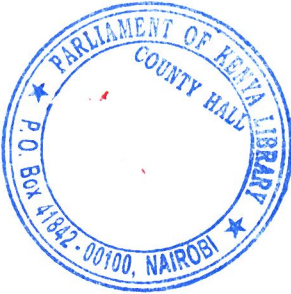


Approved for tabling <sup>But</sup> SNA

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8/2/17



REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

*Paper Laid  
By Hon. Dr. Rachael Nyantai, MP  
Chair - DC on Health on  
Thurs. Feb. 09, 2017 (pm)  
MMW  
09 FEB 2017*

ELEVENTH PARLIAMENT – FIFTH SESSION – 2017

THE DEPARTMENTAL COMMITTEE ON HEALTH

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

CLERK'S CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

FEBRUARY, 2017

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## **LIST OF ABBREVIATION**

BLS	-	Basic Life Support
CCTV	-	Closed Circuit Television
CEO	-	Chief Executive Officer
CID	-	Criminal Investigating Department
DPP	-	Director of Public Prosecution
EMC	-	Executive Management Course
ENT	-	Ear Nose and Throat
KNH	-	Kenyatta National Hospital
MDR	-	multi drug Resistant
MOH	-	Ministry of Health
NIS	-	National Intelligence Service
NCTC	-	National Counter Terrorism Centre
UON	-	University of Nairobi

## ANNEXES

- I. Adoption List
- II. Committee Minutes
- III. Petition

## **CHAIRPERSON'S FOREWORD**

The Petition on the alleged brutal murder of the late Cosmas Mutunga at the Kenyatta National Hospital was tabled before the House pursuant to Standing Order No. 225 (2)(a) by the Hon. John Mati Munuve, M.P on behalf of the family of the Late Mr. Cosmas Mutunga and the residents of Mwingi North Constituency on 10<sup>th</sup> August, 2016.

In considering the Petition, the Committee undertook an inspection visit to Kenyatta National Hospital on 6<sup>th</sup> October, 2016 in order to familiarize itself with the situation on the ground. The Committee further held Sittings on 15<sup>th</sup> September and 4<sup>th</sup> October 2016 where it received evidence from the petitioner, the Chief Executive Officer, Kenyatta National Hospital and the Board of Management of the Kenyatta National Hospital. The Inspector General of Police was invited vide letters ref. KNA/DCH/CORR/2016(098) and KNA/DCH/CORR/2016(104) but did not honour the invitations. The Ministry of Health submitted their comments vide its letter Ref. MOH/ADM/NA/01/93 Vol. III dated 19th October, 2016. The meetings were aimed at responding to issues raised by the petitioner.

The Committee is thankful to the Office of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its Sittings. I also wish to express my appreciation to the Honorable Members of the Committee who, with commitment, participated in the activities of the Committee and preparation of this Report.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my pleasant duty to table in the House the Report of the Departmental Committee on Health on its consideration of the petition on the alleged brutal murder of the late Cosmas Mutunga at the Kenyatta National Hospital.

## EXECUTIVE SUMMARY

This report details the consideration and response to the prayers sought by the family of the late Cosmas Mutunga and residents of Mwingi North Constituency on alleged brutal murder of Mr. Cosmas Mutunga at the Kenyatta National Hospital.

The petition was referred to the Departmental Committee on 10th August 2016 for consideration and preparation of a report within 60 days Pursuant to the provisions of Standing Order 227 (1) and (2).

In considering the petition, the Committee held 3 meetings in which it invited the Hon. John Matu Munuve, MP, who presented the petition on behalf of the petitioners and the family of the late Mr. Cosmas Mutunga, the Chief Executive Officer and the Board of Management of the Kenyatta National Hospital. The Committee also conducted an inspection visit at the Kenyatta National Hospital under the guidance of the Board of Management of the hospital and the hospital administration. The Ministry of Health presented its comments on the petition vide its letter Ref: MOH/ADM/NA/01/93 Vol. III dated 19<sup>th</sup> October, 2016.

The Committee found that the alleged murder took place between 4 am (when the last observation was made) and 5 pm (when the nurses were changing the shifts). Given the description of the stab wounds, it was possible that the patient had been sedated by the time of the murder since he did not make any notice nor scream for help. KNH had requested for a pathology report to establish if the patient had been sedated at the time of the murder. Samples were taken but the Hospital was yet to receive the report. The patient sharing the ward with the late Cosmas Mutunga had a speech and hearing impairment. His interrogation relied heavily on sign language with the assistance of the parents and interpreters. During his interrogation however, he indicated that there was a male and a female in the room during the murder. The patient was eventually released to his family even though he could have been a potential suspect.

The Hospital Security called the police on 29<sup>th</sup> November 2015 and handed over the crime scene to them immediately on arrival. The case was left under investigation by the Criminal Investigation Department (CID) in collaboration with the Directorate of Public Prosecution (DPP). While there were some internal investigations conducted by the KNH Security Services, the security report was completed about 8 months after the incident and handed over to the management. On 22<sup>nd</sup> September 2016, the Hospital placed on interdiction the staff on night duty on that fateful night. The grounds for interdiction were negligence of duty and failure to secure hospital patient. Disciplinary procedure was ongoing. The Hospital further terminated effective 22<sup>nd</sup> September 2016, the services of Nurse Rosemary Nkonge who had been engaged on *locum*. It was notable that KNH did not follow up on the case until the Committee started the inquiry. According to the presentation by the C.E.O., KNH requested for feedback on the status of the investigation on 9<sup>th</sup> September 2016, and was awaiting response from the DCIO Kilimani police Division. The Police Department had not completed their investigation and last report had been received the morning of the meeting

(15<sup>th</sup> September 2016). There were no official correspondence to show that KNH had followed up on the matter.

The admission by the Board of Management that the murder weapon was an item stored within the hospital indicated that the planning and execution of the murder was done internally. The Hospital carried out its own internal investigations through the Security and Safety Department. A report dated 2<sup>nd</sup> September 2016 was submitted whose findings indicated possible criminal collusion between unknown hospital staff and outsiders with the mode of execution remaining highly concealed and yet to be established. The Management at KNH however seemed either lax or unwilling to act expeditiously on the matter since the action of interdicting staff who were found negligent on that fateful night on 29<sup>th</sup> November, 2015 was taken almost a year after the incident on 22<sup>nd</sup> September, 2016 and after holding a meeting with the Health Committee of the National Assembly.

The Kenyatta National Hospital has no capacity to secure the large number of people visiting or working at the facility due to low staffing levels in its security section among other factors. A reduction in GOK funding to Kenyatta National Hospital from the 2013/14 Financial Year to the 2015/16 financial year could further compromise service delivery and security services at the facility.

There were several requests for assistance made via letters from KNH to security services in the country including: The Inspector General of Police, The National Counter Terrorism Centre and the National Security Intelligence Services. However, no tangible action had been taken to improve the security situation at KNH.

## **1.1 PREFACE**

1. On 10<sup>th</sup> August, 2016, a Petition was tabled before the House pursuant to Article 119 (1) of the Constitution and Standing Order No. 227 (2) (b) by the Hon. John Mati Munuve, MP, on behalf of family of the late Cosmas Mutunga and residents of Mwingi North Constituency on alleged brutal murder of Mr. Cosmas Mutunga at the Kenyatta National Hospital.
2. The House pursuant to Standing Order 227 referred the Petition to the Departmental Committee on Health for preparation of the Report and reporting to the House within 60 days as set out in Standing Order No 227(2).

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

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

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

## **1.3 OVERSIGHT**

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

#### 1.4 COMMITTEE MEMBERSHIP

The Committee comprises the following Members:-

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

#### 1.5 COMMITTEE SECRETARIAT

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

## **1.6 ADOPTION OF THE REPORT**

We, the Members of the Departmental Committee on Health have, pursuant to Standing Order 199, adopted this Report on the Petition by the family of the late Cosmas Mutunga and residents of Mwingi North Constituency on alleged brutal murder of Mr. Cosmas Mutunga at the Kenyatta National Hospital and affix our signatures (Annex 1) to affirm our approval and confirm its accuracy, validity and authenticity today, Thursday 26<sup>th</sup> January, 2017.

## 1.7 LIST OF RECOMMENDATIONS

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

**1. As to the prayer that the Committee Causes an immediate probe into the death of the late Mr. Cosmas Mutunga;;**

The Committee finds that although blood and tissue biopsies specimens were taken for further investigations. A report on the same was still being awaited.

The Committee therefore recommends that the Chief Government pathologist immediately concludes and releases the pathology report to the Hospital, the Criminal Investigations Department and the Director of Public Prosecutions as the evidence is crucial in resolving the case

**2. As to the prayer that the Committee ensures the establishment of mechanisms to guarantee security and safety of patients admitted and visiting public hospitals especially those under the National government;**

The Committee recommends that the Inspector General of Police should increase armed Police Officers in the Hospital to supplement the existing internal security system.

The Committee further recommends that the Management of the KNH ensures that:

- a. CCTV cameras are installed at the KNH immediately to avert any such incidents and secure the staff, patients therein and other visitors.
- b. More security guards should be employed and deployed to increase security surveillance at the facility.

**3. As to the prayer that the Committee ensures that the Petitioner's plight is addressed**

The Committee finds that four (4) suspects were arraigned in court to answer murder charges on 10<sup>th</sup> October 2016;

The Committee directs that the Criminal Investigations Department and the Director of Public Prosecutions expedites the investigations on the murder.

**4. As to the prayer that the Committee considers causing compensation to the family of the late Mr. Cosmas Mutunga and other affected Persons as a result of gross violation of human rights of patients under the care and custody of the Kenyatta National Hospital;**

The Committee finds that the award of compensations is matter to be determined by the Courts and would therefore not pronounce itself on the matter.

The petitioner could however proceed to seek compensation through the right channel and that due process be followed to determine the matter.

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

The Committee recommends that the Ministry of Health adequately funds KNH as the country's largest referral facility to enable it offer the highest attainable level of health care in line with Article 43(1)(a).

## 2.0 BACKGROUND

1. The Petition by the Hon. John Mati Munuve, MP, on behalf of the family of the late Cosmas Mutunga and residents of Mwingi North Constituency on alleged brutal murder of the late Mr. Cosmas Mutunga at the Kenyatta National Hospital was tabled before the House on 10<sup>th</sup> August 2016.
2. The Petitioner informed the House that Article 26(1) of the Constitution provides for the right to life while Article 43(1) provides for the right to the highest attainable standard of health for every citizen.
3. He further informed the House that on 29<sup>th</sup> November 2015, a Mr., Cosmas Mutunga who had been admitted at the hospital was found dead in his bed having been stabbed severally using a sharp object and bled profusely to death. The Mysterious death at the Hospital caused great agony to the deceased family and no arrests had been made as at the time of lodging the petition bearing in mind that the hospital was under 24 hour CCTV surveillance.
4. The petitioner prayed that the National Assembly, through the Departmental Committee of Health:-
  - a) Causes an immediate probe into the death of the late Mr. Cosmas Mutunga;
  - b) Ensures the establishment of mechanisms to guarantee security and safety of patients admitted and visiting public hospitals especially those under national government;
  - c) Considers causing compensation to the family of the late Mr. Cosmas Mutunga and other affected Persons as a result of gross violation of human rights of patients under the care and custody of the Kenyatta National Hospital;
  - d) Ensures that the Petitioner's plight is addressed

## 2.1 SUBMISSIONS AND EVIDENCE

### 2.1.1 SUBMISSIONS FROM THE HON. JOHN M. MUNUVE, MP

Hon. John Mati Munuve, M.P Mwingi North Constituency, representing the petitioners appeared before the Committee on Tuesday 15<sup>th</sup> September, 2016 and informed it that:

1. The Petitioners were his constituents and that on 29<sup>th</sup> November 2015, Mr. Cosmas Mutunga who had been admitted at the Kenyatta National Hospital was found dead having been stabbed severally using a sharp object. He was discovered at 5 am in the morning.
2. The Late Cosmas had been admitted in Hospital for about 5 months having been diagnosed with cancer. On admission, he was admitted at Ward 8D since he needed a blood transfusion, where he stayed for two weeks. He was later transferred to Ward 8C after his blood levels were found to have improved in order to start chemotherapy.
3. Before his death, the late Cosmas was an employee of Mada Hotels at the head office, the Holding company for La Mada Hotels as a procurement manager. He had worked at the company for 20 years. However, at the time of his death, he was on sick leave.
4. He was the sole provider for his family by the time of his demise and left his children at various levels of schooling. The Children have since been forced to rely on the Constituency Development Fund bursaries for their education.
5. His wife is a house wife with meagre means of income. With the murder of the Late Cosmas, the family was left without a provider.
6. On the fateful day, the wife and the brother had visited him in Hospital and he appeared to be in high spirits and was in a stable condition. In his interactions with the family, he looked forward to being discharged from Hospital and resume work. He requested his family to visit him again the following day as they were leaving the hospital that evening.
7. On the morning of Sunday 29<sup>th</sup> November 2015, the family received a call from relatives of another patient who informed them that there had been a murder at the Hospital. The brother rushed to the Hospital but was not allowed in until the wife to Cosmas, Mrs. Selestin M. Kenyatta arrived.
8. The family recorded a statement with the Police at Milimani Police Station. The staff on night duty during the time of the murder were arrested but later released. No further arrests had been made and neither was the family aware of any one who has been charged in court for the murder.
9. The late Cosmas was sharing a cubicle with a cancer patient (cancer of the tongue) who was alleged to have been mentally retarded and could neither hear nor speak.
10. According to the Hospital, the nurse rounds were conducted at 4 am and Cosmas had been administered with drugs at that time. His body was discovered at 5 am when the nurses were changing shifts.
11. The family was allowed to view his body at the ward before he was moved to the mortuary.
12. By the time the family arrived at the scene, the police had already interrogated the patient who was sharing the cubicle with Cosmas and had been moved to another ward.
13. The interrogation of the said patient was done through sign language due to his condition. The family was however not able to interact with him but they got information the patient had described that a woman and a young man had walked into the room and murdered Cosmas.

14. Post-mortem results showed that he had been stabbed 42 times with a sharp object. One of his legs had been broken and one eye gorged out. The family had been represented at the post-mortem.
15. The body was later released to the family after two weeks for the funeral after they had cleared all the hospital bills.
16. KNH did not communicate with the family at all after the unfortunate event.

### **2.1.2 SUBMISSIONS FROM THE KENYATTA NATIONAL HOSPITAL**

Lily Koros Tare, the Chief Executive Officer, Kenyatta National Hospital appeared before the Committee on Tuesday 15<sup>th</sup> September, 2016 and informed the Committee, that:

1. Cosmas Mutunga Kenyatta, 42 years old, Hospital No. 1769984 was first seen at the Kenyatta National Hospital (KNH) on the 14<sup>th</sup> October 2015, in the Ear Nose Throat (ENT) clinic where he presented with nasal blockage, headaches, decreased right eye movement and loss of hearing in the right ear;
2. For a period of 4 months he reported that he was progressively getting worse and was getting excessive discharge from the right ear and that he was losing both sense of smell and hearing on the right ear with a severe head ache on the same side;
3. Cosmas reported that 4 months prior to the presentation he led a normal life while he was working as a store manager with a private company. He was a married man, father of four children and was residing in Imara Daima Estate in Nairobi. He had a history of smoking prior to this, was a social drinker(light drinker on social occasions)
4. Physical examination showed he was in fairly good condition, mild pallor with ptosis of the right eye. The right eye was partially blocked and the pharynx was normal on examination;
5. He was booked for diagnostic tests on 16<sup>th</sup> October 2015, which were successfully conducted.
6. Cosmas was continuing on medical treatment for pain as an outpatient and was having follow ups in the ENT clinic. He was however presented on the 5<sup>th</sup> of November 2015 at accident and Emergency with dizziness, general body weakness for about two days. He was found to be very pale (Hb -5gm/dl) ,was sick and looked weak. A decision to admit him was made and was prepared for chemotherapy once the laboratory reports were ready.
7. He was admitted to the admitting medical ward 8D. He got transfused and when the hemoglobin rose to normal levels, he was transferred to specialized Cancer Ward 8C for Chemotherapy which was started on the 23<sup>rd</sup> November 2015. He was given cyclophosphamide, doxorubicin Vincristine and predisone (chop) with intrathecal methotrexate.
8. He was in the ward during the resting period awaiting the 2<sup>nd</sup> course of chemotherapy and was noted to be deteriorating. He was noted to be very sick on the 28<sup>th</sup> November 2015 and was last observed at 4.00am on 29<sup>th</sup> November 2015 before the unfortunate incident. He was found at 5.30 am, by the nurse who was giving medication. She informed security officers and the doctor covering.
9. A post-mortem examination was conducted on the body of Mr. Cosmas Kenyatta and conclusion as to the cause of death was “hemorrhage and head injury due to blunt penetrating trauma”

### Security Coverage

10. During the night, the KNH tower Block that houses most of the wards was secured by safety and security services wardens deployed in specific entrances/exit. Some entrances/exits were physically locked at night due to shortage of security personnel;
11. The KNH safety and security services department Duty Officer (Mr. Dan Otieno) and shift supervisor (Mr. Peter Mutiso) visited all deployment areas and patrolled other areas that had no deployment, including level 8 where ward 8C is located. During their patrols, along the corridors in Tower Block including Ward 8C, nothing unusual was detected or reported to them.
12. The incident of patient Cosmas Mutunga Kenyatta was reported to security Control room and booked in KNH occurrence book under ON no.36 of 29<sup>th</sup> November 2015 at 05.40 hrs.
13. Security and safety services informed the CEO of the incident. The police were also informed and arrived at ward 8C as follows:
  - a) Arrival of police from KNH police post around 7.20 am
  - b) Arrival of safety and Security services manager at around 8.30 am
  - c) Arrival of police from scenes of Crime at around 9.30 am
  - d) Arrival of CEO at around 9.35 am
  - e) A meeting by Executive Management Committee at around 10.00am
  - f) Arrival of Police CID Kilimani(Deputy Criminal Investigations Officer and team) at around 2.00 p.m
14. Screening visitors was usually done during the two visiting hour's i.e 12.30 pm to 2.00 pm and 4.30 p.m to 6.00 p.m at entry points. KNH safety and security officers ensure visitors leave the wards after expiry of visiting hours.

2. On the fateful night Deployment in the Tower Block was as follows:

GROUND FLOOR	AREA	NO DEPLOYED STAFF	OF	NAMES
	Tower Block casualty Side	2		Peter Musya Vincent Kigen
	Tower Block University	2		Sarah Chepkwony Monica Moraa
	Lift Rea	1		Eliazar Chacha
Ist Floor	Theatre gate	1		Gervasio Njeru
	Ward 1D	1		David Juma Kazi
Third Floor	Floor Security Reception desk	1		Naomi Kimani
9 <sup>th</sup> and 10 <sup>th</sup> Floor KNH prime care Centre(KPCC)	KPCC Patrol Security Service	1		Benjamin Limungi

15. During the night, the entry to the Tower Block was the entrance located between Clinic no 18 and the x-ray department. This entrance could also be accessed through accident and Emergency (A 7E) rear exit. All other entrances/exits were physically locked.
16. Apart from the tower block, the other areas of the Hospital i.e Accident and Emergency, tower block outer layer which included Hospital frontage perimeter, consultant barrier, administration block, supplies gate and oxygen area, farewell home areas, new isolation ward, old wards 1F/ward 42, general outpatient clinic and paediatric filter clinic, walk in

- casualty, new Cancer treatment Centre Bunker, KNH estates, Laundry, boiler and Incinerator, Staff Training Centre/Comprehensive Care Centre were all covered by security officers
17. There was coverage by armed security with KNH estate patrols having 2 administration police and Kenya police manning the consultant barrier(2) and 2 others at the accident and emergency.
  18. To enhance security and safety, the following areas in the hospital were locked at night and weekends:
    - a) Tower block 2<sup>nd</sup> floor entrance
    - b) KNH bus terminus gate
    - c) No.14 entrance next to National Bank
    - d) Post office gate
    - e) Salaries entrance
    - f) Old wards ground floor entrance
    - g) Entrance from farewell home to tower block
    - h) KNH gate A
    - i) Entrance from Helipad(multi drug Resistant(MDR) tuberculosis clinic)
  19. KNH had two normal visiting sessions during lunch time and in the evening as summarized below:
    - a) Lunch time -12.30 pm to 2 .00 pm
    - b) Evening-4.30 pm to 6 .00 pm
  20. Patient's relatives were allowed outside these hours during admission, discharge and when required for other medical reasons
    - b) On the night of November 28<sup>th</sup>, 2015 the following staff were on night duty covering ward 8C
      - a) Priscilla Wairimu Njeru P/No 529706 –Senior nursing officer
      - b) Godfrey Muriithi Gachora P/No 529579 –Senior enrolled nurse
      - c) Rosemary Gatakaa Nkonge PACT 13 –Locum nurse(employee of UON working at KNH comprehensive care Centre
      - d) Mary Muthoni Kamau P/No 532522-Nurse on duty covering 4 wards during the night
      - e) Dan Otieno Safety and security services department duty officer
      - f) Peter Mutiso Safety and security services department Shift supervisor
  21. The Hospital Security called the police on 29<sup>th</sup> November 2015 and handed over the scene of crime to them immediately on arrival and the case is under investigation by the CID in collaboration with DPP.
  22. As of 9<sup>th</sup> September 2016, the police department had not completed their investigation. KNH had requested for feedback on the status of the investigation and was awaiting response from the DCIO Kilimani police Division.

### **Intervention measures taken to improve security**

23. The hospital received an estimated day time population of 30,000 people made up of staff, students, patients and patient's relatives. The hospital was not adequately

- secured due to lack of a perimeter fence. The security department was understaffed and inadequately equipped.
24. KNH security concerns had been shared with various government agencies where the hospital had made request for funds to employ more security staff, install CCTV and modernize crowd control systems.
25. In addition to request for assistance from government agencies, the management had since stepped up security measures to prevent recurrence of the same as follows:
- a) Management organized for Counter Terrorism Awareness training by the National Counter Terrorism Centre and Anti-terrorism Police Unit for all security staff and some National Police as well as some representatives from neighboring institutions in the larger KNH complex
  - b) National Intelligence Service (NIS) facilitated physical security training of all security staff to improve their capacity on physical security management. Other courses included command and leadership, fraud detection/prevention/investigations, disaster management, senior management course and basic life support(BLS)
  - c) National Security and protection security training to members of the Executive Management Committee (EMC) by NIS at the National intelligence Academy
  - d) Counter terrorism measures by National Counter terrorism centre(NCTC) to EMC as well as senior management staff at the Chief executive officers monthly meeting
  - e) Basic crime investigation course by the Directorate of Criminal investigations training school for 40 newly employed security and safety wardens
  - f) 100 hand metal detectors were procured as an immediate measure to improve security screening. Tender processes are underway to procure walk through scanners, access control gadgets and security communication equipment
26. The management had also improved security management processes as follows:
- a) The process of developing an elaborate security and safety policy had started to help in ensuring maximum security in the larger KNH complex
  - b) Visitors screening in a bid to control unauthorized access into restricted areas was initiated besides reduction in number of gates/entrances available to access the tower block
  - c) The Inspector of Police was requested to increase armed police officers in the hospital to supplement the existing internal security system
  - d) The safety and security department had since increased security presence through increased patrols.
27. A blunt object was found at the scene suspected to be the murder weapon.
28. The Hospital did not get a credit waiver request from the family and therefore the family had to clear all the bills in the absence of a request.

### **2.1.3 SUBMISSIONS FROM THE BOARD OF MANAGEMENT, KENYATTA NATIONAL HOSPITAL**

Mr. Mark Bor, Chairman to the Board of Management, Kenyatta National Hospital appeared before the Committee on 4<sup>th</sup> October 2016 and informed it that:

1. On Establishment & Mandate of KNH he stated that Kenyatta National Hospital (KNH) was established by the Government under Legal Notice No.109 of 6<sup>th</sup> April 1987, its mandate is to:
  - a) receive patients on referral from other hospitals or institutions within or outside Kenya for specialized health care;
  - b) provide facilities for medical education for the University of Nairobi Medical School, and for research either directly or through other co-operating health institutions;
  - c) provide facilities for education and training in nursing and other health and allied professions; and
  - d) Participate as a national referral hospital in national health planning.
2. Kenyatta National Hospital being a public health facility receives an estimated daytime population of 30,000 made up of patients, patient relatives, students and staff. Being a health rather than a security facility and having in mind the heavy traffic, the Hospital at best assures of modest security of those within the facility. The situation was worsened by its expansive size, limited and ever reducing allocations for recurrent expenditure particularly human resources costs and a complete omission to allocate funds for capital expenditure that could be used to refurbish and modernize the facility to meet the security needs of the moment.
3. Annually, KNH receives on average over 500,000 outpatients and 80,000 inpatients. The devolved system of government and the introduction of free maternity had led to significant increases in the number of admissions in the Hospital. KNH was still managing diseases that should be managed at the county level.
4. The Hospital death rate in the year 2015 stood at 8.9%. The leading causes of death included cancer; HIV complications, pneumonia; preterm infants, acute renal failure, respiratory distress of new born, diabetes mellitus, heart failure, among others.
5. In the long history of the Hospital and in spite of the huge number of clients mentioned above, outside of the alleged murder of the late Cosmas Mutunga, the Board and Management of the Hospital was unaware of any other mysterious deaths within the Hospital precincts of any patient visiting or undergoing treatment.
6. The late Cosmas Mutunga, aged 42 years, was first seen on 14<sup>th</sup> October 2015 at the ENT Clinic where he was presented with nasal blockage, headaches, decreased right eye movement and loss of hearing in his right ear. Physical examination showed a man who was in a fairly good condition, mild pallor with ptosis right eye. The right eye was partially blocked and the pharynx was normal on examination. He was booked for diagnostic tests on 16<sup>th</sup> October 2015 and the necessary medical tests were carried out.
7. The late Mutunga continued on follow up treatment as an outpatient in the ENT Clinic. On 5<sup>th</sup> November 2015 he was presented at the Accident and Emergency Unit with dizziness and general body weakness. On examination, he was found to be very pale (Hb-5gm/dl), was sick looking and weak. A decision was made to admit and transfuse him and

for further management. He was admitted in the Medical Ward 8D and was transfused. When his haemoglobin levels rose to normal, he was transferred on 18<sup>th</sup> November 2015 to the Specialized Cancer Ward 8C (male white room), for chemotherapy which was started on 23<sup>rd</sup> November 2015.

8. The Specialized Cancer Ward 8C is located on the 8<sup>th</sup> floor of the Tower Block. On the night of 28<sup>th</sup> November 2015, the ward had a total of 32 patients. The male white room was occupied by only two patients, Clement Kagundu, IP No.1775984 and the late Mutunga. Patient Clement Kagundu, aged 21 years, was admitted on 23<sup>rd</sup> November 2015 with multiple abdominal masses in the background of Down's syndrome. He had speech and hearing impairment and was discharged on 4<sup>th</sup> December 2015.
9. The staff on night duty in Ward 8C on 28<sup>th</sup> November 2015 were: -
  - a) **Nursing personnel**
    - Mrs. Priscillah W. Njeru - Senior Nursing Officer
    - Mr. Godfrey M. Gachora - Senior Enrolled Nurse
    - Ms. Rosemary Nkonge - Locum Nurse
  - b) **Security personnel**
    - Mr. Dan O. Onjira - Security & Safety Services Duty Officer
    - Mr. Peter Mutiso - Security & Safety Services Shift Supervisor
  - c) **Support staff:**
    - Ms. Mary M. Kamau - Support Staff
10. On that fateful night, the nursing staff on duty reported that all entrances/exits to the Ward were locked at around midnight. At 4.00 am on 29<sup>th</sup> November 2015, the late Mutunga's primary nurse, Priscillah W. Njeru, observed that the patient appeared to be very sick but breathing well. She took his temperature. At about 5.30am, Nurse Njeru went back to the patient's room to administer treatment and was shocked to find splashes of blood on the wall next to the patient's bed. She approached the patient and found that he was bleeding and soaked in a pool of blood. She took the hospital gown (shirt) which she found on his chest and wiped the blood off his face. She observed the patient was not breathing and called for help from her colleagues, Nurses Godfrey G. Muriithi and Rosemary Nkonge. The incident was immediately reported to Security Control Room.
11. A blunt metallic object suspected to have been used in the murder was found placed on the bed next to the deceased patient's bed. The metal object was a metal bracket used to support shelves in the wards. Five (5) other metal brackets similar to the suspected murder weapon were recovered from Ward 8C Service Store.
12. The Service Store is located opposite the nurses' desk and is normally locked and the key kept in one of the drawers at the nursing desk for easy access by clinicians on duty.
13. A postmortem examination was conducted on 7<sup>th</sup> December 2015 on the body of the late Cosmas Mutunga. On external examination, the body was found to have 32 lacerations on the left frontal region of the face. Internal examination found among others, fracture of maxilla on the left side; left upper incisor and lower canine missing; left premolar tooth floating in the mouth; bruising of the tongue; ruptured eyeball; fracture of the left frontal-temporal of the skull; and brain contusions on the right temporal region. Conclusion as to cause of death was haemorrhage and head injury due to blunt and penetrating trauma.

14. Blood and tissue biopsies specimens were taken for further investigations. A report on the same was still being awaited.
15. The KNH Board of Management was formally briefed on the unfortunate incident during its 127<sup>th</sup> regular Board meeting held on 10<sup>th</sup> December 2015. The Board observed that the Ministry of Interior and Coordination of National Government, Office of Internal Security, through the Ministry of Health (MoH) had requested for a brief on the matter and the Hospital had responded. The Board had resolved that:
  29. Management explores resources for installation of CCTV at strategic points in the Hospital.
  30. Management requests the Office of the Inspector General of Police for the deployment of Administration Police (APs).
  31. The Board to await the investigation report from the National Police Service. In the meantime, the Hospital to carry out its own internal investigations and a report to be submitted.
16. The Hospital carried out its own internal investigations through the Security and Safety Department. A report dated 2<sup>nd</sup> September 2016 was submitted whose findings indicate possible criminal collusion between unknown hospital staff and outsiders with the mode of execution remaining highly concealed and yet to be established. The report recommended that: -
  - a) Administrative and or disciplinary action be taken against all staff found to have been culpable or negligent in their performance of duty; and
  - b) Management to consider recruiting additional safety and security staff for adequate coverage of the Hospital as well as procuring an integrated security system.
17. On 22<sup>nd</sup> September 2016, the Hospital placed on interdiction the staff on night duty on that fateful night. The grounds for interdiction were negligence of duty and failure to secure hospital patient. Disciplinary procedure was ongoing. The Hospital further terminated effective 22<sup>nd</sup> September 2016, the services of Nurse Rosemary Nkonge who had been engaged on *locum*.
18. The Hospital had taken the following steps to ensure safety and security of patients and prevent recurrence of a similar incident: -
  - a) Requested the Inspector General of Police to increase armed Police Officers in the Hospital to supplement the existing internal security system.
  - b) Procured 100 hand metal detectors to enhance screening of visitors.
  - c) Increased surveillance through increased security patrols and emphasized the importance of respecting visiting hours and rest periods for patients.
  - d) Tendered for the supply, delivery, installation testing and commissioning of security communications equipment and closed circuit equipment (cameras, walk through metal detectors, and access control system). The tender closed on 9<sup>th</sup> August 2016 and was in the award stage (at the time of the meeting).
  - e) Counter Terrorism Awareness training by the National Counter Terrorism Center and Anti-Terrorism Police Unit organized for all security staff as well as some National Police and representatives from neighbouring institutions in the larger KNH Complex.
  - f) Physical security training of all security staff facilitated by the National Intelligence Service to improve capacity on physical security management.

- g) Initiated plans to train all employees, and in particular health workers, on their roles and responsibilities towards the safety and security of patients.
  - h) Was at the time developing a Security and Safety Policy.
19. The Hospital was not vicariously liable for criminal acts committed by others. Once investigations were concluded, and the perpetrator(s) found, it was expected that the State would prosecute them. In such a scenario, the Estate of the late Cosmas Mutunga shall have recourse against the said perpetrator(s). On the other hand, if the investigating authorities failed to find the perpetrator(s) responsible for this heinous crime, and a civil suit or a constitutional petition filed against the Hospital, then the doctrine of res ipsa loquitur (i.e. the thing speaks for itself) would apply. Under such action in court, if the Hospital was found liable in negligence in the alleged murder of the late Cosmas Mutunga, then the Hospital Management should address itself towards compliance of such lawful orders as may be issued.

#### **2.1.4 INSPECTION VISIT TO KENYATTA NATIONAL HOSPITAL**

The Committee made an inspection visit on 6<sup>th</sup> October, 2016 at the KNH to establish the facts about the petition. The Committee subsequently toured the following areas located on the 8<sup>th</sup> floor of the Tower Block at the hospital:

1. Ward 8C and adjoining wards
2. The Nursing Desk
3. The Linen Store
4. Service Store for ward 8C
5. Store 1
6. The Balcony that goes round the ward and the adjoining washrooms.

From the hospital tour and the engagement with the Board and Management, Kenyatta National Hospital, Members made the following observations:

- i. The absence of CCTV cameras almost one year after the incident at such a major national facility was a serious oversight on the part of the management and the Board of Kenyatta National Hospital.
- ii. Other avenues to access ward 8C existed and included the balcony that goes round the ward and adjoining washrooms, the door that leads to an area for temporal storage of bodies.
- iii. There was need to clearly establish the family and career background of the patient in question, the Late Mr. Cosmas Mutunga.

#### **2.1.5 SUBMISSION FROM THE MINISTRY OF HEALTH**

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

1. Investigation of murder is the mandate of the police and office of the Director of Public prosecutions. A probe into the death of the late Cosmas Mutunga has been ongoing resulting in the arraignment of 4 suspects in court to answer murder charges on 10/10/2016;

2. The Ministry was working with the Kenyatta National Hospital to improve security and safety for patients through expanding CCTV coverage, access control gates and more security guards
3. The available basis for compensation to aggrieved patients or their relatives was court awards and none had been made in respect of the late Cosmas Mutunga. If an award was made against KNH, the liability was effectively with the government as KNH was funded by the government;
4. The plight of the petitioners was being addressed through due process by the Inspector General of Police, the Director of Public Prosecutions and the Courts.

### **2.1.6 SUBMISSIONS FROM THE INSPECTOR GENERAL OF POLICE**

The Inspector General Of Police was invited vide letters ref KNA/DCH/CORR/2016(098) 28<sup>th</sup> October, 2016 and KNA/DCS/DCH/2016(104) dated 14<sup>th</sup> November 2016 to shed light on measures being pursued, if any, to improve the security situation at the KNH but did not honour the invitations nor make written submissions on the matter.

### **3.1 COMMITTEE OBSERVATIONS**

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

- 1) The alleged murder took place between 4 am (when the last observation was made) and 5 Pm (when the nurses were changing the shifts). Given the description of the stab wounds, it was possible that the patient had been sedated by the time of the murder since he did not make any noise nor scream for help. KNH had requested for a pathology report to establish if the patient had been sedated at the time of the murder. Samples were taken but the Hospital was yet to receive the report.
- 2) The patient sharing the ward with the late Cosmas Mutunga had a speech and hearing impairment. His interrogation relied heavily on sign language with the assistance of the parents and interpreters. His interrogation however indicated that there was a male and a female in the room during the murder. The Patient was eventually released to his family even though he could have been a potential suspect.
- 3) The Hospital Security called the police on 29<sup>th</sup> November 2015 and handed over the crime scene to them immediately on arrival and the case was left under investigation by the CID in collaboration with DPP.

While there were some internal investigations conducted by the KNH Security Services, the security report was completed about 8 months after the incident and handed over to the management. On 22<sup>nd</sup> September 2016, the Hospital placed on interdiction the staff on night duty on that fateful night. The grounds for interdiction were negligence of duty and failure to secure hospital patient. Disciplinary procedure was ongoing. The Hospital further terminated effective 22<sup>nd</sup> September 2016, the services of Nurse Rosemary Nkonge who had been engaged on *locum*.

- 4) It was notable that KNH did not follow up on the case until the Committee started the inquiry. According to the presentation by the C.E.O., KNH requested for feedback on the status of the investigation on 9<sup>th</sup> September 2016, and was awaiting response from the DCIO Kiliman police Division. The Police Department had not completed their

investigation and last report had been received the morning of the meeting (15<sup>th</sup> September 2016). There were no official correspondence to show that KNH had followed up on the matter.

- 5) The admission by the Board of Management that the murder weapon was an item stored within the hospital indicated that the planning and execution of the murder was done internally.
- 6) The Management at KNH seemed either lax or unwilling to act expeditiously on the matter since the action of interdicting staff who were found negligent on that fateful night on 29<sup>th</sup> November, 2015 was taken almost a year after the incident on 22<sup>nd</sup> September, 2016 and after holding a meeting with the Health Committee of the National Assembly.
- 7) The Hospital carried out its own internal investigations through the Security and Safety Department. A report dated 2<sup>nd</sup> September 2016 was submitted whose findings indicate possible criminal collusion between unknown hospital staff and outsiders with the mode of execution remaining highly concealed and yet to be established.
- 8) The Kenyatta National Hospital had no capacity to secure the large number of people visiting or working at the facility due to low staffing levels in its security section among other factors.
- 9) There was reduction in Government funding to Kenyatta National Hospital from the 2013/14 Financial Year to the 2015/16 financial year which could compromise service delivery and security services at the facility.
- 10) There were several requests for assistance made via letters from KNH to security services in the country including: The Inspector General of Police, The National Counter Terrorism Centre and the National Security Intelligence Services. However, no tangible action had been taken to improve the security situation at KNH.

#### **4.1 COMMITTEE RECOMMENDATIONS**

In response to the prayers by the petitioner, the Committee recommends that:-

**1. As to the prayer that the Committee Causes an immediate probe into the death of the late Mr. Cosmas Mutunga;;**

The Committee finds that although blood and tissue biopsies specimens were taken for further investigations. A report on the same was still being awaited.

The Committee therefore recommends that the Chief Government pathologist immediately concludes and releases the pathology report to the Hospital, the Criminal Investigations Department and the Director of Public Prosecutions as the evidence is crucial in resolving the case

**2. As to the prayer that the Committee ensures the establishment of mechanisms to guarantee security and safety of patients admitted and visiting public hospitals especially those under the National government;**

The Committee recommends that the Inspector General of Police should increase armed Police Officers in the Hospital to supplement the existing internal security system.

The Committee further recommends that the Management of the KNH ensures that:

- b. CCTV cameras are installed at the KNH at the earliest opportunity to avert any such incidents and secure the staff, patients therein and other visitors.
- c. More security guards should be employed and deployed to increase security surveillance at the facility.

**1. As to the prayer that the Committee ensures that the Petitioner's plight is addressed**

The Committee finds that 4 suspects were arraigned in court to answer murder charges on 10<sup>th</sup> October 2016;

The Committee Directs that the Criminal Investigations Department and the Director of Public Prosecutions expedite the investigations on the Murder.

**2. As to the prayer that the Committee considers causing compensation to the family of the late Mr. Cosmas Mutunga and other affected Persons as a result of gross violation of human rights of patients under the care and custody of the Kenyatta National Hospital;**

The Committee finds that the award of compensations is matter to be determined by the Courts and would therefore not pronounce itself on the matter.

The petitioner could however proceed to seek compensation and due process will be followed to determine the matter.

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

The Committee recommends that the Ministry of Health adequately funds KNH as the country's largest referral facility to enable it offer the highest attainable level of health care in line with Article 43(1)(a).

Signed..........Date..........

(HON. DR. ROBERT PUKOSE, MP)

**VICE - CHAIRPERSON,  
DEPARTMENTAL COMMITTEE ON HEALTH**

# DC-H: DEPARTMENTAL COMMITTEE ON HEALTH


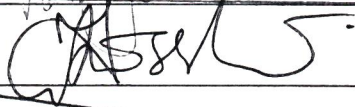

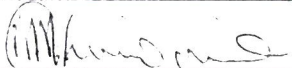

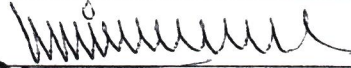
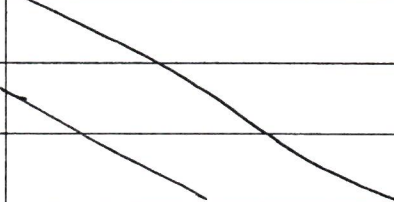
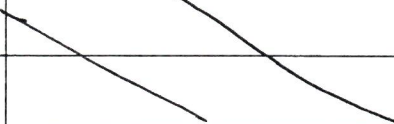


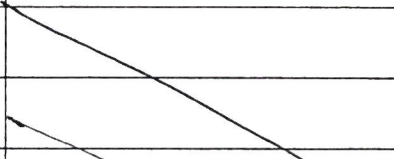


## ATTENDANCE REGISTER

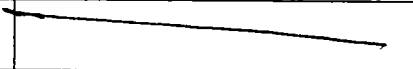
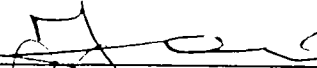

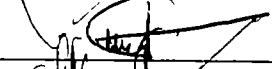
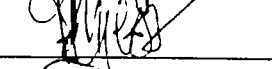

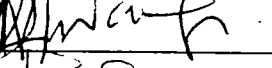
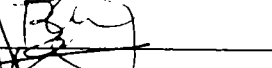
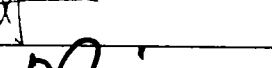

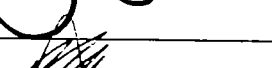

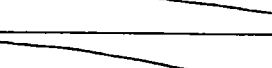
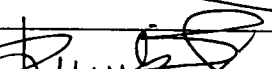
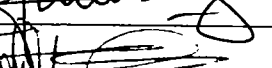
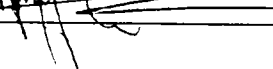
### AGENDA:

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

DATE: 26/01/2017

VENUE: 4<sup>th</sup> floor Court.

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

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

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

**PRESENT**

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

**ABSENT WITH APOLOGY**

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

**IN ATTENDANCE**

**NATIONAL ASSEMBLY SECRETARIAT**

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

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

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

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

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

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

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

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

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

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

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

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

The Committee considered the following reports:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (ii) Preventive, Promotive and RMNCAH: The gross capital expenditure estimate for this programme was reducing by Ksh. 1.454 billion from the approved Ksh. 6.061 billion to Ksh. 4.608 billion.
  - (iii) Health Policy, Standards and Regulations: - The gross capital expenditure estimate for this programme was reducing by Ksh. 211 million from the approved Ksh. 8.038 billion to Ksh. 7.827 billion.
15. The following were some of the capital expenditure estimates votes heads which had been adjusted downwards:
- (i) East Africa's Centres of Excellence for Skills and Tertiary Education: - The gross capital expenditure estimate for this vote head had been reduced by Ksh. 279.63 million from the approved Ksh. 365 million to Ksh. 85.370 million.
  - (ii) Kenyatta National Hospital- Construction of Buildings: - The gross capital expenditure estimate for this vote head had been reduced by Ksh. 100 million from the approved Ksh.150 million to Ksh. 50 million. Another approved expenditure estimate of Ksh. 150 million for construction had been reduced by Ksh 99.5 million to Ksh. 50.5 million. These reductions were likely to significantly affect development projects being undertaken at KNH.
  - (iii) Health Sector Development (Reproductive Health and HIV/AIDS) Commodity: The gross capital expenditure estimate for this vote head had been reduced by Ksh.115 million from the approved Ksh. 385 million to Ksh. 269.5 million.
  - (iv) Program for Basic Health Insurance Subsidy: The gross capital expenditure estimate for this vote head had been reduced by Ksh. 210 million from the approved Ksh. 700 million to Ksh. 490 million.
  - (v) Wajir District Hospital: The gross capital expenditure estimate for this vote head had been reduced by Ksh. 200 million from the approved Ksh. 250 million to Ksh. 50 million.
  - (vi) Kenya Medical Supplies Authority: - The gross capital expenditure estimate for this vote head had been reduced by Ksh. 2.125 billion from the approved Ksh. 3.125 billion to Ksh. 1 billion. The reduction had been necessitated by a reduction in grants from development partners and is likely to affect operation at KEMSA.
  - (vii) Moi Teaching and Referral Hospital (MTRH):- The gross capital expenditure estimate for this vote head had been reduced to zero from Ksh. 364.021 million following a reduction in development partner support. This reduction affected specialized materials and supplies for Academic Model Providing Access project.
  - (viii) East Africa Public Laboratory Networking Project: The gross capital expenditure estimate for this vote head had been reduced by Ksh. 534.965 million to Ksh. 200 million from Ksh. 734.965 million. The reduction had been necessitated by reduction in external development partner support.
  - (ix) Upgrade of Health Centres in Slums ( Strategic Interventions):- The gross capital expenditure estimate for this vote head had been reduced by Ksh. 116.052 million from approved Ksh, 500 million to Ksh. 383 .947 million.

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

### **SALIENT ISSUES**

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

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

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

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

### **Committee Observations and Resolutions**

The Committee observed that:

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

### **Committee Resolutions**

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

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

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

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

**1. Doctors Strike**

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

**2. Managed Equipment Service Project**

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

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

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

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

SIGNED: ..... 

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

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

MINUTES OF THE 77<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY 6<sup>TH</sup> OCTOBER, 2016, AT THE KENYATTA NATIONAL HOSPITAL AT 10.30 AM.

**PRESENT**

1. The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)
2. The Hon. Dr. James Murgor, M.P. Chairing
3. The Hon. Dr. Dahir D. Mohamed, M.P.
4. The Hon. Kamande Mwangi, M.P.
5. The Hon. Hassan Aden Osman, M.P.
6. The Hon. Stephen M. Mule, M.P.
7. The Hon. Jared Opiyo, M.P.
8. The Hon. Dr. Stephen Wachira, M.P.
9. The Hon. Fred Outa, M.P.
10. The Hon. David Karithi, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)
2. The Hon. Dr. Eseli Simiyu, CBS, M.P.
3. The Hon. Dr. Naomi Shaban, M.P.
4. The Hon. Paul Koinange, M.P.
5. The Hon. Robert Mbui, M.P.
6. The Hon. John Nyaga Muchiri, M.P.
7. The Hon. Dr. Patrick Musimba, M.P.
8. The Hon. Dr. Susan Musyoka, M.P.
9. The Hon. James Gakuya, M.P.
10. The Hon. Dr. James Nyikal, M.P.
11. The Hon. Michael Onyura, M.P.
12. The Hon. Dr. Enoch Kibunguchy, M.P.
13. The Hon. Raphael Milkau Otaalo, M.P.
14. The Hon. Alfred Agoi, M.P.
15. The Hon. Mwinga Gunga, M.P.
16. The Hon. Leonard Sang, M.P.
17. The Hon. Zipporah Jesang, M.P.
18. The Hon. Dr. James O. Gesami, M.P.
19. The Hon. Alfred Sambu, M.P.

**IN ATTENDANCE**

**KENYATTA NATIONAL HOSPITAL**

1. Mark Bor - Chairman, Board of Management
2. Lily Koros Tare - Chief Executive Officer

- |                       |   |                                   |
|-----------------------|---|-----------------------------------|
| 3. Philomena W. Maina | - | Deputy Director, Nursing Services |
| 4. Calvin Nyachoti    | - | Corporation Secretary             |
| 5. Gicheru Evalyne    | - | Legal Officer                     |
| 6. Carylus Odianso    | - | KNH                               |
| 7. Githae B.M         | - | KNH                               |
| 8. Wilson Chepkwesi   | - | KNH                               |
| 9. Mutie T.M.         | - | KNH                               |
| 10. Jared Owiny       | - | KNH                               |
| 11. Dr. Kioko Henry   | - | KNH                               |
| 12. Alice Njihia      | - | KNH                               |
| 13. Judith Wanyonyi   | - | KNH                               |

#### **MINISTRY OF HEALTH**

1. Dr. Makau Matheka
2. Peter Odundo

#### **National Assembly Secretariat**

- |                             |   |                         |
|-----------------------------|---|-------------------------|
| 1. Ms. Esther Ngunjiri      | - | Third Clerk Assistant   |
| 2. Mr. Dennis Megare Ogechi | - | Third Clerk Assistant   |
| 3. Ms. Marlene Ayiro        | - | Legal Counsel           |
| 4. Ms. Farida Ngasura       | - | Audio Recording Officer |
| 5. Mr. Albert Atunga        | - | Serjeant-At-Arms        |

#### **MIN.NO. DCH 320/2016: PRELIMINARIES.**

The Acting Chairperson called the meeting to order at 10.46 am and said a prayer. He then stated that the purpose of the visit to Kenyatta National Hospital was to inspect the scene of the alleged murder of the Late Mr. Cosmas Mutunga in order to respond to a petition before the Health Committee of the National Assembly. He thereafter invited those present to introduce themselves.

#### **MIN.NO. DCH 321/2016: INSPECTION VISIT TO KENYATTA NATIONAL HOSPITAL**

The Acting Chairperson ruled that the Committee would tour the alleged scene of crime before settling for sharing of views.

The KNH Board of Management Chairperson, Mr. Mark Bor welcomed Members to tour the facility but urged for respect of the privacy of patients while conducting the tour.

The Committee subsequently toured the following areas located on the 8<sup>th</sup> floor of the Tower Block at the hospital:

1. Ward 8C and adjoining wards

2. The Nursing Desk
3. The Linen Store
4. Service Store for ward 3C
5. Store 1
6. The Balcony that goes round the ward and the adjoining washrooms.

**MEMBERS' OBSERVATIONS**

From the hospital tour and the engagement with the Board and Management, Kenyatta National Hospital, Members made the following observations:

1. The absence of CCTV cameras almost one year after the incident at such a major national facility was a serious oversight on the part of the management and the Board of Kenyatta National Hospital.
2. Other avenues to access ward 8C existed and included the balcony that goes round the ward and adjoining washrooms, the door that leads to an area for temporal storage of bodies.
3. There was need to clearly establish the family and career background of the patient in question, the Late Mr. Cosmas Mutunga.

**RESOLUTIONS**

After deliberations with the Board and management of KNH, it was resolved that:

1. CCTV cameras should be installed at the KNH at the earliest opportunity to avert any such incidents and secure the staff, patients therein and other visitors.
2. More security guards should be employed and deployed to increase security surveillance at the facility.
3. The country's security services should conduct training and awareness creation on various aspects of security to the staff at KNH generally and specifically to the security department at the facility.

**MIN.NO. DCH 322/2016:**

**ADJOURNMENT**

There being no other business, the meeting was adjourned at 12.29 pm.

**SIGNED:** .....

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

**CHAIRPERSON**

**DATE:** ..... 6/12/2016 .....

THE UNIVERSITY OF CHICAGO PRESS

MINUTES OF THE 76<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON TUESDAY 4<sup>TH</sup> OCTOBER, 2016, IN THE 4<sup>TH</sup> FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.

**PRESENT**

1. **The Hon. Dr. Racheal Nyamai, M.P.** (Chairperson)
2. **The Hon. Dr. Robert Pukose, M.P.** (Vice Chairperson)
3. The Hon. Jared Opiyo, M.P.
4. The Hon. Dr. James Nyikal, M.P.
5. The Hon. Dr. Stephen Wachira, M.P.
6. The Hon. Fred Outa, M.P.
7. The Hon. James Gakuya, M.P.
8. The Hon. Michael Onyura, M.P.
9. The Hon. Dr. Enoch Kibunguchy, M.P.
10. The Hon. Raphael Milkau Otaalo, M.P.
11. The Hon. Alfred Agoi, M.P.
12. The Hon. Dr. James Murgor, M.P.
13. The Hon. Leonard Sang, M.P.
14. The Hon. Zipporah Jesang, M.P.
15. The Hon. Dr. James O. Gesami, M.P.
16. The Hon. David Karithi, M.P.
17. The Hon. Mwinga Gunga, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Eseli Simiyu, CBS, M.P.
2. The Hon. Dr. Naomi Shaban, M.P.
3. The Hon. Hassan Aden Osman, M.P.
4. The Hon. Stephen M. Mule, M.P.
5. The Hon. Paul Koinange, M.P.
6. The Hon. Dr. Dahir D. Mohamed, M.P.
7. The Hon. Kamande Mwangi, M.P.
8. The Hon. Robert Mbui, M.P.
9. The Hon. John Nyaga Muchiri, M.P.
10. The Hon. Dr. Patrick Musimba, M.P.
11. The Hon. Dr. Susan Musyoka, M.P.
12. The Hon. Alfred Sambu, M.P.

## IN ATTENDANCE

### KENYATTA NATIONAL HOSPITAL

- |                       |   |                                   |
|-----------------------|---|-----------------------------------|
| 1. Mark Bor           | - | Chairman, Board of Management     |
| 2. Lily Koros Tare    | - | Chief Executive Officer           |
| 3. Issack O. Kibwage  | - | Board Member                      |
| 4. Dr. Makau Matheka  | - | Board Member                      |
| 5. Philomena W. Maina | - | Deputy Director, Nursing Services |
| 6. Calvin Nyachoti    | - | Corporation Secretary             |
| 7. Gicheru Evalyne    | - | Legal Officer                     |
| 8. Githae B.M         | - | Legal Officer                     |

### National Assembly Secretariat

- |                             |   |                        |
|-----------------------------|---|------------------------|
| 1. Ms. Esther Nginyo        | - | Third Clerk Assistant. |
| 2. Ms. Ruth Mwihaki         | - | Third Clerk Assistant. |
| 3. Mr. Dennis Mogare Ogechi | - | Third Clerk Assistant. |

### MIN.NO. DCH 316/2016: PRELIMINARIES.

The Chairperson called the meeting to order at 10.24 am and prayer was said by the Hon. Dr. Robert Pukose, M.P.

She stated that the purpose of the meeting was to receive information from the KNH Board of Management in regard to the petition before the Committee regarding the murder of the Late Mr. Cosmas Mutunga at the Kenyatta National Hospital (KNH). She thereafter invited those present to introduce themselves.

### MIN.NO. DCH 317/2016: SUBMISSIONS FROM THE BOARD OF MANAGEMENT, KENYATTA NATIONAL HOSPITAL

Mr. Mark Bor, Chairman to the Board of Management, Kenyatta National Hospital appeared before the Committee and informed it that:

1. On Establishment & Mandate of KNH he stated that Kenyatta National Hospital (KNH) was established by the Government under Legal Notice No.109 of 6<sup>th</sup> April 1987, its mandate is to:
  - i) receive patients on referral from other hospitals or institutions within or outside Kenya for specialized health care;
  - ii) provide facilities for medical education for the University of Nairobi Medical School, and for research either directly or through other co-operating health institutions;
  - iii) provide facilities for education and training in nursing and other health and allied professions; and

- iv) Participate as a national referral hospital in national health planning.
2. On KNH by Numbers he stated that:
- i) Kenyatta National Hospital being a public health facility receives an estimated daytime population of 30,000 made up of patients, patient relatives, students and staff.
  - ii) Being a health rather than a security facility and having in mind the heavy traffic, the Hospital could at best assure of modest security of those within the facility. The situation was worsened by its expansive size, limited and ever reducing allocations for recurrent expenditure particularly human resources costs and a complete omission to allocate funds for capital expenditure that could be used to refurbish and modernize the facility to meet the security needs of the moment.
  - iii) Annually, KNH received on average over 500,000 outpatients and 80,000 inpatients. The devolved system of government and the introduction of free maternity had led to significant increases in the number of admissions in the Hospital. KNH was still managing diseases that should be managed at the county level.
  - iv) The Hospital death rate in the year 2015 stood at 8.9%. The leading causes of death included cancer; HIV complications, pneumonia; preterm infants, acute renal failure, respiratory distress of new born, diabetes mellitus, heart failure, among others.
  - v) In the long history of the Hospital and in spite of the huge number of clients mentioned above, outside of the alleged murder of the late Cosmas Mutunga, the Board and Management of the Hospital was unaware of any other mysterious deaths within the Hospital precincts of any patient visiting or undergoing treatment.
3. On Admission, Treatment and Eventual Death of the late Cosmas Mutunga he stated that:
- i) The late Cosmas Mutunga, aged 42 years, was first seen on 14<sup>th</sup> October 2015 at the ENT Clinic where he was presented with nasal blockage, headaches, decreased right eye movement and loss of hearing in his right ear. Physical examination showed a man who was in a fairly good condition, mild pallor with ptosis right eye. The right eye was partially blocked and the pharynx was normal on examination. He was booked for diagnostic tests on 16<sup>th</sup> October 2015 and the necessary medical tests were carried out.
  - ii) The late Mutunga continued on follow up treatment as an outpatient in the ENT Clinic. On 5<sup>th</sup> November 2015 he was presented at the Accident and Emergency Unit with dizziness and general body weakness. On examination, he was found to be very pale (Hb-5gm/dl), was sick looking and weak. A decision was made to admit and transfuse him and for further management. He was admitted in the Medical Ward 8D and was transfused. When his haemoglobin levels rose to normal, he was transferred on 18<sup>th</sup> November 2015 to the Specialized Cancer Ward 8C (male white room), for chemotherapy which was started on 23<sup>rd</sup> November 2015.

- iii) The Specialized Cancer Ward 8C is located on the 8<sup>th</sup> floor of the Tower Block. On the night of 28<sup>th</sup> November 2015, the ward had a total of 32 patients. The male white room was occupied by only two patients, Clement Kagundu, IP No.1775984 and the late Mutunga.
- iv) Patient Clement Kagundu, aged 21 years, was admitted on 23<sup>rd</sup> November 2015 with multiple abdominal masses in the background of Down's syndrome. He had speech and hearing impairment and was discharged on 4<sup>th</sup> December 2015.
- v) The staff on night duty in Ward 8C on 28<sup>th</sup> November 2015 were: -

**a) Nursing personnel**

- Mrs. Priscillah W. Njeru - Senior Nursing Officer
- Mr. Godfrey M. Gachora - Senior Enrolled Nurse
- Ms. Rosemary Nkonge - Locum Nurse

**b) Security personnel**

- Mr. Dan O. Onjira - Security & Safety Services Duty Officer
- Mr. Peter Mutiso - Security & Safety Services Shift Supervisor

**c) Support staff:**

- Ms. Mary M. Kamau - Support Staff

4. On the Suspected Murder Weapon, he stated that:

- i) On that fateful night, the nursing staff on duty reported that all entrances/exits to the Ward were locked at around midnight. At 4.00 am on 29<sup>th</sup> November 2015, the late Mutunga's primary nurse, Priscillah W. Njeru, observed that the patient appeared to be very sick but breathing well. She took his temperature.
- ii) At about 5.30am, Nurse Njeru went back to the patient's room to administer treatment and was shocked to find splashes of blood on the wall next to the patient's bed. She approached the patient and found that he was bleeding and soaked in a pool of blood. She took the hospital gown (shirt) which she found on his chest and wiped the blood off his face. She observed the patient was not breathing and called for help from her colleagues, Nurses Godfrey G. Muriithi and Rosemary Nkonge. The incident was immediately reported to Security Control Room.
- iii) A blunt metallic object suspected to have been used in the murder was found placed on the bed next to the deceased patient's bed. The metal object was a metal bracket used to support shelves in the wards. Five (5) other metal brackets similar to the suspected murder weapon were recovered from Ward 8C Service Store.
- iv) The Service Store is located opposite the nurses' desk and is normally locked and the key kept in one of the drawers at the nursing desk for easy access by clinicians on duty.

5. On cause of death he stated that:

- i) A postmortem examination was conducted on 7<sup>th</sup> December 2015 on the body of the late Cosmas Mutunga. External examination of the body was found to have 32 lacerations on the left frontal region of the face.
  - ii) Internal examination found among others, fracture of maxilla on the left side; left upper incisor and lower canine missing; left premolar tooth floating in the mouth; bruising of the tongue; ruptured eyeball; fracture of the left frontal-temporal of the skull; and brain contusions on the right temporal region. Conclusion as to cause of death is **haemorrhage and head injury due to blunt and penetrating trauma.**
  - iii) Blood and tissue biopsies specimens were taken for further investigations. A report on the same was still being awaited.
6. On Steps and Mechanisms to Guarantee Security and Safety of Admitted Patients he stated that:
- i) The KNH Board of Management was formally briefed on the unfortunate incident during its 127<sup>th</sup> regular Board meeting held on 10<sup>th</sup> December 2015. The Board observed that the Ministry of Interior and Coordination of National Government, Office of Internal Security, through the Ministry of Health (MoH) had requested for a brief on the matter and the Hospital had responded.
  - ii) The Board resolved that:
    - a) Management explores resources for installation of CCTV at strategic points in the Hospital.
    - b) Management requests the Office of the Inspector General of Police for the deployment of Administration Police (APs).
    - c) The Board to await the investigation report from the National Police Service. In the meantime, the Hospital to carry out its own internal investigations and a report to be submitted.
7. On KNH Board of Management Action he stated that:
- i) The Hospital carried out its own internal investigations through the Security and Safety Department. A report dated 2<sup>nd</sup> September 2016 was submitted whose findings indicate possible criminal collusion between unknown hospital staff and outsiders with the mode of execution remaining highly concealed and yet to be established. The report recommended that: -
    - a) Administrative and or disciplinary action be taken against all staff found to have been culpable or negligent in their performance of duty; and
    - b) Management to consider recruiting additional safety and security staff for adequate coverage of the Hospital as well as procuring an integrated security system.
  - ii) On 22<sup>nd</sup> September 2016, the Hospital placed on interdiction the staff on night duty on that fateful night. The grounds for interdiction were negligence of duty and failure to secure hospital patient. Disciplinary procedure was ongoing. The Hospital further terminated effective 22<sup>nd</sup> September 2016, the services of Nurse Rosemary Nkonge who had been engaged on *locum*.
  - iii) The Hospital had taken the following steps to ensure safety and security of patients and prevent recurrence of a similar incident: -

- a) Requested the Inspector General of Police to increase armed Police Officers in the Hospital to supplement the existing internal security system.
- b) Procured 100 hand metal detectors to enhance screening of visitors.
- c) Increased surveillance through increased security patrols and emphasized the importance of respecting visiting hours and rest periods for patients.
- d) Tendered for the supply, delivery, installation testing and commissioning of security communications equipment and closed circuit equipment (cameras, walk through metal detectors, and access control system). The tender closed on 9<sup>th</sup> August 2016 and was in the award stage (at the time of the meeting).
- e) Counter Terrorism Awareness training by the National Counter Terrorism Center and Anti-Terrorism Police Unit organized for all security staff as well as some National Police and representatives from neighbouring institutions in the larger KNH Complex.
- f) Physical security training of all security staff facilitated by the National Intelligence Service to improve capacity on physical security management.
- g) Initiated plans to train all employees, and in particular health workers, on their roles and responsibilities towards the safety and security of patients.
- h) Was at the time developing a Security and Safety Policy.

8. On compensation, he stated that:

- i) The Hospital was not vicariously liable for criminal acts committed by others. Once investigations were concluded, and the perpetrator(s) found, it was expected that the State would prosecute them. In such a scenario, the Estate of the late Cosmas Mutunga shall have recourse against the said perpetrator(s).
- ii) On the other hand, if the investigating authorities failed to find the perpetrator(s) responsible for this heinous crime, and a civil suit or a constitutional petition filed against the Hospital, then the doctrine of *res ipsa loquitur* (i.e. the thing speaks for itself) would apply.
- iii) Under such action in court, if the Hospital was found liable in negligence in the alleged murder of the late Cosmas Mutunga, then the Hospital Management should address itself towards compliance of such lawful orders as may be issued.

## **MEMBERS' OBSERVATIONS**

From the presentation and the engagement with the Board of Management, Kenyatta National Hospital, members made the following observations:

1. The admission by the Board of Management that the murder weapon was an item stored within the hospital indicated that the planning and execution of the murder was done internally.
2. There was no definite plan of action by the Board of Management to beef up security at the facility, a worrying indication since the hospital was a strategic place that could easily attract terror attacks due to the fact that it's highly populated.
3. The installation of CCTV at the facility to protect patients risks running into ethical challenges of intruding into patients' privacy. It was therefore prudent that such installations are limited to public areas within the facility.
4. The Management at KNH seemed either lax or unwilling to act expeditiously on the matter since the action of interdicting staff who were found negligent on that fateful night on 29<sup>th</sup> November, 2015 was taken almost a year after the incident on 22<sup>nd</sup> September, 2016 and after holding a meeting with the Health Committee of the National Assembly.
5. The Kenyatta National Hospital had no capacity to secure the large number of people visiting or working at the facility due to low staffing levels in its security section among other factors.
6. There was reduction in GOK funding to Kenyatta National Hospital from the 2013/14 Financial Year to the 2015/16 financial year which could compromise service delivery and security services at the facility.
7. There were several requests for assistance made via letters from KNH to security services in the country including: The Inspector General of Police, The National Counter Terrorism Centre and the National Security Intelligence Services. However, no tangible action had been taken to improve the security situation at KNH.

## RESOLUTIONS

The Committee resolved that:

1. The Inspector General of Police should be invited to shed light on measures being pursued, if any, to improve the security situation at the KNH.
2. During the inspection visit to the KNH on 6<sup>th</sup> October, 2016, the members of staff that were interdicted due to the subject matter of the petition should be present to interact with the Committee.

**MIN.NO. DCH 318/2016:                      ANY OTHER BUSINESS**

Members were informed that:

1. An NGO named ARECA-DAPS wrote to the Committee asking to engage it on urgent intervention on current NHIF rates to make them affordable to low income earners.

The Committee resolved to write to the NGO asking it to furnish it with a detailed actuarial study informing their proposal.

2. The Chairperson of the Kenya Nutritionists and Dieticians Institute wrote to the Committee inviting members to a breakfast meeting within Nairobi on 5<sup>th</sup> October, 2016 at 7 am.

The Committee resolved to send representation to the breakfast meeting.

MIN.NO. DCH 319/2016:                      ADJOURNMENT

There being no other business, the meeting was adjourned at 1.21 pm.

SIGNED:  .....

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

DATE: 27/10/2016 .....

**MINUTES OF THE 75<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY 15<sup>TH</sup> SEPTEMBER, 2016, IN THE 4<sup>TH</sup> FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 2.30 PM.**

**PRESENT**

1. **The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)**
2. **The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)**
3. The Hon. Jared Opiyo, M.P.
4. The Hon. Dr. James Nyikal, M.P.
5. The Hon. Dr. Stephen Wachira, M.P.
6. The Hon. Fred Outa, M.P.
7. The Hon. Hassan Aden Osman, M.P.
8. The Hon. Michael Onyura, M.P.
9. The Hon. Mwinga Gunga, M.P.
10. The Hon. Stephen M. Mule, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Enoch Kibunguchy, M.P.
2. The Hon. Dr. Eseli Simiyu, CBS, M.P.
3. The Hon. Alfred Agoi, M.P.
4. The Hon. Dr. James Murgor, M.P.
5. The Hon. Dr. Naomi Shaban, M.P.
6. The Hon. Dr. James O. Gesami, M.P.
7. The Hon. David Karithi, M.P.
8. The Hon. Paul Koinange, M.P.
9. The Hon. Dr. Dahir D. Mohamed, M.P.
10. The Hon. Raphael Milkau Otaalo, M.P.
11. The Hon. Kamande Mwangi, M.P.
12. The Hon. Robert Mbui, M.P.
13. The Hon. John Nyaga Muchiri, M.P.
14. The Hon. Leonard Sang, M.P.
15. The Hon. Zipporah Jesang, M.P.
16. The Hon. Dr. Patrick Musimba, M.P.
17. The Hon. Dr. Susan Musyoka, M.P.
18. The Hon. Alfred Sambu, M.P.

**IN ATTENDANCE**

**KENYATTA NATIONAL HOSPITAL**

1. Lily Koros Tare - Chief Executive Officer
2. Githae B.M - Ag. Director Clinical Services

3. Rev. Manasseh Mugwang'a - Head of Security.
4. Carylus Odiang'o - DCOS.
5. Gicheru Evalyne - Legal

**National Assembly Secretariat**

1. Ms. Esther Nginyo - **Third Clerk Assistant.**
2. Ms. Ruth Mwhaki - Third Clerk Assistant.

**MIN.NO. DCH 313/2016: PRELIMINARIES.**

The Chairman called the meeting to order at 3.00pm and prayer was said by the Hon. Hassan Aden Osman, M.P.

She stated that the purpose of the meeting was to receive information from the KNH management in regard to the petition before the Committee regarding the murder of the Late Mr. Cosmas Mutunga at the Kenyatta National Hospital (KNH). She thereafter invited those present to introduce themselves.

**MIN.NO. DCH 314/2016: SUBMISSIONS FROM THE KENYATTA NATIONAL HOSPITAL**

Lily Koros Tare, the Chief Executive Officer Kenyatta National Hospital informed the Committee as follows, that:

1. Cosmas Mutunga Kenyatta, 42 years old, Hospital No. 1769984 was first seen at the Kenyatta National Hospital (KNH) on the 14<sup>th</sup> October 2015, in the Ear Nose Throat (ENT) clinic where he presented with nasal blockage, headaches, decreased right eye movement and loss of hearing in the right ear;
2. For a period of 4 months he reported that he was progressively getting worse and was getting excessive discharge from the right ear and that he was losing both sense of smell and hearing on the right ear with a severe head ache on the same side;
3. Cosmas reported that 4 months prior to the presentation he led a normal life while he was working as a store manager with a private company. He was a married man, father of four children and was residing in Imara Daima Estate in Nairobi. He had a history of smoking prior to this, was a social drinker(light drinker on social occasions)
4. Physical examination showed a man who was in fairly good condition, mild pallor with ptosis of the right eye. The right eye was partially blocked and the pharynx was normal on examination;
5. He was booked for diagnostic tests on 16<sup>th</sup> October 2015 and the following tests were done:
  - a) CT Scan Brain- showed postnatal tumor with intracranial extension and nodal metastasis right side of the neck.
  - b) Rigid nasal Endoscopy and Biopsies- Histology showed large B cell lymphoma immunohistochemistry showed CD45- strongly and diffusely positive, CD20 –strongly positive and CD3 –negative
  - c) Abdominal ultrasound and chest x ray were also done for staging and were all normal.

- d) Other baseline tests like full blood counts, urea and electrolytes, liver function tests were all done.
6. Cosmas was continuing on medical treatment for pain as an outpatient and was having follow ups in the ENT clinic. He was however presented on the 5<sup>th</sup> of November 2015 at accident and Emergency with dizziness, general body weakness for about two days. He was found to be very pale (Hb -5gm/dl) and was sick and looked weak. A decision to admit him was made and was prepared for chemotherapy once the laboratory reports were ready.
  7. He was admitted to the admitting medical ward 8D. He got transfused and when the hemoglobin rose to normal levels, he was transferred to specialized Cancer Ward 8C for Chemotherapy which was started on the 23<sup>rd</sup> November 2015. He was given cyclophosphamide, doxorubicin Vincristine and predisone (chop) with intrathecal methotrexate.
  8. He was in the ward during the resting period awaiting the 2<sup>nd</sup> course of chemotherapy and was noted to be deteriorating. He was noted to be very sick on the 28<sup>th</sup> November 2015 and was last observed at 4.00am on 29<sup>th</sup> November 2015 before the unfortunate incidence. He was found at 5.30 am, by the nurse who was giving medication with multiple facial injuries in a pool of blood. There was no sign of life. She informed security officers and the doctor covering.
  9. A postmortem examination was conducted on the body of Mr. Cosmas Kenyatta and conclusion as to the cause of death was “hemorrhage and head injury due to blunt penetrating trauma”

#### **Security Coverage**

10. During the night, the KNH tower Block that houses most of the wards was secured by safety and security services wardens deployed in specific entrances/exit. Some entrances/exits were physically locked at night due to shortage of security personnel;
11. The KNH safety and security services department Duty Officer (Mr. Dan Otieno) and shift supervisor (Mr. Peter Mutiso) visited all deployment areas and patrolled other areas that had no deployment, including level 8 where ward 8C is located. During their patrols, along the corridors in Tower Block including Ward 8C, nothing unusual was detected or reported to them.
12. The incident of patient Cosmas Mutunga Kenyatta was reported to security Control room and booked in KNH occurrence book under ON no.36 of 29<sup>th</sup> November 2015 at 05.40 hrs.
13. Security and safety services informed the CEO of the incident. The police were also informed and arrived at ward 8C as follows:
  - a) Arrival of police from KNH police post around 7.20 am
  - b) Arrival of safety and Security services manager at around 8.30 am
  - c) Arrival of police from scenes of Crime at around 9.30 am
  - d) Arrival of CEO at around 9.35 am
  - e) A meeting by Executive Management Committee at around 10.00am
  - f) Arrival of Police CID Kilimani(Deputy Criminal Investigations Officer and team) at around 2.00 p.m

14. Screening visitors was usually done during the two visiting hour's i.e 12.30 pm to 2.00 pm and 4.30 p.m to 6.00 p.m at entry points. KNH safety and security officers ensure visitors leave the wards after expiry of visiting hours.

15. On the fateful night Deployment in the Tower Block was as follows:

GROUND FLOOR	AREA	NO OF DEPLOYED STAFF	NAMES
	Tower Block casualty Side	2	Peter Musya Vincent Kigen
	Tower Block University	2	Sarah Chepkwony Monica Moraa
	Lift Rea	1	Eliazar Chacha
	Ist Floor	Theatre gate	1
	Ward 1D	1	David Juma Kazi
Third Floor	Floor Security Reception desk	1	Naomi Kimani
9 <sup>th</sup> and 10 <sup>th</sup> Floor KNH prime care Centre(KPCC)	KPCC Patrol Security Service	1	Benjamin Limungi

16. During the night, the entry to the Tower Block was the entrance located between Clinic no 18 and the x-ray department. This entrance could also be accessed through accident and Emergency (A 7E) rear exit. All other entrances/exits were physically locked.

17. Apart from the tower block, the other areas of the Hospital i.e Accident and Emergency, tower block outer layer which included Hospital frontage perimeter, consultant barrier, administration block, supplies gate and oxygen area, farewell home areas, new isolation ward, old wards 1F/ward 42, general outpatient clinic and paediatric filter clinic, walk in casualty, new Cancer treatment Centre Bunker, KNH estates, Laundry, boiler and Incinerator, Staff Training Centre/Comprehensive Care Centre were all covered by security officers

18. There was coverage by armed security with KNH estate patrols having 2 administration police and Kenya police manning the consultant barrier(2) and 2 others at the accident and emergency.

19. To enhance security and safety, the following areas in the hospital were locked at night and weekends:

- a) Tower block 2<sup>nd</sup> floor entrance
- b) KNH bus terminus gate
- c) No.14 entrance next to National Bank
- d) Post office gate
- e) Salaries entrance
- f) Old wards ground floor entrance
- g) Entrance from farewell home to tower block
- h) KNH gate A
- i) Entrance from Helipad(multi drug Resistant(MDR) tuberculosis clinic)

20. KNH had two normal visiting sessions during lunch time and in the evening as summarized below:

- a) Lunch time -12.30 pm to 2 .00 pm
- b) Evening-4.30 pm to 6 .00 pm

Patient's relatives were allowed outside these hours during admission, discharge and when required for other medical reasons

21. On the night of November 28<sup>th</sup>, the following staff were on night duty covering ward 8C

- a) Priscilla Wairimu Njeru P/No 529706 –Senior nursing officer
- b) Godfrey Muriithi Gachora P/No 529579 –Senior enrolled nurse
- c) Rosemary Gatakaa Nkonge PACT 13 –Locum nurse(employee of UON working at KNH comprehensive care Centre
- d) Mary Muthoni Kamau P/No 532522-Nurse on duty covering 4 wards during the night
- e) Dan Otieno Safety and security services department duty officer
- f) Peter Mutiso Safety and security services department Shift supervisor

22. The Hospital Security called the police on 29<sup>th</sup> November 2015 and handed over the scene of crime to them immediately on arrival and the case is under investigation by the CID in collaboration with DPP.

As of 9<sup>th</sup> September 2016, the police department had not completed their investigation. KNH has requested for feedback on the status of the investigation and was awaiting response from the DCIO Kilimani police Division.

#### **Intervention measures taken to improve security**

23. The hospital received an estimated day time population of 30,000 people made up of staff, students, patients and patient's relatives. The hospital was not adequately secured due to lack of a perimeter fence. The security department was understaffed and inadequately equipped.

24. KNH security concerns had been shared with various government agencies where the hospital had made request for funds to employ more security staff, install CCTV and modernize crowd control systems.

25. In addition to request for assistance from government agencies, the management had since stepped up security measures to prevent recurrence of the same as follows:

- a) Management organized for Counter Terrorism Awareness training by the National Counter Terrorism Centre and Anti-terrorism Police Unit for all security staff and some National Police as well as some representatives from neighboring institutions in the larger KNH complex
- b) National Intelligence Service (NIS) facilitated physical security training of all security staff to improve their capacity on physical security management. Other courses included command and leadership, fraud detection/prevention/investigations, disaster management, senior management course and basic life support(BLS)
- c) National Security and protection security training to members of the Executive Management Committee (EMC) by NIS at the National intelligence Academy

- d) Counter terrorism measures by National Counter terrorism centre(NCTC) to EMC as well as senior management staff at the Chief executive officers monthly meeting
  - e) Basic crime investigation course by the Directorate of Criminal investigations training school for 40 newly employed security and safety wardens
  - f) 100 hand metal detectors were procured as an immediate measure to improve security screening. Tender processes are underway to procure walk through scanners, access control gadgets and security communication equipment
26. The management had also improved security management processes as follows:
- a) The process of developing an elaborate security and safety policy had started to help in ensuring maximum security in the larger KNH complex
  - b) Visitors screening in a bid to control unauthorized access into restricted areas was initiated besides reduction in number of gates/entrances available to access the tower block
  - c) The Inspector of Police was requested to increase armed police officers in the hospital to supplement the existing internal security system
  - d) The safety and security department had since increased security presence through increased patrols.
27. A blunt object was found at the scene suspected to be the murder weapon.
28. The Hospital did not get a credit waiver request from the family and therefore the family had to clear all the bills in the absence of a request.

### **Committee Observations:**

The Committee observed:

1. The alleged murder took place between 4 am (when the last observation was made) and 5 Pm (when the nurses were changing the shifts).
2. During the incidence, the patient did not raise an alarm or scream for help. It was possible that the patient was sedated at the time of the murder
3. The patient sharing the ward with the late Cosmas Mutunga had a speech and hearing impairment. His interrogation relied heavily on sign language with the assistance of the parents and interpreters. His interrogation however indicated that there was a male and a female in the room during the murder.
4. The Hospital Security called the police on 29<sup>th</sup> November 2015 and handed over the scene of crime to them immediately on arrival and the case was left under investigation by the CID in collaboration with DPP. KNH had not followed up on the matter since handing over the case to the police.
5. There were no arrests done internally as the KNH security had no suspect. The staff on duty were interrogated by the police for three days and then released and resumed work. The management did not find any member of staff culpable for the incidence and also failed to take any administrative action as they claimed to wait for the CID report. The staff responsible for the patient continues to work at KNH.

6. While there were some internal investigations conducted by the KNH Security Services, the security report was completed about 8 months after the incident and handed over to the management. The report did not give anything substantial to lead to the arrest of the culprit.
7. It was notable that KNH did not follow up on the case until the Committee started the inquiry. According to the presentation by the C.E.O., KNH requested for feedback on the status of the investigation on 9<sup>th</sup> September 2016, and was awaiting response from the DCIO Kilimani police Division. The Police Department had not completed their investigation and last report had been received the morning of the meeting (15<sup>th</sup> September 2016). There were no official correspondence to show that KNH had followed up on the matter.
8. KNH had requested for a pathology report to establish if the patient had been sedated at the time of the murder. Samples were taken but as at the time of the meeting, the hospital had not followed up nor received the report.
9. The Hospital did not engage the family at all after the incidence.

**Committee Resolutions**

The Committee Resolved:

1. That the following documents be availed to the Committee for scrutiny:
  - a) final security report by KNH security services,
  - b) the nurses report for the evening of 29<sup>th</sup> November 2015,
  - c) the cadexes for the other patients in the immediate neighbouring wards for that day
  - d) the pathology report
2. That the Committee conducts an inspection visit at the Hospital to familiarize itself with the alleged crime scene
3. That the KNH Board to appear before the Committee to clarify on various issues of concerns in regard to how the hospital handled the murder of a patient under its care. Further, that the staff on duty be present at the meeting.

**MIN.NO. DCH 315/2016:**

**ADJOURNMENT**

There being no other business, the meeting was adjourned at 5.32 pm.

**SIGNED:** .....

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

**DATE:** ..... 27/10/2016

**MINUTES OF THE 74<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH HELD ON THURSDAY 15<sup>TH</sup> SEPTEMBER, 2016, IN THE 4<sup>TH</sup> FLOOR COMMITTEE ROOM, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM.**

**PRESENT**

1. **The Hon. Dr. Racheal Nyamai, M.P. (Chairperson)**
2. **The Hon. Dr. Robert Pukose, M.P. (Vice Chairperson)**
3. The Hon. Alfred Agoi, M.P.
4. The Hon. Jared Opiyo, M.P.
5. The Hon. Dr. James Nyikal, M.P.
6. The Hon. Dr. James O. Gesami, M.P.
7. The Hon. Dr. Naomi Shaban, M.P.
8. The Hon. Dr. Stephen Wachira, M.P.
9. The Hon. Fred Outa, M.P.
10. The Hon. Hassan Aden Osman, M.P.
11. The Hon. Michael Onyura, M.P.
12. The Hon. Mwinga Gunga, M.P.

**ABSENT WITH APOLOGY**

1. The Hon. Dr. Enoch Kibunguchy, M.P.
2. The Hon. Dr. Eseli Simiyu, CBS, M.P.
3. The Hon. Dr. James Murgor, M.P.
4. The Hon. David Karithi, M.P.
5. The Hon. Paul Koinange, M.P.
6. The Hon. Dr. Dahir D. Mohamed, M.P.
7. The Hon. Raphael Milkau Otaalo, M.P.
8. The Hon. Kamande Mwangi, M.P.
9. The Hon. Robert Mbui, M.P.
10. The Hon. ~~John~~ Nyaga Muchiri, M.P.
11. The Hon. Leonard Sang, M.P.
12. The Hon. Stephen M. Mule, M.P.
13. The Hon. Zipporah Jesang, M.P.
14. The Hon. Dr. Patrick Musimba, M.P.
15. The Hon. Dr. Susan Musyoka, M.P.
16. The Hon. Alfred Sambu, M.P.

**IN ATTENDANCE**

**PETITIONERS**

1. Hon. John Mati Munuve, M.P. - Mwingi North Constituency.
2. Mrs. Selestin M. Kenyatta - Wife to the Late Cosmas

3. Ms. Pascala Mwikali - Daughter to the Late Cosmas.
4. Mr. Mwanzia Kihuku - Brother to the Late Cosmas.
5. Mwanzia Kihuku

**National Assembly Secretariat**

1. Ms. Esther Nginyo - Third Clerk Assistant.
2. Ms. Ruth Mwihaki - Third Clerk Assistant.

**MIN.NO. DCH 309/2016: PRELIMINARIES.**

The vice Chairman called the meeting to order at 11:26 am and said a prayer. He thereafter invited those present to introduce themselves

**MIN.NO. DCH 310/2016: CONSIDERATION OF THE PETITION ON THE ALLEGED MURDER OF THE LATE COSMAS MUTUNGA AT THE KENYATTA NATIONAL HOSPITAL.**

Hon. Dr. Stephen Wachira on a point of order sought guidance as to whether the matters raised in the petition on the alleged murder of the Late Cosmas Mutunga at KNH was within the mandate of the Health Committee or the Administration and National Security Committee. After deliberation, the Committee noted that the matter was properly before it as the patient was allegedly murdered while at the custody of the Hospital. It therefore resolved to consider the petition.

**Brief by the Hon. John M. Munuve, MP and the Petitioners**

Hon. John Mati Munuve, M.P Mwingi north Constituency, representing the petitioners briefed the Committee on the petition and informed it that:

- a) The Petitioners were his constituents and that on 29<sup>th</sup> November 2015, Mr. Cosmas Mutunga who had been admitted at the Kenyatta National Hospital was found dead having been stabbed severally using a sharp object. He was discovered at 5 am in the morning.
- b) The Late Cosmas had been admitted in Hospital for about 5 months having been diagnosed with cancer. On admission, he was admitted at Ward 8D since he needed a blood transfusion, where he stayed for two weeks. He was later transferred to Ward 8C after his blood levels were found to have improved in order to start chemotherapy.
- c) Before his death, the late Cosmas was employed at Mada Hotels head office, the Holding company for La Mada Hotels as a procurement manager. He had worked at the company for 20 years. However, at the time of his death, he was on sick leave.
- d) He was the sole provider for his family. His children were at various levels of schooling. The Children were forced to rely on the Constituency Development Fund bursaries for their education.
- e) His wife was a house wife with meagre means of income. With the murder of the Late Cosmas, the family was left without a provider.

- f) On the fateful day, the wife and the brother had visited the Late Cosmas in Hospital and he appeared to be in high spirits and was in a stable condition. He looked forward to being discharged from Hospital and resume work. He requested his family to visit him again the following day as they were leaving the hospital that evening.
- g) On the morning of Sunday 29<sup>th</sup> November 2015, the family received a call from relatives of another patient who informed them that there had been a murder at the Hospital. The brother rushed to the Hospital but was not allowed in until the wife to Cosmas arrived.
- h) The family recorded a statement to the Police at Milimani Police station and was released. The staff on night duty during the time of the murder were also arrested but later released. No further arrests had been made and neither was the family aware of any one who has been charged in court for the murder.
- i) The late Cosmas was sharing a cubicle with a cancer patient (cancer of the tongue) who was alleged to have been mentally retarded and could neither hear nor speak.
- j) According to the Hospital, the nurse rounds were conducted at 4 am and Cosmas had been administered with drugs at that time. His body was discovered at 5 am when the nurses were changing shifts.
- k) The family was allowed to view his body at the ward before he was moved to the mortuary.
- l) By the time the family arrived at the scene, the police had already interrogated the patient who was sharing the cubicle with Cosmas and had been moved to another ward.
- m) The interrogation of the said patient was done through sign language due to his condition. The family was however not able to interact with him but they got information the patient had described that a woman and a young man had walked into the room and murdered Cosmas.
- n) Postmortem results showed that he had been stabbed 42 times with a sharp object. One of his legs had been broken and one eye gorged out. The family was represented at the postmortem.
- o) The body was later released to the family after two weeks for the funeral after they had cleared all the hospital bills.
- p) KNH did not communicate with the family at all after the unfortunate event.

**The Committee observed that:**

- a) The Patient was murdered between 4 am and 5 am in the Morning.
- b) Given the description of the stab wounds, it is possible that the patient had been sedated by the time of the murder since he did not make any notice nor scream for help.
- c) There was need to ensure that patients were guaranteed security while in hospitals.
- d) There was need to establish the whereabouts of the other patient who was allegedly sharing ward with the Late Cosmas as he had crucial information.

**MIN.NO. DCH 311/2016:**

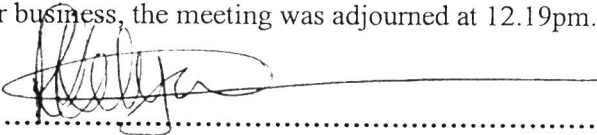
**ANY OTHER BUSINESS**

Members were informed that the Committee was scheduled to meet with the Kenyatta National Hospital Management at 2.30 pm. Hon. John Mati Munuve, M.P requested that the petitioners be allowed to sit in during the meeting.

MIN.NO. DCH 312/2016:

ADJOURNMENT

There being no other business, the meeting was adjourned at 12.19pm.

SIGNED:  .....

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

DATE: 27/10/2016 .....

REPUBLIC OF KENYA

M. S. O. G. M.  
Please appear  
P. J. O. S. M.  
10/8

Approved  
B. N. S. M. A.  
10/8/16



THE NATIONAL ASSEMBLY  
ELEVENTH PARLIAMENT  
(FOURTH SESSION)

PUBLIC PETITION

BY THE FAMILY OF THE LATE COSMAS MUTUNGA AND RESIDENTS OF  
MWINGI NORTH CONSTITUENCY ON ALLEGED BRUTAL MURDER OF MR.  
COSMAS MUTUNGA AT THE KENYATTA NATIONAL HOSPITAL

I, the UNDERSIGNED, on behalf of the family of the Late Mr. Cosmas Mutunga and the resident of Mwingi North Constituency;

DRAW the attention of the House on the following: -

- i. THAT, Article 26(1) of the Constitution provides for the right to life while Article 43(1) (a) provides for the right to highest attainable standard of health for every citizen;
- ii. THAT, whilst the Kenyatta National Hospital is the largest national referral hospital in Kenya however, many patients have lost their lives under mysterious circumstances while undergoing treatment at the facility;
- iii. THAT, on 29<sup>th</sup> November, 2015 a Mr. Cosmas Mutunga who was admitted at the Kenyatta National Hospital was found dead in his hospital bed having been stabbed severally using a sharp object and bleed profusely to death;
- iv. THAT, the mysterious death of the patient at the Kenyatta National Hospital has caused great agony and distress to his family, other patients at the Hospital and the Country at large;
- v. THAT, to date no arrest has been made despite the fact that the said patient was killed while in the custody of the Kenyatta National Hospital and in presence of other patients bearing in mind that the entire hospital is under 24 hours surveillance;
- vi. THAT, efforts to bring closure to this matter have been futile and further that similar incidents in the past, have not yielded any prosecution or convictions; and
- vii. THAT, the matter presented in this petition is not pending before any tribunal or court of law.

PUBLIC PETITION

BY THE FAMILY OF THE LATE COSMAS MUTUNGA AND RESIDENTS OF  
MWINGI NORTH CONSTITUENCY ON BRUTAL MURDER OF MR. COSMAS  
MUTUNGA AT THE KENYATTA NATIONAL HOSPITAL

THEREFORE your humble Petitioners pray that the National Assembly, through the  
Departmental Committee of Health: *& Administration & National Security*

- i. Causes an immediate probe into the death of the late Mr. Cosmas Mutunga;
- ii. Ensures the establishment of mechanisms to guarantee security and safety to patients  
admitted and visiting public hospitals especially those under the national government;
- iii. Considers causing compensation to the family of the late Mr. Cosmas Mutunga and other  
affected persons as a result of gross violation of human rights of patients, under the care  
and custody of the Kenyatta National Hospital;
- iv. Ensures that the Petitioner's plight is addressed; and
- v. Makes any other order or direction that it deems fit in the circumstances of the case.

And your PETITIONERS will ever pray.

PRESENTED BY:



HON. JOHN MATI MUNUVE, MP  
MWINGI NORTH CONSTITUENCY

DATE: *9-8-2016*.....