

MISCARRIAGE OF JUSTICE

commission thanks to their track record of resolving cases successfully



Chair Commission on Administrative Justice Otiende Amollo. He says there has been an increase in the number of reported complaints from the public.
[PHOTO: COLLINS KWEYU/STANDARD]

should be aged between 40 and 55. CAJ ruled that the requirement was in breach of the Constitution's Article 27, which bans discrimination on the basis of age, resulting in removal of the age requirement in the advertisement.

In another case, the complainant, a person with disability, lodged a complaint seeking intervention in an application for duty exemption for a car she had imported for personal use. She alleged that a similar application to KRA in 2009, was unsuccessful despite her physical condition, making her unable to travel in a public service vehicle.

She argued that KRA's refusal to grant her exemption did not take into account her physical condition and the need for a special means of transport. The commission ruled in her favour and KRA granted her the exemption, on condition that the vehicle

would not be used or disposed off in a manner inconsistent with the exemption.

CAJ chairperson Otiende Amollo, says there has been effort by the Judiciary and police in responding to issues raised. The same can, however, not be said of the Lands ministry, which he says continues to perform dismally in its response to issues.

"There have been efforts by the Police Service, which has set up an internal website to monitor complaints that have been raised against it and tracking of the same. As a result, several officers have been disciplined, or arraigned in court. The response from individual members of the Provincial Administration has also been good while the Judiciary has also helped resolve many complaints," says Mr Amollo.

He attributes the rise in number of complaints received at the commis-

Cases resolved successfully

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. The Nairobi office is located in Westlands on Waiyaki Way at Westend Towers. The commission can be reached on 0202 2270000, 2603765

sion to heightened awareness of the CAJ and its functions, and says the public should know there is a complementary justice administration mechanism one can use instead of going to court.

"Many people are obsessed with going to court whenever they are seeking justice, even over matters that don't warrant this kind of action. The CAJ exists as one alternative to resolving certain disputes, and is not only a faster but free method of seeking a remedy," he says.

The downside to this, however, is the possibility of the commission having an avalanche of complaints to resolve for a staff that is already strained.

Amollo says there has been greater demand for the commission's services in remote areas of the country, but they have few lawyers and investigators. Besides the challenge of meeting high public expectations, budgetary constraints (the commission received Sh274 million instead of Sh438 million for 2013/2014, impunity especially among highly placed public officers, and an insufficient statutory framework to enforce the commission's determinations, there is also concern over access to the commission's services by the public. Besides Nairobi, the commission, so far, only has offices in Mombasa and Kisumu.

The Nairobi office is located in Westlands on Waiyaki Way at Westend Towers. The commission can be reached on 0202 2270000 or 2603765 complain@ombudsman.go.ke

Ombudsman wants officers punished over bungled assault case

By LILIAN ALUANGA-DELVAUX

The Commission on Administrative Justice has released a damning report, which recommends several police officers to face disciplinary action over failure to investigate an assault case.

The Ombudsman faults the Industrial Area Police Station in Nairobi, for handling of the matter, which resulted in inaction, delay, unfair treatment, injustice, inefficiency, abuse of power, and negligence, by officers at the police station and Makadara Police Division.

Mr Stephen Mwita Juma (pictured), a guard, has complained that he reported the alleged assault at the police station on May 15, but two months later and even after the case was highlighted in the media, no action had been taken. Mwita says on the fateful day at about 7.30am, while manning the security barrier on Road 'A' Industrial Area, a motorcycle rider known to him attempted to pass through, but he denied him entry as instructed. It was then that an argument arose between him and the passenger. After paying the rider the passenger went inside one of the factories and returned in the company of several men who Mwita came to realise were his employees.

The group assaulted the guard and he was rescued after the public responded to his distress call. Mwita claimed he was issued with a P3 form. Other pieces of evidence adduced were a CCTV clip showing his assailants beating him up and corroboration by witness statements. But he lamented that despite visiting the police station several times, he did not get any help. His employer Hussein Dabasso, director of Wasso Security Services Ltd, who initially went out of his way to assist the injured guard get medical attention, was, however, faulted by the commission 'for playing a role in derailing due process by initiating negotiations, in favour of the assailant, a Mr Abdi Abass'.

The commission established that officers at the station had failed to open a case file, and record statements from the complainant and three suspects who were arrested. The officers also failed to visit the crime scene, arrest the main suspect, enter the case number in the Crime register at the station's Crime branch, and send the report relating to the case to Police headquarters.

The Ombudsman's office also took great exception with the conduct of OCPD Makadara Police Division Nehemiah Lang'at, OCS Industrial Area Amos Shammalla, Deputy OCS and OC Crime Section, Industrial Area Police Station Zuhura Khan, and Corporal Stephen Otieno (Crime Branch Section, Industrial Area Police Station). The commission recommends that the Inspector General (IG), and National Police Service Commission (NPSC) take disciplinary action against Mr Otieno 'for intentional official misconduct and interference', which impeded due process regarding the assault case reported by Mwita.

It also proposes that the IG and NPSC come up with guidelines and time frames for inves-

tigation of reported cases.

The commission also wants the IG, and the NPSC in collaboration with the Director of Public Prosecution's office to give clear guidelines on the promotion of reconciliation on criminal cases at police station level, and ensure fresh police graduates deployed to the Crime Branch Sections are mentored by experienced police officers before being assigned cases to investigate.

The Ombudsman wants administrative action taken against Mr Lang'at, for negligence in the performance of his supervisory duties and for going on a local TV station and giving misleading information, thus putting the Police Service into disrepute.

Lang'at had told the media that the complainant withdrew his statement, in spite of not having seen the said statement, which was reportedly written and signed on behalf of the guard by Otieno. The officer is said to have written the statement without consulting the investigating officer and without due regard of Section 176 of the Criminal Procedure Code regarding the promotion of reconciliation in a criminal case.

Excerpts of the report say, "It is apparent that Corporal Stephen Otieno, had an interest in the case and hence, the motive to 'kill' a criminal case at the police station level. The fact that Mwita disowned the statement pointing out that even the signature on it was not his own, suggests that Otieno wrote the withdrawal statement after the OCPD went to the media and spoke of a withdrawal letter by the complainant."

This, according to the Commission's findings, show Otieno was culpable of abuse of power, delay, incompetence and official misconduct given that he admitted to creating the contentious withdrawal statement thus misrepresenting facts of the matter. The commission also proposes that administrative action be taken against Mr Shammalla for negligence in his supervisory duties and promotion of an out of court reconciliation in a criminal matter. The officer was faulted for failure to follow up the case he had assigned for investigations and is said to have abused his powers by ordering the release of three suspects held for assault and the refund of the Sh5,000 cash bail paid by each of them even before the matter had reached the courts. Others sanctioned by the commission include Khan, for 'negligence in her supervisory role over personnel, and the complainant, who despite having initially taken the right steps, making his case merit fair judicial dispensation, compromised it by accepting to enter into an out of court negotiation by demanding Sh1 million from the assailant.

Information from the Ombudsman's office shows that so far, the NPSC and IG have responded to the commission's findings, with the latter ordering that an investigator be assigned to the case.



[PHOTO: FELIX KAVI/STANDARD]

encroached on couple's land

Marigu has had to mostly work night shifts so she can spend her free time during the day following up the matter.

"It has been an expensive and agonising exercise. Sometimes my family slept hungry so that I could save money for numerous journeys to government offices and still have money to educate my children," she says.

According to the commission's findings, the said land was registered in the name of Mr Mvungu, who is the complainant's husband. In a letter to the Embu County Governor's office dated December 17, 2013, the Commission acknowledges it was in receipt of a complaint from Marigu detailing the construction of a public road on her land without her consent and that she had sought to have this stopped but to no avail.

Marigu also complained that the contractor had destroyed her crops

and trees (planted in the 1980s and valued at Sh1.4 million) during the construction.

The Commission directed the Governor's office to investigate the complaint and revert to it indicating their position on the same and action taken, but no response has been forthcoming.

Marigu, also wrote to Nema, seeking to know why they did not enforce orders to stop the construction, pending resolution of the matter, and why none of her family members (land owners) were involved in the Environmental Impact Assessment (EIA) process.

She alleges that the process was only carried out after her complaint and that 'passers-by' were secretly interviewed without her knowledge. In recommendations contained in the report dated October 2014, the CAJ wants the Embu County Government,

jointly with the National Government (Transport and Lands ministries) to assess the loss of use of the land by Marigu for 30 years and compensate her. It also wants the County Government to value the portion of Marigu's land still occupied by the constructed bridge and compensate her accordingly.

The commission also proposes that Nema takes action against the Embu County Public Works Officer for failing to submit a report and the statutory fee to the Authority for environmental impact assessment as required by law.

The CAJ also took great exception to the unresponsiveness of Embu Governor Martin Wambora, and said it will monitor the trend of complaints against him 'with a view to consider declaring him unfit to hold public office'.