

**THE COMMISSION ON ADMINISTRATIVE JUSTICE**

**Office of the Ombudsman**



**“Hata Mnyonge ana Haki”**

**CRY FOR JUSTICE**

**AN INVESTIGATIONS REPORT BY THE OMBUDSMAN-KENYA**

**ON**

**IN ACTION BY POLICE OFFICERS FROM INDUSTRIAL AREA POLICE STATION  
REGARDING A MATTER OF ALLEGED ASSAULT OF A SECURITY GUARD BY KNOWN  
PERSON(S) ON 15/5/2014.**

**SEPTEMBER 2014**



## Foreword

The Commission on Administrative Justice (CAJ) pursuant to its mandate as stipulated under Section 8 of its constitutive Act undertook investigations into alleged inaction by police officers from Industrial Area Police Station within Makadara Police Division. The assault case was reported by Mr. Stephen Mwita Juma, a security guard who claimed to have been attacked by known persons.

CAJ undertook the investigations *suo motu* following a news item on Citizen TV 9.00 p.m. news on the 18<sup>th</sup> June 2014 in which Mr. Mwita lamented that he had been assaulted by a proprietor of one of the premises he guards along Road "A" in Industrial Area. Mr. Mwita alleged that he was assaulted by the proprietor jointly with several of his employees.

The Commission wrote to the Officer Commanding Makadara Police Division, Mr. Nehemiah Kibet Lang'at, informing him of the Commission's decision to undertake the investigations.

The compilation of this report was informed by interviews held with the complainant, Investigating Officer, the Deputy OCS Industrial Area Police Station, the Officer Commanding Industrial Area Police Station, Officer Commanding Makadara Police Division the Director of Wasso Security Services Company, who is Mr. Mwita's employer and other police officers who played a role in the matter.

The Commission has made recommendations to the National Police Service Commission, the Inspector General of Police, Nairobi County Police Commander and the Director of Public Prosecutions to take appropriate action against police officers found culpable of the confirmed omissions and commissions. These recommendations will also help in reviewing identified policy issues. The implementation of the findings will serve to guide Police Officers in performing their work with due diligence.

**Signed this.....day of September, 2014**

**Cmmr. Otiende Amollo, E.B.S**  
**Chairperson,**  
**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.

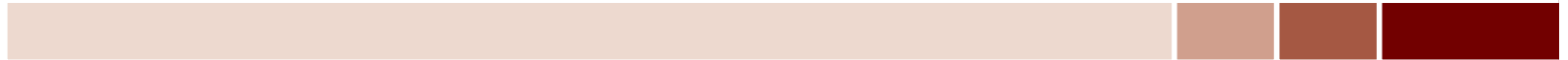
Under Section 31 of its Act, CAJ has power not limited by other provisions to investigate an administrative action despite a provision in any written law to the effect that the action taken is final or cannot be appealed, challenged, reviewed, questioned or called in question.

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 draft report addresses the following:

- Introduction to the Investigations
- Investigations Strategy
- Normative Framework
- Analysis and Findings
- Consequential Observations
- Conclusions and Recommendations

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## Acronyms

CCTV	:	CLOSED CIRCUIT TELEVISION
CI	:	CHIEF INSPECTOR
CPC	:	CRIMINAL PROCEDURE CODE
Cpl	:	CORPORAL
IP	:	INSPECTOR
OCPD	:	OFFICER COMMANDING POLICE DIVISION
OCS	:	OFFICER COMMANDING POLICE STATION
PC (W)	:	POLICE CONSTABLE WOMAN
SGT	:	SERGEANT
SSP	:	SENIOR SUPERINTENDENT OF POLICE

## Executive Summary

The Commission on Administrative Justice was prompted to undertake this investigation *suo motu*, by a news item which featured in the 9.00pm Citizen TV news on the 18<sup>th</sup> June 2014. In the news clip, Mr. Stephen Mwita Juma alleged that police officers from Industrial Area Police Station had failed to take action on an assault case that he had reported at the station on the 15<sup>th</sup> May, 2014.

Mr. Mwita complained that he had been assaulted by the proprietor of one of the premises he guards along Road "A" in Industrial Area. The proprietor had assaulted him jointly with several of his employees.

The complainant claimed that he had reported the matter at Industrial Area Police Station vide OB No.18/15/5/2014. He further said that he was given a P3 Form at the station which he returned to the police station after a doctor had completed it. He lamented that he thereafter visited the police station several times but did not get police assistance. This necessitated his going to the media.

Pursuant to Section 8 (a), (b) &(d) of the CAJ Act, the Commission decided to investigate the matter with a view to establish whether there was inaction, delay, unfair treatment, injustice, inefficiency, abuse of power and negligence by police officers at Industrial Area Police Station, Makadara Police Division, Nairobi.

The Commission wrote to Mr. Nehemiah Kibet Lang'at, the OCPD Makadara notifying him of its decision to conduct investigations on the matter before commencement of investigations. Thereafter, the investigations team visited Industrial Area Police Station. The investigations team also interviewed a number of officers and other relevant persons, recorded statements and recovered several documents relevant to the matter under investigations. The investigations team was also able to interview the complainant Mr. Stephen Mwita Juma, a security guard at Wasso Security Services.

Upon completion of investigations, CAJ wrote to Mr. Nehemiah Kibet Lang'at, OCPD Makadara and Chief Inspector of Police Amos Shamallah, OCS Industrial Area Police Station and sought their responses regarding the findings and recommendations thereof. Both Mr. Lang'at and CI Shamallah wrote back to the Commissions and their responses were found unsatisfactory.

## Findings:

### Facts of the allegation

The investigations team confirmed that Mr. Stephen Mwita Juma had reported an assault case at Industrial Area Police Station on the 15<sup>th</sup> May, 2014 at 9.15 a.m vide Occurrence Book entry No. 18/15/5/2014. The case was assigned to PC (W) Lydia Okware for investigation.

It was also established that Mr. Stephen Mwita Juma was issued with a P3 Form which he returned to the station after a police Doctor had examined him and confirmed harm.

### Inaction by Police Officers

Investigations confirmed inaction by the Industrial Area Police.

It was established that Police **did not**:-

- Open a case file.
- Record statements from the complainant and the three arrested assailants.
- Visit the scene of the crime.
- Enter the reported assault case number in the Crime Register at the station Crime Branch.
- Send the required incident report relating to the reported assault case to Police Headquarters.
- Capture the reported assault case in the Crime Statistics from Industrial Area Police station for the month of May 2014.
- Arrest the main suspect, Mr. Abdi Hamid Abass

### Negligence in the performance of duty

Mr. Nehemiah Kibet Lang'at, OCPD Makadara:

Mr. Nehemiah Kibet Lang'at being the OCPD Makadara Division, exhibited lack of control and supervision over the police stations within Makadara Police Division, specifically Industrial Area Police Station in relation to the matter under investigation.

In his interview with CAJ investigators, Mr. Lang'at confirmed that he had not seen the alleged withdrawal statement when he spoke to the media.

Chief Inspector of Police Amos Shamalla, OCS Industrial Area Police Station:

The OCS, C.I Amos Shamalla after assigning PC (W) Lydia Okware to investigate the reported assault case, he gave instructions to the Deputy OCS to release the three arrested persons on a cash bail of Ksh. 5,000 each. He later gave further

instructions that the Ksh. 5,000 cash bail per person be refunded to the three men even before the matter went to court.

The OCS abused his powers by acting contrary to Section 176 of the Criminal Procedure Code (CPC), CAP 75 Laws of Kenya.

**Inspector of Police Zuhura Yasmin Khan, Deputy OCS &I/c Crime Branch, Industrial Area Police Station:**

IP Zuhura Yasmin Khan failed to supervise the investigations process. She did not ensure that an investigation file was opened, scene of crime was visited, offenders arrested, statements recorded and the case number entered in the Crime Register.

**Delay in service delivery**

Mr. Stephen Mwita Juma reported the assault incident at Industrial Area Police Station on 15<sup>th</sup> May 2014. Two months later and even after the case had been highlighted in the media, the police did not take any action on the matter.

CAJ confirmed delay on the part of the OCPD Makadara Police Division, the OCS and the Deputy OCS Industrial Area Police Station in taking action on this matter.

**Consequential Observations:**

**Sgt. Beatrice Maithya**

Sgt. Beatrice Maithya received the duly completed P3 Form from Mr. Stephen Mwita and informed him that the person he was complaining against had also been issued with a P3 Form. Sgt Maithya further informed Mr. Mwita that the accused person had alleged that Mr. Mwita had assaulted him too.

**Cpl. Stephen Okuto Otieno**

Cpl. Stephen Okuto Otieno wrote a withdrawal statement on behalf of Mr. Stephen Mwita without consulting the Investigating Officer. It is apparent that Cpl. Stephen Okuto Otieno had an interest in the case and hence the motive to “kill” a criminal case at the Police Station level.

The fact that Mr. Mwita disowned the statement pointing out that even the signature on it was not his own, suggests that Cpl. Stephen Okuto Otieno wrote the withdrawal statement after the OCPD went to the media and spoke of a withdrawal letter by the complainant. Mr. Lang'at, the OCPD Makadara told the CAJ investigators that he had not seen the withdrawal statement before going to the media.

### PC (W) Lydia Okware

PC (W) Lydia Okware was assigned to investigate the case but before she could commence investigations, the case was interfered with by her superiors.

### Mr. Hussein Tene Dabasso

Mr. Hussein Tene Dabasso is the Director of Wasso Security Services Limited and the employer of Mr. Mwita. CAJ noted that initially Mr. Dabasso had gone out to assist his employee, Mr. Mwita, to get medical attention and have the assailants arrested by the police.

Mr. Dabasso played a big role in derailing due process by initiating negotiation but with a bias in favour of the assailant, Mr. Abdi Hamid Abass to the extent that Mr. Mwita failed to agree to the negotiation.

### Mr. Stephen Mwita Juma

While Mr. Stephen Mwita Juma, the complainant in this case had initially taken the right steps, and his case would have merited fair judicial dispensation, he unfortunately compromised the case by accepting to enter into an out of court negotiation and settlement of the case by demanding a million shillings from the assailant.

It is inferred that when the demand for one million shillings could not be fulfilled, and instead twenty five thousand shillings was allegedly given to him, Mr. Mwita was not satisfied and therefore sought other ways to score, which he accomplished by going to the press.

### Chief Inspector of Police Amos Shamalla OCS Industrial Area Police Station

Chief Inspector of Police Amos Shamalla, OCS, Industrial Area Police Station and his Deputy, Inspector of Police Zuhura Yasmin Khan, encouraged the promotion of an out of court settlement on a cognizable offence, that of assault on one Mr. Stephen Mwita by a known male adult, one Mr. Abdi Hamid Abass (and others) contrary to Section 176 of the CPC.

The OCS pointed out that some police officers at the station level are keen on serving self-interests as opposed to serving the interest of Kenyans. Such officers defeat justice by interfering with cases. This has overtime eroded public confidence in the Police Service.

### Mr. Nehemiah Kibet Lang'at, SSP OCPD Makadara

In an interview with the CAJ investigators, it was observed that Mr. Lang'at appeared not to have direct control on the daily happenings at the station level.

Being the OCPD, Mr. Lang'at had the oversight responsibility to ensure that cases reported in his Division are properly recorded and effectively investigated to the logical conclusion. It is his duty to manage crime within his jurisdiction.

Mr. Lang'at conceded that there are many cases assigned for investigations at the Crime Branch and Case Files not opened and compiled as per standard procedure. The OCPD confessed that proper records management is a big challenge.

### Conclusions:

This is a serious matter that involves inaction, delay in service delivery, abuse of power and negligence in the performance of duty by public officers occasioning injustice.

Investigation confirmed that **Mr. Stephen Mwita Juma** had reported the assault case at Industrial Area Police Station where it had been entered as OB. No. 18/15/5/14. Mr. Mwita also provided CAJ with a copy of the P3 form duly completed by a Police Doctor and a CCTV video clip on his ordeal.

It was noted that **PC (W) Lydia Okware**, the Investigating Officer in the assault case was only seven months old in the Police Service and that she had been assigned night and crime aid duties. PC (W) Okware met the complainant who requested for time to collect a CCTV video clip capturing the assailant attacking him. The complainant did not return. When she resumed normal duties she was informed by the OC Crime that the two parties had decided to reconcile.

**Cpl. Stephen Okuto Otieno** interfered with the case thereby impeding wheels of justice by writing a withdrawal statement of the complainant without consulting the Investigating Officer and without due regard of Section 176 of the Criminal Procedure Code regarding the promotion of reconciliation in a criminal case. Cpl. Stephen Okuto Otieno is culpable of abuse of power, delay, incompetence and official misconduct. He admitted to creating the contentious withdrawal statement thus misrepresenting facts of the matter.

**The OCS, Chief Inspector Amos Shamalla** failed to follow up on the case he had assigned for investigations. Chief Inspector Amos Shamalla abused his powers by

ordering the release of the three suspects held for the assault of Mr. Mwita, and the refund of the KSh. 5,000 cash bail paid by each of them. The OCS made this decision without consulting the Investigating Officer and in complete disregard of the provisions of Section 176 of the CPC.

In his statement during an interview with CAJ officers, CI Shamalla admitted negligence in the performance of his duties by failing to closely monitor the progress of investigations on the matter.

**Inspector of Police Zuhura Yasmin Khan**, the Deputy OCS and Officer in charge Crime Branch exhibited negligence in her supervisory role over personnel.

CAJ found **Mr. Nehemiah Kibet Lang'at**, the Officer Commanding Makadara Police Division, negligent in the performance of his supervisory role as the OCPD. Mr. Nehemiah Kibet Lang'at displayed a high level of recklessness when he wilfully misled the public in his statement to the media. He misled Kenyans by stating that the station had not taken action on the complaint because the complainant, Mr. Stephen Mwita Juma had written a withdrawal statement. The OCPD was not able to avail a copy of the withdrawal statement to the CAJ Investigators. On the other hand, Mr. Mwita denied having written any withdrawal statement.

In making the press pronouncement, **Mr. Nehemiah Kibet Lang'at** ignored the provisions of Section 176 of the Criminal Procedure Code.

**Mr. Stephen Mwita Juma**, the complainant in this case compromised the case by accepting to enter into an out of court negotiation and settlement of the case by demanding a million shillings from the assailant. CAJ noted that Mr. Mwita exhibited inconsistent behaviour rendering his account on the manner he alleged the police to have handled the case incredible.

#### **General conclusion:**

CAJ observed that Records management at the Crime Branch registry is a challenge. It was also noted that some police officers at the Crime Branch lack the necessary Case File Management competences and basic investigations skills.

CAJ also noted lack of integrity among some of the police officers and failure to uphold the principles of Article 244 of the Constitution of Kenya.

## Recommendations:

- i. The Inspector General, National Police Service, to assign another team of investigators to promptly and conclusively investigate the assault case and take appropriate action based on their findings.
- ii. The Inspector General, National Police Service to take disciplinary action against Cpl Stephen Okuto Otieno by giving him a stern warning and redeploying him from Crime Branch to general duties.
- iii. The Inspector General, National Police Service to come up with guidelines and time-frames for investigation of reported cases. These will compel the investigating officers to work expeditiously towards concluding such matters within the right time frame in future and to report on progress.
- iv. The Inspector General, National Police Service to make it compulsory for police officers attached to the station Crime Branch Sections to undergo basic investigations and police records/case management courses before deployment.
- v. The Inspector General, National Police Service to organize refresher/advanced investigations courses for those police officers who had undergone basic investigations course.
- vi. The Inspector General, National Police Service to ensure that fresh police graduates deployed in Crime Branch are mentored by experienced police officers of integrity before being assigned cases to investigate.
- vii. The Inspector General, National Police Service to ensure that all officers are conversant with the provisions of Chapter Six and Article 244 (b) of the Constitution of Kenya.
- viii. The Inspector General, National Police Service in collaboration with Director of Public Prosecution to provide clear guidelines on the promotion of reconciliation on criminal cases at police station level.
- ix. The National Police Service Commission to warn the Officer Commanding Makadara Police Division, Mr. Nehemiah Kibet Lang'at for negligence in the performance of his supervisory duties and for going on Citizen TV and giving misleading information without any documentary proof or otherwise that put the service into disrepute.

- x. The National Police Service Commission to warn the Officer Commanding Police Station, Chief Inspector Amos Shamalla and Inspector of Police Zuhura Yasmin Khan, the Deputy OCS and Officer In-Charge Crime Branch for negligence in the performance of their supervisory duties and for the promotion of an out of court reconciliation in a criminal matter contrary to Section 176 of the CPC.
- xi. PC (W) Lydia Okware be facilitated to undertake a police investigations course and be mentored by an experienced officer of integrity in the Crime Branch Section.
- xii. The OCPD and OCS were invited vide letter ref. CAJ/POL/015/2052(2)(3) to make their representations or further responses but failed to honour the summons, hence being unresponsive. CAJ may consider blacklisting them.
- xiii. CAJ takes great exception of the conduct and performance of Mr. Nehemiah Kibet Lang'at, SSP, OCPD Makadara Police Division, CI Amos Shamalla, OCS Industrial Area Police Station, IP Zuhura Yasmin Khan, Deputy OCS and OC Crime Section, Industrial Area Police Station and CPL Stephen Okuto Otieno of Crime Branch Section Industrial Area Police Station. CAJ will also monitor complaints against the officers with a view to recommend them unfit for service.
- xiv. Mr. Stephen Mwita Juma needs to be cautious and desist from giving misleading information to public agencies which may lead to prosecution pursuant to Section 40 and 52 of CAJ Act, 2011.
- xv. In the event of such a process of out of court settlement commencing and it appears that the complainant wants to use the police to extort, then the police must decline to be party to such process and proceed to prosecute the criminal aspect of the case.

## Introduction to investigations

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 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.

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 CAJ undertook this investigations *suo motu*, into the allegation that officers from Industrial Area Police Station failed to investigate a case of assault reported by a security guard, Mr. Stephen Mwita Juma on 15<sup>th</sup> May, 2014. The decision was prompted by a news item on the matter aired on Citizen TV 9.00 pm on 18<sup>th</sup> June 2014.

Mr. Stephen Mwita Juma stated that on the morning of 15<sup>th</sup> May 2014, at about 7.30 am while at his work place manning the security barrier on Road 'A', Industrial Area, a man known to him attempted to enter beyond the barrier riding on a motor-cycle (boda boda) but Mr. Stephen Mwita Juma denied him entry because he had instructions not to allow motor-cycles ferrying passengers access entry beyond the barrier.

Mr. Stephen Mwita Juma further stated that an argument arose between him and the passenger for denying him passage. The passenger paid off the rider, went inside one of the factories and came back in the company of other men who Mr. Mwita came to realize were employees of the person he had denied entry. The group then assaulted Mr. Stephen Mwita Juma whose screams attracted members of the public who came to his rescue.

Mr. Stephen Mwita Juma reported the assault case at Industrial Area Police Station on the same day, 15th of May 2014 at 9.15 am, entered as OB No. 18/15/5/2014. The OCS, Mr. Amos Shamalla assigned the case to PC (W) Lydia Okware to investigate. Mr. Stephen Mwita was issued with a Medical Examination Report Form (P3). The form was subsequently filled by a Police Doctor who rated degree of injury as **Harm**.

Mr. Stephen Mwita Juma complained to have made several trips to the police station as a follow up to his case but didn't receive any assistance. This is what led him to go live on Citizen TV to pursue justice.

### **Issues under Investigation**

- Inaction by Police Officers
- Delay in service delivery
- Negligence in the Performance of duty
- Any other consequential matter(s)

### **Investigative Process**

#### **Notification**

The Commission notified the OCPD Makadara, vide a letter Ref: CAJ/POL/015/2052 (1) dated 19<sup>th</sup> June, 2014 of its decision to undertake investigations regarding alleged inaction by Industrial Area Police following a reported assault case against Mr. Stephen Mwita Juma.

#### **Offices Visited**

The following offices were visited for investigations:

- The office of the OCPD Makadara
- The office of the OCS Industrial Area Police Station
- Crime Branch Office

### List of Interviewees

- The OCPD Makadara
- The OCS Industrial Area Police Station
- Deputy OCS and In-charge, Crime Branch Industrial Area
- Investigating Officer
- Police officers deployed in Crime Branch and Report Office
- Director Wasso Security Services Ltd
- Complainant, Mr. Stephen Mwita Juma

### Documents Recovered

- Medical Examination Report (P3) Form
- OB extract for 15<sup>th</sup> May 2014
- Folder containing a copy of the P3 form and OB Extract

### Statements recorded

- a. Statement by Mr. Stephen Mwita Juma complainant.
- b. Statement by Mr. Nehemiah Kibet Lang'at, SSP, OCPD Makadara
- c. Statement by CI. Amos Shamalla OCS Industrial Area Police Station
- d. Statement by IP Zurah Yasmin Khan D/OCS,I/C Crime Branch Section
- e. Statement by Sgt. Beatrice Maithya Police Officer
- f. Statement by Cpl Stephen Okuto Otieno, Police Officer
- g. Statement by PC (W) Eunice Jepkorir, Police Officer
- h. Statement by PC (W) Lydia Okware, Investigating Officer
- i. Statement by Ms. Elizabeth Nchagwa, witness

### Normative Framework

Following are excerpts of some of the relevant legal provisions:

#### Constitution of Kenya, 2010

244. The National Police Service shall—

- (a) strive for the highest standards of professionalism and discipline among its members;
- (b) prevent corruption and promote and practice transparency and accountability;
- (c) comply with constitutional standards of human rights and fundamental freedoms;
- (d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and
- (e) foster and promote relationships with the broader society.

## **Commission on Administrative Justice Act, 2011:**

According to **Sections 8** the Commission shall:

- (a) investigate any conduct in state affairs, or any act or omissions in public administrations by any State organ, State or public officer in National and County Government 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;*
- (d) inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehavior, inefficiency or ineptitude within the public service*

**Section 52**, states:

*A person who-*

- (a) without justification or lawful excuse, obstructs, hinders, or threatens the Commission or a member of staff acting under this Act;*
- (b) Submits false or misleading information;*
- (c) Fails to honour summons; or*
- (d) Misrepresents to or knowingly misleads the Commission or a member of Staff of the Commission acting under this Act, commits an offence and is 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 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...."*

## **Criminal Procedure Code**

**Section 176:** *"In all cases the court may promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any other offence of a personal or private nature not amounting to felony, and not aggravated in degree, on terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed or terminated."*

## **Analysis and Findings**

### **Analysis:**

The analysis of documents recovered and information obtained through interviews with police officers, the complainant and his employer is discussed hereunder.

A review of the Industrial Area Police Station Occurrence Book for the month of May 2014 indicates that Mr. Stephen Mwita had reported a case of assault by known person(s) on the morning of 15<sup>th</sup> May, 2014 vide OB No. 18/15/5/14, **(Annexure A1)**. The case was assigned to PC (W) Lydia Okware for investigation.

It was also established that Mr. Stephen Mwita Juma was issued with a P3 Form which he returned to the station after a Police Doctor had examined him and confirmed harm.

A copy of the P3 Form **(Annexure A2)** issued to Mr. Mwita and filled by a Police Doctor confirmed that Mr. Mwita had sustained harm. In addition, a CCTV video clip vividly shows the assailants in the process of beating him up. This is corroborated by a statement by Elizabeth Nchangwa, an eye witness. **(Annexure A3)**

In his written statement, Mr. Stephen Mwita Juma said that he went to the station on 18<sup>th</sup> May 2014, to follow up on the progress of his case but the Investigating Officer was out on crime aid duty. He was referred to office number 4 where he met PC (W) Eunice Kipchumba who informed him that his assailant had also been issued with a P3 Form and therefore both of them would be arraigned in court. **(Annexure A4)**

It was further confirmed that Mr. Stephen Mwita Juma met PC (W) Lydia Okware the Investigating Officer on 19<sup>th</sup> May 2014, who asked him to record a statement but Mr. Mwita promised to come back and record the statement after obtaining a CCTV video clip taken by Tuskys Supermarket along Road "A", showing how he was attacked. The CCTV video clip would provide supporting evidence on the assault case. **(Annexure A5)**

CAJ confirmed that Mr. Stephen Mwita Juma in the company of his employer, Mr. Hussein Tene Dabasso, got the assistance of police officers on patrol and apprehended three persons he identified as having taken part in assaulting him. The three were subsequently booked in the cells vide OB 43/19/5/2014 at 14.00 hrs and later released on cash bail at 17.00 hrs vide OB No. 53/19/5/2014 under the instruction of the OCS. **(Annexure A6 & A7)**

It was also noted that, Mr. Stephen Mwita Juma went to Industrial Area Police Station on 20<sup>th</sup> May 2014 as pre-arranged to meet his boss. On arrival, he met his boss in the company of one of the accused persons who proceeded to ask that they reconcile, an offer that Mr. Stephen Mwita Juma declined.

CAJ also confirmed that Mr. Mwita shared the CCTV video clip he had collected from Tuskys Supermarket with the Deputy Officer Commanding Industrial Area Station, IP. Zuhura Khan as indicated in her written statement. **(Annexure A8)**

### **Inaction by Police Officers**

Investigations revealed that the police at Industrial Area did not take appropriate action on the reported matter.

It was established that Police **did not**:-

- Open a case file.
- Record statements from the complainant and the three arrested assailants.
- Visit the scene of the crime.
- Enter the reported assault case number in the Crime Register at the station Crime Branch.
- Send the required incident report relating to the reported assault case to Police Headquarters.
- Capture the reported assault case in the Crime Statistics from Industrial Area Police station for the month of May 2014.
- Arrest the main suspect, Mr. Abdi Hamid Abass

### Negligence in the Performance of duty

Mr. Nehemiah Kibet Lang'at, OCPD Makadara:

One of the duties of an OCPD is the efficient administration of his/her Division. Efficient administration means and includes supervision and personally directing inquiries into all complaints against police under him/her in a Division.

Mr. Nehemiah Kibet Lang'at being the OCPD Makadara Division, exhibited lack of control and supervision over the police stations within Makadara Police Division, specifically Industrial Area Police Station in relation to the matter under investigation.

In his interview with CAJ investigators, Mr. Lang'at confirmed that he had not seen the alleged withdrawal statement when he spoke to the media. Indeed he informed the investigators that he had called for a copy of withdrawal statement after receiving invitation to attend an interview at CAJ.

Mr. Lang'at did not follow-up the matter even after he spoke to the media to ascertain the facts of the matter until CAJ called him for the interview.

Chief Inspector of Police Amos Shamalla, OCS Industrial Area Police Station:

An OCS is responsible for the efficient administration of his/her station and its jurisdiction. The OCS should ensure that all complaints received are properly recorded and investigated and keep his/her Divisional Commander (OCPD), fully informed on matters affecting crime and security in his/her area.

The OCS, C.I Amos Shamalla assigned PC (W) Lydia Okware to investigate the reported assault case but did not follow up to make sure that PC (W) Lydia Okware had investigated the case to its logical conclusion.

Assault is a serious offence under Section 251 of the Penal Code, CAP 63 Laws of Kenya. The OCS ought to have monitored the progress of the investigations and where possible give guidance to the Investigating Officer. In his written statement, CI Shamalla, said that he gave instructions that the three arrested persons be released on a cash bail of KSh. 5,000 each and later gave further instructions to his Deputy that the KSh. 5,000 cash bail per person be refunded to the three men even before the matter went to court, **(Annexure A9)**. The OCS gave the above instructions without reference to the Investigating Officer. He also failed to brief the OCPD appropriately on the assault case as required.

Inspector of Police Zuhura Yasmin Khan, Deputy OCS and the Officer in-charge Crime Branch Section, Industrial Area Police Station:

In her capacity as the Officer in-charge Crime Branch Section, failed to supervise the investigations into the assault case as is required of her. She abused her powers by usurping the power of a court as provided for under Section 176 of the Criminal Procedure Code (CPC), CAP 75 Laws of Kenya.

During interviews with the CJ Team, IP Zuhura Yasmin Khan admitted that she failed in her duty and that she made a mistake in encouraging the two parties to reconcile out of court, **(Annexure A10)**.

### **Delay in service delivery**

Investigations confirmed that Mr. Stephen Mwita Juma reported the assault incident at Industrial Area Police Station on 15<sup>th</sup> May 2014. Two months later and even after the case had been highlighted in the media, the police did not take any action on the matter.

CAJ confirmed delay on the part of the OCPD Makadara Police Division, the OCS and the Deputy OCS Industrial Area Police Station in taking action on this matter.

CAJ also confirmed that Mr. Mwita shared a CCTV video clip he had collected from Industrial Area Tusks Supermarket on Road "A" with the Deputy Officer Commanding Industrial Area Police Station, IP. Zuhura Khan as indicated in her written statement. IP. Zuhura Khan did not take action.

### **Consequential Observations:**

Mr. Nehemiah Kibet Lang'at, SSP, OCPD Makadara

In an interview with the CAJ investigators, it was observed that Mr. Lang'at appeared not to have direct control on the daily happenings at the station level. Being the OCPD, Mr. Lang'at had the oversight responsibility to ensure that cases reported in his Division are properly recorded and effectively investigated to the logical conclusion. It is his duty to manage crime within his jurisdiction.

Mr. Lang'at conceded that there are many cases assigned for investigations at the Crime Branch and Case Files not opened and compiled as per standard procedure. The OCPD further confessed that proper records management is a big challenge. **(Annexure A11)**.

### Officer Commanding Industrial Area Police Station and his Deputy

Chief Inspector of Police Amos Shamalla OCS Industrial Area Police Station and his Deputy, Inspector of Police Zuhura Yasmin Khan, encouraged the promotion of an out of court settlement on a cognizable offence, that of assault on one Mr. Stephen Mwita by a known male adult, one Mr. Abdi Hamid Abass contrary to Section 176 of the CPC.

CAJ noted that both the OCS and his Deputy abused their powers by usurping the power of a court as provided for under Section 176 of the Criminal Procedure Code (CPC), CAP 75 Laws of Kenya, where the court may promote reconciliation, encourage and facilitate the settlement in an amicable way of proceedings for common assault, or for any other offence of a personal or private nature not amounting to felony, and not aggravated in degree, on terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed or terminated.

The OCS pointed out that some police officers at the station level are keen on serving self-interests as opposed to serving the interest of Kenyans. Such officers defeat justice by interfering with cases. This has overtime eroded public confidence in the Police Service.

The Deputy OCS, IP Zuhura Yasmin Khan failed to supervise the investigations process. She did not ensure that an investigation file was opened, scene of crime was visited, offenders arrested, statements recorded and the case entered in the crime register.

### Sgt. Beatrice Maithya

Sgt. Beatrice Maithya received the duly completed P3 Form from Mr. Stephen Mwita and informed him that the person Mr. Mwita was complaining about had also been issued with a P3 Form. She further informed Mr. Mwita that the accused person had alleged that Mr. Mwita had assaulted him too.

### Cpl. Stephen Okuto Otieno

Cpl. Stephen Okuto Otieno wrote a withdrawal statement on behalf of Mr. Stephen Mwita without consulting the Investigating Officer. It is apparent that Cpl. Stephen Okuto Otieno had an interest in the case and hence the motive to “kill” a criminal case at the station level. Cpl. Stephen Okuto Otieno ought to have known the provisions of Section 176 of the Criminal Procedure Code regarding the promotion of reconciliation in a criminal case. **(Annexure A12).**

The fact that Mr. Mwita disowned the statement pointing out that even the signature on it was not his, suggests that Cpl. Stephen Okuto Otieno wrote the withdrawal statement after the OCPD went to the media and spoke of a withdrawal letter by the complainant. Mr. Lang'at, the OCPD Makadara told the CAJ investigators that he had not seen the withdrawal statement before going to the media.

#### PC (W) Lydia Okware

PC (W) Lydia Okware was assigned the case to investigate but before she could commence investigations, the case was interfered with by her superiors. OB No. 53/19/5/14 was entered by one PC (W) Mwanaisha, purporting to be PC (W) Okware and released from police custody the three arrested suspects under the instructions of the OCS through IP Khan. PC (W) Lydia Okware was not involved yet she was the Investigating Officer in this case, **(See Annexure A7)**.

#### Mr. Hussein Tene Dabasso

Mr. Hussein Tene Dabasso is the Director of Wasso Security Services Limited and the employer of Mr. Mwita. CAJ noted that initially Mr. Dabasso had gone out to assist his employee, Mr. Mwita, to get medical attention and have the assailants arrested by the police.

The CAJ team also noted that Mr. Dabasso later changed sides and was instrumental in having Mr. Mwita resolve the matter out of court. According to Mr. Dabasso, his change of mind was borne out of the fact that the assailant of Mr. Mwita, Mr Abdi Hamid Abass had sought his (Mr. Dabasso) indulgence and he obliged, saying that as Muslims they ought to forgive one another and that since Mr. Mwita was his employee he would influence him to accept an out of court settlement.

Mr. Dabasso played a big role in derailing due process by initiating negotiation but with a bias in favour of the assailant, Mr. Abdi Hamid Abass to the extent that Mr. Mwita failed to agree to the negotiation. **(Annexure A13)**.

#### Mr. Stephen Mwita Juma

While Mr. Stephen Mwita, the complainant in this case had initially taken the right steps, and his case would have merited fair judicial dispensation, he unfortunately compromised the case by accepting to enter into an out of court negotiation and settlement of the case by demanding a million shillings from the assailant.

It is inferred that when the demand for one million shillings could not be fulfilled, and instead twenty five thousand shillings was allegedly given to him, Mr. Mwita was not satisfied and therefore sought other ways to score, which he accomplished by going to the press.

### Conclusions:

This is a serious matter that involves inaction, delay in service delivery, abuse of power and negligence in the performance of duty and unresponsiveness by public officers occasioning injustice.

CAJ found **Mr. Nehemiah Kibet Lang'at** the Officer Commanding Makadara Police Division, negligent in the performance of his supervisory role as the OCPD. Mr. Nehemiah Kibet Lang'at displayed a high level of recklessness.

Mr. Nehemiah Kibet Lang'at went to the media and misled Kenyans by stating that the station had not taken action on the complaint because the complainant, Mr. Stephen Mwita Juma had written a withdrawal statement. The OCPD was not able to avail a copy of the withdrawal statement to the CAJ Investigators. On the other hand, Mr. Mwita denied having written any withdrawal statement.

In making the press pronouncement, **Mr. Nehemiah Kibet Lang'at** ignored the provisions of Section 176 of the Criminal Procedure Code.

**The OCS, Chief Inspector Amos Shamalla** failed to follow up on the case he had assigned for investigations. Chief Inspector Amos Shamalla abused his powers by ordering the release of the three suspects held for the assault of Mr. Mwita, and the refund of the KSh. 5,000 cash bail paid by each of them. The OCS made this decision without consulting the Investigating Officer and in complete disregard of the provisions of Section 176 of the CPC.

In his statement during an interview with CAJ officers, CI Shamalla admitted negligence in the performance of his duties by failing to closely monitor the progress of investigations on the matter **(Annexure A14)**.

Upon completion of investigations, CAJ wrote to Mr. Nehemiah Kibet Lang'at, OCPD Makadara and Chief Inspector of Police Amos Shamallah, OCS Industrial Area Police Station and sought their responses regarding the findings and recommendations thereof.**(Annexure A16&A17)**.

Both Mr. Lang'at and CI Shamallah wrote back to the Commission but their responses were found unsatisfactory.( **Annexure A18 & A19**)

**Inspector of Police Zuhura Yasmin Khan**, the Deputy OCS and Officer in charge Crime Branch exhibited negligence in her supervisory role over personnel. CAJ confirmed inaction on the part of Inspector of Police Zuhura Yasmin Khan (**See Annexure A8**).

**Cpl. Stephen Okuto Otieno** interfered with the case thereby impeding wheels of justice by writing a withdrawal statement of the complainant without consulting the Investigating Officer and without due regard of Section 176 of the Criminal Procedure Code regarding the promotion of reconciliation in a criminal case. Cpl. Stephen Okuto Otieno is culpable of abuse of power and official misconduct. He admitted to creating the contentious withdrawal statement thus misrepresenting facts of the matter. (**Annexure A15**).

It was noted that **PC (W) Lydia Okware**, the Investigating Officer in the assault case was only seven months old in the Police Service and that she had been assigned night and crime aid duties. PC (W) Okware met the complainant who requested for time to collect a CCTV video clip capturing the assailant attacking him. The complainant did not return back to the Investigating Officer. When she resumed normal duties she was informed by the OC Crime that the two parties had decided to reconcile.

Investigations confirmed that **Mr. Stephen Mwita Juma** had reported the assault case at Industrial Area Police Station where it had been entered as OB. No. 18/15/5/14. Mr. Mwita also provided CAJ with a copy of the P3 form duly completed by a Police Doctor and a CCTV video clip on his ordeal.

**Mr. Stephen Mwita Juma**, told the CAJ Investigators that he demanded a million shillings from his assailant for an out of court settlement. The complainant thus compromised the case by accepting to enter into an out of court negotiation on the case. Mr. Mwita's inconsistent behaviour rendered his account on the manner he alleged the police to have handled the case incredible.

#### **General conclusion:**

Records management at the Crime Branch registry is a challenge. Some police officers at the Crime Branch lack the necessary Case File Management competences and basic investigations skills.

CAJ also noted lack of integrity among some of the police officers and failure to uphold the principles of Article 244 of the Constitution of Kenya.

## Recommendations

- i. The Inspector General, National Police Service, to assign another team of investigators to promptly and conclusively investigate the assault case and take appropriate action based on their findings.
- ii. The Inspector General, National Police Service to take disciplinary action against Cpl Stephen Okuto Otieno by giving him a stern warning and redeploying him from Crime Branch to general duties.
- iii. The Inspector General, National Police Service to come up with guidelines and time-frames for investigation of reported cases. These will compel the investigating officers to work expeditiously towards concluding such matters within the right time frame in future and to report on progress.
- iv. The Inspector General, National Police Service to make it compulsory for police officers attached to the station Crime Branch Sections to undergo basic investigations and police records/case management courses before deployment.
- v. The Inspector General, National Police Service to organize refresher/advanced investigations courses for those police officers who had undergone basic investigations course.
- vi. The Inspector General, National Police Service to ensure that fresh police graduates deployed in Crime Branch are mentored by experienced police officers of integrity before being assigned cases to investigate.
- vii. The Inspector General, National Police Service to ensure that all officers are conversant with the provisions of Chapter Six and Article 244 (b) of the Constitution of Kenya.
- viii. The Inspector General, National Police Service in collaboration with Director of Public Prosecution to provide clear guidelines on the promotion of reconciliation on criminal cases at police station level.

- ix. The National Police Service Commission to warn the Officer Commanding Makadara Police Division, Mr. Nehemiah Kibet Lang'at for negligence in the performance of his supervisory duties and for going on Citizen TV and giving misleading information without any documentary proof or otherwise that put the service into disrepute.
- x. The National Police Service Commission to warn the Officer Commanding Police Station, Chief Inspector Amos Shamalla and Inspector of Police Zuhura Yasmin Khan, the Deputy OCS and Officer In-Charge Crime Branch for negligence in the performance of their supervisory duties and for the promotion of an out of court reconciliation in a criminal matter contrary to Section 176 of the CPC.
- xi. PC (W) Lydia Okware be facilitated to undertake a police investigations course and be mentored by an experienced officer of integrity in the Crime Branch Section.

The OCPD and OCS were invited vide letter ref. CAJ/POL/015/2052(2)(3) to make their representations or further responses but failed to honour the summons, hence being unresponsive. CAJ may consider blacklisting them.

- xii. CAJ takes great exception of the conduct and performance of Mr. Nehemiah Kibet Lang'at, SSP, OCPD Makadara Police Division, CI Amos Shamalla, OCS Industrial Area Police Station, IP Zuhura Yasmin Khan, Deputy OCS and OC Crime Section, Industrial Area Police Station and CPL Stephen Okuto Otieno of Crime Branch Section Industrial Area Police Station. CAJ will also monitor complaints against the officers with a view to recommend then unfit for service.
- xiii. Mr. Stephen Mwita Juma needs to be cautious and desist from giving misleading information to public agencies which may lead to prosecution pursuant to Section 40 and 52 of CAJ Act, 2011.
- xiv. In the event of such a process of out of court settlement commencing and it appears that the complainant wants to use the police to extort, the police must decline to be party to such process and proceed to prosecute the criminal aspect of the case.