



*Paper laid
in the House
today by Hon. Chelkanyo,
Justice. 3 Legal Affairs
2013 Thursday, Oct 31
M. G. S. / 31/10/13*

**PARLIAMENT
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THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT

FIRST SESSION (2013)

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS

REPORT

ON THE PETITION FOR THE REMOVAL OF AHMEDNASIR
ABDULLAHI, REVEREND (DR.) SAMUEL KOBIA, PROF. CHRITINE
MANGO, MOHAMMED WARSAME EMILY OMINDE AND
FLORENCE MWANGANGI AS MEMBERS OF THE JUDICIAL
SERVICE COMMISSION

Clerk's Chambers,
Parliament Buildings,
NAIROBI

31ST OCTOBER, 2013


Approved for tabling

M. G. S. / 31/10/13

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PREFACE

Mr. Speaker Sir,

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

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

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

- a) Constitutional Affairs
- b) The administration of law and justice
- c) The Judiciary
- d) Public prosecutions
- e) Elections

1.0 PREFACE

Mr. Speaker Sir,

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to Standing Order 216(5), it is my pleasure and duty to present to the House, the Committee's Report on the Petition for removal of members of the Finance Committee as Members of the Judicial Service Commission.

1.1 Committee Membership

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

1. The Hon. Samuel Chepkong'a, M.P. -Chairperson
2. The Hon. Priscialla Nyokabi, M.P. -Vice Chairperson
3. The Hon. Njoroge Baiya, M.P.
4. The Hon. Muriithi Waiganjo, M.P.
5. The Hon. Ndirangu Waihenya, M.P.
6. The Hon. Florence Kajuju, M.P.
7. The Hon. Kang'ata Irungu, M.P.
8. The Hon. Benson Mutura, M.P.
9. The Hon. John Njoroge Chege, M.P.
10. The Hon. William Cheptumo, M.P.
11. The Hon. Mohamed Abdi Haji, M.P.
12. The Hon. Kangongo Bowen, M.P.
13. The Hon. Sammy Koech, M.P.
14. The Hon. Moses Cheboi, M.P.
15. The Hon. Paul Bii, M.P.
16. The Hon. Charles Gimose, M.P.

17. The Hon. Johana Ng'eno, M.P.
18. The Hon. Boniface Otsiula, M.P.
19. The Hon. David Ouma Ochieng, M.P.
20. The Hon. Neto Agostinho, M.P.
21. The Hon. Kaluma Peter, M.P.
22. The Hon. Fatuma Ibrahim Ali, M.P.
23. The Hon. Ben Momanyi Orori, M.P.
24. The Hon. T. J. Kajwang', M.P.
25. The Hon. (Bishop) Mutua Mutemi, M.P.
26. The Hon. Olago Aluoch, M.P.
27. The Hon. Christine Oduor Ombaka, M.P.
28. The Hon. Munuve G. Mati, M.P.
29. The Hon. Mwamkale William Kamoti, M.P.

1.2 Committee's Mandate

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

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed

necessary, and as may be referred to it by the House or a minister;

- f) 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 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

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

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

The Committee oversees the following Ministries/Departments:

- a) State Law Office
- b) The Judiciary
- c) Ethics and Anti-Corruption Commission
- d) Independent Electoral and Boundaries Commission
- e) Commission on Administrative Justice

The Committee also has oversight mandate over all matters relating to political parties.

Mr. Speaker Sir,

On October 16th 2013, pursuant to Standing Order 225(2), you conveyed to the House a Petition regarding the removal of the following persons as members of the Judicial Service Commission: Mr. Ahmedinasir Abdullahi, Rev. (Dr) Samuel Kobia, Prof. Christine Mango, Mohammed Warsame, Emily Ominde and Florence Mwangangi.

The Petition dated October 4, 2013 is addressed to the National Assembly and signed by Mr. Riungu Nicholas Mugambi praying that Parliament finds the above mentioned members of the Judicial Service Commission as having contravened and violated the Constitution and the law.

The Petitioner avers that the said members of the Judicial Service Commission have violated the Constitution by breaching:

- (a) Article 161 (2)(c) that designates the Chief Registrar of the Judiciary as the Accounting Officer of the Judiciary by purporting to approve and or disapprove expenditure of monies allocated to the Judiciary thereby causing inordinate delay in the processing of salaries for judicial staff.
- (b) Article 173(1)(3) that designates the Chief Registrar of the Judiciary as the Administrator of the Judiciary Fund by directing payments to be done by persons not authorized to approve expenditure hereby increasing the vulnerability of the judiciary.
- (c) Article 245(4) of the Constitution which provides that no person may give directions to the Inspector-General with respect to the investigation of any particular offences. The said members of the Judicial Service Commission signed a resolution directing the police not to arrest and charge Judiciary staff who were alleged to have stolen Ksh.80million from the Judiciary thereby willfully interfering with criminal investigations.

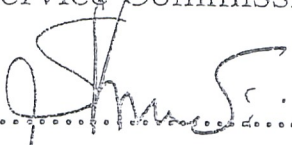
The Petition was committed to the Departmental Committee on Justice and Legal Affairs pursuant to provisions of Standing Order

230(3).The Committee considered the Petition and the grounds prescribed in the Constitution.

Acknowledgements

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. The Committee also appreciates the media for coverage of its proceedings and thanks members of the public who made submissions to the Committee.

It is my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs, to present and recommend this report on the Petition for removal of Mr.Ahmedinasir Abdullahi, Rev. (Dr) Samuel Kobia, Prof.Christine Mango, Mohammed Warsame, Emily Ominde and Florence Mwangangi as members of the Judicial Service Commission.

SIGNED..........

Hon. Samuel Chepkong'a, M.P

(Chairperson)

DATE: 31st October, 2013

2.0 BACKGROUND

2.1 Judicial Service Commission

The Judicial Service Commission is established under Article 171 of the Constitution and consists of: —

- (a) the Chief Justice, who shall be the chairperson of the Commission;
- (b) one Supreme Court judge elected by the judges of the Supreme Court;
- (c) one Court of Appeal judge elected by the judges of the Court of Appeal;
- (d) one High Court judge and one magistrate, one a woman and one a man, elected by the members of the association of judges and magistrates;
- (e) the Attorney-General;
- (f) two advocates, one a woman and one a man, each of whom has at least fifteen years' experience, elected by the members of the statutory body responsible for the professional regulation of advocates;
- (g) one person nominated by the Public Service Commission; and
- (h) one woman and one man to represent the public, not being lawyers, appointed by the President with the approval of the National Assembly.

It further provides that the Chief Registrar of the Judiciary shall be the Secretary to the Commission.

Article 172 of the Constitution, the functions of the Judicial Service Commission are: -

1) to promote and facilitate the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice and shall—

- a. recommend to the President persons for appointment as judges;
- b. review and make recommendations on the conditions of service of judges and judicial officers, other than their remuneration; and the staff of the Judiciary;
- c. appoint, receive complaints against, investigate and remove from office or otherwise discipline registrars, magistrates, other judicial officers and other staff of the Judiciary, in the manner prescribed by an Act of Parliament;
- d. prepare and implement programmes for the continuing education and training of judges and judicial officers: and
- e. advise the national government on improving the efficiency of the administration of justice.

2) In the performance of its functions, the Commission shall be guided by the following-

- a. competitiveness and transparent process of appointment of judicial officers and other staff of the judiciary; and
- b. the promotion of gender equality.

2.2 Judicial Fund

The constitution states in article

- 173.** (1) There is estimated a fund to be known as the Judiciary Fund which shall be administered by the Chief Registrar of the Judiciary.
- (2) The Fund shall be used for administrative expenses of the Judiciary and such other purpose as may be necessary for the discharge of the functions of the Judiciary
 - (3) each financial year, the Chief Registrar shall prepare estimates of expenditure for the following year, and submit them to the National Assembly for approval.
 - (4) Upon approval by the National Assembly, the expenditure of the Judiciary shall be a charge on the Consolidated Fund and the funds shall be paid directly into the Judiciary Fund
 - (5) Parliament shall enact legislation to provide for the regulation of the Fund.

2.3 Removal from office of members of a commission

251. (1) A member of a commission (other than an ex officio member), or the holder of an independent office, may be removed from office only for –
- (a) serious violation of this constitution or any other law, including a contravention of Chapter Six;
 - (b) gross misconduct, whether in the performance of the member's or the office holder's functions or otherwise;
 - (c) physical or mental incapacity to perform functions of office;
 - (d) incompetence; or
 - (e) bankruptcy
- (2) A person desiring the removal of a member of a commission or of a holder of an independent office on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.
- (3) The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the president
- (4) On receiving a petition under clause (3), the president –
- (a) may suspend the member or the office holder pending the outcome of the complaint; and
 - (b) shall appoint a tribunal in accordance with clause (5).

- (5) The tribunal shall consist of -
- (a) a person who holds or has held office as a judge of a superior court, who shall be the chair person;
 - (b) at least two persons who are qualified to be appointed as High Court judges; and
 - (c) one other member who is qualified to assess the facts in respect of the particular ground for removal.
- (6) The tribunal shall investigate the matter expeditiously, report on the facts and make a binding recommendation to the President, who shall act in accordance with the recommendation within thirty days.
- (7) A person suspended under this Article is entitled to continue to receive one-half of the remuneration and benefits of the office while suspended.

PETITION FROM MR. RIUNGU NICHOLAS MUGAMBI

Mr. Riungu Nicholas Mugambi presented petition for the removal of the Office of Ahmed Abdullahi, Reverend (Dr.) Samuel Kobia, Prof. Christine Mango, Mohamed Warsame, Emily Ominde and Florence Mwangangi as Members of the Judicial Service Commission on the following grounds-

1. Serious violation of the Constitution;
2. Serious violation of the Law;
3. Gross misconduct in the performance of functions;

4. Incompetence.

The facts constituting the grounds are as follows: -

1. **THAT** the aforesaid Members of the Judicial Service Commission by getting actively involved in the financial and procurement day to day operations of the Judiciary, exercising veto power regarding expenditure and abrogating to themselves extensive oversight powers over fiscal management of the Judiciary under the guise of being Members of the Finance and Administration Subcommittee of the Judicial Service Commission seriously violated by breaching-
 - (a) Article 161 (2) (c) of the Constitution that designates the Chief Registrar of the Judiciary as the accounting officer of the Judiciary by purporting to approve and or disapprove expenditure of monies allocated to the Judiciary thereby causing inordinate delay in the processing of salaries for Judicial staff.
 - (b) Article 173 (1) (3) that the designates the Chief Registrar of the Judiciary as the Administrator of the Judicial Fund by directing payments to be done by persons not authorized to approve expenditure hereby increasing the vulnerability of the Judiciary.
 - (c) Article 245(4) of the Constitution that but no person may give directions to the Inspector-General with respect to the investigation of any particular offence or offences by

signing a resolution directing the police not to arrest and charge Judiciary staff who were alleged to have stolen Kshs 80 million from Judiciary coffers thereby willfully interfering with criminal investigations.

- (d) Article 226 (2) that grants the National Assembly oversight over public spending by public institutions including the Judiciary by questioning the budgetary allocation and interference with lawful expenditure thereby causing undue delay in program implementation in the Judiciary thus affecting the proper administration of justice in the country.
 - (e) Article 226 (4) that provides that the accounts of all governments and State organs shall be audited by the Auditor-General by carrying out its own audit without the requisite skill and or training thereby undermining the authority of the Auditor General.
2. **THAT** although the provisions of Article 249(2)(a) of the Constitution requires the Judicial Service Commission to be subject to the Constitution to the Constitution and law, the aforesaid members of the Finance and administration Subcommittee of the Judicial Service Commission by their conduct seriously violated the provisions of the existing laws by-
- (a) Disregarding the provisions under section 8(1)(a) of the Judicial Service Act that provides that the Chief Registrar

shall be responsible for the overall administration and management of the Judiciary;

- (b) Disregarding the provisions under section 8(1)(d) of the Judicial Service Act that provides that the Chief Registrar shall be responsible account for any service in respect of which monies have been appropriated by Parliament and for which issues are made from the exchequer account;
- (c) Disregarding the provisions under section *(1)(e) of the Judicial Service Act that provides that the Chief registrar shall be the authorized officer for the Judiciary, who shall be responsible for the efficient management of the day-to-day operations and administration of human resources in the judicial services;
- (d) Disregarding the provisions under section 8(1)(h) of the Judicial Service Act that provides that the Chief Registrar shall be responsible for planning, preparing, implementing and monitoring the budget and collecting, receiving and accounting for revenue;
- (e) Disregarding the provisions under section 8(1)(j) of the Judicial Service Act that provides that the Chief Registrar shall be in-charge of the procurement of all stores, and the management and maintenance of all physical facilities;
- (f) Disregarding the provisions under section 66(1) of the Public Finance Management Act that provides the

accounting officer of the Judiciary shall monitor, evaluate and oversee the management of public finances including: ensuring proper management and control of, and accounting for, their finances in order to promote the efficient and effective use of budgetary resources; monitoring the management of public finances and their financial performance;

3.0 CONSIDERATION OF THE PETITION BY THE COMMITTEE

- i). The Committee had sittings and deliberated on the petition by Mr. Riungu Mugambi.
- ii). The Committee through the Office of the Clerk of the National Assembly put an advert in the main media in October, 2013 for submission of written representations and submissions pertaining to the Petition.
- iii). The Committee received written memoranda and/or letters from the following:
 - Mr. Alex Kibii
 - Gladys Boss Shollei
 - Cabinet Secretary for National Treasury
 - Inspector General of Police
- iv) Pursuant to the provisions of Article 251 of the Constitution and the relevant provisions of the Standing Order, the

Committee considered the Petitions, the written and oral presentations and materials hereinabove.

3.1 OBSERVATIONS, FINDINGS AND CONCLUSIONS

Hon. Speaker:

The mandate of the Committee and the National Assembly on this matter is as prescribed in Article 251 of the Constitution and Standing Order 230(4).

It is not for the Committee or the National Assembly to find and determine the issue concerning removal of the subject Commissions. To the contrary, the Committee and the National Assembly merely considers the Petition and the supporting documents and/or information to determine whether the petition discloses grounds for removal to warrant it being remitted to the President to establish a tribunal to undertake full investigations.

The grounds for removal from office of members of the Judicial Service Commission are provided for under Article 251(1) of the Constitution, which provides as follows: -

“251. (1) A member of a commission (other than an ex officio member), or the hold of an independent office, may be removed from office only for -

- (a) serious violation of this constitution or any other law, including a contravention of Chapter Six;*

- (b) gross misconduct, whether in the performance of the member's or the office holder's functions or otherwise;
- (c) physical or mental incapacity to perform functions of office;
- (d) incompetence; or
- (e) bankruptcy.

The instant petitions are premised upon the grounds stipulated under Article 251(a), (b) and (d) of the Constitution.

Chapter Six, Article 75 of the Constitution provides as follows: -

"75 (1) A state officer shall behave, whether in public and official life, in private life or in association with other persons in a manner that avoids-

- a) Any conflict between personal interest and public or official duties;
- b) Compromising any public or official interest in favour of a personal interest; or
- c) Demeaning the office the officer holds.

2) A person who contravenes clause (1) or article 76, 77 or 78(2) -

- a) Shall be subject to the applicable disciplinary procedure for the relevant office; and
- b) May in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office

3) A Person who has been dismissed or otherwise removed from office for a contravention of the provisions mentioned in clause is disqualified from holding any other state office.

76(2) A state officer shall not-

a) ...

b) Seek or accept a personal loan or benefit in circumstances that compromise the integrity of the state officer.”

The procedure for removal of a member of the Judicial Service Commission is prescribed under Article 251(2) of the Constitution which provides that: -

“(2) A person desiring the removal of a member of a commission or of a holder of an independent office on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.

(3) The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the president

(4) On receiving a petition under clause (3), the president -

(a) may suspend the member or the office holder pending the outcome of the complaint; and

(b) shall appoint a tribunal in accordance with clause (5).

(5) The tribunal shall consist of –

(a) a person who holds or has held office as a judge of a superior court, who shall be the chair person;

(b) at least two persons who are qualified to be appointed as High Court judges; and

(c) one other member who is qualified to assess the facts in respect of the particular ground for removal.

(6) The tribunal shall investigate the matter expeditiously, report on the facts and make a binding recommendation to the President, who shall act in accordance with the recommendation within thirty days.

(7) A person suspended under this Article is entitled to continue to receive one-half of the remuneration and benefits of the office while suspended.”

The President upon receipt of the petition from the National Assembly is obligated to establish the tribunal to investigate the member of the Commission sought to be removed. The President however exercises discretion on the matter of suspension of the affected Commissioner(s) pending determination of the matter.

The National Assembly received the a petition from Riungu Nicholas Mugambi seeking removal from office of: Ahmednasir Abdullahi, Reverend (Dr.) Samuel Kobia, Prof. Christine Mango, Mohamed Warsame, Emily Gwindi and Florence Mwangangi.

In the discharge of its mandate over the matter, the Committee put an advertisement in the media inviting members of public to submit written presentations and submissions pertaining to the petition.

Following the advertisement, the Committee received the following written representations: -

- a) A petition by Mr. Alex Kibii also seeking removal from office of Ahmednasir Abdullahi, Reverend (Dr.) Samuel Kobia, Prof. Christine Mango, Mohamed Warsame, Emily Ominde and Florence Mwangangi;
- b) Written representations from Mrs. Gladys Boss Shollei, the former Chief Registrar of the Judiciary;
- c) Submissions from the Cabinet Secretary, Treasury;
- d) Letter from the Inspector General, National Police Service;
- e) Representations from the Office of the Auditor General;

The Committee wrote letters inviting the affected members of the Commission to present written representations to the petition and granting the affected Commissioners liberty to appear before the Committee and make oral presentations.

The affected members of the Commission did not deliver any written presentations on the matter. The members of the Commission also did not appear before the Committee.

a) Alleged violation of Articles 161(2) (c) and 173(1) and (3)

Article 161(2)(c) of the Constitution designates the Chief Registrar of the Judiciary as the Chief Administrator and Accounting Officer of the Judiciary.

Article 173(1) establishes the Judiciary Fund, "*which shall be administered by the Chief Registrar of the Judiciary.*"

As the administrator of the Judiciary Fund, Article 173 (3) requires the Chief Registrar to submit to prepare estimates of expenditure for the following year and submit them to the National Assembly for approval.

It is alleged that the members of the Judicial Service Commission; particularly those sitting in the Finance and Administration Committee of the Commission violated the provisions of Article 161(2)(c) and 173(3) of the Constitution and approved/disapproved expenditure of monies allocated to the Judiciary.

The Committee received materials in this regard; which, the Committee felt should be investigated by a tribunal set for the purpose by the President.

b) Alleged violation of Article 245(4) of the Constitution

Article 245(4) of the Constitution provides that no person may give a direction to the Inspector-General with respect to the investigation of any particular offence or offences. the

enforcement of the law against any particular person or persons.

It is alleged that the members of the Finance and Administration Committee of the Judicial Service Commission at its meeting held on 20th September, 2013 resolved that *"the judicial staff being held in police custody in relation to the fraud should not be charged in court..."*.

The charge related to alleged withdrawal of Kshs.80,000,000.00 from one of the judiciary's account.

It is alleged that the resolution was delivered to the Inspector General, National Police Service by the Judicial Service Commission and approaches made to the office to give effect to the resolution.

Upon due considerations, the Committee found the claim herein disclosed sufficient grounds to warrant the Petition and the supporting materials being forwarded to the President to constitute a tribunal to fully investigate the matter.

c) Alleged Violation of Chapter Six of the Constitution and the Advocates Act

Article 75 of the Constitution (Chapter six) provides as follows: -

"75 (1) A state officer shall behave, whether in public and official life, in private life or in association with other persons in a manner that avoids-

- d) Any conflict between personal interest and public or official duties;
 - e) Compromising any public or official interest in favour of a personal interest; or
 - f) Demeaning the office the officer holds.
- 4) A person who contravenes clause (1) or article 76, 77 or 78(2) –
- c) Shall be subject to the applicable disciplinary procedure for the relevant office; and
 - d) May in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office
- 5) A Person who has been dismissed or otherwise removed from office for a contravention of the provisions mentioned in clause is disqualified from holding any other state office.

76(2) A state officer shall not-

c) ...

Seek or accept a personal loan or benefit in circumstances that compromise the integrity of the state officer."

In separate complaints against Ahmednasir Abdullai, Mr. Brian Yonggo made written and oral presentations before the Committee alleging that Commissioner Ahmednasir Abdullai shared with him

profits in violation of the Advocates and contrary to the provisions of Chapter 6 of the Constitution.

The said Mr. Yongo also made presentations and delivered materials to the effect that Commissioner Ahmednasir Abdullai's papers leading to his admission to serve as an Advocate had been forged and that the Advocate who purportedly signed the Commissioner's papers for admission to the Bar was not licensed to practice as such Advocate.

Upon review of the presentations made and consideration of the materials availed to the Committee, the Committee found a prima facie case established against the Commissioner for violation of the aforesaid laws and resolved to recommend to the house that the matter together with the petition be delivered to the President for further action.

Mr. L.G. Kamweti, an Advocate and a former employee of National Bank also made written presentations and appeared before the Committee alleging the said Commissioner Ahmednassir Abdullahi had unlawfully accessed confidential documents from National Bank of Kenya that he used against the Bank (Affidavit attached). Mr. Kamweti also gave sworn testimony before the Committee that the said Commissioner Ahmednassir Abdullahi had abused his office to occasion the termination of his employ with the Bank.

The Committee also considered this matter and resolved it disclosed ground for abuse of office; a matter necessitating the Committee to

recommending to Parliament to recommend initiation of the process of removal of the Commissioner.

4.0 Recommendations

Hon. Speaker:

Having considered the provisions of Articles 73, 75, 76, 125, 161, 171, 172, 173, 245 and 251 of the Constitution; and, having considered the provisions of the Judicial Service Act, the Public Finance Management Act, the National Police Service Act and the Advocates Act; and Standing Order 230, the Committee reports to House that the Petition discloses grounds for removal of the following members of the Commission: Ahmednasir Abdullai, Ahmednasir Abdullahi, Reverend (Dr.) Samuel Kobia, Prof. Christine Mango, Mohamed Warsame, Emily Ominde and Florence Mwangangi and recommends to the House as follows: -

- a) That the House resolves that the Petitions herein together with the materials in support thereof be sent to His Excellency the President pursuant to Article 251 of the Constitution;
- b) That the House resolves that His Excellency the President appoint a tribunal to deal with the matter in accordance with Article 251 (5) of the Constitution;
- c) That considering the matters to which the Petitions herein relate, the House resolves that His Excellency the President suspends the Commissioners herein pending the determination of the tribunal.

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ANNEX A

MINUTES OF THE 40TH SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS MEETING HELD ON THURSDAY 24TH
OCTOBER, 2013 IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL
HOUSE, PARLIAMENT BUILDINGS AT 9.30 A.M

PRESENT

Hon. Samuel Chepkong'a, MP - Chairperson
Hon. Priscilla Nyokabi, MP - Vice Chairperson
Hon. Dr. Christine Ombaka, MP
Hon. Moses Cheboi, MP
Hon. Mutua Mutemi (Bishop) , MP
Hon. John Njoroge Chege, MP
Hon. Benson Mutura, MP
Hon. Mohamed Abdi Haji, MP
Hon. Charles Gimose, MP
Hon. William Cheptumo, MP
Hon. Olago Aluoch, MP
Hon. Ben Momanyi Orori, MP
Hon. Muriithi Waiganjo, MP
Hon. David Ouma Ochieng, MP
Hon. Kaluma Peter, MP
Hon. Munuve Mati John, MP
Hon. Johanna Ngeno, MP
Hon. Florence Kajuju, MP
Hon. Njoroge Baiya, MP
Hon. Neto Agostinho, MP
Hon. Ndirangu Waihenya, MP
Hon. Kangongo Bowen, MP
Hon. T.J. Kajwang', MP
Hon. Kang'ata Irungu. M
Hon. Kamoti Mwamkale, MP

ABSENT

Hon. Paul Bii, MP
Hon. Fatuma Ibrahim Ali, MP
Hon. Boniface Otsiula, MP
Hon. Sammy Koech, MP

IN ATTENDANCE

Abenayo Wasike - Committee Clerk

Lydia Makaka - Parliamentary Intern

IN ATTENDANCE

Abenayo Wasike - Committee Clerk

Lydia Makaka - Parliamentary Intern

MIN.NO.188/2013

PRELIMINARIES

The meeting started at 10.20 a.m after a word of prayer by the Chairperson.

The Chairperson informed Members that KEWOPA will sponsor a retreat in Naivasha on the Marriage Bill, 2013.

MIN.NO/189/2013

PETITIONS

Meeting with Mr. Bryan Yongo

Members considered the Petition by Bryan Yongo.

Mr.Yongo briefed members on the core issues in the petition as follows:

- That Mr.Ahmednasir Abdullahi did not qualify to be admitted to the Bar as an Advocate of the High Court of Kenya.
- That Mr.Ahmednasir forged the late Peter Simani's signature even though Simani did not take out a practicing certificate in 1992.
- That Mr.Ahmednasir professional qualifications are wanting.
- That Mr.Ahmednasir shared profit contrary to provisions of the Advocates Act.
- That Mr.Ahmednasir boasted for having influenced the appointment of Dr.Willy Mutunga as Chief Justice.
- He promised to obtain records from Safaricom as evidence of his communication with Ahmednasir on issues raised before the Committee.
- The Committee asked Mr.Yongo to provide further evidence.

Members Comments

Members were concerned that Mr.Yongo took too long to expose Mr.Ahmednasir in unclear circumstances.

- The Committee will peruse the PIC report on NCPB investigations where Mr.Yongo appeared.

- There is need to confirm authenticity of the LSK letter produced by Mr.Yongo.
- Members raised concerns that Mr.Yongo may have been used by Mr.Ahmednasir to approach Judges.

Meeting with Mr.Kamweti

He informed Members that he appeared before the Committee in 2010 and informed them that Mr.Ahmednasir had no moral character to be a member of the JSC.

- He stated that he filed a complaint with the LSK.
- He tabled an affidavit dated 16th September, 2010.
- Mr.Ahmednasir circulated a letter without authority of the National Bank of Kenya.
- He never wrote any letter to Mr.Ahmednasir.
- The Bank was prejudiced by the Contents of the letter circulated by Mr.Ahmednasir.
- The Bank asked him to proceed on early retirement after working for the Bank for 17 years.

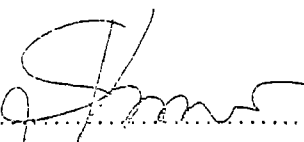
Meeting with Mr.Kingori Mwangi

Members considered the Petition and advised the Petitioner that the Committee will seek further clarification from the Ombudsman and Judicial authorities on the appeal.

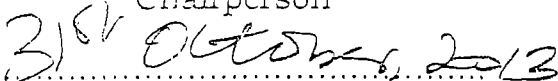
MIN.NO.190/2013

ADJOURNMENT

There being no other Business, the meeting was adjourned at 12.30 pm

Signed..........

Chairperson

Date..  ..

MINUTES OF THE 41ST SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS MEETING HELD ON FRIDAY 25TH
OCTOBER, 2013 IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL
HOUSE, PARLIAMENT BUILDINGS AT 9.00 A.M

PRESENT

Hon. Samuel Chepkong'a, MP - Chairperson
Hon. Priscilla Nyokabi, MP - Vice Chairperson
Hon. Dr. Christine Ombaka, MP
Hon. Moses Cheboi, MP
Hon. Mutua Mutemi (Bishop) , MP
Hon. Mohamed Abdi Haji, MP
Hon. William Cheptumo, MP
Hon. Ben Momanyi Orori, MP
Hon. Muriithi Waiganjo, MP
Hon. David Ouma Ochieng, MP
Hon. Kaluma Peter, MP
Hon. Munuve Mati John, MP
Hon. Johanna Ngeno, MP
Hon. Florence Kajuju, MP
Hon. Njoroge Baiya, MP
Hon. Boniface Otsiula, MP
Hon. Neto Agostinho, MP
Hon. Sammy Koech, MP
Hon. Ndirangu Waihenya, MP
Hon. Kangongo Bowen, MP

ABSENT

Hon. T.J. Kajwang', MP
Hon. Kang'ata Irungu, M
Hon. Kamoti Mwamkale, MP
Hon. Paul Bii, MP
Hon. John Njoroge Chege, MP
Hon. Benson Mutura, MP
Hon. Charles Gimose, MP
Hon. Olago Aluoch, MP
Hon. Fatuma Ibrahim Ali, MP

IN ATTENDANCE

Abenayo Wasike - Committee Clerk
Lydia Mahutu - Parliamentary Intern

The meeting started at 10.20 a.m after a word of prayer by the Chairperson. The Chairperson briefed members on the letter from Mr. Paul Muite, S.C, Advocate, for the JSC.

Members were concerned that the Commissioners mentioned in the Riungu Petition were not keen to meet the Committee and thus resolved not meet their representative.

- Members observed that the Commissioners were given an opportunity to be heard but declined to honour the invitation.
- The Committee resolved to consider the Petition and any documents received on Tuesday 29th October, 2013.

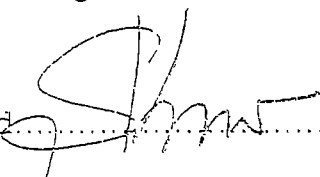
Meeting with the Auditor General

The Auditor General was represented by Mr. Dennis Theuri and Mr. Richard Nyangau Nyacheo

Mr.Nyacheo informed Members that his office is seized of the matter and asked for at least three weeks to make a report on the issue before the committee.

Having noted the urgency of the matter, Mr.Nyacheo promised to submit their written representations on Tuesday 29th October, 2013.

There being no other Business, the meeting was adjourned at 2.30 pm

Signed 

Chairperson

Date..... 31st October, 2013

MINUTES OF THE MEETING OF THE COMMITTEE ON JUSTICE,
AND LEGAL AFFAIRS HELD ON MONDAY, OCTOBER 28, 2013 AT
COMMITTEE ROOM 2ND FLOOR, CONTINENTAL HOUSE AT 3.00 PM.

PRESENT

1. Hon. Samuel Chepkonga, MP - Chairperson
2. Hon. Priscilla Nyokabi, MP
3. Hon. Boniface Otsiula, MP
4. Hon. Moses Cheboi, MP
5. Hon. John Mati Munuhe, MP
6. Hon. Christine Ombaka, MP
7. Hon. Paul K. Bii, MP
8. Hon. John Olago Aluoch, MP
9. Hon. Florence Kajuju, MP
10. Hon. Kangogo Bowen, MP
11. Hon. Bishop R. Mutemi, MP
12. Hon. Benson Mutura, MP
13. Hon. John M. Waiganjo, MP
14. Hon. Peter Kaluma, MP
15. Hon. Agostino Neto, MP

ABSENT WITHOUT APOLOGY

1. Hon. Njoroge Baiya, MP
2. Hon. Ndirangu Waihenya, MP
3. Hon. Kang'ata Irungu, MP
4. Hon. John Njoroge chege, MP
5. Hon. William Cheptumo, Mp
6. Hon. Mohamed Abdi Haji, Mp
7. Hon. Sammy Koech, MP
8. Hon. Charles Gimose, Mp
9. Hon. Johana Ngeno, MP
10. Hon. David Ochieng, MP
11. Hon. Fatuma Ibrahim Ali, MP
12. Hon. Ben Momanyi Orari, Mp
13. Hon. T.M. Kadwangi, MP
14. Hon. Mwanuzi William Kamoti, MP

MIN NO: PRELIMINARY

The proceedings were commenced at Twenty Six Minutes past Three O'clock and prayers were said by Hon. Samuel Chepkong'a, M.P.

The Chairperson informed the Committee that Mr. Abenayo Wasike lost his sister earlier in the day and consequently had taken compassionate leave. He has sent his condolences and those of the Committee to him. Mr. Peter Chemweno, Deputy Director, Committees was in attendance on his behalf.

He stated that the Committee had received the following documents:-

1. Petition for the removal of Ahmednassir Abdullahi, Prof. Christine Mango, Rev. Samuel Kobia, Mohamed Warsame, Florence Mwangangi and Emily Ominde as Members of the Judicial Service Commission from Mr. Alex Kibii.
2. Letter from the Inspector General of Police on fraud in the Judiciary involving loss of Kshs.80,013,302.
3. Petition for the removal of Ahmednassir Abdullahi, Rev. Samuel Kobia, Prof. Christine Mango, Mohamed Wasame, Emily Ominde and Florence Mwangangi as Members of the Judicial Service Commission from Mr. Riungu Nicholas Mugambi
4. Documents from Gladys Shollei supporting the petition for the removal of Ahmednassir Abdullahi, Rev. Samuel Kobia, Prof. Christine Mango, Mohamed Wasame, Emily Ominde and Florence Mwangangi as Members of Judicial service Commission.

MIN NO: PETITIONS

It was resolved that: -

1. The meeting be adjourned until Tuesday, 29th October 2013 at 10.00 am to consider the petitions.
2. The petitions by Mr. Riungu Nicholas Mugambi and Mr. Alex Kibii be consolidated as they raise the same issues in substance.
3. The Chairperson will consult the Director of Committees on how to proceed on writing the Committee report in view of the absence of the clerk of the Committee.
4. The secretariat should make follow up with the Auditor General on matters referred by the Committee.

5. The secretariat should provide copies of the documents received for consideration during the next meeting.

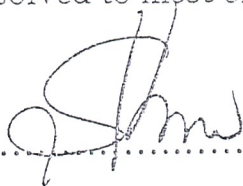
MIN NO: ADJOURNMENT

The Committee was adjourned at Forty Eight Minutes Past Three O'clock.

MIN NO: DATE OF THE NEXT MEETING..

The Committee resolved to meet on Tuesday 29th October, 2013 at 10.00 am.

SIGNED



CHAIRPERSON

DATE

31st October, 2013

MINUTES OF THE 42ND SITTING OF THE DEPARTMENTAL COMMITTEE
ON JUSTICE AND LEGAL AFFAIRS MEETING HELD ON FRIDAY 31ST
OCTOBER, 2013 IN COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL
HOUSE, PARLIAMENT BUILDINGS AT 11.00 A.M

PRESENT

Hon. Samuel Chepkong'a, MP - **Chairperson**
Hon. Priscilla Nyokabi, MP - **Vice Chairperson**
Hon. Dr. Christine Ombaka, MP
Hon. Moses Cheboi, MP
Hon. Paul Bii, MP
Hon. Mutua Mutemi (Bishop) , MP
Hon. Benson Mutura, MP
Hon. Mohamed Abdi Haji, MP
Hon. Charles Gimose, MP
Hon. William Cheptumo, MP
Hon. Olago Aluoch, MP
Hon. Ben Momanyi Orori, MP
Hon. Muriithi Waiganjo, MP
Hon. Munuve Mati John, MP
Hon. Johanna Ngeno, MP
Hon. Florence Kajuju, MP
Hon. Njoroge Baiya, MP
Hon. Boniface Otsiula, MP
Hon. Neto Agostinho, MP
Hon. Kangongo Bowen, MP

ABSENT

Hon. Kaluma Peter, MP
Hon. Ndirangu Waihenya, MP
Hon. Kang'ata Irungu, MP
Hon. John Njoroge Chege, MP
Hon. Sammy Koech, MP
Hon. David Ouma Ochieng, MP
Hon. Fatuma Ibrahim Ali, MP
Hon. T.J Kajwang', MP

IN ATTENDANCE

Eric Nyambati

- Clerk Assistant

MIN.NO. 195/2013

PRELIMINARIES

The meeting started at 11.20 a.m after a word of prayer by the Chairperson.

MIN.NO.196/2013 MEMBERS OBSERVATION ON MR RIUNGU'S PETITION

Members considered the petition and observed as follows:

a) Alleged violation of Articles 161(2) (c) and 173(1) and (3)

Article 161(2)(c) of the Constitution designates the Chief Registrar of the Judiciary as the Chief Administrator and Accounting Officer of the Judiciary.

Article 173(1) establishes the Judiciary Fund, "*which shall be administered by the Chief Registrar of the Judiciary.*"

As the administrator of the Judiciary Fund, Article 173 (3) requires the Chief Registrar to submit to prepare estimates of expenditure for the following year and submit them to the National Assembly for approval.

It is alleged that the members of the Judicial Service Commission; particularly those sitting in the Finance and Administration Committee of the Commission violated the provisions of Article 161(2)(c) and 173(3) of the Constitution and approved/disapproved expenditure of monies allocated to the Judiciary.

The Committee received materials in this regard; which, the Committee felt should be investigated by a tribunal set for the purpose by the President.

b) Alleged violation of Article 245(4) of the Constitution

Article 245(4) of the Constitution provides that no person may give a direction to the Inspector-General with respect to the investigation of any particular offence or offences, the enforcement of the law against any particular person or persons.

It is alleged that the members of the Finance and Administration Committee of the Judicial Service Commission at its meeting held on 20th September, 2013 resolved that "*the judicial staff being held in police custody in relation to the fraud should not be charged in court...*".

The charge related to alleged withdrawal of Kshs.80,000,000.00 from one of the judiciary's account.

It is alleged that the resolution was delivered to the Inspector General, National Police Service by the Judicial Service Commission and approaches made to the office to give effect to the resolution.

Upon due considerations, the Committee found the claim herein disclosed sufficient grounds to warrant the Petition and the supporting materials being forwarded to the President to constitute a tribunal to fully investigate the matter.

c) Alleged Violation of Chapter Six of the Constitution and the Advocates Act

Article 75 of the Constitution (Chapter six) provides as follows: -

"75 (1) A state officer shall behave, whether in public and official live, in private life or in association with other persons in a manner that avoids-

- a) Any conflict between personal interest and public or official duties;*
- b) Compromising any public or official interest in favour of a personal interest; or*
- c) Demeaning the office the officer holds.*

2) A person who contravenes clause (1) or article 76, 77 or 78(2) –

- a) Shall be subject to the applicable disciplinary procedure for the relevant office; and*
- b) May in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office*

3) A Person who has been dismissed or otherwise removed from office for a contravention of the provisions mentioned in clause is disqualified from holding any other state office.

76(2) A state officer shall not-

- a) ...*

Seek or accept a personal loan or benefit in circumstances that compromise the integrity of the state officer."

In separate complaints against Ahmednasir Abdullai, Mr. Brian Yongo made written and oral presentations before the Committee alleging that Commissioner Ahmednasir Abdullai shared with him profits in violation of the Advocates and contrary to the provisions of Chapter 6 of the Constitution.

The said Mr. Yongo also made presentations and delivered materials to the effect that Commissioner Ahmednasir Abdullai's papers leading to his admission to serve as an Advocate had been forged and that the Advocate who purportedly signed the Commissioner's papers for admission to the Bar was not licensed to practice as such Advocate.

Upon review of the presentations made and consideration of the materials availed to the Committee, the Committee found a prima facie case established against the Commissioner for violation of the aforesaid laws and resolved to recommend to the house that the matter together with the petition be delivered to the President for further action.

Mr. L.G. Kamweti, an Advocate and a former employee of National Bank also made written presentations and appeared before the Committee alleging the said Commissioner Ahmednassir Abdullahi had unlawfully accessed confidential documents from National Bank of Kenya that he used against the Bank (Affidavit attached). Mr. Kamweti also gave sworn testimony before the Committee that

the said Commissioner Ahmednassir Abdullahi had abused his office to occasion the termination of his employ with the Bank.

The Committee also considered this matter and resolved it disclosed ground for abuse of office; a matter necessitating the Committee to recommending to Parliament to recommend initiation of the process of removal of the Commissioner.

MIN.NO.197/2013 RECOMMENDATIONS

The committee;

Having considered the provisions of Articles 73, 75, 76, 125, 161, 171, 172, 173, 245 and 251 of the Constitution; and, having considered the provisions of the Judicial Service Act, the Public Finance Management Act, the National Police Service Act and the Advocates Act; and Standing Order 230, the Committee reports to House that the Petition discloses grounds for removal of the following members of the Commission: Ahmednasir Abdullai, Ahmednasir Abdullahi, Reverend (Dr.) Samuel Kobia, Prof. Christine Mango, Mohamed Warsame, Emily Ominde and Florence Mwangangi and recommends to the House as follows: -

- a) That the House resolves that the Petitions herein together with the materials in support thereof be sent to His Excellency the President pursuant to Article 251 of the Constitution;
- b) That the House resolves that His Excellency the President appoint a tribunal to deal with the matter in accordance with Article 251 (5) of the Constitution;

ANNEX B

EXTRACT OF THE MINUTE S OF THE JUDICIAL SERVICE COMMISSION
FINANCE AND ADMINISTRATION COMMITTEE MEETING HELD ON 20TH
SEPTEMBER, 2013 AT THE CHIEF JUSTICE'S BOARDROOM SUPREME
COURT BUILDING.

PRESENT

1. Commissioner Ahmednasir Abdullahi SC, Chairman
2. Commissioner Florence Mwangangi
3. Commissioner Prof. Christine Mango
4. Commissioner Dr. Rev Samuel Kobia
5. Commissioner Justice M. Warsame

ABSENT WITH APOLOGIES

1. Commissioner Justice Dr. Smokin Wanjala
2. Commissioner Emily Ominde

IN ATTENDANCE

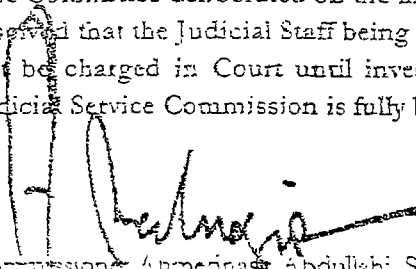
1. Mr. Kakai Kissinger, Deputy Chief Registrar of the Judiciary
2. Mr. Benedict Omollo, Director Finance
3. Mr. Wycliffe Wanga, Director Revenue
4. Ms. Winfrida Mokaya, Registrar JSC
5. John L. Tamar, Deputy Registrar JSC


MINUTE 3./ 20.9.2013: REPORT ON THE BANKING FRAUD

Following reports of financial impropriety in the Judiciary relating to banking fraud, the Judicial Service Commission Finance and Administration Committee at its meeting held on 20th September, 2013 received a report from the management on the matter.

Committee Resolution

The Committee deliberated on the matter and having considered the management report resolved that the Judicial Staff being held in police custody in relation to the fraud should not be charged in Court until investigations being undertaken are complete and the Judicial Service Commission is fully briefed.


Commissioner Ahmednasir Abdullahi SC
CHAIRMAN
FINANCE AND ADM. COMMITTEE


Mr. Kakai Kissinger
DEPUTY CHIEF REGISTRAR OF
THE JUDICIARY

26/9/2013

ANNEX C

347 ①

D/Committees
per deal
CWA
25/10

② WASIKO
pls def
FA
25/10



**OFFICE OF THE INSPECTOR GENERAL
NATIONAL POLICE SERVICE
NAIROBI – KENYA**

Telegraphic Address: "IG, NPS"
Telephone: Nairobi 020-2221969
When replying please quote Ref.
No. and Date

Jogoo House "A"
P O Box 44249-00100
NAIROBI

NPS/IG/SEC/2/6/13/8/VOL.1/12

25th October, 2013

The Clerk of The National assembly

Clerks Chambers
Parliament Building
P O Box 41842-00100
NAIROBI.

**RE: PETITION FOR REMOVAL OF MEMBERS OF FINANCE AND
ADMINISTRATION COMMITTEE OF THE JUDICIAL SERVICE
COMMISSION/BANKING FRAUD IN THE JUDICIARY.**

Your letter Ref. KNA/IC/2013/02 dated 9th October 2013 refers.

A Banking Fraud in the judiciary involving Kshs:80,013,302/= was reported to Banking fraud investigation unit of the Police Service by the former Chief Registrar of Judiciary Ms. Gladys Boss. Shallei on phone on 18th September 2013. She requested for investigators to proceed to the Supreme Court and carry out investigations.

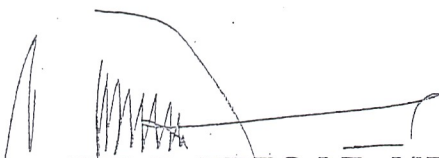
Three officers were immediately dispatched to her office to commence investigations. By this time, Mr. Henry Achoka Joseph and Mr. Fredrick Mueni Tsofa who are businessmen had already been intercepted at CFC Stanbic Bank, Kenyatta Avenue attempting to withdraw Kshs: 1 million which was part of the transferred Kshs: 12 million from an account in the business name M/s Bonarza Agencies.

On 30th September 2013, the personal assistant to the chief Justice informed the investigating officers, that the judiciary was carrying out internal investigations and requested for copies of the audit trail reports which was provided accordingly.

The IFMIS audit trail report has not been received to-date from the Treasury but efforts are underway to obtain it.

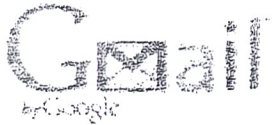
The case against the above six accused persons is till PBC and the DPP in a letter Ref. ODPPP/CAM/013/7/4/1039 dated 15th October 2013 has called for the duplicate file, after receiving a complaint from the charged judiciary staff.

In accordance with the provisions of article 245(4) of the constitution, the Inspector General has not acted on any directive whatsoever in relation to the investigation or charging of the Judiciary staff. The case as mentioned earlier, is pending before court until otherwise advised by the Director of Public Prosecutions.



PETER E. FREGAE, MBQ, OGW, ndc(h)
FOR: INSPECTOR GENERAL
NATIONAL POLICE SERVICE.

ANNEX D



Gladys Boss Shollei <gladysboss@gmail.com>

Opinion Regarding Concerns on Financial Management of the Judiciary

Willy Mutunga <willymutunga2013@gmail.com>
To: Gladys Boss Shollei <gladysboss@gmail.com>

Wed, Sep 18, 2013 at 6:26 AM

Gladys

All I can say at this point in time is that I do not believe the constitution makes me headless head of the Judiciary. I do not agree that oversight by JSC and Head of the Judiciary is outlawed by any law and the constitution. Such oversight in my view protects the OCRJ.

On Tue, Sep 17, 2013 at 6:42 AM, Gladys Boss Shollei <gladysboss@gmail.com> wrote:

Dear CJ,

Attached please find my opinion on the above subject matter.

Regards,

Gladys Boss Shollei

Chief Registrar of the Judiciary | P.O.Box 30041 - 00100 | Nairobi - Kenya

Tel: +254 20 222 1221 | Direct Line: +254 20 322 0068

Website : <http://www.judiciary.go.ke>

Dr. Willy Mutunga, D.Jur, SC, EGH
Chief Justice/President, Supreme Court of Kenya

"The poor need Justice; others need the Law." Professor Dani Nabudere

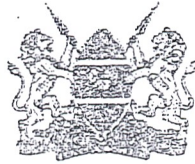
"The rich don't need the law, they've got wealth and power. It's the poor who need the law." Albie Sachs.

"The Supreme Court of Kenya neither has friends nor enemies among Kenyans. All the Court cares for is Justice for and to all Kenyans."

ANNEX E

Telephone: Nairobi 2221221
Fax: 316172
Email: chiefregistrar@judiciary.go.ke

When replying please quote



REPUBLIC OF KENYA

CHIEF REGISTRAR'S CHAMBERS
SUPREME COURT BUILDING
P.O. Box 30041-00100
NAIROBI

Ref CRJ 14/11

25th September, 2013

Hon. Mr. Henry Rotich,
Cabinet Secretary,
National Treasury
Treasury Building
NAIROBI

Dear

RE: CLARIFICATION ON ROLE OF THE ACCOUNTING OFFICER OF
THE JUDICIARY

The above matter refers.

The Constitution through Article 161 (2) (c) establishes of the office of the Chief Registrar of the Judiciary and designates the incumbent as the Chief Administrator and Accounting Officer of the Judiciary. Article 173 (1) (3) designates the Chief Registrar of the Judiciary as the administrator of the Judiciary Fund.

Through a letter from your office dated 15th July, 2013 and referenced AG.1/020 Vol. 13(10) you designated me as the accounting officer for the Judiciary vote for the financial year 2013/14.

The Public Financial Management Act (the Act) provides via section 66 that the accounting officer of a public entity is responsible for ensuring proper management and control of, and accounting for, their finances in order to promote the efficient and effective use of budgetary resources. In this undertaking I am supported by six internal auditors from National Treasury and the Kenya National Audit Office. We have also recently hired 7 internal risk and system auditors.

However, I have been unable to exercise proper management of the public resources due to the fact that it is the Finance and Administration Subcommittee of the Judicial Service Commission (JSC) currently approving payments (copy of memo enclosed). The Director of Finance has raised the issue with the Chief Justice (copy of memo enclosed). I raised the issue more elaborately with the Hon. Chief Justice but the issue remains unresolved.

Commissioner Ahmednasir Abdullahi has taken upon himself to provide approvals for payment. He believes as Chair of the Finance and Administration Subcommittee

PRIVATE AND CONFIDENTIAL

of the JSC (an entity not recognised under the Act) he has residual powers to unilaterally approve or disapprove payments (email correspondence enclosed).

A large number of pending invoices were handed him by the Hon. Chief Justice on 10th September, 2013 which he took to his private office. He thereafter convened a meeting for his Subcommittee to scrutinize the pending bills. The Subcommittee proceeded to reject the bills and directed that no pending bills or payments should be made. I fear we might get into legal trouble if we as the Judiciary do not honour our contractual obligations. I have already received written complaints from suppliers demanding adherence to contractual terms (copy of complaint letter enclosed).

In my reading of the law I am of the opinion that the Finance and Administration Subcommittee of the JSC should be concerned with the finances of the JSC and not of the Judiciary as the two are distinct and separate.

In the past I have availed from time to time broad details of financial activities of the Judiciary to the JSC in the spirit information awareness and collegiality. This has however led them to mistakenly believe that they are in charge of the finances.

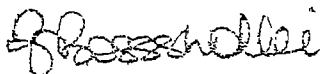
I write this letter raising my concerns as allowed by the terms of my designation letter and section 68 (2) (f) of the Public Finance Management Act which provides as follows:

bring any matter to the attention of the Cabinet Secretary responsible for the entity, or the Chief Justice or the Speaker of the National Assembly if, in the accounting officer's opinion, a decision or policy or proposed decision or policy of the entity may result in resources being used in a way that is contrary to subsection (1);

Instead of raising these issues with the National Assembly, I prefer that we hold a tripartite meeting with the Hon. Chief Justice.

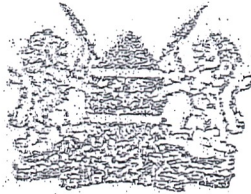
I am looking forward to your prompt response.

Yours Sincerely,



G. BOSS SHOLLEI
CHIEF REGISTRAR OF THE JUDICIARY
CC: HON. DR. WILLY MUTUNGA, D.JUR, SC, EGH
CHIEF JUSTICE/PRESIDENT
SUPREME COURT OF KENYA

PRIVATE AND CONFIDENTIAL



REPUBLIC OF KENYA
THE NATIONAL TREASURY

Telegraphic Address: Z2521
FINANCE- NAIROBI
Fax No.: 310823
Telephone: +254 2 252 299
When replying please quote

P.O. Box 30007-00100
NAIROBI
KENYA

AG 1/20

Ref. No.

October 15, 2013
Date:

Gladys Boss Shollei,
Chief Registrar of the Judiciary,
Supreme Court Building,
NAIROBI

Dear Mrs. Shollei,

RE: ACCOUNTING OFFICER OF THE JUDICIARY

Your letters of 25th September 2013 and 14th October 2013 on the above subject refers.

Article 161(2)(c) of the Constitution provides that the Chief Registrar of the Judiciary shall be the accounting officer of the Judiciary. Further, Article 173(1) provides that the Chief Registrar of the Judiciary shall be the administrator of the Judiciary Fund. Accordingly, the Cabinet Secretary of the National Treasury, acting under Section 67 of the Public Finance Management Act (PFMA), 2012, designated you as the Accounting Officer of the Judiciary.

Your responsibilities as an Accounting Officer of the Judiciary are elaborated in your Designation Letter, and are consistent with the provisions in Section 68 of PFMA, 2012. No other person can perform those functions if that person

is not the designated accounting officer as provided for in the law. Please note that Section 197(m) of the PFMA provides that "a public official commits an offence of financial misconduct if, without lawful authority, the officer intentionally or recklessly obstructs or hinders a person while that person is acting in the performance or exercise of the person's functions or powers under the PFMA".

I trust that the above clarifies the role of Accounting Officer of the Judiciary.

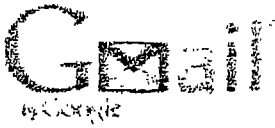
Yours Sincerely,



HENRY A. ROTICH
CABINET SECRETARY, THE NATIONAL TREASURY

Copy to: HON. DR. WILLY MUTUNGA, D.JUR, SC, EGH
CHIEF JUSTICE/ PRESIDENT
SUPREME COURT OF KENYA
NAIROBI

ANNEX F



Communication from the Hon. Cabinet Secretary- National Treasury

COMMUNICATION FROM THE HON. CABINET SECRETARY- NATIONAL TREASURY

Gladys Boss <gladysboss@judiciary.go.ke>
 o: gladysboss@gmail.com

Tue, Oct 15, 2013 at 9:39 PM

----- Forwarded Message -----

From: Willy Mutunga <willymutunga2013@gmail.com>
 To: Gladys Boss <gladysboss@judiciary.go.ke>
 Sent: Tue, 15 Oct 2013 21:15:48 +0300 (EAT)
 Subject: Re: COMMUNICATION FROM THE HON. CABINET SECRETARY- NATIONAL TREASURY

I have forwarded your mail and attachments to JSC for deliberation. I am very clear about my powers under the Constitution of Kenya. The JSC, under the authority of a Supreme Court decision, has a constitutional power to make decisions which, of course, can be challenged in a Court of Law. So can the exercise of my powers which I have made clear to you in a previous email message.

On Tue, Oct 15, 2013 at 5:16 PM, Gladys Boss <gladysboss@judiciary.go.ke> wrote:

- >
- > Dear Hon. Chief Justice,
- >
- > Kindly find attached a letter from the Hon. Cabinet Secretary, National
- > Treasury on financial management in the Judiciary. I have attached previous
- > correspondence and supporting documents for the same for your ease of
- > reference.
- >
- >
- > Regards,
- >
- > Gladys
- >
- >

--
 Dr. Willy Mutunga, D.Jur, SC, EGH
 Chief Justice/President, Supreme Court of Kenya

"The poor need Justice; others need the Law." Professor Dani Nabudere

"The rich don't need the law; they've got wealth and power. It's the poor who need the law." Albie Sachs

"The Supreme Court of Kenya neither has friends nor enemies among Kenyans. All the Court cares for is Justice for and to all Kenyans."

Zimbabwe

nokemwa@judiciary.go.ke

Delay in the Salary for the Month of September, 2013

From : Dismus obondo <dismus.obondo@judiciary.go.ke>

Tue, Oct 01, 2013 10:09 AM

Subject : Delay in the Salary for the Month of September, 2013**To :** All Courts <allcourts@judiciary.go.ke>, Judiciary Directors <directors@judiciary.go.ke>, Registrars <registrars@judiciary.go.ke>, principal judge <principaljudge@judiciary.go.ke>, JTI <judiciaryinstitute@judiciary.go.ke>, JTI <jti@judiciary.go.ke>, Kihara Kariuki <kiharakariuki@judiciary.go.ke>, Faith Kosgei. Jerop <faith.jerop@judiciary.go.ke>**Cc :** Chief Registrar <chiefregistrar@judiciary.go.ke>, The Chief-Justice <chiefjustice@judiciary.go.ke>

Dear All,

Due to some unavoidable technicalities the Salary for the Month of September for Magistrates, Kadhis, and Staff of the Judiciary will delay a little. We however are working hard to solve the problem with a view of paying the salaries this week.

Please bring this information to the attention of staff.

Regards,

*Dismus O. Obondo***DIRECTOR****HUMAN RESOURCE & ADMINISTRATION**

ANNEX G

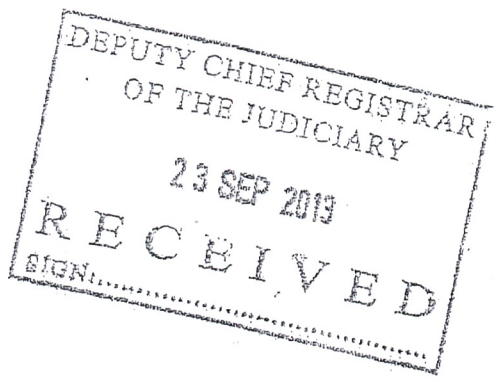


Ref: JUC/CON/09/2012-2013/02

Date: 03/09/2013
Our Ref: H/2587
Your Ref:

Date: 23 September 2013
To:
THE CHIEF REGISTRAR OF THE JUDICIARY

THE JUDICIARY,
SUPREME COURT BUILDING,
P.O. Box 30041-00100,
NAIROBI



Dear Madam,

Re: PROPOSED PREFABRICATED LAW COURTS FOR THE JUDICIARY LOT 1 (BOMET) AND LOT 2 (OTHAYA, MARIMANTI AND WANGURU) CONTRACT NO IUD/CON/09/2012-2013 AND IUD/CON/10/2012-2013

Delayed Payment of Interim Payment Certificate No. 2 - Request for Immediate Settlement

We refer to the Architect's Interim Payment Certificate (IPC) No. 2 released vide his letter Ref. JUC/CON/09/2012-2013 dated 20 June 2013.

According to Clause 23.3 of the Conditions of Contract, the Employer has an express obligation to pay to the Contractor amounts certified by the Architect within 30 days of the date of issue of the certificate. Payment for IPC No. 2 therefore ought to have been settled by 20 July 2013.

However, in disregard to the terms of the Contract we note that by the date of this letter the Employer has failed to make any payment against IPC NO. and this has placed the Employer in default of his contractual obligation since 21 July 2013.

In situations where the Employer defaults in timely payments to the Contractor, the Contract directs that (i) interest on the delayed amount shall be paid to the Contractor [Sub-Clause 23.3], (ii) the Contractor shall be entitled to an extension of time and payment of additional costs flowing from the fact that the Employer has not worked within the constraints stated in the contract [Sub-Clause 24.1 (h) and, (iii) the Contractor is entitled to terminate the contract [Sub-Clause 33.1 (d)].

On 03/09/2013 we served notice, vide letter Ref. JPB2/EHG/PM/007 of our intention to reduce the rate of progress of the works and of our intention to claim for an extension of time including the consequent additional disruption and prolongation costs. We are in a position to confirm that the reduction in the rate of progress of the works took effect on 5th August and remains in effect for both Lot 1 and Lot 2 contracts. We further advise that the additional costs associated to idle resources, disruption in the rate of progress of the works and prolongation of Contract are KShs 48,667/- per day for the Lot 1 contract and KShs 145,000 per day for the Lot 2 contract.



Cont/

Ref:

Date:

Therefore based on the assessed and determined extension of time as at 30 August 2013 the additional costs payable due to delays in completion of Lot 1 works are KShs 2,579,351.00 and at Lot 2 KShs 12,264,252.00.

The above amounts continue to increase on a daily basis as the Employer's failure to pay and default of his contractual obligation continues. We will therefore provide a more accurate figure once payment for IPC NO. 2 is made in full and the cause of delay is removed.

Notwithstanding the foregoing we are becoming increasingly concerned that the Employer might not be keen on meeting his obligations as demonstrated by the apparent refusal to settle amounts properly due to us and the lack of any incontrovertible evidence from the Employer assuring us that the amounts will be settled without further delay is particularly perturbing.

We therefore request you to settle the amount without any further delay and also advise us through provision of incontrovertible evidence that you have put in place all necessary financial arrangements to ensure that future payments are made in time.

We look forward to receipt of the above.

Yours faithfully,

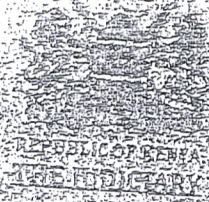
Kenja Waruru

Managing Director, Economic Housing Group Limited

c.c. Architect - Arch Charles Wambua
Quantity Surveyor - QS Mureithi

ANNEX H

Telephone Nairobi 2221221
Fax 2221222
E-mail: ombudsman@ombudsna.go.ke
Website: www.ombudsna.go.ke



Office of the Ombudsman
Supreme Court Building
P.O. Box 10001, Nairobi

Ref: OVI/14/11

Central Bank of Kenya
Banking Fraud Investigation Department
P.O. Box 60000, 00200
Nairobi

18th September 2013

Mt. Joseph Mugwanya

REQUEST FOR OFFICERS FROM THE BANKING FRAUD INVESTIGATION DEPARTMENT

Reference is made to the above

The Judiciary today 18th September 2013, discovered from its CBK statements for account No. 1000182342 and 1000181915, some irregular and possibly fraudulent payments.

This is to request for a meeting with your office to discuss the said matter and commence investigations immediately.

Your benevolent assistance in this matter will highly be appreciated.

Yours sincerely
[Signature]

CHIEF JUSTICE
CHIEF JUSTICE OF THE JUDICIARY

ANNEX I

forward to the
Legal Panel
25/10

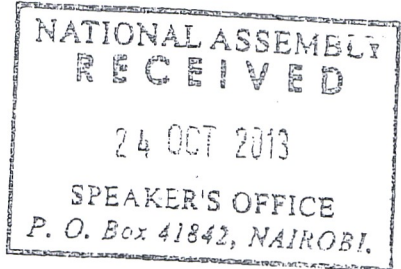
PK MUIITE, S.C., Advocate

Chaka Apartments, Suite No. 5
Chaka Road
Nairobi.
Email: muite.paul@gmail.com

P.O. Box 14746-00100
Tel: +254-020-2730630
Fax: +254-020-2730631
Cell: 0711 181 713

24th October, 2013

Mr. Justin N. Bundi,
Clerk of the National Assembly,
Parliament Buildings,
Parliament Road,
Nairobi.



Dear Mr. Clerk,

PETITION FOR REMOVAL OF MEMBERS OF THE FINANCE AND ADMINISTRATION COMMITTEE OF THE JUDICIAL SERVICE COMMISSION.

I have been instructed (with Mr. Issa Mansur) by the Judicial Service Commission (JSC) to give an opinion and act for JSC on the matter under reference.

At the very outset, the Chief Justice and JSC wish to make it clear that they hold the Institution of Parliament, Speakers of the two Houses, Honourable Members of the National Assembly and the Senators in the highest esteem and respect.

Your letter dated 17th October 2013 (Thursday last week) requested the Commissioners to submit written submissions on or before Thursday 24th October 2013 and to appear before the Committee on Justice and Legal Affairs on Friday 25th October 2013, if they so elect. The intervening weekend was a long one.

In relation to the matters raised in the petition, the six Commissioners were acting in their capacity as Commissioners of JSC on the specific instructions/directions of JSC. The matter therefore concerns the entire JSC as an Institution and not just the six Commissioners.

This matter has weighty constitutional implications and calls for adequate time for reflection and consideration. The Chief Justice and JSC are anxious to avoid any

ANNEX J



THE KENYA NATIONAL ASSEMBLY

IN THE MATTER OF PETITION FOR REMOVAL OF MEMBERS OF FINANCE AND
ADMINISTRATIVE COMMITTEE OF THE JUDICIAL SERVICE COMMISSION

SUBMISSION OF MEMORANDA

Article 119 (1), of the Constitution provides that; "Every person has a right to Petition Parliament to consider any matter within its authority, including to enact, amend or repeal any Legislation". Pursuant to the said Article, Mr. Riungu Nicholas Mugambi has presented a Petition to Parliament for the removal of the following persons as members of the Judicial Service Commission: Mr. Ahmednasir Abdullahi, Reverend (Dr) Samuel Kobia, Prof. Christine Mango, Mohammed Warsame, Emily Ominde and Florence Mwangangi. Pursuant to the provisions of standing Order 230 (3) and (4), the petition stands committed to the Departmental Committee on Justice and legal Affairs for consideration. The Committee shall consider the Petition and within fourteen days (14), report to the House whether the Petition discloses grounds for removal under Article 251 (a) of the Constitution.

Pursuant to Article 118 of the Constitution, the Departmental Committee on Justice and legal Affairs now invites interested members of the public to submit any representations by way of written statements on oath (Affidavit), that they may have on the issues raised in the petition on the said members of the Judicial Service Commission. The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or email clerk@parliament.go.ke, to be received on or before Friday 25th October, 2013 at 5:00 p.m.

A handwritten signature in black ink, appearing to read 'Justin N. Bundi'.

JUSTIN N. BUNDI

CLERK OF THE NATIONAL ASSEMBLY

ANNEX K

[REDACTED]

From: The Hon. The Chief Justice/President, Supreme Court of Kenya
To: The Chief Registrar of the Judiciary
Cc: The Deputy Chief Justice/Vice-President, Supreme Court of Kenya
The Deputy Chief Registrar of the Judiciary
All Registrars
All Directors
Ref: CJ 103
Date: 30th July, 2013

SUBJECT: RESTRUCTURING THE REPORTING & ACCOUNTABILITY FRAMEWORK

May 31, 2013 marked the first anniversary of the Judiciary Transformation Framework (JTF). Since we assumed office in June 2011, the judiciary budget and staff complement has expanded considerably. This expansion calls for modern methods of reporting and accountability that ensure that the Chief Justice, as the Head of the institution, is substantively and meaningfully consulted and briefed on important events and developments, as is the Judicial Service Commission (JSC). In order to improve the overall quality and flow of information, good order, accountability and seamless decision making, I wish to make the following arrangements:

1. Internal reporting:

Early this year, during the meeting with all Directors and Registrars, I requested that directorates and courts prepare and complete their strategic plans and work plans, which would enable the Chief Registrar to finalize a Consolidated Work Plan for the Judiciary. I also expected that the Directors and Registrars meet me once every month, to institutionalize a structured way of providing updates. Whereas this has not happened for a number of reasons, it is no longer tenable. In this regard, I hereby direct that going forward, we shall proceed as follows:

REPUBLIC OF KENYA

Telegraphic Address

"Bunge", Nairobi

Telephone 2221291/2848000

Fax: 2243694

E-mail: clerk@parliament.go.ke

When replying please quote



National Assembly

Clerk's Chambers

Parliament Buildings

P.O. Box 41842-00100

NAIROBI, Kenya

KNA/JLA/JSC/2013/01

October 17th, 2013

Hon. Justice Mohammed Warsame

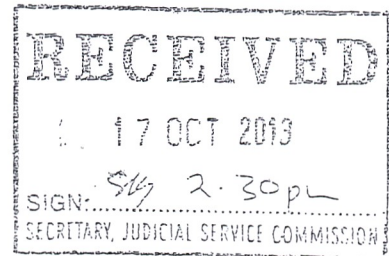
Judicial Service Commission

Supreme Court Building

P. O. Box 30041-00100

NAIROBI

Dear *Justice Warsame*



PETITION FOR REMOVAL OF MEMBERS OF FINANCE AND ADMINISTRATIVE COMMITTEE OF THE JUDICIAL SERVICE COMMISSION

We refer to the above matter and state as hereunder.

The Departmental Committee on Justice and Legal Affairs has received a Petition seeking the removal of the following persons as members of the Finance and Administrative Committee of the Judicial Service Commission; they are Mr. Ahmednasir Abdullahi, Reverend (Dr) Samuel Kobia, Prof. Christine Mango, Mohammed Warsame, Emily Ominde and Florence Mwangangi.

The Petition was presented to the National Assembly by Mr. Riungu Nicholas Mugambi and the same is attached for your reference.

During its sitting held on Thursday October 17th, 2013, the Committee deliberated on the matter and resolved to notify the Commissioners mentioned of the Petition and to requests that the Commissioners submit their written responses to the Petition on or before Thursday 24th October, 2013 or they may elect to appear before the Committee on Friday 25th October, 2013 at 10.00 a.m.

Yours *Sincerely*

A handwritten signature in dark ink, appearing to read 'Justin N. Bundi'.

JUSTIN N. BUNDI

CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address

"Bunge", Nairobi

Telephone 2221291/2848000

Fax: 2243694

E-mail: clerk@parliament.go.ke

When replying please quote

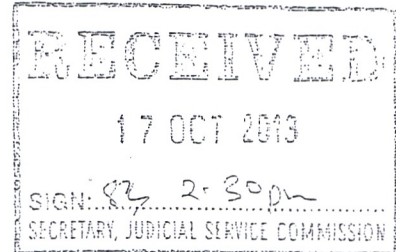


National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

KNA/JLA/JSC/2013/01

October 17th, 2013

Ms.Emily Ominde
Judicial Service Commission
Supreme Court Building
P.O.BOX 30041-00100
NAIROBI



Dear *Emily*

PETITION FOR REMOVAL OF MEMBERS OF FINANCE AND ADMINISTRATIVE COMMITTEE OF THE JUDICIAL SERVICE COMMISSION

We refer to the above matter and state as hereunder.

The Departmental Committee on Justice and Legal Affairs has received a Petition seeking the removal of the following persons as members of the Finance and Administrative Committee of the Judicial Service Commission; they are Mr. Ahmednasir Abdullahi, Reverend (Dr) Samuel Kobia, Prof. Christine Mango, Mohammed Warsame, Emily Ominde and Florence Mwangangi.

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Yours

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JUSTIN N. BUNDI
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address

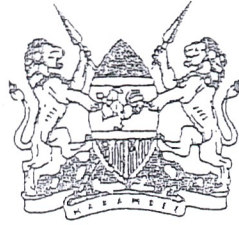
"Bunge", Nairobi

Telephone 2221291/2848000

Fax: 2243694

E-mail: clerk@parliament.go.ke

When replying please quote

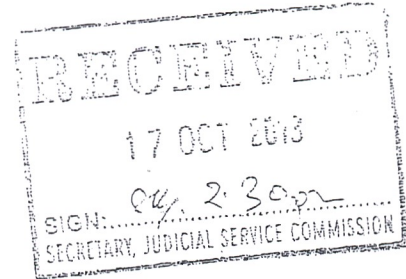


National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

KNA/JLA/JSC/2013/01

October 17th, 2013

Ms. Florence Mwangangi
Judicial Service Commission
Supreme Court Building
P.O. BOX 30041-00100
NAIROBI



Dear *Florence*

PETITION FOR REMOVAL OF MEMBERS OF FINANCE AND ADMINISTRATIVE
COMMITTEE OF THE JUDICIAL SERVICE COMMISSION

We refer to the above matter and state as hereunder.

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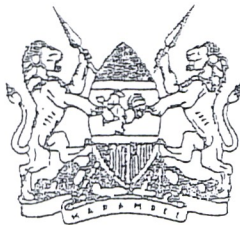
Yours

A handwritten signature in black ink, appearing to be "Justin N. Bundi".

JUSTIN N. BUNDI
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address
"Bunge", Nairobi
Telephone 2221291/2848000
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote



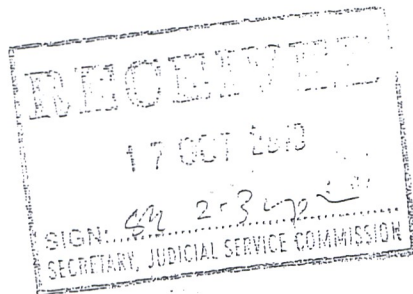
National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

KNA/JLA/JSC/2013/01

October 17th, 2013

Prof. Christine Mango
Judicial Service Commission
Supreme Court Building
P.O. BOX 30041-00100
NAIROBI

Dear *Prof. Mango*



PETITION FOR REMOVAL OF MEMBERS OF FINANCE AND ADMINISTRATIVE COMMITTEE OF THE JUDICIAL SERVICE COMMISSION

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Yours

Handwritten signature of Justin N. Bundi.

JUSTIN N. BUNDI
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address

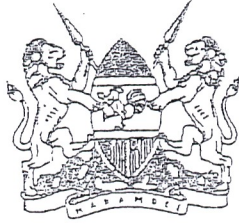
"Bunge", Nairobi

Telephone 2221291/2848000

Fax: 2243694

E-mail: clerk@parliament.go.ke

When replying please quote

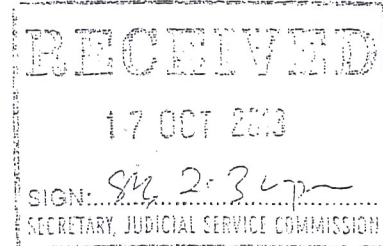


National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

KNA/JLA/JSC/2013/01

October 17th, 2013

Reverend (Dr) Samuel Kobia
Judicial Service Commission
Supreme Court Building
P.O.BOX 30041-00100
NAIROBI



Dear *Rev. Kobia*

PETITION FOR REMOVAL OF MEMBERS OF FINANCE AND ADMINISTRATIVE COMMITTEE OF THE JUDICIAL SERVICE COMMISSION

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Yours

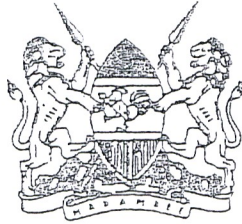
A handwritten signature in dark ink, appearing to read 'Justin N. Eundi'.

JUSTIN N. EUNDI

CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address
"Bunge", Nairobi
Telephone 2221291/2848000
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote

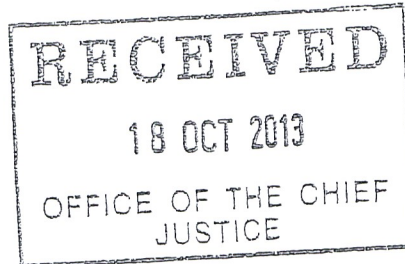


National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

KNA/JLA/JSC/2013/01

October 17th, 2013

Ms. Gladys Boss Shollei,
Chief Registrar of the Judiciary
Judicial Service Commission
Supreme Court Building
P. O. Box 30041-00100
NAIROBI



Dear *Dr. Mutunga*

RE: PETITION FOR REMOVAL OF MEMBERS OF FINANCE AND ADMINISTRATIVE COMMITTEE OF THE JUDICIAL SERVICE COMMISSION

We refer to the above matter and state as hereunder;

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Yours

A handwritten signature in dark ink, appearing to read 'Justin N. Bundi'.

JUSTIN N. BUNDI
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address
"Bunge", Nairobi
Telephone 2221291/2848000
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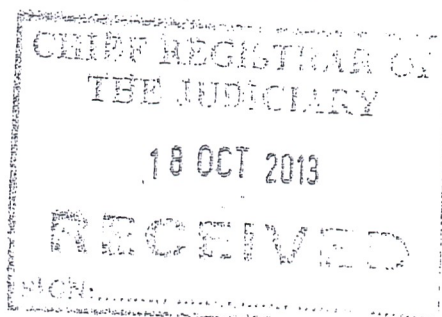


National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

KNA/JLA/JSC/2013/01

October 17th, 2013

Ms. Gladys Boss Shollei,
Chief Registrar of the Judiciary
Judicial Service Commission
Supreme Court Building
P. O. Box 30041-00100
NAIROBI



Dear Gladys,

RE: PETITION FOR REMOVAL OF MEMBERS OF FINANCE AND ADMINISTRATIVE COMMITTEE OF THE JUDICIAL SERVICE COMMISSION

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Yours

A handwritten signature in black ink, appearing to read 'Justin R. Bunde'.

JUSTIN R. BUNDE
CLERK OF THE NATIONAL ASSEMBLY

ANNEX L

CABINET SECRETARY
REPUBLIC OF KENYA
NATIONAL TREASURY

Telegraphic Address 18 OCT 2013

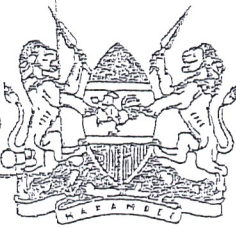
"Bunge", Nairobi

Telephone 22212922/2243600

Fax: 2243694 P. O. Box 30007, NAIROBI

E-mail: clerk@Parliament.go.ke

When replying please quote



National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

KNA/JLA/JSC/2013/02

October 17th, 2013

Dr. Kamau Thugge
Principal Secretary
The National Treasury
Treasury Building
NAIROBI

Dear *Henry*

**RE: PETITION FOR REMOVAL OF MEMBERS OF FINANCE AND ADMINISTRATIVE
COMMITTEE OF THE JUDICIAL SERVICE COMMISSION**

We refer to the above matter and state as hereunder;

The Departmental Committee on Justice and Legal Affairs has received a Petition seeking the removal of the following persons as members of the Finance and Administrative Committee of the Judicial Service Commission; they are Mr. Ahmednasir Abdullahi, Reverend (Dr) Samuel Kobia, Prof. Christine Mango, Mohammed Warsame, Emily Ominde and Florence Mwangangi. The Petition was presented to the National Assembly by Mr. Riungu Nicholas Mugambi and the same is attached for your reference.

During its sitting held on Thursday October 17th, 2013, the Committee deliberated on the matter and resolved to notify the Commissioners mentioned of the Petition and to requests that the Commissioners submit their written responses to the Petition on or before **Thursday 24th October, 2013** or they may elect to appear before the Committee on **Friday 25th October, 2013 at 10.00 a.m.**

Further, the Committee resolved to invite you for a meeting to be held on **Friday 25th October, 2013 at 10.00 am** to provide your written information on the subject matter under consideration.

Yours

JUSTIN N. BUNDI
CLERK OF THE NATIONAL ASSEMBLY

Copy:-

Hon. Henry Rotich
National Treasury
Treasury Building
NAIROBI

ANNEX M

REPUBLIC OF KENYA

Telegraphic Address

"Bunge", Nairobi

Telephone 2221291/2848000

Fax: 2243694

E-mail: clerk@parliament.go.ke

When replying please quote



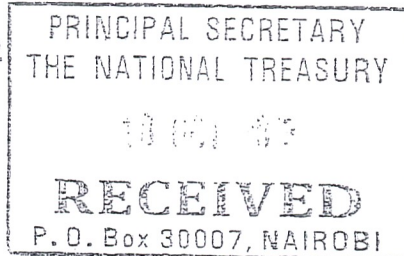
National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

KNA/JLA/JSC/2013/02

PRINCIPAL SECRETARY
THE NATIONAL TREASURY

October 17th, 2013

Dr. Kamau Thugge
Principal Secretary
The National Treasury
Treasury Building
NAIROBI



Dear Dr. Thugge

RE: PETITION FOR REMOVAL OF MEMBERS OF FINANCE AND ADMINISTRATIVE COMMITTEE OF THE JUDICIAL SERVICE COMMISSION

We refer to the above matter and state as hereunder;

The Departmental Committee on Justice and Legal Affairs has received a Petition seeking the removal of the following persons as members of the Finance and Administrative Committee of the Judicial Service Commission; they are Mr. Ahmednasir Abdullahi, Reverend (Dr) Samuel Kobia, Prof. Christine Mango, Mohammed Warsame, Emily Ominde and Florence Mwangangi. The Petition was presented to the National Assembly by Mr. Riungu Nicholas Mugambi and the same is attached for your reference.

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Yours

A handwritten signature in black ink, appearing to read "Justin N. Bundi".

JUSTIN N. BUNDI
CLERK OF THE NATIONAL ASSEMBLY

Copy:-

Hon. Henry Rotich
National Treasury
Treasury Building
NAIROBI

ANNEX N

REPUBLIC OF KENYA

Telegraphic Address
"Bunge", Nairobi
Telephone 2221291/2848000
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote



National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

KNA/JLA/JSC/2013/02

October 17th, 2013

Mr. Edward Ouko
Auditor General
Kenya National Audit Office
Anniversary Towers, University Way
NAIROBI

KENYA NATIONAL AUDIT OFFICE
P. O. Box 30084 - 00100
NAIROBI, KENYA.

*Delivered
15/10/13*

Dear *Edward*

**RE: PETITION FOR REMOVAL OF MEMBERS OF FINANCE AND ADMINISTRATIVE
COMMITTEE OF THE JUDICIAL SERVICE COMMISSION**

We refer to the above matter and state as hereunder;

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Yours

Handwritten signature of Justin M. Birindi.

JUSTIN M. BIRINDI
CLERK OF THE NATIONAL ASSEMBLY

KENYA NATIONAL AUDIT OFFICE
P. O. Box 30084 - 00100
NAIROBI, KENYA.

ANNEX O

REPUBLIC OF KENYA

Telegraphic Address
"Bunge", Nairobi
Telephone 2221291/2848000
Fax: 2243694
E-mail: clerk@parliament.go.ke
When replying please quote



National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100
NAIROBI, Kenya

KNA/JLA/JSC/2013/02

October 17th, 2013

Mr. David Kimaiyo, CBS, DSM
Inspector General of Police
Judicial Service Commission
Supreme Court Building
P. O. Box 30041-00100 .
NAIROBI

Dear *David*

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COMMITTEE OF THE JUDICIAL SERVICE COMMISSION**

We refer to the above matter and state as hereunder;

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Yours

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JUSTIN N. BUNDI
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

Telegraphic Address

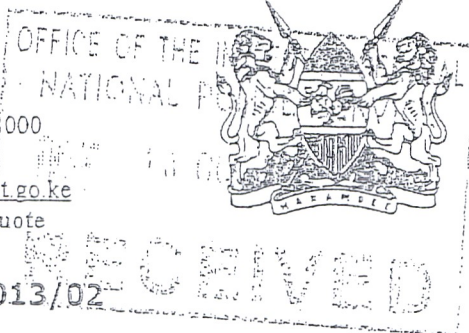
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NAIROBI, Kenya

KNA/JLA/JSC/2013/02

October 17th, 2013

Mr. David Kimaiyo, CBS, DSM

Inspector General of Police

Judicial Service Commission

Supreme Court Building

P. O. Box 30041-00100

NAIROBI

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Yours

JUSTIN N. BUNDI

CLERK OF THE NATIONAL ASSEMBLY

ANNEX P

MINUTES OF THE 9TH MEETING OF THE JUDICIAL SERVICE COMMISSION HELD ON 10TH MAY, 2013 AT 12.00 NOON AT THE SUPREME COURT OF KENYA BOARDROOM, ROOM 74, 2ND FLOOR.

Present:

- | | | |
|---|---|-------------------------|
| 1. Hon. Justice Dr. Smokin Wanjala, SCJ | - | Commissioner - Chairing |
| 2. Hon. Ms. Emily Orinde | - | Commissioner. |
| 3. Hon. Mrs. Florence M. Mwangangi | - | Commissioner. |
| 4. Hon. Mr. Ahmenasir Abdullahi | - | Commissioner. |
| 5. Hon. Rev. (Dr.) Samuel Kobia | - | Commissioner. |
| 6. Hon. Prof. Githu Muigzi, A.G. | - | Commissioner. |
| 7. Hon. Mr. Justice M.A. Warsame, J.A. | - | Commissioner. |
| 8. Mrs. G. Boss Shollei, CRJ | - | Secretary, JSC. |

Absent with apology:

- | | | |
|--|---|-------------------------|
| 1. Hon. Justice Dr. Willy M. Mutunga, D.jur, SC, EGH | - | Chief Justice/Chairman. |
| 2. Hon. Prof. Christine K.A. Mango | - | Vice-Chair, JSC. |
| 3. Hon. Mr. Justice Isaac Lensola | - | Commissioner. |
| 4. Hon. Prof. Margaret Kobia, PhD, CBS | - | Commissioner. |

In Attendance:

- | | | |
|---------------------------|---|-----------------|
| 1. Ms. Winfrida B. Mokaya | - | Registrar, JSC. |
|---------------------------|---|-----------------|

The meeting was called to order at 12.30 p.m. and was chaired by Hon. Commissioner Dr. Smokin Wanjala on behalf of the Chairman, Hon. Justice Dr. Willy M. Mutunga who was away on official duties.

ADOPTION OF AGENDA

1. The following Agenda was presented for deliberation and adoption, namely:
 - (i) Adoption of Agenda.
 - (ii) Appointment of staff to the various Directorates.
 - (iii) Recruitment of casual.

- (iv) Residence for the Hon. Chief Justice.
- (v) Committee Report on Hon. Mr. Justice Joseph Mbalu Mutava.
- (vi) Any Other Business.

2. Members resolved to proceed with deliberation of all the Agenda items save for Items 2 and 3 which were deferred since they were still pending before the Human Resource Management Committee.

MIN.1/10.5.2013: REPORT ON THE RESIDENCE OF THE HON. CHIEF JUSTICE.

- (i) Hon. Commissioner Mr. Ahmednasir Abdullahi, Chair of the Finance and Administration Committee reported that on 26th April, 2013 the Finance Committee discussed a report on the purchase of a residential property for the Hon. Chief Justice.
- (ii) That after deliberating on the report, which included the valuation and security survey conducted by the relevant Consultants, the Committee approved the purchase price and recommended purchase of property, namely L.R. No.7785/131 – Runda Ridge, House No.131.
- (iii) The Chief Registrar of the Judiciary indicated that there was need to hire a Chef and Grounds man for the Chief Justice.

ISC DECISION

- The report was adopted by the Commission as presented and proposed by Hon. Commissioner Ms. Emily Ominde and seconded by Hon. Commissioner Rev. (Dr.) Samuel Kobia.

MIN.2/10.5.2013: COMMITTEE REPORT ON HON. MR. JUSTICE JOSEPH MBALU MUTAVA

- (i) Hon. Commissioner Dr. Smokin Wanjala, SCJ, Chair of the Committee appointed to investigate the conduct of Hon. Mr. Justice Joseph Mbalu Mutava in a brief report to the Commission stated as follows:-
- (ii) That the Committee was still working on the report and had made its findings, however, Members still needed to work on the final report and make their recommendations on the Petition.
- (iii) The Commission was further informed that the Committee's work had been delayed because of a new complaint against the Judge that had been received through the Judiciary Ombudsperson.
- (iv) That Hon. Judge Mutava had been asked to respond to the new complaint and his response had just been received that morning.

DELIBERATIONS:

- Members reiterated the need to remove the Judge from harms way by ensuring that the Judge does not handle sensitive files.
- Members recalled that there were several complaints pending against various serving Judges and there was need to expedite them.

J.S.C. DECISION:

1. Members resolved that all pending complaints against serving judges be summarized and presented before the Commission as a substantive agenda.
2. A proposal was made that the Commission needs to have a Standing Disciplinary Committee within the Judicial Service Commission to deal with such complaints against judges.
3. That the Code of Conduct for judges/judicial officers and staff being developed by Consultants should be fast tracked and tabled before the Commission for deliberation and ratification.
4. That the report on Hon. Mr. Justice Joseph Mbalu Mutava be tabled before the Commission within seven (7) days.

MIN.3/10.5.2013: ANY OTHER BUSINESS:

(i) JUDICIAL SERVICE COMMISSION CALENDAR

The Chief Registrar of the Judiciary informed members that for purposes of planning due to financial considerations, there was need to readjust the Judicial Service Commission Calendar so that the intended benchmarking tours by Commissioners to Bosnia and U.S.A. be conducted in the next financial year after August and preferably after completing the interviews for Legal Researchers.

I.S.C. DECISION:

Members approved the request and directed the Registrar, Judicial Service Commission to adjust the dates accordingly on the Judicial Service Commission Calendar to reflect that the trip to Bosnia shall be undertaken after August while the one to the U.S.A./Canada shall be undertaken after completing the interviews for Legal Researchers.

(ii) SETTING UP OF THE INTERNATIONAL CRIMES DIVISION WITHIN THE HIGH COURT.

Hon. Commissioner Rev. (Dr.) Samuel Kobia, Chair of the Committee appointed to oversee the establishment of the International Crimes Division in the High Court gave an update report on the consultative meetings held by the Committee with the identified stakeholders and indicated that these meetings had added a lot of value to the Committee's work.

There being no other business, the meeting came to a close at 1.30 p.m.

Proposed by.....

Seconded by.....

Confirmation Date:.....

.....
G. Boss Shollei
Secretary,
Judicial Service Commission.

.....
Hon. Justice Dr. Smokin Wanjala, SCJ, CBS
Commissioner/Chairing -
Judicial Service Commission.

BRIEF ON PURCHASE RESIDENTIAL PROPERTY AND LEASE OF OFFICE PREMISES PROCUREMENT PROCESS

PURCHASE OF RESIDENTIAL PROPERTY - TENDER NO. JUD/13/2012-2013

Procurement Method	-	Open Tender
No. of firms that returned the documents	-	5 No.
Date of Press. Advert	-	5 th October, 2012 in the Standard and Nation Newspapers
Closing / Opening Dates	-	30 th October, 2012
Validity period	-	120 days upto 30 th January 2013
Extended Validity Period	-	60 day up to 30 th March, 2013

Responses

No.	Tenderer		Address	Location of Property	Tender Sum
	No.	Name			
1		Moruri Erastus George Momanyi	P. O. Box 44404-00100, Tel: 44453341/2/3, Fax 4445334, E-mail: e-momanyi@faram-ea.com		184,510,000.00
2		Dickson Mwangi Waithaka	P. O. Box 8147-00200, Nairobi	Kiambu (neighborhood of Windsor Golf and County Club)	395,000,000.00
3		Johnson NduyaMuthama Holdings Limited	P. O. Box 58511-00200, Nairobi, Tel: 7120366, E-mail: info@jnmholdings.co.ke	Runda	425,000,000.00
4		Johnson NduyaMuthama Holdings Limited	P. O. Box 58511-00200, Nairobi, Tel: 7120366, E-mail: info@jnmholdings.co.ke	Runda	325,000,000.00
5		Swarn Singh	P.O Box 49278-00100 Nairobi	Muthangari	270,000,000.0

Evaluation

Evaluation was carried out by a Committee appointed by the Chief Registrar of the Judiciary.

- *Preliminary Evaluation.* All bidders were found responsive during preliminary evaluation
- *Technical Evaluation.* Bidder No. 1 Moruri Erastus George Momanyi did not qualify for the scoring stage of evaluation since the property they were quoting for was not fully developed. To qualify for financial evaluation, bidders were required to score 90% and above. Bidder No. 2 Mr. Dickson Mwangi Waithaka scored less and therefore did not proceed to financial evaluation. The two bids submitted by M/s Johnson Nduya Muthama Holdings Limited and M/s Swarn Singh scored above 90% and therefore proceeded to financial evaluation.

The evaluation Committee recommended Mr. Swan Singh at Kshs. 270, 000,000.00

Valuation and Security Survey

Before making a decision, the Tender Committee however recommended for an independent valuation and security surveys of the properties that were technically responsive and the results were as below:-

No.	Tenderer	Address	Property Location	Tendered Price	Valuation amount (Kshs.)	Security Survey Comments
3	Johnson Nduya Muthama Holdings Limited	P. O. Box 58511-00200, Nairobi, Tel: 7120366, E-mail: info@jnmholdings.co.ke	Runda, Near Royal Dutch embassy	425,000,000	350,000,000	<ul style="list-style-type: none"> • It has two gates leading to the compound • It has a stand by Generator • The building has both front and back garden ideal for functions, especially in relation to the potential occupant • The building has side of building clearance to allow for invited guests to move straight to the front lawns without necessarily passing through the main house • The finishing in the building and on the building is good and attractive • The building has discrete anti-burglar proof frames that are not visible from outside the house • The Compound is large enough to accommodate a large gathering and good and serene enough to host dignitaries
4	Johnson Nduya Muthama Holdings Limited	P. O. Box 58511-00200, Nairobi, Tel: 7120366, E-mail: info@jnmholdings.co.ke	Runda, Near Runda Water	325,000,000.00	250,000,000	<ul style="list-style-type: none"> • The residence is impressive in architectural design but with a dull ambience • The residence is close to the road, only separated by a hedge fence making the occupant of the residence very vulnerable to extraneous threats • The drainage system allows water and other dirt from the road to flow through the piping and open drain in the compound. This possess a threat to the occupant since anything can be released through the drainage system. • The gate of the residence opens quite close to the main estate road and there are many vehicles plying the road outside the compound.
5	Swam Singh	P.O Box 49278-00100 Nairobi	Muthangari	270,000,000	500,000,000	<ul style="list-style-type: none"> • While the residence has a wonderful ambience to behold, it has major lapses in terms of security • The building is rather old though maintenance looks great • The residence shares a fence with waivako way and therefore a lot of accompanying noise and disruptions • The building has poorly constructed fences on both sides with neighbours thus creating and exposing the principal to unnecessary potential threats

Security was considered of paramount importance because of the potential occupant and since only one property was deemed safe enough and also considering the valuation, discussions were held with M/s Johnson Nduya Muthama Holdings Limited representatives who accepted Kshs. 310,000,000 without furniture. The available funds could also not cater for furniture.

The tender Committee at its meeting No. 17/2012-2013 held on Thursday 27th March, 2013 approved award to M/s Johnson Nduya Muthama Holdings Limited at a total Kshs. 310,000,000

ANNEX Q

(e) Article 228 (4) that provides that the accounts of all governments and State organs shall be audited by the Auditor-General by carrying out its own audit without the requisite skill and or training thereby undermining the authority of the Auditor General.

2. THAT although the provisions of Article 249(2)(a) of the Constitution requires the Judicial Service Commission to be subject to the Constitution and the law, the aforesaid members of the Finance and administration Subcommittee of the Judicial Service Commission by their conduct seriously violated the provisions of the existing laws by-

(a) disregarding the provisions under section 8(1)(a) of the Judicial Service Act that provides that the Chief Registrar shall be responsible for the overall administration and management of the Judiciary;

(b) disregarding the provisions under section 8(1)(d) of the Judicial Service Act that provides that the Chief Registrar shall be responsible account for any service in respect of which monies have been appropriated by Parliament and for which issues are made from the exchequer account;

(c) disregarding the provisions under section 8(1)(e) of the Judicial Service Act that provides that the Chief Registrar shall be the authorized officer for the Judiciary, who shall be responsible for the efficient management of the day-to-day operations and administration of human resources in the judicial service;

(d) disregarding the provisions under section 8(1)(h) of the Judicial Service Act that provides that the Chief Registrar shall be responsible for planning, preparing, implementing and monitoring the budget and collecting, receiving and accounting for revenue;

(e) disregarding the provisions under section 8(1)(j) of the Judicial Service Act that provides that the Chief Registrar shall be in-charge

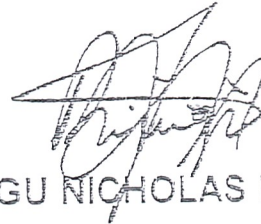
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acts of gross misconduct in the performance of their functions;

3. **THAT** the said Members of the Judicial Service Commission are jointly and severally incompetent;

4. **THAT** the said Members of the Judicial Service Commission be removed from office on the aforesaid grounds.

Dated 4th October, 2013



RIUNGU NICHOLAS MUGAMBI

ANNEX S

① Director Comptroller

pse fact file

CMA

25/10/2013

②

WARSAME

pls deal

FA

25/10

447

THE CONSTITUTION OF KENYA
(Article 251)

NATIONAL ASSEMBLY STANDING ORDERS
(Standing Order 230)

PETITION FOR THE REMOVAL OF AHMEDNASIR ABDULLAHI, .
PROF. CHRISTINE MANGO, REVEREND (DR.) SAMUEL KOBIA
MOHAMED WARSAME, FLORENCE MWANGANGI AND EMILY
OMINDE AS MEMBERS OF THE JUDICIAL SERVICE COMMISSION

TO: THE NATIONAL ASSEMBLY,
MAIN PARLIAMENT BUILDINGS,
NAIROBI.



I, ALEX KIBII, of P.O. Box 5 CHEPKORIO and ID Number 22064769 a citizen of the Republic of Kenya from KEIYO MARAKWET County do hereby petition for the removal from office of Ahmednasir Abdullahi, Prof. Christine Mango, Reverend Samuel Kobia, Mohamed Warsame, Florence Mwangangi and Emily Ominde as members of the Judicial Service Commission on the following grounds-

1. Serious violation of the Constitution;
2. Serious violation of the law;

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3. Gross misconduct in the performance of functions;

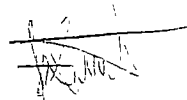
The facts constituting the grounds are as follows-

1. THAT the aforesaid said Members of the Judicial Service Commission who are members of the Finance and Administration Subcommittee of the Judicial Service Commission by purporting to issue instructions to the Kenya Police seriously violated the Constitution by breaching-

(c) Article 245(4) of the Constitution that ~~but no person may~~ give directions to the Inspector-General with respect to the investigation of any particular offence or offences by interfering with investigation through directing the police not to arrest and charge persons suspected to have pilfered Kshs 72 million from the Judiciary.

2. THAT although the provisions of Article 249(2)(a) of the Constitution requires the Judicial Service Commission to be subject to the Constitution and the law, the aforesaid members of the Finance and administration Subcommittee of the Judicial Service Commission by their conduct seriously violated the provisions of the existing laws by-

(a) flouting the provisions under section 24(e)(h) of the National Police Service Act that provides that the Kenya Police Service be responsible for investing crimes and apprehending offenders by directing that they give their approval before any suspects are arrested and arraigned in court.

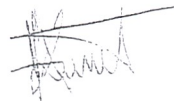


NOW THEREFORE your humble petitioner prays that the National Assembly finds-

1. THAT Ahmednasir Abdullahi, Reverend (Dr.) Samuel Kobia, Prof. Christine Mango, Mohamed Warsame, Emily Ominde and Florence Mwangangi as members of the Judicial Service Commission have jointly and severally contravened the aforementioned provisions of the Constitution and of the law;
2. THAT in contravening the Constitution and the Law, the said Members of the Judicial Service Commission have jointly and severally, committed acts of gross misconduct in the performance of their functions;
3. THAT the said Members of the Judicial Service Commission are jointly and severally incompetent;
4. THAT the said Members of the Judicial Service Commission be removed from office on the aforesaid grounds.

Dated 10th October, 2013

ALEX KIBII
alexkkibii@gmail.com



ANNEX T

REPUBLIC OF KENYA

IN THE MATTER OF A PETITION BY BRYAN YONGO PURSUANT
TO SECTION 251 (2) OF THE CONSTITUTION TO THE NATIONAL
ASSEMBLY AGAINST AHMEDNASSIR ABDULLAHI,
COMMISSIONER JUDICIAL SERVICE COMMISSION

SUPPLEMENTARY SUBMISSIONS

Mr. Chairman Sir,

Further to my written submissions submitted to yourselves dated 23rd October 2013, I wish to submit this supplementary affidavit to buttress my submission with regard to the late Mr. Simani not taking out a practicing certificate for the year 1992.

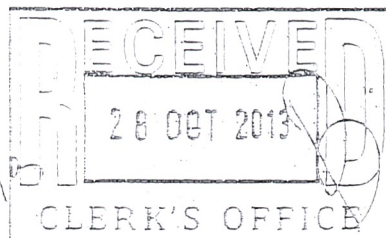
Mr. Chairman sir, the late Peter Simani swore an affidavit on the 27th of January 1993 wherein he confirmed that he did not take out a practicing certificate for the year 1992 and this is confirmed at Paragraphs 4,6, 7, 9, 10, 14, 15, 16, 18 thereof.

In particular at Paragraph 18 of the said affidavit he depones thus

"THAT towards the end of 1992 I decided to revive my law practice and went to the Law Society of Kenya to apply for a certificate"

Mr. Chairman sir, this confirms that the late Mr. Simani did not hold a practicing certificate in 1992 so that he was not qualified to sign a certificate of completion of pupillage for Mr. Ahmed Nassir dated 26th November 1992.

Mr. Chairman Sir



I also wish to enclose herewith a letter by the late Peter Simani dated 16th July 2012 addressed to the Law Society of Kenya with regard to my complaint to the Law Society of Kenya on the same issue.

With due respect the late Mr. Simani stated that there is no Affidavit he can respond to given the fact that my Complaint had been withdrawn so that he never rebutted my allegations.

Looking at his comments at Paragraph 3 and I quote

"As to whether Mr. Ahmed Nassir forged a Certificate of Pupilage from my office, I cannot comment on this since I have NOT had site (sic) of the document complained of by Mr. Yongo to enable me respond to the same"

Again the late Mr. Simani did not rebut my allegations. This corroborates all the allegations contained in my petition.

My Chairman Sir, I also enclose a letter reference CC/S/4/605/92 (20) addressed to the Law Society of Kenya by the Complaints Commission which confirms the late Mr Simani had no practicing certificate in 1992 owing to various complaints against him.

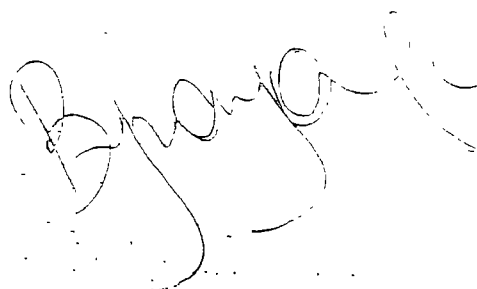
Mr. Chairman sir, I have proved beyond peradventure the fact that the late Mr. Simani never took out a practicing certificate for the said year 1992.

INTERVIEW CONDUCTED FOR THE POSITION OF CHIEF JUSTICE

Mr. Chairman Sir, you will recall that this interviews were conducted in public and were televised "LIVE". It is my prayer that this Committee gets clips of the said recording from "Citizen TV". You will observe the following from the said clips.

28th October 2013

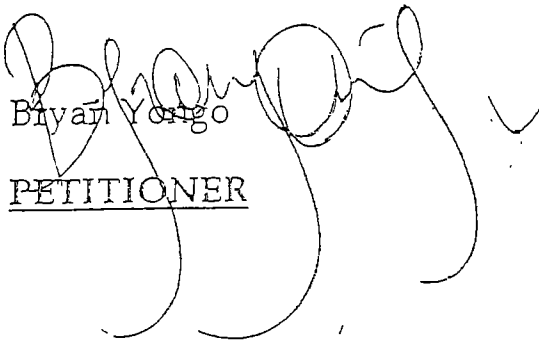
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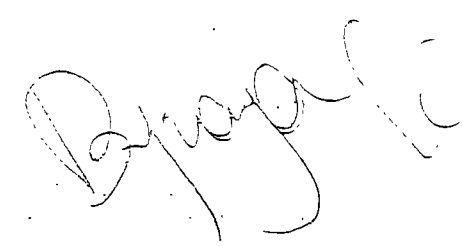
- (a) That no candidate was allowed to the interview with a laptop.
- (b) That Dr. Willy Mutunga is the only "candidate" who was allowed to enter the interview room with a laptop which he kept on referring to each time he was asked a question and each time he answered a question.
- (c) You will observe the pattern of questioning and the demeneour of Mr. Ahmed Nassir including his questions as opposed to his arrogant and disrespectful attitude against the other candidates.

Mr. Chairman Sir, the said clips will enable your committee appreciate my allegations on the coaching incidence.

I humbly submit.


Bryan Yongo
PETITIONER

28/10 oct 2013



ANNEX U

REPUBLIC OF KENYA

AFFIDAVIT

I PETER L. SIMANI of P. O. Box 14071 NAIROBI hereby make oath and state as follows:-

1. THAT I am an Advocate of the High Court of Kenya having been admitted on the 11th January, 1983.
2. THAT since 1987 I have been practising in the name of P. L. SIMANI & CO. ADVOCATES.
3. THAT prior to this date I worked with the law firms of Khaminwa & Khaminwa and S. G. Mbaabu & Co. Advocates.
4. THAT my last practising certificate expired on the 31st December, 1989.
5. THAT at the time my certificate expired my postal address had changed from Post Office Box 61793 NAIROBI to Post Office Box 14071 NAIROBI.
6. THAT due to an error on my part I overlooked the need to inform the Secretary of the Law Society of the change of postal address a result of which all my mail was directed to my former address.
7. THAT during the year 1990 I inadvertently omitted to submit my application for the Annual Practising Certificate.
8. THAT this omission was neither intentional nor meant to be a show of disrespect for the Law Society of Kenya or the Advocates Act.
9. THAT in 1991 due to poor performance of my firm in 1990 I decided to branch into other areas of economic activity and

~~concentrated my efforts in my stationary firm known as~~
Cheptulu Enterprises.

10. ~~THAT in the same year I with the assistance of other investors~~
~~three other companies namely Credit Reference of Kenya Ltd;~~
~~Veri - Cheque (K) Ltd and Veri - Credit (K) Ltd~~
11. THAT as a result of this change I closed down my Law Offices which were then situated on 5th Floor, Rehema House, Standard Street, NAIROBI.
12. THAT I moved to No. 14, Milimani Road where the Registered Offices of the companies mentioned in paragraph 10 herein were situated.
13. THAT I proceeded to establish myself in the above commercial concern as a Director in charge of legal affairs.
14. ~~THAT I have since worked with the said firms on a full time~~
~~basis~~
15. ~~THAT during the years 1991-92 I did do some legal work but~~
~~much of this was to finalise previous briefs and I carried out~~
~~several commercial transactions for the companies I set up.~~
16. THAT in the excitement of my new undertaking I forgot to keep my practising licence current.
17. THAT I realise my actions were contrary to the provisions of the Advocates Act and I admit the same.
18. THAT towards the end of 1992 I decided to revive my law practise and went to the Law Society to apply for a certificate.
19. THAT the Secretary of the Law Society then requested me to apply for a renewal.

20. ~~THAT~~ I then realised I had contravened the Advocates Act and proceeded immediately to report the matter to the Registrar of the High Court Mr. Jacob Ole Kipury.

~~21. THAT I also reported the matter to the Acting Chairman of the Law Society who advised me that the matter would be dealt with by the Council of the Law Society when my renewal application was presented.~~

22. THAT I feel utter remorse for the actions that have led to this contravention.

23. THAT at no time did I intend to purposely contravene the Advocates Act.

24. THAT what I have stated herein is true to the best of my knowledge truth and belief.

SWORN by PETER L. SIMANI this)
this 27th day of)
January 1993.)

BEFORE ME)

COMMISSIONER FOR OATHS)
COMMISSIONER FOR OATHS)




DEPONENT



Telephone: Nairobi 250736

Ref. No. CC/S/4/4/605/92 (20)

The Secretary
Law Society of Kenya
NAIROBI

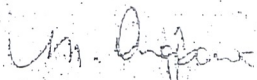
Attention: Mr. Mwangi.

P. L. S. SIMANI, ADVOCATE

The above advocate has had no practising certificate.
Several complaints were made against him.

He now requests we take no action until you do
refer to your past law society meetings/minutes.

Will you let us know the position and when you
refer to the Disciplinary Committee?


M. A. Ang'awa
COMMISSIONER

MAA/do

PL Simani & Co.
Advocates

14 Milkmani Road,
(Next to Heron Court Hotel)
P.O. Box 14071 Nairobi
Tel: 726640/2 Fax: 721505

Our Ref:

Your Ref:

Date: 26th November, 1992

The Secretary
Council for Legal Education
Attorney General's Chambers
State Law Office
NAIROBI

Dear Sirs,

RE: CERTIFICATE OF COMPLETION OF PUPILLEGE

I, P. L. SIMANI of Post Office Box Number 14071 Nairobi, an Advocate of the High Court of Kenya of over 5 years standing do hereby certify that AHMEDNASIR MAALIM ABDULLAHI has attended as a pupil under my guidance and received instructions in the proper business, practice and employment of an Advocate as from 1st June, 1990 to 31st December, 1990 in accordance with the provisions of the Advocates Act.

Dated at Nairobi this 30 day of November 1992.

Yours faithfully,
P. L. SIMANI & CO.
ADVOCATES

P. L. SIMANI

PL Simani & Co.
Advocates

1273/52

14 Mikmani Road,
(Next to Heron Court Hotel)
P.O. Box 14571 Nairobi
Tel: 726649/2

Our Ref: 008/93

Your Ref: CC/S/605/92(16)

Date:

02/02/93

The Complaints Commission
P. O. Box 7797
NAIROBI

Dear Madam

RE: COMPLAINT BY FLORENCE J. J. OTHIENO

Thank you for your letter dated 8th January, 1993. The delay in replying the last correspondence is due to an oversight occasioned by the participation of the undersigned in the last general election. We sincerely apologise for this.

With regard to the issue of the practising certificate, the position is that I reported this matter personally to the Registrar of the High Court, the Acting Chairman of the Law Society and the Secretary of the Law Society in late November 1992. I was advised to explain the circumstances that had led to my omission and further advised to reapply for my practising certificate if I wanted to practise. The Vice-Chairman Mr. Willy Mutunga further informed me that this matter would be dealt with by the Council of the Law Society at its next meeting and that it was certain my case would be referred to the Disciplinary Committee for further action.

In the circumstances I would request that no action be taken by the Commission until the Council of the Law Society and the Disciplinary Committee have made a decision.

Yours faithfully
P. L. SIMANI & CO.
ADVOCATES

P. L. SIMANI

cc: The Acting Chairman
Law Society of Kenya
Professional Centre
NAIROBI

cc: The Registrar
High Courts of Kenya
Law Courts
NAIROBI

Please quote our reference

REPUBLIC OF KENYA

IN THE MATTER OF THE ADVOCATES ACT (NO. 18 OF 1989)

AND

IN THE MATTER OF THE ADVOCATES (ADMISSION) REGULATIONS - 1991

10

P E T I T I O N

TO: THE HONOURABLE THE CHIEF JUSTICE OF KENYA

The humble petition of AHMEDNASIR MAALIM ABDULLAHI of Post Office Box Number 78719, Nairobi in the Republic of Kenya.

SHEWETH:

1. That the petitioner has obtained the following professional and academic qualifications specified in Section 13(1) of the Advocates Act, that is, having passed the relevant examination of the University of Nairobi he holds a degree in Law of that University, and having passed the relevant examinations at the Kenya School of Law he holds a diploma in law.

2. That the petitioner has during the period from the 1st day of June, 1990, to the 31st day of December, 1990 attended as a pupil of and received instructions in the proper business, practice and employment of an advocate firm PETER SIMANI of P.L. Simani & Company Advocates, REHEMA HOUSE, KAUNDA STREET, P O Box 14071, Nairobi an Advocate of more than (5) years standing was a bona fide student of the Kenya School of Law from January 1991 to April 1991, and was granted exemption by the council of Legal Education from 1st May to 4th June 1991, and has passed the examinations referred to in part III of the Advocates (Admission) Regulations subject to the following exemptions granted under Section 13 (2) of the said Act:-

- i) Constitutional Law and Legal System in Kenya
- ii) Law of Contract
- iii) Criminal Law

- iv) Family law
- v) The law of succession
- vi) The law of Torts
- vii) Commercial Law
- viii) The Law of Business Associations
- ix) Equity
- x) Law of evidence
- xi) Land law

3. that the petitioner believes that he has never committed or done anything which renders him unfit or unworthy to practice as a advocate, and has been given two testimonials as to moral fitness by:-


- i) KARYI GACHOKA - ADVOCATE
- ii) MICHAEL JOSPHAT ISEME - ADVOCATE

4. that the petitioner's name was duly gazetted in Gazette Notice Number 5889 1992 in accordance with Regulation 15 of the Advocates (Admission) Regulations, 1981.

5. that the petitioner is a citizen of the Republic of Kenya
The petitioner therefore prays that he may be admitted as an Advocate of the High Court of Kenya.

AND the petitioner will every pray.

DATED AT NAIROBI THIS 22nd DAY OF November 1992


.....
Signature of the Petitioner

ANNEX V

IN THE HIGH COURT OF KENYA AT NAIROBI

OATH BY AN ADVOCATE

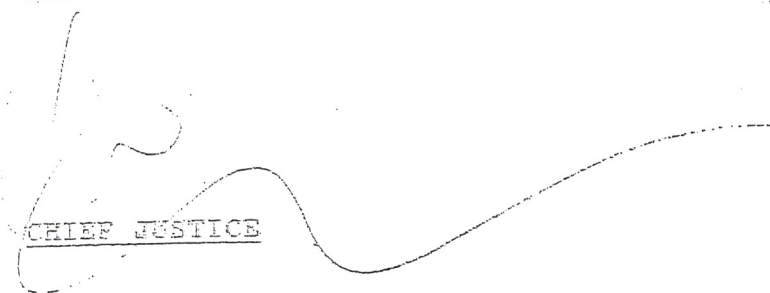
I, AHMEDNASIR MAALIM ABDULLAHI,

SWEAR BY ALMIGHTY GOD THAT I WILL AT ALL TIMES UPHOLD THE RULE OF LAW AND ADMINISTRATION OF JUSTICE, AND THAT WITHOUT FEAR OR FAVOUR, I WILL WELL AND TRULY DISCHARGE MY DUTIES AS AN ADVOCATE OF THE HIGH COURT OF KENYA.

DATED AT NAIROBI THIS EIGHTEENTH DAY OF MARCH IN THE YEAR OF OUR LORD ONE THOUSAND NINE HUNDRED AND NINETY-THREE.


ADVOCATE

SWORN BEFORE ME AT NAIROBI
THIS 18TH DAY OF MARCH 1993


CHIEF JUSTICE

GAZETTE NOTICE No. 5864

CHANGE OF NAME

NOTICE is given that by a deed poll dated 4th November, 1992, duly executed and registered by the Registry of Titles at the Land Office, Registry of Nairobi, under Volume D1, Folio 199/2130, File No. DXXV at Nairobi, Kenya, by me, Tahira Rauf Samnakay, of P.O. Box 46342, Nairobi in the Republic of Kenya, the mother and legal guardian of my minor son Rameez Rauf Samnakay formerly known as Rameez Gilay for and on behalf of the said Rameez Rauf Samnakay formally and absolutely renounce and abandon the use of his name Rameez Gilay and in lieu thereof assume and adopt the name of Rameez Rauf Samnakay for all purposes. I, Tahira Rauf Samnakay the mother and legal guardian of Rameez Rauf Samnakay for all purposes authorize and request all persons to designate, describe and address him by his assumed and adopted name Rameez Rauf Samnakay only.

Dated the 3rd December, 1992.

TAHIRA RAUF SAMNAKAY,
*the mother and legal guardian of
Rameez Rauf Samnakay,
formerly known as Rameez Gilay.*

GAZETTE NOTICE No. 5865

CHANGE OF NAME

NOTICE is given that by a deed poll dated 10th June, 1992, duly executed and registered in the Registry of Documents at Nairobi in Volume D1, Folio 372/848, File DXXV, by my client, Reuben Kambich Kelles, of P.O. Box 12835, Nakuru in the Republic of Kenya, formerly known as Reuben Kambich Chesang, formally and absolutely renounced and abandoned the use of his former name Reuben Kambich Chesang and in lieu thereof assumed and adopted the name of Reuben Kambich Kelles for all purposes and authorizes and requests all persons at all times to designate, describe and address him by his assumed name Reuben Kambich Kelles only.

Dated the 17th November, 1992.

S. K. CHELULE,
*Advocate for Reuben Kambich Kelles,
formerly known as Reuben Kambich Chesang.*

GAZETTE NOTICE No. 5866

CHANGE OF NAME

TAKE NOTICE that by a deed poll dated 2nd November, 1992, duly executed and registered in the Registry of Documents at Nairobi as Presentation No. 52 in Volume D1, Folio 395/2682, File DXXV, by me, Samuel George Gichure Kamundia, of P.O. Mbari ya Njiku, Dagoretti Market, Nairobi in the Republic of Kenya, formerly known as Samuel Kamau Mwauna, formally and absolutely renounced and abandoned the use of my former name Samuel Kamau Mwauna and in lieu thereof assumed and adopted the name Samuel George Gichure Kamundia for all purposes and authorize and request all persons at all times to designate, describe and address me by my assumed name Samuel George Gichure Kamundia only.

Dated the 2nd November, 1992.

SAMUEL GEORGE GICHURE KAMUNDIA,
formerly known as Samuel Kamau Mwauna.

GAZETTE NOTICE No. 5867

MWANA MUKIA HOUSING CO-OPERATIVE SOCIETY LTD.

APPROVAL

IT IS certified that in accordance with the Local Government Act, (Cap. 265), section 262 (g) of 1978, the town planning committee at its meeting held on 15th July, 1991, and that held on 15th September, 1991, recommends approval of subdivision of L.R. 8469/5 & 6 and L.R. 8469/7 & 8, therefore, surveyors have to replan the above portions according to the approval plans, and re-surveyed.

PETER KURIA,
Chairman.
ROBERT WAIRURI,
Treasurer.
JOHN NJOROGE,
Secretary.

GAZETTE NOTICE No. 5868

THE COURT OF APPEAL
CHRISTMAS VACATION, 1992

THE Christmas Vacation will commence on 21st December, 1992, and will terminate on 13th January, 1993.

During the vacation the registry of the court will be open to the public from 9 a.m. to noon on all weekdays, except public holidays. A judge will be in attendance for the disposal of any urgent business.

Dated the 7th December, 1992.

T. S. LUVUGA,
Acting Deputy Registrar.

GAZETTE NOTICE No. 5869

THE ADVOCATES (ADMISSION) REGULATIONS
(L.N. 512 of 1991)

PURSUANT to regulation 15 of the Advocates (Admission) Regulations, 1991, it is notified that—

James Chepkoiwo Chebet,
Ahmednasir Maalim,
Waithaka Chera,
Mary Wangari Muchina,
Rose Ndaru Jamah,
Francis Kinyua Kamundi,
Christopher Chesire Chepyegon,

have complied with the provisions of section 13 of the Advocates Act, as to pupillage and the passing of examinations subject to such exemptions as may have been granted under subsection (2) of that section.

Dated the 8th December, 1992.

M. N. NZIOKA,
*Secretary,
Council of Legal Education.*

GAZETTE NOTICE No. 5870

THE CUSTOMS AND EXCISE ACT
(Cap. 472)

VALUES OF GOODS LIABLE TO VARIABLE IMPORT DUTY

PURSUANT to the Eleventh Schedule to the Customs and Excise Act, the following values are to be declared the import reference prices in the second column and the corresponding domestic reference prices in the third column of each commodity listed in the first column:

Commodity	SCHEDULE	
	Import Reference Price per ton	Domestic Reference Price per ton
1. Rice (Bangkok)	Sh. 14,968 18	Sh. 18,000 00
2. Milk (Rotterdam)	90,605 51	85,700 00
3. Wheat (US Gulf) (New Orleans)	8,019 37	8,457 75
4. Maize (US Gulf) (New Orleans)	7,000 32	7,117 22
5. Sugar (US Gulf) (New Orleans)	17,281 57	15,605 00

Made on the 9th December, 1992.

S. W. WAINAINA,
Commissioner of Inland Revenue and Prices.

GAZETTE NOTICE No. 5871

IN THE PRINCIPAL MAGISTRATE'S COURT AT THIKA
IN THE MATTER OF THE ESTATE OF NJUGUNA
MUTI GATLIANYAGA OF KIAMBU
PROBATE AND ADMINISTRATION
SUCCESSION CAUSE No. 226 of 1992

LET ALL the parties concerned take notice that a petition for a grant of letters of administration intestate to the estate of the above-named deceased, who died at Kiambu District, on 25th December, 1977, has been filed in this registry by (1) Joseph Ghas Njuguna and (2) Muroki Njuguna, in their capacities as administrators of the deceased's estate.

And further take notice that objections in the prescribed form to the making of the proposed grant are invited and must be lodged in this registry within thirty (30) days of publication of this notice.

And further take notice that if no objection has been lodged in this registry in the prescribed form within thirty (30) days of the date of publication of this notice, the court may proceed to make the grant as prayed or to make such order as it thinks fit.

Dated the 26th November, 1992.

S. W. WAINAINA,
District Magistrate, Thika.

ANNEX W

EXTRACT FROM THE MINUTES OF THE JUDICIAL SERVICE COMMISSION MEETING HELD ON 21ST JANUARY, 2013 AT THE SUPREME COURT BUILDING BOARDROOM NO.74 STARTING AT 2.30 P.M

Present:

- 1. Hon. Justice Dr. Willy M. Mutunga, D.jur, SC, EGH - Chief Justice/Chairman
- 2. Hon. Prof. Christine K.A. Mango - Vice-Chair, JSC
- 3. Hon. Hon. Mrs. Florence M. Mwangangi - Commissioner.
- 4. Hon. Mr. Titus J.K. Gateere, CBS - Commissioner.
- 5. Hon. Mr. Ahmednasir Abdullahi, SC - Commissioner.
- 6. Hon. Justice Dr. Smokin Wanjala, CBS - Commissioner.
- 7. Mrs. G. Boss Shollei, CBS - Secretary, JSC.

Absent with Apologies:

- 1. Hon. Mr. Justice Isaac Lenaola - Commissioner.
- 2. Hon. Ms. Emily Ominde - Commissioner.
- 3. Hon. Rev. (Dr.) Samuel Kobia, CBS - Commissioner.
- 4. Hon. Prof. Githu Muigai, A.G., EGH, SC, MP. - Commissioner.

In Attendance:

- 1. Mr. John Tamar - Deputy Registrar, JSC.

MIN. NO. 2/21.1.2013 – RE-SUBMISSION OF PROPOSED LEASING AND OCCUPATION OF ELGON PLACE PREMISES BY THE COURT OF APPEAL

After deliberations on the above agenda and considering the justification to move the Court of Appeal to Elgon Place premises and having been satisfied that all legal requirements had been adhered to, the Judicial Service Commission (JSC) thus resolved as hereunder:-

- 1. THAT the Commission's decision made on 21st December, 2012 stopping the leasing of the Elgon Place premises and relocation of the Court of Appeal thereto is hereby rescinded.

LEASE OF OFFICE PREMISES - TENDER NO. JUD/12/2012-13

Procurement method : Open Tender
 Advertisement Date : 2nd October 2012 in The Nation and Standard Newspapers
 No. of Firms that Bought the Document : 7 No.
 Closing / Opening Date : 24th October, 2013
 No. of Firms that Responded : 4 No.

Firms that Responded

Tenderer		Address
No.	Name	
1	Shalfa Holdings Limited	Unique Centre, Quarry Road, P. O. Box 56151-00200, Nairobi, Tel: 254 (020) 2669579/82/85, Cell: 0721-361868, 0735361868, Nairobi, E-mail: info@shalfaholdings.co.ke
2	Regent Valuers International (K) Ltd.	Upperhill Road, Next to Citi Bank, P. O. Box 79487-00200, Nairobi, Tel: 2734900 / 2724545, E-mail: info@regent-mgt.com
3	Knight Frank Kenya Limited	Lions Place, Wayaki Way, Westlands, P. O. Box 39773-00623, Nairobi, Tel: +254 (20) 4239000, E-mail: info@ke.knightfrank.com
4	Ismail Rahimtulla Trustees Registered	3 rd Floor, The Rahimtulla Tower, Upper Hill Road, P. O. Box 40333-00100, Nairobi, E-mail: daudi.shore@gmail.com

Prices Quoted

(a) Rent, Service Charge and Parking

Bidder Name	No.	DESCRIPTION OF CHARGE	UNIT PRICE PER SQUARE FOOT (KSHS.)	TOTAL SQUARE FEET	TOTAL CHARGE PER MONTH (KSHS.) PLUS VAT	TOTAL CHARGE PER ANNUM (KSHS) PLUS VAT
Shalfa Holdings Limited	1	Rental Charge	40/-	31,000	1,240,000	14,880,000
	2	Service Charge	Inclusive			
	3	Parking Charge	Inclusive			
		TOTAL				14,880,000
Regent Valuers International (K) Ltd	1	Rental Charge	100	40,000	4,000,000	48,000,000
	2	Service Charge	20	40,000	800,000	9,600,000
	3	Parking Charge	5000 per bay	60 spaces	300,000	3,600,000
		TOTAL				61,200,000
Knight Frank Kenya Limited	1	Rental Charge	US\$1.05	34,400	\$36,120.00	\$433,440.00
	2	Service Charge	Kshs 20	34,400	Kshs. 688,000.00	8,256,000.00
	3	Parking Charge	US\$85	60 Bays	\$5,100.00	61,200.00
		TOTAL				8,345,284.00
Ismail Rahimtulla	1	Rental Charge	100	33,149	3,845,284.00	38,452,840.00

Trustees Registered						
		Rental Charge	100	6,027	699,132.00	4,893,924.00
		Rental Charge	120	2,721	378,763.20	3,787,632.00
	2	Service Charge	29.00	35,870.00	1,040,230	14,480,001.60
			29.00	6,027	202,748.28	1,824,734.52
	3	Parking Charge	10,000	15 bays	174,000.00	2,088,000.00
		TOTAL				65,527,132.12

(b) Escalation

No.		PERIOD OF LEASE / YEAR OF LEASE	APPLICABLE ESCALATION CLAUSE	TOTAL LEASE COST FOR THE PERIOD TAKING INTO CONSIDERATION THE ESCALATION CLAUSE
1	Shalfa Holdings Limited	1 st year to 3 rd year	40	29,760,000.00
		3 rd year to 4 th year	44	16,368,000.00
		4 th year to 5 th year	50 / 6	18,823,000.00
2	Regent Valuers International (K) Ltd	Year 1	10% P.A (Not Applicable Yr.1)	61,200,000.00
		Year 2	10% P.A	67,320,000.00
		Year 3	10% P.A	74,052,000.00
		Year 4	10% P.A	81,457,200.00
		Year 5	10% P.A	89,602,920.00
		Year 6	10% P.A	98,563,212.00
3	Knight Frank Kenya Limited	Year 1	US\$ 49,350.0	US\$ 592,200.00
		Year 2	US\$ 37,926.00	US\$ 455,112.00
		Year 3	US\$ 39,822.30	US\$ 477,867.60
		Year 4	US\$ 41,813.40	US\$ 501,760.80
		Year 5	US\$ 43,904.10	US\$ 526,849.20
		Year 6	US\$ 46,904.10	US\$ 553,291.35
4	Ismail Rahimtulla Trustees Registered	01.1.2013-31.12.2013	0%	65,527,132.12
		01.1.2014-31.12.2014	0%	78,079,131.36
		01.1.2015-31.12.2016	15%	173,881,707.84
		01.1.2017-31.12.2018	15%	194,263,669.73

Evaluation

Evaluation was done by a Committee appointed by the CRJ. The detailed evaluation report is attached but the summary is as follows:-

- *Preliminary Evaluation.* Bidder No. 1 Shalfa Holdings Limited & Bidder No. 2 Regent Valuers International (K) Ltd. were found non-responsive at the preliminary evaluation stage.

Tenderer		Reasons
No.	Name	
1	Shalfa Holdings	Tender Form Signed but has no tender Amount

	Limited	<ul style="list-style-type: none"> ▪ Reference Letters concern lease of warehouse/godowns and not office premises. Only two letters of reference submitted and one is less for Kshs. 251,604 which is less than Kshs. 500,000 per month, which was minimum rental value. ▪ No copy of registration from Estate Agent Registration Board but there is a title deed provided.
2	Regent Valuers International (K) Ltd.	<ul style="list-style-type: none"> ▪ Audited accounts submitted for 2009 and 2010 instead of 2010 and 2011 ▪ Reference Letters submitted but value of contracts not given.

- *Technical Evaluation.* Bidder No. 3 and Bidder No. 4 were all found to be technical responsive and were recommended for award

Recommendations

Although the tender was initially for leasing of office space in one building, a recommendation was made that the Judiciary should lease the two building as follows:-

- (a) Court of Appeal to occupy Elgon Place which is the property offered by Knight Frank Kenya Limited.
- (b) The Rahimtulla Towers, the property offered by Ismail Rahimtulla Trustees Registered to be occupied by:-
 - (i) The Finance, HR & Administration and Procurement Directorates as there have been recommendations that the pre-fabs within the Supreme Court building mostly occupied by staff from these Directorates be demolished as they are structurally affecting the building which has been declared a National Monument. The three Directorates were also expecting to employ more people who would not having seating space within the Supreme Court Building.
 - (ii) The Political Parties Tribunal, Auctioneers Board and the National Council for Administration of Justice which The Judiciary needs to accommodate.
 - (iii) The Independent Fiduciary Agent and the Project Management Unit under the Judicial Performance Improvement Project (JPIP) funded by the World Bank which is about to commence. This will lead to a close working relationship and make monitoring of the project easier.

The Space offered by at Rahimtulla Towers was occupied by PricewaterHouseCoopers who are about to vacate.

The tender Committee at its meeting No. JUD/09/2012-2013 23rd November 2012 approved award as below

- (a) M/s Knight Frank Kenya Limited was awarded the contract for lease of Office Premises at Elgon Place as follows:-

UNIT PRICE PER SQUARE FOOT (KSHS.)	TOTAL SQUARE FEET	TOTAL CHARGE PER MONTH (KSHS.)	TOTAL CHARGE PER ANNUM (KSHS)
US\$1.05	34,400	\$36,120.00	\$433,440.00
Kshs. 20	34,400	Kshs. 688,000.00	8,256,000.00
US\$85	60 Bays	\$5,100.00	\$61,200.00
TOTALS (Exclusive of VAT)			Kshs. 8,256,000. US\$ 494,640.00

The applicable escalation clause shall be 5% per annum

- (b) M/s Ismail Rahimtulla Trustees Registered was awarded the contract for lease of Office Premises at Rahimtulla Towers as follows:-

UNIT PRICE PER SQUARE FOOT (KSHS.)	TOTAL SQUARE FEET	TOTAL CHARGE PER MONTH (KSHS.) PLUS VAT	TOTAL CHARGE PER ANNUM (KSHS) PLUS VAT
100	33,149	3,845,284.00	38,452,840.00
100	6,027	699,132.00	4,893,924.00
120	2,721	378,763.20	3,787,632.00
29.00	35,870.00	1,040,230	14,480,001.60
29.00	6,027	202,748.28	1,824,734.52
10,000	15 bays	174,000.00	2,088,000.00
TOTAL			65,527,132.12

The proposed applicable escalation clause was as follows:-

PERIOD OF LEASE / YEAR OF LEASE	APPLICABLE ESCALATION CLAUSE	TOTAL LEASE COST FOR THE PERIOD TAKING INTO CONSIDERATION THE ESCALATION CLAUSE
01.1.2013-31.12.2013	0%	65,527,132.12
01.1.2014-31.12.2014	0%	78,079,131.36
01.1.2015-31.12.2016	15%	173,881,707.84
01.1.2017-31.12.2018	15%	194,263,669.73

The Committee further recommended that discussions be held with Ismail Rahimtulla Trustees Registered with a view to reducing the escalation rate and increasing the number of parking bays as 15 bays were not enough.

ANNEX X

AHMEDNASIR, ABDIKADIR & CO. ADVOCATES

LCK-1A

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- G. W. Ngechu LL.M (UK) / LL.M (KE)

PIN NO: P051123720K
VAT REG NO: 0109750J

Our Ref: AAC/NEK/061/2001

Your Ref: TBA

Monday, November 20, 2006

The Hon Justice F. Azangalala
Millimani Commercial Court
NAIROBI

The Hon Justice Mary Karango
Millimani Commercial Court
NAIROBI

My Lords,

~~Millimani HC Misc NO 758 of 2004 & 750 of 2004~~
Ahmednasir, Abdikadir & Company Advocates
Vs
National Bank of Kenya Limited

My Lords a letter dated 1st November 2006 written by counsel for the respondent to his client as relates to the above cases has come to my attention.

I am of the respectful view that since counsel casts aspersions on Honorable Judges quite unfairly and since the same is an outrageous insult and assault on the integrity of the court, I am duty bound as counsel to bring this letter to your humble attention. I enclose herewith a copy of the said letter for your kind attention.

I am of the respectful view that in case your Lordships want to address this issue further you could invite the parties to appear before you so that we can make suggestions on how this contempt of court should be addressed.

To complete the record I have taken the liberty to copy the letter to the author of the letter in contention.

Yours faithfully
Ahmednasir, Abdikadir & Company Advocates

545666

**OCHIENG, ONYANGO
& KIBET & OHAGA**

Advocates, Commissioners For Oaths & Notaries Public

Our Ref: 4/594/047

Your Ref: ZKM/

The Company Secretary,
National Bank of Kenya Limited,
National Bank Building,
Harambee Avenue,
NAIROBI.

Dear Sir,

RE: High Court Misc. Civil Case No. 753.
AHMEDNASIR, ABDIKADIR & CO
KENYA LIMITED

We write to inform you that the ruling on the application previously scheduled to be delivered last Friday and was adjourned; the same was delivered yesterday.

The Judge (Hon. Justice M. Kasango) found that the applicant was not bound by the judgment against the bank for the sum of KSh. 100,000.00. The applicant was also granted costs of the application and recovery of the amount. We were, however, adjourned for (14) days. We also sought and obtained leave for your perusal, reference and records.

We feel compelled to bring to your attention the High Court which we have encountered in the past brought against you for the recovery of costs.

i. In High Court Civil Case No. 532 of 1998 between Advocates, versus National Bank of Kenya Limited, the court struck out the suit on the basis of illegality. In an argument that the fee agreement was caught by the doctrine of illegality, the court held that the provisions of Rule 3 of the Advocates (Remuneration) Order are inoperative. In the present ruling, Hon. Justice Kasango held that the provisions of the Advocates (Remuneration) Order are inoperative. This means that the fee agreement is inoperative.

- ii. In High Court Misc. Application No. 21 of 2005 D Njogu & Company versus Kenya National Capital Corporation we had argued that the Certificate of Taxation relied on was a nullity because it had been signed by a Taxing Officer other than the Officer who taxed the bill. This argument was upheld by Mr. Justice F. Ochieng who proceeded to strike out the Certificate of Costs and the application for judgment. However, when we took the same point as a preliminary objection in the present suit, Hon Justice M. Kasango went out of her way to expressly disagree with Mr. Justice F. Ochieng on this point and proceeded to overrule the preliminary objection.

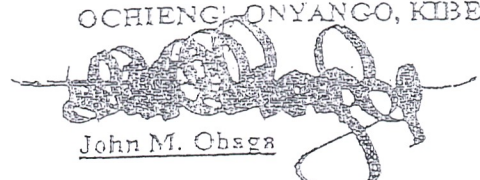
It does appear that separate standards are applied to bills and proceedings filed by this firm of advocates. Indeed, following previous proceedings before Hon. Justice Kasango, the firm of Advocates specifically attacked the writer's integrity because of the vigorous manner in which we have sought to defend the bank's position and the issue was only resolved after we were summoned to appear before the Judge in Chambers. A copy of the letter to this effect dated 2nd June, 2006 is annexed for your reference.

You had in your letter of 2nd June 2006 expressed the view that issues regarding Rule 3, Section 44 and 45 of the Advocates Act were straight forward and should present no legal issues. Clearly, however, the Judges continue to disagree on the interpretation and effect of these provisions and we are left to wonder whether this is the result of extra-judicial considerations because, notwithstanding the disagreements on interpretation, the findings continue to be in favour of the applicant. We mention decisions by the two judges that we have appeared before but we are aware that Hon. Justice F. Azangalala has also held against the bank in a similar application where the validity of the Certificate of Costs was in issue.

Clearly, all this is extremely frustrating but it is our view that these contradictions can only be resolved by the Court of Appeal. In the meantime though, we do not consider that an application for stay of execution in the High Court has any real chances of success in light of the foregoing and we would recommend that you arrange to pay over the amount awarded to the applicant to avoid execution proceedings and the attendant escalation of costs.

We now await your further instructions.

Yours faithfully,
OCHIENG, ONYANGO, KIBET & OHAGA,


John M. Ohsaga

REPUBLIC OF KENYA

BEFORE THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

IN THE MATTER OF JUDICIAL SERVICE COMMITTEE MEMBER

ABDULAH MAALIM AHMEDNASIR

CONTRIBUTION TO PETITION ARTICLE 251 OF THE CONSTITUTION AND REQUEST TO CLEAR MY NAME

AFFIDAVIT

1. LEONARD GETHOI KAMWETI residing in Nairobi and of care of Post Office Box Number 58346-00200 Nairobi, hereby make oath and state as follows:

1. THAT I am an Advocate of the High Court of Kenya and a former Company Secretary of National Bank of Kenya Limited ("NBK") where I worked for 17 years until my termination in July 2013.
2. THAT I am conversant with the facts herein and thus competent to swear this Declaration in order to contribute to a petition for the removal of JSC Commissioners which I saw in the Nation of 20-10-2013 pg 46 as well as to clear my name of wrongdoing falsely attributed to me by Ahmednassir Maalim Abdullahi.
3. THAT NBK is engaged in a civil suit High Court Misc. Civil Case No. 753 of 2004 (Milimani) [hereinafter referred to as ("the said Suit")] wherein it has been sued by Messrs Ahmednasir, Abdikadir & Company Advocates, the subject matter being the taxation of various bills. The said suit is still on-going.
4. THAT during the course of proceedings in the said Suit, the Bank's Advocates on record, Messrs. Ochieng. Onyango, Kibet & Ohaga Advocates wrote a letter to the Bank dated 1st November 2006 rendering legal advice on the said Suit, which letter I verily believe constitutes confidential legal advice-as set out by the provisions of Section 134 of the Evidence Act (Cap. 80, Laws of Kenya) (hereinafter referred to as "Advocate-Client Confidential Information") (pg 006a).
5. THAT on or about 20th November 2006, Messrs, Ahmednasir, Abdikadir & Company Advocates wrote to the Honourable Justices F. Azangalala and M. Kasango enclosing a copy of the said privileged Advocate-Client Confidential Information, which letter was also copied to the Bank's Advocates. Annexed hereto and marked "LGK-1b" (pg 006b and 006c) is a true copy of the said letter.
6. THAT as a consequence of Messrs. Ahmednasir, Abdikadir & Company Advocates letter aforesaid, Messrs. Ochieng Onyango, Kibet & Ohaga Advocates wrote to me on behalf of the Bank on 21st November 2006 requesting that I advise them how the Advocate-Client Confidential Information was obtained by the former lawyers. Annexed hereto and marked "LGK-2" (pg 007) is a true copy of the said letter.
7. THAT on 23rd January 2007, I wrote to Messrs. Ahmednasir, Abdikadir & Company Advocates demanding information on how the Advocate-Client Confidential Information was received by them which letter elicited no response. Annexed hereto and marked "LGK-3" (pg 008) is a true copy of the said letter.
8. THAT on 27th January 2007, I once again wrote a final reminder to Mr. Abdullahi of Messrs. Ahmednasir, Abdikadir & Company Advocates and demanded to be informed how the Advocate-Client Confidential Information had been received by them. The letter further confirmed that if no response was received, the Bank would be at liberty to proceed to the Advocates Complaints Commission. Annexed hereto is the said letter marked "LGK-4" (pg 009). However, once again did not, and to the best of my knowledge, have never responded to the letter.
9. THAT I verily believe that the Bank's rights to Advocate-Client Confidentiality as enshrined in Section 134 of the Evidence Act, and which all clients are entitled to, has been unlawfully breached by Mr. Abdullahi of the firm of

10. THAT I verily believe that the act by Mr. Abdullahi breaching the Advocate-Client Confidential relationship is in my humble view unlawful conduct, and conduct incompatible with:
- the civil liberties of the Bank which stood to lose Kshs 60 million to him as a result of his unlawfully having obtained insider information;
 - the professional standing of the deponent as custodian of such confidential documents.
 - Messrs, Ahmednasir, Abdikadir & Company Advocates status as a reputable firm of advocates; and the Advocates Act (Cap. 16, Laws of Kenya).
11. THAT I aver and confirm that the Advocate-Client Confidentiality has neither been waived by The Bank or myself and nor, to the best of my knowledge and belief, has it been qualified by act of law.
12. THAT I further aver and confirm that I have never given the documents to Mr. Abdullahi and at no time have I visited Mr Abdullahi,s offices, or made or attempted to make any contact with the said advocate. I am not personally acquainted to him. I was the sole bank witness in the civil suit referred to above and assert that it is therefore not possible to take such sensitive communications to Mr. Abdullahi while litigation on the matter was still ongoing and in which I only stood to be embarrassed if I acted in such an unprofessional manner.
13. THAT following the said incident I filed a complaint with the Complaints Commission on 15th September, 2010. Annexed herewith is the said complaint letter. The Complaints Commission proceeded to write to Mr. Abdullahi on 27th September, 2010 and 27th October, 2010 in an attempt extract a response from the said Advocate. I understand from reading the letter that he responded acrimoniously to the communication. Annexed hereto are copies of the said letters labeled "LGK- 5"(pg 010 and 10A) and "LGK- 6"(pg 011 to 013).
14. THAT after four years of refusing to state where he obtained the confidential letter from, by way of a letter dated October 27th 2010, Mr. Abdullahi confirmed that the letter was sent to them by myself. Annexed hereto is the letter labeled "LGK- 7""(pg 014). I verily believe that the said letter was specifically written on October 27th 2010 being the day that the Justice and Legal Affairs Committee had invited me to appear before it as a way of duping the Committee and hide the unlawful manner in which he obtained the documents which in my view is perjury and which should disqualify Abdullahi from membership of the JSC forthwith.
15. THAT on October 27, 2010, I was invited to the Committee of Justice and Legal Affairs in order to explain to them the events leading to my conclusion that there were still issues of professional propriety relating to the said advocate which should be taken into account when assessing his suitability to serve in the Judicial Service Commission. Annexed hereto is their letter of invitation dated 27th October 2010 labeled "LGK-13" "(pg 024). in support.
16. THAT on my behalf and that of the Bank as did other members of the public I carried out my civic duty and explained my position to the Committee and departed. Later on it came to my attention by way of an audio visual clip recorded on 29th October 2010 that the then Chairman of the Committee Hon Namwamba was "satisfied" with the explanation that Mr. Ahmednassir had given the Committee. I verily believe that Mr Abdullahi handed in the letter of October 27th and lied that I had given him the confidential communication an act incompatible with his status as a JSC member.
17. THAT on May 16th 2011, the Complaints Commission wrote and informed me that :-
- it is the advocate who authored the letter to the Bank (Messrs Ochieng Onyango Ohaga Kibet & Co Advocates) who should complain rather than the Bank which had no locus standi.
 - The Bank should not complain after having divulged information and then crying foul.
 - The Bank had not really suffered injury. Annexed herewith is the said letter labeled "LGK-8"
18. THAT by a letter dated 15th June, 2011 I responded and respectfully differed with the complaints Commission that :-
- the Bank had no *locus standi* in the complaint,
 - the Bank had not suffered any harm.
 - That the Bank was indeed the offender and not the offended. I confirmed my belief that the Bank was the wronged party, that the crux of the complaint was not the quantum of harm, but rather the Advocate's conduct which was dishonorable and disgraceful in terms of Section 60 of the Advocates Act (Cap 16).

Annexed hereto is my letter labeled "LGK-9" (pg 016-017) in support.

19. THAT by of a letter dated 26th September, 2011 the Advocates Complaints Commission sought to know from me who had parted with the communication. Annexed hereto is their letter labeled "LGK- 10" (pg 018) in support
20. THAT on 3rd October 2011 I wrote back informing the Complaints Commission that the Complaints Commission was in effect unlawfully reversing the burden of proof and asking the victim to explain the reason why the crime had taken place and the perpetrator. I informed the Commission that the onus was upon Mr. Abdullahi to explain how the communication came into his hands. Annexed hereto is the letter dated October 2011 in support hereof labeled "LGK- 11" (pg 019 and 020).
21. THAT subsequently, by of a letter dated 25th October, 2011 Advocates Complaints Commission closed their file on the complaint and advised me to take out a private prosecution directly with the Disciplinary Committee Attached herewith in support is a copy of the said letter labeled "LGK- 12 "(pg 023).
22. THAT on 8th February, 2012 I wrote to the Honourable Secretary of the Law Society formally filing a complaint. The communication was accompanied by an affidavit. Annexed hereto is the letter labeled "LGK-14" (pg 025 to 030).
23. THAT the Law Society wrote to Mr. Abdullahi and on 15th May 2012. "LGK 15A" (pg 032). The Honourable Secretary forwarded to me a response he had received from Mr Abdullahi on 7th May, 2012. Mr. Abdullahi
 - a. said that he was informed that the Justice and Legal Affairs Committee had dismissed the complaint after it failed a *prima facie* test
 - b. querying whether this was a second appeal from complaints commission.
 - c. alleged that I had personally given him the letter in contention. The communication did not attempt to deal with the issue of laying down proof that I had given him the communication. It was just a mere unsubstantiated desperate allegation. Annexed hereto in support is the letter marked "LGK-15" (pg 031) I verily believe that the claim that the Committee had dismissed the complaint and the allegation that I gave him the letter are deliberate and false allegations that preclude Mr Abdullahi from being a JSC member.
24. THAT on 13th May, 2012 I responded confirming that:
 - a. Apart from a mere allegation, he had never given evidence explaining how the confidential communication got into his hands,
 - b. I had never had any personal acquaintance with the said lawyer whatsoever,
 - c. He had not disclosed the mechanism time and place I used to deliver the letter to him
It had taken him 3 (three) years to concoct the explanation that I had given him the letter without explaining where when and how I had carried out this act

Annexed hereto is my letter marked "LGK-16" (pg 033 to 034). in support. I verily believe that the concocted explanation was contrived as a tool to deceive the Committee and enable the Committee to pass him as a JSC member.

25. During the year 2011 A certain Mr Mohamed Adan the current Chairman of NSSF which has shares in NBK had replaced existing board members with friends and acquaintances of Mr. Abdullahi. Mr Adan is a business partner of Mr Abdullahi. The friends and acquaintances he appointed were namely:
 - a. Mr. Hassar Abdurahman Mohamed (Chairman) a family friend of both Mr Abdullahi and Mr Adan,
 - b. Mr Munir Sheikh Ahmed (Managing Director) whose father brought up Mr Abdullahi and whom Mr. Munir Sheikh Ahmed would and actually considers to be a cousin or half brother.

These changes as will be seen subsequently emboldened Mr Abdullahi to begin:-

- a. copying his letters to his friend the Chairman and then,
- b. claiming that the Bank was unaware of the 7 year old complaint and then,
- c. seeking the assistance of his friends in terminating the complaint and thereafter

26.

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32. THAT shortly thereafter in 28th June Mr Abdullahi went on air and confirmed that "the complaint would definitely be withdrawn next week" Upon being told by the presenter that "we do not know" he replied "I am telling you" meaning that he was aware that the chairman would take strong action on his behalf to ensure that the complaint was withdrawn. The Audio visual labied "the Complaint will be withdrawn next week cant be sure I tell you" is annexed as "LGK- 22" (*cd media*).
33. THAT That thereafter the Chairman Mr Mohamed Hassan called me twice and asked me to withdraw the complaint. I declined and explained to him that as a director of a public institution such as National Bank and as a fiduciary with a legal duty to do so he should be interested in knowing how documents unlawfully left the institution. The Chairman who is a non-executive proceeded to unsuccessfully write two letters to the Complaints Commission withdrawing the complaint. The two letters are annexed and labeled "LGK- 23" and "LGK- 24". (*pg 044-045*).
34. THAT In the third instance the Chairman Mr Hassan informed me that I would lose my job. I have not withdrawn the complaint against Mr. Abdullahi.
35. THAT on 8 July 2013 as stated Mr. Hassan convened a Board meeting. During that meeting he informed the Board that he had received a letter from Mr Abdullahi relating to a complaint from the Complaints Commission. He explained the Board his unhappiness about my response. There after he proceeded to confirm that he had no confidence in me and that my services be terminated Annexed hereto is an audio and a transcript of the Audio marked "LGK- 25". (*pg 046-051*). (*cd media*). I verily believe that the aforesaid action was latently actuated by Mr. Abdullahi through meetings and correspondence as a consequence of Mr. Abdullahi not wishing to be held to account and explain where he obtained the confidential documents from and who authorized him to distribute the letters and this is incompatible with his status as a JSC member
36. THAT I certify that the audio recording was made on a state of the art Sony IC recorder ICD-MX20 recorder which is reliable and can be presented to the committee to confirm and verify its working state. I have used this model for the last two years as part of my working tools.
37. THAT that following the Board meeting I was served with a letter of early retirement No reasons were given for the letter which is annexed herewith and marked "LGK- 26". (*pg 052-053*).
38. THAT Prior to the issuance of the letter I had never received a verbal or written caution or warning in the 17 years I worked for the Bank.
39. THAT following Mr Ahmednasir being put on his defence as mentioned in paragraph 31 above Mr Abdullahi was ordered to put in a defence for the hearing to proceed on 7th October 2013 However on 7th he did not put in a defence but an application to stop the complaint since it had purportedly been dismissed "LGK-15" (*pg 031*) by the Committee on 27th October. This latest in a series of obstructions/evasions/futile technical obstacles seen throughout this declaration is in my humble view further evidence that he is unable to sustain the lie/perjury made to the Committee on 27th October 2010 that I gave him the confidential documents and authorized him to distribute them a sure sign of dishonesty, deceit and trickery uncharacteristic of a member of the JSC. The latest series of pleadings is marked "LGK-27" (*pg 054-064*).

THE COMPLAINT

40. THAT my complaint against the JSC member is as follows:-
- a. Unlawfully acquiring confidential correspondence exchanged between the bank and its lawyers.
 - b. Proceeding to distribute this confidential information to third parties without prior approval of the Bank which is behavior that is disgraceful and dishonorable conduct incompatible with his status as an advocate and contrary to Section 60 (1) of the Advocates Act. Cap 16.
 - c. Failing to state where he obtained the documents for a period of 3 years which is dishonest, disgraceful and dishonorable conduct incompatible with his status as an advocate and contrary to Section 60 (1) of the Advocates Act. Cap 16
 - c. Falsely alleging to a parliamentary body vide a letter of 27th October 2010 addressed to the Complaints Commission and copied to The Justice and Legal Affairs Committee - as an act of desperation to name

THE ADVOCATES COMPLAINTS COMMISSION

Telephone No. +254-20-251915/227461
Fax No.: +254-20-315317
CC/PE/GT/VOL IV/74
Your Ref.



SHERIA HOUSE
5TH FLOOR
P.O. BOX 48048-00100
NAIROBI



Our Ref.

September 27, 2010

M/S Ahmednasir, Abdikadir & Co. Advocates
Prudential Assurance Building
1ST Floor, Webera Street
NAIROBI.

Attn Mr. L.G.Kamweti

Dear Sir,

RE: COMPLAINT AGAINST YOU BY NATIONAL BANK OF KENYA LTD

We have received a complaint from National Bank of Kenya LTD that on 20/11/2006 you wrote to the Judicial Officers at Milimani Commercial Court. That this letter was written on HC MISC Civil Appl No. 753 of 2004 & 750 of 2004 to forward a copy of a letter you had had access to by reason of your dvocate/ Clients relationship with the complainant. That that relationship imposed on you a duty to keep trust and confidence.

That in breach of that duty of trust and confidence you authored the said letter to the prejudice and embarassment of your client. This conduct is unprofessional and unbefitting of an Advocate of your status.

This is to call on you to respond to the complaint within the next 14 days of the date hereof noting that failure to respond to letters from this Commission is by itself professional Misconduct.

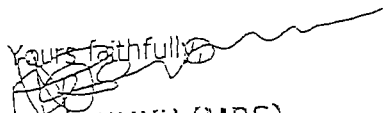
This Commission resolves complaints against Advocates by way of InHouse Dispute Resolution Session, ADR mechanism which you may wish to take advantage of.

Please quote our reference when replying

Committed to the Education of Dishonesty and Incompetence in the Legal Profession in Kenya

Your attention is drawn to section 53(4) of the Advocates Act and Rule 7 of the Advocates (Complaints Commission) Rules LN 507 of 1991 and the recent amendments to the Advocates Act as contained in the Statute Law (Misc Amendments) Act 2002 with specific reference to the Complaints Commission and the Disciplinary Committee.

Yours faithfully,


G.N. THUKU (MRS)

SENIOR PRINCIPAL STATE COUNSEL

FOR: SECRETARY

National Bank of Kenya

P.O. BOX 72866-00200

City Square - Nairobi

Attn: Mr. L.G.Kamwet

010A

THE ADVOCATE

Telephone No. +254-20-251915/227451
Fax No. +254-20-315317

Your Ref:

Our Ref:

CC/A/76/2/204/10

October 27, 2010

Mr. Ahmednasir M. Abdullahi
M/s Ahmednasir, Abdikadir &
Prudential Assurance Building
1st Floor, Wabera Street
NAIROBI

Dear Sir,

RE: COMPLAINT AGAINST

We refer to your letter dated
raised in your letter without e

1. Our letter dated 27/9/
any particular Advocat
drawn to the attention
The fact that this lette
inadvertence and a ge
regretted. Ordinarily
have you disregard its
as the addressee does
2. On the contents of the
course of the business
mandate is to receive
was written on behalf
are not personal.
3. The complaint herein
/clients confidentiality

Please

Committed to the Eradication of

- a) It is not lost to the writer there had existed an relationship between your Law Firm and the co relationship created a duty of trust and confide

By their letter dated 14/12/2006, the bank had cor previous association /relationship with them placed advantage to access their documents. Though the relationship was terminated it is our view that the you to continuously keep their confidence and trust relating to your former client.

We believe that the termination of the Advocate/ Client relationship give you the liberty to disclose confidence and abuse trust to embarrassment of your client. Indeed your former client had how you had accessed the documents and it is noteworthy that been released from your duty to maintain confidence and trust client.

- b) The letter dated 1/11/2006 was privileged communication National Bank of Kenya Ltd (your former client) Advocate Ochieng Onyango Kibet & Ohaga Ad accessed that letter and by your letter dated 20 availed that same letter to Judicial Officers and have the effect of embarrassing and prejudicing who would be entitled to fair trial
- c) It has also been complained that you have failed correspondence from the Complainant and their

Our letter dated 27/9/2010 sought to enquire if We had classified this complaint as falling under section 60 Advocates Act. If we were to establish the validity after the inquiry then the language of section 60 c. the public Legal domain to wit conduct unbecoming would come into play. It is therefore incorrect to say defamatory, if it is, in whose light and esteem has defamed.

We call on you to respond to this complaint within the next 14 days hereof. We also take the liberty to copy this letter to the Chair of Kenya to whom you copied your letter under reference.

Your attention is drawn to section 53(4) of the Advocates Act and Rule 7 of the Advocates (Complaints Commission) Rules LN 507 of 1991 and the recent amendments to the Advocates Act as contained in the Statute Law (Misc Amendments) Act 2002 with specific reference to the Complaints Commission and the Disciplinary Committee.

Yours faithfully,



G.N. THUKU (MRS)
SENIOR PRINCIPAL STATE COUNSEL
FOR: SECRETARY

The Company Secretary
National Bank Of Kenya Limited
National Bank Building
NAIROBI

Chairman Law Society
Gitanga Road
NAIROBI



AHMEDNASIR, ABDIKADIR
& CO. ADVOCATES

M. Abdullahi
O. Sagoo
E. Abdullahi
O. Ameyah
M. Mubinyi
D. Mwangi

M. F. Hassan
D. Mohamed

Our Ref: AAC/3614/2010

Our Ref: CC/PE/GT/VOL IV/74



PIN. NO. PO51123722K
VAT. REG NO. 01097501

Thursday, October 27, 2010

G.N. Thuku (Mrs)
Senior Principal State Counsel,
The Advocates Complaints Commission,
Shena House, 5th Floor
NAIROBI

Dear Madam,

RE: COMPLAINT AGAINST USIBY NATIONAL BANK OF KENYA LTD

We acknowledge with thanks receipt of your letter dated 27th October 2010 the contents whereof we have noted

1. Contrary to your suggestion, there is no client Advocate relationship between our law firm and National Bank of Kenya.
2. We hereby state that the contentious letter was sent to us by Mr. L.G. Kamwetui himself.
3. We deny to be in breach of any professional duty, as none exists.
4. It is quite obvious to us that in the light of the above that the alleged complaint is *malafide* and is an integral part of a grand conspiracy against the undersigned. We wish all involved the best of luck in their endeavors
5. You are at liberty to proceed as you wish.

Yours faithfully,
Ahmednasir Abdikadir & Company Advocates

Ahmednasir M. Abdullahi
ahmednasir@ahmedgad.com

Cc: Chairman,
Advocate Disciplinary Committee
NAIROBI

7014

THE ADVOCATES COMPLAINTS COMMISSION

Telephone No -254-20-261815/22726
Fax No -254-20-315017

SHERA HOUSE
5TH FLOOR
P.O. BOX 48048-00100
NAIROBI



Your Ref
CC/A/76/21/204/10

Our Ref
The Company Secretary
National Bank of Kenya Limited
National Bank Building
Harambee Avenue
NAIROBI



May 16 2011

Dear Sir,

RE: YOUR COMPLAINT AGAINST AHMEDNASIR M.ABDULLAHI
ADVOCATE

We refer to the above complaint and to the past correspondence on the issues complained of. We have reassessed this complaint and enclose copies of opinions on the No Contact Rule normally enforced in legal practice to protect the relationship between an advocate and his client and also the interest of a client.

We are of the view that the person prejudiced by the action of the advocate complained against was your counsel.

They ought to be the ones to raise a complaint since according to current legal opinion, Mr. Ahmednasir Abudullahi advocate ought to have sought their consent before contacting an employee of your corporation.

The No - Contact Rule appears to have been intended to protect the interest of a client from an advocate seeking to get information for use against such client. It would appear to us that once a person and in this case a corporation agrees to divulge information to an opponent's advocate he cannot turn them around and cry foul. Thus the best person placed to complaint against the act of such an advocate would be the counsel whose consent was not sought before his client was contacted. This is especially so, when the intention of the advocate contacting his opponents clients appears to have been intended to humiliate his opponents.

Your attention is drawn to Section 53(4) of the Advocates Act and rule 7 of the Advocates (Complaints Commission) Rules LN 507 OF 1991 and the recent Amendments to the Advocates Act as contained in the statute law (Misc. Amendments) Act 2002 with specific reference to the Complaints Commission and the Disciplinary Committee

Yours faithfully,

Grace Thuku
Senior Principal State Counsel
Advocates Complaints Commission



National Bank

15th June 2011

NATIONAL BANK OF KENYA LIMITED
 Head Office:
 National Bank Building, Harambee Avenue
 P.O. Box 72566 00200 - City Square, Nairobi Kenya
 Tel: 020 - 2528000, 2226471
 Fax: 020 - 311444, 2225044
 Email: info@nationalbank.co.ke
 Website: www.nationalbank.co.ke

Your Ref CC/A/76/21/204/i0

Our Ref CS/LD/9900/409/2

The Advocates Complaints Commission
 Sheria House
 5th Floor
 Nairobi



Attn: Grace Thuku.

Dear Madam,

RE: OUR COMPLAINT AGAINST AHMEDNASSIR ABDULLAHI ADVOCATE

We are in receipt of your letter of May 16th 2011. The opinion was not enclosed but we get the gist from the body of your aforesaid letter.

Whilst appreciating that you are attempting to infuse an alternative or devils view we would however respectfully fault it on the following grounds:-

1. It would appear that you consider that the Bank contributed to the theft of the documents by the lawyer or agreed to the theft and therefore it cannot be heard to complain. We do not think this *volenti non fit injuria* approach is any more correct than for instance blaming the victim of sexual assault for dress code/colour rather than turning attention to the assailant who should know better.
2. It also appears that you consider that if the client did not suffer, but the advocate did, then the client has no *locus standi*. We humbly and respectfully beg to differ with you. The Advocates Act deals with conduct unbecoming of an advocate. Further -
 - a) It does not *quantify* magnitude of misconduct of the advocate and set a threshold below which no action is taken.
 - b) It does not require proof of harm or demonstration of degree of harm by any party - be it the client or the advocate. Section 60 of the Advocates Act states: "a complaint against an advocate of professional misconduct, which expression includes *disgraceful or dishonorable conduct* incompatible with the status of an advocate, may be made to the Committee by any person". The no harm view is further augmented by Section 53 (6) which allows the Commission additional powers of compensation in the event that the Commission considers that the unbecoming conduct has resulted in the complainant suffering loss. Harm or prejudice is therefore not a pre-condition or a core component of disgraceful or dishonorable conduct but, if it is, it can be dealt with under S.53(6).
 - c) Contrary to what you state, we can confirm to you that the Bank has suffered immeasurable prejudice since the new advocate acting is unable to have candid communications with the client knowing that above subject lawyer has the penchant to ferret away documents at will through unofficial avenues.

- d) We can confirm that in our view the use of dishonorable and deplorable as for example court or in the registry. This is an intelligence against him approaches the tea lady or the advocate is acting in a dishonest, dishonorable status as an advocate.
- e) Strouds Judicial Dictionary describes "dishonest" what in our view illustrates the conduct of proudly cite his conduct in the next inductive disgraceful.
- f) Allowing the advocate to proceed without being at the foot of your letterhead. "Commitment to the Profession in Kenya" no one should fear accountability.
- g) Allowing the advocate to proceed unchallenged rule of the Jungle and impunity.

In our humble view an advocate who secretly takes payment from a former client after the relationship has ended and further his own financial gain is *ipso facto* acting disgracefully. We believe that any reasonable person - even when such conduct is rationalized - can rationalize it.

Kindly try to see if you can attempt to do what is in the best interests of the institution's rights as set out under Section 50(1) of the Advocates Act.

Yours faithfully



L.G. Kachweti
COMPANY SECRETARY

THE ADVOCATES COMPLAINTS COMMISSION

Telephone No.: +254-20-251915/2227461
 Fax No.: +254-20-315317

SHERIA HOUSE
 5TH FLOOR
 P.O. BOX 48048-00100
 NAIROBI



Your Ref:
 CC/A/76/2/204/10
 Our Ref:

25th October 2011

Company Secretary
 National Bank of Kenya Limited
 National Bank Building
 Harambee Avenue
NAIROBI



Dear Sir

RE: YOUR COMPLAINT AGAINST AHMEDNASIR M ABDULLAHI ADVOCATE

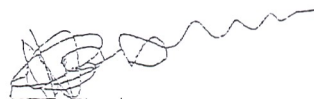
We refer to the above complaint and your letter dated 3rd October 2011.

Our letter dated 26th September 2011, informed you that you have not provided the Commission with evidence that the advocate took the letter the subject of this complaint without your consent. We advised you that if you were not satisfied with our decision dismissing the complaint, you were at liberty to take out private prosecution against the Advocate. Your attention is drawn to Section 60(1) and (2) which clearly provides that charges under that section may be instituted by any person. The door is therefore open for the bank to take out private prosecution before the Disciplinary Committee.

On our part we have closed our file and we advise that correspondence on this complaint is closed.

Yours faithfully

no authority to dismiss


 G.N. Thuku
 Sr. Principal State Counsel
 FOR: SECRETARY

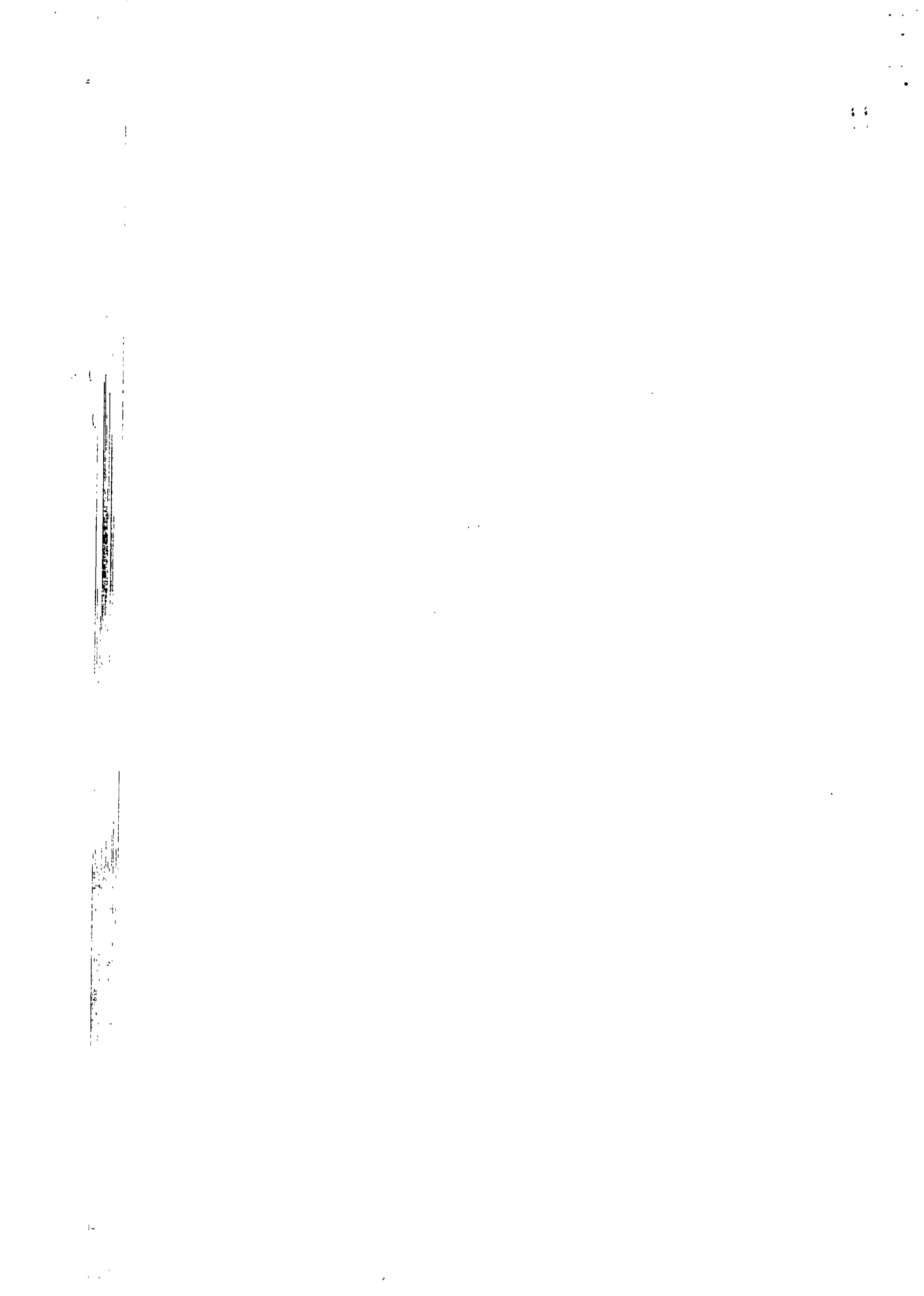
- c.c. (1) Chairman
- (2) Commission Secretary

Please quote our refer:

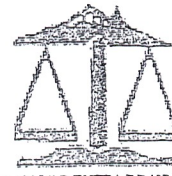
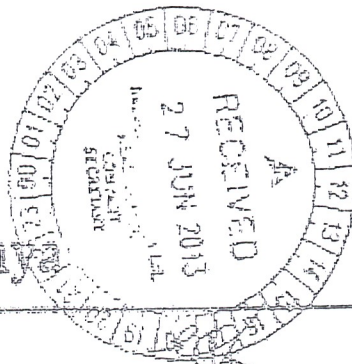
replying

Committed to the Eradication of Dishonesty and Illegality

in the Legal Profession in Kenya



Law Society of Kenya



LAW SOCIETY OF KENYA

BY HAND DELIVERY

ABDULLAHI AHMEDNASIR MAALIM, ADVOCATE
 AHMEDNASIR ABDIKADIR & CO. ADVOCATES
 CBA BLDG., 2ND FLR., STANDARD ST.
 P.O. BOX 57731-00200
 NAIROBI.

Gitanga Road
 P.O. Box 72219-00200
 Nairobi, Kenya
 Telephone: 3874664
 Mobile: 0720-904983
 E-mail: lsk@lsk.or.ke

Website: www.lsk.or.ke

Out-Box/83/2013

Your Ref:

Date: 26.06.2013

the disciplinary committee

Dear Sir,

RE: DISCIPLINARY COMMITTEE CAUSE NUMBER 83 OF 2013

The cause under reference has been fixed for Plca before the Disciplinary Committee sitting at 9.00 a.m. on Monday, 22nd July 2013 in the Council Chambers, 2nd Floor, Professional Centre, Parliament Road, Nairobi.

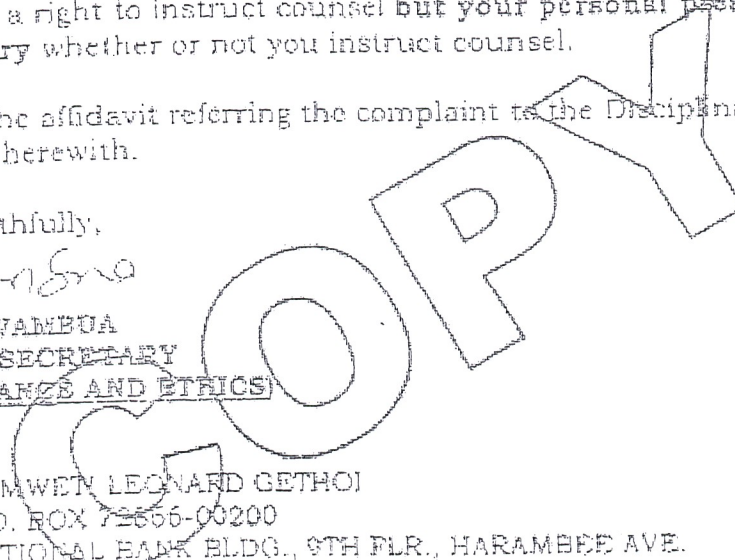
You have a right to instruct counsel but your personal presence is mandatory whether or not you instruct counsel.

Copy of the affidavit referring the complaint to the Disciplinary is attached herewith.

Yours faithfully,

Mercy Wambua
 MERCY WAMBUA
 DEPUTY SECRETARY
 (COMPLIANCE AND ETHICS)

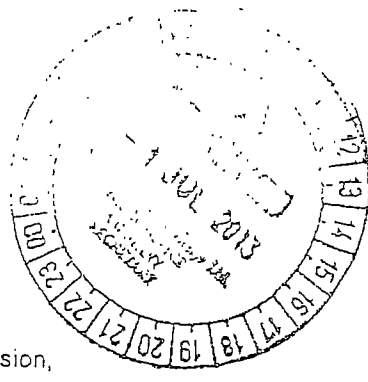
C.C. KAMWEN LEONARD GETHO
 P.O. BOX 72666-00200
 NATIONAL BANK BLDG., 9TH FLR., HARAMBEE AVE.
 NAIROBI



Nw Kamweti

L9K-23

National Bank



28th June, 2013

Your Ref: CC/A/76/2/204/10

G N Thuku (Mrs)
Senior Principal State Counsel,
The Advocates Complaints Commission,
The State Law Office,
Sheria House, 5th Floor
Nairobi.

National Bank of Kenya Limited
Head Office, National Bank Building,
Horombee Avenue,
P.O. Box 72866-00200 Nairobi, Kenya
Tel: +254 (0)20-2828000
Cell: +254 (0)711-038000
Email: chairman@nationalbank.co.ke
Website: www.nationalbank.co.ke

From the desk of
MOHAMED A. HASSAN
Chairman

Dear Madam,

Complain Against Ahmednasir Abdullahi by National Bank of Kenya Limited

I refer to the letter dated 18th June 2013 from the firm of Ahmednasir, Abdikadir & Co. Advocates addressed to you and copied to me . . .

First, I wish to advise that the complaint was filed prior to my appointment as the chairman of the Board of Directors of National Bank of Kenya Limited.

Further, the Complaint -was formally brought to my attention when I received the letter under reference upon which I inquired from L G Kamweti the background of the matter.

Kamweti has confirmed to me that he is the complainant in the matter in line with Sec.60(2) of the Advocates Act .

I therefore confirm that the Complaint was not lodged by National Bank of Kenya Limited

Yours faithfully,

Mohamed A. Hassan
Chairman

cc. Ahmednasir, Abdikadir & co. Advocates
CBA Building, 2nd Floor, Standard St.
Nairobi

Munir Sheikh Ahmed
Managing Director
National Bank of Kenya

C44

2nd July 2013

Your Ref: CC/A/76/2/204/10

C. N. Thuku (Mrs)
Senior Principal State Counsel,
The Advocates Complaints Commission,
The State Law Office,
Sheria House, 5th Floor
Nairobi

Dear Madam,

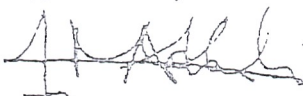
Complaint Against Ahmednassir Abdull

I acknowledge receipt of a letter dated 18th Jun

Further to my reply letter of 28th June 2013, I v

1. That having read the complaint and e
submitted to your office was in form :
Kenya.
2. However I wish to restate and reitera
Board or Management, has not autho
3. That in light of the content of Paragra
purported to have been filed on beha
withdrawn as it was filed without du
decision making organs of the bank.

Yours Faithfully,



Mohamed A. Hassan
Chairman

cc: - Ahmednassir Abdikadir & Co. Advo
CBA Building, 2nd Floor, Standard 5
Nairobi

Munir Sheikh Ahmed
Managing Director
National Bank of Kenya

		M.A. Hassan - Chairman	E.K Mvongera - Director	W Mwaniki - Director
		S.M.J. Hanga - Vice Chair	J.K Kimote Alt to MT NSSF	
		Maurit Sheikh - MD	G Omimo - Alt to PS Treasury	
AOB 8TH JULY 2013 MONDAY 409TH BOARD MEETING				
CONTENT OF SPEECH				
1.	Chairman	I announce my AOB. I have an issue myself. The issue is Kamweti. So Kamweti I want you out.		
2.	Chairman	<i>(continuing with the thread of the previous issue while Kamweti leaves)</i> I know Ouko (auditor general) can do it. I have known Ouko for many years. He can write a letter don't joke with him.		
3.	MD	Well take steps....		
4.	Chairman	The most important thing is that the damage has been done. When the damage has been done its very difficult to recover.... anyway I have an issue. I don't know if you guys saw the email I sent you.		
5.	Mvongera	Yes we saw it.		
6.	Kimote	Pole Pole Pole I never saw it mine never came through until now		
7.	Chairman	Okay		
8.	Kimote	Please get me a copy		
9.	Chairman	Anyway my problem is this. We- we we have a letter here that was written by Ahmednassir to my office about complaint of complaint commission and that sort of thing. And I was out of the country actually. It was on... the letter was written on the 17 th of July. When I came back I got another letter on my desk. I asked Kamweti please tell me what this complaint is about. And when he told me what the complaint is about [REDACTED] or discussing with the MD who was out of town at that time I think Kamweti had written a letter to the complaint commission which found out that I think that such letters cannot go out without having discussions with ourselves even if... even if... the manner it was written saying it was ch Ahmednassir should not have written a letter to the chairman or saying the Chairman is non executive or putting so many things... who is executive at the end of the day? The directors of this institution are the one who give management executive authority. And the directors can take away whatever authority. But we should not be discussing issues of the Board Outside ch... eh... what do we call outside our offices we should you should bring the documents here we agree we ask someone to write the letter saying... actually the letter was... I found the letter in my office I don't know [REDACTED]		
10.	Mwaniki	The language was not well		
11.	Chairman	I couldn't believe it actually. I totally couldn't believe that that letter was but I was not even in the country....		
			MY COMMENTS	
				The session starts here
				This is in fact the true purpose of the meeting despite the smokescreen claim that will be thrown to the world and the regulator that the Board is "acting on the advice of McKinsey". There is no mention of McKinsey in this entire meeting.
				[REDACTED]
				The letter of 18 th July cited by Pritchard, guidelines and a provision for the Auditor's role are amended to simply state the facts and that the Disciplinary Committee and must be applied in a way that does not allow for any attempt to circumvent the complaint.
				This is a mere recitation of a CBK Prudential Guidelines.
				Speaker is hiding the fact that he wrote two letters attempting to stop the prosecution on behalf of his friend who cannot explain why he got the letter from and does not wish to stand before the Disciplinary Committee because his allegation that I gave him the letter will fail when put under scrutiny.
				[REDACTED]
				Trying to feel the safest ground for conflict avoidance
				He is denigrating an area that he does not want members to point and question his feelings. I would have expected that the board should independently ask for the letter in question from the chairman and MD and conclude position and ask the

<p>12 13</p>	<p>Chairman Chairman</p>	<p>It was not a normal letter I called Mimir very upset. I asked Mimir how can you write such letters. He asked which letter are you talking about. He says he does not know anything about the letter itself. And when I asked him to explain to me what the issue is about he explained to me what it was about it was a very straightforward issue which I think is isis simple that we had a case issue with Ahmednassir. Ahmednassir went to court... we won.... He won a case against us eh he was a lot how many nine million shillings? How much were you supposed to pay him nine million shillings? Yeah something like that eight or nine million shillings</p>	<p>Chairman Chairman</p>	<p>Another group think comment. What is <u>normal</u>? Now ties in another director who is the cousin of Ahmednassir. Having declared his strong views on the issue, he should not chair this session.</p>
<p>14 15</p>	<p>AD Chairman</p>	<p>Nine point nine million shillings. I went through the documentation and eh your lawyer who was Kibel and Ohaga wrote a letter to the bank complaining that although... eh he asked the bank to pay the money in his letter and he went further and said anyway this thisthe judges seem to have... it depends on who takes court cases to the judges. He was insinuating that ahmednassir had eh what do you call maybe compromised the judges in not many words. Ahmednassir got to get to get the letter I don't know how from the bank here and Ahmednassir circulated that letter to what do you call the judges</p>	<p>AD Chairman</p>	<p>Ahmednassir has found a sympathizer, which certainly amounts to a breach of the director's fiduciary duties. He is supposed to act in the interests of the Bank, and not allow any collateral purpose. The complaint at the Disciplinary Committee is supposed to answer this question and the director ought to be interested in having a genuine answer but has aggressively attempted not to get an answer. Note that although here he does not know how Ahmednassir got the letter... "Ahmednassir got to get the letter I don't know how" in row 23 he suddenly knows Ahmednair is alleged to have asked me "... are you sure?... send me the letter"... sustaining a lie consistently is extremely difficult.</p>
<p>16 17</p>	<p>Quito Chairman</p>	<p>The judges yeah When he circulated the letter to the judges (he laughs) and he copied our lawyers who had written the letters our lawyers got very upset and wrote to us a letter of complaint here. But if you look at the documentations that you were given before kam we paid Ahmednassir the 9.9 million shillings Kamweli wrote a letter to Ahmednassir saying we... we have been instructed to pay you but you know you are wrong because of one two three four five six your conscious should clear you. Laughter both</p>	<p>Quito Chairman</p>	<p>This is a sign of how seriously the speaker takes the interest of the bank. I did actually tell the lawyer that he had signed a fee contract and unilaterally and quite dishonestly reneged and resiled on it.</p>
<p>18 19</p>	<p>Finance Chairman</p>	<p>You know your conscience should clear you and you should not take the money or something like that and a... so ahmednassir did that so when he was asked who gave you the letter Ahmednassir writes back and says Kamweli gave me the letter. More Laughter both</p>	<p>Finance Chairman</p>	<p>Reinforce the group spirit and in my view as far as the Chairman is concerned also to mask duplicity. This lie by the advocate is uttered 3 years after 5 letters have been issued, and under questioning of the Advocates Complaints Commission. The only way of resolving such a dispute is by having it adjudicated by an independent tribunal.</p>
<p>20 21</p>	<p>Kinoh Chairman</p>	<p>So the issue now became a personal issue between Kamweli and ahmednassir. And ahmednassir is now saying Kamweli is the one who has given him the letter anyway National Bank of Kenya did an</p>	<p>Kinoh Chairman</p>	<p>Reinforce the group think. But for the Chairman. I genuinely believe there is a lie to be masked! It is not a personal issue. It is the issue of an identified outsider (and personal friend of the Chairman and cousin of the MD) breaking into the Bank and taking its documents.</p>

22	Chairman	investigation through the ...one of the investigation officers who passed-away.	
23	Chairman	They could not find out where he got the document. In his report in his response he says we... the letter was given by Kamweti. So Kamweti wrote back saying he cannot be the one who wrote the letter because even if he is quarreling with this guy. (Caught) So I called Ahmednassir and asked him how did you get the letter. Just... He told me I told you guys Kamweti gave me the letter. He called me and told me...eh...we have been told that I had compromised the judges... and... and... by our lawyers so he told him... are you sure?... send me the letter... the guy was told... that's what he says so he was sent the letter... anyway <i>he clears his throat</i> subsequently we have a court case with	Firstly, when you listen to the Chairman say "...are you sure? Send me the letter..." you can tell that he has held unreported discussions with Ahmednassir on the issue and reached a mutual agreement, note however the earlier contradiction in row 15 above yellow highlight where he says "Ahmednassir got to get the letter? don't know how". Yet in row 23 he has an answer. It is very difficult to sustain a lie or to get someone to sustain a lie. This is not the behavior expected of a fiduciary. I suspect that this dishonesty is actually the cause of the two bouts of belaboured laughter on row 18 and 20.
24	MD	All this is quite a few years back by the way quite a few years back	and secondly, one must ask what prevented Ahmednassir stating this upon receipt of the first demand why allow this 5 year chase? Bring in haziness to get the facts out of reach. It also doubles up to justify the non production of documents.
25	Chairman	Yes 200 2006 but we have a court case with ahmednassir. Everytime I meet him in the streets hes telling me you know my money is rising to one hundred million you guys are going to pay 100 million	Everything here is off the cuff. No documents are produced and positions can change see contrasts between row 15 and 22
26	MD	He keeps threatening me	Fiduciaries ought not to be blackmailed by their acquaintances/relatives.
27	Chairman	Laughter	
28	Chairman	Every time I meet him on the streets he tells me	A supportive veiled threat to pay a consanguine relative.
29	MD	The clock is running on us	
30	Omibo	He was never paid 9 million	He has taken offence that no payment is made yet the matter is in court for litigation. For the record, the proceedings are Milimani HCCC No. 532/2004.
31	Chairman	He was never paid the 9 million and we were told to pay that 9 million	A veiled threat to pay and a justification which follows that has no legal effect. If the chairman has a strong opinion on something he should get another director to chair the session.
32	Omibo	We are going to court to contest the award	
33	Chairman	Each According to him we will lose the case miserably because that thing was taxed with 100% by the law and you know within a period of time and you had no time to raise the issue and we did not raise it with the tax guys and he says once that period has lapsed has	He has forgotten what I told him. That no ruling was ever drawn and signed by the taxing master and hence it was not possible or lawful to file an appeal. Time starts running 7 days after issue of the signed ruling. The taxing master has since left the judiciary.
34	MD	has elapsed by not appealing on a case	The speaker has spent considerable time with the advocate and is representing him. In my view, this contravenes CBK PG2 on corporate governance - conflict of interest
35	Chairman	And he has that letter that says... and Kamweti wrote to him saying we have been instructed to pay	As with the chair, that's a double-edged sword. He has been in a position to get the chair in an alternative position
36	Chairman	So me my issue was this.. my issue was the process and procedures that you guys are running in the bank . you cannot go and discuss management issues out there or ...or directors issues out there they have thought they have to write to a director here let's right procedure be followed to sort out those issues but you cannot go and say you have read the letter... your... the one he is an employee of the board at the end of the day so me I was very upset and I told myself that after all these meetings we've had cautioning Kamweti we've sat here and told Munitir to go ahead and caution Kamweti in the last meeting we gave him instructions to whatever. I have absolutely no confidence in	The Chairman has actually written two letters trying to stop the Complaints Commission and they have equally been asked by me to continue with Kamweti as personal complainant. That is the issue. Kamweti would get off the back of their friend and relative whatever they do or say on a point of principle.

	<p>correspondence which ah to be honest has preceded all of us but the bit which I think the chairman is alluding to be honest. He response of saying its my job to raise this issue and to challenge you he says it in such a bad way. Ahmednassir being a very cheeky lawyer pulls a fast one here has sort of deliberately wrote to the chairman because he says if I write If he writes because the chairman asked him he writes to the bank he will not be asking the right question. The question is: <u>is the company that is complaining</u> [redacted] He actually writes that in his... does he actually say that</p>	<p>friends and relatives.... Ahmednassir is a lawyer who realizes that the dishonest stand he has taken at the Advocates Disciplinary Committee will come undone there and who is using the Chairman of the Bank to stop an ongoing judicial process through threats and intimidation. Chairman has also called me thrice to tell me to stop this vendetta and I consider it conduct contrary to Section 117 of the Penal Code - intimidating witnesses.</p> <p>The Bank's complaining against Mr Ahmednassir commenced on 19/04/2011. Mr Ahmednassir and I shared the board and Ahmednassir instructed me to write a letter to the Directors in explaining the legal situation in the Advocates Complaint Commission by putting up a claim that the bank knew nothing about the complaint. In my law it is unhelpful which was introduced in court state in his support.</p>	
60	Chairman	<p>No He says its up to those guys to give them a minute of whatever is discussed</p>	<p>It is not necessary and my letter of 18th clearly explains that Section 60 of the Advocates Act does not require a resolution. This does not count for a dishonest chairman whose task is to release his friend from the proceedings.</p>
61	MD	<p>Ya so has who is complaining of course and I thought hes hes very crafty in his legal approach if it is the company that is complaining of my conduct so that he can address the right person of us it Kamweti as a fellow lawyer so that he can also complain as a fellow lawyer so that he can also complain as a fellow lawyer and I think the chairman should deal with him</p>	<p>This is a dishonest conclusion and an attempt to start rehabilitating this close relative lawyer whose effect on the Bank has been corrosive. The lawyer is not empty just dishonest. He has sought protection from his inexplicable unprofessional act. The fiduciaries have a mission to understand why claim in the bank regarding of this matter. The bank has been a water bill for the last 6 years. The bank does not equate. They have just deliberately changed position and made social peace with the advocate who fraudulently acquired confidential bank correspondence. Conflict of interest, dishonesty, failure to act on the fiduciary principle i.e. in the best interests of the bank.</p>
62	Chairman	<p>Yah</p>	<p>The banks letterhead had been used on this matter for the last six years. Therefore, who stands to gain from this new false position? Only Mr Abdullahi. The interest of the Bank certainly does not count.</p>
63	MD	<p>And he clarified that with him that is I as Kamweti which then begs the and in fact to upset the chairman question then why are you using the Bank's letterhead. You can complain directly as an advocate directly yourself. So...tha tha that added onto the top of all the other issues that last of which was the one engineer has mentioned not taking instructions of the board and [redacted] were documented in the previous discussions we had where where one of those were the where one of which was the change of is it the charter? Yea where we were saying the the resolution.</p>	<p>Keep the team on its narrow group think avenue</p>
64	F. omwela	<p>Mmm mmm</p>	<p>Board minutes are circulated in advance for directors to read and amend... Directors</p>
65	F. omwela	<p>Where [redacted] from omwelas visit this is now what the board asked you the board said facilitate the change of the articles so that when a managing director is appointed he automatically becomes part of the board and he went and gave a different instruction ... aaa n then there was a series of three of them and then the fourth one was that one of aaa not taking the instruction of [redacted]</p>	
66	F. omwela	<p>There was a previous one</p>	
67	F. omwela	<p>Deliberate actually..</p>	

58	George	There was a previous another one where ... He... he... wrote a letter without the authority of the board on in	should read and return drafts as required by the prudential guidelines this one has never. Claims of "deliberate" are in the same spirit as the ones on row 57. Directors are supposed to have independent minds. The former late managing director was fully aware of it. However the letter was just a replication of the CBK prudential guidelines 1.4.6. It was referred to an external counsel who did not have an issue with it and it should simply have been referred to the regulator for a second opinion.
59	Mwongera	Independence of directors	This issue of independent directors is dealt with in article 1.4.6 of CBK guidelines on corporate governance. The communication merely cited this provision. I recommend that the regulator look at this communication.
70	MD	Then there was the one on the dividend which I now remember we have the letter which we stayed	(i) Strained and dishonest effort to rationalize the main issue of Ahmednassir but there is no documentation only one-on-one discussions. (ii) No one has ever talked or written to me or asked for a verbal written explanation as natural justice and fairness, due process would require. Another smoke screen to shield a comrade.
71	Chairman	The one that embarrassed George	(i) A director has traditionally asked me to tell him what the likely dividend will amount to given the fact that the agenda with dividend figures was approved. The Director asks how the figures will be worked out and what the total amount will be for budgeting purposes. (ii) Dividend can and has never be paid prior to the AGM.
72	MD	Where George was made to run around through treasury got approval on dividends when no board had agreed so there was a series of actions or inactions or deliberately changing what the board had agreed and ... so that was where the board was sitting when I think this thing happened sort of.	(iii) Company Secretaries don't resolve on dividends it is only shareholders (iv) no communication/demand for explanation has ever been issued to me. Basic and fair hearing/defense has not been allowed
73	Mwongera	So md when you get this head of legal and tech	He was coming in hours and all that members are doing in terminating is saving themselves from a problem. No interviews done. Nothing in writing on my shortcomings that needed to be changed
74	MD	Company secretary	
75	Mwongera	Company secretary what will happen what is envisioned?	Reprimand letters follow a demand for explanation and an unsatisfactory answer. Basic rules of notice, fairness and an opportunity to be heard. I have never been asked for an explanation or given any answer-unsatisfactory or otherwise.
76	MD	Now eh wh one thing is that the company secretary works in terms of secretarial role it's a board appointment so who gets appointed there. If aaa h we give him the reprimand letter which is already ... You know has been printed and and the huxx said I should give III give that reprimand letter but beyond that its for the board to appoint public appoint someone from company secretaries office an that and as the person in charge we bring in another qualified company secretary into the equation and that also to consolidate the legal and and company secretaries office because currently its too personalised	There is no such thing as a free lunch. It is a combination of your own and staff's reprimand session

National Bank of Kenya Limited
Head Office, National Bank Building,
Harombee Avenue,
P.O. Box 72866-00200 Nairobi, Kenya
Tel: +254 (0)20-2828000
Cell: +254 (0)711-038000
Email: chairman@nationalbank.co.ke
Website: www.nationalbank.co.ke

24th July 2013

Mr. Leonard G. Kamweti
C/o Ourselves

no
Resubmission
1/11/13

Dear Sir,

From the desk of
MOHAMED A. HASSAN
Chairman

RE: EARLY RETIREMENT

We write to draw your attention to the Bank's policy as contained in the Staff Manual, particulars of which are otherwise within your knowledge, the official retirement age is 60 years. It is however, within the discretion of either party to exercise the option of early retirement from the age of 50 years.

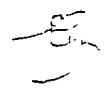
You have attained the age of 51 years and accordingly the Bank wishes to exercise its discretion to retire you as provided by the said provision. In this regard, your last day of service will be 31st July 2013.

You will be entitled to the following payments less any statutory taxes and deductions as may be applicable;

- i. Three (3) months' salary in lieu of notice totaling to Kshs. 2,012,682=00.
- ii. Payment of your 14 days leave earned but not taken as at 31st July 2013, totaling to Kshs.308,795=05.
- iii. Your retirement benefits will also be paid to you in accordance with the terms of the Bank's retirement benefits scheme.

The Bank appreciates your long devoted service and wish to make the following additional benefits:

- iv. Severance pay of one month for every completed year of service (17 years), which will be totaling to Kshs.11,405,198=00
- v. Medical allowance of Kshs.150,000=00
- vi. Half (1/2) a month's salary for each year to retirement (9 years) totaling Kshs.3'019,023=00



As you are also aware, you are indebted to the Bank for certain loan facilities advanced to you currently totaling Kshs. 6,488,012.15 I am however, pleased to inform you that the Board of Directors has approved a 40% rebate of the outstanding loan if you will settle the amount immediately. However, if you chose to settle 50% and above but less than 100% of the outstanding loan then you will be entitled to a 20% rebate. Otherwise the total outstanding loan will be restructured per the Bank's credit policy. Any settlement below 50% of the outstanding loan will not qualify for any rebate.

You are also entitled to statutory certificate of service from the Bank. However, please feel free to let us know should you require further references for a possible employment opportunity in future.

The Human Resources Division will liaise with you to facilitate all-the-required exit procedures as stipulated under the Bank's regulations including but not limited to the procedures under the Human resources Manual. We hope for your utmost co-operation in this regard.

On behalf of the Board of Directors, Shareholders and all stakeholders of the Bank, I wish to thank you for your valuable contribution during your employment with the Bank and wish you the best in your future endeavors. In addition thereto Human resources Division will be available to answer any questions that you may have. We wish to inform you that all communication channels within the Bank are open for your use during this transition period. Please do not hesitate to contact us for any clarification and/or information that you may require. Again we would like to thank you for your contribution.

Please sign the duplicate copy of this letter confirming receipt of the terms stipulated herein and return same to us.

Yours sincerely,



M.A. Hassan
Chairman

ACKNOWLEDGEMENT OF RECEIPT.

I, Leonard G. Kamweti, hereby acknowledge having received from National Bank of Kenya Limited a Letter of Early Retirement of which the above is a copy.

Signed: _____

Date: _____

31-07-13

053

National Bank

2nd July 2013

Your Ref: CC/A/76/2/204/10



G N Thuku (Mrs)
Senior Principal State Counsel,
The Advocates Complaints Commission,
The State Law Office,
Sheria House, 5th Floor
Nairobi

National Bank of Kenya Limited
Head Office, National Bank Building,
Harambee Avenue,
P.O. Box 72666-00200 Nairobi, Kenya
Tel: +254 (0)20-2828000
Cell: +254 (0)771-038000
Email: chairman@nationalbank.co.ke
Website: www.nationalbank.co.ke

From the desk of
MOHAMED A. HASSAN
Chairman

Dear Madam,

Complaint Against Ahmednassir Abdullahi by National Bank of Kenya Limited

I acknowledge receipt of a letter dated 18th June, 2013 addressed to you and copied to my office.

Further to my reply letter of 28th June 2013, I wish to restate and clarify the following -

1. That having read the complaint and especially paragraph 2 of the same, I note that the complaint submitted to your office was in form and in essence made as a complaint by National Bank of Kenya.
2. However I wish to restate and reiterate that the National Bank of Kenya, whether through the Board or Management, has not authorized or sanctioned the complaint so filed.
3. That in light of the content of Paragraph 1 and 2 herein above, I restate that since the Complaint is purported to have been filed on behalf of National Bank of Kenya, then the same is hereby withdrawn as it was filed without due authority or sanctioned by the relevant committees or decision making organs of the bank

Yours Faithfully,

Mohamed A. Hassan
Chairman

cc - Ahmednassir, Abdikadir & Co. Advocates
CBA Building, 2nd Floor, Standard St
Nairobi

Munir Sheikh Ahmed
Managing Director
National Bank of Kenya

On the 30th day of August 2013, I, M.A.H.
Chairman of the Board of Directors of National Bank of Kenya Limited,
do hereby certify that the above is a true and correct copy of the
original/Declared before me this 30th
day of September 2013
at Nairobi, Kenya.
MOHAMED A. HASSAN
CHAIRMAN

M.A.H.

DD/Committee

CONFIDENTIAL
&
URGENT.

WASIKE
pls def
FA
29/10

548

From The Desk

Of

Tom Mogaka,

P.O. Box 102909 - 00101,

Nairobi

Tel. 0716 466 027; email:kenyangeri@yahoo.com



The Chairman,
Parliamentary Committee
On
Justice & Legal Affairs,
House of Parliament.

URGENT & CONFIDENTIAL

Dear Sir,

**COMMISSIONER AHMEDNASIR ABDULAH, ONE WHO OBSTRUCTS
JUSTICE IN KENYA AND THEREFORE UNFIT TO SIT IN THE
JSC:THE UNKNOWN TRUTH.**

- I write to request you to bring into closure membership of Ahmednasir Abdulahi as a Commissioner with Judiciary Service Commission, after you give forensic scrutiny of my claims herebelow, because:
 - FIVE REASONS WHY THE COMMISSIONER DOESN'T DESERVE TO SIT IN THE JSC.
 - I WAS GRANTED PERMISSION BY CJ TO SEEK CONSTITUTIONAL INTERPRETATION OVER HIS POWER HE WAS WIELDING.
- a) FIVE REASONS
DISREPECT LAWS OF KENYA
 - i) CONTEMPT OF COURT
He doesn't respect the laws of Kenya, in the first place having disobeyed a Court Stay in HCCC 5081 of 1987 not to sell land by instructing NBK to go ahead and sell the property pretending and lying that he was not

aware of a Court decree existing then and yet had issued warrant of arrest using the decree, which, itself was sufficient to address the purported bank debt and when no other methods were legally permitted. See corresp. No 1 (2/10/02); Court Stay of Execution No2 (30/9/2002; Notice of Objection No 3.(30/10/2002).

ii) HIS AGENTS DISREGARD LAW AND DUE PROCESS
In a matter of controversial Karen parcel of land where he and Mr Brian Yongo are pitched to try to remove residents who have lived there for over 30 years awaiting for their titles, Ahmednasir, who has dismissed Mr. Yongo's complaints as idle talk, ordered his agents to forcefully enter residents homes without court orders, leave alone eviction orders. (Enclosed see picture No. 4 a,b.. Mr. Yongo with Mr. Andrew Ouko who is Mr. Ahmednasir's client...and No5.... trying to enter residence by force but is restrained at the gate. Another picture No...6a shows people fully armed with arrows that is a serious threat to peace).

iii). AHMEDNASIR ALLEGEDLY REPRESENTING A DEAD PERSON ^{that}
As if above [^] was not enough, Ahmednasir, recently issued notice to some residents of Karen plots saga, but allegedly addressed that he was representing Mr. Jason Ouko who died in about 1997 while current estate administrators is disputed in court. See Succession Cause H553/97 ^{Gift decree. Justice Osiemo signature in dispute. (NO 6-b)}

b) PRETENDER

He pretended that the Decree of August 29, 2001, did not exist and yet he was issuing warrants of arrest in implementation of that decree. (Enclosed Decree No...7. and Notice to Show Cause No 8a. This same Decree is visited by J. Waweru ^{where quotes that if he has a decree the Bank loses Stat. Power of Sale}

c) SCHEMER

Extracts from Court file (NO 8b)
ruling p 7

In a move to deprive me of my property, knowing that their existed flaws and breach of contract with the bank, and having realized existing decree was flawed, a different date of the same decree was inserted in the Application for Stay which eventually helped him to disown the Decree, thus raising queries whether this was done in collaboration with

our lawyer, See letter to the lawyer No 9a(21/07/11), because soon after, the latter turned up to represent him(Ahmednasir), in his matter apparently against NBK. How can such a person be a champion of justice to sit in the JSC?

d). RACIST *See also extract from Court files Ruling (No 9b) where Ahmednasir quotes the DECREE*
While we appeared before J. Hayanga on a matter (HCCC 1418 of 02), My wife vs both Myself and the Bank, over the same property to protect her rights under Matrimonial Property Act, Ahmednasir used derogatory language against my wife which bordered on racism. To address her as 'This African Woman, could I go to look for her in the village to serve her with court papers?' This was uttered before senior lawyers like (Kawaja - Hamilton & Mathews and Alfred Nyandieka) including Justice Kiage of Court of Appeal, who was then my lawyer and can, therefore, testify. See my letter to CJ No 10 (12/02/04). Also same for 11.

c). INTIMIDATION OF JUDGES- AHIRER AND FIRER OF JUDGES THAT AFFECTED JUSTICE: CJ GRANTS PERMISSION FOR CONSTITUTIONAL INTERPRETATION.

On same matter in defending my property, I realized that, judges were shaky not knowing their fate, as Ahmednasir was appearing before them and at the same time purging them, I protested to the Chief Justice. He granted me permission to call for Constitutional Interpretation. (See my letter to CJ No...12; his reply No...12a 28/04/04) and the Standard print media coverage No...12(28/03/2004). *also See Petition Draft 12b for information.*

d) WHAT HAPPENED TO MY LETTER TO YOUR COMMITTEE TO BLOCK AHMEDNASIR FROM PRESIDENT KIBAKI APPROVING HIS NAME

I HAVE COMPLAINED BEFORE TO YOUR COMMITTEE WHEN IT WAS HEADED BY HON ABDIKADIR, then Chairman of your Committee, THE CO-PARTNER OF AHAMEDNASIR IN THE LAW FIRM "Ahmednasir, Abkadir & Co Advocates", where I presented all this complaints above to bar him from his approval by the President.

Could Hon Abdikadir have blocked my letter?

The family has suffered unbearably over the years and the education of the children suffered since the income from the farm was cut off and yet J. Waweru had ordered that we remain in the farm and the family gave an undertaking to the court only for the plunders of this Commissioner to become an obstacle to our lives. This same reason of pecuniary embarrassment has contributed to court process delay and affected our access to quality legal service, which was a successful design by our opponents. In a situation that looks like personal vendetta, as if he has not inflicted enough harm to my family with an oozing wound, he follows me to the Karen plots saga in siege of me.

All this is as a result of, among others, Ahmednasir Abdulahi, whose larger than life image seem to hover over us from above and around the country making us feel very, very insecure and scared. Kenyans must be very, very worried about this man.

Tom Mogaaka



ANNEX Y

AKHEDNASIR, ABDIKADIR
& CO. ADVOCATES

1st Floor, Prudential Assurance Building,
Wing B, Wabera Street,
P.O. Box 57731 NAIROBI.
Tel: 217886, 215422, 343957 • Fax: 213582
E-mail: ahmedahdl@ahmedahdl.com

PIN. NO. P051123722K

VAT. REG. NO. 0109750

Our Ref: AAC/NBK/054/2001

Your Ref:

A. M. Abdullahi
A. H. Hussein
H. N. Lakoba
R. W. Mbanya

2nd October 2002

National Bank of Kenya Limited,
Harambee Avenue,
P.O. Box 72866-00100,
Nairobi



Attn: Mrs. Z. K. Moga

Dear Madam,

RE CIVIL CASE NO. 5081 OF 1987
THOMAS MOGAKA T/A TROPISUN LIMITED
-VERSUS- NATIONAL BANK OF KENYA LIMITED

We have been served with a copy of stay of execution order purporting to stop you from executing a purported decree of 8.3.2002.

The order basically stops you from executing the said decree of 8.3.2002, which we are sure you will not be executing. We are actually unaware of the existence of the said decree of 8.3.2002. The Order of 8.3.2002 merely dismissed an application brought to court by the plaintiff, and as such no decree arises there from.

However, there is no restraining order stopping you from exercising your statutory power of sale. You are at liberty to sell the said property at a public auction, since the same is pursuant to your statutory power of sale.

Yours faithfully
Ahmednasir, Abdikadir & Co.
Advocates


Ahmednasir M. Abdullahi

CC Ganam Investments
Auctioneers
Mishu House
Nairobi

When replying please quote our reference

2

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURT
CIVIL SUIT NO.5081 OF 1987



TOM MOGAKA..... PLAINTIFF
VERSUS
NATIONAL BANK OF KENYA..... DEFENDANT
AND
SOPHIE MOGAKA..... OBJECTOR

To.
Garam Investments
Auctioneers,
Muhu House
NAIROBI.

NOTICE OF STAY OF EXECUTION
(Under Order XXL Rules 54 of the Civil Procedure Rules)

WHEREAS a notice of objection has been filed on the 30th day of September, 2002 in this court on behalf of the objector by Messrs Evans N. Monari & Company, Advocate, NAIROBI against the attachment and sale of goods attached as shown on the copy of the Proclamation containing the full inventory of the goods attached by you in execution of the decree herein.

YOU ARE HEREBY COMMANDED not to take any further steps as regards the said attached goods until further order of this court.

GIVEN under my hand and the seal of the court this 30th day of September 2002.

DEPUTY REGISTRAR
HIGH COURT OF KENYA
MILIMANI COMMERCIAL COURT
NAIROBI

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI
(MILIMANI COMMERCIAL COURTS)

CIVIL SUIT NO. 5081 OF 1987

TOM MOGAKA PLAINTIFF

Versus

NATIONAL BANK OF KENYA LIMITED DEFENDANT

And

SOPHIE MOGAKA OBJECTOR

NOTICE OF OBJECTION

TAKE NOTICE that SOPHIE MOGAKA, the objector hereinabove named hereby objects to the intended sale on 3rd October 2002 by public auction of L.R. No. 7993 (I.R. 9427) Trans-Nzora District in satisfaction of the decree/order herein dated 8th day of March, 2002

THE NATURE of the claim relied is that of equitable property interest as the land is held in trust for her and no one has ever had the authority to charge, mortgage or otherwise alienate the same either for her benefit or the benefit of any other person

THE Objector's address is care of E.N. MONARI, Advocate 23rd Floor Anniversary Towers, P.O. Box 50250 Nairobi.

Dated at Nairobi this 30th day of September 2002


E.N. MONARI ESQ.
ADVOCATE FOR THE OBJECTOR

Drawn & Filed By -

E.N. Monari Esq
Advocate
Anniversary Towers, 23rd Floor,
P.O. Box 50250
Nairobi







1001

Roselyn Ouko, Admin Ouko
16th



Migori

[Handwritten signature]
2007

REPUBLIC OF KENYA

F

S

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE No. H.C. 353 OF 19 97

In the matter of the Estate of JASON ATINDA OUKO Deceased

BE IT KNOWN that on the 22ND MAY 19 2006, letters of Administration intestate of all the estate JASON ATINDA OUKO

(also known as AFORESAID)

deceased late of SUNA-MIGORI who died domiciled in THE REPUBLIC OF KENYA on the 2ND FEBRUARY, 19 96

at MIGORI which by law devolves to and vests in his/her personal representative were granted by this Court to ROSELYN DOLA OUKO,

AARON TAFARI OUKO (and DAVID SCOTT ONGOSI

of P.O. BOX 30962-00100, NAIROBI) he/they having undertaken faithfully to administer such estate according to law and to render a just and true account thereof whenever required by law so to do.

ISSUED by the High Court/President Magistrate's Court through the registry at

NAIROBI IN KENYA this 22ND MAY 19 2006

Signature *[Handwritten Signature]*
Judge of the High Court
President Magistrate's Court

(7)

Marekwa Co 8201
Please have more
Copies Jm Agustin

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

CIVIL CASE NO. 5081 OF 1987

HIGH COURT OF KENYA
MILIMANI COMMERCIAL COURTS
27 AUG 2007
RECEIVED

THOMAS N. MOGAKA

T/A KENYA TROPISUN INTERNATIONAL LTD..... PLAINTIFF

-VERSUS-

NATIONAL BANK OF KENYA LTD..... DEFENDANT

(In open court on 4th December 1998 before the

Hon. Justice. Ole-Keiwua (as he then was)

DECREE

CLAIM FOR:-

- a) An injunction to restrain the defendant by itself, it's servants or agents or otherwise howsoever from selling, advertising for sale, or in any other way whatsoever disposing of the said property known as L.R. No. 7993 situated in Kitale Municipality until further orders of this court.
- b) A declaration that the defendant is not entitled to exercise its power of sale until it has first obtained the relief provided for under the policy.
- c) Costs of this suit.
- d) Such further or other relief this Honorable Court may deem fit and just to grant.

COUNTER -CLAIM FOR:-

- a) The sum of Kshs. 9,183,690.80 plus interest at the rate of 30% per annum with effect from 31st May, 1995 until payment in full.
- b) Costs of this suit.
- c) Interest on (b) above at Court rates from the date of filing suit until payment in full.
- d) Any other or further orders that this Honourable Court shall deem fit and just to grant.

UPON READING the application presented to this court on 28th May, 1997 by Counsel for the Defendant under Order XXXV Rule 1 of the Civil Procure Rules and UPON READING the affidavit of VINCENT S. OBONG'O sworn on the 16th day of May, 1997 in support of the application and the annexures thereto and UPON HEARING both counsel for the Defendant/Applicant and counsel for the Respondent it is ORDERED:-

1. THAT the plaintiff do pay to the Defendant the sum of kshs. 15,780,850 80 as more particularly set forth hereunder together with interest thereon at 30% per annum from 5th December 1998 until payment in full.
2. THAT the plaintiff do pay to the Defendant the costs of this suit to be taxed and certified by the taxing officer of this court.

PARTICULARS

a) Principal amount - Kshs. 9,183,690.80
b) Interest thereof at 30% from
31.6.95 to 31.12.98 (11311 days- Kshs. 6,597,160.00
TOTAL - Kshs. 15,780,850.80
=====

GIVEN under my hand and the seal of the court at Nairobi this 4th
day of December 1998.

ISSUED at Nairobi this 29th day of August 2001.

DEPUTY REGISTRAR
HIGH COURT OF KENYA
MILIMANI, NAIROBI

DEPUTY REGISTRAR
HIGH COURT OF KENYA AT NAIROBI MILIMANI

decree/ak/jiw

**AHMEDNASIR, ABDIKADIR
& CO. ADVOCATES**



6b

1st Floor, Prudential Assurance Building,
Wing B, Wabera Street,
P.O. Box 57731 NAIROBI.
Tel: 217886, 215422 - Fax: 213582
E-mail: ahmednasir@ahmedabdi.com

A. M. Abdullahi
A. M. Hussain
A. W. Ojiambo
R. W. Mhanya

PIN. NO. P051123722K
VAT. REG. NO. 01097501

Our Ref: AAC/NBK/054/2001.
Your Ref:

22nd April, 2002

Deputy Registrar
High Court of Kenya
Milimani Commercial Court
NAIROBI.



Dear Sir,

RE: HCC. NO. 5081 OF 1987 - MILIMANI
THOMAS MOGAKA -VS- NATIONAL BANK OF KENYA LTD.

The above matter refers.

Kindly re-issue a notice to show cause why execution should not issue against the judgment debtor whose application for stay was dismissed with costs on 8th March 2002.

Yours faithfully,
Ahmednasir Abdikadir
& Co. Advocates.

Ahmednasir M. Abdullahi.

When replying please quote our reference

APPLICATION FOR EXECUTION OF DECREE

IN THE HIGH COURT OF KENYA

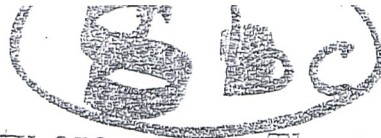
AT NAIROBI

KWE MEREKA & CO. ADVOCATES, decree-holder, hereby apply for execution of the decree herein below set forth.

1.	No. of Suit	HCCC No. 5081 Of 1987									
2.	Name of Parties	Thomas Mogaka T/A Kenya Tropisun Intl Ltd Vs. National Bank of Kenya Ltd									
3.	Date of Decree	29th August, 2001									
4.	Whether any appeal preferred from decree.	NIL									
5.	Payment, or adjustment made, if any.	NIL									
6.	Previous application, if any, with date and result.	NIL									
7.	Amount with interests due upon the decree or other relief granted thereby together with particulars of any cross-decree.	Decretal Sum Interest from 29.08.01 - 12.09.01 TOTAL	Kshs. 15,780,850.80 Kshs. 181,587.90 <hr/> Kshs. 15,962,438.70								
8.	Amount of costs, if any, awarded.	As awarded in the decree Interest Subsequently incurred Court collection fee TOTAL	<table border="1"> <tr> <td>S/.</td> <td>cts.</td> </tr> <tr> <td>193,031</td> <td>00</td> </tr> <tr> <td colspan="2"><hr/></td> </tr> <tr> <td>93,031</td> <td>00</td> </tr> </table>	S/.	cts.	193,031	00	<hr/>		93,031	00
S/.	cts.										
193,031	00										
<hr/>											
93,031	00										
9.	Against whom to be executed.	Thomas Mogaka T/a Kenya Tropisun International Ltd P.O. Box 60836 NAIROBI									
10.	Mode in which the assistance of the Court is required.	By issuance of notices to show cause why warrants of attachment & sale of the judgement debtors moveable assets should not issue to satisfy the decree herein.									

HIGH COURT OF KENYA
 MILIMANI - NAIROBI
 20 SEP 2001
RECEIVED

MSC
14/11/01



Grounds for the alleged illegality are given. The sale itself of the property to the 3rd Defendant in an auction conducted by the 2nd Defendant has been challenged on various grounds particularized in the plaint. Those grounds include the pleas that there was not any or proper statutory notice served upon the Plaintiff; that there was not any or proper notification of sale served; and that the sale itself was tainted with fraud. Many particulars of the alleged fraud are given.

The Defendants have of course denied all these allegations by the Plaintiff. The allegations are repeated in the Plaintiff's affidavits sworn in support of the application and in equal measure denied in the replying affidavits. All these are weighty issues that cannot be adjudicated upon at this stage upon the affidavits. They will have to await trial of the action.

Furthermore, it is pleaded in the replying affidavits that the 1st Defendant already has judgment in another case against the Plaintiff for the sums of money owed upon the charge and further charge. An important issue arises from this -whether the 1st Defendant could, in the face of that judgment, be entitled in law to exercise its statutory power of sale. This issue, just like the others, will have to await adjudication at the trial.

Having read the main pleadings and the various affidavits I am satisfied that the Plaintiff has a *prima facie* case with a probability of success. It is to be noted that fraud is not alleged against only the 1st Defendant and the 2nd Defendant (the auctioneer). It is also alleged against the purchaser (3rd Defendant) as an active participant in the alleged fraud.

Does the Plaintiff stand to suffer irreparable damage? Should the Plaintiff ultimately prove at the trial the various serious allegations pleaded the trial court may well find that the 1st Defendant had no statutory power of sale to exercise, or that the same had not accrued, or that the auction as conducted was a complete fraud and that therefore the sale of the Plaintiff's land was null and void. ~~In that event would an award of damages be adequate compensation? I think not.~~ I am of the same view as Ringer, J (as he then was) in the case of SIMIYU -VS- HOUSING FINANCE COMPANY OF KENYA LTD., (2001) 2 EA 540, that where a Defendant in his conduct has been in flagrant breach of the law the court will issue an injunction to protect the proprietary interests of the Plaintiff, notwithstanding that damages would be adequate compensation and that the Defendant would have the ability to pay such damages. In the

present matter there are serious allegations of breach of statutory provisions, and, looking at the various affidavits filed, and without purporting to decide the issue, it cannot be said that they are without serious basis. I would therefore be inclined to grant the temporary prohibitory injunction sought.

What about temporary mandatory injunction? This is not a clear-cut case. There is a dispute as to whether the Plaintiff was in possession or not at the time of sale. There is also a dispute as to whether the 3rd Defendant has taken possession of the entire parcel of land or just a portion of it, and, in its manner of taking possession. It is a large parcel of land measuring 340 acres. All these disputed facts cannot be settled upon the conflicting affidavits. From what was said during arguments I get the impression that the 3rd Defendant may not yet be in occupation of the entire parcel of land and that the Plaintiff may be in possession of a portion thereof. But as I have said, these disputed facts are not settled by the affidavits. I hold that there are no special circumstances here as would warrant the issuance of a temporary mandatory injunction as sought.

In conclusion therefore I will allow prayer No 3 of the chamber summons dated 20th November, 2008. This will be upon

the condition that the Plaintiff files by 1.00p.m. on 21st February, 2005 an appropriate undertaking as to damages. Prayer No. 4 of the application is dismissed. Costs of the application shall be in the cause. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 17TH DAY OF
FEBRUARY, 2005.

H.P.G. WAWERU
JUDGE

DELIVERED THIS 18TH DAY OF FEBRUARY, 2005.

July 21, 2011,

Tom Mogaka,

P.O. Box 102909 00101,

Nairobi.

Evans Monari

C/o Figgs & Advocates,

P.O. Box

Nairobi.

Dear Evans,

**DISTURBING QUERRIES ON COURT DOCUMENT – NOTICE OF STAY OF
EXECUTION & NOTICE OF OBJECTION**

HCCC 5081 OF 1987: TOM MOGAKA VS NATIONAL BANK OF KENYA (NBK)

In the year 2000, you represented the family on a controversial land matter LR 7993. Kitale when you went to court to seek Stay of Execution against the sale of the said farm.

In Justice Ringera's chambers in the year 2001 or thereabout, the matter had come before him when he ruled and I quote "many of the matters urged on behalf of the plaintiff (myself) evoke sympathy from the court and may be a basis for other action by him against the advocates concerned, but they are irrelevant to the exercise of the courts discretion under Order 35 rule 10," unquote.

Over the years, I have been disturbed about events that culminated to the sale of the farm, and wonder where, I, you and others, went wrong when everything looked good for us. Many mistakes have been made by many lawyers who had stood for me and I am not without mistake, especially in delay to execute my

LR No. This is signed by you. Which one did you file and serve?

- II) There exists yet, a second one of 30th September, 2002, dully stamped by deputy Registrar High Court. ATTACHED GOODS Instead of quoting LR 7993, as (1) above, "against the attachment and sale of the goods in the execution of the decree hereto copies whereof attached hereto."

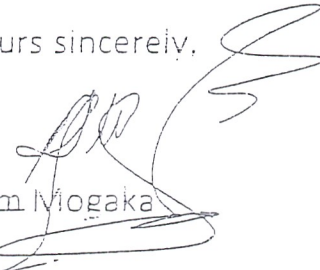
You proceeded to file "Notice of Withdrawal" (6th January, 2003) and " Notice of Discontinuance" same date.

THE POINT OF CONTENTION HERE IS THE DECREE DATE WHICH GAVE THE OTHER PARTIES A CHANCE TO DISOBEY COURT ORDERS AND GET AWAY WITH SALE.

I have your hand written drafts, but I don't see any of these errors therein, which make me conclude that it would have been the one who typed them. It is this point that I am searching for. Was it the Deputy Registrar who made these mistakes?

I would wish that we sit and discuss this in short time possible.

Yours sincerely,



Tom Mogaka

Cc Deputy Registrar High Court – Commercial Section.

Encis: court documents and captions of bulky documents

receipts exhibited is not contradicted. His contention that he did not consent to increase of interest beyond 15% as contained in the further charge is also not contradicted. He has a good defence to the respondent's counterclaim pleads for favourable exercise of judicial discretion. Allow application as prayed.

Mr. Ahmed Nassir: oppose. Rely on grounds filed and particularly ground (b). The real issue is whether court can exercise its discretion under Order 35 rule 10. There is such a discretion in proper circumstances. The discretion is available to a party who did not attend at the hearing. The plaintiff need not be there in person. A person can appear in person or by an agent. The lawyer was in court. He made an application for adjournment which was refused in exercise of discretion. No appeal has been preferred. The decree itself shows both counsel were heard. In any case his lawyer had admitted the indebtedness and applied to pay by instalments. It is supported by plaintiff's own affidavit. Party cannot be allowed to change his position with every change of lawyer. The plaintiff's claim is still alive. He cannot prosecute it if he wishes. If his lawyer did not advise him of the hearing date of application for summary judgement, he has a redress against such advocate on negligence. Court should not exercise any discretion in his favour. Dismiss application.

Mr. Mogikoyo: the lawyer on record said he did not have sufficient instructions. He should have withdrawn but he did not. We can live even with a conditional leave to defend.

Court: I would want to know how much the applicant would be owing to the respondent if interest were calculated at 15% par annum on Kshs.800,000 instead of Kshs.1,500. I will adjourn to 11.30 am.

12.05 pm *Mr. Mogikoyo:* We are unable to agree.

Mr. Ahmed Nassir: perhaps the status quo could be maintained to enable us to take further instructions. The matter is vexed.

Order: proceedings are adjourned to 18.2.2002. Status quo to be maintained until then.

A.G. Ringera

JUDGE

18.2.02

Coram Ringera J.

Court clerk Muriithi

Mr. Mogikoyo for plaintiff/applicant

Miss Mbanya holding brief for Mr. Ahmed Nassir for defendant/respondent

Mr. Mogikoyo: We have been unable to reconcile figures. Let court rule on basis on material on record.

Court: Ruling on 8.3.2002 at 9.00 am.

A.G. Ringera

JUDGE

8.3.2002: Ringera J.

Mr. Mogikoyo for applicant

Miss Mbanya for respondent

Ruling read in court.

A.G. Ringera

JUDGE

12th February, 2004.

Tom N. Mogaka
P.O. Box 97 00517
NAIROBI

Chief Justice
The Judiciary
The High Court of Kenya
P.O. Box
NAIROBI

Dear Sir,

1. CAN PUBLIC (MEDIA) BASHING OF JUDGES AND CALL FOR THEIR PURGING GUARANTEE IMPARTIALITY AND FAIR DECISION IN COURT WHERE THE BASHER (LAWYER) IS AN INTERESTED PARTY IN A CASE?
2. IS ANYBODY ALLOWED DURING COURT PROCEEDINGS TO USE DEROGATORY LANGUAGE ON A PLAINTIFF?

In the name of justice and the new spirit of doing things correctly and ensuring the rights of citizens are respected void of corruption, I wish to seek your guidance on the following:-

BACKGROUND

1. First, to request you to look at the following interrelated files with all keenness with intention to see whether my rights to be heard have not been violated and whether there has been respect for peoples property in my plight to redeem a family property - a fight that stretch for over 20 years. If you cannot notice fraud, intimidation, tenets of land grabbing, misuse of office, hoodwinking and conspiracy to steal, under valuation of a property with intention to cheat then I am ready to withdraw this strong statements. And yet this is what was supposed to be related in the witness box by myself in the court on Case No. HCC 5081 of 87 but it never happened because I have been denied the chance. If you have to instill to Kenya moral uprightedness and create a corruption - free society, then the experiences that I have gone through must not be ignored because, in corruption style it cuts across fraud by bank, file disappearance, influencing bidders by bank intimidation and extortion, covet for neighbours property, fixing of auction, predetermined valuation for special price, contempt of court order or designing to evade me and fixing of stage managing of auction.

Intentional misinterpretation of orders of this court to take away property, meandering through legal loopholes to achieve evil intention (Staf. Power of sale and judgement), misuse of office by administration, and armed personnel to enforce occupation by a stranger in a family property, attempt by police to evict the rightful owner. Putting barrier in public road to block entry for others to their farms and manning unlawful barrier by armed personnel that include of Government and a private army guards that create war like zone to scare workers, arresting and evicting my workers by police and denying them right to make statements. Misuse of firearm provided to KOR by the government. Denying me security granted by P.S. Defence & Provincial Administration that resulted violence attack on the Mogaka family in the farm. All these plus the past regimes habit of "have been received instructions from above" which has also featured make what NARC's Government stands for a mockery. That now my chance to be heard in court are unsure, I bring this facts to your attention. It is not my wish to embarrass the Government but unless this matter receives attention it deserves and corrections made; it is a problem that will never go away. Failure to do so is to give chance to evil corruption to prevail. Now you may investigate and prove me right.

The files are:-

HCCC 5081 of 87

HCCC 1654 of 1989

HCCC 1418 of 2002

CONSTITUTIONAL INTERPRETATION REQUIRED IF NO LAW EXISTS

2. Second, I write to seek guidance whether it is not legally unacceptable for a chief lawyer of all lawyers in the country who happen to represent a bank that is respondent in cases in court HCCC 5081 of 87 and HCCC 1418 of 2002 to publicly threaten sitting judges to have them investigated and recommend them for their dismissal (and proceed to appoint his committee for same) only for the same lawyer or his partner to turn in court to defend his client before the Judge that could be one being purged. How could one know whether the fear created will not tilt a court decision in favour of his client? And against me since the fate of the Judge is somehow in his hands (Chief Lawyer)? For this my Lord as I layman if there is no law, I need constitutional interpretation and demand protection and for other Kenyans too.

My Lord, I am not saying this without unfounded reasons. Recently in a case HCC 1418 of 2002 Sophie vs National Bank of Kenya myself and others, when Justice Mbiti resisted to allow the application of the said

lawyer to have the above mentioned case (in which I am also respondent) to be transferred to Milimani Commercial Court for reasons that is hard to guess but was turned down and going by the heated arguments and how the judge gave his orders denying him his second request to have the file placed before your offices, he could have not been happy as he was evidently hurt.

In the same case also sits Mr. Kawala of Hamilton and Mathews Advocate, who too has been appointed to a committee by Mr. Nassir's body to purge judges by Law Society of Kenya. This lawyer and law firm that is defending a European wanting our property since 80's is using unprecedented unbecoming tactics and influence to take away our family property. Both their appearances in one sitting before any judge may make matters even more serious.

It is no secret that soon after the heated arguments in court the Chief Lawyer recently blasted Justice Mbiti in the media, and called for investigation into his "corruptive ways"; although it was in the unrelated Goldenberg Case, it raises two disturbing questions:-

1. How could a layman who witnessed fiery exchanges between J. Mbiti and Ahmed Nassir in Court interpret these goings on? Could it be because of what transpired in Court? Or Justice Mbiti is actually corrupt? How could one draw a line between the two incidences?
2. If in a case where I or anyone else has his land interests threatened, Justice Mbiti is the Judge and Chief Lawyer is defending the Bank, would the decision remain impartial, since Justice Mbiti or any other judge, who fears the purge, is only human?

For these reasons my Lord, if there are no laws to defend me and citizens at large from this kind of scenario, then I would seek constitutional interpretation because I would not accept him appear in any case in which I have interest.

USE OF DEROGATORY LANGUAGE ON MY WIFE

3. My heart is troubled in the manner in which the same Chief lawyer conducted himself before Justice Hayanga in this same matter which he has greatly personalized. I found it disgusting the remarks Ahmed Nassir the Chief lawyer made about my wife (although I am in domestic disagreement) during a court proceeding that to me is derogatory. To call somebody "THIS AFRICAN WOMAN" may sound normal but the manner in which it

was put brings bad memories of racism that this and other terms directly or indirectly refer to suggest "INFERIORITY" - a situation that our people suffered under for centuries. Mr. Ahmed Nassir is an African, Kenyan of Somali origin. Uttering this makes me confused what he is. This plus the remark "Could I serve villagers?" which he made when asked whether Notice of Sale was served, is unacceptable remarks coming from head of all lawyers. I've brought this matter to you for redress and guidance because I could have rightfully complained first to LSK but unfortunately he is the HEAD of that body, that is legally by the Laws of the land to ensure among other things that our rights are protected.

ACTS OF PREDETERMINING PROPERTY PRICE AT AUCTION

4. Finally, I seek guidance whether the Law of Kenya is adequate to ensure that there is transparency when a bank, as is in practice now, engages to woe bidders of property to be sold by auctioning in the same advertisement offers, to provide loan to potential bidders that may be negotiated before or after. Wont this influence negatively or predetermine the price and the outcome of the Auction to the disadvantage of the property owner? (I attach advert).

With an early opportunity to address you personally, will reveal many more things that are not right, that belong to a different era but which will frustrate people's rights and your war on corruption.

I believe you will not ignore a small voice like mine.

Yours faithfully,

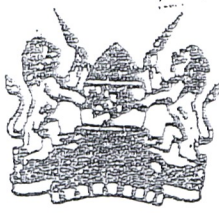
TOM N. MOGAKA

cc.

- Minister for Constitutional Affairs
- Minister for Lands
- Attorney General
- Anti-Corruption Police Unit
- Kenya Human Rights Chapter

Telegrams: "COURT", Nairobi
When replying please quote/

Ref. No. SDR/GEN CORR/1/52
and date



THE REGISTRAR'S CHAMBERS
HIGH COURT OF KENYA
LAW COURTS
P.O. Box 30041-00100
NAIROBI

28th April, 2004

Mr. Tom Mogaka,
P.O. Box 97 00517,
Nairobi.

Dear Sir,

RE: CONSTITUTIONAL INTERPRETATION

Thank you for your letter dated 12th February, 2004 and received at the office of the Chief Justice on 2nd March, 2004.

The Honourable the Chief Justice has directed me to request you to seek Constitutional Interpretation in Court, if you contend that any constitutional issues arise in the circumstances of the matter.


EDWARD M. MURIITHI
SENIOR DEPUTY REGISTRAR

PETITION TO BAR MR. AHMEDNASIR ABDULAHI AND HIS
LEGAL FIRM FROM ATTENDING A COURT MATTER

I, THOMAS NYANGERI MOGAKA, of P.O. Box 102909 00101, Nairobi.
(I.D No. 8289151).

WISH TO ADDRESS HONOURABLE CHIEF JUSTICE OF THE HIGH COURT OF
KENYA WITH A PETITION AS FOLLOWS:

THAT

MR. AHMEDNASIR ABDULAHI of C/o Ahmednasir, Abdikadir & Co Advocates

A COMMISSIONER IN THE JUDICIARY SERVICE COMMISSION (JSC).
ALSO PRACTISING AS AHMEDNASIR ABDIKADIR & CO ADVOCATES AS PERSON
OR BOTH HIM AND HIS COMPANY

BE, IN THE INTEREST OF JUSTICE, PREVENTED, RESTRAINED, BY LAW
FROM APPEARING FOR THE RESPONDENT IN HCCC382 OF 2011(OS) IN
WHICH I AM PLAINTIFF VS R.D. OUKO AND ANOTHER OR ANY OTHER
MATTER THAT IS OR MAY COME UP IN THE FUTURE, AS LONG AS HE
REMAINS AND CONTINUES TO WIELD POWER AND INFLUENCE
EMANATING FROM HIS SAID POSITION AND STATUS, THAT TOUCH ON
JUDGES CHARACTER AND DISCIPLINE.

FOR THE FOLLOWING REASONS:

- ▲ I WILL NEVER GET JUSTICE AS LONG AS VETTING OF JUDGES HAS NOT BEEN
COMPLETED OR EVEN THEREAFTER BECAUSE;

THE PRESENCE OF AHMEDNASIR ABDULAHI IN COURT WILL
INTIMIDATE THE JUDGES.

1. IT IS HUMAN FOR A JUDGE TO FEEL UNEASE IF A MATTER
BEFORE HIM/HER IS WHERE THE COMMISSIONER APPEARS IN
COURT IN PERSON OR BY PROXY, CONSEQUENCE OF WHICH
HE/SHE MAY ACT IN A MANNER TO ERODE HER/HIS
IMPARTIALITY AND CREATE MISCARRIAGE OF JUSTICE.

- ▲ A PAST VICTIM

Going by experience I have acquired in court since 1987 period in which I have struggled to
get fairness and justice to be done to get back my property sold unlawfully in which Mr.
Ahmednasir greatly featured, I have learned a experienced incidences that confirm my fears.

His position in the JSC vetting board as well as in the board interviewing the possible next police director, puts him and his firm in a near fascist position where he can heavily influence both the police and the judiciary as you will see below.

IN A NUTSHELL THESE ARE THE REASONS COMING FROM NOTHING BUT CONCRETE EXPERIENCES:

A. OBSTRUCTION OF FAIR DECISION BY JUDGES DUE TO CONFLICTING STATUS OF MR. AHMEDNASIR: MAY THE CHIEF JUSTICE REISSUE PERMISSION TO GRANT AND SET IN MOTION CONSTITUTIONAL INTERPRENTATION, and put into hold his/legal representation in the matter HCCC of 282 of 2011 Myself vs A.Ouko & Other.

1. Chief Justice Letter of 28th April 2004 . Supporting complaint letters your ref. SDR/GEN. CORR/1/52. (See Exhibit No 1).
2. My letter to CJ of 12th February, 2004.
3. My letter to Ahmednasir. CONTENTS OF THIS LETTER IS STILL VALID AND STRONGER, THAT NOW HE IS A MEMBER OF JSC.(See Exhibit No.2).
4. Newspaper cutting on same.(See Exhibit No.3).

B. BLANTANT DISREGARD FOR LAW

CONTEMPT OF COURT ORDERS

(MR.AHMEDNASIR IS PRONE TO DISREGARDING COURT ORDERS).

1ST FIRST EXAMPLE IN COURT CONTEMPT

Refer to letter to your ombudsman describing *SCHEMMING* to circumnavigate and defeat justice that include letters to advise the bank and auctioneers to defy court orders.

2ND EXAMPLE OF CONTEMPT

After Justice Waweru had issued, HCCC 646/03 restraining orders of 3rd march 2005 to stop removing me from my farm sold unlawfully and second attempt through J.Azangalala to remove me was turned down (See Exhibit No.4)

The European purported buyer used violence to invade my farm where many were injured. When we went to court before J. Waweru, he, the judge declined to issue fresh orders and said that we should instead go for contempt of court because we were well covered by the first orders(See Exhibit No.5 (extract from court proceedings)).

3RD EXAMPLE OF CONTEMPT

The DC Trans-Nzoia District felt justice was not followed by the bank, Ahmednassir and the European. He replied to the bank and stopped any moves to remove me from the farm against court orders (See Exhibit No.6)

Ahmednassir hit back in a very arrogant and unethical manner in a *sub judice* move to defame the court and the DC in a manner that raises eye brows. (See Exhibit No.7)

CONCLUSION

My Karen land case comes on 16th February, 2012. It is my request this PETITION takes first preference, as it will be UNJUST TO APPEAR IN COURT, AT LEAST, WHEN VETTING HAS NOT BEEN COMPLETED.

The Cry of the Mukinduri Lane residents with similar fear and discomfort over Mr. Ahmednafir's larger-than-life personality is also manifested herein. The residents have written to you for your action (I attach a copy of the letter addressed to JSC(See Exh. No 9) enlisting several cases going on over the same subject.

It therefore goes that a solution to this problem is necessary to come as soon as possible to avoid massive miscarriage of justice. BECAUSE I HAVE A RIGHT TO A FAIR DECISION AND JUSTICE.

Yours faithfully,



TOM MOGAKA

THE PETITIONER.

Role of LSK boss as advocate questioned

By **Myakundi Nyamboga**

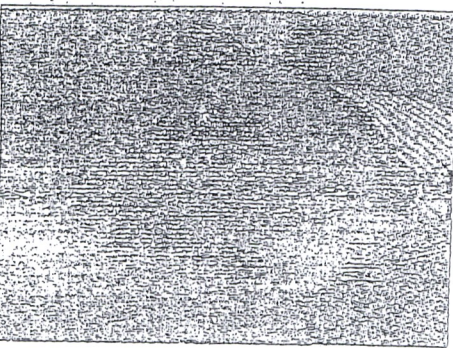
SHEMBA is the chairman of the Law Society of Kenya, Mr Ahmed Nasir Ahmednasir, continue to represent clients in court after his election to the high profile office.

A Kilale lawyer, the Team Hagaka, thinks he should be C.J. and has sought to stop him from representing the High of Peak. The case, which he (Mogaka) is to be heard on Sh.46 million dispute.

He also says that he has blocked from representing the bank in another case where Mogaka's wife, Sophie, has sued him, HRK and Bob Anderson of Mt Elgon Orchards Ltd. over the intended sale of a 340-acre farm in Kilale.

Mogaka an agricultural economist, has written to Chief Justice Ewan Gicheru speaking a constitutional interpretation of Ahmednasir's position as LSK chairman and his private legal practice.

In his letter to the C.J, Mogaka says he is uncomfortable with Ahmednasir's representation in the Sh.36 million dispute alleging that judges will feel intimidated whenever he appears before them. "He has the power to hire and fire



finds himself in a unique position, having been in office at a time when there was a purge in the Judiciary that saw him and the LSK council play a pivotal role in the appointment of new judges.

It will be interesting to see how the C.J responds to Mogaka's plea or how the LSK chairman reacts to the queries raised that border on fears of likely bias.

In a separate representation to the Minister for National Security and Provincial Administration, Mogaka also claims that he and 33 members of his family have been denied access to the 340-acre farm.

He alleges that an illegal barrier has been erected on the way to his farm and a vintage bridge has been destroyed, thus denying the family access to the farm.

He says the only other way he could access his farm is through a neighbour's property, Wanguu's Farm, but it has been taken over by Mt Elgon Orchards Limited, who he blames for his woes. He says that in the circumstances, he will be forced to seek permission from the Uganda Government to allow him to cross international waters to reach his farm.

Justice Gicheru

may have also been to school with lawyers in private practice who appear before them.

There are exceptions, however. An LSK official, just like any other lawyer, may disqualify himself from appearing in a matter listed before a judge or magistrate who may have been appointed from his firm. Similarly, a magistrate or judge may disqualify himself from hearing a matter in which one of the lawyers is from his former law firm. The current LSK chairman

Meanwhile, a Kenyan-Asian family of 18 is seeking to recover over Sh176 million it allegedly lost to two city lawyers and five directors of the collapsed Reliance Bank. Led by Sudhir K Shah, the family claims lawyers Sheetal Kapila and Ishan Kapila and five former directors of Reliance fraudulently converted to their Q use and benefit Sh176 million they held at the bank in bearer certificates of deposits.

Natural

The former directors of Reliance Bank are Panachand J Shah, Hansraj F Gurdka, Abdul Aziz Lalani, Dipak P Shah and Panachand J Dedhia.

Through lawyer Donald Kipkorir, the family claims they learnt in November 1998 that their bearer certificates of deposits had been discounted and the deposits utilised without their knowledge.

Kipkorir alleges that the family, on realising this, proceeded on a complex, technical and hazardous forensic investigation on what happened to their deposits and found that the same had been fraudulently converted to the use and benefit of the defendants.

Storm as judge disqualifies colleague from case

GOVERNORS OF JUSTICE

By Nyakundi Nyamboga

It had to be said that the court judge, Justice Gichungo, was not only a colleague of the judge but also a friend. The judge had no objection about whether or not the judge had any authority to do so.

Justice Gichungo had ruled that he and his colleagues, Justice Chesamus and Justice Mwangi, were in the dispute between a bank, the National Bank of Kenya, and its former director, Joseph Mwangi, and the former director, Joseph Mwangi.

The judge said the court so decided for "public good" to be done but also to be seen to have been done.

At the time of making the decision, Justice Gichungo was not in court. In the suit, Mwangi is seeking to reclaim his 340-acre Mera farm in Kiambu District, sold to Mr. Bob Anderson's Mount Elgon Orchards Limited by auction to recover Sh36 allegedly owed to National Bank.

MPK, in the records say,

It was logical, he added, that he continues handling the case.

The court heard that Justice Mwangi had last December made a finding that restraining orders could be issued by a court at whatever stage of a transaction as long as there was evidence of fraud.

It is Mogaka's case that an auction held on instructions from National Bank of Kenya, at which his farm was allegedly sold for Sh11 million, was unlawful and fraudulent.

A lower court had last August found that the auctioneer conducted an auction before issuing the requisite 45 days notice.

Consistency

Mr. Ahmednash Abdullahi, who represents National Bank of Kenya, opposed the move to take back the case to Justice Mwangi.

He told the court that the decision by Mwangi was only on a preliminary point of law and the hearing of the substantive case could proceed before any other judge.

Ahmednash claimed it was

Mogaka's habit to insist that legal matters be heard to their conclusion by the judge who handles them first.

He wondered if Mogaka's application to have Justice Mwangi hear and determine the dispute did not amount to looking for a "favourable judge". Lawyer Adil Kawaj, who represents Mount Elgon Orchards Limited, supported his submissions.

Justice Azangala observed that the application by Mogaka's lawyer, seeking to have the case removed from him was an indirect way of asking him to disqualify himself from hearing the case.

Mogaka's application was premised on the civil procedure rules that require a judge who has heard a matter in part to continue to hear it until its logical conclusion, unless he is transferred to another station, is promoted to a higher court, or is not available by reason of death or retirement.

The lawyer maintained he had not applied for the judge's disqualification. There is no express provision in

Kenyan law for the disqualification of judges from hearing certain matters. This being the case, judges may disqualify themselves from hearing matters by invoking the rules of natural justice that dictate no one should be a judge in their own cause.

If a judge feels he is uncomfortable with hearing a case because of having a pecuniary interest or is closely related to any of the parties, he could disqualify himself.

A judge may also disqualify himself from hearing a case if a party to the suit asks him to do so on grounds of bias.

However, a judge has no powers to disqualify another judge from hearing matters.

A judge is also not expected to determine matters that are not before him.

In an adversarial judicial system, such as Kenya's, a court of law is not supposed to move itself to initiate matters not before it. Its powers are limited to issuing orders that have been sought for by litigants.

PHOTO COURTESY OF THE NATIONAL BUREAU OF STANDARDS