

MISCARRIAGE OF JUSTICE

Public awareness: Ombudsman says there's a spike in the number of grievances being handled by the

Lands, Interior ministries top complaints at Ombudsman's office

By LILIAN ALUANGA-DELVAUX

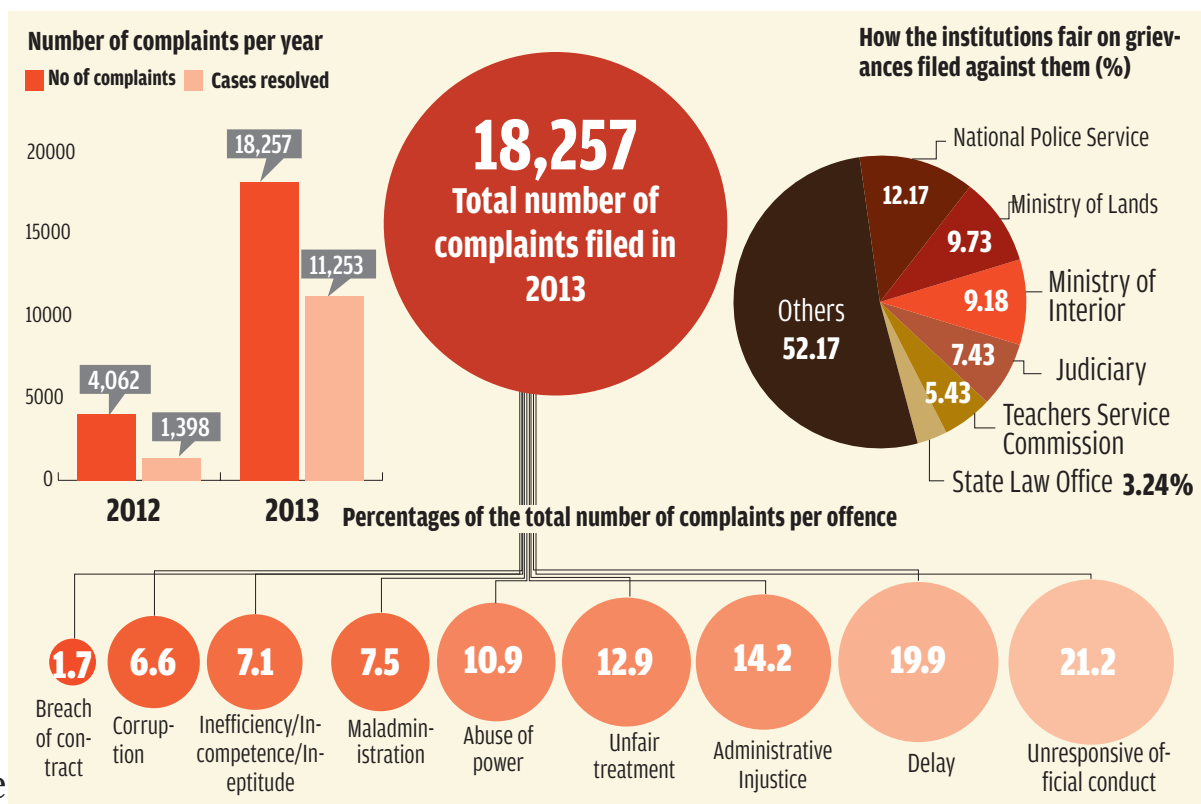
The National Police Service, Ministry of Lands Housing and Urban Development, and the Ministry of Interior and National Coordination account for the highest number of complaints filed against public institutions at the Commission on Administrative Justice (CAJ), according to data from the commission.

At 12.82 per cent, 9.73 and 9.18 per cent, respectively, the institutions are ranked ahead of the Judiciary, (7.43), Teachers Service Commission (5.43) and the State Law Office (3.24).

Unresponsive official conduct, delays, administrative injustice, unfair treatment, abuse of power, and corruption, top the list of 22,000 complaints the public has presented to the Commission (also known as the Ombudsman's Office), in the last two years, with a remarkable rise in numbers last year alone, from about 4,000 to 18,000 cases.

Overall, the figures represent a spike in the number of grievances being handled by the commission, in comparison to its predecessor, the Public Complaints Standing Committee, which handled 4,600 cases in four years. More than half of the cases handled by CAJ in 2012 and 2013 were resolved, accounting for 12,651 complaints ranging from issues of

“Many people are obsessed with going to court whenever they are seeking justice, even over matters that don't warrant this kind of action.”



maladministration to breach of contract and inefficiency of public officers. More than 60 per cent of complaints filed at the commission in 2013 were resolved compared to 31 per cent in 2012.

The commission was established in September 2011, pursuant to Article 59 of the Constitution. It is mandated to investigate any conduct in State affairs or any act or omission in public administration in any sphere of government and complaint of abuse of power, unfair treatment, oppressive or unresponsive official conduct. If there is failure or refusal to implement recommendations made by the commission on a matter within the specified time, then it is mandated to submit a report to the National Assembly on the same for appropriate action to be taken.

Perhaps one of the most interesting cases handled by the commission, from a sample of about 50, was that of Nancy Khisa versus the Kenya Copyright Board in 2012. After taking up a job at the board as a senior public communications officer, and working for two months, Ms Khisa was informed her appointment had to be re-

voked because she had been 'erroneously' appointed.

Upon inquiry, the human resource department conceded that there had been a technical error, which resulted in a letter of appointment 'mistakenly' being sent to her. After assessing the facts in the case, the commission held that as much as it may be probable that an error may have occurred, it was inconceivable that such an error would take months to be discovered and that in any event responsibility for such a mistake fell on the board.

It also found that a letter of appointment was issued to the complainant and accepted, and a contract of employment lawfully entered into (which could only be broken on justifiable grounds). CAJ, therefore, ruled that since the complainant was on a six month probation period and had been paid a month's salary in lieu of notice, the board should pay Khisa an equivalent of two month's salary, in compensation for the loss she suffered, and that in turn, the complainant pursues no further action.

The board duly complied and acted in compliance with the commis-

sion's findings.

In another case, CAJ received a complaint from a prisoner who alleged that, through fraudulent means and forgery, some people had procured letters of administration in a succession case of his deceased father's estate, and were now enjoying proceeds of the same. He sought help from the commission to have criminal proceedings instituted against the suspects and have proceeds from the estate granted to him and other beneficiaries.

Among cases resolved by the commission are those on complaints over undue delays in issuance of passports, unfair suspensions from learning institutions, delays in payment of pensions, and unlawful dismissals from the workplace.

Others relate to matters of discrimination like in the case of the National Gender and Equality Commission, which wrote a letter to the commission alleging that the National Aids Control Council had put an advertisement in a local daily in October last year, for the position of Director of the Council. One of the requirements of the position was that the candidate



Margery Marigu shows the two acre plot in Embu County that has been encroached on. [PHOTO: JOSEPH MUCHIRI/STANDARD]

By JOSEPH MUCHIRI AND LILLIAN ALUANGA-DELVAUX

Three decades ago, a newly married couple decided to buy a two-acre piece of land in Kithimu location, Embu County.

Margery Marigu, a nurse at the Embu Level Five General Hospital, and her husband, Mr John Mwaniki Mvungu, a junior government clerk, took a loan to buy the land hoping to engage in commercial farming. That was in 1983, and they enjoyed only one season of a bountiful harvest before the local authorities allegedly forcefully acquired part of their land to create a road diversion.

Ms Marigu, 53, says the then Municipal Council of Embu, while constructing the diversion near her farm encroached on the land in an effort to bypass a huge rock that would have hindered the exercise. She took up the

matter with the local authority and Provincial Administration, seeking realignment of the diversion and compensation.

But for 30 years, justice remained elusive.

When the Embu County Government was constituted last year, Marigu says more justice was meted on her when the devolved unit built Mvungu-Rwang'onde bridge that also encroached on her farm.

But Marigu's long search for justice may finally pay off if recommendations made by the Commission on Administrative Justice (CAJ), on the matter, are implemented.

CAJ, also known as the Ombudsman's office, last week ordered the County Government of Embu and ministries of Lands and Transport to assess the loss incurred by Marigu and compensate her accordingly.

In her complaint to the commis-

sion, Marigu alleged that the Embu County Government had constructed a bridge and public road on her land, without her consent, thereby destroying her crops and trees.

She said she had complained to public offices, including the County Government, National Land Commission (NLC), National Environmental Management Authority (Nema), Embu Land Offices, and Kenya Rural Roads Authority, but did not get any help.

"I have been called a madwoman in my relentless pursuit for justice. The truth of the matter is that I have been denied justice and spent lots of time, energy and resources to get what is legally mine," she says.

The mother of four says what hurt her most was the callous attitude of Municipal officials who never consulted her when making the decision to divert the road to her farm.

To get time to visit those offices,

How Embu County allegedly