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REPUBLIC OF KENYA



PARLIAMENT OF KENYA

THE SENATE

TWELFTH PARLIAMENT

SIXTH SESSION

THE STANDING COMMITTEE ON HEALTH

REPORT ON THE PETITION CONCERNING APPOINTMENT OF THE CHIEF EXECUTIVE OFFICER FOR NATIONAL HOSPITAL INSURANCE FUND (NHIF)

Clerk's Chambers,
First Floor,
Parliament Buildings,

③ Hon. Speaker
You may approve for table
15/6/22

DC-EG

Recommended & Forwarded for Approval
15/06/22

COS.
Forwarded for processing, your approval
15/6/2022

Approved
16/06/2022

NAIROBI.
2022

JUNE,

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LIST OF ABBREVIATIONS AND ACRONYMS

CEO	Chief Executive Officer
FY	Financial Year
HR	Human Resource
IFRS	International Financial Reporting Standards
SOPs	Standard Operating Procedures

PREFACE

Establishment of the Committee

The Standing Committee on Health is established under standing order 218(3) of the Senate Standing Orders and is mandated to “*consider all matters relating to medical services, public health and sanitation.*”

Membership of the Committee

The Committee membership is composed of the following:

1. Sen. (Dr.) Michael Mbiti, MP -**Chairperson**
2. Sen. Mary Seneta, MP -**Vice-Chairperson**
3. Sen. (Prof.) Samson Ongeru, MP -Member
4. Sen. Beth Mugo, EGH, MP -Member
5. Sen. (Dr.) Abdullahi Ali, MP -Member
6. Sen. Beatrice Kwamboka, MP -Member
7. Sen. Millicent Omanga, MP -Member
8. Sen. Ledama Olekina, MP -Member
9. Sen. Fred Outa, CBS, MP -Member

Mr. Speaker,

On 23rd February, 2021, a petition by Dr. Alexander Irungu Wanjiru concerning the appointment of the Chief Executive Officer (CEO) for the National Hospital Insurance Fund (NHIF) was tabled before the Senate and committed to the Standing Committee on Health pursuant to Standing Order No. 226(1) of the Senate Standing Orders.

The petition alleged that the current CEO of NHIF was appointed to the position without undergoing a competitive recruitment process as envisaged by section 10(1) of the National Hospital Insurance Act No. 9 of 1998.

Mr. Speaker Sir,

The Petitioner was thus seeking the intervention of the Senate in investigating whether the NHIF Board followed due process in the recruitment and subsequent appointment of its CEO, Dr. Peter Kamunyu.

In the course of its investigations, the Committee established that the matter is *sub judice* as a suit has been filed in court, *Employment and Labour Relations Court, Petition No. 54 of 2022 filed by Okiya Omtatah Okoiti versus the Board of Management - National Hospital Insurance Fund, the Public Service Commission, Cabinet Secretary, Ministry of Health, the Hon. Attorney General and the Salaries & Remuneration Commission, the National Hospital Insurance Fund and Dr. Peter Kamunyo Gathege as interested parties*. As such, the Committee was constrained in tabling a complete report detailing its findings and determinations.

Mr. Speaker Sir,

The Standing Committee on Health wishes to thank the Offices of the Speaker and Clerk of the Senate for their support during the process of considering this petition. Mr. Speaker Sir, It is now my pleasant duty and privilege to present this report of the Standing Committee on Health, for consideration and approval by the House pursuant to Standing Order No. 226(2) of the Senate Standing Orders.

Signed.....



..... Date.....15/6/2022.....

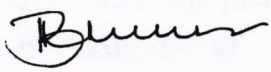
SEN. MBITO MICHAEL MALING'A, MP

CHAIRPERSON, STANDING COMMITTEE ON HEALTH

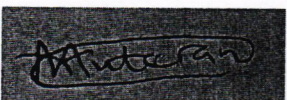
ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON HEALTH OF THE SENATE

We, the undersigned Members of the Standing Committee on Health of the Senate, do hereby append our signatures to adopt the Report-

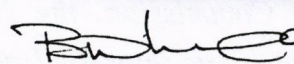
1. Sen. (Dr.) Michael Mbitu, MP

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2. Sen. Mary Seneta, MP

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3. Sen. Beth Mugo, EGH, MP



4. Sen. Beatrice Kwamboka, MP

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5. Sen. (Prof) Samson Ongeru, EGH, MP

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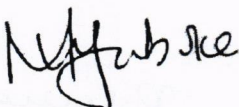
6. Sen. (Dr) Abdullahi Ali Ibrahim, MP

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7. Sen. Fred Outa, MP

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8. Sen. Millicent Omanga, MP

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9. Sen. Ledama Olekina, MP

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EXECUTIVE SUMMARY

On 23rd February, 2021, a petition by Dr. Alexander Irungu Wanjiru concerning the appointment of the Chief Executive Officer (CEO) for the National Hospital Insurance Fund (NHIF) was tabled before the Senate and committed to the Standing Committee on Health pursuant to Standing Order No. 226(1) of the Senate Standing Orders.

The petition alleged that the current CEO of NHIF was appointed to the position without undergoing a competitive recruitment process as envisaged by section 10(1) of the National Hospital Insurance Act No. 9 of 1998, and sought the Senate's intervention in investigating the matter. To this effect, the petitioner averred that -

1. The NHIF Board advertised for a vacancy in the position of Chief Executive Officer in July 2019, and invited shortlisted candidates for interviews on 17th January 2020 at their boardroom on 10th floor of NHIF building;
2. Sometime in February 2020, the NHIF Board chairperson Mrs. Hannah Muriithi and Health Principal Secretary Mrs. Susan Mochache informed the National Assembly Health Committee that the interview process conducted on 17th January 2020 was conclusive, and that they forwarded names of the top three candidates to the outgoing Health Cabinet Secretary, and that the board was waiting for the appointment of a substantive Health Cabinet Secretary to appoint the NHIF CEO from those three names;
3. Without canceling the initial recruitment process which was conclusive, the NHIF Board re-advertised the position of CEO on 24th February 2020 and changed some eligibility requirements by deleting the expression "relevant business field" and replacing it with the word "Medicine";
4. The NHIF Board held a "Special Board Meeting On Recruitment Of The Chief Executive Officer" on Friday, 20th March 2020, listed among the agenda was "Report from the Secretariat", and in attendance was Dr. Mercy Mwangangi "(on Special Invitation)", Chief Administrative Secretary-Ministry of Health;
5. The NHIF Board proceeded to handpick and appoint Dr. Peter Kamunyo Gathege as the new NHIF CEO without subjecting him to competitive recruitment process, vide a public notice dated 9th April 2020;

6. The NHIF Board refused to appoint as CEO the person who emerged top at the interviews, despite specific provisions of the Constitution and Statutes, which require appointments for such positions in state corporations to be competitive and on merit;
7. The NHIF Board violated its own NHIF Act as amended in 2014, Section 10 (1) which states that: *"There shall be a Chief Executive Officer of the Board who shall be recruited competitively by the Board..."*.
8. The actions of NHIF Board were deliberate and contemptuous violation of the express provisions of the Constitution, Statutes and Public Service Management Guidelines, and are conveniently designed to achieve undeclared collateral purposes far from public interest;
9. The matter was of extreme public interest because of the fraud schemes and public suffering associated with such unlawful actions in previous decisions by the NHIF Board and its Management;
10. The petitioner was apprehensive that unless this petition is heard and determined immediately by this Honorable Senate, Dr. Peter Kamunyo Gathege will without merit, and unlawfully continue to occupy and execute the mandate of the NHIF CEO, and may do things that the public at large stand to suffer irreparable loss;
11. The Honorable Senate has the jurisdiction to protect the Constitution, rule of law, public interest and safeguard the right of the Kenyan who merits to be the CEO of NHIF by the outcome of the competitive recruitment process which started with advertisement on July 2019 and concluded with interviews on 17th January 2020;
12. The Petitioner had made the best efforts to have these matters addressed by the relevant authorities all of which had failed to respond.
13. None of the issues raised in the Petition were pending in any court of Law, or constitutional or any legal body.

In his prayers, the petitioner requested that the Senate:

1. Investigate into any unlawful and discriminative activities perpetrated by the NHIF Board in the course of this recruitment process;
2. Determine whether, where persons met the eligibility threshold set in the July 2019 advertisement for the position of CEO for NHIF, the Board had the power under any written law to decline to appoint as CEO the top candidate from those it interviewed for the position, then handpick and appoint a person who was never part of the competitive

recruitment process as it has done;

3. Confirm the competitive recruitment process that started with advertisement of the vacancy in July 2019 to include *inter alia*, list of applicants, list of shortlisted candidates, list of interviewed candidates on 17th January 2020 and marks scored by each candidate, names and scores of the three candidates forwarded to Health Cabinet Secretary for appointment;
4. Ascertain any competitive recruitment process that Dr. Peter Kamunyo Gathege participated in, to include *inter alia*, advertisement of the vacancy, list of applicants, list of shortlisted candidates, marks scored by each candidate, minutes of the board meeting for the interview and the letter from the Ministry of Health approving and/or appointing Dr. Peter Kamunyo Gathege to the position of CEO of NHIF;
5. Determine the proceedings and resolutions of the NHIF Board Special Meeting of Friday, 20th March 2020, and whether the action to handpick and appoint Dr. Peter Kamunyo Gathege as the NHIF CEO promoted competitiveness, fairness and merit, and establish the role of Dr. Mercy Mwangangi in that meeting;
6. Issue orders quashing the tailor-made advertisement of 24th February 2020 since the competitive recruitment process had already been concluded, quash the appointment of Dr. Peter Kamunyo Gathege as the CEO of NHIF, and compel the NHIF Board of Management to appoint the topmost candidate from the competitive recruitment process as the new CEO of NHIF;
7. Be pleased to issue any further order(s) that it shall deem fit and necessary to give effect to the cause of justice, fairness, merit and safeguard public interest.

In considering the Petition, the Committee made the following observations:

- 1) The Committee noted that according to the submissions made by the Ministry of Health (MoH), due processes and procedures were followed in undertaking recruitment of the CEO of NHIF, including the publication of a public advertisement in the Standard and Daily Nation newspapers in July, 2019; and the subsequent shortlisting and interviews of candidates. However, that the position was subsequently re-advertised to allow for the inclusion of persons with medical qualifications. And further, that following the readvertisement, due processes were again followed including longlisting, shortlisting, interviews and formal appointment;
- 2) The Committee further observed that according to his testimony, the current CEO, NHIF, duly responded to a newspaper advertisement dated Monday, February, 24th,

2020, for the position of Chief Executive Officer of the National Hospital Insurance Fund, having found that he met the necessary requirements. He subsequently hand delivered his application to the Office of the Chairperson of the NHIF Board on 9th March, 2020. Further, that he was subjected to an interview process by Members of the NHIF Board on 20th March, 2022, and having been successful in the interview, was subsequently given a letter of appointment.

- 3) Whereas the allegations raised by the Petitioner were serious, the evidence provided to support them was circumstantial and not properly substantiated.
- 4) The matter was *sub judice* as a suit has been filed in court, *Employment and Labour Relations Court, Petition No. 54 of 2022 filed by Okiya Omtatah Okoiti versus the Board of Management - National Hospital Insurance Fund, the Public Service Commission, Cabinet Secretary, Ministry of Health, the Hon. Attorney General and the Salaries & Remuneration Commission, the National Hospital Insurance Fund and Dr. Peter Kamunyo Gathege as interested parties*. As such, the Committee was constrained in proceeding further with the investigation.

CHAPTER ONE

INTRODUCTION

1. Background

On 23rd February, 2021, a petition by Dr. Alexander Irungu Wanjiru concerning the appointment of the Chief Executive Officer (CEO) for the National Hospital Insurance Fund (NHIF) was tabled before the Senate and committed to the Standing Committee on Health pursuant to Standing Order No. 226(1) of the Senate Standing Orders.

2. Allegations Raised in the Petition

The petition alleged that the current CEO of NHIF was appointed to the position without undergoing a competitive recruitment process as envisaged by section 10(1) of the National Hospital Insurance Act No. 9 of 1998, and sought the Senate's intervention in investigating the matter. To this effect, the petitioner averred that -

1. The NHIF Board advertised for a vacancy in the position of Chief Executive Officer in July 2019, and invited shortlisted candidates for interviews on 17th January 2020 at their boardroom on 10th floor of NHIF building;
2. Sometime in February 2020, the NHIF Board chairperson Mrs. Hannah Muriithi and Health Principal Secretary Mrs. Susan Mochache informed the National Assembly Health Committee that the interview process conducted on 17th January 2020 was conclusive, and that they forwarded names of the top three candidates to the outgoing Health Cabinet Secretary, and that the board was waiting for the appointment of a substantive Health Cabinet Secretary to appoint the NHIF CEO from those three names;
3. Without canceling the initial recruitment process which was conclusive, the NHIF Board re-advertised the position of CEO on 24th February 2020 and changed some eligibility requirements by deleting the expression " relevant business field" and replacing it with the word " Medicine" ;
4. The NHIF Board held a "Special Board Meeting On Recruitment Of The Chief Executive Officer" on Friday, 20th March 2020, listed among the agenda was "Report

- from the Secretariat”, and in attendance was Dr. Mercy Mwangangi “(on Special Invitation)”, Chief Administrative Secretary-Ministry of Health;
5. The NHIF Board proceeded to handpick and appoint Dr. Peter Kamunyo Gathege as the new NHIF CEO without subjecting him to competitive recruitment process, vide a public notice dated 9th April 2020;
 6. The NHIF Board refused to appoint as CEO the person who emerged top at the interviews, despite specific provisions of the Constitution and Statutes, which require appointments for such positions in state corporations to be competitive and on merit;
 7. The NHIF Board violated its own NHIF Act as amended in 2014, Section 10 (1) which states that: *“There shall be a Chief Executive Officer of the Board who shall be recruited competitively by the Board...”*.
 8. The actions of NHIF Board were deliberate and contemptuous violation of the express provisions of the Constitution, Statutes and Public Service Management Guidelines, and are conveniently designed to achieve undeclared collateral purposes far from public interest;
 9. The matter was of extreme public interest because of the fraud schemes and public suffering associated with such unlawful actions in previous decisions by the NHIF Board and its Management;
 10. The petitioner was apprehensive that unless this petition is heard and determined immediately by this Honorable Senate, Dr. Peter Kamunyo Gathege will without merit, and unlawfully continue to occupy and execute the mandate of the NHIF CEO, and may do things that the public at large stand to suffer irreparable loss;
 11. The Honorable Senate has the jurisdiction to protect the Constitution, rule of law, public interest and safeguard the right of the Kenyan who merits to be the CEO of NHIF by the outcome of the competitive recruitment process which started with advertisement on July 2019 and concluded with interviews on 17th January 2020;
 12. The Petitioner had made the best efforts to have these matters addressed by the relevant authorities all of which had failed to respond.
 13. None of the issues raised in the Petition were pending in any court of Law, or constitutional or any legal body.

3. Prayers to the Senate

In his prayers, the petitioner requested that the Senate:

1. Investigate into any unlawful and discriminative activities perpetrated by the NHIF

Board in the course of this recruitment process;

2. Determine whether, where persons met the eligibility threshold set in the July 2019 advertisement for the position of CEO for NHIF, the Board had the power under any written law to decline to appoint as CEO the top candidate from those it interviewed for the position, then handpick and appoint a person who was never part of the competitive recruitment process as it has done;
3. Confirm the competitive recruitment process that started with advertisement of the vacancy in July 2019 to include *inter alia*, list of applicants, list of shortlisted candidates, list of interviewed candidates on 17th January 2020 and marks scored by each candidate, names and scores of the three candidates forwarded to Health Cabinet Secretary for appointment;
4. Ascertain any competitive recruitment process that Dr. Peter Kamunyo Gathege participated in, to include *inter alia*, advertisement of the vacancy, list of applicants, list of shortlisted candidates, marks scored by each candidate, minutes of the board meeting for the interview and the letter from the Ministry of Health approving and/or appointing Dr. Peter Kamunyo Gathege to the position of CEO of NHIF;
5. Determine the proceedings and resolutions of the NHIF Board Special Meeting of Friday, 20th March 2020, and whether the action to handpick and appoint Dr. Peter Kamunyo Gathege as the NHIF CEO promoted competitiveness, fairness and merit, and establish the role of Dr. Mercy Mwangangi in that meeting;
6. Issue orders quashing the tailor-made advertisement of 24th February 2020 since the competitive recruitment process had already been concluded, quash the appointment of Dr. Peter Kamunyo Gathege as the CEO of NHIF, and compel the NHIF Board of Management to appoint the topmost candidate from the competitive recruitment process as the new CEO of NHIF;
7. Be pleased to issue any further order(s) that it shall deem fit and necessary to give effect to the cause of justice, fairness, merit and safeguard public interest.

CHAPTER TWO

2.1. LEGAL AND POLICY PROVISIONS RELATING TO THE PETITION

1. Role and Mandate of Parliament

Articles 94 as read together with Article 96 of the Constitution provides for the role of Parliament in general, and the Senate in particular. Generally, the Houses of Parliament exercise the legislative mandate of the people, deliberate on matters of national interest and oversee the exercise of power by other arms of government.

2. Right to Petition Parliament

The right to petition Parliament is provided for under Article 119 of the Constitution, which provides as follows:-

“Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. Parliament shall make provision for the procedure for the exercise of this right.”

Further, Standing Order 226 the Senate Standing Order outlines the procedure for the committal of a petition to a Committee and transmission of its decision to the Petitioner. The Standing Committee on Health is mandated to consider all matters related to medical services, public health and sanitation. Further, the Petition to Parliament (Procedure) Act, 2012 and the Standing Orders of the Senate provide for the procedure to be followed in the submission, processing and consideration of a Petition.

3. Right to the Highest Attainable Standard of Health

Article 43 (1)(a) of the Constitution guarantees every person the right to *‘the highest attainable standard of health, which includes the right to health care services, including reproductive health care’*.

4. Analysis of the Law in regard to the Prayers

Section 10(1) of the National Hospital Insurance Act No. 9 of 1998 mandates the Board to appoint a CEO of the Fund, through a competitive process, on such terms and

conditions as the Board may, with the advice of the Salaries and Remuneration Commission, determine.

CHAPTER THREE

COMMITTEE PROCEEDINGS

In conducting its investigations, on diverse dates, the Committee met with key parties in relation to the petition including:

- 1) The Petitioner,
- 2) The Ministry of Health
- 3) The National Health Insurance Fund

The minutes of the above meetings have been attached to this report as Annex 3.

Further to the above, written memoranda as submitted to the Committee by the Ministry of Health, the National Health Insurance Fund and the petitioner have been annexed to this report for reference purposes.

CHAPTER FOUR

COMMITTEE DETERMINATIONS

In respect of the prayer made in the petition, the Committee made the following observations:

- 1) The Committee noted that according to the submissions made by the Ministry of Health (MoH), due processes and procedures were followed in undertaking recruitment of the CEO of NHIF, including the publication of a public advertisement in the Standard and Daily Nation newspapers in July, 2019; and the subsequent shortlisting and interviews of candidates. However, that the position was subsequently re-advertised to allow for the inclusion of persons with medical qualifications. And further, that following the readvertisement, due processes were again followed including longlisting, shortlisting, interviews and formal appointment;
- 2) The Committee further observed that according to his testimony, the current CEO, NHIF, duly responded to a newspaper advertisement dated Monday, February, 24th, 2020, for the position of Chief Executive Officer of the National Hospital Insurance Fund, having found that he met the necessary requirements. He subsequently hand delivered his application to the Office of the Chairperson of the NHIF Board on 9th March, 2020. Further, that he was subjected to an interview process by Members of the NHIF Board on 20th March, 2022, and having been successful in the interview, was subsequently given a letter of appointment.
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