

COUNTY GOVERNMENT OF TAITA TAVETA



Laid ON 9/12/2020
AT 10:20 AM

(Signature)

COUNTY ASSEMBLY OF TAITA TAVETA

SECOND ASSEMBLY - FOURTH SESSION

COMMITTEE ON JUSTICE, CONSTITUTIONAL, LEGAL AFFAIRS, LABOUR,
EMPLOYMENT, TRADE UNIONS AND SOCIAL WELFARE

REPORT ON THE
PETITION BY CASSIAN NGO THO MWACHANYA
AGAINST CONSTRUCTIVE DISMISSAL FROM EMPLOYMENT

DECEMBER, 2020

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LIST OF ACRONYMS AND ABBREVIATIONS

CoG	Council of Governors
MCA	Member of County Assembly
CCO	County Chief Officer
CECM	County Executive Committee Member
CS	County Secretary
CPSB	County Public Service Board
UNDP	United Nations Development Programme
E.L.R.C.	Employment and Labour Relations Court
PSC	Public Service Commission

The Committee on Justice, Constitutional, Legal Affairs, Labour, Employment, Trade Unions and Social Welfare is one of the committees constituted in 10th November, 2020 pursuant to the provisions of the Taita Taveta County Assembly Standing Order No. 193.

Pursuant to Standing Order No. 182 (6), the Committee hereby presents its report on the petition by Cassian Ngotho Mwachanya against the constructive dismissal from employment.

The Committee on Justice, Constitutional, Legal Affairs, Labour, Employment, Trade Unions and Social Welfare of the second County Assembly of Taita Taveta as currently constituted comprises of the following Members;

1. Hon. Frank Kichoi Mwakanyanga, **MCA, Chairperson**
2. Hon. Frank Jumapili Mmare, **MCA, Vice-Chairperson**
3. Hon. Jones Solomon Maghanga, **MCA, Member**
4. Hon. Abednego Mwanjala, **MCA, Member**
5. Hon. Joan Akinyi, **MCA, Member**
6. Hon. Justine Juma Mwamba, **MCA, Member**
7. Hon. Joyce Mwangoji, **MCA, Member**
8. Hon. Constance Mwandawiro Shungula, **MCA, Member**
9. Hon. Christopher Mwambingu, **MCA, Member**

The Committee on Justice, Constitutional, Legal Affairs, Labour, Employment, Trade Unions & Social Welfare is mandated to carry out;

- a) All matters related to labour, trade union relations, fair employment practices including terms and conditions of work
- b) Ensuring that national legislation on all such matters are adhered to;
- c) Human resource planning and development.
- d) All matters related to the protection of human rights,
- e) good governance,
- f) issues regarding marginalization and the administration of law and justice;
- g) Constitutional affairs including the elections, devolution, ethics, integrity and anti-corruption activities.

The Committee pursuant to the provisions of Standing Order No. 193 (5) is further mandate to;

- (a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;
- (b) Study the programme and policy objectives of departments and the effectiveness of the implementation;
- (c) Study and review all County legislation referred to it;

- (d) Study, assess and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives;
- (e) Investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;
- (f) Vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 187 (*Committee on Appointments*); and
- (g) Make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.

ACKNOWLEDGEMENT

On behalf of the Committee, I take this opportunity to sincerely thank the office of the Speaker and the Clerk of the County Assembly of Taita Taveta for the support and facilitation during the investigation of the claims made in the petition.

The County Assembly of Taita Taveta on November 2019 received the petition through the office of the clerk and the petition was reported to the House by the Speaker pursuant to Standing Order No. 197 (1) (a) and 197 (5).

Pursuant to the Standing Order No. 204 (1) the Petition was committed to the Justice, Constitutional, Legal Affairs, Labour, Employment, Trade Unions & Social Welfare

The Committee objectives were:

1. To review the petition and investigate the matters raised in the petition
2. To report to the House the recommendations of the Committee on the petition

The Committee took the following approach in investigating the matters raised in the petition;

The Committee held 4 deliberative sittings in deliberating on the petition.

The Committee held a deliberative session with the County Secretary, County Public Service Board, the County Executive Committee member Administration, Devolution and Public Service and the Payroll Manager to deliberate on all matters related to the engagement, re-designation and termination of services of Mr. Cassian Ngotho Mwachanya.

The Committee also held a deliberative session with the petitioner.

The Committee reviewed documents related to the petition as submitted by the petitioner, the County Secretary, the CECM. The County Public Service Board and the Payroll Manager.

2.0 CHAPTER TWO: FINDINGS OF THE CONSTITUTIVE PANEL
NGOITHO MWACHANYA FROM EMPLOYMENT

The Committee reviewed the petition by Mr. Cassian Ngotho Mwachanya and found as follows;

2.1 The Petition

Mr. Cassian Ngotho Mwachanya was employed by the County Government of Taita Taveta as a Sub-County Administrator for a four years contract, personal number 20130035102 in 2013.

Tribulations of the Petitioner during the first regime

The tribulations of the petitioner began when he was first engaged as a sub-County Administrator. His relationship with the then County Executive Committee Member (CECM) for Administration and Devolution was wanting. The petitioner applied for an advertised position in Taita-Taveta County whose recruitment process was competitive and was appointed as a Sub County Administrator Job Group "Q" in 2013.

Communication on his engagement to the position

Mr. Basil Tangai, the County Public Service Board Chairman on a personal basis informed him that, the officer responsible for informing him of his engagement to the position was not able to reach him and that he risk losing the position to another person.

On 1/10/2013 H.E The Governor John Mtuta Mruttu also called and informed him that County Public Service Board (CPSB) was unable to reach him, to inform him of his engagement to the position. Later, one Mr. Mwanyungu, the petitioner's relative known to CECM for Administration and Devolution also informed him that the CECM had indicated that the petitioner had been given the job, an engagement which he had not been officially informed of by the CPSB. On the same note Mr. Mwanyungu also informed the petitioner that he was told by the CECM that the recruitment had not attracted competitive candidates though he has been given the job anyway. This clearly shows the presence of malice aforethought which was later perfected in the form of constructive dismissal.

Reporting, Induction and Confirmation of the Petitioner

He reported to work at the offices in Wundanyi on 10/10/2013 and was deployed to Taveta Sub County vide the County Secretary's letter SF/GPV/TT/ST.7/VOL.1/4 dated 14th October 2013, where he reported and attended an induction course at the Salt Lick Lodges from 10th February 2014 through 14th February 2014.

Prior to the induction course, there were claims that he was an emissary of Hon. Thomas Mwadeghu who had declared his candidature for the gubernatorial position in 2017.

During a presentation session on 10th February 2014, the CECM Administration and Devolution refused to listen to his presentation claiming that she had heard enough from the rest of the administrators and there was nothing new that the petitioner will add and if there was, the deputy who spoke before him would have mentioned it. This was despite the fact that the petitioner had imprest

issues he wished to seek clarity on. The CECM further quarreled and told him off before his deputy and the rest of the administrators.

On 20th February 2014 the petitioner sent the CECM an email requesting that whenever she wished to discipline him be it verbally or otherwise, she should call him aside and not before his deputy for the sake of respect. The CECM in response to the request said "Respect is earned". Since then, the CECM Administration and Devolution never worked with him and preferred working with his deputy and the Principal Administrative Officer.

On 26th February 2014, six (6) days after her response, the CECM sent the petitioner a text message instructing him to go and see the Governor's Political Advisor. He met the advisor who informed him that the Governor has vowed to sack him because of information they had that, he was working with competitor, Hon. Thomas Mwadeghu since they both came from Mwanda-Mgange Ward.

Mind you the petitioner had not met Hon. Thomas Mwadeghu when he was working as a Sub County Administrator of Taveta, the petitioner through the CECM at a later date requested in writing for an appointment with the Governor to discuss the matter. When no response came forth, the petitioner later visited the Governor at his residence in Taveta where they discussed and settled the matter.

On 26th May 2014, he was assigned a duty to be in charge of Security at the Mgeno ground breaking ceremony, where the County Headquarters were to be constructed. He spent 5 days in the cold in a program that was coordinated by the Governor's Political Advisor but was not paid his allowances. He later learnt that his signature was forged by someone, who took up the allowance in his name. The issue of forgery was discussed at the County Assembly, though until now no payment has been made.

After the probationary period, he was confirmed as the Sub County Administrator of Taveta vide CPSB letter CPSB/TTC/CONFIRMATION LETTER/VOL.1 (17) dated 9th December 2014.

Re-designation of the Petitioner

On 7th May 2015 while waiting for the Governor at Mti wa Chila, where he was to have a security meeting and later open the Kitobo Bridge, the petitioner received a phone call from the acting County Chief officer for Administration and Devolution, Mr. Abed Malusha. Mr. Malusha revealed to him that he will be "re-designated" to the position of County Head of Enforcement in job group "N" because his administration was against the Governor and was working in favour of Hon. Mwadeghu.

Later in the evening, Mr. Mande Jumanne, the then Chief of staff told him to revert the transfer of one Mr. Kaka Malimali, the Ward Administrator of Mahoo Ward in Taveta to Wundanyi in exchange with Emmerisiana Wakesho, then Ward-Administrator for Wundanyi. Mr. Mande told the petitioner that failure to revert the said transfer would lead to his transfer by the Governor. In response to the Chief of Staff, the petitioner informed him that he had no power to revert transfers.

On Monday 9th May, 2015, the petitioner got a formal communication on his "re-designation" to the position of 'County Head of Enforcement' through a letter by the Director of Human Resource dated Friday, 6th May, 2015. The said letter was hand delivered as a matter of urgency on Saturday 7th May, 2015 by the CECM for Administration and Devolution along with the Deputy Head of Enforcement.

Upon getting the re-designation letter, he called Mr. Mande and informed him about the developments in line with his previous assertion; he (Mr. Mande) told him by virtue of his position, he had seen it coming.

On that same day, that is 9th May, 2015, the petitioner sent an email expressing his feelings about the new designation and called for dialogue on the same but it was not replied. On 14th May, 2015, he handed over to the Deputy Ms. Catherine Zawadi.

Issues as the County Head of Enforcement

On reporting to Wundanyi, the petitioner was not issued with a job description for the position of County Head of Enforcement, working space, human resource or comfortable environment to perform any work.

On 21st May 2015, he wrote to the Director of Human Resource Management seeking clarification on job description, a letter which he copied to the relevant officers including the Governor.

Later in that evening of 21st May 2015, he was called to a meeting with the CECM for Administration and Devolution where she tried to order him to write another letter to withdraw the first one. The petitioner promised not to do until he was told why he had been re-designated without his consent and consequently demoted.

In regards to his working space, the CECM informed him that they were to procure a land cruiser through UNDP for use in law enforcement which never came to pass. The petitioner was forced to facilitate the partitioning of an open room to create his office and a reception desk for the secretary.

It was around this time that the department got a substantive Chief Officer who for reasons not known to the petitioner also started working with the Deputy Head of Enforcement instead of him. Forthwith, the petitioner started getting excluded in all issues including trainings conducted in the County, Nationally and Internationally. The petitioner was also excluded on payments of allowances for duties he performed, a matter he raised with the Governor vide a letter of redress dated 14th October 2015.

The issue of the petitioner's re-designation also came up at the County Assembly during the pending bill hearing debate. The CECM for Administration and Devolution informed the Assembly that his transfer was on promotion to the position of County Director of Inspectorate, job group R, contrary to the actual position where he was re-designated as the County Head of Enforcement in job group "N".

The CECM further informed the Assembly that, an indent for the position of Director of Inspectorate Job Group R had already been made to the County Public Service Board. This is captured in a Hansard recording obtained through a letter of request thus it's permissible for use as evidence.

However, the Director of Human Resource Management and the Chief Officer for Administration and Devolution vide his letter P/F 20130035102 dated 3rd December 2015 affirmed and more so clarified the petitioner's position as the County Head of Enforcement.

The County Assembly vide its letter TTCA/CG/29/VOL.2/ (203) dated 25th November 2016 raised questions on the formation of the Law Enforcement Unit. These questions resulted in Chief Officer

victimizing the petitioner on allegations of colluding with County Assembly hence escalating the discrimination that the petitioner was already going through.

In June 2016, the petitioner and the Deputy Head of Enforcement offered expert advice on badness of fraternization thereby recommending strict adherence to the Chain Of Command.

When it became apparent that the Chief Officer was not following up the promotion to County Director of Inspectorate as purported by the CECM, the petitioner applied for the position through the County Secretary but the same was not responded to.

On 25th August, 2016, the petitioner prepared a report to the Governor, which the Governor adopted. This included a law enforcement bill of which the CECM for Administration and Devolution was tasked by the Governor to fine tune the same for enactment to law.

The CECM referred the same to the petitioner and the Chief Officer but despite every counsel, the Chief Officer didn't act, instead continued excluding the petitioner on virtually everything as addressed in the petitioner's letter GOV/TTCG/DAE/CONF./VOL.1/1 dated 3rd April 2017.

In the said letter, the petitioner formally advises the Chief Officer to embrace the Chain Of Command system but in contrast, he blacklisted the petitioner from payment of claims which date back to 2014 when he was a Sub County Administrator Taveta. Besides those claims some got lost in CCO's office upon being presented to the Chief Officer for approval.

Non-payment of allowances

In early January, 2017, the petitioner spoke to the Governor about the said claims which were referred to the Office of the County Secretary and Chief Officer, Finance. They were given instruction to avail funds and pay them without further delay.

The Chief Officer Finance instructed staff under him to vouch, examine and validate the claims for payment. Upon all being found to be in order and payable, the County Secretary and the Chief Officer for finance identified Ksh.1.8M in the Law Section that could be used for the payment of the claims. However, the Chief Officer for Administration and Devolution refused to make any payments reference his letter GOV/AD/INT/VOL.2/382 dated 27th February 2017.

The petitioner supported the vouchers and where there was no document due to time lapse he swore an affidavit and requested for payments reference his letter GOV/TTCG/DAE/INT.1/VOL.1/19 dated 24th March 2017 but the Chief Officer shelved the claims. The petitioner requested for promotion to Acting, Director of Inspectorate but in response reference his letter PF/NO/20130035102/83 dated 23rd May 2017 said that I am on a four year contract as Sub County Administrator whose terms are well stated without variation.

The said letter was a contradiction of the CCO's previous letter referenced P/F 20130035102 dated 3rd December 2015 where he affirmed and more so clarified the petitioner's position as County Head of Enforcement.

Termination of Contract

Three days later the CCO wrote a notification of expiry of the petitioners contract in which he referred to him as a Sub County Administrator reference PF/NO/20130035102/84 dated 26th May 2017.

The petitioner then asked the CCO to clarify on his position as County Head of Enforcement vide a letter dated 9th June 2017 which the CCO did not respond to.

Petition on the Re-Designation/Transfer

The petitioner, petitioned against his irregular re-designation and transfer from the position of Sub County Administrator to County Head of Enforcement used interchangeable with Director of Enforcement/Inspectorate according to the claims of the CECM for Devolution and Administration.

In a petition to the Public Service Commission (PSC), PSC gave a directive that the petitioner be deployed back to perform his substantive duties as Sub county Administrator vide a letter reference PSC. D/CAP/6 (17) dated 14th June, 2017 and PSC/CAP/6/ (15) of 26th April, 2017 respectively.

The petitioner also petitioned to the County Assembly severally, including the petition against his irregular re-designation and transfer from his position as Sub County Administrator to County Head of Enforcement.

In the said petition the Taita-Taveta County Assembly reference page 13 item 8 of County Assembly Hansard report dated 25th November, 2015, reached a decision and consequently gave directive that he be deployed back to perform his substantive duties as Sub county Administrator.

A similar decision was reached by the Taita-Taveta County Public Service Board reference their letter CPSB/TTC/ST.7/VOL1/57 dated 25th January, 2016.

On all the three resolutions, the County Executive Committee Member (CECM) for Devolution and Administration held that she had promoted him to County Director of Inspectorate Job Group "R" and that the indent already with the County Public Service Board.

Issues during the Second County Government

Upon the expiry of the term of the first County Government, the second County Government took over in August 2017 under the governorship of H.E. Granton Samboja.

On 28th August 2017 through an advertisement in the local daily newspapers, the Taita Taveta County Government sent the officer and others from the Directorate of Revenue on compulsory leave without any substantive explanation.

The compulsory leave was issued by the Chief Officer for Administration vide a letter dated 28th August 2017 referenced SF/GOV/TT/ST.2/VOL.11/1 stating that the officer had been sent on leave as the acting Director of Enforcement a position he was not appointed to acting position. By issuing the petitioner with the compulsory leave indefinitely as Ag. Director of Enforcement the Chief Officer was being malicious and naïve in that according to his a letter PF/NO/20130035102/84 dated 26th May 2017

the CCO denied that he the petitioner was Ag Director of Enforcement, and thus the exact position of the petitioner is not clear.

A press statement was also made on Monday 28th August 2017 directing that the petitioner, Director of revenue administration and Director of Enforcement along with other junior staff have been sent on compulsory leave.

The County Public Service Board in a letter reference CPSP/TTC/ST.25/VOL.2/37 dated 1st December 2017 acknowledged the petitioner as the Sub County Administrator and Acting Director of Enforcement but was never given a salary of high rank or an acting allowance.

Other officers from the Director of Revenue were given an opportunity to be heard in defence and were reinstated to work with the exception of the petitioner who was not heard despite having exhibited diligence, integrity and accountability in the performance of his duties. In the estimation of the petitioner, that was an act that denied him of his rights and an exhibition of lack of impartiality and equality on the part of Public Service and Administration Department.

The petitioner will have accepted as justice if there would have been an Adhoc Committee that was formed to carry out investigations whose findings and resolution were to be used to decide whether he was guilty or not.

According to the petitioner, for the Governor to remove him as the acting Director of Enforcement three days into office leaves a lot to be desired and it can be assumed that the Governor relied on false allegations peddled against the petitioner

To dispel the allegations of corruption, the petitioner vide a letter dated 20th February 2019 through Mr. Philemon Mwaisaka and the legal advisor Mr. Edwin Chahilu submitted his Bank Account as 0460193199446 of Equity Bank Digo Rd. Mombasa for investigation but got no response. The bank account is the only account he has had since he was in the Military (Kenya Navy)

He also made public his KRA pin number to enable investigation if he had any assets that may have been corruptly obtained but no investigative action was taken.

On 6th September 2017 while he on compulsory leave, the Chief Officer for Devolution and Public Administration wrote to the County Secretary and the Chief Officer Finance suggesting the petitioner should not be paid his claims. The CCO alleged that the claims did not have the required supporting documents. It was apparent that the CCO had maliciously removed the supporting documents and the affidavit which the petitioner had sworn to.

While on the compulsory leave, the petitioner's salary was stopped and No formal communication was made on the same. When the petitioner started following up the matter, a letter referenced CPSB/TTC/ST.25/VOL.2/37 dated 1st December, 2017 was retrieved purporting that his contract had been terminated. A letter he had never been served with.

2.2: Petitioner's Prayer

The petitioner's prayers were as follows;

1. That action be taken against all the public officers found liable so as to stop future regimes from perpetuating discrimination and favourism in public office
2. To be deployed to perform his substantive duties as Sub County Administrator pursuant to the decision by the Public Service Commission, County Public Service Board and the County Assembly since he is still assumed to be on compulsory leave since 28th August 2017.
3. To be informed if an Adhoc Committee was constituted to investigate on the allegation peddled against him, the Members of the Committee, and why he was not given an opportunity to be heard in defense, together with its findings and recommendations
4. To be informed of his entitlement whether is to receive half salary since it is assumed he is on compulsory leave or no pay at all as is the case.
5. To be reinstated to work as is the case with others since the CECM said she had transferred him from Taveta to Wundanyi on promotion to County Director of Inspectorate job group R or be returned to Taveta Sub County Administrator as per recommendation by the National Public Service Commission, the Taita-Taveta County Assembly and the Taita Taveta County Public Service Board.
6. That the County Assembly Hansard recording be taken as evidence to compel the Administration to promote him to County Director of Inspectorate job group "R" as per the Organogram and the same be backdated to 6th May 2015.
7. That stiff action be taken against the Public Service and Devolution department for disrespecting the National Public Service Commission, the Taita-Taveta County Assembly and the Taita Taveta Public Service Board decision to have him returned to his substantive position.
8. That Public Service and Devolution Department should be held responsible for the breach of contract and therefore give the petitioner the opportunity to complete the contract term.
9. For the retraction of all the false and defamatory statements made about him on the daily newspapers and some on WhatsApp audio speeches and damages for false and defamatory statement.
10. To be paid Ksh.1.27 million being pay of higher rank for the period between 6th May 2015 and May 2020 as Director of Inspectorate.
11. That he be paid Ksh.4, 539, 000 worthy of salary from January, 2018 to May, 2020, a period when his salary was stopped.
12. That he be paid Ksh. 1,770, 210 being 31% of 4, 549, 000 plus there would have been interest in his favor if same was remitted to the pension fund.
13. Ksh. 155, 000 being 31 months annual increment at a rate of Ksh. 5, 000 beginning October 2017.
14. He be paid Ksh. 420, 000 worth of claims outstanding from 2014.
15. He be paid Ksh. 40, 000 worth of allowance on Mgeno ground breaking activity still outstanding since 2014.
16. Clarification about his position whether he is a Sub County Administrator or Director of Enforcement.
17. To be informed why the entitlements that come with either positions was not given to him including non-payment of acting allowance.
18. To be informed why he was not reinstated when a court injunction that allowed the Sub county Administrators to continue to work.

19. Be compensated on the opportunities lost as a result of the unclear position he held which was used to sideline him from chances of carrier progression, capacity-building and educational tours.

The County Public Service Board on Tuesday, 2nd June, 2020 informed the Committee vide a letter dated 29th May, 2020 referenced CPSB/ADM1B/VOL.2/78 as follows in regards to the petition;

1. That the claims of the petitioner was interviewed and appointed as a sub County Administrator in October 2013 and was confirmed to appointment for the same position on 9th December, 2014 (See attachment).
2. That while in service, the petitioner was never re-designated by the Board since it is only the Board which has powers to do so.
3. That the petitioner's contract ended in September 2017 as a sub County Administrator but due to transition issues it as extended for a period of six months but was terminated through a one month notice on the 4th month of the extension.
4. That the petitioner joined himself to the court case involving other former County Administrators, a matter which is still pending in court.

According to documents provided by the CPSB, the matter is before the Employment and Labour Relations Court at Mombasa E.L.R.C. No 269 of 2018, where the petitioner; Cassian Ngotho Mwachanya is the claimant and the Taita Taveta County Government and the Taita Taveta County Service Board are the 1st and 2nd respondent respectively. The law suit dated 13th April, 2018 revolves around the *'unfair and/or illegal refusal by the respondents to convert the claimant's term of service into permanent and pensionable basis'* and was received by the County Public Service Board on 8th May, 2018 as attached.

5. The County Public Service Board also provided the following documents in regards to the petition:
 - A letter from the Public Service Commission dated 26th April, 2016 referenced PSC/CAP/6/ (15) on 'Appeal Against Re-Deployment: Mr. Cassian Ngotho Mwachanya: P/NO 20130035102: County Head of Enforcement' where the PSC decided that he be deployed to his substantive position as sub-County Administrator which he was competitively appointed and did not request for re-designation.

- A letter from the CPSB to the County Secretary dated 23rd June 2017 referenced CPSB/TTC/CIR.3/VOL.1/78 on 'Appeal against Re-Deployment: Mr. Cassian Ngotho Mwachanya: P/NO 20130035102. In the letter, the board had resolved in a meeting that the advisory by the Public Service Commission to deploy the petitioner to his substantive position as sub-County Administrator be forwarded to the CS for action.

2.4: Response from the County Secretary

The County Secretary as follows;

1. On 12th January, 2017, the Director, Human Resource Management wrote to the CPSB on the redeployment of Cassian Ngotho Mwachanya in response to the petitioner clarifying that;
 - i. The Deployment to the enforcement unit was occasioned by the fact that the unit had recruited new enforcement officers in March 2015 and the unit need a senior officer with enforcement background
 - ii. The allegation that the officer was demoted was not true but a deployment that retained all his benefits and privileges.
 - iii. The Officer also attended the following official events;
 - ✓ Trip sponsored by CISP to Arusha on March 2016
 - ✓ SMC in Kenya School of Government Nairobi in July 2016
 - ✓ Showcase of the County Government achievements in Meru County on April 2016
2. On 22nd February, 2017, the petitioner proceeded for 15 days annual leave, leaving a balance of 15 days annual leave as at December, 2017.
3. On 26th February, 2017, the petitioner wrote to the CCO Public Service and Devolution requesting for the lifting of the compulsory leave considering that all the other employees in the Directorate of Revenue who were sent on leave had resumed office.
4. On 27th February, 2017 vide a letter referenced GOV/AD/INT/VOL.2/382 the CCO Administration and Devolution informed the petitioner that his request for payment of claims lack supporting documents which should be submitted to enable processing of the same;
 - i. Claim dated 15 May 2015, 70,000 lacks supporting documents
 - ii. Undated claim, 7,000 payment of accommodation at Chala Hotel is not supported
 - iii. Claim dated 15th May, 2015, 109,200, activity not supported.

- iv. Claim dated 15 May, 2015 56,000, activity not supported-said to have been facilitated before
 - v. Claim dated 15 May, 2020, 31,500 activity not supported
 - vi. Undated claim of 20,000 activity not supported but other sources say activity was facilitated.
5. On 23rd May, 2017, the CCO Administration and Devolution wrote in response to the petitioner informing him that he is on a four (4) year contract whose terms are well stated without variation. However, at the end of the contract, in case of renewal, the request will be put into consideration.
 6. On 26th May, 2017, the CCO Administration and Devolution wrote to the petitioner notifying him of the expiry of his employment contract. He was also instructed to make formal clearance on all obligations with the County by 30th September, 2017. By the letter, the Director of Human Resource Management was also notified to facilitate payment of the petitioner's gratuity.
 7. On 28th August, 2017 vide a letter referenced 20130035102/87, the CCO Administration and Devolution wrote instructing the petitioner as the acting Director Enforcement to proceed to an indefinite compulsory leave with immediate effect.
 8. On 29th September, 2017, the CCO administration and Devolution wrote to the petitioner informing him of the extension of employment contract by 1 month ending 31st October, 2017 following a resolution of the CPSB vide a letter CPSB/TTC/ST.25/VOL.1/93. This was informed by the on-going advertisement of positions which were to be filled competitively.
 9. On 2nd October, 2017, the CCO Administration and Devolution wrote a recommendation letter to the CPSB vide a letter referenced PF/NO: 20130035102 for consideration of renewal of the petitioner's contract or any other term that the CPSB may deem fit. In the letter, the CCO noted that throughout services, Mr. Cassian proved to be hard working, assertive and honest in carrying out his responsibilities as the sub-County Administrator stationed at Taveta sub-County
 10. On 24th October, 2017 vide a letter referenced GOV/TT/ST.24/NR/VOL.1 (14) the interim County Secretary informed the CCO Administration and Devolution on the extension of contracts for sub-County and Deputy sub-County Administrators for a further 6 months

following the resolution of the CPSB in a meeting held on 17th October, 2017 to enable continuity of service.

11. On 1st December, 2017, vide a letter dated CPSB/TTC/ST.25/VOL.2/37 the CPSB wrote to the petitioner informing him of the termination of his contract on 31st December 2017. In the letter, CPSB said that the Board in its full board meeting held on 30th November, 2017 rescinded the decision to extend the petitioners contract for further 6 months which was set to lapse on 30th April, 2018.
12. On 18th April, 2018, the CPSB vide a letter referenced CPSB/TTC/ST.8/VOL.3/18 informed the interim County Secretary of the recommendation by CHRAC for the approval of payment of special duty allowance as per the provisions of the Human Resource Policies and Procedures Manual of the Public Service Commission- May 2016 for the petitioner and other officers
13. A payment voucher of Ksh. 86,418.95 for the payment of special duty allowance to the petitioner was submitted.
14. On 21st January 2019, the petitioner wrote to the CCO Public Service and Devolution requesting for payment of 17 outstanding leave days.
15. In April 2019, the petitioner was paid a total of Ksh. 55,785.50 as payment of 15 days leave commutation. A payment voucher of the same was submitted.
16. In a letter dated 21st October, 2020 referenced GOV/TT/ST.1/NR/VOL.1/165, the County Secretary submitted as follows;
 - He admitted that the petitioner had been underpaid an acting allowance for the position of Director of Enforcement noting that; since he was acting on one job group above his substantive position but his payment was calculated by 15% and not 20% as per the Public Service-HR Manual, May 2016, Section C 14 (10). The County Government is therefore in the process of paying the difference of Ksh. 27,973.05.
 - On compulsory leave, the petitioner was paid his full salary since there is no compulsory leave in the HR manual and compulsory leave does not affect salary.
 - The officer was not found culpable and worked till the end of this contract on 31st December, 2017
 - The petitioner was paid all his dues including gratuity at the end of his contract

- On unpaid allowance and re-imbursements, the petitioner should provide supporting documents as request by the CCO Administration and Devolution vide a letter referenced GOV/AD/INT/VOL.2/382 dated 27th February, 2017 to enable the County Government to approve and ay the allowances.
- If the petitioner is not contented, he may address the matter though the relevant employment channels including CPSB, PSC and the court.

The CECM Public Service and Administration during her appearance with the Payroll Manager, informed the Committee as follows;

1. The petitioner cleared with the County Government on 17th January 2018. In the clearance certificate, the petitioner commented that the County Government owes him close to Ksh. 500,000 worth of unpaid claims and 17 days outstanding leave.

3.0: CHAPTER THREE: CONCLUSION AND RECOMMENDATIONS

3.1: CONCLUSION

AL The Committee on Justice, Constitutional, Legal Affairs, Labour, Employment, Trade Unions and Social Welfare concludes that;

1. The petitioner was engaged on 1st October, 2013 as sub-County Administrator Job Group 'Q' on a term of 4 years contract.
2. The petitioner was deployed as acting Head of Enforcement Job Group 'R' on 6th May, 2015
3. The petitioner was sent on compulsory leave as the acting Director of Enforcement on 28th August, 2017.
4. He acted as the Head of Enforcement for 31 months from 6th May, 2015 to 31st December, 2017.
5. The contract of the petitioner as sub-County Administrator ended on 31st December, 2017 which the Committee also assumes to be the end of the petitioner serving in acting capacity as Head of Enforcement.
6. The petitioner was paid his full salary while on compulsory leave from 28th August, 2017 to 31st December, 2017 when his contract ended
7. The petitioner was paid Ksh. 55,785.05 as 15 days leave commutation
8. The petitioner was paid Ksh. 86,418.95 as special duty allowance which is 15% of his basic salary for the six months
9. The petitioner has been paid his gratuity
10. The petitioner is yet to be paid Ksh. 27,973.05 as acting allowance in addition to the special duty allowance already paid as a deficit of the 5% not paid in the special
11. The petitioner is yet to be paid allowances for some activities carried out while in line of duty which are said to lack support documents to warrant payment
12. The employer irregularly let the petitioner be in acting position for 31 months contrary to the Public Service Human Resource Manual (May 2016) Section C14 (1) which requires that acting position should be for 6 months after which a substantive person should be engaged to take the position and that acting allowance will not be payable to an officer for more than 6 months.

13. While taking note of the provisions of the Public Service Human Resource Manual (May 2016) as indicated above, the Committee resolved that the irregularity committed by the employer in this case being the County Government should **not** be held against the petitioner who carried out his duties with due diligence as was required of him as indicated in the letter of recommendation dated 2nd October, 2017 referenced PF/No: 20130035102 by the CCO Administration and Devolution.

The Committee on Justice, Constitutional, Legal Affairs, Labour, Employment, Trade Unions and Social Welfare recommends that;

1. That the petitioner is entitled to a cumulative sum of Ksh. 636,916.60 as acting allowance for the 31 months he served as acting Head of Enforcement.
2. The petitioner be paid the difference between the special duty allowance paid and the acting allowance for the 31 months in which he acted as Head of Enforcement as indicated in recommendation 1 above.
3. The petitioner submits all support documents to enable the County Government to pay claims and allowances as directed by the County Chief Officer Devolution and Administration.
4. The County Public Service Board and the County Secretary should going forward adhere to the prescribed regulations, laws, schemes of service regarding timelines for acting capacity responsibilities.
5. The County Secretary and the payroll Manager submits to the County Assembly the report on the implementation of this resolution within 60 days upon the communication of this resolution.

for

CONFIRMED..... DATE.....

Frank Kichoi

9th Dec, 2020

HON. FRANK KICHOI, MCA/ CHAIRPERSON,
COMMITTEE ON JUSTICE, CONSTITUTIONAL, LEGAL AFFAIRS, LABOUR,
EMPLOYMENT, TRADE UNIONS & SOCIAL WELFARE

COMMITTEE ADOPTION OF THE REPORT

The Committee on Justice, Constitutional, Legal Affairs, Labour, Employment, Trade Unions and Social Welfare adopts the report as follows;

1. Hon. Frank Kichoi Mwakanyanga, MCA, Chairperson
2. Hon. Frank Jumapili Mmare, MCA, Vice-Chairperson
3. Hon. Jones Solomion Maghanga, MCA, Member
4. Hon. Abednego Mwanjala, MCA, Member
5. Hon. Joan Akinyi, MCA, Member
6. Hon. Justine Juma Mwamba, MCA, Member
7. Hon. Joyce Mwangoji, MCA, Member
8. Hon. Constance Mwandawiro Shungula, MCA, Member
9. Hon. Christopher Mwambingu, MCA, Member

