

THE COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of The Ombudsman"



Hata Mnyonge ana Haki

A
MOTHER'S PAIN

**AN INVESTIGATIONS REPORT BY
THE OMBUDSMAN-KENYA
ON
INACTION BY OFFICERS FROM KAYOLE AND SOWETO
POLICE STATIONS ON ALLEGED DEFILEMENT AND
SUBSEQUENT KIDNAPPING OF A FEMALE MINOR AGED 14
YEARS**

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Foreword

The Commission on Administrative Justice (CAJ) pursuant to its mandate as stipulated under Section 8 of the its Act, undertook investigations into alleged inaction by officers from Kayole and Soweto Police Stations within Kayole Division Nairobi, on reported cases of defilement and kidnapping of a minor, Ms. Nina Bakari aged 14 years.

The investigations were undertaken based on a complaint received from Ms. Fatuma Bakari (mother of the minor) who alleged that she had reported a defilement incident of her 14 year old daughter at the Kayole Police Station on 23rd August, 2011, and that no action had been taken six months later. Ms. Fatuma Bakari also lodged another complaint alleging that she had reported a subsequent kidnapping incident of the same minor to Soweto Police Station on 12th September and that similarly the Police took no action against the alleged kidnapper.

The Commission wrote to the Officer Commanding Kayole Police Division informing him of the complaints lodged with the Commission on Administrative Justice. In the letter, the OCPD was requested to clearly indicate the position of the cases, steps taken, intended actions and the time frames.

The OCPD's response to the Commission was found to be unsatisfactory hence the decision to carry out investigations on the alleged inaction by the Police at Kayole and Soweto Police Stations.

This report is a result of interviews held with the complainant, Police investigating officers, the arresting officer, the Officers Commanding Kayole and Soweto Police Stations and the erstwhile Officer Commanding Kayole Police Division.

The Commission has made recommendations to the Inspector General National Police Service, Nairobi County Police Commander as well as to the National Police Service Commission and the Independent Police Oversight Authority to take action against Police Officers found culpable for various malfeasances and to address identified policy issues. The implementation of the findings will serve to demonstrate the need for Police Officers to do due diligent in their work.

Signed this.....day of February, 2014

Cmmr. Otiende Amollo E.B.S
Chairperson,
Commission on Administrative Justice
(Office of the Ombudsman)

NB The real names of the minor and the parents have been replaced with pseudonyms for legal/ethical reasons.

Preamble

The Commission on Administrative Justice (Office of The Ombudsman) is a Constitutional Commission established under Article 59 (4) and Chapter Fifteen of the Constitution, and the Commission on Administrative Justice Act, 2011.

The Commission on Administrative Justice (CAJ) has a mandate, inter-alia, to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.

In addition to the CAJ's investigative powers under Article 252 (1) (a), Sections 26, 27, 28 and 29 of the CAJ Act gives the Commission powers to conduct investigations on its own initiative or on a complaint made by a member of the public, issue Summons and require that statements be given under oath, adjudicate on matters relating to Administrative Justice, obtain relevant information from any person or Governmental authorities and to compel production of such information.

Under Section 31 of its Act, CAJ may investigate an administrative action despite a provision in any written law to the effect that the action taken is final or cannot be appealed, challenged, reviewed, questioned or called in question.

After undertaking its investigations, the Commission is required under Section 42 of its constitutive Act, to prepare a report to the State organ, public office or organization to which the investigation relates. The report shall include the findings of the investigation, action the Commission considers to be taken, reasons whereof and recommendations the Commission deems appropriate.

CAJ may upon an inquiry into a complaint, undertake such other action as it may deem fit against a concerned person or persons where the inquiry discloses a criminal offence as provided for under Section 41 of the CAJ Act.

Section 8 (g) of the CAJ Act gives the Commission power to recommend compensation or other appropriate remedies against persons or bodies to which the Act applies.

Section 42 (4) states; If there is failure or refusal to implement the recommendations of the Commission within the specified time, the Commission may prepare and submit to the National Assembly a report detailing the failure or refusal to implement its recommendations and the National Assembly shall take the appropriate action.

Further, Article 59(2) (j) of the Constitution of Kenya, 2010 empowers the Commission to report on complaints investigated under paragraph (h) and (i) and take remedial actions.

Section 52 (b) and (d) of the CAJ Act 2011, provides that a person who knowingly submits false or misleading information to a member of staff of the Commission commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years or both.

This report is divided into part A and part B. Part A discusses the alleged defilement of the minor while part B is on the alleged kidnaping of the minor.

The general layout of the report includes the following sections :

- Introduction to the investigations
- Investigations strategy
- Normative framework
- findings
- Conclusions and Recommendations

Acronyms

SSP	SENIOR SUPERINTENDENT OF POLICE
OCPD	OFFICER COMMANDING POLICE DIVISION
OCS	OFFICER COMMANDING STATION
CI	CHIEF INSPECTOR
IP	INSPECTOR
CPL	CORPORAL
CAJ	COMMISSION ON ADMINISTRATIVE JUSTICE
PC	POLICE CONSTABLE
PC (W)	POLICE CONSTABLE WOMAN
OB	OCCURRENCE BOOK
GVRC	GENDER VIOLENCE RECOVERY AND COUNSELLING CENTRE
NRB	NATIONAL REGISTRATION BUREAU
CRB	CIVIL REGISTRATION BUREAU
CPC	CRIMINAL PROCEDURE CODE

Executive Summary

The Commission received a complaint from Ms. Fatuma Bakari alleging that she had reported a defilement incident of her 14 year old daughter Ms. Nina Bakari at the Kayole Police Station on 23rd August, 2011, and no action had been taken six months later.

Ms. Fatuma Bakari also alleged that she reported a subsequent kidnapping incident of the same minor at the Soweto Police Station on 12th September 2011 and that similarly the Police took no action against the alleged kidnapper.

In the statement recorded with CAJ in regard to defilement, Ms. Fatuma Bakari stated that on 23rd August 2011, while still at her place of work, she received a telephone call from a neighbor informing her that her daughter, Ms. Nina Bakari had been sexually assaulted.

Upon receiving the information of her daughter's defilement, Ms. Fatuma Bakari called a Police Officer by the name Cpl Samwel Mwadime who was based at Soweto Police Station but unfortunately the officer was in court. Immediately, she left her place of work and headed home, picked her daughter Ms. Nina Bakari and together they went and reported the incident at Kayole Police Station vide OB No.78/23/8/2011. She was advised by the Officers working at the Report Office to take the minor to hospital for medical examinations. They boarded a Matatu and headed to Nairobi Women Hospital in Hurlingham where a medical examination was done on the minor. The examination revealed that the minor had been sexually assaulted.

The following day (24th August 2011), they went back to Kayole Police Station where they recorded their statements and gave the original medical report to PC (W) Ruth Maithya who had been assigned to investigate the case. PC (W) Ruth Maithya promised to take the complainant and the minor to the police Doctor to fill the p3 form. She also assured the complainant that the incident would be investigated to its logical conclusion.

Ms. Fatuma Bakari followed up the case with the Investigating Officer, PC Ruth Maithya but nothing was forthcoming. Ms. Fatuma Bakari decided to get assistance from the OCPD Kayole Division, Mr. Moses Lubisia who assured her that the reported incident would be dealt with accordingly but nothing was done.

Subsequently, another incident of kidnapping befell Ms Nina Bakari and the same was reported at Soweto Police Station OB No. 29/12/9/2011.

In her complaint to the Commission, Ms Fatuma Bakari alleged that a man known to her as Mr. Enock Wekesa came to her house in Soweto area while she was away at the place of work and swayed the minor to pack her clothes and accompany him. The accused (Enock Wekesa) had

promised the minor that he would take her to his mothers' home in Mt.Elgon. The minor accepted the offer. The neighbors alerted the minor's parents (Ms. Fatuma Bakari and Juma Bakari) that their daughter had eloped. The father made effort to follow them while Ms. Fatuma Bakari called Cpl Samwel Mwadime (Officer based in Sowetto Police Station) and informed him that her daughter had eloped.

Cpl Samwel Mwadime intercepted and managed to arrest them (Mr. Enock Wekesa and Ms. Nina Bakari) and escorted them to Soweto Police Station where the accused was booked in for the offence of creating disturbance instead of kidnapping. The minor (Ms. Nina Bakari) on the other hand, was booked in for the offence of a child in need of care and protection. The following day, the accused was released on a cash bail of KES.2000 under the instruction of CI Julius Mwamrizi, erstwhile Officer Commanding Soweto Police Station. The minor (Nina Bakari) was also freed the same day.

The matter was taken to court. The accused absconded court for plea and a warrant of arrest was issued for his arrest and production before the court. The Police officers failed to execute the warrant claiming that he was at large.

The difficulties that Ms. Fatuma Bakari went through while seeking for justice for her 14 years old daughter left her with no option but to run to the Commission on Administrative Justice for help. The complaint merited action by the Commission.

The process of investigations include; holding interviews with the erstwhile Officer Commanding Kayole Police Division (OCPD), the current and former Officers Commanding Kayole and Soweto Police Stations (OCSs), the Arresting Officer in the case of kidnaping and the Investigating Officers in both cases.

Objectives of the investigations:

The objectives of the investigations were:

- i. To conduct preliminary investigations to verify the allegations raised against the Kayole and Soweto Police Stations
- ii. To conduct in-depth investigations and establish the facts of the matters.
- iii. To establish reasons for the change of charges from kidnapping to creating disturbance.
- iv. To recommend appropriate action that needs to be undertaken to settle the complaints
- v. To give appropriate recommendations to relevant government agencies on matters arising from the investigations.
- vi. To give advisories to government for change of policy where possible or on measures to be taken.

The Report is in two parts; Part I covers the defilement case while Part II is on kidnaping of the minor

PART I: DEFILEMENT OF A MINOR, MS. NINA BAKARI¹

The complainant Ms. Fatuma Bakari lodged a complaint with the Commission alleging that she had reported a defilement case involving her 14year old daughter Ms. Nina Bakari at the Kayole Police Station on 23rd August 2011 and six months down the line, the Station had not taken action.

Pursuant to its mandate as provided in the CAJ Act 2011, the Commission decided to undertake investigations into the alleged inaction by the Kayole Police Station

The following are the findings of the investigations;

Findings on the alleged defilement

The investigators visited the Nairobi Women Hospital (Gender Violence Recovery and Counseling Section) and confirmed from the hospital records that:-

- The minor went to the hospital on 23rd August 2011.
- The minor was examined and diagnosed as having been sexually assaulted.
- She was treated and counseling recommended.

According to a copy of a Child Health Card obtained from Ms. Fatuma Bakari the mother of the minor, Ms. Nina Bakari was born on 16th June, 1997. The minor was therefore 14 years old at the time of the alleged defilement.

Findings on allegation that the complainant reported the matter at Kayole Police Station.

The investigators confirmed that:-

- The complainant, Ms. Fatuma Bakari had made the complaint at Kayole Police Station on 23rd August, 2011 at 7.30pm.
- The matter was booked vide OB NO.78/23/08/2011.
- The Officer Commanding Kayole Police Station, CI Wilson Cheruiyot and Investigating Officer, PC (W) Ruth Maithya confirmed that the matter was reported at Kayole Police Station on 23rd August 2013.
- The Officer Commanding Police Station (OCS) allocated the matter to PC (W) Ruth Maithya for investigations as indicated in the OB.

¹ Not her real name

Findings on alleged inaction by officers from Kayole Police Station.

Investigations by CAJ team revealed that the Kayole Police Division did not take action on the reported defilement case.

In an interview with the CAJ investigations team, the then Officer Commanding Kayole Police Division, Mr. Moses Lubisia, Officer Commanding Kayole Police Station, Chief Inspector Wilson Cheruiyot and the Investigating Officer, Police Constable (W) Ruth Maithya confirmed that they did not take any action regarding the aforesaid matter. It is worth noting that the minor was examined at Nairobi Women Hospital (Gender Violence Recovery and Counseling Section) and the Medical Report to confirm sexual assault submitted to PC Ruth Maithya, the investigating officer who apparently misplaced it.

PC (W) Ruth Maithya:

- PC (W) Maithya stated that she did not take any action because she could not trace the complainant.
- CAJ Investigators also noted that PC (W) Maithya had not opened a case file on this matter
- PC (W) Ruth Maithya actually proceeded on leave soon after she was assigned the case to investigate.
- The investigations team noted gross inefficiency, negligence, unresponsiveness and incompetence on the part of the Investigating Officer, PC (W) Maithya. The manner in which she handled the matter revealed that she has no capacity to investigate cases of that nature and magnitude.
- During the interview with CAJ Investigators, PC (W) Maithya completely denied the fact that she knew the complainant Ms. Fatuma Bakari, and the minor. She denied ever meeting the complainant and having recorded the statements of the complainant and the minor. PC (W) Ruth Maithya also denied having received the minor's Medical Report.

Consequently, PC (W) Ruth Maithya proved herself unresponsive, inefficient and negligent in her work.

Chief Inspector Wilson Cheruiyot:

- CAJ Investigations revealed dereliction and negligence of duty on the part of the OCS, Mr. Cheruiyot in that he failed to ensure that the matter was investigated properly. He too was unresponsive.

Mr. Moses Lubisia, the erstwhile OCPD Kayole

- The investigations also revealed that there existed improper social contact between the complainant, Ms. Fatuma Bakari and the then Officer Commanding Kayole Police Division, Mr. Moses Lubisia. The two met out of office and the relationship was more social in nature and had nothing to do with the matter under investigation. Mr. Lubisia also gave monetary assistance to the Complainant on different occasions. The social contact may have compromised the case under investigations.

Ms. Fatuma Bakari

The complainant Ms. Fatuma Bakari is also culpable in compromising the investigations by willingly having had improper social contacts with the OCPD, Mr. Lubisia besides accepting financial assistance from him.

Conclusions:

The following is a summary of conclusions:

On allegation of defilement and subsequent reporting at Kayole Police Stations

- Perusals of the Occurrence Book (OB) reveals that the case of defilement was reported by the complainant to Kayole Police Station on 23rd August 2011 vide OB NO.78/23/08/2011
- According to a copy of a Child Health Card obtained from Ms. Fatuma Bakari, the mother of Ms. Nina Bakari, Ms. Bakari was born on 16th June, 1997 and therefore she was 14 years old at the time of the alleged defilement,
- The records at Nairobi Women's Hospital (Gender Violence Recovery and Counseling Section) confirm that the child was examined there on the night of 23rd August 2011 and diagnosed as having been sexually assaulted.

On allegation of inaction by police at Kayole Police Station

- It is also noted that the investigating officer never opened a case file on this matter. The CAJ investigations team noted inefficiency, negligence and unresponsiveness on the part of the Investigating Officer, PC (W) Ruth Maithya. The manner in which she handled the matter revealed that she has no capacity to investigate cases of that nature and magnitude.
- The Officer Commanding Kayole Police Station, Chief Inspector Wilson Cheruiyot, whose responsibility among others includes being an efficient administrator of his station, preventing and detecting crime and apprehending offenders in his area and ensuring that all complaints received are properly recorded and investigated, failed in his duties in as far as this defilement case is concerned.
- Mr. Moses Lubisia, the then OCPD Kayole, also failed in his duty to supervise the Officer Commanding Kayole Police Station and oversee that this case involving the alleged defilement of a minor which the complainant brought to his attention, was properly investigated.
- The OCPD demonstrated inattention, unresponsiveness and inaction in this matter.
- The CAJ team confirmed that the minor was sexually assaulted and that the mother reported the incident to Kayole Police Station.
- The Commission finds that there was inaction by Police Officers from Kayole Police Station on the matter of alleged defilement of the minor, Ms. Nina Bakari.

Recommendations:

- i. The Nairobi County Police Commander should take disciplinary actions against the Investigating Officer, PC (W) Ruth Maithya for her unresponsiveness and intentional or unintentional negligence in undertaking her duties.
- ii. The Nairobi County Police Commander should assign another team of investigators to promptly and conclusively investigate the matter and take appropriate action based on their findings
- iii. The National Police Service Commission should take stern administrative actions against the then Officer Commanding Kayole Police Division, Mr. Moses Lubisia, for the improper social contact that developed between him and a vulnerable client, Ms. Fatuma Bakari.
- iv. The National Police Service Commission should take stern administrative actions against the Officer Commanding Police Station, Chief Inspector Wilson Cheruiyot for unresponsiveness and negligence in the performance of his duties.
- v. The Inspector General should come up with guidelines and time-frames for investigations. These will compel the investigating officers to work expeditiously towards concluding such matters within the right time in future and to report on progress.

1.0 Introduction

1.1 Introduction to the Investigations.

The Commission received a complaint from Ms. Fatuma Bakari alleging that she reported a defilement incident of her 14 year old daughter to Kayole Police Station and no actions had been taken. In the statement recorded with CAJ in regard to defilement, Ms. Fatuma Bakari stated that on 23rd August 2011, while still at her place of work, she received a telephone call from a neighbor informing her that her daughter, Ms. Nina Bakari, had been sexually assaulted.

Upon receiving the information of her daughter's defilement, Ms. Fatuma Bakari called a Police Officer by the name Cpl Samwel Mwadime who was based at Soweto Police Station but unfortunately the officer was in court. Immediately, she left her place of work and headed home.

Ms. Fatuma Bakari went to her house and picked her daughter Ms. Nina Bakari together they went and reported the incident at Kayole Police Station vide OB No.78/23/8/2011. She was advised by the Officers working at the Report Office to take the minor to hospital for medical examinations. They boarded a Matatu and headed to Nairobi Women Hospital in Hurlingham where a medical examination was done on the minor. The examination revealed that the minor had been sexually assaulted.

The following day (24th August 2011), they went back to Kayole Police Station where they recorded their statements they also gave the original medical report PC (W) Ruth Maithya who had been assigned to investigate the case. PC (W) Ruth Maithya promised to take the complainant and the minor to the police Doctor to fill the p3 form. She also assured the complainant that the incident would be investigated to its logical conclusion.

Ms. Fatuma Bakari followed up the case with the Investigations Officer, PC Ruth Maithya but nothing was forthcoming. Ms. Fatuma Bakari decided to get assistance from the OCPD Kayole Division, Mr. Moses Lubisia who assured her that the reported incident would be dealt with accordingly but nothing was done Six months down the line. This dissatisfaction drove Ms. Fatuma Bakari to report the matter to the Commission on Administrative Justice which prompted the Commission to inquire into the alleged inaction by Police at Kayole Police Station.

1.2 Issue under investigation

From the complaint lodged by Ms. Fatuma Bakari, the Commission undertook to investigate:

- Allegation of inaction by officers from Kayole Police Station to arrest and prosecute the perpetrator who defiled the minor.

1.3 Investigative Strategy

The Commission wrote to the Officer Commanding Kayole Police Division informing him of the complaints lodged with the Commission on Administrative Justice vide letter, Reference CAJ/POL/015/1146/2012-FL. In the letter, the OCPD was requested to clearly indicate the position of the case regarding the defilement of Ms. Nina Bakari, steps taken, intended actions and the time frames.

1.3.1 Offices Visited

Research and investigation team visited the following offices:

- i. Kayole Police Station
- ii. Nairobi Women's Hospital
- iii. Imara Primary School
- iv. Spice Junior Academy

1.3.2 Interviews held and statements recorded

The CAJ Investigations team held interviews and recorded statements with the following officers:

- i. Senior Superintendent of Police (SSP), Mr. Moses Lubisia, the then Officer Commanding Kayole Police Division and currently OCPD Kiambu Police Division.
- ii. Chief Inspector of Police (C.I), Mr. Wilson Cheruiyot Kipkosgei, Officer Commanding Kayole Police Station.
- iii. Police Constable (Woman), Ruth Ndunge Maithya, the Investigating Officer.
- iv. Complainant, Ms. Fatuma Bakari, mother of the minor.
- v. Head Teacher Imara Primary School
- vi. Head Teacher Spice Junior Academy
- vii. Regional Coordinator National Registration Bureau Coast
- viii. Regional Coordinator Civil Registration Bureau Coast

N/B The investigators were not able to interview the minor who was said to be away in Mombasa

1.3.3 Documents Recovered

The Investigations team managed to recover the following documents relevant to the matter:

1. OB extracts. (See exhibit A1)
2. Copy of investigation diary. (See exhibit A2)
3. Complainant's Statement. (See exhibit A3)
4. Doctor's Report from Nairobi Women Hospital. (See exhibit A4)
5. Statements recorded by the then OCPD Mr. Moses Lubisia. (See exhibit A5)
6. Statement by the OCS CI Wilson Cheruiyot. (See exhibit A6)
7. Statement by the Investigating Officer PC (W) Ruth Maithya. (See exhibit A7)
8. Mr. Moses Lubisia's response letter to the Commission. (See exhibit A8)
9. Copy of the Child Health Card for Ms. Nina Bakari (See Exhibit A9)

1.4 Normative Framework

Following are excerpts of some of the relevant provisions:

1.4.1 Commission on Administrative Justice Act, 2011:

Sections 8(d) states

“..the commission shall inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehavior, inefficiency or ineptitude within the public service..”

Section 52, states:

a person who-

- (b) Submits false or misleading information;
- (c) Fails to honour summons; or

(d) Misrepresents to or knowingly misleads Commission or a member of Staff of the Commission acting under this Act, Commits an offence and liable on conviction

to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

1.4.2 Public Officers Ethics Act, 2003 (Revised 2009)

Section 9 of Public Officer's Ethics Act, 2003 states

"...A public officer shall, to the best of his ability, carry out his duties and ensure that the services that he provides are provided efficiently and honestly..."

Section 19 of Public Officer's Ethics Act, 2003 states

"...A public officer shall not knowingly give false or misleading information to members of the public or to any other public officer...."

1.4.3 Sexual offences Act, No. 3 of 2006

The following section of Sexual Offences Act, 2006, gives the definition of defilement and punishment based on the age of the minor as follows:

Section 8 states

- (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.
- (2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.
- (3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
- (4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.

2.0 Analysis and Findings

The CAJ Investigations team undertook investigations on the alleged inaction by police officers from Kayole Police Station regarding the defilement of the minor. The CAJ Investigators interviewed the Police Officers who were involved in the matter in one way or another, the complainant and other key players. In addition various statements and recovered documents were examined. The following are the findings;

2.1 Sexual offences Act, No. 3 of 2006

- The investigators confirmed from the records of the hospital that the minor attended the hospital on 23rd August 2011 and diagnosis revealed that the minor was sexually assaulted. *(See exhibit A4)*
- According to a copy of a Child Health Card obtained from Ms. Fatuma Bakari, the mother of Ms. *Nina Bakari, Ms. Bakari was born on 16th June, 1997. Ms. Bakari was therefore 14 years old at the time of the alleged defilement, **(see Exhibit marked A9)**

2.2 Findings on allegation that the complainant reported the matter at Kayole Police Station.

- The CAJ investigators on perusing the Occurrence Book (OB), established that the incident was booked on 23rd August 2011 vide OB NO.78/23/08/2011. *(See exhibit A1)*
- The Officer Commanding Kayole Police Station, CI Wilson Cheruiyot and Investigating Officer, PC (W) Ruth Maithya confirmed that the matter was reported at Kayole Police Station on 23rd August 2013. *.(See exhibit A6&A7)*
- The Officer Commanding Police Station (OCS) allocated the matter to PC (W) Ruth Maithya for investigations as indicated in the OB

2.3 Findings on alleged inaction by officers from Kayole Police Station to arrest and prosecute the perpetrator who defiled the minor.

- Investigations by CAJ team revealed that the Kayole Police Division did not take action on the reported defilement case.
- In an interview with the CAJ investigations team, the then Officer Commanding Kayole Police Division, Mr. Moses Lubisia, Officer Commanding Kayole Police Station, Chief Inspector Wilson Cheruiyot and the Investigating Officer, Police Constable (W) Ruth Maithya confirmed that they did not take any action regarding the aforesaid matter. The only action OCS CI Wilson Cheruiyot took was to assign PC (W) Ruth Maithya the matter to investigate as indicated in the OB. It is worth noting that the minor was examined at Nairobi Women Hospital (Gender Violence Recovery and Counseling Section) and the Medical Report to confirm sexual assault submitted to PC Ruth Maithya, the investigating officer who apparently misplaced it.
- The CAJ investigators, on perusing the Occurrence Book (OB) established that the incident was booked on 23rd August 2011 and the Case File was never opened.
- The OB shows that the OCS CI Wilson Cheruiyot marked the case to PC (W) Ruth Maithya to investigate. *(See exhibit A1)*

- Perusal of Occurrence Book (OB) indicates that the matter was never investigated since there is no record in the Occurrence Book showing the steps taken if any, during investigation as is the practice.
- The investigating officer, PC (W) Ruth Maithya proceeded on a one month leave after she had been assigned the case without handing over the case to another officer. There were no entries made in the OB regarding the actions taken by the investigating officer even after returning from leave. (*See exhibit A7*)
- On an interview with the CAJ team, PC (W) Ruth Maithya, Mr. Moses Lubisia and CI Wilson Cheruiyot confirmed that they did not take any action on this matter claiming that the complainant did not indicate her contacts while reporting the incident at the station. (*See exhibit A5&A6*)
- In-depth investigations revealed that, PC (W) Ruth Maithya did not fill a P3 form complainant, PC (W) Ruth neither filled P3 yet she had been given original Medical report by the complainant. (*See exhibit A3*)
- From the way she handled the matter, it is apparent that PC (W) Ruth has no capacity to investigate matters of that magnitude. This greatly contributed to the failure of the case.
- It is worth noting that the Officer Commanding Kayole Station, Wilson Cheruiyot did not ensure that the matter reported to the station was properly investigated to its logical conclusion.
- The investigations also revealed that there existed improper social contact between the complainant, Ms. Fatuma Bakari and the then Officer Commanding Kayole Police Division Mr. Moses Lubisia. The two met out of office and the relationship was more social in nature and had nothing to do with the matter under investigation. Mr. Moses Lubisia also gave monetary assistance to the Complainant on different occasions. The improper social contact may have compromised the case under investigations.
- Even after Ms. Fatuma Bakari visited his office on several occasions, Mr. Moses Lubisia appeared not to be concerned about the complaint. Instead, he took advantage of complainant's situation since their meeting took a social dimension. Mr. Lubisia disclosed in his statement that he sent KES.2000 to the complainant and also facilitated transport severally when Ms. Fatuma Bakari visited him in his new Police Division, Kiambu. (*See exhibit A5*)
- It is regrettably noted that Mr. Moses Lubisia was not truthful in his assertion that the complainant, Ms. Fatuma Bakari had not left behind her contact hence investigations could not be undertaken on the matter, yet he continued to have an improper social relationship with the complainant.

3.0 Conclusion

This is a serious matter that involves misuse of power, negligence, unresponsiveness and misconduct by public officers which should be treated with utmost seriousness to curb such occurrence in the future.

The involvement of a minor in this case puts a lot of weight to the matter since those in authority and who are supposed to protect minors have violated their obligation. This can cause more violations of the rules protecting minors who are vulnerable in the society. Lack of trust by the community with the forces entrusted to provide justice especially to the minors is a serious issue that should not be underestimated.

The investigations therefore, confirm that there is inaction by officers from Kayole Police Station for not investigating the matter to date. It is also noted that; According to a copy of Child Health Card, Ms. Nina Bakari was born on 16th June, 1997. Ms. Nina Bakari was therefore 14 years old at the time of the alleged defilement, (see **Exhibit marked A9**)

3.1. PC (W) Ruth Maithya:

- Ms. Nina Bakari was 14 years old at the time of defilement as per the available copy of Child Health Card for Ms. Bakari.
- During the interview with CAJ Investigators, PC (W) Ruth Maithya completely denied the fact that she knew the complainant Ms. Fatuma Bakari, and the minor. She denied ever meeting the complainant and having recorded the statements of the complainant and the minor. PC (W) Ruth also denied having received the minor's Medical Report.
- The investigations team noted gross inefficiency negligence unresponsiveness and incompetence on the part of the Investigating Officer, PC (W) Ruth. The manner in which she handled the matter revealed that she has no capacity to investigate cases of the same nature and magnitude
- Consequently, PC (W) Ruth Maithya proved herself unresponsive and incompetent in her work.

3.2. Chief Inspector Wilson Cheruiyot:

- Investigations revealed some idleness, inefficiency and negligence on the part of the OCS, Chief Inspector Wilson Cheruiyot in the performance of his duties by failing to ensure that the matter is investigated properly. He too was unresponsive.

3.3. Mr. Moses Lubisia:

- The investigations also revealed unresponsiveness on the part of the Officer Commanding Kayole Police Division Mr. Moses Lubisia who ought to have ensured that the station undertook thorough investigations into the reported defilement case. The fact that the complainant had sought assistance from the OCPD, the more reason he should have taken interest in the matter.
- Further, it was established that there existed improper social contact between the complainant, Ms. Fatuma Bakari and Mr. Moses Lubisia. The two met out of office and the relationship was more social in nature and had nothing to do with the matter under investigation. Mr. Moses Lubisia also gave monetary assistance to the complainant on different occasions. The social contact may have compromised the case under investigations.

3.4. Breach of the Public Officers Ethics ACT, CAP 183 of the Laws of Kenya

Mr. Moses Lubisia's improper social contact with the complainant, Ms. Fatuma Bakari, contravened the Public Officers Ethics Act, Cap 183 of the Laws of Kenya, in particular Section 9, on Professionalism where a public officer shall:—

- (a) carry out his duties in a way that maintains public confidence in the integrity of his office;
- (b) treat the public and his fellow public officers with courtesy and respect;
- (c) to the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organisation;

3.5. Ms. Fatuma Bakari:

The complainant, Ms. Fatuma Bakari is also culpable in compromising the investigations of the case in allowing the improper social interaction between herself and Mr. Moses Lubisia and even accepting the monetary gifts he gave her.

4.0 Recommendations

- i. The National Police Service should take stern administrative actions against the Officer Commanding Police Station, Chief Inspector Wilson Cheruiyot for unresponsiveness and negligence in the performance of his duties.
- ii. The National Police Service should take stern administrative actions against the then Officer Commanding Kayole Police Division, Mr. Moses Lubisia, for gross unofficial conduct that developed between him and a vulnerable client, the complainant.
- iii. The Inspector General should endeavor to come up with (service agreement levels) time-frames for investigations. These will compel the investigating officers to work expeditiously towards concluding such matters within the right time in future.
- iv. The Nairobi County Police Commander should take disciplinary actions against the Investigating Officer, PC (W) Ruth Maithya for her unresponsiveness and intentional or unintentional negligence in undertaking her duties diligently.
- v. The Nairobi County Police Commander should assign another team of investigators to promptly and conclusively investigate the matter and take appropriate action based on their findings

PART II: KIDNAPPING OF A MINOR, MS. NINA BAKARI

Ms. Fatuma Bakari subsequently alleged that she reported a kidnapping incident of the same minor to Soweto Police Station on 12th September 2011 and that similarly the Police took no action against the alleged kidnapper.

In her complaint to the Commission, Ms. Fatuma Bakari alleged that a man known to her as Mr. Enock Wekesa came to her house in Soweto area when she was away at the place of work and swayed the minor to pack her clothes and accompany him. The accused (Enock Wekesa) had promised the minor that he would take her to his mother's house in Mt.Elgon. The minor accepted the offer. The neighbors alerted the minor's parents (Ms. Fatuma Bakari and Juma Bakari) that their daughter has eloped. The father made effort to follow them while Ms. Fatuma Bakari called Cpl Samwel Mwandime (Officer based in Sowetto Police Station) and informed him that her daughter has eloped. Cpl Samwel Mwandime intercepted and managed to arrest them (Mr. Enock Wekesa and Ms. Nina Bakari) and escorted them to Soweto Police Station where the accused was booked in for the offence of creating disturbance instead of kidnapping. The minor (Ms. Nina Bakari) on the other hand, was booked in for the offence of a child in need of care and protection.

The findings of the investigations

Findings on kidnapping:

It was established that on 12th September 2011, Chief Inspector Julius Mwandime (the then Officer Commanding Soweto Police Station) received a phone call from Ms. Fatuma Bakari informing him that her daughter had been kidnapped by a person known to her as Mr.Enock Wekesa, a male adult

Investigations further revealed that the complainant, Ms. Fatuma Bakari also called a police officer by the name Cpl. Samuel Mwandime and informed him that her daughter, Nina Bakari had been kidnapped by Mr. Enock Wekesa whom they (parents) had intercepted while with the minor at stage 17 within Soweto.

It was also established that the said Police Officer, Cpl. Mwandime arrested Mr. Enock Wekesa and the minor and booked them at the station for the offence of creating disturbance, and a child in need of care and protection, respectively.

Cpl. Samuel Mwadime booked the matter vide *OB. 29/12/9/2011* at Soweto Police Station.

Mr. Enock Wekesa was found in the company of the minor, Ms. *Nina Bakari (not her real name) under circumstances that indicated that the minor was actually kidnaped by the accused, Enock Wekesa. Alternatively, Mr. Enock Wekesa was found in the company of a girl of 14 years without the parent's consent and in unclear circumstances.

According to a copy of a Child Health Card obtained from Ms. Fatuma Bakari, the mother of Ms. *Nina Bakari, Ms. Bakari was born on 16th June, 1997. Ms. Bakari was therefore 14 years old at the time of the alleged kidnaping, (see **Exhibit marked A9**)

Soweto Police Stations is also under Kayole Police Division which was then headed by Mr. Moses Lubisia as the OCPD.

On change of charges from kidnapping to creating disturbance

Perusal of the Occurrence Book revealed that the suspect, Mr. Enock Wekesa was booked in for the offence of creating disturbance while the complainant reported that her daughter had been kidnaped by the accused. The OCS confirmed that he had instructed the Officers to book the matter as an offence of creating disturbance as a holding charge.

On inaction by officers from Soweto Police Station

The Occurrence Book disclosed that the OCS, CI Mwamrizi had given instructions that the accused, Mr. Enock Wekesa be released on a cash bail of KES.2000. The cash bail was later forfeited to the state.

The CAJ investigators team established that the matter had been assigned to Cpl. Samuel Mwadime to investigate. However, Cpl. Samuel Mwadime coincidentally proceeded on leave without investigating the case.

The matter was not acted upon until the OCPD intervened after the complainant sought assistance from him. IP Kiplagat the Deputy OCS then assigned Cpl. Peter Cheronno to charge Mr. Enock Wekesa with the offence of creating disturbance. Cpl Peter Cheronno stated that the matter was taken to Makadara Law Courts.

The court proceedings regarding the matter revealed that Soweto Police Station took the matter to Makadara Chief Magistrate's Court on 25th October 2011. The accused person, Mr. Enock Wekesa never turned up in Court and a warrant of arrest was issued to produce him in Court.

The case was mentioned in court on 25th November 2011 and the warrant of arrest earlier issued was extended to 27th February 2011. Since the warrant of arrest had not been executed, and the Police could not explain the reason for not effecting arrest, the Charges were withdrawn under section 87(a) of the Criminal Procedure Code (CPC) on 27th March 2011. This translates to abuse of the Court process.

In an interview with CAJ investigators, the officers from Soweto said that they did not execute the warrant of arrest because they could not trace the accused

Mr. Enock Wekesa, yet during the interview with the OCS Soweto, the Director Research and Investigations called Mr. Wekesa on his mobile and he (Wekesa) answered.

Improper Social contact between the OCPD and the Complainant:

Investigations established that there existed social contact between the complainant, Ms. Fatuma Bakari and Mr. Moses Lubisia. The two met out of office and the relationship was more social in nature and had nothing to do with the matter under investigation. Mr. Lubisia also gave monetary assistance to the Complainant on different occasions. The social contact may have compromised the case under investigations

Inconsistencies noted in the Police Case File regarding the alleged kidnapping of the Minor

The investigations team recovered a Police Case File No. 135/476/2011 containing copies of Court proceedings obtained from Makadara Law courts. In-depth analysis of the recovered documents revealed the following inconsistencies:

1. Name of the accused

In the Occurrence Book (OB), the accused was booked in under the name Mr. Enock Wasike for the offence of creating disturbance. The accused was later taken to Court on 25th October 2011 under the name Enock Wekesa charged with the offence of creating disturbance.

2. Date and time of arrest

Close scrutiny of the Occurrence Book (OB) and Investigation Diary reveals that Mr. Enock Wekesa was arrested on 12th September 2011. However, the Charge Sheet indicates that the accused was arrested on 24th October 2011 and arraigned in court on 25th October 2011.

3. Charges preferred against the accused

The initial crime and incident report states an offence of Abduction of a child under the age of fourteen years contrary to Section 262 of the Penal Code. The

Occurrence Book (OB) entry indicates an offence of Creating Disturbance in a manner likely to cause a breach of peace contrary to section 95(1) (b) of the Penal Code which also appears on the Charge Sheet. The Covering Report in the Police Case File talks about a case of Kidnapping or abducting a child less than fourteen years with intent to steal from persons contrary to Section 262 of the Penal Code.

Conclusions

The CAJ investigations team analyzed the information and documents relating to the matter and the following are the conclusions:

Kidnapping of Ms. Nina Bakari

Ms. Nina Bakari was born on 16th June, 1997 and was therefore 14 years old at the time of the alleged kidnapping.

Circumstances surrounding the matter under investigations suggest that the minor was kidnapped by Mr. Enock Wekesa. Alternatively, Mr. Enock Wekesa was found in the company of the minor without the parent's consent.

The degree of convergence with allegations that the minor was kidnapped by the accused is thus arguably probable from the complainants' perspective.

A thorough investigation by the Police is, therefore, necessary to confirm the allegations.

Cpl Samuel Mwadime

The Arresting Officer, Cpl Samuel Mwadime booked Mr. Enock Wekesa in the Occurrence Book (*OB. No. 29/12/9/2011*) for the offence of creating disturbance instead of kidnapping

The investigations team noted negligence by Cpl Samuel Mwadime in carrying out his duties since he also misplaced all the statements he had recorded and so Cpl Peter Cherono had to record the statements afresh. Coincidentally Cpl. Mwadime proceeded on leave soon after being assigned to investigate the case. This contributed to a delay in taking the matter to court.

Both Cpl. Samuel Mwadime and Cpl Peter Cherono contravened section 52 of CAJ Act of 2011 and Section 19 of Public Officers Ethics Act by giving false or misleading information to Commission's officers by stating that they could not trace the accused Mr. Enock Wekesa.

CI Julius Mwamrizi

- Chief Inspector Julius Mwamrizi erred by instructing the investigating officers, CPL Madime and CPL Cheronno to change the charges from kidnapping to creating disturbance. Consequently, he violated Chapter 2(10) iii of Force Standing Orders which states that an Officer Commanding Station is responsible for ensuring that the complaints received are properly recorded and investigated. The OCS arrived at this decision prematurely since no investigations were undertaken.
- CI Mwamrizi also informed the CAJ Investigations Team that he had preferred creating disturbance as a holding charge.
- Chief Inspector Julius Mwamrizi contravened section 52 of CAJ Act of 2011 and Section 19 of Public Officers Ethics Act by giving false or misleading information to Commission's officers in utterly denying that he did not know the complainant, Ms. Fatuma Bakari who used to visit him in his office .
- The officer also lied to CAJ that they could not trace the accused Mr. Enock Wekesa, yet his mobile phone was active

Mr. Moses Lubisia

Further, it was similarly established that the improper social contact between the complainant, Ms. Fatuma Bakari and Mr. Moses Lubisia, may have compromised the investigations of the kidnap case as was the case with that of defilement.

Inconsistencies noted in the Police Case File

- There are discrepancies in the name of the accused, date and time of arrest and charges preferred against him. It is not clear whether the aforementioned discrepancies were deliberate or otherwise.
- It is also worth noting that the case was handled by many officers which may compromise investigations
- The fact that Cpl. Mwadime went on leave soon after he had been assigned the case to investigate is a coincidence of sorts. It was noted that PC (W) Ruth Maithya who was assigned to investigate the defilement case involving the same minor also went on leave soon after she was assigned the case to investigate.
- It is the responsibility of the Officer Commanding Station to ensure that the cases reported to the station are properly recorded and investigated which did not apply in this case.

- It is noted that the behavior of the minor as described by the School authorities is wanting; this may have a bearing on the case at hand.

Recommendations

- i. The National Police Service to take stern administrative actions against the then Officer Commanding Soweto Police Station and currently, OCS Londiani Police Station in Kericho County, CI Julius Mwamrizi for negligence and misuse of power by ordering junior officer to prefer a lesser charge against the accused, Mr. Enock Wekesa, while facts and circumstances indicated that it was a kidnap case as reported. Consequently, he violated Chapter 2(10) iii of Force Standing Orders which states that the OCS is responsible for ensuring that the complaints received are properly recorded and investigated.
- ii. The Inspector General should endeavor to come up with timelines (frames) for police investigations on any given matter in order to compel investigating officers to work expeditiously towards concluding such matters within specified timelines.
- iii. The Nairobi County Police Commander to assign another team of investigators to promptly and conclusively investigate the matter and take appropriate action based on their findings.
- iv. The Nairobi County Police Commander to take disciplinary actions against the arresting and investigating officer, Cpl. Samuel Mwadime for his unresponsiveness and intentional or unintentional negligence in undertaking his duties diligently.
- v. . Nairobi County Police Commander to take specific administrative action against Cpl. Samuel Mwadime for changing the charge to a lesser offence, intentionally misplacing statements and for failing to take appropriate actions including re-arresting the accused and producing him before the court

Introduction

1.5. Introduction to the investigations

Investigations into the alleged kidnap case was prompted by the receipt of a complaint from Ms. Fatuma Bakari alleging that she reported a kidnapping incident of her 14 year old daughter to Soweto Police Station in September 2011 and no actions had been taken.

In her complaint to the Commission, Ms. Fatuma Bakari alleged that a man known to her as Mr. Enock Wekesa came to her house in Soweto area when she was away at the place of work and swayed the minor to pack her clothes and accompany him. The accused (Mr. Enock Wekesa) had promised the minor that he would take her to his mother home in Mt.Elgon. The minor accepted the offer.

The neighbors alerted the minor's parents (Ms. Fatuma Bakari and Juma Bakari) that their daughter has eloped. The father made effort to follow them while Ms. Fatuma Bakari called Cpl Samwel Mwadime (Officer based in Sowetto Police Station) and informed him that her daughter has eloped. Cpl Samwel Mwadime intercepted and managed to arrest them (Mr. Enock Wekesa and Ms. Nina Bakari) and escorted them to Soweto Police Station where the accused was booked in for the offence of creating disturbance instead of kidnapping. The minor (Ms. Nina Bakari) on the other hand, was booked in for the offence of child in need of care and protection.

The following day, the accused was released on a cash bail of KES.2000 under the instruction of CI Julius Mwamrizi, erstwhile Officer Commanding Soweto Police Station. The minor (Ms. Nina Bakari) was also freed the same day.

The matter was taken to court. The accused absconded court for plea and a warrant of arrest was issued to that effect. The Police officers failed to re-arrest the accused claiming that he was at large.

The difficulties that Ms. Fatuma Bakari went through while seeking for justice for her 14 years old daughter left her with no option but to run to the Commission on Administrative Justice for help. The complaint merited the Commission to initiate investigation on the matter, particularly in relation to the delay, inaction and unresponsiveness by the Police Officers.

1.6. Summary of issues under investigation

The Commission sought to investigate alleged inaction by officers from Soweto Police Station. The Police Officers did not execute the warrant of arrest issued by the Court, hence they failed to re-arrest and produce the perpetrator before the Court.

1.7. Investigative Strategy

The Commission wrote a letter, Reference *CAJ/POL/015/1146/2012-FL* to the Officer Commanding Kayole Police Division informing him of the complaints lodged with the Commission on Administrative Justice. In the letter, the OCPD was requested to clearly indicate the position of the case regarding the alleged kidnapping of Ms. Nina Bakari, steps taken, intended actions and the time frames. The OCPD response was not satisfactory hence the decision to investigate the matter.

Offices Visited

- Soweto Police Station
- Imara Primary School
- Spice Primary School
- National Registration Department Mombasa
- Civil Registration Department Mombasa
- Makadara Chief Magistrate's Court

Interviews held and statements recorded

The investigations team conducted interviews and recorded statements from the following officers:

1. Senior Superintendent of Police (SSP), Mr. Moses Mutely Lubisia, the then Officer Commanding Kayole Police Division but currently, the OCPD Kiambu Police Division.
2. Chief Inspector of Police (C.I), Julius Wangi Mwamrizi, the then Officer
3. Commanding Soweto Police Station but currently, the Officer Commanding Londiani Police Station in Kericho County.
4. Chief Inspector of Police (C.I), Hussein Abdouba, the Officer Commanding Soweto Police Station.
5. Corporal Samuel Wangemi Mwadime, who arrested the suspect and booked him in the Occurrence book (OB). He was also assigned by the OCS, CI Mwamrizi to investigate the matter initially.
6. The complainant, Ms. Fatuma Bakari, the mother of the minor.
7. Regional Coordinator Coast National Registration Bureau Mombasa
8. Regional Coordinator Civil Registration Mombasa

Documents Recovered

The team managed to recover relevant documents which include:

- i. Statement of Mr. Enock Wekesa (accused) from Police File. (*See exhibit B1*)
- ii. Statement of the minor from Police File. (*See exhibit B2*)
- iii. Two statements by Cpl . Peter Cheronon's (Investigating Officer) which he recorded at Soweto Police Station-(*See exhibit B3[i]*) and the one he recorded at CAJ offices- (*See exhibit B3[ii]*)
- iv. Copy of a charge sheet (*See exhibit B4*)
- v. Copy of an investigations Diary (*See exhibit B5*)
- vi. Covering report (*See exhibit B6*)
- vii. Crime and Incident report (*See exhibit B7*)
- viii. OB extracts (*See exhibit B8*)
- ix. Copy of all the court proceedings in relation to Criminal Case No.5135 of 2011 (*See exhibit B9*)
- x. Statement by Mr. Moses Lubisia. OCPD (*See exhibit A5 on page 3*)
- xi. Statement by C.I Julius Mwamrizi OCS. (*See exhibit B11*)
- xii. Statement by Cpl Samwel Mwadime. (*See exhibit B12*)
- xiii. Complainant's Statement. (*See exhibit A3 on page 3*)
- xiv. Statement by CI Abdouba's OCS. (*See exhibit B14*)
- xv. Mr. Moses Lubisia's response letter to the Commission. (*See exhibit B15*)
- xvi. Copy of a Child Health Card showing that Ms. Nina Bakari was 14 year old (*See exhibit marked B16*)

1.8. Normative Framework

Following are excerpts of some of the relevant provisions:

Commission on Administrative Justice Act, 2011:

Sections 8(d) states

the commission shall inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehavior, inefficiency or ineptitude within the public service.

Section 52 states that a person who-

- (b) Submits false or misleading information; (c) Fails to honour summons; or
- (e) Misrepresents to or knowingly misleads the Commission or a member of Staff of the Commission acting under this Act,

Commits an offence and liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

Public Officers Ethics Act, 2003:

Section 9 of the Public Officers Ethics Act, 2003 states

A public officer shall, to the best of his ability, carry out his duties and ensure that the services that he provides are provided efficiently and honestly

Section 19 of the Public Officers Ethics Act, 2003 states

A public officer shall not knowingly give false or misleading information to members of the public or to any other public officer.

Section 24. (1) of the Public Officers Ethics Act, 2003 states

A public officer contravenes the Code of Conduct and Ethics if-

- he causes anything to be done through another person that would, if the public officer did it, be a contravention of the Code of Conduct and Ethics; or
- *he allows or directs a person under his supervision or control to do anything that is a contravention of the Code of Conduct and Ethics*

Penal Code:

In the Penal code, Cap 63 Laws of Kenya, and Section 255 the definition of kidnapping is given below;

Any person who takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of mind, without the consent of the guardian, is said to kidnap the minor or person from lawful guardianship.

Section 257 of the Penal Code states as follows:

Any person who kidnaps any person from Kenya or from lawful guardianship is guilty of a felony and is liable to imprisonment for seven years

2.0 Analysis and Findings

On 12th September 2011, Chief Inspector Mwamrizi (the then Officer Commanding Soweto Police Station) received a phone call from Ms. Fatuma Bakari informing him that her daughter had been kidnapped by a person known to her as Mr. Enock Wekesa, a male adult. He instructed Corporal Mwadime to rush to the scene and attend to the matter. While on his way to the scene as directed by OCS, Cpl Mwadime also received a phone call from the same complainant informing him of the said kidnapping incident. (*See exhibit B11 & B12*)

At the scene (stage 17, within Soweto area), he met the minor's parents and a furious crowd gathered outside the Cyber Shop where the minor and the accused, Mr. Enock Wekesa, had been locked in. He arrested the accused and the minor and escorted them to Soweto Police Station where he booked the accused for the offence of creating disturbance and the minor as a child in need of care and protection. (*See exhibit B8&B12*)

According to a copy of a Child Health Card received from the mother of the minor Ms. Fatuma Bakari, Ms. Nina Bakari was born on 16th June, 1997. Ms. Nina Bakari was therefore 14 years old at the time of the alleged kidnaping, (*See exhibit marked B16*)

In endeavoring to get the in-depth understanding of the matter, the investigation team interviewed five officers who played a role in this matter. The following are findings:

Findings on alleged kidnapping

Investigations revealed that the minor was found in the company of Mr. Enock Wekesa at stage 17, within Soweto area, which is some distance from the minor's home. Mr. Wekesa did not have the consent of the minor's parents. Under the circumstances, the complainant reported the kidnapping of her daughter by the accused. (*See exhibit B2& B3*)

In the statements recorded by the minor on the 19th September 2011, the minor stated that the Mr. Enock Wekesa had given her his mobile phone number so that she could call him. She called Mr. Wekesa and he told her to take her clothes and go and meet him at Dawabu so that he may take her to his mother's place at Mt. Elgon. The minor took her clothes and met Mr. Wekesa at the agreed place.

Mr. Enock Wekesa took her to a cyber café where she waited for him as he played computer games until 6.00pm. The two met the parents of the minor as they were going to the house of Mr. Wekesa's sister. The two were later arrested by the police officers at Stage 17 within Soweto area, some distance from her parents' house. Being a minor, Ms. Nina Bakari was not in a position to decide on her own. It is inferred that Mr. Enock Wekesa influenced her actions through promises. **(See exhibit B2)**

On the other hand, it is also apparent that Mr. Enock Wekesa did not use force to make Ms. Nina Bakari accompany him. The fact that she went to meet him at the agreed place and that she waited for him as he played computer games indicates that Ms. Nina Bakari was willing to go along the plan.

It is thus inferred that Ms. Nina Bakari knew what she was doing and was therefore, too participated willingly in the arrangement.

The Complainant Ms. Fatuma Bakari, reported a case of kidnapping of her daughter to the police.

Findings on change of charge from kidnapping to creating disturbance

Perusal of the Occurrence Book revealed that the suspect, Mr. Enock Wekesa was booked in by Cpl Samuel Mwadime for the offence of creating disturbance instead of kidnapping as reported by the complainant. **(See exhibit B8).**

Cpl Peter Cherono who took over from Cpl Mwadime as the investigating officer, stated that Inspector Kiplangat, the then Deputy Officer Commanding Soweto Police Station instructed him (Cpl Peter Cherono) to charge the accused person with an offence of kidnapping, as the facts were there. **(See exhibit B3)**

CI Hussein Abdouba, the new Officer Commanding Soweto Police Station, confirmed that he perused the Case File and noted an anomaly whereby the accused, Mr Enock Wekesa was booked in the Occurrence Book (OB) with a lesser offence of creating disturbance while the initial statement made by the Cpl Peter Cherono and the circumstances in which the two were arrested gave enough grounds for the accused to be booked for the offence of kidnapping. **(See exhibit B14)**

In an interview with CAJ investigation team, CI Julius Mwamrizi confirmed that the accused was booked for the offence of creating disturbance as a holding charge. CI Julius Mwamrizi could not give adequate reason for the change of offence from kidnapping to creating disturbance. **(See exhibit B11)**

The arresting and investigating officer, Cpl Samuel Mwadime had sufficient facts to charge the accused, Mr. Enock Wekesa with the offence of kidnapping or a closely related offence. This was evident by the fact that the girl was found in the company of the accused person and it was apparent that the accused, Mr. Enock Wekesa was taking her somewhere. Instead, the officer changed the charge and preferred an offence of creating disturbance, which is a lesser charge. *(See exhibit B2 & B8)*

A careful examination of the documents obtained; the Covering Report, Cpl Peter Cheronon's statements dated 22nd October 2011 and the Crime and Incident Report disclosed that the accused person was to be charged with the offence of kidnapping. However, through the instruction of the OCS Mr. Julius Mwamrizi to Cpl Peter Cheronon, the charge sheet read the offence of creating disturbance instead of kidnapping of the minor. *(See exhibit B6, B7 & B3 [ii])*

Notwithstanding the above facts, it is worth noting that the minor did not resist, but willingly participated in the plan.

Findings on inaction by police officers

The Occurrence Book revealed that the OCS, CI Julius Mwamrizi instructed that the accused, Mr. Enock Wekesa be released on a cash bail of KES.2000.

The obtained court proceedings regarding the matter revealed that the issue was taken to Makadara Chief Magistrate's Court on 25th October 2011. The accused person never turned up in court on several mentions and a warrant of arrest was issued to produce him before the Court.

During the mention of 25th November 2011 the warrant of arrest was extended to 27th February 2012. Since the warrant of arrest had not been executed, and the police could not explain the reason for failing to execute the warrant, the charges were withdrawn under section 87(a) of the Criminal Procedure Code (CPC) on 27th March 2012. **(See exhibit B9)**

In an interview with the CAJ investigators, Cpl. Samuel Mwadime Cpl. Peter Cheronon, CI. Julius Mwamrizi, CI. Hussein Abdouba and Mr. Moses Lubisia, said that the case was withdrawn under section 87 (a) of CPC because the accused was at large. The CAJ investigators confirmed that the accused is not at large because he received a call from Director, Research and Investigations.

The officers confirmed that they never took any action to arrest the culprit and arraign him in court.

CAJ noted that there were no investigations undertaken in the first place. Actually the matter was taken to court and the accused did not appear in court, He had been released on a cash bail of Ksh. 2,000 by the police.

Chief Inspector Julius Mwamrizi gave false or misleading information by denying the fact that he knew the complainant, Ms. Fatuma Bakari. However, Cpl Peter Cheron, in his statement, revealed that the complainant used to visit CI Mwamrizi in his office. A fact that CI Mwamrizi confirmed during the interview with the CAJ Investigation Team.

Inconsistencies noted in the Police Case File regarding the alleged kidnapping of the Minor

The investigations team recovered a Police Case File No. 135/476/2011 containing copies of court proceedings obtained from Makadara Law courts. In-depth analysis of the recovered documents revealed the following inconsistencies:

1. Name of the accused

In the Occurrence Book (OB), the accused was booked in under the name Mr. Enock Wasike for the offence of creating disturbance. The accused was later taken to court on 25th October 2011 under the name Mr. Enock Wekesa charged with the offence of creating disturbance.

2. Date and time of arrest

Close scrutiny of the Occurrence Book (OB) and Investigation Diary reveals that Mr. Enock Wekesa was arrested on 12th September 2011. However, the Charge Sheet indicates that the accused was arrested on 24th October 2011 and arraigned in court on 25th October 2011.

3. Charges preferred against the accused

The initial crime and incident report states an offence of Abduction of a child under the age of fourteen years contrary to Section 262 of the Penal Code. The Occurrence Book (OB) entry indicates an offence of Creating Disturbance in a manner likely to cause a breach of peace contrary to section 95(1) (b) of the Penal Code which also appears on the Charge Sheet. The Covering Report in the Police Case File talks about a case of Kidnapping or abducting a child under fourteen years with intent to steal from its persons contrary to Section 262 of the Penal Code.

3.0 Conclusion

This is a serious matter that involves misuse of power, negligence unresponsiveness and misconduct by public officers which should be treated with utmost seriousness to curb such occurrence in the future.

The fact that a minor is involved in this case puts a lot of weight on the matter since those in authority and who are supposed to protect the minors have violated their obligation. This can cause more violations of the rules protecting the minors who are vulnerable in the society. Lack of trust by the community with the forces entrusted to provide justice especially to minors is a serious issue that should not be underestimated.

Investigations therefore, confirm that the allegation holds that there is inaction by officers from Soweto Police Station in failing to execute the warrant of arrest against the accused. It is worth noting that the accused, Mr. Enock Wekesa kidnapped the minor. Furthermore, it is also noted;

Cpl Samuel Mwadime

Investigations revealed that Cpl Samuel Mwadime arrested the accused, Mr. Enock Wekesa and booked him in the Occurrence Book (OB No. 29/12/9/2011) with the offence of creating disturbance instead of kidnapping as the facts were there on the scene.

Cpl Samuel Mwadime knowingly substituted the offence of kidnapping with a lesser offence of creating disturbance for unknown reasons.

The CAJ investigations team noted negligence by Cpl Samuel Mwadime in carrying out his duties since he misplaced all the statement he had recorded and this forced Cpl Peter Cherono to record the statements afresh. This contributed to a delay in taking the matter to court.

It is apparent that by changing the charge and misplacing original statements and also releasing the accused on a cash bail was an attempt to assist the accused not to be punished.

Chief Inspector Julius Mwamrizi

CI Julius Mwamrizi erred by instructing the Investigating Officers, Cpl Samuel Mwadime and Cpl Peter Cherono to change the charges from kidnapping to creating disturbance. Consequently, he violated Chapter 2(10) iii of Force Standing Orders which

states that an Officer Commanding Station is responsible for ensuring that the complaints received are properly recorded and investigated. He also contravened Chapter 24. (1) of the Public Officers Ethics Act, 2003 by allowing or directing Cpl Peter Cheron who is under his supervision or control to change the offence from kidnapping to creating disturbance which is a lesser offence.

He also contravened section 52 of CAJ Act of 2011 and Section 19 of Public Officers Ethics Act by knowingly giving false or misleading information to Commission's officers in utterly denying that he knew the complainant, Ms. Fatuma Bakari who used to visit him in his office .

The police at Soweto

The police at Soweto willingly failed to effect the warrant of arrest issue by the court as the accused could be reached through his mobile phone The police offices were therefore, unresponsive. They appeared incompetent, inefficient and unwilling to perform their duties hence inaction.

Mr. Moses Lubisia

The investigation team noted that there existed improper social contact between the complainant, Ms. Fatuma Bakari and the then Officer Commanding Kayole Police Division, Mr. Moses Lubisia who met the complainant out of office besides extending monetary assistance to the Complainant. This jeopardized the investigations of the case and ultimately compromised the outcome.

The Minor Ms. Nina Bakari

Information given by the school administration where Ms. Nina Bakari was a pupil indicated that she was a truant pupil. The School management described her behavior as bad something that may have played a role in her participation in the alleged kidnap.

The Complainant, Ms. Fatuma Bakari:

The Complainant, Ms. Fatuma Bakari is also culpable in compromising the investigations by willingly having had social contacts with the OCPD, Mr. Lubisia besides accepting financial assistance from him

Breach of the Public Officers Ethics Act, Cap 183 of the Laws of Kenya

Mr. Moses Lubisia's social contact with the complainant, Ms. Fatuma Bakari, contravened the Public Officers Ethics Act, Cap 183 of the Laws of Kenya in particular Section 9, on Professionalism, where a public officer shall:—

- (a) Carry out his duties in a way that maintains public confidence in the integrity of his office;
- (b) Treat the public and his fellow public officers with courtesy and respect;
- (c) To the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organization;

Mr. Enock Wekesa

From the findings, it is apparent that the accused, Mr. Enock Wekesa was found in the company of the minor without the consent of the parents. It may be argued that the minor had collected her clothes from the parents' house willingly, but being a minor and not in a position of making her own decisions, it is apparent that she was influenced by Mr. Enock Wekesa. Further, the accused's decision to take the minor to his mother's home in Mt. Elgon was premeditated and done without the consent of the minor's guardian. Therefore, he contravened Section 255 of the Penal Code which on conviction is liable to imprisonment for seven years. These are the facts that the police failed to bring to light hence inaction on their part.

Inconsistencies noted in the Police Case File

- There are discrepancies in the name of the accused, date and time of arrest and charges preferred against him. It is not clear whether the aforementioned discrepancies were deliberate or otherwise.
- It is also worth noting that the case was handled by many officers which may compromise investigations
- It is the responsibility of the Officer Commanding Station to ensure that the cases reported to the station are properly recorded and investigated which did not apply in this case.

4.0 Recommendations

- i. The National Police Service to take stern administrative actions against the then Officer Commanding Soweto Police Station and currently, OCS Londiani Police Station in Kericho County, CI Julius Mwamrizi for negligence and misuse of power by ordering junior officer to prefer a lesser charge against the accused, Mr. Enock Wekesa, while facts and circumstances indicated that it was a kidnap case as reported. Consequently, he violated Chapter 2(10) iii of Force Standing Orders which states that the OCS is responsible for ensuring that the complaints received are properly recorded and investigated.
- ii. The Inspector General should endeavor to come up with timelines (frames) for police investigations on any given matter in order to compel investigating officers to work expeditiously towards concluding such matters within specified timelines.
- iii. The Nairobi County Police Commander to assign another team of investigators to promptly and conclusively investigate the matter and take appropriate action based on their findings.
- iv. The Nairobi County Police Commander to take disciplinary actions against the arresting and investigating officer, CPL Samuel Mwadime for his unresponsiveness and intentional or unintentional negligence in undertaking his duties diligently.
- v. Nairobi County Police Commander to take specific administrative action against Cpl Samuel Mwadime for changing the charge to a lesser offence, intentionally misplacing statements and for failing to take appropriate actions including re-arresting the accused and producing him before the court.