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THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (THIRD SESSION)
PUBLIC PETITIONS COMMITTEE

*Approved
JSS
11/04/24*

REPORT ON -
THE CONSIDERATION OF THE PUBLIC PETITION NO. 34 OF 2023 REGARDING THE
DEREGISTRATION AND DISMISSAL OF MR. JOSEPH KIMELI CHEBII BY THE TEACHERS
SERVICE COMMISSION (TSC)

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 10 APR 2024	DAY: Thursday
TABLED BY:	Hon. Janet Sireni Njiru (Chairperson, Public Petitions Committee)
CLERK AT RE-TABLE: APRIL 2024	Shibuko

Directorate of Legislative & Procedural Services
Clerk's Chambers
Main Parliament Buildings
NAIROBI



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ACRONYMS

- TSC - Teachers Service Commission
- CBS - Chief of the Burning Spear
- CEO - Chief Executive Officer
- CORT - Cord of Regulations for Teachers

CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Public Petition No. 34 of 2023 regarding the de-registration and dismissal of Mr. Joseph Kimeli Chebii by the Teachers Service Commission. The petition was presented to the House pursuant to Standing Order No. 225 (2) (b) by the Member for Marakwet West, the Hon. Timothy Kipchumba Toroitich, MP on 27th July, 2023.

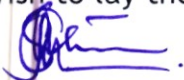
The Committee considered the Petition and observed that the petitioner prayed that the National Assembly through the public petitions committee among others inquire into the matter to secure the reversal of Mr. Chebii's dismissal and reinstatement and re-registration by the Teachers Service Commission, as well as his remittance of all his dues 2x from the date of his dismissal. The Petitioner further prayed that there was a need to review and strengthen TSC's policies on disciplinary procedures and enact legislation or amend existing laws on disciplinary procedures to provide better safeguards for teachers against arbitrary and unjust dismissal based on unfounded allegations.

The Committee considered the Petition and observed that Mr. Joseph Chebii was a teacher registered and employed by the TSC until 4th June 2015 when he was dismissed and removed from the Register following accusations of immoral misconduct with his student (minor). The Committee further observed that Mr. Chebii was taken through a fair and lawful disciplinary process in line with the Constitution, Employment Act, and the Code of Regulations before his dismissal by the Teachers Service Commission.

The Committee recommended that Mr. Chebii was taken through a fair and lawful disciplinary process in line with the Constitution, Employment Act, and the Code of Regulations hence there are no grounds for reversal of the dismissal decision. Further, the aggrieved teacher could apply for reinstatement to the register of teachers under Section 31 of the Act and Regulation 36 of the Teachers Service Commission Code of Regulations for Teachers.

The Committee appreciates the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support without which its work would not have been possible. The Chairperson expresses gratitude to the Committee Members for their devotion and commitment to duty during the consideration of the Petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to lay the Report on the Table of the House.



HON. NIMROD MBITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date.....11-04-2024.....

PART ONE

1. PREFACE

1.1. Establishment and Mandate of the Committee

The Public Petitions Committee is established pursuant to the provisions of Standing Order 208A and is mandated to -

- a) consider all public petitions tabled in the House;
- b) make such recommendations as may be appropriate concerning the prayers sought in the petitions;
- c) recommend whether the findings arising from consideration of a petition should be debated; and
- d) advise the House and report on all public petitions committed to it.

PART ONE

1. PREFACE

1.1. Establishment and Mandate of the Committee

The Public Petitions Committee is established pursuant to the provisions of Standing Order 208A and is mandated to -

- a) consider all public petitions tabled in the House;
- b) make such recommendations as may be appropriate concerning the prayers sought in the petitions;
- c) recommend whether the findings arising from consideration of a petition should be debated; and
- d) advise the House and report on all public petitions committed to it.

1.2. Committee Membership

The Public Petitions Committee was constituted in October 2022 and comprises of the following Members:

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.

Kitui East Constituency

United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.
Turbo Constituency

United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.
Mavoko Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Ernest Kivai Ogesi Kagesi, M.P.
Vihiga Constituency

Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency

United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency
United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.
Awendo Constituency

Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere North Constituency

Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South

Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.
Machakos Town Constituency

Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.
Taveta Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency

Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency

United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency

**Wiper Democratic Movement-Kenya
(WDM-K)**

1.3. Committee Secretariat

The Public Petitions Committee is facilitated by the following secretariat:

Lead Clerk

Mr. Ahmed Kadhi

Senior Clerk Assistant/Head of Secretariat

Ms. Miriam Modo

First Clerk Assistant

Mr. Willis Obiero

Third Clerk Assistant

Ms. Anne Shibuko

First Clerk Assistant

Ms. Patricia Gichane

Legal Counsel II

Mr. Martin Sigei

Research Officer III

Mr. Roseline Ndegi

Principal Sergeant at Arms

Felistus Muiya

Public Communications Officer

Mr. Calvin Karingo

Media Relations Officer

Mr. Peter Mutethia

Audio Officer

PART TWO

2. PUBLIC PETITION NO. 34 OF 2023 REGARDING THE DEREGISTRATION AND DISMISSAL OF MR. JOSEPH KIMELI CHEBII BY THE TEACHERS SERVICE COMMISSION (TSC)

2.1. INTRODUCTION

1. The Petition was brought before the House by Hon. Timothy Kipchumba Toroitich, MP on behalf of Mr. Joseph Kimeli Chebii a resident of Marakwet West Constituency on 27th July, 2023.
2. The petitioner claims that Mr. Kimeli was wrongfully dismissed by the Teachers Service Commission for allegations of defilement of one of his students.
3. He stated that Mr. Chebii was interdicted on 14th May 2014 for having carnal knowledge with one of his pupils, he was then charged in Iten Magistrates Court on the 23rd of May 2014.
4. Further, the Teachers Service Commission conducted a disciplinary hearing for Mr. Chebii through their County Director at Eldoret, whereby he was later dismissed and de-registered on 13th July 2015. Mr. Chebii lodged an appeal on the disciplinary proceedings but was unsuccessful.
5. The petitioner claims that the Teachers Service Commission did not investigate the allegations and thus the dismissal of Mr. Chebii was a grave injustice, as the complainant or defiled minor gave birth to a child that was not Mr. Chebii's, as per the DNA analysis conducted on the 21st June 2017 by the Government Chemist.
6. Therefore, the court case was dismissed and Mr. Chebii was acquitted on the 18th of January 2018 despite that the Teachers Service Commission had declined to reinstate and re-register him.
7. To the best of the petitioner's knowledge, the matter presented in the petition was not pending before any Court of law or any constitutional or legal body.

2.2 PETITIONER'S PRAYERS

The Petitioner prayed that the National Assembly through the Public Petitions Committee: -

8. Investigate the matter with a view of declaring the dismissal and deregistration of Mr. Chebii as unfair, unlawful and irregular;
9. Inquires into the matter to secure the reversal of his dismissal, his reinstatement and re-registration by the Teachers Service Commission, as well as his remittance of all his dues from the date of his dismissal;
10. Reviews and strengthens Teachers Service Commission policies on disciplinary procedures and to ensure the allegations of sexual misconduct involving teachers and students are investigated thoroughly and dealt with in a fair and just manner; and
11. Considers enacting legislation or amending existing laws on disciplinary procedures and to provide better safeguards for teachers against arbitrary and unjust dismissal based on unfounded allegations thereby upholding their rights to due process and a fair hearing.

PART THREE

3.0 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1 SUBMISSIONS BY THE PETITIONER, MEMBER FOR MARAKWET EAST (THE HON. TIMOTHY KIPCHUMBA, MP)

On Wednesday, 30th August, 2023, the Member for Marakwet West Constituency (Hon. Timothy Kipchumba, MP) accompanied by the petitioner, Mr. Joseph Chebii, appeared before the Committee and submitted as follows -

12. Mr. Chebii Joseph's petition revolved around his employment problems stemming from his appointment as Secretary to the Constituency Development Fund Committee (CDFC). His case centred on his alleged removal due to the discontent of his predecessor, Isabella Kaino.
13. The disciplinary proceedings against Chebii, initiated in 2014 and overseen by Kaino, raising suspicions of bias. Chebii contends that the charges brought against him were fabricated as a result of personal vendettas.
14. Mr. Joseph Chebii was dismissed in 2014 for allegedly having sexual relations with a pupil. Subsequently, Chebii's name was removed from the teacher's register on the same grounds despite various appeals on the decision of the Commission.
15. DNA evidence later indicated that Chebii was not the father of the complainant's child. He was acquitted by a Magistrate's Court in 2018, and an attempt to revise the case in the High Court was unsuccessful.
16. Chebii's petition asserts several violations of due process during the disciplinary proceedings which included denial of fair representation and cross-examination opportunities, which infringed upon his right to a fair hearing, charges against him were inconsistent. They lacked clarity, and the investigation process was generally flawed.
17. The Petitioner further averred that the Teachers Service Commission (TSC) shifted the burden of proof to Chebii, violating his constitutional rights and therefore called for the overturning of TSC's decision based on these grounds.
18. The petition recommends reforms to the disciplinary procedure for teachers, suggests a clear definition of "immoral conduct," the protection of human rights during proceedings, putting in place independent investigative panels to avoid bias, timely case resolution, an appeals mechanism, and a provision in the law for reviewing cases with new evidence.

19. Mr. Chebii also prays for the re-opening of the case to present DNA evidence, invoking the Court of Appeal's decision in **Teachers Service Commission vs Joseph Wambugu Nderitu (2016) eKLR**.
20. To the best of his knowledge, the matter was not pending before any court law, constitutional or legal body.

3.2. SUBMISSIONS BY THE TEACHERS SERVICE COMMISSIONS (TSC)

On Wednesday, November, 15, 2023, the Chief Executive Officer of the Teachers Service Commission (TSC), Dr. Nancy Macharia, appeared before the Committee and submitted as follows-

21. The Teachers Service Commission (TSC) was established under Article 237(1) of the Constitution as a Constitutional Commission with primary functions being to among others, register teachers, recruit and employ registered teachers, promote and transfer teachers, assign teachers for service in any public school or institution and exercise disciplinary control over teachers and terminate the employment of teachers engaged in public service.
22. The Commission is further mandated under Article 237(3) of the Constitution to review the standards of education and training of persons entering the teaching service, review the national demand and the supply of teachers and advise the National government on matters relating to the teaching profession.
23. The Commission is also bound by the provisions of Chapters 6, 10, and 232 of the Constitution that provide for the integrity of public officers, national values and principles of governance, and the values and principles of public service.
24. In discharging the mandate to discipline teachers, the Commission is guided by its duty under Article 53 to protect learners from any form of abuse including sexual abuse, and always consider the best interest of the learners.
25. Further the Commission is alive to the right of every learner to access basic education provided under Article 43 of the Constitution. To this end, the Commission has a role in ensuring the actualization of this right by creating a conducive and safe environment for learners.
26. To better execute its mandate, the National Assembly enacted the Teachers Service Commission Act, of 2012, and the Code of Regulations for Teachers (CORT) 2015. Part IX of the CORT extensively provides for discipline procedures that are in tandem with the principles of fair hearing as envisioned in the Constitution and the relevant legislation.
27. Under the Code of Regulations for Teachers, 2015, the TSC Act, 2012 and the Employment Act, the Commission has the power to institute disciplinary proceedings against any of its employees who has or is alleged to have violated

the terms and conditions of service as prescribed under the Code and may ultimately terminate the services of such employees after following the due process of law regardless of the employee's criminal proceedings.

28. Mr. Joseph Chebii was a teacher registered and employed by the Commission until 4th June 2015 when he was dismissed and removed from the Register following accusations of immoral misconduct in that he had sexual intercourse with M. J. who was a standard 6 pupil at Kibirech Primary School in Marakwet West Sub County.
29. Before dismissal from service, the Commission in line with its mandate undertook a fair and procedural disciplinary process that included -
 - a) Collection of statements from the victim and the teacher;
 - b) Conducting independent investigations;
 - c) Serving the teacher with an interdiction letter;
 - d) Granting the teacher an opportunity to respond to the allegations;
 - e) Granting the teacher an opportunity to be heard in person;
 - f) Granting the teacher an opportunity to cross-examine witnesses; and
 - g) Granting the teacher the right of Appeal.
30. During the disciplinary process, witnesses including the victim and her parents were consistent in their evidence that indeed Mr. Chebii had abused the victim. Mr. Chebii on the other hand, did not present any evidence/material to disapprove the allegations. The elaborate hearing culminated in the considered decision to dismiss and deregister him.
31. Mr. Chebii formally appealed the decision and subsequently, the Teachers Service Review Committee considered the appeal, evaluated the facts, and the circumstances of the case, and upheld the earlier decision to have him dismissed and deregistered.
32. Further, Mr. Chebii was charged in a criminal court with the offence of defilement contrary to the Sexual Offences Act and was acquitted based on the DNA test that showed he was not the biological father of the victim's child in **Criminal Case 862 of 2014: State vs. Joseph Kimeli Chebii.**
33. However, the Commission was not a party to the court process and neither participated in the criminal court case. The criminal proceedings were instigated and prosecuted by the police pursuant to the provisions of the Penal Code, the Sexual Offences Act, and the Police Act which were in no way to impact or oust the administrative action undertaken by TSC under the TSC Act and Employment Act.

34. On the allegations of acquittal by the criminal case, the Commission specifically states -

- a) *While at the court, Mr. Chebii was accused of a criminal offence of defilement under the Penal Code as read with the Sexual Offences Act, before the employer, he was accused of immoral behaviour as provided by the Teachers Service Commission Act and the Code of Regulations for Teachers;*
- b) *In the criminal matter the suit was subjected to a proof beyond "reasonable doubt" standard. This contrasts the scenario that followed the discipline process by the Commission under which the offence as crafted and prosecuted is a professional one and the expected standard of proof is on a "balance of probability";*
- c) *The criminal charges against the teacher were inherently different and distinguishable from the charge of professional misconduct and/or immoral behaviour preferred by the Commission;*
- d) *The substance of the criminal charge was centred on "defilement" which was neither canvassed nor issued in the disciplinary case before the Commission;*
- e) *The Commission's mandate to exercise disciplinary control over teachers is limited by law to the professional culpability of its employees and does not extend to criminal matters provided for under the Penal Code;*
- f) *Under Section 12 of the TSC Act Cap 212 the Commission is exempted from strict adherence to the conventional rules of evidence and procedural technicalities while discharging its administrative mandate;*
- g) *The threshold for the standard of proof in Criminal matters is not similar and/or comparable to the standard of proof expended in matters before tribunals exercising quasi-judicial functions such as that constituted under the TSC Act;*
- h) *The rigours of criminal trial and cases of professional misconduct are distinct and the findings of each cannot be used to determine and/or influence the other; and*
- i) *The Respondent's principal objective is enforcement of the CORT and not punishment for criminal offences.*

35. In the circumstances, the findings of the criminal court could not salvage an employment contract which had inevitably been broken and the Commission being a public institution had a duty to maintain public morality, integrity and

nobility of the teaching profession and the decision meted on Mr. Chebii was proportionate to the offence committed.

36. Further, while the procedure employed in prosecuting the criminal matter was based on the strict rules and evidence, the administrative process by the Commission was on general evidence, statements and circumstances facts pursuant to **Regulation 139(1)(d) of the Code of Regulations for Teachers**.
37. From the foregoing, it is obvious on the grounds of law and facts that the administrative processes on discipline by quasi-judicial bodies such as the Commission are distinct from the criminal processes.
38. The refusal to review the disciplinary decision based on the Criminal Court's finding is neither isolated nor peculiar to Mr. Chebii's case. The Court of Appeal has equally held that employers are not bound by the findings of criminal courts in cases of professional misconduct for instance Civil Appeal 29 of 2016: Kenya Power & Lighting Company Limited
39. Therefore, it was the position of TSC that Mr. Chebii was taken through a fair and lawful disciplinary process in line with the Constitution, Employment Act, and the Code of Regulations. Further, there are no grounds for reversal of the dismissal decision.
40. Notwithstanding the above, Section 31 of the Teachers Service Commission Act allows Mr. Chebii to apply for reinstatement of his name to the Register of Teachers.

PART FOUR

4.0 COMMITTEE OBSERVATIONS

Upon hearing from the Petitioner and other witnesses, the Committee observed that -

41. Mr. Joseph Chebii was a teacher registered and employed by the TSC until 4th June 2015 when he was dismissed and removed from the Register following accusations of immoral misconduct in that he had sexual intercourse with M. J. who was a standard 6 pupil at Kibirech Primary School in Marakwet West Sub County. Subsequently, Chebii's name was removed from the teacher's register on the same grounds despite various appeals on the decision of the Commission.
42. Mr. Chebii was taken through a fair and lawful disciplinary process in line with the Constitution, Employment Act, and the Code of Regulations. Further, there were no grounds for reversal of the dismissal decision against him.
43. During the disciplinary process, witnesses including the victim and her parents were consistent in their evidence that indeed Mr. Chebii had abused the victim. Mr. Chebii on the other hand, did not present any evidence/material to disapprove the allegations which culminated in the considered decision to dismiss and deregister him.
44. DNA evidence later indicated that Chebii was not the father of the complainant's child. He was acquitted by a Magistrate's Court in 2018, and an attempt to revise the case in the High Court was unsuccessful.
45. Before dismissal from service TSC in line with its mandate undertook a fair and procedural disciplinary process that included -
 - a) collection of statements from the victim and the teacher;
 - b) conducting independent investigations;
 - c) serving the teacher with an interdiction letter;
 - d) granting the teacher an opportunity to respond to the allegations;
 - e) granting the teacher an opportunity to be heard in person;
 - f) granting the teacher an opportunity to cross-examine witnesses; and
 - g) granting the teacher, the right to appeal.
46. Mr. Chebii formally appealed the decision and subsequently, the Teachers Service Review Committee considered the appeal, evaluated the facts, and the circumstances of the case, and upheld the earlier decision to have him dismissed and deregistered.

47. Mr. Chebii was charged in a criminal court with the offence of defilement contrary to the Sexual Offences Act and was acquitted based on the DNA test that indicated that he was not the biological father of the victim's child in **Criminal Case 862 of 2014: State vs. Joseph Kimeli Chebii.**
48. The aggrieved teacher did not lodge or institute an application for reinstatement of his name to the register of teachers within eighteen months from the date of removal of the name from the register in compliance with Section 31 of the TSC Act.
49. The aggrieved teacher could seek for reinstatement of his name to the register of teachers and secure employment elsewhere but he cannot be re-employed by the TSC.
50. TSC disregarded the decision of the court as the orders did not direct TSC on any matter unlike if the aggrieved teacher would have appealed to the Employment Court where such matters are resolved.

PART FIVE

5.0 ANALYSIS OF ISSUES FOR DETERMINATION AS PER THE PRAYERS IN THE PETITION

Upon hearing from the Petitioners and other witnesses, the Committee makes a determination on prayers sought in the Petition as follows -

Prayer No. 1: *Investigate the matter with a view of declaring the dismissal and deregistration of Mr. Chebii as unfair, unlawful and irregular;*

51. The Committee -

- a) summoned the CEO of the Teachers Service Commission (TSC), Dr. Nancy Macharia, who appeared before the Committee on Wednesday, November, 15, 2023 and apprised the Committee of the matter;
- b) notes that TSC is a Constitutional body bound by the provisions of Chapters 6, 10, and 232 of the Constitution that provide for the integrity of public officers, national values and principles of governance, and the values and principles of public service;

- a) notes that in discharging the mandate to discipline teachers, TSC is guided by its duty under Article 53 to protect learners from any form of abuse including sexual abuse, and always consider the best interest of the learners;
- b) further notes that Article 43 of the Constitution provides for the right to basic education to all Kenyan children. To this end, TSC has a role in ensuring the actualization of this right by creating a conducive and safe environment for learners;
- c) notes that the National Assembly enacted the Teachers Service Commission Act, of 2012, and the Code of Regulations for Teachers (CORT) 2015. Part IX of the CORT extensively provides for discipline procedures that are in tandem with the principles of fair hearing as envisioned in the Constitution and the relevant legislation;
- d) In the circumstances, notes that, the findings of the criminal court could not salvage an employment contract which had inevitably been broken and the Commission being a public institution had a duty to maintain public morality, integrity and nobility of the teaching profession and the decision meted on Mr. Chebii was proportionate to the offence committed.
- e) notes that in the Court of Appeal case of *Teachers Service Commission versus Joseph Wambugu Nderitu (2016) eKLR* a three-judge bench held as follows -

Turning to the applicable principles of law, there is no doubt that the learned Judge relied on the decision of a court of coordinate jurisdiction in the case of Mathew Kipchumba Koskei versus Baringo Teachers SACCO [2013] eKLR for the holding that where the employer has initiated and concluded disciplinary proceedings on account of misconduct which also has substantially been subject of a criminal process in which the employee is exculpated or found innocent, the employer is entitled to set aside or rescind any punitive administrative decision he may have taken against such an employee and in addition to the above meet all remedies available in law to such an employee to restore him to the position he would have been if the punitive administrative decision not been taken against him. The Mathew Kipchumba case (supra) was preferred amongst many others from the Industrial Court stating the contrary view. No reason was given by the learned Judge as to why he preferred the proposition in the Mathew Kipchumba Koskei case (Supra) over those of Daniel Kamei (Supra) Clement Mutiso Muiinde (Supra) and Joseph Wambugu Kimanju (Supra) among

numerous others on the same point all of which re-echoed the principle that professional disciplinary proceedings are distinct from the criminal proceedings even if they emanate from the same set of circumstances.

This Court has crystalized the above position in a number of its pronouncements. Waki JA in the case of the Hon. The Attorney General and another versus Maina Githinji & Another Nyeri Court of Appeal No. 21 of 2015 (UR) approved the reasoning of Okwengu JA in Judicial Service Commission versus Gladys Boss Shollei & Another (2014) eKLR, and the decision of the court in Kibe versus Attorney General Civil Appeal no. 164 of 2000.

In the Judicial Service Commission case (supra) the following observations were made by Okwengu JA.

"(61) The disciplinary process undertaken by the appellant was a quasi-judicial process as it involved the appellant in an adjudicatory function that required the appellant to ascertain facts and make a decision determining the respondent's legal rights in accordance with the Constitution and the Judicial Service Act, both of which provided for fair hearing. The disciplinary proceedings were anchored on a contractual relationship and the appellant was not empowered to provide penal sanctions. Notwithstanding the seriousness of the allegations made against the respondent, the disciplinary proceedings could not be treated like criminal proceedings, as the nature of the sanctions that could be applied in a criminal trial. Thus, the learned judge misdirected himself, in holding that the disciplinary proceedings were quasi-criminal. The Criminal Procedure Code which is an Act providing for the procedure in criminal cases had absolutely no application in the disciplinary proceedings, and the learned judge erred in applying the provisions of the Criminal Procedure Code."

In Kibe versus Attorney General Civil Appeal No. 164 of 2000 approved by Waki JA in the Hon. Attorney General & Another case (supra) this Court was categorical that:

"an acquittal in a criminal case does not automatically render an employee immune to disciplinary action by an employer for the reason that a criminal trial and an internal disciplinary proceeding initiated by an employer against an employee are two distinct processes with different procedures and standard of proof requirements. While an

employer may rely on the outcome of a criminal trial against an employee to make its decision on that employee going against the outcome does not by itself render the employer's decision wrongful or unfair".

Lastly in Geoffrey Kiragu Njogu versus Public Service Commission & 2 Others (2015) eKLR this Court approved the reasoning of the Industrial Court in James Mugeru Egati versus Public Service Commission of Kenya (2014) eKLR where it is stated that "there is nothing in the Public Service Commission Regulations which suggest that disciplinary process is tied to a criminal process that may arise from the same facts. There is no provision in the Public Service Commission Regulations which makes it necessary for employers to follow police investigations, or findings or indeed criminal court decisions in resolving employment disputes. The Public Service Commission Regulations do not merge disciplinary processes with criminal trials-----"

The above being the position, it is our view that this Court has made itself clear on the issue as to whether a successful outcome of a criminal process against an employee has primacy over an internal disciplinary process against such an employee arising from the same set of circumstances. The two processes are distinct from each other. The appellant having concluded its disciplinary process, accorded the respondent an internal opportunity to challenge them, which he failed to utilize and which had been fore-closed long before the pronouncement of the successful criminal decision. It is therefore our finding that the issue of the appellants concluded disciplinary process remains foreclosed in the absence of any plea by the respondent that these be reopened for re-interrogation on account of the alleged new and damning evidence.

- f) notes that despite the above, Section 31 of the TSC Act, 2012 allows Mr. Chebii to apply for reinstatement of his name to the Register of Teachers.

Therefore, the Committee finds that that Mr. Chebii was taken through a fair and lawful disciplinary process in line with the Constitution, Employment Act, and the Code of Regulations. Further, there are no grounds for reversal of the dismissal decision.

The Committee therefore rejected the first prayer for investigations to the matter with a view of declaring the dismissal and deregistration of Mr. Chebii as unfair, unlawful and irregular; and, thus the Committee made no recommendation to it;

Prayer No. 2: *Inquires into the matter to secure the reversal of his dismissal, his reinstatement and re-registration by the Teachers Service Commission, as well as his remittance of all his dues from the date of his dismissal;*

52. The Committee notes that -

- a) having been moved persuasively that the process leading to the dismissal of the teacher was procedural, fair and within the Constitutional framework, the Committee is therefore find that the same was without error;
- b) notes that TSC proposed that the aggrieved teacher can seek for reinstatement of his name to the register of teachers and secure employment elsewhere but he cannot be re-employed by the TSC; and
- c) notes that under 249(2)(b) of the Constitution, TSC is a Commission that is independent and not subject to direction or control by any person or authority. Therefore, the Committee proceeds not to interfere with the mandate of the Commission having complied with the law in reaching its decision. The aggrieved teacher hence can enforce his rights under section 31 of the TSC Act, 2012 and Regulation 36 of the Teachers Service Commission Code of Regulations for Teachers.

The Committee therefore rejected the second prayer for Inquiries into the matter to secure the reversal of his dismissal, his reinstatement and re-registration by the Teachers Service Commission, as well as his remittance of all his dues from the date of his dismissal; the dismissal and deregistration of Mr. Chebii as unfair, unlawful and irregular; and, thus the Committee made no recommendation to it;

Prayer No. 3: *Review and strengthen Teachers Service Commission policies on disciplinary procedures and ensure the allegations of sexual misconduct involving teachers and students are investigated thoroughly and dealt with in a fair and just manner.*

53. The Committee -

- a) having interrogated the Petitioner and TSC on this matter, the Committee notes that no material was placed before the Committee demonstrating cogent reason to interfere with the policies on disciplinary procedures.

The Committee therefore rejected the third prayer for reviewing and strengthening Teachers Service Commission policies on disciplinary procedures and ensure the allegations of sexual misconduct involving teachers and students are investigated thoroughly and dealt with in a fair and just manner; and, thus the Committee made no recommendation to it;

Prayer No. 4: *Considers enacting legislation or amending existing laws on disciplinary procedures and to provide better safeguards for teachers against arbitrary and unjust dismissal based on unfounded allegations thereby upholding their rights to due process and a fair hearing.*


54. The Committee notes that -

- a) The Constitution, the Teachers Service Commission Act, 2012; the Employment Act, 2007, the Teachers Service Commission (Code of Conduct and Ethics for Teachers) Regulations; and the Teachers Service Commission Code of Regulations for Teachers provide enough safeguards for teachers and ensures fair process and procedures; and
- b) At the same time, the same set of laws provides a balance that seeks to protect children while at school and ensure their rights under the Constitution are protected. Therefore, no evidence was provided that pointed to the unconstitutionality of the law.

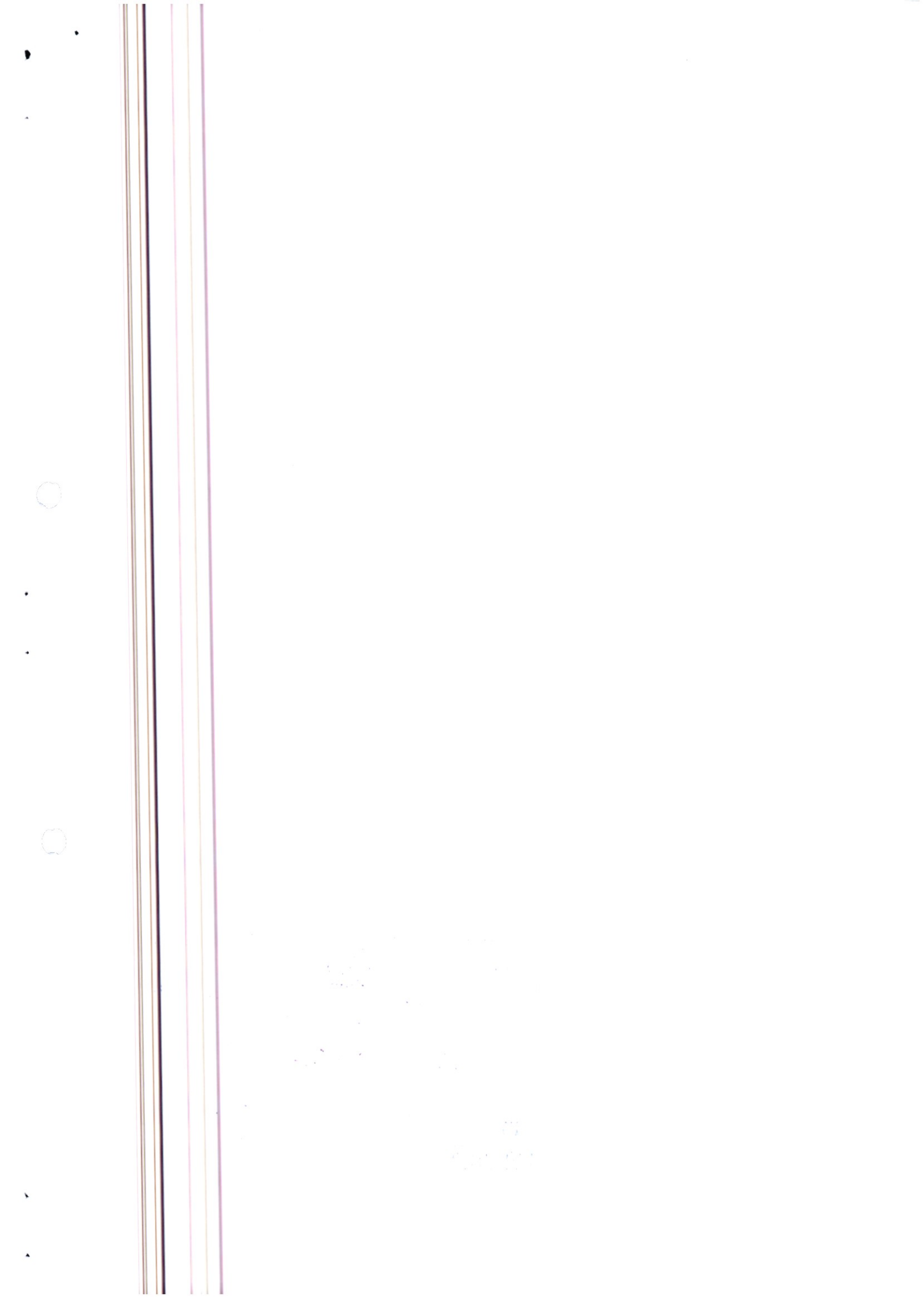
The Committee therefore rejected the fourth prayer for considering enacting legislation or amending existing laws on disciplinary procedures and to provide better safeguards for teachers against arbitrary and unjust dismissal based on unfounded allegations thereby upholding their rights to due process and a fair hearing; and, thus the Committee made no recommendation to it;

Prayer No. 5: *makes any other recommendation that it deems fit in the circumstance of the petition.*

55. The Committee recommends that the aggrieved teacher, Mr. Joseph Chebii could apply for reinstatement to the register of teachers under Section 31 of the TSC Act, 2012 and Regulation 36 of the Teachers Service Commission Code of Regulations for Teachers.

Signed: 
THE HON. NIMROD MITHUKA MBATIA, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 APR 2024	DAY: _____
TABLED BY: _____	Date: 11-04-2024
THE TABLE: _____	



ANNEXURES

- Annex 1:** The Adoption List
- Annex 2:** Public Petition No. 34 of 2023 regarding the de-registration and dismissal of Mr. Joseph Kimeli Chebii by the Teachers Service Commission
- Annex 3:** Minutes of the 57th Sitting held on Wednesday, 30th August, 2023
- Annex 4:** Minutes of the 79th Sitting held on Wednesday, 15th November, 2023
- Annex 5:** Minutes of the 15th Sitting held on Monday, 25th March, 2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE

ADOPTION OF THE REPORT ON THE CONSIDERATION OF A PUBLIC PETITION NO. 34 OF 2023
REGARDING DE-REGISTRATION AND DISMISSAL OF MR. JOSEPH CHEBII KIMELI BY THE
TEACHERS SERVICE COMMISSION (TSC)

We, the undersigned Honourable Members of the Public Petitions Committee, today Monday, 25th March, 2024, do hereby affix our signatures to this Report on the consideration of Public Petition No. 34 of 2023 regarding the de-registration and dismissal of Mr. Joseph Kimeli Chebii by the Teachers Service Commission (TSC) to affirm our approval and confirm its accuracy, validity and authenticity: -

S/NO	NAME	DESIGNATION	SIGNATURE
1.	Hon. Nimrod Mbithuka Mbai, M.P.	Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, M.P.	Vice-Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	Member	
4.	Hon. Ernest Ogesi Kivai, M.P.	Member	
5.	Hon. Joshua Chepyegon Kandie, M.P.	Member	
6.	Hon. John Walter Owino, M.P.	Member	
7.	Hon. Maisori Marwa Kitayama, M.P.	Member	
8.	Hon. Edith Vethi Nyenze, M.P.	Member	
9.	Hon. Bidu Mohamed Tubi, M.P.	Member	
10.	Hon. Caleb Mutiso Mule, M.P.	Member	
11.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	Member	
12.	Hon. Peter Mbogho Shake, M.P.	Member	
13.	Hon. Suzanne Ndunge Kiamba, M.P.	Member	
14.	Hon. John Bwire Okano, M.P.	Member	
15.	Hon. Sloya Clement Logova, M.P.	Member	



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)

Approved
SNA
26/7/23

PUBLIC PETITION

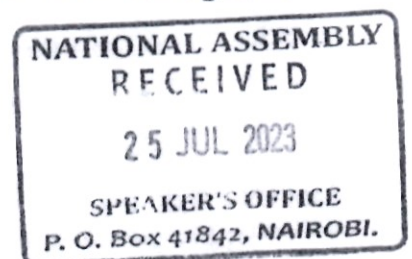
(No. 34 of 2023)

**REGARDING DEREGISTRATION AND DISMISAL OF MR. JOSEPH
KIMELI CHEBII BY THE TEACHERS SERVICE COMMISSION**

I, the **UNDERSIGNED**, on behalf of Mr. Joseph Kimeli Chebii, a resident of Marakwet West Constituency;

DRAW the attention of the House to the following:

1. **THAT**, Mr. Joseph Kimeli Chebii of National I/D Card No. 7372032 was engaged as a teacher by the Teachers Service Commission in May 1990 and deployed to various schools including Kibigos Primary School, Kokwongoi Primary School, and Kiberech Primary School;
2. **THAT**, while serving as Headteacher of Kiberech Primary School, Mr. Chebii was interdicted on 14th May 2014 by the TSC for allegedly having carnal knowledge with one of his pupils;
3. **THAT**, on 23rd May 2014, he was charged in Court with the offence of defilement at Iten Magistrates Court, whereupon he was released on bond;
4. **THAT**, Mr. Chebii appeared before the TSC County Director in Eldoret for the hearing of his disciplinary case, during which he was neither represented by Counsel nor given an opportunity to cross examine the key witness who was also the complainant, thereby infringing upon his right to fair hearing;
5. **THAT**, on 13th July 2015 he received two letters from TSC informing him of the Commission's decision to remove his name from the Register of Teachers and to dismiss him from service on the alleged but unsubstantiated grounds;
6. **THAT**, despite his appeal, the Commission upheld his deregistration and dismissal without informing him of his right of being accompanied by an Advocate;
7. **THAT**, the deregistration and dismissal constituted grave injustice since the TSC did not properly investigate the allegations levelled against him, and arrived at its decision solely on hearsay;



PUBLIC PETITION
REGARDING DEREGISTRATION AND DISMISSAL OF MR. JOSEPH
KIMELI CHEBII BY THE TEACHERS SERVICE COMMISSION

8. **THAT**, the complainant in the defilement case gave birth to a child whom she claimed as belonging to Mr. Chebii, but the resultant DNA test turned negative as contained in the Government Analyst's letter dated 21st June 2017;
9. **THAT**, based on the DNA test, the Court acquitted Mr. Chebii on 24th January 2018, and the High Court further dismissed the complainant's application for revision on 24th July 2019, marking the end of the protracted legal battle;
10. **THAT**, since his unlawful dismissal, Mr. Chebii has suffered great prejudices and irreparable harm, and efforts to seek his reinstatement and re-registration by the TSC in light of his acquittal have been futile;
11. **AND THAT** , the issues in respect of which this Petition is raised are not pending before any court of Law, or any constitutional or legal body

THEREFORE, your humble petitioner pray that the National Assembly through the Public Petitions Committee;

- a) Investigates the matter with a view to declaring Mr. Chebii's deregistration and dismissal from service by the Teacher's Service Commission as unfair, irregular and unlawful;
- b) Inquires into the matter in order to secure the reversal of his dismissal, his reinstatement by TSC, re-registration in the Register of Teachers as well as remittance of all his dues from the date of his unfair dismissal;
- c) Reviews and strengthens the existing TSC policies on disciplinary procedures and to ensure that allegations of sexual misconduct involving teachers and learners are thoroughly investigated and dealt with in a fair and just manner; and,
- d) Considers enacting legislation or amending existing laws on disciplinary procedures and to provide better safeguards for teachers against arbitrary and unjust dismissals based on unfounded allegations, thereby upholding their rights to due process and a fair hearing.

And your **PETITIONER** will ever pray.

PRESENTED BY:

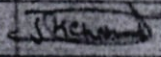


THE HON. TIMOTHY KIPCHUMBA TOROITICH, MP
MEMBER FOR MARAKWET WEST CONSTITUENCY

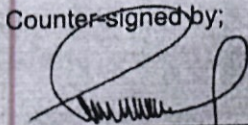
DATE:

RE: PETITION TO THE NATIONAL ASSEMBLY UNDER ARTICLES 119 OF THE CONSTITUTION, PETITION TO PARLIAMENT (PROCEDURE) ACT (2012) & STANDING ORDER 219 OF THE NATIONAL ASSEMBLY STANDING ORDERS REQUESTING THE NATIONAL ASSEMBLY TO LOOK INTO AND REPORT ON THE CIRCUMSTANCES THAT LED TO THE DEREGISTRATION AND DISMISAL OF JOSEPH CHEBII OF TSC NUMBER 242146

AND YOUR HUMBLE will ever pray;

S/NO.	NAME OF PETITIONER	TEL NO.	NATIONAL ID NO	SIGNATURE
1.	JOSEPH KIMELI CHEBI	0723014085	7372032	

Counter signed by;



HON. TIMOTHY KIPCHUMBA TOROITICH
MEMBER OF NATIONAL ASSEMBLY



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 57TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON WEDNESDAY, AUGUST 30, 2023, IN GARDEN SUITE, HILTON GARDEN INN HOTEL AT 3.00 P.M.

PRESENT

- | | | | |
|-----|--|---|------------------|
| 1. | Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. | Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. | Hon. John Walter Owino, M.P. | | |
| 4. | Hon. Ernest Ogesi Kivai, M.P. | | |
| 5. | Hon. Joshua Chepyegon Kandie, M.P. | | |
| 6. | Hon. Edith Vethi Nyenze, M.P. | | |
| 7. | Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 8. | Hon. Maisori Marwa Kitayama, M.P. | | |
| 9. | Hon. Peter Mbogho Shake, M.P. | | |
| 10. | Hon. Caleb Mutiso Mule, M.P. | | |
| 11. | Hon. Suzanne Ndunge Kiamba, M.P. | | |

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. John Bwire Okano, M.P.
3. Hon. Bidu Mohamed Tubi, M.P.
4. Hon. Sloya Clement Logova, M.P.

IN ATTENDANCE**SECRETARIAT**

- | | | | |
|----|---------------------|---|---------------------------|
| 1. | Mr. Samuel Kalama | - | Principal Clerk Assistant |
| 2. | Ms. Miriam Modo | - | Clerk Assistant I |
| 3. | Ms. Anne Shibuko | - | Clerk Assistant I |
| 4. | Mr. Shadrack Omondi | - | Legal Counsel II |
| 5. | Mr. Martin Sigei | - | Research Officer III |
| 6. | Ms. Rehab Chepkilim | - | Audio Officer |

Teachers Service Commission

- | | | | |
|----|-------------------|---|--|
| 1. | Dr. Julius Olayo | - | Director Human Resource Management & Development |
| 2. | Ms. Evelyne Mitei | - | Field Services Officer |
| 3. | Mr. Calvin Anyuor | - | Legal, Labour & Industrial Relations Officer |

Petitioners

1. Hon. Timothy Kipchumba, MP - Marakwet West Constituency
2. Mr. Joseph Kimeli Chebii - Former teacher

MIN./PPETC/2023/368: PRELIMINARIES

The Chairperson called the meeting to order at 03.00 p.m. and Hon. John Walter Owino, M.P. said the prayers.

MIN./PPETC/2023/369: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sitings
4. Matters Arising
5. **Consideration of Public Petition No. 44 of 2023 regarding Enhancement of House allowances Consideration of Public Petition No. 7 of 2023 regarding Gazettement of Rachuonyo North Sub - County as a hardship area**
 - a) *Meeting with CEO, Teachers Service Commission (TSC) (Dr. Nancy Macharia)*
 - b) *Meeting with Commission Secretary/CEO Public Service Commission (Dr. Simon K. Rotich, CBS)*
6. **Consideration of Public Petition No. 44 of 2023 regarding Enhancement of House allowances for teachers working and residing within Kilifi Municipality**
 - a) *Meeting with CEO, Teachers Service Commission (TSC) (Dr. Nancy Macharia)*
 - b) *Meeting with Commission Secretary/CEO Public Service Commission (Dr. Simon K. Rotich, CBS)*
7. **Consideration of Public Petition No. 34 of 2023 regarding Deregistration and dismissal of Mr. Joseph Kimeli Chebii by the Teachers Service Commission**
 - a) *Meeting with the Petitioner (Hon. Timothy Kipchumba, MP)*
 - b) *Meeting with CEO, Teachers Service Commission (TSC) (Dr. Nancy Macharia)*
8. Any other Business
9. Adjournment & Date of Next Meeting

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Edith Nyenze, M.P. and seconded by Hon. Joshua Chepyegon Kandie, M.P.

MIN./PPETC/2023/370: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/371: MATTERS ARISING

There were no matters arising.

MIN./PPETC/2023/372: CONSIDERATION OF PUBLIC PETITION NO. 7 OF 2023 REGARDING GAZETTEMENT OF RACHUONYO NORTH SUB - COUNTY AS A HARDSHIP AREA

Meeting with CEO, Teachers Service Commission (TSC) (Dr. Nancy Macharia)

Vide a letter dated 29th August 2023 Ref. CS/TSC/76/ VOL.VII, the CEO of the Teachers Service Commission, Dr. Nancy Macharia appointed the following 3 officers to attend the meeting on her behalf:

- i. Dr. Julius Olayo-Director Human Resource Management& Development
- ii. Ms. Evelyne Mitei -Field Services Officer

iii. Mr. Calvin Anyuor -Legal, Labour &Industrial Relations Officer

The Committee was of the conviction that the magnitude of the matter under consideration required the top decision-making organ to appear before the Committee. The 3 officers were therefore not allowed to make their submissions and were advised to inform the CEO that the Committee would expect her to appear in person.

The Agenda was deferred.

Meeting with Commission Secretary/CEO Public Service Commission (Dr. Simon K. Rotich, CBS)

Vide a letter dated 29th August 2023, REF. PSC/ADM/26/11(36), the CEO, Public Service Commission, Dr. Simon Rotich, CBS informed the Committee that an Inter-Agency Team had been constituted by the Ministry of Public Service, Gender and Affirmative Action to review the policy on current designated Hardship areas and allowances in order to ensure harmony in the Civil Service.

The Inter agency team had submitted a Memorandum to the Cabinet for consideration and approval hence the matter is still pending.

Committee Resolution

In light of the above considerations, the Committee resolved to consider the matter at a later date.

MIN./PPETC/2023/373: CONSIDERATION OF PUBLIC PETITION NO. 14 OF 2023 REGARDING ENHANCEMENT OF HOUSE ALLOWANCES FOR TEACHERS WORKING AND RESIDING WITHIN KILIFI MUNICIPALITY

Meeting with CEO, Teachers Service Commission (TSC) (Dr. Nancy Macharia)

Vide a letter dated 29th August 2023 Ref. CS/TSC/76/ VOL.VII, the CEO of the Teachers Service Commission, Dr. Nancy Macharia appointed the following 3 officers to attend the meeting on her behalf

- a) Dr. Julius Olayo-Director Human Resource Management& Development
- b) Ms. Evelyne Mitei -Field Services Officer
- c) Mr. Calvin Anyuor -Legal, Labour &Industrial Relations Officer

The Committee was of the conviction that the magnitude of the matter under consideration required the top decision-making organ to appear before the Committee. The 3 officers were therefore not allowed to make their submissions and were advised to inform the CEO that the Committee would expect her to appear in person.

The Agenda was deferred.

Meeting with Commission Secretary/CEO Public Service Commission (Dr. Simon K. Rotich, CBS)

Vide a letter dated 29th August 2023, REF. PSC/ADM/26/11(36), the CEO, Public Service Commission, Dr. Simon Rotich, CBS informed the Committee that the Petition falls within the mandate of the Teachers Service Commission and therefore it was best placed to respond in accordance with the existing Collective Bargaining Agreements and in consultation with the Salaries and Remuneration Commission.

Committee Resolution

In light of the above considerations, the Committee resolved to consider the matter at a later date.

MIN./PPETC/2023/374: CONSIDERATION OF PUBLIC PETITION NO. NO. 34 OF 2023 REGARDING DEREGISTRATION AND DISMISSAL OF MR. JOSEPH KIMELI CHEBII BY THE TEACHERS SERVICE COMMISSION

Brief by the Legal Counsel

The Legal Counsel briefed the Committee as follows:

- a) The Petition was brought before the House by Hon. Timothy Kipchumba Toroitich, MP on behalf of Mr. Joseph Kimeli Chebii a resident of Marakwet West Constituency.
- b) The petitioner claims that Mr. Kimeli was wrongfully dismissed by the Teachers Service Commission for allegations of defilement of one of his students.
- c) He states that Mr. Chebii was interdicted on 14th May 2014 for having carnal knowledge with one of his pupils, he was then charged in Iten Magistrates Court on the 23rd of May 2014.
- d) Further, the Teachers Service Commission conducted a disciplinary hearing for Mr. Chebii through their County Director at Eldoret, whereby he was later dismissed and de-registered on 13th July 2015. Mr. Chebii lodged an appeal on the disciplinary proceedings but was unsuccessful.
- e) The petitioner claims that the Teachers Service Commission did not investigate the allegations and thus the dismissal of Mr. Chebii was a grave injustice, as the complainant or defiled minor gave birth to a child that was not Mr. Chebii's, as per the DNA analysis conducted on the 21st June 2017 by the Government Chemist.
- f) Therefore, the court case was dismissed and Mr. Chebii was acquitted on the 18th of January 2018 despite this the Teachers Service Commission has declined to reinstate and re-register him.
- g) The petitioner seeks the intervention of the House to -
 - i.) Investigate the matter with a view of declaring the dismissal and deregistration of Mr. Chebii as unfair, unlawful and irregular;
 - ii.) Inquire into the matter to secure the reversal of his dismissal, his reinstatement and re-registration by Teachers Service Commission, as well as his remittance of all his dues from the date of his dismissal;
 - iii.) Review and strengthen Teachers Service Commission policies on disciplinary procedures and to ensure the allegations of sexual misconduct involving teachers and students are investigated thoroughly and dealt with in a fair and just manner; and
 - iv.) Consider enacting legislation or amending existing laws on disciplinary procedures and to provide better safeguards for teachers against arbitrary and unjust dismissal based on unfounded allegations thereby upholding their rights to due process and a fair hearing.

Meeting with the Petitioner

The Member for Marakwet West Constituency (Hon. Timothy Kipchumba, MP) accompanied by the petitioner, Mr. Joseph Chebii appeared before the Committee and submitted as follows:

Introduction

1. Mr. Chebii Joseph's petition revolves around his employment problems stemming from his appointment as Secretary to the Constituency Development Fund Committee (CDFC). His case centers on his alleged removal due to the discontent of his predecessor, Isabella Kaino.
2. The disciplinary proceedings against Chebii, initiated in 2014, were overseen by Kaino, raising suspicions of bias. Chebii contends that the charges brought against him were fabricated as a result of personal vendettas.

Dismissal and Legal Battles

3. He was dismissed in 2014 for allegedly having sexual relations with a pupil. Subsequently, Chebii's name was removed from the teacher's register on the same grounds. Despite appealing these decisions, they were upheld. However, DNA evidence later indicated that Chebii was not the father of the complainant's child. He was acquitted by a Magistrate's Court in 2018, and an attempt to revise the case in the High Court was unsuccessful.

Procedural Violations and Recommendations

4. Chebi's petition asserts several violations of due process during the disciplinary proceedings. He was denied fair representation and cross-examination opportunities, which infringed upon his right to fair hearing. The charges against him were inconsistent and lacked clarity, and the investigation process was flawed.
5. The Teachers Service Commission (TSC) shifted the burden of proof to Chebii, violating his constitutional rights. He calls for the overturning of TSC's decision based on these grounds.
6. The petition recommends reforms to the disciplinary procedure for teachers. It suggests a clear definition of "immoral conduct," the protection of human rights during proceedings, independent investigative panels to avoid bias, timely case resolution, an appeals mechanism, and provisions for reviewing cases with new evidence.
7. Mr. Chebii also prays for the reopening of his case to present DNA evidence, invoking the Court of Appeal's decision in **Teachers Service Commission vs Joseph Wambugu Nderitu (2016) eKLR**.

Committee concerns

Sub-judice

The Committee sought clarification whether the case was pending before a court of law. The Petitioner responded that there was no pending as he as he had not appealed the matter nor sought redress from the labour court.

Fair hearing

The Committee enquired why the petitioner was optimistic that the TSC would give him a fair decision as the mechanism hasn't changed and the same panel will hear the matter using the same process as before.

The petitioner responded that he believed he would be accorded the right to fair hearing and was of the view that the Committee would order TSC to reopen the disciplinary hearing and admit new evidence.

Communication from TSC

The Committee enquired whether the petitioner had received any communication from TSC in writing.

The petitioner responded that the Commission had asked him to apply for reinstatement to register of teacher. However, the implication of this would be that only records would show that he was a teacher in his career, but he would not be reinstated back to employment.

Committee Resolution

The provision in TSC regulations that the Commission shall not be bound by the outcome of a criminal court on the outcome of a case of carnal knowledge was retrogressive and ought to be amended.

Meeting with CEO, Teachers Service Commission (TSC) (Dr. Nancy Macharia)

Vide a letter dated 29th August 2023 Ref. CS/TSC/76/ VOL.VII, the CEO of the Teachers Service Commission, Dr. Nancy Macharia appointed the following 3 officers to attend the meeting on her behalf:

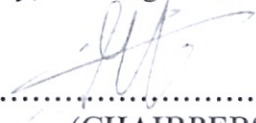
- a) Dr. Julius Olayo-Director Human Resource Management& Development
- b) Ms. Evelyne Mitei -Field Services Officer
- c) Mr. Calvin Anyuor -Legal, Labour &Industrial Relations Officer

The Committee was of the conviction that the magnitude of the matter under consideration required the top decision-making organ to appear before the Committee. The 3 officers were therefore not allowed to make their submissions and were advised to inform the CEO that the Committee would expect her to appear in person.

The Agenda was deferred.

MIN./PPETC/2023/375: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 05:30 p.m. The next meeting would be held on Thursday, 31st August 2023 at 9.00 a.m.

Sign: 
(CHAIRPERSON)

Date..... 27/11/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 79TH SITTING OF THE PUBLIC PETITIONS COMMITTEE
HELD ON WEDNESDAY, NOVEMBER 15, 2023, IN COMMITTEE ROOM 12,
GROUND FLOOR, MAIN PARLIAMENT BUILDINGS, AT 11.00 A.M
PRESENT

- | | | | |
|----|------------------------------------|---|----------|
| 1. | Hon. John Bwire Okano, M.P. | - | Chairing |
| 2. | Hon. Joshua Chepyegon Kandie, M.P. | | |
| 3. | Hon. John Walter Owino, M.P. | | |
| 4. | Hon. Ernest Ogesi Kivai, M.P. | | |
| 5. | Hon. Maisori Marwa Kitayama, M.P. | | |
| 6. | Hon. Edith Vethi Nyenze, M.P. | | |
| 7. | Hon. Bidu Mohamed Tubi, M.P. | | |
| 8. | Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 9. | Hon. Sloya Clement Logova, M.P. | | |

APOLOGIES

- | | | | |
|----|--|---|------------------|
| 1. | Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. | Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. | Hon. Patrick Makau King'ola, M.P. | | |
| 4. | Hon. Caleb Mutiso Mule, M.P. | | |
| 5. | Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 6. | Hon. Peter Mbogho Shake, M.P. | | |

SECRETARIAT

- | | | | |
|----|-------------------------|---|--|
| 1. | Mr. Ahmed Kadhi | - | Senior Clerk Assistant |
| 2. | Ms. Miriam Modo | - | Clerk Assistant I |
| 3. | Ms. Willis Obiero | - | Clerk Assistant III |
| 4. | Mr. Shadrack Omondi | - | Legal Counsel II |
| 5. | Ms. Lilian Mburugu | - | Media Relations Officer III |
| 6. | Mr. Martin Sigei | - | Research Officer III |
| 7. | Ms. Felistus Muiya | - | Protocol Officer |
| 8. | Mr. Moses Lokeny Ekutan | - | Attaché (Starehe Boys Centre and School) |

IN ATTENDANCE

SALARIES AND REMUNERATION COMMISSION (SRC)

1. Mr. John K. Monyoncho - Commissioner
2. Ms. Nelly Peris Ashubwe - Commissioner
3. Director

TEACHERS SERVICE COMMISSION (TSC)

1. Dr. Nancy Macharia - CEO
2. Mr. Cavin Anyuor - Director, Legal
3. Dr. Julius Olayo - Deputy, Human Resource Manager
4. Ms. Eveleen Mitei - Director, Filed Services
5. Ms. Sylvia Ngere - Legal Counsel
6. Ms. Jane Kimathi - PACS

MIN./PPETC/2023/494: PRELIMINARIES

The Chairperson called the meeting to order at 11:00 a.m. and Hon. John Walter Owino, M.P. said the prayers.

MIN./PPETC/2023/495: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of a Public Petition regarding enhancement of House Allowances for Teachers Working and Residing within Kilifi Municipality**
- *Meeting with the Salaries Remuneration Commission (SRC)*
6. **Meeting with the CEO, Teachers Service Commissions (TSC) regarding -**
 - i.) *Public Petition regarding the Deregistration and dismissal of Mr. Joseph Kimeli Chebii by the Teachers Service Commission.*
 - ii.) *Public Petition regarding Enhancement of House Allowances for Teachers Working and Residing within Kilifi Municipality.*
 - iii.) *Public Petition regarding the Gazettement of Rachuonyo North as a hardship area.*
7. **Meeting with CS, Ministry of Environment, Forestry and Climate Change regarding -**
 - i.) *Public Petition regarding Delayed Adjudication and Settlement of Squatters after the expiry of Lease of Macalder Mines Ltd. Land*
 - ii.) *Public Petition regarding the Declaration of Mukutani Forest as a Public Forest*
8. **Consideration and adoption of Public Petition No. 01 of 2023 regarding Poor Implementation of Edu-Afya Medical Scheme in Public Secondary Schools.**
9. **Consideration and adoption of Public Petition No. 05 of 2023 regarding Ward-Based Solution as a long-term remedy to perennial water shortage in Kenya.**
10. Any Other Business

11. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Bidu Mohamed Tubi, M.P. and seconded by Hon. John Walter Owino, M.P.

MIN./PPETC/2023/496: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/497: CONSIDERATION OF A PUBLIC PETITION REGARDING ENHANCEMENT OF HOUSE ALLOWANCES FOR TEACHERS WORKING AND RESIDING WITHIN KILIFI MUNICIPALITY

Meeting with the Salaries Remuneration Commission (SRC)

SRC led by Commissioner Mr. Kennedy Monyoncho appeared before the Committee and submitted that -

- i.) The issues raised by the petitioners was the mandate of SRC as they relate to the review of an allowance.
- ii.) SRC was undertaking progressive harmonization of house allowance and in the current 3rd remuneration and benefits review cycle (FY 2021/22 - FY 2024/25), the rates for Cluster 3 (other former municipalities) and Cluster 4 (all other areas) would be harmonized from 1st July 2024. SRC has communicated the new rates to TSC for both phases vide a letter dated 31st July 2023 as adopted in the 2021-2025 CBAs for Teachers.
- iii.) Kilifi Town which was under Cluster 4 (all other areas) had benefitted from the new review of house allowance and from 1st July 2023 teachers working in the area would be draw the allowance at similar rates as Cluster 3 (other former municipalities). The aim of SRC was to fully harmonize house allowance into one cluster taking into consideration affordability and sustainability.
- iv.) A review of the allowance for one group of public servants would lead to inequity and unfairness in pay.

Therefore, SRC advised that the teachers submit their request to SRC through their employer TSC for consideration in line with the mandate of SRC.

Members Concerns

- i.) **Regarding the frequency of review of house allowances**, the Commission indicated that remuneration was reviewed every four years. In the third cycle of FY 2021/2024, the review considered affordability and sustainability, and enhanced the house allowances were considered.
- ii.) **Regarding the different classifications of teachers unlike other civil servants in consideration of hardship areas**, the Commission stated that the Commission considers house allowances for every public servant. Currently, four (4) categories were set including

cities, major municipalities, other municipalities, and other towns. However, teachers had slightly more designated hardship areas compared to other civil servants as advised by TSC.

- iii.) **Regarding whether SRC considers increment based on the status of a municipality**, the Commission indicated that if the municipality was part of the categorization the review would not factor the status of the municipality but rather the categorization put in place in terms of the various clusters. Further, a review of house allowance by grade other than municipality is achievable subject to affordability and sustainability. Teachers of Kilifi North belonged to a CBA with TSC registered on 26th October, 2023 where the house allowances had been addressed hence it was not possible to change the terms of the CBA midstream as it was legally binding.
- iv.) **Regarding the role of SRC on employers who do implement the advisory**, the mandate of the Commission was set, review, and advise on the remuneration of all public servants, and employers are expected to implement the advisory. The Commission further, establishes the status of implementation of its advisories, and the challenges therein through monitoring and evaluation exercises conducted twice annually to resolve the issues. Further, employers are encouraged to write to the SRC on challenges experienced. However, the intention was to move towards full harmonization gradually. The Auditor General ensured on the implementation of the advisory. However, the Commission lacked enforcement mandate for employers who do not implement the advisory.
- v.) **Regarding whether employees could benefit from enhanced allowances outside the CBAs**, the Commission indicated that joining trade unions was voluntary and constitutional. However, SRC still advises on remuneration even outside a CBA.
- vi.) **Regarding whether all civil servants were being subjected to the municipality's rule in determining house allowances**, the Commission indicated that it remunerates salaries and allowances for state officers who were mostly in the cities, as well as other public officers depending on where they live. The categorization was applicable to civil servants based on the salary structure to ensure fair implementation of remuneration. However, other unique areas could be relooked through consolidated pay.
- vii.) **Regarding the determination of the categorization of municipalities and other hardship areas and the transition for remuneration after gazettement**, the Commission indicated that the Ministry of Ministry of Public Service, Performance and Delivery Management is responsible for gazetting hardship areas and informs SRC to advise on the remuneration of salaries and allowances accordingly based on affordability and sustainability. Therefore, there is a need for the Ministry to harmonize all hardship areas to address existing gaps in the remuneration of civil servants. On the transition for review of house allowances, the Commission indicated that it was automatic for the various teachers or other civil servants to get the rightful pay once their areas had been gazetted.
- viii.) **Regarding employees benefiting from backdated claims not received after a change of municipality status**, the Commission indicated that there was need to establish the contractual agreements therein compelling the employers to pay. However, the Commission

could assist even individual cases that could be raised through the employer and sent to SRC to ensure the constitutional principles are maintained.

MIN./PPETC/2023/498: MEETING WITH THE CEO, TEACHERS SERVICE COMMISSIONS (TSC)

The CE of TSC, Dr. Nancy Macharia, appeared before the committee to respond to the following Petitions -

Public Petition regarding the Deregistration and dismissal of Mr. Joseph Kimeli Chebii by the Teachers Service Commission.

- i.) The Commission was a Constitutional body bound by the provisions of Chapters 6, 10, and 232 of the Constitution that provide for the integrity of public officers, national values and principles of governance, and the values and principles of public service.
- ii.) In discharging the mandate to discipline teachers, the Commission is guided by its duty under Article 53 to protect learners from any form of abuse including sexual abuse, and always consider the best interest of the learners.
- iii.) Further the Commission is alive to the right of every learner to access basic education provided under Article 43 of the Constitution. To this end, the Commission has a role in ensuring the actualization of this right by creating a conducive and safe environment for learners.
- iv.) To better execute its mandate, the National Assembly enacted the Teachers Service Commission Act, 2012, and the Code of Regulations for Teachers (CORT) 2015. Part IX of the CORT extensively provides for discipline procedure that is in tandem with the principles of fair hearing as envisioned in the Constitution and the relevant legislations.
- v.) Mr. Joseph Chebii was a teacher registered and employed by the Commission until 4th June 2015 when he was dismissed and removed from the Register following accusations of immoral misconduct in that he had sexual intercourse with M. J. who was a standard 6 pupil at Kibirech Primary School in Marakwet West Sub County.
- vi.) Prior to his dismissal from service the Commission in line with its mandate undertook a fair and procedural disciplinary process that included:
 - a) Collection of statements from the victim and the teacher;
 - b) Conducting independent investigations;
 - c) Serving the teacher with an interdiction letter;
 - d) Granting the teacher an opportunity to respond to the allegations;
 - e) Granting the teacher an opportunity to be heard in person;
 - f) Granting the teacher an opportunity to cross-examine
 - g) Granting the teacher the right of Appeal witnesses;
- vii.) During the disciplinary process witnesses including the victim and her parents were consistent in their evidence that indeed Mr. Chebii had abused the victim. Mr. Chebii on the

other hand, did not present any evidence/material to disapprove the allegations. The elaborate hearing culminated in the considered decision to dismiss and deregister him.

- viii.) Mr. Chebii formally appealed the decision. Subsequently, the Teachers Service Review Committee considered the appeal, evaluated the facts, and the circumstances of the case, and upheld the earlier decision to have him dismissed and deregistered.
- ix.) Further, Mr Chebii was charged in a criminal court with the offense of defilement contrary to the Sexual Offences Act and was acquitted based on the DNA test that showed he was not the biological father of the victim's child in Criminal Case 862 of 2014: State vs. Joseph Kimeli Chebii.
- x.) However, the Commission was not a party to the court process and neither participated in the criminal court case. The criminal proceedings were instigated and prosecuted by the police pursuant to the provisions of the Penal Code, the Sexual Offences Act, and the Police Act which were in no way to impact or oust the administrative action undertaken by TSC under the TSC Act and Employment Act.
- xi.) Notwithstanding the above, Section 31 of the Teachers Service Commission Act allows Mr Chebii to apply for reinstatement of his name to the Register of Teachers.
- xii.) Therefore, it was the position of TSC that Mr Chebii was taken through a fair and lawful disciplinary process in line with the Constitution, Employment Act, and the Code of Regulations. Further, there are no grounds for reversal of the dismissal decision.

Committee Concerns

- (i) **Regarding the possibility of teachers targeted using claims of immoral behaviour**, the Commission stated that TSC's mandate was limited to disciplinary processes. Further, about 50 percent of such cases were acquitted based on evidence provided. However, in the case of Mr Chebii, there was compelling evidence leading to his dismissal.
- (ii) **Regarding whether a cross-examination opportunity was granted to Mr Chebii**, the Commission reiterated that Mr Chebii was given ample opportunity to cross-examine the witness. Further, Mr Chebii did not appear before the County Director as indicated in the Petition, but he appeared before a panel of TSC Commissioners.
- (iii) **Regarding whether Mr Chebii could apply for reinstatement in the Register of Teachers to continue the practice**, the Commission indicated that he would be allowed to be reinstated in the Register to continue practice anywhere in the world except with the TSC.
- (iv) **As to whether TSC was obliged to respect the court decision in the criminal case**, the Commission stated that while it respects the court decision, the orders in the criminal court case did not direct TSC on any matter. However, if Mr Chebii had appealed in the employment court where such disputes are resolved, TSC would have taken direction as issued by the employment court, but he never appealed and cannot rely on the criminal court.

- (v) Regarding the evidence relied upon by TSC, the Commission indicated that it relied on the witness statement by the victim, her headteacher and deputy, parents, and classmates. Further, during cross-examination, the victim was presented before Mr Chebii but he did not challenge the statement provided by the girl hence TSC relied on the uncontroverted evidence by the girl and other circumstantial evidence.
- (vi) Regarding the pardon of Mr Chebii, the Commission indicated that the rules and regulations under which the TSC operates did not provide for pardon.

Public Petition Regarding Enhancement of House Allowances for Teachers Working and Residing within Kilifi Municipality

- i.) Pursuant to Article 230 of the Constitution, the Salaries and Remuneration Commission (SRC) has the mandate to advise on remuneration and benefits of public officers including the teaching service. In the exercise of this mandate, SRC issued an advisory vide letter ref: SRC/TS/MDP/3/1/2 (2) dated 11th August 2015 on the payment of house allowance for public officers.
- ii.) In the said advisory, the SRC categorized the Country into four (4) clusters for purposes of payment of house allowance namely *Nairobi, former major municipalities, other former municipalities, and other areas*.
- iii.) At the time the advisory was issued, Kilifi was a township and was gazetted as such as per Gazette Notice No. 10557 of 2007 hence fell under Cluster 4. Cluster 4 rates are payable to teachers stationed in townships and rural areas.
- iv.) Accordingly, in compliance with the advisory of the SRC teachers in Kilifi have been receiving house allowance under Cluster 4.
- v.) While the Commission is aware that Kilifi Township was gazetted as a municipality in March 2019, the SRC did not review or render an advisory on the review of house allowance payable to teachers in Kilifi town until 31st July 2023.
- vi.) The Commission has received an advisory from SRC recommending the review of Cluster 4 house allowances payable to teachers. To this end, house allowance for Cluster 3 and Cluster 4 shall be harmonized in two phases with full harmonization to be realized on 1st July 2024.
- vii.) On 29th August 2023, the Commission signed an addendum to the 2021-2025 CBA with teacher unions effective 1st July 2023 as per the SRC advisory. Accordingly, Phase 1 of the harmonization had already been effected in the August 2023 payroll.
- viii.) Accordingly, with effect from 1st July 2023, teachers in Kilifi Municipality received an enhanced house allowance as advised by SRC.

Committee Concerns

Regarding the transition during the change of status of an area to a different cluster, the Commission stated that all remunerations were effected on the advisory of SRC. In the SRC advisory of 20The cities are upgraded but TSC awaiting the advisory of SRC and then pay. Further, the National Treasury would not release money. SRC can gazette. The advisory did not say to pay higher allowances.

Public Petition regarding the Gazettement of Rachuonyo North as a hardship area.

- i.) That under the Constitution of Kenya, the TSC had no legal mandate to gazette any area as a hardship. The mandate to designate an area as a hardship area vests with the Ministry of Public Service, Performance and Delivery Management.
- ii.) Regulation 91 of the Code of Regulations for Teachers requires the Commission to pay hardship allowance to a teacher assigned to teach in a school situated in a designated and gazetted hardship area.
- iii.) The designated hardship areas were gazetted in Legal Notice 534 of 1997. In Homa Bay County, the gazetted areas are Mfangano and Rusinga Islands in Suba North. Rachuonyo North is not gazetted as a hardship area.

Committee Concerns

- i.) **Regarding the role of TSC in the gazettement of hardship areas and addressing inequality amongst teachers**, the CEO indicated that the gazettement of hardship areas was done by the Ministry of Public Service, Performance and Delivery Management. However, the Commission had made submissions to the multiagency team working on the harmonization of hardship areas. The report by the team was yet to be approved by Cabinet. Further, the Commission was aware of the inequalities in the classification of hardship areas across the civil service and had engaged the Ministry to harmonize as TSC did not have the mandate.
- ii.) **Regarding the structure for reviews for hardship areas**, the Commission reiterated that the Ministry of Public Service, Performance and Delivery Management was developing guidelines from time to time for gazettement and TSC could only make submissions. However, the Ministry had undertaken a comprehensive study of the country for harmonization and gazettement of the deserved hardship areas as some areas previously considered as hardship areas may no longer be.
- iii.) **Regarding whether TSC could handle the mandate of gazetting hardship areas for teachers**, the Commission stated that a change in legislation to give TSC the mandate was welcome. However, harmonization across other civil would still be a concern.

MIN./PPETC/2023/499:

MEETING WITH CS, MINISTRY OF ENVIRONMENT,
FORESTRY AND CLIMATE CHANGE

The Agenda was deferred.

MIN./PPETC/2023/500:

CONSIDERATION AND ADOPTION OF PUBLIC PETITION NO. 01 OF 2023 REGARDING POOR IMPLEMENTATION OF EDU-AFYA MEDICAL SCHEME IN PUBLIC SECONDARY SCHOOLS.

The Agenda was deferred.

MIN./PPETC/2023/501:

CONSIDERATION AND ADOPTION OF PUBLIC PETITION NO. 05 OF 2023 REGARDING WARD-BASED SOLUTION AS A LONG-TERM REMEDY TO PERENNIAL WATER SHORTAGE IN KENYA.

The Agenda was deferred.

MIN./PPETC/2023/502:

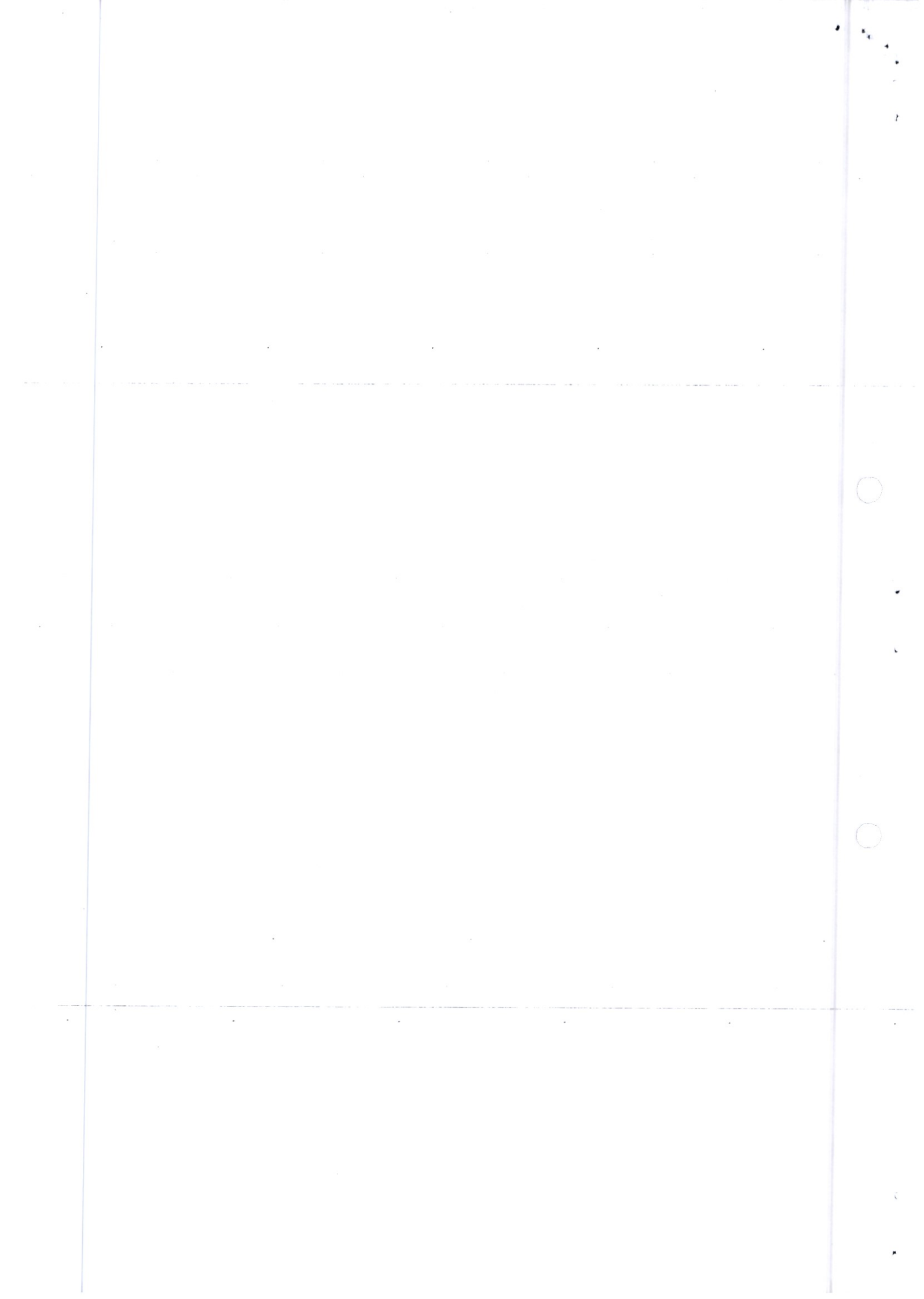
ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 2:15 p.m. The next meeting will be held on Wednesday, 15th November, 2023 at 3.00 p.m.

Sign: 

(CHAIRPERSON)

Date..... 29/11/2023





REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 15TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON MONDAY, MARCH 25, 2024, IN MEDUSA 2 ROOM, MARINA ENGLISH POINT HOTEL, MOMBASA COUNTY AT 02.30 P.M

PRESENT

- | | | |
|---|---|------------------|
| 1. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 2. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 3. Hon. Ernest Ogesi Kivai, M.P. | | |
| 4. Hon. Bidu Mohamed Tubi, M.P. | | |
| 5. Hon. John Walter Owino, M.P. | | |
| 6. Hon. Caleb Mutiso Mule, M.P. | | |
| 7. Hon. Maisori Marwa Kitayama, MP | | |
| 8. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 9. Hon. Edith Vethi Nyenze, M.P. | | |
| 10. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 11. Hon. John Bwire Okano, M.P. | | |
| 12. Hon. Peter Mbogho Shake, M.P. | | |

APOLOGIES

- | | | |
|--------------------------------------|---|-------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P. | | |
| 3. Hon. Sloya Clement Logova, M.P. | | |

IN-ATTENDANCE

- | | | |
|-----------------|---|-----------------------------|
| 1. Mr. Noah Too | - | Principal Clerk Assistant I |
|-----------------|---|-----------------------------|

SECRETARIAT

- | | | |
|-------------------------|---|-------------------------------|
| 2. Mr. Ahmed Kadhi | - | Senior Clerk Assistant |
| 3. Ms. Miriam Modo | - | Clerk Assistant I |
| 4. Ms. Anne Shibuko | - | Clerk Assistant I |
| 5. Mr. Willis Obiero | - | Clerk Assistant III |
| 6. Ms. Peninnah Naisiae | - | Legal Counsel II |
| 7. Mr. Martin Sigei | - | Research Officer III |
| 8. Ms. Roselyn Njuki | - | Senior Serjeant-at-Arms I |
| 9. Mr. Calvin Karungo | - | Media Relations Officer III |
| 10. Mr. Peter Mutethia | - | Audio Officer |
| 11. Ms. Felistas Muiya | - | Public Communications Officer |

MIN./PPETC/2024/ 100: PRELIMINARIES

The Chairperson called the meeting to order at 02:30 p.m. and proceedings began with prayers by Hon. John Walter Owino, M.P.

MIN./PPETC/2024/101: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Report on Public Petition No. 34 of 2023 regarding Deregistration and Dismissal of Mr. Joseph Kimeli Chebii by the Teachers Service Commission.
6. Consideration of Report on Public Petition No. 44 of 2023 regarding enhancement of House Allowances for Teachers working and residing within Kilifi Municipality.
7. Any Other Business
8. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Joshua Kandie, M.P. and seconded by Hon. Bidu Mohammed, M.P.

MIN./PPETC/2024/102: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/103: CONSIDERATION OF REPORT ON PUBLIC PETITION NO. 34 OF 2023 REGARDING DEREGISTRATION AND DISMISSAL OF MR. JOSEPH KIMELI CHEBII BY THE TEACHERS SERVICE COMMISSION

The Committee reviewed the draft Report and made the following observations:

- (i) Mr. Joseph Chebii was a teacher registered and employed by the TSC until 4th June 2015 when he was dismissed and removed from the Register following accusations of immoral misconduct in that he had sexual intercourse with M. J. who was a standard 6 pupil at Kibirech Primary School in Marakwet West Sub County. Subsequently, Chebii's name was removed from the teacher's register on the same grounds despite various appeals on the decision of the Commission.
- (ii) Mr. Chebii was taken through a fair and lawful disciplinary process in line with the Constitution, Employment Act, and the Code of Regulations. Further, there were no grounds for reversal of the dismissal decision against him.
- (iii) During the disciplinary process, witnesses including the victim and her parents were consistent in their evidence that indeed Mr. Chebii had abused the victim. Mr. Chebii on the other hand, did not present any evidence/material to disapprove the allegations which culminated in the considered decision to dismiss and deregister him.

- (iv) DNA evidence later indicated that Chebii was not the father of the complainant's child. He was acquitted by a Magistrate's Court in 2018, and an attempt to revise the case in the High Court was unsuccessful.
- (v) Before dismissal from service TSC in line with its mandate undertook a fair and procedural disciplinary process that included -
- a) collection of statements from the victim and the teacher;
 - b) conducting independent investigations;
 - c) serving the teacher with an interdiction letter;
 - d) granting the teacher an opportunity to respond to the allegations;
 - e) granting the teacher an opportunity to be heard in person;
 - f) granting the teacher an opportunity to cross-examine witnesses; and
 - g) granting the teacher, the right to appeal.
- (vi) Mr. Chebii formally appealed the decision and subsequently, the Teachers Service Review Committee considered the appeal, evaluated the facts, and the circumstances of the case, and upheld the earlier decision to have him dismissed and deregistered.
- (vii) Mr. Chebii was charged in a criminal court with the offence of defilement contrary to the Sexual Offences Act and was acquitted based on the DNA test that indicated that he was not the biological father of the victim's child in Criminal Case 862 of 2014: State vs. Joseph Kimeli Chebii.
- (viii) The aggrieved teacher did not lodge or institute an application for reinstatement of his name to the register of teachers within eighteen months from the date of removal of the name from the register in compliance with Section 31 of the TSC Act.
- (ix) The aggrieved teacher could seek for reinstatement of his name to the register of teachers and secure employment elsewhere but he cannot be re-employed by the TSC.
- (x) TSC disregarded the decision of the court as the orders did not direct TSC on any matter unlike if the aggrieved teacher would have appealed to the Employment Court where such matters are resolved.

The Committee made the following recommendations:

Prayer No. 1: *Investigate the matter with a view of declaring the dismissal and deregistration of Mr. Chebii as unfair, unlawful and irregular;*

The Committee having -

- a) summoned the CEO of the Teachers Service Commission (TSC), Dr. Nancy Macharia, who appeared before the Committee on Wednesday, November, 15, 2023 and apprised the Committee of the matter;
- b) noted that TSC is a Constitutional body bound by the provisions of Chapters 6, 10, and 232 of the Constitution that provide for the integrity

of public officers, national values and principles of governance, and the values and principles of public service;

- c) noted that in discharging the mandate to discipline teachers, TSC is guided by its duty under Article 53 to protect learners from any form of abuse including sexual abuse, and always consider the best interest of the learners;
- d) further noted that Article 43 of the Constitution provides for the right to basic education to all Kenyan children. To this end, TSC has a role in ensuring the actualization of this right by creating a conducive and safe environment for learners;
- e) noted that the National Assembly enacted the Teachers Service Commission Act, of 2012, and the Code of Regulations for Teachers (CORT) 2015. Part IX of the CORT extensively provides for discipline procedures that are in tandem with the principles of fair hearing as envisioned in the Constitution and the relevant legislation;
- f) In the circumstances, noted that, the findings of the criminal court could not salvage an employment contract which had inevitably been broken and the Commission being a public institution had a duty to maintain public morality, integrity and nobility of the teaching profession and the decision meted on Mr. Chebii was proportionate to the offence committed.
- g) noted that in the Court of Appeal case of Teachers Service Commission versus Joseph Wambugu Nderitu (2016) eKLR a three-judge bench held as follows -

Turning to the applicable principles of law, there is no doubt that the learned Judge relied on the decision of a court of coordinate jurisdiction in the case of Mathew Kipchumba Koskei versus Baringo Teachers SACCO [2013] eKLR for the holding that where the employer has initiated and concluded disciplinary proceedings on account of misconduct which also has substantially been subject of a criminal process in which the employee is exculpated or found innocent, the employer is entitled to set aside or rescind any punitive administrative decision he may have taken against such an employee and in addition to the above meet all remedies available in law to such an employee to restore him to the position he would have been if the punitive administrative decision not been taken against him. The Mathew Kipchumba case (supra) was preferred amongst many others from the Industrial Court stating the contrary view. No reason was given by the learned Judge as to why he preferred the proposition in the Mathew Kipchumba Koskei case (Supra) over those of Daniel Kamei (Supra) Clement Mutiso Muiinde (Supra) and Joseph Wambugu Kimanju (Supra) among numerous others on the same point all of which re-echoed the principle that professional disciplinary proceedings are distinct from the criminal proceedings even if they emanate from the same set of circumstances.

This Court has crystalized the above position in a number of its pronouncements. Waki JA in the case of the Hon. The Attorney General and another versus Maina Githinji & Another Nyeri Court of Appeal No. 21 of 2015 (UR) approved the reasoning of Okwengu JA in Judicial Service Commission versus Gladys Boss Shollei & Another (2014) eKLR, and the decision of the court in Kibe versus Attorney General Civil Appeal no. 164 of 2000.

In the Judicial Service Commission case (supra) the following observations were made by Okwengu JA.

"(61) The disciplinary process undertaken by the appellant was a quasi-judicial process as it involved the appellant in an adjudicatory function that required the appellant to ascertain facts and make a decision determining the respondent's legal rights in accordance with the Constitution and the Judicial Service Act, both of which provided for fair hearing. The disciplinary proceedings were anchored on a contractual relationship and the appellant was not empowered to provide penal sanctions. Notwithstanding the seriousness of the allegations made against the respondent, the disciplinary proceedings could not be treated like criminal proceedings, as the nature of the sanctions that could be applied in a criminal trial. Thus, the learned judge misdirected himself, in holding that the disciplinary proceedings were quasi-criminal. The Criminal Procedure Code which is an Act providing for the procedure in criminal cases had absolutely no application in the disciplinary proceedings, and the learned judge erred in applying the provisions of the Criminal Procedure Code."

In Kibe versus Attorney General Civil Appeal No. 164 of 2000 approved by Waki JA in the Hon. Attorney General & Another case (supra) this Court was categorical that:

"an acquittal in a criminal case does not automatically render an employee immune to disciplinary action by an employer for the reason that a criminal trial and an internal disciplinary proceeding initiated by an employer against an employee are two distinct processes with different procedures and standard of proof requirements. While an employer may rely on the outcome of a criminal trial against an employee to make its decision on that employee going against the outcome does not by itself render the employer's decision wrongful or unfair".

Lastly in Geoffrey Kiragu Njogu versus Public Service Commission & 2 Others (2015) eKLR this Court approved the reasoning of the Industrial Court in James Mugeru Egati versus Public Service Commission of Kenya (2014) eKLR where it is stated that "there is nothing in the Public Service Commission Regulations which suggest that disciplinary process is tied to a criminal process that may arise from the same facts. There is no provision in the Public Service Commission Regulations which makes it necessary for employers to

follow police investigations, or findings or indeed criminal court decisions in resolving employment disputes. The Public Service Commission Regulations do not merge disciplinary processes with criminal trials-----"

The above being the position, it is our view that this Court has made itself clear on the issue as to whether a successful outcome of a criminal process against an employee has primacy over an internal disciplinary process against such an employee arising from the same set of circumstances. The two processes are distinct from each other. The appellant having concluded its disciplinary process, accorded the respondent an internal opportunity to challenge them, which he failed to utilize and which had been fore-closed long before the pronouncement of the successful criminal decision. It is therefore our finding that the issue of the appellants concluded disciplinary process remains foreclosed in the absence of any plea by the respondent that these be reopened for re-interrogation on account of the alleged new and damning evidence.

- h) noted that despite the above, Section 31 of the TSC Act, 2012 allows Mr. Chebii to apply for reinstatement of his name to the Register of Teachers.

Therefore, the Committee finds that that Mr. Chebii was taken through a fair and lawful disciplinary process in line with the Constitution, Employment Act, and the Code of Regulations. Further, there are no grounds for reversal of the dismissal decision.

The Committee therefore rejected the first prayer for investigations to the matter with a view of declaring the dismissal and deregistration of Mr. Chebii as unfair, unlawful and irregular; and, thus the Committee made no recommendation to it;

Prayer No. 2: *Inquires into the matter to secure the reversal of his dismissal, his reinstatement and re-registration by the Teachers Service Commission, as well as his remittance of all his dues from the date of his dismissal;*

(xi) The Committee having noted that -

- a) having been moved persuasively that the process leading to the dismissal of the teacher was procedural, fair and within the Constitutional framework, the Committee is therefore find that the same was without error;
- b) the TSC proposed that the aggrieved teacher can seek for reinstatement of his name to the register of teachers and secure employment elsewhere but he cannot be re-employed by the TSC; and
- c) under 249(2)(b) of the Constitution, TSC is a Commission that is independent and not subject to direction or control by any person or authority. Therefore, the Committee proceeds not to interfere

with the mandate of the Commission having complied with the law in reaching its decision. The aggrieved teacher hence can enforce his rights under section 31 of the TSC Act, 2012 and Regulation 36 of the Teachers Service Commission Code of Regulations for Teachers.

The Committee therefore rejected the second prayer for Inquiries into the matter to secure the reversal of his dismissal, his reinstatement and re-registration by the Teachers Service Commission, as well as his remittance of all his dues from the date of his dismissal; the dismissal and deregistration of Mr. Chebii as unfair, unlawful and irregular; and, thus the Committee made no recommendation to it;

Prayer No. 3: *Review and strengthen Teachers Service Commission policies on disciplinary procedures and ensure the allegations of sexual misconduct involving teachers and students are investigated thoroughly and dealt with in a fair and just manner.*

(xii) The Committee -

- a) having interrogated the Petitioner and TSC on this matter, the Committee notes that no material was placed before the Committee demonstrating cogent reason to interfere with the policies on disciplinary procedures.

The Committee therefore rejected the third prayer for reviewing and strengthening Teachers Service Commission policies on disciplinary procedures and ensure the allegations of sexual misconduct involving teachers and students are investigated thoroughly and dealt with in a fair and just manne; and, thus the Committee made no recommendation to it;

Prayer No. 4: *Considers enacting legislation or amending existing laws on disciplinary procedures and to provide better safeguards for teachers against arbitrary and unjust dismissal based on unfounded allegations thereby upholding their rights to due process and a fair hearing.*

(kiii) The Committee notes that -

- a) The Constitution, the Teachers Service Commission Act, 2012; the Employment Act, 2007, the Teachers Service Commission (Code of Conduct and Ethics for Teachers) Regulations; and the Teachers Service Commission Code of Regulations for Teachers provide enough safeguards for teachers and ensures fair process and procedures; and
- b) At the same time, the same set of laws provides a balance that seeks to protect children while at school and ensure their rights under the Constitution are protected. Therefore, no evidence was provided that pointed to the unconstitutionality of the law.

The Committee therefore rejected the fourth prayer for considering enacting legislation or amending existing laws on disciplinary procedures and to provide better safeguards for teachers against arbitrary and unjust dismissal based on unfounded allegations thereby upholding their rights to due process and a fair hearing; and, thus the Committee made no recommendation to it;

Prayer No. 5: *makes any other recommendation that it deems fit in the circumstance of the petition.*

The Committee recommended to fifth prayer that the aggrieved teacher, Mr. Joseph Chebii could apply for reinstatement to the register of teachers under Section 31 of the TSC Act, 2012 and Regulation 36 of the Teachers Service Commission Code of Regulations for Teachers.

MIN./PPETC/2024/104:

CONSIDERATION OF REPORT ON PUBLIC
PETITION NO. 44 OF 2023 REGARDING
ENHANCEMENT OF HOUSE ALLOWANCES FOR
TEACHERS WORKING AND RESIDING WITHIN
KILIFI MUNICIPALITY

The Committee reviewed the draft Report and made the following observations:

- (i) Whereas the SRC issued a Circular on the payment of House allowances in 2014, Kilifi was conferred Municipality status in 2018 vide Kenya Gazette Supplement Notice No. 2 dated 19th March, 2019 and this therefore meant that by the time the SRC was forwarding names of municipalities, Kilifi had not been conferred the status of a Municipality.
- (ii) At the time the advisory was issued, Kilifi was a township and was gazetted as such as per Gazette Notice No. 10557 of 2007 hence falling under Cluster 4. Cluster 4 rates are payable to teachers stationed in townships and rural areas. Accordingly, in compliance with the advisory of the SRC, teachers in Kilifi have been receiving house allowance under Cluster 4 hence require an enhancement which is reviewed after every four (4) years.
- (iii) While the Commission is aware that Kilifi Township was gazetted as a municipality in March, 2019, the SRC did not review or render an advisory on the review of house allowance payable to teachers in Kilifi town until 31st July, 2023 which would be fully harmonized by 1st July, 2024.
- (iv) The Ministry of Public Service, Performance and Delivery Management is mandated to gazette hardship areas and SRC reviews salaries and allowances for the gazetted areas accordingly based on affordability and sustainability.
- (v) The Ministry of Public Service, Performance and Delivery Management is yet to harmonize all hardship areas to address the existing gaps in the remuneration of civil servants.
- (vi) In a bid to ensure gradual and full harmonization of allowances for all civil servants, SRC lacks a compliance mandate for employers who do not implement the directive.

The Committee made the following recommendations:

Prayer 1: inquires into the living conditions of teachers working and residing within Kilifi Municipality

- (i) The teachers working and residing within Kilifi Municipality allegedly feel discriminated against as they are not paid a commensurate allowance as those residing in major towns; and
- (ii) Teachers were also experiencing high cost of living, the cost of rental houses and basic commodities compared to the monthly allowances they were paid forcing them to seek affordable houses in the outskirts of the town far away from the schools in which they teach.

Therefore, the Committee recommends that the affected teachers submit their copies of the draft CBA to SRC through their employer TSC for consideration.

Prayer 2: recommends that teachers in both Secondary and Primary Schools within Kilifi Municipality are facilitated to receive enhanced house allowance

The Committee notes that -

- (i) SRC was undertaking progressive harmonization of House Allowances under the Third Remuneration and Benefits Cycle for the Teaching Service for the FY2021/2022 - 2024/2025 which had been actualized with effect from 1st July, 2023 and would be fully harmonized by 1st July, 2024; and
- (ii) Consequently, SRC communicated the new rates to TSC for both phases vide a letter dated 31st July, 2023 to negotiate with teachers' Trade Unions on the Collective Bargaining Agreements for teachers.

Therefore, the Committee recommends that SRC and TSC in compliance with the above provision, ensures that teachers working and residing in Kilifi Municipality get enhanced house allowances together with arrears with effect from 1st July, 2023.

Prayer 3: makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.

- (i) The Committee recommends that the Ministry of Public Service, Performance and Delivery Management fast tracks and provides the status report on the review of hardship areas which will inform review of hardship allowances across the country; and
- (ii) The Committee further recommends that the Ministry of Public Service, Performance and Delivery Management in consultation with the Salaries and Remuneration Commission (SRC) and other relevant Agencies harmonizes House Allowances for Public Officers in all areas across the country as a way of addressing disparities that may exist in various sectors of public service within six (6) months from 1st July, 2023.

MIN./PPETC/2024/105:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 05:00 p.m. The next meeting will be held on Tuesday, 26th March, 2024 at 10:00 a.m.

Sign: 
FSV (CHAIRPERSON)

Date...09-04-2024.....