



PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT
(THIRD SESSION - 2015)

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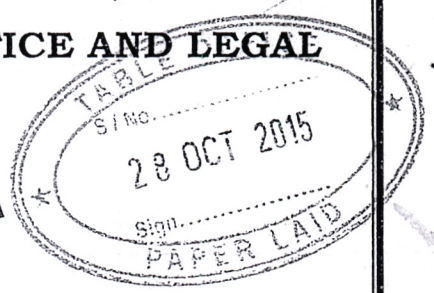
THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS

REPORT

ON THE PETITION ON THE MATTER OF THE ELECTION OF
THE CHAIRPERSON OF THE AGRICULTURAL SOCIETY OF
KENYA

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI.

OCTOBER, 2015



7 approved - 10/10/15
SNA
28/10/15
Paper laid
By the Hon
Florence Kyalo
on Wednesday
28/10/2015
[Signature]

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1.0 PREFACE

Mr. Speaker Sir,

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to Standing Order 216(5), it is my pleasure and duty to present to the House, the Committee's Report on the Petition on the matter of the election of the Chairperson of the Agricultural Society of Kenya (ASK).

1.1 Committee Membership

The Committee on Justice and Legal Affairs was constituted by the House on Thursday 16th May, 2013 and comprises the following members:

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

1.2 Committee's Mandate

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing order 216(5) which defines functions of the Committee as being to:-

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) study and review all legislation referred to it;
- d) study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister;
- f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those understanding order 204 (Committee on appointments); and
- g) make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to deal with the following subjects:-

- a) Constitutional Affairs;
- b) The administration of law and justice;
- c) The Judiciary;
- d) Public prosecutions;
- e) Elections;
- f) Ethics ,Integrity and anti-corruption; and
- g) Human rights.

On 24th April, 2015 pursuant to Standing Order 225, you conveyed to the House a Petition on the matter of the election of the Chairperson of the Agricultural Society of Kenya (ASK).

The Petition by one Mr. Joseph Gachagua, a resident of Nanyuki within Laikipia County is dated 22nd April, 2015, was presented to your office through Hon. Weru Kinyua, M.P. and is signed by the Petitioner who prays as follows:-

- (i) The House finds and hold that his Lordship Justice Anthony Mrima of Kakamega High Court is not qualified to hold an elective office in the name of National Chairman of Agricultural Society of Kenya;

- (ii) The House finds that the elections held on 27th February, 2015 and presided over by the Chief Executive Officer of the Agricultural Society of Kenya were contrary to rule L of the Elections Rules of 2009 and the outcome thereof is null and void;
- (iii) The House resolves that the Cabinet Secretary, Ministry of Agriculture calls for fresh elections of the Agricultural Society of Kenya for purposes of electing new office holders, to be presided over by the Returning Officer appointed by the Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries in accordance with the provisions of the Agricultural Society of Kenya's constitution and elections rules of 2009. Thereafter, the Ministry of Agriculture presides over the handing over process to the new officials.
- (iv) The House resolves that by virtue of being a major stakeholder and financier of the Agricultural Society of Kenya, The Principal Secretary, Ministry of Agriculture be an automatic board member of the Society to provide guidance and represent public interest. The Society's constitution be amended accordingly to provide for this post.

The Petitioner draws the attention of the National Assembly to the following:-


- (i) The Agricultural Society of Kenya was formed in December 1901 with an objective of promoting agricultural development in Kenya.
- (ii) The Constitution of Law Society of Kenya provides that there shall be a National Chairman who shall be elected after every five years by the council from among members of the council.
- (iii) The ASK elections were conducted on 27th February, 2015 when a sitting judge of the High Court was elected to the office of the National Chairman.
- (iv) That the said election was marred by massive electoral issues, irregularities and illegality. Despite objections raised by the Petitioner and the directions given by the Ministry of Agriculture, the ASK leadership proceeded to regularize the irregular appointments.
- (v) That the election of justice Mrima is in violation of Article 77 of the Constitution of Kenya, 2010 which restricts a full-time state officer from participating in any other gainful employment.

The Petition was committed to the Departmental Committee on Justice and Legal Affairs pursuant to provisions of Standing Order 227. The Committee considered the Petition pursuant to the Constitution of Kenya, 2010 and other enabling laws.

1.3 Acknowledgements

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

It is my pleasant duty and privilege, on behalf of the Committee to present this report to the House.

SIGNED  DATE 28th October 2015
Hon. Samuel Chepkong'a, M.P
(Chairperson)

Departmental Committee on Justice and Legal Affairs

2.0 BACKGROUND

The Petition is dated 22nd April 2015 and was presented to the National Assembly by Hon. Weru Kinyua, M.P. on behalf of Mr. Joseph Gachagua, a resident of Nanyuki within Laikipia County.

The Petitioner prays that the National Assembly, through the Departmental Committee on Agriculture, Livestock and Co-operatives:-

- (i) Recommends that the Cabinet Secretary, Ministry of Agriculture finds and holds that his Lordship Justice Anthony Mrima of Kakamega High Court as not qualified to hold an elective office of Chairman of Agricultural Society of Kenya (ASK) for purposes of electing new office holders to be presided over by the Returning Officer appointed by the Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries in accordance with the provisions of the Society's constitution and elections rules, 2009.
- (ii) Recommends that the Agricultural Society of Kenya constitution be amended accordingly to provide that the Principal Secretary, Ministry of Agriculture be a Board member of the Society to provide guidance and represent public interest.

The Petition was conveyed to the House on 23rd April, 2015. The Honorable Speaker however noted that the issues raised were of legal nature and he committed it to the Departmental Committee on Justice and Legal Affairs on 23rd April 2015 which was the most suited to deal with legal issues.

3.0 CONSIDERATION OF THE PETITION AND FINDINGS

The Committee considered the petition on the 8th of September, 2015 during which it interrogated the issues raised and drew the conclusion that the election of Justice Mrima as a Chairperson of the Agricultural Society of Kenya was null and void because he holds another State Office as a Judge of the High Court of Kenya.

4.0 RECOMMENDATIONS

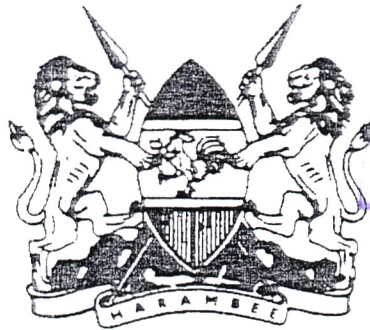
Having considered the petition in line with Article 119 of the Constitution and the provisions of the Petitions to Parliament (Procedure) Act, and the Standing Orders of the National Assembly, the Committee recommends as follows:-

- i. As a Judge of the High Court and pursuant to Article 77 (1) of the Constitution, Justice Mrima was ineligible to vie for or accept election to the position of Agricultural Society of Kenya (ASK) Chairperson. In the circumstances thereof, a fresh election for the position of ASK Chairperson be held in accordance with the Constitution of Kenya and the ASK Constitution.
- ii. A copy of the petition be forwarded to the Judicial Service Commission (JSC) for further action in relation to any violation of the Judicial Code of Conduct during the period Justice Mrima held the two concurrent posts despite the express provisions of Article 77 (1) of the Constitution.

.....**END**.....

APPENDIX 1

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KENYA NATIONAL ASSEMBLY
TENTH PARLIAMENT – THIRD SESSION (2009)

REPORT OF THE JOINT SITTINGS OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS AND THE COMMITTEE ON
DELEGATED LEGISLATION AND ON THE APPOINTMENT OF THE
DIRECTOR AND TWO ASSISTANT DIRECTORS OF THE KENYA ANTI-
CORRUPTION COMMISSION

Read on Tues 8/9/09

Clerks Chambers,
Parliament Buildings,
NAIROBI.

SEPTEMBER, 2009

16/9/09 Adopted with amendment

PREFACE

Mr. Speaker, Sir,
Mandate of the Committees.

The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order 198, while schedule II of the Standing Orders mandates the Committee to consider the following subjects:-

- i) Constitutional Affairs;
- ii) The administration of law and order (Judiciary, police and prisons department, community service orders);
- iii) Public prosecutions;
- iv) Elections;
- v) Integrity; and
- vi) Anti-corruption and human rights

The Committee oversees the following Ministries/Departments

- i) Ministry of Justice, National Cohesion and Constitutional Affairs;
- ii) State Law Office;
- iii) The Judiciary;
- iv) Kenya Anti-Corruption Commission;
- v) Interim Independent Electoral Commission; and
- vi) Interim Independent Boundaries Commission

The Committee on Delegated Legislation is established under Standing Order 197 to, among other functions;

- i) ensure that statutory instruments are laid before the House as may be provided under any written law and scrutinize such instruments to ensure that they are consistent with parent statutes;
- ii) Unless otherwise provided for either expressly or by implication under any written law, all subsidiary legislation

shall be tabled before the House upon publication in the Kenya Gazette; and

- iii) The Committee may recommend that the House resolves that any particular subsidiary legislation be annulled.

The Standing Order also requires that all subsidiary legislation be tabled before the House upon publication in the Kenya Gazette.

Joint Sittings

Pursuant to provisions of Standing Order 185, the Committee on Delegated Legislation and the Departmental Committee on Justice and Legal Affairs resolved to hold joint sittings to consider the respective appointments of Director and Assistant Directors to the Kenya Anti-Corruption Commission, and report to the house.

The Committee has held two meetings. The minutes of these meetings are appended to this report.

Membership

The Joint Committee comprises of the following members:-

- | | |
|--|------------------|
| i. Hon. Amina Abdalla, M.P. | - Co-Chairperson |
| ii. Hon. Abdikadir Mohammed, M.P | - Co-Chairperson |
| iii. Hon. Millie Odhiambo-Mabona, M.P. | |
| iv. Hon. George Nyamweya, M.P. | |
| v. Hon. Olago Aluoch, M.P. | |
| vi. Hon. Isaac K.Ruto, M.P. | |
| vii. Hon. Sophia Abdi Noor, M.P. | |
| viii. Hon. (Prof)Philip Kaloki, M.P. | |
| ix. Hon. Mutava Musyimi, M.P | |
| x. Hon. Ababu Namwamba, M.P. | |
| xi. Hon. Peter Baiya, M.P. | |
| xii. Hon.Gitobu Imanyara,M.P | |
| xiii. Hon.Kiema Kilonzo,M.P | |
| xiv. Hon.Fahim Twaha,M.P | |

- xv. Hon.(Dr) Julius Kones,M.P
- xvi. Hon.B.C.Muturi Mwangi,M.P


Acknowledgements

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.


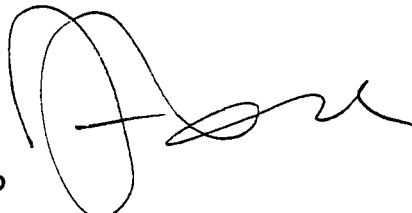
Mr. Speaker, Sir,

It is our pleasant duty and privilege, on behalf of the Committee on Delegated legislation and the Departmental Committee on Justice and Legal Affairs to present and commend this report to the House for adoption pursuant to Standing Order 181.

Thank you

Signed.....  8/9/2009

HON. AMINA ABDALLA, MP
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

Signed.....  
HON. ABDIKADIR MOHAMMED, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL AFFAIRS

Date:..... 8/9/2009

INTRODUCTION

In the course of executing its mandate, the Joint Committees' attention was drawn to the contents of Kenya Gazette Vol. CXI No. 77 Gazette Notices No. 9300 and 9301 laid on the table of the House on September 3, 2009 by Hon. Isaac Ruto, MP on the re-appointment of the Director and two Assistant Directors of the Kenya Anti-corruption Commission.

During debate of the said Notice, it became clear that the issue fell within the mandate of the Departmental Committee on Justice and Legal Affairs since KACC is one of the bodies under its jurisdiction

Since the appointments were made vide Gazette Notices in exercise of powers conferred by an Act of Parliament, the Committee on Delegated Legislation found it necessary to scrutinize the Gazette Notices to confirm whether they were in conformity with the parent statute.

The two Committees held two sittings, and further heard oral presentation from the Minister for Justice, National Cohesion and Constitutional Affairs. The committee also received and considered written memoranda from the International Commission of Jurists- Kenya Section and the Law Society of Kenya.

After deliberations and consideration of the presentations made to the Committee, the Committee found as follows;

1. PROCEDURE OF APPOINTMENT OF DIRECTOR AND ASSISTANT DIRECTORS OF THE KACC.

The procedure for appointment of the Director and the Assistant Directors of the Kenya Anti-Corruption Commission is set out in section 8(3)(4)&(5) of the Anti-corruption and Economic Crimes Act, No. 3 of 2003 (herein after referred to as the ACECA) and paragraph 3 (1&2) of the First Schedule to the Act, reproduced herein below: Section 8(3) and (4)) of the Anti Corruption and Economic Crimes Act provides that:-

(3) The Director and Assistant Directors shall be persons recommended by the Advisory Board and approved by the National Assembly for appointment to their respective positions.

(4) On the approval of a person by the National Assembly under subsection (3), the President shall appoint the person concerned to the office in respect of which the approval was given.

(5) The terms and conditions of service of the Director and the Assistant Directors shall be determined by the Advisory Board.

Paragraph 3(1),(2) of the First Schedule to the Act) provides that:-

(1) The term of office of the Director or an Assistant Director shall be five . . . years: Provided that an Assistant Director may be appointed for a term of four years to avoid having the Assistant Director's term expire on or around the time the Director's term expires.

(2) A person who has held office as Director or Assistant Director may be reappointed, but may not serve as the Director for more than two terms or as an Assistant Director for more than two terms.

This was indeed the procedure followed when the Director and the Assistant Directors were first appointed. This procedure was again recently followed in the appointment of two assistant directors for their second terms.

One of the serving Assistant Directors, Dr. John Mutonyi, served a full first term of four years, which came up for renewal in June, 2009. To be reappointed for a second term by the President, the KACC Advisory Board recommended him and the National Assembly approved the recommendation, as if he had never served previously.

2. WAS THE ABOVE PROCEDURE COMPLIED WITH IN THE PRESENT REAPPOINTMENTS?

The Joint Committee finds that the procedure as set out in the Act and the Schedule was not followed in making the re-appointments.

It must be noted that the wording of the Gazette Notices by referring to section 8(3) and (4) of the Act implies that the appointments were done on the recommendation of the KACC Advisory Board and approved by the National Assembly, and in this impression the Committee found erroneous. Indeed the committee received a letter dated 2nd September, 2009 from the chairman of the KACC Advisory Board, which, quoted verbatim at para 2, says:

“This (appointments) was done in complete disregard of the ACECA Act section 8(3) and (4) of the Act that states that the Director and Assistant Directors shall be persons recommended by the Advisory Board and approved by the National Assembly for their respective positions.”

The same letter concludes thus;

“We wish to make a special appeal to your committee to do all that is possible to nullify those appointments to preserve the integrity and independence of the Commission and the role given to Parliament under the Act.”

The letter referred to above is annexed to this report as Annexure 1.

The Committee also heard from the Minister for Justice and Constitutional Affairs that the President was not required to seek the recommendation of the Advisory Board or the approval of the National Assembly because the persons being appointed had undergone the same process in the initial appointments and there was no provision for re-vetting the officers.

According to the Minister, a reappointment under the First Schedule at Section 3(2) did not have to follow the procedure set out in the Act and the president was perfectly in order to make the re appointments. As to the reappointment of Dr. Mutonyi, the minister was of the view

that though he had been subjected to re-vetting it was not mandatory and this should not be seen as setting any precedent.

The Committee considered and rejected the views of the minister that the said para 3(2) could be read in isolation of the main body of the statute, especially section 8(3), (4) thereof.

Para 3(2) of the schedule read on its own does not state that the president shall reappoint the Director and Assistant Directors without the recommendation of the Board and approval of the National Assembly. The powers of the president to reappoint are anchored in section 8 (4) of the ACECA. These powers cannot be exercised without complying with Section 8 (3) thereof.

Furthermore if there was to be a doubt on the procedure of reappointment one has to refer to section 51 of the Interpretation and General Provisions Act Cap 2 which provides as follows;

51 (1) "Whereby or under a written law, a power or duty is conferred or imposed upon a person to make an appointment or to constitute or establish a board, commission, committee or similar body, then unless a contrary intention appears, the person having that power or duty shall also have the power to remove , suspend, dismiss or revoke the appointment of, and to reappoint or reinstate, a person appointed in the exercise of the power or duty , or to revoke the appointment, constitution or establishment of or dissolve a board, commission, committee or similar body appointed constituted or established, in exercise of the power or duty, and to reappoint, reconstitute or re-establish it.

51 (2) "Where the power or duty of a person under this section is exercisable upon the recommendation , or is subject to the approval or consent of another person, then the power shall, unless a contrary intention appears be exercisable only upon that recommendation or subject to that approval or consent."

The committee finds that paragraph 3 of the First Schedule to the Act does not provide for a different procedure for re-appointments. As such, the appointing authority is bound by the express provisions of the ACECA as reinforced by section 51 (2) of Cap. 2 quoted above.

3. EXECUTIVE PREROGATIVE.

The committee also found that the appointments were done under powers granted to the president under the ACECA and not the executive prerogative of appointments set out in section 24 of the constitution. However, the committee examined the said section 24 constitution and the presidential powers of appointment therein, and it is clear that even appointments under the section are subject to the constitution and any other law.

Section 24 of the constitution provides:

“Subject to this constitution and any other law, the powers of constituting and abolishing offices of the Republic of Kenya, of making appointments to any such office and terminating any such appointment shall vest in the president”

In the present circumstances the “any other law” referred to is the Anti Corruption and Economic Crimes Act, that sets out the process of making appointments to KACC to which, under section 24 constitution, the President is subject to and bound by:

4. LEGAL STATUS OF A GAZETTE NOTICE.

The Committee also considered whether the Gazette Notices under which the appointments were made were subsidiary legislation thus subject to the jurisdiction of the Committee on Delegated legislation.

The committee noted that Standing Order No. 197 makes reference to the term “subsidiary legislation” without specifically defining the same. Indeed the

word “subsidiary legislation” is used interchangeably with the term “delegated legislation” in that Standing Order.

In the absence of such definition the Committee used the definition of the term as used in section 3 of the Interpretation and General Provisions Act, Cap 2 Laws of Kenya, as follows:

"Subsidiary legislation" means any legislative provision (including a transfer or delegation of powers or duties) made in exercise of a power in that behalf conferred by a written law, by way of by-law, notice, order, proclamation, regulation, rule, rule of court or other instrument.

From the foregoing it is clear that Gazette Notice No. 9300 and No. 9301 is subsidiary legislation because if the notices are issued by the President in exercise of a power in that behalf conferred by the ACECA. As such the notice falls within the mandate of the committee on delegated legislation and are liable to be recommended for annulment under Standing Order 197(4).

The committee rejects the argument that Parliament does not have power to annul Gazette Notices. How can a Parliament which has power to amend the constitution, power to enact and amend statutes, power to annul rules and regulations not have power to annul mere Gazette Notices, especially when such Gazette Notices are published in flagrant disregard of the enabling law?

Conclusion

- a) The re-appointments as stipulated in Gazette Notice Vol. CXI No. 77 and Gazette No. 9300 and No. 9301 were made under section 8(4) of the Anti Corruption and Economic Crimes Act and regulation 3(2) of the First Schedule to this Act.

It is the view of the Committee that in making the re-appointments, the President did not follow the procedure set out in the relevant laws and as such the appointments are unprocedural.

- b) The approval that Parliament gave in 2004 when the Director and his Assistants were appointed lapsed with the subsequent expiry of their

respective contracts, and the President must come back to Parliament to get further approvals before appointing persons to these positions.

RECOMMENDATION

- a. The Committee recommends that the House resolves that the reappointments of the Director and the two Assistant Directors of the KACC as contained in the Kenya Gazette Vol. CXI No. 77 Gazette Notices No. 9300 and 9301 respectively was not done in accordance with the procedure set out in section 8(3) (4) of the Anti Corruption and Economic Crimes Act No. 3 of 2003 as read together with Paragraph 3(2) of the First Schedule to the Act.
- b. The Joint Committee hereby urges the House to resolve that the Gazette Notices 9300 and 9301 contained in Kenya Gazette Vol. CXI No. 77 be annulled.
- c. The Joint Committee urges that due process of the Law be followed in the appointment of the Director and the Assistant Directors.

Hon.Amina Abdalla,MP

Signed.....

HON. AMINA ABDALLA, MP
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

Hon.Abdikadir Mohammed,MP

Signed.....

HON. ABDIKADIR MOHAMMED, MP
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON JUSTICE & LEGAL
AFFAIRS

Date:.....

MINUTES OF THE THIRD SITTING OF THE JOINT COMMITTEE OF DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS AND THE COMMITTEE ON DELEGATED LEGISLATION HELD TUESDAY, SEPTEMBER 8, 2009 COMMITTEE ROOM 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 11.30AM.

PRESENT

Hon. Amina Abdalla, M.P. - Co-Chairperson
Hon. Abdikadir Mohamed, M.P. - Co-Chairperson
Hon. Baiya Njoroge, M.P.
Hon. Ababu Namwamba, M.P.
Hon. Nyamweya George, M.P.
Hon. Isaac Ruto, M.P.
Hon. Sophia Abdir Noor, M.P.
Hon. Olago Aluoch, M.P.
Hon(Dr)Julius Kones, M.P

ABSENT WITH APOLOGY

Hon. B.C. Muturi Mwangi, MP
Hon. Fahim Twaha, MP
Hon. Millie Odhiambo-Mabona, M.P. - Vice-Chairperson
Hon. Mutava Musyimi, M.P.
Hon. (Prof) Philip Kaloki, M.P.
Hon. Gitobu Imanyara, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

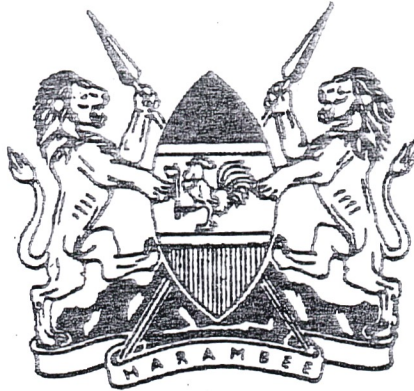
Mrs. Lucy Wanjohi	Clerk Assistant
Mr. Dennis Abisai	Legal Counsel
Mr. Willis Otieno	Parliamentary Intern

MIN.NO.03/2009 ADOPTION OF COMMITTEE REPORT

The Joint Committee report on the appointments of the Director and two Assistant Directors to the Kenya Anti-Corruption Commission was considered, approved and unanimously adopted for tabling in the House.

MIN.NO.04/2009 ADJOURNMENT

And there being no other business the Chairman adjourned the sitting at thirty minutes past one.



THE KENYA GAZETTE

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(Registered as a Newspaper at the G.P.O.)

Vol. CXI—No. 77

NAIROBI, 31st August, 2009

Price Sh. 50

GAZETTE NOTICE No. 9300

THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT

(No. 4 of 2003)

APPOINTMENT

IN EXERCISE of the powers conferred by section 8 (4) and paragraph 3 (2) of the First Schedule of the Anti-Corruption and Economic Crimes Act, I, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, re-appoint—

JUSTICE AARON G. RINGERA

to be the Director of the Kenya Anti-Corruption Commission, for a period of five (5) years, with effect from 8th September, 2009.

Dated the 26th August, 2009.

MWAI KIBAKI,
President.

GAZETTE NOTICE No. 9301

THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT

(No. 4 of 2003)

APPOINTMENTS

IN EXERCISE of the powers conferred by section 8 (4) and paragraph 3 (2) of the First Schedule of the Anti-Corruption and Economic Crimes Act, I, Mwai Kibaki, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, re-appoint—

Fatuma Sichale (Mrs.),
Smokin C. Wanjala (Dr.),

to be the Assistant Director, Legal Services and Assistant Director, Preventive Services, respectively of the Kenya Anti-Corruption Commission, for a period of four (4) years, with effect from 8th September, 2009.

Dated the 26th August, 2009.

MWAI KIBAKI,
President.

KENYA ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE
(Valley Rd. /Milimani Rd.
Junction)
P.O. Box 61130
00200 - NAIROBI, Kenya



Tel.: 254 (020) 2717318/310722
Fax: 254 (020) 2719757
Email: kacc@integrity.go.ke
Website: www.kacc.go.ke

When replying please quote:

2nd September 2009

The Chairman

Parliamentary Committee on Legal
Affairs and Administration

NAIROBI

Dear Sir

REF: APPOINTMENT OF DIRECTOR AND TWO ASSISTANT DIRECTORS OF KENYA ANTI-CORRUPTION COMMISSION

As you are aware the President recently reappointed the Director and two Assistant Directors.

This was done in complete disregard of the ACECA Act Section 8(3) & (4) of the Act that states that the Director and Assistant Directors shall be persons recommended by the Advisory Board and approved by the National Assembly for their respective positions.

Whilst Section 8(5) provides that "on approval of a person by the National Assembly, under Section (3) the President shall appoint the person concerned to the office in respect of when approval is given.

The failure to observe due process in our view is unattainable and undermines the authority of both the Board and Parliament.

The Board has resolved to execute its mandate as required, as follows:

- (1) Noting that the renewal of contracts requires Board recommendation and approval of Parliament we are proceeding to write to the Assistant Directors that we are unable to determine the terms of service as their appointment was unproceedural.

- (2) In regard to the Director, we will write to him to continue in office until he is re-appointed or replaced by new Director as provided for under Section 2(3) of the First Schedule of the Act.

We have also written to His Excellency the President, the Attorney General, the Minister for Justice, National Cohesion and Constitutional Affairs to revoke the appointment and allow due process to follow.

We seek your intervention in amending S16(2) of the ACECA which establishes the Advisory Board as an unincorporated body hence no powers to sue.

We wish to make a special appeal to your Committee to do all that is possible to nullify those appointments to preserve the integrity and independence of the Commission and the role given to Parliament under the Act.

Yours faithfully



Eric O. Omogeni

CHAIRMAN
KACC, ADVISORY BOARD

Copy to: **The Clerk**
Kenya National Assembly
P O Box 41842-00100
NAIROBI



98

MINISTRY OF JUSTICE, NATIONAL COHESION AND CONSTITUTIONAL AFFAIRS

OFFICE OF THE PERMANENT SECRETARY

Telegrams: "JUSTICE", Nairobi
Telephone: Nairobi 2224029/55/82
When replying please quote

CO-OPERATIVE BANK HOUSE
HAILE SELASSIE AVENUE
P.O. BOX 56057 - 00100
NAIROBI, KENYA

Ref. No. MJCA/CONF/3/C/3/ (95)
and date

11th December, 2008, 20

Mr. Patrick Gichohi
Clerk of the National Assembly
Parliament Buildings
NAIROBI

Dear

Mr. Gichohi,

**KENYA ANTI-CORRUPTION COMMISSION: RECOMMENDATION
FOR APPOINTMENT OF ASSISTANT DIRECTOR – INVESTIGATION
AND ASSET TRACING: DR. JOHN PARMENUS MUTONYI:**

We refer to the above matter.

We are pleased to submit the name of **Dr. John Parmenus Mutonyi** for consideration and approval by the National Assembly, as per the provisions of Section 8(3) of the Anti-Corruption and Economic Crimes Act, 2003 (No. 3 of 2003). His candidature is for the post of **Assistant Director (Investigations and Asset Tracing)** at the **Kenya Anti-Corruption Commission (KACC)**.

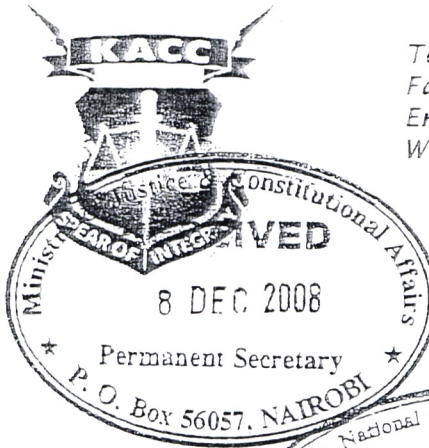
Dr Mutonyi has been recruited by the Kenya Anti-Corruption Advisory Board through a competitive process pursuant to the powers vested on the Advisory Board by the Act. Please find attached, a copy of a letter dated 25th November, 2008, addressed to our Ministry by the Chairman of the Board on the matter.

Once the National Assembly approves the recommendation, your office will inform our Ministry accordingly, so that we facilitate the formal appointment by H.E. the President in accordance with Section 8(4) of the Act.

KENYA ANTI-CORRUPTION COMMISSION

92

INTEGRITY CENTRE
(Valley Rd. /Milimani Rd.
Junction)
P.O. Box 61130
00200 - NAIROBI, Kenya

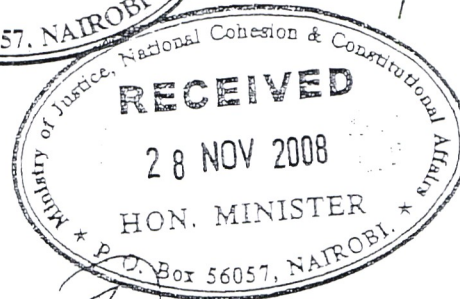


Tel.: 254 (020) 2717318/310722
Fax: 254 (020) 2719757
Email: kacc@integrity.go.ke
Website: www.kacc.go.ke

When replying please quote:

25th November 2008

Hon. Martha W. Karua, EGH, MP
Minister of Justice, National Cohesion
And Constitutional Affairs
Cooperative House
NAIROBI



Dear Hon. Minister,

Handwritten notes:
③
Int deal
18/12/08
Mr. Kiboi
For A
and

RECOMMENDATION FOR APPOINTMENT OF ASSISTANT DIRECTOR - INVESTIGATIONS AND ASSET TRACING

We wish to advise that the Advisory Board carried out interviews of seven (7) candidates on 19th November 2008, aimed at identifying a suitable person to fill the above mentioned position. The position had been advertised in the Standard newspaper on Tuesday, 9th September 2008 and Daily Nation on Friday, 12th September 2008.

Following the exercise, the Board decided to recommend **Dr John Parmenus Mutonyi** for appointment as **Assistant Director - Investigations and Asset Tracing**, as he was the highest-scoring candidate.

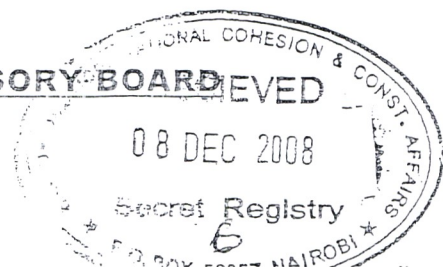
This letter is therefore to request you to take the necessary action in accordance with the Anti-Corruption and Economic Crimes Act, 2003, Section 8(3), to facilitate his formal appointment.

Yours Sincerely,

Handwritten signature: Allan N. Ngugi

ALLAN N. NGUGI, OGW
CHAIRMAN

KENYA ANTI-CORRUPTION COMMISSION, ADVISORY BOARD





KENYA ANTI-CORRUPTION COMMISSION

THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT, 2003 (ACT NO.3 OF 2003)

VACANCY

ASSISTANT DIRECTOR (INVESTIGATIONS & ASSET TRACING)

The Kenya Anti-Corruption Commission Advisory Board wishes to invite suitable candidates to apply for the position of Assistant Director (Investigations & Asset Tracing), in the Kenya Anti-Corruption Commission.

This is the senior-most position in the Commission's Directorate of Investigations and Asset Tracing, and reports directly to the Director.

Duties and Responsibilities

The successful candidate will be required to undertake the following duties and responsibilities:

- the detection and investigation of matters of corruption and economic crimes.
- the investigation of loss of or damage to public property, and recommendations for recovery.
- provide leadership and supervision of a multi-disciplinary team of forensic specialists, investigators and experts.
- liaison with other investigative agencies involved in fighting corruption and economic crimes.
- compiling evidence for use in cases for criminal prosecution and civil proceedings.
- participate in the formulation, implementation and periodic revision of the Commission's Strategic Plan.
- serve as Secretary to the Investigations and Asset Tracing Committee of the Board.
- any other duties and responsibilities that may be assigned by the Director or the Board.

The candidate

The successful candidate shall:

- be a graduate from a recognized university.
- be knowledgeable and experienced in the practices of Investigations and Asset Tracing, with at least ten years experience in that field at a senior level.
- be of outstanding honesty and integrity
- have outstanding interpersonal and communication skills and the ability to establish partnerships and working relationships in an investigative environment.
- have excellent analytical and problem solving skills.
- be able to provide technical and administrative leadership.
- possession of a relevant post-graduate qualification will be an added advantage.

Procedure for Appointment

The name of the successful candidate will be recommended to the National Assembly for approval, and the appointment will be for a term of 4 or 5 years.

The terms and conditions of appointment will be offered to the successful candidate upon approval of the candidate by the National Assembly and appointment by His Excellency the President.

It is also a legal requirement that the successful candidate shall:

- Declare his or her assets and liabilities as prescribed by the Public Officer Ethics Act, 2003.
- Relinquish all other employment, businesses and offices immediately on appointment.

If you possess the required academic and professional qualifications, have the prescribed attributes, and are willing to submit to the legal requirement, please write in strict confidence, and include your latest CV, daytime telephone contact, current remuneration, career progression and two referees to:

The Chairman
Kenya Anti-Corruption Commission Advisory Board
Kenya Anti-Corruption Commission
P O Box 10459-00100
NAIROBI

So as to reach him by 30th September 2008



MINISTRY OF HEALTH

REQUEST FOR PROPOSALS

CONSULTANCY OPPORTUNITY WITH UNICEF KENYA

DEADLINE FOR ASSIGNMENT: 19 September, 2008
Please submit applications to: Human Resources Office, UNICEF Kenya,
P.O. Box 44145, Nairobi 00100
Email: kenya/hrvacancies@unicef.org

Baseline assessment of Behaviour Change Communication (BCC) practicing organizations working on HIV/AIDS prevention in Kenya

The assignment UNICEF and National AIDS Control Council require the services of a consultant/consultancy team to conduct a baseline assessment of the organizations engaged in BCC activities to help establish some benchmark of their capacities, practices and opportunities. This would be a detailed situation analysis that would include a review of the current practice of organizations engaged in implementing BCC work in Kenya. This will also involve reviewing any existing research work in the area and highlighting existing needs and gaps to be addressed. Recommendations and priority areas emerging from the study will help to define the format and design of a capacity development package to support improvement of behavior change practices related to HIV/AIDS in the Kenya. Specifically, the assignment entails:

- Undertaking a comprehensive review and follow-up of existing research work in the area of BCC in Kenya and incorporate results or findings as part of analysis within the final baseline report.
- Conducting a series of interviews and discussions with key government staff and other local partners (including both INGO and NGO – list to be provided by the national Behaviour Change Communication Consortium), media practitioners with regard to specific BCC needs.
- Conducting a series of interviews and discussions with various target audience groups that include the youth in and out school, parents, and women with regard to BCC need and challenges.
- Producing a draft report and present to BCC Consortium for review/feedback and producing a final baseline assessment report.
- Creating a data base of resource persons and trainers in support of technical capacity building dimensions around BCC.

Request for Proposal: Proposals are requested from qualified experienced consultants/companies who should submit the following:

- A justification as to why your team should be awarded the contract;
- Qualifications and CVs of each team member;
- Past activities or research work that supports undertaking the assignment;
- A proposed work-plan for completing the assignment; and,
- A detailed budget for each component of the assignment.

For more information, contact Sara Cameron, scameron@unicef.org Tel. 020-762-2977



USAID
FROM THE AMERICAN PEOPLE

Human Resources for Health Specialist

The United States Agency for International Development (USAID) seeks to hire a Human Resources for Health (HRH) Specialist in the Office of Population & Health (OPH), USAID/Kenya. The position is open to qualified Kenyan citizens.

BASIC FUNCTION OF POSITION:

The HRH Specialist is responsible for the coordinating, planning, management, monitoring, and results reporting of all human capacity development projects and activities. More specifically, the HRH Specialist serves as lead advisor for the human capacity development technical area on the USG team. He/she works with all PEPFAR partners, USG President's Malaria Initiative (PMI) Team, USAID Reproductive Health Team, the Ministry of Health (MOH) a USG other partners to ensure core strategic and technical HRH capacities are improved; works with partners to ensure with partners to ensure core strategic and technical HRH capacities are improved; works with partners to ensure leadership and management capacities are improved; works to support effective implementation of the Government of Kenya (GOK) HRH development plan and participates in the management of USAID/Kenya's health portfolio.

REQUIRED QUALIFICATIONS:

Any application that does not meet the minimum requirements stated below will not be evaluated.
Education: A Master's degree in business administration, economics, public health, or a closely related field.
Prior Work Experience: A minimum of five years of progressively responsible professional experience in health systems strengthening with emphasis on human capacity development.
Language Proficiency: Fluency in written and spoken English (IV level) is required.
Knowledge: Familiarity with public health programming, data collection, analysis and presentation is needed. Knowledge of human capacity development issues and HRH systems strengthening approaches is needed. General knowledge of the Kenyan public sector health system, donors and related private sector programs is preferred. General knowledge of U.S. Government procedures, laws and regulations relating to commodity procurement is highly desirable.
Abilities and Skills: Advanced specialist knowledge of human capacity development techniques and application. Excellent interpersonal and communications skills to establish and maintain effective contacts within USAID, the PEPFAR Team, implementing partners, relevant GOK counterparts, other donors, private sector and civil society organizations. Excellent analytical, writing and organizational skills. Advanced numerical skills are required. Strong initiative to obtain, evaluate, and interpret factual data and to prepare concise, accurate, and complete reports. Initiative as well as to recognize significant developments and trends reflected in collected data and bring it to the attention of supervisors. Excellent technical writing skills to clearly and effectively draft various USG documents. Competent in using various computer software applications including Microsoft Office programs. The incumbent must be able to work in a stressful to meet project deadlines or dates for special events. Must be a self-starter with strong diplomatic and leadership qualities. Sound judgment combined with a mature and professional demeanor is required to work in an environment where highly complex information comes from multiple disciplines.

Those fulfilling the requirements of the position should submit their application together with a detailed CV to following address:

Human Resources Office
Re: Human Resources for Health (HRH) Specialist
P.O. Box 44145, Nairobi, Kenya

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI MILIMANI COMMERCIAL COURT
MISC CAUSE NO. 648 OF 2008

IN THE MATTER OF NYAGA STOCKBROKERS LIMITED
 AND
 IN THE MATTER OF THE CAPITAL MARKETS ACT CHAPTER 485A, LAWS OF KENYA
 AN APPLICATION BY THE CAPITAL MARKETS AUTHORITY FOR THE EXTENSION OF THE TERM OF THE STATUTORY MANAGER

TO : ALL INTERESTED PARTIES AND AFFECTED PERSONS

HEARING NOTICE
 Pursuant to an order on the 4th day of September 2008 by the Honourable Mr Justice J. Komeni

TAKE NOTICE that the term of the Statutory Manager has been extended from the 5th day of September 2008 to the 18th day of September 2008.

TAKE FURTHER NOTICE that the Chamber Summons application dated the 4th day of September 2008 seeking the extension of the term of the Statutory Manager for a further period of Six (6) months has been fixed for hearing on the 18th day of September 2008 at 9.00 a.m. or soon thereafter.

Service of the application on all Interested Persons was directed by means of this advertisement. A copy of the application may be obtained from the High Court of Kenya, Milimani Commercial Courts P O Box 30420, Nairobi.

DATED at Nairobi this 5th day of September 2008

ARCHER & WILCOCK
 ADVOCATES FOR THE APPLICANT

DRAWN & FILED BY:
 ARCHER & WILCOCK ADVOCATES
 P O BOX 10201-00400
 NAIROBI

SADDABRI AGENCIES
 Licensed Auctioneers, Valuers, Estate Agents, Property Managers and Property Consultants
 P.O. Box 13264 Nairobi, Tel: 011 272 2286, 020-3411184, 0779-903111, E-mail: saddabri1@gmail.com

PUBLIC AUCTION

Under instructions received from the Honourable High Court we have pleasure in announcing that the following property will be sold by Public Auction on Wednesday the 17th day of September 2008 at the auction room being situated at the National Bank of Kenya Limited, Nairobi Branch at 11.00 a.m.

CONVEYANCE OF LAND

CONVEYANCE OF LAND

CONVEYANCE OF LAND

Drop your standard advert here

GREENLINE COMMUNICATION NETWORK


Aarpee House, 3rd Floor Lusaka Rd., P.O. Box 28582-00200, NAIROBI
 Tel/Fax: 254-020-551706
 Mobile: 0721-978196
 E-mail: gncmnet@yahoo.com

CORRECTION

Associated Electrical and Hardware Suppliers Ltd (In Interim Liquidation)

The winding up cause is No 2 of 2008 and NOT No 1 as stated in the advertisement dated 8th September 2008. All other details remain the same.

George Mokuwa Obiria (Interim Liquidator)


KENYA ANTI-CORRUPTION COMMISSION
THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT, 2003 (ACT NO.3 OF 2003)

VACANCY

ASSISTANT DIRECTOR (INVESTIGATIONS & ASSET TRACING)

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- the detection and investigation of matters of corruption and economic crimes;
- the investigation of loss of or damage to public property, and recommendations for recovery;
- provide leadership and supervision of a multi-disciplinary team of forensic specialists, investigators and experts;
- liaison with other investigative agencies involved in fighting corruption and economic crimes;
- compiling evidence for use in cases for criminal prosecution and civil proceedings;
- participate in the formulation, implementation and periodic revision of the Commission's Strategic Plan;
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- any other duties and responsibilities that may be assigned by the Director or the Board.

The candidate

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- have excellent analytical and problem solving skills;
- be able to provide technical and administrative leadership;
- possession of a relevant post-graduate qualification will be an added advantage.

Procedure for Appointment

The name of the successful candidate will be recommended to the National Assembly for approval, and the appointment will be for a term of 4 or 5 years.

The terms and conditions of appointment will be offered to the successful candidate subject to the approval of the National Assembly and appointment by His Excellency the President.

It is also a legal requirement that the successful candidate shall:

- Declare his or her assets and liabilities as prescribed by the Public Officer Ethics Act, 2003.
- Relinquish all other employment, businesses and offices immediately on appointment.

If you possess the required academic and professional qualifications, have the prescribed attributes, and are willing to submit to the legal requirement, please write in strict confidence, and include your latest CV, daytime telephone contact, current remuneration, career progression and two referees to:

The Chairman
 Kenya Anti-Corruption Commission Advisory Board
 Kenya Anti-Corruption Commission
 P O Box 10459-00100
 NAIROBI

to reach him by 30th September 2008

INVASSING WILL RESULT IN IMMEDIATE DISQUALIFICATION

Short-listed applicants will be contacted.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURT
MISC CAUSE NO. 648 OF 2008

IN THE MATTER OF NYAGA STOCKBROKERS LIMITED
 AND
 IN THE MATTER OF THE CAPITAL MARKETS ACT, CHAPTER 485A, LAWS OF KENYA
 AN APPLICATION BY THE CAPITAL MARKETS AUTHORITY FOR THE EXTENSION OF THE TERM OF THE STATUTORY MANAGER

ORDER

APPLICATION FOR ORDERS:

- THAT the application be certified as urgent and be heard ex-parte;
- THAT the Honourable Court be pleased to extend time for the Statutory Managers to continue running the affairs of NYAGA STOCKBROKERS LTD for a period of six (6) months from the 5th day of September 2008 or such other period as this Honourable Court may deem fit.

Alternatively:

- THAT this Honourable Court be pleased to extend time for the Statutory Managers to continue running the affairs of NYAGA STOCKBROKERS LTD pending the hearing and determination of this application inter-partes in respect of prayer 2 hereinabove;
- THAT this Honourable Court grant leave to the Applicant to serve all the affected parties by way of an advertisement in the newspapers as this Honourable Court shall direct;
- THAT this Honourable Court do give directions with regard to informing all the interested parties in respect of the said extension;
- THAT the costs of this application be in the cause.

UPON READING the application presented to this Court on 4th September, 2008 by the counsel for the applicant, under the High Court Practice and Procedure Rules, Part I Vacation Rule 53 (2) and Under Section 13A (3) of the Capital Markets Act, Chapter 485A, Laws of Kenya and all other enabling Provisions of the Law and UPON READING the affidavits of STELLA KILONZO and ZENABABANU JANMOHAMED sworn on 4th September, 2008 and UPON HEARING the Counsel for the Applicant ex-parte:

IT IS HEREBY ORDERED:


- THAT the Application be and is hereby certified as urgent and it shall be heard during the High court vacation;
- THAT temporary orders be and are hereby issued extending time for the Statutory Managers to continue running the affairs of NYAGA STOCKBROKERS LTD pending the hearing of the application inter-partes on 18th September, 2008 at 9.00 a.m. before any Judge;
- THAT the affected parties shall be served in the Daily Nation and the Standard each once on alternative days and the said advertisement shall be placed in the said papers within seven (7) days from the date hereof;
- THAT costs shall be in the cause.

GIVEN under my hand and seal of this Honourable Court at Nairobi this 4th day of September 2008.

ISSUED at Nairobi this 4th day of September, 2008.

MILIMANI COMMERCIAL COURTS NAIROBI

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NELLY

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