



REPUBLIC OF KENYA



NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT
(SECOND SESSION, 2014)

paper laid
By Hon. Dr. Raso
on behalf of the
Chair, Departmental
Committee on
Defence and Foreign
Relations
on Wednesday
17/11/2014
[Signature]

THE DEPARTMENTAL COMMITTEE ON DEFENCE & FOREIGN
RELATIONS



REPORT ON THE PETITION REGARDING NON-PAYMENT OF PENSION BENEFITS TO
CAPTAIN (RETIRED) J.N. WAFUBWA – EX MEMBER OF THE KENYA DEFENCE
FORCES

CLERK'S CHAMBERS
NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER, 2014

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1.0 PREFACE

Honorable Speaker,

The Departmental Committee on Defence and Foreign Relations was constituted on April 24, 2013 and is established under Standing Order No. 216 whose functions are *inter-alia*:-

- i) Investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments;
- ii) Study the programme and policy objectives of the Ministries and Departments and the effectiveness of the implementation;
- iii) Study and review all legislation referred to it;
- iv) Study, assess and analyse the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
- v) Investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House;
- vi) To vet and report on all appointments where the constitution or any law requires the national assembly to approve, except those under Standing order 204 (committee on appointments); and
- vii) Make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

The Committee is mandated to consider the following issues; on Defence, Intelligence, Foreign Relations, Diplomatic and Consular Services, International Boundaries, International Relations, Agreements, Treaties and Conventions.

In executing its mandate, the Committee oversees the operations of the following Ministries/State Department:

- i) Ministry of Defence
- ii) Ministry of Foreign Affairs and International Trade
- iii) National Intelligence Service
- iv) State Department for East African Affairs in the Ministry of East African Affairs, Commerce and Tourism

Committee Membership

The Departmental Committee on Defence and Foreign Relations comprises the following Members: -

- 1) Hon. Ndungu Gethenji, M.P. - **Chairperson**
- 2) Hon. Elias Bare Shill, M.P. - **Vice Chairperson**

Draft Report of the Departmental Committee on Defence and Foreign Relations on a Petition regarding non-payment of pension benefits to Captain J.N. Wafubwa

- 3) Hon. Jakoyo Midiwo, MGH, M.P.
- 4) Hon. Adan Keynan, CBS, M.P.
- 5) Hon. Katoo Ole Metito, EGH, MGH, M.P.
- 6) Hon. Christantus Wamalwa, M.P.
- 7) Hon. Nyiva Mwendwa, EGH, M.P.
- 8) Hon. Maj-General (Rtd.) Joseph Nkaisserry, MGH, CBS, M.P.
- 9) Hon. Gonzi Rai, MGH M.P.
- 10) Hon. Joel Onyancha, MGH, M.P.
- 11) Hon. Richard Onyonka, M.P.
- 12) Hon. Wafula Wamunyinyi, M.P.
- 13) Hon. Lekuton Joseph, M.P.
- 14) Hon. Joseph Kiuna, M.P.
- 15) Hon. Yusuf Hassan, M.P.
- 16) Hon. Joseph Gitari, M.P.
- 17) Hon. Col (Rtd.) Ali Dido Rasso, MBS, M.P.
- 18) Hon. David Pkosing, M.P.
- 19) Hon. Beatrice Nyaga, (HSC) M.P.
- 20) Hon. Roselinda Soipan, M.P.
- 21) Hon. John Lodepe Nakara, M.P.
- 22) Hon. Annah N. Gathecha, M.P.
- 23) Hon. David Wafula, M.P.
- 24) Hon. Elisha Busienei, M.P.
- 25) Hon. Abass S. Mohammed, M.P.
- 26) Hon. Ibrahim Sane, M.P.
- 27) Hon. Joyce Wanjalay Lay, M.P.
- 28) Hon. Dennitah Ghati, M.P.
- 29) Hon. Ken Obura, M.P.

2.0 BACKGROUND

Honorable Speaker,

Standing Order 225(2) (b) requires that the Hon. Speaker reports to the House, any Petition other than those presented through a Member. On 13th February, 2014, the Hon. Speaker, you conveyed to the House that your office had received a petition by one Captain (Rtd) J. N. Wafubwa, a ex Member of the Armed Forces who retired in 1992, regarding non-payment of his pension benefits.

The Petitioner also sought to draw the attention of the National Assembly to the following:- THAT;

1. Since he retired in May 1993 from the Armed Forces, he has never been paid his pension benefits due to failure, refusal, or negligence by the Minsiter for Finance to appoint members of the “**Pensions Appeals Tribunal**” as provided in Chapter 201, the Armed Forces Act. As a result, he took action in the High Court but due

to interference, disobeying court orders and refusal to give *Viva Voce* evidence by the Chief of the Defence Forces, or the Defence Council, the High Court declared itself powerless in the matter.

2. He was served with the notice to retire in 1992 but later, the very notice and all his essential documents were withdrawn from him in October 1992.
3. As a result, he challenged the validity in law of the retirement in the High Court wherein, he won, but the Court of Appeal reversed the High Court decision with the following orders, That;
 - The retirement on age grounds was lawful under Section 227 (1) (a) of the Armed Forces Act, Caps 199.
 - The assessment of damages by the High Court and the assessment of his monthly pension of Kshs. 3,397.50/- and the lump sum cash of Kshs. 203, 850/- by the Defence Council were erroneous and illegal.
 - His employment was protected in law and thus cannot be 'removed lawfully' from military service until the provisions in law are fully complied with.
4. Upon civil appeal judgement, he returned to the high Court to have his lawful pension benefits re-assessed, but the Defence Council opposed, refused and continues to protest that the Court of Appeal was wrong to have set aside its assessment of his benefits.
5. Upon the trial judges being put to notice of Section 227 (2) of Caps 199, the new law which the Defence Council must fully comply with so as to 'remove him lawfully' from military service, the trials Judges impressed upon the Attorney General and himself to settle the matter out of Court. This was agreed, but the Defence Council refused and continues to state it would not re-assess his benefits again save for what it had already assessed as Kshs. 203,850/-
6. The Defence Council is mistaken in this matter; the Court of Appeal took nearly one year on research and investigation before announcing its judgment. The Defence Council in early 1980 resorted to unlawful, fraudulent and wrong principles of managing the Armed Forces when it discarded and used only one Act, Caps 199 to administer the forces. The Armed Forces has a number of laws which the Court of Appeal referred to as the cognate statutes of the Armed Forces. They include;
 - a. The Armed Forces Act, Caps 199;
 - b. The Kenya Regiment (Territory Force) Act, Cap 200 – The training and comatant Act.
 - c. The Armed Forces Pensions and Allowances Act, Caps 201;
 - d. The Armed Forces (Out of Bounds Areas) Act, Caps 202 Act;

- e. The Cantonment Act, Caps 203 – The location and descriptive military land;
 - f. The protected areas Act, Caps 204;
 - g. The military training Act, Caps 205 – Repealed since all trainings were merged into Caps 200;
 - h. The National Service Act, Caps 206 – The coordinating Act between military, police and Civil Society in any civil operation;
 - i. The Reinstatement in Civil Employment Act Caps 207 – The reserves Act; and
 - j. The National Youth Service Act, Caps 208 – The main supplier of combatants to Caps 200.
7. Section 112 (9) (a) of the repealed Lancaster Constitution removes Caps 201 from the Defence Council to the Treasury since the Section reads...“For the purpose of pensions an office in the Military, Air Force or Naval shall be “Regarded” as an office in the Public Office...”
 8. The preamble or Section 2 of Chapter 201 reads that Treasury can only pay pensions to members of the Armed Forces upon death, sickness or disabilities, otherwise members are transferred to the Public Service Commission as provided under Section 227 (2) of the main Act, Chapter 199.
 9. Chapter 199 and Chapter 200 are generators of deaths, sickness and disabilities, as such under their Sections 227, (1), (f), (g) of Caps 199 and Section 36 of Caps 200 any regulations thereto shall be by consent of Treasury wherein Caps 201 must be observed.
 10. The Defence Council made regulations under legal notice number 61 of 1980, but for the mischievous reasons and for bad motives the legal notice became part of Caps 199 instead of being the subsidiary legislation of Caps 201, causing this dispute.
 11. The KDF Act, 2012 is entirely unconstitutional and the legal notice being unconstitutional in some parts, the notices’s rules 16, 33 and 34 are illegal to Caps 201.
 12. Section 227(2) (c)(d) of Caps 199 mandates the respective Service Commanders to transfer retired members to the Public Service Commission with their right to promotions, respective salaries and allowances for onward deployment in the service of the Kenyan government, time when pensions are assessed upon attaining the required ages.

13. The repealed Lancaster Constitution which governs this dispute describes any compensation, salaries, allowances or gratuities paid after retirement instructions given by the Defence Council as Pension Benefits which can only be reduced in amount by the Public Service Commission as read under Section 113.
14. The repealed Lancaster Constitution forbides suits against the Defence Council during active Service, but any disputes on pension benefits by the members against the Council is determined by a tribunal chaired by the AG or SG as provided under Chapter 201. The tribunal has no right to refer to the Council, and its finding is final and conclusive.
15. Under Section 37(2), (m) of Caps 200, the Cabinet Secretary after consultations with the respective Service Commander may fix age limits for effective training and territorial combat, but those ages do not warrant payment of pensions as stated in Caps 201.
16. The trial Judge on hearing his application for re-assessment of his pension benefits and upon hearing the Attorney General who never challenged his allegations over Section 227 (2) of Caps 199, the Judge avoided to make any comment on his judgement but made the following orders:- That;
 - If the petitioner is entitled to any terminal benefits and pensions, then the Court ought to hear Viva Voce evidence from the Defence Council, and in particular the Chief of Defence Forces who would state why legal duties under Section 227 (2) are not performed.
 - The Court has to weigh one thing to another and see whether or not the remedy is to grant the discretional orders sought.
 - If the remedy is strewn with blockage, or where it would cause administrative chaos and public inconvenience then the orders can be denied.
 - Once it is alleged that the Chief of General Staff assessed the terminal benefits at Kshs. 203, 850/- and has refused to rescind his decision, then granting the orders sought would not bring the matter to finality.
17. The pension appeals tribunal operated until 1980 when legal notice 61 of 1980 was published, usurping its functions. To date, no appeals have ever determined, leaving widows, orphans and the injured field combatants to remain in misery.
18. Under the current constitutional dispensation, the Defence Council is outside the Public Service Commission but remains directly under the President, and has no role to play on military pensions benefits.
19. As a result of the aforesaid paragraph, the Chief of the Defence Forces having refused to give evidence and since, he has remained firm that the assessed amount

of Kshs. 203,850/- is final, and the Court of Appeal having stated its Judgment that civil courts normally do not interfere in military matters, and the High Court in Misc. JR 79 of 2013 having expressed the fears stated herein above, it is only fair that the Committee on Defence and Internal Security be pleased to look at and review the laws governing the Armed Forces a fresh and hear this petition as a matter of urgency.

Therefore, Petitioner prayed that;

1. Parliament re-activates the Pensions Appeals Tribunal by ordering the Cabinet Secretary for Finance to appoint members of the tribunal to team up with the Attorney General, and select the location for hearing and paying his military benefits as a matter of urgency;
2. In the alternative, Parliament do grant interim orders that the Attorney General in consultation with the Cabinet Secretary for Finance pay his assessed pensions benefits agreed upon after the High Court gave the order that the matter be settled out of court; and
3. Parliament repeals KDF Act, 2012 to amend Caps 199 and thereafter activate all the concealed or cognate military statutes, Caps 200, 201, 203, 206 and 2017 to be consistent with the current constitution.

Honourable Speaker,

The Petition was referred to the Departmental Committee on Defence and Foreign Relations in accordance with Standing Order 227. The Committee was expected to Table its report on the same within sixty (60) calendar days.

In considering the Petitioner, the Committee took into consideration the submissions and supporting documents, by the Petitioner, the Cabinet Secretary for Defence, the National Treasury, and the Office of the Attorney General and Department of Justice. The Committee also took into consideration the KDF Act, 2012 and the Constitution.

Therefore, the Committee sought to establish the following issues:-

1. Reasons for non-payment of the Petitioner's benefits.
2. The Pensioner's assessed pension's benefits.
3. The status of the Pensions Appeals Tribunal.
4. The need for repeal of KDF Act, 2012.

The Committee held a total of five (5) sittings where it deliberated on the matter and received submissions, presentations and other reports from the witnesses. The Committee received a comprehensive brief from the Petitioner. The Committee later received submissions from the Cabinet Secretary for Defence; the Pensions Secretary, the National Treasury; and Chief Litigation Counsel & Head of Civil Litigation in the Office Attorney

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General. The Cabinet Secretary for Defence was accompanied by Technical Officers in the Ministry.

The Committee met with the following:-

- i. Captain (Rtd) J. N. Wafubwa - the Petitioner,
- ii. Amb. Raychelle Omamo, SC - Cabinet Secretary for Defence
- iii. Ms. Stella Muthoni Munui - Chief Litigation Counsel & Head of Civil Litigation, the Office of the Attorney General and Department of Justice
- iv. Ms. Anne K. Mugo, MBS - Pensions Secretary, the National Treasury

The minutes of these sittings are appended to this report.

Honourable Speaker,

3.0 Based on the submissions, presentations and evidence adduced, the Committee made the following findings.

- i. The Committee finds that the retirement of the Petitioner was lawful under section 227 (1) (a) of the Armed Forces Act (Cap 199) (now repealed) and upon attaining 39 years of age which is the mandatory age of retirement for captains in the event that they are not promoted. Prior to this retirement, the Petitioner had committed various disciplinary offences and had been condemned on the same.
- ii. The delay in the payment of pension to the Petitioner was caused by the various court cases which the Petitioner had instigated. His claim for pension was ultimately received by the Pension's Department on 7th April, 2014. This was after he cleared with his service which was the Kenya Air Force and was advised that he owed the Government a sum of Kshs. 135, 904.50 which he acknowledged. A file APN/MP 247169 was opened for this purpose.

In order for the claim to be processed, the Petitioner has since cleared his effects with the Ministry of Defence and was advised that he owed the Government a liability of Kshs. 135,904.50 an amount which he countersigned to signify his acceptance.

- iii. The Petitioner did not demonstrate any solid legal ground that his claims of compensation amount to Kshs. 236,000,000 being lump sum for the last 21 years.
- iv. The assessment of his benefits is as follows; a monthly pension of Kshs. 3,397.50/- and the lump sum cash of Kshs. 203, 850/-.
- v. The Department of the Director of Pensions consulted with the Ministry of Defence on the Government liability and other matters and resolved to continue processing the award despite the debt. The closure of financial year 2013/14

suspended the processing of all claims until a fresh allocation of budgetary resources is given. Director of Pensions undertook to pay Captain Wafubwa's pension by 31 August, 2014.

- vi. The Petitioner did not demonstrate any solid legal ground to have the Kenya Defence Forces Act 2012 repealed nor for the re-activation of the concealed and cognate military statutes. This prayer should thus be ignored and the current legal regime should continue. The Petitioner further did not demonstrate that KDF Act, 2012 is not consistent with the current constitution.
- vii. The pension paid to officers and servicemen retiring from the Kenya Defence Forces are paid under the Defence Forces (Pension and Gratuities, Officers and Services Members) Regulation under the Kenya Defence Forces Act Cap. 199 (No. 25 of 2012). Under Section 310 (1) (b) and 310 (2), the Defence Council has established two Boards namely; Defence Forces Pension Assessment Board and the Defence Forces Pensions Appeal Tribunal.

The current Membership of these Boards was as per the Gazette Notice No. 2180 of 28th March 2014 and therefore, Ex-Captain Wafubwa's Petition has already been addressed in the law.

- viii. Parliament does not have powers grant interim orders that the Attorney General in consultation with the Cabinet Secretary for National Treasury pays the Petitioner's assessed pensions benefits agreed upon after the High Court gave the order that the matter be settled out of court.

This is because the Petitioner cannot rely on the Court of Appeal decision as his case had been dismissed. The Petitioner had written numerous correspondences to the State Law Office and the Attorney General personally responded vide letter dated, 25th October, 2010 informing the Applicant that the matter could not be settled out of Court as it has been dismissed by the Court of Appeal.

- ix. The National Treasury had given an undertaking to the Committee that, the Petitioner's claim is under process and would be paid his by 31st August 2014, unless any new challenges arise to impede the processing.

4.0 In view of the above observations, the Committee recommends that;

- i) The Petitioner should be paid his assessed benefits as follows; a monthly pension of Kshs. 3,397.50/- and the lump sum cash of Kshs. 203, 850/- as matter of urgency.
- ii) The Petitioner's essential documents that were withdrawn from him by the

Defence Forces in October 1992 including his Service Record Book should be returned to him.

- iii) The circumstances of the Liability are not clear and that the liabilities should be written off.

5.0 ACKNOWLEDGEMENT

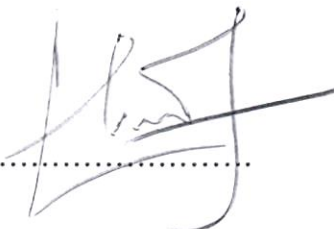
Honorable Speaker,

On behalf of the Committee, I wish to thank the Members of the Committee for their commitment to the work of this Committee.

I also wish to that the Office of the Honorable Speaker and the Liaison Committee for the necessary support extended to it in the execution of its mandate as well as the Office of the Clerk for providing the necessary logistical and technical support to execute its mandate. The Committee further wishes to thank the Cabinet Secretaries for Treasury, Defence and the Attorney General together with all the Technical Staff who appeared before the Committee for providing the necessary information and responding to issues raised by the Members during the considerations of the Petition by Captain (Rtd) J. N. Wafubwa.

On behalf of the Members of the Departmental Committee on Defence and Foreign Relations, pursuant to the provisions of Standing Order No. 227, I have the honor and pleasure to table the Committee Report on the Petition conveyed to this House regarding non-payment of pension benefits to Captain (Rtd) J. N. Wafubwa.

SIGNED



**THE HON. NDUNG'U GETHENJI, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON
DEFENCE & FOREIGN RELATIONS**

DATE:.....28TH OCTOBER, 2014.....

6.0 ADOPTION OF THE REPORT

The Report was adopted **unanimously by all Members present**. The Committee also resolved to submit the Report in the House on October 30, 2014.

7.0 INTRODUCTION

The Petitioner was recruited into the Kenya Air Force in 1978. He was convicted of serious disciplinary breaches under the Armed Forces Act, Cap 199 (now repealed) and was condemned under sections 19, 27, 34, 60 and 68 of the Act leading to loss of seniority, salary reduction and reprimand. He was ultimately retired from service in 1993.

After his retirement, he sought the court's intervention and filed a series of court cases. These are *NRB HCC 674/1993 Captain J.N. Wafubwa v Attorney General, Civil Appeal No. 278/2003 Captain J.N. Wafubwa v Attorney General, NRB HC PETITION 715/2006 Captain J. N. Wafubwa v Attorney General, NRB HC MISC 368/2009 Captain J.N. Wafubwa v Attorney General* and finally resting with *HCJR Misc Civil Application No. 79 of 2013* wherein he claimed that the then Permanent Secretary for Defence had failed to pay his benefits. The application was dismissed on the grounds that the judicial review remedies were not proper and that the applicant was relying on a Court of Appeal decision (CA No. 278 of 2003) that had dismissed his prayers.

The Petitioner seeks that Parliament be pleased to re-activate the Pensions Appeal Tribunal by ordering the Cabinet Secretary for Finance to appoint members of the tribunal to team up with the Attorney- General and select the location for hearing and paying his military benefits. In the alternative, that the Attorney General in consultation with the Cabinet Secretary for Finance pay his assessed pension benefits. In addition, Parliament should repeal the Kenya Defence Forces Act of 2012 and activate all the concealed or cognate military statutes to be consistent with the current Constitution.

7.1 EVIDENCE RECEIVED PETITION REGARDING NON-PAYMENT OF PENSION BENEFITS TO CAPTAIN J.N. WAFUBWA

7.1.1 EVIDENCE BY THE PETITIONER, CAPTAIN (RTD) J.N. WAFUBWA

The Petitioner, Captain (Rtd) J. N. Wafubwa appeared before the Committee on 1st April, 2014. He was accompanied by one Maj. (Rtd) Stanley Kiama as a witness. He adduced evidence as follows:-

- i) He is an ex-member of the Armed Forces and a resident of Nairobi.
- ii) He has never been paid his pension benefits since he retired in May 1993 from the Armed Forces due to failure, refusal, or sleeping on the job by the Minister/Cabinet Secretary for Finance to appoint members of the "Pensions Appeals Tribunal" as provided in Chapter 201, the Armed Forces Act. As a result, he took action in the High Court but due to interference, disobeying court orders and refusal to give Viva Voce evidence by the Chief of the Defence Forces, od defence Council, the High Court has declared itself powerless in the matter.
- iii) He was served with the notice to retire in 1992 but later, the very notice and all his essential documents were withdrawn from him in October 1992.

- iv) As a result, he challenged the validity in law of the retirement in the High Court wherein, he won, but the Court of Appeal reversed the High Court decision with the following orders, That;
- o The retirement on age grounds was lawful under Section 227 (1) (a) of the Armed Forces Act, Caps 199.
 - o The assessment of damages by the High Court and the assessment of his monthly pension of Kshs. 3,397.50/- and the lump sum cash of Kshs. 203, 850/- by the Defence Council were erroneous and illegal.
 - o This employment was protected in law and thus cannot be 'removed lawfully' from military service until the provisions in law are fully complied with.
- v) Upon civil appeal judgement, he returned to the high Court to have his lawful pension benefits re-assessed, but the Defence Council opposed, refused and continues to protest that the Court of Appeal was wrong to have set aside its assessment of his benefits.
- vi) Upon the trial judges being put to notice of Section 227 (2) of Caps 199, the new law which the Defence Council must fully comply with so 'remove him lawfully' from military service, the trials Judges impressed upon the AG and himself to settle the matter out of Court. This was agreed, but the Defence Council refused and continues to state it would not re-assess again save for what it had already assessed as Kshs. 203,850/-
- vii) The Defence Council is mistaken in this matter; the Court of Appeal took nearly one year on research and investigation before announcing its judgment. The Defence Council in early 1980 resorted to unlawful, fraudulent and wrong principles of managing the Armed Forces when it discarded and used only one Act, Caps 199 to administer the forces. The Armed Forces has a number of laws which the Court of Appeal referred to as the cognate statutes of the Armed Forces. They include the Armed Forces Act, Caps 199; the Kenya Regiment (Territory Force) Act, Cap 200; the Armed Forces Pensions and Allowances Act, Caps 201; the Cantonment Act, Caps 203 among others.
- viii) Section 112 (9) (a) of the repealed Lancaster Constitution removes Caps 201 from the Defence Council to the Treasury since the Section read...“For the purpose of pensions an office in the Military, Air Force or Naval shall be “Regarded” as an office in the Public Office...”
- ix) The preamble or Section 2 of Chapter 201 reads that Treasury can only pay pensions to members of the Armed Forces upon death, sickness or disabilities, otherwise members are transferred to the Public Service Commission as provided under Section 227 (2) of the main Act, Chapter 199.
- x) Chapter 199 and Chapter 200 are generators of deaths, sickness and disabilities, as such under their Sections 227, (1), (f), (g) of Caps 199 and Section 36 of Caps 200 any regulations thereto shall be by consent of Treasury wherein Caps 201 must be observed.
- xi) The Defence Council made regulations under legal notice number 61 of 1980, but for the mischievous reasons and for bad motives the legal notice became part of Caps 199 instead of being the subsidiary legislation of Caps 201, causing this dispute.

- xii) The KDF Act, 2012 is entirely unconstitutional and the legal notice being unconstitutional in some parts, the notices's rules 16, 33 and 34 are illegal to Caps 201.
- xiii) Section 227(2) (c)(d) of Caps 199 mandates the respective Service Commanders to transfer retired members to the Public Service Commission with their right to promotions respective salaries and allowances for onward deployment in the service of the Kenyan government, time when pensions are assessed upon attaining the required ages.
- xiv) The repealed Lancaster Constitution which governs this dispute describes any compensation.
- xv) The repealed Lancaster Constitution forbids suits against the Defence Council during active Service, but any disputes on pension benefits by the members against the Council is determined by a tribunal chaired by the AG or SG as provided under Chapter 201. The tribunal has no right to refer to the Council, and its finding is final and conclusive.
- xvi) Under Section 37(2), (m) of Caps 200, the Cabinet Secretary after consulting the respective Service Commander may fix age limits for effective training and territorial combat, but those ages do not warrant payment of pensions as stated in Caps 201.
- xvii) The trial Judge on hearing his application for re-assessment of his pension benefits and upon hearing the AG who never challenged his allegations over Section 227 (2) of Caps 199, the Judge avoided to make any comment on his judgement but made the following orders:- That;
- o If the petitioner is entitled to any terminal benefits and pensions then the Court ought to hear Viva Voce evidence from the Defence Council, and in particular the Chief of Defence Forces who would state why legal duties under Section 227 (2) are not performed.
 - o The Court has to weigh one thing to another and see whether or not the remedy is to grant the discretionary orders sought.
 - o If the remedy is strewn with blockage, or where it would cause administrative chaos and public inconvenience then the orders can be denied.
 - o Once it is alleged that the Chief of General Staff assessed the terminal benefits at Kshs. 203, 850/- and has refused to rescind his decision, then granting the orders sought would not bring the matter to finality.
- xviii) The pension appeals tribunal operated until 1980 when legal notice 61 of 1980 was published, usurping its functions. To date, no appeals have ever determined, leaving widows, orphans and the injured field combatants remain in misery.
- xix) Under the current constitutional dispensation, the Defence Council is outside the Public Service Commission but remains directly under the President, and has no role to play on military pensions benefits.
- xx) As a result of the aforesaid paragraph, the Chief of the Defence Forces having refused to give evidence and since, he has remained firm that he has assessed amount of Kshs. 203,850/- is final, and the Court of Appeal having stated its Judgment that civil courts normally do not interfere in military matters, and the High Court in Misc. JR 79 of 2013 having expressed the fears stated hereinabove, it is only fair that the Committee

on defence and internal security be pleased to look at and review the laws governing the Armed Forces a fresh and hear this petition as a matter of urgency.

- xxi) The petitioner further to the presentations stated that he claims a compensation of Kes. 236,000,000 being lump sum for the last 21 years. The monthly pension to be calculated from the last pay of a Lt. Colonel being that cap 200 puts the maximum regimental military rank at Lt. Colonel.

7.1.2 SUBMISSIONS BY CABINET SECRETARY FOR MINISTRY OF DEFENCE

The Cabinet Secretary for Defence, Amb. Raychelle Omamo, SC appeared before the Committee on 19th June, 2014 and adduced evidence as follows:-

- i) The Petitioner herein retired from Service in 1993 upon attaining the mandatory retirement age of 39yrs at the rank of Captain in accordance with the Armed Forces Terms and Conditions for service. Since his retirement, he has made several unsuccessful attempts in court seeking to have the Defence Council compelled to reinstate him and to review upwards his pension assessment as well as his retirement benefits as follows:-
- a. HCC No. 674/1993 – The High Court ordered that the Rtd officers’ retirement benefits and pension be assessed at the rank of “Major” despite having retired as a Captain.
 - b. Civil appeal No. 278/2003 – Despite the orders being favourable, the Rtd Officer Challenged the High Court Orders to have the benefits assessed at rank of Lieutenant Colonel. The Attorney General cross-appealed and the Court set aside and vacated the High Court Judgment.
 - c. HC Petition 715/2006 – The Rtd Officer applied to have the Hon. Minister for Finance /Treasury directed to assess the petitioner’s benefits for services rendered under the Military Law. The application was dismissed noting that the same was an abuse of the court process in light of the Court of appeal Judgment C.A No. 278 of 2003.
 - d. JR Misc Civil Application No. 368/2009 – The petitioner /Applicant had sought to review the court of appeal Judgement in C.A No. 278/2003. The High Court dismissed two related applications dated 3rd May 2011 and 10th February 2012, observing that the High Court was inferior to the Court of Appeal. Earlier on 13th April 2011, Justice Musinga had dismissed a related application observing that same was res Judicata.
 - e. HCJR Misc Civil Application No. 79 of 2013 – the Rtd Officer alleged that the then Permanent secretary for Defence had failed to have his benefits paid. The Rtd officer had failed to clear with his Service (Kenya Air Force) to enable the processing of his benefits and for instructions to be issued to the Director of Pensions to release his pension. The application was dismissed on the grounds that judicial review remedies were not proper and that the applicant was relying on a court of appeal decision (CA No. 278 of 2003) that had dismissed his prayers.

The petition to the National Assembly for a review of his case does not raise any fresh issue(s) and is simply vexatious. The issue of re-assessment of benefits is far-fetched and the Court order laid the matter bare when it reversed the High Court order. The Accounting Officer or Ministry of Defence has no powers to re-assess a retired person's pension, especially in light of the Court of Appeal judgement. The suggestion for a possibility to negotiate the amount of compensation payable to the complainant similarly has no basis in law or fact and should not be entertained.

The Ministry of Defence further notes that the petitioner is requesting the Committee to repeal the Kenya Defence Forces Act which the Ministry of Defence submits is not tenable. Further the petition is directed at the Cabinet Secretary in the Ministry of Finance (National Treasury) and not Defence.

7.1.3 EVIDENCE BY THE OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

The Committee met with Ms. Stella Muthoni Munui – Chief Litigation Counsel & Head of Civil Litigation in the Office of the Attorney General and Department of Justice on 14th August, 2014 on behalf of the Attorney General. She adduced evidence as follows:- That,

- i. The Captain J. N. Wafubwa (petitioner) was recruited into the Kenya Air Force in 1978 and rose through the ranks to the ranks of a Captain. However, he was convicted of serious disciplinary breaches under the Armed Forces Act and due to the conviction; he was condemned under Section 19, 27, 34, 60 and 68 of the Armed Forces Act to suffer loss of seniority, salary deduction and reprimand.

On 24th September, 1992, the petitioner was issued with notice of retirement from the 82 Air Forces with effect from 22nd May, 1993.

- ii. The Petitioner then instituted a civil suit **NRB HCC 674/1993 Captain J. N. Wafubwa Vs Attorney General** seeking the following;
 - a. Declaration that notice to retire him was unlawful, invalid, null and void;
 - b. The 82 Air Force did not exist;
 - c. Declaration that he was entitled to be promoted to the next rank and be given reasons for failure to promote him; and
 - d. In the alternative judgment for;
 - i) General damages for illegal and unlawful termination of employment;
 - ii) Injunction to stop use of air manouver displays designed by the plaintiff until there are properly qualified and trained personnel to execute the maneuver;
 - iii) Compensation to the plaintiff at 6% of the Standard Puma helicopter Account;

- iv) Compensation of 6% of the value of the equipment the proposed held with full responsibility for the months he had worked;
- iii. The matter was fully defended and the High Court entered judgment on 23rd June, 2003 in favour of the Captain. In its judgment, the Court granted as follows;
- a) Declaration that notice to retire the Captain was unlawful, invalid, null and void;
 - b) Order that 82 Air Force did not exist;
 - c) Declaration that he was entitled to be promoted to the next rank and be given reasons for failure to promote him;
 - d) General damages for the wrongful termination of the service assessed at 10 months' salary as at date of retirement;
 - e) Payment to the plaintiff of salary for 5 years when he would have been Major at 44 years;
 - f) Payment of all his terminal benefits, pension and gratuity calculated at the time he would have retired as Major at 44 years; and
 - g) Costs of the suit.
- iv. Being dissatisfied with the judgment of the High Court, the Petitioner (Captain Wafubwa) appealed to the Court of Appeal in **Civil Appeal No. 278/2003**. The Defendant (the Attorney General) then filed a cross appeal.

The Court of Appeal heard and determined the matter dismissing the appeal and allowing the Defendants' cross appeal, setting aside and vacating all the consequent orders of the High Court decision with costs.

The Court of Appeal in dismissing the appeal held that the Petitioner (Captain Wafubwa) was lawfully retired from service and the High Court's assessment of his terminal benefits based on the rank of a Major was erroneous and illegal.

- v. Following the Court of Appeal decision, the Petitioner again filed a Petition **NRB HCC PET 715/2006, Captain J. N. Wafubwa Vs Attorney General**, but the Petition was dismissed on grounds that the matter was already judged.
- vi. The Petitioner further commenced judicial review proceedings in **Nairobi HC MISC 368/2009, Captain J.N. Wafubwa Vs the Hon. Attorney General** seeking order of the mandamus to compel the Respondents-Minister for Finance and Permanent Secretary, Treasury to delegate any Principal Pension Officer to compute his benefits as provided under Section 3 & 4 of the Pensions Act. These proceedings were dismissed

on 13th April, 2011 by the Hon. J. Musinga who held that the same was already judged.

- vii. The Petitioner being dissatisfied with the ruling of 13th April, 2011 filed a summons application under a certificate dated 9th February, 2012 arguing that the Court had no jurisdiction to hear the application as it was *functus officio* (expired) and in the breach of provisions of Section 8 and 9 of the Law Reform Act and the application was dismissed on grounds that is the application was *functus officio*.
- viii. The Petitioner again commenced judicial review proceedings vide notice of motion dated 27th February, 2013 in **Nairobi HC JR.MISC 79/2013, Captain J. N. Wafubwa Vs General Julius Karangi, Monica Juma and Nancy Kirui** seeking orders of *mandamus* to compel them to re-assess as indicted in the pleadings and pay him compensation and terminal benefits under the legislations that removed him from service, and that during the re-assessment and the Respondents consult with him.

The State Law Office filed grounds of opposition and replying affidavits in opposition to the proceedings. During the pendency of the proceedings in court, the State Law Office explored ways of settling the matter out of court. The Ministry of Defence facilitated the Petitioner's clearance from the service. However, the Petitioner could not be cleared from the Force as he had not obtained the KRA Clearance Certificate as requested and therefore the settlement could not thus be reached because of the Petitioner's failure.

The matter then proceeded in court and judgment was entered as against the Petitioner on 21st January, 2014. The Court in its judgment held that judicial review remedies were not the proper remedies and further, the Petitioner could not rely on the Court of Appeal decision as his case had been dismissed.

- ix. The Petitioner has written numerous correspondences to the State Law Office and the **Attorney General personally responded vide letter dated, 25th October, 2010 informing the Applicant that the matter could not be settled out of Court as it has been dismissed by the Court of Appeal.**
- x. In light of the foregoing, and the Petition before the Parliament, as the Petitioner has not been paid his pension, therefore, the Ministry of Defence should state whether the Petitioner (Captain Wafubwa) has complied with all the requirements to enable the claim be forwarded to the Treasury (Director of Pensions) for settlements.

7.1.4 EVIDENCE BY THE NATIONAL TREASURY

The Committee met with Ms. Ann Mugo, the Pensions Secretary in the National Treasury on 14th August, 2014 on behalf of the Cabinet Secretary, the National Treasury. She adduced evidence as follows:- That

- i. The National Treasury, Pensions Department had not refused or neglected to pay the Ex-Captain J. N. Wafubwa as he had stated in his petition.
- ii. The pension paid to officers and servicemen retiring from the Kenya Defence Forces are paid under the Defence Forces (Pension and Gratuities, Officers and Services Members) Regulation under the Kenya Defence Forces Act Cap. 199 (No. 25 of 2012). Under Section 310 (1) (b) and 310 (2), the Defence Council has established two Boards namely; Defence Forces Pension Assessment Board and the Defence Forces Pensions Appeal Tribunal.
- iii. The current Membership of these Boards was as per the Gazette Notice No. 2180 of 28th March 2014 and therefore, Ex-Captain Wafubwa's Petition had already been addressed in the law.
- iv. The processing and payment of benefits due to Captain Wafubwa had commenced and information regarding the pension claim was as follows:-
 - a) Following lengthy court pleadings by the Petitioner, (as were presented to the Committee by the State Law Office) the pension claim for the Petitioner was received in the Pension Department on 7th April, 2014 from the Ministry of Defence as the Pension's Department always relies on the submission by the employing Ministry/Department.
 - b) In order for the claim to be filed, the Petitioner cleared his effects with the Ministry of Defence and was advised that he owed the Government a liability of Kshs. 135,904.50 an amount which he countersigned to signify his acceptance.
 - c) The claim was accompanied by a Tax Clearance Certificate, Bank details and Pay slip as required together with other supporting documents.
 - d) The Pension Department immediately commenced processing of the pension claim, and a file **APN/MP 247169** was opened for the purpose. The claim was verified and vetted.
 - e) The Department further received a letter dated 6th April, 2014 from the Petitioner disputing certain facts concerning the pension amount, and the letter was actioned on 15th April 2014.

- f) The final calculation is being carried out in the Pensions Information Management System (PMIS) and audited as necessary, before payment is finalized. Payment is made direct to the retiree's bank account, supplied by him and once payment is done, a letter with details thereof is generated from the system and dispatched to the retiree.
- g) The Department consulted the Ministry of Defence on the Government's liability and other matters and subsequently resolved to continue processing the award. However, due to closure of FY 2013/2014 on 30th June 2014, all claims that were being processed were put on hold pending fresh allocation of budgetary resources in the new FY 2014/15.
- v. On the issue of delays, the Petitioner was not honest in his Petition to the National Assembly, given that the delays occasioned by his lengthy litigation.
- vi. Therefore, the Petitioner's claim is under process and will be paid his by 31st August 2014, unless any new challenges arise to impede the processing.

8.0 COMMITTEE FINDINGS

The Committee deliberated on the submissions by the Petitioner and other witnesses and made the following findings: - THAT:-

- i. The retirement of the Petitioner was lawful under section 227 (1) (a) of the Armed Forces Act (Cap 199) (now repealed) and upon attaining 39 years of age which is the mandatory age of retirement for captains in the event that they are not promoted. Prior to this retirement, the Petitioner had committed various disciplinary offences and had been punished on the same.
- ii. The delay in the payment of pension to the Petitioner was caused by the various court cases which the Petitioner had instigated. His claim for pension was ultimately received by the Pension's Department on 7th April, 2014. This was after he cleared with his service which was the Kenya Air Force and was advised that he owed the Government a sum of Kshs. 135, 904.50 which he acknowledged. A file APN/MP 247169 was opened for this purpose.

In order for the claim to be processed, the Petitioner has since cleared his effects with the Ministry of Defence and was advised that he owed the Government a liability of Kshs. 135,904.50 an amount which he countersigned to signify his acceptance.

- iii. The Petitioner did not demonstrate any solid legal ground that his claims of compensation amounting to Kshs. 236,000,000/- being lump sum for the last 21 years.

- iv. The assessment of his benefits is as follows; a monthly pension of Kshs. 3,397.50/- and the lump sum cash of Kshs. 203, 850/-.
- v. The Department of the Director of Pensions consulted with the Ministry of Defence on the Government liability and other matters and resolved to continue processing the award despite the debt. The closure of financial year 2013/14 suspended the processing of all claims until a fresh allocation of budgetary resources is given. Director of Pensions undertook to pay Captain Wafubwa's pension by 31 August, 2014.
- vi. The Petitioner did not demonstrate any solid legal ground to have the Kenya Defence Forces Act 2012 repealed nor for the re-activation of the concealed and cognate military statutes. This prayer should thus be ignored and the current legal regime should continue. The Petitioner further did not demonstrate that KDF Act, 2012 is not consistent with the current constitution.
- vii. The pension paid to officers and servicemen retiring from the Kenya Defence Forces are paid under the Defence Forces (Pension and Gratuities, Officers and Services Members) Regulation under the Kenya Defence Forces Act Cap. 199 (No. 25 of 2012). Under Section 310 (1) (b) and 310 (2), the Defence Council has established two Boards namely; Defence Forces Pension Assessment Board and the Defence Forces Pensions Appeal Tribunal.

The current Membership of these Boards was as per the Gazette Notice No. 2180 of 28th March 2014 and therefore, Ex-Captain Wafubwa's Petition has already been addressed in the law.

- viii. Parliament does not have powers grant interim orders that the Attorney General in consultation with the Cabinet Secretary for National Treasury pays the Petitioner's assessed pensions benefits agreed upon after the High Court gave the order that the matter be settled out of court.

This is because the Petitioner cannot rely on the Court of Appeal decision as his case had been dismissed. The Petitioner had written numerous correspondences to the State Law Office and the Attorney General personally responded vide letter dated, 25th October, 2010 informing the Applicant that the matter could not be settled out of Court as it has been dismissed by the Court of Appeal.

- ix. The National Treasury had given an undertaking to the Committee that, the Petitioner's claim is under process and would be paid his dues by 31st of August 2014, unless any new challenges arise to impede the processing.

9.0 In view of the above observations, the Committee recommends that;

- i) The Petitioner should be paid his assessed benefits as follows; a monthly pension of Kshs. 3,397.50/- and the lump sum cash of Kshs. 203, 850/- as matter of urgency.
- ii) The Petitioner's essential documents that were withdrawn from him by the Defence Forces in October 1992 including his Service Record Book should be returned to him.
- iii) The circumstances of the Liability are not clear and that the liabilities should be written off.

MINUTES OF THE 88TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
DEFENCE AND FOREIGN RELATIONS HELD ON WEDNESDAY 28th OCTOBER,
2014 IN THE SMALL DINNING HALL, MAIN PARLIAMENT BUILDINGS AT 12.00PM

PRESENT

1. Hon. Col. (Rtd) Ali Dido Rasso, MP (Ag. Chairperson)
2. Hon. Jakoyo Midiwo, MGH, MP
3. Hon. Katoo Ole Metito, EGH, MGH, MP
4. Hon. Chrisanthus Wamalwa, MP
5. Hon. Nyiva Mwendwa, EGH, MP
6. Hon. Maj. Gen. Joseph Nkaissey, MGH, CBS, MP
7. Hon. Gonzi Rai, MGH, MP
8. Hon. Joel Onyancha, MGH, MP
9. Hon. Wafula Wamunyinyi, MP
10. Hon. Annah Nyokabi Gathecha, MP
11. Hon. David Pkosing, MP
12. Hon. Elisha Busienei, MP

APOLOGY

1. Hon. Ndungu Gethenji, MP - Chairperson
2. Hon. Elias Bare Shill, MP - Vice-Chairperson
3. Hon. Adan Keynan, CBS, MP
4. Hon. Lekuton Joseph, MP
5. Hon. Joseph Gitari, MP
6. Hon. Richard Onyonka, MP
7. Hon. Yusuf Hassan, MP
8. Hon. David Wafula, MP
9. Hon. Roselinda Soipan, MP
10. Hon. Beatrice Nyaga, HSC, MP
11. Hon. Abass S. Mohammed, MP
12. Hon. Joseph Kiuna, MP
13. Hon. Joyce Wanjaloh Lay, MP
14. Hon. Ken Obura, MP
15. Hon. Dennitah Ghati, MP
16. Hon. Ibrahim Sane, MP
13. Hon. John Lodepe Nakara, MP

IN-ATTENDANCE

1. Mr. Douglas Katho - Third Clerk Assistant
2. Ms. Emma Essendi - Legal Counsel
3. Ms. Fiona Musili - Research Officer

Min No. 305/2014

PRELIMINARIES

The Sitting commenced with a word of prayer.

Min No. 306/2014

CONFIRMATION OF MINUTES

The minutes of the previous minutes were deferred to a later sitting.

Min No. 307/2014

CONSIDERATION AND ADOPTION OF THE DRAFT
REPORT BY EX-KDF CAPTAIN WAFUBWA ON NON-
PAYMENT OF HIS PENSION BENEFITS

In adopting the draft report; the committee made the following recommendations as indicated below:

- i) The Petitioner should be paid his assessed benefits as follows; a monthly pension of Kshs. 3,397.50/- and the lump sum cash of Kshs. 203, 850/- as matter of urgency.
- ii) The unpaid lump sum cash of Kshs. 203, 850/- and the monthly pension of kshs. 3,397.50 be calculated to have accrued interests for the petitioner.
- iii) The Petitioner's essential documents that were withdrawn from him by the Defence Forces in October 1992 including his Service Record Book should be returned to him.
- iv) The circumstances of the Liability are not clear and that the liabilities should be written off.

Further the committee members also resolved to write to the Cabinet the Cabinet Secretary for Finance to confirm if the pension benefits for the above cited officer have been fully processed as at 31st August, 2014, as was indicated in the submissions by the National Treasury on the 14th of August, 2014; and that the national treasury to be able to calculate the lump sum pension benefits and the monthly payments taking into account the accrued interests; taking into account that the officer has not been able to access his pension benefits since he was retired.

Min No. 308/2014

AOB

There were AOB that were raised.

Min No. 309/ 2014 ADJOURNMENTS

The Chairperson adjourned the meeting at 2.00 PM

Signed.....

Chairperson

Date.....

28/10/2014

MINUTES OF THE 66TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
DEFENCE AND FOREIGN RELATIONS HELD IN THE SMALL DINNING HALL. MAIN
PARLIAMENT BUILDINGS ON THURSDAY, 14TH AUGUST, 2014 AT 10:30 A.M.

MEMBERS PRESENT

1. Hon. Ndungu Gethenji, M.P. - Chairperson
2. Hon. Elias Bare Shill, M.P. - Vice Chairperson
3. Hon. Katoo Ole Metito, EGH, MGH, M.P.
4. Hon. Adan Keynan, CBS, M.P
5. Hon. Jakoyo Midiwo, MGH, M.P.
6. Hon. Christantus Wamalwa, M.P
7. Hon. Nyiva Mwendwa, EGH, M.P.
8. Hon. Lekuton Joseph, M.P.
9. Hon. Wafula Wamunyinyi, M.P.
10. Hon. Joseph Kiuna, M.P.
11. Hon. Yusuf Hassan, M.P.
12. Hon. Col. (Rtd) Ali Dido Rasso, M.P.
13. Hon. Joyce Wanjalah Lay, M.P.
14. Hon. David Wafula, M.P.
15. Hon. John Lodepe Nakara, M.P.
16. Hon. Elisha Busienei, M.P.
17. Hon. Beatrice Nyaga, M.P.
18. Hon. Richard Onyonka, M.P.
19. Hon. David Pkosing, M.P.
20. Hon. Abass S. Mohammed, M.P.

ABSENT WITH APOLOGY

Hon. Joseph Gitari, M.P

ABSENT

1. Hon. Maj-General (Rtd) Joseph Nkaiserry, MGH, M.P.
2. Hon. Gonzi Rai, MGH, M.P.
3. Hon. Joel Onyancha, MGH, M.P
4. Hon. Annah N. Gathecha, M.P.
5. Hon. Dennitah Ghati, M.P.
6. Hon. Ibrahim Sane, M.P.
7. Hon. Ken Obura, M.P
8. Hon. Roselinda Soipan, M.P.

IN ATTENDANCE: STATE LAW OFFICE

Ms. Stella Muthoni Munui – Chief Litigation Counsel & Head of Civil Litigation

NATIONAL TREASURY

Ms. Anne K. Mugo, MBS - Pensions Secretary

NATIONAL ASSEMBLY

1. Ms. Rachel Kairu - Senior Clerk Assistant
2. Mr. Douglas Katho - Third Clerk Assistant
3. Ms. Halima Hussein - Third Clerk Assistant
4. Ms. Fiona Musili - Third Research Officer

MIN. NO.198/2014: PRELIMINARIES

The Sitting's proceedings commenced with a word of prayer and thereafter the meeting's agenda was adopted.

MIN.NO. 199/2014: SUBMISSION BY THE STATE LAW OFFICE REGARDING THE PETITION BY EX-CAPT. J. N. WAFUBWA (20654) ON NON-PAYMENT OF PENSION BENEFITS

The following were discussed under this agenda as herein below:-

Submission by the State Law Office

Ms. Stella Muthoni Munui, the Chief Litigation Counsel & Head of Civil Litigation appeared before the Committee on behalf of the Attorney General and filed the following submission, that:-

- i. The Captain J.N. Wafubwa (petitioner) was recruited into the Kenya Air Force in 1978 and rose through the ranks to the ranks of a Captain. However, he was convicted of serious disciplinary breaches under the Armed Forces Act and due to the conviction; he was condemned under Section 19, 27, 34, 60 and 68 of the Armed Forces Act to suffer loss of seniority, salary deduction and reprimand. On 24th September, 1992, the petitioner was issued with notice of retirement from the 82 Air Forces with effect from 22nd May, 1993.
- ii. The Petitioner then instituted a civil suit **NRB HCC 674/1993 Captain J. N. Wafubwa Vs Attorney General** seeking the following;
 - a. Declaration that notice to retire him was unlawful, invalid, null and void;
 - b. The 82 Air Force did not exist;
 - c. Declaration that he was entitled to be promoted to the next rank and be given reasons for failure to promote him; and
 - d. In the alternative judgment for;
 - a) General damages for illegal and unlawful termination of employment;
 - b) Injunction to stop use of air manouver displays designed by the plaintiff until there are property qualified and trained personnel to execute the maneuver;
 - c) Compensation to the plaintiff at 6% of the Standard Puma helicopter Account; and
 - d) Compensation of 6% of the value of the equipment the proposed held with full responsibility for the months he had worked;

- iii. The matter was fully defended and the High Court entered judgment on 23rd June, 2003 in favour of the Captain. In its judgment, the Court granted as follows;
- a) Declaration that notice to retire the Captain was unlawful, invalid, null and void;
 - b) Order that 82 Air Force did not exist;
 - c) Declaration that he was entitled to be promoted to the next rank and be given reasons for failure to promote him;
 - d) General damages for the wrongful termination of the service assessed at 10 months' salary as at date of retirement;
 - e) Payment to the plaintiff of salary for 5 years when he would have been Major at 44 years;
 - f) Payment of all his terminal benefits, pension and gratuity calculated at the time he would have retired as Major at 44 years; and
 - g) Costs of the suit.
- iv. Being dissatisfied with the judgment of the High Court, the Petitioner (Captain Wafubwa) appealed to the Court of Appeal in **Civil Appeal No. 278/2003**. The Defendant (the Attorney General) then filed a cross appeal.

The Court of Appeal heard and determined the matter dismissing the appeal and allowing the Defendants' cross appeal, setting aside and vacating all the consequent orders of the High Court decision with costs.

The Court of Appeal in dismissing the appeal held that the Petitioner (Captain Wafubwa) was lawfully retired from service and the High Court's assessment of his terminal benefits based on the rank of a Major was erroneous and illegal.

- v. Following the Court of Appeal decision, the Petitioner again filed a Petition **NRB HCC PET 715/2006, Captain J. N. Wafubwa Vs Attorney General**, but the Petition was dismissed on grounds that the matter was already judged.
- vi. The Petitioner further commenced judicial review proceedings in **NAIROBI HCMISC 368/2009, Captain J.N. Wafubwa Vs the Hon. Attorney General** seeking order of the mandamus to compel the Respondents-Minister for Finance and Permanent Secretary, Treasury to delegate any Principal Pension Officer to compute his benefits as provided under Section 3 & 4 of the Pensions Act. These proceedings were dismissed on 13th April, 2011 by the Hon. J. Musinga who held that the same was already judged.
- vii. The Petitioner being dissatisfied with the ruling of 13th April, 2011 filed a summons application under a certificate dated 9th February, 2012 arguing that the Court had no jurisdiction to hear the application as it was *functus officio* (expired) and in the

breach of provisions of Section 8 and 9 of the Law Reform Act and the application was dismissed on grounds that is the application was *functus officio*.

- viii. The Petitioner again commenced judicial review proceedings vide notice of motion dated 27th February, 2013 in NAIROBI HC JR.MISC 79/2013, Captain J. N. Wafubwa Vs General Julius Karangi, Momica Juma and Nancy Kirui seeking orders of *mandamus* to compel them to re-assess as indicted in the pleadings and pay him compensation and terminal benefits under the legislations that removed him from service, and that during the re-assessment and the Respondents consult with the him.

The State Law Office filed grounds of opposition and replying affidavits in opposition to the proceedings. During the pendency of the proceedings in court, the State Law Office explored ways of settling the matter out of court. The Ministry of Defence facilitated the Petitioner's clearance from the service. However, the Petitioner could not be cleared from the Force as he had not obtained the KRA Clearance Certificate as requested and therefore the settlement could not thus be reached because of the Petitioner's failure.

The matter then proceeded in court and judgment was entered as against the Petitioner on 21st January, 2014. The Court in its judgment held that judicial review remedies were not the proper remedies and further, the Petitioner could not rely on the Court of Appeal decision as his case and been dismissed.

- ix. The Petitioner has written numerous correspondences to the State Law Office and the Attorney General personally responded vide letter dated, 25th October, 2010 informing the Applicant that the matter could not be settled out of Court as it has been dismissed by the Court of Appeal.
- x. In light of the foregoing, and the Petition before the Parliament, as the Petitioner has not been paid his pension, therefore, the Ministry of Defence should whether the Petitioner (Captain Wafubwa) has complied with all the requirements to enable the claim be forwarded to the Treasury (Director of Pensions) for settlements.

MIN.NO. 200/2014: SUBMISSION BY THE NATIONAL TREASURY
REGARDING THE PETITION BY EX-CAPT. J. N.
WAFUBWA (20654) ON NON-PAYMENT OF PENSION
BENEFITS

Ms. Ann Mugo, the Pensions Secretary in the National Treasury appeared before the Committee and filed the following submission, that:-

- i. The National Treasury, Pensions Department had not refused or neglected to pay the Ex-Captain J. N. Wafubwa as he had stated in his petition.
- ii. The pension paid to officers and servicemen retiring from the Kenya Defence Forces are paid under the Defence Forces (Pension and Gratuities, Officers and Services Members) Regulation under the Kenya Defence Forces Act Cap. 199 (No. 25 of 2012). Under Section 310 (1) (b) and 310 (2), the Defence Council has established two Boards namely; Defence Forces Pension Assessment Board and the Defence Forces Pensions Appeal Tribunal.
- iii. The current Membership of these Boards was as per the Gazette Notice No. 2180 of 28th March 2014, which she tabled before the Committee and therefore, Ex-Captain Wafubwa's Petition had already been addressed in the law.
- iv. The processing and payment of benefits due to Captain Wafubwa had commenced and information regarding the pension claim was as follows:-
 - a) Following lengthy court pleadings by the Petitioner, as were presented to the Committee by the State Law Office, the pension claim for the Petitioner was received in the Pension Department on 7th April, 2014 from the Ministry of Defence as the Pension's Department always relies on the submission by the employing Ministry/Department.
 - b) In order for the claim to be filed, the Petitioner cleared his effects with the Ministry of Defence and was advised that he owed the Government a liability of Kshs. 135,904.50 an amount which he countersigned to signify his acceptance.
 - c) The claim was accompanied by a Tax Clearance Certificate, Bank details and Pay slip as required together with other supporting documents.
 - d) The Department immediately commenced processing of the pension claim, and a file APN/MP 247169 was opened for the purpose. The claim was verified and vetted.
 - e) The Department further received a letter dated 6th April, 2014 from the Petitioner disputing certain facts concerning the pension amount, and the letter was actioned on 15th April 2014.
 - f) The final calculation is carried out in the Pensions Information Management System (PMIS) and audited as necessary, before payment is finalized. Payment is made direct to the retiree's bank account, supplied by him and once payment is done, a letter with details thereof is generated from the system and dispatched to the retiree.
 - g) The Department consulted the Ministry of Defence on the Government's liability and other matters and subsequently resolved to continue processing the award. However, due to closure of FY 2013/2014 on 30th June 2014, all claims that were being processed were put on hold pending fresh allocation of budgetary resources in the new FY 2014/15.

- h) On the issue of delays, the Petitioner was not honest in his Petition to the National Assembly, given that the delays occasioned by his lengthy litigation.
- i) Therefore, the Petitioner's claim is under process and will be paid by 31st August 2014, unless any new challenges arise to impede the processing.

MIN.NO. 201 /2014:

ANY OTHER BUSINES

- i. The Committee rescheduled the meeting to discuss Somalia-Kenya relations to Thursday, 21st August 2014. Further, the Committee also resolved to hold a house-keeping sitting on Tuesday 19th August 2014.
- ii. Members were reminded that the proposed fact-visit to Migingo and Ugingo Islands in Lake Victoria Fact-finding mission regarding the Petition before the Committee, on alleged continued occupation of Migingo and Ugingo Islands by the Uganda Security Forces (USF) was scheduled for Thursday, 19th to Saturday, 21st August 2014.

MIN.NO. 202/2014:

ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Half past twelve O'clock.

SIGNED.....

(CHAIRPERSON)

DATE.....

28/10/2014

MINUTES OF THE 51ST SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD IN THE SECOND FLOOR OF PROTECTION HOUSE, PARLIAMENT BUILDINGS ON THURSDAY, 19TH JUNE, 2014 AT 10:30 A.M.

MEMBERS PRESENT

1. Hon. Ndungu Gethenji, M.P. - Chairperson
2. Hon. Elias Bare Shill, M.P. - Vice Chairperson
3. Hon. Jakoyo Midiwo, MGH, M.P.
4. Hon. Adan Keynan, M.P.
5. Hon. Maj-Gen.(Rtd) Joseph Nkaiserry, MGH, M.P.
6. Hon. Gonzi Rai, MGH, M.P.
7. Hon. Joel Onyanacha, MGH, M.P.
8. Hon. Wafula Wamunyinyi, M.P.
9. Hon. Joseph Kiuna, M.P.
10. Hon. Yusuf Hassan, M.P.
11. Hon. David Wafula, M.P.
12. Hon. Elisha Busienei, M.P.
13. Hon. Abass S. Mohammed, M.P.
14. Hon. Lekuton Joseph, M.P.
15. Hon. Joyce Wanjalay Lay, M.P.
16. Hon. David Pkosing, M.P.
17. Hon. Beatrice Nyaga, M.P.
18. Hon. Ken Obura, M.P.
19. Hon. John L. Nakara, M.P.

ABSENT WITH APOLOGIES

1. Hon. Katoo Ole Metito, EGH, MGH, M.P.
2. Hon. Christantus Wamalwa, M.P.
3. Hon. Nyiva Mwendwa, EGH, M.P.
4. Hon. Col. (Rtd) Ali Dido Rasso, M.P.
5. Hon. Dennitah Ghati, M.P.
6. Hon. Joseph Gitari, M.P.
7. Hon. Ibrahim Sane, M.P.

ABSENT

1. Hon. Annah N. Gathecha, M.P.
2. Hon. Richard Onyonka, M.P.
3. Hon. Roselinda Soipan, M.P.

IN ATTENDANCE

MINISTRY OF DEFENCE

- | | | |
|-------------------------|---|-------------------------------------|
| 1. Amb. Raychelle Omamo | - | Cabinet Secretary |
| 2. Brig. K. O. Ndindi | - | Chief of Legal MOD |
| 3. Maj. Elphas Kweya | - | MA to Cabinet Secretary for Defence |
| 4. Mr. G. F. Sakwa | - | PLO |

IN ATTENDANCE

NATIONAL ASSEMBLY

- | | | |
|-----------------------|---|------------------------|
| 1. Ms. Rachel Kairu | - | Senior Clerk Assistant |
| 2. Ms. Halima Hussein | - | Third Clerk Assistant |

MIN. NO.129/2014: PRELIMINARIES

The sitting's proceedings commenced with a word of prayer. Thereafter, the meeting's agenda was adopted.

MIN.NO. 130/2014: MEETING WITH THE CABINET SECRETARY FOR DEFENCE

The Cabinet Secretary thanked the Committee for the invitation and confirmed she was in receipt of the two petitions by the two Ex-KDF officers namely:-

- i) Petition by Ex-SPTE Enock Mukanda on wrongful discharge from service.
- ii) Petition by Ex-Capt J. N. Wafubwa on the non-payment of his pension benefits.

1. The Petition on discharge of Ex-SPTE Enock Makanda (64814) from the Defence Forces

The Cabinet Secretary for Defence made the following submission in respect to the Petition;- That,

- i) The Ex-service member was enlisted into the Armed Forces on 4th May 1990. He was discharged from the service on 29th September 1996 on the basis of "Service No Longer Required" (SNLR) as provided for under section 176 of the Armed Forces Act (now repealed) following disciplinary action taken against him for habitually absenting himself, and not on medical grounds.
- ii) At the time of his discharge, he had served for a period of six (6) years and twelve (12) days. As was spelt out in the terms and conditions for service, he was not eligible for pension. He was therefore assessed for gratuity at Kshs. 78,516/- from which the government liabilities he had accrued and accepted were to be deducted.
- iii) On the basis of a femur injury sustained while in service due to a road traffic accident, the Ex-Serviceman requested to be assessed for disability. A Medical Board convened on 13th October 1998 examined him and found him to be medically fit. The femoral plate that had been inserted at the time of the accident, required to be removed and the removal had no time limit. At the time, the Ex-serviceman was not covered under the Armed Forces Medical Scheme while in service because he had voluntarily not joined the scheme. The Medical Board did not award any compensation for the broken femur of the Ex-Serviceman.
- iv) The discharge was not done on medical grounds but on disciplinary grounds. He therefore cannot seek any disability pension or benefits as he was found by the Medical Board to be medically fit and further more, at the time of his assessment he was no longer a member of the Armed Forces.
- v) The Workman's Compensation Act at section 2(1)(v) exempts the Armed Forces from its application and as such cannot be relied on this case. The terms and conditions of service were applied in processing the retirement for the service member and as such he cannot claim what was not due to him.
- vi) The petitioner's terminal benefits were paid in accordance with the lawful assessment and cannot be paid twice.

Therefore, the Petition in this case must fail.

2. The Petition by Captain J. N.Wafubwa (20654) on Non-Payment of his Pension Benefits

The Cabinet Secretary for Defence made the following submission in regard to the Petition:-

- i) The Petitioner retired from Service in 1993 upon attaining the mandatory retirement age of 39 years at the rank of Captain in accordance with the Armed Forces Terms and Conditions for service.
- ii) Since his retirement, he has made several unsuccessful attempts in court seeking to have the Defence Council compelled to reinstate him and to review upwards his pension assessment as well as his retirement benefits as follows:-
 - a. HCC No. 674/1993 – The High Court ordered that the Retired Officers' retirement benefits and pension be assessed at the rank of "Major" despite having retired as a Captain.
 - b. Civil appeal No. 278/2003 – Despite the orders being favourable, the Retired Officer challenged the High Court Orders to have the benefits assessed at rank of Lieutenant Colonel. The Attorney General cross-appealed and the Court set aside and vacated the High Court Judgment.
 - c. HC Petition 715/2006 – The Retired Officer applied to have the Hon. Minister for Finance /Treasury directed to assess the Petitioner's benefits for services rendered under the Military Law. The application was dismissed noting that the same was an abuse of the court process in light of the Court of appeal Judgment CA No. 278 of 2003.
 - d. JR Misc Civil Application No. 368/2009 – The Petitioner /Applicant had sought to review the court of appeal Judgement in CA No. 278/2003. The High Court dismissed two related applications dated 3rd May 2011 and 10th February 2012, observing that the High Court was inferior to the Court of Appeal. Earlier on 13th April 2011, Justice Musinga had dismissed a related application observing that same was res Judicata.
 - e. HCJR Misc Civil Application No. 79 of 2013 – the Rtd Officer alleged that the then Permanent Secretary for Defence had failed to have his benefits paid. The Retired Officer had failed to clear with his Service (Kenya Air Force) to enable the processing of his benefits and for instructions to be issued to the Director of Pensions to release his pension.
 - f. The application was dismissed on the grounds that judicial review remedies were not proper and that the applicant was relying on a Court of Appeal's decision (CA No. 278 of 2003) that had dismissed his prayers.
- iii) The petition to the National Assembly for a review of his case does not raise any fresh issue(s) and is simply vexatious. The issue of re-assessment of benefits is far-fetched and the Court of Appeal laid the matter bare when it reversed the High Court order.
- iv) The Accounting Officer or Ministry of Defence has no powers to re-assess a retired person's pension, especially in light of the Court of Appeal judgement. The suggestion for a possibility to negotiate the amount of compensation payable to the complainant similarly has no basis in law or fact and thus should not be entertained.
- iv) The petitioner was requesting the Committee to repeal the Kenya Defence Forces Act which was not tenable. Further, the Petition was directed at the Cabinet Secretary Ministry of Finance (National Treasury) and not Defence.

MIN. NO.131/2014:

COMMITTEE'S OBSERVATION

The Committee made the following observations:-

- i) Terms and Conditions of service of KDF officers should be reviewed.
- ii) A scheme should be put in place to support KDF officers who get injured in the line of duty.
- iii) There are numerous such cases of officers who feel they were unfairly discharged from the military, or who have queries regarding the payment of their pension benefits. Therefore, there is need to have in place an Independent Appeals Board, where all such cases would be considered. Members resolved to establish how such a Board can be established.

MIN. NO.132/2014 : ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at half past twelve O'clock.

SIGNED.....

(CHAIRPERSON)

DATE..... 28/10/2014

MINUTES OF THE 38TH SITTING OF THE DEPARTMENTAL COMMITTEE ON DEFENCE AND FOREIGN RELATIONS HELD IN THE COMMITTEE ROOM ON 7TH FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS ON TUESDAY, 1ST APRIL 2014 AT 10.30.A.M.

MEMBERS PRESENT

1. Hon. Ndungu Gethenji, M.P. – Chairperson
2. Hon. Elias Bare Shill, M.P. - Vice Chairperson
3. Hon. Jakoyo Midiwo, M.P.
4. Hon. Christantus Wamalwa, M.P.
5. Hon. Nyiva Mwendwa, M.P.
6. Hon. Maj-General (Rtd) Joseph Nkaisserry, M.P.
7. Hon. Wamunyinyi Athanas Wafula, M.P.
8. Hon. Col (Rtd) Ali Dido Rasso, M.P.
9. Hon. Yusuf Hassan, M.P.
10. Hon. Beatrice Nyaga, M.P.
11. Hon. John Lodepe Nakara, M.P.
12. Hon. David Wafula, M.P.
13. Hon. Elisha Busienei, M.P.

ABSENT WITH APOLOGIES

1. Hon. Adan Keynan, M.P.
2. Hon. Katoo Ole Metito, M.P.
3. Hon. Gonzi Rai, M.P.
4. Hon. Lekuton Joseph, M.P.
5. Hon. Joseph Kiuna, M.P.
6. Hon. Joseph Gitari, M.P.
7. Hon. Joyce Wanjaloh Lay, M.P.
8. Hon. Roselinda Soipan, M.P.
9. Hon. Annah Nyokabi Gathecha, M.P.
10. Hon. Dennitah Ghati, M.P.

ABSENT

1. Hon. Joel Onyantha, M.P.
2. Hon. Richard Onyonka, M.P.
3. Hon. David Pkosing, M.P.
4. Hon. Abass S. Mohammed, M.P.
5. Hon. Ken Obura, M.P.
6. Hon. Ibrahim Sane, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Ms. Rachel Kairu - Senior Clerk Assistant

IN ATTENDANCE

PETITIONER

1. Captain (Rtd) J. N. Wafubwa – Petitioner
2. Maj. (Rtd) Stanley Kiama – Accompanying the Petitioner

MIN. NO.075/2014

PRELIMINARIES

The sitting commenced with a word of prayer. Thereafter, the sitting's agenda was adopted.

MIN. NO. 076/2014

PETITION BY CAPTAIN (RTD) J. N. WAFUBWA ON NON-PAYMENT OF HIS PENSION BENEFITS

The Petition under consideration was conveyed to the House by the Speaker pursuant to SO 225(2) (b).

Pursuant to Standing Order 90, the Hon. Hon. Maj-General (Rtd) Joseph Nkaisserry, M.P and the Hon. Col (Rtd) Ali Dido Rasso, M.P. declared their interest in the subject, being former Members of the Kenya Defence Forces.

The Petitioner, Captain (Rtd) J. N. Wafubwa was accompanied by one Maj. (Rtd) Stanley Kiama. He tabled his petitions and other relevant papers before the Committee. Thereafter, he made the following submission:- That;

- He is an ex-member of the Armed Forces and a resident of Nairobi.
- He has never been paid his pension benefits since he retired in May 1993 from the Armed Forces due to failure or refusal by the Minister/Cabinet Secretary for Finance to appoint members of the "Pensions Appeals Tribunal" as provided in Chapter 201 of, the Armed Forces Act. As a result, he filed a case in the High Court but due to interference, disobeying court orders and refusal to give Viva Voce evidence by the Chief of the Defence Forces, or the Defence Council, the High Court declared itself powerless in the matter.
- He was served with the notice to retire in 1992 but later, the very notice and all his essential documents were withdrawn from him in October 1992.
- As a result, he challenged the validity in law of the retirement in the High Court wherein, he won, but the Court of Appeal reversed the High Court decision with the following orders, That;
 - The retirement on age grounds was lawful under Section 227 (1) (a) of the Armed Forces Act, Caps 199.
 - The assessment of damages by the High Court and the assessment of his monthly pension of Kshs. 3,397.50/- and the lump sum cash of Kshs. 203, 850/- by the Defence Council were erroneous and illegal.
 - This employment was protected in law and thus cannot be 'removed lawfully' from military service until the provisions in law are fully complied with.
- Upon civil appeal judgement, he returned to the high Court to have his lawful pension benefits re-assessed, but the Defence Council opposed, refused and continues to protest that the Court of Appeal was wrong to have set aside its assessment of his benefits.
- Upon the trial judges being put to notice of Section 227 (2) of Caps 199, the new law which the Defence Council must fully comply with so as to "remove him lawfully" from military service, the trials Judges impressed upon the AG and Petitioner to settle

the matter out of Court. This was agreed, but the Defence Council refused and continues to state it would not re-assess again save for what it had already assessed as Kshs. 203,850/-

- The Defence Council is wrong in this matter, the Court of Appeal took nearly one year on research and investigation before announcing its judgement. The Defence Council in early 1980 resorted to unlawful, fraudulent and wrong principles of managing the Armed Forces when it discarded and used only one Act, Caps 199 to administer the forces. The Armed Forces has a number of laws which the Court of Appeal referred to as the cognate statutes of the Armed Forces. They include the Armed Forces Act, Caps 199; the Kenya Regiment (Territory Force) Act, Cap 200; the Armed Forces Pensions and Allowances Act, Caps 201; the Cantonment Act, Caps 203 among others.
- Section 112 (9) (a) of the repealed Lancaster Constitution removes Caps 201 from the Defence Council to the Treasury since the Section read...“For the purpose of pensions an office in the Military, Air Force or Naval shall be “Regarded” as an office in the Public Office...”
- The preamble or Section 2 of Chapter 201 reads that Treasury can only pay pensions to members of the Armed Forces upon death, sickness or disabilities, otherwise members are transferred to the Public Service Commission as provided under Section 227 (2) of the main Act, Chapter 199.
- Chapter 199 and Chapter 200 are generators of deaths, sickness and disabilities, as such under their Sections 227, (1), (f), (g) of Caps 199 and Section 36 of Caps 200 any regulations thereto shall be by consent of Treasury wherein Caps 201 must be observed.
- The Defence Council made regulations under legal notice number 61 of 1980, but for the mischievous reasons and for bad motives the legal notice became part of Caps 199 instead of being the subsidiary legislation of Caps 201, causing this dispute.
- The KDF Act, 2012 is entirely unconstitutional and the legal notice being unconstitutional in some parts, the notices’s rules 16, 33 and 34 are illegal to Caps 201.
- Section 227(2) (c)(d) of Caps 199 mandates the respective Service Commanders to transfer retired members to the Public Service Commission with their right to promotions respective salaries and allowances for onward deployment in the service of the Kenyan government, time when pensions are assessed upon attaining the required ages.
- The repealed Lancaster Constitution which governs this dispute describes any compensation.
- The repealed Lancaster Constitution forbids suits against the Defence Council during active Service, but any disputes on pension benefits by the members against the Council is determined by a tribunal chaired by the AG or SG as provided under Chapter 201. The tribunal has no right to refer to the Council, and its finding is final and conclusive.
- Under Section 37(2), (m) of Caps 200, the CS after consulting the respective Service Commander may fix age limits for effective training and territorial combat, but those ages do not warrant payment of pensions as stated in Caps 201.
- The trial Judge on hearing his application for re-assessment of his pension benefits and upon hearing the AG who never challenged his allegations over Section 227 (2) of Caps 199, the Judge avoided to make any comment on his judgement but made the following orders:- That;

- If the petitioner is entitled to any terminal benefits and pensions then the Court ought to hear Viva Voce evidence from the defence Council, and in particular the Chief of Defence Forces who would state why legal duties under Section 227 (2) are not performed.
- The Court has to weigh one thing to another and see whether or not the remedy is to grant the discretionary orders sought.
- If the remedy is strewn with blockage, or where it would cause administrative chaos and public inconvenience then the orders can be denied.
- Once it is alleged that the Chief of General Staff assessed the terminal benefits at Kshs. 203, 850/- and has refused to rescind his decision, then granting the orders sought would not bring the matter to finality.
- The pension appeals tribunal operated until 1980 when legal notice 61 of 1980 was published, usurping its functions. To date, no appeals have ever been determined, leaving widows, orphans and the injured field combatants to remain in misery.
- Under the current constitutional dispensation, the Defence Council is outside the Public Service Commission but remains directly under the President, and has no role to play on military pensions benefits.
- As a result of the aforesaid paragraph, the Chief of the Defence Forces having refused to give evidence and since he has remained firm that he has assessed amount of Kshs. 203,850/- is final, and the Court of Appeal having stated its judgement that civil courts normally do not interfere in military matters, and the High Court in Misc. JR 79 of 2013 having expressed the fears stated hereinabove, its is only fair that the Committee on Defence and Foreign Relations be pleased to look at and review the laws governing the Armed Forces a fresh and hear this petition as a matter of urgency.

Therefore, the Petitioner prayed that Parliament:-

- Be please to re-activate the Pensions Appeals Tribunal by ordering the CS for Finance to appoint members of the tribunal to team up with the AG, and select the location for hearing and paying his military benefits as a matter of urgency.

In the alternative, Parliament do grant interim orders:-

- That the AG in consultation with the CS for Finance pay his assessed pensions benefits agreed upon after the High Court gave the order that the matter be settled out of Court.
- Parliament be pleased to repeal KDF Act, 2012 amend Caps 199 and thereafter activate all the concealed or cognate military statutes, Caps 200, 201, 203, 206 and 207 to be consistent with the current constitution.

MIN. NO. 077/2014

DELIBERATIONS

The Committee deliberated on the submission by the Petitioner and made the following observations:-

- This may not be an isolated case and therefore a way forward should be sought to assist such persons who may be suffering under similar circumstances and ensure they are compensate accordingly.

- Members of the Pensions Appeals Tribunal should quickly be appointed so as to deal with this case and other similar cases.
- The Petitioner's essential documents were withdrawn from him in October 1992 including his Service Record Book (withdrawn in writing)
- There may be need to amend the KDF Act, 2012 to make it consistent with the current constitution.
- There may be need to improve the current structure of KDF through consultations with the Ministry of Defence.

The Committee requested the petitioner to avail all the relevant papers regarding his petition.

The Committee resolved to engage the Ministry of Defence and Kenya Defence Forces. The Committee also resolved to consider engaging other witnesses including the National Treasury, the Attorney General and any other relevant Office after the short recess.

MIN. NO. 078/2014

CONSIDERATION OF THE DRAFT COMMITTEE REPORT OF THE VISIT TO THE PERMANENT MISSION OF THE REPUBLIC OF KENYA TO THE UN, GENEVA, NOVEMBER 2013

Consideration of the draft Committee Report of the Visit to the Permanent Mission of the Republic of Kenya to the UN, Geneva, November 2013 was deferred to a later date. Members were called upon to read the draft report in readiness for the consideration.

MIN. NO. 079/2014

ANY OTHER BUSINESS

- i. Maj. (Rtd) Stanley Kiama as a witness who accompanied the Petitioner, Captain (Rtd) J. N. Wafubwa sought the Committee's approval to also submit his Petition to the Committee, and the Committee having considered his request acceded to it.
- ii. Lists of Members Attendance to Meetings, Foreign Visits and Nominations to Foreign Visits laid before the Committee during the sitting held on 23rd March, 2014 were presented before Members.

It was resolved that nominations to foreign visits be done taking into consideration Members attendance to Committees/commitment activities as well as previous visits undertaken. Committed Members and those who had not undertaken any foreign visit should be considered as a priority.

- iii. Members were informed that H.E. the President State visit to the Republic of Turkey was scheduled to take place from 8th to 9th April 2014. The Committee nominated the following Members to accompany the President, subject to availability of spaces, in following order of priority:-

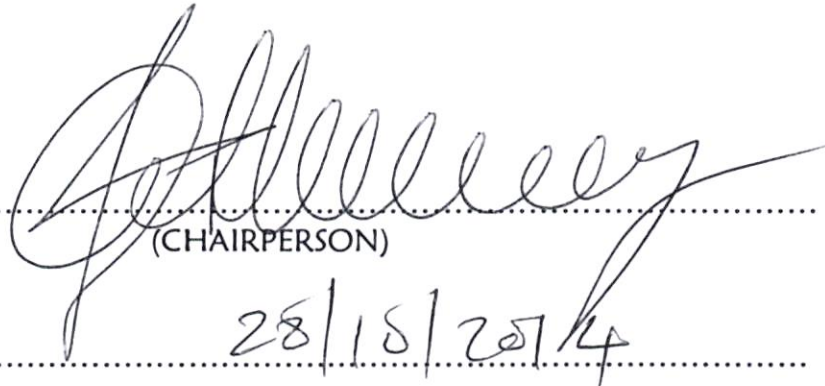
- a) The Hon. Chris Wamalwa, M.P.
- b) The Hon. Elisha Busienei, M.P.
- c) The Hon. Gonzi Rai, M.P.
- d) The Hon. Beatrice Nyaga, M.P.

MIN. NO. 080/2014

ADJOURNMENT

There being no Other Business, the Chairperson adjourned the meeting at Ten Minutes to One O'clock until Thursday, 3rd April 2014 at 10.30am. Hilaleous

SIGNED.....

A large, stylized handwritten signature in black ink, written over a dotted line. The signature is cursive and appears to be 'Hilaleous'.

(CHAIRPERSON)

DATE.....

28/10/2014