OF LANDS  
1<sup>st</sup> NGONG AVENUE  
OFF NGONG ROAD  
P. O. Box 30089  
NAIROBI

Date: 25/9/2007

The Director of Surveys,  
NAIROBI.

The Director of Physical Planning,  
NAIROBI.

RE: CHANGE OF USER FROM RESIDENTIAL TO MULTI-DWELLING  
UNITS (FLATS) ON L.R. NO. 1/287- KILIMANI.

The Director of City Planning vide letter ref. CPD/PIS/003946/1/287/RWM/sng dated 17<sup>th</sup> August, 2007 has approved the above transaction.

Kindly favour me with your comments/recommendations.

S. P. N.

S. P. N. GATHONGO  
For: COMMISSIONER OF LANDS.

C.C.

Irene Keino,  
P. O. Box 458997 – 00100,  
NAIROBI.

Please pay Kshs. 3,000.00 to the Director of Physical Planning as inspection fees.

File No. 34969/76

C.L. Approved on 19/2/68

D.C.L.

S.A.C.L. Recommended. 25/1/68

A.C.L. (on leave)

S.L.O - P.W. A. - Forwarded and recommended

AUTHORITY FOR CHANGE OF USER

1. Parcel No/Locality. L.R. NO. 1/257 - Nairobi
  2. Acreage 1.021 Acres (ha)
  3. Name of Registered Owner The General Manager of The E.A. & Harbours (62)
  4. Term of Lease Freehold.
  5. Recommendations:
    - a. Council Director of City planning approved the change of user (71)
    - b. Planning Director of physical planning recommended change of user (74)
    - c. Survey Director of Survey has no objection to the proposal (75)
    - d. District Land Officer N/A
  6. Ground Report (79) The site has an old one private dwelling with most infrastructural facilities. The neighbourhood is changing to Flats and offices.
  7. Newspaper advertisement (78)
  8. Existing User Residential (OPDH)
  9. Proposed User Multi-dwelling Units (Flats).
  10. Recommendation by L. O. In view of the above I recommend the change of user subject to the conditions stip by Director of City planning (71).
- Name Mbumi J.N. Signature [Signature] Designation L.O. (i)
- Date 30/11/68

Recommended by the ADVISOR



Republic of Kenya

MINISTRY OF LANDS

Telegrams "LANDS", Nairobi  
Telephone: Nairobi 02718050  
When replying please quote

DEPARTMENT OF LANDS  
1<sup>ST</sup> NGONG AVENUE  
OFF NGONG ROAD  
P.O. Box 30089  
NAIROBI.

Ref: 34969/77

Date: 11<sup>th</sup> November 2008


Irene Keino  
P. O. Box 45897 - 00100  
**NAIROBI**

**PROPOSAL FOR CHANGE OF USER FROM RESIDENTIAL TO MULTI-DWELLING UNITS (FLATS) ON LR NO. 1/287 KILIMANI NAIROBI**

The above subject matter refers.

I am please to inform you that the government has approved your application subject to the following conditions:-

1. Surrender the existing title in exchange for a new one reflecting the new user
2. Forward to this office a new deed plan duly signed and sealed by the Director of Surveys
3. Payment of Kshs.5,000/= being approval fees
4. Payment of legal fees as it will be assessed by this office and communicated to you later
5. Payment of revised ground rent as it will be assessed by the government Valuer and communicated to you later.

  
S. K. Mburugu

For: **COMMISSIONER OF LANDS**

c.c.

Director of Surveys **NAIROBI**

The Director of City Planning **NAIROBI**



# MINISTRY OF LANDS

Telegrams: "URBANPLAN", Nairobi  
Telephone: Nairobi 718050  
When replying please quote

DEPARTMENT OF PHYSICAL PLANNING  
ARDHI HOUSE  
1<sup>st</sup> NGONG AVENUE  
P.O. Box 45025  
NAIROBI

REF: PPD/42/24/VII/55

Commissioner of Lands,  
P.O Box 40159 – 00100,  
NAIROBI.

Date: 20<sup>th</sup> July, 2007

## RE: CHANGE OF USER FROM RESIDENTIAL TO MULTI-DWELLING UNITS (FLATS ON L.R. NO. I/287

I refer to your letter ref: 34969/72 of 25<sup>th</sup> September, 2007.

I visited the site and observed the following:-

- i) The site has an old individual dwelling house in the compound
- ii) It is next to a tarmarked road
- iv) Most of Infrastructural facilities are available
- v) The neighbourhood character is changing to residential  
Flats and offices. The property is opposite invesco offices.

The change of user is recommended on the ground that maximum value of the land will be realized. Besides plentiful infrastructural facilities, it will match the change of character of the area.

Given the rapid change of use to flats and offices the increased population may overstretch the current infrastructure. There is need to upgrade them.

~~447~~ - 6  
S.N. TUMBO  
FOR: DIRECTOR OF PHYSICAL PLANNING

C.C. Irene Keino,  
P.O. Box 458997 – 00100,  
NAIROBI.

Director of City Planning,  
P.O. Box 30075,, NAIROBI.

# APPENDIX 11

Date: 1<sup>st</sup> April, 2015

Departmental Committee on Justice and Legal Affairs  
The Kenya National Assembly  
Parliament Buildings  
P.O Box 41842 - 00100  
**NAIROBI.**

RE: RESPONSE TO THE PETITION FOR THE REMOVAL OF THE CHAIRPERSON AND THE VICE CHAIR-PERSON OF ETHICS AND ANTI-CORRUPTION COMMISSION

### 1.0 Background

- 1.1 The Petition for the removal of the Chairperson and Vice Chairperson of the Ethics and Anti-Corruption Commission was signed and filed by Mr. Geoffrey Oriaro on the 12<sup>th</sup> March 2015 on the grounds that Mr. Mumo Matemu (the Chairperson) and Ms. Irene Keino (Vice Chairperson):-
- a. *are in serious violation of the Constitution and the Ethics and Anti-Corruption Commission Act, the Anti-Corruption and Economic crimes Act and the Penal Code;*
  - b. *have shown gross misconduct in performance of the functions and duties as Commissioners; and*
  - c. *are incompetent in the management of the Commission.*
- 1.2 The Clerk of the National Assembly referred the Petition to the Directorate of Legal Services to peruse and establish whether the Petition submitted complies with the Constitution and the National Assembly Standing Orders.
- 1.3 The Directorate of legal affairs perused the Petition and on 18<sup>th</sup> March 2015 advised as follows:-
- The documents submitted at face value appear to disclose a ground for removal of a member of a constitutional Commission under Article 251(1) of the Constitution. Under Standing Order 230(4) the Petition should be submitted to the relevant standing committee. It is thus necessary to refer the matter to the Departmental Committee on Justice and Legal Affairs to conduct investigations on the matter under Standing Order 230(4), thereafter, the Committee shall report to the House within 14 days as to whether the Petition discloses grounds for removal under Article 251(1) (a).*
- 1.4 The advice was given to the Speaker of the National Assembly and on the 19<sup>th</sup> March 2015.
- 1.5 The Speaker of the National Assembly conveyed it to the Honorable Members of the National Assembly where he stated that the Petition was referred to the Departmental Committee on Justice and Legal Affairs.

I, Irene Keino (Vice Chairperson) Respondent objects and responds to this Petition as here below and pray that the same be dismissed.

### 2.0 The Law

#### 2.1 The Constitution of Kenya 2010

2.1.1 In carrying out its activities Parliament is guided by *inter alia* Articles 1(1), 2(1), 3 (1) and 10(1) of the Constitution of Kenya 2010.

2.1.2 It is pertinent to reproduce the provisions of Article 1(1), 2(1) and 3(1) of the Constitution of Kenya 2010.

2.1.3 Sovereignty of the people;

*1.(1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.*

2.1.4 Supremacy of the Constitution

*2.(1) This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government.*

2.1.5 Deface of the Constitution

*3.(1) Every person has an obligation to respect, uphold and defend this Constitution.*

2.1.6 National values and principles of governance;

*1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—*

*(a) applies or interprets this Constitution;*

*(b) enacts, applies or interprets any law; or*

*(c) makes or implements public policy decisions.*

*(2) The national values and principles of governance include—*

*(a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;*

*(b).....*

*(c).....*

2.1.7 The acquisition of information held by any person is firmly anchored under the provisions of Article 35 of the Constitution as read together with section 80 of the Evidence Act, Cap 80 Laws of Kenya.

2.1.8 The provisions of Article 35 and section 80 are reproduced as follows:-

Access to information

*35. (1) Every citizen has the right of access to—*

*(a) information held by the State; and*

*(b) information held by another person and required for the exercise or Protection of any right or fundamental freedom.*

2.1.9 In the conduct of any proceedings, the Constitution dictates that the principles of natural justice should be observed and adhered to; in particular the right to fair hearing under Article 50 of the Constitution as follows:-

*“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”*

- 2.1.10 The Constitution abhors the admission of illegally obtained evidence under Article 50 (2) (4) in the following aphorism -:

*“Evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair, or would otherwise be detrimental to the administration of justice.”*

## 2.2 The Evidence Act, Cap 80 Laws Of Kenya

### 2.2.1 Certified copies of public documents.

*80. (1) every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.*

- 2.3 It is worth noting that the letters annexed to the Petition were obtained by Mr. Oriaro Geoffrey who is not a Commissioner or in any way associated with the Ethics and Anti-Corruption Commission (EACC). The Letters relied on; bear the tag “confidential”.
- 2.4 The process of acquiring public documents by any person has a legal underpinning as avowed under Article 35 of the Constitution as read together with section 80 of the Evidence Act as outlined above.
- 2.5 It is therefore logical to categorically assert that the documents were illegally obtained which has an effect of violating and/ or infringing on the Respondents right to fair trial guaranteed by Article 50 of the Constitution of Kenya 2010.
- 2.6 The use of illegally obtained evidence is clearly forbidden by Article 50 (2) (4) of the Constitution of Kenya.
- 2.7 Halsbury’s Laws of England Vol. 17 4<sup>th</sup> Edition at page 211 buttresses this point as follows:-
- “In general, the prime requirement of anything sought to be admitted in evidence is that it is of sufficient relevance. What is relevant (namely what goes to the proof or disproof of a matter in issue) will be decided by logic and human experience, and facts may be proved directly or circumstantially. But while no matter should be proved which is not relevant, some things which are relevant by the normal tests of logic may not be proved because of exclusionary rules of evidence. Such matters are inadmissible. Admissible evidence is thus that which is (1) relevant and (2) not excluded by any rule of law or practice...”*
- 2.8 Warsame J. eschewed the admission and/or use of illegally obtained evidence in the case of Baseline Architects Limited & 2 Others Vs National Hospital Insurance Fund Board Management [2008] eKLR where he opined as follows:-

*“In conclusion it is my humble view the documents were obtained in an illegal manner/means with the tacit support of the employees of the applicant or through the office of the Attorney General. Such a conduct is disturbing to public interest and is a manifestation of betrayal by public officers with a mandate to safeguard the general interest of the public. I do not think the parties who gave out the said documents were aware/understand that public duty and employment comes with a corresponding obligation to always and as far as possible to safeguard public documents from adverse parties. That is a fundamental duty on all employees of the applicants. It appears there has been an abdication of that duty on the part of the persons who gave away such vital and important documents to the respondents.*

- 2.9 The Petitioner should have adhered to the provisions of the Constitution as read together with the Evidence Act to acquire the public documents.
- 2.10 Sufficing to say that the admission of the letters by the Committee to prove the allegations in the Petition will be contrary to the mandatory exclusion rule under Article 50(2) (4) of the Constitution and therefore an infringement and violation of the Respondents right to a fair trial which is guaranteed under Article 50 of the Constitution.
- 2.11 Pursuant to Article 25, the right to a fair trial is a non-derogable right; it can never be limited by any law. The section states as follows:-

*“Despite any other provision in this constitution, the following rights and fundamental freedoms shall not be limited:-*

- a).....*
- b).....*
- c) The right to a fair trial*
- d).....*

- 2.12 From the foregoing, Parliament and in particular the Departmental Committee on Justice and Legal Affairs has a duty to uphold the Constitution in carrying out its respective activities including the consideration of this Petition. The Committee must animate the following provisions in its consideration of the Petition before it.
- 2.13 The Committee should therefore be guided by the law in its operations so as not to violate the Respondent’s right to a fair trial as envisaged by the provisions of Article 50 of the Constitution.
- 2.14 The Petition has been presented based on documents pilfered from the files of the Ethics and Anti-Corruption Commission in violation of the Constitution and our positive laws.
- 2.15 The Petition has been presented in breach of our national values and should be dismissed *in limine*.

### **3.0 Response To The Petition**

- 3.1 The allegations as outlined in the Petition are generic in nature and are glaringly unsubstantiated. The Committee cannot rely on mere allegations to arrive at its decision. In the case of **Sawe Vs Republic [2003] KLR 364** the court held that:

*“Suspicion however strong cannot provide the basis of inferring guilt which must be proved by evidence beyond reasonable doubt”.*

- 3.2 This position was similarly adopted in the case of Kipkering Arap Koske vs Republic (1949) 16 EACA, 135 where it was held, inter alia, that;

*"In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt."*

- 3.3 The Petition so far as it relates to Geoffrey Oriaro is made on the following grounds:
- a) *Serious violation of the Constitution,*
  - b) *Serious violation of the EACC Act, ACECA and Penal Code;*
  - c) *Gross misconduct in the performance of my functions as Vice Chairperson of the Commission.*
  - d) *Incompetence.*

#### 4.0 Questions For Determination:

- a) *Which sections of the Constitution have been violated by Ms. Irene Keino (Vice Chairperson)?*
- b) *How have sections of the Constitution been violated by Ms. Irene Keino (Vice Chairperson).*
- c) *What Acts of conduct of the Ms. Irene Keino (Vice Chairperson) are alleged to have Violated the Constitution;*
- d) *How does one determine performance of the office held Ms. Irene Keino (Vice Chairperson) in question?*
- e) *What performance indices has the Petitioner used to evaluate the performance of the Commission and that of Ms. Irene Keino (Vice Chairperson)?*
- f) *Who has oversight role on the Ethics and Anti-Corruption Commission Commission?*
- g) *Is it the Departmental Committee on Justice and Legal Affairs directly?*
- h) *Does the Ethics and Anti-Corruption Commission Commission Report to Parliament?*
- i) *What acts have been shown as incompetence on the part of the Vice Chair?*

#### 5.0 Observations

- 5.1 The Petition so far as it relates to Geoffrey Oriaro is void of any factual specifics and or depositions against Ms. Irene Keino (Vice Chairperson) Respondent.
- 5.2 The Petitioner Oriaro makes no specific charge against the Vice Chair.
- 5.3 The Petitioner Oriaro provides no proof that Vice Chair is associated with the companies he alludes to.

- 5.4 The Petitioner Oriaro seems to represent Mr. Mubea's issues which can be thrashed out before the Employment and Labour Relations Court and is not a ground warranting Vice Chair's removal.
- 5.5 It is to be noted the Ethics and Anti-Corruption Commission has formally made its Constitutional Report to the National Assembly as required by Article 254 of the Constitution.
- 5.6 The underlying intrigue of this matter is aimed at stalling and handicapping the Commission in respect of Anglo Leasing, Karen Land and Integrity Centre issues.

#### **6.0 Response To The Factual Inaccuracies Raised**

6.1 *On 20<sup>th</sup> February, CAJ received a letter from a member of staff from NSSF indicating that Ms Keino is doing business with NSSF through Lulu East Africa, a company associated with her. The business involves the management of parking lot near Laico Regency hotel, where the company is reportedly receiving a revenue of approximately Ksh 500,000 daily.*

#### **Answer:**

In February 2015, I requested the Chairperson of CAJ regarding various anonymous letters sent to him regarding myself. The Chairperson agreed to send an investigator the following Monday.

On the same note the Justice & Legal Affairs Committee wrote to CAJ requesting them to conduct investigations on the same issues and forward within 21 days.

The CAJ commission sent two investigators a Mr. Nguli and Mr. Leki who took my statements and documents pertaining of the issues raised:

- I stated that I had no knowledge of the mentioned firm above.
- The petitioner should have attached registration documents for the company.
- The petitioner should have provided the link of that firm to the vice chairperson
- I have concluded that this is a way to malign the Vice- Chairperson without evidence.
- The petitioner has not provided the sections of the constitution and Acts that the VC has violated.
- I am aware that the Petitioner and Mubea worked at Aden, Wetangula law firm, between these periods: Petitioner (2004-2007) and Mubea (2007-2011).
- I am also aware that the investigations, that the commission is conducting on Mubea relates to transactions of Integrity centre building and anglo leasing.
- Am also aware that the legal firms that acted for the integrity centre transactions were Oraro and Oraro and Aden, Wetangula, Machoka Law firms.

- To my mind, this presents a conflict of interest. Mubea and the petitioner used to work for Aden, Wetangula law firm.
- It easy to see the common thread as to who is behind this Petition with the only discernible motive being to silence the Vice-Chair on the investigations regarding integrity centre.
- I have been threatened by some lawyers in town to leave Integrity Centre alone and concentrate on other corruption matters.

*6.2 The letter by NSSF staff also indicated that another company **Eco Plant**, which is managed by a Mr. Matemu Nzatu, has been awarded contracts by the NSSF including EIA, subdivision of titles and planning in the NSSF Tassia II Project. This company has been associated amongst other people **IK** and a staff member of the NSSF, Gideon Kyengo, whose wife is a senior officer at EACC. The letter further indicates that through the wife of Kyengo, members of the Commission have been assisted to acquire houses at NSSF.*

**Answer:**

I gave the statement on the above to CAJ as shown below:

*6.3 NSSF Houses*

**Answer:**

- I was appointed on 11 May 2012 and was sworn in 27<sup>th</sup> September 2012.
- I earned salary arrears of over Kshs 3.5m. I was acting and hadn't time on me to invest the salary arrears, so I decided to buy the flat (**see payslip for 30<sup>th</sup> February 2013**)
- My secretary Violet Rahedi, inherited two houses at NSSF Tassia II from her late husband. She services her mortgage monthly. She found out that there are some flats that still available and advised, that I should invest.
- The Flats, are at located in Phase 5 Embakasi.
- I wrote to the CEO to introduce myself to the managing trustee of NSSF which would constitute support documents to indicate my ability to service the mortgage scheme (**See attached letters**).
- I put in an application with supporting documents.
- I paid the application fee Kshs 1000 (**see original receipt**). I also paid the 10% of 610,000 and legal fees of Kshs 107,000 (**see receipts**).
- See attached monthly payments to facilitate the tenant purchase scheme.
- I never used the Kyengos to get me allocated these houses. I have never met Mr. Kyengo in my life.
- The investigations of Tassia II commenced in August 2013, and I bought the houses in March 2013. I am servicing my mortgage loan monthly and all transactions are above board.

Note:

- *Why would someone say I benefited from a house to protect NSSF Tassia II project? What was I to protect?*
- *The investigations of Tassia II came in August 2013, and I bought the houses in March 2013. Can someone be bribed prior to the offence?*
- *After all am servicing my mortgage loan monthly?*
- *Who has more stake to protect Vice Chair or Mubea?, Mubea who is a partner at Michael, Daud Law firm,*
- *Mubea worked also at Micheal, Daud Law firm 2012, before jionng EACC in January 2013*

#### 6.4 ECO Plant

##### Answer

I have no knowledge of any company known as Eco Plant.

The Petitioner should have provided details of this company from the registrar of companies.

However I had a company called **Eco Plan Management Limited** that deals in spatial planning and environmental management established in 2004.

It is public knowledge that, I am a registered urban planner and NEMA expert.

When I got appointed on 11<sup>th</sup> May 2015, I resigned in 2010 (see resignation letter);

I transferred my shares to Timothy Morogo in 2010 (See affidavit).

I am aware that the named Nzatu is not a director of Eco Plan Management Ltd neither are the Kyengos'. I have never met Gideon Kyengo in my life.

#### 6.5 *Kilimani Plot of Land*

##### Answer

- I have noted that the petition attached some correspondences of a change of user conducted in 2007, indicating that it was prepared by me.
- I confirm that I am a registered Spatial Planner and NEMA expert since 2002 till to-date.
- My annual subscriptions are paid but I do not pay for practising sub's because I cannot practice since am a state officer.
- I wish to state that these attached correspondence were removed from a file of the national Land commission. Upon receiving information that some cartel were registering a parcel of land along Lenana Road in my name, I informed the DCEO and CEO from a confidant of mine a Diana Chebet.

- In trust, the above two advised me to write to the Director CID, EACC CEO, Kenya Railways CEO and Kenya Railways pension fund telling them of a purported land fraud using my name (see correspondence).
- The CID took my statement and provided an Inquiry No 140/2014 of DIV
- I have attached correspondence on the same.

I therefore wish to state that the petitioner must have gotten these land documents from Mubea and Halakhe.

The CEO recalled the file from the Land's CEO to conduct the investigations.

#### Note

- Both of them show immaturity and dishonesty trying to use documents from an official government file and to purport that I was involved in the land fraud is total disrespect to me as a commissioner and they lack integrity.
- They have gone against the code of conduct they signed at the commission.
- The government secrets act as been violated by the CEO and DCEO.
- The CEO is the custodian of documents, assets and has over sight over his staff, Why would he work in conclusion with Mubea and the petitioner, if they are not in the disbandment bandwagon together.
- Both reveal that they lack national values as envisaged in Article 10 of the constitution, values such as lack of transparency, accountability and integrity for using false documents in a petition of this nature with the same notion of trying to malign my personal integrity.
- On the petitioner, that he didn't seek to verify if these were forged documents or not. It therefore looks like the petitioner was used as a median to transport this petition to parliament, but it was drafted by the CEO and DCEO.
- It therefore shows the intention and schemes of the cliques and cartels working to disband the commission have the same intention as the petition.
- He should have sought advice from my professional body to confirm if and indeed I was a legally licenced spatial planner in 2007. This is a case of defamation on my personal self by the petitioner.
- What tenants of the constitution and Acts am I violating?
- They are not trust worthy and fit to hold a state and public office in this regard.
- The actions of omission or commission make them not eligible for state and public office.

As an experienced spatial planner, the said documents seem fake or forged e.g.

- the minutes from the council are partially attached and do not reflect true minutes approved by the planning committee at city hall
- The letter from lands recommending the ground report and signed by Steve Tumbo. It is important to note that Steve Tumbo was a colleague of mine at the university during the Master's degree program and he has since passed away in 2005, a matter that I stated in my statements noting that he couldn't have done the letter.

#### 6.6 Letter Dated 9<sup>th</sup> September 2014 to His HE

##### Answer

The DCEO and CEO informed Prof Onsongo and myself that they had intelligence and evidence on the chairperson doing the following:

- Meeting with suspects whom EACC was investigating
- Trying to get information on investigation of files before they are completed

I agreed that in as far as they (DCEO & CEO) bring evidence on the chair we shall then take up the matter.

The two (DCEO and CEO) tabled allegations and I included issues on lack of leadership.

The two commissioners on waiting from 9<sup>th</sup> September 2014 to 15<sup>th</sup> January 2015, for evidence which was not forth coming, decided to hold a meeting with the Chairperson and tell him about the letter that had been done and tremendously apologised to him.

We agreed that in good faith we needed to show solidarity and support the chair, I recanted the earlier letter written.

It was a shocker to me and Jane Onsongo that the day the commission interdicted Mubea (DCEO), was the same day the letter was forwarded to state house for removal of the chairperson.

##### Note

- ✓ I wish to repeat that the same intentions of the cartels to disband the commission, unfortunately the petitioner also has the intentions too. In addition the petition links both Mubea and Halahke as the sponsor.
- It therefore means that both CEO and DCEO have the intentions of disbanding the commission so that the secretariat conduct their illegal operations at the commission (delay of files, rent seeking on selective files, intimidation of staff who speak and are flatly transferred)
- The intention of the DCEO and CEO was not justifiable and shows lack of honesty and trust on their part.
- I state that both lack good virtues that we hold dear at the commission as spelt out in the code of conduct.

- It was a calculated move to put the commission in disrupt and to demean my personal integrity and public at large.
- The two were very calculative by keeping the letter waiting for an opportune time to release it when the three commissioners decided to work together as a team. Meaning they were waiting for such an opportunity to take both of us down.

#### 6.7 *Interdiction of the DCEO*

##### Answer

The Commission interdicted Mubea DCEO in a Commission meeting on 9<sup>th</sup> of March 2015 due to malpractices and integrity issues.

The meeting comprised of the CEO and the three Commissioners.

All Commissioners resolved that Mubea DCEO be interdicted and stay away for 30 days as investigations were conducted.

The Commission decided to constitute a team comprising of two members of the CID, and one member from PSC and LSK and two EACC staff members.

#### 7.0 *The Current File Management system in place at EACC*

The current file management system is that all investigations files are submitted at the report centre. The investigation director then allocates a file to an investigation officer. Once the investigator officer finishes with the file forwards it to the DCEO (Mubea).

The DCEO may decide to raise issues and return the file or forwards the file to the legal Director.

Upon the Legal director finishes with the file forwards it back to the DCEO for finalizing and forwarding to CEO for onward transmission to the DPP.

The system is not transparent a one man show and lacks integrity. The current system is not able to determine timelines for staff for each files thus inefficient.

##### After realizing the short comings in the file system, the Commission took some action

The Commission decided to conduct a file audit in February 2015, which would show the status of files in the Commission e.g which staff has which file, the delay in files and make recommendations and challenges of the file system.

It became relevant to conduct a file audit, after the Parliamentary Legal Committee requested the Commission that it had to oversight the operations of the Commission.

The justification by the Commission to undertake the file audit springs from its oversight role on the secretariat as stated in Section 11 (6)(a) of the EACC Act.

(6) *The functions of the Commissioners shall be to—*

(a) *assist the Commission in policy formulation and ensure that the Commission and its staff, including the Secretary perform their*

*duties to the highest standards possible in accordance with this Act;*

*Section 11(6)(d)*

- (d) *deal with reports, complains of abuse of power; impropriety and other forms of misconduct on the part of the Commission or its staff; and*

*Section 11(6)(e)*

- (e) *deal with reports of conduct amounting to maladministration, including but not limited to delay in the conduct of investigations and unreasonable invasion of privacy by the Commission or its staff.*

In addition to the public outcry that corruption was increasing and from the several meeting held with the Commission and the Parliamentary Legal Committee.

There are several cases where the Commission has delayed to complete investigations of files such as:

GDC, Karen land, Judiciary cases, NSSF, IEBC, county cases e.g. Kilifi, Embu, Garissa, isiolo, Nyeri, Nairobi county, Kisumu, Nandi etc.

The Commission has given the two Commissioners oversight roles:

- Commissioner Keino oversee Risk and Audit Committee as well as Investigations and legal departments
- Commissioner Onsongo Oversees Preventive Services, Ethics and Leadership and support functions
- The Chairperson has the entire oversight of the organization

I was therefore tasked to oversee the file audit exercise for only investigation and legal files in February 2015.

The Commission also decided to keep a close scrutiny of the operations of the organization.

This is where the Secretariat resisted attempts for oversight and I started receiving negative depiction of my personal integrity in both print and electronic media.

From the initial reports from the file audit and intelligence.

I came across the following which I quickly communicated to the Commission:

That the DCEO, Mubea, wrongfully withheld information regarding investigation touching on the Integrity Centre Building and/or influenced the closing of the investigation file without due regard to procedures, practice and concurrence or approval of the Commission.

It is important to find out if the Government received the total amount of the debt on this building? Was the public cheated?

How was the building transferred from DPF, to Raveck, and from Raveck to Tegus Limited?

Was there impropriety, forgery in the transfer of the building from DPF, to Raveck, and from Raveck to Tegus Limited as asserted by the Investigator?

Why was the investigation and all relevant documents taken over by the Director of Investigation and the investigator told to close investigation and has since been transferred to Malava to start a satellite office not bequeathing his experience?

**Note:**

The lease documents show that the owners of Integrity Centre building have links to the following firms Michael, Daud Advocates and Aden, Wetangula & Makoka advocates.

Micheal Mubea (DCEO) used to work in the Aden, Wetangula Law firm from 2007-2011 and it's a wonder that the Petitioner Geoffrey Oriaro also worked at the same firm between (2004-2007).

There is a clear link between the Petitioner, Aden, Wetangula law firm and Mubea (DCEO) and the Petition filed to remove the Chair and Vice- Chair.

### **Anglo Leasing Contracts**

That the DCEO participated in the communications during the period of November 2014, relating to negotiations with suspects in the Anglo- leasing cases without first seeking approval from the Commission.

That the DCEO concealed documents and information from the Commission relating to investigations on Anglo- leasing.

These are the companies that were involved:

- Sound Day Corporation,
- Apex Finance, Globetel Incorporation,
- Midland Finance and Security.

After all this the Commission held a Commission meeting with the CEO in attendance to deliberate on the conduct of the DCEO.

The Commission resolved to interdict the DCEO and constituted a inter agency committee comprising of 2 members from CID, PSC, LSK and two Commission staff. The Committee draw up TORs and were given 25 days to provide 2 interim reports and a final report to the commission.

#### **8.0 Drama at EACC after the Interdiction of Mubea**

The Commission received intelligence and evidence on the two issues raised above.

The Commission therefore held a meeting on 9<sup>th</sup> March to interdict Mubea.

The Chair communicated to the CEO on 9<sup>th</sup> March through a Memo requesting the CEO to implement the interdiction process.

The CEO on 10<sup>th</sup> March wrote to the Chair revoking the interdiction.

On 10<sup>th</sup> March the Chair sent another Memo to CEO to implement the Commission decision of ensuring Mubea DCEO stays out of the Commission building and files.

The Commission also released a public notice stating that any public member dealing with Mubea will be at their own peril.

On 13<sup>th</sup> March 2015, the Chair got a call from State House instructing him to lift the interdiction. The Chair was told to prepare a road map and a letter accepting lifting of Mubea's interdiction.

The other two Commissioners protested and told the Chair that it could not happen. In the evening of the same day the EACC Management was called to Harambee House to impress on them that HE's directive is to return Mubea DCEO back to work ASAP.

On 16<sup>th</sup> March, 2015 the Commission established an Inter-agency Committee to investigate the conduct of Mubea DCEO and the Committee was given 25 days within which to complete the report. The 1<sup>st</sup> Interim report was due on 24<sup>th</sup> March and 2<sup>nd</sup> on 31<sup>st</sup> March, the final on 10<sup>th</sup> April 2015.

**Note:**

- The clear signs of insubordination
- Clear signs that the secretariat gets their orders from external sources
- The clear signs that the two were very trusted friends and workmates
- That the secretariat conducted its affairs without due regard to the commission.
- That activities could be organized and the commission were told on the same day to attend, meaning lack of coordination of commission affairs

**EACC CEO Corruption list**

- The commission presented a list to the legal and justice committee on 19<sup>th</sup> Feb 2015, while Halakhe presented another list to the Executive without following due procedure (tabbing it at the commission for approval, assigning the commission seal and signing of the report by the commissioner and secretariat)
- The commission held a commission meeting which it requested the CEO to table the report he submitted to the Executive and why he didn't let the commission know.
- He noted that he did it in a hurry.
- He also confirmed the lack of independence on his part.
- The commission took minutes of the process leading to the request and his submitting the list.
- The commission has decided

9.0 Achievements during the Period the Vice Chairperson Acted as Ag Chairperson from 27<sup>th</sup> September 2012 to 5<sup>th</sup> August 2013

Prominent cases handled during the period:

**ACHIEVEMENTS FOR THE VICE CHAIRPERSON**

**2013**

1. NHIF
2. Tokyo Case-Foreign Affairs
3. Public service commission-recruitment of Principal Secretaries
4. Workshops with council of Governors and senators on integrity and establishment of governance instruments
5. Prepared a vetting framework for elected and state and public staff
6. Vetting of elected leaders, principals and CSs
7. Vetting of EACC staff
8. Instilled discipline within staff members
9. Roadmap for the commission activities
10. Reorganization of regional offices and HQs
11. Initiated the preparation of the strategic plan in 2013 and launched in

**2014**

1. Prepare code of conduct for EACC
2. Held 1<sup>st</sup> Anti-Corruption workshop with HE and Deputy
3. Sought Legal Opinion from the Attorney General
4. Election of the Vice Chairperson of the Commission
5. Recruitment of the Chief Executive and Deputy Secretaries
6. Vetting Framework for elected and Executive Government Appointees
7. Reorganization of Departments and Directorates and Regional office
8. Technical Transitional committees
9. Negotiations with Salaries Remunerations Commission (SRC)
10. Regional Office Expansion program
11. Job Evaluation

12. Vetting Framework (Tool)
13. Vetting of Kenya Anti-Corruption Commission staff and preparation of the vetting report
14. National Leadership and Integrity Conference
15. Workshop on the Leadership and Integrity Act 2012
16. The EACC Strategic Plan
17. Code of Conduct for State officers and Code of Conduct for EACC staff
18. Abridged version of the Code of Conduct of the Leadership and Integrity Act 2012.
19. Proposed Amendments to the Anti-Corruption Economic Crime Act 2003 and the Ethics Anti-Corruption Commission Act of 2011.
20. Established Standing Committees
21. Acquisition of the EACC Headquarters and Disposal of EACC Karen Plot
22. Staff Corporate open Day
23. Commission Charter

## 2015

Has played over sight Role on the committees coming up with the following:

1. **Integrity Awards**  
Prepared a concept note
  2. Using sports as an anti-corruption awareness e.g. golf, Marathon, youth events. All events to be sponsored.
  3. Sponsorship Policy
  4. Event Management Policy
  5. EACC Rapid response Initiative
  6. The National Rapid Response Initiative for the country. I have been nominated to seat in this committee. The committee to be chaired by the Chief of staff of Public service
- 
1. **Sought Legal Opinion from the Attorney General**
    - a. The Commission in order to revamp the operations of the new institution, we decided to seek the legal opinion of the Attorney General on the legality of the two Commissioners' undertaking the operations of the Commission in the absence of the Chairperson. The legal advice of the Attorney General was that we could embark on revamping the Commission without any legal hurdles.
  2. **Election of the Vice Chairperson of the Commission**
    - a. The First Commission meeting of the two Commissioners' was held on 27<sup>th</sup> September 2012 as one item agenda to elect the Vice Chairperson. Ms Irene Keino was elected the vice Chairperson of the Commission.

3. **Developed a Road Map to guide the transition period**
  - a. The Commission drew up a roadmap of the intended activities that the Commission needed to run in the first year of business.
4. **Recruitment of the Chief Executive and Deputy Secretaries**
  - a. The Commission commenced the recruitment of the Chief Executive/Secretary of the Commission and the Deputy Secretary Technical Services and Deputy Secretary Support in December 2012 and they reported in January 2013. A recruitment committee comprising of nominees from Public Service Commission, Association of Professional Societies, Attorney General, National Anti-Corruption Steering Committee and the two Commissioners prepared the interview tools, score sheets and minutes of all deliberations.
5. **Vetting Framework for elected and Executive Government Appointees**
  - a. The Commission developed the external vetting framework for persons' seeking elective and appointive positions. We mobilized resources that saw over 18,000 vetting forms received by all EACC regional and Integrity Centre offices. The vetting forms were analyzed and data captured in the EACC database before the law was changed to transfer the services to IEBC.
6. **Reorganization of Departments and Directorates and Regional office**
  - a. The Commission re-organized the departments, directorates and regional offices to infuse energy and jam start the Commission's operations after a lull period of one year (transition period).
7. **Technical Transitional committees**
  - a. The Commission established technical transitional committees to guide the transition process of the Commission during the transition of the institution from Kenya Anti-Corruption Commission to Ethics Anti-Corruption Commission.
8. **Negotiations with Salaries Remunerations Commission (SRC)**
  - a. We started negotiations with SRC on the terms and conditions of service for EACC state officers and all staff through several correspondence and meetings. We held several meeting with H.E and the Deputy President on the need to remunerate the Commission staff due to the various risks that befall them in the cause of their duty.
9. **Regional Office Expansion program**
  - a. We started the process of regional office expansion and officially launched the Eldoret regional office in February 2013 and made proposals for opening of Machakos, Isiolo, Nakuru regional office. To-date none of these offices have been opened as we are kept busy engaging in unnecessary wars.
10. **Job Evaluation**
  - a. The Commission initiated the advertisement for the expression of interest for the job evaluation to map out the skills requirement, establishment and structure of the new EACC.

## **11. Vetting Framework (Tool)**

- a. In line with the requirements of section 33 of the EACC Act, we developed the vetting policy, procedures and guidelines (vetting tool) for the Ethics Anti-Corruption Commission. This tool has since been borrowed heavily by other institutions including the National Police Service Commission for the vetting of the police staff.

## **12. Vetting of Kenya Anti-Corruption Commission staff and preparation of the vetting report**

- a. The Commission prepared the Vetting Tool taking into consideration the input of all staff. The EACC Vetting Tool was subjected to stakeholder validation in compliance with the law. All former KACC employees were vetted using the tool. Therefore transition of all KACC staff to Ethics Anti-Corruption Commission was after finalisation of this process.

## **13. National Leadership and Integrity Conference**

- a. The Commission through its Kenya Leadership Integrity Forum organised the National Leadership and Integrity Conference in coordination with its stakeholder and it was graced by both H.E The President and Deputy President on 12<sup>th</sup> June 2013. This provided an opportunity to present the EACC's accomplishments so far and seek government support in solving the challenges it faced in the fight against graft.

## **14. Workshop on the Leadership and Integrity Act 2012**

- a. The Commission held a seminar in Mombasa on the leadership and integrity Act 2012 to start the process of developing regulations for operationalization of the Act. So far the regulations have been forwarded to Parliament for the necessary consultations, input and subsequent approval.

## **15. The EACC Strategic Plan**

- a. The Commission commenced the process of developing the EACC strategic Plan 2013-2018 in March 2013. An inception workshop was conducted at KICC where all senior staff were invited to comment and initiate the strategic planning process.

## **16. Code of Conduct for State officers and Code of Conduct for EACC staff**

- a. The Commission embarked on the development of the general code of conduct for state officers based on Leadership and Integrity Act 2012 (note this process stalled after the Chair assumed office).

## **17. Abridged version of the Code of Conduct of the Leadership and Integrity Act 2012.**

- a. The Commission embarked on the development of a simplified version of the code of conduct for state officers. The thought around the development of an abridged version of the code of conduct was to make it easier for all state officers when referring to the code during duty. We had planned to host all cabinet secretaries and request all of them to sign the code witnessed by H.E. and Deputy President. This idea would then have been cascaded downwards to all ministries. The Chairperson has frustrated further progress in this area.

**18. Proposed Amendments to the Anti-Corruption Economic Crime Act 2003 and the Ethics Anti-Corruption Commission Act of 2011.**

- a. We worked on the draft amendments to ACECA 2003 and EACCA 2011. At the moment the miscellaneous Bill which host the EACC proposed amendments is awaiting the President to accent to it. The Chair sponsored some members of parliament from his community to frustrate this vital amendments. We are aware that he is using the Chairman of LSK to write to you objecting the signing of this Bill.

**19. Established Standing Committees**

- a. We set up the EACC standing committees: namely Risk and Audit, Operations and Finance and administration and all have been meeting as scheduled.

**20. Acquisition of the EACC Headquarters and Disposal of EACC Karen Plot**

- a. We started the process of acquiring office premises for EACC headquarters in January 2013. We have since put more effort in ensuring the government allocates extra budget to facilitate this initiate. We have indeed obtained Treasury approval of the same through the CEO. The Chairperson is vigorously opposed to this idea.

**21. Staff Corporate open Day**

- a. We organized a staff corporate open day for all staff on 14<sup>th</sup> June 2013 to enhance inclusiveness and obtain comments and ownership of the progress by the Commission so far.

**22. Commission Charter.**

- a. We have since developed a draft Commission charter and sought the secretariat's assistance on sourcing for a consultant to prepare one for the Commission.



**Ms. Irene Keino**

**Vice Chairperson of the Ethics and Anti-Corruption Commission.**

**APPENDIX 12**

Chair: Dr. Otiende Amollo, EBS  
V. Chair: Dr. Regina G. Mwachia, MBS  
Member: Cmmr. Saadia A. Mohamed, OGW, MBS



THE  
COMMISSION ON ADMINISTRATIVE JUSTICE  
"Office of the Ombudsman"

Our Ref: CAJ/EACC/026/102/14

14<sup>th</sup> April, 2015

Hon. Samuel Chepkong'a, MP  
Justice and Legal Affairs Committee  
Kenya National Assembly  
Parliament building parliament road  
Ethics and Anti-Corruption Authority  
P. O. Box 41842-00100

NAIROBI

Dear *Hon Chepkong'a,*

RE: ANONYMOUS COMPLAINT AGAINST THE ETHICS AND ANTI-CORRUPTION COMMISSION ON ALLEGED IMPROPRIETY AND ABUSE OF POWER BY SELECTIVELY AWARDED THE DEPUTY COMMISSION SECRETARY A SALARY BEYOND THE RATES APPROVED BY THE SALARIES AND REMUNERATION COMMISSION

AND

THE GRAVE ALLEGATIONS OF IMPROPRIETY BY SOME EACC OFFICIALS THROUGH ALLEGED ACQUISITION OF SOME HOUSES ALLEGEDLY DONATED OR FACILITATED BY THE NATIONAL SOCIAL SECURITY FUND OR WHOSE ACQUISITION DEMONSTRATES FOREBEARANCE OR CULPABLE ACCOMODATION ON THE PART OF NSSF AT A TIME WHEN THE LATER BODY WAS UNDER INVESTIGATIONS BY THE FORMER.

---

Kindly receive warmest compliments from the Commission on Administrative Justice (CAJ), a Constitutional Commission established under Article 59 (4) and Chapter Fifteen of the Constitution, and the Commission on Administrative Justice Act, 2011.

In the conduct of its functions the Commission has powers to conduct investigations on its own initiative or on a complaint made by a member of the public, issue summons and require that statements be given under oath, adjudicate on matters relating to Administrative Justice, obtain relevant

information from any person or Governmental authorities and to compel production of such information.

The Commission on Administrative Justice undertook investigations upon receipt of anonymous complaints against the Ethics and Anti-Corruption Commission on alleged impropriety and abuse of power by selectively awarding the Deputy Commission Secretary a salary beyond the rates approved by the Salaries and Remuneration Commission and the grave allegations of impropriety by some EACC officials through alleged acquisition of some houses allegedly donated or facilitated by the National Social Security Fund or whose acquisition demonstrates forbearance or culpable accommodation on the part of NSSF at a time when the later body was under investigations by the former.

Pursuant to section 8 (b) of the Commission on Administrative Justice Act, 2011 CAJ undertook investigations into the allegations. The Commission conducted interviews with identified officers, recovered and examined various documents to obtain facts on the matters. Upon completion of its investigation, the Commission prepared a report.

## **Findings**

### Salary structure

EACC drew similar contracts for Mr. Michael Kamua Mubea and Mr. Edward Kenga Karisa with a basic salary offer starting from **KSh. 400,000 to 500,000** and an annual increment of **5%**. The contracts were interim pending advice from the Salaries and Remuneration Commission (SRC).

Mr. Mubea denied having signed an employment contract offer similar to that of Mr. Edward Karisa with a starting basic salary of **KSh. 400,000 to 500,000** and an annual increment of **5%**. CAJ is in possession of a copy of a contract document Ref: EACC/2/6 (45) dated 15<sup>th</sup> January, 2013 with a basic salary of

KSh, 400,000 to 500,000 and an annual increment of 5% for Mr. Michael Mubea which he signed on the 16<sup>th</sup> January, 2013. It is apparent that this was the actual contract that should be in force.

Mr. Mubea submitted to CAJ investigators a copy of his current contract of employment Ref: EACC/2/6 (45) dated 16<sup>th</sup> January, 2013 with a fixed salary of **KSh. 500,000** and allowances amounting to KSh. 280,000. He confirmed that he earns a fixed salary of Ksh. 500,000 and KSh. 280,000 as allowances adding to Ksh. 780,000 per month.

The salary structures for Commission staff was advised by SRC vide letter Ref: SRC/TS/ANTI-COR/3/35/7 dated 10<sup>th</sup> December 2013 in which SRC recommended a gross monthly remuneration of KSh. 400,000 up to of KSh. 550,000 for the Deputy Commission Secretary at EACC Grade 2.

CAJ confirmed through letter Ref: SRC/TS/ CAJ/3/38/6 VOL. I (83) dated 26<sup>th</sup> September, 2014 from SRC that the current remuneration for Mr. Michael Kamau Mubea in Grade 2, Deputy Commission Secretary EACC of **Ksh. 780,000 was not approved by the Salaries and Remuneration Commission.**

An analysis of the salary earned by Mr. Mubea since January 2014 courtesy of the negotiated salary against the salary recommended by SRC, shows that he has earned **KSh. 1,231,392.20** more than he should have.

Mr. Michael Kamau Mubea knowingly misled the CAJ investigators to believe that he was not aware of and he did not sign the contract with a basic salary starting from KSh. 400,000 with an annual increment of 5%.

EACC leadership is collectively culpable of negligence for failing to implement the salary structure for EACC staff as advised by SRC vide letter Ref: SRC/TS/ANTI-COR/3/35/7 dated 10<sup>th</sup> December, 2013.

Pursuant to section 36 of the CAJ Act, CAJ wrote to MR. Michael Kamau Mubea vide letter Ref: CAJ/EACC/026/102/14 dated 31<sup>st</sup> March, 2015, seeking his response on the findings, conclusions and recommendations drawn out of the draft report. Mr. Mubea responded through his advocates M/s. S. Musalia Mwenesi in a letter Ref: SMM/MKM/1472/LIT dated 2nd April, 2015.

His response cites other public officers at EACC who are also earning above the official SRC approved salary structure. CAJ notes that the complaint received was specifically on Mr. Mubea and that in the event that there is any other officer earning above SRC's approved salary structure, they must revert to the initial approved scale and refund the overpayment.

Further, the argument espoused by Mr. Mubea fails to acknowledge clause (ii) which states that staff recruited to EACC prior to provision of any advice by SRC should adopt the structure given in SRC's letter dated 10<sup>th</sup> December 2013. In any event, Clause (iii) is very clear that any remuneration to an EACC staff must have been advised by the SRC. Being a public officer, Mr. Mubea's salary of KSh. 780,000 was not approved by SRC. His response fails to distinguish between a State Officer and a Public Officer in respect to determination of remuneration by SRC. On request of Mr. Mubea, CAJ availed a copy of the signed contract which gave him the basic salary of Ksh. 400,000 and an annual increment of 5%.

Further, the Commission wrote to the Chair, EACC Mr. Mumo Matemu and the Vice Chair, EACC, Ms. Irene Keino vide letters Ref: CAJ/EACC/026/102/14 dated 31<sup>st</sup> March, 2015 respectively, regarding the adverse findings, conclusions and

recommendations contained in the draft report on account of collective responsibility.

The Chair, EACC, Mr. Mumo Matemu and Vice Chair Ms. Irene Keino gave their responses vide letter Ref: EACC.6/38 and another, dated 7<sup>th</sup> April, 2015, respectively, of which contents CAJ has noted.

#### NSSF Housing

There was no evidence that Mr. Michael Mubea purchased a house/houses from NSSF at the time in question.

CAJ established that Ms. Irene Cheptoo Keino, Vice Chair EACC bought two houses; L.R. NO. NBI/BLK 140/529/008 and L.R. NO. NBI/BLK 140/529/019 from NSSF. The two properties are in Phase V. Nyavo Estate. Embakasi.

CAJ noted that Ms. Irene Keino informally got information on the available houses on sale by NSSF two years and three months after the closing date. Ms. Keino said that she got information from her Secretary that NSSF had some houses available for sale.

NSSF is also unable to give records of payments made by the Vice-Chair of EACC, Ms. Irene Keino in relation to arrears of Kenya shillings eight hundred and six thousand, four hundred and thirty four (KSh 806, 434) as contained in the notice of repossession dated 4<sup>th</sup> March, 2014 for two houses acquired by Ms. Keino. NSSF is unable to give proper accounts and records of general payments for the two houses. CAJ has further noted serious faults in the internal processes of NSSF and in particular as demonstrated by the fact that NSSF issued a repossession notice of a house to Ms. Keino and later NSSF admitted it was an error.

Pursuant to section 36 of the CAJ Act, CAJ wrote to the Chief Executive Officer/Managing Trustee, NSSF and Ag. General Manger, Finance and Investment, NSSF, vide letters Ref: CAJ/EACC/026/102/14 dated 31<sup>st</sup> March,

2015, respectively and the Vice Chair EACC, Ms. Irene Keino seeking their response on the adverse findings, conclusions and recommendations out of the investigations contained in the draft report.

The Ag. General Manager, Finance and Investment, NSSF, gave his response vide letter Ref: SF/A/10/189/VOL.VI (71) dated 2<sup>nd</sup> April, 2015 contents of which CAJ has noted.

The Vice Chair Ms. Irene Keino gave her response vide a letter dated 7<sup>th</sup> April, 2015, the contents of which CAJ has noted.

### Recommendations

As required by section 42 (1) & (3) of the CAJ Act, 2011, the Commission is obligated to submit a report to relevant offices for appropriate action, which we hereby do as provided for under Section 44 of the CAJ Act, 2011.

CAJ wishes to draw your attention to the following recommendations as captured on page xiii and xx of the report for your necessary action:

- i. EACC to immediately implement the Salary structure for Mr. Michael Kamau Mubea, as advised by SRC vide letter Ref: SRC/TS/ANTI-COR/3/35/7 dated 10<sup>th</sup> December, 2013 in which SRC recommended a gross monthly remuneration of KSh. 400,000 up to of KSh. 550,000 for the Deputy Commission Secretary at EACC Grade 2.
- ii. EACC to immediately recover **KSh. 1,231,392.20** being net salary overpayment beyond SRC approval to Mr. Michael Mubea from January 2014 to March, 2015.
- iii. Mr. Mubea should refund to the EACC, **Kenya shillings one million, two hundred and thirty one thousand, three hundred and ninety two cents**

twenty only (KSh. 1,231,392.20) being net salary he earned over and above the approved salary structure stipulated by SRC;

- iv. The EACC to expedite the completion of investigations of cases at NSSF including Tassia II Project, the appointments to the NSSF Board and the procurement of CCTV for the NSSF towers;
- v. While it cannot blanketly be said that any officer at EACC cannot invest in NSSF, the fact that the Vice Chair bought houses at NSSF at a time when the later body was under investigations by the former leads CAJ to conclude that it was an unwise decision given the possibility of conflict of interest.

Your cooperation in this regard will be appreciated and we assure you of our highest regards

Yours

*Sturges*

*Amollo*

DR. OTIENDE AMOLLO, EBS,  
CHAIR OF THE COMMISSION

## **APPENDIX 13**



KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT  
FOURTH SESSION (2011)

-----  
THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE NOMINATIONS OF THE CHAIRPERSON AND MEMBERS OF THE  
ETHICS AND ANTI-CORRUPTION COMMISSION

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Clerk's Chambers,  
Parliament Buildings,  
NAIROBI.

DECEMBER, 2011

*Paper tabled  
by Vice-Chair  
Justice & Legal  
Affairs Committee  
(Humbanyo)  
on 14/12/11 at 2.30pm  
[Signature]*

## PREFACE

Mr. Speaker Sir,

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing order 198(3) which defines functions of the Committee as being:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and enquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister; and
- f) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Schedule II of the Standing Orders, the Committee is mandated to consider:-

- a) Constitutional Affairs
- b) The administration of law and order (Judiciary, police, prisons department, and community service orders)
- c) Public prosecutions
- d) Elections
- e) Integrity
- f) Anti-corruption and human rights.

The Committee oversees the following Ministries/Departments:

- a) Ministry of Justice, National Cohesion and Constitutional Affairs
- b) State Law Office
- c) The Judiciary

- d) Kenya Anti-Corruption Commission
- e) Interim Independent Electoral Commission
- f) Interim Independent Boundaries Commission

The Committee also has oversight mandate over all matters relating to political parties.

### COMMITTEE MEMBERSHIP

The Committee comprises of the following members:

- Hon. Ababu Namwamba, M.P - Chairperson
- Hon. Njoroge Baiya, M.P - Vice-Chairperson
- Hon. Abdikadir Mohammed, M.P
- Hon. Millie Odhiambo-Mabona, M.P
- Hon. Mutava Musyimi, M.P
- Hon. George Omari Nyamweya, M.B.S., M.P
- Hon. Amina Abdalla, M.P
- Hon. Olago Aluoch, M.P
- Hon. Isaac K. Ruto, E.G.H., M.P
- Hon. Sophia Noor Abdi, M.P
- Hon. Eugene Wamalwa, M.P

Mr. Speaker Sir,

On 1<sup>st</sup> December, 2011 you informed the House that H.E the President had after consultation with the Right Hon. Prime Minister nominated the following persons to be considered for appointment as chairperson and members of the Ethics and Anti-Corruption Commission by the National Assembly pursuant to the provisions of section 6(6) of the Ethics and Anti-corruption Commission Act No. 22 of 2011.

1. Mr. Mumo Matemu - Chairperson
2. Prof. Jane Kerubo Onsongo - Member
3. Ms. Irene Cheptoo Keino - Member

You then directed that the names and Curriculum Vitae (CVs) of the nominees be referred to the Departmental Committee of Justice and Legal Affairs for consideration prior to approval by the House and directed that the JLA to

deliberate on the nominees and table its report on or before Thursday December 8th, 2011.

The Committee held a meeting with each of the three nominees on Wednesday 14<sup>th</sup> December, 2011 starting at 9.30a.m. The Nominees made submissions on why they should be appointed to serve in the Ethics and Anti-Corruption Commission.

**Mr. Speaker Sir,**

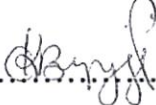
The Committee deliberated on the issues raised in the memoranda together with the submissions made by the nominees and now recommends that pursuant to the provisions of paragraphs 6(6) Ethics and Anti-Corruption Commission Act, No.22 of 2011, the House rejects the appointment of Mr. Mumo Matemu as Chairperson of the Ethics and Anti-Corruption Commission, Prof. Jane Kerubo Onsongo and Ms. Irene Cheptoo Keino.

#### Acknowledgements

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. The Committee also appreciates the media for live coverage of its proceedings during the vetting process. Further, the Committee thanks members of the public who made submissions to the Committee.

**Mr. Speaker Sir,**

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to present and commend this report on the nominations to the Ethics and Anti-Corruption Commission, to the House for adoption in accordance with the provisions of section 6(7) of the Ethics and Anti-Corruption Commission Act No. 22 of 2011.

SIGNED.....

Hon.Njoroge Baiya, M.P

VICE-CHAIRPERSON

DATE: .....14/12/2011.....

## BACKGROUND

1. The Ethics and Anti-Corruption Commission is established under Article 79 of the Constitution and the Ethics and Anti-Corruption Commission Act No 22 of 2011.
2. Article 79 of the Constitution provides that:-

*Parliament shall enact legislation to establish an independent ethics and anti-corruption commission, which shall be and have the status and powers of a commission under chapter fifteen, for purposes of ensuring compliance with and enforcement of, the provisions of this Chapter.*

3. Section 3 of the Ethics and Anti-Corruption Commission Act No. 22 of 2011 provides for the establishment and membership of the Commission. Section 4 provides inter alia that the Commission shall consist of a chairperson and two other members appointed in accordance with the provisions of this Act.
4. The Commission shall replace the **Kenya Anti-Corruption Commission (KACC)** which was established by Section 6 of the Anti-Corruption and Economic Crimes Act,2003
5. Following the enactment of the Ethics and Anti-Corruption Commission Act,NO.22 Of 2011 ,the President constituted a selection panel which held its inaugural meeting on September 12<sup>th</sup>,2011.The following persons were appointed to the selection panel:-

i).	Mrs.Rose Mambo	-	Chairperson
ii).	Mr. Levi Obonyo	-	Member
iii).	Rev. Dr.Samuel Kobia	-	Member
iv).	Mrs. Sheila N.Kiambati	-	Member
v).	Mr.Caroli Omondi,CBS	-	Member
vi).	Mr.Tache Bonsa Gollo	-	Member
vii).	Mr.Charles Kanjama	-	Member
viii).	Mrs.Florence Simbiri Jaoko	-	Member
ix).	Mr.John K.Tuta	-	Member

6. On 26<sup>th</sup> September, 2011, the Selection Panel advertised in the *Daily Nation* and in *The Standard Newspapers* one (1) vacancy for the position of chairperson and two(2) vacancies for the position of Member of the Commission.
7. Twenty one (21) applications were received for the position of Chairperson and one hundred and sixty four (164) applications for the position of member. However due to insufficient number of qualified female applicants for the position of Chairperson, the Selection panel decided to re-advertise the said position.
8. The names of all the applicants for the position of member and the shortlisted candidates were published in the print media on 18<sup>th</sup> October, 2011 and oral interviews conducted on 1<sup>st</sup> and 2<sup>nd</sup> November at the Public Service Commission.
9. Re-advertisement for the position of Chairperson was done on 24<sup>th</sup> October, 2011 in the *Daily Nation* and *The Standard Newspapers*. Upon closure of the re-advertisement on 1<sup>st</sup> November, 2011, the Selection Panel had received a total of seventy nine(79) applications. The Selection Panel shortlisted nine(9) candidates and the names plus those names of all the applicants for the position of Chairperson were published in the print media on 4<sup>th</sup> November, 2011. Interviews were conducted on 8<sup>th</sup> and 9<sup>th</sup> November, 2011. The Selection Panel, pursuant to section 6(5)(e),(f) and (g) of the Act forwarded to the President the following names for the Chairperson and members as follows:

**a) Chairpeson**

- i). Mr. Erick O. Omogeni
- ii). Mr. Mumo Matemu, MBS
- iii). Dr. Sarah M. Kilemi

**b) Members**

- i). Prof. Jane Kerubo Onsongo
- ii). Mr. Ochillo Polycarp J. Omolo
- iii). Mr. Robert Francis Shaw
- iv). Ms. Irene Cheptoo Keino

10. A letter from the Office of the Permanent Secretary, Secretary to the Cabinet and Head of Public Service dated 24<sup>th</sup> November, 2011, to the Clerk of the National Assembly indicated that His Excellency the President has, in consultation with the Prime Minister, nominated Mr. Mumo Matemu as Chairperson while Prof. Jane Kerubo Onsongo and Ms. Irene Cheptoo Keino as members of the Ethics and Anti-Corruption Commission.

11. On 1<sup>st</sup> December, 2011, the Speaker in a communication to the House referred the names of the three nominees to the Departmental Committee on Justice and Legal Affairs for vetting and directed the Committee to submit its recommendations on the nominees to the House on Thursday, 7<sup>th</sup> December, 2011.

### CONSIDERATION OF THE NOMINEES BY THE COMMITTEE

12. The nominees were nominated to serve in the Ethics and Anti-Corruption Commission pursuant to Articles 79 and 250 of the Constitution and Sections 6,7 and 8 of the Ethics and Anti-Corruption Act,2011.

At a meeting held on December 14,2011, the Committee examined the Candidates against the criteria set out in the Schedule to the *Public Appointments (Parliamentary Approval)Act, No.33 of 2011* (Criteria for vetting/approval of nominees for appointment to public office by Parliament). That criterion requires nominees to disclose information on their personal and professional life including their political affiliations, tax compliance and potential conflict of interests and other things.

13. Their qualifications for appointment to the office are set out in Section 5 of the Ethics and Anti-Corruption Act(EACC),No.22 of 2011. The Chairperson of the EACC shall be a person who meets the requirement of Chapter Six of the Constitution; holds a degree from a university recognised in Kenya; has knowledge and experience of not less than fifteen years in any office of the following fields:- ethics and governance; law; public administration; leadership; economics; social studies; audit; accounting; fraud investigation; public relations and media or religious studies or philosophy and has had a distinguished career in their respective fields.

14. The member of the EACC shall be a person who meets the requirement of Chapter Six of the Constitution, must be a citizen of Kenya ; must hold a degree from a recognized University; have proven relevant experience in any of the following: ethics and governance, law, public administration, leadership, economics, social studies, audit, accounting, fraud investigation, public relations and media or religious studies or philosophy and has had distinguished career in their respective field.

## Nomination of Mr. Mumo Matemu as Chairperson of the Ethics and Anti-Corruption Commission

15. The Committee having considered the curriculum vitae of **Mr. Mumo Matemu**, and having heard his submissions during the interview, made the following observations on his nomination:-

- i). That Mr. Mumo Matemu, is a Kenyan citizen born in 1954. He is a Lawyer and an advocate of the High Court of Kenya for the over twenty five (25) years.
- ii). He holds a Bachelors' Degree in Law (LLB) from the University of Nairobi, Post Graduate Diploma from Kenya School of Law.
- iii). He is a Certified Public Secretary.
- iv). He is currently the Chairman of the Taskforce on Citizenship and related provisions of the Constitution. He has also served as a Commissioner – Support Services, he served as Commissioner, Customs & Excise Department at the Kenya Revenue Authority. He served in the Agricultural Finance Corporation as Legal Officer, Senior Legal Officer and Chief Legal Officer. He served in the Judiciary as District Magistrate 11 (Professional) and Resident Magistrate.
- v). He is a member of the Law Society of Kenya, Institute of Certified Public Secretaries of Kenya and International Bar Association.
- vi). He has published several writings including: Report of the Taskforce on Citizenship and related provisions of the Constitution to the Minister of State for Immigration and Registration of persons, Report /presentation to the annual meeting of Ambassadors held in 2011 at the Leisure Lodge on developments in the law on citizenship, presentation to the International Bar Association in Madrid, Spain on developments in trade law in East Africa, development of the enforcement strategy paper for Kenya Revenue Authority in 2008.
- vii). He received the Presidential award and honour of the Order of the Moran of Burning Spear in December 2010.
- viii). He has fully complied with his tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry;

- ix). He is not a member of any political party and does not expect any conflict of interest to arise;
- x). He has never been charged in a court of law for any offence;

Nomination of Prof Jane Kerubo Onsongo as a member of the Ethics and Anti-Corruption Commission.

16. The Committee having considered the curriculum vitae of **Prof Jane Kerubo Onsongo**, and having heard her submissions during the interview, made the following observations on her nomination:-

- i). That she is a Kenyan Citizen born on 11<sup>th</sup> November 1967. She holds a PhD in Higher and Further Education, Masters of Arts in Education, leadership and management of Higher Education, Master of Education in Educational Communication and Technology and a Bachelor of Education (Arts), History and CRE. She is currently a lecturer at the Catholic University of Eastern Africa. She was an Assistant Director, Preventive Services, Kenya Anti-Corruption Commission, and she has worked at the Teachers Service Commission.
- ii). She is not a member of any political party and does not expect any conflict of interest to arise.
- iii). She has fully complied with her tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry;
- iv). She has never been charged in a court of law for any offence.

Nomination of Ms. Irene Cheptoo Keino as a member of the Ethics and Anti-Corruption Commission

17. The Committee having considered the curriculum vitae of Ms. Irene Cheptoo Keino made the following observations on her nomination:-

- i). That Irene Cheptoo Keino was born on 16<sup>th</sup> February 1964 and holds an Executive Masters in Business Administration from Jomo Kenyatta University of Agriculture and Technology, a Masters in Urban and Regional

Planning and a Bachelor of Arts in Geography and Sociology. She works as an Estates Manager with the National Cereals and Produce Board. She was the Vice-Chair, Advisory Board of the Kenya Anti-Corruption Commission. A member of the Selection panel for the recruitment of the Independent Electoral and Boundaries Commission, a Board Member of the Physical Planning Registration Board and a council member of the Architectural Association of Kenya.

- ii). She is a Member of the Architectural Association of Kenya, Physical Planning Registration Board, Royal Town Planning Institute and International Society of City and Regional Planners.
- i). She has fully complied with her tax obligations to the State and has never been dismissed from office for contravention of provisions of Article 75 of the Constitution which deals with conduct of state officers or adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry;
- iii). She is not a member of any political party and does not expect any conflict of interest to arise;
- iv). She has never been charged in a court of law for any offence.

### RECOMMENDATIONS OF THE COMMITTEE

18. The Committee deliberated on the nominees to the Ethics and Anti-Corruption Commission and noted that :-

- The nominees lacked the passion, initiative and the drive to lead the fight against Corruption in this country.
- The nominees did not demonstrate sufficient interest in the fight against corruption.
- All the nominees had excellent careers with excellent academic qualifications but lacked the passion to lead the Anti-Corruption Commission which qualifications could be relevant at other levels.

19. Following the above deliberations, the Committee recommends that pursuant to the provisions of section 10 of the Ethics and Anti-Corruption Commission Act,

No.22 of 2011, the House rejects the nominations of the following persons for appointment to serve in the Ethics and Anti-Corruption Commission in the stated capacities:-

1. Mr. Mumo Matemu - Chairperson
2. Prof. Jane Kerubo Onsongo - Member
3. Ms. Irene Cheptoo Keino - Member

20. The Committee recommends that the Executive submits fresh names for consideration and approval to the Ethics and Anti-Corruption Commission, based on experience and passion for the fight against corruptions.

21. The Committee further observed that the Executive failed to include details on the criteria used to bypass the best candidates. The Committee therefore recommends that future nominations should be accompanied by reports outlining the standards used.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

MINUTES OF THE 71<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON WEDNESDAY, DECEMBER 14, 2011 IN COMMITTEE ROOM. NO. 7, PARLIAMENT BUILDINGS AT 9.00 A.M.

PRESENT

Hon. Njoroge Baiya (Chairing)  
Hon. Olago Aluoch, M.P.  
Hon. Eugene Wamalwa, M.P.  
Hon. George Omari Nyamweya, MBS, M.P.  
Hon. Abdikadir Mohammed, M.P.  
Hon. Millie Odhiambo-Mabona, M.P.  
Hon. Sophia Abdi Noor, M.P.  
Hon. Mutava Musyimi, M.P.

ABSENT WITH APOLOGY

Hon. Ababu Namwamba, M.P.  
Hon. Isaac Ruto, EGH, M.P.  
Hon. Amina Abdalla, M.P.

IN ATTENDANCE

Mrs. Consolata Munga  
Mrs. Lucy Wanjohi  
Ms. Wanjiru Ndindiri

KENYA NATIONAL ASSEMBLY

Deputy Director/Committees  
Second Clerk Assistant  
Third Clerk Assistant

MIN.NO.244/2011

VETTING OF NOMINEES TO THE ETHICS & ANTI-CORRUPTION COMMISSION

The Committee was guided in the vetting process by the questionnaire provided in the Schedule of the Public Appointments (Parliamentary Approval) Act. The following were the main areas covered during the deliberations, among others:

1. The nominee's educational background and personal details
2. Participation in any pro-bono/charity works
3. The nominee's prior professional/Employment History
4. Honours and Awards
5. Sources of income/statement of Net worth/tax compliance status
6. Public office, political activities and affiliations
7. Potential conflicts of interest

MR. MUMO MATEMU, MBS

- The nominee informed the Committee of his extensive legal background, especially his experience as the Commissioner of Support Services at the Kenya Revenue Authority, and most recently as the Chair of the Taskforce on Citizenship and Related Provisions of the Constitution.

PROF. JANE K. ONSONGO

The nominee highlighted her long career as an educationist, primarily as a university academic, researcher and scholar. The Committee also heard that she previously served on the now defunct Kenya Anti-Corruption Commission for one year as the immediate former Assistant Director, Preventive Services.

The Committee considered and determined that her skill-set did not match the job to which she had been nominated.

MS. IRENE C. KEINO

The nominee informed the Committee of her relevant experience for this post, which included working in the Government and related organisations for the past 17 years, most recently serving on the Selection Panel for the nominees to the Independent Electoral and Boundaries Commission.

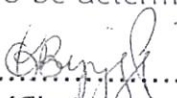
The Committee considered and determined that her skill-set did not match the job to which she had been nominated.

MIN. NO. 245/2011      APPROVAL AND ADOPTION OF THE REPORT

The Committee considered, made observations and adopted the report unanimously rejecting the nominees. The Committee recommended that fresh names be submitted for consideration and possible approval to the Ethics and Anti-Corruption Commission, based on their suitability and past experience.

MIN.NO 246/2011      ADJOURNMENT

And there being no other business the Chair adjourned the sitting at ten minutes to one o'clock until a date to be determined.

Signed: .....  .....  
(Chairperson)

Date: ..... 14/12/2011 .....  
.....

**APPENDIX 14**

## PRESS STATEMENT

### RESIGNATION AS COMMISSIONER, ETHICS AND ANTICORRUPTION COMMISSION

I have today tendered my resignation as a commissioner in the Ethics and Anticorruption commission. I have served as a commissioner since taking my oath of office on 27<sup>th</sup> September 2012. Over this period I have come to the realisation that the commission as currently constituted may not be able to discharge its mandate. The events of the past few weeks have crystallised this view. I believe that threat from corruption is the single most challenge facing our country. Unfortunately, the fight against corruption cannot be won by a divided commission.

Consequently and in order to offer the country an opportunity to reconstitute the commission and strengthen the institutional framework in the fight against corruption I have offered to resign. I thank president and the people of the republic of Kenya mostly sincerely for giving me the opportunity to serve in this position.



Prof. Jane Kerubo Onsongo-PhD

31/03/2015

Prof. Jane Kerubo Onsongo

P.O BOX 22446-00100

NAIROBI

31<sup>st</sup> March 2015

H.E. Uhuru Kenyatta , C.G.H

President of the Republic of Kenya and Commander in Chief

Kenya Defence Forces

State House

NAIROBI

Dear

*Sir,*

RESIGNATION AS COMMISSIONER, ETHICS AND ANTICORRUPTION COMMISSION

It is with great regret that I have to tend my resignation as a commissioner in the above named commission. I have served as a commissioner since taking my oath of office on 27<sup>th</sup> September 2012. Over this period I have come to the realisation that the commission as currently constituted may not be able to discharge its mandate. The events of the past few weeks have crystallised this view. I believe that threat from corruption is the single most challenge facing the country and your government. Unfortunately, the fight against corruption cannot be won by a divided commission.

Consequently and in order to offer the country an opportunity to reconstitute the commission and strengthen the institutional framework in the fight against corruption I have offered to resign. I thank you and the people of the republic of Kenya mostly sincerely for giving me the opportunity to serve in this position.

Yours

*sincerely*

*Jane Kerubo*

Prof. Jane Kerubo Onsongo-PhD

