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Annex 4:

Submissions by the Public Service Commission



PUBLIC SERVICE COMMISSION

MEMORANDUM TO THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS ON GARISSA COUNTY GOVERNMENT HUMAN RESOURCE PRACTICES.

Introduction & background information

The Public Service Commission received a letter dated 22nd May, 2024 in which the Chairperson of the Commission was invited to appear before the Senate Standing Committee on Devolution and Intergovernmental Relations on 28th May, 2024 to shed light on the Commission's report dated 25th September, 2023 that was submitted and adopted by the Employment and Labour Relations Court (ELRC) at Nairobi (Hon. Byram Ongaya, J) in Nairobi ELRC Petition No.E205 of 2022: Ahmed Abdi Hussein & 4 Others - v- Garissa County Public Service Board & 4 Others.

On 22nd June, 2023, the ELRC issued orders that the petitioners and other aggrieved employees be subjected to an independent verification or audit process to be undertaken by the Public Service Commission in exercise of its constitutional and statutory powers and functions at the instance and cost of the County Government of Garissa as enabled by the Governor of the County Government of Garissa and the County Secretary. The court further ordered all parties to cooperate by way of providing relevant documents or information and attending when called upon so as to enable the Commission to undertake the verification and audit exercise expeditiously and accordingly.

On 13th July, 2023, the court clarified its orders of 22nd June, 2023 to the effect that the court supervised process was outside the Commission's appellate powers and functions in Article 234(2)(i) of the Constitution and further that the Commission would undertake the verification exercise within the finding by the court of a dysfunctional human resource management surrounding the petitioners' dispute and in particular within the Commission's objects and authority to protect the sovereignty of the people, secure the observance by all State organs of democratic values and principles and promote constitutionalism as per Article 249(1)(a), (b) and (c) of the Constitution and the Commission's general powers and functions in Article 252(1) of the Constitution to conduct investigations on its own initiative or on a complaint made by a member of the public and the powers necessary for conciliation, mediation and negotiation.

The Commission was not a party to the suit before the ELRC but was only called upon to assist the court as an independent party by way of conducting a court supervised independent verification or audit process with respect to the dispute that was before it, specifically to undertake the verification/audit exercise as a result of which it submitted the report dated 25th September, 2023.

In undertaking the assignment as had been ordered and directed by the Court, the Commission did the following:

- a. developed a tool for collection of data;
- b. requested for information from the parties;
- c. held meetings with the parties; and
- d. undertook document review and analysis.

The data collection tool that was developed by the Commission included the following parameters:

- a. name of officer;
- b. national identification number;
- c. personal number;
- d. designation on first appointment;
- e. Job Group on first appointment;
- f. department;
- g. existence of a date of advertisement;
- h. whether there was an application letter or application form by the officer;
- i. whether the officer was qualified as the per advertisement;
- j. whether the officer was on the long list of applicants;
- k. whether the officer was shortlisted;
- l. the shortlisting report from the County Public Service Board (CPSB);
- m. minutes of shortlisting committee;
- n. date of interview of each officer;
- o. interview report from the CPSB;
- p. minutes of the interview committee;
- q. minutes of the CPSB meeting appointing the officer;
- r. letter of offer of appointment;
- s. letter of appointment;
- t. letter indicating the date the officer reported for duty on first appointment;
- u. letter of confirmation in appointment;
- v. whether an officer was promoted; the current designation;
- w. origin of the verified file; and
- x. whether the officer was originally from the national government.

Information was also sought by the Commission on the following items:

- a. Staff Establishment for the County;
- b. Human Resource Manual;
- c. budgetary approvals for the advertised positions;
- d. requests from the County Government for filling the vacant positions that are the subject of the court petition;
- e. approval of recruitment by the County Public Service Board;
- f. excerpts of the advertisements for the various positions;
- g. long list of applicants for all the positions;
- h. shortlist of applicants;
- i. reports of shortlisting committees;
- j. minutes of shortlisting committees;
- k. reports of interview committees;
- l. minutes of interview committees;
- m. minutes of the County Public Service Board meeting appointing the various officers who are subject to the petition;
- n. regulatory procedures on recruitment (if any); and
- o. any other relevant document.

The Commission also held meetings as follows with the parties herein:

- a. On **1st August, 2023** in the morning, the Commission, led by the Chairperson, met the County Executive led by the Governor;
- b. On the same day **1st August, 2023** in the afternoon, the Commission met the County Public Service Board comprising the Chairperson, the Vice Chairperson and one other board member;
- c. On **4th August, 2023**, the Commission met with the Petitioners;
- d. Between the **6th and 10th August, 2023**, the Commission met the Vice Chairperson and individual Board members separately; and
- e. On **10th August, 2023**, the Commission met with the Chairperson of the CPSB, upon the request of the said chairperson.

The Commission undertook document review which involved the following documents:

- a. The County Governments Act, 2012;
- b. The County Governments Human Resource Policy;
- c. Staff Rationalization Report, 2014;
- d. Personal files;
- e. Payroll data;
- f. Auditor General's Reports for the years ending 30th June, 2019 to 30th June, 2022; and
- g. Annual reports of the CPSB submitted to the County Assembly.

The Commission analyzed the above information and tabulated its finding in the report that was submitted to the Court.

The Commission's Findings

1. The Commission requested for files in relation to the petitioners and received a total of 1088 personnel files from the County Executive and the CPSB out of which 934 were from the CPSB and 653 were from the County Executive. 499 of these files were common in both the files submitted by the CPSB and those submitted by the County Executive as shown in Table 1 below:

<i>Received files</i>			
<i>S/No.</i>	<i>Origin of the Reviewed File</i>	<i>No.</i>	<i>%</i>
1	CPSB	435	39.98%
2	Executive	154	14.15%
3	Executive/CPSB	499	45.86%
Total		1088	100%

Table 1: Total number of received files.

2. Out of the 1088 files received, only 920 were on the list of petitioners. The balance of 168 files provided by both the County Executive and the CPSB as shown in Table 2 below and **appendix 21** of the report were not in the list of petitioners. The findings in the report did not therefore include the 168 persons.

Files submitted for persons who are not in the Petitioners' List			
S/No.	Origin of the Reviewed File	No.	%
1	CPSB	136	80.95%
2	Executive	15	8.93%
3	Executive/CPSB	17	10.12%
Total		168	100%

Table 2: Analysis of personnel files for persons who are not in the petitioners' list

3. Out of the list of the 1053 petitioners, 133 files were not availed either by the County Executive or the CPSB.

4. Further details of the findings of the audit are as follows:

a. **Ahmed Hussein Kediye** (County Affairs Department) and **Yussuf Ibrahim Aden** (Roads & Public Works Department) shared one personal number **20200457291**. However, data from the IPPD system, revealed that the shared personal number belonged to Ahmed Hussein Kediye. In respect of **Yussuf Ibrahim Aden**, his national identity card number (ID) and/or personal number could not be traced and neither was his personal file availed for verification by the Commission.

b. **Yussuf Nunow** (Revenue Department) and **Ismail Mohamed** (County Affairs Department) shared one personal number 20200301270. However, data from the IPPD system revealed that the shared personal number belongs to Ismail Mohamud Yussuf. In respect of Yussuf Nunow his ID and/or personal number could not be traced and neither was his personal file availed for verification by the Commission.

c. **Ibrahim Abdi Gure** of ID No.35749769 and personal number 20170168199 appeared on the list of petitioners. However, his national identity card number and personal number were not provided for in the list and the Commission obtained the same from the personal file availed by the CPSB.

d. **Application letters/Forms:** A total of 138 files had application letters/forms while 782 did not have the same.

e. **Letters of offer of appointments:**

i. A total of 873 files had letters of offer of appointment out of which 4 were un-dated and 4 were not signed. 47 files did not have letters of offer of appointment.

ii. Letters of offer of appointments were signed by different officers (chair of CPSB, Secretary/CEO of the CPSB, CECM, Directors, County Secretary, Chief Officers, Sub-County Administrators), while others were not signed.

- f. **Arrival/Reporting dates:** There were inconsistencies in the dates of the arrival/reporting letters viz-a-viz the letter of offer of appointment. For example, some employees reported on duty even before a letter of offer of appointment was written.
- g. **On confirmation in appointment:** From a perusal of the personnel files received by the Commission, a total of 355 files had letters of confirmation in appointment while 565 did not have the same.
- h. The Commission noted that one ***Mohamud Hussein Gabbow of ID No. 9847918 and personal number 2007133309***, may have been seconded to the county as a result of the provisions of Section 138(1) of the County Governments Act (CGA) which deemed staff who were serving in a county on the date of the constitution of the county government as staff on secondment from the national government to the county government until such a time as they were transferred to the County Government. All staff deemed seconded to the counties were transferred to the counties by the Public Service Commission with effect from 1st July 2016.
- i. **On staff establishment:** Although the Commission received the County Public Service Staff Rationalization Report of Nov/Dec 2014, which contained the proposed optimal staff establishment, there was no evidence provided to show that the proposed establishment was ever adopted and approved by the CPSB. In addition, the County Secretary, vide a letter Ref. CGG/CS/PSC/VOL. I/2 dated 31st July 2023, informed the Commission that the County Government did not have a current staff establishment.
- j. **Annual recruitment plan:** The County Government stated that the County did not have annual recruitment plans. This is contrary to the provisions of clause 2.1 of the Human Resource Policy.
- k. **Declaration/Reporting of vacancies:**
- i. There was no documentary evidence provided by the County Executive or the CPSB on declared vacancies.
 - ii. Further, vide a letter Ref. CGG/CS/PSC/VOL. I/2 dated 31st July 2023, the County Secretary informed the Commission that **there were no indents or budget approvals from the relevant departments or requests to fill vacant positions by departments in respect of the aggrieved employees** that was made through the County Secretary's office or approved and forwarded by the County Secretary to the CPSB for consideration and action.

I. Advertisement of vacant posts by the CPSB/Departments:

- i. There were no advertisements submitted in respect of the positions held by the aggrieved employees. This was contrary to Section 66 of the CGA and clause 2.3 of the County Human Resource Policy.
 - ii. However, during the review of the individual personnel files, the Commission came across an advertisement for the position of **Senior Plant Operator** in two personnel files, one in the file of **Francis Odhiambo Jaoko of ID No.20968715** and the other in the file of **Ali Kasai Adan of ID/No.23873588** both of the **Department of Agriculture, Livestock and Cooperatives**. There was also an advertisement for the position of **Sub-County Administrator** in the personal file of **Yussuf Muhumed Nuriye of ID No. 244386669** of the **Department of County Affairs**. The authenticity of the two advertisements could not however be ascertained because the CPSB and County Executive did not submit any advertisements against which the two could be verified.
- m. On Applications for employment:** The Commission noted the following on the availed application letters/forms:
- i. most of them were generated after the date of the offer of appointment;
 - ii. some were undated;
 - iii. some were not signed;
 - iv. some were incomplete;
 - v. majority were photocopies;
 - vi. some had glaring discrepancies between the job applied for and the job held by the officer without any evidence of promotion or re-designation to the different position.
- n. Long lists:** There was no long list of candidates provided by the County Executive or the CPSB for any of the positions held by the aggrieved employees contrary to Section 68 of the CGA.
- o. Shortlists:** There was no shortlist, shortlisting report or minutes of any shortlisting committee provided by the County Executive or the CPSB in reference to any of the positions held by the aggrieved employees contrary to Section 68 of the CGA.

p. Interview and Selection:

Interview schedules, copies of invitations to candidates, interview reports or minutes of the interview committees were not provided to the Commission. The absence of these documents was contrary to the expectations in Section 65 of the CGA and Clause 2.5 of the Human Resource Policy for the County Government.

Specifically, it was not possible to ascertain whether the following factors were considered in recruiting the aggrieved employees;

- i. the standards, values and principles set out in Articles 10, 27(4), 56(c) and 232(1) of the Constitution;
- ii. the prescribed qualifications for holding or acting in the office;
- iii. the experience and achievements attained by the candidate;
- iv. the need to ensure that the candidates proposed for appointment have knowledge and experience in diverse fields including human resource management and development and finance;
- v. the conduct of the candidate in view of any relevant code of conduct, ethics and integrity;
- vi. the need to ensure that at least thirty percent of the vacant posts at entry level are filled by candidates who are not from the dominant ethnic community in the county;
- vii. the need for open and transparent recruitment of public servants in relation to merit, fair competition and representation of the diversity of the county; and
- viii. individual performance.

q. Re-designation: Some files had letters of re-designation which appeared irregular as there was no evidence of the following requirements as provided in the Section 69(2) of the CGA and clause 2.21 of the Human Resource Policy;

- i. requests from the re-designated officers;
- ii. promotion of officers before processing the re-designation requests;
- iii. existence of vacancies;
- iv. suitability interview for officers who were moving from one cadre to another;
- v. limitation of the re-designations to positions in the first two (2) entry levels in any cadre; and
- vi. approvals of re-designations by the CPSB.

5. Generally, the Commission observed as follows:

- a. There is general poor management of human resource in the County Government;
- b. There is need for the County Government to recruit professional officers to manage human resource and maintain proper personnel records;
- c. There is need for the CPSB to recruit its own adequate professional staff at appropriate levels to assist the Board to efficiently execute its statutory mandate;
- d. There is strained working relationship between the County Executive and the CPSB which adversely affects the management of human resource;
- e. The aggrieved employees were unfortunate victims of an apparent systemic problem in the management of human resource in the county;
- f. There is very poor record keeping by both the County Executive and the CPSB;
- g. There appears to be lack of unity and poor communication amongst the members of the CPSB;
- h. There was apparent misinterpretation, by the CPSB, of Order No. 3(c) issued by the Court on 22/6/2023. The CPSB had erroneously concluded, from the said order, that there was a general freeze on employment of any new staff in the county. The correct position was that the court only prohibited the recruitment, appointment or promotion of any other person to the positions or cadres held by the Petitioners as employees at the time;
- i. The absence of the Secretary to the Board was adversely affecting the operations of the CPSB. There was therefore an urgent need to recruit a Secretary to the Board;
- j. There was need to train and sensitize the Members of the County Executive Committee, Chief Officers, Directors and Senior staff of the County Government together with members and staff of the CPSB on human resource management and the legal framework thereof;
- k. There was need to consider, *inter alia*, statutory amendments to the CGA to clearly segregate the roles of the CPSB, the County Secretary and the CECM in charge of matters relating to county public service; and
- l. There is heavy clan influence in the management of human resources in the county. This situation requires urgent intervention.

6. In conclusion and based on the material reviewed by the Commission and having interviewed all the parties concerned, it was the Commission's considered opinion that apart from Mohamud Hussein Gabbow of ID. No.9847918 and personal number 2007133309, the Petitioners and the other aggrieved persons whose files were reviewed by the Commission were not lawfully employed into the County Government as there were no documents to support their alleged appointments as required by the County Governments Act, 2012 and the Garissa County Human Resource Manual. The Commission found that the nine hundred and nineteen (919) persons were not lawfully employed by the County Government of Garissa.
7. The Senate should also note that after the ELRC adopted the Commission's report aforementioned which was protested by the Petitioners and the other aggrieved employees, the aggrieved parties have since filed an application for stay in the Court of Appeal at Nairobi vide Civil Application No.E068 of 2024: Ahmed Abdi Hussein & 4 Others -v- Garissa County Public Service Board & 4 Others in which the Commission has been named as an Interested Party. The case was last in court on 7th May, 2024 when it came up for hearing but was adjourned to a date to be issued on notice to the parties.

A detailed copy of the Commission's report is attached herewith for scrutiny by the Committee.



A.M. MUCHIRI (AMB.)
CHAIRPERSON
PUBLIC SERVICE COMMISSION

28th May, 2024
DATE

