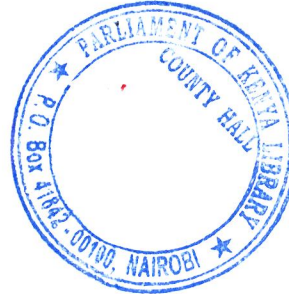


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Hon. Robert Pukosempion  
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House on 8/2/17  
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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY



ELEVENTH PARLIAMENT – FIFTH SESSION - 2017

THE DEPARTMENTAL COMMITTEE ON HEALTH

REPORT ON THE CONSIDERATION OF THE PETITION REGARDING  
ALLEGED DETENTION OF THE BODY OF BERETTA RERI BY THE  
MANAGEMENT OF NAIROBI WOMENS HOSPITAL.

CLERK'S CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

FEBRUARY, 2017

07

## TABLE OF CONTENTS

TABLE OF CONTENTS .....	1
ANNEXES .....	2
CHAIRPERSON'S FORWARD .....	3
EXECUTIVE SUMMARY .....	4
1.0 PREFACE.....	5
1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE MANDATE.....	5
1.2 OVERSIGHT .....	5
1.3 COMMITTEE MEMBERSHIP .....	5
1.4 COMMITTEE SECRETARIAT .....	6
1.5 ADOPTION OF THE REPORT .....	6
1.6 LIST OF RECOMMENDATIONS .....	7
2.0 BACKGROUND INFORMATION.....	9
3.0 SUBMISSIONS AND EVIDENCE.....	10
3.1 MEETING WITH HON. AGOSTINHO NETO, MP.....	10
3.2 MEETING WITH THE NAIROBI WOMEN'S HOSPITAL MANAGEMENT .....	11
3.3 PRESENTATION BY MS. CAREN ACHIENG, THE GUARDIAN OF THE DECEASED.....	11
3.4 MEETING WITH THE MANAGEMENT OF MBAGATHI VIEW ACADEMY SECONDARY .....	12
3.5 SUBMISSION BY THE MINISTRY OF HEALTH.....	13
4.0 COMMITTEE OBSERVATIONS.....	14
5.0 COMMITTEE RECOMMENDATIONS.....	15

**ANNEXES**

1. Adoption List
2. Committee Minutes
3. Copy of the Petition


**CHAIRPERSON'S FORWARD**

The Petition regarding detention of the body of Beretta Reri by the management of Nairobi Women's hospital was tabled before the House pursuant to Standing Order No. 225 (2)(a) by the Hon. Agostinho Neto, MP, on behalf of the grandmother and concerned friends of the late Beretta Reri on 17<sup>th</sup> August, 2016.

In considering the petition, the Committee invited and held meetings with the Hon. Agostinho Neto, MP, who presented the petition on behalf of the petitioners; the grandmother of the late Beretta Reri, Mrs Caren Achieng; the Management of the Nairobi Women's Hospital, the Proprietor, Mbagathi view academy and the former Principal and Former Deputy Principal Mbagathi view academy. The Ministry of Health submitted their comments vide its letter Ref. MOH/ADM/NA/01/93 Vol. III dated 19<sup>th</sup> October, 2016. The meetings were aimed at responding to issues raised by the petitioner.

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my pleasant duty to table in the House the Report on the Petition regarding detention of the body of Beretta Reri by the management of Nairobi Women's hospital.

Signed:  .....Date: 07/02/2017  
(HON. DR. RACHAEL NYAMAI, MP)

**CHAIRPERSON,  
DEPARTMENTAL COMMITTEE ON HEALTH**

## **EXECUTIVE SUMMARY**

This report details the consideration and response to the prayers sought by the petition regarding detention of the body of Beretta Reri by the management of Nairobi Women's Hospital through Hon. Agostinho Neto, MP.

The petition was referred to the Departmental Committee on Health on 17<sup>th</sup> August, 2016 for consideration and preparation of a report within 60 days pursuant to the provisions of Standing Order 227 (1) and (2).

From the evidence adduced and the observations made, the Committee noted that the late Beretta Reri was hospitalized at the Nairobi Women's Hospital Rongai branch but her condition deteriorated occasioning her transfer to a higher facility. It was also noted that despite establishing that there was an ICU bed available at the Kenyatta National Hospital (KNH) for her referral, the same changed within minutes of leaving the Rongai Branch of the Nairobi Women's Hospital and the Hospital made a decision to admit the patient at their Adams Arcade branch. It appeared that the transfer of the patient to the Adams Arcade Branch of the hospital was motivated by the need to keep the Patient in the Hospitals custody to ensure payment of the bill already incurred at the Rongai Branch of the facility.

The consent form for transfer of the patient produced by the Nairobi Women's Hospital also appeared to be a forgery since it had different admission dates, i.e the date on the form was indicated as 17<sup>th</sup> January, 2014 whilst the actual date of signing was 17<sup>th</sup> January, 2016 and the guardian, Carren Achieng, disowned the signature on the consent form that was alleged to be hers.

The Committee further found that the Nairobi Women's Hospital had set revenue targets to its various sections leading to possible overcharging of patients to meet such targets. From the fraudulent consent form presented, it would therefore appear that even the over Ksh. 2 Million bill might not have been genuine.

The Committee also established that there had been no fundraiser organized by the Mbagathi View Academy Secondary School to raise funds towards the Late Beretta's Hospital Bill and Students had collected token contributions and presented the same to the family of the late Beretta Reri. Further, that although the then Deputy Principal of Mbagathi View Academy Secondary School registered a pay bill number to assist the family in collecting funds towards the Hospital bill, the pay bill account was valid for 3 months only and within that period, the account had only managed to collect Ksh.190 which the pay bill provider could not release due to the small amount involved.

The Committee noted that whilst the ministry had no powers to compel Nairobi Women's Hospital to unconditionally release the body of the late Beretta Reri for interment or to waive outstanding hospital bills, the only option available was dialogue with the hospital management with a view of obtaining release of the body to relatives on compassionate grounds.

The Committee noted that after meeting with the Nairobi Women's Hospital Management on the matter, the body of the late Beretta Reri was unconditionally released for interment.

## **1.0 PREFACE**

1. On 17<sup>th</sup> August, 2016, a Petition was tabled before the House pursuant to Standing Order No. 225 (2) (b) by the Hon. Agostinho Neto, MP, on behalf of the grandmother and concerned friends of the late Beretta Reri.
2. The House pursuant to Standing Order 227 referred the Petition to the Departmental Committee on Health for preparation of the Report and reporting to the House within 60 days as set out in Standing order no 227(2).

## **1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE MANDATE**

The Committee on Health is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to, inter alia;

1. Investigate and inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments’.
2. Study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
3. Study and review all legislation referred to it;
4. Study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
5. 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;
6. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and
7. Make reports and recommendations to the House as often as possible, including recommendation or proposed legislation.

## **1.2 OVERSIGHT**

The Committee is mandated to cover the functions of the Ministry in accordance with the Fourth Schedule of the Constitution. As such, the Committee exercises oversight role on the work and administration of the Ministry of Health alongside the following SAGAs:- The Kenyatta National Hospital; Moi Teaching and Referral Hospital; Kenya Medical Training College; Kenya Medical Supplies Authority; National Hospital Insurance Fund; Kenya Medical Research institute and National Aids and Control council.

## **1.3 COMMITTEE MEMBERSHIP**

The Committee comprises the following Members:-

1. **Hon. Dr. Rachel Nyamai, M.P.** - Chairperson
2. **Hon. Dr. Robert Pukose, M.P.** - Vice Chairperson

3. Hon. Dr. Naomi Shaban, M.P.
4. Hon. Dr. Enoch Kibunguchy, M.P.
5. Hon. Dr. James Nyikal, M.P.
6. Hon. Dr. James Gesami, M.P.
7. Hon. Dr. Eseli Simiyu, M.P., CBS
8. Hon. Fred Outa, M.P.
9. Hon. Alfred Sambu, M.P.
10. Hon. John Nyaga Muchiri, M.P., HSC
11. Hon. Alfred Agoi, M.P.
12. Hon. David Karithi, M.P.
13. Hon. Dr. Dahir Mohamed, M.P.
14. Hon. Dr. James Murgor, M.P.
15. Hon. Dr. Patrick Musimba, M.P.
16. Hon. Eng. Stephen Mule, M.P.
17. Hon. Dr. Stephen Wachira, M.P.
18. Hon. Dr. Susan Musyoka, M.P.
19. Hon. Hassan Aden Osman, M.P.
20. Hon. James Gakuya, M.P.
21. Hon. Kamande Mwangi, M.P.
22. Hon. Leonard Sang, M.P.
23. Hon. Michael Onyura, M.P.
24. Hon. Mwinga Gunga, M.P.
25. Hon. Paul Koinange, M.P.
26. Hon. Raphael Milkau Otaalo, MP
27. Hon. Zipporah Jesang, MP
28. Hon. Robert Mbui, MP
29. Hon. Jared Opiyo, MP

#### **1.4 COMMITTEE SECRETARIAT**

Ms. Esther Nginyo	-	Clerk Assistant
Mr. Dennis Mogare Ogechi	-	Clerk Assistant
Ms. Ruth Mwhaki Gakuya	-	Clerk Assistant
Ms. Sande Marale	-	Research & Policy Analyst
Ms. Marlene Ayiro	-	Legal Counsel
Mr. Joash Kosiba	-	Fiscal Analyst

#### **1.5 ADOPTION OF THE REPORT**

We, the Members of the Departmental Committee on Health have, pursuant to Standing Order 199, adopted this Report on the Petition regarding detention of the body of Beretta

Reri by the management of Nairobi Women's Hospital and affix our signatures (Annex 1) to affirm our approval and confirm its accuracy, validity and authenticity today .....

## **1.6 LIST OF RECOMMENDATIONS**

From the evidence adduced and the observations made, the Committee made the following determinations on the prayers of the petitioners:

- 1. As to the prayer that the Committee Investigates the circumstances under which the management of the Nairobi Women's Hospital transferred the deceased to its Adams Arcade Branch instead of Kenyatta National Hospital, a cheaper public Facility without the grandmothers knowledge or approval;**

The Committee finds that the decision to transfer the patient to the Adams Arcade Branch after initially confirming availability of an ICU bed at the Kenyatta National Hospital could have been motivated by the need to keep the Patient in the Hospitals' custody to ensure payment of the bill already incurred at the Rongai Branch of the facility.

However, the Committee notes that the Hospital has since waived the entire bill and released the body to the family for interment on compassionate grounds.

The Committee recommends that the Management of the Nairobi Women's Hospital should ensure that consent forms are properly administered to avoid incidences of fraud.

- 2. As to the prayer that the Committee intervenes through the Ministry of Health to ensure that the Hospital's management unconditionally releases the body of the late Beretta Reri to the grandmother for internment and waives the outstanding Hospital bills;**

The Committee notes that the Management of the Nairobi Women's Hospital had, on the Committee's intervention, waived the entire bill unconditionally in view of the late Berretta Reri's grandmother inability to raise any funds towards clearing the bill. and has since released the body to the family for burial.

- 3. As to the prayer that the Committee Investigates the alleged failure by the administration of Mbagathi view Academy Secondary school to pay about Ksh.60,000 that was allegedly collected from the students, towards the late Berretta's hospital bills :**

The Committee notes that although the Deputy Principal registered a pay bill number (220685) to assist the family in collecting funds towards the Hospital bill, the pay bill account had only managed to collect Ksh.190 within three months which the pay bill

provider could not transfer to a bank account as requested.

The Committee therefore finds that the former Principal and former Deputy Principal, Mbagathi view Academy Secondary School, Mr. Francis Waita Mutiso and Mr. Dotrus Maokola Wistic respectively did not directly collect funds towards the late Berretta Reri's hospital Bill and therefore not liable for any loss of funds.

**4. As to the prayer that the Committee makes any other order or direction that it deems fit in the circumstances of the case.**

The Committee notes that Article 43(1) (a) of the Constitution provides that every person has the right to the highest attainable standard of Health, which includes the right to healthcare services, including reproductive healthcare.

The Committee therefore directs that the Ministry of Health should review the current hospital referral system and develop a referral policy in order to ensure and guarantee access to the highest attainable standard of care for patients.

## 2.0 BACKGROUND INFORMATION

1. The right of Kenyan citizens to petition public authorities and Parliament is a right conferred by the Constitution under Articles 37 and Article 119 of the Constitution; by the Petition to Parliament (Procedure) Act; and, by the Standing Orders of the National. The right to petition is an essential citizen participatory tool that allows for direct intervention by Parliament on issues relating to the promotion and protection of the rights of citizens.
2. On 17<sup>th</sup> August, 2016, Hon. Agostinho Neto, MP, Ndhiwa Constituency, tabled a public petition before the House on behalf of the on behalf of the grandmother and concerned friends of the late Beretta Reri. The petition was in regard to the detention of the body of the late Berretta Reri by the Nairobi Women's hospital.
3. In his Petition, the Petitioner informed the House that the Late Beretta Reri, aged 17 years was orphaned at the age of 7 years in 2005 leaving her to be raised by her Grandmother Caren Achieng.
4. In 2015, the late Beretta, then a student at Mbagathi View Academy Secondary school developed some complications in her feet after being bitten by an unknown insect while on a school trip, and in October 2015, her condition deteriorated requiring hospitalization at Nairobi Women's hospital- Rongai Branch. The School internally conducted a fundraising from students which allegedly raised about Kshs 60,000 but the proceeds were never paid to the Hospital.
5. Towards the end of January 2016, Beretta developed Kidney failure and the Hospital arranged to transfer her to Kenyatta National Hospital for continuous cheaper treatment. However, without seeking the consent of her grandmother, the late Beretta was instead taken to the Adams Arcade Branch of Nairobi Women's Hospital where she passed away on 9<sup>th</sup> February 2016.
6. The deceased body still lay at the Hospital Mortuary due to an outstanding bill and mortuary fee totaling 2,582,082.82 and still accruing, which Berettas grandmother was unable to raise, out of which the Hospital had indicated it will only waive Kshs 500,000.
7. The Petitioner prayed that the National Assembly through the Committee:
  - a) Investigates the circumstances under which the management of the Nairobi Women's Hospital transferred the deceased to its Adams Arcade Branch instead of Kenyatta National Hospital, a cheaper public Facility without the grandmothers knowledge or approval;
  - b) Intervenes through the Ministry of Health to ensure that the Hospitals management unconditionally releases the body of the late Beretta Reri to the grandmother for internment and waives the outstanding Hospital bills;
  - c) Investigates the alleged failure by the administration of Mbagathi view Academy Secondary school to pay about Ksh.60,000 that was allegedly collected from the students, towards the late Berretta's hospital bills and
  - d) Intervenes to ensure that the Body of the late Beretta Reli is unconditionally released to the grandmother for internment.

- e) Makes any other order and /or direction that it deems fit in the circumstances of the plight of the deceased child's grandmother.

### **3.0 SUBMISSIONS AND EVIDENCE**

#### **3.1 Meeting with Hon. Agostinho Neto, MP**

Hon. Agostinho Neto, MP appeared before the Committee on Tuesday 11<sup>th</sup> October 2016 and informed it that:

1. Berretta Reri, aged 17 years was orphaned at the age of 7 years in 2005 and has been raised by her grandmother, Carren Achieng, since then.
2. She was a student at Mbagathi View Academy Secondary School when she developed some complications in her foot after being bitten by some insect while on a school trip in early 2015. In October, 2015, her condition deteriorated requiring hospitalization at Nairobi Women's Hospital, Rongai Branch.
3. The management of Mbagathi View Academy Secondary School allegedly opened an Mpesa Pay Bill Account Number 220685 in November 2015 under the name Berretta Walk Initiative to mobilize funds to clear her then existing bill of Kshs 717,929. The proceeds from that initiative were never paid to the hospital or given to the family. Mbagathi View Academy Secondary School allegedly raised a total of Ksh 60,000 internally and the same had never been paid to the hospital or given to the family.
4. Berretta developed kidney complications towards the end of January, 2016 and the hospital (Nairobi women's) arranged her transfer to Kenyatta National Hospital for continuous, cheaper treatment; however, without her guardians' consent, the late berretta was instead taken to the Adams Arcade Branch of Nairobi Women's Hospital where she passed away on 9<sup>th</sup> February, 2016.
5. The deceased's body lay at the Nairobi women's hospital mortuary due to the outstanding bill and mortuary fee then totaling to Ksh. 2, 582,082.82 which berretta's grandmother had been unable to raise. Out of the amount, the hospital had indicated that it was willing to waive Ksh. 500,000.
6. Efforts by the grandmother and area leaders to have the hospital release Berretta's body for interment have borne no fruit.
7. He then requested the Committee to:
  - a) Investigate the circumstances under which the management of Nairobi women's hospital transferred the deceased to its Adams Arcade Branch instead of Kenyatta National Hospital, cheaper public health facility without the grandmother's consent.
  - b) Intervenes through the Ministry of Health to ensure that the hospital's management releases the body of the late Berretta Reli to the grandmother for interment, and waives the outstanding bill.
  - c) Investigates the alleged failure by the administration of Mbagathi View Academy Secondary School to pay about Ksh. 60,000 that was allegedly collected from students and via the Mpesa pay bill account towards mitigating the deceased's hospital bills and recommends punishment to those found culpable for misappropriating the said contributions.

### **3.2 Meeting with the Nairobi Women's Hospital Management**

Dr. Felix Wanjala, Chief Operating Officer, Nairobi Women's Hospital appeared before the Committee and informed it that:

1. The Late berretta Reri had been admitted at the Nairobi Women's Hospital, Rongai Branch and on 17<sup>th</sup> January 2016, her condition deteriorated and the Hospital made a decision to transfer the patient to Kenyatta National Hospital (KNH).The transfer was necessitated by the fact that the patient needed admission to an Intensive Care Unit (ICU), which was not available at the hospitals admitting facility in Rongai. The guardian, Carren Achieng agreed and signed the consent to transfer the patient.
2. However, on the way to KNH, it was established that there was no bed space at the ICU at KNH and a decision was made to admit the patient at the Nairobi Women's Hospital, ,Adams Arcade Branch which has an ICU. The guardian was informed accordingly and granted her consent for transfer to the Adams Arcade Branch by signing a consent form
3. The unavailability of an ICU bed at the Kenyatta National Hospital was established through a call made to a Dr. Githinji and a Dr. Summary Sitima on the morning of 17<sup>th</sup> January, 2016 (between 9am-10am).
4. At the point of transfer from the Rongai Branch, a bill that had already been incurred at the branch had not yet been settled. The family had at that time managed to settle a bill amounting to Kshs 190,000 only.
5. On release of the body, he stated that the hospital required payment of at least the basic cost incurred in treating the patient. The Board of the Nairobi Women's Hospital could however write off the debt in case it was established that the bill could not be settled. Such bad debts were established within a timeline of 12 months.
6. The Board of the Nairobi Women's Hospital had met and considered the case at hand but a decision was yet to be reached.

On 19<sup>th</sup> October 2016, Nairobi Women's Hospital Advocates, Ngira & Associates Advocates wrote to the Committee vide a letter Ref.No. NWH/2/2016/DN. In the letter, the Committee was informed that after the Hospitals appearance before the Committee, a meeting was held between the Hospital and the guardian of the Late Berretta Reri, Ms. Carren Achieng. It was resolved in that meeting that in view of her inability to raise any funds towards clearing the hospital Bill, the hospital had decided to unconditionally waive the entire bill.

She had also been advised to pick the body for burial and she had undertaken to do so as soon as possible.

### **3.3 Presentation by Ms. Caren Achieng, the Guardian of the Deceased**

Ms. Caren Achieng, the guardian of the deceased appeared before the Committee and informed it that:

1. On transfer of the patient to the Adams Arcade Branch, she stated that a decision was made enroute to Kenyatta National Hospital and she was duly informed. Since she needed

help, she could therefore neither contest the decision nor establish any details regarding the availability of an ICU bed at the KNH.

2. She denied ever signing the consent form produced by the hospital and asserted that the signature alleged to be hers wasn't her signature.
3. She sought the Committee's intervention to have the body of her granddaughter interred to enable her have closure.

### **3.4 Meeting With the Management of Mbagathi View Academy Secondary**

#### **3.4.1 Presentation by Mr. Danson M. Pere, Manager, Mbagathi View Academy Secondary School**

Mr. Danson M. Pere, Manager, Mbagathi View Academy Secondary School appeared before the Committee and informed it that:

1. The school was started in the year 2002 and had a population of 300 students.
2. Berretta Reri had a neck swelling sometime in the year 2015. He however was not aware of her illness originating from an insect bite during a school trip and neither was he aware of details of a fundraising conducted at his school via a pay bill number and student collections towards any hospital bill.
3. The then Principal and Deputy Principal organized the fund raising using class representatives and when taken to task by the manager, they deserted their work.
4. There were several fundraisers held in the school to respond to various challenges experienced by members of the school community. Such fund raisers raised approximately Ksh 20,000- Ksh 30,000.
5. He had established that the pay bill number used was in the name of Berretta Reri but since she didn't have an Identity Card, someone else could have opened it in her name. This was yet to be established.
6. The proprietor normally goes to the school 2 to 3 times in a week to supervise happenings.
7. He requested that the Committee interrogates the then principal, Mr. Francis Waita Mutiso, and his deputy principal, Mr. Dotrus Maokola Wilstic in order to get details of the collections made. He further indicated that the two were no longer employed by the school.

#### **3.4.2 Presentation by the Former Principal, Mbagathi View Academy Secondary School**

1. Mr. Francis Mutiso, the Former Principal, Mbagathi View Academy Secondary School appeared before the Committee and informed it that:
2. On the alleged fund raising that raised Ksh 60.000, there had been no such a fundraiser organized by the school. Students collected token contributions and presented the same to the family of the late Beretta Reri.
3. He had requested the Nairobi Women's Hospital, through a lady only identified as Damaris, to conduct a fundraiser with the consent of the family but the same never happened.

4. He was not aware of the alleged existence of a pay bill number to help raise funds for treatment of the late Beretta Reri.
5. He had resigned from the school in January, 2016 for personal reasons which included seeking professional growth and lack of following operational procedures by the school management i.e. he was not involved in any management meetings to deliberate on school matters, and no appointment letters were given to staff hence arbitrary firing of staff at the school was the norm.

### **3.4.3 Presentation by the Former Deputy Principal, Mbagathi View Academy Secondary School**

Mr. Dotrus Wilstic, Former Deputy Principal Mbagathi View Academy Secondary School appeared before the Committee and informed it that:

1. There had been no formal fundraiser held in the school. He had however taken a personal initiative on compassionate grounds, in conjunction with the students after visiting the late Beretta Reri in hospital.
2. The funds were raised and handled by the students themselves and therefore no teacher was involved in handling the funds. The first collection by students amounted to about Ksh 10,000 and was presented to the grandmother by the students.
3. He had opened a pay bill account with Safaricom Limited after consultations with the management of the Nairobi Women's Hospital in order to assist the family to collect funds towards the hospital bill of the late Beretta Reri. He had used his ID card since Beretta was a minor. The pay bill account was opened at the Maasai Mall customer service centre of Safaricom Limited.
4. He later requested Safaricom to release the funds in the pay bill account through his bank account, but was informed that the amount of Ksh 190 in the account was too small to be sent to the bank account as requested.
5. The late Beretta's guardian, Carren Achieng had equally sought the pay bill statement from Safaricom and had established the total amount in the account was Kshs. 190 .
6. In November, 2015, there was an organizing committee between the Nairobi Women's Hospital management, the grandmother of the late and the school to plan a fund raising. The plans flopped after a strike in the school around the same time.

### **3.5 Submission by the Ministry of Health**

The Ministry of Health submitted its response in regards to the petition vide its letter Ref: MOH/ADM/NA/01/93 Vol. III dated 19<sup>th</sup> October, 2016 in which it stated that:

1. Other than the petition in question, there had been no complaint lodged with the Ministry or its regulatory agencies.
2. Upon receipt of the petition, the Ministry had referred the matter to Kenya Medical Practitioners and Dentists Board for investigation. The Board had since written to Nairobi Women's Hospital vide a letter dated 11<sup>th</sup> October 2016 to respond to the allegations and to submit treatment documents for reference during investigations. The Board was also making efforts to get in touch with the family of the Late Beretta Reri;

3. Upon receipt of submissions, the Board would convene the Preliminary Inquiry Committee (PIC) which would be mandated to conduct inquiries into complaints. On completion of investigations, a report would be submitted to the Departmental Committee on Health;
4. The Ministry had no powers to compel Nairobi Women's Hospital to unconditionally release the body of the late Beretta Reri for internment or to waive outstanding hospital bills. However, the Ministry has initiated dialogue with the hospital management with a view of obtaining release of the body to relatives on compassionate grounds. In the event that these initiatives did not work the family of the late Beretta Reri and the petitioner would have the option of seeking court orders.
5. The Ministry had neither the mandate nor the capacity to carry out an investigation on the whereabouts of the proceeds of the fundraiser undertaken by the late Beretta's school.

#### **4.0 COMMITTEE OBSERVATIONS**

The Committee having considered the petitioners' prayers and their submissions and those of various stakeholders, observed the following, that:-

1. Despite establishing that there was an ICU bed available at the Kenyatta National Hospital (KNH), the same changed within minutes of leaving the Rongai Branch of the Nairobi Women's Hospital and the Hospital made a decision to admit the patient at their Adams Arcade branch. It appears that the transfer of the patient to the Adams Arcade Branch of the hospital was motivated by the need to keep the Patient in the Hospitals custody to ensure payment of the bill already incurred at the Rongai Branch of the facility.
2. The consent form for transfer of the patient produced by the Nairobi Women's Hospital appeared to be a forgery because:
  - i) The date on the form was indicated as 17<sup>th</sup> January, 2014 whilst the actual date of signing was 17<sup>th</sup> January, 2016.
  - ii) The guardian, Carren Achieng was indicated as being the patient's mother whereas she was the grandmother.
  - iii) The guardian, Carren Achieng, disowned the signature on the consent form that was alleged to be hers.
3. The Nairobi Women's Hospital had set revenue targets to its various sections leading to possible overcharging of patients to meet such targets. From the fraudulent consent form presented, it would therefore appear that even the over Ksh. 2 Million bill might not have been genuine.
4. There had been fundraiser organized by the Mbagathi View Academy Secondary School to raise funds towards the Late Beretta's Hospital Bill. Students had collected token contributions and presented the same to the family of the late Beretta Reri.
5. Although the then Deputy Principal of Mbagathi View Academy Secondary School registered a pay bill number to assist the family in collecting funds towards the Hospital bill, the pay bill account had only managed to collect Ksh.190 within three months which the pay bill provider could not pay through a bank account as requested.
6. The Ministry had no powers to compel Nairobi Women's Hospital to unconditionally release the body of the late Beretta Reri for internment or to waive outstanding hospital

bills. The only option available was dialogue with the hospital management with a view of obtaining release of the body to relatives on compassionate grounds.

## **5.0 COMMITTEE RECOMMENDATIONS**

- 1. As to the prayer that the Committee Investigates the circumstances under which the management of the Nairobi Women's Hospital transferred the deceased to its Adams Arcade Branch instead of Kenyatta National Hospital, a cheaper public Facility without the grandmothers knowledge or approval;**

The Committee finds that the decision to transfer the patient to the Adams Arcade Branch after initially confirming availability of an ICU bed at the Kenyatta National Hospital could have been motivated by the need to keep the Patient in the Hospitals' custody to ensure payment of the bill already incurred at the Rongai Branch of the facility.

However, the Hospital has since waived the entire bill and released the body to the family for interment on compassionate grounds.

The Management of the Nairobi Women's Hospital should ensure that consent forms are properly administered to avoid incidences of fraud.

- 2. As to the prayer that the Committee Intervenes through the Ministry of Health to ensure that the Hospitals management unconditionally releases the body of the late Beretta Reri to the grandmother for internment and waives the outstanding Hospital bills;**

The Committee notes that the Management of the Nairobi Women's Hospital had, on the Committee's intervention, waived the entire bill unconditionally in view of the late Beretta Reri's grandmother inability to raise any funds towards clearing the bill. and has since released the body to the family for burial.

- 3. As to the prayer that the Committee Investigates the alleged failure by the administration of Mbagathi view Academy Secondary school to pay about Ksh.60,000 that was allegedly collected from the students, towards the late Berretta's hospital bills :**

The Committee notes that although the Deputy Principal registered a pay bill number to assist the family in collecting funds towards the Hospital bill, the pay bill account had only managed to collect Ksh.190 which the pay bill provider could not pay through a bank account as requested.

The Committee therefore finds that the former Principal and former Deputy Principal, Mbagathi view Academy Secondary School, Mr. Francis Waita Mutiso and Mr. Dotrus Maokola Wistic respectively did not directly collect funds towards the late

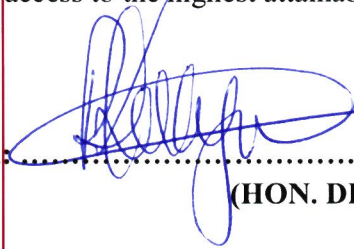
Berretta Reri's hospital Bill and therefore not liable for any loss of funds.

**4. As to the prayer that the Committee makes any other order or direction that it deems fit in the circumstances of the case.**

The Committee notes that Article 43(1) (a) of the Constitution provides that every person has the right to the highest attainable standard of Health, which includes the right to healthcare services, including reproductive healthcare.

The Committee therefore directs that the Ministry of Health should review the current hospital referral system and develop a referral policy in order to ensure and guarantee access to the highest attainable standard of care for patients.

Signed



Date:

07/02/2017

(HON. DR. RACHAEL NYAMAI, MP)

**CHAIRPERSON,  
DEPARTMENTAL COMMITTEE ON HEALTH**

Annex 1.

**DC-H: DEPARTMENTAL COMMITTEE ON HEALTH**

**ATTENDANCE REGISTER**

**AGENDA:**

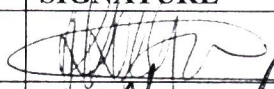
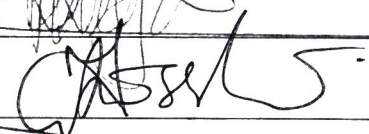
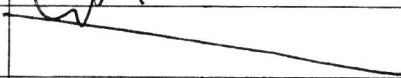


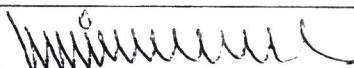

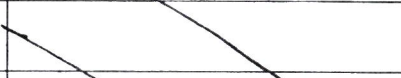
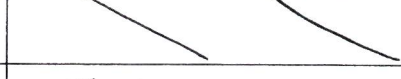
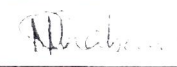
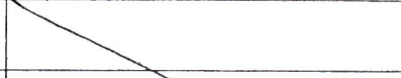
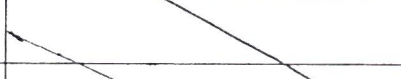

1. CONSIDERATION AND ADOPTION OF THE FOLLOWING REPORTS:
  - a) REPORT ON PETITION REGARDING DIRECT EMPLOYMENT OF GRADUATE NURSES BY THE PUBLIC SERVICE COMMISSION.
  - b) REPORT ON PETITION REGARDING THE ALLEGED BRUTAL MURDER OF THE LATE COSMAS MUTUNGA AT THE KENYATTA NATIONAL HOSPITAL
  - c) REPORT ON PETITION REGARDING THE ALLEGED DETENTION OF THE BODY OF THE LATE BERRETTA RERI BY THE MANAGEMENT OF THE NAIROBI WOMEN'S HOSPITAL
  - d) REPORT ON PETITION REGARDING ALLEGED NEGLIGENCE BY THE MOMBASA HOSPITAL AND FAILURE TO ATTEND TO A PATIENT
  - e) REPORT ON THE GOVERNMENT CHEMIST AGENCY BILL (LEGISLATIVE PROPOSAL)
2. BRIEFING BY THE PARLIAMENTARY BUDGET OFFICE ON THE SUPPLEMENTARY BUDGET




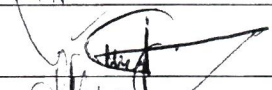
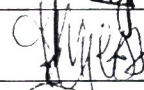

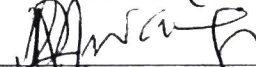


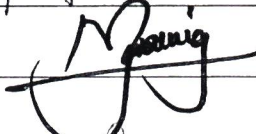



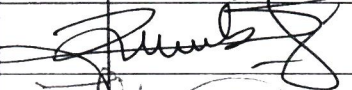


DATE:

26/01/2017

VENUE:

4<sup>th</sup> Floor Conf.

	NAME	SIGNATURE
1.	Hon. Dr. Rachel Nyamai, M.P. Chairperson	
2.	Hon. Dr. Robert Pukose, M.P. Vice Chairperson	
3.	Hon. Alfred Agoi, M.P.	
4.	Hon. David Karithi, M.P.	
5.	Hon. Dr. Dahir Mohamed, M.P.	
6.	Hon. Dr. Enock Kibunguchy, M.P.	
7.	Hon. Dr. James Murgor, M.P.	
8.	Hon. Dr. James Nyikal, M.P.	
9.	Hon. Dr. James Gesami, M.P.	
10.	Hon. Dr. Naomi Shaban, M.P.	
11.	Hon. Dr. Patrick Musimba, M.P.	
12.	Hon. Eng. Stephen Mule, M.P.	
13.	Hon. Dr. Stephen Wachira, M.P.	

14.	Hon. Dr. Susan Musyoka, M.P.	
15.	Hon. Fred Outa, M.P.	
16.	Hon. Hassan Aden Osman, M.P.	
17.	Hon. James Gakuya, M.P.	
18.	Hon. John Nyaga Muchiri, M.P., HSC	
19.	Hon. Dr. Eseli Simiyu, CBS, M.P.	
20.	Hon. Kamande Mwangi, M.P.	
21.	Hon. Leonard Sang, M.P.	
22.	Hon. Michael Onyura, M.P.	
23.	Hon. Mwinga Gunga, M.P.	
24.	Hon. Paul Koinange, M.P.	
25.	Hon. Raphael Milkau Otaalo, MP	
26.	Hon. Zipporah Jesang, MP	
27.	Hon. Alfred Sambu, M.P.	
28.	Hon. Robert Mbui, MP	
29.	Hon. Jared Opiyo, MP	

## Annex 2.

### MINUTES OF THE 84<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON TUESDAY, 18<sup>TH</sup> OCTOBER, 2016 IN THE 2<sup>ND</sup> FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

#### PRESENT

1. **The Hon. Dr. Robert Pukose, M.P.** (Vice Chairperson)
2. The Hon. Dr. James Nyikal, M.P.
3. The Hon. Dr. Dahir D. Mohamed, M.P.
4. The Hon. James Gakuya, M.P.
5. The Hon. Fred Outa, M.P.
6. The Hon. Michael Onyura, M.P.
7. The Hon. Robert Mbui, M.P.
8. The Hon. Dr. Stephen Wachira, M.P.
9. The Hon. Kamande Mwangi, M.P.
10. The Hon. Mwinga Gunga, M.P.
11. The Hon. Dr. Eseli Simiyu, CBS, M.P.
12. The Hon. Leonard Sang, M.P.
13. The Hon. Hassan Aden Osman, M.P.
14. The Hon. Jared Opiyo, M.P.
15. The Hon. David Karithi, M.P.

#### ABSENT WITH APOLOGY

1. **The Hon. Dr. Racheal Nyamai, M.P.** (Chairperson)
2. The Hon. Dr. Naomi Shaban, M.P.
3. The Hon. Dr. Patrick Musimba, M.P.
4. The Hon. Raphael Milkau Otaalo, M.P.
5. The Hon. Dr. Susan Musyoka, M.P.
6. The Hon. Dr. James Murgor, M.P.
7. The Hon. Alfred Agoi, M.P.
8. The Hon. Dr. Enoch Kibunguchy, M.P.
9. The Hon. John Nyaga Muchiri, M.P.
10. The Hon. Stephen M. Mule, M.P.
11. The Hon. Paul Koinange, M.P.
12. The Hon. Zipporah Jesang, M.P.
13. The Hon. Dr. James O. Gesami, M.P.
14. The Hon. Alfred Sambu, M.P.

#### IN ATTENDANCE

##### Nairobi Women's Hospital

1. Dr. Felix Wanjala - Chief Operating Officer
2. John Mwiti

3. Dennis Ngira
4. Reuben Waweru
5. Muthuvih Githinji
6. Caren Achieng

**Mbagathi View Academy**

1. Danson M. Pere - Manager

**National Assembly Secretariat**

1. Mr. Dennis M. Ogechi - Third Clerk Assistant.
2. Ms. Ruth Mwihaki - Third Clerk Assistant.
3. Ms. Marlene Ayiro - Legal Counsel
4. Mr. Simon Muinde - Audio Recording Officer
5. Mr. Nixon Kibet - Audio Recording Officer

**MIN.NO. DCH 344/2016: PRELIMINARIES.**

The acting Chairperson called the meeting to order at 10.25 am and said a prayer. He thereafter invited those present to introduce themselves.

**MIN.NO. DCH 345/2016: MEETING WITH THE MANAGEMENT OF NAIROBI WOMEN'S HOSPITAL ON THE PETITION BY HON. AGOSTINHO NETO, M.P REGARDING THE ALLEGED DETENTION OF THE BODY OF THE LATE BERRETTA RERI BY THE MANAGEMENT OF THE NAIROBI WOMEN'S HOSPITAL.**

The acting Chairperson stated that the purpose of the meeting was to receive submissions from the Management of Nairobi Women's Hospital to enable the Committee to respond to a petition by Hon. Agostino Neto, M.P Regarding the Alleged Detention of the Body of the Late Berretta Reri by the Management of the Nairobi Women's Hospital.

He then invited Dr. Felix Wanjala to make his submissions.

**Presentation by Dr. Felix Wanjala, Nairobi Women's Hospital**

Dr. Felix Wanjala, Nairobi Women's Hospital appeared before the Committee and informed it that:

1. On the consent to transfer the patient from the Rongai Branch of Nairobi Women's Hospital to the Adams Arcade Branch of the same facility, he stated that on 17<sup>th</sup> January, 2016, the patient was to be transferred to Kenyatta National Hospital as agreed with the guardian. However, on the way to KNH, it was established that there was no bed space at the ICU at

KNH. It was then resolved that the patient be taken to the Adams Arcade Branch. The guardian was accordingly informed.

2. The lack of ICU bed at KNH was established through a call made to Dr. Githinji and Dr. Summary Sitima on the morning of 17<sup>th</sup> January, 2016 (between 9am-10am).
3. At the point of transfer from the Rongai Branch, a bill that had already been incurred at the branch had not yet been settled.
4. The guardian of the patient granted her consent for transfer of the patient to the Adams Arcade Branch via signing a consent form (the said form was presented before the Committee).
5. On release of the body, he stated that the hospital required payment of at least the basic cost incurred in treating the patient.
6. The family had managed to settle a bill amounting to 190,000 thus far.
7. The Board of the Nairobi Women's Hospital could write off the debt incase its established that the bill can't be settled. Such bad debts are established within a timeline of 12 months.
8. The Board of the Nairobi Women's Hospital had met and considered the case at hand but a verdict was yet to be given. The relevant documents indicating consideration of the case by the board were to be submitted by end of day.

#### **Presentation by Ms. Caren Achieng, the Guardian of the Deceased**

Ms. Caren Achieng, the guardian of the deceased appeared before the Committee and informed it that:

1. On transfer of the patient to the Adams Arcade Branch, she stated that a decision was made enroute to Kenyatta National Hospital and she was duly informed. She needed help therefore she could neither contest the decision nor establish details of why the bed wasn't available at KNH.
2. She denied ever signing the consent form produced by the hospital. In fact she asserted that the signature alleged to be hers wasn't her signature.
3. She pleaded for help to have the body of her granddaughter interred to enable her have closure.

#### **COMMITTEE OBSERVATIONS**

The Committee observed that:

1. Despite establishing that there was bed capacity at the ICU at KNH, the same changed within minutes of leaving the Rongai Branch of the Nairobi Women's Hospital. This assertion by the hospital officials seems unconvincing.
2. The consent form for transfer of the patient produced by the Nairobi Women's Hospital seems a forgery because:
  - i) The date was indicated as 17<sup>th</sup> January, 2014 which was wrong as the same happened on 17<sup>th</sup> January, 2016.

- i) The guardian is indicated as being the patient's mother whereas it was the grandmother involved.
  - ii) The grandmother disowned the signature on the consent form that was alleged to be hers.
3. It seemed that the transfer of the patient to the Adams Arcade Branch of the hospital was motivated by keeping custody of the patient to ensure payment of the bill already incurred at the Rongai Branch of the same facility.
4. From the fraudulent consent form, it seemed that even the bill that was alleged to be over Ksh. 2 Million might not have been genuine.
5. The Nairobi Women's Hospital was known to give revenue targets to its various sections leading to overcharging of patients to meet such targets. This needed further probing by the Committee in a bid to establish the authenticity of the hospital bill in question.

## **RESOLUTION**

The Committee resolved that the Nairobi Women's Hospital should:

1. Table the patient's hospital bill for it to establish its veracity.
2. Produce the documents indicating consideration for waiver of the bill by the Board of the hospital.

**MIN.NO. DCH 346/2016:**

**MEETING WITH THE MANAGEMENT OF  
MBAGATHI VIEW ACADEMY SECONDARY  
SCHOOL ON THE PETITION BY HON.  
AGOSTINHO NETO, M.P REGARDING THE  
ALLEGED DETENTION OF THE BODY OF THE  
LATE BERRETTA RERI BY THE MANAGEMENT  
OF THE NAIROBI WOMEN'S HOSPITAL.**

The acting Chairperson stated that the purpose of the meeting was to receive submissions from the Management of Mbagathi View Academy Secondary School to enable the Committee to respond to a petition by Hon. Agostino Neto, M.P Regarding the Alleged Detention of the Body of the Late Berretta Reri by the Management of the Nairobi Women's Hospital.

He then invited Mr. Danson M. Pere, Manager, Mbagathi View Academy Secondary School to make his submissions.

### **Presentation by Mr. Danson M. Pere, Manager, Mbagathi View Academy Secondary School**

Mr. Danson M. Pere, Manager, Mbagathi View Academy Secondary School appeared before the Committee and informed it that:

1. The school was started in the year 2002 and had a population of 300 students.
2. Berretta Reri had a neck swelling sometime in the year 2015. He however was not aware of her illness originating in an insect bite during a school trip.

3. He was not aware of details of a fundraising conducted at his school via a pay bill number and student collections in school.
4. The then Principal and Deputy Principal organized the fund raising using class representatives and when taken to task by the manager, they deserted their work.
5. There were several fundraisers held in the school to respond to various challenges experienced by members of the school community. Such fund raisers raised approximately Ksh 20,000- Ksh 30,000.
6. He had established that the pay bill number used was in the name of Berretta Reri but since she didn't have an Identity Card, someone else could have opened it in her name. He was yet to establish who did so.
7. The proprietor goes to the school 2 to 3 times in a week to supervise happenings.
8. He requested the Committee to get in touch with the then principal and deputy principal to get details of the collections made. He provided their names and contacts to the Committee. They were:
  - i) Mr. Francis Waita Mutiso, Former Principal,
  - ii) Mr. Dotrus Maokola Wistic, Former Deputy Principal,

**COMMITTEE OBSERVATIONS**

The Committee observed that:

1. There was need to have the former principal and his deputy respond to the issue of collections/fundraising meant for the late Berretta Reri.
2. The management of the school appeared to have been negligent or was misleading since despite the manager being in school 2 to 3 times a week; he claimed to have been unaware of details of collection and not bothered to investigate the issue of fund raisings meant to help settle the hospital bill of the late Berretta Reri.

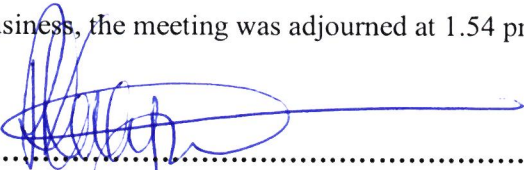
**RESOLUTION**

The Committee resolved to invite the then principal (Mr. Francis Waita Mutiso) and then deputy principal (Mr. Dotrus Maokola Wistic) to shed light on fundraisers in school meant to help settle the bill of the late Berretta Reri

**MIN.NO. DCH 347/2016:                      ADJOURNMENT**

There being no other business, the meeting was adjourned at 1.54 pm.

SIGNED: .....



**HON (DR.) RACHAEL NYAMAI, M.P.  
CHAIRPERSON**

DATE: ..... 07/02/2017 .....

**MINUTES OF THE 78<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON TUESDAY, 11TH OCTOBER, 2016, IN THE 2<sup>ND</sup> FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT AT 10.00 AM.**

**PRESENT**

1. **The Hon. Dr. Racheal Nyamai, M.P.** (Chairperson)
2. The Hon. Dr. James Murgor, M.P.
3. The Hon. James Gakuya, M.P.
4. The Hon. Raphael Milkau Otaalo, M.P.
5. The Hon. Alfred Agoi, M.P.
6. The Hon. Dr. James Nyikal, M.P.
7. The Hon. Michael Onyura, M.P.
8. The Hon. Leonard Sang, M.P.
9. The Hon. Paul Koinange, M.P.
10. The Hon. Robert Mbui, M.P.
11. The Hon. Kamande Mwangi, M.P.
12. The Hon. Dr. Stephen Wachira, M.P.
13. The Hon. David Karithi, M.P.

**ABSENT WITH APOLOGY**

1. **The Hon. Dr. Robert Pukose, M.P.** (Vice Chairperson)
2. The Hon. Dr. Eseli Simiyu, CBS, M.P.
3. The Hon. Dr. Naomi Shaban, M.P.
4. The Hon. John Nyaga Muchiri, M.P.
5. The Hon. Dr. Patrick Musimba, M.P.
6. The Hon. Dr. Susan Musyoka, M.P.
7. The Hon. Hassan Aden Osman, M.P.
8. The Hon. Stephen M. Mule, M.P.
9. The Hon. Jared Opiyo, M.P.
10. The Hon. Dr. Enoch Kibunguchy, M.P.
11. The Hon. Mwinga Gunga, M.P.
12. The Hon. Fred Outa, M.P.
13. The Hon. Zipporah Jesang, M.P.
14. The Hon. Dr. James O. Gesami, M.P.
15. The Hon. Dr. Dahir D. Mohamed, M.P.
16. The Hon. Alfred Sambu, M.P.

**IN ATTENDANCE**

**Friend to the Committee**

1. Hon. Agostino Neto, M.P.

**National Assembly Secretariat**

- |                         |   |                               |
|-------------------------|---|-------------------------------|
| 1. Ms. Esther Nginyo    | - | <b>Third Clerk Assistant.</b> |
| 2. Mr. Dennis M. Ogechi | - | Third Clerk Assistant.        |
| 3. Ms. Marlene Ayiro    | - | Legal Counsel                 |
| 4. Dr. Christine Sagini | - | Researcher                    |
| 5. Ms. Noelle Chelagat  | - | Media Relations Officer       |

**MIN.NO. DCH 323/2016: PRELIMINARIES.**

The Chairperson called the meeting to order at 10.28 am and a prayer was said by Hon. Dr. Stephen Wachira, M.P. She thereafter invited those present to introduce themselves.

**MIN.NO. DCH 324/2016: MEETING WITH THE HON. AGOSTINO NETO, M.P. REGARDING HIS PETITION ON THE ALLEGED DETENTION OF THE BODY OF THE LATE BERRETTA RERI BY THE MANAGEMENT OF THE NAIROBI WOMEN'S HOSPITAL**

The Chairperson stated that the purpose of the meeting was to receive submissions from the Hon. Agostino Neto, M.P. with regard to his petition on the alleged detention of the body of the late Berretta Reri by the management of the Nairobi Women's Hospital. She then invited the Hon. Agostino Neto, M.P. to make his presentation.

**Presentation by the Hon. Agostino Neto, MP**

Hon. Agostino Neto, MP appeared before the Committee and informed it that:

1. Berretta Reri, aged 17 years was orphaned at the age of 7 years in 2005 and has been raised by her grandmother, Carren Achieng, since then.
2. Berretta, who was a student at Mbagathi View Academy Secondary School, developed some complications in her feet after being bitten by some insect while on a school trip in early 2015. In October, 2015, her condition deteriorated requiring hospitalization at Nairobi Women's Hospital, Rongai Branch.
3. The management of Mbagathi View Academy Secondary School allegedly opened an Mpesa Pay Bill Account Number 220685 in November 2015 under the name Berretta Walk Initiative to mobilize funds to clear her then existing bill of Kshs 717,929. The proceeds from that initiative were never paid to the hospital or given to the family.
4. Mbagathi View Academy Secondary School allegedly raised a total of Ksh 60,000 internally and the same had never been paid to the hospital or given to the family.
5. Berretta developed kidney complications towards the end of January, 2016 and the hospital (Nairobi women's) arranged her transfer to Kenyatta National Hospital for

continuous, cheaper treatment; however, without her guardians' consent, the late berretta was instead taken to the Adams Arcade Branch of Nairobi Women's Hospital where she passed away on 9<sup>th</sup> February, 2016.

6. The deceased's body still lay at the Nairobi women's hospital mortuary due to the outstanding bill and mortuary fee then totaling to Ksh. 2, 582,082.82 which berretta's grandmother was unable to raise. Out of the amount, the hospital had indicated that it was willing to waive Ksh. 500,000.
7. Efforts by the grandmother and area leaders to have the hospital release Berretta's body for interment have borne no fruit.
8. He then requested the Committee to:
  - a) Investigate the circumstances under which the management of Nairobi women's hospital transferred the deceased to its Adams Arcade Branch instead of Kenyatta National Hospital, cheaper public health facility without the grandmother's consent.
  - b) Intervenes through the Ministry of Health to ensure that the hospital's management releases the body of the late Berretta Reli to the grandmother for interment, and waives the outstanding bill.
  - c) Investigates the alleged failure by the administration of Mbagathi View Academy Secondary School to pay about Ksh. 60,000 that was allegedly collected from students and via the Mpesa pay bill account towards mitigating the deceased's hospital bills and recommends punishment to those found culpable for misappropriating the said contributions.

## **RESOLUTIONS**

After interaction with the Hon. Agostino Neto, MP, members made the following resolutions:

1. The legal counsel attached to the Committee ought to brief the Committee on laws guiding handling of bodies.
2. The following shall be invited to a meeting with the Committee in order to effectively respond to the petition:
  - a) The family of the deceased
  - b) The Ministry of Health
  - c) The Nairobi women's hospital
  - d) The management of Mbagathi View Academy Secondary school

**MIN.NO. DCH 325/2016: CONSIDERATION AND ADOPTION OF THE REPORT ON THE AGREEMENT BETWEEN THE GOVERNMENT OF KENYA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING COOPERATION IN THREAT REDUCTION BIOLOGICAL ENGAGEMENT PROGRAMS.**

The Report on the Agreement between the Government of Kenya and the Government of the United States of America Concerning Cooperation in Threat Reduction Biological Engagement Programs was considered and members deferred its adoption after recommending the following amendments:

1. Add the requirement for quarterly reporting to parliament in part "c" of the recommendations.
2. Add a new recommendation that shall read as follows:  
"The agencies to be involved in implementation of the agreement should develop adequate capacity to ensure effective implementation of the agreement."
3. Add a new recommendation that shall read as follows:  
"The implementing agencies should ensure that toxins, pathogens and biological agents are not exported from the facilities envisaged under the agreement (Article XI (1)) unless with mutual consent."

**MIN.NO. DCH 326/2016: ANY OTHER BUSINESS**

The Committee resolved to visit, within a month from the date of the meeting, the Garissa and Meru County Hospitals to assess:

- a) The efficacy of conditional grants allocated to the facilities.
- b) The progress of the Manged Equipment Service Project at the facilities.

**MIN.NO. DCH 327/2016: ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.55 pm.

SIGNED:  .....

**HON (DR.) RACHAEL NYAMAI, M.P.  
CHAIRPERSON**

DATE: ..... 07 / 02 / 2017 .....

**MINUTES OF THE 2<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY 26<sup>TH</sup> JANUARY 2017 IN THE 4<sup>TH</sup> FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00AM.**

**PRESENT**

1. **The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)**
2. **The Hon. Dr. Robert Pukose, M.P. (Vice-Chairperson)**
3. The Hon. David Karithi, M.P.
4. The Hon. Jared Opiyo, M.P.
5. The Hon. Dr. Naomi Shaban, M.P.
6. The Hon. Dr. Enoch Kibunguchy, M.P.
7. The Hon. Dr. Eseli Simiyu, CBS, M.P.
8. The Hon. Hassan Aden Osman, M.P.
9. The Hon. James Gakuya, M.P.
10. The Hon. Fred Outa, M.P.
11. The Hon. John Nyaga Muchiri, M.P.
12. The Hon. Robert Mbui, M.P.
13. The Hon. Michael Onyura, M.P.
14. The Hon. Mwinga Gunga, M.P.
15. The Hon. Kamande Mwangi, M.P.
16. The Hon. Leonard Sang, M.P.
17. The Hon. Raphael Milkau Otaalo, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. James Murgor, M.P.
2. The Hon. Dr. Stephen Wachira, M.P.
3. The Hon. Dr. James Nyikal, M.P.
4. The Hon. Dr. James O. Gesami, M.P.
5. The Hon. Dr. Dahir D. Mohamed, M.P.
6. The Hon. Alfred Agoi, M.P.
7. The Hon. Stephen M. Mule, M.P.
8. The Hon. Paul Koinange, M.P.
9. The Hon. Zipporah Jesang, M.P.
10. The Hon. Dr. Patrick Musimba, M.P.
11. The Hon. Dr. Susan Musyoka, M.P.
12. The Hon. Alfred Sambu, M.P.

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

1. **Ms. Esther Nginyo - Third Clerk Assistant.**
2. **Mr. Dennis Mogare - Third Clerk Assistant.**

3. Ms. Ruth Mwihaki - Third Clerk Assistant.  
4. Mr. Joash Kosiba - Fiscal Analyst

**MIN.NO. DCH 006/2017: PRELIMINARIES.**

The Chairperson called the meeting to order at 10.30 am and a prayer was said by Hon. Dr. Robert Pukose, M.P.

**MIN.NO. DCH 007/2017: CONFIRMATION OF MINUTES**

Minutes of the 95<sup>th</sup> Sitting held on Tuesday 22<sup>nd</sup> November, 2016 at 11.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. Fredrick Outa, M.P. and Hon. Leonard Sang, M.P. respectively.

Minutes of the 97<sup>th</sup> Sitting held on Thursday 29<sup>th</sup> November, 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. David Kariithi, M.P. and Hon. Raphael Milkau Otaalo, M.P. respectively.

Minutes of the 98<sup>th</sup> Sitting held on Thursday 1<sup>st</sup> December 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. Fredrick Outa, M.P., and Hon. Michael Onyura, M.P. respectively.

Minutes of the 99<sup>th</sup> Sitting held on Tuesday 6<sup>th</sup> December, 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. Kamande Mwangi, M.P. and Fredrick Outa, M.P. respectively

Minutes of the 100<sup>th</sup> Sitting held on Wednesday 7<sup>th</sup> December, 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. Mwinga Gunga, M.P. and Hon. Kamande Mwangi, M.P. respectively.

Minutes of the 101<sup>st</sup> Sitting held on Thursday 8<sup>th</sup> December 2016 at 10.00 a.m. were confirmed as the true record of the Committee's deliberations after being proposed and seconded by Hon. Michael Onyura, M.P., and Hon. Raphael Milkau Otaalo, M.P. respectively.

**MIN.NO.DCH 008/2017: CONSIDERATION AND ADOPTION OF REPORTS.**

The Committee considered the following reports:

**i. REPORT ON A PETITION BY KENYA STUDENT NURSES CHAPTER OF THE NATIONAL NURSES ASSOCIATION OF KENYA REGARDING THE DIRECT EMPLOYMENT OF DEGREE NURSES BY THE PUBLIC SERVICE COMMISSION.**

The report was adopted after being proposed by the Hon. Leonard Sang, M.P., and Seconded by the Hon. Raphael Milkau Otaalo, M.P.

**ii. REPORT ON THE CONSIDERATION OF THE PETITION REGARDING ALLEGED DETENTION OF THE BODY OF BERETTA RERI BY THE MANAGEMENT OF NAIROBI WOMENS HOSPITAL.**

The report was adopted after being proposed by the Hon. David Kariithi, M.P. and seconded by the Hon. Mwinga Gunga, M.P.

**iii. REPORT ON THE PUBLIC PETITION BY THE FAMILY OF MOHAMED BAKARI ON NEGLIGENCE BY THE MOMBASA HOSPITAL AND FAILURE TO ATTEND TO A PATIENT.**

The report was adopted after being proposed by the Hon. Mwinga Gunga, M.P., and seconded by the Hon. John Nyaga Muchiri, M.P.

**iv. REPORT ON THE CONSIDERATION OF THE PETITION REGARDING THE PETITION BY THE HON. JOHN MATI, M.P THE ALLEGED BRUTAL MURDER OF THE LATE COSMAS MUTUNGA AT THE KENYATTA NATIONAL HOSPITAL.**

The report was adopted after being proposed by the Hon. Robert Mbui, M.P. and seconded by the Hon. Leonard Sang, M.P.

**MIN.NO.DCH 009/2017:**

**BRIEF ON THE ANALYSIS OF THE FIRST SUPPLEMENTARY ESTIMATES FOR THE FINANCIAL YEAR 2016/2017 FOR THE MINISTRY OF HEALTH**

The Committee was taken through the Brief from the Parliamentary Budget office by Mr. Joash Kosiba, Fiscal Analyst and informed as follows:

1. The Constitution of Kenya 2010 in Article 223 provided that the national government may spend money that had not been appropriated only in two specific occasions namely: it the amount appropriated for any purpose under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; and money has been withdrawn from the Contingencies Fund. However, these expenditures must be regularized through Parliamentary approvals within two months after withdrawal of the money as stipulated in Article 223 (2&3) of the CoK, 2010.
2. The first supplementary expenditure estimates for the FY 2016/17 were submitted to the National Assembly on Thursday 1<sup>st</sup> December 2016. The supplementary budget came at a time when the Health sector was facing a crisis of serious industrial unrests which have paralyzed service delivery in all public health institutions across the country.

3. The collective bargaining agreement (CBA) signed between the Ministry of Health (MoH) and Kenya Medical Practitioners, Pharmacists, and Dentists' Union (KMPDU) in June 2013 was the basis of the current industrial action by doctors, pharmacists and dentists. The CBA which was to remain in force for a period of two years effective from 1<sup>st</sup> July 2013 had since come to haunt the government as it has paralyzed service delivery in the public health sector with serious ramifications on health and economic well-being of Kenyans.
4. The CBA had not been registered in industrial court as required by labour laws due to several legal technicalities and constitutional flaws and therefore its implementation in its current form was likely to face serious hurdles. Any agreement reached between the government and the union was also likely to have financial implications for both the national and county governments which had to be catered for through a revised budget for the FY 2016/17 or a new budget for the FY 2017/2018

#### **Overview of the Overall Expenditure Estimates Totals**

5. The gross approved expenditure estimates for the Ministry of Health in the FY 2016/17 was Ksh. 60.269 billion comprising of Ksh. 28.990 billion for current expenditures and Ksh. 31.279 billion for capital expenditures.
6. The proposed supplementary estimates I for the FY 2016/17 adjusted the approved expenditure estimates to Ksh. 60.453 billion representing an overall increase of Ksh. 183.957 million in the budget of the Ministry of Health.
7. The overall approved current expenditures estimates for the Ministry of Ksh. 28.990 billion had been adjusted upwards by Ksh. 464.963 million to Ksh. 29.455 billion while the overall approved capital expenditure estimates of Ksh. 31.279 billion had been adjusted downwards by Ksh. 281.006 million to Ksh. 30.998 billion.
8. The overall approved gross current expenditures estimates for the Ministry of Health of Ksh. 28.990 billion had been adjusted upwards by Ksh. 464.963 million to Ksh. 29.455 billion.
9. In terms of economic classification, the downward revision of current expenditures estimates were: Compensation to employees adjusted upwards by Ksh. 286.275 million from the approved Ksh. 5.72 billion to Ksh. 5.434 billion; and Other recurrent which had been adjusted downwards by Ksh. 2.16 million from the approved Ksh. 196.618 million to Ksh. 194.457 million.
10. The upward revision of the current expenditures estimates were: Use of goods and services which has been increased by Ksh. 303.399 million from the approved Ksh. 1.542 billion to Ksh. 1.845 billion; and Current transfers to government agencies which has been increased by Ksh. 450 million from the approved Ksh. 21.530 billion to Ksh. 21.980 billion
11. The overall approved gross capital expenditure estimates for the Ministry of Health of Ksh. 31.279 billion had been slightly adjusted downwards by Ksh. 281.006 million to Ksh. 30.998 billion.
12. The proposed supplementary capital expenditures estimates affected all the five programmes under implementation by the Ministry of Health. The estimates proposed to increase the total gross expenditures estimates for the following programmes and vote heads:
  - (i) National Referral & Specialized Health Services Programme: - The gross capital expenditure estimate for this programme was increasing by Ksh. 5.457 billion from

Ksh. 7.032 billion to Ksh. 11.325 billion. The significant increase was attributed to an increase in expenditure estimates for managed equipment services – hire of medical equipment for 98 hospitals whose expenditure estimate was increasing by Ksh. 5.1 billion from Ksh. 4.5 billion to Ksh. 9.6 billion.

- (ii) Health Research and Development Programme:- The gross capital expenditure estimates for this programme was increasing by Ksh. 100 million from Ksh. 209 million to Ksh. 309 million. The increase was attributed to increased allocation for construction of building tuition blocks at KMTC from Ksh. 140 million to Ksh. 240 million

13. The following were other votes heads which had an increase in allocation of capital expenditure estimates:

- (i) Kenya Health Sector Support Project (KHSSP): The approved gross capital expenditure estimate for this vote head was increasing by Ksh. 50 million from Ksh. 3.422 billion to Ksh. 3.472 billion
- (ii) Tuberculosis Round 6: - The approved gross capital expenditure estimate for this vote head was increasing by Ksh. 260.63 million from Ksh. 1.008 billion to Ksh. 1.269 billion.
- (iii) Clinical Waste Disposal Project:- The approved gross capital expenditure estimate for this vote head was increasing by Ksh. 860 million from Ksh. 40 million to Ksh. 900 million
- (iv) Expansion of Ileho Health Centre (KIDDP):- The approved gross capital expenditure estimate for this vote head had been allocated by Ksh. 20 million. There was no allocation for the vote head in the approved expenditure estimate.
- (v) Free Maternity Programme (Strategic Intervention):- The approved gross capital expenditure estimate for this vote head was increasing by Ksh. 1.498 billion from approved expenditure estimate of Ksh. 4.298 billion in the approved expenditure estimates to Ksh.5.796 billion in the supplementary expenditure estimates. The significant increase may be attributed to the expansion of the free maternity programme and the recently launched “Linda Mama Programme”
- (vi) Procurement of Ambulances: - The Ministry was set to benefit from Smith and Ouzman (popularly referred to as “chicken gate scandal”) compensation. The compensation of Ksh. 43.746 million had been has been budgeted for procurement of ambulances.
- (vii) Provision of Medical Equipment for Msambweni Hospital: There is a new allocation of Ksh. 100 million for provision of medical equipment.
- (viii) Capacity Building Support to Kisii Hospital Cancer Centre: - There was a new allocation of Ksh. 15.2 million for capacity building.

14. The supplementary expenditure estimates proposed to reduce the total gross capital expenditures estimates for the following programmes and vote heads:

- (i) General Administration, Planning and Support Services: - The gross capital expenditure estimate for this programme was reducing by Ksh. 4.173 billion from Ksh. 9.94 billion to Ksh. 5.767 billion .

- (ii) Preventive, Promotive and RMNCAH: The gross capital expenditure estimate for this programme was reducing by Ksh. 1.454 billion from the approved Ksh. 6.061 billion to Ksh. 4.608 billion.
- (iii) Health Policy, Standards and Regulations: - The gross capital expenditure estimate for this programme was reducing by Ksh. 211 million from the approved Ksh. 8.038 billion to Ksh. 7.827 billion.

15. The following were some of the capital expenditure estimates votes heads which had been adjusted downwards:

- (i) East Africa's Centres of Excellence for Skills and Tertiary Education: - The gross capital expenditure estimate for this vote head had been reduced by Ksh. 279.63 million from the approved Ksh. 365 million to Ksh. 85.370 million.
- (ii) Kenyatta National Hospital- Construction of Buildings: - The gross capital expenditure estimate for this vote head had been reduced by Ksh. 100 million from the approved Ksh.150 million to Ksh. 50 million. Another approved expenditure estimate of Ksh. 150 million for construction had been reduced by Ksh 99.5 million to Ksh. 50.5 million. These reductions were likely to significantly affect development projects being undertaken at KNH.
- (iii) Health Sector Development (Reproductive Health and HIV/AIDS) Commodity: The gross capital expenditure estimate for this vote head had been reduced by Ksh.115 million from the approved Ksh. 385 million to Ksh. 269.5 million.
- (iv) Program for Basic Health Insurance Subsidy: The gross capital expenditure estimate for this vote head had been reduced by Ksh. 210 million from the approved Ksh. 700 million to Ksh. 490 million.
- (v) Wajir District Hospital: The gross capital expenditure estimate for this vote head had been reduced by Ksh. 200 million from the approved Ksh. 250 million to Ksh. 50 million.
- (vi) Kenya Medical Supplies Authority: - The gross capital expenditure estimate for this vote head had been reduced by Ksh. 2.125 billion from the approved Ksh. 3.125 billion to Ksh. 1 billion. The reduction had been necessitated by a reduction in grants from development partners and is likely to affect operation at KEMSA.
- (vii) Moi Teaching and Referral Hospital (MTRH):- The gross capital expenditure estimate for this vote head had been reduced to zero from Ksh. 364.021 million following a reduction in development partner support. This reduction affected specialized materials and supplies for Academic Model Providing Access project.
- (viii) East Africa Public Laboratory Networking Project: The gross capital expenditure estimate for this vote head had been reduced by Ksh. 534.965 million to Ksh. 200 million from Ksh. 734.965 million. The reduction had been necessitated by reduction in external development partner support.
- (ix) Upgrade of Health Centres in Slums ( Strategic Interventions):- The gross capital expenditure estimate for this vote head had been reduced by Ksh. 116.052 million from approved Ksh, 500 million to Ksh. 383 .947 million.

- (x) Roll out of Universal Health Coverage: - The gross capital expenditure estimate for this vote head had been reduced by Ksh. 1 billion from the approved Ksh. 1.3944 billion to Ksh. 394.4 million.
16. In terms of economic classification, the downward revision of capital expenditures estimates were: Acquisition of non-financial assets which had been revised downwards by Ksh. 317.386 million from the approved Ksh. 1.564 billion to Ksh. 1.246 billion; and capital grants to government agencies which had been adjusted downwards by Ksh. 577.356 million from the approved Ksh. 15.405 billion to Ksh. 14.828 billion.
17. The upward adjustment in capital expenditures estimates affected only other development which had been adjusted upwards by Ksh. 613.736 million from the approved Ksh. 14.309 billion to Ksh. 14.923 billion.
18. There was an adjustment in all the MTEF budget programmes for the Ministry of Health in the supplementary expenditures estimates I for the FY 2016/17.

### **SALIENT ISSUES**

#### **The following were some of the salient issues arising from the analysis of the supplementary expenditure estimates for vote 1081 Ministry of Health:**

1. Compliance with the Legal Provisions: - The Constitution, the Public Finance Management Act 2012 and the Public Finance Management ( National Regulations) 2015 sets the legal threshold for a supplementary budget estimates. Regulation 40 (9) of the PFM ( National Government) Regulations 2015 provides that In approving any estimates under sections 43 and 44 of the Act, the National Assembly approval shall not exceed ten (10) percent of the approved budget estimates of a program or Sub-Vote unless it is for unforeseen and unavoidable need as defined in section 21 of the Act. The changes in the following programmes do not meet the legal requirement:
- (a) Preventive, Promotive and RMNCAH recurrent expenditure estimates proposed total deduction of 23.98 percent exceeds the 10 percent limit and some of the items proposed for changes are neither unforeseen nor unavoidable.
  - (b) Preventive, Promotive and RMNCAH development expenditure estimates proposed total increase of 22.34 percent exceeds the 10 percent limit and some of the items proposed for changes are neither unforeseen nor unavoidable.
  - (c) The re-allocation of current expenditure estimates under Preventive, Promotive and RMNCAH programme to defray capital expenditures contravenes Section 43(1b) of the PFM Act, 2012 which states that accounting officer may reallocate funds from the authorized use but may not reallocate funds where the funds are appropriated for capital expenditure except to defray other capital expenditure.
  - (d) National Referral & Specialized Services Programme development expenditure estimates proposed total increase of 77.60 percent exceeds the 10 percent limit and some of the items proposed for changes such as increased allocation to Managed Equipment Services are neither unforeseen nor unavoidable.
  - (e) Health Research and Development Programme development expenditure estimates proposed total increase of 47.96 percent exceeds the 10 percent limit and some of

the items proposed for changes such as increased allocation to KMT of Ksh. 100 million for construction of classroom are neither unforeseen nor unavoidable.

2. Introduction of new budget Items: The proposed introduction of new budget items such Procurement of Ambulances; Provision of Medical Equipment for Msambweni Hospital and Capacity Building Support to Kisii Hospital Cancer Centre contravenes Regulation 40 (8) PFM (National Government) which requires budget allocations for new policy options and service delivery initiatives to be only be considered when introduced in the annual estimates. Furthermore these new budget items are neither unforeseen nor unavoidable.
3. Managed Equipment Services Programme: - The significant increase is in expenditure estimates for managed equipment services – hire of medical equipment for 98 hospitals by Ksh. 5.1 billion from Ksh. 4.5 billion to Ksh. 9.6 billion raises doubts as proper planning for the implementation of the programme. Furthermore proposed allocation of Ksh. 100 million to Msambweni Hospital for purchase of medical equipment may lead to double expenditures if Msambweni is one of the 98 hospitals benefiting from the Managed Equipment Services Programme
4. Othaya Hospital Upgrading Project: - The new allocation of Ksh. 300 million to pay for pending bills for Othaya Hospital Upgrading Project does not qualify for supplementary since it was neither unforeseen nor unavoidable. It also contravenes Regulation 40 (8) of the PFM ( National Government) Regulation 2015 which requires budget allocations for new policy options and service delivery initiatives to be only be considered when introduced in the annual estimates
5. Kenyatta National Hospital (KNH):- The reductions in capital expenditures estimates for KNH construction of buildings are likely to hamper development projects at the hospital and impede effective service delivery.

### **Committee Observations and Resolutions**

The Committee observed that:

- a. The salient issues arising from the First Supplementary Estimates raised serious concerns in regard to the Ministry's utilization of the 2016/2017 budget:
- b. The supplementary estimates presented itself as a revised budget and did not serve the purpose of a supplementary budget given that it failed to comply with the Public Finance Management Act 2012 and the Public Finance Management (National Regulations) 2015.

### **Committee Resolutions**

The Committee resolved that the Cabinet Secretary for Health should appear before the Committee on 2<sup>nd</sup> February to Clarify on the following:

- a. The rationale of increasing the free maternity fund by Kshs. 1.498 billion considering that there were allegations of diversion of funds from free maternity for financial year 2015/2016;
- b. Whether the free maternity fund disbursement was being done through the National Hospital Insurance Fund as previously proposed by the Committee;
- c. The rationale for allocating Kshs. 100 million for medical equipment to Msambweni Hospital whereas the hospital is a beneficiary of the managed equipment service;

- d. The facilities/counties that will benefit from the ambulances that are budgeted for with the compensation of Kshs. 43.746 million from Smith and Ouzman.
- e. The rationale for additional allocation of Kshs. 5.1 billion to the MES project and the MES implementation status as at January 2017.
- f. Justification for the allocation of Kshs. 200 million for nutrition;
- g. How the reduction of the allocation to the Kenyatta National Hospital going to affect development projects being under taken by the hospital;
- h. The total allocation for the construction of Othaya Hospital to date;
- i. Provide justification on each of the item affected by the supplementary estimates especially those which are beyond the legal threshold of 10%.

**MIN.NO. DCH 010/2017: ANY OTHER BUSINESS**

**1. Doctors Strike**

The Committee noted the ongoing industrial unrest in the Health sector which had paralyzed services in public hospitals and resolved that the CBA signed with the Doctors be availed to the Committee on Tuesday 31<sup>st</sup> January 2017 for scrutiny. The Committee would thereafter make a decision on how to proceed with the matter.

**2. Managed Equipment Service Project**

The Committee noted that there was need to conduct and audit of the MES project to ascertain value for money given that the Project had been allocated a substantial amount of funds since inception and the First supplementary estimates had further proposed an additional 5.1 billion allocation for the project.

The Committee resolved that a request be made to the Auditor General's Office for a special performance Audit of the project.

**MIN.NO. DCH 011/2017: ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.05 pm.

SIGNED: .....

**HON (DR.) RACHAEL NYAMAI, M.P.  
CHAIRPERSON**

DATE: ..... 07/02/2017 .....