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By Chair Departmental
Committee on Labour &
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[Signature]



THE DEPARTMENTAL COMMITTEE (I)
ON LABOUR AND SOCIAL WELFARE

REPORT ON THE PETITION BY THE HON. JOHN MUTUTHO, MEMBER OF
PARLIAMENT FOR NAIVASHA CONSTITUENCY, ON
THE ONGOING REDUNDANCY EXERCISE AT KENYA AIRWAYS LIMITED
LAID ON THE TABLE OF THE HOUSE ON
13TH SEPTEMBER 2012

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VOLUME I

CLERK'S CHAMBERS
NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

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PREFACE

Mr. Speaker Sir,

- 1 The Departmental Committee on Labour and Social Welfare is one of the Departmental Committees established under Standing Order No. 198 whose functions are *inter alia*:
 - i) investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments;
 - ii) study the programme and policy objectives of the Ministries and Departments and the effectiveness of the implementation;
 - iii) study and review all legislation referred to it;
 - iv) study, assess and analyse the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
 - v) investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister; and
 - vi) make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.
- 2 The Committee's functions also include considering any matter or petition referred to it in accordance with Standing Order 210.
- 3 The Committee is mandated to consider the following issues; Labour; Trade Union Relations; Manpower or Human Resource Planning; Gender; Culture and Social Welfare; Youth, Children's Welfare; National Heritage and Sports.
- 4 In executing its mandate, the Committee oversees the following Ministries and Commission:-
 - i. Ministry of Labour
 - ii. Ministry of State for Youth Affairs and Sports
 - iii. Ministry of State for Special Programmes
 - iv. Ministry of Gender and Children Development
 - v. Ministry of State for National Heritage and Culture; and
 - vi. National Gender and Equality Commission
- 5 The Departmental Committee on Labour and Social Welfare Committee Membership comprises of the following: -
 - i. The Hon. Sophia Abdi Noor, M.P. – Chairperson
 - ii. The Hon. Lenny Kivuti, M.P. – Vice-Chairperson
 - iii. The Hon. Najib Balala, M.P.
 - iv. The Hon. Charles Keter, M.P.
 - v. The Hon. Jackson K. Kiptanui, M.P.
 - vi. The Hon. Elijah Lagat, M.P.
 - vii. The Hon. Joseph Magwanga, M.P.

- viii. The Hon. Alfred Odhiambo, M.P.
- ix. The Hon. Pollyns Ochieng, M.P.
- x. The Hon. Charles Nyamai, M.P.
- xi. The Hon. Clement Waibara, M.P.

BACKGROUND

Mr. Speaker Sir,

- 6 On Thursday, 13th September 2012, the Hon. John Mututho, Member of Parliament for Naivasha Constituency presented a petition on the subject of the ongoing redundancy exercise at Kenya Airways Limited on behalf of former Employees of the Airline affected by the exercise. The petition sought among other things the nullification of the ongoing redundancy exercise and reinstatement of all the affected employees without any victimization. The petitioners also sought to bring to the attention of the Government through Parliament the following:-
- i. THAT they had been working for Kenya Airways on permanent and pensionable terms in various departments and were members of Aviation and Allied Workers Union-K (AAWU-K) that is mandated to represent workers who are its members in all matters relating to their terms and conditions of service.
 - ii. THAT they had worked for Kenya Airways for diverse durations.
 - iii. THAT the majority of them were young people with young families who solely depended on them and that they had committed their salaries to mortgages and loans.
 - iv. THAT they had gained enough and valuable experience in their course of duty most of which had been at the expense of their employer through trainings/workshops/short term courses.
 - v. THAT a similar exercise was undertaken in 2004 under the same CEO where many of their colleagues were retrenched and a new lot employed immediately, thereby proving that the objective was not to downgrade the wage bill but driven by other motives.
 - vi. THAT over the last one year, the Company had increased pay for its top executives by over 24 percent compared to 10 percent for the unionisable employees.
 - vii. THAT the management and pilots totalling approximately 1000 employees earn approximately 74 percent of the total wage bill compared to the unionisable employees totalling to about 3840 earning approximately 26 percent of the total wage bill.
 - viii. THAT the company had misled the public into believing that its wage bill was Kshs. 13.2 billion, in an attempt to justify the redundancy exercise while the actual wage bill was Kshs. 8.3 billion.
 - ix. THAT over 90 percent of the employees affected by the redundancy exercise were in the category of those taking 26 percent of the total wage bill, whose net result would be insignificant on the total wage bill.

- x. THAT the company made a decision to do fuel hedging (long term fuel purchase contracts) for 5 years, a decision whose consequences had led to high fuel prices for Kenya Airways above the market price, which were being cited to justify redundancies.
- xi. THAT Kenya Airways had been quoted indicating that the employees declared redundant would be taking home a consolidated package of Kshs. 2 million as minimum while the truth was that, most of them would be getting as low as Kshs. 100,000 despite having worked for over 10 years.
- xii. THAT the company provided an overheads account of Kshs. 3 billion in the 2011-2012 financial year to among others, cater for foreign trips that actually takes the bulk of this allocation with top management making unlimited foreign trips with family members, an expenditure that negatively impacts on the profitability of the company.
- xiii. THAT the top executives enjoy monthly pet allowances of over Kshs. 70,000 an amount that is way above the average wage of the unionisable employees, and further the top executives enjoy a monthly spousal responsibility allowance of over Kshs. 300,000.
- xiv. THAT on 1st August 2012, Kenya Airways communicated to all its employees on their intention to commence a redundancy exercise and without prior consultation with the workers union and gave a 9 day notice for those who wished to take an early voluntary retirement.
- xv. THAT among the reasons cited for this envisaged redundancy were unsustainable wage bill, high headcount and high jet fuel costs.
- xvi. THAT while Kenya Airways purports to downsize its workforce, the reality on the ground is that the company has either maintained or increased its manpower levels.
- xvii. THAT Kenya Airways has an ambitious 10 year Strategic Plan, Project Mawingu, to expand its fleet to over 100 aircrafts and to fly to all parts of the world, it is already 3 years into the plan that will keep on demanding for more employees and hence the current redundancy exercise is a huge contradiction.
- xviii. THAT having worked for Kenya Airways for diverse durations, they felt this to be their calling and their future and did not therefore offer/volunteer to be retired early.
- xix. THAT starting 3rd September 2012, they started receiving their dismissal letters from Kenya Airways, indicating that they had been declared redundant effective 4th September 2012, and their payments would be processed upon, among others, undergoing a medical check-up at the Kenya Airways Clinic.
- xx. THAT there appears to have been a deliberate objective to target female staff who had delivered in the last two years, those who were expecting and employees who had work-related injuries and occupational health being treated using Kenya Airways medical cover.
- xxi. THAT some of their colleagues affected by the exercise had been booked for deliveries that were due in a week's time that would ordinarily be covered by the Kenya Airways medical cover. The hospital declined to honour this booking on the strength of the redundancy.

- xxii. THAT one of the affected ladies who was expectant and due for delivery miscarried despite having no recorded complications or conditions.
- xxiii. THAT one of the affected employees was due to fly to India for specialised treatment for a condition that was unmanageable in Kenya and would have enjoyed the Kenya Airways Medical Cover for this treatment.
- xxiv. THAT among those affected was a disabled employee who had served Kenya Airways for over 15 years.
- xxv. THAT the exercise was designed to target current and former union officials and those members who actively participated in the strike action of 2009, whose objective was to agitate for the conclusion of the CBA that would have resulted in the improvement of terms of conditions of service that has been pending for long.
- xxvi. THAT the Company had irregularly outsourced functions to external companies where the CEO holds substantial interests through proxies, without due regard to the established competitive procurement procedures, and that the company had hired expatriates to undertake duties that have traditionally been performed by Kenyans.
- xxvii. THAT the CEO is on his way out of the Company and has attended an interview for position of CEO for Magadi Africa in South Africa, and that he holds an insignificant shareholding of only 5 shares in Kenya Airways which raises serious doubts whether he has the interest of the Company at heart.
- xxviii. THAT the CEO forced the Company to pay salary arrears of Kshs. 798,000 allegedly arising out of a job evaluation exercise for his domestic workers, yet these roles were not part of the job evaluation exercise and are not in the Company structure.
- xxix. THAT among the reasons given for the redundancy exercise was the drastic increase in headcount in the year 2011-2012, a move solely undertaken by the CEO to seemingly justify redundancy since it was not affecting the employees hired during the period in reference.
- xxx. THAT this redundancy exercise was discriminatory, unlawful, irregular, and inhuman and was a cover-up of corrupt deals being undertaken under the watch of the CEO which, if allowed to proceed, will be a travesty of justice and an infringement of the fundamental rights of the affected employees.

7 Therefore, the petitioners prayed that the Government of Kenya through Parliament;

- i. Nullifies the whole redundancy exercise and reinstates all the affected employees unconditionally and without any victimization whatsoever.
- ii. Constitutes an Ad-Hoc committee to investigate the CEO of Kenya Airways on issues to do with outsourcing of various functions to external companies, hiring of expatriates to take over jobs traditionally held by Kenyans, and other unethical practices.
- iii. Suspends the hiring of expatriates and outsourcing of these functions pending the outcome/findings of the investigation.
- iv. Undertakes a forensic audit to uncover the truth.

8 The petition elicited a lot of interest and support from the Members of Parliament. In their contributions, Members overwhelmingly supported the petition and observed that it was raising grave issues of concern. They added that Kenyans had a direct interest in Kenya Airways as a national carrier and by virtue of the Government shareholding, and that they should not be party to, among other concerns preference for expatriates where there was local expertise, and discrimination especially on basis of gender as the retrenchment appeared to be directed at a section of employees mainly the female staff.

Members also observed that the computation of the consolidated severance package was questionable and the affected employees were being offered very little money, with most of them getting as little as Kshs. 100,000 despite having worked for Kenya Airways for many years.

9 The petition was referred to the Departmental Committee on Labour and Social Welfare by the Chair in accordance with Standing Order No. 210. The Committee was expected to Table its report on the same within twenty-one calendar days. Ensuing from the Chair's ruling, the Committee held a meeting on 20th September 2012 to deliberate on its programme of activities.

10 In considering the matter, the Committee took into consideration that Kenya Airways limited is a private company listed on the Nairobi Securities Exchange (NSE) following its privatization in 1996 thus not a State Organ. But while it is a private company, it is still a Kenyan company and as such must comply with the laws of the land. Therefore, in examining the issues raised in petition, the Committee limited its consideration to matters within its powers. In particular, the Committee sought to establish whether the redundancy exercise was carried out in compliance with the Employment Act, 2007 and the Labour Relations Act, 2007. The Committee sought to establish the following issues:-

- i. Justification of the redundancy exercise.
- ii. Notification of the intended redundancy. Whether Kenya Airways conformed to the provisions of the Employment Act, 2007, which provides that notice of any intended redundancy should be given not less than one month prior to the date of intended termination on account of redundancy.
- iii. Consultations on the intended redundancy. Whether Kenya Airways adhered to Collective Bargaining Agreement (CBA) with the Aviation and Allied Workers Union, which provides for consultations on any intended redundancy exercise.
- iv. Procedure used in declaring the workers redundant.
- v. Whether there was fairness in the implementation of redundancy.
- vi. Labour outsourcing.

11 The Committee held a total of eleven sittings whereby it deliberated on the matter and received submissions, presentations and other reports from various witnesses. The Committee met with the following:-

- i. The Petitioners (Former Employees of Kenya Airways affected by the redundancy exercise).
- ii. The Aviation and Allied Workers Union - Kenya
- iii. Central Organization of Trade Unions - Kenya
- iv. The Minister for Transport
- v. The Minister for Labour

- vi. The Permanent Secretary, Ministry of Finance/Treasury
- vii. The Permanent Secretary, Ministry of Transport
- viii. The Acting Chief Executive Officer, Capital Markets Authority
- ix. Kenya Airways Management Team

The minutes of these sittings are appended to this report.

Kenya Airways was uncooperative during the inquiry. Indeed, both the management team and Board of Directors refused to give evidence on the petition under the alleged reason that the matter was *subjudice*.

During the Committee sitting held on 11th October 2012, Kenya Airways management team refused to make any submission on the petition. The Group Managing Director and Chief Executive Officer asserted that discussing the issues raised in the petition would of necessity mean discussing the matters before the Industrial Court, which would be “prejudicial” since the Petitioners had also instituted proceedings before the Industrial Court in the Case No. 1616 of 2012 – Aviation and Allied Workers Union (K) versus Kenya Airways Limited; Minister for Transport; Minister for Labour; and the Attorney General. The matter was due for mention the following day on 12th October 2012.

On its part, the Group Board of Directors refused to appear before the Committee and maintained the position taken by the management that the matter was *subjudice*.

Committee takes great exception to the attempts by the Law Society of Kenya to intimidate the Committee during the inquiry. The Committee wishes to state that any person appearing before a Committee is entitled to the same right or privilege as before a court of law including legal representation. However, the legal representation must have regard for procedure of Committee’s proceedings.

In this regard, the Committee wishes to strongly condemn the conduct of Mr. Kiragu Kimani, the legal counsel who represented Kenya Airways management during the meeting held on 11th October 2012 for his unprofessional conduct and disregard for procedure of conduct of the Committee’s proceedings.

The Committee sought to meet the Federation of Kenya Employers. Unfortunately, the Federation shied away from appearing before the Committee despite being a key stakeholder in industrial relations and labour matters in the Country as well as the matter under consideration.

- 12 The Committee also took into consideration the Report on Petition for Intervention against Kenya Airways Staff Restructuring Programme by the Ministry of Labour dated 5th October 2012.

COMMITTEE FINDINGS

Mr. Speaker Sir,

13 Based on the submissions, presentations and evidence adduced, the Committee made the following findings. That:-

i. **Justification of the Redundancy Exercise**

Like many other airlines globally, Kenya Airways has continued to experience declining revenues principally occasioned by economic difficulties in most markets, unstable fuel prices, increased airport charges, regional geo-political situations, and employees' costs. These airlines have implemented restructuring programmes to enable them cope with the said challenges and remain competitive.

In the case of Kenya Airways, there is evidence that the wage bill has been rising over time. However, in declaring some workers redundant on the grounds of reducing unsustainable wage bill, the management was not candid. The airline had only reported a reduced profit margin but not a loss as contemplated by the definition of redundancy in the Employment Act, 2007.

Redundancy means the loss of employment, occupation, job or career by involuntary means through no fault of an employee involving termination of employment at the initiative of the employer, where the services of an employee are superfluous, the practices are commonly known as abolition of office, job or occupation and loss of employment.

In addition, none of the offices, career or job was being abolished. Indeed, the company went ahead and recruited for certain positions, some of which were held by the staff declared redundant.

Further, the company is still engaged in creating new senior management positions and recruiting to fill them, the company also went ahead to increase the salaries of its top management by 24 percent. Best practice would dictate that other options would be explored to reduce the wage bill. A reduction of the wage bill should begin with a freeze in wage increases for management, followed by a wage cut before embarking on the ultimate step of job losses.

Kenya Airways has categorically stated that it was conducting a staff rationalization exercise. It is the Committee's view that a rationalization process would involve more consultations between the parties themselves and also with the Government. Such exercises have been successfully carried out at the Barclays Bank (1998), and NSSF (2011).

The justification given for the redundancy exercise is high employees' costs. However, the real challenges facing the airline include not just the wage bill but mainly downturn in passenger volumes occasioning sharp shortfall in expected revenue streams, increasingly competitive environment, very high direct operating costs and other overheads which have continued to rise disproportionately to rise in revenues. The Committee attributed the Airline's precarious position to mismanagement, corruption and negligence. It is worth noting that the Airline under the same management has

carried out several retrenchment exercises in the past but still finds itself in the sad state of affairs.

A look at the financial results for the year ending March 2012 will reveal that there was a rise of Kshs. 2.2 billion in employee costs, while there was a staggering rise of almost Kshs. 24 billion in direct operating costs. While most of this was attributed to fuel costs at Kshs. 40.7 billion, there was still another Kshs. 36.5 billion that is not accounted for. This could be including cost of delayed flights, hotel accommodations, misconnected baggage, and cancelled flights. According to European Union regulations (EU Regulation 261/2004) passengers can get up to €600 as compensation for flight delays, which can amount to Kshs. 20 million per delayed/cancelled flight. Irregular outsourcing practices within the company have also been a major avenue for loss of funds.

In addition, the company made a decision to do fuel hedging (long term fuel purchase contracts) for 5 years, a decision whose consequences had led to high fuel costs for Airline above the market price. Fuel costs have also been cited to justify the redundancies. This denied the airline the benefit of price fluctuations.

ii. **Conformation to the provisions of the Employment Act, 2007**

The Act provides that notice of any intended redundancy should be given not less than one month prior to the date of intended termination on account of redundancy.

According to the communication sent by Kenya Airways to the Permanent Secretary, Ministry of Labour and copied to: The District Labour Officer, The Labour Commissioner, The Executive Director of Federation of Kenya Employers (FKE), the National Secretary General of AAWU-K, and the Branch Secretary of the same Union vide letter Ref. DM/093/2012 dated 1st August 2012, Kenya Airways gave a 30-days notice, commencing on 30th August 2012 as letters of separation were issued on 4th September 2012, which suggests that Article 41 of the Employment Act, 2007 was observed.

In the notice however, the employees opting for voluntary retirement were required to make a decision within a period of ten days.

Voluntary Early Retirement is not governed by any laws. However, Article 41 of the Employment Act, 2007 provides that any notice for any separation should be minimum 30 days. Equivalent practice is that other company's notices have been much longer than what Kenya Airways issued.

iii. **Adherence to Collective Bargaining Agreement (CBA) with the Aviation and Allied Workers Union - Kenya (AAWU-K)**

AAWU-K has a valid recognition agreement with Kenya Airways, representing unionisable employees within the company. This agreement clearly outlines issues that are subject to joint consultations, and negotiations, which includes terms and conditions of service.

Further to this, the unionisable workers in the company have a CBA with Kenya Airways, for the period 2010-2012. Some of the clauses in the CBA were however pending negotiation and conclusion, among them, redundancy and, foreign contract staff. The clause on redundancy had therefore not been concluded in the CBA.

There was an attempt for consultations between the parties, which were hampered because there were two factions in the Union, who were entangled in internal leadership wrangles thus no consultations were carried out as there was no meaningful union representation.

The company clearly violated the recognition agreement by embarking on the exercise without consultations with the Union, and in contempt of the fact that redundancy was one of the issues that were pending conclusion in the CBA.

iv. The Implementation Process of Redundancy Exercise

The Committee established that communication to most of the employees who were declared redundant was through short text messages while on sick leave, maternity leave, in hospitals, or on duty out of their stations which, was extremely cruel and barbaric.

There were cases of employees who were in hospitals but were summoned by text messages to receive their redundancy letters. One employee had a premature birth as a result of emotional and psychological trauma while others developed complications despite having no recorded complications or conditions earlier on.

The Committee also established that there was no training/counseling given to the employees in regard to their redundancy prior to the separation, which subjected them to emotional and psychological trauma associated with redundancies. Kenya Airways carried out the exercise hurriedly and even the employees who did not opt for voluntary early retirement were laid off and the letters sent out to them indicated that they opted for the retrenchment.

The issue of social dialogue is critical in ensuring that the exercise is done in a humane way.

The Committee took great exception to the inhumane manner in which the exercise was conducted.

v. Procedure used in declaring the workers redundant

Data made available to the Committee relating to actual implementation of the staff restructuring exercise indicates that of the 546 employees who exited the Airline through the staff rationalization, 98 staff opted to exit through Voluntary Early Retirement while 448 staff were declared redundant.

Kenya Airways did not use any procedure whatsoever in declaring the workers redundant. The Committee would have expected Kenya Airways to probably use Last In First Out (LIFO) or First In First Out (FIFO) principles. The best practice in redundancy is the principle rule of Last In First Out (LIFO). Before getting the court order that temporarily put on hold the retrenchment exercise, Kenya Airways had sent text messages to its employees stating that they would undergo aptitude/psychometric tests with a view to identifying those to be laid off.

The consultants who had been hired by the airline to administer Psychometric tests did not subject every worker to the tests. The company began the tests, and had covered about 5 percent of the entire workforce. When the court order was lifted, the company

never concluded the exercise, and went ahead to hurriedly lay off even those who had not gone through the tests.

Many of the letters sent out to the employees stated that they had opted for Voluntary Early Retirement, which was not the case. These employees who purportedly opted for voluntary early retirement had since certified that they did not opt for it.

It was apparent that there was discrimination and victimization in the redundancy exercise. There was a deliberate objective to target female staff who had been on maternity leave in the last two years, those who were expectant and employees who were unwell including work related injuries and occupational health issues.

In the case of the female employees, the company cited productivity as the reason why they targeted these particular staff which suggests that the company was implying that maternity leave was a basis for declaring one unproductive. In the case of employees with work related injuries, the company used the redundancy exercise to run away from its obligation to compensate them.

Others who were victimized included union officials, shop stewards as well as those who had actively participated in the 2009 strike whose objective was to agitate for the conclusion of the CBA that would have resulted in the improvement of terms of conditions of service that had been pending for long.

vi. Outsourcing of Labour

Outsourcing of labour is an emerging trend in Kenya where both the public and private sectors outsource their non-core functions to independent contractors for purposes of management of labour and as a cost cutting measure. Initially, non-core functions were outsourced but currently even core functions are being outsourced.

In the Kenya Airways situation, the proposed outsourced functions would include ground services. This is an area in which 258 employees were declared redundant followed by 165 employees in flight operations. This in the view the Committee as well as the Ministry of Labour as are core functions for the airline.

The Committee has great reservations regarding this trend as some employers are misusing it leading to unfair labour practices. The practice also negates the principle of 'equal pay for work of equal value' as provided for in ILO Convention No. 100. The practice is also anti-union since short term contracts are issued to outsourcing firms and therefore subjecting workers to relatively less favourable terms of service. In addition, absence of Collective Bargaining Agreements is contrary to the Decent Work Agenda. The practice also casualizes labour thereby denying the workers long-term benefits of service.

Outsourcing of core functions may compromise security of an organization's operations and information. In addition, establishment of different sets of workers with different terms and conditions of employment may lead to disharmony.

vii. Contracting

It is difficult to mention outsourcing of labour in the petition without referring to contracting. Some of the employees declared redundant were replaced by staff hired on contract through Career Directions Limited. These workers are subjected to relatively

less favourable terms of service and are not in a position to engage or consult with their employer as they are not unionisable. Absence of Collective Bargaining Agreements is contrary to the Decent Work Agenda, contracting leads to casualization of labour thereby denying the workers long-term benefits of service; and establishment of different sets of workers with different terms and conditions of employment may lead to disharmony.

viii. Foreign Staff

Kenya Airways is in the process of hiring flight attendants from India, Rwanda and Ghana in addition to the existing crew from Ghana, Cameroon and Thailand. These foreign nationals employed by Kenya Airways, and working locally are mostly cabin crew, a skill which is sufficient locally.

The justification given for employment of foreigners as cabin crew is culture and enhanced service, but a comparison with Ethiopian Airlines, British Airways, KLM, Air France, and South African Airways clearly showed that these established carriers do not employ foreigners to these positions. Emirates and Qatar Airways employ foreigners since they have a shortage of their own citizens who can perform these jobs.

The terms of employment of locals are inferior and discriminatory compared to those of foreigners. In addition, foreigners are trained for free by Kenya Airways at the Pride Centre, given free accommodation during training and guaranteed employment with the airline thereafter, at salaries which are much more superior to those of local staff. Besides, the airline also pays for their work permits and crew certificates issued by the Ministry of Immigration and Registration of Persons; and Kenya Civil Aviation Authority respectively.

This is happening in a country that has very high unemployment rates, and which is struggling to keep the pace in achieving vision 2030. Annual reports indicate that job creation still falls way below the target if the vision is to be achieved. This issuance of work permits to non-Kenyan nationals is happening while Kenya Airways retrenches the same cadre of Kenyan workers, who have for more than a decade made sacrifices in a bid to help achieve Kenya Airways' vision, 'To consistently be a safe and profitable airline that guarantees World Class service: The Pride of Africa'.

The Committee took exception to this exportation of Kenyan jobs as these work permits and crew certificates issued to foreigners had directly led to the retrenchment of Kenyans who have performed the same tasks for years.

COMMITTEE OBSERVATIONS

- 14 Based on the above findings, the Committee made the following observations. That:-
- i. Considering that the notice of the proposed redundancy was given on 1st August 2012 and letters of separation issued on 4th September 2012, the duration lapsed suggests that the minimum requirement in the Employment Act, 2007 was fulfilled.
 - ii. Clause on redundancy in the registered CBA had not been concluded and agreed upon by the Aviation and Allied Workers Union - Kenya and Kenya Airways.

- iii. Although Kenya Airways may have complied with the minimum provisions of the law, the CBA was not observed. There were no meaningful consultations during the process between Kenya Airways and AAWU-K. There was some form of engagement though. However, the union was pulling at cross purposes during the period. The faction led by the Union Chairperson had purportedly suspended the Union Secretary General and communicated the same to Kenya Airways management and the Registrar of Trade Unions. The Union faction led by the Chairperson did not participate in the negotiations. Kenya Airways management took advantage of the Union leadership wrangles for lack of meaningful Union representation.
- iv. There was also lack of fairness in implementing the staff lay off exercise. The process was inhumane, cruel and barbaric.
- v. The severance package presented in the retrenchment notice had not been negotiated nor agreed on between management and the staff union.
- vi. Kenya Airways did not use any procedure whatsoever in declaring the workers redundant. There was discrimination and victimization in the exercise with a deliberate objective to target female staff who had been on maternity leave in the last two years, those who were expectant and employees who were unwell including occupational health issues and work related injuries.

Others who were victimized included union officials, shop stewards as well as those who had actively participated in the 2009 strike.

The best practice in redundancy is the principle rule of Last In First Out (LIFO). In addition, if the company was recruiting thereafter, the best practice would be to employ the same employees first before considering others.

- vii. Some of positions declared redundant have since been filled through outsourced services implying that the positions have not been abolished but were being indirectly transferred to outsourcing firms.
- viii. Some employers are abusing the emerging trend of outsourcing of labour leading to unfair labour practices. The practice negates the principle of 'equal pay for work of equal value' as provided for in ILO Convention No. 100. The practice is also anti-union since short term contracts are issued to outsourcing firms and therefore subjecting workers to relatively less favourable terms of service; absence of Collective Bargaining Agreements is contrary to the Decent Work Agenda; and it leads to casualization of labour thereby denying workers long-term benefits of service.
- ix. Although the trend of labour outsourcing seems to be a norm being entrenched in Kenya's labour management systems, there is no policy or legal provisions to regulate it. In the absence of regulation, outsourcing may be exploitative to the rights of workers contrary to the spirit and provisions of the Constitution.
- x. Outsourcing of core functions may compromise security of an organization's operations and information. Establishment of different sets of workers with different terms and conditions of employment may lead to disharmony.
- xi. The airline's precarious position was not mainly due to labour costs but largely due to other factors including mismanagement, corruption and negligence. This is considering

that the Airline under the same management has carried out several retrenchment exercises in the past but still finds itself in the sad state of affairs.

- xii. Irregular outsourcing practices within the company have been a major avenue through which funds are lost and the two entities, Amboseli Limited and Samburu Limited registered in Caymans Island were questionable.
- xiii. Kenya Airways management did not explore all fundamental options available for reducing its wage bill including introducing pay cuts before embarking on the ultimate step of job losses.
- xiv. The work permits and crew certificates issued to foreigners by the Ministry of Immigration and Registration of Persons; and Kenya Civil Aviation Authority respectively had directly led to the retrenchment of Kenyans who have performed the same tasks for years.
- xv. Other established airlines elsewhere hardly employ foreigners to positions such as cabin crew apart from those where there is shortage of their own citizens who can perform the jobs, such as Emirates and Qatar Airways.
- xvi. The government's representation in the Kenya Airways Board of Directors by the Ministries of Transport and Finance is wanting and it does not represent the public interest.
- xvii. The process of carrying out the redundancy exercise was flawed in the separation of the two parties and not in line with the principles of justice and equity as per provisions of section 45 (4) (b) of the Employment Act, 2007, due consideration of an appropriate and commensurate form of compensation will suffice.
- xviii. AAWU had already referred the issue of redundancy to the Industrial Court. The Court has powers to order for reinstatement, award damages, give declaratory order or any other order it deems just and fair to award. The industrial court also has discretionary powers to refer the matter to the Labour Commission for fact finding and recommendations not based on legal technicalities.

COMMITTEE RECOMMENDATIONS

- 15 In view of the above observations, that the process of declaring the employees redundant by the management of Kenya Airways was flawed and without prejudice to the matter in Court referred by the Union, the Committee recommends that;
- i. The whole redundancy exercise should be nullified and the affected employees reinstated with full benefits unconditionally and without any victimization whatsoever.
 - ii. The offices abolished should not be filled through outsourcing as this negates the principle of redundancy.
 - iii. The Government should urgently formulate policies to regulate both labour outsourcing and contracting.

- iv. The Ministry of Immigration and Registration of Persons; and Kenya Civil Aviation Authority should be investigated by the relevant authorities to establish whether the work permits and crew certificates issued to foreign workers are done within the existing legal framework to ensure that their actions protect, and do not in any manner undermine the livelihood of the workers in the country.
- v. The Ministry of Immigration and Registration of Persons; and Kenya Civil Aviation Authority should stop issuance of work permits and crew certificates to foreign workers for jobs where there are sufficient skills locally.
- vi. Kenya Airways management should train its Kenyan employees in foreign languages as opposed to employing foreign nationals. Besides, the employees could learn the languages.
- vii. Kenya Airways should have regard for its workers constitutional rights and fundamental freedoms relating to labour relations. The airline should respect employee's rights to fair labour practices in line with provision of Article 41 of the Kenya Constitution.
- viii. Kenya Airways should have regard for the Collective Bargaining Agreement signed between the airline and Kenya Aviation and Allied Workers Union.
- ix. Kenya Airways management should stop victimizing its staff on the basis of gender and health status. It should also stop victimizing Kenya Aviation and Allied Workers Union officials.
- x. Kenya Airways Board of Directors; and the Government should immediately institute investigations into the mismanagement, corruption, negligence and alleged sexual harassments within the airline's management and take requisite action to safeguard the interest of the shareholders and ensure investor confidence.
- xi. Kenya Airways Board of Directors; and Government should immediately institute investigations into the relationship between Kenya Airways and Amboseli, and Samburu Companies registered in Cayman Islands to protect the interest of shareholders and ensure investor confidence.

16 ACKNOWLEDGEMENTS

The Committee is grateful to the Speaker for support granted in executing its mandate; to the Office of the Clerk for facilitating and providing the necessary logistical and technical support; and Hon. John Mututho, MP for tabling the petition in the House on behalf of the petitioners.

The Committee is also grateful to the Ministers for Transport and Labour; Acting Chief Executive Officer, CMA; The Petitioners; The Aviation and Allied Workers Union - Kenya; and the Central Organization of Trade Unions- Kenya for appearing before the Committee.

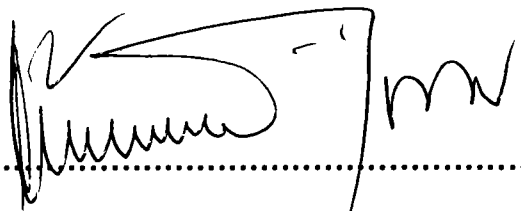
providing the necessary information and responding to issues raised by Members during consideration of the petition.

The Committee wishes to register its disappointment regarding the submissions by the Minister for Transport; Permanent Secretaries; Ministries of Finance/Treasury, and Transport as the three were not candid in responding to issues raised by Members.

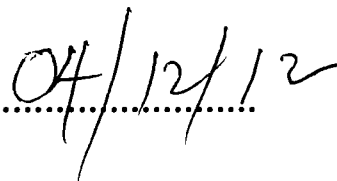
I wish to confirm that the findings and observations of the Committee in this report were arrived at after extensive deliberations and that recommendations were unanimous.

Mr. Speaker Sir,

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Labour and Social Welfare to Table this Report on the Petition by the Hon. John Mututho, Member of Parliament for Naivasha Constituency in the House on Thursday, 13th September 2012 on the subject of ongoing redundancy at Kenya Airways Limited.

SIGNED 

**THE HON. CHARLES KETER, MP
ACTING CHAIRPERSON
DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE**

DATE: 

INTRODUCTION

- 17 In a letter Ref. DM/093/2012 of 1st August 2012 to the Permanent Secretary, Ministry of Labour and copied to: the District Labour Officer; Labour Commissioner; Executive Director of Kenya Employers (FKE); National Secretary General of Kenya Airways Aviation and Allied Workers Union-Kenya (AAWU) and the branch Secretary of the same Union; the Kenya Airways Managing Director gave a notice of a proposed Kenya Airways staff rationalization exercise. The Director pointed out the large increase in staff headcount in 2011/2012, significant staff annual salary increments, and unsustainable Collective Bargaining Agreement (CBA) negotiations, which had increased the Airline's staff costs to unsustainable levels.

In an attempt to address the challenge of high staff-related costs, the Kenya Airways Managing Director informed these parties of a staff restructuring exercise. He pointed out that the exercise would result in staff redundancies, and staff outsourcing where applicable. He further reported that less than 650 staff would be affected.

- 18 In response to Kenya Airways notification of the intended redundancy, one faction of the Union, led by the Secretary General namely Mr. Bonne Baraza engaged the Management of Kenya Airways to dialogue on the subject matter on 3rd and 10th August 2012. The second faction led by the Chairperson, Ms. Perpetua Mponjiwa instituted proceedings at the Industrial Court on the same matter. The Court issued a temporary injunction. When the injunction was lifted, this enabled Kenya Airways to proceed with implementation of the intended exercise.

In the notice of the intended redundancy, Kenya Airways had proposed to apply the following criteria in identifying the staff to be affected; The employees' fit in the revised Kenya Airways organization structure based on their skills and experience, standard of work performance, displayed work initiative, and respective competencies defined for different roles in the organization design. The Airline undertook to comply with the Labour laws and the Collective Bargaining Agreement (CBA).

- 19 In the Kenya Airways notice of intended redundancy dated 1st August 2012 to staff, workers were encouraged to consider the option of Voluntary Early Retirement (VER) within 10 days i.e. by 10th August 2012. On 4th September 2012, the affected staff were issued with separation letters, which was also their last day of work. On 6th September 2012, the Chairperson's Union faction petitioned the Office of the Prime Minister for Intervention on the matter.

In addition, on 13th September 2012, the affected staff presented a petition to Parliament through the Hon. John Mututho, Member of Parliament for Naivasha Constituency and the petition was referred to the Departmental Committee on Labour and Social Welfare.

KENYA AIRWAYS LIMITED

- 20 Kenya Airways Limited is listed on the Nairobi Securities Exchange (NSE) under the commercial and services sector in the Main Investment Market Segment. It was established after January 1977 following the collapse of the East African Community and East African Airways. The airline was privatized in 1996 and issued an Initial Public Offer (IPO) in the same year in strategic partnership with KLM Royal Dutch Airlines. The Government of Kenya which is the largest shareholder owns 29.8 percent and the second largest shareholder –KLM Royal Dutch Airlines owns 26.73 percent of the company.
- 21 As at August 2012, Kenya Airways had 35 aircrafts operating 3 domestic, 43 African, 8 Middle East and Asia, and 4 European destinations. Therefore, the Airline currently operates on a total of 58 destinations.

During the last three years, the company has increased fully owned aircrafts and on operating leases to service the expansion in and outside Africa. The Airline has entered into full-scale alliances, individual partnerships as well as code-sharing agreements to optimize its operational capacity. Kenya Airways is a full member of a global alliance of international airlines- the Sky Team Alliance through which it is able to reach a large number of destinations.

Through its strategic partnership with KLM Royal Dutch Airline, Kenya Airways is able to access a large number of European destinations and share revenues with KLM. Furthermore, the airline cooperates with Precision Air, which facilitates both airlines to feed and de-feed one another's operations at each other's hub. Kenya Airways also has code sharing agreements with other airlines such as Air Mauritius, Air Botswana, Air Nigeria, Jet Airways, LAM Mozambique, Qantas and TAAG Angola.

- 22 In June 2012, the national carrier, Kenya Airways targeted to raise Kshs. 6 billion through a rights issue but managed to raise Kshs. 4.487 billion which represents a 70 percent subscription performance. The proceeds were used to finance pre-delivery payments for a fleet of nine Boeing 787-800 Dream liner aircrafts, the first of which is expected to join the airline fleet in 2014.

Kenya Airways management is currently implementing a 10-year Growth Plan which seeks to grow its fleet from 35 aircraft to 119 by the year 2021, and increase its destinations from 58 to 115 during the same period.

CONDUCT OF KENYA AIRWAYS DURING THE INQUIRY

- 23 Kenya Airways was uncooperative during the inquiry. In deed, both the Management team and Board of Directors refused to give evidence on the matter under the guise that the

matter was *sub judice*. It is worth noting that during deliberations on the matter in the House on 18th September 2012, there was a point of order from a Hon. Member on whether or not the matter was *sub judice*, and the Chair upheld the ruling of 13th September 2012, that the Committee should go ahead and conduct its hearings and Table its report to the House.

It is also worth noting that, Kenya Airways did make a submission on the matter to the Committee of Inquiry appointed by the Labour Commissioner following a directive by the Office of the Prime Minister for the Ministry of Labour to delve into the matter following a petition by the Aviation and Allied Workers Union on 6th September 2012.

In addition, Kenya Airways has also issued several statements in the sections of the media responding to what they referred to as misleading, wild and unsubstantiated media reports and allegations regarding the Staff Rationalization programme. In the statements, Kenya Airways basically stated its position on the various issues that were the subject of the petition.

Nevertheless, the Airline did refuse to make any submission to the Committee arguing that discussing the issues raised in the petition would of necessity mean discussing the matters before the Industrial Court, which would be "prejudicial" since the Petitioners had also instituted proceedings before the Industrial Court in the Case No. 1616 of 2012 - Aviation and Allied Workers Union (K) versus Kenya Airways Limited; Minister for Transport; Minister for Labour; and the Attorney General.

Since Kenya Airways failed to make any submission to the Committee, the Committee had to rely significantly on data availed to the Ministry of Labour by the Kenya Airways management on the subject matter.

PERFORMANCE OF KENYA AIRWAYS

Introduction

- 24 Principal activities of the airline are international, regional and domestic carriage of passengers and cargo, provisions of ground handling services to other airlines and handling of import and export cargo.

Kenya Airways Staff and Costs

- 25 Kenya Airways staff decreased yearly from 4, 503 staff in 2007 to 4,122 staff in 2010 and increased thereafter reaching 4,358 by March 2011 and 4,774 by August 2012.

Kenya Airways Unionisable cost increased steadily from Kshs. 6.10 billion in 2008/09 to Kshs. 7.33 billion in 2009/10. The cost increased to Kshs. 8.66 billion in 2010/11 and Kshs. 10.99 billion in 2011/12. The Management staff cost has also increased but less sharply over time from Kshs. 1.51 billion in 2008/09 to Kshs. 2.99 billion in 2011/12. The cost of wages and allowances for casual employees increased from Kshs. 5.1 million in 2008/09 to Kshs. 12.1

million in 2009/10. The wage bill cost for this category of staff increased to Kshs. 19.5 million in 2010/11 and thereafter dropped to Kshs. 13.7 million in 2011/12.

Kenya Airways Staff Rationalization Exercise

- 26 Regarding the actual implementation of the staff restructuring exercise, data availed to the Ministry of Labour indicates that 98 staff opted to exit the Airline through Voluntary Early Retirement (VER) while 448 staff were declared redundant. This suggests that a total of 546 staff were identified to exit the Airline through staff rationalization exercise. The distribution of these staff was as follows;

Table 1: Kenya Airways Redundant and VER Staff

	Department	Number of Staff Affected (VER)	Number of Staff Affected (Redundancy)	Total
1.	Chief Operating Officer	9	47	56
2.	Commercial	7	2	9
3.	Finance	8	21	29
4.	Flight Operations	13	152	165
5.	Ground Services	52	206	258
6.	Director's Office	3	-	3
7.	Technical	6	17	23
8.	Human Resources	-	1	1
9.	Information Systems	-	2	2
	Total	98	448	546

- 27 The management of Kenya Airways stated that among others, performance related criteria were applied in identifying redundant staff within its departments. It was apparent that the largest numbers of staff to exit the Airline were mostly from Ground Services and Flight Operations departments. However, from the evidence presented by various witnesses, the Committee established that Kenya Airways did not use any procedure whatsoever in declaring the workers redundant. Besides, there was victimization on the basis of gender, health and membership and participation in the workers' union among other factors.

The Committee would have expected Kenya Airways to probably use Last In First Out (LIFO) or First In First Out (FIFO). The best practice in redundancy is the principle rule of Last In First Out (LIFO). Before getting the court order to put on hold the retrenchment exercise, Kenya Airways had sent a text message to its employees stating that they would undergo aptitude/psychometric tests with a view to identifying those to be laid off.

Kenya Airways Staff Level after Rationalisation

- 28 If the 546 staff exits the Airline, staff levels shall thereafter revert towards the 2007-2011 staff downsizing trajectory. This will positively affect the Airline's profit levels, all other factors constant. Information availed to the Ministry of Labour by Kenya Airways Management indicates that other international airlines have also implemented similar restructuring interventions to cope with challenges of cost escalation affecting the airline industry globally.

These airlines include Delta which in June 2012 engaged in investment of Jet A1 fuel refinery, American Airlines which in February 2012 cut down 33,000 employees out of its 88,000

employees, Air France-KLM which in January 2012 committed to cut down 5,122 employees (or by 10.4 percent) by the end of 2013, Oantas which lay off 5 percent of its cabin crew in January 2012, and Gulf Air which embarked on staff optimization, contract re-negotiation and streamlining of its processes from July 2010.

Other strategies adopted by airlines to mitigate high operational costs include acquisition of better efficiency B738s, owning hotels and catering facilities, route network rationalization, renegotiation and new collective employee contracts among other measures

MINISTRY OF LABOUR'S POLICY REGARDING REDUNDANCY

29 The Ministry of Labour's Policy position regarding redundancy is informed by Section '40. (1) of the *Employment Act, 2007*, which stipulates that an employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions –

- a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
- b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
- c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
- d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
- e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
- f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
- g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.

30 The Ministry's position is further informed by Section 62 (4 and 5) of Labour Relations Act, 2007 which provides that:

- a) if the issue in dispute concerns the redundancy of one or more employees, a trade union may report a trade dispute to the Minister at any stage after the employer has given notice of its intention to terminate the employment of any employee on grounds of redundancy.
- b) The reporting of a trade dispute by a trade union under subsection (4) does not prevent an employer from declaring employees redundant on the expiry of notice of intention to declare the employees redundant.

CONSTITUTIONAL RIGHTS AND FUNDAMENTAL FREEDOMS RELATING TO LABOUR RELATIONS

- 31 The Constitution of Kenya 41(1) provides that every person has a right to fair labour practices
- (2) Every Worker has the right –
 - a) to fair remuneration;
 - b) to reasonable working conditions;
 - c) to form, join or participate in the activities and programmes of a trade union; and
 - d) to go on strike.
 - (3) Every employer has the right –
 - e) to form and join an employers organisation; and
 - f) to participate in the activities and programmes of an employers organisation.
 - (4) Every trade union and every employers' organisation has the right-
 - a) to determine its own administration, programmes and activities;
 - b) to organize; and
 - c) to form and join a federation.
 - (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining."

RATIONALIZATION, RETRENCHMENT AND REDUNDANCY

Rationalization

- 32 Rationalization is the selling off or closing down some plants or units to reorganize a firm's operations to be more in line with its core competencies, in the interest of efficiency, or as a cost cutting measure. It is often used as a euphemism for firing employees.

Retrenchment

- 33 Retrenchment at work occurs when an employee's employment is terminated through no fault of his/her own. It usually involves a reduction of the workforce.

Redundancy

- 34 Redundancy on the other hand, involves a reduction of positions as a result of a number of factors. A person cannot be declared redundant but a position which a person is holding can be declared vacant. The employer makes a position redundant when its duties are no longer needed to be done by anyone. Once the position is redundant, the person doing its duties may either be redeployed or retrenched.
- 35 The biggest difference between retrenchment and redundancy is that retrenchment targets people, whilst redundancy targets positions. It is possible to declare one position redundant and therefore only one employee loses his or her job. But it is unlikely that only one employee will be retrenched. Usually retrenchments affect a number of people at the same time.

Reasons for Making a Position Redundant

- 36 A company's reasons for declaring a position redundant must be genuine and the company must be able to prove their genuineness. Some of the reasons for redundancy and retrenchment include:-
- i. A new organizational chart
 - ii. Financial records showing losses
 - iii. Figures showing how much money a redundancy will save
 - iv. Prove that the company considered other options, such as another position, shorter hours (or if merging positions, longer hours), changing work arrangements, re-training, offering early retirement
 - v. The business has to reduce the size of its workforce to save it from going under
 - vi. The business no longer needs certain skills or duties to be performed
 - vii. Sale of business and general restructure
 - viii. Insolvency or bankruptcy
 - ix. Relocation of businesses, mergers or takeovers
 - x. An organization's decision to restructure the company
 - xi. Technological change
 - xii. Lack of demand for products or services
 - xiii. Several changes such as the structure of the markets (tariffs or exchange rates)

The Main Steps for a Redundancy and Retrenchment

- 37 Any company intending to undertake redundancy or retrenchment must do the following:-
- i. A preliminary investigation to make sure the redundancy or retrenchment is genuine. This involves taking a close look at other options and how the business operates. When considering which positions to make redundant a company should consider what skills are least needed at the time of redundancy and retrenchment and what skills the company will need when there is a recovery (if the company is in a downturn). This means reducing or eliminating positions that make the least contribution to safety, compliance or income. Other options are reducing positions with skills easiest to replace or duties that can be moved to other positions.

- ii. Checking the employee's awards and agreements (and any workplace policies and employment contracts) for notice periods, payments and the correct procedures. Errors here could mean claims for unlawful or unfair dismissal later.
- iii. Holding consultations with staff and unions and keeping a written record of what was discussed during the meetings.
- iv. Deciding between voluntary or compulsory redundancies.
- v. Using fair selection criteria (e.g. performance) and transparent processes. Keeping people up to date to maintain trust and respect.
- vi. Prepare redundancy materials, payments and support, and farewell employees with respect.
- vii. Give the minimum notice period as a legal requirement or provide payment in lieu of notice. If the company does not advise the employee in writing, or gives them a too short notice period, this may be a breach of the law.
- viii. If individuals on long-term leave (such as parental or long service leave) are being retrenched, the company should ensure the process for selection is documented and transparent, and not based on discriminatory grounds.

Selecting Employees for Retrenchment

38 Employees are selected for retrenchment based on several factors.

- i. Commonly, employees are selected based upon their length of service with the organization, their future potential or their performance. The length of service with the organization usually refers to the statement 'Last In, First Out' (LIFO). The LIFO selection method for retrenchment aims to protect employees who have been with the company for longer time. This method might seem fair to the employee who has served a longer time, however, it may not be in the best interests of the company.
- ii. Another approach is 'First On, First Off,' which aims to create opportunities by removing older employees. This might be problematic as the level of experience might be reduced and loyalty towards a company will be undermined.
- iii. Employees could also be chosen based upon their job performance. This method aims at removing poorly performing employees first. This would also be based upon the performance appraisal system of the organization. Organizations using this system will have to provide employees with feedback and opportunities for improvement to ensure fairness.
- iv. Evaluating the future potential of employees and retrenching those with least potential first. This method relies on performance reviews and similar to job performance, it requires procedural fairness.
- v. Retrenchment can also be voluntary, whereby employees who want to be made redundant are provided with the opportunity to do so. Voluntary redundancy can also occur when an employee is offered financial incentives to leave a job. This method of managing layoffs encourages employees for redundancy. However, this might result in best employees (individuals the company wants to keep) leaving.

EVIDENCE ON THE ONGOING REDUNDANCY EXERCISE AT KENYA AIRWAYS LIMITED

EVIDENCE BY THE FORMER EMPLOYEES OF KENYA AIRWAYS AFFECTED BY THE REDUNDANCY EXERCISE

39 The following former employees of Kenya Airways appeared before the Committee on 24th September 2012;

- | | | |
|-----------------------------|---|-----------------------------|
| i. Ms. Nancy Musalia | - | Ex Customer Service, Ground |
| ii. Ms. Judith Pius | - | Ex Customer Service, Ground |
| iii. Ms. Violet Kiguhi | - | Ex Customer Service, Ground |
| iv. Mr. Samwel Odhiambo | - | Flight Attendant |
| v. Ms. Lilian Achieng Asewe | - | Ex Flight Attendant |
| vi. Mr. David Mavua Musembi | - | Ex Flight Attendant |
| vii. Mr. Kennedy Wekesa | - | Ex Flight Attendant |
| viii. Mr. David Nyasani | - | Ex Flight Attendant |
| ix. Mr. Julius Chacha Mwita | - | Ex Flight Attendant |
| x. Capt. Patrick Waweru | - | Captain |
| xi. Mr. Moses Ndiema | | |
| xii. Mr. Timothy Muchiri | | |

They adduced evidence as follows:-

a) Redundancy

- i. On 1st August 2012, Kenya Airways sent an internal memo reference no. 035 to staff written by the Group Managing Director and CEO. The memo stated in part that the company would carry out a staff rationalization exercise. The memo gave staff ten days to make a life changing decision regarding voluntary early retirement while letters of separation for the workers declared redundant were issued on 4th September 2012.

The memo contained an appendix of how the computation for payments would be carried out, following the Collective Bargaining Agreement (CBA) of 2010. The memo further stated that after the staff rationalization, Kenya Airways would carry out counseling to the affected staff.

- ii. In total 600 employees were retrenched out of which, about 125 were said to have volunteered to proceed on early retirement.
- iii. The Group Managing Director and CEO had nevertheless, a year before in a memo dated 3rd August 2011 written to all Staff stated that that the management had at no time contemplated declaring any redundancies in the Company. He added that in fact, the company was recruiting to match its continued expansion.
- iv. 100 employees were recruited on the week that ended on 22nd September 2012 just after the affected staffs were laid off, ironically for the same positions that were being held by the staff who had been declared redundant.

b) Foreign Staff

- i. Kenya Airways requires that Kenyans pay over Kshs. 200,000 to be trained at the Pride Centre, Embakasi whereas, foreign employees are trained for free at the centre, are accommodated in five star hotels in Nairobi during their training and are guaranteed employment with the company thereafter.
- ii. The airline had stated that they intended to have about 400 foreign employees. So far they had recruited from Thailand, Ghana, Cameroon, India, Uganda and Rwanda. These foreign staff are employed mainly as cabin crew, a job whose minimum requirement is Kenya Certificate of Secondary Education (KCSE) mean grade C (Plain), hence whose skills are abundant locally.
- iii. The terms of employment for locals are inferior and discriminatory compared with those of foreign staff. The foreigners are paid a basic salary of approximately Kshs. 120,000 while Kenyans get about Kshs.35,000 and they are employed on a contractual basis through Career Directions Limited. Some of the foreign staff had been working with KQ since 2007 and others were promoted without any interview process.

c) Wage Bill

The airline had indicated that the purpose of the retrenchment was to cut down on the high wage bill but at the same time, it had continued to recruit foreigners, and new staff under the outsourcing company, Career Directions Limited.

d) Outsourcing

- i. Kenya Airways had stated that it would outsource labour through Career Directions Limited. On 31st July 2012, all interns who had been informed that they would be confirmed with the company on completion of their internship were summoned to a meeting and forced to sign new contracts with Career Directions, with the threat that those who did not sign up would lose their internship status.

Some were informed that they would work under KQ while others were informed that they would work under Jambo Jet having signed agreement forms with Career Directions Limited.

e) Relationship Between Jambo Jet Limited and Kenya Airways

- i. The company's advocate, Obura Mbeche had claimed that Kenya Airways and Jambo Jet Limited were two distinct corporate entities, but the question that begs, is why Kenya Airways was using its resources to train Jambo Jet staff.

f) Cruel and Inhuman Practices

- i. The exercise of laying off the employees was done hurriedly in a cruel and inhumane manner. The notice given was very short as the memo was written on 1st August 2012 and the staff were required to clear with KQ by 10th September 2012. However, due to the restraining order by the industrial court, the process was delayed.

The airline seemed to be in a hurry to get rid of employees who had been injured in the course of their duties, and those who were expectant or on maternity leave. The Company also targeted union officials, shop stewards and other active union members as a way of silencing the union. Those who had participated in the 2009 industrial action were clear targets in the retrenchment exercise. In addition, the company had in

the past sacked some union officials for having voiced concerns over malpractices within the organization.

- ii. Communications to staff at Kenya Airways including sackings is mostly carried out through short text messages. Some staff got their text messages while they were out of the country on duty, on sick leave or maternity leave. This could have compromised security for passengers like it happened in Botswana but the management did not have passengers' security concerns in consideration.

g) Kenya Airways Expansion Programme

Kenya Airways has embarked on a 10 year strategic plan which began in 2010. The plan states that the company would increase the number aircrafts as well as employees. Indeed, the Airline has already embarked on acquisition of planes in preparation for a massive fleet expansion that would see it triple its fleet to about 105 aircraft in ten years. The plan thus makes a mockery of the whole retrenchment exercise.

h) Personal Experiences

1. Mr. Julius Chacha Mwita - Ex-Flight Attendant informed the Committee the following:-

- i. On 4th May, 2010 while preparing to fly to N'doula on flight KQ.578, he suffered a back injury just before departure. Captain V. Watuku who was scheduled to fly the aircraft called for a doctor who attended to him. He was later taken to Aga Khan Hospital in an Ambulance where he was admitted for three days. He was discharged on 6th May 2010 and put on physiotherapy for about eleven sessions after which he was cleared to resume work. The back pain persisted and he kept visiting the JKIA clinic, until around May 2011, when the pain disappeared. On 8th July 2012, the pain reappeared and he was given a three-day sick-off and when he was scheduled to report back to work on 11th July 2012, the back pain deteriorated and was referred to Prof. L. N. Gakuu of Menelik Clinic who sent him to Nairobi MRI Centre for an MRI scan. The scan indicated that he had degenerated discs and he was given one week sick-off.
- ii. He continued with sick off and light duties interchangeably until September 2011 when he was sent for another MRI scan and the results showed that the status quo remained. In late December 2011, he was put on complete sick off indefinitely and his condition declared a permanent disability. He was advised to undergo surgery but he was not keen on going through surgery. Dr. J. Munyi, Head of Medical Services at KQ requested for a progress report which was given on 4th July 2012 and it recommended that he continues with medications and only carries out light duties and later be retired early on medical grounds. The KQ doctor, Dr. J. Munyi referred him to a different doctor who gave the same diagnosis.

2. Ms. Violet Kiguhi an Ex-Customer Service - Ground informed the Committee the following:-

She believed she was terminated because she was expectant. She received a text message from the flight controller asking her to attend a staff rationalization meeting on 4th September 2012 where the staff present were informed that they had been rendered redundant and that their services were no longer required by Kenya Airways. However, most of the colleagues who were also expectant and who too were declared redundant were either at home or in hospitals and therefore did not attend the meeting.

3. Mr. Kennedy Wekesa an Ex-Flight Attendant informed the Committee that:-
He was declared redundant on the 4th September 2012. He took his sick daughter to the JKIA clinic thereafter but could not be attended to as the airline promptly discontinued the medical cover services to those who had been laid off.
4. Ms. Lilian Achieng Asewe an Ex-Flight Attendant informed the Committee that:-
 - i. She worked as a cabin crew but when she became expectant, she got deployed to the Pride Centre. In the course of her work, some managers would ask her why she decided to become pregnant. She felt that this was an intimidating question that seemed to suggest that if one works for KQ, then they should not get pregnant.
 - ii. Unfortunately, she got preterm labour in July 2012 and lost her baby. After the loss, she stayed at home for three weeks before resuming duty. Upon her return, she was informed by the manager that she was required to explain why she exceeded her thirty days annual leave by seven days. The annual leave days were the days that she was in hospital and the days she took to recover after the loss of her baby. She was asked to pay for the seven days and she advised that they be recovered from her salary.
 - iii. She received a text message asking her to attend a meeting where the Director of Operations informed those present about retrenchment programme and informed them that there would be three categories; those who would be retained; redeployed; and retrenched. Finally, she received a letter informing her she was one of the employees declared redundant.
5. Captain Waweru Patrick Mwangi informed the Committee the following:-
 - i. He had worked for the airline for seventeen years and was grounded for unearthing a corruption scandal involving employment of pilots.
 - ii. The Committee noted that he was not among the petitioners who had signed the petition under consideration and further that his case was different from the matter before the Committee. The Committee therefore advised him to prepare a summary of his submission for presentation to the Committee at a later meeting.

EVIDENCE BY THE AVIATION AND ALLIED WORKERS UNION - KENYA (AAWU-K)

40 The following Members of the Aviation and Allied Workers Union-Kenya (AAWU-K) appeared before the Committee on 24th September 2012.

- | | | |
|-----------------------------|---|---------------------------------------|
| i. Ms. Perpetua Mponjiwa | - | Chairperson |
| ii. Mr. Jackson Akenga | - | Branch Secretary |
| iii. Ms. Ruth Kioko | - | Cabin Crew Branch Treasurer |
| iv. Ms. Judith Rweria | - | Cabin Crew Branch Committee Member |
| v. Mr. Samwel Abilah | - | Cabin Crew Deputy Branch Secretary |
| vi. Mr. Julius Chacha Mwita | - | Cabin Crew Branch Executive Committee |

They informed the Committee as follows:-

- i. The AAWU-K has had a valid recognition agreement with KQ since 2006. The AAWU-K got into a Collective Bargaining Agreement (CBA) with KQ for the period 2010-2012.

The agreement clearly outlines issues that are subject to consultations and negotiations, which includes terms and conditions of service. However, the CBA also contained clauses that were pending negotiations and conclusion, among them redundancy and foreign contract staff.

Kenya Airways clearly violated the recognition agreement by embarking on the redundancy exercise without consultations with the union, and in contempt of the fact that redundancy was one of the issues that were pending conclusion in the CBA.

- ii. KQ had also been issuing warning letters to workers erratically. On two occasions, some ten and another thirty-two cabin crew were sacked at a go and interns employed through Career Directions Limited thereafter to replace them.
- iii. The relationship between the AAWU-K and KQ has been unfriendly. The Union cannot even negotiate with the Group CEO or the Human Resource Manager directly.
- iv. The AAWU-K was shocked, when they got information that KQ had given workers ten days notice to make the life changing decisions, whether or not to voluntarily retire early. KQ did not follow section 40 of the Employment Act, 2007 that states;

'40. (1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—

- a) *where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;*
- b) *where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;*
- c) *the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;*
- d) *where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;*
- e) *the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;*
- f) *the employer has paid an employee declared redundant not less than one month' notice or one month's wages in lieu of notice; and*

- g) *the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.*
- 2) *Subsection (1) shall not apply where an employee's services are terminated on account of insolvency as defined in Part VIII in which case that Part shall be applicable.*
- 3) *The Minister may make rules requiring an employer employing a certain minimum number of employees or any group of employers to insure their employees against the risk of redundancy through an unemployment insurance scheme operated either under an established national insurance scheme established under written law or by any firm underwriting insurance business to be approved by the Minister.'*

- v. The AAWU-K expected communication from KQ giving notification on the redundancy and the laying-off of staff but the employees were not given any such notice, neither was the labour officer, which is a requirement in section 40 (1)(b) of the Employment Act, 2007. Some of the employees declared redundant were not members of the AAWU-K.
- vi. The AAWU-K instituted proceedings before the Industrial court and an order restraining KQ from continuing with the redundancy exercise was issued. The Judge however lifted the order after fourteen days after which the company went ahead with the exercise.

a) **Criteria for Retrenchment**

- i. Kenya Airways did not use any procedure whatsoever in declaring the workers redundant. The AAWU-K would have expected the company to probably use Last In First Out (LIFO) or First In First Out (FIFO). Before industrial court issued an order to put on hold the retrenchment, KQ had informed its employees that they would undergo aptitude/psychometric tests with a view to identifying those to be laid off. The company began the tests, and had covered about 5 percent of the entire workforce. When the order was lifted, the company never concluded the exercise, and went ahead to lay off even those who had not gone through the tests. Most of the letters sent out to the employees stated that they had volunteered to retire early, which was not the case.
- ii. It was apparent that there was discrimination and victimization in the redundancy exercise. All the female employees who had been on maternity leave in the last one year, and those who were expectant, were targeted. One employee had a premature birth as a result while others developed complications. There were cases of employees who were sick in hospitals but were summoned through text messages to receive their redundancy letters.

The company cited productivity as the reason why they targeted these particular female employees, which suggested that the company was stating that maternity leave was a basis for declaring one unproductive.

Others who were targeted included union officials, as well as those who had participated in the 2009 strike and those who had been unwell including work-related injuries. All shop stewards were victimized for being members of the union. For instance, Ms. Ruth Kioko, an AAWU-K official was retrenched on 14th September 2012 after the redundancy exercise had been closed officially.

- iii. The company targeted AAWU-K officials, shop stewards and other active union members as a way of silencing the union. It is instrumental to note that the company sacked union officials for having voiced malpractices within the organization. Some of the Union Officials got their redundancy letters at night.

Those who had participated in the 2009 industrial action by the union were also obvious targets in the redundancy exercise.

b) Kenya Airways Wage Bill

- i. The airline blamed the rising wage bill for the redundancy exercise. It had publicly quoted in the media that its wage bill was Kshs. 13.4 billion. However, statistics obtained from the Kenya Bureau of Statistics, and filed with the Ministry of Labour after registration of the CBA showed that the company quoted a real wage bill of approximately Ksh.8.4 billion instead which begs the question, why the disparity in the figures.
- ii. The 3,800 unionisable employees of the airline account for approximately 24 percent of the wage bill. The rest of the wage bill, approximately 76 percent is taken up by approximately 1,000 managers and pilots. Best practice would dictate that any cost cutting or redundancy should have targeted the cadre of staff who take up the bulk of the wage bill.

Instead, the company increased pay for its top executives by 24 percent while it was claiming publicly that its wage bill was becoming unsustainable. The Company should have at least considered having these executives take a pay cut. It could also have considered reorganizing and restructuring the company to bring down other operating costs before targeting the low cadre employees who earn the least. The practice worldwide is that the top management usually takes the lead by taking a pay cut and these trickles down to the lowest paid employee. These fundamental options were never explored by the company.

- iii. Out of the 600 employees who were retrenched only ten managers volunteered for early retirement.
- iv. Whereas the company attempts to blame employee costs for the redundancy exercise, it was still creating new senior management positions and recruiting to fill them. For instance, the position of Marketing Director, which did not previously exist within the company's structure, was created and the appointment made on 31st August 2012.

- v. KQ was carrying out the redundancy exercise, but at the same time recruiting for the same positions. On 21st September 2012, the company placed advertisements in the local dailies seeking to recruit for certain positions, some of these positions were ironically being held by the staff declared redundant.

c) Cruel and Inhuman Practices

- i. The exercise was designed to humiliate the affected staff. The female employees who had been on maternity leave prior to the exercise and those who were expectant were deemed unproductive hence retrenched.

There were cases of expectant employees who were due in a week's time, had booked hospital beds through the company's medical cover only to receive text messages summoning them to a compulsory meeting where they were served with redundancy letters. Some of them got so traumatized, with one of them Ms. Ann Kananda, getting a pre-term delivery as a result of the trauma.

The company promptly discontinued the medical cover for the affected staff hence hospitals declined to honour the maternity bookings for these ladies at the very late stages of their pregnancies.

The company also targeted couples, retrenching them, with no consideration given for how their young families would be affected.

- ii. In mid 2010-2011, as a result of the company policy at the time of reducing manpower levels, and denying staff leave hence accumulating fatigue, many employees, especially those working as cabin crew developed back/spinal injuries, and were advised by medical practitioners to perform light duties while they recovered. They were being treated under the company medical cover since they had suffered the injuries in the line of duty.

These employees were all declared redundant and their medical covers withdrawn immediately. The company therefore used the retrenchment exercise to run away from its obligation to compensate the concerned staff.

- iii. For some of the affected staff, the company in the letters it sent to them alleged that they had volunteered for the retrenchment exercise which was misleading. The company dismissed it as a typo, which was unbelievable for such an error to occur on so many personal letters. Attempts by the affected staff to meet the management were unsuccessful.

d) Foreign Employees

- i. Foreign nationals employed in KQ, and working locally are mostly Cabin Crew, whose skill is abundantly available locally, since the minimum qualification is Kenya Certificate Secondary of Education (KCSE) mean grade C Plain.

The foreign nationals were from Thailand, Cameroon, Ghana, and in the last two months, the company interviewed Rwandese and Indians with a view to employing from these countries. The process of employing the newly interviewed foreigners had been put on hold pending conclusion of the redundancy exercise after which they would be taken in.

- ii. The justification given for employment of foreigners as Cabin Crew was culture and enhanced service, but a comparison with Ethiopian Airlines, British Airways, KLM, Air France, and South African Airways clearly showed that these established carriers do not employ foreigners to these positions. Emirates and Qatar Airways employ foreigners since they have a shortage of their own citizens who can perform these jobs.
- iii. The terms of employment of locals were inferior and discriminatory compared with those of foreign staff. The foreign staff are trained for free by the airline at the Pride Centre, and guaranteed employment with the airline thereafter, at a basic salary of around Kshs. 100,000. Besides, the airline also pays for their work permits which cost approximately Kshs.500,000 per permit but many of them do not have permits, which is a legal requirement. They hold operating licenses issued by the Kenya Civil Aviation Authority are usually accommodated at the Stanley Hotel, Nairobi during their two months training period at the airline's cost.

On the contrary, Kenyans also train at the Pride Centre but after paying fees amounting to USD 2,600 (Kshs. 221,000). Even after the training, they are not guaranteed employment, and upon recruitment, they earn a consolidated salary of approximately Kshs. 45,000.

- iv. If indeed the justification of the redundancy exercise was high labour costs, then the first employees that the company ought to have considered laying off ought to have been the foreign employees.

e) Outsourcing

- i. Kenya Airways had embarked on outsourcing all its non-core functions to certain companies. Some of them include; Career Directions Limited, Insight Management Ltd, Budget, Signature Safaris, KQ Holiday Homes, and Amicabre. However, the outsourcing model adopted by the company had raised many questions on the real motive behind it.
- ii. In the case of Career Directions Limited, all interns who had been on internship programme with the airline as Customer Service Agents and Cabin Crew for close to nine (9) months, and who had been informed that upon completion of their internship they would be confirmed within the company, were summoned to a meeting on July 31, 2012, and forced to sign new contracts with Career Directions Limited with the threat that if they did not sign they would lose their internship status.

They would earn a consolidated salary of Kshs. 45,000. They never applied for these jobs neither did they attend any interview with Career Directions Limited which begs the questions, who forwarded their personal details to this Company, and who negotiated their contracts. On the following day, 1 August, 2012, KQ announced the staff rationalization exercise and among the employees who were rendered redundant, 200 were Cabin Crew.

Career Directions Limited was hitherto unknown and had no track record in managing or outsourcing for any airline. Competitive procurement procedures were not followed in awarding it the tender. The company also acts as a holding company for other entities awarded tenders to supply transport and other services. The union believes that these entities were formed by company executives using proxies to transact business with the company raising the issues of conflict of interest. Career Directions is registered under the Company's Act under the Directorship of Ms. Lucy Mmari.

iii. In the outsourcing process that saw drivers laid off, Budget Company took over the provision of transport at Kenya Airways. The spouse to the Group CEO was a Member of the Board of Directors at Budget.

g) Relationship between Jambo Jet Limited and Kenya Airways

i. In a letter written to the AAWU-K by a law firm representing KQ, Obura Mbeche & Company Advocates, the company stated that Jambo Jet Limited was a separate entity from Kenya Airways. But the public had been constantly told by the KQ management that Jambo Jet would be a subsidiary of Kenya Airways raising the questions, why there was such a contradiction and why details of shareholding and directorship of this company were mired in secrecy.

h) Kenya Airways Expansion

i. The company had embarked on acquisition of planes in preparation for a massive fleet expansion that would see its fleet triple to about 105 aircraft in ten years, under the Project Mawingu. This plan clearly shows that the company will need to employ more, and makes a mockery of the whole retrenchment exercise.

ii. Viewed in the backdrop of the increased hiring of foreign staff, and new staff under an outsourcing company, it is clear that there was an ulterior motive behind the retrenchment exercise. Additionally, the company had through a memo dated 3rd August 2011 to the staff assured them that there was no retrenchment envisaged in its business plan, only to surprise them in August 2012.

i) Mismanagement

i. The union is of the considered view that incompetence within the management was the real reason behind the company's poor performance. The company under the same leadership had carried out several retrenchment exercises in the past yet it is still in the sad state of affairs. This clearly shows that wage bills were not the issue, but rather poor management.

- ii. Acquisition of aircrafts, in particular the Embraer is mired in irregular deals under companies such as Amboseli Ltd and Samburu Ltd. The airline had not declared Samburu and Amboseli with the Capital Markets Authority neither were they registered in Kenya.

Some of the acquired aircrafts purported to be new were in actual sense refurbished and which were previously in service elsewhere and were sold to Kenya Airways as new. For example, a recently acquired aircraft purported to be new was actually previously operated by Hong Kong Express under Serial No. 17000111 currently owned by Kenya Airways under registration 5Y-KYK. The aircraft which was defective was taken back to the manufacturer, refurbished and later sold to Kenya Airways as new. It was initially registered as B-KXC-Hong Kong Express.

- iii. Irregular outsourcing practices within the company had been a major avenue for loss of funds.
 - iv. Promotions and employment based on ethnicity and corruption especially in the hiring of pilots is prevalent within the company. The Group CEO had acknowledged this in a memo to the staff but unsurprisingly no action has been taken on the responsible managers.
 - v. Sexual harassment was endemic, with managers openly soliciting favours in exchange for promotions and employment, and those who fail to comply are targeted for sham disciplinary proceedings, dismissals and retrenchments.
 - vi. Despite the poor management in the company, no single manager had taken responsibility and this had led to a sense of impunity within the organization by the management. Other stakeholders within the company such as the Kenya Airline Pilots Association (KALPA) had publicly voiced their concerns on the manner in which the company was being managed.
- j) **Severance Package**
- i. A further testament of dishonesty on the part of the management could be noticed in the recent media statements attributable to the Group Managing and CEO to the effect that the least paid employee declared redundant received a severance package of Kshs. 2 million. However, the reality was that were employees whom after serving for close to 12 years would be paid less than Kshs. 200,000. In comparison, other companies that have carried out retrenchments had superior packages that saw very many employees opting to voluntarily retire early.
- k) **Cost Cutting Measures**
- i. AAWU-K proposed that KQ could cut cost through the reduction of the administrative and management wage bill and procurement.

- 41 The AAWU was not questioning the redundancy exercise but its concern was to ensure that the process was carried out in accordance with the law.

EVIDENCE BY THE PERMANENT SECRETARY, MINISTRY OF TRANSPORT

- 42 The Permanent Secretary, Ministry of Transport, Dr. Eng. Cyrus Njiru, CBS appeared before the Committee on 24th September 2012 and adduced evidence as follows:- That;
- i. Kenya largely has a market economy and Kenya Airways is a privately owned company listed in the Nairobi Securities Exchange. The shareholders elect Members of the Board of Directors, who in turn have in place, a management team.
 - ii. The Ministry of Transport's role was to formulate policies for the air transport sector to among other things ensure competition, a level playing field, minimize of cost of doing business, and ensure a safe and secure the airspace.
 - iii. The airline had played a major role in the growth and development of the Country's economy. The airline currently operates on a total of 58 destinations.
 - iv. Just like many other international airlines globally, the airline was facing major challenges, among them, escalating operating costs arising from high global fuel prices and wage bill. Similarly, many of these airlines have implemented restructuring interventions to be able to cope.
 - v. He sits in the Board of Directors, both in his capacity as Permanent Secretary, Ministry of Transport as well in his private capacity. The Ministry of Finance was in a better position to provide the airline's shareholding structure as well as other related information.
- 43 The Permanent Secretary was however not candid in responding to the queries regarding his roles in the Board in his two capacities. He was also not candid regarding whether the decision to carry out the redundancy exercise was made by the Board.

EVIDENCE BY THE MINISTER FOR TRANSPORT

- 43 The Minister for Transport, the Hon. Amos Kimunya, EGH, M.P appeared before the Committee on 2nd October 2012. He was accompanied by the Permanent Secretary, Dr. Eng. Cyrus Njiru, CBS. He adduced evidence as follows:- That;
- i. The matter under consideration by the Committee was a labour issue, which then should be handled by the Ministry of Labour.
 - ii. The Ministry of Transport oversees the Kenya Airports and Kenya Civil Aviation Authorities. In this regard, it also oversees aviation matters including ensuring safety in the sky, land and further creates an enabling environment to enable safe takeoff and landing.
 - iii. Kenya Airways is a publicly listed company and the Permanent Secretary, Treasury oversees interplay with the Capital Markets Authority which in turn oversees interplay with stakeholders.

- iv. There were three government representatives in the Kenya Airways Board; two representatives of KLM and rest were public's representatives. The Ministry of Transport is represented by the Permanent Secretary. However, by the Ministry sitting in the board, this does not in any way compromise the role of regulator of aviation matters, Kenya Civil Aviation Authority.

The Ministry and Kenya Airways relate purely on an arm's length basis and the Ministry cannot direct KQ or any other airline on their internal operations.

- v. In the suit filed by the Aviation and Allied Workers Union in the Industrial Court, the Ministry of Transport is named as the second respondent. Others were the Ministry of Labour and the Attorney General. The Ministry thus planned to seek advice from the Attorney General on how to respond since the matter was a labour one.
- vi. KQ is Kenya's national carrier and thus the Ministry of Transport has a responsibility of ensuring its success as an anchor airline around which Kenya's aviation industry grows. Expansion of KQ means more jobs for Kenyans, not only within the aviation, but also in the hospitality industry and other related sectors.
- vii. The operating environment for airlines globally had been very difficult. For instance, Virgin Atlantic and other airlines from South Africa which were operating in Kenya had since ceased their operations. Many other airlines have closed down including the Nigerian Airlines. Other key airlines in India were also about to close shop. Thus, any discerning airline has to rationalize and restructure all its aspects in order to survive.
- Other Airlines besides Kenya Airways are also outsourcing services to cut down on costs. Others have come up with ways of cooperation amongst themselves for example in provision of ground services in each other's hubs to cut down on cost and be more efficient.
- viii. The staff rationalization exercise by Kenya Airways was being carried out in the best interest of the company and the country. It would enable the airline to operate in all the African countries and ensure that all African countries interconnect to other continents through Kenya. Thus, the rationalization programme was not targeting staff only but also other aspects including procurement of fuel and spare parts for the aircrafts. The Ministry of Transport supports every aspect of the programme.
- ix. Kenya Airways should appear before the Committee to provide the actual numbers of the employees declared redundant. Provided that the redundancy exercise was carried out within the law and the CBA, then the Ministry of Transport supports it and as far as the Ministry was concerned the exercise was carried out within the law.
- x. The information with Ministry of Transport on the Embraers procured by KQ was that they were new. The Embraer Company was launching the 900th aircraft in its manufacturing plant and in fact, they had invited the Kenyan media to confirm that the KQ's Embraers were new. Procuring of the aircrafts through companies in Cayman Islands was an arrangement between the manufacturer and the management.
- xi. The Ministry of Labour had given comfort to the Ministry of Transport that the redundancy exercise was within the labour laws and was carried out in accordance with

the laws. The Ministry of Labour was consulted on the issue all along the way. The severance terms were also in accordance with the CBA.

- xii. The Kenya Airways Board meets on a quarterly basis and their broad objective is to maximize the shareholders interests as opposed to micromanaging the company. Outsourcing of Career Directions Ltd was purely a management issue and not a Board issue. The Ministry of Transport wouldn't wish to micro manage Kenya Airways or any other entity.
- xiii. Jambo Jet Company is 100 percent owned by KQ and its directorship therefore is that of Kenya Airways. The rationale for having Jambo Jet was to have a low cost carrier to compete at par with other low cost carriers.

EVIDENCE BY MINISTER FOR LABOUR

- 44 The Assistant Minister for Labour, the Hon. Sospeter Ojaamong, M.P appeared before the Committee on 2nd October 2012. He was accompanied by the Permanent Secretary, Mrs. Beatrice Kituyi, CBS; the Deputy Labour Commissioner, Mr. J. A. Yidah; and Deputy Chief Industrial Relations Officer, Mr. P.N. Macharia.

The Assistant Minister adduced evidence as follows:-

- i. As a Ministry of Labour, they should be able to protect the available jobs in the Country. Regarding redundancy, the Kenya Constitution Article 41 protects all employees by stating that,
 - "41(1) Every person has a right to fair labour practices*
 - (2) Every Worker has the right –*
 - a) To fair remuneration;*
 - b) To reasonable working conditions;*
 - c) To form, join or participate in the activities and programmes of a trade union; and*
 - d) To go on strike.*
 - (3) Every employer has the right –*
 - a) To form and join an employers organisation; and*
 - b) To participate in the activities and programmes of an employers organisation.*
 - (4) Every trade union and every employers' organisation has the right-*
 - a) To determine its own administration, programmes and activities;*
 - b) To organize; and*
 - c) To form and join a federation.*
 - (5) Every trade union, employers' organisation and employer has the right to engage in collective bargaining."*

45 The Permanent Secretary adduced evidence as follows:-

a) **Notice of the Intended Redundancy**

- i. According to the communication sent to the Ministry of Labour by Kenya Airways, the Company issued a 30 days' notice, starting 1st to 31st August 2012 in accordance to section 41 of the Employment Act, 2007.
- ii. In the notice however, the employees of Kenya Airways were required to make an option to decide whether to opt for an early retirement within a period of ten days. Voluntary Early Retirement is not governed by any laws. However, according to Article 41 any notice for any separation should be 30 days.
- iii. Equivalent practice is that other companies give notices that are much longer than what Kenya Airways issued.

b) **Consultations with the Union on the Intended Redundancy**

- i. The issue raised by the Aviation Allied Workers Union is that the clause on redundancy had not been concluded in the Collective Bargaining Agreement between the Union and Kenya Airways. Therefore, the Ministry of Labour fell back on the existing clause on the Employment Act of the one month notice.
- ii. According to Kenya Airways, consultations between the Aviation and Allied Workers Union and Kenya Airways were hampered because there were two factions in the Union, thus no consultations were carried out.

c) **The Manner in which the Retrenchment was Carried Out**

- i. The Aviation Allied Workers Union had raised an issue with the way the redundancy exercise was carried out. The Ministry of Labour established that there was no separation training given to the employees in regard to their redundancy. Kenya Airways carried out the exercise hurriedly and even the employees who did not opt for voluntary early retirement were sent on retrenchment.
- ii. The issue of social dialogue is critical in ensuring that a redundancy exercise is carried out in a humane way. Further, the communication to affected employees through text messages while on maternity leave, sick leave or out of station was inhuman, cruel and barbaric.
- iii. The Ministry of Labour was not involved nor consulted in the exercise from day one all along the way. The Ministry only received the letter dated 1st August 2012 that was giving the one month notice to the employees regarding the staff rationalisation exercise.
- iv. When the matter became of national interest, the Ministry of Labour was directed by the Office of the Prime Minister to carry out an inquiry into the exercise and submit a report to the office. The Ministry was in the process of finalizing the report and a copy of the same would be availed to the Committee.

d) **Outsourcing**

- i. The concern over outsourcing of staff would arise if the terms offered to employees were inferior. The report under preparation would also comprehensively address the issue of outsourcing.

e) **Way Forward**

- i. The notification received by the Ministry of Labour had a confirmation that the exercise would be carried out in accordance with the labour laws and CBA where applicable. When the exercise was carried out, that is when the Ministry realized that the labour laws were not complied with. Ordinarily, in such matters, the role of the Ministry would be to mediate. In this particular case, the union opted to institute proceedings before the Industrial court. The Ministry thus resolved to let the Court handle the matter until it became a national issue that also required the Ministry's intervention.
- ii. The Ministry of Labour had proposed to Kenya Airways that they consider other options such as holding a social dialogue but the company declined. The Ministry still holds the same view, that the parties should consider holding social dialogue/negotiations.

EVIDENCE BY THE CAPITAL MARKETS AUTHORITY (CMA)

46 The Committee met with the Ag. Chief Executive Officer, Capital Markets Authority (CMA), Mr. Paul Muthaura on 3rd October 2012. He was accompanied by the Director, Market Operations, Mr. Wycliffe M. Shamiah; and Financial Analyst, Mr. Richard Muigai. The Ag. Chief Executive Office adduced evidence as follows;

a) **Overview of the Mandate of the Authority**

- i. The Capital Markets Authority (CMA) was set up in 1989 as a statutory agency under the Capital Markets Act Cap 485A. It is charged with the prime responsibility of both regulating and developing orderly, fair and efficient capital markets in Kenya with the view to promoting market integrity and investor confidence.
- ii. The regulatory functions of the Authority as provided by the Act and the regulations include; licensing and supervising all the capital markets intermediaries; ensuring compliance with the legal and regulatory framework by all market participants; regulating public offers of securities, such as equities and bonds and the issuance of other capital market products such as collective investment schemes; promoting market to respond to market development through research on new products and services; reviewing the legal framework to respond to market dynamics; promoting investor education and public awareness; and protecting investors' interest.
- iii. Kenya Airways is listed on the Nairobi Security Exchange thus it falls under the oversight of the CMA. It is listed under the commercial and services sector in the main investment market segment. The level of the oversight on Kenya Airways by CMA is to ensure that there is proper disclosure and that the company complies with the minimum requirements of the listed companies.
- iv. A listed company is not a licensee of the Authority and its internal operations are not under the direct supervision of the Authority. Operations of listed company are

supervised by its board of directors, shareholders in general meetings and first line supervisor, if any.

Therefore, under the legal and regulatory framework, the supervision of listed companies by the Authority is limited to supervision of any public offer of securities by these companies, the disclosure obligations and corporate governance practices of the companies and the trading of their securities on approved exchanges. The Authority reserves the power to intervene into the affairs of a listed company if the interests of investors are not protected and thus it may intervene under its own motion or at the request of any person pursuant to section 11(3) (w) of the Capital Markets Act.

- v. Disclosures cover many scopes and in the continuous oversight by the Authority to date, Kenya Airways has been fully compliant.
- vi. CMA depends on the information that is disclosed and if specific issues don't meet the threshold, then listed company is not obligated to disclose. In the scope of the involvement with the listed company, the Authority is obliged to ensure that there is adequate information to ensure that shareholders are in a position to decide whether to invest or not invest in that particular company but not to micromanage.

Companies are obliged to disclose subsidiary companies and are also required to seek shareholder consent.

- vii. A significant labour dispute is defined as material information under the Regulation 2 of the Public Offer and Listing Regulations and the obligation of a listed company is only to disclose the same to the public within twenty four hours.
- viii. As at 31st August 2012, the Government of Kenya through the Permanent Secretary, Ministry of Finance owns 29.8 percent, KLM owns 26.73 percent while the rest of the shareholders own 43.47 percent.
- ix. Jumbo Jet Limited is one of Kenya Airways subsidiaries. The value of business carried out through Jambo Jet relative to total Group business over the last 5 years is nil. The company was incorporated and acquired in 2000 and has been dormant since April 2004.
- x. Kenya Airways had explained that the two entities, Amboseli Limited and Samburu Limited registered in Caymans Island are Special Purpose Vehicles (SPVs) established for purposes of the financing lease arrangements entered into by airline with regard to the new aircrafts being acquired by KQ. The arrangement involves the airline repaying the loans borrowed to purchase aircrafts from the manufacturer and operating the aircrafts in a similar way to the operating lease arrangement but where the airline takes titles to the aircrafts once the loan is fully paid and it becomes the legal owner of the aircrafts. Given that KQ does not own the SPVs, the services of the SPVs are recognized as professional fees offered and are expensed as such. The Airline has indicated that the amounts charged were nominal ranging from USD 1,000 to 2,000 per year.

The two entities will be the owners of the Aircrafts for the duration of the finance lease. The companies are owned by a charitable trust and are neither owned by Kenya Airways nor by the company providing the financing arrangements. The Directors of these two companies are two lawyers based in Caymans Island representing the financiers' interest in the company.

The airline had indicated that the structuring of the lease through the creation of SPV was a requirement of the financiers of the transaction and is common in financing of purchases of large assets such as aircrafts and shipping vessels. From the firm's perspective, the main reasons for making the loans to the orphan SPV and having the aircrafts owned by these entities are to ensure that the transaction is bankruptcy remote and to enable the financiers have a better security package.

- xi. In respect of the acquisitions financed through Amboseli and Samburu, the total value financed through each subsidiary is NIL for Amboseli and a Kshs. 5.3 billion equivalent for Samburu as at 30th September 2012. This amount represents 6.85 percent of the total Kenya Airways limited assets. The amount is therefore below the 25 percent threshold stipulated in the regulations for an issuer to seek shareholders approval before proceeding.
- xii. Kenya Airways has outsourced several aspects of its operations ranging from the provision of computing facilities to cleaning, medical and insurance services. However, the Authority was not in position to determine whether the ultimate beneficiaries of the outsourced services were employees or the airline's management.
- xiii. The Permanent Secretaries, Ministries of Transport and Finance/Transport sit in the Kenya Airways Board purely as investment partners rather than regulators.

EVIDENCE BY THE INVESTMENT SECRETARY, MINISTRY OF FINANCE

47 The Committee met with the Investment Secretary, Ministry of Finance, Mrs. Esther Koimet on 10th October 2012. She was accompanied by Ag. Director of Investments, Ms. Beatrice Gathirwa. The Investment Secretary informed the Committee as follows:- That;

- i. The Permanent Secretary and the Alternate Director in the Kenya Airways Board were out of the country on official duties until 21st October 2012. The Committee resolved to give a hearing to the Investment Secretary in the absence of the Permanent Secretary who had been invited to give evidence.
- ii. Kenya Airways is a private company following its privatization in 1996 and its subsequent listing on the Nairobi Securities Exchange. It is managed by its Board and Management. As a shareholder in the company, the Government of Kenya exercises its rights as an investor through the Annual General Meeting as provided for in the Companies Act.
 - a) **The Ministry's Position Regarding the Retrenchment Exercise at Kenya Airways**
 - i. As a listed company and given that the Government shareholding is less than 50 percent, Kenya Airways is not a State Corporation and therefore is not under the

purview of the State Corporations Act, Cap 446 nor is the Company under the direct control by any Government ministry.

- ii. The affairs of Kenya Airways are exercised as stipulated in the Companies Act and specifically in the Memorandum and Articles of Association of the Company. The shareholders through the AGM appoint the Board of Directors, which in turn appoints management which engages employees to undertake the day to day affairs of the company.
- iii. The main objective of a commercial entity like Kenya Airways was to maximize shareholders' value and returns as well as provide efficient services to its clientele in the most competitive terms. The management therefore must ensure that the operations of the Company are efficient and effective, and costs are sustainable.

b) Kenya Airways Economic Status Report

- i. As the national carrier, Kenya Airways plays a very significant role in the development of transport and tourism sectors in the Country. It also plays an important role in the development of Jomo Kenyatta International Airport as a major regional hub for air transportation.
- ii. Kenya Airways is self-sustaining and has not relied on the Exchequer for funding to finance its operations from the time of its privatization. It has been declaring and paying dividends to its shareholders including the Government and this constitutes part of the National Revenue which is appropriated by Parliament for various Government spending. Dividends received by Government from Kenya Airways' investment in the last three (3) years were as follows:-

	Year	Amount in Kshs.
1.	2009/10	100,862,982.00
2.	2010/2011	100,862,982.00
3.	2011/2012	151,294,474.00

c) Adherence to the Provisions of the Labour Laws

The Ministry of Finance expects Kenya Airways as a responsible legal entity to operate within the laws of the country and adhere to all the laws it operates under, including the Employment Act, 2007 and Labour Relations Act, 2007. As a national flag carrier, Kenya Airways is important as it enhances the image of our country, thus, it is expected to adhere to good governance practices.

d) Role of the Permanent Secretary, Ministry of Finance in the Kenya Airways Board of Directors

The Permanent Secretary, Ministry of Finance sits in the Board as a shareholder and his role is that of an investment partner, to ensure that the company is run efficiently. If there are any policy issues, they get communicated to the Government.

e) **The Rationale of the Retrenchment Exercise**

The Investment Secretary was not in a position to comment on the rationale for the retrenchment as she does not sit on the Board. However, she would confirm whether the retrenchment was approved by the Board from their minutes and revert back to the Committee.

EVIDENCE BY THE KENYA AIRWAYS TEAM

48 The Committee met with the Kenya Airways Group Chairperson of the Board of Directors, Mr. Evanson Mwaniki; and Managing Director and CEO, Dr. Titus Naikuni on 11th October 2012. They were accompanied by Group Human Resource Director, Mr. Albert Mwenda and Legal Advisor, Mr. Kiragu Kimani.

The Chairman of the Board informed the Committee as follows; That:-

- i. Kenya Airways would wish to correct the erroneous impression given by the members of the fourth estate that the management of Kenya Airways had refused to appear before the Committee.
- ii. The management of Kenya Airways appreciates the role played by the Committee and also appreciates that Kenya Airways is a national entity that plays a key economic role and the issues raised by petitioners were pertinent.
- iii. He had the letter inviting Board members to a meeting with the Committee on 16th October 2012. Regrettably, some of the Directors were out of the country, thus it was not possible for them to appear on the date indicated. He was therefore grateful that the Committee has given an alternative date on 18th October 2012 for the meeting as per the Board's request.
- iv. The company belongs to the 74,000 shareholders who have elected the Board of Directors with specific mandate among them to set policies and supervise the management and to ensure that the policies were in best interest of the shareholders and to also ensure long term sustainability of the business.
- v. The Board was very much involved company's decision making including in matters of investments, organizational structure and budget among others. This included the critical issue of retrenchment under consideration.
- vi. The Board has a very huge mandate to ensure that the airline, which is a national carrier, performs its duties efficiently, effectively and meets the expectations of the Kenyan Public considering the airline is 55 percent owned by Kenyans.

The Group Managing Director and CEO informed the Committee the following:-

- i. The Petitioners had also instituted proceedings before the Industrial Court in the Case between the Aviation and Allied Workers Union (K) versus Kenya Airways Limited; Minister for Transport; Minister for Labour; and the Attorney General. The matter was due for mention the following day on 12th October 2012. Therefore, the Kenya Airways Team was of the view that discussing the issues raised in the petition would of necessity mean discussing the matters before the Industrial Court, which would be "prejudicial".

The Chairman of the Board requested that the Management of Kenya Airways be given more time to consult over the issue and revert back to the Committee.

EVIDENCE BY THE CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)

49 The Committee met with the Deputy Secretary General of Central Organization of Trade Unions-Kenya (COTU), Mr. George Muchai on 16th October 2012. He was accompanied by:-

- i. Mr. Rajab W. Mwondi - Board Member/Chairman General, COTU
- ii. Mr. Musamia Wafula - Board Member, COTU
- iii. Mr. Ernest Nadome - Board Member, COTU
- iv. Mr. Isaiah Kubai - Board Member, COTU
- v. Mr. Albert Njeru - Board Member, COTU
- vi. Mr. Bonnie Nicholas Barasa - General Secretary, Aviation and Allied Workers Union (AAWU)

50 The Deputy Secretary General adduced evidence as follows:-

- i. COTU is an umbrella body of trade unions in the country and thus does not deal directly with the employees. COTU relies heavily on its affiliates and in regard to the matter under consideration; the affiliate was the Aviation Allied and Workers Union (AAWU-K).
- ii. COTU understands matter before the Committee to be about redundancy. As defined in Section 40 of the Employment Act. 40. (1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions -

a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;

(b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;

(c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;

(d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy, the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;

(e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;

(f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and

(g) *the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.*

(2) *Subsection (1) shall not apply where an employee's services are terminated on account of insolvency as defined in Part VIII in which case that Part shall be applicable.*

(3) *The Minister may make rules requiring an employer employing a certain minimum number of employees or any group of employers to insure their employees against the risk of redundancy through an unemployment insurance scheme operated either under an established national insurance scheme established under written law or by any firm underwriting insurance business to be approved by the Minister.*

- iii. Kenya Airways failed to notify the employees, the union to which the employees were members and the area labour officer of the intended redundancy. The notification that was given did not conform to the law. The District Labour Officer was just copied the letter that was sent to the Permanent Secretary, Ministry of Labour so it was not possible to make any intervention.
- iv. The management of Kenya Airways first issued a notice dated 4th September 2012, to all its employees informing them that they had been declared redundant, two days after on the 6th of September, it issued another memo referring to a retrenchment programme, yet the two, redundancy and retrenchment are different.
- v. The union did not have an engagement with Kenya Airways over the redundancy. Sometime in August 2012, the management had invited the Union to discuss the rationalization exercise but the negotiations were never completed.
- vi. Kenya Airways did not abide to Clause 49 of the Collective Bargaining Agreement which states that;

Redundancy

- (a) This shall be as defined in the current Employment Act, 2007 and as may be amended from time to time.
- (b) An employee declared redundant shall receive three (3) months notice or three (3) months' salary in lieu.
- (c) An employee who has been declared redundant and given notice shall be permitted to leave before the expiry of the notice period if he/she wishes. However, he/she shall not be paid for the unexpired notice period.
- (d) In addition to (b) above, an employee declared redundant shall be entitled to a severance pay at the rate of 20 days salary for each year of completed service.
- (e) An employee declared redundant shall be entitled to the following:-
 - Gross pay up to the effective date of the redundancy

- Accrued leave days up to the effective date of redundancy based on the salary at the rate of 20.5 working days per month
- Provident Fund in accordance with the Provident Fund Rules and Regulations.
- ESOP shares in accordance with ESOP Rules and Regulations if applicable.

vii. Kenya Airways wrote a letter to the Permanent Secretary, Minister for Labour vide letter dated 1st August 2012 informing her of the staff rationalization exercise. The subject matter of the letter was 'Kenya Airways Staff Rationalization Exercise'. In one of the paragraphs the letter indicated that Kenya Airways would immediately embark on a restructuring exercise that would result in staff redundancies and, where applicable, outsourcing of labour.

The entire redundancy exercise was aimed at the removal of employees and their replacement through outsourcing. Outsourcing is a new concept in Kenya. It had been outlawed by the industrial court and it runs contrary to Article 41 of the Constitution.

In the second last paragraph, the letter stated that in executing the process, full compliance to the labour laws and the CBA where applicable, would be observed. Kenya Airways did not observe the laws and CBA.

- viii. Other employers who have in the past declared their intentions to reduce labour have engaged the concerned unions and have agreed on other alternatives including redeployments, which Kenya Airways failed to do.
- ix. Kenya Airways employs foreigners to jobs that can be very ably done by Kenyans. Other airlines elsewhere hardly employ foreigners. Nothing stops Kenya Airways from training the Kenyans on foreign languages to perform these jobs, besides; employees could learn foreign languages. Kenya Airways was making an effort to sustain employees from other countries at the expense Kenyans.
- x. Most of the employees who were retrenched were young persons with families whose lives had been declared economically dead.

51 COTU Board Member, Mr. Isiah Kubai made the following submission:-

- i. There were two issues under the matter; to start with the company talked of retrenchment then they resulted to redundancy. In regard to retrenchment, the worker voluntarily agrees to terminate his/her services and they should thus be paid generously in accordance with the agreement that the parties have set. This is because the employees were on permanent and pensionable basis.
- ii. The employee numbers were not superfluous as Kenya Airways started recruiting immediately through outsourcing after declaring the employees redundant.
- iii. Kenya Airways discriminated and victimized the workers, by declaring redundant those that they thought were expensive to maintain in terms of hospital bills, and union officials as a way of silencing the union.

- iv. The best practice in criteria for redundancy was the principle rule of Last In First Out (LIFO). In addition, if the company was recruiting thereafter, the best practice would be to employ the same employees first before considering others as opposed to the practice of outsourcing.
- v. In 2006, International Labour Organization (ILO) considered the practice of outsourcing and recommended that each country must have laws in place to guide the practice, and thus COTU very strongly challenges the practice by Kenya Airways.

52 The General Secretary of the Aviation and Allied Workers Union, Mr. Bonnie Nicholas Barasa made the following submission:-

- i. The Union wanted to engage the management of Kenya Airways, but the management was unwilling. The management only sent a single communication to the Union under subject matter, the rationalization exercise.
- ii. Whereas Kenya Airways was claiming that it intended to reduce the number of employees thus declaring some them redundant, the union was concerned that the company was through its expansion programme in the process of acquiring more aircrafts meaning the company would need to employ more employees as opposed to retrenchment.
- iii. Only the General Secretary of the Union is mandated to engage with the Kenya Airways management. Other members of the union supported the Chairperson who had no authority to engage with the Management.
- iv. Some workers applied for voluntary retirement. However, the company indicated that all the employees had voluntarily agreed to retire even those that did not volunteer.
- v. On whether the Union was in any way involved or engaged by the airline's management in the rationalization exercise, the General Secretary initially denied any engagement but later confirmed after the Committee read out the minutes of the meetings held on 3rd and 10th August 2012 between the Aviation and Allied Workers Union and the Management, whereby he attended one meeting and was represented in the other. He confirmed that indeed, there had been some engagements, which were not concluded.

He however denied having submitted a proposal to Kenya Airways Management on severance package, yet the Committee was in possession of a copy of the proposal that he had submitted, He further denied that he had ever been suspended from the Aviation and Allied Workers Union stating that it was the creation of Kenya Airways, yet the Committee had information that he had been suspended from the union and the same information had been communicated to the Kenya Airways and the Registrar of Unions.

53 The Deputy Secretary General of COTU further made the following submission:-

- i. COTU does not interfere with the internal matters of the affiliate unions. Under the Labour Relations Act, 2007 Section 2, the authorized representative in matters of a

union is the General Secretary of a particular union and COTU transacts with that individual. However, in the case of the matter between Kenya Airways and the AAWU-K, the letter copied to the Union regarding the rationalization exercise and the proposal that was made by the General Secretary of the AAWU-K to the Kenya Airways Management on severance package were not presented to COTU.

- ii. Kenya Airways acted contrary to the labour laws and the Constitution of Kenya.
- iii. The redundancy exercise carried out by Kenya Airways was irregular and unlawful and thus should be nullified and all the affected employees reinstated.
- iv. Most of the affected employees were the women. They should not be discriminated on account of a natural phenomenon such as pregnancy and neither should any company discriminate union workers.

EVIDENCE BY PERMANENT SECRETARY, MINISTRY OF FINANCE

- 54 The Committee met with Permanent Secretary, Ministry of Finance, Mr. Joseph Kinyua on 6th November 2012. He was accompanied by the Alternate Director, Kenya Airways Board, Mr. Vincent Rague and Deputy Director, Mr. Protus Sigei.
- 55 The Permanent Secretary informed the Committee the following:-
 - i. The Permanent Secretary represents the Government in the Kenya Airways Board. His role was to among other things, ensure oversight in management of the company towards maximizing returns for the investor (Government). He also ensures that the investment was being managed in a manner to optimize profits. In terms of policy, he advises on the impact of any policy that the Board takes. Retrenchment was outside the policy matters that the Permanent Secretary would advice on, because there are labour laws that govern that sector.
 - ii. The decision to retrench was by the Board but it should have been done within the laws of the country.
 - iii. Kenya Airways put a notice in the print media, stating its intentions to lay off about five hundred employees and those that volunteered to retire early and were non unionisable proceeded with their retirement whereas the unionisable ones were still with Kenya Airways pending the determination of the case at the industrial court.
 - iv. The interest of the government and the shareholders was to ensure that shareholders get returns for their investments and ensure that the company was self sustaining.
 - v. The Committee needs to have a balance between retaining employees and ensuring the company remains profitable to enable it continue its operations. Indeed, unlike pre-privatization period, when the airline made huge losses, the company currently pays taxes, meets its operational cost and pays dividends to its shareholders. Therefore, the net benefits to the Government and the Kenyan people were substantial.
 - vi. Kenya Airways has a well thought out plan for increasing its fleet by purchasing new aircrafts. A company in the United States of America that was contracted to supply the aircrafts failed and thus Kenya Airways resorted to leasing.
 - vii. The Ministry of Labour would only get involved in such a matter if there was a problem, to ensure that the labour laws are observed and if not solved, the matter can proceed to the industrial court as is the case, with the matter under consideration. Workers Union would certainly be involved in the discussions but at the end of the day the employer who is meeting the financial responsibility has the final say.

56 The Alternate to the Permanent Secretary, Mr. Vincent Rague informed the Committee the following:-

- i. He had sat in several Boards and no employer just sets out to retrench employees. This is only done with good reasons. The global airline market was in economic turmoil and Kenya Airways has been greatly affected. Kenya Airways market includes Europe, Asia and Africa. Previously, the European market was the greatest contributor to the Kenya airways revenues but with the economic recession, the routes were no longer profitable.
- ii. Fuel prices have also significantly gone up thus, the decision to retrench was based on the economic situation and operational costs and if the situation improves, Kenya Airways would hire once more.
- iii. If the industrial court rules that the employees targeted be laid off, Kenya Airways would make a saving of Kshs. one billion annually and the cost of their severance packages would amount to Ksh. 800,000,000 million.
- iv. He was not aware that Kenya Airways outsourced other employees immediately after retrenching the over 600 employees. However, the role of the Board was not to micromanage management, and outsourcing is an operational decision for the management.
- v. He felt constrained to respond to questions referring to operations of the airline as he felt they were sub-judice and further, the airline's management would be better placed to respond to them.
- vi. Regarding procurement of aircrafts in the company, he was not aware of Samburu and Amboseli companies and the names were new to him. In terms of procurement, the airline has a long term plan to contract with Boeing for supply aircrafts. The first delivery was expected in 2014. Kenya Airways procures the Embraer aircrafts directly from the Embraer Company. The airline is financed by banks to acquire the aircrafts.

The Committee concluded that the Permanent Secretary and his alternate to the Kenya Airways Board were not candid in terms of volunteering information regarding the issue under consideration.

COMMITTEE FINDINGS

57 Based on the Submissions, Presentations and Evidence Adduced, The Committee Made the Following Findings. That:-

- i. **Justification of the Redundancy Exercise**

Like many other airlines globally, Kenya Airways has continued to experience declining revenues principally occasioned by economic difficulties in most markets, unstable fuel prices, increased airport charges, regional geo-political situations, and employees' costs. These airlines have implemented restructuring programmes to enable them cope with the said challenges and remain competitive.

In the case of Kenya Airways, there is evidence that the wage bill has been rising over time. However, in declaring some workers redundant on the grounds of reducing unsustainable wage bill, the management was not candid. The airline had only reported

a reduced profit margin but not a loss as contemplated by the definition of redundancy in the Employment Act, 2007.

Redundancy means the loss of employment, occupation, job or career by involuntary means through no fault of an employee involving termination of employment at the initiative of the employer, where the services of an employee are superfluous, the practices are commonly known as abolition of office, job or occupation and loss of employment.

In addition, none of the offices, career or job was being abolished. Indeed, the company went ahead and recruited for certain positions, some of which were held by the staff declared redundant.

Further, the company is still engaged in creating new senior management positions and recruiting to fill them, the company also went ahead to increase the salaries of its top management by 24 percent. Best practice would dictate that other options would be explored to reduce the wage bill. A reduction of the wage bill should begin with a freeze in wage increases for management, followed by a wage cut before embarking on the ultimate step of job losses.

Kenya Airways has categorically stated that it was conducting a staff rationalization exercise. It is the Committee's view that a rationalization process would involve more consultations between the parties themselves and also with the Government. Such exercises have been successfully carried out at the Barclays Bank (1998), and NSSF (2011).

The justification given for the redundancy exercise is high employees' costs. However, the real challenges facing the airline include not just the wage bill but mainly downturn in passenger volumes occasioning sharp shortfall in expected revenue streams, increasingly competitive environment, very high direct operating costs and other overheads which have continued to rise disproportionately to rise in revenues. The Committee attributed the Airline's precarious position to mismanagement, corruption and negligence. It is worth noting that the Airline under the same management has carried out several retrenchment exercises in the past but still finds itself in the sad state of affairs.

A look at the financial results for the year ending March 2012 will reveal that there was a rise of Kshs. 2.2 billion in employee costs, while there was a staggering rise of almost Kshs. 24 billion in direct operating costs. While most of this was attributed to fuel costs at Kshs. 40.7 billion, there was still another Kshs. 36.5 billion that is not accounted for. This could be including cost of delayed flights, hotel accommodations, misconnected baggage, and cancelled flights. According to European Union regulations (EU Regulation 261/2004) passengers can get up to €600 as compensation for flight delays, which can amount to Kshs. 20 million per delayed/cancelled flight. Irregular outsourcing practices within the company have also been a major avenue for loss of funds.

In addition, the company made a decision to do fuel hedging (long term fuel purchase contracts) for 5 years, a decision whose consequences had led to high fuel costs for Airline above the market price. Fuel costs have also been cited to justify the redundancies. This denied the airline the benefit of price fluctuations.

ii. **Conformation to the provisions of the Employment Act, 2007**

The Act provides that notice of any intended redundancy should be given not less than one month prior to the date of intended termination on account of redundancy.

According to the communication sent by Kenya Airways to the Permanent Secretary, Ministry of Labour and copied to: The District Labour Officer, The Labour Commissioner, The Executive Director of Federation of Kenya Employers (FKE), the National Secretary General of AAWU-K, and the Branch Secretary of the same Union vide letter Ref. DM/093/2012 dated 1st August 2012, Kenya Airways gave a 30-days notice, commencing on 30th August 2012 as letters of separation were issued on 4th September 2012, which suggests that Article 41 of the Employment Act, 2007 was observed.

In the notice however, the employees opting for voluntary retirement were required to make a decision within a period of ten days.

Voluntary Early Retirement is not governed by any laws. However, Article 41 of the Employment Act, 2007 provides that any notice for any separation should be minimum 30 days. Equivalent practice is that other companies' notices have been much longer than what Kenya Airways issued.

iii. **Adherence to Collective Bargaining Agreement (CBA) with the Aviation and Allied Workers Union - Kenya (AAWU-K)**

AAWU-K has a valid recognition agreement with Kenya Airways, representing unionisable employees within the company. This agreement clearly outlines issues that are subject to joint consultations, and negotiations, which includes terms and conditions of service.

Further to this, the unionisable workers in the company have a CBA with Kenya Airways, for the period 2010-2012. Some of the clauses in the CBA were however pending negotiation and conclusion, among them, redundancy and, foreign contract staff. The clause on redundancy had therefore not been concluded in the CBA.

There was an attempt for consultations between the parties, which were hampered because there were two factions in the Union, who were entangled in internal leadership wrangles thus no consultations were carried out as there was no meaningful union representation.

The company clearly violated the recognition agreement by embarking on the exercise without consultations with the Union, and in contempt of the fact that redundancy was one of the issues that were pending conclusion in the CBA.

iv. **The Implementation Process of Redundancy Exercise**

The Committee established that communication to most of the employees who were declared redundant was through short text messages while on sick leave, maternity

leave, in hospitals, or on duty out of their stations which, was extremely cruel and barbaric.

There were cases of employees who were in hospitals but were summoned by text messages to receive their redundancy letters. One employee had a premature birth as a result of emotional and psychological trauma while others developed complications despite having no recorded complications or conditions earlier on.

The Committee also established that there was no training/counseling given to the employees in regard to their redundancy prior to the separation, which subjected them to emotional and psychological trauma associated with redundancies. Kenya Airways carried out the exercise hurriedly and even the employees who did not opt for voluntary early retirement were laid off and the letters sent out to them indicated that they opted for the retrenchment.

The issue of social dialogue is critical in ensuring that the exercise is done in a humane way.

The Committee took great exception to the inhumane manner in which the exercise was conducted.

v. **Procedure used in declaring the workers redundant**

Data made available to the Committee relating to actual implementation of the staff restructuring exercise indicates that of the 546 employees who exited the Airline through the staff rationalization, 98 staff opted to exit through Voluntary Early Retirement while 448 staff were declared redundant.

Kenya Airways did not use any procedure whatsoever in declaring the workers redundant. The Committee would have expected Kenya Airways to probably use Last In First Out (LIFO) or First In First Out (FIFO) principles. The best practice in redundancy is the principle rule of Last In First Out (LIFO). Before getting the court order that temporarily put on hold the retrenchment exercise, Kenya Airways had sent text messages to its employees stating that they would undergo aptitude/psychometric tests with a view to identifying those to be laid off.

The consultants who had been hired by the airline to administer Psychometric tests did not subject every worker to the tests. The company began the tests, and had covered about 5 percent of the entire workforce. When the court order was lifted, the company never concluded the exercise, and went ahead to hurriedly lay off even those who had not gone through the tests.

Many of the letters sent out to the employees stated that they had opted for Voluntary Early Retirement, which was not the case. These employees who purportedly opted for voluntary early retirement had since certified that they did not opt for it.

It was apparent that there was discrimination and victimization in the redundancy exercise. There was a deliberate objective to target female staff who had been on maternity leave in the last two years, those who were expectant and employees who were unwell including work related injuries and occupational health issues.

In the case of the female employees, the company cited productivity as the reason why they targeted these particular staff which suggests that the company was implying that maternity leave was a basis for declaring one unproductive. In the case of employees with work related injuries, the company used the redundancy exercise to run away from its obligation to compensate them.

Others who were victimized included union officials, shop stewards as well as those who had actively participated in the 2009 strike whose objective was to agitate for the conclusion of the CBA that would have resulted in the improvement of terms of conditions of service that had been pending for long. All shop stewards were victimized for being members of the Union.

vi. Outsourcing of Labour

Outsourcing of labour is an emerging trend in Kenya where both the public and private sectors outsource their non-core functions to independent contractors for purposes of management of labour and as a cost cutting measure. Initially, non-core functions were outsourced but currently even core functions are being outsourced.

In the Kenya Airways situation, the proposed outsourced functions would include ground services. This is an area in which 258 employees were declared redundant followed by 165 employees in flight operations. This in the view the Committee as well as the Ministry of Labour as are core functions for the airline.

The Committee has great reservations regarding this trend as some employers are misusing it leading to unfair labour practices. The practice also negates the principle of 'equal pay for work of equal value' as provided for in ILO Convention No. 100. The practice is also anti-union since short term contracts are issued to outsourcing firms and therefore subjecting workers to relatively less favourable terms of service. In addition, absence of Collective Bargaining Agreements is contrary to the Decent Work Agenda. The practice also casualizes labour thereby denying the workers long-term benefits of service.

Outsourcing of core functions may compromise security of an organization's operations and information. In addition, establishment of different sets of workers with different terms and conditions of employment may lead to disharmony.

vii. Contracting

It is difficult to mention outsourcing of labour in the petition without referring to contracting. Some of the employees declared redundant were replaced by staff hired on contract through Career Directions Limited. These workers are subjected to relatively less favourable terms of service and are not in a position to engage or consult with their employer as they are not unionisable. Absence of Collective Bargaining Agreements is contrary to the Decent Work Agenda, contracting leads to casualization of labour thereby denying the workers long-term benefits of service; and establishment of different sets of workers with different terms and conditions of employment may lead to disharmony.

viii. Foreign Staff

Kenya Airways is in the process of hiring flight attendants from India, Rwanda and Ghana in addition to the existing crew from Ghana, Cameroon and Thailand. These foreign nationals employed by Kenya Airways, and working locally are mostly cabin crew, a skill which is sufficient locally.

The justification given for employment of foreigners as cabin crew is culture and enhanced service, but a comparison with Ethiopian Airlines, British Airways, KLM, Air France, and South African Airways clearly showed that these established carriers do not employ foreigners to these positions. Emirates and Qatar Airways employ foreigners since they have a shortage of their own citizens who can perform these jobs.

The terms of employment of locals are inferior and discriminatory compared to those of foreigners. In addition, foreigners are trained for free by Kenya Airways at the Pride Centre, given free accommodation during training and guaranteed employment with the airline thereafter, at salaries which are much more superior to those of local staff. Besides, the airline also pays for their work permits and crew certificates issued by the Ministry of Immigration and Registration of Persons; and Kenya Civil Aviation Authority respectively.

This is happening in a country that has very high unemployment rates, and which is struggling to keep the pace in achieving vision 2030. Annual reports indicate that job creation still falls way below the target if the vision is to be achieved. This issuance of work permits to non-Kenyan nationals is happening while Kenya Airways retrenches the same cadre of Kenyan workers, who have for more than a decade made sacrifices in a bid to help achieve Kenya Airways' vision, 'To consistently be a safe and profitable airline that guarantees World Class service: The Pride of Africa'.

The Committee took exception to this exportation of Kenyan jobs as these work permits and crew certificates issued to foreigners had directly led to the retrenchment of Kenyans who have performed the same tasks for years.

COMMITTEE OBSERVATIONS

58 Based on the above findings, the Committee made the following observations.

That:-

- i. Considering that the notice of the proposed redundancy was given on 1st August 2012 and letters of separation issued on 4th September 2012, the duration lapsed suggests that the minimum requirement in the Employment Act, 2007 was fulfilled.
- ii. Clause on redundancy in the registered CBA had not been concluded and agreed upon by the Aviation and Allied Workers Union - Kenya and Kenya Airways.
- iii. Although Kenya Airways may have complied with the minimum provisions of the law, the CBA was not observed. There were no meaningful consultations during the process between Kenya Airways and AAWU-K. There was some form of engagement though. However, the union was pulling at cross purposes during the period. The faction led by the Union Chairperson had purportedly suspended the Union Secretary General and

communicated the same to Kenya Airways management and the Registrar of Trade Unions. The Union faction led by the Chairperson did not participate in the negotiations. Kenya Airways management took advantage of the Union leadership wrangles for lack of meaningful Union representation.

- iv. There was also lack of fairness in implementing the staff lay off exercise. The process was inhumane, cruel and barbaric.
- v. The severance package presented in the retrenchment notice had not been negotiated nor agreed on between management and the staff union.
- vi. Kenya Airways did not use any procedure whatsoever in declaring the workers redundant. There was discrimination and victimization in the exercise with a deliberate objective to target female staff who had been on maternity leave in the last two years, those who were expectant and employees who were unwell including occupational health issues and work related injuries.

Others who were victimized included union officials, shop stewards as well as those who had actively participated in the 2009 strike.

The best practice in redundancy is the principle rule of Last In First Out (LIFO). In addition, if the company was recruiting thereafter, the best practice would be to employ the same employees first before considering others.

- vii. Some of positions declared redundant have since been filled through outsourced services implying that the positions have not been abolished but were being indirectly transferred to outsourcing firms.
- viii. Some employers are abusing the emerging trend of outsourcing of labour leading to unfair labour practices. The practice negates the principle of 'equal pay for work of equal value' as provided for in ILO Convention No. 100. The practice is also anti-union since short term contracts are issued to outsourcing firms and therefore subjecting workers to relatively less favourable terms of service; absence of Collective Bargaining Agreements is contrary to the Decent Work Agenda; and it leads to casualization of labour thereby denying workers long-term benefits of service.
- ix. Although the trend of labour outsourcing seems to be a norm being entrenched in Kenya's labour management systems, there is no policy or legal provisions to regulate it. In the absence of regulation, outsourcing may be exploitative to the rights of workers contrary to the spirit and provisions of the Constitution.
- x. Outsourcing of core functions may compromise security of an organization's operations and information. Establishment of different sets of workers with different terms and conditions of employment may lead to disharmony.
- xi. The airline's precarious position was not mainly due to labour costs but largely due to other factors including mismanagement, corruption and negligence. This is considering that the Airline under the same management has carried out several retrenchment exercises in the past but still finds itself in the sad state of affairs.

- xii. Irregular outsourcing practices within the company have been a major avenue through which funds are lost and the two entities, Amboseli Limited and Samburu Limited registered in Caymans Island were questionable.
- xiii. Kenya Airways management did not explore all fundamental options available for reducing its wage bill including introducing pay cuts before embarking on the ultimate step of job losses.
- xiv. The work permits and crew certificates issued to foreigners by the Ministry of Immigration and Registration of Persons; and Kenya Civil Aviation Authority respectively had directly led to the retrenchment of Kenyans who have performed the same tasks for years.
- xv. Other established airlines elsewhere hardly employ foreigners to positions such as cabin crew apart from those where there is shortage of their own citizens who can perform the jobs, such as Emirates and Qatar Airways.
- xvi. The government's representation in the Kenya Airways Board of Directors by the Ministries of Transport and Finance is wanting and it does not represent the public interest.
- xvii. The process of carrying out the redundancy exercise was flawed in the separation of the two parties and not in line with the principles of justice and equity as per provisions of section 45 (4) (b) of the Employment Act, 2007, due consideration of an appropriate and commensurate form of compensation will suffice.
- xviii. AAWU had already referred the issue of redundancy to the Industrial Court. The Court has powers to order for reinstatement, award damages, give declaratory order or any other order it deems just and fair to award. The industrial court also has discretionary powers to refer the matter to the Labour Commission for fact finding and recommendations not based on legal technicalities.

COMMITTEE RECOMMENDATIONS

- 59 In view of the above observations, that the process of declaring the employees redundant by the management of Kenya Airways was flawed and without prejudice to the matter in court referred by the Union, the Committee recommends that;
- i. The whole redundancy exercise should be nullified and the affected employees reinstated with full benefits unconditionally and without any victimization whatsoever.
 - ii. The offices abolished should not be filled through outsourcing as this negates the principle of redundancy.
 - iii. The Government should urgently formulate policies to regulate both labour outsourcing and contracting.
 - iv. The Ministry of Immigration and Registration of Persons; and Kenya Civil Aviation Authority should be investigated by the relevant authorities to establish whether the work permits and crew certificates issued to foreign workers are done within the

existing legal framework to ensure that their actions protect, and do not in any manner undermine the livelihood of the workers in the country.

- v. The Ministry of Immigration and Registration of Persons; and Kenya Civil Aviation Authority should stop issuance of work permits and crew certificates to foreign workers for jobs where there are sufficient skills locally.
- vi. Kenya Airways management should train its Kenyan employees in foreign languages as opposed to employing foreign nationals. Besides, the employees could learn the languages.
- vii. Kenya Airways should have regard for its workers constitutional rights and fundamental freedoms relating to labour relations. The airline should respect employees' rights to fair labour practices in line with provision of Article 41 of the Kenya Constitution.
- viii. Kenya Airways should also have regard for the Collective Bargaining Agreement signed between the airline and Kenya Aviation and Allied Workers Union.
- ix. Kenya Airways management should stop victimizing its staff on the basis of gender and health status. It should also stop victimizing Kenya Aviation and Allied Workers Union officials.
- x. Kenya Airways Board of Directors; and the Government should immediately institute investigations into the mismanagement, corruption, negligence and alledged sexual harassments within the airline's management and take requisite action to safeguard the interest of the shareholders and ensure investor confidence.
- xi. Kenya Airways Board of Directors; and Government should immediately institute investigations into the relationship between Kenya Airways and Amboseli, and Samburu Companies registered in Cayman Islands to protect the interest of shareholders and ensure investor confidence.

MINUTES OF THE 242ND SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON TUESDAY, 4TH DECEMBER 2012 IN THE COMMITTEE ROOM ON 7TH FLOOR, PROTECTION HOUSE PARLIAMENT BUILDING, AT 10.30 A.M.

PRESENT

Hon. Pollyns Ochieng, MP - Ag. Chairperson
Hon. Charles Keter, MP
Hon. Jackson Kiptanui, MP
Hon. Najib Balala, MP
Hon. Alfred Odhiambo, MP
Hon. Charles Nyamai, MP

ABSENT WITH APOLOGY

Hon. Sophia Abdi Noor, MP- Chairperson
Hon. Charles Keter, MP
Hon. Elijah Langat, MP
Hon. Joseph Magwanga, MP

ABSENT

Hon. Lenny Kivuti, MP - Vice Chairperson
Hon. Clement Waibara, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

Ms. Rachael Kairu - Second Clerk Assistant

MIN. NO.350/2012 PRELIMINARIES

The Sittings' proceedings commenced with a word of prayer.

MIN. NO.351/2012 CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Minutes of the following sittings were read and confirmed by the Members present as true record of the proceedings, and signed by Acting Chairperson.

- i. Minutes of 215th Sitting of the Committee held on 20th September 2012, Proposed by Hon. Jackson Kiptanui, MP and Seconded by Hon. Alfred Odhiambo, MP;
- ii. Minutes of 216th Sitting of the Committee held on 24th September 2012, Proposed by Hon. Pollyns Ochieng, MP and Seconded by Hon. Alfred Odhiambo, MP;
- iii. Minutes of 217th Sitting of the Committee held on 24th September 2012, Proposed by Hon. Alfred Odhiambo, MP and Seconded by Hon. Pollyns Ochieng, MP;
- iv. Minutes of 218th Sitting of the Committee held on 25th September 2012, Proposed by Hon. Pollyns Ochieng, MP and Seconded by Hon. Charles Nyamai, MP;
- v. Minutes of 220th Sitting of the Committee held on 2nd October 2012, Proposed by Hon. Charles Nyamai, MP and Seconded by Hon. Pollyns Ochieng, MP;

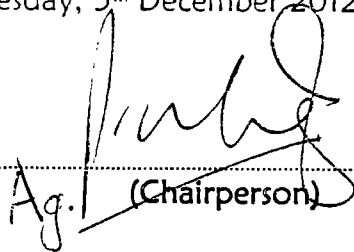
- vi. Minutes of 221st Sitting of the Committee held on 2nd October 2012, Proposed by Hon. Charles Nyamai, MP and Seconded by Hon. Pollyns Ochieng, MP;
- vii. Minutes of 222nd Sitting of the Committee held on 3rd October 2012, Proposed by Hon. Jackson Kiptanui, MP and Seconded by Hon. Pollyns Ochieng, MP;
- viii. Minutes of 224th Sitting of the Committee held on 9th October 2012, Proposed by Hon. Pollyns Ochieng, MP and Seconded by Hon. Charles Nyamai, MP;
- ix. Minutes of 225th Sitting of the Committee held on 10th October 2012, Proposed by Hon. Charles Nyamai, MP and Seconded by Jackson Kiptanui, MP;
- x. Minutes of 227th Sitting of the Committee held on 11th October 2012, proposed by Hon. Pollyns Ochieng, MP and Seconded by Hon. Charles Nyamai, MP;
- xi. Minutes of 228th Sitting of the Committee held on 16th October 2012, Proposed by Hon. Charles Nyamai, MP and Seconded by Hon. Charles Keter, MP;
- xii. Minutes of 229th Sitting of the Committee held on 16th October 2012, Proposed by Hon. Charles Keter, MP and Seconded by Hon. Charles Nyamai, MP;
- xiii. Minutes of 231st Sitting of the Committee held on 18th October 2012, Proposed by Hon. Hon. Jackson Kiptanui, MP and Seconded by Hon. Charles Keter, MP;
- xiv. Minutes of 232nd Sitting of the Committee held on 6th November 2012, Proposed by Hon. Charles Keter, MP and Seconded by Hon. Jackson Kiptanui, MP;
- xv. Minutes of 233rd Sitting of the Committee held on 6th November 2012, Proposed by Hon. Pollyns Ochieng, MP and Seconded by Hon. Alfred Odhiambo, MP;
- xvi. Minutes of 235th Sitting of the Committee held on 14th November 2012, Proposed by Hon. Pollyns Ochieng, MP and Seconded by Hon. Charles Keter, MP;
- xvii. Minutes of 237th Sitting of the Committee held on 21st November 2012, Proposed by Hon. Pollyns Ochieng, MP and Seconded by Hon. Jackson Kiptanui, MP;
- xviii. Minutes of 238th Sitting of the Committee held on 22nd November 2012, proposed by Hon. Jackson Kiptanui, MP and Seconded by Hon. Charles Nyamai, MP;

MIN.NO. 192/2012

ADJOURNMENT

There being no other business, the Chairperson the meeting at Half Past Eleven O'clock until Wednesday, 5th December 2012 at Eleven O'clock.

Signed


 Ag. (Chairperson)

Date

4th December 2012

MINUTES OF THE 238TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY 22 NOVEMBER, 2012, IN THE PRIVATE MEMBERS LOUNGE, MAIN PARLIAMENT BUILDINGS AT 4.00 PM

MEMBERS PRESENT

1. Hon. Charles Keter, M.P. - Ag. Chairperson
2. Hon. Pollyns Ochieng, M.P.
3. Hon. Jackson Kiptanui, M.P.
4. Hon. Joseph Magwanga, M.P.
5. Hon. Charles Nyamai, M.P.
6. Hon. Elijah Lagat, M.P.

ABSENT WITH APOLOGY

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Alfred Odhiambo, M.P.
3. Hon. Najib Balala, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

INATTENDANCE NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline Karwitha K. - Third Clerk Assistant
3. Mr. Wilfred Manyi - Parliamentary Intern

MIN. NO.335/2012 PRELIMINARIES

The Sittings' proceedings commenced with a word of prayer.

MIN. NO.336/2012 ADOPTION OF THE REPORT ON THE PETITION ON REDUNDANCY EXERCISE AT KENYA AIRWAYS

The Committee deliberated the draft Report on the Petition on the ongoing Redundancy Exercise at Kenya Airways on adopted it with the followings amendments after being proposed by Hon. Pollyns Ochieng, MP and seconded by Hon. Jackson Kiptanui, MP.

Members resolved that:-

- i. The acknowledgement to the Ministry of Transport be deleted.
- ii. In page 16, paragraph 16 (3), the word 'candid' be amended.
- iii. In page 15 paragraph 15 (vi) and (vii), the word 'consider' be substituted with a stronger term.

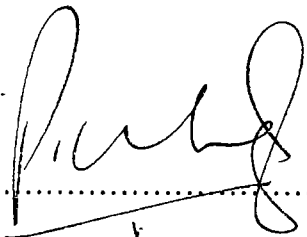
iv. In page 14, paragraph 14 (xvii), the observation that the representation of the Government in the Kenya Airways Board through the Ministries of Transport and Finance is wanting be added.

MIN. NO.337/2012 ANY OTHER BUSINESS

The Committee was informed that the House was scheduled to debate the motion to adopt the Committee Report on the appointment of **Mrs. Gumato Ukur Yatani** as a Member to the National Gender and Equality Commission later in the evening, hence the need for the Committee Members to be present to contribute to the motion.

MIN. NO.338/2012 ADJOURNMENT

There being no other business the Ag. Chairperson meeting adjourned at Quarter to Five O'clock.

SIGNED.....

Ag. (Chairperson)

DATE..... 4/12/2012

MINUTES OF THE 237TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM ON SEVENTH FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS ON WEDNESDAY 21, NOVEMBER, 2012 AT 11.50 AM

MEMBERS PRESENT

1. Hon. Pollyns Ochieng, M.P. - Ag. Chairperson
2. Hon. Jackson Kiptanui, M.P.
3. Hon. Joseph Magwanga, M.P.
4. Hon. Elijah Lagat, M.P.

ABSENT WITH APOLOGY

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Alfred Odhiambo, M.P.
3. Hon. Mohamed Najib Balala, M.P.
4. Hon. Charles Nyamai, M.P.
5. Hon. Charles Keter, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant

MIN.NO. 332/2012

PRELIMINARIES

The Sittings' proceedings commenced with a word of prayer.

MIN.NO. 333/2012

CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON THE PETITION ONGOING REDUDANCY EXERCISE AT KENYA AIRWAYS

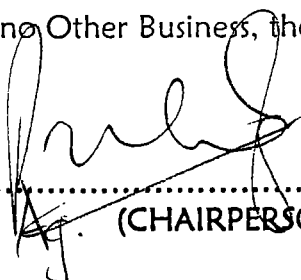
The Committee considered the draft report, agreed with its contents, but could not adopt it as the quorum was inadequate for adoption of the report.

MIN.NO. 334/2012:

ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Twelve O'clock.

SIGNED.....


Ag. (CHAIRPERSON)

DATE..... 4/12/2012

MINUTES OF THE 235TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM ON FOURTH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON WEDNESDAY, 14TH NOVEMBER, 2012 AT 2.30 P.M.

MEMBERS PRESENT

1. Hon. Charles Keter, M.P. - Ag. Chairperson
2. Hon. Joseph Magwanga, M.P.
3. Hon. Pollyns Ochieng, M.P.

ABSENT WITH APOLOGY

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Alfred Odhiambo, M.P.
3. Hon. Elijah Lagat, M.P.
4. Hon. Charles Nyamai, M.P.
5. Hon. Jackson Kiptanui, M.P.
6. Hon. Mohamed Najib Balala, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant
3. Mr. Willfred Manyi - Parliamentary Intern

MIN.NO. 325/2012

PRELIMINARIES

The sittings' proceedings commenced with a word of prayer.

MIN.NO. 326/2012

CONSIDERATION OF THE DRAFT REPORT ON THE PUBLIC PETITION ON THE RETRENCHMENT EXERCISE AT KENYA AIRWAYS LIMITED

The Committee having perused the draft report proposed the following amendments:-

i. Observations

- The representation of the Government in the Kenya Airways Board is wanting as they have not taken keen attention of the interests of the Government and the public in general.
- The Committee commends the Capital Markets Authority and the Ministry of Labour for being very candid with information.

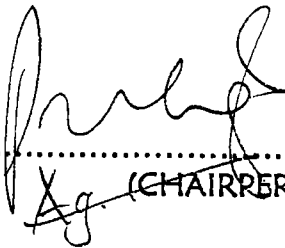
ii. Recommendations

- That the connection between Samburu and Amboseli companies with Kenya Airways be investigated.
- That investigations be carried out to establish whether indeed Kenya Airways bought an old refurbished Embraer aircraft and claimed that it was new.

- Those employees who volunteered to retire be allowed to leave Kenya Airways.

MIN.NO. 327/2012 ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Three O'clock.

SIGNED.....
Ag. (CHAIRPERSON)

DATE..... 4/12/2012.....

MINUTES OF THE 234TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM ON FOURTH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON TUESDAY, 13TH NOVEMBER, 2012 AT 10.20 A.M.

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Pollyns Ochieng, M.P.
3. Hon. Mohamed Balala, M.P.

ABSENT WITH APOLOGY

1. Hon. Charles Keter, M.P.
2. Hon. Joseph Magwanga, M.P.
3. Hon. Alfred Odhiambo, M.P.
4. Hon. Elijah Lagat, M.P.
5. Hon. Charles Nyamai, M.P.
6. Hon. Jackson Kiptanui, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

- | | | |
|---------------------------|---|------------------------|
| 1. Ms. Rachael Kairu | - | Second Clerk Assistant |
| 2. Ms. Caroline K. Kinyua | - | Third Clerk Assistant |
| 3. Mr. Willfred Manyi | - | Parliamentary Intern |

MIN.NO. 321/2012

PRELIMINARIES

The meeting began with a word of prayer.

MIN.NO. 322/2012

CONSIDERATION OF THE DRAFT REPORT ON THE PUBLIC PETITION ON THE REDUNDANCY EXERCISE AT KENYA AIRWAYS LIMITED

The Committee was of the view that the Kenyan public was depending on it to give an independent report with strong recommendations, towards that effect they proposed the following amendments:-

- i. Under recommendations, to include that the management of Kenya Airways should train Kenyans in other foreign languages as opposed to employing foreign nationals;
- ii. To include a specific paragraph stating the casual manner in which the Managing Director of Kenya Airways acted, by failing to give the committee evidence.

The Committee resolved to carry with them copies of the draft report for an in depth reading.

i. Letter from the Law Society of Kenya to the Speaker

The Committee was informed that the Law Society of Kenya had vide letter reference no. S/20 dated 12th October 2012 written to the Speaker of the National Assembly and copied the Chairperson on the Proceedings of the Committee for the meeting that was held on October 11, 2012. The letter was requesting the Speaker to take action on the Committee for asking the legal counsel representing Kenya Airways Management, Mr. Kiragu Kimani to leave the meeting room.

The Committee was of the view that the contents of the letter amounted to intimidation, because the lawyer was asked to leave for fail to follow procedure for conduct of Committee meetings and kept on interrupting the proceedings while Committee Members were speaking. The Committee resolved to have the Chairperson meet the Speaker over the matter.

ii. Request to Visits

- The Committee was informed of a letter from the Ministry of Foreign Affairs, Kenya on behalf of the South African Parliamentary Portfolio Committee on Arts and Culture. The South African Parliamentary Portfolio Committee was requesting to visit between 26th and 28th November, 2012. Their main for the visit was and understand the management of Kenya's paleontological and world heritage sites.

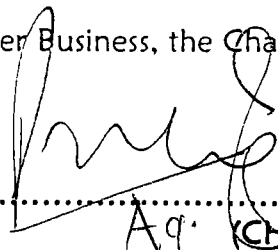
The Committee agreed to their request and resolved to write to the Ministry of National Heritage and Culture requesting for a brief on the subject matter and for the visits to the heritage sites to be arranged for the delegation.

- The Parliament of Uganda Sessional Committee on Gender, Labour and Social Welfare had requested to visit Kenya Parliament. Their main purpose for the visit is to benchmark on the Disability, Social Protection, and Equity issues.

The Committee agreed to their request and resolved to meet them when they visit.

There being no Other Business, the Chairperson adjourned the meeting at Eleven O'clock.

SIGNED.....



Ag. (CHAIRPERSON)

DATE.....

4/12/2012

MINUTES OF THE 233RD SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON TUESDAY, 6TH NOVEMBER, 2012 AT 12.30 PM

MEMBERS PRESENT

1. Hon. Charles Keter, M.P. - Ag. Chairperson
2. Hon. Joseph Magwanga, M.P.
3. Hon. Alfred Odhiambo, M.P.
4. Hon. Pollyns Ochieng, M.P.

ABSENT WITH APOLOGY

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Elijah Lagat, M.P.
3. Hon. Charles Nyamai, M.P.
4. Hon. Najib Balala, M.P.
5. Hon. Jackson Kiptanui, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

MINISTRY OF FINANCE

1. Mr. Joseph Kinyua - Permanent Secretary
2. Mr. Vincent Rague - Senior Financial Advisor
3. Mr. Protus Sigei - Deputy Director

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant
3. Ms. Rose Ometere - Hansard Recorder

MIN.NO. 321/2012

PRELIMINARIES

The sittings' proceedings commenced with a word of prayer.

MIN.NO. 322/2012

CONSIDERATION OF THE PUBLIC PETITION ON THE RETRENCHMENT EXERCISE AT KENYA AIRWAYS LIMITED (KQ)

PRESENTATION BY THE MINISTRY OF FINANCE/TREASURY

The Permanent Secretary informed the Committee the following:-

- i. The Permanent Secretary had appointed Mr. Vincent Rague his alternate to the Kenya Airways Board.
- ii. The Permanent Secretary represents the Government in the Board as a shareholder. His role is to ensure oversight in management of the company in maximizing returns for the investor (government). He also ensures that the investment is managed in a manner to optimize profits and in terms of policy, he

advises on the impact of any policy decision that the Board takes. Retrenchment is however not the kind of policy that the Permanent Secretary has in mind, because there are labour laws that govern that sector.

- iii. The decision to retrench was by the Board but it should have been done within the laws of the country.

The alternate to the Permanent Secretary Mr. Vincent Rague informed the Committee the following:-

- i. He has sat in several Boards and no employer just sets out to retrench employees, it's done with good reasons. The global airline market is in economic turmoil and Kenya Airways has been greatly affected. Kenya Airways markets include Europe, Asia and Africa. The European market was the greatest contributor to the Kenya airways profits but has suffered economic recession and the routes are no longer profitable.
- ii. Fuel prices have also gone up significantly, so the decision to retrench was based on the economic situation and if the situation improves, Kenya Airways will hire employees once more.

Committee Clarifications

The Committee sought the following clarifications:-

- i. Whether the exercise carried out was a redundancy or retrenchment.
- ii. Why Kenya Airways failed to involve the Ministry of Labour.
- iii. Whether their allegations that Kenya Airways purchases old aircrafts purporting to be new ones and further it does not buy its aircrafts directly but through a financier.
- iv. Whether Kenya Airways buys or leases aircrafts from Samburu and Amboseli companies that are registered in Cayman's Island.

The Ministry's responses

The Permanent Secretary responded as follows:-

- i. Kenya Airways put a notice in the dailies of its intention to lay off about five hundred employees and those that volunteered to be laid off and were non unionisable proceeded with their retirement whereas the unionisable ones were still with Kenya Airways pending the determination of the case in the industrial court.
- ii. The interest of the government and the shareholders is to ensure that shareholders get return for their investments and ensure that the company does not revert to the pre-private period, when it made losses.
- iii. The Committee needs to have a balance between retaining employees and ensuring the company remains profitable to enable it continue its operations.
- iv. The Kenya Government shall not create jobs without investments. In deed, unlike before privatization, Kenya Airways pays tax, meets its operational cost and pays dividends thus the net benefits to the government and the Kenyan people were substantial.

- v. Kenya Airways has a well thought out plan for increasing its fleet by purchasing new aircrafts. A company in the United States of America that was contracted to provide the aircrafts failed and thus Kenya Airways resorted to leasing aircrafts.
- vi. The Ministry of Labour would only get involved in such a matter if there is a problem, to ensure that the labour laws are observed and if not solved, the matter can proceed to the industrial court as is the case, with the current issue under consideration.
- vii. Workers unions would certainly be involved in the discussions but at the end of the day the employer who is meeting the financial responsibility has the final say.

The Alternate to the Permanent Secretary Mr. Vincent Rague responded as follows:-

- i. If the court rules that the employees targeted should be laid off, Kenya Airways would make a saving of one billion annually and the costs of laying them off would be Kshs. 800,000,000 million.
- ii. He was not aware that Kenya Airways outsourced other employees immediately after retrenching the over 600 employees. However, the role of the Board is not to micromanage management, and outsourcing is an operational decision for the management.
- iii. He was aware of the letter dated 27th October 2012 by the Committee inviting the Board to a meeting and was also aware that various persons had appeared or were scheduled to appear before the Committee, but just like the other witnesses, he feels constrained to answer questions that refer to operations of the airline as they were sub-judice and the management would be better placed to answer them.
- iv. He was not aware of Samburu and Amboseli companies and the names were new to him. In terms of procurement, there is a long term plan for the airline to contract with Boeing for supply aircrafts. The first delivery was expected in the year 2014.
- v. Kenya Airways procures the Embraer aircrafts directly from the Embraer company. They borrow money from banks to acquire the aircrafts.

The Committee was of the view that, Treasury was not representing the wishes of public and the government in the Kenya Airways Board, and the decision by Kenya Airways was rushed the labour laws was not observed.

The Committee observed that the Permanent Secretary and his alternate to the Kenya Airways Board were not willing to volunteer information regarding the issue under consideration.

MIN.NO. 323/2012

ANY OTHER BUSINESS

i. Report from the Capital Markets Authority (CMA)

Following the request by the Committee, to submit a report covering the following issues; the legal mandate of the Authority; the shareholding structure of Kenya Airways; details of group structure of Kenya Airways; the relationship between Kenya Airways and Jambo Jet Ltd, Amboseli Ltd and Samburu Ltd; and the services that have been outsourced by Kenya Airways to other companies and

the ultimate beneficiaries, Capital Markets Authority through the Clerk's Office submitted the report.

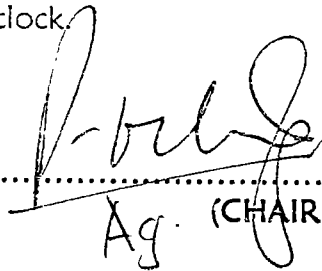
ii. **Draft Report on petition by Ex-Employees of Kenya Airways who had been declared redundant**

The Committee was of the view that so far they had exhausted all the evidence despite Kenya Airways management failure to appear. The Committee resolved to close its evidence taking and consider the draft report on Tuesday, 13 November 2012.

MIN.NO. 324/2012 ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Forty Five minutes past One O'clock

SIGNED.....



Ag. (CHAIRPERSON)

DATE.....

4/12/2012

MINUTES OF THE 232ND SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON TUESDAY, 6TH NOVEMBER, 2012 AT 10.15 AM

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Charles Keter, M.P.
3. Hon. Joseph Magwanga, M.P.

ABSENT WITH APOLOGY

1. Hon. Najib Balala, M.P.
2. Hon. Alfred Odhiambo, M.P.
3. Hon. Elijah Lagat, M.P.
4. Hon. Charles Nyamai, M.P.
5. Hon. Pollyns Ochieng, M.P.
6. Hon. Jackson Kiptanui, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant

MIN.NO. 321/2012

PRELIMINARIES

The sittings' proceedings commenced with a word of prayer.

MIN.NO. 322/2012

CONSIDERATION OF THE PUBLIC PETITION ON THE REDUNDANCY EXERCISE AT KENYA AIRWAYS LIMITED (KQ)

MEETING WITH THE BOARD OF DIRECTORS, KENYA AIRWAYS

The meeting was informed that the Board of Kenya Airways had written a letter stating that they would not be attending the meeting, citing their previous stand that the matter (petition) was sub judice.

The Committee was of the view that Kenya Airways was uncooperative, and resolved to proceed to write its report without their input.

MIN.NO. 323/2012

ANY OTHER BUSINESS

MEETING WITH THE PERMANENT SECRETARY, MINISTRY OF FINANCE

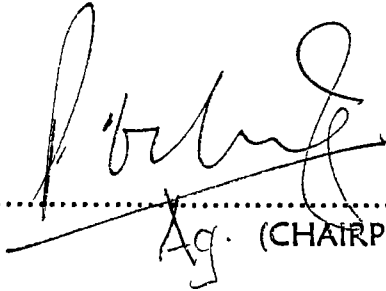
The Committee was informed of the meeting with the Permanent Secretary, Ministry of Finance scheduled for 12.00 noon on Tuesday, 06 November, 2012.

MIN.NO. 324/2012

ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Thirty minutes past Ten O'clock.

SIGNED.....



Ag. (CHAIRPERSON)

DATE.....

4/12/2012

MINUTES OF THE 231ST SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON THURSDAY, 18TH OCTOBER, 2012 AT 10.30 AM

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Charles Keter, M.P.
3. Hon. Jackson Kiptanui, M.P.

ABSENT WITH APOLOGY

1. Hon. Najib Balala, M.P.
2. Hon. Alfred Odhiambo, M.P.
3. Hon. Elijah Lagat, M.P.
4. Hon. Charles Nyamai, M.P.
5. Hon. Joseph Magwanga, M.P.
6. Hon. Pollyns Ochieng, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

- | | | |
|---------------------------|---|------------------------|
| 1. Ms. Rachael Kairu | - | Second Clerk Assistant |
| 2. Ms. Caroline K. Kinyua | - | Third Clerk Assistant |
| 3. Ms. Rose Ometere | - | Hansard Recorder |
| 4. Mr. Willy Manyi | - | Parliamentary Intern |

MIN.NO. 317/2012

PRELIMINARIES

The sittings' proceedings commenced with a word of prayer.

MIN.NO. 318/2012

CONSIDERATION OF THE PUBLIC PETITION ON THE
RETRENCHMENT EXERCISE AT KENYA AIRWAYS LIMITED
(KQ)

MEETING WITH THE BOARD OF KENYA AIRWAYS

- i. The meeting was informed that the Board of Kenya Airways had communicated vide letter dated 16th October 2012 that it would was not attending the sitting as scheduled. The letter cited that the matter (petition) was before the Industrial Court and it would be subjudice to deliberate on the same.

It also requested the Committee to reply to the letter by the management dated 11th October 2012, before they could consider having another meeting with the Committee.

- ii. The Committee resolved to have the letter of 11th October replied to and to invite the Board to its meeting on 1st of November, 2012.

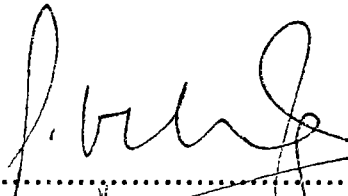
MIN.NO. 319/2012 ANY OTHER BUSINESS

Adjournment of Committee Business

The Committee resolved to adjourn its sittings until Thursday, November 1, 2012 as the House was on recess.

MIN.NO. 320/2012 ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Forty Five minutes past Ten O'clock.

SIGNED.....

Ag. (CHAIRPERSON)

DATE..... 4/12/2012

MINUTES OF THE 229TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON TUESDAY, 16TH OCTOBER, 2012 AT 11.20 AM

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Charles Keter, M.P.
3. Hon. Charles Nyamai, M.P.

ABSENT WITH APOLOGY

1. Hon. Najib Balala, M.P.
2. Hon. Alfred Odhiambo, M.P.
3. Hon. Elijah Lagat, M.P.
4. Hon. Jackson Kiptanui, M.P.
5. Hon. Pollyns Ochieng, M.P.
6. Hon. Joseph Magwanga, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)

1. Mr. George Muchai - Board Member/Deputy Sec. General, COTU
2. Mr. Rajab W. Mwondi - Board Member/Chairman General, COTU
3. Mr. Musamia Wafula - Board Member, COTU
4. Mr. Ernest Nadome - Board Member, COTU
5. Mr. Isaiah Kubai - Board Member, COTU
6. Mr. Albert Njeru - Board Member, COTU
7. Mr. Bonne Nicholas Barasa - Aviation Union (AAWU) General Secretary

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant
3. Wilfred Manyi - Parliamentary Intern
4. Ms. Rose Ometere - Hansard Recorder

MIN.NO. 311/2012

PRELIMINARIES

The sittings' proceedings commenced with a word of prayer.

MIN.NO. 312/2012

CONSIDERATION OF THE PUBLIC PETITION ON THE RETRENCHMENT EXERCISE AT KENYA AIRWAYS LIMITED (KQ)

The Deputy Secretary General of COTU informed the meeting that the Secretary General was out of the country attending a meeting so he was not able to attend the meeting and he had instead requested the Deputy Secretary General to appear before the Committee.

He thereafter Tabled the following documents:-

- i. Letter dated 1st was on the Kenya Airways Staff Rationalization Exercise, from the CEO of Kenya Airways to the Permanent Secretary, Ministry of Labour.
- ii. Letter dated 4th, August 2012 on redundancy, from the Head of Human Resources Relationships and Reward to Julius Chacha Mwita.
- iii. Memo dated 6th September 2012 on Voluntary Early Retirement/Retrenchment, from the CEO of Kenya Airways to the employees of Kenya Airways.
- iv. Section 40, Employment Act, 2007 on termination on account of redundancy.
- v. Section 49, Collective Bargaining Agreement on redundancy.
- vi. ILO Employment Relationship Recommendation, of 2006.

PRESENTATION BY CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)

The Deputy Secretary General informed the Committee the following:-

- i. COTU is an umbrella body of trade unions in the country and thus does not deal directly with the employees. COTU relies heavily on its affiliates and in regard to the matter under consideration, the affiliate was the Aviation Allied and Workers Union (AAWU).
- ii. COTU understands matter before the Committee to be about redundancy. As defined in Section 40 of the Employment Act. **40. (1)** An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions -
 - (a) *where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;*
 - (b) *where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer ;*
 - (c) *the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;*
 - (d) *where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy, the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;*

(e) *the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;*

(f) *the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and*

(g) *the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.*

(2) *Subsection (1) shall not apply where an employee's services are terminated on account of insolvency as defined in Part VIII in which case that Part shall be applicable.*

(3) *The Minister may make rules requiring an employer employing a certain minimum number of employees or any group of employers to insure their employees against the risk of redundancy through an unemployment insurance scheme operated either under an established national insurance scheme established under written law or by any firm underwriting insurance business to be approved by the Minister.*

- iii. Kenya Airways failed to notify the employees, the union to which the employees were members and the area labour officer of the intended redundancy. The notification that was given did not conform to the law. The District Labour Officer was just copied the letter that was sent to the Permanent Secretary, Ministry of Labour so it was not possible to make any intervention.
- iv. The management of Kenya Airways first issued a notice dated 4th September 2012, to all its employees informing them that they had been declared redundant, two days after on the 6th of September, Kenya Airways issued a memo talking about retrenchment programme which is different from redundancy.
- v. The union did not have an engagement with Kenya Airways over the redundancy. At some time in August 2012, the management had invited the union to discuss rationalization but the negotiations were never completed.
- vi. Kenya Airways did not adhere to Clause 49 of the Collective Bargaining Agreement which states that;

Redundancy

- (a) This shall be as defined in the current Employment Act, 2007 and as may be amended from time to time.
- (b) An employee declared redundant shall receive three (3) months notice or three (3) months' salary in lieu.

- (c) An employee who has been declared redundant and given notice shall be permitted to leave before the expiry of the notice period if he/she wishes. However, he/she shall not be paid for the unexpired notice period.
 - (d) In addition to (b) above, an employee declared redundant shall be entitled to a severance pay at the rate of 20 days salary for each year of completed service.
 - (e) An employee declared redundant shall be entitled to the following:-
 - Gross pay up to the effective date of the redundancy
 - Accrued leave days up to the effective date of redundancy based on the salary at the rate of 20.5 working days per month
 - Provident Fund in accordance with the Provident Fund Rules and Regulations.
 - ESOP shares in accordance with ESOP Rules and Regulations if applicable.
- vii. Kenya Airways wrote a letter to the Permanent Secretary, Minister for Labour vide letter dated 1st August 2012 informing her of the staff rationalization exercise. The subject matter of the letter was 'Kenya Airways Staff Rationalization Exercise'. In one of the paragraphs the letter indicated that Kenya Airways would immediately embark on a restructuring exercise that would result in staff redundancies and, where applicable, outsourcing of labour.

The entire redundancy exercise was aimed at the removal of employees and their replacement through outsourcing. Outsourcing is a new concept in Kenya. It had been outlawed by the industrial court and it runs contrary to Article 41 of the Constitution.

In the second last paragraph, the letter stated that in executing the process, full compliance to the labour laws and the CBA where applicable, would be observed. Kenya Airways did not observe the laws and CBA.

- viii. Other employers who have in the past declared their intentions to reduce labour have engaged unions and have agreed on other alternatives including deployments, which Kenya Airways did not.

Observations by Central Organization of Trade Unions (COTU)

- i. Kenya Airways employs foreigners to jobs that can be very ably done by Kenyans. Other airlines elsewhere hardly employ foreigners. Nothing stops Kenya Airways from training the Kenyans on foreign languages to perform these jobs, besides, employees could learn the foreign languages. Kenya Airways was making an effort to sustain employees from other countries at the expense Kenyans.
- ii. Most of the employees who were retrenched were young persons with families whose lives had been declared economically dead.

Mr. Isiah Kubai informed the Committee the following:-

- i. There were two issues under the matter; to start with the company talked of retrenchment then they resulted to redundancy. In regard to retrenchment, the worker voluntarily agrees to terminate his/her services and they should thus be paid generously in accordance with the agreement that the parties have set. This is because the employees were on Permanent and Pensionable basis.
- ii. The employee numbers were not superfluous as Kenya Airways started recruiting immediately through outsourcing after declaring the employees redundant.
- iii. Kenya Airways discriminated and victimized the workers, by declaring redundant those that they thought were expensive to maintain in terms of hospital bills, and union officials as a way of silencing the union.
- iv. The best practice in criteria for redundancy was the principle rule of Last In First Out (LIFO). In addition, if the company was recruiting thereafter, the best practice would be to employ the same employees first before considering others as opposed to the practice of outsourcing.
- v. In 2006, International Labour Organization (ILO) considered the practice of outsourcing and recommended that each country must have laws in place to guide the practice, and thus COTU very strongly challenges the practice by Kenya Airways.

The General Secretary of the Aviation and Allied Workers Union informed the Committee the following:-

- i. The Union wanted to engage the management of Kenya Airways, but the management was unwilling. The management only sent one communication to the Union under subject matter, the rationalization exercise.
- ii. Whereas Kenya Airways was claiming that it wanted to reduce the number of employees thus declaring some them redundant, the union was concerned that the company was through its expansion programme in the process of acquiring more aircrafts meaning the company would need to employ more employees.
- iii. Only the General Secretary of the Union who is mandated to engage with the Kenya Airways management. Other members of the union supported the Chairperson who had no authority to engage with the Management.
- iv. Some workers applied for voluntary retirement. However, the company indicated that all the employees had voluntarily agreed to retire even those that did not volunteer.

The Committee sought to know whether the Union was in any way involved by the management in deciding whether to carry out the retrenchment, which the General Secretary initially denied any engagement but later confirmed after the Committee read out the minutes of the meetings held on 3rd and 10th August 2012 between the Aviation and Allied Workers Union and the Management of Kenya Airways, whereby he attended one meeting and he was represented in the other. He confirmed that indeed, there had been some engagements, which were not concluded.

He however denied having submitted a proposal to Kenya Airways Management on severance package, yet the Committee was in possession of a copy of the proposal that he had submitted, He further denied that he had ever been suspended from the Aviation and Allied Workers Union stating that it was the creation of Kenya Airways, yet the Committee had information that he had been suspended from the union and the same information had been communicated to the Kenya Airways and the Registrar of Unions.

The Deputy Secretary General of COTU informed the Committee the following:-

- i. COTU does not interfere with the internal matters of the affiliate unions. Under the Labour Relations Act, 2007 Section 2, the authorized representative in matters of a union is the General Secretary of a particular union and COTU transacts with that individual. However, in the case of the matter between Kenya Airways and the AAWU-K, the letter copied to the union regarding the rationalisation exercise and the proposal that was made by the General Secretary of the Aviation and Allied Workers Union to the Kenya Airways Management on severance package were not presented to COTU.
- ii. Kenya Airways acted contrary to the labour laws and the Constitution of Kenya.
- iii. The redundancy exercise carried out by Kenya Airways was irregular and unlawful and thus should be nullified and all the affected employees reinstated.
- iv. Most of the affected employees were the women. They should not be discriminated on account of a natural phenomenon such as pregnancies and neither should any company discriminate union workers.

The Committee requested COTU to prepare a report clarifying the three issues as referred to by various witnesses under the matter under consideration; rationalization, redundancy, and retrenchment.

MIN.NO. 313/2012

ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Ten minutes past One O'clock.

SIGNED.....


Ag. (CHAIRPERSON)

DATE.....

4/12/2012

MINUTES OF THE 227TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON THURSDAY, 11TH OCTOBER, 2012 AT 10.30 A.M.

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Charles Keter, M.P.
3. Hon. Joseph Magwanga, M.P.
4. Hon. Pollyns Ochieng, M.P.
5. Hon. Charles Nyamai, M.P.
6. Hon. Elijah Lagat, M.P.

ABSENT WITH APOLOGY

1. Hon. Alfred Odhiambo, M.P.
2. Hon. Jackson Kiptanui, M.P.
3. Hon. Najib Balala, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

KENYA AIRWAYS MANAGEMENT

1. Dr. Titus Naikuni - Group Managing Director and CEO
2. Mr. Evanson Mwaniki - Chairman, Board of Directors
3. Mr. Albert Mwenda - Group Human Resource Director
4. Mr. Kiragu Kimani - Legal Advisor

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant
3. Ms. Rose Ometere - Hansard Recorder

MIN.NO. 304/2012

PRELIMINARIES

The sittings' proceedings commenced with a word of prayer.

MIN.NO. 305/2012

CONSIDERATION OF THE PUBLIC PETITION ON THE
RETRENCHMENT EXERCISE AT KENYA AIRWAYS LIMITED
(KQ)

PRESENTATION BY KENYA AIRWAYS

The Chairman of the Board informed the Committee the following:-

- i. That Kenya Airways would wish to correct the erroneous impression given by the members of the fourth estate that the management of Kenya Airways had refused to appear before the Committee.

- ii. The management of Kenya Airways appreciates the role that the Committee plays and also appreciates that Kenya Airways is a national entity that plays a key economic role and the issues in the petition were pertinent.
- iii. The Chairman of the Board had received the letter inviting members of the Board to a meeting of the Committee. However, some of the Directors were out of the country, thus it was not possible for them to appear in the meeting as invited. He was grateful that the Committee has given an alternative date for the meeting.
- iv. The company belongs to the 74,000 shareholders who have elected the Board of Directors with specific mandate among them to; set policies, supervise the management, ensure that the policies were in interest of the shareholders, and to also ensure long term sustainability of the business. The Board is very much involved in the decision making in the company including; the investments, structure of the organization, delivery of the agreed budget among others. This includes the critical issue of retrenchment under discussion.
- v. The Board has a very critical mandate to ensure that the airline, which is a national carrier is efficient and meets the expectations of the Kenyan Public. The airline is 55 percent owned by Kenyans.

The CEO informed the Committee the following:- The petitioners had also moved to the Industrial Court over the same matter therefore it would be prejudicial to discuss the matter with the Committee.

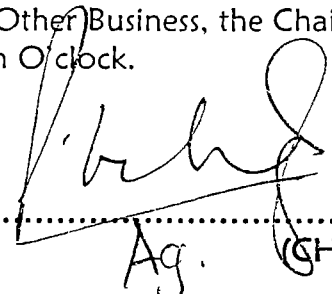
The Committee Chairperson informed the meeting the following:- That the Hon. Speaker had directed the Committee to investigate the matter while aware that the matter was in the Court and therefore, the matter being subjudice should not arise, and further that the case was it was only at the mention stage.

The CEO of Kenya Airways maintained that he was not to discuss the issue as it was subjudice. The Chairman of the Board requested that the management of Kenya Airways be given more time to consult over the issue and revert back to the Committee.

The Committee under the circumstances resolved to adjourn the meeting.

MIN.NO. 306/2012 ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Forty Five minutes past Ten O'clock.

SIGNED.....

 Ag. (CHAIRPERSON)

DATE..... 4/12/2012.....

MINUTES OF THE 226TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDING; ON WEDNESDAY, 30TH OCTOBER, 2012 AT 11.10 AM

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Najib Balala, M.P.
3. Hon. Charles Keter, M.P.
4. Hon. Jackson Kiptanui, M.P.
5. Hon. Joseph Magwanga, M.P.
6. Hon. Charles Nyamai, M.P.
7. Hon. Pollyns Ochieng, M.P.

ABSENT WITH APOLOGY

1. Hon. Alfred Odhiambo, M.P.
2. Hon. Elijah Lagat, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant

MIN.NO. 299/2012

PRELIMINARIES

The sittings' proceedings commenced with a word of prayer.

MIN.NO. 300/2012

CONFIRMATION OF MINUTES

Minutes of the 223rd Sitting of the Committee held on 9th October, 2012 were confirmed as a true record of the deliberations and signed by the Chairperson after being proposed by Hon. Charles Keter, MP and seconded by Hon. Pollyns Ochieng, MP.

MIN.NO.301/2012

CONSIDERATION AND ADOPTION OF THE REPORT ON THE NOMINEE TO THE NATIONAL GENDER AND EQUALITY COMMISSION

The Committee considered the draft report on the nomination of Mrs. Gumato Ukur Yatani for the position of a Member to the National Gender and Equality Commission and approved it without amendments, after being proposed by Hon. Joseph Magwanga, M.P and seconded by Hon. Charles Nyamai, M.P.

- i. **Consideration of the Petition on the Redundancy Exercise at Kenya Airways Limited (KQ)**
 - The Committee was informed of a request from KQ to have the meetings with Management and Board held on 18th October 2012. Members upheld its resolution of Tuesday, 9th October 2012, to take evidence from the CEO and management on Thursday, 11th October 2012 at 10.00 a.m as they had earlier requested. The Committee resolved to take evidence from the Board on Thursday 18th October 2012 at 10.00 a.m.

- ii. **Bills before the Committee**
 - The Committee resolved to hold a stakeholders meeting on the Sports Bill, 2012 on Monday, 15th October, 2012 at 2.00 p.m.
 - The Committee resolved to invite the Chandaria Foundation and other stakeholders to present the memorandum of Foundations and Trusts on the Public Benefit Organization Bill, 2012 on Monday October 15, 2012 at 3.00 p.m. The Committee further resolved to table its report on the Bill on Wednesday, 17th October 2012.
 - The Committee resolved to Table its report on the Social Assistance Bill, 2012 on the week beginning 15th October 2012.
 - The Committee was informed that the Departmental Committee on Health was also considering the Kenya National AIDS Commission Bill, 2012 and that they had too met several stakeholders. The Committee proposed to have a joint sitting to agree on the amendments.
 - The Committee resolved to consider the other pending Bills including the Industrial Training Amendment Bill, 2012 and the Human Resource Profession Management Bill, 2012 after Tabling all the above reports.

- iii. **Invitation to an IPU Seminar on Violence against Women and Girls**
 - The Committee was informed of an invitation to an IPU seminar for the East and Southern African Parliaments on preventing and responding to violence against women and girls: From legislation to effective enforcement. The seminar was scheduled to take place in Dar es Salaam, Tanzania between 5th and 7th December 2012.

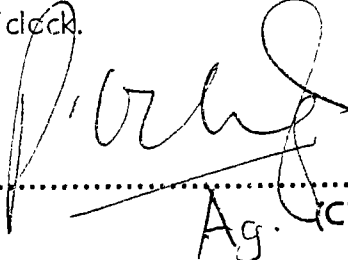
The Committee nominated Hon. Sophia Abdi Noor, M.P., Hon. Charles Keter, M.P., Hon. Joseph Magwanga, M.P., and Hon. Pollyns Ochieng, M.P. to attend the seminar.

MIN.NO. 303/2012

ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Forty minutes past Eleven O'clock.

SIGNED.....



Ag. (CHAIRPERSON)

DATE.....

4/12/2012

MINUTES OF THE 225TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM NO. SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON WEDNESDAY, 10TH OCTOBER, 2012 AT 10.20 AM

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Charles Keter, M.P.
3. Hon. Najib Balala, M.P.
4. Hon. Pollyns Ochieng, M.P.
5. Hon. Joseph Magwanga, M.P.
6. Hon. Jackson Kiptanui, M.P.
7. Hon. Charles Nyamai, M.P.

ABSENT WITH APOLOGY

1. Hon. Alfred Odhiambo, M.P.
2. Hon. Elijah Lagat, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

MINISTRY OF FINANCE

1. Esther Koimet - Investment Secretary
2. Beatrice Gathirwa - Ag. Director of Investment

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant
3. Ms. Rose Ometere - Hansard Recorder

MIN.NO. 293/2012

PRELIMINARIES

The sittings' proceedings commenced with a word of prayer.

MIN.NO. 294/2012

CONSIDERATION OF THE PUBLIC PETITION ON THE RETRENCHMENT EXERCISE AT KENYA AIRWAYS LIMITED (KQ)

The Permanent Secretary and the Alternate Director in the Kenya Airways Board were out of the country on official duties until 21st October 2012. The Committee resolved to give a hearing to the Investment Secretary in the absence of the Permanent Secretary who had been invited to give evidence.

PRESENTATION BY THE MINISTRY OF FINANCE

The Investment Secretary informed the Committee the following:-

- i. Kenya Airways is a private company following its privatization in 1996 and its subsequent listing on the Nairobi Securities Exchange.
- ii. Kenya Airways is managed by its Board and Management. As a shareholder in the company, the Government of Kenya exercises its rights through the Annual General Meeting as provided for in the Companies Act.

The position of the Ministry on the retrenchment exercise of Kenya Airways

- i. As a listed company and given that the Government shareholding is less than 50 percent, Kenya Airways is not a State Corporation and therefore is not under the purview of the State Corporations Act, Cap 446 nor is the Company under the direct control by any Government ministry.
- ii. The affairs of Kenya Airways are exercised as stipulated in the Companies Act and specifically in the Memorandum and Articles of Association of the Company.
- iii. The shareholders through the AGM appoint the Board of Directors, which in turn appoints management which engages employees to undertake the day to day affairs of the company.
- iv. The main objective of a commercial entity like Kenya Airways was to maximize shareholders' value and returns as well as provide efficient services to its clientele in the most competitive terms. The management therefore must ensure that the operations of the Company are efficient and effective, and costs are sustainable.

Kenya Airways economic status report

- i. As the national carrier, Kenya Airways plays a very significant role in the development of transport and tourism sectors in the Country. It also plays an important role in the development of Jomo Kenyatta International Airport as a major regional hub for air transportation.
- ii. Kenya Airways is self-sustaining and has not relied on the Exchequer for funding to finance its operations from the time of its privatization. It has been declaring and paying dividends to its shareholders including the Government and this constitutes part of the National Revenue which is appropriated by Parliament for various Government spending. Dividends received by Government from Kenya Airways' investment in the last three (3) years were as follows:-

Year	Amount in Kshs.
2009/10	100,862,982.00
2010/2011	100,862,982.00
2011/2012	151,294,474.00

Adherence to the provisions of the Employment Act

- i. The Ministry of Finance expects Kenya Airways as a responsible legal entity to operate within the laws of the country and adhere to all the laws it operates under, including the Employment Act, 2007 and Labour Relations Act, 2007.

The Committee sought the following clarification

- i. The role of the Permanent Secretary Ministry of Finance in the Kenya Airways Board.
- ii. The rationale of the retrenchment that Kenya Airways carried out recently.
- iii. Whether the Board approved the retrenchment programme. Whether the representation of the government in the Board agreed with the retrenchment exercise. How was the Board informed about the exercise.
- iv. Whether Kenya Airways adhered to labour law by retrenching employees through short text messages.
- v. The amount of funds that had been invested by the government prior to Kenya Airways privatization.
- vi. Whether the Ministry of Finance was satisfied that the dividends being paid by Kenya Airways were correct.
- vii. The saving by Kenya Airways by retrenching the 600 employees.
- viii. Whether it was necessary for Kenya Airways to seek the government's approval in retrenching the employees, taking into account the government's ownership of 30 percent shareholding in Kenya Airways.

The Investment Secretary responded as follows:-

- i. The Permanent Secretary Ministry of Finance sits in the Board as a shareholder and his role is that of a shareholder to ensure that the company is run efficiently. If there any policy issues, they get communicated to the government.
- ii. As a national flag carrier, Kenya Airways is important as it enhances the image of our country, thus, it is expected to adhere to good governance practices.
- iii. She was in the know regarding the rationale for the retrenchment as she does not sit on the Board. However, she would confirm whether the retrenchment was approved by the Board from the minutes and revert back to the Committee.

- iv. The department of investment is charged with accounting for investment income. When the Board makes a recommendation to the Annual General Meeting on the shares to be paid, the department receives the rightful shares and accounts for it.

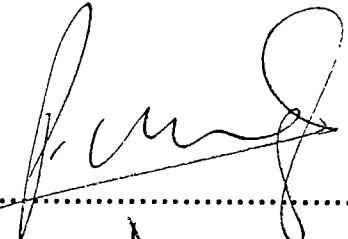
The company has a dividend policy which also considers the strategic plan. The government participates through the mechanisms that have been created by the Company's Act in verifying the dividends.

- v. In terms of separation of powers, the Ministry was only in a position to respond to policy issues but the questions on how the Board went about the retrenchment exercise could only be answered by the Board.
- vi. The Ministry would avail information on how much money the government had invested prior to the privatization of Kenya Airways.
- vii. At the time of privatization Kenya Airways was fully owned by the government. Since the privatization, Kenya Airways has been self sustaining. It plays a very significant role in the improvement of the country's economy in among other sectors, tourism.

Owing to the fact that the investment secretary was not able to respond to follow up questions as she does not sit in the Kenya Airways Board, the Committee resolved to invite the Permanent Secretary and the alternate to its sitting, once they were back in the country.

MIN.NO. 295/2012 **ADJOURNMENT**

There being no Other Business, the Chairperson adjourned the meeting at Ten minutes past Eleven O'clock.

SIGNED.....
Ag (CHAIRPERSON)

DATE..... 4/12/2012

MINUTES OF THE 224TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM SECOND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON TUESDAY, 9TH OCTOBER, 2012 AT 10.50 AM

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Charles Keter, M.P.
3. Hon. Joseph Magwanga, M.P.
4. Hon. Jackson Kiptanui, M.P.
5. Hon. Pollyns Ochieng, M.P.
6. Hon. Charles Nyamai, M.P.
7. Hon. Elijah Lagat, M.P.

ABSENT WITH APOLOGY

1. Hon. Najib Balala, M.P.
2. Hon. Alfred Odhiambo, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant

MIN.NO. 290/2012

PRELIMINARIES

The meeting commenced with a word of prayer.

MIN.NO. 291/2012

CONSIDERATION OF THE PUBLIC PETITION ON THE RETRENCHMENT EXERCISE AT KENYA AIRWAYS LIMITED (KQ)

Meeting With Kenya Airways Group and CEO, Kenya Airways

The Committee informed that the CEO, Kenya Airways had sent an apology vide a letter dated 9th October 2012 and instead requested to meet with the Committee on Thursday 11, October 2012.

The Committee accepted the request to meet with the CEO on Thursday 11, October 2012 and with the Board of Directors on Thursday 18, October 2012.

MIN.NO. 292/2012

ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Fifteen minutes past Eleven O'clock.

SIGNED.....


Ag. (CHAIRPERSON)

DATE..... 4/12/2012

MINUTES OF THE 222ND SITTING OF THE DEPARTMENTAL COMMITTEE ON
LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM NO. 9, MAIN
PARLIAMENT BUILDINGS ON WEDNESDAY, 03RD OCTOBER, 2012 AT 11.30 AM

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Charles Keter, M.P.
3. Hon. Pollyns Ochieng, M.P.
4. Hon. Joseph Magwanga, M.P.
5. Hon. Najib Balala, M.P.
6. Hon. Jackson Kiptanui, M.P.
7. Hon. Elijah Lagat, M.P.

ABSENT WITH APOLOGY

1. Hon. Charles Nyamai, M.P.
2. Hon. Alfred Odhiambo, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

CAPITAL MARKETS AUTHORITY

1. Mr. Paul Muthaura - Ag. CEO
2. Mr. Richard Mugai - Financial Analyst
3. Mr. Wycliffe M. Shamah - Director Market Operations

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant
3. Ms. Rose Ometere - Hansard Recorder
4. Mr. Willy Manyi - Parliamentary Intern

MIN.NO. 284/2012

PRELIMINARIES

The meeting commenced with a word of prayer.

MIN.NO. 285/2012

CONSIDERATION OF THE PUBLIC PETITION ON THE
RETRENCHMENT EXERCISE AT KENYA AIRWAYS LIMITED
(KQ)

PRESENTATION BY THE CAPITAL MARKETS AUTHORITY (CMA)

The Ag. Chief Executive Officer requested to have the evidence given in camera. After deliberations, the Committee resolved to hear the Authority publicly first and then go into camera later.

The Ag. Chief Executive Officer informed the committee the following:-

a) Overview of the Mandate of the Authority

- i. The Capital Markets Authority (CMA) was set up in 1989 as a statutory agency under the Capital Markets Act Cap 485A. It is charged with the prime responsibility of both regulating and developing orderly, fair and efficient capital markets in Kenya with the view to promoting market integrity and investor confidence.
- ii. The regulatory functions of the Authority as provided by the Act and the regulations include; licensing and supervising all the capital markets intermediaries; ensuring compliance with the legal and regulatory framework by all market participants; regulating public offers of securities, such as equities and bonds and the issuance of other capital market products such as collective investment schemes; promoting market to respond to market development through research on new products and services; reviewing the legal framework to respond to market dynamics; promoting investor education and public awareness; and protecting investors' interest.
- iii. Kenya Airways is listed on the Nairobi Security Exchange thus it falls under the oversight of the CMA. It is listed under the commercial and services sector in the main investment market segment. The level of the oversight on Kenya Airways by CMA is to ensure that there is proper disclosure and that the company complies with the minimum requirements of the listed companies.

Deliberations

- i. The Government and general public shareholding in Kenya Airways and how they were trading. Members were informed that the Government of Kenya through the Permanent Secretary, Ministry of Finance owns 29.79 percent while other local shareholders own 60.2 percent.
- ii. What disclosures were mandatory by a company that is listed on the Nairobi Stock Exchange, and whether Kenya Airways compliant.

The Committee heard that CMA depends on the information that is disclosed and a threshold has to be reached in order for any disclosures to be made. Kenya Airways is only required to disclose to CMA and the shareholders if they want to acquire assets that are above the threshold.

In the scope of the involvement with the listed company, the authority is obliged to ensure that there is adequate information to ensure that shareholders decide on their investments in that particular company but not to micromanage.

Disclosures cover many scopes and in the continuous oversight of the Authority to date, Kenya Airways had been fully compliant.

The Ag. CEO undertook to have CMA would consider issues raised by Members, and actual figures involved to establish whether they warranted disclosure, and revert back to the Committee.

- iii. Whether Kenya Airways had disclosed to the shareholders about the other subsidiary companies; the retrenchment of staff; how they were procuring the Embraers; and ownership of Jambo Jet; partnership between the airline and, Samburu and Amboseli companies as procurement partners.

Procurement is handled by the Board and Management and CMA does not have any role in that. Companies are obliged to disclose subsidiary companies and they are also required to seek shareholder consent.

In respect to the redundancy, the Committee heard that the matter was responsibility of the management and did not qualify to have shareholders approval.

- iv. Why KLM withdrew from the acquisition of additional shares despite its earlier commitment/plan to acquire a certain number of rights and whether that did jeopardize the position of Kenya Airways expansion.

The Committee heard that at one time, Kenya Airways just completed a rights issue which raised Kshs. 14.5 billion and there was a memorandum on what to be acquired with the funds. At one point KLM was unable to take up the shares they had planned to purchase due to unspecified personal reasons so the government of Kenya went ahead to pick the extra shares. However, there were many factors that may not be within the knowledge of CMA.

- v. Members heard that the Permanent Secretaries, Ministries of Transport and Finance sit in the Kenya Airways Board on behalf of Government purely as investment partners rather than regulators.
- vi. The interest of staff who have shares in the Kenya Airways is as investors in the company but not as staff. Thus the interest being protected by CMA is not for staff but that of shareholders. There are other agencies that are mandated to deal with staff issues.

The Committee proceedings went in camera

The Ag. CEO Capital Markets Authority informed the Committee that they had requested to go into camera in the interest of clarity of information that was going out to the public, however they had volunteered all the information publicly.

The Committee's retaliated that their interest was not to make the interest rating of Kenya Airways to drop, as they were proud of Kenya Airways and needed to protect it but to find out if the right procedure was followed in retrenching the employees.

The Committee requested CMA to avail for the following information:-

- i. mandate of the Authority;
- ii. the shareholding structure of Kenya Airways;
- iii. the Group structure of Kenya Airways;
- iv. the relationship between Kenya Airways and Amboseli and Samburu Ltd; and
- v. services outsourced by Kenya Airways

MIN.NO. 286/2012 ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Twenty minutes past One O'clock.

SIGNED.....

Ag. (CHAIRPERSON)

DATE.....4/12/2012.....

MINUTES OF THE 221ST SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS ON TUESDAY, 2ND OCTOBER, 2012 AT 12.25 PM

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Charles Keter, M.P.
3. Hon. Pollyns Ochieng, M.P.
4. Hon. Najib Balala, M.P.
5. Hon. Charles Nyamai, M.P.

ABSENT WITH APOLOGY

1. Hon. Joseph Magwanga, M.P.
2. Hon. Jackson Kiptanui, M.P.
3. Hon. Elijah Lagat, M.P.
4. Hon. Alfred Odhiambo, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

MINISTRY OF LABOUR

1. Hon. Sospeter Ojamong, M.P- Assistant Minister
2. Ms. Betarice Kituyi - Permanent Secretary
3. Mr. J. A. Yidah - Deputy Labour Commissioner
4. Mr. P.N. Macharia - Deputy Chief Industrial Relations Officer

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant
3. Ms. Rose Ometere - Hansard Recorder
4. Mr. Willy Manyi - Parliamentary Intern

MIN.NO. 281/2012

PRELIMINARIES

The meeting began with a word of prayer.

MIN.NO. 282/2012

CONSIDERATION OF THE PUBLIC PETITION ON THE RETRENCHMENT EXERCISE AT KENYA AIRWAYS LIMITED (KQ)

PRESENTATION BY THE MINISTER FOR LABOUR

The Minister for Labour informed the Committee the following:-

As a Ministry of Labour, they should be able to protect the available jobs in the Country. Regarding redundancy, the Kenya Constitution Article 41 protects all employees by stating that,

“41(1) Every person has a right to fair labour practices

(2) Every Worker has the right –

a) To fair remuneration;

b) To reasonable working conditions;

c) To form, join or participate in the activities and programmes of a trade union; and

a) To go on strike.

(3) Every employer has the right –

a) To form and join an employers organisation; and

b) To participate in the activities and programmes of an employers organisation.

(4) Every trade union and every employers’ organisation has the right-

a) To determine its own administration, programmes and activities;

b) To organize; and

c) To form and join a federation.

(5) Every trade union, employers’ organisation and employer has the right to engage in collective bargaining.”

The Permanent Secretary informed the Committee that:-

Notice of the intended redundancy

- i. According to the communication sent to the Ministry of Labour by Kenya Airways, the Company issued a 30 days notice, starting 1st to 31st August 2012 in accordance to section 41 of the Employment Act, 2007.
- ii. In the notice however, the employees of Kenya Airways were required to make an option to decide whether to opt for an early retirement within a period of ten days. Voluntary Early Retirement is not governed by any laws. However, according to Article 41 any notice for any separation should be 30 days.
- iii. Equivalent practice is that other companies give notices that are much longer than what Kenya Airways issued.

Dialogue with the Union

- i. The issue raised by the Aviation Allied Workers Union is that the clause on redundancy had not been concluded in the Collective Bargaining Agreement between the Union and Kenya Airways.

- ii. According to Kenya Airways, consultations between the Aviation and Allied Workers Union and Kenya Airways were hampered because there were two factions in the Union, thus no consultations were carried out.

Communications to employees

- i. The Aviation Allied Workers Union had raised an issue with the way the redundancy exercise was carried out. The Ministry of Labour established that there was no separation training given to the employees in regard to their redundancy. Kenya Airways carried out the exercise hurriedly and even the employees who did not opt for voluntary early retirement were sent on retrenchment.
- ii. The issue of social dialogue is critical in ensuring that a redundancy exercise is carried out in a humane way. Further, the communication to affected employees through text messages while on maternity leave, sick leave or out of station was inhuman, cruel and barbaric.
- iii. The Ministry of Labour was not involved in the exercise from day one all along the way. The Ministry only received the letter dated 1st August 2012 that was giving the one month notice to the employees regarding the staff rationalisation exercise.
- iv. When the matter became of national interest, the Ministry of Labour was directed by the Office of the Prime Minister to carry out an inquiry into the exercise and submit a report to the office. The Ministry was in the process of finalizing the report which was expected to be ready by Friday, October, 5, 2012 and a copy of the same would be availed to the Committee.

Outsourcing

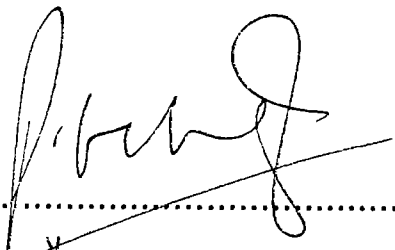
- i. The concern in outsourcing would be valid if the terms were inferior. The report will also address the issue of outsourcing.

Way Forward

- i. The notification received by the Ministry of Labour had a confirmation that the exercise would be carried out in accordance with the labour laws and CBA where applicable. When the exercise was carried out, that is when the Ministry realized that the labour laws were not complied with. Normally, in such matters, the role of the Ministry would be to mediate. In this particular case, the union opted to institute proceedings before the Industrial court. The Ministry thus resolved to let the Court handle the matter until it became a national issue that also required the Ministry's intervention.
- ii. The Ministry had suggested to Kenya Airways that they consider other options such as holding a social dialogue but the company declined. The Ministry still holds the same view, that the parties should consider holding social dialogue/negotiations.

MIN.NO. 283/2012 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Fifty Minutes past 12.00 O'clock.

SIGNED.....

Ag. CHAIRPERSON

DATE..... 4/12/2012

MINUTES OF THE 220TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS ON TUESDAY, 2ND OCTOBER, 2012 AT 10.30 AM

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor M.P. - Chairperson
2. Hon. Charles Keter, M.P.
3. Hon. Pollyns Ochieng, M.P.
4. Hon. Najib Balala, M.P.
5. Hon. Charles Nyamai, M.P.

ABSENT WITH APOLOGY

1. Hon. Joseph Magwanga, M.P.
2. Hon. Jackson Kiptanui, M.P.
3. Hon. Elijah Lagat, M.P.
4. Hon. Alfred Odhiambo, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

MINISTRY OF TRANSPORT

1. Hon. Amos Kinyua, M.P. - Minister
2. Dr. Eng. Cyrus Njiru - Permanent Secretary

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant
3. Ms. Rose Ometere - Hansard Recorder
4. Mr. Willy Manyi - Parliamentary Intern

MIN.NO. 278/2012

PRELIMINARIES

The meeting began with a word of prayer by the Secretariat. The Chairperson informed the Committee that the meeting had been called to consider a petition by Ex – Employees of Kenya Airways who had been declared redundant.

MIN.NO. 279/2012

CONSIDERATION OF THE PUBLIC PETITION ON THE RETRENCHMENT EXERCISE AT KENYA AIRWAYS LIMITED (KQ)

PRESENTATION BY THE MINISTER FOR TRANSPORT

The Hon. Minister for Transport sought a clarification on the way forward given that the matter under consideration was in court.

The Chairperson clarified that the Hon. Speaker, while referring the petition to the Committee was aware that there is an ongoing court case but asked that the Committee delves into the matter and reports back in 21 days. The Hon. Speaker also following the request for a Ministerial Statement by the Hon. Sophia Abdi Noor, M.P. on the matter directed that instead of giving a Ministerial Statement, the Minister for Transport should present all the information regarding the matter before the Committee.

The Minister informed the Committee the following:-

- i. The matter under consideration by the Committee was a labour issue, which then should be handled by the Ministry of Labour.
- ii. The Ministry of Transport oversees the Kenya Airports and Kenya Civil Aviation Authorities. In this regard, it also oversees aviation matters including ensuring safety in the sky, land and further creates an enabling environment to enable safe takeoff and landing.
- iii. Kenya Airways is a publicly listed company and the Permanent Secretary, Treasury oversees interplay with the Capital Markets Authority which in turn oversees interplay with stakeholders.
- iv. There were three government representatives in the Kenya Airways Board; two representatives of KLM and rest were public's representatives. The Ministry of Transport is represented by the Permanent Secretary. However, by the Ministry sitting in the board, this does not in any way compromise the role of regulator of aviation matters, Kenya Civil Aviation Authority.

The Ministry and Kenya Airways relate purely on an arm's length basis and the Ministry cannot direct KQ or any other airline on their internal operations.
- v. In the suit filed by the Aviation and Allied Workers Union in the Industrial Court, the Ministry of Transport is named as the second respondent. Others were the Ministry of Labour and the Attorney General. The Ministry thus planned to seek advice from the Attorney General on how to respond since the matter was a labour one.
- vi. KQ is Kenya's national carrier and thus the Ministry of Transport has a responsibility of ensuring its success as an anchor airline around which Kenya's aviation industry grows. Expansion of KQ means more jobs for Kenyans, not only within the aviation, but also in the hospitality industry and other related sectors.
- vii. The operating environment for airlines globally had been very difficult. For instance, Virgin Atlantic and other airlines from South Africa which were operating in Kenya had since ceased their operations. Many other airlines have closed down including the Nigerian Airlines. Other sleek airlines in India were also about to

close shop. Thus, any discerning airline has to rationalize and restructure all its aspects in order to survive.

Other Airlines besides Kenya Airways are also outsourcing services to cut down on costs. Others have come up with ways of cooperation amongst themselves for example in provision of ground services in each other's hubs to cut down on cost and be more efficient.

- viii. The staff rationalization exercise by Kenya Airways was being carried out in the best interest of the company and the country. It would enable the airline to operate in all the African countries and ensure that all African countries interconnect to other continents through Kenya. Thus, the rationalization programme was not targeting staff only but also other aspects including procurement of fuel and spare parts for the aircrafts. The Ministry of Transport supports every aspect of the programme.
- ix. Kenya Airways should appear before the Committee to provide the actual numbers of the employees declared redundant. Provided that the redundancy exercise was carried out within the law and the CBA, then the Ministry of Transport supports it and as far as the Ministry was concerned the exercise was carried out within the law.
- x. The Ministry of Transport has a responsibility to protect the national carriers such as Kenya Airways, Jetlink and Fly 540.

Deliberations

- i. The Minister's take regarding the allegations that efforts by Qatar airline, which had wanted to operate an airline in Kenya had been frustrated.

The Minister for Transport stated that there was a draft bilateral agreement that was yet to be signed between Qatar and Kenya Governments. The agreement will however be between Government to Government and not Qatar airline and the Kenyan Government.

- ii. Regarding why Kenya airways was purchasing old and refurbished aircrafts that have been used in other countries and later sold to KQ as new ones, the Minister stated that the information with Ministry of Transport on the Embraers procured by the airline is that they were new. The Embraer Company was launching the 900th aircraft in its manufacturing plant and in fact, they had invited the Kenyan media to confirm that the Embraers procured by KQ were new. Procuring of the aircrafts through companies in Cayman's Islands was an arrangement between the manufacturer and the management.

He added that he would be keen to have the details of the aircraft that was registered in another country and later sold to Kenya Airways as new so that he could follow up the matter with Kenya Civil Aviation Authority.

iii. On whether the staff rationalization programme done in a humane way, the Minister stated that the Ministry of Labour had given comfort to the Ministry of Transport that the redundancy exercise was within the labour laws and was carried out in accordance with the laws. The Ministry of Labour was consulted on the issue all along the way. The severance terms were also in accordance with the CBA.

In order to appreciate that retrenchment is a global issue, Air France was planning to retrench 10 percent its worker force (5122) by the end of 2013.

- iv. Regarding why KQ employees were forced to sign a contract with Career Directions Limited and how the company was sourced, the Minister observed that the Kenya Airways Board meets on a quarterly basis and their broad objective is to maximize shareholders interests as opposed to micromanaging the company. Outsourcing of Career Directions Ltd was purely a management issue and not a Board issue. The Ministry of Transport would not wish to micro manage Kenya Airways or any other entity.
- v. Regarding the ownership of Jambo Jet Company, the Minister informed the Committee that the company is 100 percent owned by KQ and its directorship therefore is that of Kenya Airways. The rationale for having Jambo Jet as a subsidiary was to have a low cost carrier to compete at par with other low cost carriers.
- vi. On whether it was in order for the airline to outsource labour for its core business, the Minister for Transport observed that the business of KQ is to ferry passengers, therefore Cabin Crew services are core but their services could be outsourced.

Committee observation

The Committee observed that the continued representation of the government by the Ministry of Transport in the KQ Board is not tenable. The Ministry does not seem to have any say in terms of the decisions made by the Board.

MIN.NO. 280/2012 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Twenty Minutes past 12.00 O'clock.

SIGNED.....


AG. CHAIRPERSON

DATE..... 4/12/2012

MINUTES OF THE 218TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM ON 11TH FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS ON TUESDAY, 2ND SEPTEMBER 2012 AT 10.00AM

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Charles Keter, M.P.
3. Hon. Alfred Odhiambo, M.P.
4. Hon. Pollyns Ochieng, M.P.
5. Hon. Joseph Magwanga, M.P.
6. Hon. Charles Nyamai, M.P.
7. Hon. Elijah Lagat, M.P.

ABSENT WITH APOLOGY

1. Hon. Najib Balala, M.P.
2. Hon. Jackson Kiptanui, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

MINISTRY OF TRANSPORT

1. Eng. Dr. Cyrus Njiru - Permanent Secretary

2

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Mr. Willy Manyi - Parliamentary Intern

MIN.NO. 271/2012

PRELIMINARIES

The meeting commenced with a word of prayer. The Chairperson informed the Committee briefly highlighted the purpose of the meeting, which she said was to consider a petition by Ex-Employees of Kenya Airways who had been declared redundant.

The Permanent Secretary informed the Committee that the Minister was not able to attend the meeting as invited as he was out of town. Similarly, the Assistant Minister was out of town.

a) PRESENTATION BY THE PERMANENT SECRETARY, MINISTRY OF TRANSPORT

The Permanent Secretary informed the Committee as follows:-That;

- i. Kenya is a market economy and KQ was a privately owned company listed in the Nairobi Securities Exchange. The shareholders elect Members of the Board, who in turn have in place, a management team.
- ii. The Ministry's role was to prepare policies in the air transport sector to among other things ensuring competition, a level playing field. minimizing of cost of doing business. and ensuring a safe and secure the airspace.
- iii. KQ had played a major role in the growth and development of the Country's economy. The airline had experienced major expansion in the recent past, and currently flies to 54 destinations globally.
- iv. Just like many other international airlines globally, the airline was facing major challenges, among others, huge operating costs arising from high global cost of fuel and cost of labour.
- v. He is full Board Member, and sits in the KQ Board of Directors, both in his capacity as PS, Ministry of Transport and in his personal capacity. He was however not candid to respond to the queries regarding his roles in both capacities. He was also not candid regarding whether the decision to carry out the redundancy exercise was a Board's decision.
- vi. The Ministry of Finance was in a better position to give the shareholding at KQ.

The Committee deferred the agenda to a later date, when the Minister for Transport would be available. The Committee also resolved to invite the Minister on 2nd October 2012. The Committee further resolved to meet PS, Treasury, on 3rd October 2012.

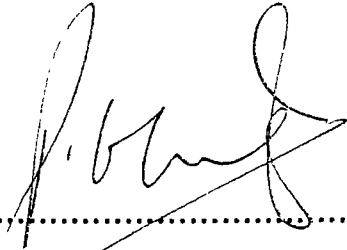
Members also resolved to meet the KQ's CEO & Group MD, Chairperson and Members Board of Directors on 9th October 2012.

b) PRESENTATION BY THE ACTING CEO, CAPITAL MARKETS AUTHORITY

The Committee was informed that the office of Ag. CEO, had requested that the meeting be rescheduled to a later date from the week commencing on 1st October as the Ag. CEO was out of the Country on official duties. The Committee rescheduled the meeting to 3rd October 2012. The Committee further resolved to meet Ag. CEO jointly with PS, Treasury.

MIN.NO. 273/2012 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Thirty Minutes past Eleven O'clock.

SIGNED.....

AG. CHAIRPERSON

DATE.....4/12/2012.....

MINUTES OF THE 217TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM NO. 5, MAIN PARLIAMENT BUILDINGS ON MONDAY, 24TH SEPTEMBER, 2012 AT 4.25 PM

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Charles Keter, M.P.
3. Hon. Alfred Odhiambo, M.P.
4. Hon. Pollyns Ochieng, M.P.

ABSENT WITH APOLOGY

1. Hon. Najib Balala, M.P.
2. Hon. Jackson Kiptanui, M.P.
3. Hon. Joseph Magwanga, M.P.
4. Hon. Charles Nyamai, M.P.
5. Hon. Elijah Lagat, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE AVIATION AND ALLIED WORKERS UNION- KENYA(AAWU-K)

1. Ms. Perpetua Mponjiwa - Chairperson
2. Mr. Jackson Akenga - Branch Secretary
3. Ms. Ruth Kioko - Cabin Crew Branch Treasurer
4. Ms. Judith Rweria - Cabin Crew Branch Committee Member
5. Mr. Samwel Abilah - Cabin Crew Deputy Branch Secretary
6. Mr. Julius Chacha Mwita - Cabin Crew Branch Executive Committee

IN ATTENDANCE NATIONAL ASSEMBLY

1. Ms. Rachael Kairu - Second Clerk Assistant
2. Ms. Caroline K. Kinyua - Third Clerk Assistant

MIN.NO. 268/2012 PRELIMINARIES

The meeting commenced with a word of prayer.

MIN.NO. 269/2012 CONSIDERATION OF THE PUBLIC PETITION ON THE RETRENCHMENT EXERCISE AT KENYA AIRWAYS LIMITED (KQ)

PRESENTATION BY THE AVIATION AND ALLIED WORKERS UNION-KENYA (AAWU)

The Chairperson of AAWU-K informed the Committee the following:-

They informed the Committee as follows:-

- i. The AAWU-K has had a valid recognition agreement with KQ since 2006. The AAWU-K got into a Collective Bargaining Agreement (CBA) with KQ for the period 2010-2012. The agreement clearly outlines issues that are subject to consultations and negotiations, which includes terms and conditions of service.

However, the CBA also contained clauses that were pending negotiations and conclusion, among them redundancy and foreign contract staff.

Kenya Airways clearly violated the recognition agreement by embarking on the redundancy exercise without consultations with the union, and in contempt of the fact that redundancy was one of the issues that were pending conclusion in the CBA.

- ii. KQ had also been issuing warning letters to workers erratically. On two occasions, some ten and another thirty-two cabin crew were sacked at a go and interns employed through Career Directions Limited thereafter to replace them.
- iii. The relationship between the AAWU-K and KQ has been unfriendly. The Union cannot even negotiate with the Group CEO or the Human Resource Manager directly.
- iv. The AAWU-K was shocked, when they got information that KQ had given workers ten days notice to make the life changing decisions, whether or not to voluntarily retire early. KQ did not follow section 40 of the Employment Act, 2007 that states;

'40. (1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions -

- (a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;*
 - (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;*
 - (c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;*
 - (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;*
 - (e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;*
 - (f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and*
 - (g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.*
- (2) Subsection (1) shall not apply where an employee's services are terminated on account of insolvency as defined in Part VIII in which case that Part shall be applicable.*

(3) The Minister may make rules requiring an employer employing a certain minimum number of employees or any group of employers to insure their employees against the risk of redundancy through an unemployment insurance scheme operated either under an established national insurance scheme established under written law or by any firm underwriting insurance business to be approved by the Minister.'

- v. The AAWU-K expected communication from KQ giving notification on the redundancy and the laying-off of staff but the employees were not given any such notice, neither was the labour officer, which is a requirement in section 40 (1)(b) of the Employment Act, 2007. Some of the employees declared redundant were not members of the AAWU-K.
- vi. The AAWU-K instituted proceedings before the Industrial court and an order restraining KQ from continuing with the redundancy exercise was issued. The Judge however lifted the order after fourteen days after which the company went ahead with the exercise.

a) Criteria for Retrenchment

- i. Kenya Airways did not use any procedure whatsoever in declaring the workers redundant. The AAWU-K would have expected the company to probably use Last In First Out (LIFO) or First In First Out (FIFO). Before industrial court issued an order to put on hold the retrenchment, KQ had informed its employees that they would undergo aptitude/psychometric tests with a view to identifying those to be laid off. The company began the tests, and had covered about 5 percent of the entire workforce. When the order was lifted, the company never concluded the exercise, and went ahead to lay off even those who had not gone through the tests. Most of the letters sent out to the employees stated that they had volunteered to retire early, which was not the case.
- ii. It was apparent that there was discrimination and victimization in the redundancy exercise. All the female employees who had been on maternity leave in the last one year, and those who were expectant, were targeted. One employee had a premature birth as a result while others developed complications. There were cases of employees who were sick in hospitals but were summoned through text messages to receive their redundancy letters.

The company cited productivity as the reason why they targeted these particular female employees, which suggested that the company was stating that maternity leave was a basis for declaring one unproductive.

Others who were targeted included union officials, as well as those who had participated in the 2009 strike and those who had been unwell including work-related injuries. All shop stewards were victimized for being members of the union. For instance, Ms. Ruth Kioko, an AAWU-K official was retrenched on 14th September 2012 after the redundancy exercise had been closed officially.

- iii. The company targeted AAWU-K officials, shop stewards and other active union members as a way of silencing the union. It is instrumental to note that the company sacked union officials for having voiced malpractices within the organization. Some of the Union Officials got their redundancy letters at night. Those who had participated in the 2009 industrial action by the union were also obvious targets in the redundancy exercise.

b) Kenya Airways Wage Bill

- i. The airline blamed the rising wage bill for the redundancy exercise. It had publicly quoted in the media that its wage bill was Kshs. 13.4 billion. However, statistics obtained from the Kenya Bureau of Statistics, and filed with the Ministry of Labour after registration of the CBA showed that the company quoted a real wage bill of approximately Ksh.8.4 billion instead, which begs the question why there was disparity in the figures.
- ii. The 3,800 unionisable employees of the airline account for approximately 24 percent of the wage bill. The rest of the wage bill, approximately 76 percent is taken up by approximately 1,000 managers and pilots. Best practice would dictate that any cost cutting or redundancy should have targeted the cadre of staff who take up the bulk of the wage bill.

Instead, the company increased pay for its top executives by 24 percent while it was claiming publicly that its wage bill was becoming unsustainable. The Company should have at least considered having these executives take a pay cut. It could also have considered reorganizing and restructuring the company to bring down other operating costs before targeting the low cadre employees who earn the least. The practice worldwide is that the top management usually takes the lead by taking a pay cut and these trickles down to the lowest paid employee. These fundamental options were never explored by the company.

- iii. Out of the 600 employees who were retrenched only ten managers volunteered for early retirement.
- iv. Whereas the company attempts to blame employee costs for the redundancy exercise, it was still creating new senior management positions and recruiting to fill them. For instance, the position of Marketing Director, which did not previously exist within the company's structure was created and the appointment made on 31st August 2012.
- v. KQ was carrying out the redundancy exercise, but at the same time recruiting for the same positions. On 21st September 2012, the company placed advertisements in the local dailies seeking to recruit for certain positions, some of these positions were ironically being held by the staff declared redundant.

c) Cruel and Inhuman Practices

- i. The exercise was designed to humiliate the affected staff. The female employees who had been on maternity leave prior to the exercise and those who were expectant were deemed unproductive hence retrenched.

There were cases of expectant employees who were due in a week's time, had booked hospital beds through the company's medical cover only to receive text messages summoning them to a compulsory meeting where they were served with redundancy letters. Some of them got so traumatized, with one of them Ms. Ann Kananda, getting a pre-term delivery as a result of the trauma.

The company promptly discontinued the medical cover for the affected staff hence hospitals declined to honour the maternity bookings for these ladies at the very late stages of their pregnancies.

The company also targeted couples, retrenching them, with no consideration given for how their young families would be affected.

- ii. In mid 2010-2011, as a result of the company policy at the time of reducing manpower levels, and denying staff leave hence accumulating fatigue, many employees, especially those working as cabin crew developed back/spinal injuries, and were advised by medical practitioners to perform light duties while they recovered. They were being treated under the company medical cover since they had suffered the injuries in the line of duty.

These employees were all declared redundant and their medical covers withdrawn immediately. The company therefore used the retrenchment exercise to run away from its obligation to compensate the concerned staff.

- iii. For some of the affected staff, the company in the letters it sent to them alleged that they had volunteered for the retrenchment exercise which was misleading. The company dismissed it as a typo, which was unbelievable for such an error to occur on so many personal letters. Attempts by the affected staff to meet the management were unsuccessful.

d) Foreign Employees

- i. Foreign nationals employed in KQ, and working locally are mostly Cabin Crew, whose skill is abundantly available locally, since the minimum qualification is Kenya Certificate Secondary of Education (KCSE) mean grade C Plain.

The foreign nationals were from Thailand, Cameroon, Ghana, and in the last two months, the company interviewed Rwandese and Indians with a view to employing from these countries. The process of employing the newly interviewed foreigners had been put on hold pending conclusion of the redundancy exercise after which they would be taken in.

- ii. The justification given for employment of foreigners as Cabin Crew was culture and enhanced service, but a comparison with Ethiopian Airlines, British Airways, KLM, Air France, South African Airways clearly showed that these established

carriers do not employ foreigners to these positions. Emirates and Qatar Airways employ foreigners since they have a shortage of their own citizens who can perform these jobs.

- iii. The terms of employment of locals were inferior and discriminatory compared with those of foreign staff. The foreign staff are trained for free by the airline at the Pride Centre, and guaranteed employment with the airline thereafter, at a basic salary of around Kshs. 100,000. Besides, the airline also pays for their work permits which costs approximately Kshs.500,000 per permit but many of them do not have permits, which is a legal requirement. They hold operating licenses issued by the Kenya Civil Aviation Authority are usually accommodated at the Stanley Hotel, Nairobi during their two months training period at the airline's cost.

On the contrary, Kenyans also train at the Pride Centre but after paying fees amounting to USD 2,600 (Kshs. 221,000). Even after the training, they are not guaranteed employment, and upon recruitment, they earn a consolidated salary of approximately Kshs. 45,000.

- iv. If indeed the justification of the redundancy exercise was high labour costs, then the first employees that the company ought to have considered laying off ought to have been the foreign employees.

e) Outsourcing

- i. Kenya Airways had embarked on outsourcing all its non-core functions to certain companies. Some of them include; Career Directions Limited, Insight Management Ltd, Budget, Signature Safaris, KQ Holiday Homes, and Amicabre. However, the outsourcing model adopted by the company had raised many questions on the real motive behind it.
- ii. In the case of Career Directions Limited, all interns who had been on internship programme with the airline as Customer Service Agents and Cabin Crew for close to nine (9) months, and who had been informed that upon completion of their internship they would be confirmed within the company, were summoned to a meeting on July 31, 2012, and forced to sign new contracts with Career Directions Limited with the threat that if they did not sign they would lose their intership status.

They would earn a consolidated salary of Kshs. 45,000. They never applied for these jobs neither did they attend any interview with Career Directions Limited which begs the questions, who forwarded their personal details to this Company, and who negotiated their contracts. On the following day, 1 August, 2012, KQ announced the staff rationalisation exercise and among the employees who were rendered redundant, 200 were Cabin Crew.

Career Directions Limited was hitherto unknown and had no track record in managing or outsourcing for any airline. Competitive procurement procedures were not followed in awarding it the tender. The company also acts as a holding company for other entities awarded tenders to supply transport and other services. The union believes that these entities were formed by company executives using proxies to transact business with the company raising the issues of conflict of interest. Career Directions is registered under the Company's Act under the Directorship of Ms. Lucy Mmari.

- iii. In the outsourcing process that saw drivers laid off and Budget Company take over the provision of transport at KQ, the wife of the Group CEO was a Member of the Board at Budget.

g) Relationship between Jambo Jet Limited and Kenya Airways

- i. In a letter written to the AAWU-K by a law firm representing KQ, Obura Mbeche & Company Advocates, the company stated that Jambo Jet Limited was a separate entity from Kenya Airways. But the public had been constantly told by the KQ management that Jambo Jet would be a subsidiary of Kenya Airways raising the questions, why there was such a contradiction and why details of shareholding and directorship of this company were mired in secrecy.
- ii.

h) Kenya Airways Expansion

- i. The company had embarked on acquisition of planes in preparation for a massive fleet expansion that would see its fleet triple to about 105 aircraft in ten years, under the Project Mawingu. This plan clearly shows that the company will need to employ more, and makes a mockery of the whole retrenchment exercise.
- ii. Viewed in the backdrop of the increased hiring of foreign staff, and new staff under an outsourcing company, it is clear that there was an ulterior motive behind the retrenchment exercise. Additionally, the company had through a memo dated 3rd August 2011 to the staff assured them that there was no retrenchment envisaged in its business plan, only to spring a surprise on them.

i) Mismanagement

- i. The union is of the considered view that incompetence within the management was the real reason behind the company's poor performance. The company under the same leadership had carried out several retrenchment exercises in the past yet it is still in the sad state of affairs. This clearly shows that wage bills were not the issue, but rather poor management.
- ii. Acquisition of aircrafts, in particular the Embraer is mired in irregular deals under companies such as Amboseli Ltd and Samburu Ltd. The Airline had not declared Samburu and Amboseli with the Capital Markets Authority neither were they registered in Kenya.

Some of the acquired aircrafts purported to be new were in actual sense refurbished and which were previously in service elsewhere and were sold to Kenya Airways as new. For example, a recently acquired aircraft purported to be new was actually previously operated by Hong Kong Express under Serial No. 17000111 currently owned by Kenya Airways under registration 5Y-KYK. The aircraft which was defective was taken back to the manufacturer, refurbished and later sold to Kenya Airways as new. It was initially registered as B-KXC-Hong Kong Express.

- iii. Irregular outsourcing practices within the company had been a major avenue for loss of funds.
- iv. Promotions and employment based on ethnicity and corruption especially in the hiring of pilots was rife within the company. The Group CEO had acknowledged this in a memo to the staff but unsurprisingly no action was taken on the responsible managers.
- v. Sexual harassment was endemic, with managers openly soliciting favours in exchange for promotions and employment, and those who fail to comply are targeted for sham disciplinary proceedings, dismissals and retrenchments.
- vi. Despite the poor management in the company, no single manager had taken responsibility and this had led to a sense of impunity within the organization by the management. Other stakeholders within the company such as the Kenya Airline Pilots Association (KALPA) had publicly voiced their concerns on the manner in which the company was being managed.

j) Severance Package

- i. A further testament of dishonesty on the part of the management could be noticed in the recent media statements attributable to the Group Managing and CEO to the effect that the least paid employee declared redundant received a severance package of Kshs. 2 million. However, the reality was that were employees whom after serving for close to 12 years would be paid less than Kshs. 200,000. In comparison, other companies that have carried out retrenchments had superior packages that saw very many employees opting to voluntarily retire early.

k) Cost Cutting Measures

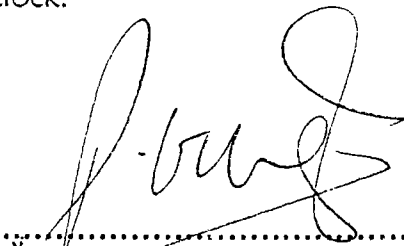
- i. AAWU-K proposed that KQ could cut cost through the reduction of the administrative and management wage bill and procurement.

The AAWU was not questioning the redundancy exercise but its concern was to ensure that the process was carried out in accordance with the law.

MIN.NO. 270/2012 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Thirty Minutes past 6.00 O'clock.

SIGNED.....



AG. CHAIRPERSON

DATE.....

4/12/2012

MINUTES OF THE 216TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LABOUR AND SOCIAL WELFARE HELD IN COMMITTEE ROOM NO. 5, MAIN
PARLIAMENT BUILDINGS ON MONDAY, 24TH SEPTEMBER, 2012 AT 2.55 PM

MEMBERS PRESENT

1. Hon. Sophia Abdi Noor, M.P. - Chairperson
2. Hon. Charles Keter, M.P.
3. Hon. Alfred Odhiambo, M.P.
4. Hon. Pollyns Ochieng, M.P.

ABSENT WITH APOLOGY

1. Hon. Joseph Magwanga, M.P.
2. Hon. Charles Nyamai, M.P.
3. Hon. Mohamed Najib Balala, M.P.
4. Hon. Jackson Kiptanui, M.P.
5. Hon. Elijah Lagat, M.P.

ABSENT

1. Hon. Lenny Kivuti, M.P. - Vice Chairperson
2. Hon. Clement Waibara, M.P.

IN ATTENDANCE

EX – EMPLOYEES OF KENYA AIRWAYS

- | | | |
|-----------------------------|---|------------------------------|
| 1. Ms. Nancy Musalia | - | Ex Customer Service (Ground) |
| 2. Ms. Judith Pius | - | Ex Customer Service (Ground) |
| 3. Ms. Violet Kiguhi | - | Ex Customer Service (Ground) |
| 4. Mr. Samwel Odhiambo | - | Flight Attendant |
| 5. Ms. Lilian Achieng Asewe | - | Ex Flight Attendant |
| 6. Mr. David Mavua Musembi- | - | Ex Flight Attendant |
| 7. Mr. Kennedy Wekesa | - | Ex Flight Attendant |
| 8. Mr. David Nyasani | - | Ex Flight Attendant |
| 9. Mr. Julius Chacha Mwita | - | Ex Flight Attendant |
| 10. Capt. Patrick Waweru | - | Captain |
| 11. Mr. Moses Ndiema | - | |
| 12. Mr. Timothy Muchiri | - | |

IN ATTENDANCE

NATIONAL ASSEMBLY

- | | | |
|---------------------------|---|------------------------|
| 1. Ms. Rachael Kairu | - | Second Clerk Assistant |
| 2. Ms. Caroline K. Kinyua | - | Third Clerk Assistant |

The meeting began with a word of prayer. The Chairperson briefly highlighted the purpose of the meeting, which she said was to consider a petition by Ex-Employees of Kenya Airways who had been declared redundant. The petition was Tabled before the House by the Hon. John Mututho, M.P. on Thursday, 13th September 2012. It was committed to the relevant Committee by the Speaker in accordance with Standing Order No.210 (1).

Papers Tabled:

The following Report was Tabled: Report on the back pain of 4th May 2010 by Julius Chacha Mwita S/N 0008020

PRESENTATION BY THE AFFECTED EMPLOYEES

1. Mr. Julius Chacha Mwita, an Ex – Flight Attendant informed the Committee the following:-

a) Retrenchment

- i. On 31st July 2012, Kenya Airways (KQ), sent an internal memo to staff reference No. 035 written by the CEO and the Group Managing Director. The memo stated in part that the company would carry out a staff rationalization exercise. The memo gave staff ten days to make a life changing decision to retire voluntarily.
- ii. The memo had an appendix of how the computation for payments would be done, following the Collective Bargaining Agreement (CBA) of 2010.
- iii. In total 600 employees were retrenched and among them, about 125 had volunteered to go home.
- iv. The CEO had mentioned that after the staff rationalization, KQ would carry out counseling to the affected staff. He had however, a year before written to all the Directors stating that the Company was not intending to retrench any employee.
- v. 100 employees were recruited and picked their uniform on the week that ended on 22nd September 2012 just after the retrenched staff were sent home.

b) Foreign Staff

- i. KQ requires that Kenyans pay over Kshs. 200,000 whereas, foreign employees don't pay anything to be trained at the Pride Centre, Embakasi.
- ii. KQ stated that they intended to have about 400 foreign employees. So far they had recruited from Thailand, Ghana, Cameroon, India, Uganda and Rwanda.
- iii. The foreigners get a basic salary of about Kshs. 120,000 while Kenyans get about Kshs.35,000 and they are employed on a contractual basis. Some of them had

been working with KQ since 2007 and others were promoted without any interview process.

c) Wage Bill

- i. KQ had indicated that it intended to cut down on the wage bill by retrenching the Kenyan employees, but at the same time it had continued recruiting foreigners.

d) Outsourcing

- i. KQ mentioned that they would outsource labour from Career Directions Ltd. KQ had some interns under its internship programme. They had been in the programme for a period of three months, then an additional ten months. Some were absorbed under KQ while others were informed that they would work under Jambo Jet having signed agreement forms with Career Directions Ltd.

e) Relationship Between Jambo Jet and Kenya Airways

- i. The KQ lawyer claimed that Jambo Jet is an independent airline from KQ, but the question that begs, is why KQ was using its resources to train Jambo Jet staff.

f) Cruel and Inhuman Practices

- i. The exercise of retrenching the employees was done so hurriedly in a cruel manner. The notice given was very short as the memo was written on 1st September and the staff were required to clear with KQ by 10th September 2012. However, due to the restraining order by the court, the process was delayed.
- ii. KQ staff communication including sacking is mostly conducted through sms'. Some staff got their text messages while they were out of the country on duty. This could have compromised security for passengers like it happened in Botswana but the management did not have security concerns in consideration.
- iii. KQ seemed to be in a hurry to get rid of employees who had been injured in the course of their duty, and those who were expectant or on maternity leave.

g) KQ Expansion Programme

- i. Kenya Airways has a strategic plan which runs for ten years beginning year 2010. The plan states that the company would increase the number of employees and the aircrafts.

h) Personal Experience

- i. On 4th May, 2012 while preparing to fly to N'doula on flight KQ.578 he experienced a sharp pain at the lower back and the limbs went numb. Captain Watuku who was scheduled to fly the aircraft called for a doctor who attended to him and requested for an ambulance that took him to Agha Khan Hospital where he was admitted for three days. He was discharged on 6th May 2010 but was put on physiotherapy for about eleven sessions after which he was cleared to resume work. The back pain was however still present and he kept visiting the JKIA clinic,

until the pain disappeared around May 2011. He got unwell again on 8th July 2012 and was given a three-day sick off and when he was supposed to report back on 11th July, the back pain recurred and he got referred to Menelik clinic to Prof. Gakuu. Prof. Gakuu sent him to Nairobi MRI Centre for an MRI scan which indicated that he had degenerated discs and he was given one week sick off.

- ii. He continued with sick off and light duties interchangeably until September 2011 when he was sent for another MRI and the results showed that the status quo remained. In late December 2011, he was put on complete sick off indefinitely and his condition declared a permanent disability. He was advised to undergo surgery but was not keen on going through a surgery. Dr. Munyi of KQ requested for a progress report which was given on 4th July 2012 and it recommended that he continues with medications and only carries out light duties and later be retired early on medical grounds. The KQ doctor, Dr. Munyi referred him to a different doctor who gave the same diagnosis.

2. Ms. Violet Kiguhi an Ex-Customer Service (Ground) informed the Committee the following:-

Personal Experience

- i. She believed she was terminated because she was expectant. She received an sms from the flight controller asking her to attend a staff rationalization meeting where they were told that they were redundant.
- ii. On 4th of September, 2012, the staff who had been called for the staff rationalization meeting were told that they “were on their own”, and their services were no longer required by KQ. Most of the colleagues who were expectant were now either at home or in hospitals nursing their preterm babies in incubators.

3. Mr. Kennedy Wekesa an Ex-Flight Attendant informed the Committee that:-

Personal Experience

- i. He was one of the employees who were retrenched. He took his daughter to the JKIA clinic but could not be attended to as KQ immediately stopped providing medical services to those who had been retrenched.

4. Mr. Lilian Achieng Asewe an Ex-Flight Attendant informed the Committee that:-

Personal Experience

- i. She worked as a cabin crew but when she became expectant, she got deployed to the Pride Centre. She got preterm labour in July 2012 and lost her baby.
- ii. In the course of her work, she met some managers who would ask her why she decided to become pregnant. She felt that this was an intimidating question that suggested that if one works for KQ, then they should not get pregnant.

- iii. After the preterm labour, she stayed at home for three weeks before going back to work. She was informed by the manager that she was required to explain why she superseded her thirty days annual leave by seven days. The said annual leave days were the days that she was in hospital and took to recover after the loss of her baby. She was asked to pay for the seven days and she advised that they be recovered from her salary.
- iv. She received an sms asking her to attend a meeting where the Director of Operations informed those present about retrenchment programme and informed them that there would be three groups: those that would be retained; those who would be redeployed; and those who would be retrenched. Finally she received a letter informing her she had been retrenched.

5. Captain Waweru Patrick Mwangi informed the Committee the following:-

Personal Experience

- i. He worked for KQ for seventeen years and was grounded for unearthing corruption involving employment of pilots.
- ii. The Committee noted that he was not among the petitioners who had signed the petition and further that his case was different. The Committee therefore advised him to write a summary of his case and to table the document before the Committee at a later meeting as the issue under consideration was that which had been presented by the petitioners.

MIN.NO. 267/2012 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Twenty Minutes past 4.00 O'clock.

SIGNED.....

AG CHAIRPERSON

DATE..... *4/12/2012*

MINUTES OF THE 215TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE HELD ON THURSDAY, 20TH SEPTEMBER, 2012 IN THE SMALL DINING ROOM, MAIN PARLIAMENT BUILDINGS AT 10.30AM

MEMBERS PRESENT

Hon. Sophia Abdi Noor, M.P. - Chairperson
Hon. Charles Keter, M.P.
Hon. Jackson Kiptanui, M.P.
Hon. Alfred Odhiambo, M.P.
Hon. Joseph Magwanga, M.P.

ABSENT WITH APOLOGY

Hon. Najib Balala, M.P.
Hon. Charles Nyamai, M.P.
Hon. Pollyns Ochieng, M.P.
Hon. Elijah Lagat, M.P.

ABSENT

Hon. Lenny Kivuti, M.P. - Vice Chairperson
Hon. Clement Waibara, M.P.

INATTENDANCE

Ms. Rachael Kairu - Second Clerk
Mr. Wilfred Manyi - Parliamentary Intern

NATIONAL ASSEMBLY

MIN. NO. 261/2012 PRELIMINARIES

The meeting commenced with a word of prayer.

MIN. NO. 262/2012

PROGRAMME OF BUSINESS, 20TH SEPTEMBER - 20TH OCTOBER 2012

The Committee deliberated on the proposed programme of business for the period, 20th September - 20th October 2012.

The Committee observed that the petition on ongoing redundancy exercise at KQ was urgent. Members therefore resolved to give the matter precedence and meet the witnesses as follows;

- i. Monday, 24th September 2012:- Victims of the redundancy exercise; thereafter, AAWU.
- ii. Tuesday, 25th September 2012:- CEO, CMA, thereafter, the Minister for Transport.
- iii. Thursday, 27th September 2012:- KQ Management, thereafter, the Board of Directors.

The Committee also observed that the Sports Bill, 2012 had already gone through the 1st reading and thus there was need for consultations with the stakeholders. Members resolved to commence deliberations on the Bill on Wednesday 26th September 2012.

Members were notified that a few memorandums had been submitted, from among others, the National Olympic Committee.

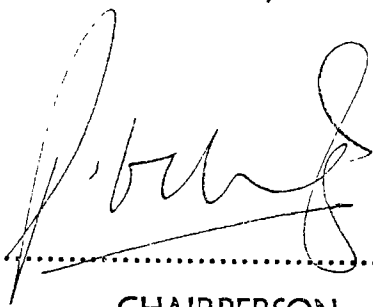
MIN. NO. 263/2012 ANY OTHER BUSINESS

Members were reminded of the invitation to the Regional Workshop on Employment Challenges in Eastern Africa by Friedrich Ebert-Stiftung that was scheduled to take place on 24th and 25th September 2012 at the Nairobi Safari Club. The Hon. Charles Keter, M.P. and Hon. Alfred Odhiambo, M.P. confirmed their participation.

MIN. NO. 264/2012 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Fifteen Minutes Past Twelve Noon until Monday, 24th September, 2012 at 2.30 p.m

SIGNED.....



CHAIRPERSON

DATE.....

4/12/2012