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REPUBLIC OF KENYA



NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT- THIRD SESSION -2015

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THE DEPARTMENTAL COMMITTEE ON ENERGY, COMMUNICATION  
AND INFORMATION

REPORT ON THE  
PETITION ON THE FAILURE BY TELKOM KENYA TO PAY RETRENCHMENT DUES  
TO 997 FORMER EMPLOYEES

Directorate of Committee Services  
Clerk's Chambers  
Parliament Building  
Nairobi

AUGUST 2015

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## 1.0 PREFACE

On behalf of the Departmental Committee on Energy, Information & Communication and pursuant to provisions of standing Order No. 216, it's my pleasant privilege and honour to present to this House the Report of the Committee **on the petition on the failure by Telkom Kenya to pay retrenchment dues to 997 former employees.** The petition was presented before the House by the Speaker of the National Assembly pursuant to Standing Order No. 225 (2)(a) on 9<sup>th</sup> June 2015.

### 1.1. Mandate of the Committee

The Departmental Committee on Energy, information & Communication is established under *Standing Order 216 (5)* pursuant to the *Standing Order 216 (5)* which outlines functions of the Committee as being:

- 1 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;
- 2 to study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- 3 to study and review all the legislation referred to it;
- 4 to study, access and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objective;
- 5 **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 Cabinet Secretary;**
- 6 to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and
- 7 to make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

The Committee is mandated to consider the following **subjects**, Fossil fuels exploration, Development of energy, Production of energy, Maintenance and regulation of energy, Communication, Information, Broadcasting and Information Communications Technology (ICT) development and management.

## 1.2. Oversight

The Committee oversees Government Ministries and State Departments under them namely, Ministry of Energy and Petroleum and Ministry of Information, Communication and Technology.

## 1.3. Committee Membership

The Committee Comprise of the following Members:-

1. The Hon. Jamleck Kamau, EGH, MP.....Chairperson
2. The Hon. Jackson Kiptanui, MP .....Vice –Chairperson
3. The Hon. Mohammed Elmi, EGH, MP
4. The Hon. EdickOmondiAnyanga, MP
5. The Hon. (Eng.)James Rege, MP
6. The Hon. MithikaLinturi, MP
7. The Hon. Cecily Mbarire, MP
8. The Hon. Zebedeo Opore, MP
9. The Hon. Mary N. Mbugua, HSC, MP
10. The Hon. AburiMpuri, MP
11. The Hon. Aramat Lemanken, MP
12. The Hon. Athur Papa, MP
13. The Hon. BantichaAbdullahi, MP
14. The Hon. Daniel Kazungu, MP
15. The Hon. Esther Gathogo, MP
16. The Hon. FathiaMahbub, MP
17. The Hon. James Lomenen, MP
18. The Hon. Joe Mutambu, MP
19. The Hon. John Mati Munuve, MP
20. The Hon. Junet Sheikh, MP
21. The Hon. Nicholas Ngikor, MP
22. The Hon. OnesmusNjuki, MP
23. The Hon. Rachael Amolo, MP
24. The Hon. Roba Duba, MP
25. The Hon. Ndung’uGethenji, MP
26. The Hon. (Eng.) Vincent Musau, MP
27. The Hon. William Kisang, MP
28. The Hon. Richard Tongi, MP
29. The Hon. Moses Kuria, MP

## 1.4 Committal and Consideration of the Petition

The Petition was presented before the House by the Speaker on the National Assembly pursuant to Standing Order No. 225 (2)(a) on 9<sup>th</sup> June 2015. The petition was thereafter referred to the Departmental Committee on Energy, Communication & Information for consideration and preparation of a report within 60 days pursuant to the provisions of Standing Order 227 (1) and (2).

The Committee proceeded with the consideration of the petition and held 3 meetings to consider the matter.

The Committee held meetings with the representatives of the petitioners and the management of Telkom Kenya. The meetings were aimed at responding to issues raised by the petitioners.

## 1.5 Response to the prayers in the petition

The petitioners had prayed that the National Assembly through the Committee, on Energy, Information & Communication undertakes the following:-

1. The National Assembly opens up investigations and or an inquiry into the conduct of the entire Board and transactions leading into the settlement deed that has now collapsed;
2. The National Assembly, through the Committee on Energy Information & Communication, summons all the 11 respondent to answer into claims of serious misconduct and attempt to defraud the petitioners through misrepresentation
3. The National Assembly through the Committee on Energy Information & Communication summons all the 8<sup>th</sup> & 9<sup>th</sup> respondent, Mr. Mohamed Nyaoga and Ngana Ivy to answer to claims of serious conflict of interest, misconducts and attempts to defraud the petitioners through misrepresentation.
4. The National Assembly through the Committee on Energy Information & Communication inquiries into the information that the 12<sup>th</sup> respondent is in a state of near collapse and that France Telkom which owns 70% of the shares of the 12<sup>th</sup> respondent is in the process of being sold to a 3rd party, and if so:
  - i) For how much;
  - ii) To whom

iii) What is the fate of the 997 petitioners and who will meet their claims

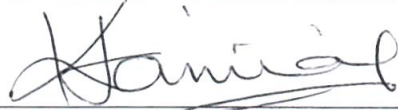
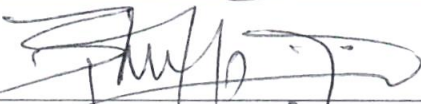
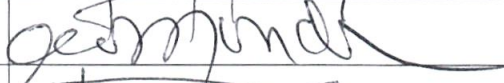


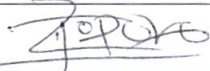
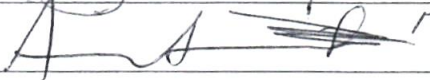
5. The National Assembly through the Committee on Energy Information & Communication do take such other appropriate measures to protect the interest of the 997 petitioners and to compel the respondent and the Government to fulfill their obligations to the petitioners.

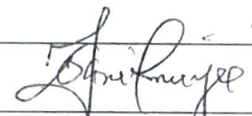
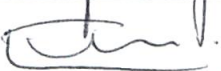
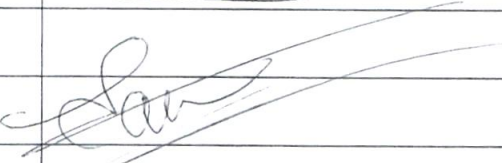



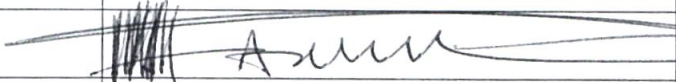
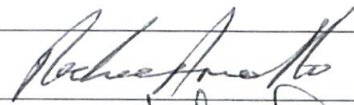

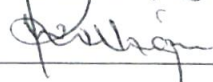

### 1.6 Committee Observation

Having held meetings and considered the submissions presented on the petition by the management of Telkom Kenya the Committee noted that the matter in the petition is pending before the court and would be *sub judice* pursuant to the Standing Order 89 to continue with the inquiries.

### 1.7 Adoption of the Report

We the Members of the Departmental Committee on Energy, Information and Communication have pursuant to standing orders 199 adopted this report on the on the petition regarding by failure Telkom Kenya Limited to pay retrenchment dues to 997 former employees and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today 25<sup>th</sup> August, 2015.

NO.	NAME	SIGNATURE
1.	HON. JAMLECK KAMAU, EGH, MP (CHAIRPERSON)	
2.	HON. JACKSON KIPTANUI, MP (VICE CHAIR)	
3.	HON. OMONDI ANYANGA, MP	
4.	HON.(ENG.) JAMES REGE, MP	
5.	HON. MOHAMMED ELMI, EGH, MP	
6.	HON. MITHIKA LINTURI, MP	
7.	HON. ZEBEDEO OPORE, MP	
8.	HON. ABURI MPURU, MP	
9.	HON. ARAMAT LEMANKEN, MP	
10.	HON. ARTHUR PAPA ODERA, MP	

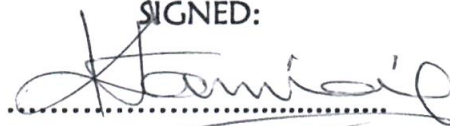
11.	HON. BANTICHA ABDULLAHI, MP	
12.	HON. DANIEL KAZUNGU, MP	
13.	HON. ESTHER GATHOGO, MP	
14.	HON. ROBA DUBA, MP	
15.	HON. FATHIA MAHBUB, MP	
16.	HON. JAMES LOMENEN, MP	
17.	HON. JOE MUTAMBU, MP	
18.	HON. JUNET SHEIKH, MP	
19.	HON. CECILY MBARIRE, MP	
20.	HON. MARY MBUGUA, MP	
21.	HON. MATI MUNUVE, MP	
22.	HON. NDUNG'U GETHENJI, MP	
23.	HON. NICHOLAS NGIKOR, MP	
24.	HON. ONESMUS NJUKI, MP	
25.	HON. RACHEAL AMOLO, MP	
26.	HON. VINCENT MUSAU, MP	
27.	HON. WILLIAM KISANG', MP	
28.	HON. RICHARD TONGI, MP	
29.	HON. MOSES KURIA, MP	

## 1.8 Acknowledgment

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate. I also wish to thank the Members of the Committee for their patience, sacrifice, endurance and hard work which enabled us to complete the tasks within the stipulated period. The Committee wishes to record its appreciation for the services rendered by the Director of Committee services and staff attached to secretariat of the Committee. Their efforts made the work of the Committee and the production of this Report possible.

Mr. Speaker, it is now my pleasant duty, on behalf of the Departmental Committee on Energy, Communication and Information, to present this report to the House pursuant to the provisions of **Standing Orders 227(2)** of the National Assembly.

SIGNED:



THE HON. JAMLECK KAMAU, EGH, M.P.  
(CHAIRPERSON)

DEPARTMENTAL COMMITTEE ON ENERGY, COMMUNICATION AND  
INFORMATION

DATE: 25/8/12

## 2.0 INTRODUCTION

### Background

On 9<sup>th</sup> June 2015 the speaker presented a petition to the National Assembly and thereafter committed it to the Departmental Committee on Energy, Information and Communication. The petition was submitted by 997 former employees of Telkom Kenya, regarding non-payment of their retrenchment dues following the 2006 staff rationalization program and further failure to honour subsequent agreements on settlement. The petitioners had earlier filed the matter in Nairobi High Court Civil Case No 216, Nairobi High Court Case No 219 and Nairobi High Court Case No 255 of 2007. The High Court in its judgement delivered on 28<sup>th</sup> September 2011 upheld the petitioners' prayers for payment of the severance pay based on 2½ months' salary for each year of completed service and a further golden handshake on the same scale as what was paid to the retrenched in Phase 2.

Consequently Telkom Kenya filed an appeal in the Nairobi Court of Appeal Civil Appeal No. 207 of 2012 which was dismissed. The court upheld the decision of the High Court that required Telkom Kenya to pay the petitioners. Subsequently Telkom Kenya filed an application to the Court of Appeal No. 60 of 2013 to have the matter certified as one of public importance so that it could be referred to the Supreme Court, a request which was however dismissed.

A further appeal by Telkom Kenya was made to have the matter determined by the Supreme Court vide **originating motion No. 17 of 2014** seeking to have the decision of the Court of Appeal reviewed so as to have the matter dispensed with in the Supreme Court. However, before the matter could be heard in the Supreme Court, the petitioners entered into an agreement on 8<sup>th</sup> August 2014 with the management team of Telkom Kenya, with the aim of having an out of court settlement. The agreement though undertaken by the petitioners and the Legal Counsel of Telkom was subject to the approval of the Board of Directors of Telkom, which approval was never obtained from the Board.

The Petitioners in apprehension of Telkom's non-compliance with the out of court settlement due to delay of approval by the Board of Directors of Telkom filed, a suit in the High Court to enforce the settlement deed. The High Court on 7<sup>th</sup> April 2015 however, declined to issue orders as in the view of the High Court the orders sought were premature and there were specific provisions of the Settlement Deed the petitioners had to comply with before seeking specific performance of the same by Telkom Kenya. This included among other provisions the release of consent orders to Telkom's

advocates, for the withdrawal of the various suits they had filed in court against Telkom over the matter. Subsequently after the Courts ruling, through a notice dated 24<sup>th</sup> April 2015, the petitioners revoked the entire settlement deed and thereafter petitioned Parliament.

### **3.0 SUBMISSIONS AND EVIDENCE**

Having been seized of the petition, the Committee commenced its consideration of the matter and invited the representatives of the 997 former employees of Telkom Kenya Limited as well as the Management of Telkom Kenya Limited for meetings on diverse dates. During the meetings, written and oral evidence was adduced to the committee as recorded hereunder:-

#### **3.1 Meeting with the Petitioners**

Mr. John Ochanda accompanied by Mr. Charles Koech, Antony T. Oluoch – A.T Oluoch, JessehNjoroge, Nophentary K. Kanyaro, Michael OdumbeAkeyo, Tom Enock Diero, Yona Bon Omiti, Musa Ibrahim, Esau Muhanji, and Joshua Mbagoappeared before the committee on 2<sup>nd</sup> July, 2015 to give evidence on behalf of the petitioners on non-payment of retrenchment dues.

He informed the Committee that:-

Following the approval of staff rationalization program by the government in the year 2006, Telkom Kenya retrenched 997 employees. The latter felt discriminated against and seriously underpaid which led to three suits filed in 2007. A judgement was delivered in their favour on 28<sup>th</sup> September, 2011and the court awarded the following:-

- i) 2.5 months' salary for every year worked
- ii) Golden handshake of Kshs 150,000/=
- iii) Costs and interest

Telkom Kenya Limitedwas not satisfied with this judgement and filed an appeal No.12 of 2012 which was dismissedTelkom Kenya was not satisfied with the decision and sought certificate of urgency to proceed to the Supreme Court in a civil application, No. 24 of 2013. The application was similarly dismissed.

Telkom Kenyafurther filed an originating summons No. 17 of 2014 to the Supreme Court seeking to review the decision of the Court of Appeal. The Supreme Court gave its rulingon 13<sup>th</sup>May, 2014 allowingTelkom Kenya to challenge the decision of the court of appeal, civil case no. 207 of 2013.

The petitioners further raised concerns over the letter written by Telkom Kenya's lawyer, Oraro & Co. Advocates to the Clerk of the National assembly stating that the matter was

subjudice. The petitioners informed the Committee that the matters in court were different from the prayers they sought to be addressed by the National Assembly.

The Petitioners presented written and oral submissions which to their understanding touched on issues that did not form part of the issues that were pending before the courts and which they sought consideration by the National Assembly:-

i) Forensic audit of the funds set aside for retrenchment arising from the Safaricom IPO which realized over Kshs 50 billion and which the retrenchees had hoped would settle their dues in full.

ii) Transaction leading to a settlement deed of 8<sup>th</sup> August, 2014 which collapsed; After a long, rigorous and painful litigation in courts which took over (8) eight years, they were directly approached by the 9<sup>th</sup> respondent Ms. Ivy Ngana who informed them that funds had been remitted from France Telkom to pay them. She advised to move very fast and accept the deal and ignore their lawyers because they would delay the payments. In addition to this the (9) ninth respondent together with the head of Human resources M/S Anne Kariuki presented to them through power point presentation on their entitlements and the calculation which reduced their claims by 60% for each of the 997 claimants and persuaded them to accept the offer and abandon all the court cases in an attempt to bring the matter to an end by making them believe that payment would be made immediately.

All this time their lawyers were totally kept in the dark while they were invited for meetings on several occasions through telephone calls by the (9) ninth respondent at their premises.

iii) Summoning of the 11<sup>th</sup> respondent who is the chief legal advisor to the Government as well as a senior partner in the firm of Mohamed and Muigai who were seized with the Telkom case to address issues of various misconduct, attempted fraud and misrepresentation.

iv) Summoning of the 8<sup>th</sup> and 9<sup>th</sup> respondent to respond to issues of conflict of interest and misrepresentation which led to the collapse of the settlement deed. Mr. Mohamed Nyaoga was a member of Telkom Kenya Board and also a senior partner in the firm of Mohamed and Muigai Advocates. He continued to be seized with the matter in court.

v) Inquiry into the financial status/assets of Telkom Kenya and the information reaching the petitioners to the effect that the former was in the process of disposing of its shares to a third party.

vi) The protection of the petitioner's interest and audit of an inventory of Telkom Kenya Limited assets in order to ensure their safety.

### 3.2 Meeting with the Management of Telkom Kenya

The chief Executive of Telkom Kenya Mr. Vincent Lobry accompanied by his lawyers George Oraro, Ms. Noella Lubano, Daniel Okoth, Robert K. Irungu, Martin Gitau, and Beryl Rachier, appeared before the Committee on 7<sup>th</sup> July, 2015 to give evidence on the non-payment of retrenchment dues to the 997 ex-employees of the company. Mr. George Oraro informed the Committee that the judgment and the settlement deed were subject of court proceedings case No. 216, HCC 255 currently pending in the High Court, the Court of Appeal Case No. 255 and the Supreme Court case No. HCC 219.

He further confirmed to the Committee that Pursuant to Standing Order No. 89 (1) and 3, any discussion, debates, investigations and/or hearings on these matters were likely to prejudice the fair hearing and determination of the proceedings pending before the various courts.

He appealed to the Committee to withhold discussions, debates, investigations and/or hearings in relation to the issues raised in the petition and in particular, the judgment and the settlement deed, until the proceedings in the various courts were finally heard and determined.

### 4.0 Committee Observations

The Committee noted the Standing Order No. 89(2) of the National Assembly provides that a matter would be considered to be *sub judice* if it referred to active criminal or civil proceedings and the discussion of such matter was likely to prejudice its fair determination.

Paragraph (3)(a) and (c) provides that criminal proceedings shall be deemed to be active if a charge has been made or a summons to appear issued, and in civil matters proceedings shall be deemed to be active if arrangements for a hearing have been made until the proceedings are ended by judgment or discontinuance.

The Committee further noted as follows:

That;

1. In view of the documents presented to the National Assembly, the **negotiated settlement referred to by the Petitioners is no longer valid by their own notice to revoke or vitiate the deed to Telkom Kenya dated 24<sup>th</sup> April 2015.** Therefore Parliament could exercise its investigatory power over the making of the agreement and alleged impropriety by Telkom Kenya and others.

2. The High court in its ruling dated 7<sup>th</sup> April 2015, acknowledged that the Petitioners themselves failed to perform certain duties required under the deed that ought to have been done before Telkom Kenya could be compelled to perform its duties under the deed. The breakdown of the settlement deed could therefore not be entirely blamed on Telkom to the exclusion of the Petitioners.
3. The main subject matter of the petition in the absence of a settlement deed-payment of dues of former employees of Telkom Kenya reverts to that which the Court had earlier pronounced itself. The active application to the Supreme Court that is therefore the Originating Motion No. 17 of 2014 for leave to appeal the Court of Appeal decision which was allowed on 13<sup>th</sup> May 2015. In effect this allows Telkom to file an appeal to the Supreme Court against the decision of the Court of Appeal to uphold the payment of dues of the Telkom workers. Therefore in terms of Standing Order 89 the investigation or inquiry of the payment of dues of former employees of Telkom Kenya is *subjudice*.
4. The potential sale of France Telkom shares and its effect on the payment of the dues of the petitioners is a matter of public interest which the National Assembly has the mandate to look into, in exercise of its power under Article 125(1) of the Constitution, which gives it powers to summon any person before it for purpose of giving evidence or providing information. Furthermore the Committee has powers under Standing Order No. 216 of the National Assembly to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister.
5. The Industrial case No. 654 of 2014 was still pending hearing and determination in the Industrial Court. The matter is *subjudice* as the main orders in the suit regards the sale of Telkom to a third party and its effect on the assets and liabilities of Telkom.

The Committee therefore, having considered the submissions presented on the petition by the management of Telkom Kenya and the petitioners noted that the prayers sought in the petition had bearing on the matters pending before the court and it would therefore be *subjudice* considering them, to continue with the inquiries pursuant to the Standing Order 89.

The Committee also noted that the prayer regarding the state of affairs and near collapse of France Telkom was a matter of public interest and the Committee would pick it as a subject of independent inquiry in due course.

## 5.0 COMMITTEE RECOMMENDATIONS

In response to the prayers by the petitioners, the Committee recommends,

The Committee having noted that the prayers by the 997 petitioners were *subjudice* pursuant to the *Standing orders 89* and in accordance to the evidence adduced before it recommends withholding of any inquiry on the matter until a judgment is issued by the Supreme Court where the matter has been filed.

