

Paper card by
Hon. P. Nyakati
on 2/7/2014
Chumbi

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REPUBLIC OF KENYA
PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT-SECOND SESSION
THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL
AFFAIRS
REPORT
ON
PETITION BY MR. ADAM KINGORI MWANGI FOR
ENFORCEMENT OF A COURT ORDER IN WINDING UP CASE
NO. 10 OF 1987
CLERK'S CHAMBERS
NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI
JUNE, 2014

1.0 PREFACE

The Petition was tabled before the House and was committed to the Departmental Committee on Justice and Legal Affairs for consideration pursuant to standing order 227. The Committee considered the Petition pursuant to the said standing order.

1.1 Committee Membership

The Committee on Justice and Legal Affairs was constituted by the House on Thursday 16th May, 2013 comprising of the following members:

1. Hon. Samuel Chepkonga, M.P.,Chairperson
2. Hon. Priscilla Nyokabi, M.P.,Vice-Chairperson
3. Hon. Muriithi Waiganjo, M.P
4. Hon. Ndirangu Waihenya, M.P
5. Hon. Florence Kajuju, M.P
6. Hon. Kang'ata Irungu, M.P
7. Hon. Benson Mutura, M.P
8. Hon. Olago Aluoch, M.P
9. Hon. John Njoroge M.P
10. Hon. William Cheptumo, M.P
11. Hon. Njoroge Baiya, M.P
12. Hon. Mohamed Abdi, M.P
13. Hon. Kangongo Bowen, M.P
14. Hon. Sammy Koech, M.P
15. Hon. Moses Cheboi, M.P
16. Hon. Paul Bii, M.P
17. Hon. Charles Gimose, M.P
18. Hon. Johanna Ngeno, M.P
19. Hon. Boniface Otsiula, M.P
20. Hon. David Ouma Ochieng, M.P
21. Hon. Neto Agostinho, M.P
22. Hon. Dr. Christine Ombaka, M.P
23. Hon. Kaluma Peter, M.P
24. Hon. Fatuma Ibrahim, M.P
25. Hon. Ben Momanyi Orori, M.P
26. Hon. Munuve Mati John, M.P
27. Hon. Mwamkale Kamoti, M.P
28. Hon. T.J Kajwang', M.P
29. Hon. Mutua Mutemi, M.P

1.2 Committee Mandate

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of standing order 216 (5) which outline functions of the Committee as being:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the Programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;
- d) To study, access and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a Cabinet Secretary;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to consider:-

- a) Constitutional Affairs
- b) The administration of Law and Justice
- c) The Judiciary
- d) Public prosecutions
- e) Elections
- f) Ethics, Integrity and anti-corruption and
- g) Human rights

1.3 Committee Meetings

The Committee held one sitting during which the Petitioner was heard and presented his written Petition to the Committee.

1.5 Acknowledgements

- a. The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate.
- b. The Chairperson of the Committee takes this opportunity to thank all Members of the Committee for their patience, Sacrifice, endurance and Commitment to Public Service under tight schedules which enabled us to complete the task within the stipulated period.
- c. The Committee wishes to record its appreciation for services rendered by the staff of the National Assembly attached to the Committee. Their efforts and input made the work of the Committee and production of this Report possible.
- d. The Departmental Committee on Justice and Legal Affairs presents and recommends this report to the House pursuant to the provisions of Standing Orders of the National Assembly and pray that the House adopts the report.

Signed..........

Hon. Samuel Chepkong'a, M.P
(Chairperson)

Departmental Committee on Justice and Legal Affairs

Date..........

2.0 THE PETITION

The Petition is for enforcement of a Court order in winding up Cause No.10 of 1987 issued by Lady Justice J.Khaminwa (as she then was) given on 17th March, 2009 and issued at Nairobi on 24th March, 2009 directing that the dissolution and release in the Winding up cause be stayed until the amount of Kshs.140, 000/= together with interest be therein from 1986 be paid to the applicant and also that costs of the application be to the applicant.

2.1 CONSIDERATION OF THE PETITION BY THE COMMITTEE

An investigative hearing of the Petition took place on 24th October, 2013 where the Petitioner Informed the Committee as follows:

- a. He deposited one Hundred and Forty thousand Kenya Shillings (140,000) with Pioneer Building, Thika Branch on July 18, 1986.
- b. The Pioneer Building Society Collapsed in 1987 and the Court appointed the Official Receiver as the Liquidator for the affairs of the Society.
- c. On October 17th, 2007, the Advocates for the Official Receiver and Provisional Liquidator issued a notice in the Daily Nation of the intention to apply for order for release and dissolution of Pioneer Building Society (in Liquidation) and invited any objections within twenty one (21) days.
- d. The Petitioner filed an application dated November 15, 2007 in Court being Nairobi High Court Winding up Cause No.10 of 1987, objecting to orders for release and dissolution of the Society.
- e. On 18th February, 2007 the Official Receiver and Provisional Liquidator's advocate filed an objection to the Petitioner's application.
- f. The Court on March 17, 2009 gave an order staying the dissolution and release of any money until the Petitioner's deposit of Ksh.140, 000/ together with interest from 1986 was paid.

- g. In June 2009, the Petitioner lodged a complaint with the Public Complaints Standing Committee now Commission on Administrative Justice seeking intervention due to the delay and /or failure by the Official Receiver and Provisional Liquidator to comply with the Court order.
- h. The Petitioner's quest for payment is premised on the Court Order of March 17th 2009 instructing the Official Receiver and the Provisional Liquidator to stay the release and dissolution until the Petitioner's deposit is paid with interest.
- i. The Official Receiver and Provisional Liquidator disputed the authenticity of the Court order and wrote to the Deputy Registrar, Milimani Law Courts seeking confirmation of the same.
- j. The Milimani Law Courts Deputy Registrar confirmed that the Court order of March 17th, 2009 was genuine.
- k. The Petitioner has visited several Government institutions including Office of the Attorney General and Department of Justice and Commission on Administrative Justice for assistance in this matter.

2.2 PRAYERS

The Petitioner prays that Parliament:

- Parliament should compel the Attorney General to explain why a court order directing payment of Ksh.140, 000/= has not been enforced.
- The Attorney General should direct payments to be made within a reasonable time as determined by Parliament.
- Makes any other order and /or direction that it deems fit in the circumstances of the case.

3.0 COMMITTEE'S OBSERVATIONS

- a. The High Court of Kenya by an order given on 17th March, 2009 stayed the dissolution and release in the winding up cause until the amount of Ksh.140,000/= together with interest from 1986 was paid to the applicant.
- b. The Law firm of Wangai Nyuthe and Co. Advocates for the Official Receiver vide letter dated 25th August, 2010, wrote to the Deputy Registrar of Milimani Commercial Courts seeking confirmation of the correct position regarding the authenticity of the Court order on grounds that Mr. Kingori Mwangi's application has never been argued and the honourable Judge never issued such an order.
- c. Mr.E.A.A Obendo for the Deputy of Milimani Law Courts, vide letter dated 3rd September, 2010 confirmed that the order complained about was granted by the court pursuant to the application by Mr.Kingori Mwangi.
- d. The Official Receiver and Provisional Liquidator of the Companies (Pioneer Building Society and Capital Finance Ltd) by a notice of motion dated 24th November, 2010 went to court for review of the order made on 17th March 2009.
- e. The order of 17th March, 2009 is contested because the application by Adam Kingori Mwangi dated 15th November, 2007, and upon which the Court granted stay order, was never heard as contested by the Official Receiver and Provisional Liquidator.
- f. The court order of 17th March, 2009 was varied by setting aside the order that stayed the dissolution and release in the winding up cause until the amount of Ksh.140, 000 and interest since 1986 was paid by the applicant.
- g. The Petitioner cannot seek enforcement of the court order dated 17th March, 2009 because the said court order was varied and set aside by an order dated 2nd March, 2012.

4.0 RECOMMENDATION

The Committee recommends that the Petitioner should pursue his claim with the Official Receiver if the claim was properly lodged.

