

THE COMMISSION ON ADMINISTRATIVE JUSTICE

Office of the Ombudsman



“Hata Mnyonge ana Haki”

THE COST OF NEPOTISM

INVESTIGATIONS REPORT BY THE OMBUDSMAN-KENYA

ON

**UNFAIR TREATMENT, INJUSTICE AND ABUSE OF POWER IN THE
RECRUITMENT OF CLERICAL OFFICER II IN NORTH RACHUONYO SUB-
COUNTY, HOMA-BAY**

DECEMBER 2014

Serial No. CAJ NO. 20/2014



Foreword

Pursuant to its mandate as stipulated under Section 8 of its constitutive Act, the Commission on Administrative Justice undertook investigations into the allegations of unfair treatment, injustice and abuse of power in the recruitment of Clerical Officer II, North Rachuonyo Sub-County, Homa-Bay County.

The investigations were undertaken based on a complaint received at CAJ office in Kisumu from Mrs. Maslynne Adhiambo Oyoo, an applicant for the position of Clerical Officer II. The position was for the National Registration Bureau, Rachuonyo North Sub-County, Homa-Bay County.

Prior to investigations, the Commission notified the Governor, Homa-Bay County of the investigation in line with the provisions of Section 37 of the CAJ Act, 2011.

The compilation of this report was informed by the analysis of documents recovered from the Deputy County Commissioner's Office, Rachuonyo North Sub-County and Registration of Persons Office, Nyayo House as well as interviews and statements obtained from the officers who were involved in the recruitment process.

CAJ has recommended that the Principal Secretary, Interior and Coordination of National Government retire Mr. Antopas Oluoch Ndede in public interest as he was irregularly appointed and, to immediately offer the Clerical Officer II position to Mrs. Maslynne Adhiambo Oyoo who is properly entitled and notify the Public Service Commission.

The Commission is confident that the implementation of its recommendations herein will provide remedial measures to address the injustice and unfair treatment on the complainant and in general, the practices in the recruitment process of public officers. Additionally, the report should serve as an eye opener for the Public Service Commission in monitoring and auditing recruitment processes to ensure adherence to best practices and the provisions of the Constitution of Kenya.

Signed this.....day of December, 2014

Cmmr. Otiende Amollo, E.B.S

**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 authorities and to compel production of such information.

Under Section 31 of its Act, CAJ has power not limited by other provisions to 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 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 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.



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 report addresses the following:

- Introduction to the investigation
- Investigations strategy
- Normative framework
- Analysis and findings
- Conclusions and recommendations

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Acronyms

| | |
|--------------|--|
| CRO | County Registration Officer |
| DC | District Commissioner |
| DCO | District Co-operative Officer |
| DDHRM | Deputy Director Human Resource Management |
| DHRM | District Human Resource Manager |
| DLPO | District Livestock Production Officer |
| DROP | District Registrar of Persons |
| HRMO | Human Resource Management Officer |
| KCSE | Kenya Certificate of Secondary Education |
| NRB | National Registration Bureau |
| PHRO | Principal Human Resource Management Officer |
| PRO | Principal Registration Officer |

Executive Summary

The Commission on Administrative Justice undertook investigations following a complaint lodged at the CAJ, Kisumu office by one Mrs. Maslynne Adhiambo Oyoo regarding alleged unfair treatment, injustice and abuse of power in the recruitment of Clerical Officer II in Rachuonyo North Sub-County, Homa-Bay County.

Mrs. Maslynne Adhiambo Oyoo, in her letter of complaint indicated that she applied for the position of Clerical Officer II in Rachuonyo North Sub-County, Homa-Bay County. She was interviewed for the position on 16th January, 2013. She was recommended for appointment but never received a letter of appointment. The nature of this complaint prompted the Commission to conduct investigations to find out circumstances surrounding the matter.

The Commission sought to investigate the matter with a view to establishing the alleged unfair treatment, injustice and abuse of power by public officers involved in the recruitment exercise.

In commencing investigations, the Commission wrote to the Governor, Homa-Bay County to notify him of its decision to conduct investigations. Thereafter, the investigations team visited Kendu-Bay, Nyatike, Ndhiwa, Mbita and Immigration Headquarters, Nyayo House Nairobi, recovered several documents relevant to the matter, interviewed a number of officers and, recorded their statements. The investigations team also interviewed the complainant, Mrs. Maslynne Adhiambo Oyoo and recorded her statement.

Summary of findings

The CAJ investigation team recovered Circular Ref: No. MSPS 18/1A/ (120) of 5th June, 2009 on District Based Recruitment Policy for officers in Job Group 'A' to 'F' in the Civil Service and a copy of the advertisement appearing on Daily Nation of 11th May 2012, which confirmed that the Ministry of State for Immigration and Registration of Persons had allocated two (2) vacancies, for clerical officer II, to Rachuonyo North Sub-County.

The annexure to the Circular indicated that Clerical Officer II position required a mean grade of C- in KCSE and Computer literacy.

It was confirmed that the complainant, Mrs. Maslynne Adhiambo Oyoo applied for the Clerical Officer II job, was shortlisted, interviewed and recommended for the position after emerging the top candidate with a score of 382 marks.

Mr. Antopas Oluoch Ndede, also appeared before the interviewing panel and scored 325 marks at position 8 out of 10 candidates.

It was established that the DC Rachuonyo North Sub-County forwarded the Minutes of the interviewing panel dated 16th January, 2013 recommending Mrs. Maslynne Adhiambo Oyoo for appointment to the position of Clerical Officer II, to the Ministry of Immigration, Nyayo House and that the Minutes were received at Nyayo House on 25th January, 2013, and entered in the Mail Register at the Central Registry.

CAJ recovered from the Ministry of Immigration Human Resources Office at Nyayo House, a copy of the letter by the DC Rachuonyo forwarding the minutes of the interviewing panel but attached to the letter was the minutes of a shortlisting meeting held on 7th January, 2013 and some documents indicating that the successful candidate was Mr. Antopas Oluoch Ndede.

The score sheets by the interviewing panel recovered from Rachuonyo District Commissioner and statements of the members of the interviewing panel showed that Mrs. Maslynne Adhiambo Oyoo was the best candidate.

CAJ investigations team noted that Mr. Donald Otieno Ojuok, the then DROP Rachuonyo North Sub-County (currently DROP Nyatike Sub-County) confirmed having sent the recommendation letter for Mrs. Maslynne Adhiambo Oyoo and minutes of interview panel to the Permanent Secretary, Ministry of Immigration and Registration of Persons, Nairobi.

Investigations revealed that the genuine minutes recommending Mrs. Maslynne Adhiambo Oyoo had been substituted with false documents to favour the appointment of Mr. Antopas Oluoch Ndede.

Mr. Ted Maina Macharia stated that he captured in the data base the recommendation for Mr. Antopas Oluoch Ndede because it had more details.

The documents recommending Mrs. Maslynne Adhiambo Oyoo could not be traced. It is therefore inferred that Mr. Ted Maina Macharia knows how the substitution took place and who did it.

Consequential Observations

That there was falsification of documents to facilitate the appointment of Mr. Antopas Oluoch Ndede and deny Mrs. Maslynne Adhiambo Oyoo the position she had been recommended for by the interview panel.

That Mr. Peterson Keta Midida, PHRO and Mr. Donald Otieno Ojuok, the then District Registrar of Persons, Rachuonyo North Sub-County are relatives of Mr. Antopas Oluoch Ndede.

It was also noted that the two officers worked in collaboration with their colleagues at the Headquarters to circumvent procedures by making and uttering false documents to facilitate the appointment of Mr. Antopas Oluoch Ndede as the Clerical Officer II for Rachuonyo North Sub-County.

That Mr. Kenneth Nduati, Principal Registration Officer and Personal Assistant to the Director NRB, had the overall responsibility to coordinate the recruitment exercise on behalf of his Director. While Mr. Donald Otieno Ojuok (currently DROP Nyatike Sub-County) represented NRB at the interview panel as the DROP Rachuonyo North Sub-County.

That Mr. Kenneth Nduati worked closely with Mrs. Rose Wanjiku Hunja, Mr. Peterson Keta Midida, PHRO and Mr. Donald Otieno Ojuok, the then District Registrar of Persons, Rachuonyo North Sub-County to fix the employment of Mr. Antopas Oluoch Ndede.

Mr. Donald Otieno Ojuok while responding to CAJ's notification vide Section 36 of the CAJ Act, 2011, contradicted himself when he made the observation that he had signed minutes of the interviewing panel recommending Mr. Antopas Oluoch Ndede for the position, while during the interview with CAJ team he stated that he forwarded minutes recommending Mrs. Maslynne Adhiambo Oyoo. This assertion confirms his involvement in the falsification of documents to favour the appointment of Mr. Antopas Oluoch Ndede. Mr. Ojuok's response letter was nonetheless past the specified seven days period.

All the other officers to whom CAJ had written to in pursuant to Section 36 of the CAJ Act, 2011 did not respond even after the expiry of the seven days period.

Conclusion

The Ministry of State for Immigration and Registration of Persons had advertised for a countrywide recruitment of 500 Clerical Officer II for the National Registration Bureau in the period covering August 2012 to January 2013.

For Rachuonyo North Sub-County, the recruitment exercise was re-advertised after the first interview selected Ms. Linda Anyango Omollo whose appointment was nullified on the basis that she was overqualified with a C+ mean grade.

The District Commissioner Rachuonyo North Sub-County chaired the panel that interviewed candidates for the Clerical Officer II for the Sub-County and forwarded to the Ministry of Immigration Headquarters, the Minutes dated 16th January, 2013 recommending Mrs. Maslynne Adhiambo Oyoo for the position. The minutes were received at the Registry on 25th January, 2013.

That to date, Mrs. Maslynne Adhiambo Oyoo has never received the letter of appointment yet she had emerged the top candidate with 382 marks while Mr. Antopus Oluoch Ndede (current clerical officer II) came eighth in the interview with 325 marks.

The Mail Register at Nyayo House did not have a second entry of minutes recommending Mr. Antopas Oluoch Ndede.

The second set of minutes recommending Mr. Antopas Ndede Oluoch which Mr. Ted Maina Macharia referred to did not originate from the District Commissioner Rachuonyo North Sub-County as claimed by Mr. Ted Maina Macharia.

That there was nepotism in the recruitment of Mr. Antopas Oluoch Ndede since his relatives were involved in the facilitation of his appointment.

Mrs. Rose Wanjiku Hunja, Mr. Kenneth Nduati, Mr. Peterson Keta Midida, Mr. Donald Otieno Ojuok and Mr. Ted Maina Macharia are culpable of misbehaviour in public office as described under Section 8 (d) of the CAJ Act, 2011 and knowingly giving misleading information to the Public Service Commission to appoint Mr. Antopas Oluoch Ndede instead of the rightful candidate contrary to Section 19 of Public Officer Ethics Act, 2003 respectively.

The allegation that there was unfair treatment, injustice and abuse of power in the recruitment of the Clerical Officer II for Rachuonyo North Sub-County holds.

Recommendations

- I. The Principal Secretary, Interior and Coordination of National Government retire Mr. Antopas Oluoch Ndede in public interest as he was irregularly appointed and, inform the Public Service Commission.
- II. The Principal Secretary, Interior and Coordination of National Government (Department of Immigration and Registration of Persons) to immediately offer the Clerical Officer II position to Mrs. Maslynne Adhiambo Oyoo who is properly entitled and notify the Public Service Commission.
- III. CAJ found Mrs. Rose Wanjiku Hunja, DDHRM, Mr. Peterson Keta Midida, PHRO, Mr. Kenneth Nduati, PRO and Personal Assistant to the Director NRB and Mr. Donald Otieno Ojouk, DROP Rachuonyo North Sub-County culpable of abuse of power and misbehaviour in office contrary to Article 27 of the Constitution and Section 8 (d) of the Commission on Administrative Justice Act, 2011.
- IV. Mrs. Rose Wanjiku Hunja, DDHRM, Mr. Peterson Keta Midida, PHRO, Mr. Kenneth Nduati, PRO and Personal Assistant to the Director NRB and Mr. Donald Otieno Ojouk, DROP Rachuonyo North Sub-County also contravened Public Service Commission Circular Ref: No. MSPS18/1A/(120) of 5th June 2009. Their action caused Mrs. Maslynne Adhiambo Oyoo to miss out on a position she was rightfully recommended for.
- V. CAJ recommends the prosecution of Mr. Ted Maina Macharia for uttering false documents and knowingly giving misleading information contrary to Section 19 of the Public Officer Ethics Act, 2003 and has advised the Director of Public Prosecution accordingly.
- VI. CAJ will enter the names of the above mentioned Public Officers found culpable in this investigation, in the CAJ Register of Public Officers guilty of misbehaviour in office and unresponsiveness.

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- VII. CAJ commends Mr. William Letetia Lenaremo, the Deputy County Commissioner, Rachuonyo North Sub-County for diligence in the performance of his duties and in particular, standing for equity and transparency as provided for under Article 10 of the Constitution of Kenya.

Introduction to investigations

The then Ministry of Immigration and Registration of Persons advertised for vacancies in the lower cadre of its work force in the Daily Nation Newspaper of 11th May 2012. The vacancies were for Clerical Officers II, Drivers and Senior Support Staff. The recruitment was District based and the then District Commissioners were mandated to serve as the chairpersons to the interviewing panels vide circular ref MSPS 18/1A/ (120) dated 9th June, 2009.

The requirements for a Clerical officer II were a mean grade of C- or its equivalent in K.C.S.E and a computer certificate. Senior Support staffs were required to be holders of a mean grade of D+ at K.C.S.E. Rachuonyo North Sub-County had three vacancies for two Clerical Officer II and one Senior Support Staff.

CAJ investigations noted that when the Government advertised for the position of Clerical Officer II in Rachuonyo North Sub-County, Homa-Bay County, the complainant applied but was unsuccessful. The interviewing panel then recommended Mr. Samson Ochieng Kere, a male from West Karachuonyo Division and Ms. Linda Anyango Omollo, a female from East Karachuonyo Division for the positions of Clerical Officer II. Mr. Walter Kasera Owala, a male from West Karachuonyo was recommended for the position of senior support staff. The criterion used included gender parity and regional/geographical balance.

Upon submission of minutes containing names of successful candidates to the then Ministry of Immigration and Registration of Persons Headquarters, it was noted that the set out rules had been breached by the Rachuonyo North District interviewing panel in recommending Ms. Linda Anyango Omollo who had a mean grade of C+ in KCSE as opposed to the requirement of C-. Her appointment was therefore dully nullified and the position re-advertised.

The clerical officer II position for Rachuonyo North Sub-County was re-advertised in the Daily Nation Newspaper of 11th December 2012. Mrs. Maslynne Adhiambo Oyoo applied again for the position of Clerical Officer II and was short-listed, interviewed and recommended by the panel for employment. She met the criteria of having a C-, being a female and from East Karachuonyo hence fulfilling gender parity and regional/geographical balance.

The investigations revealed that Mrs. Maslynne Adhiambo Oyoo was informed by the chair of the interviewing panel that she was recommended for employment and was required to provide her testimonials for onward transmission to the ministry headquarters which she complied.

When the Ministry made official appointments, she discovered that she had been left out. Consequently, Mrs. Maslynne Adhiambo Oyoo wrote a complaint letter to the District Commissioner, Rachuonyo North Sub-County and copied to several public offices including CAJ. **(Annexure A 1)**

The Commission wrote to the County Registrar of Persons, Homa-Bay County seeking clarification about the recruitment process. The County Registrar responded vide a letter ref NRB/HB/PSN.12/VOL.1/184 dated 10th March, 2014 which the Commission found unsatisfactory hence commencing investigations. **(Annexures A 2 and A 3).**

Summary of Issues under Investigation

- unfair treatment
- Injustice
- Abuse of Power

Investigative Process

Notification

The Commission notified the County Commissioner, Homa-Bay County, vide a letter Ref: CAJ/KSM/M/MM/003/5/2014 dated 11th July 2014 of its decision to undertake investigations regarding alleged unfair treatment, injustice and abuse of power in the recruitment of Clerical Officer II Rachuonyo North Sub-County, Homa-Bay County.

Offices Visited.

The following offices were visited for investigations:

- County Commissioner, Homa-Bay County
- County Registration Officer, Homa-Bay County
- Deputy County Commissioner, Rachuonyo North Sub-County
- District Registrar of Persons, Rachuonyo North Sub-County
- District Registrar of Persons, Ndhiwa Sub-County
- District Registrar of Persons, Nyatike Sub-County
- District Registrar of Persons, Mbita Sub-County
- Director, Immigration and Registration of Persons Nyayo House

List of Interviewees

- The complainant
- Deputy County Commissioner Rachuonyo North Sub-County
- District Human Resource Manager Rachuonyo North Sub-County
- District Co-operative Officer Rachuonyo North Sub-County
- District Livestock Production Officer Rachuonyo North Sub-County
- District Registrar of Persons Rachuonyo North Sub-County
- District Registrar of Persons Nyatike Sub-County
- District Registrar of Persons Mbita Sub-County
- County Registration Officer Homa-Bay County
- Deputy Director Human Resource Immigration
- Principal Registration Officer NRB
- Deputy Director Human Resource Management
- Senior Deputy Secretary Administration

Documents Recovered

- a) Copy of Circular from the Secretary, Public Service Commission of Kenya addressed to all Permanent Secretaries referenced 3/1/1/III dated 9th September, 2009
- b) Letter reference MIR/3/5/1/55 dated 19th July, 2012 addressed to All Regional Coordinators, authored by Mrs. R.W. Hunja
- c) Copy of Circular from the Office of the Prime Minister, Ministry of State for Public Service reference MSPS 18/1A/(20) dated 5th June, 2009
- d) Copy of an advertisement in the Daily Nation, Friday 11th May, 2012
- e) Copy of minutes of final selection panel held at DC's office Rachuonyo North dated 27th August, 2012
- f) Copy of minutes of final selection panel held at DC's office Rachuonyo North dated 16th January, 2013
- g) Score sheets for candidates who appeared for the interview on 7th January, 2013
- h) Letter reference MIR/3/5/1/55 dated 19th July, 2012 addressed to All Regional Coordinators, authored by Mrs. R.W. Hunja
- i) Memo referenced MIR/3/1/1/VOL.IV/(82) from Deputy Director Human Resource Management to Permanent Secretary Ministry of Immigration and Registration of Persons dated 5th December, 2012.
- j) Central Registry register MIRP/MR/SOP/01/R.4 opened on 21st February, 2012
- k) Copy of final selection minutes meeting held at Rachuonyo North DC's office on 27th August, 2012
- l) Central Registry register MIRP/MR/SOP/01/R.4 opened on 21st February, 2012
- m) Personal file number 2013013537 for Antopas Oluoch Ndede

Statements recorded

- a) Statement of Mrs. Maslynne Adhiambo Oyoo
- b) Statement of Mr. William Lenaremo DC Rachuonyo North
- c) Statement of Mr. Walter Ouko Juma the DHRM Rachuonyo North
- d) Statement of Mrs. Edith E. Kiche the DLPO Rachuonyo North
- e) Statement of Mr. Antipus Ng'ete DCO Rachuonyo North
- f) Statement of Mr. Donald Otieno Ojuok DROP Rachuonyo North
- g) Statement of Mr. Patrick Nyabuti CRO Homa-Bay
- h) Statement of Mr. Fredrick Odhiambo Were DROP Mbita District
- i) Statement of Mr. Antopas Oluoch Ndede Clerical Officer II Ndhiwa District
- j) Statement of Mrs. Rose Wanjiku Hunja DDHRM
- k) Statement of Mr. Kenneth Ndungu Nduati PRO NRB
- l) Statement of Mr. Ted Maina Macharia Clerical Officer Immigration
- m) Statement of Mr. Shem Mogire Clerical Officer NRB
- n) Statement of Mr. Peterson Keta Midida PHRO Ministry of Transport and Infrastructure
- o) Statement of Mr. Johnson Kahindi HRMO Immigration

Normative Framework

Following are excerpts of some of the relevant provisions:

Constitution of Kenya

CHAPTER SIX—LEADERSHIP AND INTEGRITY

73. (1) Authority assigned to a State officer—

(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
- (b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.

(2) The guiding principles of leadership and integrity include—

- (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
- (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;
- (c) selfless service based solely on the public interest, demonstrated by—
 - (i) honesty in the execution of public duties; and
 - (ii) the declaration of any personal interest that may conflict with public duties;
- (d) accountability to the public for decisions and actions; and
- (e) discipline and commitment in service to the people.

CHAPTER THIRTEEN—THE PUBLIC SERVICE

Part 1—values and Principles of Public service

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;
- (d) involvement of the people in the process of policy making;
- (e) accountability for administrative acts;
- (f) transparency and provision to the public of timely, accurate information;
- (g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
- (h) representation of Kenya's diverse communities; and
- (i) affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of—
 - (i) men and women;
 - (ii) the members of all ethnic groups; and
 - (iii) persons with disabilities.

(2) The values and principles of public service apply to public service in—

- (a) all State organs in both levels of government; and
- (b) all State corporations.

Commission on Administrative Justice Act, 2011:

Sections 8:

- (a)** *investigate any conduct in state affairs, or any Act or omission in public administration by any state organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice;*
- (b)** *investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector;*
- (c)** *inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, 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.

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 17. A public officer shall not practice nepotism or favouritism.

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...."

Analysis

Analysis of documents recovered at Kendu Bay (Rachuonyo North Sub-County)

The CAJ investigations team visited the Deputy County Commissioner's Office, Rachuonyo North and recovered documents that gave insight to the matter under investigations. The following is the analysis of the documents recovered.

a) Copy of Circular from the Office of the Prime Minister, Ministry of State for Public Service reference MSPS 18/1A/(20) dated 5th June, 2009

This is a circular on District Based Recruitment Policy authored by the Permanent Secretary Ministry of State for Public Service which was send out to all Provincial Commissioners and District Commissioners with guidelines on how to implement the policy on recruitment in the Districts.

The guidelines annexed to the circular provide for a District Human Resource Management Advisory Committee which also doubles up as the interview panel. The membership of the committee comprises of the District Commissioner as the Chairperson, District Human Resource Management Officer as the Secretary and a selected number of District Heads of Department as members, with emphasis on the District Technical Head of the recruiting Ministry/Department being a compulsory member of the interviewing panel.

The guidelines further provide for mode of advertisement for vacancies to include; the media (national daily newspapers and vernacular radio stations covering target areas), posting of the adverts at the offices of the DC, DO, Chief, Assistant Chief and other strategic places including announcements in Public Barazas.

There is also a provision for regard to gender parity, regional/geographical balance, ethnicity as well as physical disability to be considered when filling up vacancies so advertised.

b) Copy of an advertisement in the Daily Nation, Friday 11th May, 2012

This was an advert from the then Ministry of State for Immigration and Registration of Persons for five hundred (500) vacancies in the positions of Clerical Officer II, Job group "F", seventy five (75) posts for Drivers III, Job group "D" and three hundred and nineteen (319) posts for Senior Support Staff, Job group "D"

Rachuonyo North was allocated three vacancies as per the advertisement: two (2) posts for Clerical Officer II and one (1) post for senior support staff.

c) Copy of minutes of final selection panel held at DC's office Rachuonyo North dated 27th August, 2012

The selection panel comprised Mr. William Lenaremo, DC Rachuonyo North as the Chairperson, Mr. Walter O. Juma, District Human Resource Management Officer (DHRMO) as the secretary, Mr. Donald O. Ojuok District Registrar of Persons (DROP), Mr. Antipus O. Ng'ete District Cooperative Officer (DCO) and Ms. Edith E. Kiche District Livestock Production Officer (DLPO) as members.

The selection panel gave its verdict on the successful candidates and reasons mitigating their choices of the said candidates in minute DBRP.MIN/02/2012. Two candidates, Mr. Samson Ochieng Kere a male from West Karachuonyo Division and Ms. Linda Anyango Omollo, a female from East Karachuonyo Division were nominated for the Clerical Officer II vacancies and Mr. Walter Kasera Owala a male from West Karachuonyo was nominated for the senior support staff vacancy. This arrangement took into consideration gender parity and regional/geographical balance in the recruitment exercise.

d) Copy of minutes of final selection panel held at DC's office Rachuonyo North dated 16th January, 2013

Following the nullification of Ms. Linda Anyango Omollo, a female candidate who had been recommended for the position of Clerical Officer II on the basis of being over qualified, the selection panel comprised of Mr. William Lenaremo, DC Rachuonyo North as the chairperson, Mr. Walter O. Juma, DHRMO as the secretary, Mr. Donald O. Ojuok DROP, Mr. Antipus O. Ng'ete, DCO and Ms. Edith E. Kiche, DLPO as members sat to find a replacement for the position.

The panel recommended Ms. Maslynne Adhiambo Oyoo, a female from East Karachuonyo Division to replace Mrs. Linda Anyango Omollo whose nomination had been nullified.

e) Score sheets for candidates who appeared for the interview on 7th January, 2013

The score sheets indicate that Ms. Maslynne Adhiambo Oyoo had a total score of 382 marks awarded by the five panellists, Ms. Serphina Awuor Were scored a total of 338 marks, Ms. Molly Akoth Saka scored a total of 334 marks, Ms. Everlyne Akinyi Owino scored a total of 329 marks, Mr. William Aol Oding scored a total of 333 marks, Mr. Kabasa Basil Paul scored a total of 333 marks, Mr. David Otieno Ogola scored a total of 334 marks, Mr. Antopus Oluoch Ndede scored a total of 325 marks, Ms. Lizzy Achieng Omoth scored a total of 320 marks and Ms. Ogotu Eunice Adhiambo scored a total of 313 marks.

Thus Maslynne emerged the top candidate as tabulated below.

| S/No. | Name | Marks |
|-------|-----------------------------|-------|
| 1. | Mrs. Maslynne Adhiambo Oyoo | 382 |
| 2. | Ms. Serphina Awuor Were | 338 |
| 3. | Ms. Molly Akoth Saka | 334 |
| 4. | Mr. David Otieno Ogola | 334 |
| 5. | Mr. Kabasa Basil Paul | 333 |
| 6. | Mr. William Aol Oding | 333 |
| 7. | Ms. Everlyne Akinyi Owino | 329 |
| 8. | Mr. Antopas Oluoch Ndede | 325 |
| 9. | Ms. Lizzy Achieng Omoth | 320 |
| 10. | Ms. Ogutu Eunice Adhiambo | 313 |

Analysis of documents recovered at Immigration Offices, Nyayo House

The CAJ investigations team visited the offices of the Senior Deputy Secretary Administration, Deputy Director Human Resource Management, Senior Human Resource Assistant and Central Registry. The following are the documents recovered:

a) Copy of circular from the Secretary, Public Service Commission of Kenya addressed to all Permanent Secretaries referenced 3/1/1/III dated 9th September, 2009

This circular gives instructions on the implementation of District Based Recruitment Policy for officers in job groups 'A' – 'F' in the civil service. The circular sets out steps to follow in the declaration of vacant posts, seeking of waivers, advertising of vacant posts, the selection process where DC's are the designated chairpersons of the interviewing panels, rules regarding parity in distribution of vacancies, final selection for appointment, role of authorized officers and the role of the Ministry of State for Public Service.

b) Letter reference MIR/3/5/1/55 dated 19th July, 2012 addressed to All Regional Coordinators, authored by Mrs. R.W. Hunja

Mrs. R.W. Hunja who at the time was the Deputy Director Human Resource Management, Ministry of State for Immigration and Registration of Persons, wrote to all Regional Coordinators reiterating adherence to criteria set out for recruitment as spelt out in the PSC circular.

She brought to the attention of the Regional Coordinators qualifications set out for candidates applying for Clerical Officer II positions being a mean grade of C- in KCSE and computer knowledge. The interviewing panels were reminded to follow the regulations to the letter.

c) Memo referenced MIR/3/1/1/VOL.IV/ (82) from Deputy Director, Human Resource Management to Permanent Secretary Ministry of Immigration and Registration of Persons dated 5th December, 2012.

This memo was to seek permission to re-advertise posts that had not been taken up during the first interviews in the Daily Nation as per Public Service Commission's recommendations.

d) Copy of short-listing minutes meeting held at Rachuonyo North DC's office on 7th January, 2013

These are minutes indicating the short-listed candidates pending interview for the re-advertised position of Clerical Officer II job. These are the manipulated minutes with misrepresented information indicating that the recommended candidate after re-advertisement for the position of Clerical Officer II, was Mr. Antopas Oluoch Ndede.

The minutes have the following questionable attachments: -

- List of ten short-listed candidates
- Ranking list of the candidates
- Name of the selected applicant

e) Central Registry register MIRP/MR/SOP/01/R.4 opened on 21st February, 2012

This is a register that is maintained at the Immigration Headquarters showing receipt and processing of any correspondences/mail received at the headquarters from all over the country.

The register has an entry dated 3/9/2012 showing receipt of minutes from Rachuonyo North under covering letter reference A.14/VOL.1/21 dated 27th August, 2012 forwarding names of recommended candidates in the District Based Recruitment exercise for Clerical Officer II and Senior Support Staff.

The register also has an entry dated 25/1/2013 indicating receipt of minutes from Rachuonyo North Sub-County under covering letter reference A.I/CON/3/VOL.I/22 dated 22nd January, 2013 recommending Mrs. Maslynne Adhiambo Oyoo for employment in the re-advertised position of Clerical Officer II.

f) Personal file number 2013013537 for Mr. Antopas Oluoch Ndede

This is a personal employment file in respect of Mr. Antopas Oluoch Ndede, Clerical Officer II. It contains copies of his academic certificates, Offer of Appointment letter and Letter of Appointment to the substantive position of Clerical Officer II and issued a Personal Number 2013013537/31.

Findings

Investigations revealed that there was a Government Circular Ref: No. MSPS 18/1A/ (120) of 5th June, 2009 on District Based Recruitment Policy for officers in Job Group 'A' to 'F' in the Civil Service. The annexure to the Circular empowered District Commissioners to form and chair District interviewing panels and gave guidelines on how the recruitment was to be done with special reference to gender balance, regional balance and consideration for people with disabilities. **(Annexure A5)**

The investigation team established that there was an advertisement in the Daily Nation of 11th May, 2012 from the Ministry of State for Immigration and Registration of Persons for five hundred (500) vacancies in the positions of Clerical Officer II, Job group "F", seventy five (75) vacancies for Drivers III, Job group "D" and three hundred and nineteen (319) vacancies for Senior Support Staff, Job group "D". The requirements for Clerical Officer II, Job group "F" were a mean grade C- in KCSE and Computer knowledge. Rachuonyo North was allocated three vacancies as per the advertisement: two (2) posts for clerical officer II and one (1) post for senior support staff. **(Annexure A 6)**

The CAJ investigations team confirmed that indeed the complainant Mrs. Maslynne Adhiambo Oyoo applied for the job of Clerical Officer II in Rachuonyo North, Sub-County, whereby she was shortlisted, interviewed by the panel and was the top candidate with 382 marks. **(Annexure A7).**

The minutes by the interviewing panel under the chairmanship of the DC Rachuonyo North dated 16th January, 2013 were subsequently sent to the Permanent Secretary, Ministry of State for Immigration and Registration of Persons, with the name of Mrs. Maslynne Adhiambo Oyoo as the successful candidate. **(Annexure A8).**

CAJ investigators, in their visit to Immigration Department's Central Registry at Nyayo House, established that the interview minutes indicating the name of Mrs. Maslynne Adhiambo Oyoo as the successful candidate for employment were received on 25th January, 2013. Investigations further noted that minutes in relation to Mr. Antopas Oluoch Ndede purported to have been the successful candidate for employment was never received at the Central Registry. **(Annexure A 9)**

The investigations team visited the office of the DDHRM within Immigration and Registration of Persons at Nyayo House and recovered a copy of shortlisting minutes for a meeting held on 7th January, 2012 at Rachuonyo North DC's Office. The minutes had substituted fraudulent attachments showing that Mr.

Antopas Oluoch Ndede was the best candidate with a total mark of 380 and Mrs. Maslynne Adhiambo Oyoo, who was fifth with a total mark of 367. **(Annexure A 10)**

This however is contrary to copies of interview minutes and score sheets collected from the office of the DC, Rachuonyo North which show that Mrs. Maslynne Adhiambo Oyoo was the recommended candidate after scoring a total of 382 marks, whereas Mr. Antopas Oluoch Ndede, the current position holder, scored a total of 325 marks placing him eighth in the interview **(See annexures A 7 and A 8).**

A scrutiny of interview minutes recovered at the DDHRM's office indicated that Mr. Ted Maina Macharia, an entry clerk during the recruitment exercise, had made a notation on the minutes to the effect that Rachuonyo North had submitted names of two candidates instead of one. **(See annexure A 10)**

In his interview with CAJ investigations team, Mr. Ted Maina Macharia stated that he brought this anomaly to the attention of Mrs. Rose Wanjiku Hunja, the then DDHRM. He further stated that he carried the two sets of minutes to Mrs. Hunja's office for advice. However, the alleged second set of minutes could not be traced by the investigators for authentication. **(Annexure A 11)**

In-depth analysis of statements by members of the Rachuonyo North interviewing panel, which comprised of Mr. William Lenaremo DC Rachuonyo North and chairperson of the panel, Mr. Walter O. Juma DHRMO who served as secretary, Mrs. Edith E. Kiche DLPO and Mr. Antipus O. Ng'ete who served as members revealed that Mrs. Maslynne Adhiambo Oyoo was the recommended candidate and her name plus testimonials were send to the PS, Ministry of State for Immigration and Registration of Persons for processing of her employment. **(Annexures A 12, 13 and 14)**

Investigations established that a candidate by the name Mr. Antopas Oluoch Ndede who came eighth in the interview at the District with a total mark of 325 as per score sheet, un-procedurally secured employment for the Clerical Officer II position in Rachuonyo North Sub-County and received an appointment letter. **(Annexure marked A 15)**

Consequential Observations

Mr. Ted Maina Macharia, an entry clerk during the recruitment exercise, alleges to have consulted directly with Mrs. Hunja, DDHRM over the Rachuonyo North Clerical Officer II recruitment results. This raises concern about office protocol and what powers/influence he had in this exercise. He had a supervisor whom he never consulted but chose to take up the issue with the DDHRM herself.

Mr. Ted Maina Macharia stated in his statement recorded with CAJ investigations team that data relating to the recruitment exercise country-wide was stored on an external hard disc kept in the custody of Mr. Johnson Kahindi a Human Resource Management Officer I. Upon recovery of the hard disc, the data could not be found, an indication that it had been deleted. This made it difficult to ascertain information relating to the recruitment exercise.

Mr. Kenneth Nduati Ndungi, PRO and Personal assistant to the Director NRB, was the coordinator of the exercise on behalf of his Director. While Mr. Donald Otieno Ojuok (currently DROP Nyatike Sub-County) represented NRB at the interview panel as the DROP Rachuonyo North Sub-County.

Mr. Kenneth Nduati Ndungi participated in the sensitization exercise before the recruitment took off country wide. He bears a share of responsibility for the unprocedural recruitment of Antopas Ndede.

Investigations revealed that Mr. Ted Maina Macharia had written on the recovered forwarding letter that there were two people; Mr. Antopas Oluoch Ndede and Maslynne Adhiambo Oyoo recommended by the same DC (i.e. DC Rachuonyo North Sub-County).

Mr. Ted Maina Macharia stated that he captured the recommendation for Mr. Antopas Oluoch Ndede because it had more details. The documents recommending Mrs. Maslynne Adhiambo Oyoo could not be traced. It is therefore inferred that Mr. Ted Maina Macharia knows how the substitution took place and who did it.

It is worth mentioning that after Mr. Antopas Oluoch Ndede was appointed as a Clerical Officer II instead of Mrs. Maslynne Adhiambo Oyoo and posted to Rachuonyo North, never reported on duty at his work station. Instead, a transfer was organized for him to Ndhiwa Sub-County. This arrangement negated the spirit of the District based recruitment policy that left Rachuonyo North without a Clerical Officer II to date.

Investigations reliably revealed that Mr. Antopas Oluoch Ndede is related to Mr. Peterson Keta Midida, PHRO and Mr. Donald Otieno Ojuok, the then DROP Rachuonyo North.

Mr. Donald Otieno Ojuok, the then DROP Rachuonyo North admitted in his statement that he facilitated the transfer of Mr. Antopas Oluoch Ndede to Ndhiwa Sub-County despite the fact that Mr. Antopas Oluoch Ndede was supposed to serve in Rachuonyo North Sub-County. **(Annexure A 16)**

Mrs. Rose Wanjiku Hunja, DDHRM and Mr. Peterson Keta Midida, PHRO, appointed Mr. Antopus Oluoch Ndede, a holder of a C plain, in contravention of their own firm instructions contained in their letters to all Regional Coordinators giving a C- as the requirement for Clerical Officer II. **(Annexures A 17 and A18)**

A complaint was raised by Mrs. Maslynne Adhiambo Oyoo and addressed to the District Commissioner Rachuonyo North and copied to several government agencies. In his response, the DC, Rachuonyo North gave a detailed explanation as borne out in his letter received at the Ministry's Central Registry, Nyayo House. The DC's explanation was not acted upon, but instead, Mrs. Rose Wanjiku Hunja, the DDHRM directed its filing away. **(Annexure A 19)**

Mr. Donald Otieno Ojuok while responding to CAJ's notification vide Section 36 of the CAJ Act, 2011, contradicted himself when he made the observation that he had signed minutes of the interviewing panel recommending Mr. Antopas Oluoch Ndede for the position, while during the interview with CAJ team he stated that he forwarded minutes recommending Mrs. Maslynne Adhiambo Oyoo. This assertion confirms his involvement in the falsification of documents to favour the appointment of Mr. Antopas Oluoch Ndede. Mr. Ojuok's response letter was nonetheless past the specified seven days period. **(Annexure A 27).**

All the other officers to whom CAJ had written to in pursuant to Section 36 of the CAJ Act, 2011 did not respond even after the expiry of the seven days period.

Conclusion

The Ministry of State for Immigration and Registration of Persons had advertised for a countrywide recruitment of 500 Clerical Officer II for the National Registration Bureau in the period covering August 2012 to January 2013. The academic qualification requirement for the position was a C- with computer literacy.

For Rachuonyo North Sub-County, the recruitment exercise was re-advertised after the first interview selected Ms. Linda Anyango Omollo whose appointment was nullified on the basis that she was overqualified with a C+ mean grade.

The District Commissioner Rachuonyo North Sub-County chaired the panel that interviewed candidates for the Clerical Officer II for the Sub-County and forwarded to the Ministry of Immigration Headquarters, the Minutes dated 16th January, 2013 recommending Mrs. Maslynne Adhiambo Oyoo for the position. The minutes were received at the Registry on 25th January, 2013.

That to date, Mrs. Maslynne Adhiambo Oyoo has never received the letter of appointment yet she had emerged the top candidate with 382 marks while Mr. Antopas Oluoch Ndede (current clerical officer II) came eighth in the interview with 325 marks.

The Mail Register at Nyayo House did not have a second entry of minutes recommending Mr. Antopas Oluoch Ndede.

The second set of minutes recommending Mr. Antopas Oluoch Ndede which Mr. Ted Maina Macharia referred to did not originate from the District Commissioner Rachuonyo North Sub-County as claimed by Mr. Ted Maina Macharia.

That there was nepotism and falsification of documents to facilitate the appointment of Mr. Antopas Oluoch Ndede and deny Mrs. Maslynne Adhiambo Oyoo the position she had been recommended for by the interview panel.

Mrs. Rose Wanjiku Hunja, Mr. Kenneth Nduati, Mr. Peterson Keta Midida, Mr. Donald Otieno Ojuok and Mr. Ted Maina Macharia are culpable of misbehaviour in public office as described under Section 8 (d) of the CAJ Act, 2011 and knowingly giving misleading information to the Public Service Commission to appoint Mr. Antopas Oluoch Ndede instead of the rightful candidate contrary to Section 19 of Public Officer Ethics Act, 2003 respectively.

The recruitment of Clerical Officers in Rachuonyo North was flawed. This is evident by the fraudulent employment of Mr. Antopas Oluoch Ndede which negated the provision of the government circular regarding District Based Recruitment into the lower cadres of the public service. The Circular had given a mean grade of C- and computer knowledge as the requirements for the position.

The employment of Mr. Antopas Oluoch Ndede brought to three the number of men employed in Rachuonyo North Sub-County who also hailed from the same West Karachuonyo Division leaving out East Karachuonyo Division. This process discriminated on gender parity and regional/geographical balance as spelt out in Article 27 of the Constitution of Kenya as well as the Circular from the Public Service Commission.

Mr. Ted Maina Macharia is found culpable for uttering false documents and knowingly giving misleading information.

The allegation that there was unfair treatment, injustice and abuse of power in the recruitment of the Clerical Officer II for Rachuonyo North Sub-County holds

Recommendations

- I. The Principal Secretary, Interior and Coordination of National Government retire Mr. Antopas Oluoch Ndede in public interest as he was irregularly appointed and, inform the Public Service Commission.
- II. The Principal Secretary, Interior and Coordination of National Government (Department of Immigration and Registration of Persons) to immediately offer the Clerical Officer II position to Mrs. Maslynne Adhiambo Oyoo who is properly entitled and notify the Public Service Commission.
- III. CAJ found Mrs. Rose Wanjiku Hunja, DDHRM, Mr. Peterson Keta Midida, PHRO Mr. Kenneth Nduati, PRO and Personal Assistant to the Director NRB and Mr. Donald Otieno Ojuok, DROP Rachuonyo North Sub-County culpable of abuse of power and misbehaviour in office contrary to Article 27 of the Constitution and Section 8 (d) of the Commission on Administrative Justice Act, 2011.
- IV. Mrs. Rose Wanjiku Hunja, DDHRM, Mr. Peterson Keta Midida, PHRO, Mr. Kenneth Nduati, PRO and Personal Assistant to the Director NRB and Mr. Donald Otieno Ojuok, DROP Rachuonyo North Sub-County also contravened Public Service Commission Circular Ref: No. MSPS18/1A/(120) of 5th June 2009. Their action caused Mrs. Maslynne Adhiambo Oyoo to miss out on a position she was rightfully recommended for.

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- V. CAJ recommends the prosecutions of Mr. Ted Maina Macharia for uttering false documents and knowingly giving misleading information contrary to Section 19 of the Public Officer Ethics Act, 2003 and has advised the Director of Public Prosecution accordingly.
 - VI. CAJ will enter the names of the above mentioned Public Officers found culpable in this investigation, in the CAJ Register of Public Officers guilty of misbehaviour in office and unresponsiveness.
 - VII. CAJ commends Mr. William Letetia Lenaremo, the Deputy County Commissioner, Rachuonyo North Sub-County for diligence in the performance of his duties and in particular, standing for equity and transparency as provided for under Article 10 of the Constitution of Kenya.