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REPUBLIC OF KENYA



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THE NATIONAL ASSEMBLY

11TH PARLIAMENT – THIRD SESSION - 2015

Handwritten:
By the chair
of the PAC,
Nicolas C
on Tuesday
7/7/15
JSC

PUBLIC ACCOUNTS COMMITTEE
REPORT ON THE JUDICIAL SERVICE COMMISSION
(JSC) AND THE JUDICIARY SPECIAL AUDIT REPORT
OF MAY, 2014

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JULY, 2015

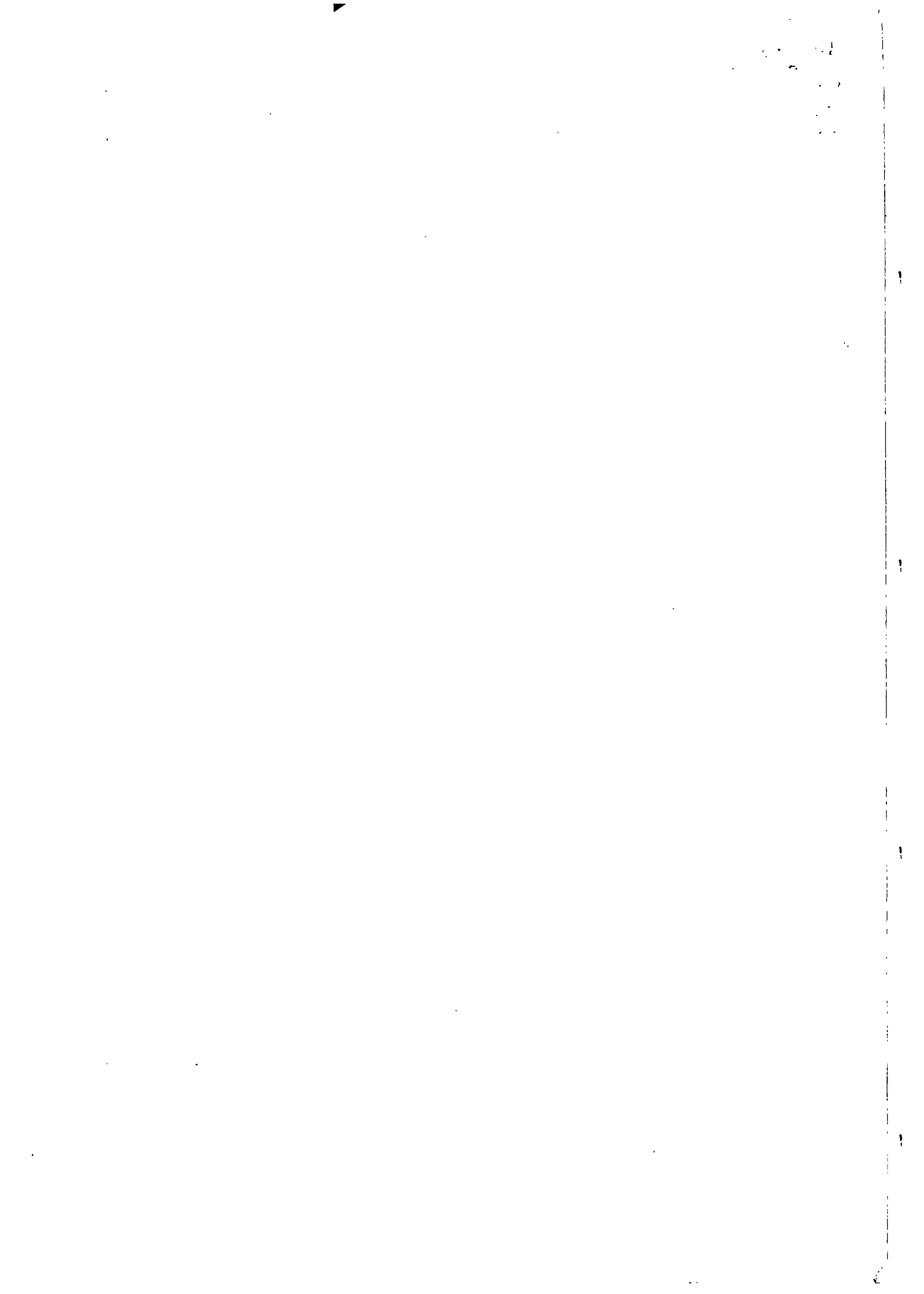


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ABBREVIATIONS

AFC	Agricultural Finance Corporation
AG	Auditor General
AIE	Authority to Incur Expenditure
CRJ	Chief Registrar of Judiciary
EACC	Ethics and Anti-Corruption Commission
IAG	Internal Auditor General
ICT	Information and Communications Technology
IFMIS	Integrated Financial Management Information System
ISK	Institution of Surveyors of Kenya
JKUATES	Jomo Kenyatta University of Agriculture and Technology Enterprises Services Ltd.
JSC	Judicial Service Commission
JTC	Judiciary Tender Committee
JTF	Judicial Transformation Framework
JTI	Judicial Training Institute
KCB	Kenya Commercial Bank
PAC	Public Accounts Committee
PPOA	Public Procurement and Oversight Authority
PV	Payment Voucher
PWC	PricewaterhouseCoopers

PREFACE

Mr. Speaker, Sir,

The Public Accounts Committee derives its mandate from Standing Order 205(2) of the National Assembly, which provides that:-

“The Public Accounts Committee (PAC) shall be responsible for the examination of the accounts showing the appropriations of the sum voted by the House to meet the public expenditure and of such other accounts laid before the House as the Committee may deem fit”.

The primary mandate of PAC is therefore to oversight the expenditure of public funds by Ministries/Departments, Constitutional commissions and independent offices to ensure value for money, optimal application of public funds and adherence to Government financial regulations and procedures.

The Committee executes its mandate on the basis of annual and special audit reports prepared by the Office of the Auditor General.

GUIDING PRINCIPLES

In the execution of its mandate afore-stated, PAC is guided by core Constitutional and statutory principles on public finance management, as well as established parliamentary customs, traditions, practices and usages. These principles include the following:

Constitutional Principles on Public Finance

Article 201 enacts fundamental principles that ***“...shall guide all aspects of public finance in the Republic...”*** The principles are:

- (a) there shall be openness and accountability, including public participation in financial matters;
- (b) the public finance system shall promote an equitable society, and in particular—
 - (i) the burden of taxation shall be shared fairly;
 - (ii) revenue raised nationally shall be shared equitably among national and county Governments; and
 - (iii) expenditure shall promote the equitable development of the country, including by making special provision for marginalized groups and areas;
- (c) the burdens and benefits of the use of resources and public borrowing shall be shared equitably between present and

- future generations;
- (d) public money shall be used in a prudent and responsible way; and;
 - (e) financial management shall be responsible, and fiscal reporting shall be clear.

Mr. Speaker,

PAC places a premium on these principles, among others, and has been guided by them in the entire process that has culminated in this Report.

Direct Personal Liability

Article 226(5) of the Constitution provides that:-

“If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not”.

PAC considers this Constitutional provision as the basis for holding each individual Accounting Officer and other Public Officers directly and personally liable for any loss of public funds under their watch.

The Committee has and will continue to invoke this provision in its recommendations to hold those responsible personally accountable. This is also intended to serve as a deterrent measure.

Obligations of Accounting Officers

Section 68 (1) of the Public Finance Management Act, 2012 provides, inter alia, that:-

“An accounting officer for a national Government entity, Parliamentary Service Commission and the Judiciary shall be accountable to the National Assembly for ensuring that the resources of the respective entity for which he or she is the accounting officer are used in a way that is lawful and authorized, and effective, efficient, economical and transparent.”

- (i) This provision obligates all accounting officers to appear before the Public Accounts Committee of the National Assembly to respond to audit queries in their respective ministries/departments.

And section 74 (2) of the same PFM Act stipulates that:-

“If a Cabinet Secretary reasonably believes that an accounting officer is engaging in or has engaged in improper conduct within the meaning of subsection (4), the Cabinet Secretary shall-

- (ii) Take such measures as may be provided in regulations; or
- (iii) Refer the matter to the relevant office or body in terms of the statutory and other conditions of appointment or employment applicable to that accounting officer.”

Mr. Speaker, Sir,

This section empowers the appointing authority to discipline errant accounting officers, which could include revoking their appointment. This provision has sealed a long standing loophole that has previously seen accounting officers continuously commit or preside over fiscal indiscipline and malpractice in their ministries with impunity without sanctions.

PAC strongly holds the view that these provisions of the law were intended to be fully applied to give effect to the high principles in Article 201 of the Constitution stated hereinabove, to ensure prudent and responsible use of public funds.

The Committee has, accordingly, applied these provisions to recommend diverse disciplinary actions, investigations and surcharging of various persons found to bear responsibility for breaches of the law and/or responsible for the loss or wastage of public funds.

Committee Membership

The Committee was re-constituted during the Third Session of the 11th Parliament in April 2015, and now comprises the following Honourable Members:-

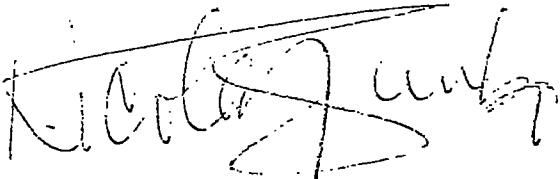
- 1. Hon. (Eng.) Nicolas Gumbo, MP - Chairman
- 2. Hon. Jackson K. Rop, MP - Vice- Chairman
- 3. Hon. Joseph Manje, MP
- 4. Hon. Gonzi Rai, MP
- 5. Hon. Julius Melly, MP
- 6. Hon. Kangogo Bowen, MP
- 7. Hon. Timothy Bosire, MP
- 8. Hon. Fathia Mahbub, MP

9. Hon. Mwadime Andrew, MP
10. Hon. Sakwa Bunyasi, MP
11. Hon. Arthur Odera, MP
12. Hon. Abdikadir Aden, MP
13. Hon. Kanini Kega, MP
14. Hon. John Mbadi, MP
15. Hon. Kyengo Katatha Maweu, MP
16. Hon. Charles Geni Mong'are, MP
17. Hon. (Dr.) David Eseli Simiyu, MP
18. Hon. Jessica Mbalu, MP
19. Hon. Alice Nyanchoka Chae, MP
20. Hon. Joel Onyancha, MP
21. Hon. Kareke Mbiuki, MP
22. Hon. Manson Nyamweya, MP
23. Hon. Mathias Robi, MP
24. Hon. Stephen Manoti, MP
25. Hon. Junet Sheikh Nuh, MP
26. Hon. Silvance Onyango Osele, MP
27. Hon. Jude Njomo, MP

Mr. Speaker, Sir,

On behalf of the Members of the Committee, and pursuant to Standing Order no. 199(6), it is my pleasant duty to table the Report of the Public Accounts Committee on its consideration of the Special Audit Report of the Judicial Service Commission and the Judiciary of May 2014, for deliberation and adoption by the House.

Signed:



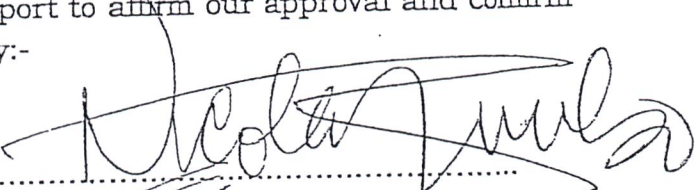
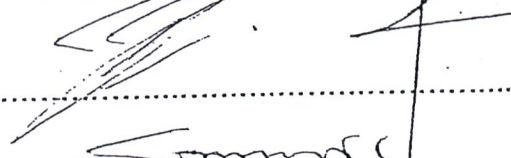
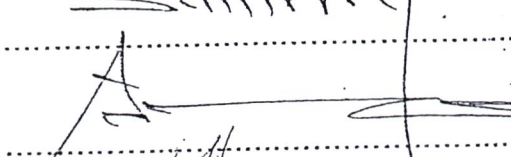

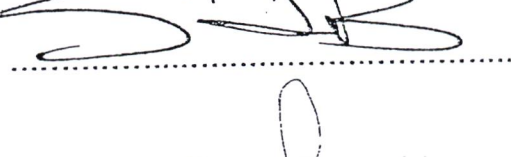

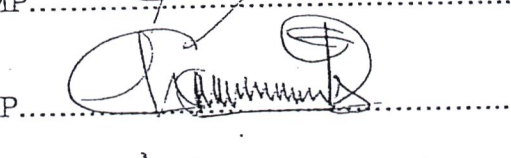

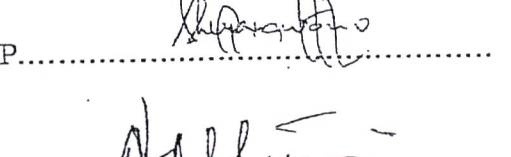
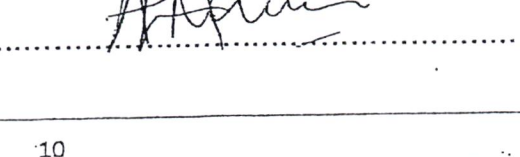
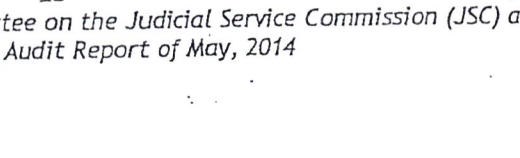

Hon. (Eng.) Nicolas Gumbo, MP
Chairman, Public Accounts Committee

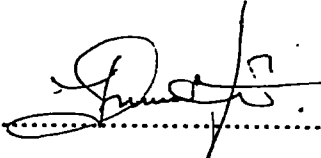
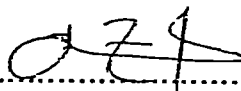

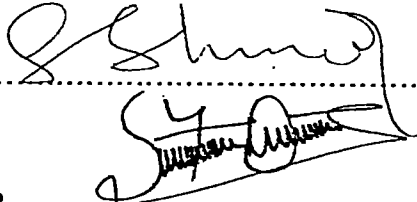
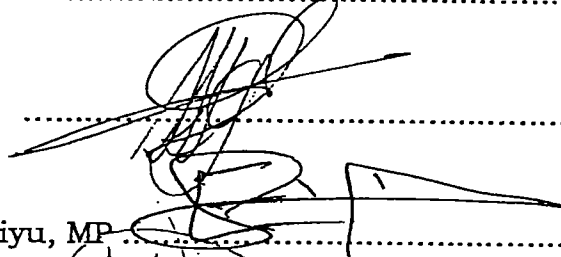
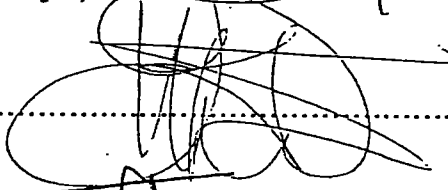
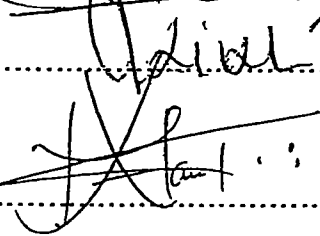
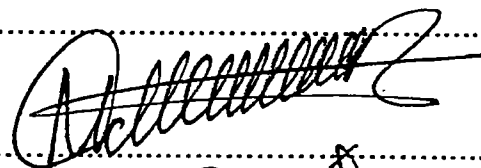
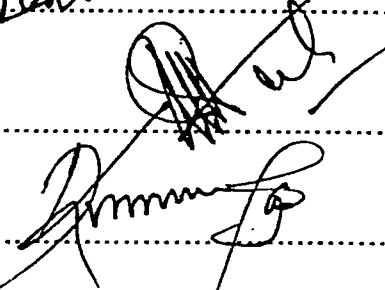
Date: 7th July 2015

ADOPTION OF THE PUBLIC ACCOUNTS COMMITTEE REPORT OF THE JUDICIARY AND THE JUDICIAL SERVICE COMMISSION

Mr. Speaker,

We, the Honourable Members of the Public Accounts Committee (PAC), do hereby affix our signatures to this report to affirm our approval and confirm its accuracy, validity and authenticity:-

1. Hon. (Eng.) Nicolas Gumbo, MP 
2. Hon. Jackson K. Rop, MP 
3. Hon. Gonzi Rai, MGH, MP 
4. Hon. Joel Onyancha, MGH, MP 
5. Hon. Kanini Kega, MP 
6. Hon. Sakwa Bunyasi, MP 
7. Hon. John Mbadi, MP 
8. Hon. Kyengo Katatha Maweu, MP 
9. Hon. Charles Geni Mong'are, MP 
10. Hon. Manson Nyamweya, MP 
11. Hon. Alice Nyanchoka Chae, MP 
12. Hon. Mwadime Andrew, MP 

13. Hon. Timothy Bosire, MP 
14. Hon. Abdikadir Aden, MP 
15. Hon. Fathia Mahbub, MP 
16. Hon. Arthur Odera, MP
17. Hon. Stephen Manoti, MP 
18. Hon. Silvance O. Osele, MP.....
19. Hon. Jude Njomo, MP 
20. Hon. Dr. David Eseli Simiyu, MP.....
21. Hon. Julius Melly, MP..... 
22. Hon. Jessica Mbalu, MP 
23. Hon. Joseph Manje, MP.....
24. Hon. Kareke Mbiuki, MP.....
25. Hon. Mathias Robi, MP..... 
26. Hon. Junet Sheikh Nuh, MP..... 
27. Hon. Kangogo Bowen, MP.....

PART I

1.0 EXECUTIVE SUMMARY

This report consists of six parts. PART I comprises Background Information and Auditor General's findings. PART II consists of the Executive Summary while PART III focuses on Issues for Determination. Part IV summarizes Witness and Committee Sitings. PART V is on Evidence from Witnesses while PART VI covers the Committee's Findings and Observations; PART VII is on Culpability, while PART VIII is on Committee's Recommendations.

The Committee was seized of the matter following a public altercation involving the Chief Justice, Dr. Willy Mutunga, the then Chief Registrar of the Judiciary, Mrs. Gladys Boss Shollei and members of the Judicial Service Commission.

On 17th October, 2013 the Committee requested the Auditor General to conduct a special audit on the financial transactions of the Judiciary and the Judicial Service Commission. The special audit was to cover 2011/2012 and 2012/2013 financial years.

Twenty three witnesses appeared before the Committee in ten appearances. The Committee notes that the Head of the Judiciary, The Chief Justice was invited to appear and shed light on matters under investigation but failed to honour the invitation. From the evidence and testimonies of those who appeared, the Committee made the following conclusions *inter alia*;

- i) The leadership of the Judiciary at the advent of the new Constitution inherited an institution that had weak structures and lacked a proper institutional set-up.
- ii) The Judiciary failed to implement its own Judiciary Transformation Framework (JTF) 2012-2016 as a blueprint to reposition the Judiciary in line with the Constitution of Kenya, 2010 and the demand for better services by the citizens. This is evident in the fact that two years into the framework's period, policy guidelines were non-existent, decisions were still centralized and the Office of the Chief Registrar of the Judiciary and the Judicial Service Commission were not working in synergy.
- iii) The budget for the Judiciary increased from Kshs.3 billion in 2010/11 financial year to Kshs.16 billion in the financial year 2012/13. Parliament's desire to have an efficient administration of justice led to increased budgetary allocation but this was undermined by apparent financial mismanagement, weak internal controls, and refusal/failure to follow public procurement laws, guidelines and regulations by the Judiciary.
- iv) The JSC had been involved in operational activities and/or

failed to carry out certain basic activities; for example, the failure to keep minutes of meetings, approval of payment to suppliers, payment vouchers, irregular direct procurements, approval of irregular allowances among others cited in this Report.

- v) Procurement was done in a manner that flouted provisions of the Public Procurement and Disposal Act, 2005 and regulations. This was noted. from irregularly constituted tender committees; direct procurements; purchase of second hand goods; acquisition of a house for the Chief Justice; pre-fabricated court premises; lease of office space at Rahimtulla Towers, Elgon Place and Mayfair Court Centre.
- vi) Human resource management was extremely poor, starting from lack of a guiding policy. Recruitment was not coordinated as the end user departments were not involved, with some moving up two job groups in a year. Allowances and salary advances were irregularly issued.
- vii) There was a general weak internal control mechanism from poor record keeping to imprest management. The Judiciary operated bank accounts without Treasury approval and some had single signatories in clear violation of both the Public Finance Management Act (PFM) 2012, and regulations governing management of public finances. The Judiciary also spent over Kshs.60 million on the Presidential Inauguration despite Parliament having enacted a law on Presidential Assumption of office and having appropriated funds for the same.

The Committee notes with grave concern the apparent widespread financial and procurement malpractices in the Judiciary, compounded by what bears all the hallmarks of a culture of impunity that routinely condoned breaches of procurement procedures and financial regulations.

The Committee finds that the former Chief Registrar of the Judiciary Mrs. Gladys Boss Shollei failed to perform her duties as stipulated in Article 161 of the Constitution and as spelt out in the Judicial Service Act, 2011. She was the accounting officer of the institution and was responsible for approving all expenditure. The Committee also takes great exception to the former Chief Registrar deliberately giving misleading information as regards procurement of Mayfair Court premises, in her written submission.

The Committee finds that the Judicial Service Commission failed to perform tasks vested upon it under Article 172 of the Constitution and spelt out in the Judicial Service Commission Act.

The Committee further faults the Chief Justice for not providing firm leadership to the Judiciary, giving a carte blanche to the then Chief Registrar of the Judiciary and the JSC in general. It is also of concern to the Committee that the Chief Justice who is in general the

custodian of law declined summons to appear and give evidence before the Committee, thereby violating clear provisions of the Constitution that he is expected to uphold and protect.

The Committee finds that certain companies were involved in widespread malpractices with the Judiciary. An example is JKUATES Ltd. which was contracted by the Judiciary as a consultant for various projects. This company was directly sourced under the guise of Government to Government procurement yet its income was privately shared to the tune of 95%.

The Committee recommends that the Director of Public Prosecutions swiftly institutes investigations and proceedings against those directly linked to financial impropriety and mismanagement as enumerated in the culpability chapter of this report.

The Committee also recommends that those found guilty by a court of law make good the loss attributable to them in accordance with Article 226(5) of the Constitution.

The Committee also strongly recommends that those found guilty by a court of law for loss of public funds, and a failure to perform duties bestowed upon them by law be barred from holding public office for such a period as the court will determine.

The Committee further recommends that the Judiciary moves with speed to implement the Judicial Transformation Framework and ensure sound policies are in place to guide all operations of the Judiciary.

The Committee further recommends that EACC investigates the formation of JKUATES Ltd. and the manner in which it was identified and contracted by the Judiciary. Any company found to have been involved in malpractices and/or professional negligence should be blacklisted by the Government and individuals behind those companies prosecuted, and be de-listed by their respective professional bodies. The investigations by EACC should be further extended to all Public Universities and other institutions of higher learning to identify amorphous bodies such as JKUATES Ltd. who operate under the guise of being public bodies with sole purpose of side-stepping the public procurement laws to confer financial benefits to private entities and individuals.

The Committee recommends full recovery of irregularly paid allowances advanced to the staff of the Judicial Service Commission and the Judiciary. Also to be recovered are monies owed to the Judiciary in form of advance rents paid for premises which ended up not being occupied by staff of the Judiciary.

PART II

2.0 BACKGROUND INFORMATION AND AUDITOR GENERAL'S FINDINGS

The Committee's attention was drawn to the public altercation between the then Chief Registrar of the Judiciary (CRJ) and the Judicial Service Commission (JSC), culminating in the dismissal of the CRJ. The Judiciary is viewed as an important pillar of the country's new Constitutional order and the various allegations touching on financial impropriety were taken by the Committee as grave and needed a special inquiry.

Pursuant to the request by the Public Accounts Committee to the Auditor General, a forensic audit was done on the financials and operations of the Judicial Service Commission and the JSC under specific terms of reference. The Auditor General presented his report to the Committee in May, 2014.

The request for the Special Audit was specifically on the following areas:-

- (i) Payment of sitting allowances to the Judicial Service Commission (JSC);
- (ii) Financial impropriety of Kshs. 2,207,400,000.00 alleged to have been carried out/presided over by the former Chief Registrar, Mrs. Gladys Boss Shollei. This was in respect of the alleged:-

- Leasing of Rahimtulla Towers by the Judiciary
- Use of funds from the Milimani Deposits Account for the purposes of recurrent expenditure;
- Irregular purchase of second hand furniture and fittings without approval of the Judicial Service Commission and without due diligence;
- Leasing of the Vimorono (Libra House) warehouse by the Judiciary
- Leasing of the Elgon Place Building by the Judiciary;
- Leasing of premises for Court houses;
- Pre-financing of Information and Communication Technology (ICT) Service Providers;
- Irregular payments of Kshs. 29,934,975.00 to one Evans Simiyu Werunga, a security consultant;
- Irregular advance interim payment for prefabricated premises in Bomet, Marimanti, Othaya and Wang'uru Courts;
- Irregular medical expenditure;
- Irregular salary advances;
- Irregular opening and use of bank accounts;
- Placing of staff on irregular salary scales and payment of unauthorized benefits;
- Irregular recruitment of staff;
- Authorizing of foreign travel of staff without due process;
- Authorizing of irregular payment of allowances to staff;
- Irregularities and improprieties in procurement.

It was out of these terms of reference that the Auditor General conducted a special audit with a view to:

- i) Determine and understand the governance structures at the Judiciary and the Judicial Service Commission (JSC) and confirm whether the structures were in line with the Judiciary and the Judicial Service Commission's mandate as envisaged by Chapter 10 of the Constitution and the Judicial Service Act, 2011;
- ii) Assess whether the Judiciary's procurement procedures were in compliance with the law and laid down regulations;
- iii) Obtain and verify revenue collection records at both the Supreme Court and Milimani Commercial courts and ensure that collected revenue were accounted for in accordance with the law;
- iv) Ascertain whether the human resource recruitment and management was in conformity with Judiciary policies and guidelines;
- v) Establish the lapses in compliance with internal control system and the main causes for these lapses;
- vi) Examine and evaluate the application of Judiciary and JSC foreign travel policy in relation to the Public sector policy;
- vii) Any other issue that the Committee may come across in the course of the audit;
- viii) Come up with an action plan to address the weaknesses and challenges in the system at Judiciary and the Judicial Service Commission.

Subsequently the Auditor General flagged out the issues as follows:-

2.1 AUDITOR GENERAL'S FINDINGS

2.1.1 Governance

The Auditor General established after examination of the JSC minutes, payments records and documentation, attendance lists, payment vouchers and payees of sitting allowances that there were instances where JSC had been involved in operational activities or had failed to carry out certain activities. Article 172 of the Constitution provides that the JSC shall promote and facilitate the independence and accountability of the Judiciary and the efficient, effective and transparent administration of Justice. These instances include the following:-

- Failure to keep minutes of meetings;

- Irregular approval of payments to suppliers;
- Failure to develop Human Resource and Training Policies;
- Single sourced direct procurement of its Offices at Mayfair Center;
- Paid rent for Mayfair Center for two years at Kshs.7,392,000 before occupying the office.
- Irregular engagement of Mr. Simiyu Werunga to undertake Security Consultancy and Construction.

Under Article 250(7) of the Constitution, the remuneration and benefits payable to or in respect of a commissioner or the holder of an independent office shall be a charge on the Consolidated Fund.

It was however noted that JSC Commissioners continued to withdraw their allowances from the Judiciary Fund and the JSC Vote. The payment of these allowances from the JSC Vote is therefore in contravention with the Constitution.

JSC further sanctioned an irregular payment of Kshs.9.8 million in allowances to non-commissioners who attended JSC meetings and a further Kshs.1.6 million to Commissioners who attended meetings that had not been duly constituted in accordance with Section 22(5) of the Judicial Service Act, 2011.

2.1.2 Human Resource Management

In the period between July 2011 and June 2013, a total of six hundred and sixty two (662) new officers including magistrates and ninety one (91) temporary staff were recruited by the Judiciary under unclear circumstances, which included:

The ninety one (91) temporary staff were among sixty six (66) officers in job groups 'J' and above, whose recruitment was not subjected to the JSC's approval. In addition, there were selectively accelerated promotions for thirty seven (37) officers whose basis was not clearly indicated. The JSC ratified these appointments on 1st December 2012.

A total of 217 officers were paid allowances in contravention of the Judiciary Scheme of Service. The allowances paid included extra-duty and responsibility allowances of Kshs.42 million and Kshs.1.6 million, respectively.

Eighty six (86) employees recruited during the period had designations not contained in the Judiciary's Scheme of Service. The scheme designations include chief of staff, deputy chief of staff, legal researchers, law clerks, graphic designer, principal facilities officer and administrator. It was however noted that the Judicial Service Commission advertised, shortlisted and appointed legal researchers and law clerks.

Thirty six (36) officers were selectively upgraded, i.e., promoted by two (2) or more job groups within a period of twelve (12) months.

One hundred and fourteen (114) officers were irregularly earning extra duty allowances on a monthly basis contrary to the scheme of service. These officers had therefore been paid Kshs.42,067,474 between October 2011 and June 2013. Also, 103 officers in job groups 'J' and below were irregularly paid responsibility allowances totalling Kshs.7,637,879.45.

Auditors established that the Accounting Officer whose salary was drawn directly from the consolidated fund account owed the Judiciary amounts totalling Kshs.3, 048,298 in form of salary advances and personal expenses.

2.1.3 Procurement

2.1.3.1 Composition of the Tender Committee

It was observed that the Accounting Officer appointed members of the tender committee who were not heads of departments as stipulated in the Public Procurement and Disposal Regulations, 2006.

2.1.3.2 Lease of Premises

During the period under review, the Judiciary invited bids for premises to lease and after the Judiciary Tender Committee award, the Judiciary entered into four (4) lease agreements whose total rent payable per year amounted to Kshs.156,466,729, for a period of six years. The four included leases for Elgon Place at Kshs.70,147,605, various court branches at Kshs.43,537,609, Rahimtulla Towers at Kshs.39,401,739 and Kshs.3,379,776 for a Warehouse. Established were the following anomalies:

2.1.3.2.1 Lease of Rahimtulla Towers

The lease agreement had not been dully executed and registered. There was inconsistency between the area in square feet awarded and with payable rent with what was leased.

Lease payments were irregularly paid from Deposits contrary to Government Financial Regulations and Procedures although they were later transferred to the recurrent account.

The lease agreement between the Judiciary and Rahimtulla Towers Premises provided for a rent deposit of six months amounting to Kshs.32,400,000, which was based on rent payable with effect from 1st July 2017.

The premises were only 50% occupied despite full payment.

2.1.3.2.2 Lease of Elgon Place

Elgon Place was meant for occupation by the Court of Appeal but was yet to be occupied since 1st April 2013. The Judiciary therefore paid funds amounting to Kshs.70,147,605 for premises that were never occupied.

The Tender Committee minutes indicated that the successful bidder - Knight Frank (K) Ltd., had quoted in US Dollars whereas the tender specifications were in Kenya shillings.

The Tender Committee approved the award to Knight Frank (K) Ltd. (agents of Sealink Holdings Ltd.) for the lease of 34,400 square feet at a monthly charge of Kshs.4,204,638 (annual: Kshs.50,455,667) but according to the duly signed lease agreements between the Judiciary and Sealink Holdings Ltd, the Judiciary leased for 47,890 square feet at a monthly charge of Kshs.5,845,633 (annual: Kshs.70,147,605). There was inconsistency between what was awarded and what was signed for in the lease agreement.

The lease agreement had not been dully executed and registered.

2.1.3.2.3 Various premises for Court houses

The Judiciary did not have duly signed and registered lease agreements for ten (10) of the eleven (11) leases it had entered into with Agricultural Finance Corporation.

Only Kshs.3,654,763, Kshs.1,827,491 and Kshs.872,784 has been paid for leases of Meru, Nakuru and Turbo offices, respectively.

Physical inspection of the AFC offices revealed that the Judiciary had only partially occupied the Meru and Kakamega offices.

2.1.3.3 Irregular Direct procurements

2.1.3.3.1 Used furniture and fittings

The Judicial Tender Committee (JTC) awarded PricewaterhouseCoopers (PWC) direct procurement of various used furniture and fittings at the Rahimtulla Towers previously occupied by PWC at a cost of Kshs.59, 699,492. The valuation of these was however carried out by Jomo Kenyatta University of Agriculture and Technology (JKUAT) Enterprises Services Ltd. The valuation of furniture which included carpets was done on the basis of depreciated replacement cost of Kshs. 32,550,000.

The valuation of ICT equipment which included the network equipment was carried on the basis of information received from supplier of the assets at USD 252,173.78 (i.e. Kshs.21, 939,118.860). Physical inspection revealed that the networking equipment had not been operationalized.

2.1.3.3.2 Fit-outs at Elgon Place at Ksh.188,059,723.00

- The Judicial Tender Committee awarded direct procurement of fit-outs at Elgon Place at a cost of Kshs.188, 059,723. The cost of the fit-outs was based on an agreement for building works between Sealink Holdings Ltd. and Sentrim Contractors Ltd. of which, the

Judiciary was not party to. This agreement was not dated and therefore its commencement date could not be established.

- The Judicial Service Commission (JSC) however deliberated and ratified the decision and recommendations of Finance and Administration Committee with regard to architectural and floor plan for the Elgon Place premises.

2.1.3.3 *Mayfair Court Centre*

The Judiciary procured these premises to house offices of the JSC without due process of advertising. The Judiciary further went ahead to pay rent for two years prior to the tune of Kshs. 7,392,000.00

2.1.3.4 *Purchase of official residence of the Chief Justice*

The Judiciary procured a fully furnished residential property at a total cost of Kshs.310 million for the Chief Justice. The Committee noted that the property had not been valued by a Government or professional valuer; hence, the value could not be ascertained. It was alleged that this purchase was sanctioned by the Judicial Service Commission.

2.1.3.5 *Procurement of a Containerized Data Center (Information and Communication Technology)*

- The Judicial Tender Committee awarded Dimensions Data the tender for the supply, installation and commissioning of a containerized data center at a cost of Kshs.106,720,048.97 that was delivered in September 2013. Physical inspection confirmed that this data center was not operational.
- The vendor had charged Kshs.18 million for three (3) years' warranty which is subject to maintenance contrary to tender specifications and requirements.

2.1.3.6 *Consultancy services with JKUAT Enterprises Services Ltd.*

In accordance with Section 4(2)(c) of the Public Procurement and Disposal Act, 2005, the Judiciary entered into contracts with JKUAT Enterprises Services Ltd. for consultancy services on works undertaken.

- The Audit report revealed that the JKUAT Enterprises Services Ltd. had been paid Kshs.157, 819,037 in the period under review.
- JKUAT Enterprises Services Ltd. had been overpaid by Kshs.32,446,402 on the initial 10% paid on cost of the works at

Kshs.951 million instead of the actual contracted cost of Kshs.626,535,974. This amount must be recovered from them.

- Also noted was that JKUAT Enterprises Services Ltd. had entered into a memorandum of understanding (MOU) with a private firm of Architects which provides that the firm collects 95% of the consultancy fee paid.

2.1.3.7 Pre-fabricated Court houses

The Judicial Tender Committee awarded the contracts for construction of pre-fabricated court-houses to M/s Timsales Ltd. and M/s Economic Housing Group (EHG) at their bid amount of Kshs.326,658,320 and Kshs.299,877,654, respectively. Timsales were to construct court houses in Tawa, Mavoko, Garsen and EHG in Bomet, Othaya, Marimanti and Wanguru towns. The two firms were paid advance payments of Kshs.126,703,827 and Kshs.26,469,832, respectively.

The Auditor General established that no construction work was done in Mavoko because the Judiciary did not own the land. However, the Judiciary moved sites for this proposed construction from Mavoko to Runyenjes, with no cost variations.

2.1.3.8 Contract for Bomet law courts

The Judicial Tender Committee on November 2012 awarded the tender for the construction of prefabricated court structures at Bomet to Economic Housing Group at a cost of Kshs.81,664,580. On 9th May 2013, through JTC, another firm, Bomco Contractors were awarded the contract for the construction of proposed Bomet law courts at a total cost of Kshs.688,800,000. The new contract was awarded even though the prefabricated court works were ongoing at 75% complete stage.

2.1.3.9 Contract for Security Services

Mr. Evans Simiyu Werunga, a security consultant/contractor, received very questionable payments totalling KSh. 30,240,975.00 for Security Consultancy/Construction at the private residences of Supreme Court Judges and other senior officials in the Judiciary largely through word-of-mouth engagements without official approvals and documentation.

2.1.4 Advance payments

The Judiciary entered into sixteen (16) contracts that had provided for advance payments upon submission of duly executed bank guarantee contrary to Government Financial Regulations and Procedures which prescribe signed contracts. A total of Kshs.654 million which represent 30%

of the total contracted amount of Ksh.2.18 billion was therefore paid to suppliers.as advance payments.

2.1.5 Weak internal controls

During the period under review the Judiciary paid an amount of Kshs.262 million towards various expenses without preparation of payment vouchers as required by the Government Financial Regulations and Procedures.

The Chief Registrar approved the payment of sitting allowances to various committees of the Judiciary which include tender, procurement, human resource management advisory committee and inspection and acceptance committees. The rate of payment of allowances to Judiciary staff was not reviewed or approved by the Judicial Service Commission.

Examination of expenditure incurred on foreign travels revealed the following Irregularities:

- i. Several foreign travels by Judiciary staff for the year 2012/2013 were authorized by the Accounting Officer in contravention of Rule 18 of the Judicial Service Code of Conduct and Ethics which stipulates that a judicial officer and any other officer in the Judicial Service, who at any time wishes to travel outside Kenya, shall obtain the prior permission of the Chief Justice.
- ii. Several Judiciary staff members traveled outside the country and did not support expenditure incurred with documentary evidence. Also some officers did not travel within the approved dates and therefore could not account for cash equivalent to Kshs.1,453,170.

The Audit report further showed that the Judiciary opened bank accounts without the Treasury's Authority as is required by the Government Financial Regulations and Procedures.

The Internal Auditor from the Treasury at the Judiciary reported to the Chief Registrar of the Judiciary who is the accounting officer.

PART III

3.0 ISSUES FOR DETERMINATION

The audit exposed certain areas of concern and weaknesses as listed below, that would guide its inquiry:-

3.1 Governance

- Minutes
- Performing duties outside its mandate
- Poor human relations/an organization at war with itself
- Foreign travels

3.2 Human resource

- Appointment of officers
- Promotions
- Extra duty allowances
- Responsibility allowances
- Advances/Imprest

3.3 Procurement

- Leases
- Composition of the tender committee
- Purchase of Chief Justice's Residence
- Consultancy Services with JKUATES
- Prefabricated court houses
- Construction of court buildings
- Radiation concerns at Elgon Place building
- Contract for Security Services

3.4 Internal controls

- Non preparation of payment vouchers
- Approval of payment of sitting allowances
- Un-procedural opening of bank accounts

PART IV

4.0 WITNESSES AND SITTINGS

The Committee held a total of twelve (12) sittings in the period of the inquiry, during which it interrogated actors it deemed to be at the core of the audit queries by the Auditor General. The interrogations were guided by the aforementioned audit issues.

All minutes of the Committee's sittings on evidence taken are annexed to this report.

The Committee received evidence from a total of twenty-five (25) witnesses. These comprised of actors in the Judiciary and JSC at the time, as well as those currently holding offices, and third parties who dealt with the Judiciary and JSC on the matters raised in the audit report.

The Committee notes that the Chief Justice was invited to give evidence as the head of the Judiciary and the JSC. He failed to appear before the Committee after initially expressing eagerness to do so.

The following witnesses appeared during the inquiry.

1. Mrs. Gladys Boss Shollei – Former Chief Registrar of the Judiciary and Secretary, Judicial Service Commission (JSC)

Mrs. Gladys Boss Shollei appeared before the Committee on 5th June 2014.

She was the immediate former Chief Registrar of Judiciary and Secretary to the Judicial Service Commission. While serving in those positions, she was the Chief Administrative Officer and Accounting Officer of the Judiciary pursuant to Article 161 of the Constitution of Kenya. Section 8 of the JSC Act sets out her powers and functions as the Chief Registrar of Judiciary.

2. Mr. Kakai Kissinger – Deputy Chief Registrar of the Judiciary

He appeared before the Committee on 9th June, 2014.

He joined the Judiciary in December, 2011 as Deputy Chief Registrar. He had however been interdicted by the Judicial Service Commission as at the time of appearance. By virtue of his position, he was the Principal Assistant to the Chief Registrar of the Judiciary Mrs. Gladys Shollei who had since been sacked.

3. Mr. Benedict Omollo– Director of Finance, the Judiciary

Mr. Benedict Omollo appeared before the Committee on 9th June, 2014. He joined the Judiciary on 1st July 2012 from the private sector. At the time of appearance, he was on interdiction, effective 5th November 2013 in connection with Kshs.80,000,000 cybercrime case committed against the Judiciary on 13th and 14th September, 2013 where his password was allegedly hacked and used.

His role as Director of Finance was to ensure prudent financial management and controls. By virtue of his position he was required to establish financial management policies, procedures and systems to ensure integrity, timely service delivery and value for money. He was an executor and implementer of approved payments by the Judiciary Chief Registrar.

4. Ms. Beatrice Kamau – Ag. Director of Finance, the Judiciary

Ms. Beatrice Kamau appeared before the Committee on 10th June, 2014.

She joined the Judiciary as Principal Planning and Budget Officer in 2012 from the Ethics and Anti-Corruption Commission (EACC). Her joining the Judiciary was on secondment and followed a request by the Chief Registrar of the Judiciary acting on behalf of JSC.

5. Mr. Austin Ogolla – Ag. Director, Supply Chain Management, the Judiciary

Mr. Austin Ogolla appeared before the Committee on 10th June, 2014.

He joined the Judiciary in March, 2013 from the Kenya Medical Research Foundation (KEMRI) and was at the time of appearance before the Committee serving as the Principal Procurement Officer in charge of Milimani Commercial Courts, Nairobi but Acting as Director of Supply Chain Management.

6. Ms. Angela Manyala – Ag. Director, Human Resource, the Judiciary

Mrs. Angela Manyala appeared before the Committee on 10th June, 2014.

She joined the Judiciary in the year 2013 as Deputy Director, Human Resource from the Kenya College of Accountancy (KCA) where she had served in the same position. She was appointed Acting Director, Human Resource in April, 2014.

7. Mr. Duncan Odima – Ag. Director Information And Communication Technology Directorate (ICT), the Judiciary

Mr. Duncan Odima appeared before the Committee on 10th June, 2014.

He joined the Judiciary in the year 2001 as an ICT Officer and was placed in the Library Department. He joined the ICT Department in the year 2006 when it was established. He was appointed Acting Director of the Department in the year 2013 when the substantive Director was suspended to pave way for investigation in relation to project implementation.

8. Mr. Martin O. Okwatta – Director, Supply Chain Management, the Judiciary (on Interdiction)

He appeared before the Committee on 9th June, 2014.

He joined the Judiciary on 1st July, 2012 and was suspended by the Chief Justice on April 3rd 2014 to allow for investigations for allegations of gross incompetence and as a step towards 'safeguard of public resources' after serious questions on corruption and financial mismanagement were raised in the Directorate.

9. Ms. Anne Atieno Amadi – Chief Registrar, and Accounting Officer, the Judiciary

Ms. Amadi appeared before the Committee on 10th June, 2014.

She is the current Chief Registrar of the Judiciary and was appointed on 11th January, 2014 after Gladys Boss Shollei was dismissed. As the current office holder she was invited to give insight as to her relationship with her employer, and the operations of the Judiciary; and to shed light on the state of affairs as she found them and as they are currently.

10. Mrs. Emily Ominde – Member, Judicial Service Commission

Mrs. Emily Ominde appeared before the Committee on 11th June, 2014 accompanied by Mr. John L. Tamar, Deputy Chief Registrar of JSC responsible for meetings of the Commission's Standing Committee on Finance and Administration.

She was a Chief Magistrate stationed at the Makadara Law Courts in Nairobi and represented Magistrates at JSC. She had been a Member of the JSC's Standing Committee on Finance and Administration since the year 2011. She served as the Committee's Vice chair from the year 2011 until March

2014 when she took over from Mr. Ahmednassir Abdullahi, who ceased being JSC Member after the Law Society of Kenya (LSK) replaced him.

11. Mr. Ahmednassir Abdullahi- Advocate of the High Court of Kenya and former member of the Judicial Service Commission

He appeared before the Committee on 12th June, 2014.

He was a member of the Judicial Service Commission (JSC) from December, 2010 to December 2013 representing the Law Society of Kenya (LSK). During his tenure at JSC, he chaired the Finance and Administration Standing Committee of the Commission.

12. Hon. (Prof.) Christine Mango – former Commissioner, Judicial Service Commission

Hon. (Prof.) Christine Mango appeared before the Committee on 12th May, 2014.

She was a member of JSC from 2011 to December, 2013 when her membership was terminated. She represented the general public at JSC and served as a member of JSC's Standing Committee on Finance and Administration.

13. Mr. Dismas Obondo – Head Of Human Resource Management, the Judiciary

Mr. Dismas Obondo appeared before the Committee on 9th June, 2014.

He was the Head of Human Resource Management of the Judiciary but on interdiction pending investigation into alleged mismanagement and corruption on matters touching on recruitment and personnel management.

14. Mr. Tom Atak – Director, Information and Communication, the Judiciary

Mr. Tom Atak appeared before the Committee on 9th June, 2014.

He was Director of ICT until his interdiction to pave way for investigation into alleged gross mismanagement and corruption in the Directorate.

15. **Mr. Lucas Meso – Managing Director, Agricultural Finance Corporation (AFC)**

Mr. Lucas Meso appeared before the Committee on 9th July, 2014. AFC had entered into several lease agreements with the Judiciary. He appeared to shed light on the circumstances surrounding the lease agreements.

16. **Ms. Winfred Kiragu – Managing Director, JKUAT Enterprises Services Ltd.**

JKUATES Ltd. was a private company 100% owned by the JKUAT. Its main agenda was to use the University's intellectual resources to provide consultancy services to the public. Among the areas the company dealt with were; architecture, agriculture, Information Technology (IT), engineering and enterprise development.

The company was directly procured to provide consultancy services for the Judiciary. All company administrative staff were employed by the University whereas professionals were contracted on need basis. Though the company has an opportunity of contracting both private and public professionals, it prefers contracting University lecturers in their private capacity. All proceeds for work done go to the University after paying the contractors.

17. **Ms. Nelly Mbugua – Valuer for JKUATES**

Ms. Nelly Mbugua was alleged to have done the valuation of the official house of the Chief Justice.

18. **M/s Gimco Ltd.**

Mr. David Muiuru, company Managing Director accompanied by Mr. Simon Warui, Director, property management, appeared before the Committee on 22nd July, 2014. Gimco Ltd. was appointed as the Letting and Managing Agent of Mayfair Centre on 1st June, 2011.

19. **M/s Knight Frank Ltd.**

Mr. Ben Woodams, the Managing Director appeared before the Committee on 22nd July 2014. The Company was the leasing agent of Sealink Holdings Ltd. which had leased the Elgon Place to the Judiciary. The total space leased was 47,000.00 square feet.

20. The Institution of Surveyors of Kenya (ISK)

A team of officials from the Institution of Surveyors of Kenya (ISK) led by Mr. Fredrick Oduor appeared before the Committee on 9th July, 2014. The Institution requested to appear because they said ISK was concerned with the professional conduct of some of its members in transactions involving the Judicial Service Commission (JSC) and the Judiciary. They however did not give specific names.

21. M/s Timsales Ltd.

Mr. Sarbjit Sai, company Managing Director appeared before the Committee. The Company was contracted by the Judiciary to build prefabricated court houses in Tawa, Mavoko and Garsen.

22. M/s Johnston Nduya Muthama Holding Ltd.

Ms. Alice Muthama, Managing Director, Johnston Nduya Muthama Holdings Ltd. appeared before the Committee in the company of her Advocate. Johnston Nduya Muthama Holdings Ltd. sold the Judiciary the official residence for the Chief Justice.

23. Hon. Lady Justice Lydia Achode

Lady Justice Lydia Achode is currently a High Court Judge at the Milimani Law Courts, Family Division. Justice Achode is a former Registrar of the High Court and the immediate predecessor to Mrs. Gladys Boss Shollei. She appeared before the Committee on 28th May, 2015 to shed light on the procurement of Mayfair Court premises that had been purported to have been carried out during her tenure.

24. Mr. Evans Simiyu Werunga

Mr. Werunga appeared before the Committee on 2nd June, 2015 to shed light on two payments he received in his personal capacity from the Judiciary totaling Kshs.30,240,975.00 for security related consultancies and contracts, without supporting documentation. Mr. Werunga is a Director of Africa Centre for Security and Strategic Studies.

4.1 SITE VISITS

The Committee made site visits to establish state, adequacy and value for money of acquired premises to the following sites;

- Purchased official residence of the Chief Justice in Runda on 2nd July, 2014
- The leased office space for court of appeal judges at Elgon place on 2nd July, 2014
- Supreme Court buildings on 2nd July, 2014
- Bomet, Kakamega and Runyenjes law courts on 04th to 08th August 2014.

PART V

5.0 EVIDENCE FROM WITNESSES

5.1 RELATIONSHIP BETWEEN THE FORMER CHIEF REGISTRAR OF THE JUDICIARY AND THE JUDICIAL SERVICE COMMISSION (JSC)

Mrs. Gladys Boss Shollei

She submitted as follows:-

She adequately briefed JSC on her operations as the Judiciary Accounting Officer as required by the Public Finance Management Act of 2012. Under the Act, she was required to submit Judiciary budgets to JSC for approval before submission to Parliament which she did. She also adequately briefed JSC on her accounting functions and attended JSC meetings when required. She had a cordial relationship with JSC until January, 2013 when the relationship started deteriorating.

JSC interfered with her administration of the Judiciary. She at one time complained to the Chief Justice in writing vide letter dated 16th September, 2013 copy of which is annexed hereto. She also complained of interference through letters written to the Cabinet Secretary and Clerk of National Assembly.

She defended her actions and said they were based on Section 68(2)(f) of the Public Finance Management Act states as follows:-

“The Accounting Officer shall bring any matter to the attention of the Cabinet Secretary responsible for the entity, or the Chief Justice or the Speaker of the National Assembly if, in the Accounting Officer's opinion, a decision or policy or proposed decision or policy of the entity may result in resources being used in a way that is contrary to subsection (i)”.

The main reason for disagreements was that the Finance and Administration Committee of the JSC was purporting to approve payments relating to the Judiciary, contrary to the law. However, the Hon. Chief Justice did not take the complaint kindly and replied via email that he is not a “headless head of the Judiciary”. She thereafter requested for a tripartite meeting with the Cabinet Secretary National Treasury.

While calling for a tripartite meeting to address the matter, the Treasury Cabinet Secretary in his letter replied by quoting section 197(m) of the PFMA, which provides as follows:-

“A public official commits an offence of financial misconduct if, without lawful authority, the officer intentionally or recklessly obstructs or hinders a person while that person is acting in the performance or exercise of that person’s functions or powers under PFMA”.

She added that despite the National Treasury’s message, the Chief Justice still proceeded to direct that the JSC approve payments as demanded or directed by the Finance and Administration Committee. The Director of Finance raised the same issue with the Chief Justice regarding the Finance and Administration Committee approving payments through a memo.

She claimed that Commissioner Mohamed Warsame wanted her to hire “his people” like her predecessor did. She reported that she flatly declined stating that all hiring of personnel was supposed to be conducted in accordance with the Judicial Service Act and the Judicial Service Staff regulations.

She also alleged that Commissioner Hon. (Prof.) Christine Mango was based outside Nairobi and every time she attended a meeting in Nairobi, the Commission would pay for her flight, reimburse transport and pay her per diem.

Due to the numerous meetings the Commission held, Commissioner Mango would end up getting per diem continuously for over a month. This was likely to raise queries and was in contravention of financial regulations which do not allow the payment of per diem *ad infinitum*.

For this reason, she recommended to JSC that Commissioner Mango be paid Kshs.100,000 per month while in Nairobi to cater for her accommodation, in addition to the sitting allowance earned. The Ministry of State for Public Service had adopted a similar approach for a member of the Truth, Justice and Reconciliation Commission.

She pointed out that her recommendation was adopted by JSC. However, Commissioner Mango was upset with the decision and upon payment of the first amount, she returned the money to the Judiciary through a cheque demanding to be paid full per diem.

She added that Commissioner Emily Ominde interfered with her management of the Judiciary. She almost derailed the pupilage programme by instructing Magistrates to stop pupils from carrying out any duties thereby creating confusion, time wastage and temporary backlog of cases that were to be addressed by the rolling out of the pupilage programme. She raised this matter with the Chief Justice who resolved it.

The witness further alleged that Commissioner Ahmednassir Abdullahi wanted to be awarded contracts by the Judiciary; including Kshs.900,000,000 for the acquisition of a building in Mombasa and purchase of a multi-storey building in Eastleigh which she declined. To stop from further engagements with him, she referred the matter to the Judiciary Legal Counsel with whom they exchanged emails.

She added that in another instance, Mr. Abdullahi brought the Chair of the National Social Security Fund Mr. Adan Mohamed who is linked with proprietorship of a certain unnamed Information Technology (IT) company to solicit for tender for infrastructure project worth Kshs.630,000,000.00. She advised them to bid like any other company. The company was unsuccessful in the tender process and Mr. Abdullahi did not take it kindly.

In addition, she said that the JSC Commissioners in one instance decided to double their per diem for a benchmarking visit in Cambodia. She refused to approve most of these payments which led to some Commissioners harassing the Director of Finance and other officers over payment of irregular allowances.

She was generally dissatisfied with the conduct of JSC Commissioners in the conduct of their official duties. They would issue irregular directives and make unreasonable demands on/to her. Being her employer and in the spirit of ensuring harmony and in order to protect her job, she would act as directed or demanded.

During cross-examination, the Committee observed that the former CRJ did not have a healthy working relationship with the Commission. The relationship was poisoned, confrontational and could only end in one way – through a parting of ways.

Mr. Kakai Kissinger

He appeared before the Committee and submitted as follows:-

His relationship as deputy and later acting CRJ with JSC was cordial. However, in the year 2012, JSC came up with an ambitious development plan for the Judiciary which it wanted implemented fast and this occasioned staff challenges.

Mrs. Emily Ominde

She appeared before the Committee and submitted as follows:-

The relationship between Mrs. Shollei and JSC at one time was not good. JSC was dissatisfied with the manner in which she conducted the affairs of the Commission and the Judiciary. Commissioners complained that Mrs. Shollei was not adequately briefing them for meetings making it difficult for them to transact business and make decisions.

They further complained that Mrs. Shollei on several occasions did not attend Commission sittings despite convening them. She produced two sets of minutes indicating Mrs. Shollei's absence from Commission's sittings, one without apology.

When JSC learnt that Mrs. Shollei was procuring goods and services without their knowledge, it directed that all procurement exceeding Kshs.50,000,000 be approved by the Commission. Mrs. Shollei wrote back to the Chief Justice contending that she was only answerable to Parliament, Treasury and the Public Procurement Oversight Authority (PPOA) on financial matters.

Mrs. Shollei was not providing information to JSC to enable it transact its business as would be expected. The Commission would on occasions ask for briefs and she would avail cartons of documents knowing very well that the Commission did not have the capacity and time to scrutinize the cartons for the purposes of transacting its business. JSC also received complaints against Mrs. Shollei from staff on the manner in which she was running the Judiciary.

She said that Mrs. Shollei was dismissed by JSC because of insubordination and financial mismanagement. She was given a fair hearing before her dismissal.

Mr. Ahmednassir Abdullahi

He appeared before the committee and submitted as follows:-

Mrs. Gladys Shollei was recruited by the current JSC during President Mwai Kibaki's administration. During the Kibaki administration, her relationship with the JSC was cordial but suddenly changed during President Kenyatta's administration in the year 2013. She 'grew horns' because she felt she was well connected and protected by Senior Government Officials and created an impression that she was bigger than JSC.

She was not available to attend to Judges and even at one time wrote to JSC stating that with respect to her Accounting Officer's responsibilities, she was only answerable to Parliament, Treasury and Public Procurement Oversight Authority (PPOA). This was notwithstanding the fact that JSC was her employer.

The witness added that despite being the Secretary to JSC, the former CRJ attended 10-15 full sittings of JSC and 1-3 sittings of the Finance and Administration Committee during her service. Some of her attendances at the meetings were technical.

In some instances she failed to ensure that officers responsible for generation of papers for deliberation by JSC attended meetings and this frustrated the work of the Commission. She was good in public relations and would give excuses for failing to attend JSC meetings. In most cases, she would say she was at JSC's service elsewhere.

Despite not attending JSC sittings, she still drew allowances for about 70 sittings she did not attend and this was one of the main reasons for her dismissal by JSC.

Mr. Ahmednassir Abdullahi alleged that Mrs. Shollei received a kick back in form of a Land Rover Discovery vehicle from Cooper Motors Corporation (CMC) Company for a tender the Judiciary awarded the Company for supply of forty (40) vehicles.

The witness further claimed Mrs. Shollei received Kshs.10,000,000.00 in kick-backs from DT Dobie Company for a tender the Judiciary awarded the Company for supply of vehicles. JSC could not act on these corrupt deals since it was difficult to get tangible evidence but asked the Committee to use powers vested in it conduct investigations.

The witness added that Mrs. Shollei did favours to some Members of Parliament. She employed the daughter of Hon. Samuel Chepkonga, Chair of Justice and Legal Affairs Committee of the National Assembly to the Judiciary. The daughter had a degree in Forestry and was certainly not qualified to work for the Judiciary. Mrs. Shollei placed the new employee in her office and paid her a salary of Kshs 190,000.00.

Mrs. Shollei had a history of moving around with staff from her previous workplaces which in essence was buying their loyalty at their new work places. When she moved to Judiciary, she came in with several staff from the Independent Electoral and Boundaries Commission (IEBC) and National Council for Law Reporting where she previously worked.

Mr. Ahmednassir said he was not solely responsible for the dismissal of Mrs. Shollei as Chief Registrar. Mrs. Shollei was dismissed for her own failures and insubordination and the decision to fire her was collectively made by JSC after investigations and after giving her a fair hearing which included her being allowed to be accompanied by her Advocate.

Mrs. Shollei's dismissal could have come earlier hadn't the Chief Justice not trusted her so much. The JSC decision to dismiss her was through voting. This was also the case with her recruitment. Though she had sued JSC for unlawful dismissal and obtained orders at the Industrial Court in Nairobi, JSC had appealed against the decision in the Court of Appeal and whether her dismissal was unlawful or not would be known once the Court of Appeal gives its verdict.

The witness added that when JSC sacked Mrs. Shollei in 2013, the Chief Justice wrote to the Ethics and Anti-Corruption Commission (EACC) to investigate her. The complaints against Mrs. Shollei were straight forward, easy to investigate and prosecute in a court of law and he did not expect EACC to take long to investigate the matter and hand over the file to the Director of Public Prosecutions (DPP) for prosecution.

Though EACC had concluded investigations, it was his evidence that a senior Government Official had instructed the anti-graft body not to present the file to the DPP for prosecution underlining Mrs. Shollei's connection and protection by the Government.

He added that the Judiciary had lost billions of Kenya Shillings during the tenure of Mrs. Gladys Shollei as the Chief Registrar and Secretary to JSC. The Commission was not involved in the day to day running of the Judiciary and could not therefore immediately notice the loss of public funds. The Commission's role over the Judiciary was oversight.

(He made claims of a corrupt deal between the Judiciary and CISCO Company not captured by the Auditor General in his report. The Committee instructed the Auditor General to audit CISCO's dealings with the Judiciary and report back). The Office of the Auditor General is yet to provide these details.

He undertook to avail documentary evidence on his claims against Mrs. Shollei and Hon. Chepkonga to the Committee by Monday of the following week. The Committee resolved that:-

- (i) It would only admit his evidence upon substantiation with documentary evidence;*
- (ii) It may have to summon Hon. Chepkonga if documentary evidence against him was availed.*

However, the witness did not avail the documentation as per his earlier undertaking.

Hon. (Prof.) Christine Mango

She appeared before the Committee and submitted as follows:-

The relationship between the former Chief Registrar, Mrs. Gladys Shollei and JSC was not cordial. Mrs. Shollei hardly attended JSC meetings and when she attended, she would be economical with information. She rarely produced reports before JSC and when asked for certain reports, she would not attend subsequent JSC meetings for long.

JSC had interviewed Mrs. Shollei for positions of Deputy Chief Justice and Supreme Court Judge. She was unsuccessful in both cases. Her appointment as Chief Registrar of Judiciary ended up in JSC taking a vote after it could not reach consensus. She did not vote for her appointment as she felt she (Mrs. Shollei) was an Information Technology Expert lacking experience and administrative skills of managing an institution of the magnitude of the Judiciary.

The Committee during questioning established that this particular witness had a particular dislike for the former CRJ.

Hon. Lady Justice Lydia Achode

She submitted as follows:-

Her relationship as a Registrar of the High Court with the JSC was professional and cordial. She however submitted that with the new JSC, there was a feeling of mistrust of those who had been in the Judiciary for long as being lethargic and anti-change. The JSC soon thereafter recruited a new Chief Registrar of the Judiciary and she moved on to her current posting as a High Court Judge, **having handed over to the new CRJ.**

5.2 MAINTENANCE OF JSC MINUTES

Mrs. Gladys Boss Shollei

She informed the Committee as follows:-

As Secretary of the Judicial Service Commission she was responsible for the taking and keeping of minutes of the JSC. She submitted that minutes had been properly taken and stored by the secretariat under her supervision. However, it had been difficult to confirm the minutes at full meetings of the Commission. This was a challenge she had expressed with the Chief Justice, and arose from numerous Committee meetings of the JSC.

She added that no proper mechanism of calling for JSC Committee meetings existed. In most cases Commissioners would instruct the JSC secretariat to convene meetings without her knowledge. Furthermore Commissioners would ask to be paid sitting allowances for court visits and trainings that they attended. For instance, Commissioners were paid sitting allowances for opening courts in Nyeri and visiting courts in Singapore.

The position had been rectified by the Salaries and Remuneration Commission (SRC) in restricting the meetings of both the Commission and its Committee's to a maximum of eight (8) meetings per month.

When the Auditor General conducted the special audit, JSC had terminated her services. Though Section 21 of JSC Act mandates her to keep records, she was not in office thus not able to explain why the Auditor General could not access all sets of JSC minutes in the course of the audit. Had she been in office, she would have ensured all minutes were submitted for audit.

She read mischief in the non-provision of minutes for audit by those in office because to the best of her knowledge, all minutes were in the custody of the JSC Secretariat. She affirmed that a letter from the Registrar of JSC confirming that all minutes of JSC were available.

Ms. Anne Amadi

She submitted as follows:-

A review of the minutes' books indicates that in 2011 to late 2012, the JSC kept all its minutes in one book, i.e., minutes for the Committees and those for the full Commission. Since 2013, each Committee's minutes and full Commission's minutes are kept in a sequential manner in separate books.

Most of the minutes were confirmed and signed by both the chairperson and secretary, with the exception of a few that were not signed by the former secretary. The minutes were availed during the special audit and are still available for audit inspection.

Going forward, all the minutes shall continue to be confirmed, signed and properly kept.

Ms. Emily Ominde

She informed the Committee as follows:-

Section 23 of the Judicial Service Act No. 1 of 2011 requires JSC to keep a record of all proceedings of every meeting of the Commission and its Committees. The Chief Registrar of the Judiciary who also serves as

Secretary to JSC is responsible for the preparation and custody of all records of the Commission. She was therefore incompetent to speak about record keeping by the Commission.

5.3 PROCUREMENT

5.3.1 Composition of the Tender Committee

Mrs. Gladys Boss Shollei

She submitted that when she joined the Judiciary, she disbanded the Tender Committee which comprised members of the Judicial Service Commission. She felt that Commissioners had overstepped their mandate by sitting in the Tender Committee. Consequently, she appointed a new Tender Committee.

Though the Public Procurement and Disposal Act, 2005 provides for Heads of Departments to constitute the Tender Committee, the situation at the Judiciary could not warrant this as some Departments did not have substantive heads.

This greatly contributed to her appointing of some non-departmental heads to sit in the Tender Committee since the Judiciary had to procure goods and services for its day to day running whereas JSC was still in the process of filling the vacant positions.

In instances where Departments did not have substantive heads, the officers she appointed from those Departments to sit in the Tender Committee were position wise the senior most.

In this regard, she appointed to the Committee Mr. Rapando who was heading the Finance Unit, Mr. Wycliffe Wanga who was head of the Accounts Department, Mr. Patrick Meyo who was the head of procurement but seconded from Treasury, Mr. Nicholas Mbeba who was the head of Transport Department and Mr. Fred Momanyi who was the head of Facilities.

Mr. Mugambi, a Supply Chain Management Officer and Mr. Quentine Mwitii, an Accountant were secretaries to the Committee. Mr. Kakai Kissinger who was the Deputy Chief Registrar was chair of the Tender Committee pursuant to provisions of the Public Procurement and Disposal Act, 2005.

She argued that in the case of the Finance Directorate which did not have a head, the immediate officer in ranking did not have the qualifications of being appointed Director thus not competent to sit in the Tender Committee. She in the circumstances appointed a junior officer with proper qualifications to sit in the Committee.

As soon as positions were substantively filled, she reconstituted the Tender Committee to reflect the new heads of Directorates and Department as shown below:-

NAME	DESIGNITION	
Kakai Kissinger	Deputy Chief Registrar	Chair
Benedict Omollo	Director, Finance	Vice Chair
Wycliff Wanga	Director, Revenue Collection	Member
Peter Mulwa	Registrar, Magistrates Courts	Member
Thomas Atak-	Director ICT	Member
Nicholas Okemwa	Legal Counsel	Member
Nick Mbeba	Head, Transport	Member
Martin Okwatta	Director Supply Chain Management	Secretary

Mr. Kakai Kissinger

He submitted as follows;

According to the Judicial Service Act, the Chief Registrar of Judiciary shall be a member and secretary of the Commission. He or she shall also be the Accounting Officer by virtue of which he or she shall be responsible for JSC and Judiciary's financial management.

Immediately he joined the Judiciary, he was appointed by the Chief Registrar as member and chair of Judiciary's Tender Committee. Other members of the Committee were as follows:-

NAME	DIRECTORATE	POSITION
Benedict Omollo	Director Finance	Vice Chair
Martin Okwatta	Director, Supply Chain Management	Secretary
Wycliffe Wanga	Director, Revenue Collection	Member
Peter Mulwa	Registrar, Magistrates Courts	Member
Thomas Atak	Director ICT	Member

Nicholas Okemwa	Legal Counsel	Member
Nick Mbeba	Head of Transport	Member

All appointments to the Committee were made by the Chief Registrar. All appointees were Heads of Directorates as required by the Public Procurement and Disposal Act of 2005. While making the appointments, the Chief Registrar assigned every member specific responsibilities for the proper functioning of the Committee.

Ms. Beatrice Kamau

During her submission, she informed the Committee that;

She was not a member of the Tender Committee. However, from her position as Deputy Director of Finance, she observed that the Tender Committee approved expenditure when there was no budgetary allocation. This was in contravention of the Government procurement regulations and procedures as well as the Public Finance Management Act.

Mr. Austin Ogolla

He submitted as follows:-

Major procurement at the Judiciary was done by the headquarters stationed at the Supreme Court Building in Nairobi. At times, stations would not even be informed of the procurement processes. During his service at Milimani, he had on occasions observed scenarios where contractors would move on site to work without any prior notice to station authorities.

The Judiciary did not have in place policies, procedures and plans on procurement. The tender process was a two way traffic involving the Director of Procurement and the Tender Committee. The Judiciary did not have a list of prequalified suppliers.

Several tenders were approved without budgetary provision. Anybody could supply so long as he was capable. Procurement processes were done based on memos and telephone calls. Even the Chief Registrar herself contracted suppliers on telephone calls. Presently several suppliers have pending bills with the Judiciary on account of lack of documentation.

The lack of procurement systems at the Judiciary led to JSC's interference in procurement processes. JSC had embarked on ambitious reform programmes and needed things moving fast in the best interest of the public, hence the interference. The Judiciary was however in the process of

developing a procurement manual to guide on procurement in the entire Judiciary.

As reported by the Auditor General, the Tender Committee was improperly constituted. The Committee is supposed to comprise heads of departments but as at the time of Constitution, many Departments did not have substantive heads and the officers picked were the senior most in their departments to sit in the Tender Committee. This was because the Judiciary needed goods and services for its day to day operations and failure to procure would have led to a crisis.

Mr. Martin Okwatta

He informed the Committee as follows:-

The Procurement Department was not properly constituted as contemplated by the Public Procurement and Disposal Act, 2005 and its regulations. The Department had only two Procurement Officers one of whom had been seconded from Treasury to assist in restructuring of the Department.

The Officers who previously served in the Department had been interdicted or transferred. There were capacity constraints at the Procurement Department and this adversely affected service delivery.

Despite the initial challenges, he served the Judiciary in strict compliance with provisions of the Public Procurement and Disposal Act, 2005 and its regulations.

He had a strong belief in developing a supply chain management structure that would be used over time based on a study. Towards this end, he developed terms of reference for the study which he presented to the World Bank for review.

He had also embarked on the development of an Internal Procurement Manual to be used in the interim in the light of the challenges that were being experienced. He had submitted the manual to JSC for approval.

Ms. Anne Amadi

She submitted as follows:-

At the time of appointment of the Tender Committee, only some of the listed officers in Table 5 on page 36 of the Auditor General's report were heads of departments. Mr. Mutugi Mugambi, Supply Chain Management Officer, who was a member of the secretariat of the Tender Committee and Mr.

Quentine M. Mwiti, Accountant I, who was an alternate to the Accounts Controller were in fact not heads of Departments but sitting on the Tender Committee. The Committee had since been reconstituted as required by law.

5.3.2 Lease and partition of Elgon Place

Mrs. Gladys Boss Shollei

She informed the Committee that:-

On 18th April, 2011, the Judicial Service Commission approved the expansion of the establishment for the Court of Appeal by increasing the number of judges by an additional sixteen (16) thus bringing the number to thirty.

The Commission further resolved that the Court of Appeal be devolved and 15 Judges to remain in Nairobi. The increase in the number of judges necessitated an amendment to the requisite legislation, the Judicature Act. This was actualized through Act No.10A of 2012.

On 27th July 2012 the Judicial Service Commission advertised fifteen (15) vacant posts and successful applicants were gazette on the 16th of November 2012. By this time, the Judicial Service Commission had resolved that decentralization would take place in phases, starting with Mombasa/Malindi, Kisumu and Nyeri with five (5) judges each with Nairobi retaining eighteen (18) judges.

The Court of Appeal in Nairobi was to have eighteen (18) judges and thus constitute six (6) benches. The minimum number of courtrooms required was six (6). The Supreme Court Building had six courtrooms.

One was the Supreme Court's; while the other was the Chief Justice's. The ones on the ground floor were small and could not accommodate three judges. Further, the Chambers available were not enough for the additional fifteen judges and as a result the Judges ended up sharing chambers.

The Registrar of the Court of Appeal, Mr. Moses Serem, tabled the agenda of lack of adequate space for the Court of Appeal in the management meeting, and further stated that it was imperative that the Judiciary acquires more space to accommodate the additional Judges.

It is also worth noting that the Supreme Court Building which was built in 1895 was declared a national monument vide Gazette Notice Number 7358. Being a national monument, the building was supposed to be maintained according to set standards as provided by the National Museum and

Heritage Act and was long overdue for repairs as evidenced by the below photos.

The Supreme Court Building was further housing over 300 persons, way over the structural limit and no structural reinforcements had been done. In fact the Judiciary had violated The Occupational Safety and Health Act section 48(1) that provides as follows:-

“A workplace shall be of sufficient size for work to be carried out with ease and shall further have the necessary free space with minimum permissible ten cubic metres per person”.

In the 2012/2013 budget presentation before the Justice and Legal Affairs committee and the Budget Committee, the Chief Registrar illustrated how the Judiciary would eventually exit the leasing arrangement and begin construction and finally move into a building owned by the Judiciary.

But in the short term there was a need to make arrangements to lease a building to house the Court of Appeal. It is against this background that the procurement of office space began and eventually Judiciary acquired space at Elgon Place for occupation by the Judges of The Court of Appeal.

The Lease of Elgon Place was done through open tendering. On 2nd October 2012, the Judiciary advertised for lease of office space in the local dailies and Judiciary website via tender number no. JUD/12/2012-2013.

On 24th October 2012 the tenders were opened where four firms had submitted bids. On 9th September 2012, the preliminary, technical, financial, and Market evaluations were tabled before the Judiciary Tender Committee and the following firms were found to be responsive:-

- a) M/s Knight Frank Kenya Ltd.
- b) M/s Ismail Rahimtulla Trustees

The Tender Committee in its meeting held on 23rd November 2012 recommended that the Judiciary leases Elgon Place, the property offered by Knight Frank Kenya Limited for occupation by the Court of Appeal.

The building was owned by Sealink Holdings Ltd, a Company associated with one Razak Patel as one of the Directors. The building was to be partitioned into a court house and the Landlord gave a two (2) month grace period for the partitioning works which however took three (3) months. The proposed fit outs for the building were tabled before JSC and approved

On January 23, 2013, the Chief Justice through a memo CJ 90/2 informed the Appellate Judges that they would be moving to Elgon place to pave way for renovations. On Wednesday 5th June 2013, the Appellate Judges visited Elgon Place and recommended changes they needed to be made before they could move in such as changes on the nametags, furniture and chamber allocations *inter alia*. Their proposals were effected and the building was made ready for occupation as shown below.

The courtrooms were fully fitted with audio visual equipment which would be linked to the case management system and as such play a big role in the reducing the backlog of cases and typing of proceedings. Automation of the courts and court processes is aptly captured in pillar four of the Judiciary Transformation Framework.

The state of the art systems installed would provide real time information, as one would be in a position to view live court proceedings from the comfort of their office or home through a video link. Further this would be key in providing transparency and accountability to the people of Kenya and would aid in the performance evaluation of Judges.

On 10th August, 2013, the Chief Justice visited Elgon Place and made the following recommendations: procurement of special seats for use by senior counsels, procurement of white boards for the courts and a letter from Telkom Kenya confirming the masts behind Elgon were environmentally friendly.

By his memo dated 11th September, 2013, the President of the Court of Appeal, Justice Paul Kihara conveyed the Chief Justice's decision that all Appellate Judges move to Elgon Place not later than 17th September, 2013. The Judges however declined to move in, arguing that the telecommunication equipment around the building was emitting radioactive materials harmful to their health.

The Judiciary called in the National Environmental Management Authority (NEMA) to give an independent opinion. NEMA did an impact assessment and ruled out radiation fears as a reason for non-occupation of the building.

The Chief Registrar also sought a professional opinion from the Communications Commission of Kenya (CCK) which is the body mandated by the Government to regulate the communications industry. CCK gave the building a clean bill of health for occupation vide letter dated 1st August, 2013 (See annexure 2).

The Court of Appeal was not convinced with the CCK opinion and hired its own independent consultant to carry out electromagnetic radiation tests.

The consultant was not licensed by NEMA or CCK and advised the Court that the building was unfit for human occupation because of radiation effects.

Based on this, the Appellate Court refused move into the building. The Chief Justice subsequently disregarded the CCK, NEMA and Telkom Kenya opinions he had earlier accepted and stopped the move to Elgon Place while instructing the Judges to remain in the Supreme Court Building.

At this point, the Court of Appeal files and other stuff which had been moved to Elgon Place through services of a professional mover, had to be taken back to the Supreme Court Building making the Judiciary incur unnecessary expenditure.

The Chief Justice then formed a committee chaired by Mr. Kakai Kissinger, the Deputy Chief Registrar, and comprising Government bodies, NEMA, CCK, and the Radiation Protection Board to develop Terms of Reference for a consultant to do final test on the radiation at the Building. This process has never taken off to date yet the Judiciary continues to pay rent for the building

Due diligence was done prior to leasing the building. The World Bank and Kadhis Courts were domiciled within the area and had never raised the radiation issue meaning the area was safe for occupation.

Approvals were granted by all relevant Governments' authorities before the portioning works were undertaken. Justice Paul Kihara, President of the Supreme Court and all other Judges had input in the design of the court rooms and chambers.

It should be noted that it took three (3) months from time the building was ready for occupation to determine the radiation issue. The Judiciary would therefore have lost only three months' rent for non-occupation of the building had it been occupied once the radiation issue was determined.

Knight Frank Kenya Ltd which presented the successful evaluated bid tendered in US Dollars instead of Kenya Shillings. Section 2.21.1 of the Standard Tender documents stated as follows:-

Conversion to a single currency

"Where other currencies are used, the procuring entity will convert those currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya."

This was the basis for the tender award to Knight Frank (K) Ltd. Additionally, there were only two responsive bidders and Knight Frank (K) Ltd quoted the lowest price.

It is also important to note that there was no prejudice in regard to award of the tender for the lease of the office premises. The Director of Supply Chain Management was directly responsible for the procurement and would be in a better position to shed more light on the process.

The Judiciary leased more office space than what was tendered for. Knight Frank tendered for total space amounting to 34,400 Square feet, which did not include the ground and mezzanine floors as well as the penthouse. The entire building had a total area of 49,890 square feet, which was available for lease. For Security and other reasons, the Tender Committee recommended the leasing of the entire building.

A security deposit equivalent to six (6) months deposit was paid to the Landlord in respect of the lease. This was a standard practice in many lease agreements and the essence of it was that during the last six (6) months of expiry of the lease, the Tenant needed not to pay rent.

The lease of these premises was approved by JSC.

The building was brand new and within the defects liability period. The only alternative was the contractor who built the building to continue the partitioning based on BQs prepared by the Judiciary architects and quantity surveyors.

Mr. Kakai Kissinger

He submitted as follows:-

Elgon Place Building is situated in Upper Hill area of Nairobi. The lease of space in the building was necessitated by the increasing number of Judges as a result of ongoing reforms in the Judiciary.

Tendering process as required by Procurement law was done before settling on Elgon Place which had submitted the lowest evaluated bid. There were two other responsive bids. Knight Frank Kenya Ltd. acted on behalf of the proprietor of Elgon Place in the lease transaction.

Knight Frank Kenya Ltd. quoted rent for the lease in US Dollars. Section 2.21.1 of the standard tender documents stated as follows:-

"Where other currencies are used, the procuring entity shall convert those currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya"

The award of the tender to Knight Frank Kenya Ltd. was based on Section 2.21.1 of the standard tender document and did not in any way prejudice the process. *(He did not however produce a copy of the tender document and lease agreement)*. The Director of Finance was a member of the Tender Committee and gave the quotation in USD a clean bill of health.

Knight Frank Kenya Ltd. tendered for space totaling 34,400 square feet which did not include the ground floor, the mezzanine floor and the penthouse. The entire building measured 49,890 square feet.

Rent payable for ground floor was USD 1.50 per square foot while mezzanine floor was USD 0.75. Since the building was to be used a court, the Tender Committee after careful consideration recommended the lease of the entire building because of security and other concerns.

Though the Tender Committee awarded the tender for space measuring 34,400 square feet, the lease agreement signed was for 49,890 square feet leading to a variation. He could not however recall if the variation process was in accordance with the law and requested the Committee to ask for minutes on the variation from the Director, Supply Chain Management.

Mr. Benedict Omollo

He submitted as follows:-

The Elgon Place building was to house the Court of Appeal which was domiciled in the Supreme Court Building. The Appellate Court was to move to the building to give way for renovation of the Supreme Court Building.

The lease was approved by the Chief Registrar, the Judicial Service Commission and the Judiciary Tender Committee. The Tender Committee approved the award of the tender for the lease of 34,400.00 square feet to Knight Frank Kenya Ltd. but the actual space leased was 47,890.00 square feet.

Knight Frank Kenya Ltd. further quoted for the lease of the office space in US Dollars which was in contravention of the tender specifications. Knight Frank's bid ought to have been disqualified in view of its quote in US Dollars. Payment of rent for the lease was however done in Kenya Shilling equivalent to the USD.

He was not involved in any payments towards implementation of the project after 16th September, 2013 as he had been interdicted.

Mr. Martin Okwatta

He informed the Committee as follows:-

When the tender for the lease of office space at Elgon Place was advertised, only two bidders responded and Knight Frank Kenya Ltd. as agent of Sealink Holdings Ltd was awarded the tender having submitted the lowest evaluated bid. The Company submitted its bid in USD.

Section 2.21.1 of the standard tender documents provides that:-

"where other currencies are used, the procuring entity will convert those currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya"

This was the basis on which Knight Frank Kenya Ltd. was awarded the tender. There was no prejudice caused to other bidders as a result of the award of the tender to the Company. *He did not however produce a copy of the tender document.*

As per the tender documents, the Judiciary required a minimum office space measuring 40,000.00 square feet. In the price schedule, Knight Frank Kenya Ltd. offered 34,000.00 square feet which was less than the requirement.

In a separate sheet submitted, with the tender document, Knight Frank Kenya Ltd. indicated that this square footage did not include additional floors for example the ground floor, mezzanine and the penthouse.

The Company further indicated that it was ready to lease out the entire building with total square footage of 49,890 if the Judiciary so wished. However, rent payable on ground floor would be USD. 1.50 per square foot, mezzanine floor would be USD. 0.75 and the rest of the floors would be USD.1.05.

The Tender Committee approved the lease for the entire building. This decision was informed by the fact that since the building would be used as a court, it would not be sensible to have other tenants in it because of security and other management reasons. Furthermore, it would be possible to modify the building to Judiciary's specifications without objection from other tenants.

The Judiciary signed a lease agreement with Sealink Holdings. The building was new and the defects liability period between the Landlord and the contractor was still in place. The lease agreement provided that the contractor would undertake all works relating to partitioning, structured cabling and fittings at the tenant's cost.

This would also ensure that standard and quality of fit outs would be in line with the rest of the development. The tenant's architects were to design the office layout and provide the space plan.

This condition was provided for in the lease agreement because the intended alterations and partitions were going to affect the structure of the building which would nullify the defects liability period.

Because of the cited provisions in the lease agreement, the only possible procurement method for the works was direct procurement as provided by the Public Procurement and Disposal Act, 2005.

The construction works were completed on time but the building has not been occupied due to administrative issues.

Ms. Anne Amadi

She submitted as follows:-

The leasing of Elgon Place premises was in the first instance done without the knowledge and consent of JSC. The Commission only learnt of the lease after the former Chief Registrar had proceeded to commit the Judiciary to an undertaking of such a huge cost.

JSC had adopted a policy to the effect that any expenditure above Kenya shillings fifty million (Kshs.50,000,000.00) must be approved by the Commission before commitment.

All this was geared towards ensuring accountability and prudent use of public resources in the Judiciary as envisaged in article 201(d) of the Constitution. JSC was thus alarmed that such project was going on without its knowledge and in complete disregard of its policy.

On 1st December, 2012 JSC stopped the leasing of Elgon Place upon examining the process and the documentation, and noting that due diligence had not been conducted.

The then Chief Registrar of the Judiciary resubmitted the agenda on leasing of the Elgon Place Premises on 21st January, 2013 and requested the

Commission to reconsider its decision of stopping the leasing of the premises.

The Commission deliberated on the same and rescinded its earlier decision to stop the leasing of the premises and directed the Management to proceed with due diligence to lease the Elgon place premises

The Commission also informed the Chief Registrar that the Elgon place project was a huge undertaking involving large sums of money and all precautionary measures to ensure prudent utilization of public funds should have been put in place.

Despite these directions by the Commission the management went ahead with the project without involving the commission.

On 23rd May, 2013 the Commission contemplated terminating the entire contract but noted that 98% of the works had been done and terminating it at that stage would lead to legal consequences and loss on the part of the Judiciary. In conclusion, the Elgon Place lease was a frustrated lease and the Judiciary was in the process of terminating it.

The architectural and floor plans for the Elgon Place were deliberated upon and approved by the Commission on 23rd January, 2013. This was again done by the Commission in line with its mandate under the law as outlined herein above and specifically to ensure that its policy directions were adhered to at all times in the project.

The Commission's desire was to see that its policy direction in respect to the involvement of the all stakeholders in the justice chain had been taken into account and that the interests of the people with disability had been taken into account in the partitioning works.

The Commission also directed that the management keeps it informed at every step of the implementation to ensure that there was prudent utilization of the funds and further to inform it of any challenges encountered in the course of the project. The Commission therefore was involved only to the extent of their facilitating accountability in the Judiciary.

From the foregoing, the manner in which the Elgon place issue came before the Commission was problematic. That explains why the Commission had to stop the process in the initial stages.

The JSC as a policy making organ has to ensure that its policies are implemented and followed to the letter. The Commission in authorizing the

management to proceed and lease the premises was within its mandate and therefore did not act illegally. The Commission did not give a blanket authority; the minutes indicate that the leasing had to be undertaken with due diligence.

Mr. Ahmednassir Abdulahi

He submitted as follows:-

When he joined JSC in the year 2010, the budgetary allocation for JSC and the Judiciary during the financial year 2010/2011 was Kshs 3 billion. This budget was inadequate and had occasioned JSC and the Judiciary numerous operational challenges which adversely affected service delivery in the administration of justice.

He appeared before the Budget and Appropriations Committee of the National Assembly in the company the then Registrar of the High Court, Mrs. Lydia Achode to put up a case for increased budgetary allocation.

During the financial year 2011/2012, JSC and Judiciary budgetary allocation was increased to Kshs 9 billion and to Kshs 16 billion in the subsequent financial year. The increased budgetary allocation brought about challenges to JSC and the Judiciary.

The Chief Registrar of Judiciary, Mrs. Gladys Shollei went on a spending spree. Without approval of JSC, she commenced the process of leasing Elgon Place Building in Upper Hill to house the Court of Appeal.

When put to task by JSC, she explained that the National Museum of Kenya which was mandated by law to manage historical buildings like the Supreme Court Building had assessed the building and noted structural defects as a result of which, occupants were required to seek alternative office space to pave way for renovations. She could not provide documentary evidence justifying the leasing of Elgon Place.

The Chief Justice was not persuaded by Mrs. Shollei's explanation on the leasing of Elgon Place and appointed a sub-committee comprising him (Ahmednassir Abdullahi) and Commissioner Justice Smokin Wanjala to look into the matter and advise.

The sub-committee established irregularities and breach of law in the leasing of the premises. Consequently, JSC directed Mrs. Shollei to stop the process but she defied the directive and went ahead to partition the building at a cost of Kshs.350,000,000.00 and furnished it at Kshs.30,000,000.

It was not necessary to furnish the building since those to occupy it were from the Supreme Court Building where they already had furniture and would have been expected to move in with their furniture.

The Law Society of Kenya (LSK) had written to JSC informing it that it would prohibit its members from attending the Court at Elgon Place Building because of telecommunication equipment near it which it feared would emit radioactive substances and harm its members. The LSK decision was based on a report of an expert it had contracted to advice.

The Finance and Administration Committee of JSC was not involved in the process of leasing Elgon Place neither was the full JSC involved nor kept in the picture. Mrs. Shollei came to JSC to seek approval for payment after she had already negotiated and commenced the leasing process. Further attempts by Mrs. Shollei to purchase a building for the Judiciary from Postal Corporation of Kenya in Mombasa were stopped by JSC.

Mr. Tom Atak

He informed the Committee as follows:-

According to the audit report, the Tender Committee awarded Knight Frank Kenya Ltd. the tender for lease of 34,400.00 square feet but according to the lease agreement, the Judiciary leased 47,890.00 square feet which was the entire building.

When the matter was presented to the Tender Committee, the Committee knew the entire building was being leased so there should not have been a variation size in the of office space that was actually leased.

As Tender Committee, they expected that any awards made be strictly executed as awarded. Likewise, the Tender Committee expected that any evaluation presented to it for award would have been done diligently.

Ms. Winfred Kiragu, JKUATES Ltd.

She submitted before the committee as follows:-

The Company was not involved in the procurement of the lease for the building. It only provided designs for partitioning of the court rooms.

Mr. Ben Woodlams, Knight Frank Kenya Ltd.

He submitted as follows:-

The initial agreement for lease of the premises was for 34,000.00 feet and an agreement was signed and duly executed to that effect. At the time of

signing the agreement, the Company had done several studies on radiation in view of the telecommunication equipment in the area and established that the levels of radiation were harmless to human beings.

This was communicated to the Judiciary with whom the Company shared reports done on studies on variation and the Judiciary signed the lease agreement well aware of this.

Later, the Judiciary indicated that it was not comfortable sharing the building with other tenants for security and other considerations and went ahead to lease the whole building. The company leased the building to the Judiciary at market rates.

In July, 2014, the Judiciary wrote Knight Frank Kenya Ltd. seeking to terminate the lease citing radiation and budget constraints as the main reasons. He was to submit letters in this regard but did not. At this time, rent arrears had accumulated to six (6) months.

The company had not terminated the lease because the exit clause in the lease agreement provided for termination through negotiations. This was standard practice for commercial leases.

If the Judiciary opted to terminate the lease without negotiations, then it would be required to pay for the remainder of the lease period which was five years at a cost of Kshs.350,000,000. This was common practice in the industry.

Mr. Fredrick Oduor, Institution of Surveyors of Kenya (ISK)

He submitted as follows:-

The Institution established rental rates for offices in Upper Hill area range between Kshs.90-110 per/sf/month. The Committee therefore observed that the rental rates for Elgon offices in Upper Hill area range between Kshs.90 and Kshs.120 psf per month exclusive of Service Charge. The Committee also established that the service charge rates for offices in Upper Hill area range from Kshs.20 to Kshs.33 psf per month.

The Institution was satisfied that the rent for this property was reasonable. The annual escalation rate of between 4 and 5% is fair since escalation rates for offices in Nairobi are generally 7.5%. The Committee further established that rent payment in dollars has become a common practice because of the nature of sourcing of the development funds and that currency fluctuations must be safeguarded.

5.3.3 Lease of office space at Rahimtulla Towers

Mrs. Gladys Boss Shollei

She informed the Committee as follows:-

Owing to ongoing Judiciary reforms, more staff were being recruited and this led to need for additional office space to accommodate the new staff. In this regard, the Judiciary leased office space at the Rahimtulla Towers to house the Human Resource and Procurement Directorates.

On 2nd October 2012, the Judiciary advertised for lease of office space in the local dailies and Judiciary website via tender number No. JUD/12/2012-2013.

On 24th October 2012 the Tender Opening Committee opened tender documents and recorded four bids. On 9th September 2012, the preliminary, technical, financial, and market evaluations were tabled before the committee and the following firms were found to be responsive:-

- a) M/s Knight Frank Kenya Ltd.
- b) M/s Ismail Rahimtulla Trustees Registered

The Tender Committee at its sitting of on 23rd November 2012 and after due process of law awarded the tender to Ms. Ismail Rahimtulla Trustees Registered, the proprietor of Rahimtulla Towers.

She was dismissed from service at a time when the two Directorates were in the process of moving to the Building. For the fact that the JSC dismissed her and all relevant Heads of Directorates from service before she had completed the transaction and pursuant to Article 225 of the Constitution, JSC should take responsibility for the eventualities arising from the lease process.

Mr. Kakai Kissinger

He submitted as follows:-

Due of ongoing reforms at the Judiciary since the year 2011, more staff were recruited leading to space constraints. This made it necessary for the Judiciary to lease additional space for staff at Rahimutullah Towers in Upper Hill, Nairobi. The procurement law was adhered to while settling on Rahimtulla Towers.

Mr. Benedict Omollo

He informed the Committee as follows:-

The lease of office space at Rahimtulla Towers was necessitated by the need for additional office space because of new recruitments occasioned by ongoing reforms in the Judiciary. The Supreme Court Building was also undergoing renovations and staff was to move to Rahimtulla to enable the contractor move on sight.

The lease of the office space was approved by the former Chief Registrar, Mrs. Gladys Shollei, the Judicial Service Commission (JSC) and the Tender Committee. The deposit was paid on the basis of final rent and got the nod of the Legal Department, Office of the Chief Registrar. He was opposed to the use of deposit funds to meet operational costs.

He stopped effecting payments for the lease on 16th September, 2013 on instructions from the Judicial Service Commission (JSC). This was a day before he detected the Kshs.80,000,000 cybercrime against the Judiciary in which his password was hacked and used leading to his interdiction.

Mr. Martin Okwata

He informed the Committee that:-

The leased space in the lease agreement is less than what was approved by the Tender Committee. The Judiciary did not however incur any loss. CB Richard Ellis was managing the building on behalf of the Landlord and payment was made as directed by the Landlord. The payments related to service charge and no further payments for the same were made to the Landlord.

Ms. Anne Amadi

She submitted as follows:-

The original lease cannot be traced as there was no formal handover. The Judiciary had since reviewed the occupancy of the leased floor space and surrendered two floors and underground parking. The lease payments were irregularly paid from deposits contrary to Government Financial Regulations. However, the money had since been reimbursed to the deposits bank account.

Institution of Surveyors of Kenya (ISK)

The Committee was informed as follows:-

The Committee observed that the rental rates for offices in Upper Hill area range from Kshs.90 to Kshs.120 psf per month exclusive of Service Charge.

The Committee also established that the service charge rates for offices in Upper Hill area range from Kshs.20 to Kshs.33 psf per month.

The Committee's opinion is that the rent and service charge negotiated for this property appear reasonable. The annual escalation rate of 7.5 % per year is within the common rates for offices in Nairobi.

Regarding the acquisition of used furniture, fittings, fixtures, partitions and ICT infrastructure, the Committee noted that it was a common practice for incoming tenants to acquire the said assets from an outgoing tenant after negotiations.

The outgoing tenant had quoted Kshs.64, 462,441 while Judiciary's independent Valuer gave a valuation of Kshs.32,000,550 for the assets. The Judiciary's appointed Negotiation Team, negotiated a price of 30,000,000 excluding the taxes amounting to Kshs.1,918,316.26.

The Institution did not make a conclusion on the matter because the valuation reports and minutes of the Tender Committee were not availed.

5.3.4 Purchase of Containerized Data Centre

Mrs. Gladys Boss Shollei

She submitted as follows:-

The request for purchase of the Containerized Data Centre was made by the Director of ICT, the user Department. On 3rd September 2012 the Director Mr. Tom Atak presented a proposal to the Chief Registrar laying out the case for acquisition of a Containerized Data Centre by the Judiciary.

The rationale for the investment on a Data Centre for the Judiciary was that the Judiciary had over 117 Courts stations countrywide. The ICT Directorate had embarked on deploying Unified Communication System, CCTV and eventually an Automated Case Management System already piloted in the Supreme Court, Court of Appeal and Eldoret Law Courts.

The audio-visual recording requires massive storage capacity for it to be extended to the more than 20 stations. The initial server rooms at the Supreme Court and Milimani High Court had power faults and lacked capacity for additional stations.

Hosting the system at the National Treasury posed security issues after previous hacking of systems that paralyzed operations in over 100 Government sites.

The option of a Containerized Data Centre outside the main Supreme Court building to house key Information Technology equipment was further arrived at on the advice of the National Museums of Kenya.

The Supreme Court Building was a gazetted building under the National Monuments Act and the National Museums of Kenya was solely responsible for its management. The National Museums advised against the drilling of holes on the walls or any other actions in the building that affected its structural design.

The tender was advertised in the local daily on 26th September 2013. The submitted bids were evaluated and the Tender Committee recommended the award of the tender to Dimensions Data Limited at a cost of Kshs.106,720,048.97.

Two teams were sent to South Africa to inspect the Data Center during construction. The teams comprised:-

DATE: 7 TH – 11 TH MAY 2013		
	NAME	CURRENT DESIGNATION
1	Mr. Duncan Odima	Ag. ICT Director
2	Mr. Martin Fundi	ICT Officer

DATE: 21 ST – 25 TH JULY 2013		
	NAME	CURRENT DESIGNATION
1	Ms. Mercy Masese	ICT Officer
2	Mr. Benson Kago	ICT Officer
3	Ms. Pembskincejendeka	ICT Officer

The Data Centre was delivered to the Judiciary on 12th September 2013. The price that was submitted by the bidder and the price in the final contract were the same.

The only difference was that in the final contract, various costs that make up the total cost were separated, thereby highlighting the 18 million that would have been incurred in maintaining the center for the agreed duration.

The Auditor General states that the Judiciary should have considered cloud computing or a spacious room at Supreme Court Building. First the Supreme Court building had to undergo structural repairs which was not advisable, secondly there was inadequate space. Thirdly the auditors had not done needs assessment of IT needs to determine practicability for cloud computing in the Judiciary.

At the time of the audit, the Centre was not operational. Martin Okwatta, Director of Procurement on interdiction was directly involved in the procurement of the Centre and was the most appropriate person to respond to audit issues on the Centre

Mr. Duncan Odima

He submitted as follows:-

The Containerized Data Centre was to house the computer server. It was to be located at the Supreme Court Building and was to measure 40 feet. It was to cost the Judiciary a total sum of Kshs.106,720,048.97 and was to comprise the following components:-

- (a) Generator
- (b) Filing system
- (c) Several racks
- (d) Access control;
- (e) Structured cabling

The container had been delivered and 80% of the total cost paid to the supplier. The procurement of the container was not based on needs assessment neither did it originate from the ICT Directorate. Memos and other correspondence relating to the project originated from Mr. Tom Atak former ICT Director who never involved the Directorate and dealt directly with the Chief Registrar.

Normal practice requires that various committees be established to carry out procurement processes of such projects. Mr. Atak has since been suspended pending investigation of implementation of the project.

The Judiciary did not need the Centre since there was enough space in the Supreme Court Building to house the server. There was already a server and filing room in the building sufficiently serving the entire building. It was not prudent to use public funds on this type of project.

The Supreme Court Building was not condemned to house the server since there was no report from a competent authority to the effect. The building is protected under the National Museums and Monuments Act and the National Museum of Kenya had been earmarked for renovation.

Mr. Martin Okwatta

He appeared before the committee and submitted as follows:-

The technical specifications provided by the Judiciary required bidders to provide a 3 year warranty for all parts. Bidders were required to quote for:-

- (a) Supply, installation and commissioning of the Containerized Data Centre;
- (b) Expenses for training judiciary staff at the premises;
- (c) Pre-shipment inspection

The tender was awarded to the lowest evaluated bidder, Dimension Solutions Ltd at a cost of Kshs.18,000,000.00 with a three (3) year warranty subject to maintenance. The tender documents provided for three year warranty.

Mrs. Emily Ominde

She submitted as follows:-

She was not aware of this project as it was never discussed by the Finance and Administration Committee of JSC. She learnt of the project after Mrs. Shollei's suspension when it was discussed by the full Commission. JSC stopped payment for the project because of integrity issues surrounding its implementation. The implementation of the project had since been referred to the Ethics and Anti-Corruption Commission (EACC) for investigation.

Mr. Ahmednassir Abdullahi

He informed the Committee that:-

JSC was not involved in the procurement of a Containerized Data Centre for the Judiciary, neither was its Finance and Administration Committee involved. He had personally not seen the facility but only heard of it a JSC sitting when Mrs. Shollei was trying to justify payment. The most striking part of her submission to JSC was that the Container would be airlifted to the Supreme Court Building.

Hon. (Prof.) Christine Mango

She appeared before the committee and submitted as follows:-

This procurement was done without the knowledge and consent of JSC. The matter was drawn to the attention of JSC by the Judiciary Director of Information and Communication Technology (ICT) who did not even appear to know where the Center was.

JSC was suspicious of several projects undertaken by Mrs. Gladys Shollei without its knowledge and approval and after Mrs. Shollei was suspended,

all claims for payment in respect of the projects were suspended pending investigation by the Commission. This was among the projects affected.

Mr. Tom Atak

He submitted as follows:-

The Containerized Data Centre was procured by the Judiciary on a need basis and was required urgently. He did the needs assessment and prepared a two page memo justifying the implementation of the project. The Container housed IT equipment and could not be placed in the main Supreme Court Building on account of the following:-

- (a) The design of the building was that there was no spacious room to house a Data Centre;
- (b) It was not possible to create a bigger room by bringing down walls since the building was protected under the National Monuments Act.

The Centre was however not operational to date though it was being utilized as a store for new computers. The total cost of the project was Kshs 106,720,048.00. The Contractor had been paid 80% of the total cost. The 20% balance was to be paid on commissioning. JSC stopped payment after it became apparent that the procurement process of the project raised integrity issues.

The tender document required bidders to provide a three year warranty of Kshs.18,000,000. It was a standard practice to ask for a warranty. The Judiciary asked for difference lengths of warranty period depending on the equipment being purchased i.e. six months for printers, one year for computers and three years for high value equipment. A warranty was different from maintenance in that the former is an assurance by a manufacturer against defects while the latter is care to ensure upkeep and good working order of the equipment.

5.3.5 Purchase of official residence for the Chief Justice

Mrs. Gladys Boss Shollei

She submitted as follows:-

The process for the purchase of an official residence for the Chief Justice started in the year 2011. The proposal was made by the Chief Justice to then Head of Public Service and Secretary to the Cabinet Amb. Francis Muthaura who advised that a cabinet memo be done. She did the memo and

the purchase of the House was approved by the cabinet at a cost of Kshs.300,000,000.

Tenders were advertised in the local dailies and three bids received. The bid submitted by Muthama Holdings Ltd was successful after evaluation and was awarded the tender at an asking price of Kshs.425,000,000.

Senator Johnston Muthama was the proprietor of Muthama Holdings Ltd. The house stood on one and half acre piece of land in Runda Estate, Nairobi and had been valued by JKUAT Enterprises Services Ltd at a cost of Kshs.350,000,000.00. She set up a Committee which negotiated the purchase price down to Kshs.310,000,000.

JKUAT Enterprises Services Ltd was single sourced to value the house because the company was Government and with the Judiciary also being Government, the ensuing procurement between the two was Government to Government procurement which according to the law did not require advertisement.

Two other houses were also valued. One was along Waiyaki Way and was valued at Kshs.250,000,000.00. With regard to this House, the Chief Justice brought in Court Martials from the United States of America to do a security assessment. The Martials disqualified the house on security grounds.

The martials were externally funded to do the job. The second house stood on two and a half acre piece of land in Kitisuru Estate and was valued at Kshs.500,000,000.00. This House was disqualified because its price was way above the Judiciary's approved budget.

The Tender Committee had initially recommended the purchase of the Waiyaki Way House because it was the lowest in price but the purchase was abandoned because of security concerns raised by the Court Martials. The Judiciary paid for the Runda House in March, 2013.

The payment was for an unfurnished house. The Chief Justice liked the property and visited it severally. The house however remains unoccupied and is guarded twenty four (24) hours by Administration Police Officers. The purchase of this property was approved by JSC at its sitting of 10th May, 2013.

It is a personal decision of the Chief Justice not to occupy the house. By letter dated 10th February, 2014, the Chief Registrar of Judiciary Mrs. Anne Atieno Amadi wrote to the Judiciary's Advocate for the conveyancing instructing him to put on hold and further transaction until pending investigations over the property are put to rest. Whereas the house was purchased in March, 2013, her issues with JSC started in October, 2013.

Mr. Kakai Kissinger

He submitted as follows:-

The proposal to purchase an official residence for the Chief Justice came from the Chief Justice himself, Dr. Willy Mutunga. The proposal was discussed and approved by the Judicial Service Commission (JSC) and subsequently by the Cabinet.

The Tender Committee followed due process of procurement law in the award of the tender. Security and serenity were key conditions of the tender. The Judiciary relied on expert advice on these key conditions.

JKUAT Enterprises Services Ltd. was retained by the Judiciary to value the House and valued it at Kshs.350,000,000.00 whereas the successful bidder quoted Kshs.425,000,000.00. Based on the valuation report, the Judiciary negotiated the price down to Kshs. 310,000,000.00.

He referred to an unsigned letter on preliminary valuation of the property by Ms. Nelly Mbugua, a Chartered Surveyor. As far as he was concerned, the Tender Committee acted prudently in the tendering process and the Judiciary did not lose any money.

Mr. Benedict Omollo

He appeared before the committee and submitted as follows:-

The purchase of an official residence for the Chief Justice was a decision of JSC and was approved by the Cabinet. JSC approved a Kshs.300,000,000 budget for the purchase of the house.

The House which was situated in Runda Estate, Nairobi was valued by JKUAT Enterprises Ltd at Kshs.350,000,000.00. JSC paid Kshs.310,000,000 for the House through a supplementary budget.

The asking price by the owner was Kshs.400,000,000.00. The JSC had also asked the Judiciary to provide for Kshs.300,000.00 in the 2013/2014 estimates for the purchase of an official residence of the Deputy Chief Justice.

Mr. Martin Okwata

He submitted as follows:-

The Tender Committee approved the purchase of an official residence for the Chief Justice at a cost of Kshs.310,000,000.00 after following all relevant

procedures. The property was valued at Kshs.350,000,000.00 by JKUAT Enterprises Services Ltd.

The Tender Committee also awarded the tender based on security and serenity concerns. Just before the award, the Chief Justice had publicly complained about his security after receiving a threatening letter from suspected Mungiki adherents. The Judiciary relied on security experts' advice on the ideal location for the residence.

According to the title of the property, the property measured 0.5622 hectares approximately 1.4 acres. The interest transferable was freehold. Tender documents annexed also confirmed this. (Annex No. 3)

The Tender Committee approved the purchase of the property based on the acreage in the title and tender documents and expected the Judiciary Advocates would establish correct facts about the property during the conveyance process. However, the sale agreement indicates that the property measures 0.5622 hectares though the interest is freehold.

Ms. Anne Amadi

She submitted as follows:-

The purchase of the official residence of the Chief Justice involved huge sums of public money. The Commission had to ensure prudent use of resources in its acquisition, hence its involvement in the process in exercise of its mandate under Article 172 of the Constitution which is ensuring the accountability of the Judiciary.

The JTC awarded the tender on 27th March 2013 on the basis of an unsigned valuation report by JKUAT enterprise which was irregular and reckless on the part of the CRJ who is expected to follow the law at all times and advise the Commission accordingly.

The Commission was only invited to deliberate and approve the purchase price in May 2013, two months after the tender had been awarded. The Chief Registrar was under obligation to follow due diligence and provide true and accurate information, not based on exaggeration.

She concluded that The Judiciary procured a residential house for the Chief Justice at a cost of Kshs.310 million, without having it valued by a Government or professional valuer. This was an irregularity. The matter was under investigation by the Ethics and Anti-Corruption Commission (EACC).

Mr. Ahmednassir Abdullahi

He informed the Committee as follows:-

The decision to purchase an official residence for the Chief Justice was made by the full JSC. This was informed by the fact that it would in the long run be cost effective for the Judiciary to own an official residence for the Chief Justice than pay rent for him.

The Chief Justice himself wanted a House costing Kshs.50,000,000 to Kshs.75,000,000. The Finance and Administration Committee however advised that his budget was insufficient to purchase a House in an area in Nairobi befitting the status of a Chief Justice of the Republic of Kenya and approved a budget of Kshs.200,000,000.00.

Towards purchasing the official residence for the Chief Justice, Mrs. Shollei identified three (3) to four (4) houses. JSC constituted a sub-committee comprising him (Ahmed Nassir Abdullahi) and Commissioner, Justice Smokin Wanjala and instructed it to inspect the houses and advise.

She took them to inspect a house in Muthaiga but they could not gain access inside on grounds that prior arrangements had not been made. From Muthaiga, they proceeded to Runda where they inspected a house owned by Senator Muthama. The House was not furnished. After Runda, they inspected a House in Kitisuru.

Based on their findings, they recommended to JSC the purchase of the House in Runda owned by Senator Muthama and Mrs. Shollei was instructed to commence the purchase process. The Muthaiga House was not considered because it was not inspected while the Kitisuru House was not considered because its asking price of Kshs.500,000,000 was much above the Judiciary's approved budget of Kshs.200,000,000.00.

Mrs. Shollei negotiated for the purchase of the House from Senator Muthama at a price of Kshs.310,000,000.00, Kshs.110,000,000.00 above the Judiciary's approved budget and signed a sale agreement with the purchaser.

The firm of Donald Kipkorir Advocates acted for the Judiciary in this transaction yet it was not prequalified by the Judiciary as required by Government procurement regulations and procedures. In fact substantial amounts of legal works for the Judiciary were being handled by the firm of Donald Kipkorir Advocates.

When he left the Judiciary, the lease agreement had been duly executed and payment fully made. He suspected that the Judiciary may have paid Senator

Muthama less than Kshs.310,000,000.00 for the purchase of the House and requested the Committee to conduct further investigations into his claim.

He was not aware if the Chief Justice had moved into the new House but understanding him, he was unlikely to move into it especially when there was controversy surrounding it. In fact he had hinted to him that he won't mind any other Senior Judge staying there.

Ms. Winfred Kiragu, JKUAT Enterprises Services Ltd.

She submitted as follows:-

The company carried out an indicative valuation of three (3) houses identified by the Judiciary for purchase and prepared indicative reports. The full valuation was to be done after other formalities like production of relevant documents especially the titles deeds.

For the Chief Justice's residence, there was no full valuation report produced because the Judiciary never gave instructions for the next phase. JKUATES Ltd. therefore never invoiced the Judiciary and was not paid any amount since it did not prepare a full valuation report.

JKUATES Ltd. brought in a Valuer called Ms. Nelly Mbugua to value the house on its behalf. The Valuer gave an indicative price of Kshs.350,000,000.

She (Mrs. Winfred Kiragu) could not tell whether the Judiciary paid the seller Kshs.350, 000,000.00 based on the indicative price report prepared by JKUATES Ltd. In a transaction of this nature, it would have been prudent for a purchaser to get at least three valuations before settling on one.

She undertook to provide in writing the basis of the Kshs. 350,000,000.00 indicative valuation. She further undertook to appear with Ms. Nelly Mbugua the Valuer to answer questions on the valuation. Nelly Mbugua declined to sign letters prepared in the course of the valuation until instructions were availed for conducting full valuation.

Institution of Surveyors of Kenya (ISK)

The Committee established the recent sales of similar properties in Runda estate to be approximately Kshs.80,000,000 for properties with total Built-up area of 4000 sq.ft and plot size 1.1 acres and Kshs.67,500,000 for properties with total built-up area of 4,600 sq.ft on a 0.5 acre piece of land.

When the Valuer was interviewed, the Institution observed as follows:-

- The Valuer did not have the basic data to carry out the valuation, such as the plot size, interest valued, property built up area et cetera.
- The Valuer could not support the market value returned in the valuation report.
- The view of the Institution was that the Valuer was negligent and therefore misled the client.

The market value of Kshs. 350,000,000.00 is high and subsequently the negotiated purchase price of Kshs. 310,000,000.00 is not reasonable.

M/s Johnston Muthama Holdings

Ms. Alice Muthama submitted as follows:-

Johnston Nduya Muthama Holdings Ltd sold the Judiciary the official residence for the Chief Justice. Ms. Alice Muthama, Managing Director, Johnston Nduya Muthama Holdings Ltd appeared before the Committee in the company of her Advocate and submitted as follows:-

In October 2012 the Judiciary advertised in both the Daily Nation and the Standard Newspapers Tender Number **JUD/13/2012-2013**, for the purchase of a furnished Residential House for the Honourable Chief Justice. At all material times of the Advertisement Johnson Nduya Muthama Holdings Limited (hereinafter referred to as "the Company"), was the registered proprietor of among others, Land Reference Numbers **7785/131** and **7785/317**, which were situated in Runda. The said properties had ready-to-occupy residential premises developed on them.

The Company as registered Proprietor submitted two separate tenders for each of the said Properties, wherein it quoted a purchase price of Kenya Shillings Four Hundred and Twenty Five Million (**Kshs.425,000,000/=**) only for each.

In the tender submitted for each respective Property, the Land and building was valued Kenya Shillings Four Hundred Million (**Kshs.400,000,000/=**), while the fittings, fixtures, furniture and electronics were valued at Kenya Shillings Twenty Five Million (**Kshs.25,000,000/=**) as more particularly specified in the tender documentation.

On 26th February 2013 the Company received from the Judiciary a notice of their intention to extend the tender period by an additional Sixty (**60**) days. The Company by a letter dated 27th February 2013 confirmed it had no objection to the extension.

On 18th March 2013, the Company received a Counter offer from the Judiciary, wherein the Judiciary requested the Company to reduce the quoted price for the CJ's Residence of Kshs.425 Million to Kshs.310 Million;

By a letter dated 20th March 2013, the Company formally advised the Judiciary that it would accept the revised price of Kshs.310 Million only if the sale was exclusive of the fittings, fixtures, furniture and electronics originally specified in the tender documents.

By an Agreement dated 30th April 2013 (hereinafter referred to as "the Original Agreement") and executed by both the Judiciary and the Company the parties agreed on the terms and conditions of the Sale of the CJ's Residence. Under the Original Agreement the CJ's Residence was purchased for Kshs.310,000,000.00 exclusive of the fittings, fixtures, furniture and electronics originally specified in the tender documents.

By a Supplemental Agreement dated 3rd June 2013 and executed by both the Judiciary and the Company, the parties varied the terms of the original agreement only in respect of possession and mode of payment. Pursuant to the executed Agreements the deposit, being Ten (10%) of the Purchase price, was paid on 24th May 2013.

On 4th June 2013, the Judiciary through its Advocates was formally informed that the Company was ready to complete the transaction under the executed Agreement, as all the Completion documents set out in the Original Agreement were ready.

On 4th July 2013, Judiciary through its agents, before payment of the balance of the Purchase price, and without the consent of the Company, entered the CJ's Residence under the guise of inspecting the same, and proceeded to damage the Property;

By a letter dated 5th July 2013, the Company complained, listed the extent of damage caused by the Judiciary on the Property and threatened to take legal action if the Judiciary did not formally apologize and admit responsibility. By letters dated 5th July 2013 and 8th July 2013 the Judiciary through its advocates accepted responsibility for the damage caused to the Property and tendered an apology for the incident.

By a letter dated 15th July 2013, the Judiciary through its Advocates confirmed that it was ready to complete. On 18th July 2013, the Judiciary confirmed through its Advocates that it had effected payment of the balance of the purchase price, being Ninety (90%) percent of the purchase price. Proof of payment was submitted by the Judiciary's Advocates on 22nd July 2013 to facilitate release of the Completion documents pursuant to the executed Agreements.

After receipt of the proof of payment, the Company released all the Completion documents set out in the Original Agreement to the Judiciary's Advocates on 22nd July 2013. Thereafter the Judiciary as beneficial owner took possession of the CJ's Residence. The Judiciary' has been in possession of the Residence since, which is now a period of One (1)year.

The whole purchase price of Kshs. three hundred and ten million (**KShs.310,000,000/=**) was paid into the Company's Account with Equity Bank as follows:-

1. The deposit of Kenya Shillings Thirty One Million (**Kshs. 31,000,000/=**), being Ten (**10%**) percent of the Purchase price was paid into the Account on 23rd May 2013; and
2. The balance of Kenya Shillings Two Hundred and Seventy Nine Million (**Kshs.279,000,000/=**), being Ninety (**90%**) percent of the Purchase price was paid into the Account on 30th July. 2013.

Equity Bank, by a Letter dated 15th May 2014, formally confirmed that the aforesaid payments were duly credited into the Company's Bank Account with them.

5.3.6 Lease of office space at Mayfair Court Centre

Mrs. Gladys Boss Shollei

She submitted as follows:-

The building was leased before she joined the Judiciary. Mrs. Lydia Achode was at that time The Registrar of the High Court. She was aware that the building was leased on recommendations of Commissioners Ahmednassir Abdullahi and Hon. Emily Ominde who were actively involved in the procurement process.

Two year rent was paid for the lease before occupation. There were no bills of quantity or designs for partitioning availed yet payment for the works was made. Commissioners designed their own bathrooms in their offices. The JSC Finance and Administration Committee was at the centre of this lease transaction and she could not take responsibility for the lease process and works at this building.

Mr. Benedict Omollo

He informed the Committee as follows:-

The lease was entered into and payments made before he joined the Judiciary. He was however aware that the Judiciary for some time paid rent for unoccupied premises. The delay in occupation was occasioned by fresh tendering process for partitioning works after the quotation for the works from the Ministry of Public Works was rejected.

Ms. Anne Amadi

She appeared before the committee and submitted as follows:-

The Judicial Service Commission (JSC) offices were initially situated at Anniversary Towers which had been leased by the Government and was being occupied by the JSC on temporary basis; this was in the year 2011 when the Commission had just been reconstituted. Subsequently, the Commission was notified to vacate the said offices as the same were to be occupied by the Judges and Magistrates Vetting Board.

Due to the short notice issued, JSC approved the leasing of office space for its operations and instructed the Chief Registrar to identify suitable office space for lease for approval by JSC. The Chief Registrar was under obligation to follow due process of law as an Accounting Officer while leasing premises.

Mrs. Emily Ominde

She submitted as follows:-

JSC was involved in the process of identifying the building. The Commission tasked the then Registrar of the High Court, Mrs. Lydia Achode to identify office space for Commissioners to move in. This was after JSC had been given notice to move out of Anniversary Towers by the Office of the President which was the landlord.

Mrs. Achode identified three buildings namely; Reinsurance Plaza, NHIF Building and Mayfair Centre. JSC instructed her and Commissioner Ahmed Nassir Abdullahi to inspect the three buildings and advise on which one to lease. Based on their advice, JSC settled on Mayfair Centre because it had more space compared to the others. The Commission then instructed then Registrar of the High Court, Mrs. Lydia Achode to finalize the lease process.

Mr. Ahmednassir Abdullahi

He submitted as follows:-

Mayfair Centre Building was once owned by the Judiciary. The late Justice Nyarangi once stayed there. When he died, the Kenya African National

Union (KANU) Political Party then in power kicked his family out of the building and allocated itself the building through proxies and or nominees.

The space occupied by JSC in the building is owned by Mr. Ambrose Rachier Advocate. The inordinate delay by JSC in occupying its office space in the building was attributed to delays in partitioning for which the Ministry of Public Works was responsible.

Hon. (Prof.) Christine Mango

She informed the Committee as follows:-

At one time, JSC did not have office space for its Commissioners and this adversely affected its operations. It was for this reason that the JSC leased office space at Mayfair Centre in Nairobi. A needs assessment was done before making a decision to lease the premises. Mrs. Gladys Shollei never showed JSC documentation for the Mayfair lease.

M/s Gimco Ltd

Mr. David Muiru of Gimco Ltd. submitted as follows:-

Gimco Ltd was the leasing agent of Mayfair Court in Upper Hill and had leased part of the premises to the Judicial Service Commission (JSC). Mr. David Muiru, Company Managing Director accompanied by Mr. Simon Warui, Director, Property Management appeared before the Committee on 22nd July, 2014 and submitted as follows:-

Gimco Ltd was appointed as the Letting and Managing Agent of Mayfair Centre on 1st June, 2011. The building is located on Ralph Bunche Road opposite Prof Nelson Awori House and Upper Hill Medical Centre off Ngong Road in Nairobi.

The company did not have idea as to how the Judiciary identified the building for lease but was approached by the Judiciary seeking to lease space on 5th floor measuring 3,600 square feet and parking space. A JSC officer by the name of Mr. Momanyi visited Gimco offices in this regard.

JSC took possession of the premises on 6th October 2011 after signing the handing-and-taking-over certificates and payment of Kshs.1,341,818.40 being rent for the first quarter of the lease. JSC staff moved into the premises on 22nd June, 2012. At this time, the office space was not partitioned and fitted. In January, 2013, JSC staff moved out of the premises for partitioning and fitting which was completed in June 2013 when they moved.

A lease agreement drawn by the firm of Rachier and Amolo Advocates was forwarded to JSC for execution but JSC had failed to execute it despite several reminders. The company was uncomfortable with JSC's refusal to execute the lease agreement which meant that the tenancy was controlled.

Hon. Lady Justice Lydia Achode

The witness denied having been in office at the time of procurement of these premises. She submitted that she left the office of Registrar of the High Court when the new Chief Registrar, Mrs. Gladys Shollei was sworn in on 22nd August 2011.

She however informed the Committee that the need for premises to house the JSC was arrived at after the Commission was asked to vacate its then offices, Anniversary Towers 22nd floor by then then Secretary to the Cabinet, Mr Francis Kimemia. These offices would later house the Judges and Magistrates Vetting Board. The witness added that no payments were ever made by the Judiciary or JSC towards these offices since the leases were already with Government at the time.

Hon Achode submitted that after the vacation notice, she tasked a Mr Allan Ojuki, an office superintendant who was in charge of all premises of the Judiciary to find alternative premises to house the JSC. Mr Ojuki initially identified space at Re-insurance plaza on Taifa Road after which Hon Achode visited the premises and wrote to the JSC informing them of this identification.

She also wrote to the ministry of Housing for valuation purposes. She thereafter tasked Mr Ojuki to look for more space to give the JSC a variety from which to pick. Mr Ojuki is thereafter reported to have identified two more premises at NHIF Building and Mayfair Court. Hon Achode submitted that she then wrote again to the JSC giving them these new options and her role ended there. She did not visit the two new premises.

5.3.7 Purchase of second hand furniture and fittings from PWC

Mrs. Gladys Boss Shollei

She submitted as follows:-

While in the process of leasing office space in Rahimtullah Towers, the Tender Committee noted furniture owned by the outgoing tenant which it deemed prudent economically for the Judiciary to purchase instead of acquiring and installing new ones.

The Tender Committee's decision was based on the fact that the process of demolishing the existing fittings and installing new ones would have taken not less than six (6) months during which the Judiciary would be paying rent without using the space for the intended purpose and would have cost the Judiciary more. Further, the furniture and fittings of the outgoing tenant were up to standard.

The furniture and fittings were valued by JKUAT Enterprise Services Ltd at a cost of Kshs.32M while that of ICT equipment at Kshs.21.9M. PWCs asking price was Kshs.59,000,000. The Judiciary paid Kshs.59,699,492.90 for the items.

Mr. Kakai Kissinger

He submitted as follows:-

While leasing office space at Rahimtullah Building, the Tender Committee noted existing furniture, fittings and IT equipment in the space to be leased, owned by the outgoing tenant, PWC.

The Committee was convinced that it would be economical, efficient and faster to procure the old furniture, fittings and IT equipment from PWC as opposed to procuring new ones. This option was further more appealing as it would prevent a scenario where the Judiciary leased office space without furniture, having learnt from past mistakes arising from the leasing of Mayfair Centre.

The decision to purchase the furniture, equipment and fittings was further based on the advice of JKUAT Enterprises Services Ltd, a consultant contracted by the Judiciary to value them. The Judiciary paid Kshs.35,000,000.00 for this transaction and did not make any loss.

The decision of the Tender Committee as explained above was based on Section 31(7) and 74(2) of the Public Procurement and Disposal Act, 2005 which state as follows:-

Section 31(7)

“Procurement entities shall use creative approaches such as design and build in order to enhance efficiency of the procurement process and project implementation”

Section 74(2)

“A procurement entity may use direct procurement if the following are satisfied:-

- (a) There is only one person who can supply the goods and the works or services being procured;*

(b) *There is no reasonable alternative or substitute for the goods, works and services.”*

Mr. Benedict Omollo

He said that the purchase was approved by the Chief Registrar, the Judicial Service Commission and the Judicial Tender Committee. The approval was granted on the basis that it would be economical and efficient to avoid paying rent while partitioning was being done. This was informed by the partitioning of Mayfair Centre for occupation Commissioners which took two years while rent was being paid.

Mr. Martin Okwatta

He submitted as follows:-

When the Judiciary was leasing the 4th to 9th Floors of Rahimtullah Towers, the tenant, Ms. Price Water House Coopers (PWC) had not vacated the premises and approached the Judiciary to purchase its furniture and fittings rather than remove them and leave an open space for partitioning again.

The Judiciary decided to purchase the furniture and fittings on grounds that there would be enormous savings in term of costs and time that would be taken to procure and complete the service. The process of direct procurement was thus commenced in accordance with Section 29(3) and 74(2) of the Public Procurement and Disposal Act, 2005.

Section 29(2) and (3) of the Public Procurement and Disposal Act, 2005 provides that:-

“A procuring entity may use alternative procurement procedure only if that procedure is allowed under Part IV and if approved by the Tender Committee prior to its use”.

The Judiciary Tender Committee approved the use of direct procurement which was followed by negotiations and approval of the negotiations pursuant to Regulation 10(2)(1) of the Act.

Section 74 of the Public Procurement and Disposal Act, 2005, provides that an entity may use direct procurement as allowed under sub section (2) or (3). Requirements of this provision were satisfied in the sense that PWC was the only entity capable of supplying the office furniture and fittings.

The other option was to demolish the partitions and buy new furniture. Partitioning and purchasing of the new furniture and fittings would have

undergone procurement process and this would take long. While the procurement process was ongoing, the Judiciary would be paying rent for the premises not occupied.

Negotiations with PWC were done by a Committee appointed by the Accounting Officer. PWC offered the assets at Kshs.59,699,492.90 down from Kshs.64,462,441. The assets included fittings, work stations, ICT structured cabling, ICT equipment and furniture. To ensure value for money, the Judiciary appointed JKUAT Enterprises Services Ltd, a public institution to carry out a valuation of the assets the Judiciary was purchasing from PWC.

The Judiciary did not make any loss from the transaction with PWC. The decision to buy the assets from PWC was in line with Section 31(7) of the Public Procurement and Disposal Act, 2005 which requires procuring entities to use creative approaches to enhance efficiency of the procurement process and project implementation. Moving to Rahimtullah was a project and the Judiciary acted prudently with due diligence in the whole process.

Ms. Anne Amadi

She informed the Committee that the Judiciary procured used furniture and fittings at the Rahimtulla Towers from PWC at a total cost of Kshs.59,699,492. Due process of law was not followed.

Mr. Ahmednassir Abdullahi

He submitted as follows:-

The purchase of second hand furniture was not approved by JSC. In any event, JSC would not have approved the purchase of second hand furniture had Shollei sought approval. The purchase price of the second hand furniture from PricewaterhouseCoopers (PWC) at a cost of Kshs.36,000,000 was a rip off. From his own assessment, the purchase for that furniture should not have exceeded Kshs.200,000.00.

JKUAT Enterprises Services Ltd.

The Committee was informed that the Judiciary purchased second hand furniture and fittings from PWC. JKUATES Ltd. was contracted by the Judiciary to value the items and valued them at Kshs.32,550,000. Mr. Stephen Mureithi valued the fittings while Nelly Mbugua valued the furniture. Instructions from the Judiciary were initially verbal but were later followed by email communication.

PriceWaterHouseCoopers

The Committee was informed as follows:-

PricewaterhouseCoopers Limited was a tenant at Rahimtulla Towers, Upper Hill until mid-February 2013 after which they moved to new premises at PwC Tower. For most of the period of their tenancy at Rahimtulla, they occupied half of 4th floor and the entire 5th to 9th floors.

As per the terms of the lease between the Company and the landlord, they were under an obligation, prior to surrendering the office space back to the landlord, to restore the premises to the same condition as at the date of commencement of the lease.

In October 2012, the Judiciary advertised a tender seeking office spaces which the Rahimtulla Tower Management Company, CBRE, responded to in light of PWC's impending move out of Rahimtulla Tower. The Chief Registrar of the Judiciary subsequently notified CBRE that their bid had been successful and contacted PWC to view the premises. Following the viewing of the premises, the Judiciary expressed interest to them in the furniture, fittings and the network.

In October 2012, PWC engaged CBRE to value the movable assets in its offices such as cabinets, chairs, desks, pedestals, shelving units and some of the partitioning. PWC's intention was to sell these movable assets to interested buyers. CBRE valued these movable assets at a market value of Kshs.21, 492,000.

Subsequent to the expression of interest by the Judiciary in leasing the space with the office fit-outs and the network, PWC engaged in direct negotiations with the Judiciary to come to an agreement on the purchase price of the furniture and fittings.

PWC's valuation factored in the intangible value that resulted in the space being in its current form such as engineering consultancies, project management and design fees.

It also factored in assets not captured in the CBRE valuation such as existing mechanical ventilation, air conditioning equipment and light fixtures.

After discussions with Judiciary, they came to an agreement that the Judiciary would purchase the office fit outs at Kshs.30,000,000 which included a discount of Kshs.4,766,998.60 and was exclusive of a VAT amount of Kshs.1,918,316.26. PWC said this was a fair value.

As indicated above, the Judiciary had also expressed interest in the network infrastructure and expressed a desire in an upgraded network that would be compatible with its existing infrastructure.

As PwC already had an existing contract with Computech (a specialist in network infrastructure) it, after consultation with JSC, engaged Computech to upgrade the network at Rahimtulla Tower at the same favorable rates that had already been extended for similar network at new office premises at PwC Tower.

The quoted cost for upgrading the network of USD 347,362.49 (Kshs.29,699,492.90) together with the agreed on price of the office fit-outs then formed the total sale value of Kshs.59,699, 492.90 as indicated in the purchase and sale agreement dated 25 June 2013.

The Judiciary made first payment on 4 July 2013 of Kshs. 29,699,492.90 which we applied to the outstanding amount for the office fit-outs. There were delays in payment of the balance and the outstanding amount was finally settled by the Judiciary on 11 February 2014 in two instalments of Kshs.18,644,087.90 and USD 105,074.

In the time period preceding the settlement of this balance, Computech had completed the cabling section of the network update project but suspended completion of the project pending settlement of the outstanding amount by the Judiciary. Upon receiving appropriate payment, Computech delivered the outstanding equipment and completed the project.

PwC was not interviewed by the Auditor General while conducting the audit which was in contravention of Article 47 (1) of the Constitution which provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

5.3.8 Consultancy Services to the Judiciary by JKUAT Enterprises Services Ltd

Mrs. Gladys Boss Shollei

She submitted as follows:-

Contracts were signed with JKUATES Ltd. and payment conditions were in accordance with the provisions of the Architects and Quantity Surveyors Act, Cap 525. The payments were made as per the provisions of Part 3 of the Fourth Schedule of cap 525 which provides for payment of up to 75% for completion of a detailed design incorporating the design work done by

consultants and for preparing production drawings and information necessary for making Bills of Quantities.

No advance payments were made to JKUATES Ltd. and payments were made against specific deliverables in the consultancy contract.

Mr. Martin Okwatta

He submitted as follows:-

The Judiciary signed consultancy contracts with JKUAT Enterprises Services Ltd for consultancy services on works it was undertaking. Payment conditions were in accordance with the provisions of Part 3 of the Fourth Schedule of the Architects and Quantity Surveyors Act, Cap 525. This Part provides for payment of up to 75% for completion of a detailed design incorporating the design work done by consultants and for preparing production drawings and information necessary for making Bills of Quantities.

The fees JKUAT Enterprises Services Ltd. claimed with regard to the proposed prefabricated court buildings were for services that had been delivered in preparation of the designs, tender documents and completion of the tender process. It was not an advance payment.

The disbursement and schedule of payment for the consultancy fees due to JKUAT Enterprises Services Ltd. for Design Consultancy and Supervision of the Proposed Prefabricated Law Courts was stipulated in the consultancy contract.

The schedule had three stages of disbursement of the fees and the two initial phases had a proportion of 75% of the total fees due. Below is the relevant extract from the agreement between the Judiciary and JKUAT Enterprises Services Ltd.

(a) Schedule of Payments

The schedule of payments is specified below

- (i) Thirty Five Percent (35%) of the consultancy fee payable upon completion of the Phase I of the services set out in the Terms of Reference and Scope of Services.*
- (ii) Forty Percent (40%) of the consultancy fee is payable upon completion of Phase II of the services set out in the Terms of Reference and Scope of Services.*
- (iii) The balance of Twenty Five Percent (25%) is to be paid on a prorata basis as a percentage of the claim*

certified by the consultant to be due to the contractor making the claim in respect of the particular project.

The two initial phases were for the provision of the design and consultancy services that culminates at the completion of the tender stage and this has been replicated here below from the consultancy contract between the Judiciary and JKUATES Ltd.

1. Scope

The scope of the services being offered shall include:-

Phase I

- a. Preparation and completion of the outline proposals in respect of each of the projects which shall incorporate a detailed presentation to the client.*
- b. Preparation and completion of scheme designs upon approval by the client in respect to each of the projects. The scheme designs shall incorporate small scale working drawings prepared in collaboration with other consultants and which indicate spatial arrangements and appearance.*
- c. Reporting to the client on the scheme and presenting an assessment of the projects' cost.*

Phase II

- a. Completion of the detailed design which incorporates the design work done by all consultants in respect to each of the projects.*
- b. Preparation of information necessary for preparation of the Bills of Quantities.*
- c. Preparation and completing the Bill of quantities and all the relevant tender documentation;*
- d. Obtaining, analyzing and advising on tenders and completion of the tender process.*

This was therefore not an advance payment but payment for consultancy services up to the completion of the tender process.

The payment for design services in the first two phases was an obligation for the consultancy services rendered upto that stage. This mode of payment for design services was enshrined in the Architects & Quantity Surveyors Act CAP 525 of the Laws of Kenya and by the Ministry of Works Standard Conditions of Engagement for Architects & Quantity Surveyors.

There seems to have been a misunderstanding on what was paid to JKUAT Enterprises Services Ltd probably because of the narrative in the payment voucher that was misleading. According to invoice No. 23688 submitted by JKUATES Ltd., the payment was to be as below:-

Contract sum	-	Kshs.951,000,000
Agreed Fees at 10%	-	Kshs.95,100,000
Fees at this stage at 75%	-	Kshs.71,325,000
Add VAT	-	Kshs.11,412,000.00
Fees Due	-	Kshs.82,737,000.00

The Consultancy fee as per the contract was 10% exclusive of VAT. The Kshs.82,737,000 paid was therefore not advance payment but payment for services already delivered as per the consultancy contract and also as provided for in the Architects & Quantity Surveyors Act CAP 525 of the Laws of Kenya and by the Ministry of Works Standard Conditions of Engagement for Architects & Quantity Surveyors. The payment was not 10% of the actual contract price but was 75% of the agreed fees of 10%.

The balance of twenty five percent (25%) was to be paid on a prorata basis as a percentage of the claim certified by the consultant to be due to the contractor making the claim in respect of the particular project.

On the issue of overpayment, the invoice submitted by JKUAT Enterprises was on the basis of design services for a total of eleven (11) sites. However, the Judiciary Tender Committee only approved seven (7) sites to proceed to construction because of budgetary constraints.

According to JKUAT Enterprises Services Ltd., it was the client's obligation to pay irrespective of whether the client proceeds to realize any or all the proposed projects. They would however not charge the supervision component (25% of the 10% Consultancy fee) for the sites that did not proceed to construction.

The possibility of recovering the stage fee of 75% of the 10% for the four (4) sites that did not proceed to construction on any monies still owed to JKUATES Ltd. should however be considered and discussed with JKUAT and an amicable solution arrived at. Depending on the agreement, any overpayment should be recovered.

The Committee noted that even though the designs were completed, they were duplication and were homogenous, and as such the payment was exorbitant. Due diligence to safeguard public funds was not undertaken.

Ms. Anne Amadi

She submitted as follows:-

According to available records, JKUAT Enterprises Services Ltd. was overpaid to the tune of 32,446,402.00 for the provision of consultancy services to the Judiciary. There was no due process in procuring of their services.

JKUATES Ltd. is a limited liability company, not a Government agency as indicated in the audit report. The company had also failed to meet its obligations in spite of the advance payments made by the Judiciary in contravention of the law.

She had scheduled a meeting with JKUAT Enterprises Services Ltd. to discuss the issue of over payment and non-completion of contracts. The meeting never materialized.

Mr. Ahmednassir Abdullahi

He submitted as follows:-

The Ministry of Public Works had been providing works for consultancy services to JSC and the Judiciary. However, JSC and Judiciary became dissatisfied with the services provided by the Ministry and tasked the Chief Registrar to source for alternative service providers to henceforth carry out all the works. The Chief Registrar single sourced JKUAT Enterprises Services Ltd. JSC was not satisfied with the Services of JKUAT Enterprises Services Ltd. and furthermore, the Company charged expensively.

Ms. Winfred Kiragu, JKUATES Ltd.

She appeared before the committee and submitted as follows:-

Mrs. Winfred Kiragu, Managing Director, JKUATES Ltd led a team from the company and submitted as follows:-

JKUATES Ltd. was a private company 100% owned by the JKUAT and its main agenda was to use the University's intellectual resources to provide consultancy services to the public. Among the areas the company dealt with were; architecture, agriculture, Information and Communications Technology (ICT), engineering and enterprise development.

All company administrative staff were employed by the University whereas professionals were contracted on need basis. Though the company has an opportunity of contracting both private and public professionals, it prefers

contracting University lecturers. All proceeds for work done go to the University after paying to contractors.

Among the consultancy works done by the company for the Judicial Service Commission (JSC) and the Judiciary involved:-

Among the consultancy works done by the company for the Judicial Service Commission (JSC) and the Judiciary involved:-

- a) Completion of court buildings in Kisumu and Narok;
- b) Prefabricated court houses built in eleven (11) stations countrywide;
- c) Designing of interior fit outs for Court of Appeal at Elgon Place;
- d) Painting works at the Judicial Training Institute;
- e) Partitioning of Mayfair Building for JSC offices;
- f) Designing of the press centre at Milimani Commercial Courts.

The works for completion of court houses in Kisumu had been finalized and the project would be handed over to the Judiciary in August, 2014. Works for the construction of the prefabricated buildings had recorded slow progress but would nonetheless be completed by end of September, 2014 and handed over to the Judiciary.

The company was contracted by the Judiciary through direct procurement. This was because the company was owned by JKUAT which was a wholly-owned Government entity same as the Judiciary. The procurement law provided for direct procurement of goods and services between Government entities. In addition to this, the institution charged cheaper than the open market players.

Align Architects is a sole proprietorship entity registered under the Business Names Act with Mr. S. Kigundu as the sole proprietor. The entity comprised JKUAT lecturers and filed own returns. Whenever JKUATES Ltd. got jobs, it would secure the services of the relevant firm of professionals like Align Architects whom it would pay 95% of the contract sum and retain 5% for its fees.

JKUATES Ltd. signed contracts with the Judiciary for the development of eleven (11) designs for prefabricated court houses to be constructed in eleven (11) stations country wide. Though the company invoiced for and was paid by the Judiciary Kshs.82,370,000.00 for the eleven (11) designs, the Judiciary used only seven (7) of the designs in building seven (7) courts.

The Kshs.32,446,402.00 alleged by the Auditor General to have been overpaid to the company related to the four (4) designs which were not put

into use by the Judiciary on account of financial constraints. There was therefore no overpayment as reported by the Auditor General.

The Auditor General was satisfied with the response. The witness was however to provide contract documents especially Fee Notes for verification but they did not do so.

5.3.9 Prefabricated court houses

Mrs. Gladys Boss Shollei

She submitted as follows:-

The decision to construct prefabricated court houses was made by the JSC and approved by Parliament. The decision was aimed at realizing faster devolution of court services in the forty seven (47) counties since it was economical and faster to construct the prefabricated court houses considering that the need for effective and efficient Judicial systems in the country was urgent.

The construction of Mavoko Law Courts was part of the lot that was awarded to Timsales Ltd. However, due to the futile efforts to get land allocated to the Judiciary, the contract site was varied and moved to Runyenjes Law Courts.

This was effected by the Judiciary Tender Committee, Min No. JTC 20/2012-2013 held on 2nd May 2013. The variation of site did not have a financial implication on the overall project cost. The project was ongoing and the status of completion as per the Project Manager's report:

The variation was approved by the Tender Committee and copies of the Minutes of the Committee's sitting to that effect are annexed. (See Annex No. 4)

In Bomet, the erection of a prefabricated court house was occasioned by two eviction orders from the landlord, i.e. the Ministry of Labour and now the County Government of Bomet which had earmarked the premises for Huduma Citizens Services by the County Commissioner.

A new eviction notice was issued to the court to move out by 31st June, 2014. Therefore the construction of the prefabricated structure was to provide an immediate court and services to members of the public, pending the construction and design of the High Court.

Though the construction of a permanent building was ongoing, the Judiciary found it necessary to also put up a prefabricated court building.

Construction of the permanent building was going to take long and the construction of a prefabricated building which was faster was for exigency and convenience thereby reducing congestion in the courts.

The contract for the construction of the permanent building was awarded in November, 2013 while that for the prefabricated building was awarded in March, 2014. Timsales Ltd and Economic Housing Group Ltd were contractors for the prefabricated court houses.

Advance payment to contractors was standard practice in the construction industry as it enables contractors mobilize on the ground. The condition to pay advance payment is borrowed directly from the Public Procurement Oversight Authority's standard bid document for building & associated civil works which Government entities are required by law to use and is widely used in public sector projects including the Ministry of Public Works (MOPW) who have similar conditions in their Bills of Quantities. However, any advance payments must be properly secured through guarantees.

Section 29 (4) of the Public Procurement and Disposal Act of 2005 (PPOA) provides that procuring entities **SHALL** use such standard tender documents as may be prescribed, Section 5 (1) of the same Act further provides that where there is conflict between the Act or the regulations made under it and any other act or regulations on matters relating to procurement and disposal, the Public Procurement and Disposal Act of 2005 and or regulations made there under shall prevail.

The advance payment would be recovered progressively as per formula in the PPOA standard bid document Clause 23.7 The advance payment is however paid against a Bank Guarantee of a similar amount thus reducing the risk of losing the money to zero.

Mr. Kakai Kissinger

He submitted as follows:-

The Judiciary had set up Mavoko Law Court in Athi River, Machakos County and posted a Magistrate to be dealing with cases relating to over-loading by transporters. Owing to lack of a proper building to house the court, the Magistrate operated from a container and this made his work difficult. Oblivious of the situation, the Mavoko Municipal Council promised to allocate land to the Judiciary for the construction of a proper court.

The site for the court construction was agreed on during a meeting between the then Minister for Justice, National Cohesion and Constitutional Affairs, Hon. Eugene Wamalwa, top Judiciary officials led by the Chief Justice and Mavoko Municipal Council officials.

The Judiciary then advertised a tender for the construction of a prefabricated court. In view of the fact that the land to be allocated belonged to Kenya Meat Commission (KMC), the Judiciary instructed JKUAT Enterprises Services Ltd to act on its behalf in ensuring the fast tracking of allocation of the land.

The land was not allocated and this resulted in shifting of the project to Runyenjes, Embu County. This was ratified by the Judiciary Tender Committee Minute No. JTC 20/2012-2013 held on 2nd May, 2013. The shifting of the project to Embu did not have any financial implication on the overall project cost.

The Judiciary did not have title deeds for most land on which its courts are situated and the process of acquiring the title deeds was ongoing. It was unfortunate that the Judiciary did not have title deeds for lands on which the Supreme Court and Milimani Commercial Court Buildings in Nairobi are situated.

In addition, the Judiciary not long ago constructed a building in Kisumu on land it did not own. Against this backdrop, he had written to all Courts to take necessary steps to ensure they have title deeds in respect of lands they are situated.

The Bomet Law Courts were housed by the County Government of Bomet. The County Government issued a notice to the Judiciary to vacate the premises for occupation by Huduma Citizen Services. This resulted in the Judiciary awarding a tender for construction of a prefabricated court the process of which would be faster and cheaper.

Mr. Benedict Omolo

He submitted as follows:-

That the decision to construct prefabricated houses was made by JSC and was intended to fast track construction so as to ensure service delivery was not adversely affected. It was also intended to fast track devolution of courts to the counties.

Mr. Martin Okwatta

He informed the Committee that:-

The proposed construction of a pre-fabricated court building at Mavoko Law Court was awarded to Timsales Ltd. One contract was signed with the Company for construction of pre-fabricated court buildings in Tawa, Mavoko

and Garsen. However, due to unavailability of land allocated to the Judiciary in Mavoko, the contract site was varied to Runyenjes Law Courts.

Runyenjes was one of the four (4) sites that did not proceed to construction stage during the initial award by the Tender Committee because of inadequate funding. The variation was approved by the Judiciary Tender Committee at its sitting of 2nd May 2013. The variation had no financial implication on the overall project cost. Project implementation was still ongoing.

Ms. Anne Amadi

She submitted as follows:-

The erection of Mavoko Law Court was part of the lot that was awarded to Timsales Ltd. Records available confirm that the sum of 46,458,069.00 was paid in advance to the contractor, Ms. Timsales Ltd. Due to unavailability of land allocated to the Judiciary, the contract was varied by location and assigned to Runyenjes Law Courts.

This was ratified by the Judiciary Tender Committee, Min No. JTC 20/2012-2013 held on 2nd May 2011 without recourse to the provisions of the Public Procurement and Disposal Act 2005 and Regulations on variation of contracts.

The Judiciary should not have advertised and awarded a tender for construction of a court without first ascertaining the availability of land. Due diligence requires this as a minimum.

The Judiciary Tender Committee (JTC 10/2012-14 of 27 November 2012) awarded a contract to construct a prefabricated court house at Bomet. This was envisioned as a quick solution to provide shelter for the court when the court faced eviction from the premises it was occupying. The idea was to have a simple facility for use while the construction of the High Court progresses.

The construction of the High Court was in line with the Articles 6(3) and 48 of the Constitution and Section 8(1), (1) of the Judicial Service Act, 2011, which provides that the Chief Registrar shall, in particular:-

“Ensure the efficient devolution of the administrative units to county levels, including a High Court Division in each County”.

The new High Court project will take into consideration the available space of the prefabs and scale down the requirements of the new building. The costs were however being reviewed.

M/s Timsales Ltd.

The Company was contracted by the Judiciary to build three (3) prefabricated court houses at Tawa, Mavoko and Garsen each at a cost of Kshs.99,959,218.00 inclusive Value Added Tax (VAT) giving a total of KShs. 299,877,654.00. Mr. Sarbjit Sai, the company Managing Director appeared before the Committee and submitted as follows:-

The company was awarded the tender on 8th January 2013 pursuant to all terms & conditions as per the submitted tender documents which included a 50% advance payment against Bank Guarantee.

On 17th January 2014, the company held a meeting with the Judiciary where it noted that substantial amount of work (60%) in prefabricated construction is done in the workshop before transportation and installation on site. In view of this, it was agreed that the Judiciary enhances the percentage of advance payment to 50% and this would require to be paid against an advance payment bank guarantee of similar value to cover the interest of the Judiciary. This was a provision in the contract agreement.

On 21st January 2013, parties signed the contract with advance payment clause. On 4th February 2013, the company submitted the advance payment Bank Guarantee for Kshs.150,000,000.00. The Judiciary subsequently made the advance payment in three parts as follows:-

On 27 th March 2013	- Kshs.110,232,329.00
On 26 th August 2013	- Kshs. 12,670,382.70
<u>On 18th February 2014</u>	<u>- Kshs.3,801,114.00</u>
TOTAL	- Kshs.126,703,825.70

The advance payment was justified. The Company had also received 50% advance payment for projects undertaken for the following:-

- (a) Kenya Human Right Commission;
- (b) United Nation High Commission of Refugees – 3 units in DAADAB – KENYA;
- (c) United Nation High Commission of Refugees – Extension of the eligibility Center;
- (d) Ministry of Environment & Natural Resources

Physical verification done in March 2014 revealed that the construction of pre-fabricated court houses was on-going with progress noted apart from Mavoko where the Judiciary did not have land for the project. The project

was eventually shifted to Runyenjes. The Company commenced the project on 13th May 2014 and was at the time of appearance 75% complete. The project was delayed for the following reasons:-

- (a) Delay in payments;
- (b) Removal of KPLC High Voltage Cables;
- (c) Ongoing court sessions;
- (d) Insufficient space at the site making the work to be split in two parts;
- (e) Delay in necessary site approvals.

The ongoing works as Tawa as at the time of appearance were 85% complete while Garsen was 75%. The company had undertaken the works over and above the payments made by the Judiciary. Meetings had been held and correspondences exchanged with the Judiciary making assurances that it would pay but in vain. The company nonetheless remained optimistic that the Judiciary would pay up.

As at 15th July, 2014, the company informed the Judiciary that it was committed to completing the remaining works within the agreed time upon receiving all the outstanding payments in full.

5.3.10 Irregular payment to Kenya Prisons Services

Mrs. Gladys Boss Shollei

She submitted as follows:-

The Judiciary procured equipment mostly furniture from the Kenya Prisons Service for its new court rooms countrywide. The applicable method of procurement here was direct procurement since Kenya Prisons was a Government entity.

The Judiciary entered into a contract with Kenya Prisons Service in the financial year 2011/2012 for delivery of furniture for various court stations. This furniture was delivered as requested to the earmarked court stations as per the delivery notes.

Mr. Kakai Kissinger

He informed the Committee that:-

The Judiciary had contracted the Kenya Prisons Service to be its sole supplier of furniture. Towards this end, the Judiciary paid the Service Kshs.59, 999,840.00 in advance to be supplying furniture on a need basis. The contract with the Service was executed during the time of the former

Chief Registrar who was against procuring furniture from shops. *(Did not put on record which Registrar)*

Mr. Benedict Omolo

He submitted as follows:-

The payment was for the supply of furniture and was made before he joined the Judiciary. He however followed up on the matter and confirmed that the Judiciary received the furniture.

5.3.11 Leases from Agricultural Finance Corporation (AFC)

Mrs. Gladys Boss Shollei

She submitted as follows:-

The Judiciary leased several buildings as court houses from the Agricultural Finance Corporation (AFC) because of inadequate space for court facilities. Apparently, at the time of the audit, the lease agreements were at the Lands Office for registration and that is why the Auditor General could not access them. Otherwise Judiciary leases with AFC were duly executed.

The Judiciary signed 11 leases out of which only two in Kakamega and Meru were operational while the rest were later terminated. Since AFC was a state corporation, the leases between the Judiciary and the Corporation were Government to Government and the Direct Procurement method was applied while entering into the lease agreements.

Ms. Anne Amadi

The Committee heard that:-

Majority of the leased premises are not occupied. For this reason, the Judiciary had terminated the tenancy agreements.

Agricultural Finance Corporation

Mr. Lucas Meso, Managing Director, Agricultural Finance Corporation appeared before the Committee on 9th July, 2014 and informed the Committee as follows:-

The Judiciary approached AFC with a view to leasing its premises in various parts of the country. The approach first came from Meru Courts in the year 2012 and was in writing. It was followed up by phone calls from the former Chief Registrar, Mrs. Gladys Shollei to the Managing Director of AFC.

In the course of discussions, she inquired whether the Corporation had more premises country-wide for lease by the Judiciary. The Corporation confirmed that it had 18 premises countrywide available for lease.

Judiciary officers in the Company of Architect John Njue, a private Consultant appointed by the Judiciary inspected AFC's premises in Meru, Kakamega, Turbo, Nakuru, Kitale, Kimilili, Eldama Ravine, Kericho, Kabarnet, Nyahururu and Ngong' and confirmed its desire to lease the premises.

In Kakamega, the Chief Magistrate and the Presiding Judge, Justice Said Chitambwe, were involved in the physical inspection of the premises. The Judge even selected his office in the building. After the inspection, the Corporation and the Judiciary embarked on the process of preparing leases.

Out of the twelve leases presented to the Judiciary for execution, the Judiciary executed only five (5) leases and returned them to AFC for registration. The Kakamega lease as presented to the Committee was among the five (5) claimed to have been duly executed but it was not. It was not dated, nor was it witnessed. He promised to provide a copy of the duly executed lease after the meeting.

He admitted that the entire lease process was not properly done. Some of the land on which the Corporation's buildings were situated did not have title deeds and that any leases ensuing there from could not be registered by the Lands office. This had indeed exposed the Corporation. The Meru lease was registered because the land had a title deed. He could not immediately confirm which leases had title deeds.

The Judiciary had occupied two of the eleven (11) leases that were to be entered into with the Corporation. These were Meru and Kakamega. They were in the process of occupying the other buildings before the process was stopped.

AFC was a Government institution same as the Judiciary. The leases in question were Government to Government and did not need to be advertized.

Despite the Judiciary executing some leases and declining others, it failed to revoke all the letters of offer. This meant that AFC could not lease the premises to other potential tenants and left AFC in an awkward position.

The Corporation had received Kshs 10,571,031.00 in form of rent, deposit and administration costs from the leases in Kakamega (Kshs.3,654,763.00), Meru (Kshs.4,215,993.00), Nakuru (Kshs. 1,827,491.00) and Turbo (Kshs.872,784.00).

On 7th March, 2014 the Corporation received a letter from the Chief Registrar confirming that the Judiciary would wish to terminate all the intended leases. The Corporation wrote back vide letter dated 12th March, 2014 requesting the Tenant to clear rent arrears in respect ten (10) leased premises amounting to Kshs. 48,306,590.00 as at February, 2014, so that the matter could be put to rest.

The Judiciary had not cleared the arrears by the time of appearance before the Committee. It should be noted that the Ngong' lease process stalled and there was no lease intention over it.

Despite indication by the Chief Registrar of terminating the leases, the Judiciary was still occupying the Kakamega premises and recently housed there new officers.

The Corporation entered into these lease agreements with the Judiciary based on mutual understanding and on the principle of a willing tenant and willing landlord. The Judiciary being an arm of the Government, the Corporation had no doubt that it would honour its obligations as a tenant.

The Corporation has made efforts to have this outstanding rent arrears paid but they are yet to receive any payment. Salient to note is the fact their continued failure to remit the outstanding amounts denies the Corporation the much needed funds for agricultural development in the Country.

5.4 HUMAN RESOURCE MANAGEMENT

5.4.1 Payment of irregular sitting allowances and salary advances

Mrs. Gladys Boss Shollei

She submitted as follows:-

Ordinarily, the Chief Justice would call for all JSC meetings. With time, Commissioners would however hold sub-committee meetings without knowledge of the Chief Justice and the Chief Registrar. These and others were irregularly convened meetings and the Commissioners would bully their way to be paid.

There were instances where Commissioners would walk into Kenyatta International Convention Centre (KICC) to transact personal businesses and thereafter claim for payment of sitting allowances which would be paid.

The payments were authorized by Mrs. Wilfrida Mokaya, JSC Registrar. Though she was allowed to delegate her Accounting Officer responsibilities at the Commission to the JSC Registrar, the buck nonetheless stopped with

her (Mrs. Shollei). She regretted why she had delegated authority to the JSC Registrar.

She had written to the Chief Justice on the irregular claim of allowances by Commissioners in vain. The Director of Finance also wrote to the Chief Justice on the same subject in vain.

At that juncture, she felt she was a lame duck Accounting Officer. She only sat in full JSC sittings and not all JSC sub-Committee sittings. She admitted that non-Commissioners attended JSC and its sub-committee sittings and drew same allowances with Commissioners. She took responsibility for this irregularity.

The allowances paid by JSC – Kshs 80,000.00 per sitting were set by the Public Service Commission (PSC). These allowances were on the higher side and ought to be reviewed by the Salaries and Remuneration Commission.

Although she was opposed to the sitting allowances, she still received them. *(She was to avail documentary evidence on how many sittings she attended and allowances paid. She was also to avail documents from PSC authorizing the Kshs 80,000.00 sitting allowances).*

The allowances were budgeted for and she appeared before the Parliamentary Budget and Appropriations Committee to have the Judiciary's budget approved. She said she had to have the allowances approved to avoid friction with JSC Commissioners in order to keep her job.

At one point, she worked under threats from JSC Commissioners who wanted things done in a particular way in their favor irrespective of the law. The Head of Procurement was threatened with sacking after questioning a decision of the Finance and Administration Committee chaired by Ahmed Nassir Abdullahi Advocate. The Committee often interfered with her work.

JSC secretariat was established under the JSC Act and conducted own operations without reference to her. In fact Treasury had assigned JSC its own vote distinct from the Judiciary's. This was wrong and it was necessary that Parliament reviews the JSC Act.

She learnt of irregular payment of sitting allowances in 2013 when filling annual returns. Her services were terminated shortly thereafter.

Payment of salary advances in the Judiciary was a common practice. However, regulations governing the facility provided that the amount advanced should be recovered within one (1) month from the date of the advance. She admitted having taken three (3) months' salary advance which was normal in Judicial Service regulations.

The payroll system (IPPD) at the time did not have a defined description for sitting allowances. However there was a provision for a payment named Extra Duty Allowance.

Therefore allowances earned by the staff for sitting in various committees i.e. Procurement, Tender and Human Resource Committees as well as the Interviewing Panels were lumped and paid out as extra duty allowance at the end of the month through the payroll system as recommended by the Ethics and Anti-Corruption Commission (EACC) which was called in to conduct payroll audit.

In some months due to the delay by officers in submitting documents for payment, the sitting allowance payments would be pushed to the following month and paid as arrears.

Previously, sitting allowances were paid through the manual voucher system. This system was prone to abuse and lacked transparency. The Judiciary also procured a new payroll system in December 2013. The system was designed to address the recommendations made by the EACC audit.

She admitted that she owed the Judiciary Kshs 1,500,000.00 and not Kshs.3,048,298.00 as reported by the Auditor General. The outstanding amount was in imprests. She had however been locked out of office making it impossible to account. She however stated that if allowed access to documents locked in her office when she was dismissed, then she would account for the outstanding imprests.

Mr. Kakai Kissinger

He submitted as follows:-

By virtue of his position as Deputy Chief Registrar, he chaired the Tender, Human Resource Management and at times ad hoc Committees and would earn sitting allowances as approved by the Accounting Officer who was the Chief Registrar of Judiciary. He did not receive irregular allowances and did not know under what circumstances the Chief Registrar authorized payment of irregular allowances.

JSC Commissioners drew sitting allowances at the rate of Kshs 80,000.00 per sitting attended. He was not aware of irregular payment of sitting allowances to the Commissioners. He read about this in the audit report which is the subject of the Committee's inquiry. Furthermore, he never attended any sitting of the Commission.

Mr. Benedict Omollo

He told the Committee that:-

Whereas the remuneration and benefits of JSC Commissioners was payable from the Consolidated Fund, he found a practice at Judiciary where the same were paid from the Judiciary Fund Account and later recovered from the Consolidated Fund.

These payments amounted to advances since they were outstanding in the Judiciary Fund Account and were in respect of commuted leave for Judges. The payments had to be effected because the Judges demanded them within the financial year whereas it would have taken long to withdraw the funds from the Consolidated Fund because of long procedures involved.

This was an irregular practice. He raised the matter at a JSC meeting but it was deferred.

The Judges later received their pay from the Consolidated Fund and he was directed by the Chief Justice to ensure the Judges refund the monies earlier paid. The Chief Justice instructed him to give them adequate notice before commencing recoveries from their salaries and that he was to notify him (CJ) of any reluctance by a Judge to repay.

Commissioners were paid a sitting allowance of Kshs. 80,000.00 per sitting. Payment was based on signed meeting attendance sheets. There was no requirement for minutes. He raised concern about the number of meetings held by the Commission and its Committees in vain.

Commissioner Christine Mango for example attended two meetings with the President elect, Hon. Uhuru Kenyatta and the outgoing President Hon. Mwai Kibaki and was paid Kshs 80,000.00 per meeting. These meetings were not qualified for the allowances. Instructions to pay her came from the Registrar, JSC.

Non JSC members who attended JSC sittings were also paid Kshs.80,000.00 per sitting. He attended JSC sittings and received Kshs.80,000.00. Later JSC resolved that staff attending its meetings be paid Kshs.10,000.00 per sitting.

This was after a JSC Committee chaired by Dr. Smokin Wanjala acted on concerns he had raised. He was against being paid the 80,000.00 but was directed to receive the payment. He was willing to refund the monies irregularly paid.

The Directorate of Finance relied on copies of the signed attendance registers maintained by the JSC Registrar to confirm attendance by Commissioners. This was summarized to compute the number of meetings attended and allowances payable.

On reconciliation, the office of the DF adjusted various amounts that were not payable or sought direction from the former CRJ. Specifically for 4th March 2013, Prof. Mango was not paid extra sitting allowances. She was paid for the full JSC meeting of that day.

The extra-duty allowances relate to sitting allowances paid to staff that were in various committees of the Judiciary. The payments were previously made via voucher outside the payroll. Additionally these were processed at the conclusion of every meeting, exposing the risk of multiple payments on the same claims.

Based on the Ethics and Anti-Corruption Commission (EACC) audit of the payroll in 2012, he improved the system of control to ensure that these were summarized monthly and processed via the payroll in the subsequent month. This eliminated duplicate payments and enhanced compliance with Income Tax Act requirements.

Ms. Anne Amadi

She submitted as follows:-

The audit report indicates that under Article 250(7) of the Constitution, the remuneration and benefits payable to or in respect of a Commissioner or the holder of an independent office shall be a charge on the Consolidated Fund. It was however noted that Commissioners drew their allowances from the Judiciary Fund and the JSC vote. The payment of these allowances from the JSC vote appears not to be in line with the Constitution.

Save for the monthly fixed allowances for respective Commissioners, the sitting allowance which is determined by the number of sittings in a month is not possible to estimate in each month hence implementing it through the consolidated Fund may pose operational challenges.

The audit report acknowledges that it is impractical to strictly adhere to the provisions of the Constitution in light of the current financial arrangement and regulations. Secondly, the payment of the allowances from the JSC vote had been budgeted for under the line item of allowances hence did not draw into monies meant for other expenses.

This shortcoming had been noted and shall be addressed in consultation with the National Treasury and other relevant bodies. The current Chief

Registrar of the Judiciary has also engaged the National Treasury on the issue with the aim of coming up with a common position on the same.

The circular by the Public Service Commission communicated remuneration and sitting allowance payable to the members of the Judicial Service Commission. The Public Service Commission exercised its mandate of setting the terms of the members of the JSC pursuant to section 41 of the Judicial Service Commission Act which mandate was interim pending the establishment of the Salaries and Remuneration Commission.

Upon the setting of the terms by the PSC, the Judicial Service Commission in its meeting held on 15th July, 2011 resolved that the secretary to the Commission would be paid Kshs.80,000.00 per sitting, an amount similar to what members of the Commission were earning as sitting allowance.

The Commission further resolved that the Registrar and the acting Registrar to the Commission would also be paid at the same rate when discharging the duties of the Secretary to the Commission.

Article 172 (1) (b) of the Constitution of Kenya mandates the JSC to review and make recommendations on the conditions of Service of Judges, Magistrates and the staff of the Judiciary. Section 21(3) of the Judicial Service Act provides that any administrative function of the Secretary under this Act may in the secretary's absence be performed by any member of staff of the Commission whom the Chairperson may authorize for that purpose.

Section 14 of the Judicial Service Act provides that subject to the provisions of the Constitution or any other law, the Commission may hire such experts or consultants or delegate such of its functions as are necessary for the day to day management of the Judicial Service. Section 22(6) of the Judicial service act also gives the Commission power to invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meetings of the Commission, but such person shall have no power to vote.

From the foregoing provisions of the law, that the JSC acted within its mandate in determining the rate of payment of the sitting allowance payable to the staff of the Judiciary who are not members of the Commission but sat in several of the Commission's meetings.

The law on the same is contained in the Statute (Miscellaneous Amendment) Act 2002 which amended section 10 of the State Corporations Act so as to include public officers in the payment of sitting allowances and other remunerations payable to directors. The amendment was clarified by the Treasury circular no 4/2002 dated 19th June, 2002 which permitted the

payment of sitting allowance to public officers who occasionally sit in boards and assist the boards in their work.

In a legal opinion dated 28th February, 2014 rendered by the Attorney General to the Inspector General of State Corporations, the AG stated that sitting allowances were payable to public officers who occasionally sit in boards.

The said legal opinion, the Statute Law (Miscellaneous Amendment) Act 2002 and the subsequent Treasury Circular No. 4 of 2002, are relevant to the issue at hand. With the establishment of the SRC, the Commission has sought clarity on allowances and is currently applying the SRC proposed rates as negotiations continue on the same.

The audit report indicates that on 8th November, 2012 Justice Smokin Wanjala, a Commissioner of JSC, was paid for a meeting that had no quorum. This is not true as the said commissioner was only paid for the full JSC meeting which was held on the same day.

A commissioner is only paid for one sitting in a day regardless of the number of meetings he/she attends. The same position applied in the case of Commissioner Florence Mwangangi with regard to a meeting of 19th July, 2013.

The report also alleges that Hon. Prof. Christine Mango was on 15th March and 4th April, 2013 paid for meetings that were not properly constituted as they lacked the requisite quorum. This as well is not true as the stated Commissioner was not paid for those meetings.

She had just signed to signify her attendance of the meeting. The meeting of 29th August 2013 was properly constituted as it was a committee meeting of the Commission where minimum quorum was three.

Commissioners drew allowances from the Judiciary Fund and JSC Vote. The payment of JSC remuneration and benefits from JSC vote was informed by:

- (i) Section 26(1) of the Judicial Service Act provides that the expense of the Commission and the Judiciary incurred in the execution of its functions under the Constitution and this Act shall be a charge on and issued out of the Consolidated Fund, and;
- (ii) The Commissioners' remunerations and benefits as set by the PSC in accordance with Section 41 of the Judicial Service Act was a Sitting Allowance which is dependent on the number of meetings held and production of attendance register(s) plus minutes. Therefore the

allowance payable to a commissioner was not fixed but varied with number of meetings and attendance. This would have been difficult to require the Treasury to pay.

The Salaries and Remuneration Commission has set the Commissioners' remuneration and benefits in accordance with Article 230(4)(a) of the Constitution vide its letter Ref. No. SRC/TS/JSC/3/35/8 dated 19th December 2013. The remuneration set is a mix of a monthly fixed allowances and a sitting allowance.

Since the fixed monthly allowances are easy to compute they will be paid directly from the Consolidated Fund while the sitting allowance which are dependent on number of sitting and attendance will continue to be paid from the JSC Vote in accordance with Section 26(1) of Judicial Service Act.

Available records show Mrs. Gladys Boss Shollei owes Kshs.3, 048,298 to the Judiciary in advances. The Judiciary had written to her demanding the money and in the event of failure to refund, recovery proceedings would be instituted against her. Records also show that she owes sums drawn in respect of JSC meetings she did not attend, which information was provided to the Kenya National Audit Office but excluded from the Special Audit Report.

Mrs. Emily Ominde

She informed the Committee that:-

All allowances paid to JSC Commissioners and Judiciary staff were set by JSC and approved by the Public Service Commission (PSC). However, the Salaries and Remuneration Commission (SRC) expressed concern over the allowances and had engaged JSC in negotiations to review them.

The Chief Justice was responsible for determining when JSC should sit. Whereas JSC Commissioners were paid Kshs. 80,000.00 per sitting of the Commission or any of its sub-committee attended, the Commission made a decision in the year 2011 that non-Commissioners attending such sittings be paid Kshs 20,000.00 per sitting.

This decision was made when Mrs. Lydia Achode was the Registrar of the High Court and acting in the capacity of CRJ. When Mrs. Gladys Boss Shollei took over as Chief Registrar, she ignored the Commission's decision and paid Kshs 80,000.00 to non-Commissioners.

She was not aware of irregular payment of allowances to JSC Commissioners and non-Commissioners. She had on occasions asked for the payroll from the then Chief Registrar, Mrs. Gladys Boss Shollei in vain.

She nonetheless believed all allowances paid were in accordance with JSC resolutions.

She argued that allowances paid at the same rate of JSC Commissioners to Judges, Magistrates and other Officers who assisted JSC in conducting interviews for recruitment of new Judicial Officers and staff were regular.

She further argued that allowances totaling Kshs.7,362,000.00 paid to one Mr. John L. Tamar, Deputy Registrar of JSC between November, 2012 and June, 2013 were regular as some of them were part of his normally paid allowances in the monthly pay slip which had accrued.

This happened because JSC had revised upwards salaries of staff and backdated them to July, 2012 but payment could not be effected at a go because of system challenges. The payments were further captured in the payroll as salary arrears and/or extra duty allowance.

Mrs. Ominde's evidence caused the Committee to interrogate Mr. John L. Tamar, Deputy Registrar of JSC who had coincidentally accompanied her. In his evidence, Mr. Tamar was in agreement with Mrs. Ominde's evidence over the allowances he received totaling Kshs.7,362,000.00. He also confirmed that he was paid Kshs.80,000.00 (JSC Commissioners rates) for attending JSC sittings in his capacity as Deputy Registrar. He stated that the decision to pay the Chief and Deputy Registrars at the same rate with JSC Commissioners was approved by JSC's Standing Committee on Finance and Administration and finally by JSC.

After further interrogation by the Committee and in the light of Mr. Tamar's testimony, Mrs. Ominde later admitted that even if JSC approved payment of Kshs 80,000.00, per sitting for staff serving the Commission, the allowance was irregular since staff could not earn the same as Commissioners as they were not members of the Commission. Commissioners were not salaried while staff members were. She finally admitted that she was aware of irregular payments to Commissioners and non-Commissioners.

Mr. Ahmednassir Abdullahi

He told the Committee that:-

It was true that certain officers serving JSC were irregularly paid sitting and other allowances. Cases were also noted where some members of staff earned more than Judges.

The matter came up for deliberation at a full JSC meeting and the Commission directed the Chief Registrar of Judiciary to recover the irregular payments. Commissioners were not full time employees of JSC and were therefore not salaried. They drew allowances only for their services to the Commission.

Mr. Dismas Obondo

He appeared before the committee and submitted as follows:-

The extra duty allowances paid to staff were regular. He was paid Kshs 2,870,000.00 in extra duty allowance between December, 2012 and June, 2013. This was because he sat in several Committees of JSC and Judiciary where he would draw daily sitting allowances for meetings attended. In a day he would attend more than one meeting earning Kshs 25,000.00 per meeting.

The extra duty allowances were paid on the basis of a circular issued by the Chief Registrar. He could not produce a copy of the circular and undertook to avail it after the meeting. He however failed to do so. He stated that allowances paid to members of Tender Committees were guided by a Treasury circular.

Ms. Angela Manyala

She told the Committee that:-

Some officers were irregularly paid allowances. She was not a beneficiary of the irregular payment, neither was her Department involved in processing the payment. Payment of the allowances was authorized by the former Chief Registrar, Mrs. Gladys Shollei who was the Accounting Officer and effected by the Finance Directorate.

5.4.2 Payment in lieu of leave days/Payment of leave allowances in advance

Mrs. Gladys Boss Shollei

She told the Committee that she did not find any irregularity in the advance payment of leave allowances as reported by the Auditor General. The payment was in lieu of leave days meaning the Judges and officers would not proceed on leave because of the heavy work load.

The following Judges were paid the following amounts for commutal of their leave days:-

- (i) Hon. Chief Justice Willy Mutunga - Kshs.1,564,440.00

(ii) Hon. Jackton Ojwang'	-	Kshs.1,151,930.00
(iii) Hon. Philip Tunoi	-	Kshs.910,201,40
(iv) Hon. Njoki Ndung'u	-	Kshs.1,630,320.00
(v) Hon. Ibrahim Isaak	-	Kshs.531,660.00
(vi) Hon. Martha Koome	-	Kshs.1,156,524.00
(vii) Hon Paul Kariuki	-	Kshs.436,000.00

She submitted that the payment of the allowances was authorized by the Chief Justice and was effected from the Judiciary Fund instead of the Consolidated Fund as required by the law. She stated that the payment of the allowances from the wrong account had been going on for over ten (10) years but had always been regularized. Most of the Judges who received payment at this time used the money to make down payment for mortgages.

5.4.3 Recruitment of staff and accelerated staff promotions

Mrs. Gladys Boss Shollei

She submitted as follows:-

All the sixty six (66) staff recruited were Information and Communication Technology (ICT) officers except three (3) Legal Researchers for the Supreme Court. The rest were on secondment from the Ministry of Information and Technology for a period of one (1) year.

In view of the fact that these officers were recruited on temporary basis, the mainstream JSC terms and conditions of service did not apply to them. Their employment was approved by JSC which also constituted their interviewing panels. She tabled before the Committee minutes to that effect. She only signed their appointment letters in her capacity as JSC Secretary.

These recruitments were made in anticipation of many election petitions that were expected to be instituted in the aftermath of the 2013 general elections. The ICT officers were distributed to difference stations countrywide.

During meetings, JSC would create new positions and recruit officers to fill them without any advice from the Human Resource Directorate. Several positions were created and recruitments done without a Human Resource establishment manual.

The promotions related to thirty (36) officers who had joined the Judiciary on secondment from other organizations for certain periods. These officers were later employed on a permanent basis. Most of the officers were placed at higher scales than serving officers based on their scales and salaries at previous places of work. This was normal in the public service.

Ms. Angela Manyala

She submitted as follows:-

She was not at the Judiciary when irregular recruitment of staff as reported by the Auditor General was done. Nevertheless, the ninety one (91) staff reported by the Auditor General were recruited because of election petition cases that were going to arise from the March, 2013 general elections whereby more manpower would be required to handle them.

The staff recruited were administrative assistants who were mainly court and registry clerks. She had not seen any document in the Directorate's records justifying the ninety one (91) appointments.

There were sixty six (66) staff appointed by the Judiciary without approval of JSC. The officers came in on secondment. She had not seen any record justifying their recruitment. There was however a record seeking approval of their recruitment by JSC. As a Human Resource expert, there must be justification for any recruitment by an employer.

Twenty nine (29) out of the thirty six (36) irregularly recruited staff had been demoted, with some being transferred to stations outside Nairobi. This was a decision made by JSC. She was not directly involved in the decision making. She only got a list from the Commission with specific instructions. With respect to demotions, JSC was guided by information obtained from previous work places of the officers. She could however not tell the rationale for the transfer of some of the officers.

Former Chief Registrar, Mrs. Gladys Shollei came in with new staff from her previous places of work that is the National Council for Law Reporting and the Independent Electoral and Boundaries Commission.

These staff owed her allegiance. This created a division in the Judiciary between "her people", those brought in by Mrs. Shollei and "others", those who had been there. Mrs. Shollei's people were mostly stationed at the headquarters and were the majority of those transferred to stations outside Nairobi.

The Judiciary had over 3000 staff on its payroll. She was not categorical as to whether there were ghost workers on the payroll but stated that audit of the payroll was ongoing and would assist the Directorate address several issues facing it.

Ms. Anne Amadi

The Committee was informed as follows:-

During the period between August 2011 and June 2013, the Accounting Officer authorized recruitment of ninety one temporary staff in contravention of code of regulations and without JSC's approval. The ICT Officers were recruited on temporary basis for one year specifically to help in election petitions. The services of casuals and ICT temporary staff have since been terminated.

The Judiciary was carrying out staff rationalization exercise to establish the right number and skill set of staff. In addition, the Judiciary was developing a Human Resource plan for the next three years to establish the optimal staffing levels and avoid arbitrary recruitment of temporary staff. Further, all recruitments will be approved by JSC in line with the JSC mandate and the Judicial Service Act.

The Authorizing Officer selectively accelerated promotions and irregularly upgraded 36 officers by two or more job groups within a period of 12 months. The officers in question had been re-designated and placed in their rightful positions, some had sued the JSC while others have resigned. The Judiciary would in future adhere to the promotion policy to eliminate such malpractices.

5.4.4 Human Resource Policy

Ms. Angela Manyala

She submitted as follows:-

The Judiciary lacked human resource polices and systems for proper running of the institution. This had in effect frustrated her even if the process for developing a human resource manual which would address several issues was ongoing.

JSC had been making decisions on human resource without involving or consulting the Human Resource Directorate. The Directorate had written to JSC over this issue and the Commission was agreeable to co-opting the Head of the Directorate as a member of its relevant Sub-Committee.

Ms. Anne Amadi

She told the Committee that:-

The Judicial Service Staff Regulations, 2006 (JSSR) which provided for the human resource management and training policies of the Judiciary and the Commission was in force up to the year 2011 when the same was challenged in court on the grounds that the Regulations had not been promulgated prior to its application as required in law.

The Court ruled that since the regulations had not been promulgated as required in law, the same were inapplicable in so far as the issue of human resource management in the Judiciary was concerned.

The Judiciary resorted to the Public Service Code of Regulations, 2006 which provides for the Human Resource Management and Training Policies for all public servants. These regulations apply to the paralegal staff and the Magistrates in the Judiciary.

The Third Schedule of the Judicial Service Act makes provisions in relation to the appointment, discipline and removal of Judicial Officers and staff. The Commission has been applying the provisions of this Act and as such the Commission had not been operating in a vacuum as the audit report seems to suggest.

The Judicial Service Commission was in the process of developing the Regulations under Section 47 of the Judicial Service Act. This began in 2011 when the Commission appointed a legal technical Committee to oversee the development of the regulations. The Committee held its 1st workshop and came up with the draft regulations and recommended that a second workshop to deliberate and fine-tune the regulations be convened.

The request to convene the 2nd workshop was directed at the former Chief Registrar of Judiciary who declined to approve the meeting on the grounds that she had hired consultants to develop the regulations, which, until the time of her sacking, she never submitted to the Commission. The efforts to develop such regulations were therefore frustrated by the former Chief Registrar of the Judiciary. This formed part of the grounds that led to her dismissal.

Going forward, the JSC in conjunction with the Judiciary has developed a comprehensive Human Resource Manual which covers all the issues ranging from transfer, training, discipline, promotion among other human resource issues and policies. The manual is in its final stages of preparation and it will be in operation by the beginning of the new financial year.

Hon. (Prof.) Christine Mango

She submitted as follows:-

The Judiciary did not have a Human Resource Policy. Before she left JSC, the Commission had constituted a Technical Committee to oversee the development of a policy which would guide recruitment by the Commission. Mrs. Gladys Shollei however went ahead and recruited staff without a policy in place and without knowledge of JSC. In the process, she recruited several of her own people.

5.4.5 Approval of foreign travel

Mrs. Gladys Boss Shollei

She told the Committee that:-

Article 173 of the Constitution of Kenya appoints the Chief Registrar of the Judiciary as the authorized officer. Section 8 of the Judicial Service Act, 2012 recognizes the Chief Registrar of the Judiciary as the Authorized Officer and in charge of human resource.

Previously, the Hon. Chief Justice approved foreign travel for Judges and Magistrates while the Chief Registrar approved travel for judicial staff. The Hon. Chief Justice through a written directive on the 13th July, 2013 ordered all approvals for foreign travels for all persons in the judiciary irrespective of cadre to come from him.

Ms. Anne Amadi

She submitted as follows:-

Documents related to foreign travels for the year 2012/13 revealed that the Accounting Officer, Mrs. Gladys Shollei, authorized foreign trips in contravention of rule 18 of the Judicial Service code of conduct and ethics. Mechanisms had been put in place to approve trainings and any other foreign travels. Going forward the code of regulations will be strictly enforced.

5.5 FINANCES, ACCOUNTS AND INTERNAL AUDIT FUNCTIONS AT THE JUDICIARY

Mrs. Gladys Boss Shollei

She submitted as follows:-

There were serious system weaknesses in the Accounts and the Internal Audit Departments at the Judiciary. Consequently, certain financial transactions never caught her eye when they were supposed to.

All payments are supported with payment vouchers that are approved, with all relevant supporting documentation attached. The filing and retrieval of documents at the Judiciary was poor making accounting difficult.

To address the situation, The Judiciary hired nine (9) Internal Auditors who revamped the entire audit department. Ninety (90) Accountants were recruited to address some of the issues facing the Accounts Department.

Section 28 of the Judicial Service Act states that the Judiciary may open such bank accounts as it deems necessary for its operations. In light of this, the Chief Registrar requested court stations to open separate bank accounts for Deposits (bails), Revenue (Fees and Fines) and Expenditure (AIE).

The Judiciary notified the National Treasury of the new accounts. With regard to operation of two deposit accounts, CBK opened new accounts for every Government entity but failed to close the old account that was nonetheless inactive.

Despite having exited the Judiciary, her name remained in the Judiciary records as a signatory to Judiciary Bank Accounts. It was a duty of those concerned at the Judiciary to ensure that her name is expunged from records as being a signatory to the bank accounts.

Kakai Kissinger

He told the Committee as follows:-

The Judiciary's internal control systems were lacking or if there, they were weak. While acting as the Chief Registrar and in consultation with Ag. Director of Finance and Director, Supply Chain Management, he commissioned the internal audit report the objective of which was to establish internal control weaknesses and take remedial measures. This report was for internal use and financial control.

The Judiciary did not have a manual on human resource. Process of developing one had commenced.

5.5.1 Judicial Training Institute (JTI) account and expenditure

Mr. Benedict Omollo

He submitted that the Judiciary paid Kshs 62,816,343.00 towards expenditure for the Presidential Assumption of Office activities. The Judiciary was a member of the Presidential Assumption of Office Committee.

Though Parliament had enacted a law on Presidential Assumption of Office in June 2012 which provided for budgetary allocation of Assumption of Office expenditure, Treasury had not allocated and funds for the process and requested members to meet expenditures relating to their roles pending refund. Judiciary Fund Account did not readily have the funds and

borrowed the 62,816,343.00 from JTI Account. Treasury had not yet refunded the funds.

Mrs. Gladys Boss Shollei

She said that the Judiciary was among several players involved in the inauguration activities for the new President after the 4th March, 2013 General Elections. Treasury requested each player to meet costs relating to his/her role and would be reimbursement.

The Judiciary was allocated the expenses for the erection of the inauguration podium, sound and lighting and live streaming of the ceremony and spent Kshs.62, 816,343.00 in this respect. This was a case where players lent money to the Office of the President pending reimbursement.

The JTI suffered capacity shortfall in qualified finance staff. It should however be noted that an internal audit was conducted after the appointment of the new Director. This anomaly of the cashbooks was raised. Proper cashbooks and bank reconciliations were done from July 2012 to June 2013.

A Board of Survey to examine and verify cash on hand and bank balances was not done. This was an oversight. Competent finance staff had been posted to JTI.

The other issue of Authority to Incur Expenditure (AIE) in 2012/2013 was an error arising from how the advance for Judicial Marches was treated. When this was noted, Judiciary asked JTI to utilize this to cover some expenditure – specifically the Assumption of Office. It should be noted that the Office of the President had committed to refund Judiciary, even as Judiciary was to cater for some portion of the expenditure.

JTI was part of the Judiciary vote. In 2013/2014, JTI had been separated from the Judiciary vote and was part of the JSC Vote.

5.6 SECURITY INSTALLATIONS

Mr. Simiyu Werunga

The witness appeared to give evidence on two unvouched payments he received from the Judiciary totaling KShs. 30,240,975.00 for security related consultations.

He stated that he met the Chief Justice at a public function sometime in October 2012 who informed him plans by the Judiciary to upgrade its

security arrangements. It was thereafter that he met the Chief Justice's Chief of Staff who introduced him to the then Chief Registrar, Gladys Boss Shollei. He then put in a proposal of his profile and soon after met Mrs. Gladys Shollei for discussions.

The witness submits that around December 2012 the Judiciary contacted him to do a security survey and audit process for the institution. He signed the contract on 27th December, 2012 (see annex 5) and embarked on a one-off survey at the Supreme Court and Milimani Law Courts, with extension to other courts. The contract was for two weeks and he would be paid at a rate of KShs. 35,000.00 per day of work done. This, he says was the initial KShs. 500,000.00 that he received after handing over his report.

The witness added that while delivering on this contract, he was called and asked to perform a security upgrade for all Supreme Court Judges and other Senior Staff of the Judiciary under the general Presidential Assumption of Office arrangements. This contract was to run from 16th January, 2013 to 26th April, 2013.

It was during this performance that he got a letter from Mrs. Shollei (see annex 6) asking him to implement his report. There was no contract for this specific job but the witness says there was a clause in the initial contract that would activate his implementation. Mid way through the implementation, he asked for part payment after judges were satisfied with his work and signed off on it. He was however unable to produce any copies of any handing over certificates.

The witness stated that the residences where he fitted the equipment were private residences, in Nairobi and upcountry, of the Supreme Court Judges and senior officers of the Judiciary.

The witness added that after Mrs. Gladys Shollei was fired, he was asked by the new Chief Registrar, Ms. Anne Amadi to hand over the project. He then demanded a further payment of the balance of KShs. 19m for works done at the Chief Justice's house but has not been paid to date. He intends to sue the Judiciary if the payment is not forthcoming.

Anne Amadi, the Chief Registrar of the Judiciary

On this particular project, the current Chief Registrar submitted that from the records in the Judiciary, Mr. Werunga was contracted in the run-up to the general elections for 100 days, from 16th January, 2013 to 26th April, 2013 at a rate of KShs. 35,500.0 per day. Mid way through, a letter dated 21st February, 2013 from the then Chief Registrar, Mrs. Gladys Shollei, asked the consultant to implement his findings. The security report with the Judiciary has only the cover page and the conclusion (see annex 7).

Clearly Mr. Werunga's initial (survey) contract did not last the expected 100 days.

After joining the Judiciary, the witness stated that Mr. Werunga visited her in her office to ask to install the security equipment in her house. She asked the consultant to give her time to consult the contract before he could proceed. She could not find a contract and thus did not engage the consultant further.

Ms. Amadi tabled before the Committee invoices from Mr. Werunga and payment voucher for the KShs. 29,934,975.00. The witness however stated that this was irregularly done since there was no such contract to support payment. The voucher checker had raised questions but the then Director Finance, Benedict Omollo, authorized payment together with the then Chief Registrar citing confidential security matters. This was the basis for her refusal to pay the KShs. 19m that the consultant was claiming as balance. Further still, the payment was done from the Deposit account which was illegal.

She further denied terminating the contract and asking the consultant to hand over since there was no contract to talk of in the first place. It was then that the consultant attempted to withdraw his equipment from the Judge's premises but was unable. Ms. Amadi added that it was at this time when Judges complained to her that the equipment was breaking down since they were not being serviced. She asked the ICT department to assist with the basic servicing.

The witness submitted that she has not instituted an audit of the systems because they were already subject of audit queries and this would jeopardize investigations. She added that there is now a policy that states that Judiciary owned equipment can only be fitted to Judiciary owned premises. Moreover, a security committee chaired by a Judge of Court of Appeal is reviewing all security arrangements in the Judiciary.

PART VI

6.0 OBSERVATIONS AND FINDINGS

This investigation revealed a number of irregularities which included:- overriding of stipulated controls, overstepping of given mandate, failing to implement the policy framework and as such, haphazard actions and breach of procurement laws and regulations and general weaknesses in the Judiciary's internal control environment.

From the evidence adduced by the witnesses, the Committee made the following findings and observations:-

6.1 Weak Leadership and Governance Structures

The leadership of the Judiciary at the advent of the new Constitution inherited an institution that was unstable. There were weak structures and a lack of proper institutional set-up. Soon after joining the Judiciary in the year 2011, the Chief Justice in his 120th day address to the public on 19th October 2011 confirms this observation in his statement as follows:-

“We found an institution so frail in its structures; so thin on resources; so low on its confidence; so deficient in integrity; so weak in its public support that to have expected it to deliver justice was to be wildly optimistic...”

In many instances, the JSC was involved in operational activities of the institution or failed to carry out certain activities, contrary to Article 172 of the Constitution, which provides for the JSC to promote and facilitate the independence and accountability of the Judiciary and for the efficient, effective and transparent administration of Justice. The instances included, but not limited to, the following:-

- Failure to keep minutes of meetings;
- Irregular approval of payments to suppliers;
- Failure to develop Human Resource and Training Policies;
- Acquisition of CJ's official residence at Kshs. 310 million;
- Lease of Elgon Place at non occupation of premises;
- Single sourced direct procurement of its offices at Mayfair Center;
- Advance payment of rent for Mayfair Center for two years at Kshs.7,392,000.00 before occupying the office; and,
- Security equipment installation without a proper contract.

Clause 5 of the Judicial Service Act 2011 says “The Chief Justice shall be the head of the Judiciary and the President of the Supreme Court and shall be the link between the Judiciary and other arms of Government”. Specifically under Clause 5(2)(c) the Chief Justice is mandated by law to **“exercise general direction and control over the Judiciary”**.

Under Article 161(2)(b) of the Constitution and Clauses 5(3) and 5(4) of the

Judicial Service Act, the Deputy Chief Justice is the Deputy Head of the Judiciary and the designated principle assistant to the Chief Justice. Article 161(2)(c) of the Constitution creates the office of the Chief Registrar of the Judiciary (CRJ) and assigns him/her the role of the chief administrator and accounting officer of the Judiciary. Among other things, the CRJ is required to “be responsible for the overall administration and management of the Judiciary”.

Effectively, therefore, the Chief Justice, the Deputy Chief Justice and the Chief Registrar of the Judiciary comprise the top leadership of the Judiciary in Kenya.

Immediately upon the enactment of the Judicial Service Act, the Judicial Service Commission embarked upon the task of recruiting the Chief Justice, the Deputy Chief Justice, and the Chief Registrar of the Judiciary. Dr. Willy Munywoki Mutunga became the Chief Justice with Nancy Makokha Baraza his Deputy, while Mrs. Gladys Boss Shollei became the Chief Registrar of the Judiciary. All the three were appointed from outside the Judiciary. All the three also had limited experience in Public Service.

While the idea may have been to inject new blood in the top leadership of the Judiciary to strengthen its “frail structures”, and raise the bar on integrity at the Judiciary, the wisdom of completely by-passing “insiders” must now be questioned.

It now appears the new leadership ideas about “delivering justice” may have been confined to “RUNNING” those they found in the Judiciary as opposed to “RUNNING WITH” them. Them, and only them, seemed to believe they had the answers to all problems facing Kenya’s Judiciary. They seemed bent on re-engineering the Judiciary the best way only they knew how, their limited experience in public service, and the fact that none of them had much experience in running a large organization, notwithstanding.

It is no wonder that on many occasions, both the Chief Justice and the Finance and Administration Committee of the JSC went ahead to approve irregular payments in total disregard of the Treasury’s written advisory on the matter.

6.2 Ineffective Judiciary Transformation Framework (JTF)

The Judiciary developed the Judiciary Transformation Framework (JTF) 2012-2016 as a blueprint to reposition the Judiciary in line with the Constitution of Kenya, 2010, and the demand for better services by the citizens.

The Committee however noted that there was no evidence to suggest that this framework was adhered to, or even contributed to a change in the modus operandi in the Judiciary.

The Committee observes that it was possible the JTF was deliberately ignored or non-operationalized, and thus those within the system took

advantage. This is evident in the fact that policy frameworks were non-existent, decisions were still centralized (as illustrated in various procurements) and the Office of the Chief Registrar and the Judicial Service Commission were not working in synergy.

6.3 Sudden increase in budgetary allocation

There was a sudden upsurge in budgetary allocation to the Judiciary which created a recipe for an insatiable appetite for reckless expenditure. The budget for the Judiciary for the financial year 2010/11 was Kshs.3 billion. This tripled to Kshs.9 billion in 2011/12 financial year and jumped to Kshs.16 billion in the subsequent financial year. In other words, in two short years, the Judiciary's budget increased FIVE times.

Even though the Committee notes that this rise in the Judiciary budget was essential for efficient administration of justice, it takes great exception to the manner in which those charged with the management of its affairs and resources failed to develop structures in line with the JTF to effectively and efficiently absorb funds.

6.4 Strained working relationships at the JSC

A sour working relationship and an atmosphere of suspicion existed between the former CRJ and the JSC. This is evident from multiple allegations, accusations and counter-accusations that were traded between members of the JSC and the former CRJ.

The Committee however notes that the JSC and the former CRJ initially had regard for each other (generally). The strain can be traced to the period where budgetary allocations were enhanced around the year 2012, leading to a flurry of procurement activities. The Committee finds that a fight for control of resources was the major point of departure.

Governance was appallingly low, indicative of wanting leadership of those in office. Even after the former CRJ raised complaints to the Chief Justice, and after a tripartite meeting with Treasury, the Chief Justice did not provide direction, and proceeded to exchange unsavory electronic mails with the former Chief Registrar.

These exchanges between the two continued in the social media even after the CRJ had been dismissed. In so doing, the Chief Justice appallingly failed to "exercise general direction and control over the Judiciary". Indeed it is doubtful if the Chief Justice fully appreciated the enormity and critical nature of the responsibilities placed upon his shoulders as the head of a crucial arm of Government.

6.5 Interference of the Judiciary operations by the JSC

The Judicial Service Commission had been involved in operational activities or had failed to carry out certain activities, contrary to Article 172 of the Constitution which provides that the Judicial Service

Commission shall promote and facilitate the independence and accountability of the Judiciary and the efficient, effective and transparent administration of justice.

Interference was evident in the JSC sanctioning irregular payment of Kshs.9.8 million in allowances to non-commissioners who attended JSC meetings and a further Kshs.1.6 million to Commissioners who attended meetings that had not been properly constituted in accordance with Section 22(5) of the Judicial Service Act, 2011. The JSC also irregularly approved payments to suppliers and irregularly authorized direct procurements, for example the Mayfair Court premises acquisition.

Evidence indicates that the former CRJ failed to attend meetings of the JSC as is required; bearing in mind she was the Secretary to the Commission. Her own evidence states that she attended 'when required', rather than consistently.

The former CRJ withheld information on financial matters thus frustrating the Commission's ability to make sound judgments necessary for effective oversight. The latter's direction that they approve transactions worth Kshs.50 million and above was flouted by the former CRJ who based her actions on Article 161 of the Constitution. She would however later table transactions to the Commission for approval after committing the Judiciary, a case in point was the lease of Elgon Place.

The Committee finds that whilst minutes were sometimes kept by the Commission, some were not confirmed, casting aspersion as to their authenticity, credibility, and reliability.

The Judicial Service Commission routinely over-stepped their mandate as stipulated under Article 172 of the Constitution and frequently engaged in management and operation functions.

6.6 Irregular Procurement procedures and processes

6.6.1 The Tender Committee

The Tender Committee comprised unqualified staff. The explanation given that these were the most senior staff at that point was largely unsatisfactory. It was not clear why in the initial Tender Committee junior officers represented the Directorate of Finance and acted as secretaries while there were more senior staff.

Further more, evidence by two (2) witnesses; Mr. Austin Ogolla and Ms. Beatrice Kamau, indicated that the Tender Committee approved expenditure when there was no budgetary allocation. The Committee finds this was in contravention of the Public Procurement and Disposal Act, 2005, Section 26(6), which states that;

"A procuring entity shall not commence any procurement

procedure until it is satisfied that sufficient funds have been set aside in its budget to meet the obligations of the resulting contract”.

The Committee heard from the current acting Director of Supply Chain Management, Mr. Austin Ogolla, that the Judiciary did not have a pre-qualified list of suppliers. Any entity would be contracted to supply goods; sometimes through telephone calls and memos in contravention of Section 58(1) of the Public Procurement and Disposal Act, 2005 which states that;

“A tender must be in writing, it must be signed and it must be sealed in an envelope”.

The current CRJ corroborated this in her submission stating that there were several ‘pending bills’ that they could not pay since there were no requisite documentation.

6.6.2 Elgon Place

Elgon Place in Upper Hill was procured for occupation by Court of Appeal. The premises are yet to be occupied by the judges since 1st April 2013. The Judiciary therefore incurred expenditure amounting to Kshs.70,147,605.00 for premises that have remained unoccupied. This amounts to wasteful and negligent use of public funds.

The current CRJ Ms. Anne Amadi and former Commissioner Mr. Ahmednassir Abdullahi concurred that this procurement was initially done without the JSC’s knowledge, contravening the Kshs.50 million limit that the Commission had directed. They were only involved after funds had been committed.

Though the Tender Committee awarded the contract for space measuring 34,400 square feet, the lease agreement quoted 47,890 square feet without involvement of the Tender Committee. The Committee finds that this was a variation to the original tender and as such contravenes Section 47(a) of the Public Procurement and Disposal Act, 2005 which states that:-

“An amendment to a contract resulting from the use of open tendering or an alternative procurement procedure under Part VI is effective only if—

(a) the amendment has been approved in writing by the tender committee of the procuring entity”.

The Chief Justice mishandled the matter by initially asking the Judges to move in, then allowing them to stay on, and further appointing a Task Force to look into the matter. This Task Force has not commenced investigations to date.

The Committee visited the location and was impressed with the quality

of works and state of the art technology installed. The reason advanced for non-occupancy due to radiation exposure did not satisfy the Committee as all responsible bodies i.e. the National Environmental Management Authority (NEMA), the then Communication Commission of Kenya (CCK) and the Radiation Protection Board had okayed the premises as habitable.

The independent firm (whose identity was not established) that the Court of Appeal relied on to base their decision was not accredited by the relevant bodies and their advice was thus found unacceptable by the Committee. This contract led to loss of public funds amounting to Kshs.70,147,605 for premises that have never been occupied.

The current CRJ submitted before the Committee that this was a failed lease contract and the Judiciary was in the process of terminating it. The Committee took issue with the legal repercussions of this action and the subsequent potential loss.

6.6.3 Rahimtulla Towers

Rahimtulla Towers was procured to house the Directorates of Procurement and Human Resource. The premises are however only 50% occupied. The lease agreement between the Judiciary and Rahimtulla provided for a rent deposit of six months amounting to Kshs.32.4 million which was based on rent payable with effect from 1st July 2017 instead of the then applicable rent of Kshs. 3,349,000.00. This led to loss of Kshs.6,482,056.50 for the six months deposit.

The Judiciary directly procured goods without satisfying requirements of the Public Procurement and Disposal Act, 2005. Second hand furniture was procured for Rahimtulla Towers from PriceWaterHouseCoopers. The inherent contraventions include lack of competitive bidding, and procurement of second hand goods.

Payment for the deposit of rent for these premises was irregularly made from the development vote. This was corroborated by the suspended Director of Finance and the current CRJ.

The Committee observed that rent was irregularly paid upfront for six (6) months.

6.6.4 Containerized Data Centre

Procurement of the Containerized Data Centre was recklessly done. Items were procured without demand and requisition from supposed end users. For instance, the procurement of the Containerized Data Centre which the current Director of ICT concurred as having been conducted un-procedurally, before he took over.

The former Director did not involve the Directorate, and the JSC's

ignorance on the matter led the Committee to believe that this was an idea privately conceptualized by the former Director and the former CRJ.

The Judiciary procured the Data Centre at a cost of Kshs. 106,720,048.97 plus an extra Kshs. 18 million for a three year warranty. The Data Centre was delivered in September 2013 but is still not operational.

On a site visit to the Supreme Court, the Committee found that this container had only basic equipment and had in fact partly been transformed as storage for new computers despite payment of the whole amount. It was also not well secured as was the intention of the purchase.

Furthermore, the vendor charged Kshs.18 million for the three (3) year warranty which was subject to maintenance. This was contrary to the provisions in the tender document where a three (3) year warranty was a mandatory requirement to all bidders. This occasioned loss of public funds by an extra KShs. 18m.

6.6.5 Jomo Kenyatta University of Agriculture and Technology Enterprises Services Ltd. (JKUATES)

JKUATES Ltd. was directly contracted to provide consultancy services to the Judiciary. This was done under the guise of Government to Government procurement despite the fact that this was a limited liability company.

Evidence by the Managing Director that the proceeds of the irregular contracts went to private lecturers, individuals and a private entity by the name of Align Architects to the tune of 95% convinced the Committee that this was a well-orchestrated scheme to defraud the public of funds.

It is also noted that JKUATES Ltd. engaged in professional dishonesty by not giving discounts for homogenous/duplicated designs as required by laws governing consultancies of this nature.

The Committee observes with concern that Align Architects used JKUATES Limited as a cover to obtain irregularly single sourced contracts. The Committee notes that similar corporate entities may exist in other Universities and are used to justify single sourcing /uncompetitive bidding under the guise of Government to Government procurement.

JKUATES had been paid Kshs.157,819,037.45 in the period under review.

6.6.6 Purchase of the Official residence of the Chief Justice

The requisition for an official residence of the Chief Justice was made by the Chief Justice himself, and the need was approved by the JSC and the Cabinet. The tender process commenced with an advertisement in the dailies with three bidders responding. One was disqualified on the basis of being over the budget while the other was disqualified on security grounds by 'US Court Martials' who were flown into the country to carry out a security assessment.

The purchased house was approved by a sub-committee of the JSC, comprising Commissioners Ahmednassir Abdullahi and Justice Smokin Wanjala. The entire JSC later settled on this specific house.

The former CRJ thus commenced modalities of purchase of the official residence of the Chief Justice at Kshs.310 million.

However, the Committee noted with concern that the former CRJ did not obtain a signed valuation report for the premises, and only relied on an indicative figure of Kshs.350 million issued by a valuer, Ms. Nelly Mbugua for JKUATES Ltd.

Moreover, the terms of the tender were varied from 'fully furnished' to 'un-furnished' house, at the same price. This price was dismissed as not being fair market value by the Institution of Surveyors of Kenya when they appeared before the Committee.

The Committee made a site visit to the premises and observed the following;

- The house was not furnished as specified in the tender advertisement.
- The house was in a state of disrepair with peeled-off floor tiles, dilapidated roofing tiles, a clogged, stagnant swimming pool and unkempt grounds.
- The house was not ready for occupation. The Judiciary was bound to spend more tax payers' money to bring the house to a habitable state, further pushing the cost upwards.
- The house was not worth Kshs.310 million, as confirmed by the Institution of Surveyors of Kenya on account of the estimated market value.
- The Committee notes with concern that the house remains unoccupied, is in prolonged state of disrepair while the Judiciary continues to pay rent for the Chief Justice, occasioning unnecessary loss of public funds.
- The current CRJ suspended conveyance while the vendor had already confirmed having received full payment. The Committee considers this as a mere public relations exercise, and recommends the Judiciary should complete renovations of the house and have it occupied.

6.6.7 Mayfair Court Centre

This procurement was made to accommodate the JSC after they had been asked to vacate offices at the Anniversary Towers.

There was no explanation as to why this contract was directly procured. This was contrary to Section 29 of the Public Procurement and Disposal Act, 2005. The Committee observes that this procurement was sanctioned by the Judicial Service Commission after active involvement of Commissioners Ahmednassir Abdullahi and Emily Ominde.

The Committee also observes that former Chief Registrar Mrs. Gladys Boss Shollei accepted the lease offer and signed the contract on 16th September, 2011. The Committee notes that Mrs. Shollei deliberately misled it to the effect that she was not in office during this procurement contrary to proof of her signing the contract as evidenced in the annexure to this report. Moreover, the Judiciary paid a two year advance rent of Kshs.7,392,000 before moving into the premises.

The Committee however notes that the procurement of these premises was fraught with irregularity *ab initio* since the procurement department was not involved. The former Registrar of the High Court Justice Lydia Achode initiated the identification of these premises as directed by the JSC without following due process. She however did not execute the contract and lease.

6.6.8 Pre-fabricated Court Houses

The Judiciary, in its attempt to transform provision of justice and improve delivery of services to the people, decided to put up pre-fabricated courts in selected areas around the country. The pre-fabricated structures would be cheaper and faster and would aid in clearing of back-log of cases and devolving judicial functions to the forty seven (47) counties. These pre-fabs were constructed in:-

- Tawa
- Bomet
- Othaya
- Marimanti
- Wang'uru
- Garsen

The proposed site in Mavoko did not take off due to challenges of land allocation, with the site being moved to Runyenjes at no cost variation.

The Committee made site visits to Bomet and Runyenjes and found work at about 50% in progress. The Committee noted that in both cases:-

- The end-user (stations) did not originate the need for office spaces.

- Station procurement offices/officers were not involved or sufficiently informed of the initiation or implementation of the projects.
- No copies of contract or lease documents were availed to the stations, and contractors received all the directions from the Head office.

The Judiciary made advance payments to Timsales Ltd. and Economic Housing Group contrary to Government Financial Regulations and Procedures. The explanation that 60% of construction of these pre-fabs happened in the workshop did not satisfy the need for advance payment.

The buildings were costly, as compared to other constructions in the areas, including CDF funded projects.

The construction in Bomet was being undertaken when another permanent construction was ongoing. This attempt to have 'speedy' solutions came at double the cost to the tax payer and yet this did not speed up the construction of the project.

6.6.9 Leases from the Agricultural Finance Corporation

Just like in the pre-fabricated law courts, the Judiciary engaged AFC for space to house judicial offices across the country. The Judiciary entered into eleven (11) lease agreements which were however not duly executed, though payment of Kshs.10,571,031 was made.

The Committee visited the Kakamega premises and found it unoccupied save for two desks and a few officers.

The current CRJ later terminated these agreements after it was realized the premises were not occupied. Unnecessary costs had already been incurred.

6.7 Poor Human Resource Management

6.7.1 Skewed staff recruitment

The Judiciary in line with the Judiciary Transformation Framework needed staff to ensure efficiency towards the administration of justice. This process was however done haphazardly without involvement of the Human Resource Directorate. The recruitment of ninety one (91) temporary staff was done without JSC's approval.

Moreover, thirty six (36) officers were moved to higher job groups creating friction and bad blood in the Judiciary. Witnesses suggested that some of these staff on secondment were the former CRJ's colleagues in her previous employment at the IEBC and National Council for Law Reporting and were loyal to her.

This was done by the former CRJ Mrs. Gladys Boss Shollei without

approval of the JSC. Evidence received by the Committee indicates that there was bad blood between the former CRJ's 'people' and the rest of the employees. This was evident as these people were victimized after the former CRJ's dismissal, through transfers and demotions.

6.7.2 Irregular payment of allowances

The Committee observes that members of the JSC earned Kshs.80,000 per sitting. This was sanctioned by the Salaries and Remuneration Commission. Quorum for full JSC meeting is six (6) while that of sub-committees is three (3).

The Commissioners however earned allowances of up to Kshs.1.6 million for meetings which were irregularly constituted, leading the SRC to cap sittings to eight (8) per month. These allowances were approved by the Director of Finance and the former CRJ.

The allowances were irregularly drawn from the JSC vote and the Judiciary Fund rather than the Consolidated Fund as is stipulated in the Constitution. The Committee notes that the payments were however refunded later on from the Consolidated Fund to the Judiciary Fund.

Non-Commissioners who sat in JSC meetings were irregularly paid at the rate of Kshs.80,000, rather than the Commission's approved rate of Kshs.10,000. In the period July- December 2013, auditors noted that 26 non Commissioners earned a total of Kshs.9.8 million. A list of the beneficiaries is annexed to this report as Annex. (Annex No. 9)

The Committee agreed with the explanation that payment for extraneous allowances was captured as extra-duty allowances because of payroll challenges.

6.7.3 Irregular salary advances/Payment in lieu of leave days

The Committee observed that the Judiciary had a culture of paying staff salary advances on the basis of commuted leave days. This was however irregular since these commuted leave days were yet to be earned, and was done anticipatorily. This was the practice at the Judiciary.

The staff also took salary advances irregularly, including the former CRJ who still owes the Judiciary an outstanding total amount of Kshs. 3,048,298.90. The payment was irregular in that it was paid from the Judiciary Fund, instead of being drawn from the Consolidated Fund. Regulations governing advances state that it should be recoverable within one month.

6.8 Weak Internal Control Mechanisms

The structural weaknesses and lack of an operational policy was clearly manifest in:-

6.8.1 Poor record keeping

During the period under review, the Judiciary made payments for various expenditures without payment vouchers as is required by the Government Financial Regulations. The explanation that record keeping was in a shambles was rejected by the Committee since it was the responsibility of those in office to ensure orderly and safe custody of the same. Authenticity of some of these payments cannot thus be ascertained. These payments were to the tune of Kshs.262,656,610.00.

The Committee notes with concern that while the Chief Justice admitted to inheriting a weak system during his 120th day address, nothing demonstrates change in management of records at the Judiciary. The Committee thus observes that the Chief Justice did not do anything to lead change. Indeed, the Committee notes with concern that apart from being laden with lyrical content, the Chief Justice's 120th Day address may never have been a statement of resolve and determination to address the many structural weaknesses he so eloquently listed. The consequent will and resolve to initiate corrective actions just did not materialize.

6.8.2 Irregular imprest management

It was established that a standing imprest amounting to Kshs.2.7 million was outstanding. The former CRJ herself admitted that some of the salary advance attributed to her were actually imprest that 'she was not accorded time to account for'. The Auditors noted that cash books were not kept to reflect the same imprest as is required.

Imprest procedures were abused as some Kshs.5.6 million was taken by officers who did not travel outside the country. Some travelled for lesser days than approved and did not surrender imprest. In addition, imprest was allocated to staff who did not seek prior permission to travel by the Chief Justice as required under Rule 18 of the Judicial Service Code of Conduct and Ethics.

6.8.3 Un-refunded expenditure on the Presidential Inauguration

The Committee observes with concern that the Judiciary, through the Judiciary Training Institute account, paid Kshs.62,816,343 towards the presidential inauguration. Parliament had enacted a law on Presidential Assumption of Office in June 2012 which approved for separate allocation of funds towards this national function.

The Committee also notes that Treasury is yet to refund this amount.

6.8.4 Irregularly operated Bank accounts

The Committee was not provided with evidence of Treasury approving opening of various bank accounts operated by the Judiciary. This is in contravention of Section 28 (1) of the Public Finance Management Act 2012 which states that;

“The National Treasury shall authorize the opening, operating and closing of bank accounts and sub-accounts for all national Government entities in accordance with regulations made under this Act.”

Some accounts had no cash books or the books were poorly maintained. These included the duplicate deposit account at CBK no. 1000182342 which had no cash book thus making audit trail difficult. The JTI account, and Milimani Law Court Revenue, Recurrent and Development accounts held at KCB had poorly maintained cash books.

The Committee also observes that some accounts still have former employees as signatories, posing a risk of loss by transaction by non-employees. An example is the Milimani Law Courts Revenue Account that has the former CRJ as a signatory.

More disturbing to the Committee is the fact that some accounts had a single signatory. They include Milimani Law Courts deposit account no. 1116930854 at KCB operated solely by the former CRJ, and Milimani Law Courts recurrent account no. 1129777367 at KCB operated solely by Mr. Gilbert Mutembei. The Committee notes that single custody of accounts leaves a loophole for possible loss of funds to personal enrichment. It also takes great exception to how any Bank of repute would permit single-signatory accounts for public funds.

It was also noted that funds collected as bail, bond and deposits were used to pay suppliers contrary to regulations which require that they are only held for purposes for which they were paid. Kshs.67 million was misapplied from the Milimani Law Courts deposit account.

6.8.5 Procurement of Security Consultancy to a Private Consultant

The Committee found that this engagement was irregular *ab initio*.

First, the Committee notes that security of public officials should be provided for by the State, and any assessment thereof should be done by State security agents. Moreover, the consultant was directly procured without following due process as required by Public Procurement and Disposal Act, 2005.

Further still, the Committee observed that the consultant was not properly contracted to take care of Judiciary’s interest. He was contracted by an initial contract to last 100 days. Mid way through it, the Chief Registrar instructed him to ‘implement’ his findings, without any other contract. This means the payment of KShs. 29,934,975.00 was a whimsical charge which for all intents and purposes amounted to giving the consultant a blank cheque.

The payment itself was done without requisite vouchers and documentation that should accompany approvals. Worse still, this payment was done from a deposit account which was un-procedural.

Still, the Committee finds that it was highly irregular to have the same consultant implement his own recommendations without any independent checks and verifications. The Chief Registrar seemed to have relied on the beneficiaries' verbal expression of satisfaction, notwithstanding the fact that they were not competent in matters security and technology.

PART VII

7.0 CULPABILITY

The Committee was guided by witness statements, evidence submitted and its observations in the many site visits it conducted to assign responsibility and culpability for errors of omission and commission. With this, the Committee is alive to Article 226(5) of the Constitution which states that:-

“If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not.”

Specifically, the Committee notes the powers and functions of the Chief Justice as spelt out in Section 5 of the Judicial Service Act 2011 are as follows:-

(1) The Chief Justice shall be the Head of the Judiciary and President of the Supreme Court and shall be the link between the Judiciary and other arms of Government.

(2) Despite the generality of subsection (1), the Chief Justice shall-

(a) Assign duties to the Deputy Chief Justice, the President of the Court of Appeal, the Principal Judge of the High Court and the Chief Registrar of the Judiciary;

(b) Give an annual report to the nation on the state of the Judiciary and the administration of Justice; and cause the report to be published in the Gazette, and a copy thereof sent, under the hand of the Chief Justice, to each of the two Clerks of the two Houses of Parliament for it to be placed before the respective Houses for debate and adoption;

(c) Exercise general direction and control over the Judiciary.

Furthermore, the Committee notes the functions and powers of the Chief Registrar as spelt out in Section 8 of the Judicial Service Act are as follows:-

In addition to the functions conferred by Article 161(2)(c) of the Constitution, which assigns the Chief Registrar the roles of being the chief administrator and accounting officer of the Judiciary, Section 8

of the Judicial Service Act states that the Chief Registrar shall, in particular:-

(1)

- (a) be responsible for the overall administration and management of the Judiciary;
- (b) perform judicial functions vested in the office of the Chief Registrar by law;
- (c) exercise powers vested in the office of the Chief Registrar by virtue of any law or regulation and give effect to the directions of the Chief Justice;
- (d) account for any service in respect of which monies have been appropriated by Parliament and for which issues are made from the exchequer account;
- (e) be the authorized officer for the Judiciary, who shall be responsible for the efficient management of the day-to-day operations and administration of human resources in the judicial service;
- (f) be in charge of support services in the Judiciary and in particular planning, and development, and the organization of staff;
- (g) monitor and enhance administration and office procedures to maximize on efficiency and the quality of service;
- (h) plan, prepare, implement and monitor the budget and collect, receive and account for revenue;
- (i) prepare reports and proposals on administrative issues;
- (j) be in charge of the procurement of all stores, and the management and maintenance of all physical facilities;
- (k) maintain and develop co-operation with key staff in the public service and other institutions and agencies; and
- (l) ensure the efficient devolution of the administrative units to county levels, including a High Court Division in each county;

(m) perform such other duties as may be assigned by the Chief Justice from time to time.

The Committee also notes the powers and functions of the Judicial Service Commission as spelt out in Article 172 of the Constitution as below;

172 (1) the Judicial Service Commission shall promote and facilitate the independence and accountability of the Judiciary and the efficient, effective and transparent administration of justice and shall-

- (a) recommend to the president persons for appointment as judges;
- (b) review and make recommendations on the conditions of service of-
 - (i) judges and judicial officers, other than their remuneration; and
 - (ii) the staff of the Judiciary;
- (c) appoint, receive complaints against, investigate and remove from office or otherwise discipline registrars, magistrates, other judicial officers and other staff of the Judiciary, in the manner prescribed by an Act of Parliament;
- (d) prepare and implement programmes for the continuing education and training of judges and judicial officers; and
- (e) advise the National Government on improving the efficiency of the administration of justice.

(2) In the performance of its functions, the Commission shall be guided by the following:-

- (a) competitiveness and transparent processes of appointment of judicial officers and other staff of the Judiciary; and
- (b) the promotion of gender equality

In addition, Section 13 of the Judicial Service Act, 2011, states as follows:-

In addition to the powers of the Commission under Article 253 of the Constitution, the Commission shall have the power to:-

- (a) Purchase or otherwise acquire, hold, charge and dispose of movable or immovable property;***

(b) borrow and lend money;

(c) enter into contracts;

(d) do or perform all such other things or acts necessary for the proper performance of its functions under the Constitution and this Act which may be lawfully done or performed by a body corporate.

Based on the above functions and responsibilities as stipulated in law, the Committee drew the following conclusions:-

7.1 THE CHIEF JUSTICE HON. DR. WILLY MUTUNGA

The Committee takes great exception to the Chief Justice's decision not to honour summons issued to him. This was in direct contravention of Article 125 (1) of the Constitution which states that:-

"Either House of Parliament, and any of its Committees, has powers to summon any person to appear before it for the purpose of giving evidence or providing information."

Article 125(2) of the Constitution further states as follows:-

- (2) For the purposes of clause (1), a House of Parliament and any of its committees has the same powers as the High Court –*
- (a) to enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;*
 - (b) to compel the production of documents; and*
 - (c) to issue a commission or request to examine witnesses abroad.*

Evidence before the Committee indicates that the Chief Justice failed to provide leadership on several occasions. This was evident in the procurement of his house, the Elgon place radiation saga and the general relationship between the former CRJ and the JSC.

Article 161(2)(a) of the Constitution is explicit that the Chief Justice is the Head of the Judiciary. The Committee was concerned that the Judiciary Transformation Framework was not effectively implemented.

The scandals of financial impropriety went on for almost a year before the JSC finally dismissed the former CRJ. Even after the Chief Justice admitted in his 120th day address on the state of the Judiciary as he found it, there is

no evidence of any tangible steps he took to ensure improved financial management, and governance of the Judiciary in general. The statement may therefore have been full of lyrics, but hollow in substance, intention, and resolve.

The Chief Justice appears to have lost control of the Judiciary. Several correspondences were tabled to show open defiance of his directives, and at one time he snapped at the former CRJ to the effect that he was not 'the headless head of the judiciary'.

However, the fact that the Commissioners could hold so many meetings without the Chief Justice's knowledge and approval demonstrated a Judiciary "without a head". It is inexcusable that claims to the effect that Commissioners routinely transacted personal business at KICC disguised as official meetings (only to end up lodging claims for payment for the same) without the Chief Justice's knowledge, drew no sanctions from the Head of the Judiciary.

There is no doubt that Hon. Dr. Willy Munywoki Mutunga, the Chief Justice of the Republic of Kenya, is one of the most academically gifted lawyers in the Country. But, with hindsight, the wisdom of placing a man with limited public service experience, and no record of having led a large organization, to head a crucial arm of Government like the Judiciary, must not only be questioned, but should be a critical point of consideration in similar future appointments.

In total disregard of The Treasury's written Advisory, the Chief Justice on several occasions went ahead to direct the JSC to approve irregular payments as directed by the Finance and Administration Committee.

The Chief Justice (CJ) was found to be a beneficiary of irregular salary advances from the Judiciary, to the tune of Kshs.1,564,440.00. The Committee recommends that future payments in lieu of leave days that have been commuted be made only on leave days already earned.

The CJ must also share responsibility for the losses incurred by the Judiciary through single-sourcing of a security consultant/contractor, who he personally introduced to the CRJ and was subsequently engaged and paid large sums of money without due process.

7.2 THE JUDICIAL SERVICE COMMISSION

The Committee finds that the Judicial Service Commission as a whole failed to deliver on its mandate, and is alive to the fact that the Chief Justice is its chair while the CRJ is the Secretary.

The JSC exceeded its powers by purporting to approve payment to various suppliers. In so doing, it went beyond its oversight mandate to delve into operation issues in the Judiciary. In its sitting of 28th August 2013, the JSC's Finance and Administration committee approved payment to 12 suppliers amounting to Kshs. 51,815,435. This is an operational activity that should have been left to administrators. Accordingly, the Finance and Administration Committee of the JSC must be held responsible for bypassing financial management procedures and directing/demanding approval of payments irregularly, thus occasioning losses.

The advance/deposit payment of Kshs. 59,999,840.00 to Kenya Prisons for supply of furniture must also be seen as irregular. JSC is yet to submit proof that all the furniture paid for was delivered.

The Commission went ahead to directly procure the offices at Mayfair Centre and instructed the then Registrar of High Court, Mrs. Lydia Achode to effect the transaction. The rent for the premises was again paid upfront two years before occupation to the tune of Kshs.7,392,000.

The Committee also finds that the JSC in its entirety and through its secretary failed to properly manage its meetings by not confirming and approving minutes. In some instances, minutes were not seen. Some of the meetings were not properly constituted in accordance with Section 22(5) of the Judicial Service Act, yet the Commissioners went ahead to approve Kshs.1.6 million in allowances to themselves. The irregular allowance payment was extended to non-Commissioners who attended JSC meetings, to the tune of Kshs.9.8 million. The irregularly paid allowances should be recovered from the affected Commissioners.

The Committee also finds that the JSC failed to provide leadership in providing broad guidelines for finance and human resources policies. The Commission should also have been in the forefront of implementing the Judiciary Transformation Framework by providing leadership.

By delving into operational matters and in some instances usurping the powers of the CRJ and various departmental heads, the JSC is culpable of overstepping its mandate and failing to discharge its powers in the spirit of the Constitution under Article 172. The many public altercations members of the JSC had with the CRJ brought the Judiciary into disrepute.

By not having a list of approved pre-qualified suppliers, and approving tenders without budgetary provisions, the Judiciary opened itself to obvious procurement malpractices. It is inexcusable that an entire arm of Government resorted to engaging suppliers/contractors many times either through phone calls or by word of mouth. The excuse of wanting "things

done fast in tandem with the Judiciary's ambitious reform program" could not be a justification for flouting laws and regulations.

The Committee further finds the tendency by some Commissioners of the JSC to ask to be paid sitting allowances for court visits and trainings that they attended as not only irresponsible but also reprehensible in the extreme. It may seem the JSC was seen more as a cash-cow by some Commissioners.

7.3 MRS. GLADYS BOSS SHOLLEI, FORMER CHIEF REGISTRAR OF THE JUDICIARY

During the period under review, Mrs. Gladys Boss Shollei was the Chief Registrar and presided over the many administrative malpractices. As the Chief Administrator and Accounting Officer and with the wide-ranging powers vested in her office, some of which she quoted in her defense over alleged JSC interference, this Committee finds her largely culpable.

The Committee takes great exception to the former Chief Registrar for deliberately misleading it on the matter of the acquisition of Mayfair Court Centre and strongly reprimands her. Irrefutable evidence shows she personally accepted the offer by signing the Letter of Offer from the landlord's agents and executed the lease on 16th September 2011. These premises went unoccupied for two years after payment of rent of Kshs. 7,392,000.00

The Committee finds that she was unable to cultivate a healthy working relationship with her employer, the JSC. Section 8 (k) of the Judicial Service Act states that the Chief Registrar should maintain and develop co-operation with key staff in the public service and other institutions and agencies. During her submission, she informed the Committee that the JSC was at constant loggerheads with her. She operated in a fractious and dysfunctional environment and sometimes failed to attend Commission sittings, notwithstanding her statutory position as Secretary to the Commission. Management of minutes of sittings of the Commission was appallingly poor.

Mrs. Gladys Boss Shollei constituted the Tender Committees in the Judiciary and was responsible for ensuring they met the threshold required. The Committee finds that the finance directorate and the Tender Committee secretaries were not the most qualified in their respective directorates. This is after Mrs. Shollei's assertion that they were more qualified than their seniors at the time.

The lease of office space and second hand furniture at Rahimtulla Towers were found to be similarly irregular. The premises remain at 50% occupancy

level to date, indicating a procurement process that lacked foresight, prudence and due diligence. This represents wastage of Kshs 24,358,193.50 of the total Kshs. 48,716,387.00 paid for the premises.

Moreover, the lease agreement provided for a rent deposit of six months amounting to Kshs. 32,400,000.00, which was based on rent payable effective 1 July 2017. The Accounting Officer in this particular instance did not act in the best interest of the Judiciary causing a loss of Kshs. 6,482,056.50.

The Committee also found that direct procurement was used in the purchase of second hand furniture. The Committee was not satisfied with the explanation for direct procurement. Mrs. Shollei was the accounting officer who sanctioned these awards and payment to PriceWaterHouse Coopers to the tune of Kshs. 59,699,492.00.

It seems unbelievably coincidental that this figure is almost the exact same amount the Judiciary paid Kenya Prisons as **DEPOSIT** for supply of furniture. This begs the question; were these mere whimsical numbers thrown around by an organization in a rush to spend public funds, or the result of careful and meticulous market research and valuation? It looks more likely these figures were the result of hurried/impulsive spending of public funds.

Failure to provide for open and competitive bidding denied the tax payer best bargains and made it difficult to establish whether the Judiciary got value for money.

Mrs. Gladys Boss Shollei is culpable in the procurement of the Containerized Data Centre. The Committee finds that this project was the brainchild of Mrs. Shollei and the then director of ICT, Mr. Tom Atak. While the stated objectives were noble, the real intentions of this flawed procurement seemed to have been no more than a poorly constructed scheme to fleece tax-payers.

The procurement was un-procedural from the start as evidence disputes a needs request from the directorate, and this is vindicated by failure to commission the project to date. In any case, the project remains incomplete and unusable.

More than Kshs.106,720,048.97 was spent on this imprudent expenditure, plus a further Kshs. 18 million on a warranty that was supposed to be included in the contract price. Evidence received showed that Mrs. Shollei not only brought this matter to the attention of the JSC after expenditure, but also flouted JSC directive of being involved in any expenditure exceeding Kshs.50 million.

The Committee finds Mrs. Shollei responsible for directly procuring services from JKUATES Ltd., and proceeding to award it several contracts - among them valuation of second hand furniture and the Chief Justice's official residence. The Committee disagreed with the explanation that this was a Government to Government procurement.

JKUATES Ltd. was a limited liability entity whose proceeds were shared among private individuals behind it (including lecturers in their private capacities and a private company, Align Architects) to the tune of 95%. Engagement of this private firm is found to have contravened provisions of the Public Procurement and Disposal Act as it was meant to circumvent the law as a Government to Government contract (see annexure 10).

Mrs. Gladys Boss Shollei is also culpable in the procurement of prefabricated court houses in seven towns in the country. The Judiciary made advance payments of Kshs. 126,703,827.00 to Messrs. Timsales Ltd. and Kshs. 26,469,832.00 to Economic Housing Group contrary to Section 14(7) of The Government Financial Regulations and Procedures which provide that payments to contractors should be made on the basis of signed contracts and a payment voucher prepared that is supported by certified delivery of goods, works and/or services.

These constructions proved costly, at Kshs. 626,535,974.00, defeating the stated purpose of affordability and reduced contract periods. A site visit to Runyenjes for instance showed that the project cost was more than that of a parallel construction of a sub-county headquarters. In the Bomet case, a parallel construction of a permanent court house was ongoing, leading to double expenditure. The Committee also notes that these projects were directly sourced in contravention of Section 29 (3) and Section 74 of the Public Procurement and Disposal Act, 2005.

Several leases including the Rahimtulla Towers (Kshs. 67,082,169.00), Elgon Court (Kshs. 70,147,605.00), AFC offices (Kshs. 43,537,609.00) and Vomorono Warehouses (Kshs. 3,379,776.00) were irregularly entered into. During the period under review, they had not been registered, a responsibility of the Accounting Officer.

The Committee in its site visits noted that the requisitioned space was unnecessary and lay unused despite the large sums of money shown above having been spent. Moreover, the Judiciary failed to fully pay for the leases, leading to losses to the AFC and exposing it to possible litigation.

The Committee finds that Mrs. Gladys Boss Shollei, being the Accounting Officer, failed to prudently manage finances towards allowances. Being the final authority on payments, the Accounting Officer allowed hefty allowances to be paid to non-members of the JSC, at Kshs.80,000.00 per

sitting. Some staff members are listed in the special audit report as having earned up to Kshs.7 million each in allowances within six months (see annex).

The Accounting Officer allowed payment of allowances for meetings not properly constituted and lacking quorum (annex table of these sittings).

Mrs. Gladys Shollei personally owes the Judiciary Kshs.3,048,298.90 to date in form of salary advances, Kshs 2,314,125.00, Current grant Kshs 400,000.00; and personal expenses on staff credit card Kshs. 334,173.90.

Mrs. Gladys Boss Shollei is culpable of opening and/or operating bank accounts without Treasury approval contrary to the Public Finance Management Act 2012 Section 28 (1) of the Public Finance Management Act 2012 which states that;

“The National Treasury shall authorize the opening, operating and closing of bank accounts and sub-accounts for all national Government entities in accordance with regulations made under this Act.”

She went further to operate a bank account, Milimani Law Courts deposit account no. 1116930854 at KCB as a sole signatory, and allowed another, Milimani Law Courts recurrent account no. 1129777367 at KCB to be operated by Gilbert Mutembei, also as a sole signatory.

This points to a failure to institute internal controls and was a high risk occurrence. It was also found that imprests were improperly issued and managed with some staff members failing to surrender imprest within 48 hours, and even some not using the imprest for purposes intended.

Mrs. Gladys Boss Shollei oversaw poor management of affairs at the Judicial Training Institute (JTI). She authorized an expenditure of Kshs.62,816,343.00 for the presidential inauguration even after Parliament passed laws providing a vote for the event. This amount has not been refunded and as such starves the Judiciary Training Institute of much needed operational funds. Moreover, audit exposed poor management of cashbooks contrary to Section 5(9) of the Government Financial Regulations and Procedures that require daily balancing and closing. Further still, JTI incurred an over-expenditure of Kshs. 128,903,491 that had neither been budgeted for, nor approved by Parliament.

Mrs. Gladys Boss Shollei oversaw negotiations into purchase of the Chief Justice’s house without a proper valuation being done. Evidence suggests she relied on an indicative figure rather than a professionally done valuation report.

Mrs. Gladys Boss Shollei directly procured a security consultant by the name of Mr. Simiyu Werunga. She further went on to approve payments to Mr. Werunga to the tune of KShs. 29,934,975.00 without a valid contract. Moreover the Project was undertaken both without the services of an independent consultant and signing of a maintenance contract as should have been the case for such projects.

It was also strange that the consultant who provided the initial report became the implementer of his own recommendations and the final checker/verifier as to cost and quality of the project. Most of the security equipment have since stopped working, leading to a direct loss to the taxpayer. Moreover, it is not clear why public funds were used to undertake work in the private residences of senior Judiciary staff. Mrs. Shollei must bear the greatest responsibility for this wasteful and unnecessary loss of public funds.

7.4 MR. BENEDICT OMOLO- FORMER DIRECTOR OF FINANCE

Mr. Benedict Omolo conceded irregularities in payment of allowances.

Mr. Benedict Omolo went further to approve advance payments to contractors, Kshs. 126,703,827.00 to Messrs. Timsales Ltd. and Kshs. 26,469,832.00 to Economic Housing Group contrary to Section 14.7 of The Government Financial Regulations and Procedures which provide that payments to contractors should be made on the basis of signed contracts and a payment voucher prepared that is supported by certified Delivery Notes and/or Certificates for goods, works and/or services.

Mr. Omolo further approved payment of Kshs.106,720,048.97 for the Containerized Data Centre which was not operational several months later.

Mr. Omolo approved payment of KShs. 29,934,975.00 to Mr. Simiyu Werunga without requisite accompanying documentation like a properly signed Contract, Payment Certificate / Delivery Notes, and proper invoices.

The Committee finds that the now interdicted Director of Finance approved payments contrary to Article 226(5) of the Constitution that places direct personal liability on public officers.

7.5 MR. MARTIN OKWATTA- FORMER DIRECTOR SUPPLY CHAIN

The Director of Supply Chain Management oversaw gross mismanagement in the organization. Procurement regulations were flouted and his evidence to the Committee was indicative of a public officer who deliberately failed to

perform his duties as is expected of him in Section 26(8) of the Public Procurement and Disposal Act, 2005, which states;

(8) For the purpose of this section, a "procurement professional" means a person who-

i. has professional qualifications in procurement and supply management from a recognized institution;

(b) is engaged in a calling or occupation in which recourse to procurement is directly or indirectly involved and has experience in the practice of procurement; and

ii. is a member of a recognized institute of purchasing and supply.

The Committee finds that this neglect of professional duty is inexcusable considering the fact that the officer was a former employee of the Public Procurement Oversight Authority.

During the period under review, the Judiciary directly procured services from JKUATES Ltd. and PriceWaterHouseCoopers without justification. As the then Director in charge, Mr. Okwatta is expected to have overseen all procurement processes and ensured they complied with the law. Mr. Martin Okwatta is therefore culpable of gross mismanagement of procurement procedures and regulations in the Supply Chain Department.

7.6 MR. TOM ATAK - DIRECTOR ICT

The Director of Information and Communication Technology (ICT) is culpable of conspiring with the former CRJ, Mrs. Gladys Boss Shollei, to commit public funds for the acquisition of the Containerized Data Centre which failed to follow due process. Moreover, in spite of injection of large amounts of public funds, the project remains unused and unusable.

Evidence points to the fact that the need for this facility was made by Mr. Atak without involving other officers in the directorate. The officers tendered evidence before the Committee that this acquisition was needless and undemonstrated.

The Judiciary lost Kshs.106,720,048.97 in this purchase. The Committee finds that Mr. Atak failed to provide professional leadership in acquiring cheaper and even better alternatives like cloud computing, than a facility that has completely failed to achieve the stated objectives.

PART VIII

8.0 RECOMMENDATIONS

The Committee recommends as follows:-

1. There is need for every Kenyan to adhere to the rule of law particularly Article 125 of the Constitution that gives Parliament the power to call evidence from any person. The Committee notes with concern the Chief Justice's refusal to honour summons by the Public Accounts Committee during its probe into the Judiciary and JSC expenditure. As the head of the Judiciary, the Chief Justice should lead from the front in demonstrating fidelity to the rule of law and Constitutionality.
2. Henceforth, the Chief Justice should annually report as required by Section 5(2)(b) of the Judicial Service Act, 2011; to Parliament on progress towards implementation of the Judiciary Transformation Framework and progress of the Judiciary.
3. The Chief Justice should forthwith refund the leave allowances irregularly drawn from the Judiciary. He should henceforth exercise effective general direction and firm control of the Judiciary as provided for under Section 5(2)(c) of the Judicial Service Act, 2011.
4. For his failure to provide leadership, the Chief Justice must take personal responsibility for allowances paid to the Commissioners of the JSC for attending meetings that were not convened with his knowledge and approval. Similarly, an audit of all such meetings should be undertaken and the responsible Commissioners surcharged.
5. For disregarding the Treasury's written advisory on the management of Public Funds, the Chief Justice must take personal responsibility for all payments irregularly made on his instructions.
6. The Director of Public Prosecution should commence prosecution against the following;
 - i. Mrs. Gladys Boss Shollei for gross breach of Government Financial Regulations and Procedures, the Procurement laws and failing to safeguard public funds as the accounting officer of the Judicial Service Commission thus occasioning loss of public funds amounting to Kshs.2,207,400,000.

- ii. Mr. Benedict Omolo for approving irregular payments and not adhering to Government Financial Regulations and Procedures, as illustrated above.
 - iii. Mr. Tom Atak for his role in the procurement of the Containerized Data Centre. He should be held personally liable and be surcharged for the loss of Kshs.106,720,048.97 and a further Kshs.18 million for a 3 year warranty for the Containerized Data Centre for the Judiciary, in accordance with provisions of Article 226(5) of the Constitution.
 - iv. Mr. Martin Okwatta for flouting procurement procedures and Government regulations contrary to the Public Procurement and Disposal Act 2005, leading to various procurement irregularities and loss of funds at the Judiciary.
7. The current Chief Registrar of the Judiciary should take the necessary steps to ensure that Government procurement regulations and procedures are strictly adhered to while procuring goods and services at the Judiciary.

Towards this end, the CRJ should present to the National Assembly a status report on,

- a) Procurement,
- b) Record keeping,
- c) Leases of premises that the Judiciary currently occupies,

on or before 31st July, 2015 every year in accordance with Section 5(2)(b) of the JSC Act, 2011.

8. The Chief Registrar should forthwith effect recovery measures on irregularly paid allowances to JSC Commissioners, members of staff, allowances paid and not already earned as at this date, and improperly accounted for imprest.
9. The Judicial Service Commission should initiate investigations on the staff who benefitted from accelerated promotions, assess them through a job evaluation program and place them within their rightful job cadres.
10. The Judicial Service Commission should forthwith cease from getting involved in operational activities of the Judiciary.

11. The Chief Registrar should move with speed to secure the Judiciary's interest in signed leases by registering them, and take possession of title deeds of all Judiciary land. The premises that are not fully occupied should be rationalized and negotiations held with the leasers.
12. The Chief Registrar should institute recovery measures on contractors who were paid and are yet to make a full delivery for goods or services and officers found responsible for the loss surcharged. The Government should further blacklist from Government tenders the firms and entities that were involved in financial impropriety and breach of contracts at the Judiciary during the stipulated time. The Auditor General, and the Ethics and Anti-Corruption Commission should conduct detailed further investigations into how Dimension Data, PriceWaterHouseCoopers, Timsales Ltd., JKUATES Ltd., Align Architects, Johnstone Muthama Holdings Ltd., and Simiyu Werunga ended up with inflated, irregular, and un-procedural procurements from the Judiciary. Those found culpable should be recommended for prosecution, recovery of the public funds wasted, and blacklisted from engagement in future Government contracts.
13. The Chief Registrar should fully institute and strengthen a functional internal audit system.
14. The Chief Registrar should strengthen internal control mechanisms. To this end, an inventory of all Bank accounts operated by the Judiciary should be made and all accounts operated without Treasury approval should be closed forthwith and those with sole signatories be properly mandated and signatories regularized.
15. The JSC should operationalize the Judiciary Transformation Framework, and develop policies that will guide all operations of the Judiciary.
16. The Ethics and Anti-Corruption Commission should investigate circumstances under which Kenya Commercial Bank Ltd. allowed public accounts to be operated on a sole signatory mandate and take necessary action on any irregularities. Should Kenya Commercial Bank Ltd. be found to have knowingly permitted lapses in procedures for operating Government accounts, punitive sanctions

including being suspended from holding Government accounts should be instituted against them.

17. The Office of the Auditor General and the Ethics and Anti-Corruption Commission should investigate the membership and clandestine nature of operations of JKUATES Limited and similar entities in all public universities and other institutions of higher learning and consequently recommend appropriate legal action on those found culpable of malpractices, including recommendations for de-registration.
18. The Judicial Service Commission should move with speed to complete renovations of the Official Residence of the Chief Justice and have the premises occupied.
19. The security upgrades implemented by Mr. Simiyu Werunga, a security consultant and contractor, should be subjected to detailed audit by an independent Security Consultant, working jointly with relevant departments of the Government, and any sums paid over and above fair market value be claimed from the consultant/contractor. The Chief Registrar should immediately engage the beneficiaries of this project with a view to recovering public funds used in their private dwellings. In the meantime, the Chief Registrar should stop, forthwith, further injection of public resources in maintaining security installations in these private dwellings.
20. Members of the Finance and Administration Committee of the JSC should be individually investigated by the Ethics and Anti-Corruption Commission for their roles in some of the financial improprieties and irregularities at the JSC.
21. All monies irregularly paid to JKUATES Ltd. must be calculated and recovered from them. JKUATES Ltd. should refund all monies over-charged by not applying correct fee scales for homogenous/duplicated designs (i.e. repetitive work). All the professionals involved in this scheme to defraud the Judiciary should be investigated in their private capacities for purposes of refunding the extra fees charged over and above the statutory charges. Additionally, they should be referred to their respective professional bodies for disciplinary action.
22. In instances where it becomes necessary to provide enhanced/specialized security to senior members of the Judiciary, the relevant arms of Government should be actively involved, just as they do with other senior public/state officers,

MINUTES OF THE ONE HUNDRED AND FOURTINTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON THURSDAY, 05TH JUNE, 2014 AT 10.00 A.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING.

PRESENT:-

1. Hon Ababu Namwamba, E.G.H, M.P. - Chairperson
2. Hon Joseph Manje, M.P.
3. Hon Kareke Mbiuki, M.P.
4. Hon Gonzi Rai, M.P.
5. Hon Jackson Rop, M.P.
6. Hon James Bett, M.P.
7. Hon Fathia Mahbub, M.P.
8. Hon Andrew Mwadime, M.P.
9. Hon Sakwa Bunyasi, M.P.
10. Hon John Mbadi, M.P.
11. Hon Kyengo Katatha Maweu, M.P.
12. Hon Manson Nyamweya, M.P.
13. Hon Abass Ahmed Ibrahim, M.P.
14. Hon Julius Melly, M.P.
15. Hon Mathias Robi, M.P.
16. Hon Samuel Arama, M.P.
17. Hon Junet Sheikh Nuh, M.P.
18. Hon Silvance Onyango Osele, M.P.
19. Hon Charles Geni Mongare, M.P.
20. Hon Alice Nyanchoka Chae, M.P.

ABSENT:-

1. Hon Cecily Mbarire, M.G.H., M.P. - Vice-chair
2. Hon Jude Njomo, M.P.
3. Hon Joel Onyancha, M.G.H., M.P.
4. Hon Arthur Odera, M.P.
5. Hon Edick Omondi Anyanga, M.P.
6. Hon Samuel Arama, M.P.
7. Hon Jessica Mbalu, M.P.
8. Hon Stephen Manoti, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

1. George Gazemba - Senior Clerk Assistant

2. Johnstone Kioko - Clerk Assistant II
3. Victor Weke - Clerk Assistant II
4. Chelagat Tungo - Clerk Assistant II
5. Rahab Chepkilim - Hansard Recorder

KENYA NATIONAL AUDIT OFFICE (KENAO)

1. Richard Nyachio - Team Leader, Audit Report
2. James Peter Kamau - Auditor
3. Angelina M Masila - Supervisor Audit

MIN No. 387/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 388/2014:- EVIDENCE: MRS. GLADYS BOSS SHOLLEI, FORMER CHIEF REGISTRAR OF THE JUDICIARY.

In the matter of the expenditure of the Judiciary Vote as captured in the Special Audit Report of the Auditor General.

Mrs. Gladys Boss Shollei, former Chief Registrar of the Judiciary submitted as follows:

- (i) The former CRJ confirmed that she was at the accounting officer at the subject time of the probe (except Mayfair court acquisition), and was the secretary of the JSC. She submitted that she kept minutes and the JSC must be mischievous in not producing them.
- (ii) She had raised issues concerning interference from the JSC, including to the Chief Justice and the Cabinet Secretary- Treasury, in accordance with the Public Finance Management (PFM) Act.
- (iii) The JSC sub-committees sat without the Chief Justices approval, and would "bully" the finance department to pay. She confirms having delegated these issues to the Director Finance, and a Wilfrida Mokaya. She however became aware of some of these irregular sittings much later.
- (iv) That responsibility and the buck should be placed on members of the Finance and Administration Committee, comprising of Messrs Ahmednassir Abdullahi, Smokin Wanjala, Rev. Kobia, Mwangangi, Ominde and Prof. Mango.
- (v) That she initially found junior staff serving in the tender committee and thus appointed the most senior people available at the time. A new tender committee was constituted after new people were hired.

- (vi) There was an infrastructure challenge at the Judiciary at the time and the transformation framework was to sort this out; a needs assessment was done. The premises not occupied were as a result of for example, Judges refusing to occupy Elgon place. The Chief Justice allowed Judges not to occupy the building, and he should take the blame. The JSC Finance committee was responsible for the 2 year prior rent payment for Mayfair court; these payments were illegal. The furniture at Rahimtullah was single sourced because PWC had them in the building already.
- (vii) Executed leases for all the premises were at the lands offices for registration.
- (viii) The amount she owes the Judiciary is Kes. 1.6M; and these advances were approved by the Deputy Registrar. Other people also collected advances. The former CRJ sought an opportunity to hand over.
- (ix) All Human Resource recruitment was done with JSC approval; and the temporary staffs were to solve shortages that led to crises. The so-called accelerated promotions were staff seconded from ministries and were placed in their proper cadres. They were thus appointed afresh, not promoted. The JSC approved the same on 1st December 2013.
- (x) There were previously non-existent internal controls, and it's the former CRJ who initially hired 9 internal auditors.
- (xi) The Judiciary Training Institutes' expenditure of Kes. 116M to be best responded to by the Director Finance. The Kes. 62M expended on the Presidential inauguration was to be refunded, and was used to pay for supplies procured by the office of the President.
- (xii) That advance payments were meant to enable urgent provision of service. JKUAT Enterprises was single sourced because it was within government.

MIN No. 389/2014:- ADJOURNMENT

There being no other business, the committee adjourned at thirteen minutes past three in the afternoon.



SIGNED.....

(Chair)

DATE.....
27/1/14

**MINUTES OF THE ONE HUNDRED AND FIFTINTH SITTING OF THE PUBLIC ACCOUNTS
COMMITTEE (PAC) HELD ON MONDAY, 09TH JUNE, 2014 AT 10.00 A.M. IN COMMITTEE
ROOM 9, MAIN PARLIAMENT BUILDING.**

PRESENT:-

1. Hon Ababu Namwamba, E.G.H, M.P. - Chairperson
2. Hon Joseph Manje, M.P.
3. Hon Jude Njomo, M.P.
4. Hon Gonzi Rai, M.P.
5. Hon James Bett, M.P.
6. Hon Fathia Mahbub, M.P.
7. Hon Andrew Mwadime, M.P.
8. Hon John Mbadi, M.P.
9. Hon Manson Nyamweya, M.P.
10. Hon Abass Ahmed Ibrahim, M.P.
11. Hon Jessica Mbalu, M.P.

ABSENT:-

1. Hon Cecily Mbarire, M.G.H., M.P. -Vice-chair
2. Hon Joel Onyancha, M.P.
3. Hon Kareke Mbiuki, M.P.
4. Hon Julius Melly, M.P.
5. Hon Jackson Rop, M.P.
6. Hon Mathias Robi, M.P.
7. Hon Sakwa Bunyasi, M.P.
8. Hon Arthur Odera, M.P.
9. Hon Edick Omondi Anyanga, M.P.
10. Hon Samuel Arama, M.P.
11. Hon Junet Sheikh Nuh, M.P.
12. Hon Kyengo Katatha Maweu, M.P.
13. Hon Silvanice Onyango Osele, M.P.
14. Hon Charles Mong'are Geni, M.P.
15. Hon Alice Nyanchoka Chae, M.P.
16. Hon Stephen Manoti, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

1. George Gazemba - Senior Clerk Assistant
2. Johnstone Kioko - Clerk Assistant 2

3. Victor Weke - Clerk Assistant 2
4. Chelagat Tungo - Clerk Assistant 2
5. Rahab Chepkilim - Hansard Editor

KENYA NATIONAL AUDIT OFFICE (KENAO)

1. Richard Nyachio - Team Leader, Audit Report
2. James Peter Kamau - Auditor
3. Angelina M Masila - Supervisor Audit

TREASURY

1. Moses M Gicheru - Senior Accountant, National Treasury.

MIN No. 390/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 391/2014:- EVIDENCE: MR. FRANCIS KAKAI KISSINGER, DEPUTY CHIEF REGISTRAR OF THE JUDICIARY (ON SUSPENSION).

In the matter of the expenditure of the Judiciary Vote as captured in the Special Audit Report of the Auditor General.

Mr. Francis Kakai Kissinger, Deputy Chief Registrar of the Judiciary (on suspension) submitted as follows:

- (i) It is true he acted as Chief Registrar of the Judiciary after Mrs. Gladys Shollei was suspended.
- (ii) That JKUAT Enterprises were may not have been recruited competitively.
- (iii) That he was not aware of the existence of any Financial or Human Resource policy manuals in the Judiciary; and was thus acting in a vacuum.
- (iv) That Elgon place was presented by Knight Frank; and the Committee approved 34,000 square feet. He was not aware, so wasn't the Acting Chair of the Tender Committee, that the lease agreement was higher by an extra 13,490 square feet.
- (v) That it was in order for the Elgon place bid to be accepted as quoted in US Dollars as long as the conversion was at mean rates. This advice was from the then Finance Director, Mr. Omollo. This was a resolution of the Tender Committee and was minuted. He however conceded that it may have been wrong to award the tender in USD, as well as the increase of the square feet.

- (vi) The Chief Justice's house was chosen because of security considerations. The Committee relied on a preliminary valuation. The title deed should be in the custody of a Ms. Manyala, a Properties Officer.
- (vii) On the Mavoko law courts, the auditors got it wrong; the award was given on the premise that the Mavoko leadership would provide the land. The award was thereafter varied from Mavoko to Runyenjes.

MIN No. 392/2014:- EVIDENCE: MR. BENEDICT OMOLLO, DIRECTOR OF FINANCE, JUDICIARY (ON SUSPENSION).

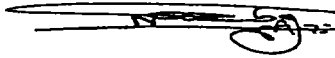
In the matter of the expenditure of the Judiciary Vote as captured in the Special Audit Report of the Auditor General.

Mr. Benedict Omollo, Director of Finance of the Judiciary (on suspension) submitted as follows:

- (i) It is true he acted as Director of Finance of the Judiciary during the subject period of the audit.
- (ii) That his suspension was actually not as a result of the audit issues but due to a Kes. 80M cyber crime investigation that happened in September 2013.
- (iii) That he initiated a job evaluation and recommended the establishment of an internal audit function.
- (iv) He believes that procurement of space at Elgon Place and Rahimtullah Towers was done on a needs assessment basis. The allocation for the official residence of The Chief Justice was however based on provision of the Cabinet which placed a ceiling of Kes. 300M.
- (v) Advance payments to contractors were done before he joined the Judiciary. Advances under his watch were based on performance of work, and were based on the contract. He questioned the basis of the advance payments and the tender committee convinced him.
- (vi) Payment for Rahimtullah Towers from the deposit account was done by the Director of Revenue.
- (vii) Use of the Judiciary Training Institute's funds for the Presidential inauguration was a directive from the office of the President; the refund was yet to be made.
- (viii) Allowances paid to various judicial officers and the JSC were based on registers of attendance from the Chief Registrar.
- (ix) That the audit did not capture the culture and context of the Judiciary at the time of audit. Performance should also not be measured on funds absorption.

MIN No. 393/2014:- ADJOURNMENT

There being no other business, the committee adjourned at one o'clock in the afternoon.



SIGNED.....

(Chair)

2/11/14

DATE.....

MINUTES OF THE ONE HUNDRED AND SIXTINTH SITTING OF THE PUBLIC ACCOUNTS
COMMITTEE (PAC) HELD ON MONDAY, 09TH JUNE, 2014 AT 1.30 P.M. IN COMMITTEE
ROOM 9, MAIN PARLIAMENT BUILDING.

PRESENT:-

1. Hon Ababu Namwamba, E.G.H, M.P. - Chairperson
2. Hon Joseph Manje, M.P.
3. Hon Jude Njomo, M.P.
4. Hon Gonzi Rai, M.P.
5. Hon James Bett, M.P.
6. Hon Fathia Mahbub, M.P.
7. Hon Andrew Mwadime, M.P.
8. Hon John Mbadi, M.P.
9. Hon Manson Nyamweya, M.P.
10. Hon Abass Ahmed Ibrahim, M.P.
11. Hon Jessica Mbalu, M.P.

ABSENT:-

1. Hon Cecily Mbarire, M.G.H., M.P. -Vice-chair
2. Hon Joel Onyantha, M.P.
3. Hon Kareke Mbiuki, M.P.
4. Hon Julius Melly, M.P.
5. Hon Jackson Rop, M.P.
6. Hon Mathias Robi, M.P.
7. Hon Sakwa Bunyasi, M.P.
8. Hon Arthur Odera, M.P.
9. Hon Edick Omondi Anyanga, M.P.
10. Hon Samuel Arama, M.P.
11. Hon Junet Sheikh Nuh, M.P.
12. Hon Kyengo Katatha Maweu, M.P.
13. Hon Silvance Onyango Osele, M.P.
14. Hon Charles Geni Mongare, M.P.
15. Hon Alice Nyanchoka Chae, M.P.
16. Hon Stephen Manoti, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

1. George Gazemba - Senior Clerk Assistant

2. Johnstone Kioko - Clerk Assistant II
3. Victor Weke - Clerk Assistant II
4. Chelagat Tungo - Clerk Assistant II
5. Rahab Chepkilim - Hansard Editor

KENYA NATIONAL AUDIT OFFICE (KENAO)

1. Richard Nyachio - Team Leader, Audit Report
2. James Peter Kamau - Auditor
3. Angelina M Masila - Supervisor Audit

TREASURY

1. Moses M. Gicheru - Senior Accountant, National Treasury.

MIN No. 394/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 395/2014:- EVIDENCE: MR. DISMAS OBONDO, DIRECTOR OF HUMAN RESOURCE MANAGEMENT, JUDICIARY (ON INTERDICTION).

In the matter of the expenditure of the Judiciary Vote as captured in the Special Audit Report of the Auditor General

Mr. Dismas Obondo, Director of Human Resource Management of the Judiciary (on interdiction) submitted as follows:

- (i) The extra duty allowances paid to staff were regular. He was paid Kshs.2,870,000.00 in extra duty allowance between December, 2012 and June, 2013. This was because he sat in several Committees of JSC and Judiciary where he would draw daily sitting allowances for meetings attended. In a day he would attend more than one meeting earning Kshs.25,000.00 per meeting.
- (ii) The extra duty allowances were paid on the basis of a circular issued by the Chief Registrar. He added that allowances paid for members of Tender Committees were guided by a Treasury circular.

MIN No. 396/2014:- EVIDENCE: MR. MARTIN OKWATA, DIRECTOR OF SUPPLY CHAIN MANAGEMENT, JUDICIARY (ON INTERDICTION).

Mr. Martin Okwata, director of supply chain management (on suspension) submitted as follows:

- (i) It was true that he served as Director of Supply Chain Management since July 1st 2013.
- (ii) Needs assessment for Elgon place was 'already done'; this information was got from an informal meeting with Mr. Kakai. The witness however did not see the needs assessment.
- (iii) Knight Frank had indicated that increase from 34,000 square feet to 47,000 square feet because the ground floor was not initially included.
- (iv) The tender committee asked the witness to explore the possibility of taking the whole building.
- (v) Procurement for Mayfair court was done before he joined the Judiciary.
- (vi) He was also not involved in transactions involving the Agricultural Finance Corporation.
- (vii) JKUATES did an independent evaluation of the second hand furniture at Rahimtullah; as well as the Chief Justice's house.

The witnesses committed to provide a detailed account with supporting documents within a week.

MIN No. 397/2014:- EVIDENCE: MR. TOM ATAK, DIRECTOR OF ICT, JUDICIARY (ON INTERDICTION).

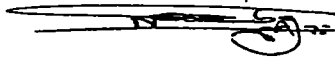
Mr. Martin Okwata, director of ICT (on interdiction) submitted as follows:

- (i) The Judiciary leased 47,890.00 square feet which was the entire Elgon Court building. When the matter was presented to the Tender Committee, the Committee knew the entire building was being leased so there should not have been a variation size of office space that was actually leased.
- (ii) The Containerized Data Centre was procured by the Judiciary on a need basis and was required urgently. He did the needs assessment and prepared a two page memo justifying the implementation of the project. The Container housed IT equipment and could not be placed in the main Supreme Court Building.
- (iii) The Centre was however not operational to date though it was being utilized as a store for new computers. The total cost of the project was Kshs 106,720,048.00. The Contractor had been paid 80% of the total cost. The 20% balance was to be paid on commissioning. JSC stopped payment after it became apparent that the procurement process of the project raised integrity issues.

(iv) The tender document required bidders to provide a three year warranty of Kshs.18,000,000. It was a standard practice to ask for a warranty. The Judiciary asked for different lengths of warranty period depending on the equipment being purchased i.e. six months for printers, one year for computers and three years for high value equipment. A warranty was different from maintenance in that the former is an assurance by a manufacturer against defects while the latter is care to ensure upkeep and good working order of the equipment.

MIN No. 398/2014:- ADJOURNMENT

There being no other business, the committee adjourned at five o'clock in the evening.



SIGNED.....

(Chair)

DATE..... 29/11/14

MINUTES OF THE ONE HUNDRED AND SEVENTINTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON THURSDAY, 10TH JUNE, 2014 AT 10.00 A.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING.

PRESENT:-

1. Hon Ababu Namwamba, E.G.H, M.P. - Chairperson
2. Hon Joseph Manje, M.P.
3. Hon Jude Njomo, M.P.
4. Hon Gonzi Rai, M.P.
5. Hon James Bett, M.P.
6. Hon Fathia Mahbub, M.P.
7. Hon Andrew Mwadime, M.P.
8. Hon John Mbadi, M.P.
9. Hon Manson Nyamweya, M.P.
10. Hon Abass Ahmed Ibrahim, M.P.
11. Hon Jessica Mbalu, M.P.
12. Hon Joel Onyancha, M.P.
13. Hon Kareke Mbiuki, M.P.
14. Hon Julius Melly, M.P.
15. Hon Jackson Rop, M.P.
16. Hon Samuel Arama, M.P.
17. Hon Kyengo Katatha Maweu, M.P.
18. Hon Silvanice Onyango Osele, M.P.
19. Hon Charles Geni Mongare, M.P.
20. Hon Alice Nyanchoka Chae, M.P.

ABSENT:-

1. Hon Cecily Mbarire, M.G.H., M.P. -Vice-chair
2. Hon Mathias Robi, M.P.
3. Hon Sakwa Bunyasi, M.P.
4. Hon Arthur Odera, M.P.
5. Hon Edick Omondi Anyanga, M.P.
6. Hon Junet Sheikh Nuh, M.P.
7. Hon Stephen Manoti, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

1. George Gazemba - Senior Clerk Assistant

2. Johnstone Kioko - Clerk Assistant II
3. Victor Weke - Clerk Assistant II
4. Chelagat Tungo - Clerk Assistant II
5. Rahab Chepkilim - Hansard Editor

KENYA NATIONAL AUDIT OFFICE (KENAO)

1. Richard Nyachio - Team Leader, Audit Report
2. James Peter Kamau - Auditor
3. Angelina M Masila - Supervisor Audit

NATIONAL TREASURY

1. Moses M Gicheru - Senior Accountant, National Treasury.

MIN No. 399/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 400/2014:- EVIDENCE: MRS ANNE AMADI, CHIEF REGISTRAR JUDICIARY.

In the matter of the expenditure of the Judiciary Vote as captured in the Special Audit Report of the Auditor General.

Mrs. Anne Amadi, Chief Registrar for Judicial Service Commission submitted as follows:

- (i) That she has been in office for 5 months and her main duties include giving advice to Judicial Service Commission as an accounting officer and chief administration secretary.
- (ii) That she had developed a governance charter which was set to be adopted before end of financial year 2014.
- (iii) On allowances she stated that new circulars had been issued which had number of meetings reduced to eight sittings in a month and allowances reviewed downwards from eighty thousand to ten thousand per sitting.
- (iv) She clarified that Elgon Place had radiation problems which had never been resolved. That the Law Society of Kenya had asked the judges not to occupy the premises thus she had to terminate the contract by sending letters to tenants and letting them know that they are no longer tenable.
- (v) Regarding leasing of AFC property, she indicated that it was difficult to trace some leases and that she was not very sure whether there were some leases in the first place. She went ahead to hold meetings with AFC management in order to terminate any existing lease agreements between AFC and Judiciary.

- (vi) As for Rahimtulla Towers, she had written to the agent to release other floors and informed them that they will only pay for the spaces which Judiciary will occupy.
- (vii) That before her tenure, procurement process was being undertaken without due regards to the Public Procurement Oversight Authority Act. There were no procurement plans in place and purchases overshoot what was in the budget. That she has now developed a 2014/2015 procurement plan to help streamline the problems
- (viii) On another note, the financial management internal controls were very weak. She therefore requested for an internal audit to be carried out in October 2013 and is currently developing a Judiciary Financial Manual to help guide and put all financial procedures in place.
- (ix) Touching on Human Resource, the Chief Registrar informed the Committee that there were officers who did not have job descriptions and for others, files could not be traced. Thus Staff rationalization program was ongoing and already about 31 officers who had been irregularly employed were terminated
- (x) On operation of bank accounts, she informed the committee that relevant communication had already been sent to signatories who no longer work with Judiciary to hand over to officers in office. Communications had also been issued out to those who took advance payments to pay back.
- (xi) Regarding official residence, she informed members that the matter was being handled by EACC at the moment. That the premises were procured without signing of transfers and full payments were made without issuance of title deeds. She has since stopped the issue of prepayment of suppliers since it was an irregularity.

MIN No. 401/2014:- ADJOURNMENT

There being no other business, the committee adjourned at ten minutes to noon in the morning.



SIGNED.....

(Chair)

DATE.....
21/11/14

MINUTES OF THE ONE HUNDRED AND EIGHTINTH SITTING OF THE PUBLIC ACCOUNTS
COMMITTEE (PAC) HELD ON THURSDAY, 10TH JUNE, 2014 AT 12.00 P.M. IN COMMITTEE
ROOM 9, MAIN PARLIAMENT BUILDING.

PRESENT:-

1. Hon Ababu Namwamba, E.G.H, M.P. - Chairperson
2. Hon Joseph Manje, M.P.
3. Hon Jude Njomo, M.P.
4. Hon Gonzi Rai, M.P.
5. Hon James Bett, M.P.
6. Hon Fathia Mahbub, M.P.
7. Hon Andrew Mwadime, M.P.
8. Hon John Mbadi, M.P.
9. Hon Manson Nyamweya, M.P.
10. Hon Abass Ahmed Ibrahim, M.P.
11. Hon Jessica Mbalu, M.P.
12. Hon Kyengo Katatha Maweu, M.P.
13. Hon Silvanice Onyango Osele, M.P.
14. Hon Charles Geni Mongare, M.P.
15. Hon Alice Nyanchoka Chae, M.P.
16. Hon Samuel Arama, M.P.
17. Hon Kareke Mbiuki, M.P.
18. Hon Julius Melly, M.P.
19. Hon Jackson Rop, M.P.
20. Hon Joel Onyancha, M.P.

ABSENT:-

1. Hon Cecily Mbarire, M.G.H., M.P. -Vice-chair
2. Hon Mathias Robi, M.P.
3. Hon Sakwa Bunyasi, M.P.
4. Hon Arthur Odera, M.P.
5. Hon Edick Omondi Anyanga, M.P.
6. Hon Junet Sheikh Nuh, M.P.
7. Hon Stephen Manoti, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

1. George Gazemba - Senior Clerk Assistant
2. Johnstone Kioko - Clerk Assistant II
3. Victor Weke - Clerk Assistant II
4. Chelagat Tungo - Clerk Assistant II
5. Rahab Chepkilim - Hansard Editor

KENYA NATIONAL AUDIT OFFICE (KENAO)

1. Richard Nyachio - Team Leader, Audit Report
2. James Peter Kamau - Auditor
3. Angelina M Masila - Supervisor Audit

TREASURY

1. Moses M Gicheru - Senior Accountant, National Treasury.

MIN No. 402/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 403/2014:- EVIDENCE: MR. AUSTINE OGOLA, AG. DIRECTOR SUPPLY CHAIN MANAGEMENT, JUDICIARY.

In the matter of the expenditure of the Judiciary Vote as captured in the Special Audit Report of the Auditor General.

Mr. Ogola, Ag. Director Supply Chain Management for Judicial Service Commission submitted as follows:

- (xii) That the process of prequalification of suppliers was started in 2012 and that there were no work plans in place at the Judiciary.
- (xiii) That procurement processes were not followed since there was no procurement plans in place as well. Thus measures were being put in place to have nationwide work plan process which is aligned with the budget.
- (xiv) He further informed the committee that poor consultation procedures in Judiciary mired working process. This as a result led to poor management.
- (xv) That the Finance Director was never involved in any procurement committee and hence no technical guidance on finance were given during the meetings.

MIN No. 404/2014:- EVIDENCE: MRS. ANGELA MANYALA, AG. DIRECTOR HUMAN RESOURCE MANAGEMENT, JUDICIARY.

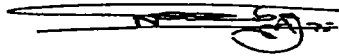
Mrs. Manyala, Ag. Director Human Resource Management for Judicial Service Commission submitted as follows:

- (i) Some officers were irregularly paid allowances. She was not a beneficiary of the irregular payment, neither was her Department involved in processing the payment. Payment of the allowances was authorized by the former Chief Registrar, Mrs. Gladys Shollei who was the Accounting Officer and effected by the Finance Directorate.
- (ii) She was not at the Judiciary when irregular recruitment of staff as reported by the Auditor General was done. Nevertheless, the ninety one (91) staff reported by the Auditor General were recruited because of election petition cases that were going to arise from the March, 2013 general elections whereby more manpower would be required to handle them. The staff recruited were administrative assistants who were mainly court and registry clerks. She had not seen any document in the Directorate's records justifying the ninety one (91) appointments.
- (iii) There were sixty six (66) staff appointed by the Judiciary without approval of JSC. The officers came in on secondment. She had not seen any record justifying their recruitment. There was however a record seeking approval of their recruitment by JSC. As a Human Resource expert, she felt there must be justification for any recruitment by an employer.
- (iv) Former Chief Registrar, Mrs. Gladys Shollei came in with new staff from her previous places of work that is the National Council for Law Reporting and the Independent Electoral and Boundaries Commission. These staff owed her allegiance. This created a division in the Judiciary between "her people", those brought in by Mrs. Shollei and "others", those who had been there. Mrs. Shollei's people were mostly stationed at the headquarters and were the majority of those transferred to stations outside Nairobi.
- (v) Twenty nine (29) out of the thirty six (36) irregularly recruited staff had been demoted, with some being transferred to stations outside Nairobi. This was a decision made by JSC. She was not directly involved in the decision making. She only got a list from the Commission with specific instructions. With respect to demotions, JSC was guided by information obtained from previous work places of the officers. She could however not tell the rationale for the transfer of some of the officers.
- (vi) The Judiciary had over 3000 staff on its payroll. Audit of the payroll was ongoing and would assist the Directorate address several issues facing it.
- (vii) The Judiciary lacked human resource policies and systems for proper running of the institution. This had in effect frustrated her even if the process for developing a human resource manual which would address several issues was ongoing.

- (viii) JSC had been making decisions on human resource without involving or consulting the Human Resource Directorate. The Directorate had written to JSC over this issue and the Commission was agreeable to co-opting the Head of the Directorate as a member of its relevant Sub-Committee.

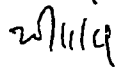
MIN No. 405/2014:- ADJOURNMENT

There being no other business, the committee adjourned at ten minutes to three in the afternoon.



SIGNED.....

(Chair)



DATE.....

MINUTES OF THE ONE HUNDRED AND NINETINTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON THURSDAY, 10TH JUNE, 2014 AT 3.00 P.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING.

PRESENT:-

1. Hon Ababu Namwamba, E.G.H, M.P. - Chairperson
2. Hon Joseph Manje, M.P.
3. Hon Jude Njomo, M.P.
4. Hon Gonzi Rai, M.P.
5. Hon James Bett, M.P.
6. Hon Fathia Mahbub, M.P.
7. Hon Andrew Mwadime, M.P.
8. Hon John Mbadi, M.P.
9. Hon Manson Nyamweya, M.P.
10. Hon Abass Ahmed Ibrahim, M.P.
11. Hon Jessica Mbalu, M.P.
12. Hon Kyengo Katatha Maweu, M.P.
13. Hon Silvanice Onyango Osele, M.P.
14. Hon Charles Geni Mongare, M.P.
15. Hon Alice Nyanchoka Chae, M.P.
16. Hon Samuel Arama, M.P.
17. Hon Kareke Mbiuki, M.P.
18. Hon Julius Melly, M.P.
19. Hon Jackson Rop, M.P.
20. Hon Joel Onyancha, M.P.

ABSENT:-

1. Hon Cecily Mbarire, M.G.H., M.P. -Vice-chair
2. Hon Mathias Robi, M.P.
3. Hon Sakwa Bunyasi, M.P.
4. Hon Arthur Odera, M.P.
5. Hon Edick Omondi Anyanga, M.P.
6. Hon Junet Sheikh Nuh, M.P.
7. Hon Stephen Manoti, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

1. George Gazemba - Senior Clerk Assistant

- | | | |
|--------------------|---|--------------------|
| 2. Johnstone Kioko | - | Clerk Assistant II |
| 3. Victor Weke | - | Clerk Assistant II |
| 4. Chelagat Tungo | - | Clerk Assistant II |
| 5. Rahab Chepkilim | - | Hansard Editor |

KENYA NATIONAL AUDIT OFFICE (KENAO)

- | | | |
|----------------------|---|---------------------------|
| 1. Richard Nyachio | - | Team Leader, Audit Report |
| 2. James Peter Kamau | - | Auditor |
| 3. Angelina M Masila | - | Supervisor Audit |

TREASURY

- | | | |
|--------------------|---|---------------------------------------|
| 1. Moses M Gicheru | - | Senior Accountant, National Treasury. |
|--------------------|---|---------------------------------------|

MIN No. 406/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 407/2014:- EVIDENCE: MS. BEATRICE KAMAU, AG. DIRECTOR FINANCE, JUDICIARY.

In the matter of the expenditure of the Judiciary Vote as captured in the Special Audit Report of the Auditor General.

Ms. Kamau, Ag. Director Finance for Judicial Service Commission submitted as follows:

- (i) She was not a member of the Tender Committee. However, from her position as Deputy Director of Finance, she observed that the Tender Committee approved expenditure when there was no budgetary allocation. This was in contravention of the government procurement regulations and procedures as well as the Public Finance Management Act.

MIN No. 408/2014:- EVIDENCE: MR. DUNCAN ODIMA, AG. DIRECTOR ICT, JUDICIARY.

Mr. Odima, Ag. Director ICT for Judicial Service Commission submitted as follows:

- (i) The Containerized Data Centre was to house the computer server. It was to be located at the Supreme Court Building and was to measure 40 feet. It was to cost the Judiciary a total sum of Kshs.106,720,048.97 and was to comprise a generator, filing system, several racks, access control and structured cabling
- (ii) The container had been delivered and 80% of the total cost paid to the supplier.
- (iii) The procurement of the container was not based on needs assessment neither did it originate from the ICT Directorate. Memos and other correspondence relating to the

project originated from Mr. Tom Atak former ICT Director who never involved the Directorate and dealt directly with the Chief Registrar.

- (iv) Normal practice requires that various committees be established to carry out procurement processes of such projects. Mr. Atak had since been suspended pending investigation of implementation of the project.
- (v) The Judiciary did not need the Centre since there was enough space in the Supreme Court Building to house the server. There was already a server and filing room in the building sufficiently serving the entire building. It was not prudent to use public funds on this type of project.
- (vi) The Supreme Court Building was not condemned to house the server since there was no report from a competent authority to the effect. The building is protected under the National Museums and Monuments Act and the National Museum of Kenya had been earmarked for renovation.

MIN No. 409/2014:- ADJOURNMENT

There being no other business, the committee adjourned at thirty minutes past five in the afternoon.



SIGNED.....

(Chair)

20/11/14

DATE.....

MINUTES OF THE ONE HUNDRED AND TWENTIETH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON THURSDAY, 11TH JUNE, 2014 AT 10.00 A.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING.

PRESENT:-

1. Hon Ababu Namwamba, E.G.H, M.P. - Chairperson
2. Hon Joseph Manje, M.P.
3. Hon Jude Njomo, M.P.
4. Hon Gonzi Rai, M.P.
5. Hon James Bett, M.P.
6. Hon Fathia Mahbub, M.P.
7. Hon Andrew Mwadime, M.P.
8. Hon John Mbadi, M.P.
9. Hon Manson Nyamweya, M.P.
10. Hon Abass Ahmed Ibrahim, M.P.
11. Hon Jessica Mbalu, M.P.

ABSENT:-

1. Hon Cecily Mbarire, M.G.H., M.P. -Vice-chair
2. Hon Joel Onyantha, M.P.
3. Hon Kareke Mbiuki, M.P.
4. Hon Julius Melly, M.P.
5. Hon Jackson Rop, M.P.
6. Hon Mathias Robi, M.P.
7. Hon Sakwa Bunyasi, M.P.
8. Hon Arthur Odera, M.P.
9. Hon Edick Omondi Anyanga, M.P.
10. Hon Samuel Arama, M.P.
11. Hon Junet Sheikh Nuh, M.P.
12. Hon Kyengo Katatha Maweu, M.P.
13. Hon Silvance Onyango Osele, M.P
14. Hon Charles Geni Mongare, M.P.
15. Hon Alice Nyanchoka Chae, M.P.
16. Hon Stephen Manoti, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

1. George Gazemba - Senior Clerk Assistant
2. Johnstone Kioko - Clerk Assistant II

3. Victor Weke - Clerk Assistant II
4. Chelagat Tungo - Clerk Assistant II
5. Rahab Chepkilim - Hansard Editor

KENYA NATIONAL AUDIT OFFICE (KENAO)

1. Richard Nyachio - Team Leader, Audit Report
2. James Peter Kamau - Auditor
3. Angelina M Masila - Supervisor Audit

TREASURY

1. Moses M Gicheru - Senior Accountant, National Treasury.

MIN No. 410/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 411/2014:- EVIDENCE: MRS. EMILY OMINDE, COMMISSIONER JUDICIAL SERVICE COMMISSION.

In the matter of the expenditure of the Judiciary Vote as captured in the Special Audit Report of the Auditor General.

Mrs. Emily Ominde, former Commissioner of Judicial Service Commission submitted as follows:

- (i) The Commissioner confirmed that all records in the Judiciary were kept by the secretariat which is under Chief Registrar.
- (ii) She indicated that the Chief Registrar stopped the process of Judicial Service Commission to develop the manuals by subletting the work to consultants.
- (iii) She expressed dissatisfaction in the manner in which the Chief Registrar (Gladys Shollei) handled meetings. Being the secretary to the commission, she was not sufficiently present in the meeting. Most often, the Registrar would sit in meetings instead of the Chief Registrar yet it was her primary responsibility to attend meetings.
- (iv) She confirmed that other responsibilities of the Chief Registrar included agenda regeneration and given to Chief Justice to approve for meeting to be called, convene meetings, keep minutes for the meeting, computing and organising payments of allowances to Commissioners.
- (v) That as Vice Chair of Finance Committee, she together with other officials were not aware about payments to non-commissioners. When they learnt about it,

they requested the then Chief Registrar to forward the matter to the Commission to be discussed and clarified in a meeting but she failed to do so.

- (vi) In regards to the number of meetings, the Chief Justice was to determine when meetings are to be convened, that is as and when required, not number.
- (vii) That the management team did not cooperate with the Commissioners especially when asked to provide certain documents in meeting and when pressurised, they would provide raw data.

MIN No. 412/2014:- ADJOURNMENT

There being no other business, the committee adjourned at thirteen minutes past three in the afternoon.



SIGNED.....

(Chair)

DATE.....
20/11/14

MINUTES OF THE ONE HUNDRED AND TWENTY FIRST SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON THURSDAY, 12TH JUNE, 2014 AT 10.00 A.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING.

PRESENT:-

1. Hon Ababu Namwamba, E.G.H, M.P. - Chairperson
2. Hon Joseph Manje, M.P.
3. Hon Gonzi Rai, M.P.
4. Hon James Bett, M.P.
5. Hon Fathia Mahbub, M.P.
6. Hon Andrew Mwadime, M.P.
7. Hon John Mbadi, M.P.
8. Hon Manson Nyamweya, M.P.
9. Hon Samuel Arama, M.P.
10. Hon Kyengo Katatha Maweu, M.P.
11. Hon Silvanice Onyango Osele, M.P.
12. Hon Charles Geni Mongare, M.P.
13. Hon Junet Sheikh Nuh, M.P.
14. Hon Abass Ahmed Ibrahim, M.P.
15. Hon Alice Nyanchoka Chae, M.P.
16. Hon Jackson Rop, M.P.
17. Hon Jude Njomo, M.P.

ABSENT:-

1. Hon Cecily Mbarire, M.G.H., M.P. -Vice-chair
2. Hon Joel Onyancha, M.P.
3. Hon Kareke Mbiuki, M.P.
4. Hon Julius Melly, M.P.
5. Hon Mathias Robi, M.P.
6. Hon Sakwa Bunyasi, M.P.
7. Hon Arthur Odera, M.P.
8. Hon Edick Omondi Anyanga, M.P.
9. Hon Jessica Mbalu, M.P.
10. Hon Stephen Manoti, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

1. George Gazemba - Senior Clerk Assistant
2. Johnstone Kioko - Clerk Assistant II

3. Victor Weke - Clerk Assistant II
4. Chelagat Tungo - Clerk Assistant II
5. Rahab Chepkilim - Hansard Editor

KENYA NATIONAL AUDIT OFFICE (KENAO)

1. Richard Nyachio - Team Leader, Audit Report
2. James Peter Kamau - Auditor
3. Angelina M Masila - Supervisor Audit

NATIONAL TREASURY

1. Moses M Gicheru - Senior Accountant, National Treasury.

MIN No. 413/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 414/2014:- EVIDENCE: MR. AHMED NASSIR, FORMER COMMISSIONER, JUDICIAL SERVICE COMMISSION AND CHAIRPERSON FINANCE COMMITTEE.

In the matter of the expenditure of the Judiciary Vote as captured in the Special Audit Report of the Auditor General.

Hon. Prof. Christine Mango, former Commissioner for Judicial Service Commission submitted as follows:

- (i) The Commissioner informed the Committee that allowances paid to whenever called upon to represent the JSC and the Chief Justice in functions were always approved. That there were resolutions made on such payments which were minuted. She undertook to request for copies of the minutes from Judiciary and submit to the Committee for verification.
- (ii) That officers and persons who were earning the same sitting allowances as Commissioners, for example judges, directors and secretariat had a resolution as well which supported their payment.
- (iii) That the former CRJ didn't attend meetings and that her relationship with the commission was very frosty. In some cases she could be very economical with information and barely assisted the Commissioners.
- (iv) On another note the Commissioner informed the committee that the Chief Registrar would only inform the Commission that there is need to acquire space for Judiciary then goes ahead to initiate process of acquiring the space but does not go back to the commission to report progress. That she would only go back

when seeking finances or presented herself in the meeting with half-baked documents when in trouble and needed the Commission's approvals.

- (v) That on many occasion she would present reports to the Commission when negotiations on acquisitions had advanced to a point whereby the JSC had no choice but to approve.
- (vi) That the CRJ always reminded the Commissioners not to micro-manage her and thus they never interfered with her at all.
- (vii) The Commissioner also noted that her relationship with the Chief Justice was okay and that she didn't experience any ethnic challenges for the three years that she was in service.

MIN No. 415/2014:- ADJOURNMENT

There being no other business, the committee adjourned at twenty minutes past one in the afternoon.



SIGNED.....

(Chair)

20/11/14

DATE.....

**MINUTES OF THE ONE HUNDRED AND TWENTY SECOND SITTING OF THE PUBLIC
ACCOUNTS COMMITTEE (PAC) HELD ON THURSDAY, 12TH JUNE, 2014 AT 2.00 P.M. IN
COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING.**

PRESENT:-

1. Hon Ababu Namwamba, E.G.H, M.P. - Chairperson
2. Hon Joseph Manje, M.P.
3. Hon Gonzi Rai, M.P.
4. Hon James Bett, M.P.
5. Hon Fathia Mahbub, M.P.
6. Hon Andrew Mwadime, M.P.
7. Hon John Mbadi, M.P.
8. Hon Manson Nyamweya, M.P.
9. Hon Samuel Arama, M.P.
10. Hon Kyengo Katatha Maweu, M.P.
11. Hon Silvanice Onyango Osele, M.P.
12. Hon Charles Geni Mongare, M.P.

ABSENT:-

1. Hon Cecily Mbarire, M.G.H., M.P. -Vice-chair
2. Hon Joel Onyancha, M.P.
3. Hon Kareke Mbiuki, M.P.
4. Hon Julius Melly, M.P.
5. Hon Jackson Rop, M.P.
6. Hon Mathias Robi, M.P.
7. Hon Sakwa Bunyasi, M.P.
8. Hon Arthur Odera, M.P.
9. Hon Edick Omondi Anyanga, M.P.
10. Hon Junet Sheikh Nuh, M.P.
11. Hon Alice Nyanchoka Chae, M.P.
12. Hon Abass Ahmed Ibrahim, M.P.
13. Hon Jessica Mbalu, M.P.
14. Hon Jude Njomo, M.P.
15. Hon Stephen Manoti, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

- | | | |
|--------------------|---|------------------------|
| 1. George Gazemba | - | Senior Clerk Assistant |
| 2. Johnstone Kioko | - | Clerk Assistant II |

3. Victor Weke - Clerk Assistant II
4. Chelagat Tungo - Clerk Assistant II
5. Rahab Chepkilim - Hansard Editor

KENYA NATIONAL AUDIT OFFICE (KENAO)

1. Richard Nyachio - Team Leader, Audit Report
2. James Peter Kamau - Auditor
3. Angelina M Masila - Supervisor Audit

TREASURY

1. Moses M Gicheru - Senior Accountant, National Treasury.

MIN No. 416/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 417/2014:- EVIDENCE: HON. PROF. CHRISTINE MANGO, COMMISSIONER, JUDICIAL SERVICE COMMISSION AND FINANCE COMMITTEE.

In the matter of the expenditure of the Judiciary Vote as captured in the Special Audit Report of the Auditor General.

Hon. Prof. Christine Mango, former Commissioner for Judicial Service Commission submitted as follows:

- (i) The Commissioner informed the Committee that allowances paid to whenever called upon to represent the JSC and the Chief Justice in functions were always approved. That there were resolutions made on such payments which were minuted. She undertook to request for copies of the minutes from Judiciary and submit to the Committee for verification.
- (ii) That officers and persons who were earning the same sitting allowances as Commissioners, for example judges, directors and secretariat had a resolution as well which supported their payment.
- (iii) That the former CRJ didn't attend meetings and that her relationship with the commission was very frosty. In some cases she could be very economical with information and barely assisted the Commissioners.
- (iv) On another note the Commissioner informed the committee that the Chief Registrar would only inform the Commission that there is need to acquire space for Judiciary then goes ahead to initiate process of acquiring the space but does not go back to the commission to report progress. That she would only go back

when seeking finances or presented herself in the meeting with half-baked documents when in trouble and needed the Commission's approvals.

- (v) That on many occasion she would present reports to the Commission when negotiations on acquisitions had advanced to a point whereby the JSC had no choice but to approve.
- (vi) That the CRJ always reminded the Commissioners not to micro-manage her and thus they never interfered with her at all.
- (vii) The Commissioner also noted that her relationship with the Chief Justice was okay and that she didn't experience any ethnic challenges for the three years that she was in service.

MIN No. 418/2014:- ADJOURNMENT

There being no other business, the committee adjourned at twenty minutes past three in the afternoon.



SIGNED.....

(Chair)

DATE.....

26/11/14

MINUTES OF ONE HUNDRED AND TWENTY EIGHTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON WEDNESDAY, 9TH JULY, 2014 AT 10.00 A.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING

PRESENT:-

1. Hon. Ababu Namwamba, E.G.H., M.P. - Chair
2. Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair
3. Hon. John Mbadi, M.P.
4. Hon. Mwadime Andrew, M.P.
5. Hon. Kareke Mbiuki, M.P.
6. Hon. Joseph Manje, M.P.
7. Hon. Ahmed Ibrahim Abass, M.P.
8. Hon. Jackson K. Rop, M.P.
9. Hon. Charles Geni Mong'are, M.P.
10. Hon. Fathia Mahbub, M.P.

ABSENT:-

1. Hon. Edick Omondi Anyanga, M.P.
2. Hon. Joel Onyancha, M.P.
3. Hon. Stephen Manoti, M.P.
4. Hon. Arthur Odera, M.P.
5. Hon. Sakwa Bunyasi, M.P.
6. Hon. Gonzi Rai, M.G.H., M.P.
7. Hon. Silvance Onyango Osele, M.P.
8. Hon. Mathias Robi, M.P.
9. Hon. Julius Melly, M.P.
10. Hon. Jessica Mbalu, M.P.
11. Hon. James Bett, M.P.
12. Hon. Samuel Arama, M.P.
13. Hon. Jude Njomo, M.P.
14. Hon. Kyengo Katatha Maweu, M.P.
15. Hon. Junet Sheikh Nuh, M.P.
16. Hon. Manson Nyamweya, M.P.
17. Hon. Alice Nyanchoka Chae, M.P.

NATIONAL ASSEMBLY

1. Mr. George Gazemba - Senior Clerk Assistant
2. Johnston Kioko - Clerk Assistant II
3. Victor Weke - Clerk Assistant II
4. Aaron Tungo - Clerk Assistant II

KENYA NATIONAL AUDIT OFFICE (KENAO)

- | | | |
|--------------------|---|-----------------------------|
| 1. Richard Nyachio | - | Assistant Director of Audit |
| 2. Charles Merande | - | Manager, Audit |

TREASURY

- | | | |
|------------------|---|-------------------|
| 1. Moses Gicheru | - | Senior Accountant |
|------------------|---|-------------------|

MIN No. 432/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 433/2014:- EVIDENCE: AGRICULTURAL FINANCE CORPORATION (AFC)

Examination of the Special Audit Report of the Auditor General of May, 2014 on the Judicial Service Commission (JSC) and the Judiciary

Mr. Lucas Meso, Managing Director, Agricultural Finance Corporation (AFC) accompanied by:-

- | | | | |
|-------|-----------------|---|--|
| (i) | Rashid Ngaira | - | Manager Services |
| (ii) | Francis Mulonzi | - | Administrative Manager |
| (iii) | Kipkemei Talam | - | Ag. General Manager, Human Resource and Administration |

Appeared before the Committee and submitted as follows:-

(i) Agricultural Finance Corporation (AFC) /Judiciary Leases

The Judiciary approached AFC with a view to leasing its premises in various parts of the country. The approach first came from Meru Courts in the year 2012 and was in writing. It was followed up by phone calls from the former Chief Registrar, Mrs. Gladys Shollei to the Managing Director of AFC. In the course of discussions, she inquired whether the Corporation had more premises country wide for lease by the Judiciary. The Corporation confirmed that it had 18 premises countrywide available for lease.

Judiciary officers in the company of Architect John Njue, a private Consultant appointed by the Institution inspected the Corporation's premises in Meru, Kakamega, Turbo, Nakuru, Kitale, Kimilili, Eldama Ravine, Kericho, Kabarnet, Nyahururu and Ngong' and confirmed its desire to lease the premises. In Kakamega, the Chief Magistrate and the Presiding Judge, Justice Said Chetambwe were involved in the physical inspection of the premises. The Judge even selected his office in the building. After inspection, the Corporation and the Judiciary embarked on the process of preparing leases.

Out of the twelve leases presented to the Judiciary for execution, the Judiciary executed only five (5) leases and returned them to AFC for registration. The Kakamega lease as presented to the Committee was among the five (5) claimed to have been duly executed but was not. It was not dated neither was it witnessed. He promised to provide a copy of the duly executed lease after the meeting.

He admitted that the entire lease process was not properly done. Some of the lands on which the Corporation's buildings were situated did not have title deeds and that any leases ensuing there from could not be registered by the Lands Office. This had indeed exposed the Corporation. The Meru lease was registered because the land had a title deed. He could not immediately confirm which leases had title deeds.

The Judiciary had occupied two of the eleven (11) leases that were to be entered into with the Corporation. These were Meru and Kakamega. The institution was in the process of occupying other buildings before the process was stopped.

(ii) Procurement process for the leases

The Corporation was a government institution same as the Judiciary. The leases in question were government to government and did not need to be advertized.

(iii) The current situation on the ground and efforts to resolve emerging issues

Despite the Judiciary executing some leases and declining others, it failed to revoke all the letters of offer. This meant that the Corporation could not lease the premises to other tenants and this left in an awkward position.

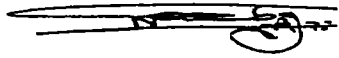
The Corporation received Kshs 10,571,031.00 in form of rent, deposit and administration costs from the leases in Kakamega (Kshs.3,654,763.00), Meru (Kshs.4,215,993.00), Nakuru (Kshs 1,827,491.00) and Turbo (Kshs 872,784.00).

On 7th March, 2014 the Corporation received a letter from the Chief Registrar confirming that the Judiciary would wish to terminate all the intended leases. The Corporation wrote back vide letter dated 12th March, 2014 requesting the Tenant to clear rent arrears in respect ten (10) leased premises amounting to Kshs 48,306,590.00 as at February, 2014, so that the matter could be put to rest. The Judiciary had not cleared the arrears by the time of appearance before the Committee. It should be noted that the Ngong' lease process stalled and there was no lease intention over it.

Despite indication by the Chief Registrar of terminating the leases, the Judiciary was still occupying the Kakamega premises and recently housed there new officers.

MIN No. 434/2014:- ADJOURNMENT

There being no other business to transact, the sitting ended ten minutes to noon.



SIGNED.....
(Chair)

20/11/14

DATE.....

MINUTES OF THE ONE HUNDRED AND TWENTY NINTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON WEDNESDAY 9TH JULY, 2014 AT 12.00 NOON IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING

PRESENT:-

1. Hon. Ababu Namwamba, E.G.H., M.P. - Chair
2. Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair
3. Hon. John Mbadi, M.P.
4. Hon. James Bett, M.P.
5. Hon. Sakwa Bunyasi, M.P.
6. Hon. Joseph Manje, M.P.
7. Hon. Mwadime Andrew, M.P.
8. Hon. Kareke Mbiuki, M.P.
9. Hon. Gonzi Rai, M.G.H., M.P.
10. Hon. Jackson K. Rop, M.P.
11. Hon. Kyengo Katatha Maweu, M.P.

ABSENT:-

1. Hon. Edick Omondi Anyanga, M.P.
2. Hon. Joel Onyancha, M.P.
3. Hon. Stephen Manoti, M.P.
4. Hon. Arthur Odera, M.P.
5. Hon. Silvanice Onyango Osele, M.P.
6. Hon. Mathias Robi, M.P.
7. Hon. Julius Melly, M.P.
8. Hon. Jessica Mbalu, M.P.
9. Hon. Samuel Arama, M.P.
10. Hon. Jude Njomo, M.P.
11. Hon. Junet Sheikh Nuh, M.P.
12. Hon. Manson Nyamweya, M.P.
13. Hon. Alice Nyanchoka Chae, M.P.
14. Hon. Ahmed Ibrahim Abass, M.P.
15. Hon. Charles Geni Mong'are, M.P.
16. Hon. Fathia Mahbub, M.P.

NATIONAL ASSEMBLY

1. Mr. George Gazemba - Senior Clerk Assistant
2. Johnston Kioko - Clerk Assistant II
3. Victor Weke - Clerk Assistant II
4. Aaron Tungo - Clerk Assistant II

KENYA NATIONAL AUDIT OFFICE (KENAO)

- | | | |
|--------------------|---|-----------------------------|
| 1. Richard Nyachio | - | Assistant Director of Audit |
| 2. Charles Merande | - | Manager, Audit |

TREASURY

- | | | |
|------------------|---|-------------------|
| 1. Moses Gicheru | - | Senior Accountant |
|------------------|---|-------------------|

MIN No. 435/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 436/2014:- EVIDENCE: INSTITUTION OF SURVEYORS OF KENYA (ISK)

Examination of the Special Audit Report of the Auditor General of May, 2014 on the Judicial Service Commission (JSC) and the Judiciary

Mr. Fredrick Oduor, Deputy Chairperson, Institution of Surveyors of Kenya (ISK) accompanied by Messrs:-

- | | | | |
|-------|-------------------|---|-------------------------|
| (i) | Moses Kidunduthi | - | Chief Executive Officer |
| (ii) | Cyprian Riungu | - | Member |
| (iii) | Dr. Sammy Musyoka | - | Member |
| (iv) | Stephen Omengo | - | Member |
| (v) | Robert Koech | - | Member |

Appeared before the Committee and submitted as follows:-

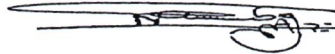
- (i) The Institution was concerned with the professional misconduct of some of its Members in transactions involving the Judicial Service Commission (JSC) and the Judiciary. This came to light after several procurement issues had been raised by JSC through the media against the former Chief Registrar of Judiciary, Mrs. Gladys Shollei. In fact the Institute went public over its concerns and JSC wrote to it requesting for facts on transactions relating to the following buildings:-
- a) Vomorono godowns
 - b) Elgon Place
 - c) Rahimtulla Towers
 - d) Official residence of the Chief Justice
 - e) Agricultural Finance Corporation leases
 - f) Milimani Courts
- (ii) In its investigations, the Institution generally observed that the Judiciary did not have strong negotiators and therefore ended up losing to the advantage of the

taxpayer. The Judiciary also lacked real estate professionals to lead them through such transactions;

- (iii) The Institution further observed that the Judiciary tried as much as it could to avoid bureaucratic systems of the Government but got into a mess because some the professionals they hired could not be trusted with proper management of public resources.

MIN No. 437/2014:- ADJOURNMENT

There being no other business to transact, the sitting ended ten minutes past one in the afternoon.



SIGNED.....

(Chair)

20/11/14

DATE.....

MINUTES OF THE ONE HUNDRED AND THIRTIETH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON TUESDAY, 22ND JULY, 2014 AT 10.00 A.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING

PRESENT:-

1. Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair - Chairing
2. Hon. Sakwa Bunyasi, M.P.
3. Hon. Joseph Manje, M.P.
4. Hon. Gonzi Rai, M.G.H., M.P.
5. Hon. Kyengo Katatha Maweu, M.P.
6. Hon. Joel Onyancha, M.P.
7. Hon. Jackson K. Rop, M.P.
8. Hon. John Mbadi, M.P.
9. Hon. James Bett, M.P.
10. Hon. Mwadime Andrew, M.P.
11. Hon. Kareke Mbiuki, M.P.
12. Hon. Ahmed Ibrahim Abass, M.P.

ABSENT WITH APOLOGY:-

1. Hon. Ababu Namwamba, E.G.H., M.P. - Chair

ABSENT:-

1. Hon. Edick Omondi Anyanga, M.P.
2. Hon. Stephen Manoti, M.P.
3. Hon. Arthur Odera, M.P.
4. Hon. Silvance Onyango Osele, M.P.
5. Hon. Mathias Robi, M.P.
6. Hon. Julius Melly, M.P.
7. Hon. Jessica Mbalu, M.P.
8. Hon. Samuel Arama, M.P.
9. Hon. Jude Njomo, M.P.
10. Hon. Junet Sheikh Nuh, M.P.
11. Hon. Manson Nyamweya, M.P.
12. Hon. Alice Nyanchoka Chae, M.P.
13. Hon. Charles Geni Mong'are, M.P.
14. Hon. Fathia Mahbub, M.P.

NATIONAL ASSEMBLY

1. Mr. George Gazemba - Senior Clerk Assistant
2. Johnston Kioko - Clerk Assistant II
3. Victor Weke - Clerk Assistant II

4. Aaron Tungo - Clerk Assistant II

KENYA NATIONAL AUDIT OFFICE (KENAO)

1. Daniel Kibiiri - Assistant Audit Manager
2. Charles Merande - Manager, Audit

NATIONAL TREASURY – PARLIAMENTARY LIAISON

Moses Gicheru - Senior Accountant

MIN No. 438/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 439/2014:- EVIDENCE: JKUAT ENTERPRISES LTD

Examination of the Special Audit Report of the Auditor General of May, 2014 on the Judicial Service Commission (JSC) and the Judiciary

Mrs. Winfred Kiragu Managing Director, JKUAT Enterprises Ltd accompanied by Messrs:-

- (i) Samuel Kamau - Architect
- (ii) Christopher Mutie- Architect
- (iii) Stephen Muriithi - Quantity Surveyor
- (iv) Eng. Charles Kabubo - Civil/Structural Engineer

appeared before the Committee and submitted as follows:-

(i) **Introductory**

JKUAT was a private company 100% owned by the JKUAT University and its main agenda was to use the University's intellectual resources to provide consultancy services to the public. Among the areas the company dealt with were; architecture, agriculture, Information Technology (IT), engineering and enterprise development. All company administrative staff were employed by the University whereas professionals were contracted on need basis. Though the company has an opportunity of contracting both private and public professionals, it prefers contracting University lectures. All proceeds for work done go to the University after paying to contractors.

Among the consultancy works done by the company for the Judicial Service Commission (JSC) and the Judiciary involved:-

- a) Completion of court buildings in Kisumu and Narok;
- b) Prefabricated court houses built in eleven (11) stations countrywide;
- c) Designing of interior fit outs for Court of Appeal;

- d) Designing of interior fit outs for Elgon Place;
- e) Painting works at the Judicial Training Institute;
- f) Partitioning of Mayfair Building for JSC offices;
- g) Designing of the press centre at Milimani Commercial Courts.

The works for completion of court houses in Kisumu had been finalized and the project was to be handed over to the Judiciary in August, 2014. Works for the construction of the prefabricated buildings had recorded slow progress but would nonetheless be completed by end of September, 2014 and handed over to the Judiciary.

(ii) **How the company was contracted by the Judiciary as a provider of consultancy services**

The company was contracted by the Judiciary through direct procurement. This was because the company was owned by JKUAT University which was a government entity same as the Judiciary. The procurement law provided for direct procurement of goods and services between government entities. In addition to this, the institution charged cheaper than the open market players.

(iii) **Relationship between JKUAT Enterprise Ltd and Align Architects**

Align Architects was a sole proprietorship entity registered under business names with Mr. S. Kigundu as the proprietor. The entity comprised JKUAT lecturers and filed own returns.

Whenever JKUAT got jobs, it would secure the services of the relevant firm of professionals like Align Architects whom it would pay 95% of the contract sum and retain 5% for its fees.

(iv) **Consultancy services with JKUAT Enterprises Ltd**

The company signed contracts with the Judiciary for the development of eleven (11) designs for prefabricated court houses to be constructed in eleven (11) stations country wide. Though the company invoiced and was paid by the Judiciary Kshs.82,370,000.00 for the eleven (11) designs, the Judiciary used only seven (7) of the designs in building seven (7) courts. The Kshs.32,446,402.00 alleged by the Auditor General to have been overpaid to the company related to the four (4) designs which were not put into use by the Judiciary on account of financial constraints.

There was therefore no overpayment as reported by the Auditor General. The Auditor General was satisfied with the response. The witness was however to provide contract documents especially fee notes for verification.

(v) **Lease of Elgon Place Building by the Judiciary**

The Company was not involved in the procurement of the lease for the building. It only provided designs for partitioning of the court rooms.

(vi) Purchase of official residence for the Chief Justice

The company carried out an indicative valuation of three (3) houses identified by the Judiciary for purchase and prepared indicative reports. The full valuation was to be done after other formalities like production of relevant documents especially the titles deeds. For the Chief Justice's residence, there was no full valuation report produced because the Judiciary never gave instructions for the next phase. JKUAT therefore never invoiced the Judiciary and was not paid any amount since it did not prepare a full valuation report.

JKUAT brought in a valuer called Ms. Nelly Mbugua to value the house on its behalf. The valuer gave an indicative price of Kshs.350,000,000.00. She could not tell whether the Judiciary paid the seller Kshs.350,000,000.00 based on the indicative price report prepared by JKUAT. In a transaction of this nature, it would have been prudent for a purchaser to get at least three valuations before settling on one. She undertook to provide in writing the basis of the Kshs.350,000,000.00 indicative valuation. She further undertook to appear with the Valuer (Mrs. Nelly Nelly Mbugua) to answer questions on the valuation.

Mrs. Nelly Mbugua declined to sign letters prepared in the course of the valuation until instructions were availed for conducting full valuation.

(vii) Purchase of second hand furniture and fittings from PricewaterhouseCoopers (PWC)

The Judiciary purchased second hand furniture and fittings from PWC. JKUAT was contracted by the Judiciary to value the items and valued them at Kshs.32,550,000.00. Mr. Stephen Mureithi valued the fittings while Mrs. Nelly Mbugua valued the furniture. Instructions from the Judiciary were initially verbal but were later followed by email communication.

MIN No. 440/2014:- ADJOURNMENT

There being no other business to transact, the sitting ended ten minutes past one in the afternoon.



SIGNED.....

(Chair)

20/11/14

DATE.....

MINUTES OF THE ONE HUNDRED AND THIRTY FIRST SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON TUESDAY, 22ND JULY, 2014 AT 12.00 NOON IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING

PRESENT:-

1. Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair - Chairing
2. Hon. Sakwa Bunyasi, M.P.
3. Hon. Joseph Manje, M.P.
4. Hon. Gonzi Rai, M.G.H., M.P.
5. Hon. Kyengo Katatha Maweu, M.P.
6. Hon. Joel Onyantha, M.P.
7. Hon. Jackson K. Rop, M.P.
8. Hon. John Mbadi, M.P.
9. Hon. James Bett, M.P.
10. Hon. Mwadime Andrew, M.P.
11. Hon. Kareke Mbiuki, M.P.
12. Hon. Ahmed Ibrahim Abass, M.P.

ABSENT WITH APOLOGY:-

1. Hon. Ababu Namwamba, E.G.H., M.P. - Chair

ABSENT:-

1. Hon. Edick Omondi Anyanga, M.P.
2. Hon. Stephen Manoti, M.P.
3. Hon. Arthur Odera, M.P.
4. Hon. Silvanice Onyango Osele, M.P.
5. Hon. Mathias Robi, M.P.
6. Hon. Julius Melly, M.P.
7. Hon. Jessica Mbalu, M.P.
8. Hon. Samuel Arama, M.P.
9. Hon. Jude Njomo, M.P.
10. Hon. Junet Sheikh Nuh, M.P.
11. Hon. Manson Nyamweya, M.P.
12. Hon. Alice Nyanchoka Chae, M.P.
13. Hon. Charles Geni Mong'are, M.P.
14. Hon. Fathia Mahbub, M.P.

NATIONAL ASSEMBLY

1. Mr. George Gazemba - Senior Clerk Assistant
2. Johnston Kioko - Clerk Assistant II
3. Victor Weke - Clerk Assistant II

4. Aaron Tungo - Clerk Assistant II

KENYA NATIONAL AUDIT OFFICE (KENAO)

1. Daniel Kibiiri - Assistant Audit Manager
2. Charles Merande - Manager, Audit

TREASURY

1. Moses Gicheru - Senior Accountant

MIN No. 441/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 442/2014:- EVIDENCE: GIMCO LTD

Examination of the Special Audit Report of the Auditor General of May, 2014 on the Judicial Service Commission (JSC) and the Judiciary

Mr. David Muiru, Managing Director, Gimco Limited accompanied by Mr. Simon Waruiu, Property Manager, appeared before the Committee and submitted as follows:-

- (i) Gimco Ltd was the Letting and Managing Agent for Mayfair Centre Building located along Ralph Bunche Road opposite Prof. Nelson Awori Centre House in Nairobi. The Judicial Service Commission (JSC) leased office space in the building.
- (ii) They were approached by the Judiciary for lease of the office space and did not know how the Judiciary settled on the building. The space leased was on 5th floor and measured 3,600 square feet and the lease was for six years.
- (iii) The premises were handed over to JSC in October, 2011 but JSC had as at the time of appearance not executed the lease agreement.

MIN No. 443/2014:- ADJOURNMENT

There being no other business to transact, the sitting ended at five minutes past one in the afternoon.



SIGNED.....

(Chair)

20/11/14

DATE.....

MINUTES OF THE ONE HUNDRED AND THIRTY SECOND SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON TUESDAY, 22ND JULY, 2014 AT 2.00 P.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING

PRESENT:-

1. Hon. Ababu Namwamba, E.G.H., M.P. - Chair
2. Hon. Joseph Manje, M.P.
3. Hon. James Bett, M.P.
4. Hon. Gonzi Rai, M.G.H., M.P.
5. Hon. Sakwa Bunyasi, M.P.
6. Hon. Kyengo Katatha Maweu, M.P.
7. Hon. Jackson K. Rop, M.P.
8. Hon. Alice Nyanchoka Chae, M.P.
9. Hon. Samuel Arama, M.P.
10. Hon. Mwadime Andrew, M.P.
11. Hon. Ahmed Ibrahim Abass, M.P.

ABSENT:-

1. Hon. Cecily Mbarire, M.G.H., M.P. - Vice Chair
2. Hon. Joel Onyancha, M.P.
3. Hon. John Mbadi, M.P.
4. Hon. Kareke Mbiuki, M.P.
5. Hon. Edick Omondi Anyanga, M.P.
6. Hon. Stephen Manoti, M.P.
7. Hon. Arthur Odera, M.P.
8. Hon. Silvance Onyango Osele, M.P.
9. Hon. Mathias Robi, M.P.
10. Hon. Julius Melly, M.P.
11. Hon. Jessica Mbalu, M.P.
12. Hon. Jude Njomo, M.P.
13. Hon. Junet Sheikh Nuh, M.P.
14. Hon. Manson Nyamweya, M.P.
15. Hon. Charles Geni Mong'are, M.P.
16. Hon. Fathia Mahbub, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. George Gazemba - Senior Clerk Assistant
2. Johnston Kioko - Clerk Assistant II
3. Victor Weke - Clerk Assistant II
4. Aaron Tungo - Clerk Assistant II

KENYA NATIONAL AUDIT OFFICE (KENAO)

- | | | |
|--------------------|---|-------------------------|
| 1. Daniel Kibiiri | - | Assistant Audit Manager |
| 2. Charles Merande | - | Manager, Audit |

NATIONAL TREASURY – PARLIAMENTARY LIAISON

- | | | |
|------------------|---|-------------------|
| 1. Moses Gicheru | - | Senior Accountant |
|------------------|---|-------------------|

MIN No. 444/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 445/2014:- EVIDENCE: KNIGHT FRANK LTD

Examination of the Special Audit Report of the Auditor General of May, 2014 on the Judicial Service Commission (JSC) and the Judiciary

Mr. Benjamin Woodhams, Managing Director, Knight Frank Ltd accompanied by Messrs:-

- | | | | |
|-------|----------------|---|--------------------|
| (i) | Maina Mwangi | - | Executive Director |
| (ii) | Wilson Maina | - | Manager |
| (iii) | Fredrick Opiyo | - | Manager |

Appeared before the Committee and submitted as follows:-

(i) Introductory

Knight Frank was a leading estate management agent worldwide and was contracted by Sealink Holdings Ltd the proprietor of Elgon House to manage the building on behalf of the Company. The Directors of Sealink were Razak Patel and Kalpesh Patel.

(ii) Lease of Elgon House Building to Judiciary

Among the consultancy works done by the company for the Judicial Service Commission (JSC) and the Judiciary involved:-

- Completion of court buildings in Kisumu and Narok;
- Prefabricated court houses built in eleven (11) stations countrywide;
- Designing of interior fit outs for Court of Appeal;
- Designing of interior fit outs for Elgon Place;
- Painting works at the Judicial Training Institute;
- Partitioning of Mayfair Building for JSC offices;
- Designing of the press centre at Milimani Commercial Courts.

The works for completion of court houses in Kisumu had been finalized and the project was to be handed over to the Judiciary in August, 2014. Works for the construction of the prefabricated buildings had recorded slow progress but would nonetheless be completed by end of September, 2014 and handed over to the Judiciary.

(iv) **How the company was contracted by the Judiciary as a provider of consultancy services**

The company was contracted by the Judiciary through direct procurement. This was because the company was owned by JKUAT University which was a government entity same as the Judiciary. The procurement law provided for direct procurement of goods and services between government entities. In addition to this, the Institution charged cheaper than the open market players.

(v) **Relationship between JKUAT Enterprise Ltd and Align Architects**

Align Architects was a sole proprietorship entity registered under business names with Mr. S. Kigundu as the proprietor. The entity comprised JKUAT lecturers and filed own returns.

Whenever JKUAT got jobs, it would secure the services of the relevant firm of professionals like Align Architects whom it would pay 95% of the contract sum and retain 5% for its fees.

(vi) **Consultancy services with JKUAT Enterprises Ltd**

The company signed contracts with the Judiciary for the development of eleven (11) designs for prefabricated court houses to be constructed in eleven (11) stations country wide. Though the company invoiced and was paid by the Judiciary Kshs.82,370,000.00 for the eleven (11) designs, the Judiciary used only seven (7) of the designs in building seven (7) courts. The Kshs.32,446,402.00 alleged by the Auditor General to have been overpaid to the company related to the four (4) designs which were not put into use by the Judiciary on account of financial constraints.

There was therefore no overpayment as reported by the Auditor General. *The Auditor General was satisfied with the response.* The witness was however to provide contract documents especially fee notes for verification.

(vii) **Lease of Elgon Place Building by the Judiciary**

The Company was not involved in the procurement of the lease for the building. It only provided designs for partitioning of the court rooms.

(viii) **Purchase of official residence for the Chief Justice**

The company carried out an indicative valuation of three (3) houses identified by the Judiciary for purchase and prepared indicative reports. The full valuation was to be done after other formalities like production of relevant documents especially the titles deeds. For the Chief Justice's residence, there was no full valuation report produced because

the Judiciary never gave instructions for the next phase. JKUAT therefore never invoiced the Judiciary and was not paid any amount since it did not prepare a full valuation report.

JKUAT brought in a valuer called Ms. Nelly Mbugua to value the house on its behalf. The valuer gave an indicative price of Kshs.350,000,000.00. She could not tell whether the Judiciary paid the seller Kshs.350,000,000.00 based on the indicative price report prepared by JKUAT. In a transaction of this nature, it would have been prudent for a purchaser to get at least three valuations before settling on one. She undertook to provide in writing the basis of the Kshs.350,000,000.00 indicative valuation. She further undertook to appear with the Valuer (Mrs. Nelly Nelly Mbugua) to answer questions on the valuation.

Mrs. Nelly Mbugua declined to sign letters prepared in the course of the valuation until instructions were availed for conducting full valuation.

(ix) Purchase of second hand furniture and fittings from PricewaterhouseCoopers (PWC)

The Judiciary purchased second hand furniture and fittings from PWC. JKUAT was contracted by the Judiciary to value the items and valued them at Kshs.32,550,000.00. Mr. Stephen Mureithi valued the fittings while Mrs. Nelly Mbugua valued the furniture. Instructions from the Judiciary were initially verbal but were later followed by email communication.

MIN No. 446/2014:- ADJOURNMENT

There being no other business to transact, the sitting ended ten minutes past one in the afternoon.



SIGNED.....

(Chair)

20/11/14

DATE.....

MINUTES OF THE ONE HUNDRED AND THIRTY THIRD SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON WEDNESDAY, 22ND JULY, 2014 AT 3.00 P.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING

PRESENT:-

1. Hon Ababu Namwamba, E.G.H, M.P. - Chairperson
2. Hon Joseph Manje, M.P.
3. Hon Julius Melly, M.P.
4. Hon Samuel Arama, M.P.
5. Hon James Bett, M.P.
6. Hon Jackson Rop, M.P.
7. Hon Andrew Mwadime, M.P.
8. Hon Alice Nyanchoka Chae, M.P.
9. Hon Junet Sheikh Nuh, M.P.
10. Hon Gonzi Rai, M.P.
11. Hon Kareke Mbiuki, M.P.

ABSENT:-

1. Hon Cecily Mbarire, M.G.H., M.P. - Vice-Chairperson
2. Hon Sakwa Bunyasi, M.P.
3. Hon Charles Geni Mongare, M.P.
4. Hon Abass Ahmed Ibrahim, M.P.
5. Hon Edick Omondi Anyanga, M.P.
6. Hon Kyengo Katatha Maweu, M.P.
7. Hon Fathia Mahbub, M.P.
8. Hon Mathias Robi, M.P.
9. Hon Arthur Odera, M.P.
10. Hon Stephen Manoti, M.P.
11. Hon Jessica Mbalu, M.P.
12. Hon Silvance Onyango Osele, M.P
13. Hon John Mbadi, M.P.
14. Hon Jude Njomo, M.P.
15. Hon Manson Nyamweya, M.P.
16. Hon Joel Onyancha, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

1. George Gazemba - Senior Clerk Assistant
2. Johnston Kioko - Clerk Assistant II
3. Victor Weke - Clerk Assistant II
4. Chelagat Tungo - Clerk Assistant II
5. Rahab Chepkilim - Hansard Recorder

KENYA NATIONAL AUDIT OFFICE (KENAO)

1. Daniel Kibiiri - Assistant Manager, Audit
2. Charles Merande - Manager

TREASURY

1. Moses M Gicheru - Senior Accountant

MIN No. 447/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 448 /2014:- EVIDENCE: TIMSALES LIMITED

Examination of the Special Audit Report of the Auditor General of May, 2014 on the Judicial Service Commission (JSC) and the Judiciary

Mr. Sarbjit Rai, Managing Director Timsales Limited appeared before the Committee and submitted as follows:-

- (i) Timsales Ltd was awarded a tender by the Judiciary for the construction of prefabricated court houses in several stations countrywide. The company won the tender on merit;
- (ii) It was common practice in the construction of pre-fabricated buildings to be paid 50% of the total sum in advance and this was an express provision in the contract agreement. The Judiciary was supposed to make the 50% down payment within two weeks from the date of signing the contract but paid months later;
- (iii) The slow progress of work was mainly as a result of the fact that work could only be undertaken when the courts were off session. This was a condition in the contract agreement;
- (iv) Construction of Mavoko Courts was transferred to Runyenjes after the Judiciary was unable to acquire land in Mavoko. The Runyenjes Courts were 75% complete. The project in Garsen was 75% complete. This project also experienced challenges in acquisition of land.

The witness also tabled several documents in support of his evidence.

MIN No. 449/2014:- ADJOURNMENT

There being no other business, the committee adjourned at five o'clock in the evening.



SIGNED.....

(Chair)

20/11/14

DATE.....

MINUTES OF THE ONE HUNDRED AND THIRTY FOURTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON WEDNESDAY, 23RD JULY, 2014 AT 10.00 A.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING

PRESENT:-

1. Hon James Bett, M.P. - Chairing
2. Hon Cecily Mbarire, M.G.H., M.P. - Vice-Chairperson
3. Hon Joseph Manje, M.P.
4. Hon Sakwa Bunyasi, M.P.
5. Hon Charles Geni Mongare, M.P.
6. Hon Jackson Rop, M.P.
7. Hon Andrew Mwadime, M.P.
8. Hon Samuel Arama, M.P.
9. Hon Julius Melly, M.P.
10. Hon Abass Ahmed Ibrahim, M.P.
11. Hon Edick Omondi Anyanga, M.P.
12. Hon Kyengo Katatha Maweu, M.P.
13. Hon Joel Onyancha, M.P.
14. Hon Jessica Mbalu, M.P.
15. Hon Stephen Manoti, M.P.

ABSENT WITH APOLOGY:-

1. Hon Ababu Namwamba, E.G.H, M.P. - Chairperson

ABSENT:-

1. Hon Kareke Mbiuki, M.P.
2. Hon Fathia Mahbub, M.P.
3. Hon Mathias Robi, M.P.
4. Hon Arthur Odera, M.P.
5. Hon Silvance Onyango Osele, M.P.
6. Hon John Mbadi, M.P.
7. Hon Jude Njomo, M.P.
8. Hon Gonzi Rai, M.P.
9. Hon Manson Nyamweya, M.P.
10. Hon Alice Nyanchoka Chae, M.P.
11. Hon Junet Sheikh Nuh, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

1. George Gazemba - Senior Clerk Assistant
2. Johnston Kioko - Clerk Assistant II

3. Victor Weke - Clerk Assistant II
4. Chelagat Tungo - Clerk Assistant II
5. Rahab Chepkilim - Hansard Recorder

KENYA NATIONAL AUDIT OFFICE (KENAO)

1. Daniel Kibiiri - Assistant Manager, Audit
2. Charles Merande - Manager

TREASURY

1. Moses M Gicheru - Senior Accountant

MIN No. 450/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 451/2014:- EVIDENCE: JKUAT ENTERPRISES LTD

Examination of the Special Audit Report of the Auditor General of May, 2014 on the Judicial Service Commission (JSC) and the Judiciary

Mrs. Winfred Kiragu, Managing Director, JKUAT Enterprises appeared before the Committee accompanied by Messrs:-

- (i) Christopher Mutie - Architect
- (ii) S.K. Muriithi - Quantity Surveyor
- (iii) Nelly Mbugua - Valuer
- (iv) Samuel Kigondu - Architect

The purpose of the meeting was for Mrs. Nelly Mbugua to shed light on the valuation price of Kshs.350,000,000.00 she gave for the official residence of the Chief Justice which the Judiciary had paid for in Runda Estate, Nairobi. She stated as follows:-

- (i) The price she gave was merely indicative pending the full valuation report to be prepared after the Judiciary had provided further instructions which included provision of all relevant documents. The Judiciary never got back to her with instructions for a full valuation meaning that she did not do any valuation for the House. All correspondence and other documentation forwarded to Judiciary in this respect was unsigned because it was not final;
- (ii) She got instructions to carry out the valuation from Mr. Wambugu, JKUAT Project Manager who forwarded the documentation on the indicative price to the Judiciary. She was surprised that the Judiciary negotiated and paid

Kshs.310,000,000.00 for the house based on the indicative price of Kshs.350,000,000.00 she had given.

MIN No. 452/2014:- ADJOURNMENT

There being no other business to transact, the sitting ended at ten minutes to noon.



SIGNED.....

(Chair)

20/11/14

DATE.....

MINUTES OF THE ONE HUNDRED AND THIRTY FIFTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON WEDNESDAY 23RD JULY, 2014 AT 12.00 NOON IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING

PRESENT:-

1. Hon James Bett, M.P. - Chairing
2. Hon Cecily Mbarire, M.G.H., M.P. - Vice-Chairperson
3. Hon Joseph Manje, M.P.
4. Hon Sakwa Bunyasi, M.P.
5. Hon Charles Geni Mongare, M.P.
6. Hon Jackson Rop, M.P.
7. Hon Andrew Mwadime, M.P.
8. Hon Samuel Arama, M.P.
9. Hon Julius Melly, M.P.
10. Hon Abass Ahmed Ibrahim, M.P.
11. Hon Edick Omondi Anyanga, M.P.
12. Hon Kyengo Katatha Maweu, M.P.
13. Hon Joel Onyancha, M.P.
14. Hon Jessica Mbalu, M.P.
15. Hon Stephen Manoti, M.P.

ABSENT WITH APOLOGY:-

1. Hon Ababu Namwamba, E.G.H, M.P. - Chairperson

ABSENT:-

1. Hon Kareke Mbiuki, M.P.
2. Hon Fathia Mahbub, M.P.
3. Hon Mathias Robi, M.P.
4. Hon Arthur Odera, M.P.
5. Hon Silvance Onyango Osele, M.P
6. Hon John Mbadi, M.P.
7. Hon Jude Njomo, M.P.
8. Hon Gonzi Rai, M.P.
9. Hon Manson Nyamweya, M.P.
10. Hon Alice Nyanchoka Chae, M.P.
11. Hon Junet Sheikh Nuh, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

1. George Gazemba - Senior Clerk Assistant
2. Johnston Kioko - Clerk Assistant II

- 3. Victor Weke - Clerk Assistant II
- 4. Chelagat Tungo - Clerk Assistant II
- 5. Rahab Chepkilim - Hansard Recorder

KENYA NATIONAL AUDIT OFFICE (KENAO)

- 1. Daniel Kibiiri - Assistant Manager, Audit
- 2. Charles Merande - Manager

NATIONAL TREASURY

- 1. Moses M Gicheru - Senior Accountant

MIN No. 453/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 454/2014:- EVIDENCE: SEALINK HOLDINGS LTD

Examination of the Special Audit Report of the Auditor General of May, 2014 on the Judicial Service Commission (JSC) and the Judiciary

Mr. Joe W. Okwach, an Advocate of the High Court of Kenya appeared before the Committee on behalf of the Directors of Sealink Holdings Ltd and requested for a postponement of the meeting on grounds that his clients were out of the country and would only be able to appear before the Committee on 8th August, 2014 when back. His request was granted by the Committee.

MIN No. 455/2014:- ADJOURNMENT

There being no other business to transact, the sitting ended at ten minutes to noon.



SIGNED.....

(Chair)

DATE.....
20/11/14

MINUTES OF THE ONE HUNDRED THIRTY SIXTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON WEDNESDAY, 23RD JULY, 2014 AT 3.30 P.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING.

PRESENT:-

1. Hon Ababu Namwamba, E.G.H, M.P. - Chairperson
2. Hon Cecily Mbarire, M.G.H., M.P. - Vice-chair
3. Hon Joseph Manje, M.P.
4. Hon Jude Njomo, M.P.
5. Hon Gonzi Rai, M.P.
6. Hon James Bett, M.P.
7. Hon Andrew Mwadime, M.P.
8. Hon Manson Nyamweya, M.P.
9. Hon Abass Ahmed Ibrahim, M.P.
10. Hon Kareke Mbiuki, M.P.
11. Hon Julius Melly, M.P.
12. Hon Jackson Rop, M.P.
13. Hon Junet Sheikh Nuh, M.P.
14. Hon Kyengo Katatha Maweu, M.P.

ABSENT:-

1. Hon Joel Onyancha, M.P.
2. Hon Mathias Robi, M.P.
3. Hon Sakwa Bunyasi, M.P.
4. Hon Arthur Odera, M.P.
5. Hon Fathia Mahbub, M.P.
6. Hon Edick Omondi Anyanga, M.P.
7. Hon Samuel Arama, M.P.
8. Hon Silvance Onyango Osele, M.P.
9. Hon Charles Geni Mongare, M.P.
10. Hon Alice Nyanchoka Chae, M.P.
11. Hon Stephen Manoti, M.P.
12. Hon Jessica Mbalu, M.P.
13. Hon John Mbadi, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

1. Johnstone Kioko - Clerk Assistant II

2. Chelagat Tungo - Clerk Assistant II
3. Rahab Chepkilim - Hansard Editor

KENYA NATIONAL AUDIT OFFICE (KENAO)

1. Charles Merande - Manager, Audit
2. Daniel Kibiiri - Assistant Manager, Audit

MIN No. 456/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 457/2014:- EVIDENCE: MR. ANDREW KARANI, ADVOCATE J.N. MUTHAMA HOLDINGS LIMITED

In the matter of the expenditure of the Judiciary Vote as captured in the Special Audit Report of the Auditor General.

Mr. Andrew Karani, Advocate of J.N. Muthama Holdings Limited submitted as follows:

- (i) It is true that J.N. Muthama Holdings deals with buying and selling of properties and that the Chief Justice Residence in Runda was purchased from Muthama Holdings through competitive tendering.
- (ii) That Muthama Holding Limited being in business, offered three properties with descriptions fitting those in the tender document for Judiciary to pick one. Thus after several consultations and inspections, settled on the Property in Runda.
- (iii) That it being a business venture, this informed the price quoted by Muthama Holdings though high for the property but there was room for negotiations thus deemed it fair. It was a case of a willing buyer/ willing seller. This explained the gap between the pricing of 425 million and 310 million which was finally paid.
- (iv) It is true that the client did not request for a bid bond and that KTK Advocates was the advocate for Judiciary who acted as a link between Judiciary and J.N. Muthama Holdings Limited. It was through KTK Advocates that payments were made to J.N. Muthama Holdings Limited.
- (v) That in between signing of agreements, money was transferred from Treasury to Judiciary then to KTK Advocates who finally paid J.N. Muthama Holdings Limited.
- (vi) That the supplemental agreement between Judiciary and J.N. Muthama Holdings Limited was made and signed in May 2013 and then payments were made.

MIN No. 458/2014:- ADJOURNMENT

There being no other business, the committee adjourned at forty five minutes past four o'clock in the afternoon.



SIGNED.....

(Chair)

DATE.....

20/11/14

MINUTES OF THE ONE HUNDRED THIRTY SEVENTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON THURSDAY, 24TH JULY, 2014 AT 3.00 P.M. IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING.

PRESENT:-

1. Hon Ababu Namwamba, E.G.H, M.P. - Chairperson
2. Hon Cecily Mbarire, M.G.H., M.P. - Vice-chair
3. Hon Jude Njomo, M.P.
4. Hon Kareke Mbiuki, M.P.
5. Hon Gonzi Rai, M.P.
6. Hon James Bett, M.P.
7. Hon Andrew Mwadime, M.P.
8. Hon Abass Ahmed Ibrahim, M.P.
9. Hon Sakwa Bunyasi, M.P.
10. Hon Kyengo Katatha Maweu, M.P.

ABSENT:-

1. Hon Joseph Manje, M.P.
2. Hon Joel Onyanacha, M.P.
3. Hon Julius Melly, M.P.
4. Hon Jackson Rop, M.P.
5. Hon Mathias Robi, M.P.
6. Hon Arthur Odera, M.P.
7. Hon Edick Omondi Anyanga, M.P.
8. Hon Samuel Arama, M.P.
9. Hon Junet Sheikh Nuh, M.P.
10. Hon Stephen Manoti, M.P.
11. Hon John Mbadi, M.P.
12. Hon Jessica Mbalu, M.P.
13. Hon Fathia Mahbub, M.P.
14. Hon Silvanice Onyango Osele, M.P.
15. Hon Charles Geni Mongare, M.P.
16. Hon Manson Nyamweya, M.P.
17. Hon Alice Nyanchoka Chae, M.P.

IN ATTENDANCE:-

NATIONAL ASSEMBLY

1. George Gazemba - Senior Clerk Assistant
2. Johnstone Kioko - Clerk Assistant II

3. Victor Weke - Clerk Assistant II
4. Chelagat Tungo - Clerk Assistant II
5. Rahab Chepkilim - Hansard Editor

KENYA NATIONAL AUDIT OFFICE (KENAO)

1. Richard Nyachio - Manager, Audit
2. James Peter Kamau - Manager, Audit
3. Angelina M Masila - Supervisor, Audit

TREASURY

1. Moses M Gicheru - Senior Accountant

MIN No. 459/2014:- CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Confirmation of minutes of previous sittings was deferred to the next sitting.

MIN No. 460/2014:- EVIDENCE: MR. JOEL KAMANDE, SECRETARY, RADIATION PROTECTION BOARD

In the matter of the expenditure of the Judiciary Vote as captured in the Special Audit Report of the Auditor General.

Mr. Joel Kamande, Secretary, Radiation Protection Board appeared before the Committee with his staff and submitted as follows:

- (i) It is true that The Radiation Protection Board is a statutory body established under the Act of parliament, the Radiation Protection Act, Cap 243, Laws of Kenya as the national competent authority with the responsibility for protecting the health and safety of people and the environment from the harmful effects of ionizing radiation. It regulates the use of ionizing radiation, exportation, importation, distribution and possession of radiation sources. The Board operates under two subsidiary legislations; that is, The Radiation Protection (standards) Regulations – LN. 54/1986 and The Radiation Protection (structural requirements and inspection of buildings) Regulations LN. 55/1986
- (ii) That in some study they learnt that Elgon place had non-ionizing kind of radiation which is common in telecommunication industry and at the moment there's no institution in Kenya which is specialized in dealing with such kinds of radiation.
- (iii) That Radiation Protection Board didn't have any contractual agreement with Judiciary or Elgon Place to deal with the issue of radiation, but took a positive step to carry out some research on it for their own good.

- (iv) Indicated that they were not aware of the fact that Judiciary had engaged an independent body to carry out research of the level of radiation around Elgon Place.
- (v) That they were able to look at the report and that their conclusion was that the manner in which the study was conducted was not satisfactory. Thus the report by Mazingira limited was not professional and had a lot of omissions. The study required one to carry out measurements during different times of the day and over a long period of time in order to get accurate results.
- (vi) That their advice to the committee was that a proper and comprehensive study be undertaken whereby proper terms of reference should be inculcated and measurements ought to take up to 6 months of study. Proper expert should be sought as well.
- (vii) That there are adverse side effect to the health of both human beings and animals found along areas affected by high levels of radiation.
- (viii) That Radiation Protection Board is not covered under law but was created under Radiation Protection Act in the Ministry of Health.
- (ix) That Communication Commission of Kenya being the communication regulator should provide a report and more information regarding Elgon Place and the studies that have been undertaken so far.

The witnesses committed to provide a detailed account with supporting documents within a week.

MIN No. 461/2014:- ADJOURNMENT

There being no other business, the committee adjourned at five o'clock in the evening.



SIGNED.....

(Chair)

DATE..... 20/11/14

MINUTES OF THE ONE HUNDRED AND NINETY THIRD (193RD) SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON TUESDAY, 19TH MAY, 2015 IN SERENA HOTEL, MOMBASA AT 9.00 A.M.

MEMBERS PRESENT

1. Hon. (Eng.) Nicolas Gumbo, M.P. - Chairman
2. Hon. Jackson K. Rop, M.P. - Vice- Chairman
3. Hon. Joseph Manje, M.P.
4. Hon. Alice Nyanchoka Chae, M.P.
5. Hon. Timothy Bosire, M.P.
6. Hon. Mwadime Andrew, M.P.
7. Hon. Sakwa Bunyasi, M.P.
8. Hon. Arthur Odera, M.P.
9. Hon. Abdikadir Aden, M.P.
10. Hon. John Mbadi, M.P.
11. Hon. David Eseli, M.P.
12. Hon. Joel Onyancha, M.P.
13. Hon. Stephen Manoti, M.P.
14. Hon. Kyengo Katatha Maweu, M.P.
15. Hon. Kareke Mbiuki, M.P.
16. Hon. Charles Geni Mong'are, M.P.
17. Hon. Gonzi Rai, M.P.
18. Hon. Kangogo Bowen, M.P.
19. Hon. Manson Nyamweya, M.P.
20. Hon. Julius Melly, M.P.
21. Hon. Silvanice Onyango Osele, M.P.
22. Hon. Jessica Mbalu, M.P.

ABSENT WITH APOLOGY

1. Hon. Mathias Robi, M.P.
2. Hon. Fathia Mahbub, M.P.
3. Hon. Jude Njomo, M.P.

ABSENT

1. Hon. Kanini Kega, M.P.
2. Hon. Junet Sheikh Nuh, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Daniel Mutunga - Principal Clerk Assistant
2. Mr. Victor Weke - Clerk Assistant II
3. Ms. Chelagat Tungo Aaron - Clerk Assistant II
4. Mr. Sidney Lugaga - Legal Counsel II
5. Ms. Winnie Kulei - Research Assistant
6. Ms. Rahab Chepkilim - Hansard Recorder

OFFICE OF THE AUDITOR GENERAL

1. Mr. Charles Merande - Manager, Audit
2. Mr. Daniel Kibirii - Manager, Audit

NATIONAL TREASURY

1. Mr. Tom Khakame - Senior Deputy Accountant General
2. Mr. Elijah Kabiru - Senior Assistant Accountant General

MIN. No. 656/2015: PRELIMINARIES

The Chairman called the meeting to order at 9.30a.m. A Prayer was said.

MIN. No. 657/2015: CONFIRMATION OF MINUTES

The agenda item was deferred to the next sitting.

MIN. No. 658/2015: CONSIDERATION OF THE JSC REPORT

The Committee considered Chapters on the Executive Summary and Observations of the draft report and made changes as follows:

That:-

1. The Committee initiated an inquiry on its own volition after a public spat between the former Chief Registrar, the JSC and the Chief Justice, over administrative and financial management issues. Therefore the Committee resolved to request the Auditor General to carry out a Special Audit of the Judiciary and the JSC, so as to establish the facts behind the allegations.
2. The Committee noted with concern that the Chief Justice ignored summons to appear before it and give evidence contrary to Article 125 of the Constitution. Being the custodian of law, the Chief Justice should uphold the rule of law in the country.
3. The specific figures on all irregular expenditures should be indicated clearly in the observations.
4. The specific sections of the laws that had been violated due a number of irregularities within the Judiciary and the JSC, should be quoted.
5. The Committee resolved to invite Hon. Lady Justice Lydia Achode who was the then Registrar of the High Court to shed light on the procurement of Mayfair Court Centre. The Committee was of the view that everyone should be accorded a fair hearing before assigning responsibility.
6. Fundamentally also, the Committee observed with concern that Align Architects used JKUATES Limited as a cover to obtain irregularly single sourced contracts from the Judiciary. The Committee noted that similar corporate entities may exist in other Universities and are used to justify single sourcing /uncompetitive bidding under the guise of inter-governmental procurement. There was need therefore to recommend a forensic audit of such arrangements in public institutions that are being used as conduits to siphon out public funds.

MIN. No. 659/2015: ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes after one O'clock in the afternoon. The next sitting would be at 2.30 pm.

SIGNED.....

(Chairperson)

DATE.....

2nd July 2015

MINUTES OF THE ONE HUNDRED AND NINETY FOURTH (194TH) SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON TUESDAY, 19TH MAY, 2015 IN SERENA HOTEL, MOMBASA AT 2.30 P.M.

MEMBERS PRESENT

1. Hon. (Eng.) Nicolas Gumbo, M.P.
2. Hon. Jackson K. Rop, M.P.
3. Hon. Joseph Manje, M.P.
4. Hon. Alice Nyanchoka Chae, M.P.
5. Hon. Timothy Bosire, M.P.
6. Hon. Mwadime Andrew, M.P.
7. Hon. SakwaBunyasi, M.P.
8. Hon. Arthur Odera, M.P.
9. Hon. Abdikadir Aden, M.P.
10. Hon. John Mbadi, M.P.
11. Hon. David Eseli, M.P.
12. Hon. Joel Onyancha, M.P.
13. Hon. Stephen Manoti, M.P.
14. Hon. Kyengo Katatha Maweu, M.P.
15. Hon. Kareke Mbiuki, M.P.
16. Hon. Charles Geni Mong'are, M.P.
17. Hon. Gonzi Raj, M.P.
18. Hon. Mathias Robi, M.P.
19. Hon. Kangogo Bowen, M.P.
20. Hon. Julius Melly, M.P.
21. Hon. Jude Njomo, M.P.
22. Hon. Silvance Onyango Osele, M.P.
23. Hon. Jessica Mbalu, M.P.

- Chairman
- Vice-Chairman

ABSENT WITH APOLOGY

1. Hon. Manson Nyamweya, M.P.
2. Hon. Fathia Mahbub, M.P.

ABSENT

1. Hon. Kanini Kega, M.P.
2. Hon. Junet Sheikh Nuh, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

- | | | |
|-----------------------------|---|---------------------------|
| 1. Mr. Daniel Mutunga | - | Principal Clerk Assistant |
| 2. Mr. Victor Weke | - | Clerk Assistant II |
| 3. Ms. Chelagat Tungo Aaron | - | Clerk Assistant II |
| 4. Mr. Sidney Lugaga | - | Legal Counsel II |
| 5. Ms. Winnie Kulei | - | Research Assistant |
| 6. Ms. Rahab Chepkilim | - | Hansard Recorder |

OFFICE OF THE AUDITOR GENERAL

1. Mr. Charles Merande - Manager, Audit
2. Mr. Daniel Kibirii - Manager, Audit

NATIONAL TREASURY

1. Mr. Tom Khakame - Senior Deputy Accountant General
2. Mr. Elijah Kabiru - Senior Assistant Accountant General

MIN. No. 660/2015: PRELIMINARIES

The Chairman called the meeting to order at 2.45p.m. A Prayer was said.

MIN. No. 661/2015: CONFIRMATION OF MINUTES

The agenda item was deferred to the next sitting.

MIN. No. 662/2015: CONSIDERATION OF THE JSC REPORT

The Committee deliberated on the recommendations of the draft report and made the following changes;

That:-

1. The Chief Registrar effects recovery measures on irregularly paid allowances to JSC Commissioners, members of staff, allowances paid and not already earned, and improperly unaccounted for imprest.
2. The Chief Registrar institutes recovery measures on contractors who were paid and are yet to make a full delivery for goods or services and officers found responsible for the loss surcharged. The Government should further blacklist from Government tenders (in accordance with the Public Procurement and Disposal Act, 2005), the firms that were involved in financial impropriety and breach of contracts at the Judiciary during the stipulated time.
3. The Ethics and Anti-Corruption Commission investigates circumstances in which individuals were allowed to operate accounts with Kenya Commercial Bank as sole signatories. The circumstances under which KCB allowed accounts to be opened and operated by sole signatories should be investigated and unnecessary action taken on any irregularities.
4. The Office of the Auditor General should investigate the membership and clandestine nature of operations of JKUATES Limited and similar institutions in all public universities and consequently, take appropriate legal action on those found culpable of malpractices, in the form of deregistration.
5. The Judicial Service Commission should complete renovations of the Official Residence of the Chief Justice and have the premises occupied.
6. As the head of the Judiciary, the Chief Justice should observe the rule of law and constitutionality. He should annually report to Parliament as required by Section 5(2b) of the Judicial Service Act, 2011, on progress towards implementation of the Judiciary Transformation Framework and progress of the Judiciary. The Chief Justice should also refund the leave allowances irregularly drawn from the Judiciary.

The Committee further recommended that the Chief Justice should henceforth exercise effective general direction and firm control of the Judiciary as provided for under Section 5(2)(c) of the Judicial Service Act.

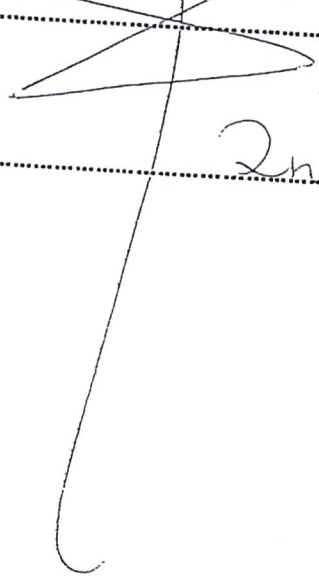
MIN. No. 663/2015: ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past six O'clock in the afternoon. The next sitting would be held on Wednesday 20th May 2015 at 9.00 am.

SIGNED.....


(Chairperson)

DATE.....


2nd July 2015

MINUTES OF THE ONE HUNDRED AND NINETY FIFTH (195TH) SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON WEDNESDAY, 20TH MAY, 2015 IN SERENA HOTEL, MOMBASA AT 9.00 AM

MEMBERS PRESENT

1. Hon. (Eng.) Nicolas Gumbo, M.P. - Chairman
2. Hon. Jackson K. Rop, M.P. - Vice- Chairman
3. Hon. Joseph Manje, M.P.
4. Hon. Alice Nyanchoka Chae, M.P.
5. Hon. Timothy Bosire, M.P.
6. Hon. Mwadime Andrew, M.P.
7. Hon. Sakwa Bunyasi, M.P.
8. Hon. Arthur Odera, M.P.
9. Hon. Abdikadir Aden, M.P.
10. Hon. John Mbadi, M.P.
11. Hon. David Eseli, M.P.
12. Hon. Joel Onyancha, M.P.
13. Hon. Stephen Manoti, M.P.
14. Hon. Kyengo Katatha Maweu, M.P.
15. Hon. Kareke Mbiuki, M.P.
16. Hon. Charles Geni Mong'are, M.P.
17. Hon. Gonzi Rai, M.P.
18. Hon. Kangogo Bowen, M.P.
19. Hon. Julius Melly, M.P.
20. Hon. Jude Njomo, M.P.
21. Hon. Silvance Onyango Osele, M.P.
22. Hon. Jessica Mbalu, M.P.

ABSENT WITH APOLOGY

1. Hon. Mathias Robi, M.P.
2. Hon. Manson Nyamweya, M.P.
3. Hon. Fathia Mahbub, M.P.

ABSENT

1. Hon. Kanini Kega, M.P.
2. Hon. Junet Sheikh Nuh, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Daniel Mutunga - Principal Clerk Assistant
2. Mr. Victor Weke - Clerk Assistant II
3. Ms. Chelagat Tungo Aaron - Clerk Assistant II
4. Mr. Sidney Lugaga - Legal Counsel II
5. Ms. Winnie Kulei - Research Assistant
6. Ms. Rahab Chepkilim - Hansard Recorder

OFFICE OF THE AUDITOR GENERAL

- 1. Mr. Charles Merande - Manager, Audit
- 2. Mr. Daniel Kibirii - Manager, Audit

NATIONAL TREASURY

- 1. Mr. Tom Khakame - Senior Deputy Accountant General
- 2. Mr. Elijah Kabiru - Senior Assistant Accountant General

MIN. No. 664/2015: PRELIMINARIES

The Chairman called the meeting to order at 9.00 a.m. A Prayer was said.

MIN. No. 665/2015: CONFIRMATION OF MINUTES

The agenda item was deferred to the next sitting.

MIN. No. 666/2015: CONSIDERATION OF THE JSC REPORT

The Committee considered issues on culpability as elucidated in the draft report and made changes as follows;

- 1. That the introductory section quotes all relevant sections of the law attributed to the Chief Justice, the Judicial Service Commission and the Chief Registrar of the Judiciary.
- 2. That Mr. Simiyu Werunga be invited to appear before the Committee and explain the circumstances surrounding his being paid up to Kshs.30 million without traceable vouchers.

MIN. No. 667/2015: ADJOURNMENT

There being no other business, the meeting was adjourned at fifteen minutes past two O'clock in the afternoon. The next sitting would be at 3.15pm.

SIGNED.....

(Chairperson)

DATE.....

2nd July, 2015

MINUTES OF THE ONE HUNDRED AND NINETY SIXTH (196TH) SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON WEDNESDAY, 20TH MAY, 2015 IN SERENA HOTEL, MOMBASA AT 3.15 PM.

MEMBERS PRESENT

1. Hon. (Eng.) Nicolas Gumbo, M.P. - Chairman
2. Hon. Jackson K. Rop, M.P. - Vice- Chairman
3. Hon. Joseph Manje, M.P.
4. Hon. Alice Nyanchoka Chae, M.P.
5. Hon. Timothy Bosire, M.P.
6. Hon. Mwadime Andrew, M.P.
7. Hon. Sakwa Bunyasi, M.P.
8. Hon. Arthur Odera, M.P.
9. Hon. Abdikadir Aden, M.P.
10. Hon. John Mbadi, M.P.
11. Hon. David Eseli, M.P.
12. Hon. Joel Onyancha, M.P.
13. Hon. Stephen Manoti, M.P.
14. Hon. Kyengo Katatha Maweu, M.P.
15. Hon. Kareke Mbiuki, M.P.
16. Hon. Charles Geni Mong'are, M.P.
17. Hon. Gonzi Rai, M.P.
18. Hon. Kangogo Bowen, M.P.
19. Hon. Julius Melly, M.P.
20. Hon. Mathias Robi, M.P.
21. Hon. Jude Njomo, M.P.
22. Hon. Silvanice Onyango Osele, M.P.

ABSENT WITH APOLOGY

1. Hon. Jessica Mbalu, M.P.
2. Hon. Manson Nyamweya, M.P.
3. Hon. Fathia Mahbub, M.P.

ABSENT

1. Hon. Kanini Kega, M.P.
2. Hon. Junet Sheikh Nuh, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Daniel Mutunga - Principal Clerk Assistant
2. Mr. Victor Weke - Clerk Assistant II
3. Ms. Chelagat Tungo Aaron - Clerk Assistant II
4. Mr. Sidney Lugaga - Legal Counsel II
5. Ms. Winnie Kulei - Research Assistant
6. Ms. Rahab Chepkilim - Hansard Recorder

OFFICE OF THE AUDITOR GENERAL

1. Mr. Charles Merande - Manager, Audit
2. Mr. Daniel Kibirii - Manager, Audit

NATIONAL TREASURY

1. Mr. Elijah Kabiru - Senior Assistant Accountant General

MIN. No. 668/2015: PRELIMINARIES

The Chairman called the meeting to order at 3.30 pm. A Prayer was said.

MIN. No. 669/2015: CONFIRMATION OF MINUTES

The agenda item was deferred to the next sitting.

MIN. No. 670/2015: CONSIDERATION OF THE JSC REPORT

The Committee continued with the review of the Culpability chapter of the draft report and made changes as follows:-

That:-

1. The Office of the Auditor General provides a write up on the matter of un-vouched payments to Mr. Evans Simiyu Werunga by Tuesday 26th May, 2015. The matter had not been substantially covered in the Special Audit report. This would guide the Committee on how to cross-examine the payments and the beneficiary.
2. The Committee would await evidence from Hon. Lady Justice Lydia Achode before moving to the next stage of adoption. The Committee would thus ensure that Hon. Lady Justice Achode was given a fair hearing before concluding its report.

MIN. No. 671/2015: CONSIDERATION OF IFMIS EXPENDITURE

Hon. Kangogo Bowen, MP, briefed the Committee on the Integrated Financial Management System (IFMIS) software acquisition by Treasury and why he felt the budgetary allocations were exorbitant.

He informed the Members that being a software project, the system did not require such huge allocations for either up-grading or disseminating it to other users. It was important to establish who owned the system, and whether the Ministry of Finance had the total control of the pass/source code.

Members agreed that the figures were not reasonable bearing in mind capital expenditure on software is one-off, with subsequent upgrades needing not cost as much as Treasury had been allocating.

Mr. Elijah Kabiru of Treasury informed the meeting that he would provide a comprehensive response from the Director of IFMIS at Treasury. The Committee resolved to await this response before deciding on how to proceed with the inquiry.

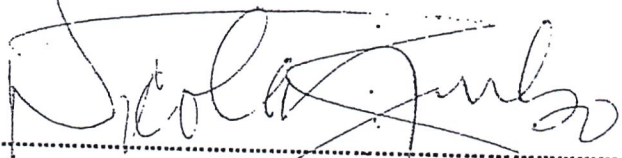
MIN. No. 672/2015: WAY FORWARD FOR THE COMMITTEE

A recap on Committee's resolutions, rules of engagement and way Forward was done. A formal report on the rules of engagement would be compiled for Members to review and adopt.


MIN. No. 673/2015: ADJOURNMENT

There being no other business, the meeting was adjourned at fifteen minutes past seven O'clock in the evening. The next Sitting would be held on Thursday, 28th May 2015 in Committee Room 9, Main Parliament Buildings, at 10.00am.

SIGNED.....


(Chairperson)

DATE.....


2nd July 2015

MINUTES OF THE ONE HUNDRED AND NINETY SEVENTH (197TH) SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON THURSDAY, 28TH MAY, 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING, AT 10.00 A.M.

MEMBERS PRESENT

1. Hon. (Eng.) Nicolas Gumbo, M.P. - Chairman
2. Hon. Jackson K. Rop, M.P. - Vice- Chairman
3. Hon. Joseph Manje, M.P.
4. Hon. Jude Njomo, M.P.
5. Hon. Gonzi Raj, M.P.
6. Hon. Alice Nyanchoka Chae, M.P.
7. Hon. Timothy Bosire, M.P.
8. Hon. Mwadime Andrew, M.P.
9. Hon. SakwaBunyasi, M.P.
10. Hon. Kanini Kega, M.P.
11. Hon. Silvance Onyango Osele, M.P.
12. Hon. Kyengo Katatha Maweu, M.P.
13. Hon. Charles GeniMong'are, M.P.

ABSENT WITH APOLOGY

1. Hon. Kangogo Bowen, M.P.
2. Hon. Fathia Mahbub, M.P.
3. Hon. Julius Melly, M.P.
4. Hon. Arthur Odera, M.P.
5. Hon. David Eseli, M.P.
6. Hon. Jessica Mbalu, M.P.
7. Hon. Abdikadir Aden, M.P.
8. Hon. John Mbadi, M.P.
9. Hon. Joel Onyancha, M.P.
10. Hon. KarekeMbiuki, M.P.
11. Hon. Manson Nyamweya, M.P.
12. Hon. Mathias Robi, M.P.
13. Hon. Stephen Manoti, M.P.
14. Hon. Junet Sheikh Nuh, M.P.

IN ATTENDANCE

WITNESS

Hon. Lady Justice Lydia Awino Achode

NATIONAL ASSEMBLY

1. Mr. Daniel Mutunga - Principal Clerk Assistant
2. Mr. Victor Weke - Clerk Assistant II
3. Ms. Chelgat Tungo Aaron - Clerk Assistant II

OFFICE OF THE AUDITOR GENERAL

Mr. Daniel Kibirii - Manager, Audit

TREASURY

Mr. Elijah Kabiru - Senior Assistant Accountant General

MIN. No. 674/2015: PRELIMINARIES

The Chairperson called the meeting to order at 10.30a.m. A Prayer was said followed by introductions. The Agenda of the Sitting was adopted.

MIN. No. 675/2015: CONFIRMATION OF MINUTES

The agenda item was deferred to the next sitting.

MIN. No. 676/2015: EVIDENCE BY HON. LADY JUSTICE LYDIA AWINO ACHODE

The witness appeared to testify on the matter of the acquisition of Mayfair Court Centre in the ongoing inquiry of the Special Auditor General's report on the Judiciary. The Chairman informed Hon. Lady Justice Lydia Achode that the matter of procurement of the Mayfair Court Centre was initiated during her tenure.

The Chairman further informed her that the Auditor's report indicated that procurement laws were flouted in the process of acquiring the premises. The Committee had therefore resolved to invite her to the meeting to clarify the issues of malpractices in the procurement of the Mayfair Centre. He then invited her to make her presentation.

Hon. Lady Justice Lydia Achode submitted as follows;

1. She was the Registrar of the High Court up to 22nd August, 2011 before the new Chief Registrar of the Judiciary, Mrs. Gladys Boss Shollei, took over office. She moved on to her new posting as High Court Judge based at Milimani Law Courts, Family Division, after her swearing in on 2nd September, 2011.
2. After the JSC was reconstituted in 2011, she asked the then Secretary to the Cabinet, Mr. Francis Kimemia, to allow them use Anniversary Towers 22nd floor as offices for the JSC. This request was granted because the lease was already in Government's hands yet unoccupied at that moment. JSC had occupied these offices until May, 2011 when they were told to vacate for the incoming Judges and Magistrates Vetting Board. The Commission instructed her to find alternative space.
3. She then tasked a Mr. Allan Ojuki, an Office Superintendent to find alternative and suitable premises to house the Commission. Mr. Ojuki identified Reinsurance plaza on Taifa Road and accompanied her there to view its suitability. Justice Achode then wrote to the JSC to inform them of this office space, and further wrote to the Ministry of Public Works for valuation purposes. Justice Achode then asked Mr. Ojuki to find more alternatives to give JSC a variety to choose from. Two more premises were identified, NHIF Building and Mayfair Court Centre, the latter which had two wings of space. She never visited the other two venues.
4. Justice Achode then wrote to JSC informing them of these two new available premises. It was at this time that the new Chief Registrar of the Judiciary was recruited and she was asked to leave the procurement to the new team. Her role in the acquisition of these premises ended there.

5. Justice Achode confirmed that there was a Tender Committee and Procurement Department in place and her role was only to execute JSC's instructions and let them decide how to proceed.
6. She informed the Committee that the previous JSC depended fully on departments in place while the new expanded one formed sub-committees to oversight various functions of the Judiciary.
7. Justice Achode confirmed that she fully handed over to her successor, Mrs. Gladys Boss Shollei in a meeting that included the Chief Justice. Her relationship with her successor was cordial though Mrs. Shollei never reached out to her for consultation as she (Justice Achode) did with her predecessors, Justice Mweru and Justice Ouko. She added that her relationship with the Chief Justice was cordial and professional for the two months they worked together.
8. She added that allowances by the previous JSC were drawn at the rate of Kshs. 60,000.00 per month regardless of the number of sittings attended. When the new leadership came in, she consulted the Office of the President on how to pay them and this may have contributed to the feeling that the old secretariat was lethargic and resistant to change.
9. Justice Achode further stated that Judiciary 'insiders' had no problem with the new team that came in. She was however of the view that there should be a balance between new and old career staff in the Judiciary to ensure continuity and institutional memory.
10. She informed the Committee that if she was to become Chief Justice, she would create rapport with Magistrates and Judges and improve service delivery by the Judiciary through prompt and efficient provision of Justice. She would listen and treat every officer equitably if appointed as Chief Justice.

The Committee resolved that Justice Achode should avail a written submission, evidence of the JSC instructing her to look for new office space for them, her handing over notes to her successor and the letters to the JSC and Ministry of Public Works regarding Reinsurance Plaza premises.

MIN. No. 677/2015: ANY OTHER BUSINESS

It was resolved that the new evidence should be reflected in the draft report. It was further resolved that in the spirit of conforming to the Committee's terms and rules of engagement, the Hansard department should avail weekly copies of transcribed Committee proceedings.

MIN. No. 678/2015: ADJOURNMENT

There being no other business, the meeting was adjourned at twenty minutes past one O'clock in the afternoon. The next meeting would be held on Tuesday 4th June, 2015 at 10am.

SIGNED.....

(Chairperson)

DATE.....

2nd July, 2015

MINUTES OF THE ONE HUNDRED AND NINETY NINTH SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON TUESDAY, 9TH JUNE, 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS, AT 10.00 A.M.

MEMBERS PRESENT

- | | | |
|---------------------------------------|---|----------------|
| 1. Hon. (Eng.) Nicolas Gumbo, M.P. | - | Chairman |
| 2. Hon. Jackson K. Rop, M.P. | - | Vice- Chairman |
| 3. Hon. Joseph Manje, M.P. | | |
| 4. Hon. Jude Njomo, M.P. | | |
| 5. Hon. Gonzi Rai, M.P. | | |
| 6. Hon. Kangogo Bowen, M.P. | | |
| 7. Hon. Andrew Mwadime, M.P. | | |
| 8. Hon. Sakwa Bunyasi, M.P. | | |
| 9. Hon. Arthur Odera, M.P. | | |
| 10. Hon. David Eseli, M.P. | | |
| 11. Hon. John Mbadi, M.P. | | |
| 12. Hon. Manson Nyamweya, M.P. | | |
| 13. Hon. Silvance Onyango Osele, M.P. | | |
| 14. Hon. Alice Nyanchoka Chae, M.P. | | |
| 15. Hon. Timothy Bosire, M.P. | | |
| 16. Hon. Stephen Manoti, M.P. | | |

ABSENT WITH APOLOGY

1. Hon. Abdikadir Aden, M.P.
2. Hon. Mathias Robi, M.P.
3. Hon. Junet Sheikh Nuh, M.P.
4. Hon. Kanini Kega, M.P.
5. Hon. Kyengo Katatha Maweu, M.P.
6. Hon. Julius Melly, M.P.
7. Hon. Joel Onyanicha, M.P.
8. Hon. Charles Geni Mong'are, M.P.
9. Hon. Jessica Mbalu, M.P.
10. Hon. Fathia Mahbub, M.P.
11. Hon. Kareke Mbiuki, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

- | | | |
|---------------------|---|--------------------|
| 1. Mr. Victor Weke | - | Clerk Assistant II |
| 2. Mr. Simon Muinde | - | Hansard Recorder |

OFFICE OF THE AUDITOR GENERAL

- | | | |
|------------------------|---|----------------|
| 1. Mr. Daniel Kibirii | - | Manager, Audit |
| 2. Mr. Charles Merande | - | Manager, Audit |

TREASURY

- | | | |
|--------------------|---|-------------------------------------|
| 1. Mr. Tom Khakame | - | Senior Deputy Accountant General |
| 2. Ms. Jane Njogu | - | Senior Assistant Accountant General |

MIN. No. 685/2015:PRELIMINARIES

The Chairperson called the meeting to order at 10.20a.m. A Prayer was said followed by introductions.

MIN. No. 686/2015: CONFIRMATION OF MINUTES

The agenda item was deferred to the next sitting.

MIN. No. 687/2015:EVIDENCE FROM MR SIMIYU WERUNGA ON THE JSC INQUIRY

Mr. Simiyu Werunga is a security consultant who was contracted by the Judiciary to provide security consultancy services. He submitted as follows:

1. That he has vast academic and insightful knowledge in the public security sector. He would soon graduate with a doctorate in the same.
2. That he met the Chief Justice at a public function sometime in October 2012 who informed him of plans by the Judiciary to upgrade its security arrangements. Thereafter that he met the Chief Justice's Chief of Staff who introduced him to the then Chief Registrar, Mrs. Gladys Boss Shollei. He then put in a bid/ proposal of his profile and soon after met Mrs. Gladys Shollei for discussions. He was even vetted by the NIS.
3. Around December 2012 the Judiciary contacted him to do a security survey and audit process for the institution. He signed the contract on 27th December, 2012 and embarked on a one-off survey at the Supreme Court and Milimani Law Courts, with extension to other courts. The contract was for two weeks and he would be paid at a rate of Kshs. 35,000.00 per day of work done. This, he says, was the initial Kshs. 500,000.00 that he received after handing over his report.
4. While delivering on this contract, he was called and asked to perform a security upgrade for all Supreme Court Judges under the general Presidential Assumption of office arrangements. This contract was to run from 16th January, 2013 to 26th April, 2013. It was during this performance that he got a letter from Mrs Shollei asking him to implement his report. There was no contract for this specific job but there was a clause in the initial contract that would activate his implementation. Mid way through the implementation, he asked for part payment after judges were satisfied of his work and signed off on it.
5. That the implementation specifics were not agreed upon and he would rely on his professional know how to perform the best possible. He added that as a result the Supreme Court Judges are among the best protected public officials in Kenya.

6. That the thirteen (13) residences where he fitted the equipment were private residences, in Nairobi and upcountry, of the Supreme Court Judges and senior officers at the Judiciary.
7. That after Mrs. Gladys Shollei was relieved of her duties, he was asked by the new Registrar, Ms. Anne Amadi to hand over the project. He then demanded payment of balance of Kshs. 19 M for works done at the Chief Justice's house but has not been paid to date. He intends to sue the Judiciary if the payment is not forthcoming.
8. That he put in a bid as a private businessman/ consultant and does not know the Judiciary's internal procurement arrangements that led to his selection. He said that it was common practice for Government to outsource services to private consultants.
9. That the Court Martials who came from abroad joined him for three (3) weeks. He accompanied them around the country to inspect the security status. He did not know how they were identified.
10. That there was no performance contract and could thus not service the equipment when the Judges called upon him.
11. That he resigned from the Military at the rank of a Captain to pursue other interests including at Sarova Hotels as the Group security officer. He then started private practice and is also a Commissioner with the National Taskforce on Community Policing and lectures at the Kenya School of Government.

MIN. No. 688/2015: ANY OTHER BUSINESS

1. The Committee resolved to meet the Chief Registrar of the Judiciary to seek clarifications on Mr. Simiyu Werunga's testimony. This meeting would be held on Thursday 11th June, 2015 at 10.00 am.
2. The Chairman reported that he had met the Auditor General the previous evening on a matter of security concerns by his officers. The Committee resolved to meet the Auditor General together with the Cabinet Secretary for Interior and Coordination of National Government and the Inspector General of Police on the matter. The meeting would be held on Thursday 11th June, 2015 at 11:00 am. The Committee also mandated the Chairman and the Vice- Chairman to seek immediate audience with the Speaker and the President.

MIN. No. 689/2015: ADJOURNMENT

There being no other business, the meeting adjourned at fifteen minutes past one in the afternoon. The next meeting would be held on Thursday, 11th June, 2015 at 10am.

SIGNED.....

(Chairperson)

DATE.....

2nd July 2015

MINUTES OF THE TWO HUNDREDTH (200TH) SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON THURSDAY, 11TH JUNE, 2015 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING, AT 10.00 A.M.

MEMBERS PRESENT

1. Hon. Eng. Nicolas Gumbo, M.P. - Chairman
2. Hon. Jackson K. Rop, M.P. - Vice- Chairman
3. Hon. Joseph Manje, M.P.
4. Hon. Jude Njomo, M.P.
5. Hon. Gonzi Raj, M.P.
6. Hon. Kangogo Bowen, M.P.
7. Hon. Andrew Mwadime, M.P.
8. Hon. Sakwa Bunyasi, M.P.
9. Hon. Arthur Odera, M.P.
10. Hon. David Eseli, M.P.
11. Hon. John Mbadi, M.P.
12. Hon. Manson Nyamweya, M.P.
13. Hon. Silvanice Onyango Osele, M.P.
14. Hon. Alice Nyanchoka Chae, M.P.
15. Hon. Kyengo Katatha Maweu, M.P.
16. Hon. Charles Geni Mong'are, M.P.
17. Hon. Julius Melly, M.P.
18. Hon. Kareke Mbiuki, M.P.
19. Hon. Timothy Bosire, M.P.
20. Hon. Stephen Manoti, M.P.

ABSENT WITH APOLOGY

1. Hon. Abdikadir Aden, M.P.
2. Hon. Mathias Robi, M.P.
3. Hon. Junet Sheikh Nuh, M.P.
4. Hon. Kanini Kega, M.P.
5. Hon. Joel Onyanchara, M.P.
6. Hon. Jessica Mbalu, M.P.
7. Hon. Fathia Mahbub, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Victor Weke - Clerk Assistant II
2. Mr. Simon Muinde - Hansard Recorder

OFFICE OF THE AUDITOR GENERAL

1. Mr. Daniel Kibirii - Manager, Audit
2. Mr. Charles Merande - Manager, Audit

TREASURY

1. Mr. Elijah Kabiru

Senior Assistant Accountant General

MIN. No. 690/2015: PRELIMINARIES

The Chairperson called the meeting to order at 10.00a.m. A Prayer was said followed by introductions.

MIN. No. 691/2015: CONFIRMATION OF MINUTES

The agenda item was deferred to the next sitting.

MIN. No. 692/2015: EVIDENCE FROM CHIEF REGISTRAR OF THE JUDICIARY, MS. ANNE AMADI ON THE JSC INQUIRY

Ms. Anne Amadi is the current Chief Registrar of the Judiciary. She was accompanied by the following officers of the Judiciary;

1. Mr. David Rapando - Deputy Chief Finance officer
2. Ms. Esther Nyaiyaki - Registrar of the Supreme Court

She submitted as follows:

1. That from the records in the Judiciary, Mr. Werunga was contracted in the run-up to the 2013 General Election for 100 days, from 16th January, 2013 to 26th April, 2013 at a rate of Kshs.35,500.00 per day.
2. Mid way through, a letter dated 21st February, 2013 from the then Chief Registrar, Mrs. Gladys Boss Shollei, asked the consultant to implement his findings.
3. That the security report with the Judiciary had only the cover page and the conclusion.
4. When she joined the Judiciary, Mr. Werunga visited her to ask to install the security equipment in her house. She asked the consultant to give him time to consult the contract before he could proceed. She could not find a contract and thus did not engage the consultant further.
5. Mrs. Amadi tabled before the Committee, invoices from Mr. Werunga and payment voucher for the Kshs.29,934,975.00. She however stated that this was irregularly done since there was no such contract to support payment. The voucher examiner had even raised questions but the then Director Finance, Mr. Benedict Omollo, authorized payment together with the then Registrar citing confidential security matters.
6. That this payment was done from the Deposit account which was irregular. The signatories to the account are usually the Head of Station, the Chief Registrar of the Judiciary and the Chief Accountant.
7. That lack of a contract was the basis for her refusal to pay the Kshs.19 million that the consultant was claiming as balance. She would only pay on a court decision.

8. That she did not terminate the 'contract' and ask the consultant to hand over since there was no contract to talk of in the first place. It was then that the consultant attempted to withdraw his equipment from the judges' premises but was unable.
9. She added that it was at this time when Judges complained to her that the equipment was breaking down since they were not being serviced. She asked ICT department to assist with the maintenance due to lack of a maintenance contract.
10. That she had not instituted an audit of the systems because they were already subject of audit queries and this would jeopardize investigations.
11. That there was now a policy that states that Judiciary owned equipment can only be fitted to Judiciary owned premises. Moreover, a security committee chaired by a Judge of Court of Appeal is reviewing all security arrangements in the Judiciary.
12. That she was not aware of who or how the equipment was sourced and 'contract' awarded the consultant. There was no documentation to support this procurement.

MIN. No. 693/2015: ADJOURNMENT

There being no other business, the meeting was adjourned at fifteen minutes past ten O'clock in the morning. The next meeting would be held on Thursday, 11th June, 2015 at 11am.

SIGNED.....

(Chairperson)

DATE.....

2nd July, 2015

MINUTES OF THE TWO HUNDRED AND FOURTH (204TH) SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON TUESDAY, 23RD JUNE, 2015 IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING, AT 10.00 A.M.

MEMBERS PRESENT

1. Hon. Eng. Nicolas Gumbo, M.P. - Chairman
2. Hon. Jackson K. Rop, M.P. - Vice- Chairman
3. Hon. Gonzi Rai, M.P.
4. Hon. Kangogo Bowen, M.P.
5. Hon. Timothy Bosire, M.P.
6. Hon. Fathia Mahbub, M.P.
7. Hon. Kanini Kega, M.P.
8. Hon. Sakwa Bunyasi, M.P.
9. Hon. Abdikadir Aden, M.P.
10. Hon. Julius Melly, M.P.
11. Hon. David Eseli, M.P.
12. Hon. Jude Njomo, M.P.
13. Hon. Andrew Mwadime, M.P.
14. Hon. Kareke Mbiuki, M.P.
15. Hon. Manson Nyamweya, M.P.
16. Hon. Arthur Odera, M.P.
17. Hon. Alice Nyanchoka Chae, M.P.
18. Hon. Joel Onyancha, M.P.

ABSENT WITH APOLOGY

1. Hon. Stephen Manoti, M.P.
2. Hon. Jessica Mbalu, M.P.
3. Hon. Charles Mong'are Geni, M.P.
4. Hon. Silvance Onyango Osele, M.P.
5. Hon. Kyengo Katatha Maweu, M.P.
6. Hon. John Mbadi, M.P.
7. Hon. Junet Sheikh Nuh, M.P.
8. Hon. Mathias Robi, M.P.
9. Hon. Joseph Manje, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Daniel Mutunga - Principal Clerk Assistant
2. Mr. Victor Weke - Clerk Assistant II
3. Ms. Chelagat Tungo - Clerk Assistant II
4. Ms. Winnie Kulei - Research Assistant
5. Mr. Simon Muinde - Hansard Recorder

MIN. No. 706/2015: PRELIMINARIES

The Chairperson called the meeting to order at 10.30 a.m. followed by introductions.

MIN. No. 707/2015: CONFIRMATION OF MINUTES

Minutes of the 193rd sitting were confirmed as true record of the proceedings. They were proposed by Hon Sakwa Bunyasi and seconded by Hon Abdikadir Aden.

Minutes of the 194th sitting were confirmed as true record of the proceedings. They were proposed by Hon Arthur Odera and seconded by Hon Alice Chae.

Minutes of the 195th sitting were confirmed as true record of the proceedings. They were proposed by Hon Kareke Mbiuki and seconded by Hon Alice Chae.

Minutes of the 196th sitting were confirmed as true record of the proceedings. They were proposed by Hon Jackson Rop and seconded by Hon Gonzi Rai.

MIN. No. 708/2015: MATTERS ARISING

There were no matters arising.

MIN. No. 709/2015: IEBC WITNESS LIST

The Committee reconsidered the earlier adopted witness list after advice from the Senior Deputy Clerk. The list was adopted as attached, with three notable additions; Hon James Rege, Mr Hudson Mboya and the Attorney General Githu Muigai.

MIN. No. 710/2015: ANY OTHER BUSINESS

1. The Committee resolved to consult the Office of the Clerk whether the minute numbering should have started afresh with the re-constitution of the new Committee or continue where the previous Committee left off.
2. The Committee resolved to await receipt of the agreement between County Governments and the Ministry of Health regarding lease of medical equipment as earlier agreed. Hon Manson Nyamweya had raised the issue as that of urgent importance.
3. The Chairman informed the meeting that he was receipt of documents related to the ongoing IFMIS matter at NYS. They had been submitted to him anonymously. The Committee resolved that he examines them and briefs the Committee in the next sitting.
4. The Chairman informed Members that he would attend the Executive Committee sittings of EAAPAC and AFROPAC in Dar es Salaam on the 29th and 30th June, 2015. He would be accompanied by Hon. Jude Njomo, Hon. Arthur Odera, Hon. Alice Chae and Hon. Andrew Mwadime. The Vice Chairman would therefore chair sittings during his absence.

MIN. No. 711/2015: ADJOURNMENT

There being no other business, the meeting was adjourned at thirty two minutes after one O'clock in the afternoon. The next sitting would be held on Thursday 25th June, 2015 at 10.00 am.

SIGNED.....

(Chairperson)

DATE.....

MINUTES OF THE TWO HUNDRED AND SIXTH (206TH) SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON TUESDAY, 30TH JUNE, 2015 IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING, AT 10.00 A.M.

MEMBERS PRESENT

1. Hon. Jackson K. Rop, M.P. - Vice- Chairman
2. Hon. Joel Onyancha, M.P.
3. Hon. Julius Melly, M.P.
4. Hon. Kangogo Bowen, M.P.
5. Hon. David Eseli, M.P.
6. Hon. Abdikadir Aden, M.P.
7. Hon. Charles Geni Mong'are, M.P.
8. Hon. John Mbadi, M.P.
9. Hon. Kyengo Katatha Maweu, M.P.
10. Hon. Manson Nyamweya, M.P.
11. Hon. Kanini Kega, M.P.
12. Hon. Gonzi Rai, M.P.
13. Hon. Timothy Bosire, M.P.

ABSENT WITH APOLOGY

1. Hon. (Eng.) Nicolas Gumbo, M.P. - Chairman
2. Hon. Joseph Manje, M.P.
3. Hon. Andrew Mwadime, M.P.
4. Hon. Junet Sheikh Nuh, M.P.
5. Hon. Mathias Robi, M.P.
6. Hon. Stephen Manoti, M.P.
7. Hon. Sakwa Bunyasi, M.P.
8. Hon. Arthur Odera, M.P.
9. Hon. Silvance Onyango Osele, M.P.
10. Hon. Jessica Mbalu, M.P.
11. Hon. Jude Njomo, M.P.
12. Hon. Fathia Mahbub, M.P.
13. Hon. Alice Nyanchoka Chae, M.P.
14. Hon. Kareke Mbiuki, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Daniel Mutunga - Principal Clerk Assistant
2. Ms. Chelagat Tungo - Clerk Assistant II

MIN. No. 706/2015: PRELIMINARIES

The Vice-Chairperson called the meeting to order at 10.45 a.m. A Prayer was said followed by introductions.

MIN. No. 707/2015: CONFIRMATION OF MINUTES

Minutes of the 197th sitting were confirmed as the true record of the proceedings of that day, after being proposed by Hon. Timothy Bosire, M.P. and seconded by Hon. Charles Geni, M.P.

Minutes of the 198th sitting were confirmed as the true record of the proceedings of that meeting, after being proposed by Hon. John Mbadi, M.P. and seconded by Hon. Joel Onyancha, M.P.

Minutes of the 199th sitting were confirmed as the true record of the proceedings of that meeting, after being proposed by Hon. Kangogo Bowen, M.P. and seconded by Hon. Manson Nyamweya, M.P.

MIN. No. 708/2015: MATTERS ARISING

Minutes of the 198th sitting

Under Min. No. 683/2015:

It was agreed that Members who travelled to South Africa to carry out investigation of procurement of electronic voters' equipment by the IEBC for the 2013 General Elections, would be requested to table a report of their findings. This would assist the Committee in the upcoming investigations of the same.

Minutes of the 199th sitting

Under Min. 654/2015

Members raised concerns on payment made to Mr. Simiyu Werunga for performing a security upgrade for all Supreme Court Judges under the general Presidential Assumption of Office arrangements bearing in mind that there were no contracts for that job. It was agreed that a tabulation of the payment breakdown be provided and included in the final report.

MIN. No. 709/2015: ADJOURNMENT

There being no other business, the meeting adjourned at ten minutes past noon. The next meeting would be held on Wednesday, 1st July, 2015, at 10 a.m.

SIGNED.....

(Chairperson)

DATE.....

2nd July, 2015

MINUTES OF THE TWO HUNDRED AND SEVENTH (207TH) SITTING OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) HELD ON THURSDAY, 2ND JUNE, 2015 IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDING, AT 10.00 A.M.

MEMBERS PRESENT

1. Hon. (Eng.) Nicolas Gumbo, M.P. - Chairman
2. Hon. Jackson K. Rop, M.P. - Vice- Chairman
3. Hon. Joel Onyancha, M.P.
4. Hon. Julius Melly, M.P.
5. Hon. Joseph Manje, M.P.
6. Hon. Andrew Mwadime, M.P.
7. Hon. Junet Sheikh Nuh, M.P.
8. Hon. Mathias Robi, M.P.
9. Hon. Stephen Manoti, M.P.
10. Hon. Sakwa Bunyasi, M.P.
11. Hon. Arthur Odera, M.P.
12. Hon. Silvance Onyango Osele, M.P.
13. Hon. Kangogo Bowen, M.P.
14. Hon. David Eseli, M.P.
15. Hon. Abdikadir Aden, M.P.
16. Hon. Charles Geni Mong'are, M.P.
17. Hon. Kyengo Katatha Maweu, M.P.
18. Hon. Manson Nyamweya, M.P.
19. Hon. Kanini Kega, M.P.
20. Hon. Gonzi Rai, M.P.
21. Hon. Timothy Bosire, M.P.
22. Hon. Fathia Mahbub, M.P.
23. Hon. Alice Nyanchoka Chae, M.P.
24. Hon. Kareke Mbiuki, M.P.

ABSENT WITH APOLOGY

1. Hon. Jessica Mbalu, M.P.
2. Hon. Jude Njomo, M.P.
3. Hon. John Mbadi, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Mr. Daniel Mutunga - Principal Clerk Assistant
2. Ms. Chelagat Tungo - Clerk Assistant II
3. Mr. Simon Muinde - Hansard Recorder

OFFICE OF THE AUDITOR GENERAL

1. Mr. Daniel Kibirii - Manager, Audit
2. Mr. Charles Merande - Manager, Audit

MIN. No. 721/2015: PRELIMINARIES

The Chairperson called the meeting to order at 10.55 a.m. A Prayer was said followed by introductions. The agenda of the day's Sitting was adopted after having been proposed by Hon. Arthur Odera, MP, and seconded by Hon. Timothy Bosire, MP.

MIN. No.722/2015: CONFIRMATION OF MINUTES

Minutes of the 200th sitting were confirmed as true record of the proceedings of that day, after being proposed by Hon. Julius Melly, M.P. and seconded by Hon. Gonzi Rai, M.P.

MIN. No.723/2015: MATTERS ARISING

There were no matters arising under this item.

MIN. No. 724/2015: ADOPTION OF JSC REPORT

The Committee Members were taken through the report. The Committee reviewed the Executive summary, observations, findings, culpability and recommendations Chapters of the report. A number of corrections, most of them editorial, were done. The proposal for adoption was by Hon. David Eseli, MP, and seconded by Hon. Andrew Mwadime, MP. The report was thus unanimously adopted.

MIN. No. 725/2015: ADJOURNMENT

There being no other business, the meeting was adjourned at fifty Minutes after one O'clock. The next meeting would be held on Tuesday 7th July, 2015, at 10.00 a.m.

SIGNED.....

(Chairperson)

DATE.....

2nd July, 2015

ANNEXURES

List of Annexure

1. Mrs. Gladys Boss Shollei's complaint to the Chief Justice on interference in her work.
2. Communications Commission of Kenya (CCK) opinion on Elgon Court premises.
3. Minutes of the Tender Committee for variation of construction of prefabricated court buildings from Mavoko to Runyenjes.
4. Contract between Mr. Simiyu Werunga and the Judiciary.
5. Mrs. Gladys Boss Shollei's instruction to Mr. Simiyu Werunga to commence implementation of his report.
6. The security report from Mr. Simiyu Werunga with the Judiciary.
7. Contract between Judiciary and agents of Mayfair Court premises signed by Mrs. Gladys Boss Shollei.
8. List of non-commissioner beneficiaries of allowances at Commissioner's rates.
9. Contract between JKUATES Limited and Align Architects.
10. List of payment of meetings not duly constituted/ lacking quorum.



Ref CJ/C2

16th September, 2013

"Without Prejudice"

Hon. Dr. Willy Mutunga, D.Jus, SC, EGH
Chairperson,
Judicial Service Commission

Dear *Chief Justice*,

RE: OPINION REGARDING CONCERNS ON FINANCIAL MANAGEMENT OF THE JUDICIARY.

The above matter refers.

On several occasions in the past I have brought to your attention matters that amount to financial malpractices that are in contravention of the Constitution, relevant statutes and laid down rules and regulations with regard to financial management in Government.

I am now writing to you in accordance with the Government Financial Legislation that require me to inform you of financial policies/practices/decisions that have been or are being made in contravention of the law. There are a number of irregularities that have and are taking place, many of which I have already brought to your attention through various meetings. I however feel that I must now, by form of written opinion, bring these concerns to the fore.

1. Financial oversight of the Judiciary by the Judicial Service Commission (JSC).

(a) The JSC cannot exercise financial oversight over the Judiciary. The JSC and the Judiciary are separate and distinct entities, each with its own financial accounting procedures under the Constitution and related law.

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(b) In spite of this, the JSC has proceeded several occasions to purport to approve procurements.

- i. The Director of the Supply Chain Management on 30th April, 2013 informed the Finance and Administration Subcommittee of the JSC that they did not have a role in the operational procurement activities, which statement was not taken kindly.
- ii. On 16th September, 2013 the Finance and Administration Subcommittee passed a resolution that no payments and pending bills are to be paid. I have talked to you several times the most recent being the meeting with the Director of Finance on 10th September, 2013 informing you that the Finance and Administration Subcommittee cannot purport to approve payments. However you proceeded to hand over the pending bills to the Chair of the Subcommittee.

(c) This situation cannot be allowed to continue, as failure to follow laid down procedures will engage all payments and create a crisis in the Judiciary, which if not addressed immediately will affect the efficient working systems within the institution. The Judiciary may also face legal action over non-compliance with our contractual obligations. In my humble opinion, you need to act urgently to redress that all decisions affecting payments should be made only by authorized officers in accordance with the law.

2. Financial oversight by the Hon. Chief Justice.

(a) In an official memorandum Ref CJ 103 dated 30th July 2013 you did as Head of the Judiciary, direct all Directors and Registrars to seek approval from you before they incur expenditure. In particular, you provided that "I would like to get an immediate comprehensive status report from Directors and Registrars. In particular, these reports should focus on ongoing/incomplete projects for the FY 2012/2013 including figures and explanations of any major variations. The report should also contain proposed activities for 2013/2014, as well as their costs, which must be in

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line with the final Judiciary budget appropriated by the National Assembly. Any significant variations to either work plans or expenditures should be approved by the Chief Justice and, where necessary, by the JSC."

Although as the Hon. Chief Justice you are Head of the Judiciary, I was appointed by the National Treasury as the accounting officer for the financial year 2013/2014 and I am mandated to give all approvals that incur expenditure. For the avoidance of parallel financial systems in the Judiciary, I request you to seek designation either as an additional accounting officer from the National Treasury, so that it is clear that we are jointly held responsible for expenditure or as the sole accounting officer singularly responsible for financial management in the Judiciary.

(b) Further, the proposed new officers for oversight and/or internal audit functions under the auspices of the office of the Hon. Chief Justice that was presented to the Judicial Service Commission recently run counter to the Government Financial Regulations. The law is clear that the internal audit function fall under the designated accounting officer, which at the current time is the office of the Chief Registrar and not the Office of the Chief Justice. Currently the audit function is conducted by the internal auditors from National Treasury who are six in number and the Kenya National Audit Office. We have also recently hired 7 internal risk and system auditors who have all reported to work. Again, in my humble opinion we need to have clarity on this issue.

(c) In view of the impeding crises above-mentioned, I urgently request the necessary feedback on the same.

Yours Sincerely,

G. BOSS SHOLLEI
CHIEF JUDICIARY OF THE JUDICIARY

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Annex 1 ctd...

Telephone Number 25525
Fax 25525
Email: secretary@judiciary.or.ke
When replying please quote



CHIEF REGISTRAR'S CHAMBERS
SUPREME COURT BUILDING
P.O. Box 30561-00100
NAIROBI

Ref CRJ 14/II

25th September, 2013

Hon. Mr. Henry Rotich,
Cabinet Secretary,
National Treasury
Treasury Building
NAIROBI

Dear

RE: CLARIFICATION ON ROLE OF THE ACCOUNTING OFFICER OF THE JUDICIARY

The above matter refers.

The Constitution through Article 161 (2) (c) establishes of the office of the Chief Registrar of the Judiciary and designates the incumbent as the Chief Administrator and Accounting Officer of the Judiciary. Article 173 (1) (3) designates the Chief Registrar of the Judiciary as the administrator of the Judiciary Fund.

Through a letter from your office dated 15th July, 2013 and referenced AG.1/020 Vol. 13(10) you designated me as the accounting officer for the Judiciary vote for the financial year 2013/14.

The Public Financial Management Act (the Act) provides via section 66 that the accounting officer of a public entity is responsible for ensuring proper management and control of, and accounting for, their finances in order to promote the efficient and effective use of budgetary resources. In this undertaking I am supported by six internal auditors from National Treasury and the Kenya National Audit Office. We have also recently hired 7 internal risk and system auditors.

However, I have been unable to exercise proper management of the public resources due to the fact that it is the Finance and Administration Subcommittee of the Judicial Service Commission (JSC), currently approving payments (copy of memo enclosed). The Director of Finance has raised the issue with the Chief Justice (copy of memo enclosed). I raised the issue more elaborately with the Hon. Chief Justice but the issue remains unresolved.

Commissioner Ahmednasir Abdullahi has taken upon himself to provide approvals for payment. He believes as Chair of the Finance and Administration Subcommittee

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of the JSC (an entity not recognised under the Act) he has residual powers to unilaterally approve or disapprove payments (small correspondence enclosed).

A large number of pending invoices were handed him by the Hon. Chief Justice on 10th September, 2013 which he took to his private office. He thereafter convened a meeting for his Subcommittee to scrutinize the pending bills. The Subcommittee proceeded to reject the bills and directed that no pending bills or payments should be made. I fear we might get into legal trouble if we as the Judiciary do not honour our contractual obligations. I have already received written complaints from suppliers demanding adherence to contractual terms (copy of complaint letter enclosed).

In my reading of the law I am of the opinion that the Finance and Administration Subcommittee of the JSC should be concerned with the finances of the JSC and not of the Judiciary as the two are distinct and separate.

In the past I have availed from time to time broad details of financial activities of the Judiciary to the JSC in the spirit information awareness and collegiality. This has however led them to mistakenly believe that they are in charge of the finances.

I write this letter raising my concerns as allowed by the terms of my designation letter and section 68 (2) (e) of the Public Finance Management Act which provides as follows:

bring any matter to the attention of the Cabinet Secretary responsible for the entity, or the Chief Justice or the Speaker of the National Assembly if, in the accounting officer's opinion, a decision or policy or proposed decision or policy of the entity may result in resources being used in a way that is contrary to subsection (1);

Instead of raising these issues with the National Assembly, I prefer that we hold a tripartite meeting with the Hon. Chief Justice.

I am looking forward to your prompt response.

Yours Sincerely,

G. BOSS SHOLLEI
CHIEF REGISTRAR OF THE JUDICIARY
CC: HON. DR. WILLY MUTUNGA, D.JUR, SC, EGH
CHIEF JUSTICE/PRESIDENT
SUPREME COURT OF KENYA

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**REPUBLIC OF KENYA
THE NATIONAL TREASURY**

Telegraphic Address: 22821
Finance - Nairobi
Fax No.: 23023
Telephone: 4242 232 234
When making phone calls:

P.O. Box 30007-00100
NAIROBI
KENYA

AG 1/20

October 15, 2013

Gladys Boss Shollei,
Chief Registrar of the Judiciary,
Supreme Court Building,
NAIROBI

Dear Mrs. Shollei,

RE: ACCOUNTING OFFICER OF THE JUDICIARY

Your letters of 25th September 2013 and 14th October 2013 on the above subject refers.

Article 161(2)(c) of the Constitution provides that the Chief Registrar of the Judiciary shall be the accounting officer of the Judiciary. Further, Article 173(1) provides that the Chief Registrar of the Judiciary shall be the administrator of the Judiciary Fund. Accordingly, the Cabinet Secretary of the National Treasury, acting under Section 67 of the Public Finance Management Act (PFMA), 2012, designated you as the Accounting Officer of the Judiciary.

Your responsibilities as an Accounting Officer of the Judiciary are elaborated in your Designation Letter, and are consistent with the provisions in Section 68 of PFMA, 2012. No any other person can performance those functions if that person

is not the designated accounting officer as provided for in the law. Please note that Section 197(m) of the PFMA provides that "a public official commits an offence of financial misconduct if, without lawful authority, the officer intentionally or recklessly obstructs or hinders a person while that person is acting in the performance or exercise of the person's functions or powers under the PFMA".

I trust that the above clarifies the role of Accounting Officer of the Judiciary.

Yours Sincerely,

HENRY ROTICH
CABINET SECRETARY, THE NATIONAL TREASURY

Copy to: **HON. DR. WILLY MUTUNGA, D.JUR, SC, EGH**
CHIEF JUSTICE/ PRESIDENT
SUPREME COURT OF KENYA
NAIROBI

ANNEX

NO. 2

1st August 2013

Ms. Gladys Boss Shollei
Chief Registrar of the Judiciary
P.O Box 30041
Nairobi 00100

Dear Madam

RE: TELEPHONE MASTS AT ELGON PLACE

We write with reference to your letter dated 24th July 2013 referenced CRJ/4/1 on the subject matter.

We have conducted an inspection and also carried out some Electromagnetic Field (EMF) exposure measurement at the site and here below is our assessment.

- a. The average EMF radiation level on the 4 floors was at $1.7W/M^2$. It is to be noted that this fall far below the WHO approved INCIRP upper limit of safe exposure of $4.5W/M^2$. Based on this the building is considered safe for occupation from the EMF radiation perspective.
- b. However given the close proximity of these masts to the building there is a potential for frequency interference that may degrade the quality of such services as mobile telephone services at the site. In view of this we would

recommend that you engage the mobile telephone service providers with a view to finding a solution to the service quality at the site in such an event.

We trust that we have been of help in your consideration in respect of the occupation of the said building.

Yours faithfully



C.K. Kemei

For. Director General

AMINZA

**MINUTES OF THE JUDICIARY TENDER COMMITTEE MEETING
NO. JTC 20/2012 - 13 HELD ON MONDAY 9TH JULY 2012 AT 11.0
P.M. AT THE DEPUTY CHIEF REGISTRAR'S CHAMBER**

MEMBERS PRESENT

- | | | |
|-----------------------------|-----------------------------|--------------|
| 1. Mr. Khalid Kamran | D.C.U. | Chairman |
| 2. Mr. Bradford A. Cassillo | Director Finance | Deputy Chair |
| 3. Mr. Thomas Alik | Director IT | Member |
| 4. Mr. Wynne Wang | Director Revenue Collection | Member |
| 5. Mr. Nick Mchaha | Transport Officer | Member |
| 6. Mr. Nicholas Okonko | Legal Counsel | Member |
| 7. Mr. Martin G. Okwara | DSCM | Secretary |
| 8. Ms. Dorcas M. Mwangi | SPO | Secretary |

The meeting was called in order at 11.15 p.m.

MINUTE NO. 19/2012 - 13 CONFIRMATION OF PREVIOUS MINUTES

Minutes of the following meetings were confirmed as correct and approved by the Committee:

- 12 Meeting No. JTC 13/2012-2013 held on Thursday 1st January, 2012
- 13 Meeting No. JTC 14/2012-2013 held on Thursday 14th February, 2012
- 14 Meeting No. JTC 15/2012-2013 held on Thursday 1st March, 2012
- 15 Meeting No. JTC 16/2012-2013 held on Wednesday 14th March, 2012
- 16 Meeting No. JTC 17/2012-2013 held on Thursday 22nd March, 2012

MINUTE NO. 20/2012 - 13 MATTERS ARISING:

There were no matters arising.

COMMITTEE'S DECISION

The tender committee reviewed the quotation received for direct procurement of services for refurbishment of vehicle GK B036D VW Passat assigned to Justice Akinde, and after seeing the above Secretary's comments further observed that the vehicle was new and had only done about 500 km and the price of a new vehicle was about Ksh. 5.1 million.

In view of the above, the Committee approved award to: M/s CNC Holdings Nairobi as follows:

NO	ITEM DESCRIPTION	UNIT	QTY	TOTAL COST
1	Major Refurbishment GK B036D New VW Passat Chassis No. 929933	Lx	1	1,192,083.00

Immediate communication was allowed.

MINUTE NO. 21/2012 - 13 AOB

AOB:
The Committee was informed and approved the variation of the contract for the renewed refurbished car bed being awarded to M/s Harare Limited by modifying Schedule 1 with Revision 1. The other terms and conditions of the contract remain unchanged.

AOB:
The Committee had at its meeting No. JTC 9/2012-2013 (Minute No. 11) held on 11th November, 2012 approved leasing of office space at Rabimulla, Nairobi but was reminded that discussions be held with Jinnah Rabimulla, Franchise Registered, with a view to reducing the escalation rate and increasing the number of parking bays which is 12 bays or more. This was officially communicated to them but they had not officially responded. They have however been engaged and they seem unwilling to discuss the escalation clause but more parking space was available. The Jinnahs were however at risk of losing the space if a decision is not urgently taken. The Committee therefore recommended that the process continue as per the tender submitted.

ANNEX M - Y

CONTRACT
FOR
SECURITY CONSULTING SERVICES

THIS CONTRACT ("Contract") is entered into this date, Jan 16th 2013 by and between The Judiciary of Kenya ("the Client") having its principal place of business at The Supreme Court Building, Nairobi and Simiyu E Werunga, P.O. Box 52589-00100, Nairobi. Tel. +254 722 9 55 515 ("the Consultant") having his principal office located at New People Media House, Adams Arcade, Ngong Rd Nairobi.

WHEREAS, the Client wishes to have the Consultant performing the services hereinafter referred to, and

WHEREAS, the Consultant is willing to perform these services,

NOW THEREFORE THE PARTIES hereby agree as follows:

1. Services

- (i) The Consultant shall perform the services specified in Annex A, "Terms of Reference and Scope of Services," which is made an integral part of this Contract ("the Services").
- (ii) The Consultant shall provide the reports listed in Annex A, "Consultant's Reporting Obligations," within reasonable time periods.

2. Term

The Consultant shall perform the Services during the period commencing 16th January 2013 and continuing April 26th 2013 or through any other period as may be subsequently agreed by the parties in writing.

3. Payment

A. Remuneration

The Client shall pay the Consultant for Services rendered at the rates as Kshs 35,500 per day.

This does not include any implementation tasks that the Consultant may be requested to undertake. Such tasks shall be remunerated separately.

C. Payment Conditions

Payment shall be made in Kenya Shillings not later than seven (7) days following submission of invoices

Payments shall be made to Consultant's bank account.

RC

Account No. 102704: Siriyu E Weringa, Barclays Bank of Kenya, Queensway Branch. If payment by bank wire is not possible, prior Bank approval to apply cash payments option shall be obtained]

4. Project Administration

A. Coordinator

The Client designates Mr./Ms Nicholas Okemwa and Ms. Lilly Odundo as Client's Contact persons; the Contact persons shall be responsible for the coordination of activities under this Contract, for receiving and approving invoices for payment, and for acceptance of the deliverables by the Client.

C. Records and Accounts

The Consultant shall keep, and shall cause its Sub-Consultants to keep, accurate and systematic records and accounts in respect of the Services, which will clearly identify all charges and expenses. The Client reserves the right to audit, or to nominate a reputable accounting firm to audit, the Consultant's records relating to amounts claimed under this Contract during its term and any extension, and for a period of three months thereafter.

5. Performance Standard

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The Consultant shall promptly replace any employees assigned under this Contract that the Client considers unsatisfactory.

6. Inspections and Auditing

The Consultant shall permit, and shall cause its Sub-Consultants to permit, the Bank and/or persons or auditors appointed by the Bank to inspect and/or audit its accounts and records and other documents relating to the submission of the Proposal to provide the Services and performance of the Contract. Any failure to comply with this obligation may constitute a prohibited practice subject to contract termination and/or the imposition of sanctions by the Bank (including without limitation a determination of ineligibility) in accordance with prevailing Bank's sanctions procedures.

7. Confidentiality

The Consultant shall not, during the term of this Contract and within one year after its expiration, disclose any proprietary or confidential information relating to the Services, this Contract or the Client's business or operations without the prior written consent of the Client.

8. Ownership of Material

Any studies, reports or other material, graphic, software or otherwise, prepared by the Consultant for the Client under the

Contract shall belong to and remain the property of the Client. The Consultant may retain a copy of such documents and software.

9. Insurance The Consultant will be responsible for taking out any appropriate insurance coverage.

11. Assignment The Consultant shall not assign this Contract or subcontract any portion of it without the Client's prior written consent.

12. Law Governing Contract and Language The Contract shall be governed by the laws of Kenya, and the language of the Contract shall be English.

13. Dispute Resolution Any dispute arising out of this Contract, which cannot be amicably settled between the parties, shall be referred to adjudication/arbitration in accordance with the laws of the Client's country.

14. Termination The Client may terminate this Contract with at least thirty (30) working days prior written notice to the Consultant after the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause:

- (a) If the Consultant does not remedy a failure in the performance of its obligations under the Contract within seven (7) working days after being notified, or within any further period as the Client may have subsequently approved in writing;
- (b) If the Consultant becomes insolvent or bankrupt;
- (c) If the Consultant, in the judgment of the Client has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for or in performing the Contract.
- (d) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.



FOR THE CLIENT

FOR THE CONSULTANT

Signed by [Signature]

Signed by [Signature]

Title: CHIEF REGISTRAR OF THE JUDICIARY

Title: SIMIYU WERUNGA

LIST OF ANNEXES

Annex A: Terms of Reference and Scope of Services

Annex B: Consultant's Reporting Obligations

[Handwritten mark]

Annex A

Terms of Reference and Scope of Services

SECURITY CONSULTANCYTerms of Reference - TORsPROVISION OF SECURITY CONSULTANCY SERVICES IN THE RUN UP AND AFTERMATH OF THE MARCH 4TH 2013 GENERAL ELECTIONS

1.0. Overall Objectives

The overall objective of this consultancy is to carry out a security audit and survey to enable the judiciary carry out an impartial resolution of the expected Presidential petition arising from the General Election.

Specifically, the consultant will be required to coordinate the security of the supreme court judges, and other important cadre of staff and act as the link with the national security apparatus.

2.0. Scope of Work

The consultant will be required to:

1. Undertake a comprehensive security audit and survey of security systems at the residences of all the Supreme Court judges, the Chief Registrar and the Deputy Chief Registrar
2. Act as the security linkage between the judiciary security systems and the national security architecture.
3. Conduct trainings for the relevant security and judiciary personnel for the duration.

3.0. Methodology

In undertaking this assignment, the consultant will be required to:

1. Visit the various residences of the Supreme Court judges, Chief Registrar and Deputy Chief Registrar. The consultant is also expected to visit the residences of the children of the Chief Justice.
2. Undertake analysis processes
3. Input client's observations in the report.
4. Provide final

5.0. Deliverables

The consultant retained will be required to deliver the following reports as part of his assignment:

- a. An inception report
- b. Participation in the implementation of the immediate tasks
- c. Final Report

6.0. Timings and Duration

The consultant retained will commence work immediately once necessary processes have been finalised. The specific dates for each of the deliverables will be determined after consultations.

Annex B

Consultant's Reporting Obligations

The Consultant will report to the:

- i. Chief Registrar of the Judiciary of Kenya;
- ii. Liaise functionally with the designated contact person appointed by the Chief Registrar.

The Consultant will liaise and also coordinate any related activities with other consultants hired by the Judiciary on matters cross cutting their specific mandates.

Deliverables

The consultant will be required to deliver the following reports as part of his assignment in phase one part I:

- a. An inception report on security assessment and survey
- b. Participation in the implementation of the immediate tasks
- c. Mid review report
- d. Final Report

Specific deliverables include (but are not limited to):

- i. An inception report during the first month of the assignment.
- ii. Advise on the immediate step-up of security on the gaps noted and identified

Place of Work

The Consultant will be working using the offices provided by the Kenya Judiciary at the Milimani High court building. The Consultant will need to be in frequent, direct contact with the contact person.

ANNEX NO 5

Telephone: Nairobi 2271221
Fax: 318172
Email: chiefregistrar@judiciary.co.ke



CHIEF REGISTRAR'S CHAMBERS
SUPREME COURT BUILDING
P.O. Box 30041-00100
NAIROBI

When replying please quote

CRJ/SEC 4

21st February, 2013

Mr. Simiyu Werunga,
Security Consultant,

JUDICIARY.

REF: IMPLEMENTATION OF THE REPORT SUBMITTED TO THE JUDICIARY ON
SECURITY AT THE JUDICIARY

Reference is made to the report you submitted to the Judiciary on security survey and audit of the Supreme Court Judges and senior staff at the Judiciary.

Kindly proceed with speed and implement the recommendations in the report.

Thank you for your continued support.

Gladys Boss Shollei,

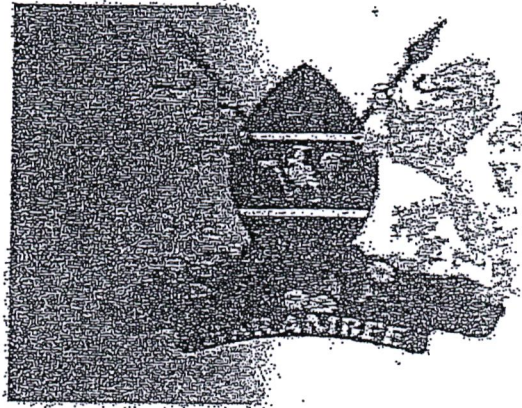
CHIEF REGISTRAR OF THE JUDICIARY.

KENYA JUDICIARY SECURITY ASSESSMENT & AUDIT

Conducted

By

Capt. (Rtd) Simiyu Werunga
Security consultant, Adviser, Trainer & Security Analyst
January to April 2013



WARNING: This document contains sensitive information regarding vulnerabilities observed at facilities, residences and the CJ's protection detail that, if compromised, could jeopardize the safety and security of the judiciary. This document is intended solely for use by the retained security consultant-Capt. Simiyu Werunga and the Kenyan Judiciary only and should not be provided to ANY non-government representatives (e.g., contractor, private security company, etc). The information contained within is and remains the property of the Kenya Judiciary and the consultant. The information contained within is for Official Use Only (FOUO) and must be maintained, distributed, secured and disposed of in a manner that will protect the information against unauthorized disclosure or release to unauthorized individuals. Any distribution of the information contained within beyond the parties named above is not authorized without the express written permission of the Kenya Judiciary

Conclusions

This security survey and audit addresses specific locations that are deficient and include immediate, short-term, and long-term recommendations for security upgrades and enhancements. Some of the recommendations may appear obvious, but are changes necessary to solidify the security posture of the courthouse, residences, and the Chief Justice's security detail. There are ways to work around the physical layout of the buildings, and still provide a safe work environment. All of these recommendations are attainable through the recommended changes that need to be made.

The approach to affecting a secure environment for the Kenyan Courts System and the Kenyan Judiciary is to intensify the security effort utilizing a balance of electronic, anti-intrusion detection systems, a system of controlling employees and visitors, while making the buildings visitor friendly. Law enforcement must remain vigilant in their duties and employees must also be observant and cooperative with the security procedures that are in place.

Security is an inconvenience, but certain security measures must be undertaken in order to ensure a safe work environment. Most importantly, affecting a secure courthouse environment takes the commitment by those in a position to affect change. This includes the Kenyan Judiciary, Development partners and security experts in order to maintain a high level of integrity in the judicial processes.

ANNEX NO. 7

ANN



Gimco Limited

(formerly Gatheru Itundu Mugo)

Valuers, Land Development Consultants,
Estate & Managing Agents

Directors:

- E. K. Gatheru B.A. Land Econ (Hons), M.L.S.K. (R.V.) Nairobi
- H. F. Mugo B.A. Land Econ (Hons), M.L.S.K. (R.W.) Nairobi
- D. N. Muri B.A. Land Econ (Hons), M.L.S.K. (R.V.) (Managing)
- S. M. Wairu B.A. Land Econ (Hons), M.L.S.K. (R.V.)

Gimco Centre
Kiambera Road Upper Hill
P.O. Box 61551-00200
Tel: 254-020-2719800
Nairobi, Kenya
Fax: 254-020-2718930
E-mail: gimco@ainc.co.ke
Web site: <http://www.gimcokenya.com>

Branches
Mbaki House
P.O. Box 1044
Telefax: 0612035403
Nyeri, Kenya

Vickers House
P.O. Box 1994
Tel: 0512217436
Nakuru, Kenya

Cannon House Towers II
P.O. Box 83674
Tel: 041-277479/341890
Mombasa, Kenya

1st September 2011

Our Ref: GIM/S/MF/ISC/2011

SUBJECT TO CONTRACT

Judicial Service Commission
P.O. Box 30041-00100
NAIROBI

Dear Sir/Madam,

**RE: LETTER OF OFFER TO LEASE PREMISES
3,600 SQUARE FEET - 5th Floor WESTERN WING- MAYFAIR INSURANCE CENTRE
AND 4 PARKING BAYS L.R. No. 209/18174 UPPER HILL NAIROBI**

Following your application to lease the above premises in Mayfair Insurance Centre Commercial Building, L.R. No. 209/18174 Upper Hill Nairobi we now set out here below a summary of the principle terms and conditions which we will recommend to the landlord to grant you a new lease

1. **Landlord:**
Ahono Green Limited
P.O. Box 53645-00200
NAIROBI.

2. **Tenant:**
Judicial Service Commission
P.O. Box 30041-00100
NAIROBI



Gimco Limited

(formerly Gatheru Irundu Mugo)

3. **Term:** The lease will be for a period of six (6) years.

4. **Premises:**
The premises comprise 5th Floor Western Wing of Mayfair Insurance Centre Commercial Building on L.R. No: 209/18174 Upper Hill Nairobi measuring approximately 3,600.00 square feet.

5. **Commencement Date:**
The term of lease will commence with effect from 1st October 2011.

6. **Rent and Parking Fee:**
The annual rent payable quarterly in advance will be as follows:

01.10.2011 to 30.09.2013	Kshs. 3,456,000.00 per annum
01.10.2013 to 30.09.2015	Kshs. 3,801,600.00 per annum
01.10.2015 to 30.09.2017	Kshs. 4,181,760.00 per annum

The rent will be reviewed at 10% upwards as shown above after 2 years as provided in the standard lease. If the rent or any sums due under the lease shall not be paid on the due date whether formally demanded or not, the tenant shall pay the landlord interest on any such sums from the date which they were due to the date which they are paid. The rent quoted above is exclusive of VAT but is subject to VAT at Government prescribed rates.

7. **Parking Fee:**
You have been allocated 4 Parking Bays, the Parking Bay numbers will be communicated once Marking is complete. The annual Parking Fee for the first year will be Kshs. 240,000.00 calculated at the rate of Kshs. 5,000.00 per parking Bay per month. This will be reviewed annually at the rate of 5% as per the Standard Parking License.

8. **Service Charge:**
You will also pay service charge determined in the manner stated in the standard lease to reimburse the Landlords for a fair portion of the operating expenses of Mayfair Insurance Centre and shall include but not limited to the following:-

Gimco Limited

(formerly Gatheru Trungu Mugo)

- a) Cost of all water consumed in the common areas of the building and related plumbing repairs;
- b) Cost of general security of the building. It is hereby understood and agreed that every tenant shall be responsible for his/her own premises and wares;
- c) Cost of electricity consumed in the common areas of the building and replacement of bulbs, tubes and similar items in the common areas;
- d) Cost of cleaning the building and periodic decoration of the common areas and cleaning materials used in the building;
- e) Vehicle parking and delivery areas maintenance;
- f) Premium payable for public liability insurance;
- g) Premium payable for fire insurance;
- h) Management cost;
- i) Cost of maintenance of the common parts;
- j) Cost of maintaining mechanical equipment e.g. lifts, water pumps, ventilation equipment etc.;
- k) Cost of general repairs and
- l) Land rent and rates.

A payment on account of service charge shall be paid quarterly in advance on the same quarterly days as rent. The first payment to be paid on acceptance of this invitation calculated as prescribed by the standard lease at the rate of Kshs 232,740.00 per quarter (exclusive of VAT). Service charge is subject to VAT at Government prescribed rates.

Payment of service charge will commence from the date you are taking possession. Any excess charge incurred by the Landlords during the tenancy will be recoverable from the tenant at the end of every year on pro-rata basis subject to audit.

9. Permitted User:

The premises are to be used for the sole purpose office only and change of user will not be permitted during the period of lease.

Please note that while the general letting policy is to have a variety and different types of users in the building, the landlord gives no guarantee to the exclusivity and reserves all its rights in this regard.



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(formerly Gatheru Irungu Mugo)

10. Sub-letting:

The tenant will not be permitted to transfer, sub-let or part with possessions of the premises upon the breach of covenant the landlord may re-enter the premises whereupon the lease shall be terminated absolutely.

11. Partitioning, Fixtures and Fittings:

You will be responsible to provide such partitioning, fixtures and fittings as you may require subject to the Landlords' prior written approval.

As such you will be required to obtain the Landlords' prior written approval through its architects of the proposed design and layout of the interior of the premises. Before commencing of any alteration or improvement to the interior you will submit plans of the intended layout and design specifying the materials to be used and shall not carry out improvements or alterations without the Landlords' prior written consent.

The tenant will be responsible for the partitioning of the office to meet its requirements such as partitioning to the specification of the building architect.

Where partitions are already in place, these belong to the landlord and the tenant should not alter the same.

12. Restriction of Signs, Notices etc.

The placement of any sign, notice or advertisement so as to be visible from the exterior of the premises is prohibited without prior consent from the Landlords. Any sign, notice or advertisement must comply with the Landlords' specifications.

13. Repairing and Insuring

The tenant will be responsible for the internal part of the premises. These include repairs to finishes, partitions, doors, windows and internal fixtures and fittings.

14. Telephone

It is the tenant's responsibility to contact Telkom Kenya Limited to obtain telephone connections or arrange telephone transfers.

15. Electricity

The tenant shall apply to KPLC for an independent electricity meter to be receiving independent bills for their own settlement in the event that their business is a heavy power consumer.

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Gimco Limited

(formerly Gatheru Trunqu Mugo)

16. Breach of Covenants:

If the rent agreed or any part thereof shall at any time remain unpaid for fourteen (14) days after becoming payable (whether lawfully demanded or not) or if at any time thereafter the tenant is in breach of any of the covenants or conditions referred to in the standard form of lease, it will be lawful for the Landlords to re-enter the premises or any part thereof in the name of the whole and there upon the lease shall be terminated absolutely.

17. Standard Lease:

The lease will be on the Landlords' standard lease. A copy of the lease which includes all terms referred to in this letter in addition to the standard clause set out herein which shall be deemed to have been accepted as provided herein is available in our offices for your perusal.

18. Tax

The tenant will be required to pay any tax imposed by the Government in respect to the renting of the premises.

19. Acceptance:

By accepting the terms of this letter of offer, the tenant is deemed to approve the standard form of lease and agrees to execute and return the lease promptly when it is submitted to the tenant together with the remittance to cover the Landlords' advocates' estimates of their charges for completion of the lease which is payable by the tenant immediately on demand.

This invitation will remain open for acceptance until the close of business on 16th September 2011 and may be accepted upon the following terms:

- a) This letter is sent to you in triplicate. Acceptance shall be in writing on the duplicates of this letter and shall be effective only when signed in duplicate of this letter together with unconditional payment of the deposit specified hereunder shall be received by us. If such a written acceptance and payment under deposits specified hereunder is not received within the above stipulated period this offer will lapse.
- b) Upon receipt of your confirmation and subject to confirmation from the Landlords, we will arrange for the lease to be sent to you for execution. The lease must be executed within seven (7) days after its delivery to you, failure to which negotiations may be terminated without reference to you.



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(formerly Gatheni Irungu Mugo)

- c) Notwithstanding, this matter remains subject to lease, the Landlords will be entitled to retain out of the deposits paid under this letter any costs and expenses incurred in preparing and negotiating the lease if you do not execute the lease within the period specified above. Any balance will then be returned to you.

Yours faithfully,

For GIMCO LIMITED

JUSTIN ACHANDI

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Gimco Limited

(formerly Gatheru Francu Mugo)

Acceptance:

We, Judicial Service Commission P. O. Box 30041-00100 confirm that we have read and understood this letter and accept the offer contained in it and enclose herewith payment of Kshs 1,341,818.40 in respect of:

One Quarter's rent with effect from 01/10/2011	Kshs	864,000.00
Vat @ 16%	Kshs	138,240.00
One Quarter's Parking fee with effect from 01/10/2011	Kshs	60,000.00
Vat @ 16%	Kshs	9,600.00
One Quarter's service charge with effect from 01/10/2011	Kshs	232,740.00
VAT @ 16%	Kshs	37,238.40
Total	Kshs	<u>1,341,818.40</u>

Signed: Blessing Oloo Date: 16/9/2011

Signed: Date:

Official Company Stamp: **CHIEF REGISTRAR OF THE JUDICIARY**

Cc: Ahono Green Limited
P.O. Box 55645-00200
NAIROBI.



IRREGULARLY PAID ALLOWANCES TO NON-COMMISSIONERS

~~SECRET~~

NAME	JUL	AUG	SEPT	OCT	NOV	DEC	TOTAL	ALLOWANCES PAID	APPROVED ALLOWANCES	IRREGULAR ALLOWANCES PAID
1 Hon. Lady Justice Martha Koome		1					1	80,000.00	10,000.00	70,000.00
2 Hon. Justice Richard Mwangi		4					4	320,000.00	40,000.00	280,000.00
3 Hon. Justice Joram Aboudha		2					2	160,000.00	20,000.00	140,000.00
4 Hon. Lady Justice W Karanja		1					1	80,000.00	10,000.00	70,000.00
5 Hon. Justice Sankale Ole Karitai		1					1	80,000.00	10,000.00	70,000.00
6 Hon. Lady Justice Maureen Onyango		2		1			3	240,000.00	30,000.00	210,000.00
7 Hon. Justice John William Musyoka		2					2	160,000.00	20,000.00	140,000.00
8 Hon. Justice David Maraga		1					1	80,000.00	10,000.00	70,000.00
9 Hon. Justice William Ouko		1					1	80,000.00	10,000.00	70,000.00
10 Hon. Lady Justice Philomena Mwilu		1		1			2	160,000.00	20,000.00	140,000.00
11 Hon. Justice John Mutungi		2					2	160,000.00	20,000.00	140,000.00
12 Hon. Lady Justice Jamilla Mohammed		1					1	80,000.00	10,000.00	70,000.00
13 Hon. Justice Milton S. A Makhandia		1					1	80,000.00	10,000.00	70,000.00
14 Hon. Justice Patrick Kiage		1					1	80,000.00	10,000.00	70,000.00
15 Hon. Justice Lagat R. Korir		1					1	80,000.00	10,000.00	70,000.00
16 Simon K. Aruwa		6		1			7	560,000.00	70,000.00	490,000.00
17 Winfrida B. Mokaya	9	16	15	8	15	7	70	5,600,000.00	700,000.00	4,900,000.00
18 John L. Tamar	2	10	3	1	2	2	20	1,600,000.00	200,000.00	1,400,000.00
19 Faith Kosgei		2					2	160,000.00	20,000.00	140,000.00
20 Nancy Nyanwamu			1	2	1		4	320,000.00	40,000.00	280,000.00
21 Benedict Omollo			3				3	240,000.00	30,000.00	210,000.00
22 Wycliff Wanga			1				1	80,000.00	10,000.00	70,000.00
23 Hon Lady Justice Pauline Nyamweya				1			1	80,000.00	10,000.00	70,000.00
24 Hon Lady Justice Alfred Mabeya				1			1	80,000.00	10,000.00	70,000.00
25 Dismus Obondo				1	3		4	320,000.00	40,000.00	280,000.00
26 Beatrice Kamau				1	1	1	3	240,000.00	30,000.00	210,000.00
								11,200,000.00	1,400,000.00	9,800,000.00

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Memorandum of Understanding

Memorandum of Understanding, is entered into this ^{2nd} day of April 2018 (Effective Date") and between JKUAT Enterprises Limited, a limited liability company registered in Kenya and having its offices in Republic of Kenya situated at Jomo Kenyatta University of Agriculture and Technology, main campus of P.O. Box 62000-00200 Nairobi (hereinafter referred to as "The Company" which expression shall where the context so admit include its assigns and successors in title) of one part and Align Architects, an architectural consultancy company duly registered in Kenya, and having its offices in the Republic of Kenya at Woodley Annex along Joseph Kang'ethe road off Ngong road of P.O. Box 64348 Nairobi, (hereinafter referred to as "Align" which expression shall where the context so include its assigns and successors in title) of the other part.

The agreement consist of two documents, this Memorandum of Understanding in one most part, and a separate Memorandum of Understanding for each project, consultancy or other collaboration related to this Memorandum of Understanding, the parties sign a separate Memorandum of Agreement, stating the various variable terms and conditions for that project, consultancy or other collaboration, as specified in detail in this Memorandum of Understanding.

DEFINITIONS

"Parties" means ALIGN or JKUAT Enterprises, and "Parties" means ALIGN and JKUAT Enterprises.

"Party" means a natural person, a corporation, partnership, a trust venture, any governmental entity and any other entity or organization.

"Control" means any corporation or non-corporate business entity which controls, is controlled or exercises common control with any of the party. A corporation or non-corporate business entity shall be rendered as in control of another corporation or non-corporate business entity if it directly or indirectly controls, in excess of fifty percent (50%) of the voting stock of the corporation, or (a) in the absence of the ownership of in excess of fifty percent (50%) of the voting stock of the corporation.

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of the voting stock of a corporation or (b) in the case of a non-corporate business entity, if it possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation or non-corporate business entity, as applicable.

"MOU" means Memorandum of Understanding and this is the overall, broad agreement covering the general terms and conditions for this cooperation between The Company and ALIGN.

"MOA" means Memorandum of Agreement and is the particular agreement, referring to the terms and conditions of the MOU, which specifies details of a particular business which The Company and ALIGN intend to do together. The Company and ALIGN can sign several independent, concurrently running MOA's.

WHEREAS;

2.1 AND WHEREAS, JKUAT Enterprises limited is a subsidiary company wholly owned by Jomo Kenyatta University of Agriculture and Technology (Hereinafter referred to as "The University").

2.2 AND WHEREAS, the University is an Institution of Higher learning incorporated in Kenya under the Jomo Kenyatta University of Agriculture and Technology Act 2013.

2.3 AND WHEREAS, the University's objects and functions include *inter alia*, to provide higher learning facilities for University education and to participate in the discovery and transmission and preservation and enhancement of knowledge and to stimulate the Intellectual participation of students on the Economic, Agriculture, professional and cultural development of Kenya.

2.4 AND WHEREAS, ALIGN is engaged in the business provision of architectural and interior design and landscape architectural consultancy services and, both JKUAT Enterprises and ALIGN willfully consent to promote and offer the consultancy services to the general public according to the terms of this agreement as to be specified in each Memorandum of Agreement.

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3. THIS AGREEMENT WITNESETH AS FOLLOWS:

The COMPANY and ALIGN hereby enter into an agreement to jointly promote and carry out architectural and interior design and landscape architectural consultancy services to both corporate organizations and individuals in Kenya - as agreed to in one separate MOA for each incident, initially for a period of four (4) years with an option of renewal or when the need arises for a further period or periods and on such terms and conditions as shall be agreed upon between the parties from time to time.

The parties here to undertake to perform and honour their respective duties and obligations as are herein stated and as amended from time to time by the parties in writing for furtherance of the objects of the agreement.

Each MOA shall specify:

- That it is a part of this MOU
- The services and/or products being offered under that agreement
- The cost of services and/or products being offered
- The client to whom services are being offered
- Use of The Company's and ALIGN's logo and marketing materials
- The time frame for the MOA to be active
- The payment consideration to both the Company to ALIGN
- The deliverables to the clients from the Company
- The deliverables to the clients from ALIGN
- The rights to sublicense to third parties and terms and conditions herefore

4. THE COMPANY COVENANTS



With effect from the date hereof and in the initiation and promotion of the objects of the collaboration the company hereby covenants and undertakes to do the following:-

To facilitate ALIGN consultants from time to time financially and provide relevant information relating to the consultancy services being provided.

To be a link between the client and Align and ensure communication between the client and Align is effective and efficient.

To assign an employee to act as liaison person with Align to ensure successful collaboration.

5. THE ALIGN COVENANTS

ALIGN to take the role of the Project Manager for the consultancy services as detailed in each Memorandum of Agreement signed between The Company and ALIGN

ALIGN shall perform the Services and carry out their obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and best practice, and shall observe sound management practices

ALIGN shall ensure that only qualified consultants will conduct all consultancy services required.

ALIGN shall perform and provide the consultancy services as per the memorandum of agreement and shall meet all the terms and conditions specified in them.

ALIGN shall guarantee the quality of the consultancy materials knowledge base and shall endeavor to update it often and ensure that it is in line with the market demands.

6. JOINT COVENANTS

The parties hereto undertake and agree jointly and severally to: -

Agree on the retainer to the Company for facilitation and promotion of services and the consultancy fee to ALIGN for consultancy services offered to the client of any Joint Venture

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that they shall engage in during the tenure of this agreement and as such shall be agreed upon in each Memorandum of Agreement signed between The Company and ALIGN.

Observe all rules and regulations governing the republic of Kenya and policies governing use of the University's and ALIGN's facilities.

Keep each other fully indemnified at all times against all damages or loss of any equipment or facilities belonging to the respective institutions that may result from the negligence of their agents and/or services during the implementation of all or any other objects of this agreement.

Grant to each other, the exclusive right, to promote the services and /or product in any market specified in each Memorandum of Agreement, with the right to appoint others, and/or Affiliates to Co-promote the product in any such region.

Grant to each other the right to use both ALIGN and JKUAT Enterprises logo(s) and include information on its website and in its marketing materials and collateral, subject to each party's prior approval in general or in particular (as specified in each MOA), which shall not be unreasonably withheld.

Grant each other an exclusive license to offer and sell the architectural and interior design and landscape architectural consultancy Services, with the right to sub-license to Affiliates provided there is consent between the parties (MOA), and with the right to sub-license to other parties (collectively the "Sub licensees") with prior consent from each party, such consent may not be unreasonably withheld or delayed. All rights not expressly granted herein are reserved by the individual party to this Agreement.

7. PAYMENT TERMS AND RESPONSIBILITIES

The parties shall at their discretion from time to time charge for the consultancy services and / or products

The Company is responsible for pricing and invoicing of all architectural and interior design and landscape architectural consultancy services. When the Company initiates the provision of services through ALIGN, the Company shall retain 5% of the cost of services and or products or as may be agreed from time to time in each MOA



When ALIGN initiates the provision of services through the Company the Company shall retain 5% of the cost of services and or products or as may be agreed from time to time in each MOA

All projects that the two parties together get involved in, other than in the specified architectural and interior design and landscape architectural consultancy services shall be discussed separately and remuneration agreed prior to execution of the project.

8. TERM

Unless terminated as provided herein, this Agreement will remain in force until terminated by either party or both in agreement or as detailed in the MOA.

9. TERMINATION

Either party may terminate this agreement by giving of three month's written notice, and after meeting its obligations to the other party as provided for in this Agreement.

In the event of termination, each party will ensure it has successfully completed its obligations to the clients.

After the termination of this MOU agreement, no other MOA's can be signed referring to this MOU.

After the termination of this MOU agreement, each MOA which has been signed prior to the termination of this MOU agreement shall be delivered as if this MOU is still in effect.

10. CONFIDENTIAL INFORMATION

All information relating to one party that is known to be confidential or proprietary, or which is clearly marked as such, will be held in confidence by the receiving party and will not be disclosed or used by the other party except to the extent that such disclosure or use is reasonably necessary to the performance of the work stipulated in this Agreement.

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These obligations of confidentiality will extend for a period of 12 months after the termination of this agreement, but will not apply with respect to information that is independently developed by the parties, or it lawfully becomes part of the public domain, or to which the parties gained knowledge or possession free of any confidentiality obligation.

11. GENERAL TERMS & CONDITIONS

Reservation of Rights: Except as expressly provided in this Agreement no right, title or interest is granted, whether express or implied, by either party relating to other products of the parties.

Relationships between Parties: In all matters relating to this Agreement, all parties will act independently. Neither party will present that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, nor to represent the other party as agent, employee, franchisee, or in any other capacity.

Assignment: Neither party may assign or otherwise transfer any rights under this Agreement without the other party's prior written consent unless specifically stipulated in this Agreement.

Notice: All notices required to be sent hereunder shall be in writing, sent to the applicable representative specified under this Agreement, and shall be deemed to have been given (i) upon delivery if sent by facsimile or overnight courier or (ii) five (5) days after the date of deposit with a first class mail delivery service by registered or certified mail, postage prepaid or (iii) by electronic mail.

Governing Law/Jurisdiction: This Agreement, and all matters arising out of or relating to this Agreement, shall be governed by the substantive and procedural laws of the Republic of Kenya.

Dispute Resolution: Any dispute arising out of this Agreement which cannot be amicably settled between the parties shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya branch, on the request of the applying party.

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Severability: In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

Waiver: The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

Entire Agreement: This Agreement constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement.

12. AUTHORISED REPRESENTATIVES:

The authorized representatives for both parties are specified below: For JKUAT Enterprises shall be the Managing Director and ALIGN ARCHITECTS the Proprietor or authorized representatives thereof.

For; JKUAT ENTERPRISES LTD

Date: 2nd April 2012

Sign: [Signature]

MD of JKUAT Enterprise

Signature above, Seal hereunder

Witnessed by: Name Martin

[Signature]

For; ALIGN ARCHITECTS

Date: APRIL 2nd 2012

Sign: [Signature]

Proprietor of Align Architects

Signature above, Seal hereunder

Sign: [Signature]

