

THE COMMISSION ON ADMINISTRATIVE JUSTICE
Office of the Ombudsman



'Hata Mnyonge ana Haki'

A PRINCIPAL'S MISTAKES

INVESTIGATIONS REPORT BY THE OMBUDSMAN-KENYA

ON

**ALLEGED ABUSE OF POWER AND MISUSE OF SCHOOL PROPERTY BY THE
PRINCIPAL NGARA GIRLS' HIGH SCHOOL AND OTHER MATTERS**

OCTOBER 2014



SERIAL NO.CAJ NO. 17 /2014



Foreword

The Commission on Administrative Justice received a complaint through a telephone call from a staff member of Ngara Girls and other complaint letters from various authors, known and anonymous, levelling various allegations against the Principal of Ngara Girls, Ms. Asumpta Ndunge Munyasya. The allegations were that she was misusing the School van, registration number KAE 214 F, a Nissan Urvan.

It was alleged that the Principal had removed the passenger seats of the school van and uses the van as a pick up to collect eggs from a poultry farm in Kayole (Ruai) and supplies the eggs to several schools in Nairobi County, among others St Georges Girls Secondary School. The allegations further state that there are ghost students and workers in the school, that she assaulted a student and that she failed to call the 2012 AGM.

The Principal, Ms. Munyasya was notified in writing of the Commission's decision to conduct investigations into the allegations, pursuant to section 37 of the Commission on Administrative Justice Act, 2011. The Research and Investigations Directorate undertook independent investigations on the allegations, a process which involved visits to the school and other institutions of interest conducting interviews with identified persons, undertaking impromptu head count with the staff and roll call with the students, as well as recovery and examination of relevant documents.

This report is informed by the analysis of the information that was recovered by the investigations team. A letter highlighting the preliminary findings, conclusions and proposed recommendations was shared with the Principal for her comments before finalization. In preparing the final report, the Commission duly observed all the procedural requirements and principles of fair administrative and natural justice.

Signed this.....day of October, 2014

**Cmmr. Otiende Amollo, EBS
Chairperson of the Commission on Administrative Justice
(Office of the Ombudsman)**



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 authority and to compel production of such information.

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 should be taken and 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 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.

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.



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.

The general layout of the report is in five parts:

Part I gives the introduction to the investigation, the Investigative strategy as well as the Normative framework;

Part II of the report deals with the allegation of misuse of the school van;

Part III is on the allegation of ghost students in the school;

Part IV is on the allegation of Ghost workers in the school;

Part V is on the allegation of assault on a student;

Part VI is on the allegation of failure to call the 2012 AGM;

Part VII is on Consequential observations, conclusions and recommendations.

Table of Contents

Foreword	i
Preamble	1
Acronyms	4
Executive Summary.....	5
PART I : Introduction to the Investigations	16
PART II:	26
Introduction	26
Analysis and Findings.....	26
Findings	27
Conclusion	30
Recommendations.....	30
PART III:	31
Introduction	31
Analysis and findings.....	31
Conclusion	35
Recommendations	36
PART IV:	37
Introduction	37
Analysis and Findings.....	37
Conclusion	37
PART V:	38
Analysis and Findings.....	38
Conclusion	38
PART VI:	38
Introduction	39
Analysis and Findings.....	39
Conclusion	39
Consequential observations.....	40



Acronyms

AGM	Annual General Meeting
BOG	Board of Governors
CEO	Chief Executive Officer
D E O	District Education Officer
FDSEF	Free Day Secondary School Education Fund
KRA	Kenya Revenue Authority
OB	Occurrence Book
OSE	Ordinary School Enrolment
PDE	Provincial Director of Education
PPOA	Public Procurement and Oversight Authority
PTA	Parents Teachers Association
SBOM	School Board of Management
TSC	Teachers Service Commission

Executive Summary

The Commission on Administrative Justice (CAJ) received complaints from known and anonymous persons, levelling allegations of misuse of the school van registration number KAE 214F, having ghost students and workers in the school, assault of a student, and failure to call the 2012 Annual General Meeting (AGM).

Considering the nature of the allegations and the institution involved, the Commission made a decision to investigate the allegations and wrote a letter to notify the Principal of that decision.

The investigations team visited several offices in Nairobi County including Ngara Girls High School, Saint Georges Girls High School, Nembu Girls High School, Upper Hill Secondary School, Buru Buru Girls Secondary School, Registrar of Companies, Teachers Service Commission and Kenya Revenue Authority. The team interviewed a number of officers and recovered and analysed several documents relevant to the investigations.

The Commission investigated the following:

- i. Alleged misuse of Ngara Girls school van
- ii. Alleged ghost students in the school
- iii. Alleged ghost workers in the school
- iv. Alleged assault of a student
- v. Alleged failure to call the 2012 AGM

Summary of findings, conclusions and recommendations

Findings

Alleged misuse of Ngara Girls school van

The CAJ investigators confirmed with the Registrar of motor vehicles that the vehicle registration number KAE 214F, a Nissan Urvan, is registered in the name of Ngara Girls High School.

The investigations team visited Ngara Girls and found that the back seats of the van had been removed. Empty egg trays had been packed in the school van.

Upon enquiry, the Principal confirmed that the school does not have a poultry farm and that the egg trays were used to collect eggs from a certain farm in Ruai for the school.

A scrutiny of the entries in the school van daily work tickets recovered from the school revealed that the vehicle in question had been driven from Ngara Girls to Ruai and then to Upper Hill and Nembu Girls Secondary Schools.

When asked to explain the purpose of the trips to these schools, the driver, Mr. Katumo Mutinda, indicated in his statement that he had been instructed to pick up eggs at a farm in Ruai and deliver them to Upper Hill and Nembu Girls Secondary schools. The vehicle work tickets and drivers statements indicated that the vehicle had been to a farm in Ruai three times on different dates.

The Principal, Ms. Munyasya, stated in her written statement that she had used her discretion as the principal of the school to instruct the driver to pick up eggs from the farm and deliver them to Upper Hill and Nembu Girls Secondary Schools. The Principal also collected eggs using the school van from Ruai for Ngara Girls.

According to statements recorded by a security officer and an accounts officer working at Upper Hill and Nembu Girls Secondary schools respectively, the said school van had been used to deliver eggs to their respective schools. It was confirmed that Upper Hill, Nembu and Buru Buru Girls had not hired the Ngara Girls school van for the delivery of eggs.

Conclusion

On the basis of the above stated findings, it is confirmed that the Principal, Ms. Asumpta Munyasya misused the Ngara Girls School Van Registration Number KAE 214F to collect and deliver eggs in contravention of Section K 19 (1) of the Public Service Code of Regulations.

Recommendations

1. The Principal, Ms. Asumpta Munyasya should desist from misusing school vehicles.
2. The Secretary, Teachers Service Commission (TSC) should strongly caution the Principal, Ms. Asumpta Munyasya for misuse of the school van.
3. The Principal Secretary, State Department of Education should cause a surcharge to be levied against Ms. Asumpta Munyasya for the misuse of the school van based on number of trips, she unlawfully authorized to Ruai farm, and subsequent supplies of eggs to various schools as indicated on work tickets contrary to Section K 19 (1) of the Public Service Code of Regulations, and take any other disciplinary action deemed appropriate.
4. The Principal Secretary, State Department of Education to facilitate sensitisation of school Principals and other officers on the use of government vehicles.
5. The Cabinet Secretary, Education, to come up with clear policy on the management of vehicles owned educational institutions, in particular, their hiring out, auditing of money accrued from hire and implement vehicle tracking system for security purposes and prevention against misuse.

Alleged ghost students in the school

The Principal informed the CAJ team that Ngara Girls High School had a student population of **eight hundred and fifty (850)** during year 2013. This was the number of students which included 182 form fours, which the school submitted to the State Department of Education for the FDSEF. The Principal further indicated that form four list of students is usually used as an estimate to cater for form one students in the subsequent year.

The State Department of Education released FDSEF for **eight hundred and fifty (850)** students for the year 2014. The principal stated that after the 2014 Form one intake, the number of students rose from **eight hundred and fifty (850)** to **eight hundred and eighty-one (881)** students, giving a difference of **thirty-one (31)** students.

CAJ investigations established that the Principal had written to the Principal Secretary, State Department of Education vide letter Ref. NG/M/VOL.1/89 of 3rd March, 2014 forwarding a list of **thirty-one (31)** students who had missed FDSEF in the first tranche for the 2014.

CAJ investigations established that the Principal Ngara Girls had declared a total of **twenty-nine (29)** students who cannot be accounted for. Out of these, **four (4)** were Form ones, **six (6)** are form twos, **five (5)** form threes and **fourteen (14)** form fours. The discrepancy of the **twenty-nine (29)** students was established through comparison of the actual students' number in the school as per CAJ roll call and the set of students in the list forwarded to the Principal Secretary, State Department of Education vide a Summary of Accountability for funds received from the Ministry. This revelation disagrees with the Principals assertion that the list of **thirty-one (31)** students the Principal sent to the State Department of Education as having missed their FDSEF, were all form ones.

Conclusion

The unexplained variance in student numbers is twenty nine (**29**) students. The school therefore, received from the State Department of Education KSh. (3,275 +1,843) x 29 students = **148,422/=** for non-existent students. Consequently it is inferred that these are the "ghost students" referred to in the allegation.

Investigations revealed that despite a variance of **twenty-nine 29** 'ghosts students', there is no direct evidence pointing to embezzlement of the KSh.**148, 422/=**.

Recommendations

1. The Secretary, Teachers Service Commission (TSC) should undertake further investigations into this matter and take appropriate action as per the code of regulations for teachers and any other applicable law.
2. The Kenya National Audit Office should examine the ordinary student enrolment lists submitted by the Principal, Ngara for the year 2014 FDSEF allocation and ascertain that the FDSEF released for the year correspond to the actual number of students in the school.
3. The Principal Secretary, Education should cause specific audit on FDSEF allocation in all schools to control abuse of the fund by school principals and in particular at Ngara Girls High School.
4. The Principal Secretary, Education should formulate and ensure the implementation of a transparent and accountable modality for students' enrolment in terms of access to FDSEF.

5. The Principal Secretary, Education should ensure enforcement of guidelines on the number of ideal student enrolment per class (number of students per class).

Alleged ghost workers in the school

The CAJ investigation team conducted an impromptu visit to the school and undertook a head count by registering all the teaching and non-teaching staff on duty on that particular day. CAJ also took details of staff on leave as well as those who were on duty out of station.

Comparison of the collected data by CAJ with the staff lists and the payroll for BOG staff recovered from the school revealed that there were no variations.

Conclusion

Investigations established that the allegation of ghost workers in the school was unfounded. CAJ noted that the school had an actual shortage of teaching staff.

Alleged assault on a student

The CAJ team interviewed the complainant and the student who was alleged to have been assaulted by the Principal and recorded their statements. The complainant, who is the father to the student and the student herself, stated that the Principal slapped the student. The Principal wrote a statement admitting that she patted the student on her back. Investigations noted that the Student, who was a school prefect then, was demoted henceforth and denied permission to go to Pangani Police Station to record her statement. CAJ noted that an assault case was reported at Pangani Police Station vide OB No. 11/17/03/2012 as well as a complaint lodged with the Provincial Director of Education but both public offices did not take any action. There is no evidence of further action on the matter from the two institutions.

Although the Principal confessed that there was physical contact with the student and subsequent demotion from being a school prefect, CAJ is not in a position to authoritatively confirm the offence of assault because of inaction by Pangani Police Station.

Recommendation

There should be minimal physical contact between a student and a teacher.

Alleged failure to call 2012 AGM

CAJ obtained statements from the Principal and recovered notices and minutes of the Special BOG Executive Committee, the Principal did not provide the CAJ team with the minutes of the AGM held on 22nd June, 2012 and the attendance lists. It was explained that all the documents were destroyed when the AGM was disrupted midway. The 2012 AGM took place on 22nd June, 2012,

Conclusion

An analysis of the information gathered by the CAJ team strongly suggests that the 2012 AGM took place on the 22nd June, 2012. The allegation that the Principal unilaterally cancelled the 2012 AGM is therefore not true. The decision to cancel the 17th March, 2012 AGM and reschedule it for 22nd June, 2012 was arrived at by the BOG Executive Committee.

Consequential observations

Supply of Eggs to Ngara Girls High School and other schools

In her statement to CAJ, Ms. Munyasya, the Principal Ngara Girls, confirmed that she regularly visits Saniki Farm in Ruai and she is known to the farm manager, Mr. Muthigani for whom she has been doing errands including collecting cheques, delivering eggs and marketing the egg business to other school principals within Nairobi.

It was established that Ms. Munyasya had visited Buru-Buru Girls Secondary School, Nembu Girls High School and Ofafa Jericho School to convince the principals to purchase eggs from Mr. Muthigani, the Ruai farm manager. Ms. Munyasya also called the Principal, Upper Hill Secondary School purposely to introduce the egg business. It was also noted that Ms. Munyasya had at one time used her personal vehicle to pick eggs from the Ruai farm and deliver them to State House Girls High School.

The Investigation team recovered tender documents dated 4th December, 2013, at Nembu Girls Secondary School for supply of eggs bearing Ms. Munyasya's personal particulars as the proprietor of the farm in Ruai.

On 17th October, 2013, Ms. Munyasya wrote a letter to the Principal Nembu Girls requesting the cheque for supply of eggs be written in the name of Mr. Peter Ngovi Kaloki, the bursar at Ngara Girls High School.

During her interview with investigators, Ms. Munyasya produced a cheque which was a payment for supply of eggs to a private hotel. On further probing, she confidently pointed out that she had been routinely collecting cheques on behalf of Mr. Muthigani, the farm manager.

Ms. Munyasya further conceded that she willingly did the marketing, collection and delivery of eggs as well as collection of payments for eggs delivered on behalf of Mr. Muthigani the manager, because of their friendship. She further stated that since the farm manager spent most of his time in Embu she would often deliver eggs and collect payments on his behalf. Ms Munyasya pointed out that she did the errands for Mr. Muthigani for free and that her zeal to assist him was motivated by their friendship.

The Principal also said that she would similarly go out of her way to perform similar errands for other friends. CAJ investigators noted that Ms. Munyasya was committed to assisting Mr. Muthigani to the extent of involving her domestic servant in some of the errands.

Conclusion

Ms. Munyasya being the Principal of Ngara Girls High school, by marketing, collecting and delivering eggs to her school and other schools as well as collecting payments for eggs delivered contravened Article 75 (1) (a), Article 77 (1) of the Constitution and the Public Officers Ethics Act 2003. This is a conflict of interest by supplying to her school.

Recommendations

1. Ms. Munyasya should strictly observe the code of regulations for public servants and the provisions of the Constitution in relation to conflict with her duties as a Principal of a public school.
2. The Secretary/CEO Teachers Service Commission should take appropriate action as provided for by the code of regulation and other laws to discourage principals, heads of schools and teachers from engaging in business that may conflict with their call of duty.

Abuse of the Procurement Process for Supply of Eggs at Ngara Girls Secondary School

Investigations by CAJ found that Ngara Girls High School had advertised the tender no. NGHS 9/2014 for the supply of fresh eggs to the school in October, 2013.

According to members of the school Tender Committee, the school bursar, Mr. Kaloki, informed them that only one firm, M/s Mwela Farm had responded to the advert and that they did not peruse the tender documents for the supply of eggs.



The Tender Committee sitting in January 2014 therefore awarded the tender to M/s Mwela Farm.

CAJ investigators noted that the school Tender Committee awarded the tender to M/s Mwela Farm despite M/s Mwela Farm not having met the procurement requirements as per the Public Procurements and Disposal Act 2005.

Investigations revealed that tender for supply of eggs was to become effective in March 2014. M/s Mwela Farm never supplied eggs to Ngara Girls School.

It was also established that Mr. Muthigani produced a letter purporting to have been written by M/s Mwela Farm advising Ngara Girls High School of change of account name from M/s Mwela Farm to Saniki Farm in Ruai which Mr. Muthigani is the manager.

Investigations further revealed that Saniki Farm had supplied eggs to Ngara Girls in October 2012 and thus it was not new to the school administration. That Saniki Farm started the supply of eggs in January 2014 and not March 2014 when the tender would have become effective. It was, therefore, not based on the strength of the letter of change of account name from M/s Mwela Farm to M/s Saniki Farm but on the basis that Mr. Muthigani was known to the Principal.

The fact that Mr. Muthigani managed to secure the tender to supply Ngara Girls with fresh eggs is an abuse of the tender process. Statements by Tender Committee members indicated that the change of name from M/s Mwela Farm to Saniki Farm and the subsequent supply of eggs by Saniki Farm was unknown to them.

CAJ investigators established that the original Tender Committee minutes dated 7th of January, 2014 had been substantially altered with the intention of showing that M/s Saniki Farm had procedurally won tender no. NGHS 9/2014 for supply of fresh eggs to the school.

According to original minutes dated 7th January, 2014 recovered by CAJ investigations team, M/s Mwela Farm was the only tenderer for the supply of eggs, and that M/s Mwela Farm is the farm that the Tender Committee had awarded the tender. Investigations revealed that the Principal Ms. Munyasya instructed the Chairman of the Tender Committee, Ms. Caroline Ayiro to alter the original minutes of the Tender Committee meeting of 7th January, 2014 to indicate that M/S Saniki Farm had won the tender.

The Tender Committee confirmed that there was no other meeting in which they awarded tender to M/s Saniki Enterprises on the basis of change of account name from M/s Mwela Farm to M/s Saniki Farm.

Mr. Peter Kaloki, Bursar Ngara Girls

When asked to account for the change of suppliers of eggs from Mwela Farm to Saniki Farm, he reiterated that the Tender Committee awarded the tender to Saniki Farm based on the Strength of the letter that was purported to have originated from the Director, Mwela Farm, Mr. Victor Sila. Additionally, he also told the investigators that he circulated that letter to other members of the Tender Committee, a claim that was denied by members of the Tender Committee.

The School Bursar told CAJ investigators that M/s Mwela Farm wrote a letter of change of account to Chairman of the Tender Committee to consider awarding the tender to M/s Saniki Farm. However, the Director of M/s Mwela Farm confirmed that he did not write nor sign the said letter and that the signature appearing on the said letter was not his. The Director of Mwela Farm also confirmed to the CAJ team that the letter head in question was not on his company's official letter head.

Mr. Samuel Mwangi Muthigani,

Mr. Muthigani the farm manager of Saniki Farm, authored, signed and presented a letter advising the school that Mwela Farm would be supplying Ngara Girls with eggs under the name of Saniki Farm. Mr. Muthigani also confirmed that he was a friend to the Ngara Girls School Principal and that is why she was helping him out.

Conclusion

The award of tender no. NGHS 9/2014 for the supply of fresh eggs to Ngara Girls was done unprocedurally in contravention of the Public Procurement and Disposal Act 2005 and Regulations therein.

Recommendations

1. The Chief Executive Officer, Public Procurement Oversight Authority should take appropriate action against the Principal for abuse of the procurement rules and regulations.
2. The Chief Executive Officer, Public Procurement Oversight Authority should train principals/heads of schools and Tender Committees on procurement processes.
3. The Chief Executive Officer, Public Procurement Oversight Authority should ensure that Public schools have qualified supply chain management officers as required by law.

Conduct of the principal, poor working environment and general fear among staff.

CAJ team observed general fear among the staff. They stated that non-teaching staff are harassed, mistreated and denied opportunities to air their grievances because they have a trade dispute in court. Most teaching staff interviewed by CAJ officers were fearful and expressed their desire to transfer to other schools citing the mistreatment by the Principal. Some said they wanted to resign.

The same was witnessed by the investigators when they visited the school where on one occasion she was engaged in a heated argument which turned physical with an outsider who had come to the school to follow up on payments for goods she had supplied to the school. Such outbursts were also cited by most of the staff interviewed by the Commission's investigators.

Teaching Staff who are members of the Tender Committee revealed that the working environment in the School is poor.

Conclusion

The CAJ team found the Principal to be very temperamental and high-handed. Her intimidation and harassment of staff and PTA members greatly contributed to the existing acrimony in the school, hence the many allegations levelled against her.

Recommendations

1. The Secretary Teachers Service Commission should facilitate school principals to undergo the Senior Management Course (SMC) and/or the Strategic Leadership Development Course at Kenya School of Government.
2. The Principal should observe the leadership and integrity principles as provided for by the Constitution as well as the Public Officers Ethics Act.
3. The Principal may require counselling and training on management of anger and interpersonal relations.
4. The Secretary, Teachers Service Commission should transfer Ms. Assumpta Munyasya from Ngara Girls School and deploy her in a non-managerial/ leadership position in a tertiary institution.

Accounting and Record Keeping

An examination of cheque books revealed that the bursar was on many occasions withdrawing large amounts of money purportedly for official use and for payment of goods and services. This poses a risk and loss or mismanagement of school funds and is not in sync with Public Finance management regulations.



It was also noted that the bursar was making cash payments of large amounts of money, for example with regard to payment of eggs to Saniki Farm an amount of Kenya shillings Seventy thousand (KSh. 70,000) was paid in cash contrary to financial regulations.

It was observed that record-keeping at the school was poor. The CAJ investigations teams had difficulty in obtaining class lists, payment vouchers, and minutes of meetings. The CAJ team asked for the AGM attendance lists, but these were never availed. Another case in point is the store ledger book. On 10th March 2014, the Ngara Girls' High School Cateress presented to the Commission copies of the store ledger book indicating that M/s Saniki had supplied the school with eggs at a price of KSh. 320 per tray. However, on 12th March, 2014, she presented similar copies with altered prices reading kes.340 per tray.

Recommendations

1. Principals and school administrators should be retrained on Public Finance management, rules and regulations.
2. Principals and school administrators should undertake compulsory Record Management course.
3. Principals and school administrators should undertake management courses

PART I: Introduction to the Investigations

The Commission on Administrative Justice (CAJ) also known as 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 CAJ has a mandate, pursuant to section 8 (a) (b) and (d) of the Commission on Administrative Justice Act, 2011 *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.

Further, the Commission has a quasi-judicial mandate to deal with maladministration through conciliation, mediation and negotiation where appropriate.

In the conduct of its functions the Commission has 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 Government authorities and to compel production of such information. The Commission is also mandated to inquire into issues within Governmental bodies, and make recommendations and advisories aimed at improving public service and the administration of justice.

The Commission received complaints against the Principal, Ngara Girls High School, Ms. Asumpta Ndunge Munyasya who is alleged to have misused a school Van KAE 214F, assaulted a student and failed to call the 2012 Annual General Meeting (AGM). It is also alleged that there are ghost students and workers in the school.

Pursuant to Section 8 of CAJ Act, 2011, the Commission decided to look into the following complaints with an aim of establishing facts on matters alleged.

Issues Subjected to Investigation

Out of all the complaints received at the Commission against Ms. Asumpta Ndunge Munyasya, the Commission sought to investigate the following issues:

- i. Alleged misuse of Ngara Girls school van vehicle registration number KAE 214F
- ii. Alleged failure to call the 2012 AGM
- iii. Alleged ghost students in the school
- iv. Alleged ghost workers in the school
- v. Alleged assault on a student

Investigative Process Notification

The Commission wrote a letter to Ms. Asumpta Munyasya notifying her of the Commission's decision to investigate the above five listed allegations.

Institutions Visited

The Commission's investigations team visited the following schools and offices:

- i. Ngara Girls High School
- ii. Saint Georges Girls High School
- iii. Nembu Girls High School
- iv. Upper Hill Secondary School
- v. Buru Buru Girls Secondary School
- vi. Registrar of Companies
- vii. Teachers Service Commission
- viii. Kenya Revenue Authority

List of Interviewees

- Principal Ngara Girls School
- Principal Buru Buru Girls School
- Principal Upper Hill Secondary School
- Class teachers, Ngara Girls High
- Bursar Ngara Girls School
- Bursar Upper Hill Secondary School
- Bursar Kangaru Secondary School
- Bursar Buru Buru Girls Secondary School
- Identified members of Ngara Girls High School Tender Committee.
- Cateress Ngara Girls High School
- Driver Ngara Girls High School
- Director Mwela Farm.

Documents Recovered

The Investigations team recovered relevant documents in respect to the issues under investigations. These include:

- a) **Documents relating to alleged misuse of Ngara School van**
 - Certificate of official search from KRA regarding motor vehicle registration number KAE 214F
 - Copy of Audit investigation report on Administrative Malpractices
 - Photographs showing school van with no seats but egg trays
 - Tender documents for M/s Saniki Enterprises
 - Copies of work tickets for the school van KAE 214F
 - Copies of driver's licence

b) Documents relating to alleged Ghost Students in the School

- Class attendance lists
- Nominal roll of Ngara Girls as submitted to the Ministry of Education
- Ordinary School enrolment as at 25th February, 2014

c) Documents relating to alleged ghost workers in the school

- List of teaching staff
- List of non- teaching staff
- Non- teaching staff files
- Copies of pay rolls

d) Documents relating to alleged assault of student

- Student statement
- Guardian statement
- OB Extract

e) Documents relating failure to call AGM

- Minutes of special B.O.G Executive Committee meeting dated 16th March, 2012
- PTA complaint letter dated 21st March, 2012
- PDE consultative meeting report dated 3rd May, 2012
- Notice AGM dated 8th June, 2012
- Minutes of special B.O.G meeting dated 25th June, 2012

Normative Framework

Following are excerpts of some of the relevant provisions:

Constitution of Kenya 2010

Chapter Six- Leadership and Integrity

73. (1) Authority assigned to a State office

- (a) is a public trust to be exercised in a manner that—***
- (i) is consistent with the purposes and objects of this Constitution;***
 - (ii) demonstrates respect for the people;***
 - (iii) brings honour to the nation and dignity to the office; and***
 - (iv) promotes public confidence in the integrity of the office; and***

75. (1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—

- (a) any conflict between personal interests and public or official duties;***
- (b) compromising any public or official interest in favour of a personal interest; or***
- (c) demeaning the office the officer holds.***

(2) A person who contravenes clause (1), or Article 76, 77 or 78

*(a) shall be subject to the applicable disciplinary procedure for the relevant office;
and*

*(b) may, in accordance with the disciplinary procedure referred to in paragraph
(a), be dismissed or otherwise removed from office*

Chapter Thirteen – The Public Service

227. (1) *When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.*

232. (1) *The values and principles of public service include—*

(a) high standards of professional ethics;

(b) efficient, effective and economic use of resources;

(c) responsive, prompt, effective, impartial and equitable provision of services

Commission on Administrative Justice Act, 2011:

Sections 8(d) *states that the commission shall inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service.*

Section 27 *states the Commission shall have the powers of a court to-*

a) Issue summons or order orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission.

b) Question any person in respect of any subject matter under investigation before the Commission, and

c) Require any person to disclose any information within the persons' knowledge relevant to any investigation by the Commission.

a) Section 52: A person who:-Submits false or misleading information;

b) Fails to honour summons; or

c) 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.

Public Officers Ethics Act, 2003 (Revised 2009)

Section 11(1): *A public officer shall not use his office to improperly enrich himself or others.*

(2) *Without limiting the generality of subsection (1), a public officer shall not—(a) except as allowed under subsection(3) or (4), accept or request gifts or favours from a person who —*

(i) has an interest that may be affected by the carrying out, or not carrying out, of the public officer's duties;

Section 9: *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: *A public officer shall not knowingly give false or misleading information to members of the public or to any other public officer*

Section 12(1): *A public officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties.*

(2) *Without limiting the generality of subsection (1), a public officer shall not hold shares or have any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having that interest would result in the public officer's personal interests conflicting with his official duties.*

(3) *A public officer whose personal interests conflict with his official duties shall—(a) declare the personal interests to his superior or other appropriate body and comply with any directions to avoid the conflict; and (b) refrain from participating in any deliberations with respect to the matter.*

Public Service Code of Regulations

Use of Government Vehicles

K.19 (1) *Except as provided for in (6) below, Government vehicles are intended for official purposes and must never be used for private purposes such as business or pleasure. It is the responsibility of a Permanent Secretary/Head of Department to ensure that a Government vehicle is properly used. An officer who makes improper use of a Government vehicle will render himself liable to surcharge in addition to any other disciplinary action which may include dismissal. In order to prevent unauthorized use of Government vehicles, all officers are duty bound to report in detail to the appropriate authority any Government vehicle which is suspected of being in unauthorized private use.*

Appropriate authority for this purpose means the Permanent Secretary/Head of Department on whose charge the vehicle is held.

(2) *No Government vehicle shall be on the road unless it is properly authorized for official Government business. In particular, no Government vehicle should be out on the road outside office hours (i.e. 8.00 a.m. to 5.00 p.m.) unless it is authorized to carry out an emergency or essential service. In such a case, the authority for the vehicle to be out will be given in writing by the officer-in-charge of the station where the vehicle is attached.*

(5) *A Surcharge Committee composed of officers from the Office of the President, the Treasury, the Ministry in charge of Government transport and the Directorate of*

Personnel Management has been established in the Office of the President to deal with reported cases of misuse of Government vehicles.

Public Procurement and Disposal Act 2006

Limitations on contract with employees etc.

Section 33. (1) *Except as expressly allowed under the regulations, a procuring entity shall not enter into a contract for procurement with —*

(a) an employee of the procuring entity or a member of a board or committee of the procuring entity;

(b) a Minister, public servant or a member of a board or committee of the Government or any department of the Government or a person appointed to any position by the President or a Minister; or

(c) a person, including a corporation, who is related to a person described in paragraph (a) or (b).

(2) *Whether a person is related to another person for the purpose of subsection (1)(c) shall be determined in accordance with regulations.*

Collusion

Section 42 (1): *No person shall collude or attempt to collude with any other person*

(a) to make any proposed price higher than would otherwise have been the case;

(b) to have that other person refrain from submitting a tender, proposal or quotation or withdraw or change a tender, proposal or quotation; or

(c) to submit a tender, proposal or quotation with a specified price or with any specified inclusions or exclusions

Conflict of Interests

Section 43. (1) *An employee or agent of the procuring entity or a member of a board or committee of the procuring entity who has a conflict of interest with respect to a procurement —*

(a) shall not take part in the procurement proceedings; and

(b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract.

(2) *An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection that, but for that subsection, would have been within his duties shall disclose the conflict of interest to the procuring entity.*

(3) *If a person contravenes subsection (1) with respect to a conflict of interest described in subsection(5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be voidable at the option of the procuring entity.*

(4) The voiding of a contract by the procuring entity under subsection (3) does not limit any other legal remedy the procuring entity may have.

(5) For the purpose of this section, a person has a conflict of interest with respect to a procurement if the person or a relative of the person —

(a) seeks, or has a direct or indirect pecuniary interest in another person who seeks, a contract for the procurement; or

(b) owns or has a right in any property or has a direct or indirect pecuniary interest that results in the private interest of the person conflicting with his duties with respect to the procurement.

(6) In this section, "relative" means —

(a) a spouse, child, parent, brother or sister;

(b) a child, parent, brother or sister of a spouse; or

(c) any other prescribed relative.

(7) For the purpose of subsection (5), the following are persons seeking a contract for a procurement -

(a) a person submitting a tender, proposal or quotation; or

(b) if direct procurement is being used, a person with whom the procuring entity is negotiating.

(8) Any person who contravenes the provisions of this section shall be guilty of an offence

137. (1) *A person convicted of a offence under this Act for which no penalty is provided shall be liable -*

(a) if the person is an individual, to a fine not exceeding four million shillings or to imprisonment for a term not exceeding ten years or to both;

(b) if the person is a body corporate, to a fine not exceeding ten million shillings.

(2) *In addition to the penalty under sub section (1), the public officer involved shall suffer disqualification from public office while the private individual shall be debarred.*

Opening of tenders

Section 60 (1) *The accounting officer shall appoint a tender opening committee specifically for the procurement in accordance with the following requirements and such other requirements as may be prescribed —*

(a) the committee shall have at least three members; and

(b) at least one of the members shall not be directly involved in the processing or evaluation of the tenders.

(2) *Immediately after the deadline for submitting tenders, the tender opening committee shall open all tenders received before that deadline.*

(3) *Those submitting tenders or their representatives may attend the opening of the tender and the name of the person submitting the tender should be read;*

(b) the total price of the tender including any modifications or discounts received before the deadline for submitting tenders except as may be prescribed; and

- (c) if applicable, what has been given as tender security.*
- (4) The tender opening committee shall assign an identification number to each tender.*
- (5) As each tender is opened, the following shall be read out loud and recorded in a document to be called the tender opening register —*
- (a) the name of the person submitting the tender;*
 - (b) the total price of the tender including any modifications or discounts received before the deadline for submitting tenders except as may be described; and*
 - (c) if applicable, what has been given as tender security.*
- (6) The procuring entity shall, on request, provide a copy of the tender opening register to a person submitting a tender.*
- (7) Each member of the tender opening committee shall —*
- (a) sign each tender on one or more pages as determined by the tender opening committee; and initial, in each tender, against the quotation of the price and any modifications or discounts.*
 - (8) The tender opening committee shall prepare tender opening minutes which shall set out —*
- (a) a record of the procedure followed in opening the tenders; and*
 - (b) the particulars of those persons submitting tenders, or their representatives, who attended the opening of the tenders.*
- (9) Each member of the tender opening committee shall sign the tender opening minutes.*

PUBLIC FINANCE MANAGEMENT ACT 2012

a) Accounting officers

74. (1) Subject to the Constitution, the Public Officers Ethics Act, 2003 and the Public Service codes of ethics or any other relevant laws, if an accounting officer reasonably believes that a public officer employed by a national government entity is engaging in, or has engaged in improper conduct within the meaning of subsection (4) in relation to the resources of the entity, the accounting officer shall—

(a) take appropriate measures to discipline the public officer in accordance with regulations; or

(b) refer the matter to the relevant office or body in terms of the statutory and other conditions of appointment or employment applicable to that public officer.

(2) If a Cabinet Secretary reasonably believes that an accounting officer is engaging in or has engaged in improper conduct within the meaning of subsection (4), the Cabinet Secretary shall—

(a) take such measures as may be provided in regulations; or

(b) refer the matter to the relevant office or body in terms of the statutory and other conditions of appointment or employment applicable to that accounting officer.

(3) The measures referred to in subsection (2) (a) include revoking the position as accounting officer.

(4) For the purposes of this section, a public officer or accounting officer engages in improper conduct in relation to a national government entity if the officer—

(a) contravenes or fails to comply with this Act, including their accounting responsibilities;

(b) undermines any financial management procedures or controls that apply to the entity;

(c) makes or permits expenditure that is unlawful or has not been authorised by the entity; or

(d) fails, without reasonable excuse, to pay eligible and approved bills promptly in circumstances where funds are provided for.

(5) Disciplinary measures under this section may not be taken against a public officer or accounting officer under subsection (1) (a) or (2) (a) unless the officer has been given an opportunity to be heard in relation to the alleged improper conduct.

Obligations of public officers

79. (1) Every public officer employed in a national government state organ or public entity shall comply with the Constitution and all laws relating to the conduct of public officers when carrying out a responsibility or exercising a power under this Act.

(2) Without prejudice to provisions under subsection (1), a public officer employed in a national government state organ or public entity shall —

(a) comply with the provisions of this Act so far as they are applicable to the officer; and

(b) ensure that the resources within the officer's area of responsibility are used in a way which —

(i) is lawful and authorised; and

(ii) is effective, efficient, economical and transparent;

(c) within the officer's area of responsibility—

(i) ensure that adequate arrangements are made for the proper use, custody, safeguarding and maintenance of public property; and

(ii) use the officer's best efforts to prevent any damage from being done to the financial interests of the national government.

Enforcement Provisions

196. (1) A public officer shall not spend public money otherwise than authorized by the Constitution, an Act of Parliament or County legislation

(5) A public officer shall not direct another public officer to do an act that constitutes a contravention of, or a failure to comply with, this Act, the Constitution or any other written law.

(6) A public officer who contravenes this section commits an offence and on conviction is liable to a term of imprisonment not exceeding two years or to a fine not exceeding one million shillings, or to both

197. (1) A public officer employed by the national government or a national government entity commits an offence of financial misconduct if, without lawful authority, the officer—

(l) fails to keep proper records or conceals, or wrongfully destroys, information that is required to be recorded;

(m) intentionally or recklessly obstructs or hinders a person while that person is acting in the performance or exercise of the person's functions or powers under this Act;

(n) makes any statement or declaration, or gives any information or certificate, lawfully required by or under this Act knowing it to be false or misleading in a material respect;

(o) for the purpose of procuring for the public officer or any other person or organisation—

(i) makes improper payment of public money belonging to or entrusted to that government or entity; or

(ii) makes improper use of any public property of that government or entity; or

(p) fails to remit revenue received contrary to the provisions of sections 76(2) and 158(2) of this Act.

198. (1) A public officer commits an offence if that officer—

(a) takes possession of public funds or assets without lawful authority;

(b) misappropriates public funds or assets;

(c) conceals information on public finances to obtain a financial benefit either for the officer or another person; or

(d) engages in a corrupt act.

(2) In this section, "corrupt act" includes soliciting or receiving an inducement.

199. Except as otherwise provided by this Act, a person who is found guilty of committing an offence under this Act for which no other punishment is given, that person is liable on conviction to a term of imprisonment not exceeding five years or to a fine not exceeding ten million shillings, or to both.

PART II: ALLEGED MISUSE OF SCHOOL VAN REGISTRATION NUMBER KAE 214F

Introduction

The Commission received an anonymous complaint that the Principal Ngara Girls High School, Ms. Asumpta Ndunge Munyasya had removed seats from school van registration number KAE 214F Nissan Urvan and was using it to pick up and deliver eggs from a farm situated in Ruai, to various schools, specifically, Ngara Girls High School, St. Georges Girls High School, Buru Buru Girls Secondary School, Upper Hill Secondary School and Nembu Girls Secondary School, among others.

Analysis and Findings

a. Copy of records

An analysis of copy of records recovered from Kenya Revenue Authority (KRA) shows that the said vehicle belongs to Ngara Girls Secondary School.

b. Copies of work tickets

A scrutiny of copies of work tickets indicates the following:

- That on 6th February 2014 the said vehicle Registration Number KAE 214F was driven from Ngara to Ruai and back to the school.
- That on 24th February 2014, it was driven from Ngara to Mombasa Road, via Upper Hill and back to the school.

c. Statements recorded

- Statements recorded by the members of the Tender Committee, Ngara Girls High School revealed that the school van has been used on several occasions to pick eggs from Saniki Farm, a farm in Ruai and deliver them to Ngara Girls High School.
- A statement by one of the officers from Nembu Girls Secondary School indicates that the school van registration number KAE 214F had been delivering eggs to Nembu Girls Secondary.
- A statement by an officer from Upper Hill Secondary School also revealed that the school van registration number KAE 214F had been delivering eggs to the said school.
- The driver, Mr. Mutinda Katumo, indicated in his statement that the Principal had been instructing him to pick up eggs from Saniki Farm and deliver them to not only Ngara Girls but also other schools.

- The Principal, Ngara Girls High School, confirmed through her statement, that she authorized the said van on various occasions to pick eggs from Saniki Enterprises and deliver them to Upper Hill and Ngara Schools.

Findings

CAJ investigators conducted interviews and analysed critically the documents recovered. The following were the findings:

In an interview with the CAJ team the School driver Mr. Mutinda Katumo confirmed that he was instructed by the Principal to remove the vehicle's seats with the assistance of a mechanic to create room for carrying egg trays (**see annexure A1**).

The school driver also revealed that he had been sent three times (**annexure A2**) by the Principal, Ms. Munyasya, to Saniki Farm in Ruai to pick up and deliver eggs to Upper Hill Secondary School, among other schools.

It is also worth noting that the Daily Work Ticket for school van registration number KAE 214F, driven by Mutinda Katumo, had been used on several occasions to transport eggs from the farm to Ngara, Nembu and Upper Hill Secondary Schools (**see annexure A3**).

The Principal, Ngara Girls, Ms. Munyasya stated in her interview with CAJ Investigations team, that she used her discretion as the Principal to use the school van to pick eggs from Saniki Farm in Ruai and deliver them to Ngara, Nembu and Upper Hill Secondary Schools (**see annexure A4**).

Statements obtained by investigators at Nembu Girls and Upper Hill Secondary School indicate that the said school van KAE 214F had been used several times to deliver eggs to the two schools respectively (**see annexures A5 and A6**).

When CAJ investigations team visited Ngara Girls High School, they found empty egg trays packed in the back compartment of the school van KAE 214F. The van had the back seats removed. (**See photographs below**)

PHOTOGRAPHS SHOWING M/V REG NO KAE 214F OCCUPIED WITH TRAYS OF EGGS.







Conclusion

On the basis of the above stated findings, it is confirmed that the Principal, Ms. Asumpta Munyasya misused the Ngara Girls school van registration Number KAE 214F to collect and deliver eggs in contravention of **Section K 19 (1)** of the Public Service Code of Regulations.

Recommendations

1. The Principal, Ms. Asumpta Munyasya should desist from misusing school vehicles.
2. The Secretary, Teachers Service Commission (TSC) should strongly caution the Principal, Ms. Asumpta Munyasya for misuse of the school van.
3. The Principal Secretary, State Department of Education should cause a surcharge to be levied against Ms. Asumpta Munyasya for the misuse of the school van based on number of trips, she unlawfully authorized to Ruai farm, and subsequent supplies of eggs to various schools as indicated on work tickets contrary to Section K 19 (1) of the Public Service Code of Regulations, and take any other disciplinary action deemed appropriate.
4. The Principal Secretary, State Department of Education to facilitate sensitisation of school Principals and other officers on the use of government vehicles.
5. The Cabinet Secretary, Education, to come up with clear policy on the management of vehicles owned educational institutions, in particular, their hiring out, auditing of money accrued form hire and implement vehicle tracking system for security purposes and prevention against misuse.

PART III: INVESTIGATION INTO ALLEGATION OF GHOST STUDENTS AT NGARA GIRLS HIGH SCHOOL

Introduction

The Commission decided to initiate investigation into the allegation of ghost students at Ngara Girls High School following complaints that were made to the Commission.

Analysis and findings

Analysis of documents recovered from Ngara Girls High

The following table indicates the number of students as per CAJ investigators, Ngara Girls High and the Nominal Roll respectively.

FORM 1

CLASS LISTS	BLUE	ORANGE	RED	YELLOW	GREEN
CAJ	49	49	49	51	51
NGHS-register	49	49	49	47	51
O.S.E	49	50	51	52	51
VARIANCE (O.S.E- CAJ)	Nil	+1	+2	+1	Nil
TOTAL VARIANCE (Number of Students unaccounted for)					4

FORM 2

CLASS LISTS	BLUE	ORANGE	RED	YELLOW	GREEN
CAJ	52	49	49	51	53
NGHS	52	49	51	54	55
O.S.E 2014	52	50	52	54	52
VARIANCE (O.S.E- CAJ)	Nil	+1	+3	+3	-1
TOTAL VARIANCE (Number of Students unaccounted for)					6

FORM 3

CLASS LISTS	BLUE	ORANGE	RED	YELLOW	GREEN
CAJ	40	36	39	40	33
NGHS	40	45	39	40	38
O.S.E 2014	38	37	38	42	38
VARIANCE (O.S.E- CAJ)	-2	1	-1	2	5
TOTAL VARIANCE (Number of Students unaccounted for)					5

FORM 4

CLASS LISTS	ALPHA	N	G	S
CAJ	40	42	36	43
NGHS	40	46	46	43
O.S.E 2014	38	48	45	44
VARIANCE (O.S.E- CAJ)	-2	6	9	1
TOTAL VARIANCE (Number of Students unaccounted for)				14

Analysis of recovered students class register, data collected by CAJ and Ordinary Students Enrolment as per 25th February 2014 reveals the following:

Form 1 Yellow

The official class lists (Ordinary Student Enrolment lists (OSE)) for Form 1 Yellow sent to the Ministry of Education by the Principal for funding had a total of **fifty-two (52)** students whereas a class list obtained from the class teacher indicated that Form 1 Yellow had forty-seven (47) students. The actual number found in the class during roll call conducted by CAJ investigators was **fifty-one (51)** students. This reveals that the Principal declared **one (1)** student, not accounted for, to the Ministry of Education for funding.

Form 1 Orange

The official class lists for Form 1 Orange sent to the Ministry of Education for funding had a total of **fifty (50)** students whereas the class list obtained from Ngara Girls had forty-nine (49) students. The total number of students registered by CAJ investigators in the class during roll call had **forty-nine (49)** students. This reveals that the Principal declared **one (1)** student, not accounted for, to the Ministry of Education for funding.

Form 1 Red

The official class lists (Ordinary Student Enrolment list (OSE)) for Form 1 Red sent to the Ministry of Education by the Principal for funding had a total of **fifty-one (51)** students. A class list obtained from the class teacher indicated that Form 2 Yellow had forty-nine (49) students. The actual number found in the class during roll call conducted by CAJ investigators was **forty-nine (49)** students. This reveals that the Principal declared **two (2)** students, not accounted for, to the Ministry of Education for funding.

Form 2 Orange

The official class lists for Form 2 Orange sent to the Ministry of Education for funding had a total of **fifty (50)** students whereas the class list obtained from Ngara Girls had forty-nine (49) students.

The total number of students registered by CAJ investigators in the class during roll call had **forty-nine (49)** students. This reveals that the Principal declared **one (1)** student, not accounted for, to the Ministry of Education for funding.

Form 2 Red

The official class lists for Form 2 Red sent to the Ministry of Education for funding had a total of **fifty-two (52)** students whereas the class list obtained from Ngara Girls had fifty-one (51) students. The total number of students registered by CAJ investigators in the class during roll call was **forty-nine (49)** students. This reveals that the Principal declared **three (3)** students, not accounted for, to the Ministry of Education for funding.

Form 2 Yellow

The official class lists (Ordinary Student Enrolment list (OSE)) for Form 2 Yellow sent to the Ministry of Education by the Principal for funding had a total of **fifty-four (54)** students. A class list obtained from the class teacher indicated that Form 2 Yellow had fifty-four (54) students. The actual number found in the class during roll call conducted by CAJ investigators was **fifty-one (51)** students. This reveals that the Principal declared **three (3)** students, not accounted for, to the Ministry of Education for funding.

Form 3 Orange

The official class lists (Ordinary Student Enrolment list (OSE)) for Form 3 Orange sent to the Ministry of Education by the Principal for funding had a total of **thirty-seven (37)** students. A class list obtained from the class teacher indicated that Form 2 Yellow had forty-five (45) students. The actual number found in the class during roll call conducted by CAJ investigators was **thirty-six (36)** students. This reveals that the Principal declared **one (1)** student, not accounted for, to the Ministry of Education for funding.

Form 3 Yellow

The official class lists (Ordinary Student Enrolment list (OSE)) for Form 3 Yellow sent to the Ministry of Education by the Principal for funding had a total of **forty-two (42)** students. A class list obtained from the class teacher indicated that Form 2 Yellow had forty (40) students. The actual number found in the class during roll call conducted by CAJ investigators was **forty (40)** students.

This reveals that the Principal declared **two (2)** students, not accounted for, to the Ministry of Education for funding.

Form 3 Green

The official class lists (Ordinary Student Enrolment list (OSE)) for Form 1 Red sent to the Ministry of Education by the Principal for funding had a total of **thirty-eight (38)** students. A class list obtained from the class teacher indicated that Form 2 Yellow had thirty-eight (38) students. The actual number found in the class during roll call conducted by CAJ investigators was **thirty-three (33)** students. This reveals that the Principal declared **five (5)** students, not accounted for, to the Ministry of Education for funding

Form 4 N

The official class lists (Ordinary Student Enrolment list (OSE)) for Form 1 Red sent to the Ministry of Education by the Principal for funding had a total of **forty-eight (48)** students. A class list obtained from the class teacher indicated that Form 2 Yellow had forty-six (46) students. The actual number found in the class during roll call conducted by CAJ investigators was **forty-two (42)** students. This reveals that the Principal declared **six (6)** students, not accounted for, to the Ministry of Education for funding.

Form 4 G

The official class lists (Ordinary Student Enrolment list (OSE)) for Form 1 Red sent to the Ministry of Education by the Principal for funding had a total of **forty-five (45)** students. A class list obtained from the class teacher indicated that Form 2 Yellow had forty-six (46) students. The actual number found in the class during roll call conducted by CAJ investigators was **thirty-six (36)** students. This reveals that the Principal declared **nine (9)** students, not accounted for, to the Ministry of Education for funding.

Form 4S

The official class lists (Ordinary Student Enrolment list (OSE)) for Form 1 Red sent to the Ministry of Education by the Principal for funding had a total of **forty-four (44)** students. A class list obtained from the class teacher indicated that Form 2 Yellow had **forty-three (43)** students. The actual number found in the class during roll call conducted by CAJ investigators was **forty-three (43)** students. This reveals that the Principal declared **one (1)** student, not accounted for, to the Ministry of Education for funding.

Discrepancies noted

The discrepancies noted per class were as follows:

Form 1 – Four (4) students more than the actual number noted by CAJ.

Form 2 – Seven (7) students more than the actual number noted by CAJ.

Form 3 – Eight (8) students more than the actual number noted by CAJ.
Form 4 – Sixteen (16) students more than the actual number noted by CAJ.

The Principal informed the CAJ team that Ngara Girls High School had a student population of **eight hundred and fifty (850)** during year 2013. This was the number of students which included 182 form fours, which the school submitted to the State Department of Education for the FDSEF. The Principal further indicated that form four list of students is usually used as an estimate to cater for form one students in the subsequent year.

The State Department of Education released FDSEF for **eight hundred and fifty (850)** students for the year 2014. The principal stated that after the 2014 Form one intake, the number of students rose from **eight hundred and fifty (850)** to **eight hundred and eighty-one (881)** students, giving a difference of **thirty-one (31)** students.

CAJ investigations established that the Principal had written to the Principal Secretary, State Department of Education vide letter Ref. NG/M/VOL.1/89 of 3rd March, 2014 forwarding a list of **thirty-one (31)** students who had missed FDSEF in the first tranche for the 2014 for consideration.

CAJ investigations established that the Principal Ngara Girls had declared a total of **twenty-nine (29)** students who cannot be accounted for. Out of these, **four (4)** were Form ones, **six (6)** are form twos, **five (5)** form threes and **fourteen (14)** form fours. The discrepancy of the **twenty-nine (29)** students was established through comparison of the actual students' number in the school as per CAJ roll call and the set of students in the list forwarded to the Principal Secretary, State Department of Education vide a Summary of Accountability for funds received from the Ministry. This revelation disagrees with the Principals assertion that the list of **thirty-one (31)** students the Principal sent to the State Department of Education as having missed their FDSEF, were all form ones.

Conclusion

The unexplained variance in student numbers is twenty nine (**29**) students. The school therefore, received from the State Department of Education KSh. (3,275 +1,843) x 29 students = **148,422/=** for non-existent students. Consequently it is inferred that these are the "ghost students" referred to in the allegation.

Investigations revealed that despite a variance of 29 'ghosts students', there is no direct evidence pointing to embezzlement of the KSh.**148, 422/=**.

Recommendations

1. The Secretary, Teachers Service Commission (TSC) should undertake further investigations into this matter and take appropriate action as per the code of regulations for teachers and any other applicable law.
2. The Kenya National Audit Office should examine the ordinary student enrolment lists submitted by the Principal, Ngara for the year 2014 FDSEF allocation and ascertain that the FDSEF released for the year correspond to the actual number of students in the school.
3. The Principal Secretary, Education should cause specific audit on FDSEF allocation in all schools to control abuse of the fund by school principals.
4. The Principal Secretary, Education should formulate and ensure the implementation of a transparent and accountable modality for students' enrolment in terms of access to FDSEF.

The Principal Secretary, Education should provide guidelines on the numbers of ideal student enrolment per class (number of students per class).

PART IV: ALLEGATION ON GHOST WORKERS

Introduction

The CAJ investigation team conducted an impromptu visit to the school and undertook a head count by registering all the teaching and non-teaching staff on duty on that particular day. CAJ also took details of staff on leave as well as those who were on duty out of station.

Comparison of the collected data by CAJ with the staff lists and the payroll for BOG staff recovered from the school revealed that there were no variations.

Analysis and Findings

Teaching staff

On 26th February, 2014, the investigations team conducted a snap head count of the teaching staff at Ngara Girls High School and confirmed that there are forty-four (44) teachers. Of these, thirty-eight (38) were posted to the School by the Teachers Service Commission, six (6) have been employed by the School Board of Governors and one had served in the school as intern. There were no ghost teachers detected. **(See annexures C1 and C2)**

Non-teaching staff

Likewise, the investigations team conducted a head count of non-teaching staff on the same day and confirmed that there were no ghost workers on payroll. **(See annexures C3 and C4)**

Conclusion

The allegation of Ghost Workers in the school is therefore unfounded.

PART V: ALLEGED ASSAULT ON A STUDENT

The Principal, Ngara Girls School is alleged to have assaulted a student because of non-payment of development levy.

Analysis and Findings

The complainant alleged that his daughter was assaulted and sent away from the school by the Principal. The Principal also demoted the student from being a school prefect by physically pulling out her prefect badge. The matter was reported to Pangani Police Station vide Occurrence Book entry number 11/17/03/2012 and to the Provincial Director of Education, Nairobi.

The CAJ team interviewed the complainant and the student who was alleged to have been assaulted by the Principal and recorded their statements. Both the complainant who is a parent to the student and the student in question stated that the Principal had slapped the student. CAJ noted that there was no evidence pointing to assault as the matter was reported to Pangani Police Station under OB No. 11/17/03/2012 as well as the Provincial Director of Education and there is no evidence of further action on the matter from the two institutions **(See annexures D1 and D2)**.

The Principal was also interviewed and she too recorded a statement in which she stated that she was not violent with the student and that she only patted her on the shoulders removed her prefect badge because of misbehaving by sneaking back to class after she had been sent home along with other students for development fee. According to the Principal, it was a matter of misbehaviour which rendered her ineligible to be a prefect. In an interview she indicated she was never violent with the student and only patted her and therefore to the Principal, the allegation was far-fetched **(See annexures A4)**.

The assertion by the student that she was slapped and her prefect's badge forcibly removed by the Principal after having called her from class could not be confirmed. There were no witnesses.

Conclusion

The allegation assault on a student lacks merit, since it is difficult to prove the allegation of assault in the absence of an independent witness or any other supporting medical documents (P3 Form). Although the Principal confessed that there was physical contact with the student and subsequent demotion from being a school prefect, CAJ is not in a position to authoritatively confirm the offence of assault because of inaction by Pangani Police Station.

Recommendation

There should be minimal physical contact between a student and a teacher.

PART VI: ALLEGATION ON FAILURE TO CALL AGM IN THE YEAR 2012

Introduction

The Principal, Ngara Girls' High School, Ms. Asumpta Ndunge Munyasya, is alleged to have unilaterally decided to cancel the 2012 Annual General Meeting at the eleventh hour against the wishes of the parents.

Analysis and Findings

CAJ investigators recovered from Ms. Munyasya a copy of a parents' newsletter Ref. NG/N/7/Vol. 1/35 dated 21st October, 2011 and a copy of the Notice for the AGM dated 15th February, 2012 both inviting parents for the 2012 Annual General Meeting (AGM) on the 17th March, 2012. **(See annexures E1 and E2),**

According to the Principal, she had followed the procedure for calling an AGM for the year 2012. She further stated that the AGM was later called off by a Special Board of Governors (BOG), Executive Committee meeting which was held in the school on Friday, the 16th March 2012 for the sake of peace and in the interest of the learners. The Special Board of Governors (BOG), Executive Committee rescheduled the meeting for 22nd June, 2012. **(See annexures E3)**

The Principal later issued a Notice for Annual General Meeting (AGM) dated 8th June 2012 inviting parents to attend the AGM on Friday 22nd June, 2012, at 2.30 pm. **(See annexures E4)**

The CAJ team recovered a Special Board of Governors Meeting minutes for a meeting held on Monday 25th June, 2012 which deliberated on the aftermath of the aborted meeting of 22nd June, 2012. This meeting resolved that the term of the then PTA members stood expired. This meeting also resolved that parents would be called to elect new PTA representatives and that former PTA executive members would be ineligible for re-election. **(See annexures E5)**

Conclusion

CAJ noted that the 2012 AGM took place on 22nd June, 2012. The CAJ team also interviewed and recorded a statement from Mr. Patrick Mutula Mung'ala, the BOG Chairman who confirmed that the 2012 AGM would have been held on the 17th March, 2012 but had to be cancelled due to anticipated disruption by some PTA members. That the AGM took place on the 22nd June, 2012 but was disrupted midway and the representative of the Provincial Director of Education had to stop the meeting. **(See annexures E6)**

CAJ also obtained statements from the Principal and recovered notices and minutes of the Special BOG Executive Committee, the Principal did not provide the CAJ team with the minutes of the AGM held on 22nd June, 2012 and the attendance lists. It was explained that all the documents were destroyed when the AGM was disrupted midway. The 2012 AGM took place on 22nd June, 2012,

An analysis of the information gathered by the CAJ team strongly suggests that the 2012 AGM took place on the 22nd June, 2012. The allegation that the Principal unilaterally cancelled the 2012 AGM is therefore not true. The decision to cancel the 17th March, 2012 AGM and reschedule it for 22nd June, 2012 was arrived at by the BOG Executive Committee.

Consequential observations

Supply of Eggs to Ngara Girls High School and other schools

In her statement to CAJ, Ms. Munyasya, the Principal Ngara Girls, confirmed that she regularly visits Saniki Farm in Ruai and she is known to the farm manager, Mr. Muthigani for whom she has been doing errands including collecting cheques, delivering eggs and marketing the egg business to other school principals within Nairobi. **(See annexure A4)**

It was established that Ms. Munyasya had visited Buru-Buru Girls Secondary School, Nembu Girls High School and Ofafa Jericho School to convince the principals to purchase eggs from Mr. Muthigani, the Ruai farm manager. Ms. Munyasya also called the Principal, Upper Hill Secondary School purposely to introduce the egg business. It was also noted that Ms. Munyasya had at one time used her personal vehicle to pick eggs from the Ruai farm and deliver them to State House Girls High School.

The Investigation team recovered tender documents dated 4th December, 2013, at Nembu Girls Secondary School for supply of eggs bearing Ms. Munyasya's personal particulars as the proprietor of the farm in Ruai. **(See annexure F1)**

On 17th October, 2013, Ms. Munyasya wrote a letter to the Principal Nembu Girls requesting the cheque for supply of eggs be written in the name of Mr. Peter Ngovi Kaloki, the bursar at Ngara Girls High School. **(See annexure F2)**

During her interview with investigators, Ms. Munyasya produced a cheque which was a payment for supply of eggs to a private hotel. On further probing, she confidently pointed out that she had been routinely collecting cheques on behalf of Mr. Muthigani, the farm manager.

Ms. Munyasya further conceded that she willingly did the marketing, collection and delivery of eggs as well as collection of payments for eggs delivered on behalf of Mr. Muthigani the manager, because of their friendship. She further stated that since the farm manager was usually in Embu she would often deliver eggs and collect payments on his behalf. Ms Munyasya pointed out that she did the errands for Mr. Muthigani for free and that her zeal to assist him was motivated by their friendship.

The Principal also said that she would similarly go out of her way to perform similar errands for other friends. CAJ investigators noted that Ms. Munyasya was committed to assisting Mr. Muthigani to the extent of involving her domestic servant in some of the errands.

Conclusion

Ms. Munyasya being the Principal of Ngara Girls High school, by marketing, collecting and delivering eggs to her school and other schools as well as collecting payments for eggs delivered contravened Article 75 (1) (a), Article 77 (1) of the Constitution and the Public Officers Ethics Act 2003. This is a conflict of interest by supplying to her own school.

Recommendations

3. Ms. Munyasya should strictly observe the code of regulations for public servants and the provisions of the Constitution in relation to conflict with her duties as a Principal of a public school.
4. The Secretary/CEO Teachers Service Commission should take appropriate action as provided for by the code of regulation and other laws to discourage principals, heads of schools and teachers from engaging in business that may conflict with their call of duty.

Abuse of the Procurement Process for Supply of Eggs at Ngara Girls Secondary School

Investigations by CAJ found that Ngara Girls High School had advertised the tender no. NGHS 9/2014 for the supply of fresh eggs to the school in October, 2013 **(See annexure G1)**

According to members of the school Tender Committee, the school bursar, Mr. Kaloki, informed them that only one firm, M/s Mwela Farm had responded to the advert and that they did not peruse the tender documents for the supply of eggs. The Tender Committee sitting in January 2014 therefore awarded the tender to M/s Mwela Farm. **(See annexure G2, G3, and G4)**

CAJ investigators noted that the school Tender Committee awarded the tender to M/s Mwela Farm despite M/s Mwela Farm not having met the procurement requirements as per the Public Procurements and Disposal Act 2005 **(See annexure G5)**.

Investigations revealed that tender for supply of eggs was to become effective in March 2014. M/s Mwela Farm never supplied eggs to Ngara Girls School.

It was also established that Mr. Muthigani produced a letter purporting to have been written by M/s Mwela Farm advising Ngara Girls High School of change of account name from M/s Mwela Farm to Saniki Farm in Ruai which Mr. Muthigani is the manager **(See annexure G6)**.

Investigations further revealed that Saniki Farm had supplied eggs to Ngara Girls in October 2012 and thus it was not new to the school administration. That Saniki Farm started the supply of eggs in January 2014, instead of March 2014 when the tender would have become effective, was not only based on the strength of the letter of change of account name from M/s Mwela Farm to M/s Saniki Farm but also on the basis of the fact that Mr. Muthigani was known to the Principal.

The fact that Mr. Muthigani managed to secure the tender to supply Ngara Girls with fresh eggs is an abuse of the tender process. Statements by Tender Committee members indicated that the change of name from M/s Mwela Farm to Saniki Farm and the subsequent supply of eggs by Saniki Farm was unknown to them.

CAJ investigators established that the original Tender Committee minutes dated 7th of January, 2014 had been substantially altered with the intention of showing that M/s Saniki Farm had procedurally won tender no. NGHS 9/2014 for supply of fresh eggs to the school, **(See annexure G7 and G8)**.

According to original minutes dated 7th January, 2014 recovered by CAJ investigations team, M/s Mwela Farm was the only tenderer for the supply of eggs, and that M/s Mwela Farm is the farm that the Tender Committee had awarded the tender. Investigations revealed that the Principal Ms. Munyasya instructed the Chairman of the Tender Committee, Ms. Caroline Ayiro to alter the original minutes of the Tender Committee meeting of 7th January, 2014 to indicate that M/S Saniki Farm had won the tender.

The Tender Committee confirmed that there was no other meeting in which they awarded tender to M/s Saniki Enterprises on the basis of change of account name from M/s Mwela Farm to M/s Saniki Farm.

Mr. Peter Kaloki, Bursar Ngara Girls

When asked to account for the change of suppliers of eggs from Mwela Farm to Saniki Farm, he reiterated that the Tender Committee awarded the tender to Saniki Farm based on the Strength of the letter that was purported to have originated from the director, Mwela Farm, Mr. Victor Sila. Additionally, he also told the investigators that he circulated that letter to other members of the Tender Committee, a claim that was denied by members of the Tender Committee. **(See annexure G9)**

The School Bursar misled CAJ investigators that M/s Mwela Farm wrote a letter of change of account to Chairman Tender Committee to consider awarding the tender to M/s Saniki Farm. In an interview with CAJ investigators, the Director of M/s Mwela Farm confirmed that he did not write nor sign the said letter and that the signature appearing on the said letter was not his. The Director of Mwela Farm also confirmed to the CAJ team that the letter head in question was not on his company's official letter head. **(See Annexure G10 and 11).**

Mr. Samuel Mwangi Muthigani

Mr. Muthigani the farm manager of Saniki Farm, authored, signed and presented a letter advising the school that Mwela Farm would be supplying Ngara Girls with eggs under the name of Saniki Farm. Mr. Muthigani also confirmed that he was a friend to the Ngara Girls School Principal and that is why she was helping him out.

Conclusion

The award of tender no. NGHS 9/2014 for the supply of fresh eggs to Ngara Girls was done unprocedurally in contravention of the Public Procurement and Disposal Act 2005 and regulations therein.

Recommendations

4. The Chief Executive Officer Public Procurement Oversight Authority should take appropriate action against the Principal for abuse of the procurement rules and regulations.
5. The Chief Executive Officer Public Procurement Oversight Authority should train principals/heads of schools and Tender Committees on procurement processes.
6. The Chief Executive Officer Public Procurement Oversight Authority should ensure that Public schools have qualified supply chain management officers as required by law.

Conduct of the principal, poor working environment and general fear among staff.

CAJ team observed general fear among the staff. They stated that non-teaching staff are harassed, mistreated and denied opportunities to air their grievances because they have a trade dispute in court. Most teaching staff interviewed by CAJ officers were fearful and expressed their desire to transfer to other schools citing the mistreatment by the Principal. Some said they wanted to resign.

The same was witnessed by the investigators when they visited the school where on one occasion she was engaged in a heated argument which turned physical with an outsider who had come to the school to follow up on payments for goods she had supplied to the school. Such outbursts were also cited by most of the staff interviewed by the Commission's investigators.

Teaching Staff who are members of the Tender Committee revealed that the working environment in the school is poor.

Conclusion

The CAJ team found the Principal to be very temperamental and high-handed. Her intimidation and harassment of staff and PTA members greatly contributed to the existing acrimony in the school, hence the many allegations levelled against her.

Recommendations

5. The Secretary Teachers Service Commission should facilitate school principals to undergo the Senior Management Course (SMC) and or the Strategic Leadership Development Course at Kenya School of Government.
6. The Principal should observe the leadership and integrity principles as provided for by the Constitution as well as the Public Officers Ethics Act.
7. The Principal may require counselling and training on management of anger and interpersonal relations.
8. The Secretary, Teachers Service Commission should remove Ms. Assumpta Munyasya from Ngara Girls School and deploy her in a tertiary institution.

Accounting and Record Keeping

An examination of cheque books revealed that the bursar was on many occasions withdrawing large amounts of money purportedly for official use and for payment of goods and services. This poses a risk and loss or mismanagement of school funds and is not in sync with Public Finance management regulations.



It was also noted that the bursar was making cash payments of large amounts of money, for example with regard to payment of eggs to Saniki Farm an amount of Kenya shillings Seventy thousand (KSh. 70,000) was paid in cash contrary to financial regulations.

There was poor record-keeping at the school. The CAJ investigations teams had difficulty in obtaining class lists, payment vouchers, and minutes of meetings. The CAJ team asked for the AGM attendance lists, but these were never availed.

On 10th March 2014, the Ngara Girls Cateress presented to the Commission copies of the store ledger book indicating that M/s Saniki had supplied the school with eggs at a price of kes.320 per tray. However, on 12th March, 2014, she presented similar copies with altered prices reading kes.340 per tray. **(See annexure G12).**

Recommendations

4. Principals and school administrators should be retrained on Public Finance management, rules and regulations.
5. Principals and school administrators should undertake compulsory Record Management course.
6. Principals and school administrators should undertake management courses.