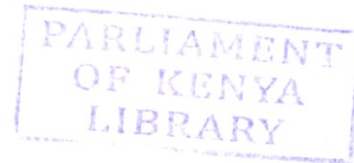


Approved for tabling  
SNA  
25/11/24



Rt. Hon. Speaker  
The report is in order.  
You may approve for  
tabling.  
Eli  
22/11/24


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



REPORT ON-

CONSIDERATION OF PUBLIC PETITION NO. 50 OF 2023 REGARDING DELAYED  
PAYMENT OF PENSION BY KENYA RAILWAYS CORPORATION BY THE HON. (DR.)  
CHARLES ONCHOKE, MP

NOVEMBER 2024

NOVEMBER 2024	
 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 NOV 2024	
DAY: Wednesday	
TABLED BY:	Hon. Njirad Nthau (Chairperson)
CLERK-AT THE-TABLE:	Womale

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

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## 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. 50 of 2023 regarding delayed payment of Pension by Kenya Railways Corporation. The petition was presented to the House pursuant to Standing Order No. 225(2)(a) by the Member of Parliament for Bonchari Constituency, Hon. (Dr.) Charles Onchoke, MP on behalf of Mr. Benson Mocheo.

The Petitioner prayed that the Committee recommends payment of the delayed pension of Mr. Benson Asiago Mocheo and action be taken on the officers occasioning the delay. The Committee considered the Petition by engaging the Petitioner, University of Nairobi and Kenya Railways Corporation and observed that the Corporation's delay in processing Mr. Mocheo's pension for his seventeen (17) years of service, by failing to remit his pension to the University of Nairobi or promptly complete the necessary processing, violated Mr. Mocheo's rights under sections 5 and 6 of the Pensions Act (Cap. 189).

The Committee recommends that the Kenya Railways Corporation promptly and adequately pays the pension owed to Mr. Mocheo for his seventeen (17) years of service within thirty (30) days of the report being tabled and fast-tracks any other pending pension payment owed to its former employees.

The Committee expresses appreciation to the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support during the discharge of its duties. The Chairperson extends gratitude to the Committee Members for their devotion and commitment to duty throughout 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.....20/11/2024.....

## **PART ONE**

### **1 PREFACE**

#### **1.1 Establishment and Mandate of the Committee**

The Public Petitions Committee is established under the provisions of Standing Order 208A with the following terms of reference:

- a) considering all public petitions tabled in the House;
- b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommending whether the findings arising from consideration of a petition should be debated; and
- d) advising the House and reporting on all public petitions committed to it.

## 1.2 Committee Membership

The Public Petitions Committee was constituted in October 2022 and comprises 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 South 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 was facilitated members of the secretariat:

Lead Clerk  
Mr. Ahmed Kadhi  
Principal Clerk Assistant II

Ms. Anne Shibuko  
First Clerk Assistant

Ms. Miriam Modo  
First Clerk Assistant

Mr. Willis Obiero  
Clerk Assistant III

Ms. Isaac Nabiswa  
Legal Counsel II

Ms. Patricia Gichane  
Legal Counsel II

Mr. Martin Sigei  
Research Officer III

Ms. Roselyne Njuki  
Senior Serjeant-at-Arms

Mr. Paul Shana  
Serjeant-at-Arms

Mr. Calvin Karungo  
Media Relations Officer III

Mr. Peter Mutethia  
Audio Officer

## PART TWO

### 2 BACKGROUND TO THE PETITION

#### 2.1 Introduction

1. Public Petition No. 50 of 2023 regarding delayed payment of pension by Kenya Railways Corporation was presented by the Hon. (Dr.) Charles Onchoke, MP, Member for Bonchari Constituency on 17<sup>th</sup> August 2023 on behalf of Mr. Benson Asiago Mocheo.
2. The Petitioner stated that Mr. Benson Mocheo had worked for Kenya Railways Corporation (KRC) for seventeen (17) years from 8<sup>th</sup> January 1968 to 30<sup>th</sup> April 1985 as a station manager on permanent and pensionable terms.
3. In 1984, the University of Nairobi (UON) advertised the position of assistant accountants, which Mr. Benson Asiago Mocheo successfully applied and transferred his service in 1985 after being cleared and released by KRC. Consequently, he worked for UON for twenty-two (22) years until his retirement in 2006.
4. The University of Nairobi and Kenya Railways Corporation had severally agreed that the KRC would pay Mr. Mocheo's pension for the seventeen (17) years of service at the Corporation. Despite the agreement, the University of Nairobi paid Mr. Mocheo's pension for the period worked, but the Kenya Railways Corporation had not paid his dues.
5. Twice, Mr. Mocheo had sought redress in court without success as the courts deemed the matter time barred. The Kenya Railways Corporation further alleged that –
  - (i) The University of Nairobi ought to have paid his pension for both the twenty- two (22) years and seventeen (17) years;
  - (ii) Mr. Mocheo had refused to accept a pension payment of Kshs. 527.20 per month absorbed by the Corporation;
  - (iii) Mr. Mocheo had refused to pick a pension cheque issued in 2007 by the Corporation; and
  - (iv) Mr. Mocheo had refused to fill all the census forms.
6. Contrary to the allegations by Kenya Railways Corporation, Mr. Mocheo claimed to have been filing the census forms every year and was not aware of any cheque made in 2007. Further, that the Kshs. 527.20 per month offered by the Corporation was lower than his rightful entitlement of Kshs. 9,002.45 as calculated using his last salary in the year 2006.

## 2.1 Prayers

7. The Petitioners prayed that the Committee—

- (i) Inquiries into the matter and recommend an appropriate mechanism for resolving the matter for the benefit of the petitioner;
- (ii) Recommends action be taken on all those involved in the continued violation of Mr. Benson Asiago Mocheo's right to fair administrative action as provided under the Constitution of Kenya 2010 and the Fair Administrative Act (Cap. 7L);
- (iii) Recommends payment of the delayed pension of Mr. Benson Asiago Mocheo; and
- (iv) Makes any other recommendation or action order that it deems fit in addressing the plight of the Petitioners.



## PART THREE

### 3 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

#### 3.1 The Petitioner

On 28<sup>th</sup> November, 2023, the Hon. (Dr.) Charles Onchoke, M.P. appeared before the Committee and submitted as follows—

8. Benson Asiago Mocheo served Kenya Railways from 8<sup>th</sup> January 1968 to 30<sup>th</sup> April 1985 on permanent and pensionable status as an assistant station master for seventeen (17) years and three (3) months.
9. On 30<sup>th</sup> April 1985, his services were transferred to the University of Nairobi on terms that his seventeen (17) years and three (3) months service would be paid by Kenya Railways Corporation after retiring from the University of Nairobi at the age of sixty (60) years; and that the retirement dues would be calculated basing the retiring earned salary as per the Pension Act.
10. A sum of Kshs. 44,964.75 which was thirty-one (31) per cent of his total pension endowment was to be transferred to the University of Nairobi as starting pensions (which stood as five per cent contributions) and university to top up twenty (20) per cent but the university is able to account for this money.
11. On 11<sup>th</sup> August 2006, there was a meeting between Kenya Railways Corporation and the University of Nairobi, and each agreed to pay for the rendered service. The University of Nairobi paid him Kshs. 44,964.75 but Kenya Railways Corporation has not paid him.
12. Railway Trustees started promising him payment from 2005 to 2015 with letter from the managing director, chief accountant, human resource management, finance accountant, and pension's manager. All these letters were fake because all these positions ceased to exist in 2004, when Kenya Railways Corporation was bought by Rift Valley Railways and all these positions were retired or retrenched.
13. He refused to take the erroneous cheque prepared in 2007 until 2015, based on the fact that the cheque was prepared based on the salary he earned in 1985, when he exited service at thirty-eight (38) years of age against the salary he was earning in 2006 upon retirement at sixty (60) years.
14. Errors in the cheque were that the lumpsum of Kshs. 621,170.80 was changed to read Kshs. 42,176.25, and that the monthly pensions of Kshs. 9,002.45 were changed to read Kshs. 527.20.
15. Efforts by Mr. Mocheo to have the matters addressed by the courts on two instances were not fruitful. The Kenya Railways Corporation alleges that he was paid all his dues in 1985 with no proof or evidence.

16. Section 90 of the Employment Act, 2007 state that with fundamental freedoms of an individual cannot be time barred in terms of Article 22(1) as read with Article 22(3) of the Constitution. Section 4(1)a thereof provides for six (6) years of limitation period for suits based on contracts. In his case it was three (3) years against six (6) years, therefore, the three (3) years of ruling was unfair).

### 3.2 The University of Nairobi

On Tuesday, 19<sup>th</sup> March 2024, Mr. Benard Njuguna, the Registrar, Administration, University of Nairobi appeared before the Committee on behalf of the Vice Chancellor, Prof. S.G Kiama, PhD and submitted as follows—

17. Mr. Mocheo was appointed as an Assistant Accountant on permanent and pensionable terms in the Finance Department of the University of Nairobi on 5<sup>th</sup> March 1985.
18. On 29<sup>th</sup> April 1985, the Kenya Railways Corporation wrote to the University of Nairobi to confirm acceptance of Mr. Mocheo's services with the Corporation to be transferred to the University, subject to him joining the then Superannuated Retirement Benefit Scheme applicable to university staff.
19. On 12<sup>th</sup> June 1985, the University wrote to the Kenya Railways Corporation conveying the acceptance to transfer Mr. Mocheo's service to the University. The Corporation was requested to proceed and process the transfer.
20. The KRC did not transfer Mr. Mocheo's pension benefits to the University of Nairobi for the period he worked at the Corporation.
21. Mr. Mocheo retired from the service of the University of Nairobi through early retirement on 31<sup>st</sup> December 2006 after serving for twenty-two (22) and was informed that he would be paid his retirement benefits in accordance with the rules of the University of Nairobi Pension Scheme.
22. On 11<sup>th</sup> August 2006, a meeting was held between the University and the Corporation noting that Mr. Mocheo had retired. The Administrator being the University of Nairobi Pension Scheme, and the Executive Trustee, Kenya Railways Pension Scheme discussed the matter of Mr. Mocheo's pension payment. It was agreed that Kenya Railways Corporation was to pay him for eighteen (18) years and UON to pay for the twenty-two (22) years he had worked for the University.
23. The meeting noted that although the KRC transferred Mr. Mocheo's service to the University, it did not transfer his accrued pension benefits. The Corporation opted to retain these benefits until Mr. Mocheo's retirement. On the meeting of 11<sup>th</sup> August 2006, KRC confirmed that they owed Mr. Mocheo as he transferred the services, but they had retained his pension.

24. The meeting agreed that the University would formally inform the Corporation on Mr. Mocheo's retirement date to enable it to start processing his pension benefits for the period Mr. Mocheo served the Corporation.
25. On its part, the University would process Mr. Mocheo's benefits for the period he had served the University as per the rules and regulations of the University of Nairobi Pension Scheme.
26. The University of Nairobi Pension Scheme (UNPS) paid Mr. Mocheo his pension dues for the twenty-two (22) years he served at the University, between 5<sup>th</sup> March 1985, and 31<sup>st</sup> December 2006. The total amount paid was Kshs 723,111.00 as lump sum less the withholding tax vide UNPS Voucher Number 11237 dated 6<sup>th</sup> December 2006.
27. The mandate of the University was to only pay terminal and retirement benefits calculated from the date Mr. Mocheo worked for it until the date he retired from employment which it did. Mr. Mocheo was receiving a monthly pension of about Kshs. 1800 from the University even after getting the lumpsum which was a defined benefit.
28. In September 2007, the University of Nairobi Pension Scheme was converted from that operating as a 'defined benefit' to one operating as a 'defined contribution scheme'. This necessitated an actuarial valuation of the Scheme as of 28<sup>th</sup> February 2007. Mr. Mocheo's share as a Member of the Scheme was calculated to be Kshs. 10,003.
29. The University paid Mr. Mocheo all his pension dues for the period he served at the University and did not owe him. The Kenya Railways Corporation should pay Mr. Mocheo his pension dues for the period he worked with the Corporation.
30. The University was guided by the Public Service Commission Human Resource Manual that an employee was not expected to lose pension after transfer of service as the two institutions were expected to harmonize. The transfer of service was accepted but the policy allowed, and Mr. Mocheo opted to transfer his pension. Therefore, the KRC pension scheme was to send the pension to UON after a computation, however that was not done.

### **3.3 The Kenya Railways Corporation**

On 24<sup>th</sup> April 2024, the General Manager, Human Resource and Administration, Mr. Asava Kadima on behalf of the Managing Director, Kenya Railways Corporation appeared before the Committee and submitted as follows—

31. Mr. Mocheo was appointed by the Kenya Railways Corporation on 18<sup>th</sup> January 1968 and worked for the Corporation on permanent and pensionable terms until 30<sup>th</sup> April 1985 when he transferred his service to the University of Nairobi with effect from 1<sup>st</sup> May 1985.

32. On 14<sup>th</sup> October 1986, the Chief Accountant at Kenya Railways Corporation prepared a statement of aggregate pensionable emoluments, which was channelled through the Chief Personnel Manager to forward to the University of Nairobi.
33. The University of Nairobi vide letter dated 10<sup>th</sup> November 2005 acknowledged receipt of the statement but noted that a cheque should have accompanied the statement.
34. The correct procedure as per the Kenya Railways Corporation Pension Regulations 1983 was that the Corporation should have paid thirty-one (31) per cent of the aggregate pensionable emoluments to the pension Scheme of the University of Nairobi.
35. The payment of Kshs. 44,964.74 which was thirty-one (31) per cent of the total pensionable emoluments to the pension Scheme of the University would have settled the claim. This amount was never paid as at Mr. Mocheo's retirement date. He was paid benefits to the service he rendered to the University minus service worked under the Corporation.
36. A joint meeting held between the Corporation and the University of Nairobi agreed that Kenya Railways Corporation should pay Mr. Mocheo for the seventeen (17) years he worked.
37. A computation for the dues was done based on the last salary earned in 1985 and certified by the Auditor General on 20<sup>th</sup> September 2007. A voucher was prepared in favor of the above for Kshs. 52,193.05. This included Kshs 42,176.25 being lumpsum and Kshs.10,116.80 representing arrears of pension at the rate of Kshs. 527.20 per month from 1<sup>st</sup> January 2007 to 31<sup>st</sup> July 2008. A Cheque No. 104067 for Kshs. 52,193.05 was done in favor of the above but Mr. Mocheo declined to collect the payment which was held by the Corporation.
38. Mr. Mocheo was introduced to the Kenya Railways Staff Retirement Benefit Scheme pension payroll in August 2018. His monthly pension was raised to a minimum of Kshs. 1,000 as per the actuarial advice setting the minimum pension to Kshs. 1,000. His pension was suspended in the month of May 2010 since the member did not submit the census form when the Scheme was conducting pensioner's census.
39. It was not true that Mr. Mocheo was unaware of any cheque made. Further, Mr. Mocheo had not been filling in the census forms as alleged and there were no documents to support assertions that he was filling the census forms. It was however in record that Mr. Mocheo requested to have the initial cheque replaced and this was being processed.

40. The Corporation was not aware of the claimant's computations resulting to a pension rate of Kshs. 9,002.45 per month instead of Kshs. 527.20 as computed by the Corporation.
41. The Corporation factored in his last salary as one of the considerations in calculating his pension under the defined benefit scheme, which amounted to Kshs. 527 at the time. However, the trustees of the Kenya Railways Scheme had approved annual increases to the pension, with the initial pension being Kshs. 1,000 and the current pension standing at approximately Kshs. 6,000 as of 2008, and not Kshs. 527. Therefore, Mr. Mocheo's claim that his entitlement was computed incorrectly was not factual.
42. The Kenya Railways Staff Retirement Benefits Scheme confirmed to the Retirement Benefits Authority vide a letter dated 21<sup>st</sup> September 2015 that Mr. Mocheo joined the scheme payroll in August 2008 (Pensioner Number 83644) through the approval of the Sponsor and was a pensioner in receipt of monthly pension as per the Scheme Trust Deed and Rules. His lumpsum was to be paid by the sponsor under the concession agreement through a World Bank funded project.
43. The last attempt to engage Mr. Mocheo for negotiations took place when Mr. Mocheo visited Kenya Railways Corporation offices to inquire about his cheque in January 2023. However, he did not receive the payment, and the finance team provided an explanation, which was that it was undergoing internal resolution.
44. The Corporation did not respond to the letter from the University regarding remittance of Mr. Mocheo's pension, but instead decided to pay directly for which calculation of the pension was ongoing.
45. The Corporation factored in Mr. Mocheo's last salary in calculating his pension under the defined benefit scheme, which amounted to Kshs. 527 at the time. However, the trustees of the Kenya Railways Scheme had approved annual increases to the pension, with the initial pension being Kshs. 1000 and the current pension standing at approximately Kshs. 6000 as of 2008, and not Kshs. 527.
46. The lumpsum gratuity payment was determined based on the years worked and that was not disputed by any party. The gratuity was calculated up to the point Mr. Mocheo was leaving the KRC, and there was no disagreement regarding the gratuity amount.
47. The Corporation would provide Mr. Mocheo with his rightful pension up to date, amounting to Kshs. 6500 monthly from 2008 when he joined the payroll, along with any outstanding arrears. However, it was deemed necessary for the three parties involved: UON, KRC, and Mr. Mocheo to engage in a tripartite discussion to synchronize the agreed pension terms for the retired employee's benefit.

## PART FOUR

### 4 COMMITTEE OBSERVATIONS

48. Upon hearing from the Petitioner, the University of Nairobi and the Kenya Railways Corporation, the Committee observed that—

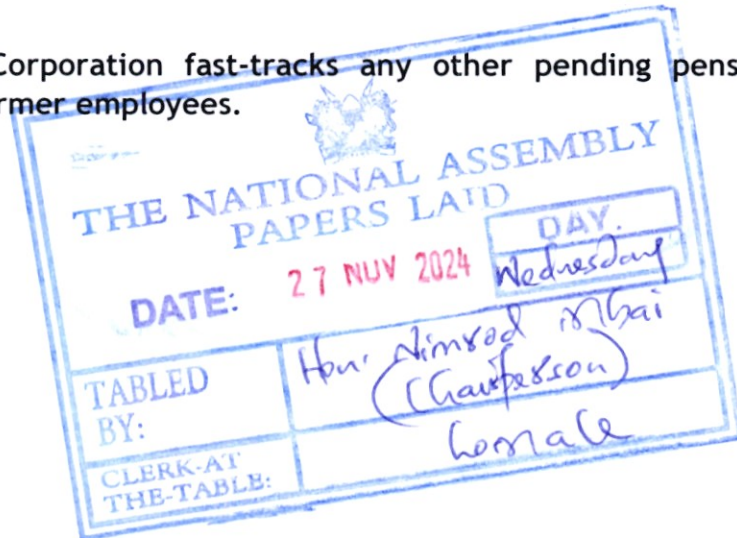
- (i) The Kenya Railways Corporation's delay in processing Mr. Mocheo's pension for his seventeen (17) years of service, by failing to remit his pension to the University of Nairobi or promptly complete the necessary processing, violated Mr. Mocheo's rights under sections 5 and 6 of the Pensions Act (Cap. 189).
- (ii) The Kshs. 527.20 per month offered by the Corporation was unreasonable as calculated using his last salary in the year 2006.
- (iii) The Kenya Railways Corporation failed to transfer Mr. Mocheo's pension benefits for the eighty (18) years of service to the University despite the request made by the University.

PART FIVE

5 COMMITTEE RECOMMENDATIONS

49. Pursuant to the provisions of Standing Order 227, the Committee recommends as follows—

- (i) On the prayers that the Committee inquires into the matter and recommends an appropriate mechanism for resolving the matter for the benefit of the petitioner; and recommends payment of the delayed pension of Mr. Benson Asiago Mocheo, the Committee recommends that, the Kenya Railways Corporation promptly and adequately pays the pension owed to Mr. Mocheo for his seventeen (17) years of service within thirty (30) days of the report being tabled.
- (ii) On the prayer that the Committee recommends action be taken on all those involved in the continued violation of Mr. Benson Asiago Mocheo's right to fair administrative action as provided under the Constitution of Kenya 2010 and the Fair Administrative Act No.4 of 2016, the Committee notes that the primary issue raised in the petition pertains to the delayed payment of pension, attributed to the Corporation. Therefore, the Committee recommends that the Corporation initiates administrative procedures to identify and deal with any negligence or fault by the officers responsible for processing the pension.
- (iii) The Kenya Railways Corporation fast-tracks any other pending pension payment owed to its former employees.



Signed: 

Date: 27/11/2024

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

## **ANNEXURES**

- Annex 1: The Adoption List**
- Annex 2: Public Petition No. 50 of 2023 regarding Delayed Payment of Pension by Kenya Railways Corporation**
- Annex 3: Minutes of 85<sup>th</sup> Sitting of 2023 held on 28<sup>th</sup> November 2023**
- Annex 4: Minutes of 10<sup>th</sup> Sitting of 2024 held on 19<sup>th</sup> March 2024**
- Annex 5: Minutes of 29<sup>th</sup> Sitting of 2024 held on 24<sup>th</sup> April 2024**
- Annex 6: Minutes of the 60th Sitting held on 9th November 2024**





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

ADOPTION SCHEDULE  
OF THE REPORT ON CONSIDERATION OF PUBLIC PETITION NO. 50 OF 2023  
REGARDING DELAYED PAYMENT OF PENSION BY KENYA RAILWAYS CORPORATION

DATE.....<sup>9TH</sup> NOVEMBER 2024

We, the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the consideration of Public Petition No. 50 of 2023 regarding Delayed Payment of Pension by Kenya Railways Corporation to confirm our approval and confirm its accuracy, validity and authenticity:

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. Joshua Chepyegon Kandie, M.P.	Member	
5.	Hon. John Walter Owino, M.P.	Member	
6.	Hon. Ernest Ogesi Kivai, 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	



Approved  
S/A  
16/8/23

**THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT (SECOND SESSION)**

**PUBLIC PETITION**

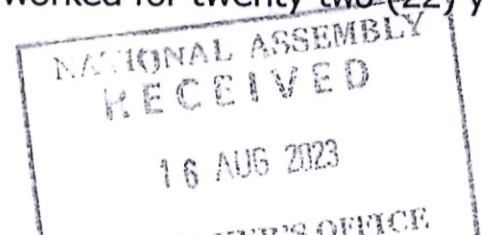
*(No. 50 of 2023)*

**DELAYED PAYMENT OF PENSION BY KENYA RAILWAYS CORPORATION**

I, the **UNDERSIGNED**, on behalf of Mr. Benson Asiago Mocheo, an aggrieved Kenyan Citizen;

**DRAW** the attention of the House to the following:

- 1. THAT**, Article 1 of the Constitution of Kenya 2010, reposes all sovereign authority in the people of Kenya; the people of Kenya have delegated legislative authority to Parliament as the representatives of the people.
- 2. THAT**, Article 10 of the Constitution provides for the national values and principles of governance. The same bind all State organs, State officers, public officers, and all persons.
- 3. THAT**, Mr. Benson Asiago Mocheo worked for the Kenya Railways Corporation for seventeen (17) years from 8<sup>th</sup> January 1968 to 30<sup>th</sup> April 1985 as a Station Master on permanent and pensionable terms. In 1984 the University of Nairobi placed an advertisement in the Daily Nation for the position of Assistant Accountant. Public officers in government and parastatals were eligible to apply through their respective Heads of Departments for recommendations and other necessary formalities.
- 4. THAT**, Mr. Benson Asiago Mocheo made an application for the said position through the Managing Director, Kenya Railways Corporation, and was later invited for an interview and offered the advertised position in 1985. He, therefore, forwarded his letter to the Managing Director of Kenya Railways Corporation to release him and transfer his service to the University of Nairobi. The Managing Director of Kenya Railways Corporation authorized Mr. Mocheo's transfer to the University of Nairobi, where he worked for twenty-two (22) years until his retirement in 2006.



**5. THAT**, the University of Nairobi and Kenya Railways Corporation have severally agreed that the latter would pay Mr. Mocheo's pension for the seventeen (17) years of service at Kenya Railways. However, the University of Nairobi paid Mr. Mocheo's pension for the period worked, but the Kenya Railways Corporation has not paid his dues to date.

**6. THAT**, twice he has sought redress in court without success as the courts have deemed it time barred. The Kenya Railways Corporation further alleged that –

- a) The University of Nairobi ought to have paid his pension for both the twenty-two (22) years and seventeen (17) years;
- b) Mr. Mocheo has refused to accept a pension payment of Kshs. 527.20 per month as offered by the Corporation;
- c) Mr. Mocheo has refused to pick a pension cheque issued in 2007 by the Corporation; and,
- d) Mr. Mocheo has refused to fill all the census forms; and,

---

**7. THAT**, contrary to the allegations by Kenya Railways, Mr. Mocheo claims to have been filing the census forms every year and is not aware of any cheque made in 2007. Further, that the Kshs. 527.20 per month is lower than his rightful entitlement of Kshs. 9002.45 as calculated using his last salary in the year 2006.

**THEREFORE**, your humble Petitioner prays that the National Assembly through the Public Petitions Committee;

- i.** Inquire into the matter and recommend an appropriate mechanism for resolving the matter for the benefit of the petitioner.
- ii.** recommend action to be taken on all involved in the continued violation of Mr. Benson Asiago Mocheo right to fair administrative action as provided under the Constitution of Kenya 2010 and the Fair Administrative Action Act, No. 4 of 2016;
- iii.** Recommends for payment of the delayed pension to Mr. Benson Asiago Mocheo; and,
- iv.** Makes any other recommendation or action it deems fit to address the plight of the Petitioner.



**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**

**MINUTES OF THE 85<sup>TH</sup> SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON TUESDAY, NOVEMBER 28, 2023, IN COMMITTEE ROOM 12, GROUND FLOOR, MAIN PARLIAMENT BUILDINGS, AT 12.00 P.M**

**PRESENT**

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. Joshua Chepyegon Kandie, M.P.
4. Hon. John Walter Owino, M.P.
5. Hon. Bidu Mohamed Tubi, M.P.
6. Hon. John Bwire Okano, M.P.
7. Hon. Sloya Clement Logova, M.P.

**APOLOGIES**

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. Maisori Marwa Kitayama, M.P.
4. Hon. Edith Vethi Nyenze, M.P.
5. Hon. Peter Mbogho Shake, M.P.
6. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
7. Hon. Caleb Mutiso Mule, M.P.
8. Hon. Suzanne Ndunge Kiamba, M.P.

**SECRETARIAT**

1. Ms. Ahmed Kadhi - Senior Clerk Assistant
2. Mr. Willis Obiero - Clerk Assistant III
3. Mr. Moses Mwariri - Legal Counsel
4. Mr. Martin Sigei - Research Officer III
5. Ms. Lilian Mburugu - Media Relations Officer III
6. Ms. Felistus Muiya - Public Communications Officer III
7. Mr. Kelvin Lengasi - Audio Officer

**IN ATTENDANCE**

**NATIONAL COHESION AND INTEGRATION COMMISSION (NCIC)**

1. Rev. Dr. Samuel Kobia - Chairperson
2. Mr. Harrison Kariuki - Chief Executive Officer/Secretary, NCIC
3. Dr. Danvas Makori - Commissioner
4. Mr. Kyulo Mwangi - Deputy Director, Legal Services

- |                        |   |  |
|------------------------|---|--|
| 5. Mr. Simeon Ndiwa    | - | Deputy Director, Investigations and Compliance |
| 6. Mr. Wycliffe Mwatu  | - | Principal Investigative Officer                |
| 7. Ms. Rosemary Saka   | - | Principal Corporate Communications Officer     |
| 8. Mr. Derrick Maina   | - | Program Officer                                |
| 9. Ms. Annet Mbugua    | - | Persona Assistant                              |
| 10. Ms. Evelyne Kavaya | - | Attaché  |

**PETITIONER**

Hon. (Dr.) Charles Onchoke, M.P. - Petitioner

**MIN./PPETC/2023/528:**

**PRELIMINARIES**

The Vice-Chairperson called the meeting to order at 12:00 p.m. and Hon. Bidu Mohamed Tubi, M.P. said the prayers.

**MIN./PPETC/2023/529:**

**ADOPTION OF AGENDA**

**AGENDA**

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Consideration of Public Petition Regarding the Delayed Payment of Pension by Kenya Railways Corporation**
  - *Meeting with the Petitioner, Hon. (Dr.) Charles M. Onchoke, MP*
6. **Consideration of Public Petition Regarding Banning of TikTok in Kenya**
  - *Meeting with NCIC*
7. Any Other Business
8. Adjournment

The Agenda was amended to include the **Consideration of Public Petition Regarding Banning of TikTok in Kenya**. Thereafter, the Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Ernest Ogesi Kivai, M.P. and seconded by Hon. Bidu Mohamed Tubi, M.P.

**MIN./PPETC/2023/530:**

**CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

The Agenda was deferred.

**MIN./PPETC/2023/531: CONSIDERATION OF PUBLIC PETITION REGARDING THE DELAYED PAYMENT OF PENSION BY KENYA RAILWAYS CORPORATION**

**Meeting with the Petitioner, Hon. (Dr.) Charles Onchoke, MP**

Hon. (Dr.) Charles Onchoke, M.P. appeared before the Committee and submitted as follows:

## Background

1. The Petition was on behalf of Mr. Benson Asiago Mocheo who was calling on this House to intervene on the delayed payment of the pension by the KRC.
2. Mr. Benson Mocheo worked as a station manager for Kenya Railways Corporation on permanent and pensionable terms for 17 years (January 1968 - April 1985). In 1984, the University of Nairobi advertised the public accountant position in the Nation newspaper in which public servants that were qualified were to apply through their respective Heads of Departments for recommendations and other necessary formalities.
3. Mr. Mocheo made an application and was offered the said position in 1985. The MD of KRC authorized his transfer to the University of Nairobi where he worked for twenty-two (22) years until his retirement in 2006.
4. The University of Nairobi and the KRC had jointly agreed to compensate Mr. Mocheo for the 17 years he worked at Kenya Railways Corporation. However, the University paid his pension for the period worked but, the Kenya Railways Corporation have not paid their dues.
5. KRC alleged that the University of Nairobi ought to have paid his pension for both the seventeen and twenty-two years worked and that Mr. Mocheo refused to accept a pension payment of Kshs. 527.20 per month as offered by the Corporation. That Mr. Mocheo had declined to pick a pension cheque issued in 2007 and refused to fill all the census forms. That contrary to the allegations, Mr. Mocheo had filled census forms every year and the ksh527.20 per month is lower than his rightful entitlement of Kshs. 9002.45 as calculated using his last salary in 2006.
6. That Mr. Mocheo was at the elderly and suffered ailments requiring special care but lacked the resources owing to the alleged injustice of the delay in his pension dues.

## Prayers

That the National Assembly through the Public Petitions Committee:

- i. Inquires into the matter and recommend an appropriate mechanism for resolving the matter for the benefit of the petitioner;
- ii. Recommends action be taken on all those involved in the continued violation of Mr. Ben Asiago Mocheo right to fair administrative action as provided under the Constitution of Kenya 2010 and the Fair Administrative Act, o.4 of 2016;
- iii. Recommends for payment of the delayed pension of Mr. Ben Asiago Mocheo, and
- iv. Makes any other recommendation or action order that it deems fit in addressing the plight of the Petitioners.

### Committee Concerns

- i. **Regarding the evidence and correspondences on the allegations made**, the Petitioner indicated that there were documents in Mr. Mocheo's possession to that effect and it would be availed for the Committee.
- ii. **Regarding the computation of the pension dues of Kshs. 9002.45**, the Petitioner stated that further information would be provided to justify the computation.
- iii. **On whether there was a court case on the matter**, the Petitioner stated that there was no active case in court hence the petition was rightfully before the Committee for determination.
- iv. **On whether the KRC refused to pay the pension dues or it was a question of the agreeable quantum**, the Petitioner stated that KRC had delayed in paying Mr. Mocheo the rightful pension. That there were regulations in place guiding transfer of service and payment of pension dues hence KRC needed to clarify why Mr. Mocheo's pension for the 17 years served at KRC.
- v. **As to whether Mr. Mocheo's case was isolated or other KRC retirees were suffering the same fate**, the Petitioner stated that there could be other retirees with similar complaints due to financial problems. However, Mr. Mocheo's case could be isolated as it involved transfer of service.

### Committee Resolutions

After the deliberations, the Committee resolved that the Petitioner provides the following documents:

- i. Appointment letter by KRC;
- ii. Secondment letter to the UON;
- iii. Last three months' pay slips before leaving KRC;
- iv. Documentation to justify the computation of Kshs. 9000.45 monthly pension;
- v. Correspondences between the UON and KRC;
- vi. Correspondences with the court stating the matter was time barred; and
- vii. Any other relevant documentation to the case.

**MIN./PPETC/2023/532:**

**CONSIDERATION OF PUBLIC PETITION  
REGARDING BANNING OF TIKTOK IN KENYA**

#### **Meeting with NCIC**

The NCIC represented by Commissioner, Dr. Davas Makori appeared before the Committee and submitted as follows:

#### **Introduction**

That the NCIC had engaged various social media platforms and noted that occasionally some of them had become avenues for incitement, ethnic contempt, and misinformation among different communities in Kenya. Politicians, especially during campaigns, had used these platforms to disseminate content inciting division. TikTok was one of the popular social media applications that allowed users to create, watch, and share videos shot on mobile devices or webcams made possible for users to exercise their freedom of expression in various ways.

## Issues with TikTok

TikTok, distinct from other platforms, permitted the sharing of explicit and inappropriate content including explicit material, violence, hate speech, vulgar language, and offensive behaviour, accessible to users of any age due to the lack of robust age restrictions and self-regulation.

## Global Usage and Bans

Kenya held a significant position globally in TikTok usage, with a majority engaging in diverse purposes, including news consumption. Notably, numerous countries, such as India, United Kingdom, Canada, EU, Afghanistan, India, Somalia, Jordan, and several others, had taken steps to ban TikTok due to similar concerns about security and societal harm.

## NCIC'S Measures to Curb Misuse

NCIC had actively worked on various strategies, including strengthening content moderation policies, engaging social media tech companies to partner on content moderation, investigations into incitement and hate speech cases, raising awareness, implementing user-friendly reporting mechanisms, and fostering collaboration among stakeholders to address harmful content online.

## Conclusion and Recommendation

That the request to ban TikTok in Kenya was unwarranted step hence the Commission recommended:

- i. The development of comprehensive policies, akin to the EU's Digital Services Act, aimed at cultivating a safer, more transparent, and accountable online environment.
- ii. Strict regulation and oversight role by the Government that would proactively safeguard citizens, particularly the younger demographic, from detrimental exposure to content negatively impacting societal cohesion and values.
- iii. The Trust and Safety team review removes or flags down any content that violates the guidelines. Similarly, community members may report on any violations on the app or website.
- iv. TikTok to engage local moderators with the capacity to review online content that done in the Kenyans dialect as users engage in hate speech tend to use local vernacular languages.
- v. The government puts in place strict measures to ensure the protection of the vulnerable groups from harmful content.

## Committee Concerns


- i. **Regarding content moderator's hosted in Kenya**, the Commission clarified that very few moderators were in Kenya. Therefore, they were imploring TikTok and other big tech companies to move more of their moderators to Kenya to assist in moderating content consumed in Kenya.
- ii. **With regards to financial gains from Tik Tok**, the Commission stated that there was need for the revision of the current monetarization policy to allow the content creators to earn more. Further, there was need to engage and ensure content moderators are well compensated.




- iii. **Whether the Commission would recommend a total ban if TikTok fails to comply,** the Commission stated that there was a gap in law for the operations of big tech companies. However, they had the capacity to comply with local laws as they do in other jurisdictions. Therefore, there was need to tighten the legal gaps and put more pressure on them to comply as they had the capacity to do so.
- iv. **Regarding the role of parenting in the concerns raised on the misuse of TikTok,** the Commission indicated that parents were the first line of care for their kids. Further, there were features in most of the social media platforms allowing for age restriction that could be used. However, there was need for more pressure to the developers to build effective moderation features to protect minors. The Commission clarified that most of the hate speech were done on other social media and not Tik Tok which had mostly misinformation, disinformation and immoral content.
- v. **Regarding whether countries banning TikTok had the same concerns as raised in the Petition,** the Commission clarified that some countries had geopolitical reasons for banning TikTok. In Kenya the issues raised were more about morality concerns which could be addressed through regulation.

**MIN./PPETC/2023/533: ADJOURNMENT AND DATE OF THE NEXT MEETING**

There being no other business, the Chairperson adjourned the meeting at 2:00 p.m. The next meeting to be on Wednesday, 29<sup>th</sup> November, 2023 at 12.00 p.m.

Sign:  .....

(CHAIRPERSON)

Date:  .....



**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**

**MINUTES OF THE 10<sup>TH</sup> SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON TUESDAY, MARCH 19, 2024, IN COMMITTEE ROOM 12, NEW WING, MAIN PARLIAMENT BUILDINGS AT 12.00 NOON**

**PRESENT**

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
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, MP
6. Hon. Bidu Mohamed Tubi, M.P.
7. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
8. Hon. Edith Vethi Nyenze, M.P.
9. Hon. Caleb Mutiso Mule, M.P.
10. Hon. Suzanne Ndunge Kiamba, M.P.
11. 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. John Bwire Okano, M.P.
4. Hon. Sloya Clement Logova, M.P.

**SECRETARIAT**

1. Mr. Noah Too - Principal Clerk Assistant I
2. Mr. Ahmed Kadhi - Senior Clerk Assistant
3. Ms. Miriam Modo - Clerk Assistant I
4. Ms. Patricia Gichane - Legal Counsel II
5. Mr. Willis Obiero - Clerk Assistant III
6. Mr. Martin Sigei - Research Officer III
7. Mr. Calvin Karungo - Media Relations Officer III
8. Ms. Felistus Muiya - Public Communications Officer
9. Mr. Peter Mutethia - Audio Officer

**IN-ATTENDANCE**

**UNIVERSITY OF NAIROBI**

1. Mr. Benard Njuguna - Registrar, Administration
2. Ms. Elizabeth Boke

**PETITIONER**

Hon. (Dr.) Robert Pukose, MP - Chairperson, Departmental Committee on Health

### **HEALTH SECTOR UNIONS, SOCIETIES & ASSOCIATIONS**

**1. KENYA MEDICAL PRACTITIONERS AND DENTISTS UNION (KMPDU)**

Dr. Davji Atellah - General Secretary  
Dr. Dennis Miskellah - Deputy Secretary General  
Dr. Cherono Siele - Member

**2. KENYA UNION OF CLINICAL OFFICERS (KUCO)**

Mr. George Gibore - General Secretary  
Ms. Mary Boniface - National Treasurer

**3. KENYA NATIONAL UNION OF NURSES (KNUN)**

Mr. Moses Kirui - Legal  
Mr. Stephen Ruterere - Industrial Relations Officer

**4. KENYA NATIONAL UNION OF PHARMACEUTICAL TECHNOLOGISTS AND OFFICERS (KNUPT)**

Mr. Elias Mutuma - General Secretary

**5. KENYA NATIONAL UNION OF MEDICAL LABORATORY OFFICERS (KNUMLO)**

Mr. Pius Nyakundi - General Secretary/CEO  
Ms. Ann Sakwa - Deputy Secretary General  
Ms. Angeline Mutisya - Treasurer

**6. KENYA UNION OF NUTRITIONISTS AND DIETITIANS (KUNAD)**

Ms. Lilian Mumina - National Treasurer

**7. KENYA ENVIRONMENTAL & PUBLIC HEALTH PRACTITIONERS UNION (KEPHPU)**

Mr. Brown Ashira - General Secretary  
Mr. Kennedy Omolo - Deputy Secretary General  
Mr. Juma Maelo - Deputy Chairperson  
Mr. Mohamed Ali - Treasurer

**8. UNIVERSAL HEALTH COVERAGE (UHC) INTERNS**

Mr. Kipkirui Korir  
Ms. Charity Wambugu

**MIN./PPETC/2024/ 070: PRELIMINARIES**

The Chairperson called the meeting to order at 12:00 noon and proceedings began with prayers by Hon. Ernest Kagesi, M.P.

**MIN./PPETC/2024/071: ADOPTION OF AGENDA**

**AGENDA**

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
  
5. Consideration of Public Petition No. 6 of 2024 regarding Delays in posting medical interns, absorption of universal health coverage contract staff, conclusion of Collective Bargaining Agreements (CBAs) and Recognition Agreements in the health sector in the country.
  - *Meeting with the Petitioner(s)*
  
6. Consideration of Public Petition No. of 2023 regarding Delayed payment of Pension by Kenya Railways Corporation
  - *Meeting with Kenya Railways Corporation*
  - *Meeting with University of Nairobi*
  
7. Any Other Business
8. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Ernest Kagesi, M.P. and seconded by Hon. Edith Vethi Nyenze, M.P

**MIN./PPETC/2024/072: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

The Agenda was deferred.

**MIN./PPETC/2024/073: CONSIDERATION OF PUBLIC PETITION NO. OF 2023 REGARDING DELAYED PAYMENT OF PENSION BY KENYA RAILWAYS CORPORATION**

**Meeting with the University of Nairobi**

Mr. Benard Njuguna, the Registrar, Administration, University of Nairobi appeared before the Committee on behalf of the Vice Chancellor, Prof. S.G Kiama, PhD and submitted as follows that—

- i. Mr. Mocheo was appointed as an Assistant Accountant on permanent and pensionable terms in the Finance Department of the University of Nairobi on March 5, 1985.
  
- ii. On April 29, 1985, the Kenya Railways Corporation wrote to the University of Nairobi to confirm acceptance of Mr. Mocheo's services with the Corporation to be transferred to the University, subject to him joining the then Superamated Retirement Benefit Scheme applicable to university staff.

- iii. On June 12, 1985, the University wrote to the Kenya Railways Corporation conveying the acceptance to transfer Mr. Mocheo's service to the University. The Corporation was requested to proceed and process the transfer.
- iv. The Kenya Railways did not transfer Mr. Mocheo's pension benefits to the University of Nairobi for the period he worked at the Corporation.
- v. Mr. Mocheo retired from the service of the University of Nairobi service through early retirement on December 31, 2006 after serving for 22 and was informed that he would be paid his retirement benefits in accordance with the rules of the University of Nairobi Pension Scheme.
- vi. On August 11, 2006, a meeting was held between the Registrar, Administration, the Administrator, the University of Nairobi Pension Scheme, and the Executive Trustee, Kenya Railways Pension Scheme to discuss the matter of Mr. Mocheo's pension payment.
- vii. The meeting noted that although the Railways Corporation transferred Mr. Mocheo's service to the University, it did not, however, transfer his accrued pension benefits. The Kenya Railways opted to retain these benefits until Mr. Mocheo's retirement.
- viii. The meeting agreed that the University would formally inform Kenya Railways on Mr. Mocheo's retirement date to enable it to start processing his pension benefits, i.e. for the period Mr. Mocheo served the Corporation.
- ix. On its part, the University would process Mr. Mocheo's benefits for the period he had served the University as per the rules and regulations of the University of Nairobi Pension Scheme.
- x. The University of Nairobi Pension Scheme paid Mr. Mocheo his pension dues for the 22 years he served at the University of Nairobi i.e. between March 5, 1985, and December 31, 2006: Kshs 723,111.00 as lump sum less the withholding tax vide UNPS Voucher Number 11237 dated December 6, 2006.
- xi. The mandate of the University following the law, was to only pay terminal and retirement benefits calculated from the date Mr. Mocheo worked for it until the date he retired from employment which it did.
- xii. The University paid Mr. Mocheo all his pension dues for the period he served at the University and did not owe him. The Kenya Railways Corporation should pay Mr. Mocheo his pension dues for the period he worked with the Corporation.

#### **Committee Concerns**

- i. The Committee inquired whether the lumpsum pay to Mr. Mocheo was sufficient or he was entitled to monthly payment. The Registrar indicated that

Mr. Mocheo was receiving a monthly pension of about Kshs. 1800 from the University even after getting the lumpsum which was in defined benefit.

- ii. The Committee sought clarification whether there was follow up to regularize the payment of pension from the two institutions. The Registrar stated that the University and the Corporation held a meeting on 11<sup>th</sup> August 2006 noting that Mr. Mocheo had retired. It was agreed that Kenya Railways Corporation was to pay him for eighteen (18) years and UON to pay for the twenty-two years he had worked for the University.
- iii. Regarding transfer of service, the Registrar indicated that the University was guided by the Public Service Commission Human Resource Manual. An employee was not expected to lose pension after transfer of service as the two institutions were expected to harmonize. The transfer of service was accepted but the policy allowed and Mr. Mocheo opted to transfer his pension. Therefore, the KRC pension scheme was to send the pension to UON after a computation, however that was not done. On the meeting of 11<sup>th</sup> August, 2006, KRC confirmed that they owed Mr. Mocheo for that bit as they transferred the services but retained the pension.

**MIN./PPETC/2024/074:**

**CONSIDERATION OF PUBLIC PETITION NO. 6 OF 2024 REGARDING DELAYS IN POSTING MEDICAL INTERNS, ABSORPTION OF UNIVERSAL HEALTH COVERAGE CONTRACT STAFF, CONCLUSION OF COLLECTIVE BARGAINING AGREEMENTS (CBAS) AND RECOGNITION AGREEMENTS IN THE HEALTH SECTOR IN THE COUNTRY.**

### **Brief by Secretariat**

The Secretariat briefed the Committee on the Petition as follows that—

#### ***Background***

- i. The petitioner claimed that despite applicable international laws, the Constitution and statutes, medical practitioners in Kenya had been subjected to unfair labour practices since 2020.
- ii. The government hired medical workers under a one-year universal health care coverage internship contract in 2020 in a bid to fight the Covid-19 outbreak and boost efforts to achieve Universal Health Care.
- iii. The health workers were released from their contracts after one year. However, they are deemed to be employed by the Public Service as they were issued with personal numbers, making it difficult for them to seek employment elsewhere.
- iv. Since September 2023, the Ministry of Health has failed to post graduate medical practitioners for internship which is a prerequisite of obtaining a licence.

- v. Further, the Ministry does not compensate medical interns through standardized salary/stipend.
- vi. The Kericho Declaration signed on the 18.9.2023 between the medical unions, the Council of Governors and the Ministry of Health, committed the absorption of national government UHC medical staff into employment. The UHC medical staff have also not received gratuities for the past three years.
- vii. Despite the fact that other unions from other sectors have concluded their Collective Bargaining Agreement's the health sector has been frustrated with their rights to the Collective Bargaining Agreement denied.

### ***Prayers***

The petitioner sought the intervention of the Committee to—

- i. Investigate reasons for failure by the Ministry of Health to post-graduate medical interns for mandatory internship since September 2023;
- ii. Inquire into the failure by the Ministry of Health to transition the Universal Health Coverage staff into permanent and pensionable terms in accordance with the Kericho Declaration Agreement signed on 18th September 2023;
- iii. Intervene to make the Ministry of Health to absorb all Universal Health Coverage workers to permanent and pensionable terms to address the shortage in the health sector;
- iv. Recommend the Ministry of Health to address discriminatory disparities in compensation of medical interns and apply fair remuneration as per the terms of job grades of the Salaries and Remuneration Commission;
- v. Recommend that the pending collective bargaining agreement and recognition agreements be concluded expeditiously;
- vi. Make any other relevant recommendation.

### **Submissions by the Petitioner, Hon. (Dr.) Robert Pukose, MP**

The Petitioner Hon. (Dr.) Pukose appeared before the Committee and submitted as follows that—

- i. Quality healthcare is the lifeline of a country's prosperity and that the maintenance of an appropriate complement of medical practitioners under suitable terms and conditions is fundamental to quality healthcare;
- ii. Articles 27 and 41 of the Constitution of Kenya as read together with the Employment Act, 2007 provide for the rights of employees and fair labour practices;
- iii. The African Charter on Human and People's Rights entitles everyone to equal protection of the law including the right to the respect of the dignity inherent in a human being and the right to receive information and to express and disseminate their opinions within the law;

- iv. Despite the elaborate safeguards in international law, the Constitution and statutes, medical practitioners in Kenya have been subjected to unfair labour practices, which have heightened since 2020;
- v. In April 2020, following the outbreak of COVID-19, the Government recruited a number of health workers on one-year Universal Health Coverage (UHC) internship contracts to boost efforts on achievement of Universal Health as well as to aid in the fight against COVID-19.
- vi. The contracted health workers were released from service after one year, yet they had already been assigned personal numbers in the Ministry of Health. Their exit created a shortage that is yet to be addressed and has also made it hard for them to get any other employment in the public service since they are deemed to be in employment because they have personal numbers;
- vii. The country's Public Service Commission, the Human Resource Policies and Procedures Manual for the Public Service (2016) recognize public sector internship programs, which is both a legal requirement and prerequisite for license and independent practice in the case of medical practitioners;
- viii. Whereas the Ministry of Health has a duty to facilitate posting of graduate medical practitioners for mandatory internship, it is yet to post medical interns who ought to have been posted in September 2023;
- ix. Further, the Ministry, which is obligated to compensate medical interns through a standardised salary/stipend, has been applying different terms. For instance, while all other interns are paid based on a job group in the health sector, Diploma Clinical Officers are only paid a meagre allowance that can hardly cater to their basic needs during the internship period;
- x. The health staff under UHC contract have been earning a salary equivalent to half of what their colleagues employed under county governments have been earning despite working in the same environment;
- xi. The delayed internship posting and subsequent licensing deny affected graduates the opportunity to get exposure to uninterrupted skills' mastery that would equip them to contribute to health service delivery in the country;
- xii. The plight of intern graduates remains unresolved despite recommendations by the Senate for absorption of UHC and other staff contracted during COVID-19. Further that the *Kericho Declaration Agreement* signed on 18<sup>th</sup> October 2023 by the medical staff Unions, the Ministry of Health and Council of Governors committed the Ministry of Health and Council of Governors to facilitate absorption and mainstreaming of national government contract staff, including the COVID-19/UHC staff into employment;
- xiii. The health workers currently under the UHC program are about three months to the end of their one-year extension, yet both county governments and the



national government have not shown any plans of transitioning them and converting their terms of service to permanent employment as per the *Kericho Declaration*;

- xiv. Further, the health workers under UHC contract have not received gratuities for their previous three-year terms served and no communication regarding the reasons for the delay and when to expect the said gratuities;
- xv. While all other unions in other sectors have concluded Collective Bargaining Agreements (CBAs) with their respective employers, the unions in the health sector have been subjected to frustrations and what appears to be deliberate intent to deny them their right to the CBAs;
- xvi. The petitioners' efforts to resolve these matters with Ministry of Health and other relevant bodied had not been fruitful despite the numerous requests for audience and engagements;
- xvii. The matter presented in the petition was not pending before any Court of law or any constitutional or legal body.

#### **Submissions by Health Sector Unions, Societies & Associations**

The Petitioner(s) drawn from the various health sector unions, societies and associations appeared before the Committee and submitted that the Committee—

- i. Investigates the reason for the failure of the Ministry of Health to facilitate the posting of graduate interns for mandatory internship since September 2023 and recommends the immediate posting of the affected interns as well as institutional measures to avert the challenges in internship posting going forward.
- ii. Inquire into the circumstances surrounding the failure of the Ministry of Health to transition contracted under the UHC in 2020 to permanent and pensionable terms in accordance with the Kericho Declaration Agreement on 18<sup>th</sup> September 2023.
- iii. Intervene to cause the Ministry of Health to absorb all the UHC workers and other contracted health workers into permanent and pensionable services to address the shortage in the health sector.
- iv. Recommend that the Ministry of Health immediately addresses discriminatory disparities in compensation of medical interns and instead apply remuneration as per the Salaries and Remuneration Commission (SRC) terms.
- v. Recommends that the CBA and recognition agreement be concluded expeditiously.
- vi. Make any other recommendation as it may deem fit in addressing the plight of the petitioners.

The Petitioner(s) further clarified the issues raised in the petition as follows—

**Delay in posting of medical interns**

- i. Internship is a compulsory requirement for medical practitioners, including pharmacists, dentists, clinical officers, nurses, and laboratory technicians. Moreover, interns comprise not only fresh graduates but also experienced health practitioners.
- ii. Once assigned to various places of work, interns provide services after obtaining temporary licenses from their respective regulatory councils.
- iii. Over the past two years, there has been a noticeable delay in posting medical interns, with some waiting a year or two after graduating before being assigned.
- iv. For example, the Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) negotiated a Collective Bargaining Agreement (CBA) with the Ministry of Health, approved by the Salaries and Remuneration Commission (SRC), stipulating that medical officers should be posted for internships within 30 days of clearance by their regulatory councils. However, significant delays have persisted before they can commence service.
- v. Interns constituted approximately 27-30 percent of the medical workforce in the counties. Consequently, delays in posting them after the preceding cohort completes its internship led to severe shortages in service delivery.
- vi. The Ministry of Health proposed salary payments to interns in a letter to the SRC, which responded with recommendations that led to reductions in stipends. For instance, stipends for doctor interns were slashed by 91 percent, while those for clinical officers and nurses were reduced by up to 50 percent. This occurred despite a negotiated CBA submitted to court.
- vii. Furthermore, interns are included in the staff establishment by the Public Service Commission (PSC), enabling their posting and allowing the Ministry of Health to plan and budget accordingly. However, the Ministry has inconsistently paid some interns according to their job group while neglecting to pay others.

**Absorption of Universal Health Coverage contract staff**

- i. The country has been striving to ensure that every Kenyan can access healthcare regardless of their socioeconomic status or ability to pay for medical services. As part of this effort, the Ministry of Health engaged a significant number of healthcare workers starting in 2019. These staff, under the Universal Health Coverage (UHC) contract, courageously served on the frontlines during the COVID-19 pandemic, risking their lives.

- ii. There were three categories of UHC staff: first, those employed in 2020, totaling around 8,500, contracted for three years. Their service term was extended for an additional year based on the advisory of the Public Service Commission (PSC), with an indication that they would transition to permanent and pensionable terms after this extension. However, while counties extended the contracts of these officers in writing for three years, their payroll reflected only a one-year extension, leading to confusion on how to address the issue.
- iii. The second category of UHC staff, known as UHC interns, served between 2020 and 2021 for a year. Their concerns have never been addressed, and they have not received their gratuity.
- iv. The third category comprised individuals referred to as the COVID-19 response team, numbering about 900. They worked briefly during the pandemic but did not receive their gratuity upon completion of their service.
- v. Contrary to Section 5 of the Labour Relations Act, which stipulates equal pay for equal value of work, these different categories of workers performed duties in the same departments as their colleagues but received only half or a third of their salaries.
- vi. Additionally, these workers were denied the ability to plan for their futures as they were on contract terms, preventing them from pursuing career progression opportunities like their counterparts on permanent and pensionable terms.

### **Realisation of the Universal Health Coverage**

- i. Despite the government's pledge to bolster the healthcare workforce, there has been a decline in numbers. This decrease stems from natural attrition, resignations, and the migration of healthcare professionals to more favourable employment opportunities elsewhere.
- ii. Both national and county governments have failed to implement a strategy for annual recruitment of healthcare workers. The committee should propose a mechanism compelling national and county government to hire health workers, aligning with the goal of achieving Universal Health Coverage (UHC), similar to recruitment practices observed in the teaching profession and security sector.
- iii. Many counties have exceeded the Controller of Budget's (COB) ceiling points, which stipulate that no county should allocate more than 35 percent of its budget towards wages and remuneration. However, numerous counties have surpassed this threshold, with some exceeding 40 percent.

### **Collective Bargaining Agreement (CBA) and recognition agreement in the health sector**

- i. Despite Kenya's ratification of Convention C98, which guarantees the right to collective bargaining as outlined in Article 41 of the Constitution, unions have faced a concerning trend. Without issuing strike notices, they have

encountered difficulties in getting their Collective Bargaining Agreements (CBAs) signed by national and county governments.

- ii. Notably, nurses and clinical officers have exerted significant effort over the years, yet their employers have failed to sign CBAs. In the case of doctors, despite the signing of a CBA intended to run from 2017 to 2021, 90 percent of its articles remained unimplemented throughout its four-year cycle.
- iii. Articles within the 2017-2021 CBA have been systematically violated, including provisions regarding the posting of medical interns, basic salary increments, post-graduate training for all cadres, and medical cover.
- iv. The medical allowance, ranging between Kshs. 4000 and Kshs. 6000 in 2011, was relinquished and replaced by comprehensive coverage. However, with the enactment of the new Social Health Insurance Act, only 40 percent of civil servants will be covered, leaving healthcare providers unable to afford the care they deliver.
- v. Employers should be compelled to honour recognition agreements with unions, eliminating the need for strike notices to negotiate CBAs.
- vi. In the health sector, only three unions have recognition agreements, leaving others in limbo as employers bypass their legal right to recognition agreements. The committee should intervene to ensure justice for these unions.

#### Intimidation and victimization of union leaders

Intimidation and victimization of union leaders had occurred across the country through harassment and brutality during peaceful and lawful protests.

#### Committee concerns

- i. **Regarding whether the matter was *sub judice***, the petitioners explained that matters raised in the Petition were not pending before any court of law and that that the matter before court was relating to stopping the ongoing strike by the health workers which was different to matters in the petition.
- ii. **Regarding the practicality of the Government to absorb all interns given the budgetary constraints**, the petitioners stated that they had engaged MOH and COG and signed an agreement that health workers were posted in shifts. That the government did that after a strike notice was issued. However, in 2024, there have been health care workers who have not been posted as per the agreement. That it was both a budgeting issue as well as a matter of priority. The petitioners indicated that they had negotiated with government but the commitments were not honored by government.
- iii. **Regarding possibility of absorbing the interns in private and mission hospitals**, the petitioners indicated that interns are placed in different level four and five

hospitals which have the capacity to ensure they can learn under experienced professionals.

- iv. **Regarding whether the UHC contract staff had a conditional time for offering the services**, the Petitioners indicated that indeed they had a specific period to offer the services during the COVID-19 period especially in the counties. However, the government realised that if the 8500 health workers were removed from counties, the counties would be stranded and the government extended their terms from one to three years contract. The counties had been requesting to have the UHC contract staff be employed on permanent and pensionable terms because of exceeding need.
- v. **Regarding the need for posting interns**, the petitioners stated that doctors, pharmacists and dentists, after their internship, in Job Group L, they were to automatically absorbed to Job Group M. This was derived based on the number of doctors in the country which was at the ratio of one to 17,000 people and 13 health workers per 10,000 people. To reach the WHO ratio of one to 1,000, there was need to employ 50,000 doctors. The shortage of doctors and health workforce had caused longer waiting times. The COG indicated that they were unable to absorb doctors annually as it was in 2017 because of budgetary constraint but the need was there.
- vi. **Regarding the on-boarding of community health promoters**, the Petitioners stated that the community health promoters were not in the cadre recognized in the health care sector.


**Committee resolution**

The Committee guided the petitioners to submit a comprehensive submission regarding the joint petition outlining the institution, issues, and the responsible institution to action concerns raised. The petitioners undertook to submit their comprehensive and joint written submission by Friday 22<sup>nd</sup> March 2024.

**MIN./PPETC/2024/075:**

**ADJOURNMENT AND DATE OF NEXT MEETING**

The Chairperson adjourned the meeting at 3:30 p.m. The next meeting will be held on Wednesday 20<sup>th</sup> March, 2024 at 12.00 noon.

Sign:  .....

(CHAIRPERSON)

Date: 21-03-2024 .....



**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**

**MINUTES OF THE 29<sup>TH</sup> SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON WEDNESDAY, APRIL 24, 2024, IN COMMITTEE ROOM 25, 5<sup>TH</sup> FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS AT 12.00. P.M**

**PRESENT**

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
3. Hon. Maisori Marwa Kitayama, MP
4. Hon. Ernest Ogesi Kivai, M.P.
5. Hon. Bidu Mohamed Tubi, M.P.
6. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
7. Hon. Peter Mbogho Shake, M.P.
8. Hon. Caleb Mutiso Mule, M.P.

**APOLOGIES**

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Joshua Chepyegon Kandie, M.P
3. Hon. John Walter Owino, M.P.
4. Hon. Edith Vethi Nyenze, M.P.
5. Hon. Suzanne Ndunge Kiamba, M.P.
6. Hon. Sloya Clement Logova, M.P.
7. Hon. John Bwire Okano, M.P.

**SECRETARIAT**

1. Mr. Ahmad Kadhi - Clerk Assistant I
2. Ms. Anne Shibuko - Clerk Assistant I
3. Ms. Patricia Gichane - Legal Counsel II
4. Mr. Isaac Nabiswa - Legal Counsel II
5. Ms. Felistas Muiya - Public Communications Officer
6. Mr. Martin Sigei - Research Officer III
7. Mr. Calvin Karungo - Media Relations Officer III
8. Mr. Peter Mutethia - Audio Officer

**IN ATTENDANCE**

**MINISTRY OF TOURISM & WILDLIFE AND KENYA WILDLIFE SERVICE**

1. Ms. Silvia Museiya - Principal Secretary, Wildlife
2. Mr. Samuel Tokore - Deputy Director, KWS
3. Dr. John Chumo
4. Dr. Richard Chepkwony

## KENYA RAILWAYS CORPORATION

1. Mr. Asava Kadima - General Manager, Human Resource and Administration
2. Mr. Nicholas Kikuvi
3. Mr. Stanely Gitari

### MIN./PPETC/2024/ 185: PRELIMINARIES

The Chairperson called the meeting to order at 12:00 p.m. and proceedings began with prayers by Hon. Ernest Kagesi, M.P.

### MIN./PPETC/2024/186: ADOPTION OF AGENDA

#### **AGENDA**

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No.43 of 2023 on Human Wildlife conflict in Keiyo North Constituency
  - *Meeting with Kenya Wildlife Service (KWS)*
  - *Meeting with CS, Ministry of Tourism & Wildlife*
6. Consideration of Public Petition No.50 of 2023 on Delayed Payment of Pension by the Kenya Railways Corporation
  - *Meeting with Kenya Railways Corporation (KRC)*
7. Any Other Business
8. Adjournment

The Agenda was adopted to constitute business having been proposed Hon. Peter Mbogho Shake, M.P. and seconded by Hon. Bernard Muriuki, M.P.

### MIN./PPETC/2024/187: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

### MIN./PPETC/2024/188: CONSIDERATION OF PUBLIC PETITION NO.43 OF 2023 ON HUMAN WILDLIFE CONFLICT IN KEIYO NORTH CONSTITUENCY

#### Meeting with the Ministry of Wildlife & Tourism and Kenya Wildlife Service

The Principal Secretary, State Department for Wildlife, Ms. Silvia Museiya accompanied by the Deputy Director, Kenya Wildlife Service, Mr. Samuel Tokore appeared before the Committee and submitted as follows—

## Overview

1. Human-wildlife conflict presented a longstanding challenge addressed by the Ministry through allocation of budgets and numerous mitigations. Despite occasional delays, the government was committed to compensating the victims. Notably, in the Financial Year 2022/2023, the government allocated Kshs 908 million, followed by Kshs 960 million in the Financial Year 2023/2024 for compensation, in addition to various other mitigation measures. These include initiatives such as fencing, provision of water sources, community education and awareness programs, and restoration of affected environments to mitigate degradation in wildlife areas, thereby reducing the need for wildlife to venture into community areas in search of water and forage.
2. Concerning Rimoi National Reserve, the focus of the Petition, it was crucial to recognize that while the Kenya Wildlife Service (KWS) and the national government oversee and manage approximately thirty-one (31) national parks, national reserves fell under the jurisdiction of county governments. Rimoi, specifically, was under the purview of the County Government of Elgeyo Marakwet. Nevertheless, KWS plays a supporting role in assisting county governments with the administration, operation, and management of national reserves.

## Background

3. Kenya had a rich diversity of wildlife making it an ultimate tourist destination with benefits of wildlife tourism. However, it was impossible to contain wildlife within specific physical boundaries.
4. Data on species movements and behaviors showed that majority of the wildlife species utilized both protected areas and areas outside whereas others reside outside the protected areas where they cause negative interactions with people due to competition for resources leading to human wildlife conflict. Such interactions sometimes result in death of humans, injury to humans, predation on livestock, destruction of property and threats to humans.
5. Human-wildlife conflicts (HWC) and poaching are twin threats facing wildlife conservation in Kenya. Kenya Wildlife Service (KWS) has therefore, placed high premium on its activities to address these twin challenges. Consequently, KWS has managed to control poaching which had reached alarming levels as at 2013.
6. Due to its proximity to Rimoi National Reserve to the south, Keiyo North Constituency had human conflicts cases being one of the key elephant habitats within the country.

## Rimoi National Reserve case

7. Rimoi National Reserve gazetted in January 1983, occupied about 66 sq kms formed part of an important habitat and dispersal area for elephants migrating between Nasolot and south Turkana national reserves. The Reserve occupies 66sq kms. It was also a mating and breeding area as well as a migratory corridor for the herds of elephants.



8. The wildlife species recorded in Rimoi were Elephants, Giraffes, Zebras, Leopards, Pangolins, and White crocodiles, Warthogs, Baboons, Vervet monkeys, Aardvark, Porcupines, Serval cats and Hyenas.

### Human Wildlife Conflict

9. Human wildlife conflict was often experienced in areas along Kerio valley including adjacent areas of Rimoi National Reserve and gazetted forest areas within the county. It was majorly attributed to drought which impacted on wildlife in Rimoi National Reserve and Kerio valley as they search for food and water resulting to conflicts such crop destruction and predation with isolated cases of human death and injury.
10. Keiyo North experienced high Human-Elephant Conflict in the month of May, June, July and October due to drought situations experienced during these months hence the elephants move out in search of forage extending all the way to Biretwo and Fluorspar in Keiyo south.
11. In the last one year, reported human wildlife conflicts within Keiyo North constituency were as follows—
  - (a) Sixteen (16) crop destruction incidents by elephants
  - (b) Ten (10) livestock predation incidents by leopards
  - (c) One (1) human injury incident by an elephant
  - (d) One (1) Human death incident by an elephant
  - (e) Four (4) property destruction incidents by elephants
12. The major causes of human wildlife conflict in the area included drought, encroachment on wildlife corridors, dilapidated game-proof fences, farming and irrigation leading to extensive abstraction of water, insecurity, illegal human activities and settlement, and inadequate legislation and enforcement of rules.
13. To address the challenges of human wildlife conflict, the KWS had engaged in problem animal control, wildlife drive operations, wildlife barriers, awareness creation, compensation, and CSR activities.
14. Regarding compensation, a total of 769 claims had been launched between 2014 and 2021 out of which 178 had been paid at about Kshs65 million. However, 336 claims were approved valued at about Kshs 29 million which were awaiting funding. Further, two death claims were paid partially with a balance of Kshs8 million while 89 claims were deferred for clarification and 166 claims were rejected. The KWS also availed Kshs 30,000 per death caused by human wildlife conflict to deceased families.
15. Regarding CSR activities, the KWS availed funds to construction of Kabulwo secondary school, Rimoi Dispensary at Kshs2.5 million and a museum at St. Patrick High School Iten at Kshs 10 million.

## Committee Concerns

16. Regarding the process of compensating victims of human-wildlife conflict, the PS outlined that compensation was administered through the County Wildlife Compensation Committee, responsible for verifying the authenticity of claims. However, under a new Wildlife Compensation Scheme, there is a proposed shift towards processing compensation at the ward level. This process was characterized by its lengthy and cumbersome nature, with verification alone sometimes taking up to five years. Initially, claimants would manually locate a Kenya Wildlife Service (KWS) warden to submit claim forms. In instances of damage, cases were reported to both the police and KWS, along with local NGAO officials. In cases of fatalities, a doctor's autopsy report was required to confirm the cause of death as a wildlife attack.

In Elgeyo Marakwet, the County Wildlife Compensation Committee had not convened any meetings since 2021, resulting in delays in processing claims for 2022, 2023, and 2024. Consequently, addressing such delays necessitated a new compensation approach involving a scheme administrator and digitalization of the process. The piloting of the new scheme was underway in six hotspot counties, with the Ministry engaging county officers to expedite responses, empowered by *boda boda* and digital platforms to enhance efficiency. These efforts were prompted by the inadequate number of KWS officers, with the last recruitment occurring in 2015, leading to staff shortages for conservation efforts even before addressing human-wildlife conflict issues.

The operational budget constraints facing KWS, including insufficient funds for vehicles, machinery, and human resources, were compounded by the fact that over 20% of the country consists of protected areas, national parks, reserves, and conservancies.

Furthermore, human-wildlife conflict often occurred outside protected areas. The Ministry's lateness in compensation was evident in its handling of claims from 2014-2016, still unresolved in 2024. These delays were partly due to the National Treasury allocating funds for compensation without timely disbursement. For instance, in the Financial Year 2023/2024, out of the Kshs960 million allocated for human-wildlife compensation, only Kshs480 million had been disbursed. To address these delays in disbursement, the Ministry was advocating for compensation allocations to be included under recurrent expenditure on a monthly basis.

17. Regarding the role of the County Wildlife Compensation Committee, the PS highlighted the role of the County Wildlife Compensation Committee, noting its existence as indicative of legislative gaps. This acknowledgment stemmed from the realization that the committee's function appeared bureaucratic in nature, given that the bulk of the work—verification in cases of injuries, fatalities, and agricultural damage—was carried out by medical professionals or agriculture officers. Consequently, there is a pressing need to modernize legislation to streamline such bureaucratic processes.

18. In response to the pressing need to compensate victims of human-wildlife conflicts, the PS committed to addressing all outstanding bills, currently under review by the Pending Bills Verification Committee, amounting to Kshs10 billion. The substantial accumulation of pending bills stemmed from systemic neglect over the years. Although the National Treasury had been allocating Kshs900 million annually, an additional Kshs3 billion pledged by the President would significantly bolster these efforts. Urgency in compensating victims was paramount, as it would swiftly inject funds into their pockets, alleviating immediate concerns surrounding food security resulting from wildlife-induced crop and livestock destruction.
19. Regarding the compensation amounts for death resulting from wildlife incidents, the PS clarified that the law stipulated a payment of Kshs5 million for fatalities and Kshs3 million for injuries or bodily harm. However, compensation for crop and livestock damage was evaluated by an agricultural officer. The Kshs30,000 provided initially by KWS through generated revenue served as an interim consolation to assist with burial expenses while the process for acquiring the full Kshs5 million compensation was underway.

Nonetheless, certain claims had been rejected due to fraudulent attempts, particularly when livestock deaths were attributed to other causes contrary to the claim. Additionally, claims would be returned whenever inconsistencies arose between the autopsy report and the information provided, or if the information provided was deemed insufficient, with the expectation that accurate information would be provided in due course.

20. Regarding the specific compensation for Keiyo North Constituency, the existing compensation form lacked provisions for such localized data unless modifications were made to segregate compensation at both the constituency and ward levels. Currently, the claim forms are generic to the county, but efforts are underway within the Ministry to streamline the process. This includes plans to ensure that once a claim is submitted, it is directed to the appropriate ward and subcounty levels, thus enhancing efficiency in the compensation process.
21. Regarding capacity building and actions in place at Rimoi National Reserve, the Ministry pledged to prioritize the rehabilitation of the 32 km fence and was considering the addition of an extra corridor to the north. The Kenya Wildlife Service (KWS) was actively working to mark all wildlife corridors, thereby ensuring connectivity within wildlife habitats. Additionally, the KWS has committed to enhancing patrols in the area following the training of recruits, aimed at reducing instances of human-wildlife conflict. Moreover, the KWS plans to bolster awareness and educational programs within the community to encourage reporting and prompt responses.

Furthermore, the KWS was in dialogue with the county government to devise effective strategies for addressing the challenges faced by communities in the area. Notably, the mitigative efforts implemented by the KWS had resulted in a reduction in human-wildlife conflict incidents, facilitated by the ongoing

rehabilitation of damaged fences on a daily basis until the construction of a new perimeter fence was completed.

22. Regarding the **mitigation measures undertaken by KWS in Keiyo North Constituency**, the PS emphasized that wildlife remained a significant driver of the Kenyan economy. As a shift from previous strategies that focused solely on fencing parks and forests, the Ministry and KWS were actively supporting communities residing outside protected areas. This support included the fencing of schools and community areas to safeguard them from wildlife encounters.
23. Regarding the **gaps in legislation and enforcement efforts**, the PS underscored the importance of KWS enforcement actions in protecting wildlife from encroachment by local communities. Kenya's commitment to multilateral environmental agreements, such as the Convention on Biological Diversity, included a pledge to designate 30% of the country's land for biodiversity preservation. However, legislative shortcomings existed, particularly on compensable wildlife, which only included a limited number of species like elephants, rhinos, and buffalos, despite the potential for harm from other species, including marine wildlife.

Additionally, the PS emphasized the necessity of ringfencing the budget for human-wildlife conflict compensation and supporting KWS, as current funding was insufficient. County legislations also revealed gaps, particularly regarding national reserves which fell under their jurisdiction. Many counties lacked policies to govern reserve operations, leading to issues such as the potential establishment of schools within reserves. Out of the 28 national reserves in the country, only four generated revenues for county governments, while others lacked management structures, fencing, demarcation, land title deeds, gates, or outposts. Thus, county governments needed to develop policies to operationalize such reserves, including allocating dedicated budgets to ensure their effective management and benefit to local communities.

24. In response to the Committee's inquiry about the **possibility of reinvesting tourism revenue into compensating victims of human-wildlife conflict** without relying solely on the National Treasury, the PS agreed that utilizing tourism revenue could indeed contribute to compensation efforts. Notably, tourism revenue had already been instrumental in funding both recurrent (86%) and development budgets. Moreover, the Tourism Promotion Fund, which collected a percentage of revenue from both domestic and international tourists, had been funding various activities related to human-wildlife conflict mitigation. Specifically, KWS had allocated approximately Kshs300 million for fencing projects in critical human-wildlife conflict hotspots, as identified through mapping efforts. The PS highlighted that the second phase of this project will encompass Rimoi National Reserve. Furthermore, the PS urged Committee Members representing constituencies affected by human-wildlife conflict to actively engage with the Ministry to address these challenges effectively.

25. Regarding whether KWS had relegated its mandate to allow NGOs engage in conservation, the PS clarified that areas managed by NGOs' conservancies were not designated protected areas under KWS jurisdiction. No gazetted protected areas under KWS were being managed by NGOs. The Northern Rangelands Trust (NRT) oversaw approximately 24 conservancies, expanding even to coastal regions. However, these conservancies were established through private arrangements, wherein landowners registered with the NRT, a legal entity operating in Kenya. While there had been some issues regarding the NRT, they had generally handled benefit sharing with communities more effectively.

Communities within these conservancies, governed by their land management committees under the Community Land Act 2016, decided on land utilization, management, grazing plans, and when to engage with supporting NGOs. Private and community conservancies, including the NRT, had united under the Kenya Wildlife Conservancies Association (KWCA), comprising 215 member organizations and 12 regional associations. These associations, such as the Maasai Mara Wildlife Conservancy Association and Taita Taveta Wildlife Conservancy Association, had their own governance structures.

Given the property rights established under Article 40, the Ministry had limited authority in these matters. Instead, it focused on capacity building for conservancy members, facilitating registration through KWS, and developing management plans while respecting property rights. These management plans incorporated a mixed-use land system, enabling coexistence of livestock, wildlife, tourism, and agriculture.

26. Regarding the preventive approach to human-wildlife conflict, the PS highlighted that KWS prioritized enforcement efforts on the ground. This enforcement strategy operates on two fronts: first, ensuring wildlife remains within protected areas and designated corridors, and second, ensuring people were kept out of KWS protected areas for their safety.
27. In response to the Committee's inquiry about the specific actions taken by the Ministry regarding the prayers in the petition concerning Rimoi National Reserve, the PS acknowledged that the submission did not provide detailed information on KWS efforts in Keiyo North Constituency. Therefore, the Ministry and KWS committed to presenting a comprehensive report on the action points and commitments related to Rimoi National Reserve within one week.

### Committee Resolution

28. After deliberations, the Committee resolved to grant the Ministry and KWS the opportunity to submit a comprehensive report addressing various action points raised in the petition within one week.

MIN./PPETC/2024/189:

CONSIDERATION OF PUBLIC PETITION NO.50 OF  
2023 ON DELAYED PAYMENT OF PENSION BY THE  
KENYA RAILWAYS CORPORATION

Meeting with Kenya Railways Corporation (KRC)

The General Manager, Human Resource and Administration, Mr. Asava Kadima on behalf of the Managing Director, Kenya Railways Corporation appeared before the Committee and submitted as follows—

29. Mr. Mocheo resigned from the services of the Corporation on 5<sup>th</sup> February 1995 to join University of Nairobi as an Assistant Accountant. As such, the KRC considered that he was disqualified from pension benefit payable by the Corporation as under CAP 397 section 81 (Kenya Railways Corporation Pensions Regulations) due to the nature of exit.
30. The ex-staff sought legal redress on the same claim at the Employee and Labor Relations Court under Case No. 487 of 2011 and No. 306 of 2013. In both cases, a ruling was made in favour of the Corporation. Consequently, it was the Corporation's view that there were no awards by the Court applicable to the Corporation.
31. It was trued that the claimant was an employee of Kenya Railways Corporation for seventeen (17) years, from 8<sup>th</sup> January 1968 as a Trainee Clerk to 30<sup>th</sup> April 1985 as an Assistant Station Master.
32. The claimant made an application for the Accounts Assistant position through the Managing Director, Kenya Railways and was later invited for an interview. Upon being offered the position, he tendered his resignation, which the Managing Director, Kenya Railways Corporation accepted, and further authorized his transfer of service to the University of Nairobi where he worked for twenty-two (22) years until his retirement in 2006.
33. That there was an agreement between the University of Nairobi and Kenya Railways Corporation for the latter to pay the claimant's pension for the seventeen (17) years of service at Kenya Railways. However, the payment was being processed.
34. That it was not true that Mr. Mocheo was unaware of any cheque made and he had not been filling the census forms as alleged since there are no documents to support that claimant's assertion that he was filling the census forms.
35. It is in record that the claimant requested to have the initial cheque replaced and the same was being processed. The Corporation was not aware of the claimant's computations resulting to a pension rate of Kshs 9,002.45 per month instead of Kshs. 527.20 as computed by the Corporation.

### Committee Concerns

36. The Committee questioned why the KRC had not transferred the entitlement to the University of Nairobi (UON) without a cheque being issued. The General Manager explained that there had been an engagement with the University of Nairobi in 1985, during Mr. Mocheo's tenure at KRC, for them to take over and assume ownership of the service. However, this engagement did not conclude until 2006 when Mr. Mocheo retired. In response to UON's query regarding the absence of a cheque accompanying the statement, KRC clarified that it did not respond to the letter, but instead decided that rather than transferring money to UON, KRC would pay directly. KRC requested time to provide a comprehensive response after consultations.
37. Regarding Mr. Mocheo's claim that his entitlement was computed incorrectly, the KRC stated that they factored in his last salary as one of the considerations in calculating his pension under the defined benefit scheme, which amounted to Kshs527 at the time. However, the trustees of the Kenya Railways Scheme had approved annual increases to the pension, with the initial pension being Kshs1000 and the current pension standing at approximately Kshs6000 as of 2008, not Kshs527.
38. Regarding the calculation of Mr. Mocheo's gratuity, the KRC submitted that the lump sum gratuity payment was determined based on the years worked and was not disputed. The gratuity was calculated up to the point he was leaving the KRC, and there was no disagreement regarding the gratuity amount.
39. Regarding the engagement with Mr. Mocheo and the offer from KRC, the Corporation pledged to provide Mr. Mocheo with his rightful pension up to date, amounting to Kshs6500 monthly from 2008 when he joined the payroll, along with any outstanding arrears. However, it was deemed necessary for the three parties involved - UON, KRC, and Mr. Mocheo - to engage in a tripartite discussion to synchronize the agreed pension terms for the retired employee's benefit.
40. Regarding efforts made to invite Mr. Mocheo for negotiations, the General Manager stated that the last attempt occurred when Mr. Mocheo visited to inquire about his cheque in January 2023. However, he did not receive the payment, and the finance team provided an explanation, which was undergoing internal resolution.


### Committee Resolution

After deliberations, the Committee resolved that the Kenya Railways Corporation submits a comprehensive response within two weeks to reconcile the issues raised by the Petitioner, including proposing an agreeable and practical framework for conclusively paying Mr. Mocheo's pension.

MIN./PPETC/2024/190:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 1:00 p.m. The next meeting will be held on Tuesday, 30<sup>th</sup> April 2024 at 10:00 a.m.

Sign:  .....

(CHAIRPERSON)

Date..... 05-06-2024 .....





**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**

**MINUTES OF THE 60<sup>TH</sup> SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON SATURDAY, NOVEMBER 09, 2024, IN MEDUSA 2 ROOM, ENGLISH POINT MARINA AT 10.00. A.M**

**PRESENT**

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

**APOLOGIES**

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. John Walter Owino, M.P.
3. Hon. Caleb Mutiso Mule, M.P.
4. Hon. John Bwire Okano, M.P.
5. Hon. Sloya Clement Logova, M.P.

**SECRETARIAT**

- |                         |                              |
|-------------------------|------------------------------|
| 1. Mr. Samuel Kalama    | Principal Clerk Assistant II |
| 2. Mr. Ahmad Kadhi      | Principal Clerk Assistant II |
| 3. Ms. Roselyn Njuki    | Senior Sergeant at Arms I    |
| 4. Ms. Anne Shibuko     | Clerk Assistant I            |
| 5. Ms. Patricia Gichane | Legal Counsel II             |
| 6. Mr. Issaac Nabiswa   | Legal Counsel II             |
| 7. Mr. Willis Obiero    | Clerk Assistant III          |
| 8. Ms. Nancy Akinyi     | Research Officer III         |
| 9. Mr. Benson Muchiri   | Audio Officer                |
| 10. Mr. Calvin Karungo  | Media Relations Officer III  |

**MIN./PPETC/2024/379: PRELIMINARIES**

The Chairperson called the meeting to order at 10:00 a.m. and proceedings began with prayers by Hon. Suzanne Kiamba, M.P.

**MIN./PPETC/2024/380: ADOPTION OF AGENDA**

## AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 50 of 2023 regarding delayed payment of pension by the Kenya Railways Corporation
6. Consideration of Public Petition No. 46 of 2023 regarding payment of retirement dues and pension for retired teachers
7. Consideration of Public Petition No. 43 of 2023 regarding Human Wildlife Conflict in Keiyo North Constituency
8. Any Other Business
9. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Janet Sitienei, M.P. and seconded by Hon. Bidu Tubi, M.P.

### MIN./PPETC/2024/381: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The agenda was deferred.

### MIN./PPETC/2024/382: CONSIDERATION OF PUBLIC PETITION NO. 50 OF 2023 REGARDING DELAYED PAYMENT OF PENSION BY THE KENYA RAILWAYS CORPORATION

#### Observations

The Committee considered the draft report and observed that:

- i. The Kenya Railways Corporation's delay in processing Mr. Mocheo's pension for his seventeen (17) years of service, by failing to remit his pension to the University of Nairobi or promptly complete the necessary processing, violated Mr. Mocheo's rights under sections 5 and 6 of the Pensions Act (Cap. 189).
- ii. The Kshs. 527.20 per month offered by the Corporation was unreasonable as calculated using his last salary in the year 2006.
- iii. The Kenya Railways Corporation failed to transfer Mr. Mocheo's pension benefits for the eighty (18) years of service to the University despite the request made by the University.

#### Recommendations

Pursuant to the provisions of Standing Order 227, the Committee recommended that—

- i. On the prayers that the Committee inquires into the matter and recommends an appropriate mechanism for resolving the matter for the benefit of the petitioner; and recommends payment of the delayed pension of Mr. Benson Asiago Mocheo, the Committee recommends that, the Kenya Railways Corporation promptly and adequately pays the pension owed to Mr. Mocheo for his seventeen (17) years of service within thirty (30) days of the report being tabled.
- ii. On the prayer that the Committee recommends action be taken on all those involved in the continued violation of Mr. Benson Asiago Mocheo's right to fair administrative action as provided under the Constitution of Kenya 2010

and the Fair Administrative Act No.4 of 2016, the Committee notes that the primary issue raised in the petition pertains to the delayed payment of pension, attributed to the Corporation. Therefore, the Committee recommends that the Corporation initiates administrative procedures to identify and deal with any negligence or fault by the officers responsible for processing the pension.

- iii. The Kenya Railways Corporation fast-tracks any other pending pension payment owed to its former employees.

**MIN./PPETC/2024/383: CONSIDERATION OF PUBLIC PETITION NO. 46 OF 2023 REGARDING PAYMENT OF RETIREMENT DUES AND PENSION FOR RETIRED TEACHERS**

The Committee considered the draft report and noted that for comprehensive consideration of the Petition, there was need to include written submission by the National Treasury in the Report invite the Retirement Benefits Authority to give additional insight into the management of pension.

The secretariat would look into the Retirement Benefits Act and the Public Service Super Annuation Scheme Act with a view to come up with a legislative proposal to tackle challenges faced in the pension industry.

**MIN./PPETC/2024/384: CONSIDERATION OF PUBLIC PETITION NO. 43 OF 2023 REGARDING HUMAN WILDLIFE CONFLICT IN KEIYO NORTH CONSTITUENCY**

Observations

The Committee considered the draft report and observed that:

- i. The initial surrender of the land by the community for the game reserve was meant to benefit both the local population and wildlife conservation efforts, but this has not yielded the expected benefits.
- ii. There is an alarming increase in human-wildlife conflict caused by elephants and leopards among other animals reflecting the inadequacy of existing wildlife management strategies.
- iii. There have been incidents of crop destruction, livestock predation, and threats to human safety within the area.
- iv. There is inadequate community engagement and awareness in the mitigation of human wildlife conflict.
- v. The seasonal nature of human-elephant conflicts, particularly during drought months (May, June, July, and October), necessitates a more dynamic approach to wildlife management that considers environmental conditions. Strategies should be adaptive, accounting for wildlife movement patterns influenced by seasonal changes in resource availability.
- vi. The backlog of compensation claims indicates systemic inefficiencies within the KWS and highlights the urgency for timely processing of claims to support affected communities. The committee emphasizes the need for increased funding and streamlined processes to address approved claims and support families impacted by human-wildlife conflicts.

- vii. The need for perimeter fencing along the unfenced areas bordering the game reserve. This gap in infrastructure makes it easier for elephants and other wildlife to stray into human settlements, leading to conflicts.

Recommendations


Pursuant to the provisions of Standing Order 227, the Committee recommended that—

- i. The County Government of Elgeyo Marakwet in collaboration with the KWS, and community stakeholders establish a comprehensive plan for fencing specific areas identified areas within FY 2025/2026 to enhance the safety of local communities against wildlife invasions.
- ii. The Ministry of Tourism and Wildlife allocates resources to increase the number of KWS posts or camps in the identified human-wildlife conflict areas bordering the Rimoi Game Reserve and other human wildlife conflict areas to facilitate effective monitoring of wildlife movements and swift response to distress calls from residents. The KWS should establish a community liaison mechanism to improve communication and foster trust with the local population.
- iii. The Ministry of Tourism and Wildlife reviews the existing policies regarding compensation framework for human-wildlife conflict victims by establishing an expedited process for claims related to loss of lives, livestock, and property including provision for regular and clear updates on the status of claims.
- iv. The Kenya Wildlife Service develops and implements a robust CSR program aimed at addressing the needs of communities surrounding the Rimoi Game Reserve by prioritizing activities proposed by the community.
- v. The Kenya Wildlife Service to identify and secure all the wildlife corridors across the country and ensures due compensation to the victims of human-wildlife conflict.

MIN./PPETC/2024/386:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 01:00 p.m. The next meeting will be held on Saturday, 9<sup>th</sup> September 2024 at 02:00 p.m.

For  
Sign:  .....

(CHAIRPERSON)

Date..... 19-11-2024 .....