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REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – FOURTH SESSION - 2011

REPORT OF THE
DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND
NATIONAL SECURITY ON THE DEMOTION OF INSPECTOR OF
POLICE SIMON GITHINJI MWAI, JULY, 2011

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1.0 PREFACE

Mr. Speaker, Sir,

The Departmental Committee on Administration and National Security is constituted under Standing Order 198 of the Kenya National Assembly and mandated to, inter-alia, ***“investigate and inquire into all matters ... as they may deem necessary and as may be referred to it by the House...”***

Mr. Speaker, Sir,

On Wednesday 11th May 2011, the Deputy Speaker directed that the matter of demotion of Chief Inspector of Police Simon Mwangi, be referred to the Committee on Administration and National Security for further investigation. The matter came to the floor of the House through an Ordinary Question by the Hon. William Kabogo, MP, Juja Constituency. The Member sought to know from the Minister of State for Provincial Administration and Internal Security;

- (a) Whether he is aware that Simon G. Mwangi (P/No. 87084988) was demoted from the rank of a Chief Inspector of Police because he questioned and chased away someone who was bribing voters at Thika Municipal Stadium Polling Station during the just-concluded Juja by election;
- (b) Why the officer was also transferred from Thika West District to Gatundu South District following his demotion on 28th October, 2010; and,
- (c) When the Ministry will reinstate the officer to his earlier rank.

From the Assistant Minister's responses and the ensuing supplementary questions raised by other Members, the Deputy Speaker ruled that the answer was unsatisfactory and directed that the matter be referred to the Committee on Administration and National Security for further investigations and that a report be filed in two weeks.

In this regard, the Committee initiated investigations to establish circumstances surrounding the demotion of the Police Inspector. The Committee thus went ahead and invited the affected Inspector as the first witness to adduce evidence before the Committee on June 2nd 2011. Afterwards, the Committee had a session with the Administration Police Commandant who appeared before it on June 9th 2011.

Mr. Speaker, Sir,

The Committee came up with recommendations based on the findings and observations that came about during the meetings with the Police Inspector and the AP Commandant. First and foremost, it is apparent that the Officer did not appeal his demotion case but went ahead to petition his local MP to intervene through

Parliament making the case take a political dimension. Secondly, we should take cognizance of separation of powers so that Parliament is not seen to interfere with procedures of independent institutions as they deal with their internal matters. The Committee therefore urges this House to adopt the findings and recommendations of this report.

Mr. Speaker,

The following are the Members of the Committee:

The Hon. Fred Kapondi Chesebe, MP **(Chairman)**

The Hon. Peter Kiilu, MP **(Vice Chairman)**

The Hon. Cyprian Omollo, MP

The Hon. Danson Mungatana, MP

The Hon. Raphael Letimalo, MP

The Hon. Pollyins Ochieng', MP

The Hon. Mohammed Hussein Ali, MP

The Hon. Maison Leshoomo, MP

The Hon. Nkoidila ole Lankas, MP

* The Hon. Clement Kung'u Waibara, MP

*(The Member whose name is marked with an asterix * has never participated in any Committee deliberations and so he is not part of the observations, findings, conclusions and recommendations in this report).*

Mr. Speaker, Sir,

The Committee takes this opportunity to thank the National Assembly, the Speaker and the Clerk for the logistical support which enabled the Members to conduct investigations successfully. The Committee is also grateful to the Administration Police Commandant for finding time to appear before the Committee.

Mr. Speaker,

On behalf of the Committee, and pursuant to Standing Order 181 (3), it is my pleasant duty to present to the House the Report of the Committee on Administration and National Security on its findings over the demotion of Inspector of Police Simon Githinji Mwai, for deliberation and adoption.



Signed..... Hon. Fred Kapondi, MP Date..... 17/08/11

Chairman, Departmental Committee on Administration and National Security

1.0 EVIDENCE BY INSPECTOR OF POLICE SIMON GITHINJI MWAI

During his oral submission, the witness informed the Committee Members that:

On 20th September, 2010, he was accused of being drunk and disorderly while on duty at the Thika Municipal Stadium polling station during the Juja bye-elections. He claimed that he was framed to have harassed members of the public by his seniors. He said that he had noticed some agents bribing voters at the polling station but when he confronted them, he was ordered to retire to his house and await further instructions only to be summoned later to appear before an Orderly Room proceedings team that had assembled to determine his case. He was found guilty of being drunk while on duty. He was later demoted to the rank of Chief Inspector.

Clarifications sought by the Committee Members

The Committee Members sought to know:

- i) Whether he had previously been disciplined for any offence
- ii) If there were prosecution witnesses during the Orderly Room proceedings
- iii) Whether he was actually drunk while on duty.

Response by the witness

In his response, the witness said that he had only been disciplined once while in training in Naivasha. He had never had any other disciplinary case, was loyal to his bosses, dedicated to duty thus he believed that is why he quickly rose through the ranks.

He further informed the Committee that there were no prosecution witnesses during the Orderly Room Proceedings. He was categorical that he was sober as he went about his duties at the polling station.

2.0 SUBMISSION BY THE HON. WILLIAM KABOGO

He informed the Committee that:

The officer was unknown to him before he petitioned his case to him as the area MP. He further alleged that he had spoken to Senior Superintendent of Police, a Mr. Njagi who agreed that indeed there were pressures from certain quarters to discipline the officer. He further stated he had no interest in the case apart from seeing justice done to one of his constituents.

3.0 SUBMISSION BY THE ADMINISTRATION POLICE COMMANDANT

During his oral submission, the AP Commandant informed the Committee Members that:

Job profile

- The demoted inspector joined the force on 28th August 1987
- He was promoted to the rank of Corporal on 21st March, 1991
- He rose to the rank of Sergeant on 4th September, 1998
- He was again promoted to Inspector on 16th February, 2002
- He attained the position of Chief Inspector on 22nd December, 2008
- He was demoted from Chief Inspector to Inspector on 27th October, 2010
- He was transferred from Thika West District to Gatundu South District on 28th October, 2010, a day after the demotion.

The offence

On 20th September 2010 the officer was supposed to be on duty in Thika Municipal Stadium voting station for Juja by election. However he was found drunk, disorderly and harassing the voting agents. It took the intervention of his deputy officer to cool down the matter. This ugly incident embarrassed the government as it was captured by the both print media and electronic media. In regard to this the officer was subjected to the orderly room proceedings. This disciplinary action according to AP act it was within the law.

Nonetheless on keenly looking at the Inspector's personal profile, he did not all appeal against the sentence as provided for by the rules and regulations. The circumstances under which the matter manoeuvred its way to parliament remain blurred.

Stipulated procedure

It was apparent that the demoted officer did not follow the stipulated procedure to address the issue. His response to the demotion was to petition to his area MP, which made the matter to take a political dimension.

Professional negligence

Due to the action of the officer, professionalism was absolutely flawed. He comprised the job ethics due to the offence and his reaction to demotion.

Addressing similar problems in future

That institutional procedure should be strictly adhered to in dealing with similar occurrence in future. Relevant institutions should deliberate on appropriate problems. If not possible then top bodies can be approached to thrash out the predicament. Therefore recommendations should be presented to the speaker to caution members against unprocedural ways of addressing problems. Respect of relevant institution in solving apposite issues should be of more concern.

Clarifications sought by the Committee Members

The Committee Members sought to know:

- iv) Whether the officer chased away voters from the station.
- v) If there were prosecution witnesses during the Orderly Room proceedings.
- vi) Whether he was actually drunk while on duty.
- vii) Whether shouting alone could make one to be declared drunk.
- viii) Whether the Officer had appealed against the verdict.
- ix) If he conducted himself professionally by ordering agents out of the venue.

Response by the witness

In his response, the AP Commandant informed the Committee that:

The Officer had not appealed against his demotion. He stated that the matter was brought before Parliament prematurely. The officer could have appealed through the District Commissioner, the Police Headquarters or the Public Service Commissioner. He further read out a list of case studies of officers who had appealed and were reinstated while others were pending hearing. His action of politicizing the case would arouse further disciplinary action.

He noted that the officer had not exhausted all the avenues of appeal before petitioning his MP thus politicizing the disciplinary process. In case he was reinstated, he would obviously have problems with his seniors since his would be a political reinstatement.

The Commandant further said that the fact that the officer was shouting at the agents was in itself unprofessional and showed there was something out of the norm. He should have arrested the offenders on the spot. During the Orderly Room Proceedings, the Disciplinary Committee called one Inspector Tuwei who testified before the Committee over the accused two counts.

Remarks by the Committee Members

The Committee Members observed that:

It was apparent that the officer did not appeal since there was evidence that there were other cases that had appealed and had been reinstated while others had their appeal cases pending hearing. While the institution of the Police followed due process, the officer did not do so himself.

The case of demotion should not have been politicized. Reinstating the officer because the matter was taken to Parliament would be setting a bad precedent. Taking disciplinary cases to Parliament would compromise forces procedural processes. The MP should have approached the police for a solution. There was need to recognize separation of powers of institutions.

Cases of officers misusing their firearms were on the raise. Officers should be handled humanely and counselled whenever traits of violence are evident.

Comments by the AP Commandant

The Commandant requested the Committee to impress that matters of the forces should not be mixed with politics. The case ought to be left to the Police to handle and forward to Public Service Commission and if not solved, it can thus be referred to other avenues.

4.0 THE COMMITTEE'S FINDINGS AND OBSERVATIONS

The Committee came up with the following observations and findings:

1. It is apparent that the Police Inspector did not follow due process to deal with his case. He did not appeal against the Orderly Room Proceedings at all
2. A number of similar appeal cases had been dealt with and dispensed according with the appellants being reinstated or losing the appeal. Other cases were still pending before they could be determined.
3. Taking the case to Parliament made it take a political dimension, a move that will not augur well if Parliament reversed the ruling of the forces procedures.
4. The Officer still has the opportunity to appeal against the decision in which due process shall be used to determine his case.

5.0 RECOMMENDATIONS

After lengthy deliberations, the Committee made the following recommendations:

1. **That due process was followed in determining the case and disciplining the officer. The presence of Inspector Tuwei as a prosecution witness at the proceedings negates the claim that no witnesses appeared before the disciplinary Committee.**
2. **That the officer follows the right channel to appeal against the decision of the Orderly room Proceedings.**
3. **That Parliament let the matter of the demotion of the officer be exhaustively dealt with by the institution of the Police. Independence of other institutions should also be upheld.**

MINUTES OF THE 68TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON THURSDAY 2ND JUNE, 2011 IN THE RESOURCE CENTRE, 1ST FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

The Hon. Fred Kapondi, MP – **Chairman**
The Hon. Peter Kiilu, MP – **Vice-Chairman**
The Hon. Polliyns Ochieng', MP
The Hon. Mohamed Hussein Ali, MP
The Hon. Joseph Kiuna, MP
The Hon. Cyprian Omollo, MP

ABSENT WITH APOLOGIES

The Hon. Maison Leshoomo, MP
The Hon. Danson Mungatana, MP
The Hon. Raphael Letimalo, MP

ABSENT

The Hon. Nkoidila Ole Lankas, MP

IN ATTENDANCE - **KENYA NATIONAL ASSEMBLY**

Mr. Daniel Mutunga - Second Clerk Assistant
Mr. Ahmad Kadhi - Third Clerk Assistant

IN ATTENDANCE

Hon. William Kabogo, MP - MP, Juja Constituency
Mr. Simon G. Mwai - Inspector of Police

PRELIMINARY

The Chair called the meeting to order and prayers were said. He then welcomed the witness to the meeting. He informed him that the Committee was tasked by the House to find out the circumstances under which he was demoted from a Chief Inspector of Police to a lower rank of a Police Inspector.

MIN. NO. 239/2011: SUBMISSION BY THE WITNESS

During his oral submission, the witness informed the Committee Members that:

On 20th September, 2010, he was accused of being drunk and disorderly while on duty at the Thika Municipal Stadium polling station during the Juja bye-elections. He claimed that he was framed to have harassed members of the public by his seniors. He said that he had noticed some agents bribing voters at the polling station but when he confronted them, he was ordered to retire to his house and await further instructions only to be summoned later to appear before an Orderly Room proceedings team that

had assembled to determine his case. He was found guilty of being drunk while on duty. He was later demoted to the rank of Chief Inspector.

Clarifications sought by the Committee Members

The Committee Members sought to know:

- i) Whether he had previously been disciplined for any offence
- ii) If there were prosecution witnesses during the Orderly Room proceedings
- iii) Whether he was actually drunk while on duty.

Response by the witness

In his response, the witness said that he had only been disciplined once while in training in Naivasha. He had never had any other disciplinary case, was loyal to his bosses, dedicated to duty thus he believed that is why he quickly rose through the ranks.

He further informed the Committee that there were no prosecution witnesses during the Orderly Room Proceedings. He was categorical that he was sober as he went about his duties at the polling station.

MIN. NO. 240/2011: SUBMISSION BY THE HON. WILLIAM KABOGO

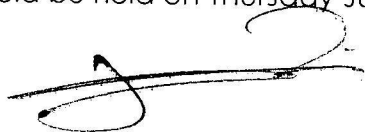
He informed the Committee that:

The officer was unknown to him before he petitioned his case to him as the area MP. He further alleged that he had spoken to Senior Superintendent of Police, a Mr. Njagi who agreed that indeed there were pressures from certain quarters to discipline the officer. He further stated he had no interest in the case apart from seeing justice done to one of his constituents.

MIN. NO. 241/2011: ANY OTHER BUSINESS

There being no other business, the meeting was adjourned at eleven o'clock. The next meeting would be held on Thursday June 9, 2011 at 10 o'clock.

Signed:



Chairman.....

Hon Fred Kapoweli MP

Date.....

17/08/11

MINUTES OF THE 69TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ADMINISTRATION AND NATIONAL SECURITY HELD ON THURSDAY 9TH JUNE, 2011 IN THE BOARD ROOM, 9TH FLOOR, HARAMBEE PLAZA, AT 10.00 AM

PRESENT

The Hon. Fred Kapondi, MP – Chairman
The Hon. Peter Kiilu, MP – Vice-Chairman
The Hon. Joseph Kiuna, MP
The Hon. Maison Leshoomo, MP
The Hon. Danson Mungatana, MP
The Hon. Raphael Letimalo, MP

ABSENT WITH APOLOGIES

The Hon. Polliyns Ochieng', MP
The Hon. Mohamed Hussein Ali, MP
The Hon. Cyprian Omollo, MP

ABSENT

The Hon. Nkoidila Ole Lankas, MP

IN ATTENDANCE - KENYA NATIONAL ASSEMBLY

Mr. Daniel Mutunga - Second Clerk Assistant
Mr. Martin Mugambi - Parliamentary Intern

IN ATTENDANCE - ADMINISTRATION POLICE

Mr. Kinuthia Mbugua - Commandant, Administration Police
Mr. P. M. Pamba - Deputy AP commandant
Mr. Gilbert B. Sumukwo - Superintendent of Police
Mr. Andrew Ndirangu - Chief Inspector of Police

PRELIMINARY

The Chair called the meeting to order and prayers were said. He then welcomed the Commandant and his team to the meeting. He informed him that the matter of the demotion of one Chief Inspector of Police Simon Mwai was referred to the Committee for further investigation by the House to establish the facts behind the demotion.

MIN. NO. 242/2011: SUBMISSION BY THE AP COMMANDANT

During his oral submission, the AP Commandant informed the Committee Members that:

- (i) Job profile
 - The demoted inspector joined the force on 28th august 1987

- He was promoted to the rank of Corporal on 21st march, 1991
- He rose to the rank of Sergeant on 4th September, 1998
- He was again promoted to Inspector on 16th February, 2002
- He attained the position of Chief Inspector on 22nd December, 2008
- He was demoted from Chief Inspector to Inspector on 27th October, 2010
- He was transferred from Thika West District to Gatundu South District on 28th October, 2010, a day after the demotion.

(ii) The offence

On 20th September 2010 the officer was supposed to be on duty in Thika Municipal Stadium voting station for Juja by election. However he was found drunk, disorderly and harassing the voting agents. It took the intervention of his deputy officer to cool down the matter. This ugly incident embarrassed the government as it was captured by the both print media and electronic media. In regard to this the officer was subjected to the orderly room proceedings. This disciplinary action according to AP act it was within the law.

Nonetheless on keenly looking at the Inspector's personal profile he did not all appeal against the sentence as provided for by the rules and regulations. The circumstances under which the matter manoeuvred its way to parliament remain blurred.

(ii) Stipulated procedure

That the demoted officer did not follow the stipulated procedure address the issue. His response to the demotion was to petition to his area MP, which made the matter to take a political dimension.

(iv) Professionalism status

Due to the action of the officer, professionalism was absolutely flawed. He comprised the job ethics due to the offence and his reaction to demotion.

(v) Addressing similar problems in future

That institution procedure should be strictly adhered to in dealing with similar occurrence in future. Relevant institutions should deliberate on appropriate problems. If not possible then top bodies can be approached to thrash out the predicament. Therefore recommendations should be presented to the speaker to caution members against unprocedural ways of addressing problems. Respect of relevant institution in solving apposite issues should be of more concern.

Clarifications sought by the Committee Members

The Committee Members sought to know:

- i) Whether the officer chased away voters from the station.
- ii) If there were prosecution witnesses during the Orderly Room proceedings.
- iii) Whether he was actually drunk while on duty.
- iv) Whether shouting alone could make one to be declared drunk.
- v) Whether the Officer had appealed against the verdict.
- vi) If he conducted himself professionally by ordering agents out of the venue.

Response by the witness

In his response, the AP Commandant informed the Committee that:

The Officer had not appealed against his demotion. He stated that the matter was brought before Parliament prematurely. The officer could have appealed through the District Commissioner, the Police Headquarters or the

Public Service Commissioner. He further read out a list of case studies of officers who had appealed and were reinstated while others were pending hearing. His action of politicizing the case would arouse further disciplinary action.

He noted that the officer had not exhausted all the avenues of appeal before petitioning his MP thus politicizing the disciplinary process. In case he was reinstated, he would obviously have problems with his seniors since his would be a political reinstatement.

The Commandant further said that the fact that the officer was shouting at the agents was in itself unprofessional and showed there was something out of the norm. He should have arrested the offenders on the spot. During the Orderly Room Proceedings, the Disciplinary Committee called one Inspector Tuwei who testified before the Committee over the accused two counts.

Remarks by the Committee Members

The Committee Members observed that:

It was apparent that the officer did not appeal since there was evidence that there were other cases that had appealed and had been reinstated while others had their appeal cases pending hearing. While the institution of the Police followed due process, the officer did not do so himself.

The case of demotion should not have been politicized. Reinstating the officer because the matter was taken to Parliament would be setting a bad precedent. Taking disciplinary cases to Parliament would compromise forces procedural processes. The MP should have approached the police for a solution. There was need to recognize separation of powers of institutions.

Cases of officers misusing their firearms were on the raise. Officers should be handled humanely and counselled whenever traits of violence are evident.

Comments by the AP Commandant

The Commandant requested the Committee to impress that matters of the forces should not be mixed with politics. The case ought to be left to the Police to handle and forward to Public Service Commission and if not solved, it can thus be referred to other avenues.

MIN. NO. 243/2011: ANY OTHER BUSINESS

The Commissioner informed the Committee that the Police were currently undergoing evaluation tests. The vetting had started with senior police officers and would trickle down to the lower cadres. Kenya Anti-Corruption Commission was also involved in the vetting and was compiling reports of officers vetted. The psychometric tests were instruments to gauge officers' personality traits, integrity, performance, etc.

There being no other business the meeting adjourned at twenty five minutes after eleven o'clock.

Signed:


Hon. Fred Kapendi, MP

Chairman.....

Date

17/08/11

construction of new buildings for the constitutional office holders' residences.

- On page 33 the Committee replace the most appropriate word would be "train" and not "maintain".
- On page 36 word the Public Communications Office would set up an office in Mombasa not a "Department" as indicated.
- On page 37, the word "inflated" had the wrong connotation and should be replaced with the word "huge".
- On page 37 the Committee noted that the Cabinet office had forwarded the breakdown of its kshs.10 million debt portfolio.
- The Committee recommended that only 3 State Houses and one State Lodge should be retained that is, Nairobi, Mombasa, Nakuru and Kisumu in that order. The other State Lodges in Sagana, Eldoret and Kakamega should be turned into Government Training Institutes (GTIs).
- The Committee wished to know the status of other State Lodges in Rimuruti, Cherangany and Mutitu Andei and whether they were still maintained by the Government.

The Committee report was adopted subject to the above amendments.

MIN NO.38 /2009: CONSIDERATION OF THE COMMITTEE'S PROPOSED WORKPLAN FOR JULY-DECEMBER 2009

The Committee deliberated on the draft work plan and proposed the following amendments in relation to local trips:

The Chairman brought to the attention of Members Bishop Okoth's letter requesting the Committee's intervention in the matter of insecurity in Isiolo and Samburu Districts. Members resolved to visit these conflict prone areas as soon as possible and directed the Committee Clerk to work on the logistics.

The Committee also proposed to visit Lamu, Malindi and Mombasa as well as Garissa, Mandera and Moyale and Turkana and Pokot areas in the course of the year.

On Foreign trips, the Committee proposed to visit Israel in September, 2009.

The Committee adopted the proposed work plan subject to the adjustments proposed.

MIN. NO. 39/ 2009 ANY OTHER BUSINESS

The Committee resolved that the Chairman to petition the Liaison Committee to replace Hon. Clement Kungu Waibara with another member since he has never attended any of the Committee's meetings.

MIN NO.40/2009: ADJOURNMENT

The Chairman adjourned the meeting at forty five minutes after twelve in the afternoon. The next meeting would be held on Monday 10th, 2009 at 2.30 pm.

Signed:



Chairman.....

Hon Fred Kapondi, MP

Date.....

04/08/09