Charles J. M. Mbuthia
Nairobi, Kenya

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22nd August 2024

Justice Martha K. Koome, EGH
Chairperson
Judicial Service Commission (JSC)
Nairobi, Kenya

Email: jscsecretariat@jsc.go.ke

"**Without Prejudice**"

Dear Justice Koome,

RE: COMPLAINT REGARDING JUDICIAL MISCONDUCT AND INTERFERENCE BY STANDARD CHARTERED BANK

I am writing to bring to your urgent attention significant concerns regarding the handling of my lawsuit against Standard Chartered Bank (SCB) at the Employment and Labour Relations Court (ELRC). My case involves various aggravated offences by my former employer and has been compromised by apparent conflicts of interest, judicial misconduct, and undue influence exerted by SCB.

Given the complexity and gravity of the issues discussed in this letter, I have copied this letter to various local and foreign oversight entities to ensure their coordinated and comprehensive action in accordance with their respective mandates.

I. Conflict of Interest and Refusal to Recuse

Lady Justice Maureen Onyango, who initially handled my case as the Principal Judge, was clearly conflicted based on overwhelming evidence I provided. Despite this, she refused to recuse herself. Following her transfer to another station away from Nairobi, my case was reassigned to the newly elected Principal Judge, Justice Byram Ongaya. His judgment was highly suspicious and appeared to disregard my pleadings and claims entirely. This handling contrasts starkly with their approach in a similar case involving another former SCB employee, where Lady Justice Onyango offered to recuse herself and Justice Ongaya later ruled in favour of the claimant.

II. Judiciary Infiltration by Standard Chartered Bank

There is substantial evidence indicating that SCB has deeply infiltrated the judiciary, leveraging its influence to undermine justice. The bank has failed to comply with a court order issued in my favour. Officers of the bank maintain unusually close relationships with judicial officers. Two such officers hold official roles in the judiciary, impacting the performance of the ELRC. A senior executive of SCB who also sits on the bank's Board of Directors once unrepentantly published remarks denigrating a judiciary ruling unfavourable to employers. The Federation of Kenya Employers (FKE) seems to be entangled in SCB's negative influence in the judiciary.

III. Intimidation and Threats

During my employment at SCB, I received an intimidating letter threatening disciplinary action for disclosing incriminating information to the court. This attempt to silence me underscores the lengths to which the bank is willing to go to avoid accountability.

IV. Internal Disclosures and Need for Protection

A close relative, who also serves as a judge at the ELRC, has confided in me about troubling practices within the judiciary, including forum shopping. He commended my efforts to expose these issues and revealed that his colleague appeared conflicted This judge should be protected for his commendable stance against judicial misconduct. I wish to categorically state that in the preparation and writing of this letter, there has been no collusion, connivance, or undue influence exerted by my relative. His disclosures were made in good faith, solely in the interest of justice, without any intent to influence or interfere with the judicial process. The views and concerns expressed in this letter are entirely my own, based on my personal experiences and the evidence I have gathered.

V. Unethical Conduct by the Defendant's Lawyer

The lawyer representing Standard Chartered Bank exhibited unethical behaviour by defending a conflicted judge against my recusal request. This conduct raises serious concerns about collusion and the ethical standards of legal representatives in the ELRC.

VI. Double Standards and nexus to FKE

There is clear evidence of double standards in the rulings by ELRC judicial officers, further compounded by a nexus to the Federation of Kenya Employers (FKE) in these injustices.

As a result of these cumulative issues, my lawsuit was dismissed under suspicious circumstances. I urgently request the JSC to conduct a thorough investigation into these matters, ensure accountability, and take appropriate actions to restore the integrity of the judiciary.

Detailed Allegations and Supporting Evidence

I am attaching supporting documents that corroborate my claims. Additionally, I am providing further detailed information to assist with any investigations deemed necessary.

1. In 2020, I filed a lawsuit (Cause Number E421 of 2020) against Standard Chartered Bank (SCB) for a myriad of aggravated offenses. The individual who presided over an unfair disciplinary process against me was the bank's Head of Employee Relations, Harrison Okeche, who was also one of 41 nominees for appointment as judges by the Head of State. It appears that Mr. Okeche was overly mesmerized by the prospect of his potential appointment that he administered the injustices against me with blatant impunity, violating both the law and the bank's Human Resources policies.

2. It was during a court recess that I sought redress at the Employment and Labour Relations Court (ELRC), where the Honourable Justice Byram Ongaya, the duty judge at the time, certified my case as urgent. Subsequently, the then Principal Judge, the Honourable Lady Justice Maureen Onyango, assumed responsibility for the case as the presiding judge.

3. Tragically, while my case was still pending, Harrison Okeche, the judge-designate, was involved in a fatal motor vehicle accident and lost his life.

4. During the course of my ongoing litigation, my family naturally became aware of the situation. Among them was my brother-in-law, a judge serving at the ELRC. At a family gathering, I had a brief conversation with him about my court case. He expressed concern and, as my close relative, was understandably empathetic. He subtly advised me to be very cautious in handling my case. He discreetly mentioned that although Lady Justice Maureen Onyango, the Principal Judge, was his superior, he found it quite unusual that she was personally handling my case. He hinted that Lady Justice Onyango had previously worked at the Federation of Kenya Employers (FKE) alongside the late Harrison Okeche, where they were closely associated, with Okeche having served as her deputy in the Legal Department. My brother-in-law noted that as the Principal Judge, Lady Justice Onyango is responsible for assigning cases to the various judges at the ELRC, and given her prior affiliations, she should not have assigned my case to herself due to an actual or potential conflict of interest. He also mentioned that, due to her background with the employers' lobby (FKE), she tends to rule in favour of employers.

5. As my brother-in-law shared his thoughts, I reflected on a previous court case in which I was involved, where he was the presiding judge. This was Nairobi Industrial Cause No. 1269 of 2011. At the time, I was serving as the Secretary of my neighbourhood residents' association, which had been sued by a security guard whose employment had been terminated by the association. I vividly recall that when I appeared in court before my brother-in-law on 29th February 2012, he immediately recused himself, stating that he was personally acquainted with one of the parties involved—myself. Our advocate in that case was Helene Namisi, who was recently appointed as a judge of the High Court. I remember that she agreed

with my brother-in-law's decision to recuse himself, acknowledging it as an appropriate course of action.

6. Upon receiving the discreet tip from my brother-in-law about Justice Maureen Onyango's conflicted position, I promptly informed my advocate, Isaac Kazungu, who advised me to gather concrete evidence to demonstrate the conflict of interest. Following his advice, I conducted extensive research and discovered compelling evidence of a triangular relationship between Judge Maureen Onyango, the late Harrison Okeche, and Counsel Geoffrey Obura, who represents SCB. Below is the evidence I submitted to the court.

    a) FKE Annual Reports (2010, 2011, 2012): The reports published on FKE's official website reveal that Justice Maureen Onyango and Harrison Okeche held closely related positions at the FKE during the same period, both serving as internal legal counsel. This establishes a clear professional relationship between the two.

    b) Judiciary Profile: The official profile of Lady Justice Maureen Onyango, as published on the Judiciary's website, confirms her tenure at the FKE, where she worked alongside Harrison Okeche. This corroborates the connection between the two during their time at FKE.

    c) Continued Association Post-FKE: The relationship among Justice Maureen Onyango, Harrison Okeche, and Geoffrey Obura (counsel for SCB) persisted beyond their FKE tenure. Notably, all three were featured as resource persons at a Law Society of Kenya (LSK) CPD seminar held on 6th May 2016, in Kisumu. This is evidenced by a Facebook post by the LSK, which mentions only these three individuals as the event's resource persons.

    d) Requiem Mass Attendance: Justice Maureen Onyango attended the Requiem Mass for the late Harrison Okeche at the Holy Family Basilica on 21st October 2020. The event, captured on video and available on YouTube, also saw the attendance of SCB's management, led by the Head of Human Resources, Evans Munyori. During her five-minute tribute, Justice Maureen Onyango expressed her deep personal connection to Okeche, which was particularly unsettling as I watched given that she was concurrently presiding over my case involving Okeche.

    e) Burial Attendance: Justice Maureen Onyango attended the burial of Harrison Okeche in Karachuonyo, Homa Bay County, an event that garnered significant media coverage. The then LSK President, Nelson Havi, shared content from the event on YouTube and Facebook, where Justice Onyango was mentioned and photographed among the dignitaries in attendance.

    f) Public Remarks and Industry Reaction: Geoffrey Obura has served as the advocate for Kenya Airways. Following a court ruling on a redundancy exercise at Kenya Airways, Richard Etemesi, the then-CEO of SCB and a long-serving director, tweeted disparaging remarks about the judiciary, insinuating that shareholder interests outweigh those of employees. The tweet, which remains online (https://x.com/retemesi/status/275817424199233536), was widely liked,

retweeted, and commented on by industry leaders and thought leaders, and was also reported on by The Standard newspaper (https://www.standardmedia.co.ke/kenya/article/2000072142/kenya-airways-takes-back-workers).

g) Task Force Appointment: Former Attorney General Amos Wako, through gazette notice 5464 dated August 14, 2002, appointed both Geoffrey Obura and Maureen Onyango as members of a task force to review labour laws. This further demonstrates the long-standing professional relationship between these individuals.

h) Industrial Court Rules Board Appointment: In gazette notice 2647, published in a special issue on 13th March 2009, former Labour Minister J. K. Munyes appointed both Judge Maureen Onyango and Geoffrey Obura as members of the Rules Board of the Industrial Court of Kenya, further indicating their close professional association.

7. I found it unconscionable that neither the judge nor Geoffrey Obura, the advocate for the respondent bank, deemed it necessary to disclose their knowledge of personal interests and potential conflicts in this case. I privately shared the above information I had gathered from the internet about Lady Justice Maureen Onyango's conflicted situation with my brother-in-law via WhatsApp. His response was, **"It's the right thing you are doing. Strange things go on in our judiciary, including forum shopping."** When I subsequently shared the List of Authorities compiled by my advocate regarding judicial conflict, my brother-in-law replied, **"Good work."**

8. With the substantial and compelling evidence I provided to my advocate, an urgent application was made in court requesting the recusal of the Principal Judge, Lady Justice Maureen Onyango. According to my advocate, Kazungu, Lady Justice Maureen was extremely agitated and reacted with verbal outbursts in response to the recusal application. She reproached my advocate with unfounded accusations, alleging that the advocate had not adhered to her directions properly.

9. Kazungu mentioned to me that, typically, a judge would quickly recognize a conflict of interest and promptly rule on their recusal. However, instead of making an immediate decision, Lady Justice Maureen Onyango opted to invite submissions from the bank's advocate, Geoffrey Obura, given my allegations of his involvement in the judicial conflict. Advocate Obura then made submissions defending the judge and opposing her recusal, which further highlighted the conflict of interest.

10. In response, my advocate criticized Obura's actions, stating: **"What is shocking and striking in the replying affidavit of counsel Geoffrey Obura is the length at which he has gone to defend the Honourable Judge and this leaves a lot to be desired whether the said Counsel holds brief for the Honourable Judge, or he privately has instructions from the Honourable Judge to defend her in the recusal application, noting that if the Honourable Judge had a clear conscience over this matter, nothing would have been difficult than to just appoint an advocate to respond on the averments by the claimant /applicant as opposed to having Counsel Geoffrey Obura indirectly defend her or**

respond on her behalf with respect to the recusal application." I believe that Geoffrey Obura's conduct not only compromised the integrity of the legal profession but also undermined the principles of justice and fairness in these proceedings. The Advocates Complaints Commission should thoroughly investigate the conduct of advocate Geoffrey Obura.

11. Ultimately, Judge Maureen Onyango ruled against recusing herself from the case. My advocate, Isaac Kazungu, informed me that after consulting widely within the legal fraternity, there was a broad consensus that the Principal Judge's handling of the recusal matter was scandalous.

12. The conduct of Principal Judge Maureen Onyango clearly breached Chapter Six of the Constitution of Kenya. In her ruling, one of the justifications she provided for not recusing herself was that she had not reviewed the bundle of documents outlining my history with the respondent and was unaware that the late Harrison Okeche had handled the file in his professional capacity rather than his personal capacity. This excuse is reminiscent of a previous instance where the judge appeared before a JSC panel and admitted that she had become confused by a certain case file, leading her to issue conflicting rulings on the same matter. I also noted a contradiction in her ruling on the recusal, as my brother-in-law had recused himself in 2012 from a similar situation where I was involved in my professional capacity as an official and Secretary of a respondent entity.

13. Furthermore, Lady Justice Maureen alleged in her ruling that my assertions regarding her self-allocation of my case were demeaning to the integrity of the court and were not made in good faith. This struck me as dishonest, as I had already been informed by my brother-in-law that it is the Principal Judge who is responsible for the allocation of cases.

14. Given that Lady Justice Maureen Onyango was undoubtedly aware of Harrison Okeche's role as an Employee Relations Officer at the bank, it would have been reasonable to expect her to recognize, even before reviewing the case file, that she might be conflicted in any case involving the bank.

15. I was also taken aback by the assertion of Geoffrey Obura that my application for the judge's recusal was an attempt at forum shopping, especially since I had not expressed any preference for a specific judge to handle my case.

16. The judge's response was troubling when my advocate requested that she set a date for the next court appearance. She refused and instead directed my advocate to contact the registry for a date, despite the case having been certified as urgent. This action by the judge seemed to be a clear instance of justice delayed, which, as the saying goes, is justice denied.

17. Interestingly, Lady Justice Maureen, seemingly guided by her conscience, voluntarily disclosed her conflict of interest in another case she was handling—Cause 237 of 2018 (Evans Oliver Olwali v Standard Chartered Bank Limited). In that case, a former colleague of mine at SCB had sued the bank over grievances similar to mine. Lady Justice Maureen offered to recuse herself because the bank's witness and Employment Relations Officer, Lorraine Adoli, like the judge, was a

former employee of the FKE and was well acquainted with her. This action by Lady Justice Maureen highlights a stark inconsistency in her handling of different cases, as she failed to take similar steps in my case.

18. Despite her refusal to recuse herself from my case, Lady Justice Maureen was eventually transferred to another station outside Nairobi, and her tenure as Principal Judge ended. She was succeeded by Honourable Justice Byram Ongaya, who, upon assuming office as the Principal Judge, took over both my case and that of my former colleague, Evans Olwali.

19. Another notable development occurred following my request for Lady Justice Maureen's recusal: the bank's advocate, Geoffrey Obura, abruptly ceased representing the bank in my suit. His role was taken over by Mary Bonyo, another advocate from his law firm. This change raises questions about the reasons behind Mr. Obura's withdrawal, as it seems to coincide with my exposure of his potential conflict of interest in my case. Notably, he has continued to represent SCB in other suits at the ELRC, suggesting that his departure from my suit may have been influenced by the ethical concerns I raised.

20. SCB's anti-bribery and corruption policy defines a bribe as anything of value given to exert undue influence, particularly on public officials or public entities. The bank's extraordinary interaction and influence over public officers and entities such as the ELRC raise serious concerns about possible corrupt practices. This prompts questions about whether the bank overlooked or even condoned the misconduct of Richard Etemesi. Additionally, one might question whether the bank was aware of or financed Harrison Okeche's participation in the LSK CPD seminar, alongside counsel Geoffrey Obura and Lady Justice Maureen Onyango, especially considering that Harrison's official role as an officer of SCB was explicitly noted by the LSK in its reporting on the event.

21. The passing of Harrison Okeche appears to have significantly impacted SCB's strategies for exerting influence. The bank, emboldened by this change, proceeded to hire new Employee Relations Officers who are closely connected with judicial officers at the ELRC. Okeche's role was filled by Grace Kanyiri, who was appointed as the bank's new Head of Employee Relations. Before joining SCB, Kanyiri led the Legal department at the FKE. Additionally, Anthony Kilonzo and Lorraine Adoli, both previously with FKE's legal department, were also hired as Employee Relations Officers by the bank.

22. Notably, shortly before their hiring, Kanyiri and Kilonzo were appointed to the Employment and Labour Relations Rules Committee, as indicated in Gazette Notice No. 1613 of 2020 dated 6th February 2020. This committee is chaired by the Principal Judge of the ELRC, with the Committee Secretary being the Registrar of the ELRC—both holding influential positions within the court. This situation created a potential conflict of interest, effectively making the bank seem like an appendage of the ELRC.

23. In numerous cases involving SCB at the ELRC, it is standard practice for Employee Relations Officers to sign affidavits and provide testimony on behalf of the bank. These responsibilities are clearly outlined in their job descriptions, which include

tasks such as “working with HR Legal and external counsel regarding data disclosure requests, litigation cases, and preparation for appearances at the Labour Court.” However, my case stands out as an exception. Instead of the usual Employee Relations Officers, the Head of Human Resources and a Senior Human Resources Manager testified on behalf of the bank. This notable deviation seems to be a direct response to my challenge against SCB's undue influence over the ELRC, particularly through their employment of former FKE staff who have close ties to judicial officers.

24. On 24th October 2023, the bank's advocate, Mary Bonyo, informed the court that the bank had encountered difficulties over several months in securing a witness to swear a witness statement. This development occurred on a day when the court had convened for a full hearing, and I was present, ready to testify. The absence of a witness statement from the respondent bank necessitated the rescheduling of the hearing to 5th December 2023. As a result, the judge awarded me nominal throwaway costs, which were to be paid by the bank before the rescheduled hearing date.

25. At the rescheduled hearing on 5th December 2023, proceedings began at approximately 11:30 a.m. My advocate, David Musyoka, immediately brought to the court's attention that the bank had yet to pay the awarded throwaway costs. In response, Advocate Bonyo requested a brief adjournment to discuss the non-payment privately with my advocate. The judge granted this request, and during the adjournment, Advocate Musyoka informed me that Advocate Bonyo had stated she needed to reconfirm the exact amount of the throwaway costs with the court registrar and would ensure payment was made soon.

26. However, when the court session resumed at 13:08 hours, I was surprised and concerned that there was no further mention of the unpaid throwaway costs, despite the fact that the adjournment had been specifically granted to address this matter. Later, my advocate reassured me that the payment of the throwaway costs would be included in the final decree from the judge as part of the judgment. However, I found it deeply troubling and suspicious that the case was concluded without addressing the unpaid throwaway costs.

27. I felt blindsided by the bank's failure to comply with the award of throwaway costs and by the fact that they appeared to escape any consequences for their non-compliance. Moreover, it is puzzling that the non-payment of these costs was conspicuously absent from the typed record of proceedings provided by the court registry—a material and deliberate omission that raises serious concerns.

28. It is not inconceivable that SCB would be motivated to exert undue influence within the ELRC, given its involvement in high-stakes legal disputes with former employees. A particularly notable case was adjudicated by the Retirement Benefits Tribunal, involving a KES 30 billion settlement for hundreds of senior citizens who feel deprived. This case, likely the largest labour-related matter in Kenya's history in terms of monetary value, was highly protracted.

29. There is considerable anecdotal evidence from many former employees of SCB suggesting that their past and present court cases have been undermined by the

bank's influence. The notoriety of these practices suggests that a class action lawsuit may be warranted. I was declared redundant by SCB alongside numerous other former employees, many of whom have also taken legal action against the bank. The redundancy exercise was a sham, with the bank providing contrasting reasons for the layoffs to the affected employees and to the Commissioner of Labour. The mishandling of my case sets a troubling precedent that could have serious implications for these other cases. Given the high stakes involved in these legal battles, it is not far-fetched to suggest that SCB's influence may be financially motivated. The bank has a war chest allocated to public relations and brand management, which it likely utilizes through intermediaries to carefully manage and protect its public image.

30. Following the death of Harrison Okeche, his son, Jude Okeche, a lawyer, was hired into the legal department of the FKE. I have observed that Jude Okeche frequently attends online court sessions to monitor cases involving SCB, where his late father's influence may still be felt. Despite the fact that Lady Justice Maureen Onyango's ruling cited my concerns about Harrison Okeche's involvement as baseless due to his death, it is reasonable to recognize that Jude Okeche's presence in court proceedings may evoke memories of his late father, who had significant interactions with many judicial officers, including Lady Justice Onyango. In this context, the legacy of Harrison Okeche seems to persist in the court proceedings through his son.

31. Moreover, apart from the late Harrison Okeche, who was both a former employee of SCB and a judge designate, former Principal Judge Maureen Onyango and Justice Nduma Nderi are notable ELRC judicial officers who previously worked in FKE's legal department. The relationship between FKE and the ELRC appears to be notably intertwined, with FKE actively participating in various stakeholder engagement events hosted by the ELRC, as evidenced by numerous social media posts from both organizations. Senior officers of FKE, especially those from its legal department, often engage with ELRC judicial officers at these events. This close interaction suggests that FKE serves as a platform for lawyers to build personal networks with ELRC judicial officers, potentially positioning themselves for future roles within the ELRC.

32. This relationship helps to explain the legal conflict between the LSK and FKE in 2019, concerning FKE's overreach in claiming to provide legal services to its members. SCB appears to have recognized FKE as a valuable source of talent, using it to influence the ELRC to serve its interests. It is not surprising that SCB is among the most celebrated members of FKE and has received numerous awards from FKE over the years.

33. One of the landmark labour-related litigations in Kenya involved a 2012 judgment by my brother-in-law, which resulted in the reinstatement of 447 former Kenya Airways employees who had been unlawfully retrenched. At that time, Richard Etemesi, the Chief Executive Officer of SCB Kenya and Chairman of the Kenya Bankers Association, reacted by posting a disparaging comment on X (formerly Twitter). His post publicly denigrated the rulings of employment courts and insinuated that shareholders' interests take precedence over employees' rights. The tweet, which was also covered by The Standard newspaper, received

significant attention from industry leaders and thought leaders, amplifying its reach. This action breached Sections 4.1 and 4.2 of the Bank's Employee Communications Standards (Reputational Risk Policy), which govern personal communications and social media use. Mr. Etemesi did not clarify whether his views were personal, despite the policy explicitly stating that *"communications made via personal social media should not be considered private."* Furthermore, he has never retracted or deleted the tweet, despite his role on SCB's Board Risk Committee, which is responsible for overseeing the bank's reputational risk programs. His actions exemplify SCB's negative influence peddling, as the bank did not denounce the tweet by its prominent employee. Notably, although SCB was not a party to the case that Mr. Etemesi commented on, the advocate representing Kenya Airways was Geoffrey Obura, whose firm holds a near-monopoly on legal representation for SCB in ELRC litigations, potentially compromising the integrity of the ELRC.

34. After his tenure as CEO of SCB Kenya, Mr. Etemesi was promoted to Regional CEO for Southern Africa and also served as Vice Chairman of SCB Group for the Africa region. He was a non-executive director for several of the bank's subsidiaries, including the Kenyan one. As the most senior SCB employee on the Board of Directors of SCB Kenya during my case at the ELRC, Mr. Etemesi wielded considerable influence. Despite his retirement in 2022, he continues to serve as a board member.

35. During my employment, the bank sought to intimidate and unduly influence me through a Letter of Caution issued by its Executive Director, threatening disciplinary action for disclosing incriminating information to the ELRC. This was a violation of my employment contract, which provides me with unfettered liberty to whistle-blow externally in accordance with the bank's whistleblowing policy. When I later contacted the bank's whistleblowing helpline requesting the withdrawal of the Letter of Caution, the bank failed to act. My concerns were also escalated via emails to the bank's Group CEO in London, Bill Winters, and its Group Vice Chairperson and whistleblowing champion, Ms. Naguib Kheraj. While Mr. Winters's response was non-committal, Ms. Kheraj did not respond. The bank's actions infringed upon my constitutional right to access justice and fair administrative action, which I specifically pleaded for in my case at the ELRC. Unfortunately, the court ignored these pleas and denied me the exemplary damages I sought.

36. I have reliable information that the late Harrison Okeche had scheduled an appointment with Mr. Francis Atwoli, Chairman of the Central Organization of Trade Unions (COTU), in October 2020 when the bank was carrying out an impugned redundancy exercise. Unfortunately, he was unable to attend due to his hospitalization and subsequent passing following a road accident. I believe this appointment was part of the broader efforts by the bank to exert undue influence through various engagements.

37. Negative influence peddling, as engaged in by SCB, and conflict of interest constitute acts of corruption under the United Nations Convention against Corruption (UNCAC), which Kenya has ratified. This unethical practice, along with the associated conflict of interest, violates not only Kenyan laws but also the Bribery Act of the United Kingdom and the Foreign Corrupt Practices Act (FCPA)

of the United States. As the SCB Group operates within the jurisdictions of both the UK and the USA, it is obligated to comply with these international anti-corruption laws as well.

38. It is clear to many aggrieved former employees, including myself, that SCB wields considerable influence at the highest levels of our nation's commercial and political spheres. The bank has played a key role in shaping Kenya's national debt as a joint lead manager for the country's Eurobond issuances and has been shortlisted for future issuances. Additionally, many accounts belonging to the Central Bank of Kenya, funded by the World Bank and other multilateral organizations, are housed at SCB. The bank also serves as a global correspondent for several local banks.

39. In due course, the new Principal Judge, Byram Ongaya, dismissed my case with the inexplicable claim that my amended Memorandum of Claim, which sought additional reliefs to address the aggravated nature of the offenses, amounted to an abandonment of the original reliefs sought. Critical elements of my pleadings, key documentary evidence, and oral testimony were disregarded. This occurred despite the fact that the reliefs sought and the supporting evidence were clearly presented during the hearing. The judgment did not take into account the oral testimonies provided in court, nor did it reference the hearing at all, giving the impression that the proceedings were irrelevant to the judge.

40. The dismissal of my suit appeared to be orchestrated, as my advocates observed that the judgment was rendered unusually quickly—within just 9 days. This timeframe was insufficient for the judge to have thoroughly reviewed the extensive dossier of the suit spanning more than 300 pages. The hastily written judgment also contained notable errors, such as a reference to a "looming strike" instead of "looming redundancy" and inaccurately cited a paragraph from a witness statement, which rendered it ambiguous.

41. I found it intriguing that the judgment rendered in my case was starkly different from the one the same judge delivered just days earlier in the case of my former colleague, Evans Olwali. Mr. Olwali had also sued SCB for injustices similar to those I experienced, and like in my case, there was a clear conflict of interest involving Justice Maureen Onyango. Despite these similarities, the judge's approach and final ruling in Mr. Olwali’s case were notably different from those in mine.

42. My legal counsel has advised that a key basis for appeal is that the judgment appears to have been based solely on the submissions of one party while disregarding the submissions from the other party. Additionally, it is noteworthy that the oral testimonies were not considered in the judgment.

43. Given the factors outlined above, it is difficult to avoid the conclusion that the ELRC was compromised. I want to emphasize that this letter is not intended to influence or prejudice my appeal before the Court of Appeal or any other legal proceedings. Furthermore, I do not intend to disparage the ELRC as a whole. I recognize that the ELRC includes many honorable judicial officers; however, there appear to be individuals within the ELRC whose actions undermine its integrity.

44. I am available to provide any additional clarification or information required. I encourage any of the entities addressed or copied on this letter to review and examine any relevant court filings as part of their investigation.

Thank you for your prompt attention to this matter. I look forward to your response and action to address these critical issues.

Yours faithfully,

C. J. M. Mbuthia

CC:

Office of the Judiciary Ombudsman (OJO)
ombudsman@court.go.ke

Advocates Complaints Commission
acc@ag.go.ke

Law Society of Kenya (LSK)
lsk@lsk.or.ke

Ethics and Anti-Corruption Commission (EACC)
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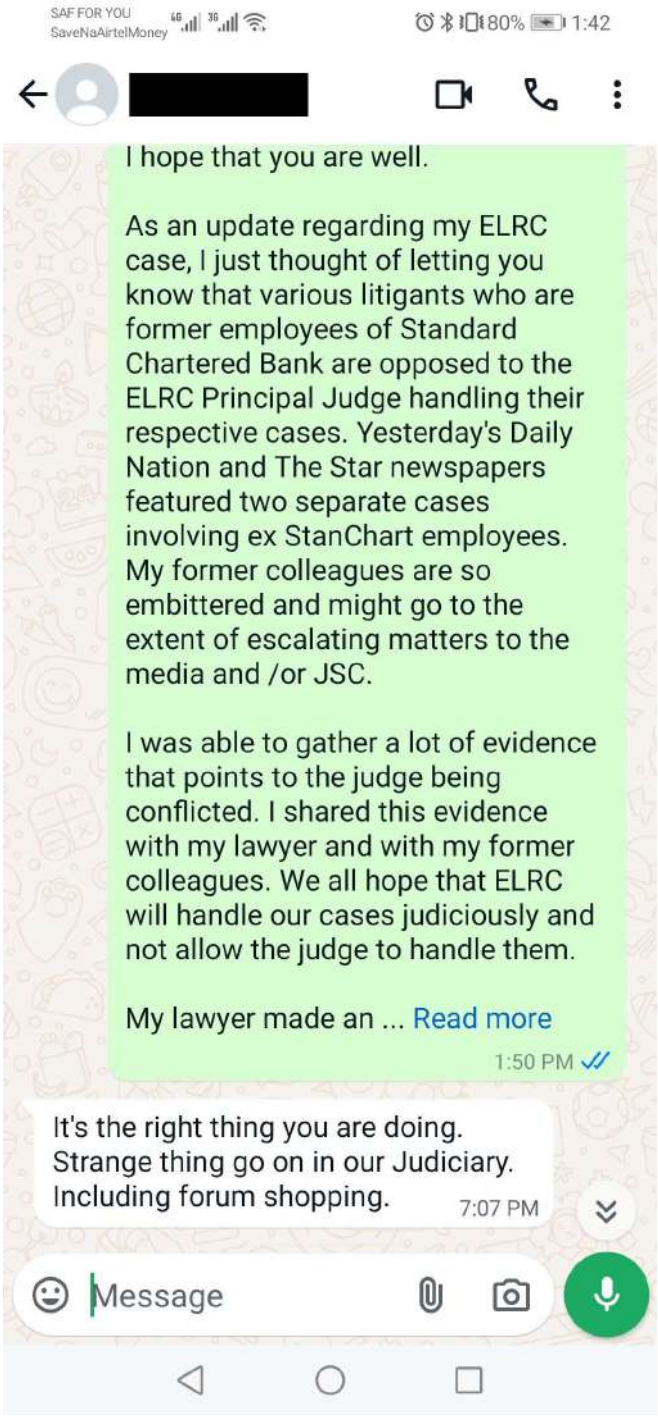
The Department of Justice (DOJ)
FCPA.Fraud@usdoj.gov

Central Bank of Kenya
governor@centralbank.go.ke

Encl.

WhatsApp correspondence with ELRC Judge



SAF FOR YOU
SaveNaAirtelMoney

81% 1:45

[redacted]

Including forum shopping. 7:07 PM

April 9, 2021


REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI
ELR CAUSE NO. E421 OF 2020

Submissions List of Authorities.pdf
21 pages • 3.6 MB • PDF

7:08 AM

Good morning.
I hope you are well.
My family is also fine.
My lawyer has argued in point number 9 of the attached submission that counsel Obura for StanChart has gone to a great length to defend the principal judge, as if he is the judge's personal lawyer. He says that the judge should ideally have appointed her own lawyer.
I never imagined that I would be involved in a landmark case like this. Hopefully this case will bring some sanity to the elrc. 7:10 AM

Hello. Good work. 5:43 PM

Message

REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI
ELR CAUSE NO. E421 OF 2020

CHARLES JOHN MACHARIA MBUTHIA ..... CLAIMANT/APPLICANT

VERSUS

STANDARD CHARTERED BANK KENYA LIMITED ..... RESPONDENT

CLAIMANT'S SUBMISSIONS ON THE APPLICATIONS DATED 29TH JANUARY, 2021 ON RECUSAL OF THE TRIAL JUDGE.

A. BACKGROUND

Your Ladyship,

1. The Claimant/Applicant doubts this Court's impartiality, competence and objectivity, and justice of this matter would be served if this matter was dealt with by another judicial officer with afresh mind since there exist a close relationship that the Honourable Judge has maintained with the key decision makers in the Respondent's Company. The Claimant/Applicant submits on his lack of confidence in this Court handling this matter.

2. The Claimant herein filed a notice of motion application dated **29th January, 2021** seeking orders that-

   (a) ***Dispensed.***
   (b) ***Dispensed.***
   (c) Hon Lady Justice Maureen Onyango do recuse herself from hearing this matter and the same be reassigned to another Judge.
   (d) Costs of this Application be in the cause.

3. The Respondent filed a Replying Affidavit sworn on the 19th January, 2021 opposing the application.

4. The Claimant/Applicant's case is that he has apprehension, on reasonable grounds the Judge will not render a fair hearing and/or determination of this claim and therefore it is just and necessary that the Judge do recuse herself.

5. The Claimant's/Applicant's apprehension is based on the fact that the Honorable Judge has had a personal relationship with the late the late Harrison Okeche who was the Head of Employee Relations who presided over the Claimant's unfair dismissal on 31st December 2019 which was subsequently overturned by the Respondent's internal appeal mechanisms.

6. The Claimant/Applicant further avers that there is a myriad of aggravated offenses that the Respondent has meted out to the Claimant through the late Harriosn Okeche and the Claimant/Applicant believes that the matter being assigned to Honourable Justice Maureen Onyango was meant to protect the reputation of the late Harrison Okeche which is at stake with respect to these proceedings.

7. The Claimant/Applicant has tendered overwhelming evidence annexed to the Supporting Affidavit of the Claimant/Applicant that goes to demonstrate that the association of the Late Okeche with Justice Maureen definitely goes back several years.

8. The Claimant/Applicant has further tendered evidence to proof a triangular interconnectedness between Counsel Geoffrey Obura representing the Respondent, the late Harrison Okeche and the Principal Judge of ELRC, Lady Justice Maureen Onyango.

9. What is shocking and striking in the Replying Affidavit of Counsel Geoffrey Obura is **the length at which he has gone to defend the Honourable Judge and this leaves a lot to be desired whether the said Counsel holds brief for the Honourable Judge or he privately has instructions from the Honourable Judge to defend her in the recusal application** noting that if the Honourable Judge had a clear conscience over this matter, noting would have been difficult than to just appoint an Advocate to respond on the averments by the Claimant/Applicant as opposed to having Counsel Geoffrey Obura indirectly defend her or respond on her behalf with respect to the recusal application.

B. ISSUE FOR DETERMINATION

10. Your Ladyship, it is the Claimant's/Applicant's submission that the only issue for determination is whether or not the Claimant/Applicant has made a case for recusal of your Ladyship in hearing this matter.

C. LEGAL PRINCIPLE VIS-À-VIS THE APPLICABILITY TO THE ISSUE FOR DETERMINATION

11. Your Ladyship, justice must not only be done, but must be seen to be done. Whereas this Court is obliged to determine the subject matter, the perception of justice is however paramount as it is the same that makes decisions palatable. It is the responsibility of this Court to manage that perception. The Court ought to consider the perception of justice and refer this matter to a different Judge for hearing.

12. The foundation for the principal underlying recusal of judicial officers was restated by the Supreme Court in **Jasbir Singh Rai & 3 Others vs. Tarlochan Singh Rai & 4 Others Petition No. 4 of 2012 [2013] eKLR** as follows:-

> **"Recusal, as a general principle, has been much practised in the history of the East African judiciaries, even though its ethical dimensions have not always been taken into account. The term is thus defined in *Black's Law Dictionary*, 8th ed. (2004) [p.1303]: *"Removal of oneself as judge or policy maker in a particular matter, [especially] because of a conflict of interest."* From this definition, it is evident that the circumstances calling for recusal, for a Judge, are by no means cast in stone. Perception of fairness, of conviction, of moral authority to hear the matter, is the proper test of whether or not the non-participation of the judicial officer is called for. The object in view, in the recusal of a judicial officer, is that justice as between the parties be uncompromised; that the due process of law be realized, and be seen to have had its role; that the profile of the rule of law in the matter in question, be seen to have remained uncompromised."**

13. The principles relating to recusal were discussed in details in the **President of the Republic of South Africa vs. The South African Rugby Football Union & Others Case CCT 16/98**, in which the Constitutional Court of South Africa pronounced itself as follows:-

> **"At the very outset we wish to acknowledge that a litigant and her or his counsel who find it necessary to apply for the recusal of a judicial officer has an unenviable task and the propriety of their motives should not lightly be questioned. Where the grounds are reasonable it is counsel's duty to advance the grounds without fear. On the part of the judge whose recusal is sought there should be a full appreciation of the admonition that she or he should not be unduly sensitive and ought not to regard an application for his [or her] recusal as a personal affront...A cornerstone of any fair and just legal system is the impartial adjudication of disputes which come before the courts and other tribunals. This applies, of course, to both criminal and civil cases as well as to quasi-judicial and administrative proceedings. Nothing is more likely to impair confidence in such proceedings, whether on the part of litigants or the general public, than actual bias or the appearance of bias in the official or officials who have the power to adjudicate on disputes...In applying the test for recusal,**

courts have recognised a presumption that judicial officers are impartial in adjudicating disputes. This is based on the recognition that legal training and experience prepare judges for the often difficult task of fairly determining where the truth may lie in a welter of contradictory evidence.....This consideration was put as follows by Cory J in R. v. S. (R.D.):37

'Courts have rightly recognized that there is a presumption that judges will carry out their oath of office...This is one of the reasons why the threshold for a successful allegation of perceived judicial bias is high. However, despite this high threshold, the presumption can be displaced with 'cogent evidence' that demonstrates that something the judge has done gives rise to a reasonable apprehension of bias.'

In their separate concurrence, L'Heureux-Dube and McLachlin JJ say: 38

'Although judicial proceedings will generally be bound by the requirements of natural justice to a greater degree than will hearings before administrative tribunals, judicial decision-makers, by virtue of their positions, have nonetheless been granted considerable deference by appellate courts inquiring into the apprehension of bias. This is because judges are assumed to be [people] of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances=: *United States v Morgan, 313 U.S. 409 (1941) at p. 421. The presumption of impartiality carries considerable weight, for as Blackstone opined at p. 361 in Commentaries on the Laws of England III . . .[t]he law will not suppose possibility of bias in a judge, who is already sworn to administer impartial justice, and whose authority greatly depends upon that presumption and idea. Thus, reviewing courts have been hesitant to make a finding of bias or to perceive a reasonable apprehension of bias on the part of a judge, in the absence of convincing evidence to that effect: R. v. Smith & Whiteway Fisheries Ltd. (1994), 133N.S.R. (2d) 50 (C.A). at pp. 60-61.'*

The test should be applied on the assumption that a reasonable litigant would take these considerations into account. A presumption in favour of judges' impartiality must therefore be taken into

account in deciding whether such a reasonable litigant would have a reasonable apprehension that the judicial officer was or might be biased."

14. As it was held by **G V Odunga J** in the case of **Republic v Independent Electoral and Boundaries Commission & 3 others Exparte Wavinya Ndeti [2017] eKLR "...Judges do not go to heaven in the evening and return to earth in the morning. Judges are human made of flesh and bones. When you prick them they bleed and when you tickle them they laugh."**

15. The Claimant/Applicant does not submit that the Ladyship must not have relationships in her private life be it in the past (as the case here), the present (as the case here) or the future, but in the event her relationship with a particular party appears to a reasonable man in the society that it might affect her perception of fairness, of conviction, of moral authority to hear the matter, then this meets a proper test for her to recuse herself from hearing a matter.

16. A cornerstone of any fair and just legal system is the impartial adjudication of disputes. The Claimant/Applicant submits that despite the high threshold for a successful allegation of perceived judicial bias, this high threshold has been met by the Claimant/Applicant by displacing the presumption with **'cogent evidence in the annexures of his Supporting Affidavit'** that demonstrates that something the judge has done and relationship that she has maintained in her private life gives rise to a reasonable apprehension of bias.

17. Your Ladyship, it is the Claimant's/Applicant's submissions that the test is what would an informed person, reasonable and right minded persons viewing the matter realistically and practically - and having thought the matter through - conclude."

18. Your Ladyship, based on the evidence availed by the Claimant/Applicant in is Supporting Affidavit to his Application for your recusal, it is not in doubt that your private life has been intertwined with that of the Respondent's key personnel who make key decisions on behalf of the Respondent.

19. The late Harrison Okeche who was the Head of Employee Relations who presided over the Claimant's unfair dismissal on 31st December 2019 was your personal friend and a former colleague whom you have worked together for over years and any informed, reasonable and right minded person viewing the

matter realistically and practically - and having thought the matter through would come to a conclusion that your Ladyship being the Head of the Employment Division, you personally assigned yourself this matter with the sole purpose to protect the reputation of the late Harrison Okeche which is at stake with respect to these proceedings.

20. Your Ladyship, from the YouTube footages whose links were shares, you were recorded saying that you maintained a close relationship with the late Okeche.

21. Your Ladyship, a section of the management of Standard Chartered Bank, the Respondent herein, was also in attendance, led by the Head of Human Resources, Evans Munyori where both Evans Munyori and you paid tribute to the deceased man whom the Claimant/Applicant avers that he presided over the injustices of the Respondent against him.

22. Your Ladyship, the Claimant/Applicant has not filed the present application with a view to choose which judicial officer should hear and determine his case but the Claimant/Applicant has filed the present application on the basis that he lacks confidence in this Court to hear and determine this case impartially, competently and objectively.

23. The Claimant/Applicant has shown that there exist ***reasonable perception*** based on facts as presented in his Supporting Affidavit.

24. Your Ladyship, we submit that you do find that the issues raised herein meet the test for the recusal or disqualification of a Judge.

Dated at Nairobi this 8h day of April, 2021

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REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI
ELR CAUSE NO. E421 OF 2020

CHARLES JOHN MACHARIA MBUTHIA ..... CLAIMANT/APPLICANT

VERSUS

STANDARD CHARTERED BANK KENYA LIMITED ..... RESPONDENT

CLAIMANT'S LIST OF AUTHORITIES.

1. Republic v Independent Electoral and Boundaries Commission & 3 others Exparte Wavinya Ndeti [2017] Eklr

Dated at Nairobi this 8h day of April, 2021

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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

MISC. CIVIL APPLICATION NO. 301 OF 2017

IN THE MATTER OF AN APPLICATION BY HON. WAVINYA NDETI FOR ORDERS OF CERTIORARI PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF AND/OR VIOLATION OF ARTICLES 10, 25, 38, 47, 50, 81 OF THE CONSTITUTION, 2010

IN THE MATTER OF THE ELECTIONS ACT

AND

IN THE MATTER OF THE POLITICAL PARTIES ACT

AND

IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORMS ACT, CHAPTERS 26, LAWS OF KENYA

AND

IN THE MATTER OF ORDERS 53 OF THE CIVIL PROCEDURE RULES 2010

BETWEEN

REPUBLIC.....APPLICANT

AND

THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION.....RESPONDENT

WIPER DEMOCRATIC MOVEMENT (KENYA).....1ST INTERESTED PARTY

REGISTRAR OF POLITICAL PARTIES.....2ND INTERESTED PARTY

KYALO PETER KYULI.....3RD INTERESTED PARTY

EXPARTE HON. WAVINYA NDETI

RULING

Introduction

1. The ex parte applicant herein, **Hon. Wavinya Ndeti**, by these proceedings seeks that the order made on 8th June, 2017 by the **Independent Electoral and Boundaries Commission** (hereinafter referred to as "the Commission") by which the Commission allowed the complaint made in the IEBC Dispute Resolution Committee Complaint No. 79 of 2017 (hereinafter referred to as "the Complaint") effectively disqualifying the applicant from vying as the gubernatorial candidate for Wiper Democratic Party on the ground that the ex parte applicant belonged to two political parties contrary to section 14(5) of the ***Political Parties Act***, be quashed.

2. On 9th June 2017, this Court granted leave to the ex parte applicant and directed that the said leave would operate as a stay of the said decision and directed that the matter come up on 13th June, 2017. On that day, **Mr Nyamodi** and **Mr Muhoro**, learned counsel for the Commission orally applied that this Court should consider referring this matter to another Judge for hearing and determination. In effect the said counsel applied that this Court should recuse itself from the matter.

3. According to learned counsel, this matter revolves around the issue of which political party between **Wiper Democratic Movement Party** (hereinafter referred to as "Wiper") and **Chama Cha Uzalendo Party** (hereinafter referred to as CCU"), the ex parte applicant belongs to. It was submitted that before this Court is Miscellaneous Application No. 67 of 2017 (hereinafter referred to as "the earlier case") in which a perusal of the orders issued shows that the Court made a determination as to which party the applicant belonged. The Respondent was therefore of the view that the justice of this case would be better served if the matter was heard by a fresh mind, as they called it.

4. To learned counsel the issue in the earlier case was a request for an order of mandamus directed to the Registrar of Political Parties to Gazette the change of office bearers of the applicant therein who were set out in the letter dated 17th January 2017 annexed to the application and which list included the ex parte applicant herein. It was submitted that this Court found that the applicant in this matter was according to the said letter the party leader of the CCU and that that determination appears in the decree extracted pursuant to the said judgement though it was appreciated that the ex parte applicant herein has the right to change her political party.

5. It was submitted that while the Respondent does not doubt this Court's impartiality, competence and objectivity, it was nevertheless contended that the justice of this matter would be served if this matter was dealt with by another judicial officer with afresh mind since there exist pending contempt of court proceedings in the said earlier case. It was contended that the effect of the said proceedings would be to have the applicant in this this matter gazetted as the CCU Party leader. It was noted that the advocates appearing for the same party in both proceedings are the same. To learned counsel this is a matter in which learned counsel are blowing hot and cold at the same time.

6. It was reiterated that the Respondent was not alleging lack of confidence in this Court but counsel emphasised that as servants in the course of justice with important responsibilities to the Court they had a responsibility to urge their client's case.

7. Whereas it was appreciated that this Court is obliged to determine the subject matter, it was however submitted that perception of justice is paramount as it is the same that makes decisions palatable. It was

therefore submitted that it is the responsibility of this Court to manage that perception and in this case as the Court has determined that the ex parte applicant is a member of CCU and there is a decree to that effect and as the same applicant is urging a different position, the Court ought to consider the perception of justice and refer this matter to a different Judge for hearing.

8. The oral applicant was supported by learned counsel for the 3rd interested party, **Mr Ngatia** and **Miss Mwanzia** who apart from associating themselves with the foregoing submissions added that given that the dispute herein revolves around the membership of a political party, the same ought to be determined at the earliest opportunity and preferably with fresh pair of eyes. They submitted that it is only just and proper that another judicial officer be allowed to hear the instant suit.

9. The application was however opposed by the ex parte applicant who submitted through her learned counsel **Mr Otieno** that section 20 of the ***Political Parties Act*** requires gazettement of intended officials and an invitation for objections one of which might be whether the proposed officials are members of the party. It was therefore submitted that the present application is in bad faith since the grounds upon which a judicial officer can recuse himself such as bias and personal interest have not been shown.

10. It was submitted that the matter before the Court in the instant case, which is whether the applicant belonged to two political parties, have not been substantially dealt with. It was submitted that in the erlier case the Court was not dealing with the issue of the applicant's membership of political parties but whether the intended officials of the party ought to have been gazetted. That issue, it was submitted does not confer the status of officials of the party.

11. It was submitted that since learned counsel have expressed confidence in this Court there is no reason for the Court to recuse itself.

12. The application was also opposed by **Mr Sore**, learned counsel for **Wiper** who was of the view that it is better for a Judge who has knowledge of the history of the matter in question to deal with the same. He clarified that his client was not a party to the earlier proceedings.

13. Mr Manduku for the Registrar of Political Parties (hereinafter referred to as "the Registrar") informed the Court that the parties in the earlier case were in the process of settling the same by way of a consent which settlement might have a bearing on this matter. He however submitted that the Registrar has full confidence in this Court and that there is no reason for the Court to recuse itself.

Determinations

14. I have considered the submissions made for and against the oral application.

15. Since the oral application is predicated on the proceedings in Miscellaneous Application No. 67 of 2017, it is important that the substance of the said proceedings be properly understood in order to make an informed decision on this oral application. The said proceedings were grounded on section 20 of the ***Political Parties Act*** which provides as follows:

1. Where a fully registered political party intends to change or amend—

a. its constitution;

b. its rules and regulations;

c. the title, name or address of any party official; or

d. its name, symbol, slogan or colour;

e. the address and physical location of the head office or county office:

it shall notify the Registrar of its intention and the Registrar shall, within fourteen days after the receipt of the notification, cause a notice of the intended change or alteration to be published in the Gazette.

2. The political party giving notification under sub-section (1) shall publish such notification in at least two daily newspapers having nationwide circulation.

3. Upon the expiry of thirty days from the date of publication of the notice in subsection (1), the political party may, after taking into account any representations received from the public under subsection (1) and (2), effect the change or alteration in accordance with its constitution and rules.

16. After hearing the said application this Court on 6th May, 2017 issued the following orders:

"Accordingly, an order *mandamus* is hereby issued compelling the Respondent to cause a notice of the changes and alterations on the party's officials list, namely the National Executive Council list of officials of the Party, as per the Applicant's letter dated 17th January, 2017, to be published in the Gazette forthwith pursuant to section 20(1) of the *Political Parties Act*. The said notification to be gazetted within 14 days from the date of service of this order on the Respondent."

17. Apart from the order relating to costs there was no other order issued by this Court. With due respect one does not need to be a rocket-scientist to see that the Court did not make a finding with respect to who are the genuine officials of the CCU Party. If someone was in doubt this position was clarified by a subsequent ruling delivered in the same case on 11th May, 2017 in which this Court expressed itself as follows:

"...it is clear that the Respondent had no discretion in the matter unless there was an order barring her from gazetting the notification. It is only after the said notification that the exercise of discretion is contemplated upon hearing any objections that other parties may wish to raise before her... In this case the mere fact that the Respondent gazettes the notification does not take away the rights of those whose interests are likely to be adversely affected from objecting to the intended change in the office holders. In other words the gazettement alone will not prejudice the rights of the parties herein or even third parties."

18. The Court was therefore clear in its mind that it was not directing the Registrar on how to exercise her discretion. It was simply directing her to exercise her discretion one way or the other after complying with the law requiring representations. To interpret this Court's decision to imply that the Court made a decision as to which party the ex parte applicant herein belonged is clearly a misconception and with due respect a misrepresentation of what the Court held.

19. It was contended that there was a decree extracted from the said judgement in which the ex parte applicant herein was described as the CCU's party leader. Apart from the reference made to the self-description by the deponent to the supporting affidavit as the Party leader, this Court did not designate her as such and made no finding with respect to her status in the said party. This Court has no role to

play in descriptions which parties attach to themselves. As was held in **Mary Anne Njuguna vs. Joseph Njuguna Ngae Civil Application No. Nai. 195 of 1997**:

"A judge is not concerned with what litigants may brag or boast as he is only concerned with dispensing justice according to law, and any boasts made by litigants ought not to perturb or even bother a Judge."

20. I have perused the decree extracted in the judgement and nowhere does it designate the applicant herein as the Party leader. If such designation appears in the letter addressed to the Registrar, such designation cannot be termed to be the order of this Court. This Court was dealing with a list sent to the Registrar and simply directed that the same be gazetted. I must note that this Court even placed this matter aside for counsel to peruse the judgement in the said earlier case in order comprehend the substance thereof. I therefore hold that in the said earlier case this Court did not make a determination that the ex parte applicant herein was a member of the **Chama Cha Uzalendo** Party leave alone being an official of the said Party. Any Kenyan has a right to purport to belong to a political Party but whether he or she is an official thereof can only be determined by the Registrar of Political Parties pursuant to section 20 of the ***Political Parties Act***.

21. Since what in effect the Commission seeks is an order of recusal, it is important for this Court to deal with the principles relating to recusal of judges in matters before them.

22. The foundation for the principal underlying recusal of judicial officers was restated by the Supreme Court in **Jasbir Singh Rai & 3 Others vs. Tarlochan Singh Rai & 4 Others Petition No. 4 of 2012 [2013] eKLR** as follows:

"Recusal, as a general principle, has been much practised in the history of the East African judiciaries, even though its ethical dimensions have not always been taken into account. The term is thus defined in *Black's Law Dictionary*, 8th ed. (2004) [p.1303]: *"Removal of oneself as judge or policy maker in a particular matter, [especially] because of a conflict of interest."* From this definition, it is evident that the circumstances calling for recusal, for a Judge, are by no means cast in stone. Perception of fairness, of conviction, of moral authority to hear the matter, is the proper test of whether or not the non-participation of the judicial officer is called for. The object in view, in the recusal of a judicial officer, is that justice as between the parties be uncompromised; that the due process of law be realized, and be seen to have had its role; that the profile of the rule of law in the matter in question, be seen to have remained uncompromised."

23. The principles relating to recusal were discussed in details in the **President of the Republic of South Africa vs. The South African Rugby Football Union & Others Case CCT 16/98**, in which the Constitutional Court of South Africa pronounced itself as follows:

"At the very outset we wish to acknowledge that a litigant and her or his counsel who find it necessary to apply for the recusal of a judicial officer has an unenviable task and the propriety of their motives should not lightly be questioned. Where the grounds are reasonable it is counsel's duty to advance the grounds without fear. On the part of the judge whose recusal is sought there should be a full appreciation of the admonition that she or he should not be unduly sensitive and ought not to regard an application for his [or her] recusal as a personal affront...A cornerstone of any fair and just legal system is the impartial adjudication of disputes which come before the courts and other tribunals. This applies, of course, to both criminal and civil cases as well as to quasi-judicial and administrative proceedings. Nothing is more likely to impair confidence in

such proceedings, whether on the part of litigants or the general public, than actual bias or the appearance of bias in the official or officials who have the power to adjudicate on disputes...In applying the test for recusal, courts have recognised a presumption that judicial officers are impartial in adjudicating disputes. This is based on the recognition that legal training and experience prepare judges for the often difficult task of fairly determining where the truth may lie in a welter of contradictory evidence.....This consideration was put as follows by Cory J in R. v. S. (R.D.):37

'Courts have rightly recognized that there is a presumption that judges will carry out their oath of office...This is one of the reasons why the threshold for a successful allegation of perceived judicial bias is high. However, despite this high threshold, the presumption can be displaced with 'cogent evidence' that demonstrates that something the judge has done gives rise to a reasonable apprehension of bias.'

In their separate concurrence, L'Heureux-Dube and McLachlin JJ say:38

'Although judicial proceedings will generally be bound by the requirements of natural justice to a greater degree than will hearings before administrative tribunals, judicial decision-makers, by virtue of their positions, have nonetheless been granted considerable deference by appellate courts inquiring into the apprehension of bias. This is because judges are assumed to be [people] of conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances=: *United States v Morgan, 313 U.S. 409 (1941) at p. 421.* The presumption of impartiality carries considerable weight, for as Blackstone opined at p. 361 in Commentaries on the Laws of England III . . .[t]he law will not suppose possibility of bias in a judge, who is already sworn to administer impartial justice, and whose authority greatly depends upon that presumption and idea. Thus, reviewing courts have been hesitant to make a finding of bias or to perceive a reasonable apprehension of bias on the part of a judge, in the absence of convincing evidence to that effect: *R. v. Smith & Whiteway Fisheries Ltd. (1994), 133 N.S.R. (2d) 50 (C.A). at pp. 60-61.*'

The test should be applied on the assumption that a reasonable litigant would take these considerations into account. A presumption in favour of judges' impartiality must therefore be taken into account in deciding whether such a reasonable litigant would have a reasonable apprehension that the judicial officer was or might be biased."

24. The Court then proceeded to pronounce itself as follows:

"Absolute neutrality on the part of a judicial officer can hardly if ever be achieved. This consideration was elegantly described as follows by Cardozo J:41

'There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence and direction to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognize and cannot name, have been tugging at them - inherited instincts, traditional beliefs, acquired convictions; and the resultant is an outlook on life, a conception of social needs... In this mental background every problem finds it[s] setting. We may try to see things as objectively as we please. None the less, we can never see them with any eyes except our own...Deep below consciousness are other forces, the likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the [person], whether [she or he] be litigant or judge.

It is appropriate for judges to bring their own life experience to the adjudication process. As it was put by Cory J in R. v. S. (R.D):42

"It is obvious that good judges will have a wealth of personal and professional experience, that they will apply with sensitivity and compassion to the cases that they must hear. The sound belief behind the encouragement of greater diversity in judicial appointments was that women and visible minorities would bring an important perspective to the difficult task of judging.'

Similar considerations were expressed in their concurring judgment by L'Heureux-Dube and MacLachlin JJ:43

'[Judges] will certainly have been shaped by, and have gained insight from, their different experiences, and cannot be expected to divorce themselves from these experiences on the occasion of their appointment to the bench. In fact, such a transformation would deny society the benefit of the valuable knowledge gained by the judiciary while they were members of the Bar. As well, it would preclude the achievement of a diversity of backgrounds in the judiciary. The reasonable person does not expect that judges will function as neutral ciphers; however, the reasonable person does demand that judges achieve impartiality in their judging...It is apparent, and a reasonable person would expect, that triers of fact will be properly influenced in their deliberations by their individual perspectives on the world in which the events in dispute in the courtroom took place. Indeed, judges must rely on their background knowledge in fulfilling their adjudicative function.'"

25. Relying on **Committee for Justice and Liberty et al vs. National Energy Board** the Court agreed that:

". . . the apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information...[The] test is what would an informed person, viewing the matter realistically and practically - and having thought the matter through – conclude."

26. It was further held that:

"An unfounded or unreasonable apprehension concerning a judicial officer is not a justifiable basis for such an application. *The apprehension of the reasonable person must be assessed in the light of the true facts as they emerge at the hearing of the application*.

It follows that incorrect facts which were taken into account by an applicant must be ignored in applying the test.... We are in full agreement with the following observation made by Mason J in a judgment given by him in the High Court of Australia [In *Re J.R.L.:Ex parte C.J.L.* (1986) 161 CLR 342 at 352.]:

"*Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour*...It needs to be said loudly and clearly that the ground of disqualification is a reasonable apprehension that the judicial officer will not decide the case impartially or without prejudice, rather than that he will decide the case adversely to one party." [Emphasis mine].

27. On the views held by judges the Court held:

"It has never been seriously suggested that judges do not have political preferences or views on law and society. Indeed, a judge who is so remote from the world that she or he has no such views would hardly be qualified to sit as a judge. What is required of judges is that they should decide cases that come before them without fear or favour according to the facts and the law, and not according to their subjective personal views. This is what the Constitution requires."

28. In conclusion, the Court decreed:

"It follows from the foregoing that the correct approach to this application for the recusal of members of this Court is objective and the onus of establishing it rests upon the applicant. The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training...and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial...Under our new constitutional order, judicial officers are now drawn from all sectors of the legal profession, having regard to the constitutional requirement that the judiciary shall reflect broadly the racial and gender composition of South Africa. While litigants have the right to apply for the recusal of judicial officers where there is a reasonable apprehension that they will not decide a case impartially, this does not give them the right to object to their cases being heard by particular judicial officers simply because they believe that such persons will be less likely to decide the case in their favour, than would other judicial officers drawn from a different segment of society. The nature of the judicial function involves the performance of difficult and at times unpleasant tasks. Judicial officers are nonetheless required to administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law. To this end they must resist all manner of pressure, regardless of where it comes from. This is the constitutional duty common to all judicial officers. If they deviate, the independence of the judiciary would be undermined, and in turn, the Constitution itself. "

29. To paraphrase the above decision, Judges do not go to heaven in the evening and return to earth in the morning. Judges are human made of flesh and bones. When you prick them they bleed and when you tickle them they laugh.

30. Similarly, in **South African Commercial Catering & Allied Workers Union & Anor. vs. Irvin & Johnson Limited Sea Foods Division Fish Processing Case CCT 2 of 2000**, the same Court expressed itself as follows:

"The Court in *Sarfu* further alluded to the apparently double requirement of reasonableness that the application of the test imports. Not only must the person apprehending bias be a reasonable person, but the apprehension itself must in the circumstances be reasonable. This two-fold aspect finds reflection also in *S v Roberts*, decided shortly after Sarfu, where the Supreme Court

of Appeal required both that the apprehension be that of the reasonable person in the position of the litigant and that it be based on reasonable grounds. It is no doubt possible to compact the double aspect of reasonableness inasmuch as the reasonable person should not be supposed to entertain unreasonable or ill-informed apprehensions. But the two-fold emphasis does serve to underscore the weight of the burden resting on a person alleging judicial bias or its appearance. As Cory J stated in a related context on behalf of the Supreme Court of Canada:

'Regardless of the precise words used to describe the test, the object of the different formulations is to emphasize that the threshold for a finding of real or perceived bias is high. It is a finding that must be carefully considered since it calls into question an element of judicial integrity.'

The double unreasonableness requirement also highlights the fact that mere apprehensiveness on the part of a litigant that a judge will be biased even a strongly and honestly felt anxiety is not enough. The court must carefully scrutinise the apprehension to determine whether it is to be regarded as reasonable. In adjudging this, the court superimposes a normative assessment on the litigant's anxieties. It attributes to the litigants apprehension a legal value, and thereby decides whether it is such that is should be countenanced in law...The legal standard of reasonableness is that expected of a person in the circumstances of the individual whose conduct is being judged. The importance to recusal matters of this normative aspect cannot be over-emphasised. In South Africa, adjudging the objective legal value to be attached to a litigant's apprehensions about bias involves especially fraught considerations. This is because the administration of justice, emerging as it has from the evils and immorality of the old order remains vulnerable to attacks on its legitimacy and integrity. Courts considering recusal applications asserting a reasonable apprehension of bias must accordingly give consideration to two contending factors. On the one hand, it is vital to the integrity of our courts and the independence of judges and magistrates that ill-founded and misdirected challenges to the composition of a bench be discouraged. On the other, the courts very vulnerability serves to underscore the pre-eminent value to be placed on public confidence in impartial adjudication. In striking the correct balance, it is as wrong to yield to a tenuous or frivolous objection as it is to ignore an objection of substance...We are aware of the need to prevent litigants from being able freely to use recusal applications to secure a bench that they regard as more likely to favour them. Perceptions of bias or predisposition, no matter how strongly entertained, should not pass the threshold for requiring recusal merely because such perceptions, even if accurate, relate to a consistent judicial "track record" in similar matters or a broad propensity to view issues in a certain way. Recusal applications should never be countenanced as a pretext for judge-shopping."

31. While dealing with the independence of judges, **Lord Denning** in ***What Next in the Law***, at page 310 had this to say:

"If I be right thus far – that recourse must be had to law – it follows as a necessary corollary that the judges must be independent. They must be free from any influence by those who wield power. Otherwise they cannot be trusted to decide whether or not the power is being abused or misused... [The judges] will not be diverted from their duty by any extraneous influences; not by hope of reward nor by the fear of penalties; not by flattering praise nor by indignant reproach. It is the sure knowledge of this that gives the people their confidence in the judges."

32. In our own jurisdiction the issue has been the subject of legal pronouncements. The Court of Appeal in **Uhuru Highway Development Ltd. vs. Central Bank of Kenya & 2 Others Civil Appeal No. 36 of**

1996 held:

"Except where a person acting in a judicial capacity had a pecuniary interest in the outcome of the proceedings, when the Court would assume bias and automatically disqualify him from adjudication, the test applied in all cases of apparent bias was whether having regard to the relevant circumstances, there was a real danger of bias on the relevant member of the tribunal in question, in the sense that he might unfairly regard or unfairly regarded with favour or disfavour the case of a party to issue under consideration by him: the real test is in terms of real danger rather than real likelihood to ensure that the Court is thinking in terms of possibility rather than probability of bias... Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duties to sit and do not, by acceding too readily to the suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a Judge, they will have their cases tried by someone thought to be more likely to decide the case in their favour... Although most litigants would much prefer that they be allowed to shop around for judges that would hear their cases, that is a luxury which is not yet available under our law to litigants."

See also Galaxy Paints Company Ltd. vs. Falcon Guards Ltd. Civil Appeal No. 219 of 1998 [1999] 2 EA 83.

33. On the same note, the Supreme Court of Uganda in **Uganda Polybags Ltd vs. Development Finance Co. Ltd and Others [1999] 2 EA 337** was of the view that litigants have no right to choose which judicial officers should hear and determine their cases since all judicial officers take oath to administer justice to all manner of people impartially, and without fear, favour, affection or ill will and the oath must be respected.

34. In this case the Commission has made it clear that it has confidence in this Court to hear and determine this case impartially, competently and objectively. Its only apprehension is that the issues in the instant application being in *pari materia* to the issues in Miscellaneous Application No. 67 of 2017, there is a perception that justice may not be done. Surely if the Commission has confidence in the Court to decide the matter impartially, competently and objectively whose perception are we dealing with" It must be appreciated that in matters of perception the applicant must show that there exist ***reasonable perception***. Such reasonable perception in my view must be based on facts and in this case the Court was not informed the perception alluded to in order for the Court to decide whether that perception is reasonable or not. According to ***The Bangalore Principles of Judicial Conduct***:

"Bias or prejudice has been defined as a leaning, inclination, bent or predisposition towards one said or another or a particular result. In its application to judicial proceedings, it represents a predisposition to decide an issue or cause in a certain way which does not leave the judicial mind perfectly open to conviction. Bias is a condition or state of mind, an attitude or point of view, which sways or colours judgement and renders a judge unable to exercise his or her functions impartially in a particular case. *However, this cannot be stated without taking into account the exact nature of the bias. If, for example, a judge is inclined towards upholding fundamental human rights, unless the law clearly and validly requires a different course, that will not give rise to a reasonable perception of partiality forbidden by law*." [Emphasis added].

35. What I understand by that position that if a Court of law has pronounced itself on a matter and the parties view that as the correct legal position, there ought to be no valid objection to the same Court entertaining a subsequent matter even if similar issues are involved. Where the parties are of the view that the matter in controversy has been decided, save for the option of an appeal where one is provided,

parties are expected to order their lives in accordance with the said decision since courts of law are meant to set the law straight so that litigants may predict the outcome of their actions and either avoid taking a particular course or order their lives in accordance therewith. Therefore where the Court has pronounced itself on a matter, parties to the subsequent proceedings where the legal issues are similar ought not to seek that the same be heard by different judges in the hope of obtaining a different outcome. In **Miller vs. Miller [1988] KLR 555**, the Court of Appeal expressed itself as follows:

"No party should be placed in a position where he can choose his court. But this is not to say that no circumstances is it possible for a judge to disqualify himself from hearing a case.... There is nothing prejudicial in one Judge making several or more orders in a court record. In practical terms it is advantageous to the parties and therefore in the interest of justice for a judge to familiarise himself with the substance of a court file. In the absence of the evidence that the appellant's case was prejudiced by some order of the nine orders the trial judge made, it must be held that the submission on this aspect was without substance. No objection was taken to the trial judge making any of the nine orders....It would be disastrous if the practice was that once there are allegations made against a judge and the judge's honour is in question, that the judge must disqualify himself. The administration of justice through court would be adversely affected since mischievous parties to cases would obtain disqualification by judges with ease and the consequence would be a choice of trial judge by a party."

36. In this case, the Court has not been informed that any party has preferred an appeal against the earlier decision. In fact as is stated hereinbelow, that dispute has now been compromised by consent of the parties. To paraphrase ***The Bangalore Principles of Judicial Conduct*** if a judge is inclined towards upholding the law, unless the law clearly and validly requires a different course, that will not give rise to a reasonable perception of partiality forbidden by law.

37. In **Attorney General vs. Anyang' Nyong'o and Others [2007] 1 EA 12** it was held:

"The court must guard against litigants who all too often blame their losses in court cases to bias on the part of the Judge. Success or failure of the government or any other litigant is neither ground for praise or for condemnation of a court. What is important is whether the decisions are good in law, and whether they are justifiable in relation to the reasons given for them. There is a fundamental tendency for the decisions of the Courts with which there is disagreement to be attacked by impugning the integrity of the Judges, rather than by examining the reasons for the judgement. Decisions of our courts are not immune from criticism but political discontent or dissatisfaction with the outcome of the case is no justification for recklessly attacking the integrity of judicial officer...An application brought more out of a desire to delay the hearing of the reference than a desire to ensure that the applicant receives a fair hearing is tantamount to abuse of court process...It is indisputable that different minds are capable of perceiving different images from the same facts. This results from diverse facts. A "suspicious mind" in the literal sense will suspect even where no cause for suspicion exists and unfortunately this is a common phenomenon among unsuccessful litigants and that is why the mind envisaged in the test to determine perception of possible or likely bias on the part of the Judge is a reasonable, fair and informed mind...While litigants have the right to apply for the recusal of judicial officers where there is a reasonable apprehension that they will not decide a case impartially, this does not give them the right to object to their cases being heard by particular judicial officers merely because they believe that such persons will be less likely to decide the case in their favour."

38. To seek the recusal of a Judge from hearing a matter simply on the ground that he has determined a matter with similar facts is an implication that there is a likelihood that another Judge will arrive at a

different decision. In my view, instead of subjecting another Judge of concurrent jurisdiction to an embarrassing situation of arriving at a different decision, parties ought to be advised by their legal counsel to appeal the decision instead and the law provides for mechanism for protection of a party while it is pursuing an appeal. By asking another Judge to hear the matter, based on recusal there would be an expectation that that other Judge may arrive at a decision different from the decision arrived at by the Court referring the matter. Whereas a Judge of the High Court is not bound by a decision of a Court of concurrent jurisdiction, to deliberately set out to have another Judge arrive at a different decision is in my view a manifestation of bad faith. If the matter were to be heard by a different Judge of concurrent jurisdiction and a different decision is arrived at there would be two conflicting decisions of the Court and the perception created would be that the Respondent chose a Judge who was sympathetic to its cause. If that were to happen the citizens of this Country would be led to believe that justice depends on a particular Judge rather than the rule of law and that belief would bring the whole judicial process into disrepute and embarrassment.

39. Having considered the application and the submissions, it is my view that based on the Respondent's submissions; the issues raised herein do not meet the test for the recusal or disqualification of a Judge. As I have stated hereinabove the only ground for seeking the Court's recusal was a misconception of this Court's decision in Miscellaneous Application No. 67 of 2017 which this Court has clarified.

40. Before I make the final order, as submitted by **Mr Manduku**, soon after the submissions in this matter, the parties in Miscellaneous Application No. 67 of 2017 who had, before the submissions herein were made, intimated that they were in the process of recording a consent, did record a consent therein on the following terms:

1. The applicant to file a fresh list of officials in the statutory Form PP7 for gazettement by the Respondent within 7 days of receipt of the list.

2. The contempt proceedings against the Respondent are hereby withdrawn.

41. In the premises I find no merit in the oral application seeking this Court to recuse itself or to refer this matter for hearing by another Judge which application is hereby dismissed with costs to the ex parte applicant to be borne by the Respondent.

42. It is so ordered.

Dated at Nairobi this 14th day of June, 2017

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Kimani Muhoro with Mr Nyamodi and Mr Muchoki for the Respondent

Mr Manduku for the 2nd interested party

Mr Omwanza with Mr Ngatia for the 3rd interested party

Mr Ochieng Oginga for Mr Willis Otieno, Mr Munyithya and Mr Nzamba Kitonga for the applicant

CA Mwangi

https://web.facebook.com/122473797783700/photos/lady-justice-maureen-onyango-follow-redundancy-procedureskisumu-kenya-high-court/1150146091683127/?_rdc=1&_rdr

Law Society of Kenya

11 May 2016 ·

Lady Justice Maureen Onyango: Follow Redundancy Procedures

Kisumu, Kenya: High Court Judge Lady Justice Maureen Onyango has said that employers should follow labour laws before declaring workers redundant. “Courts may issue orders and directions when employers fail to follow legal procedures before declaring workers redundant,” Justice Onyango said. The Judge explained that courts may interfere in redundancy when procedure is not followed. “There are specifically instances where benefits paid are lower, discrimination in selection of affected employees or where the Minister fails to act in accordance with the provisions of the law,” Justice Onyango said. The Judge was presenting a paper titled Conditions Precedent for Retrenchment, Redundancy and Layoffs during a CPD Seminar on Labour Laws at Imperial Hotel, Kisumu. She said that unlawful dismissals would be treated as unfair termination and courts may award several remedies. “Judges may direct remedies like compensation, damages, reinstatement or re-engagement among other appropriate declarations,” Justice Onyango said. She said that said that Section 40 of the Employment Act provides for redundancy and Section 40(1) and (2) provides for notification to employee or employee’s union and local labour officer of intended redundancy. Mr. Harrison Okeche, Advocate who presented a paper titled Employment Contracts said that there are conflicting decisions on whether arbitration is applicable in employment contracts. Mr. Okeche said that an employment contract is any agreement, whether oral or in writing and expressed or implied to employ or to serve as an employee for a period of time and excludes a foreign contract of service. “Section 2 of the Employment Act 2007 defines employment contract as a contract of service as opposed to contract for service,” Mr. Okeche said. Mr. Geoffrey Orao-Obura who presented a paper titled Role of ADR and Trade Unions in Resolving Labour Disputes said that ADR is applicable in labour disputes. “Employment relationships entail co-existence and efforts should be made to discourage adversarial litigation,” Mr. Orao-Obura said. He explained that ADR helps to contain labour conflicts with economically and socially acceptable bounds and contributes to maintenance of industrial peace. Mr. Orao-Obura said that national sources of disputes settlement procedures are legislation (Labour Relations Act 2007, Employment Act 2007, Labour Institutions Act 2007) and Agreements (Industrial Relations Charter, Recognition Agreements).

See less

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REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

ELRC CAUSE NO E421 OF 2020

CHARLES JOHN MACHARIA MBUTHIA.....CLAIMANT

VERSUS

STANDARD CHARTERED BANK KENYA LIMITED.....RESPONDENT

CLAIMANT'S WITNESS STATEMENT

I **CHARLES JOHN MACHARIA** an adult male of sound mind residing in Nairobi within the Republic of Kenya do hereby make this statement and state as follows:-

1. I was employed by Standard Chartered Bank Kenya Limited as a Relationship Manager with effect from 15 nth May 2015 and was subjected to a probation period of six months. My performance as an employee quickly proved to be superlative, leading to my confirmation on 5th October 2015 after only four and a half months in the probation period.***(Reference is made to the employment contract at pages 1 to 16 of my bundle of documents)***

2. In the following year 2016, the Respondent commissioned a customer satisfaction survey that was carried out by IPSOS, a leading international market research firm. The survey ranked me the top Relationship Manager among all the Relationship Managers nationally in both the Commercial Banking business unit and the Corporate & Institutional Banking unit of the Respondent. ***(Reference is made to the IPSOS report at pages 17 to 44.of my bundle of documents- ranking is at page 32 of the bundle)***

3. My troubles with the Respondent began after April 2018, when a departmental re-organization resulted in one Mr Ian Amogola becoming my new line manager.

4. Four months later in August 2018, Mr Amogola placed me on a Performance Improvement Plan (PIP) in which I performed so well by exceeding the set performance targets. Strangely, Mr Amogola did not formalize the outcome of this particular PIP with the Human Resources department. ***(Reference is made to the PIP at pages 45 to 50 of my bundle of documents)***

5. In the following year, 2019, Mr Amogola again decided to place me on another PIP that ran from 4th September 2019 to 4th December 2019. Mr Amogola did not hold any prior discussions with me about the targets and expectations for the PIP of the year 2019. ***(Reference is made to the PIP at pages 51 to 52 of my bundle of documents)***

6. One of the key targets that he imposed on me in the PIP far exceeded the annual target that had been formally agreed on at the beginning of the year.

7. I found it mischievous of Mr Amogola to impose unrealistic targets on me, and I knew that he was just exercising conscious bias to set me up for failure.

8. After the PIP period, Mr Amogola ambushed me with a Notice of a Disciplinary Meeting on the evening of 11th December 2019 requiring me to attend a disciplinary meeting in the morning of the following business day, 13th December 2019. ***(Reference is made to the notice dated 11th December 2019 at pages 53 to 54 of my bundle of documents)***

9. The disciplinary hearing was conducted on the 13th of December 2019 by Mr. Harrison Okeche the then Head of Employment Relations and Mr. Amogola Ian, my line manager.***(Reference is made to the minutes of the meeting held on the 13th of December 2019 at pages 55 to 58 of my bundle of documents)***

10. This overnight's Notice was contrary to the law and Clause 4.1 of the Respondent's Group Disciplinary Policy that requires an employee to be given reasonable Notice in writing for a Disciplinary Meeting. **(Reference is made to the Respondent's Group Disciplinary Policy at pages 59 to 69 of my bundle of documents).**

11. The disciplinary hearing was from the onset unfair and un-procedural owing to the fact that my line manager was the one supposed to make a decision on my future at the Respondent Company and was at the same time the "complainant" having raised issues with my performance.

12. During the hearing, I raised the concern about the short notice but the same was ignored by the two persons conducting the hearing.

13. The day after the Disciplinary meeting, both Mr Amogola and I proceeded on leave for two weeks and one week respectively. I was surprised when Mr Amogola telephoned me while both of us were on leave, requiring me to meet him at the office on Friday, 20th December 2019.

14. During the meeting on 20th December 2019 with Mr. Amogola, I was issued with a Notice of Termination of Employment dated 19th December 2019 that gave me a few days to handover my work and bank property by 31st December 2019. ***(Reference is made to the Notice of Termination of Employment dated 19th December 2019 at pages 70 to 71 of my bundle of documents)***

15. This disruption of my leave was a breach of the law and of Section 2 of the Respondent's Group Wellbeing and Benefits Standard. ***(Reference is made to the Respondent's Group Wellbeing and Benefits Standard at pages 72 to 78 of my bundle of documents)***

16. The Notice of Termination had promised to pay me one month's salary in lieu of notice, which salary was not paid. At the time of termination, I also surrendered medical insurance cards for myself and my dependants. The following month, January 2020, my whole family fell ill with colds and flu that we had to persevere without medical consultation. This was because my lack of any income and medical benefits as the family's breadwinner compelled me to take drastic austerity measures.

17. Payment by the Respondent to NHIF for statutory medical cover was also suspended at the end of December 2019, and only resumed in April 2020 after reinstatement of my employment. The suspension of medical benefits happened in breach of Article 2 of the Respondent's Fair Pay Charter and sections 3 and 7 of the Respondent's Group Wellbeing and Benefits Standard. ***(Reference is made to the Respondent's Fair Pay Charter at page 79 and further reference to the Respondent's Group Wellbeing and Benefits Standard at pages 72 to 78 of my bundle of documents)***

18. I made an appeal to the Head of Human Resources, protesting against the unfair and unlawful termination of employment.

19. At the time of preparing for the appeal, I had been forced to surrender my work laptop and various bank documents that I was to rely on for the appeal hearing.

20. I was invited to an appeal hearing held on 17th January 2020, where I argued my case for reinstatement. ***(reference is made to the minutes of hearing held on the 17th of January 2020 at pages 79-86 of my bundle of documents)***

21. While waiting for the outcome of the appeal hearing, I received a Certificate of Service on 23rd January 2020 from the Respondent through email. This caused me much distress, as it was suggestive of the fact that the termination of my employment was a fait accompli.(***Reference is made to the Certificate of Service at page 87 of my bundle of documents)***

22. Further, while still waiting for the outcome of the appeal hearing, the Respondent sent an email broadcast on 5th February 2020 to all my bank customers, informing them that I was no longer their Relationship Manager and that my line manager, Mr Amogola, who had taken over my entire customer portfolio, was their new Relationship Manager. (***Reference is made to the email printout at pages 88 to 89 of my bundle of documents)***

23. I felt that this action by the Respondent had dented my image and moral probity. Upon receiving the email, customers telephoned me and I was at pains to explain to them the status of my employment that was in limbo

24. That I had to wait for 33 days from the date of the appeal hearing until 19 February 2020 to receive a letter reinstating my employment. ***(Reference is made to outcome of the appeal containing the letter of reinstatement dated 17th February 2020 at pages 90 to 92 of my bundle of documents)***

25. The letter conveying my reinstatement indicated that my appeal was upheld on several grounds, not least of which is the fact that "the panel noted lapses in the management of the PIP process which did not meet the Bank's standard for Performance Improvement Plans.

26. The Outcome Letter from the Appeal Meeting which reinstated my employment also served as a final warning letter that failed to specify the reason for warning, and essentially had no basis whatsoever.

27. This warning letter failed to meet the requirements of sections 8.1 (b), (c) and (e) of the Respondent's Group Disciplinary Procedure that respectively require warnings to advise;

    i) the reason for warning;
    ii) in the case of performance, the steps which an employee needs to take to improve to acceptable standards; and
    iii) the duration of any warning given.

    (Reference is made to the Respondent's Group Disciplinary Policy at pages 59 to 69 of my bundle of documents).

28. The issuance of a warning resulted in non-payment to me of variable compensation (annual bonus), since Clause 5.1 (b) of the Respondent's Group Disciplinary Procedure allows the Respondent not to pay bonus to any employee to whom a warning letter has been issued.**((Reference is made to the Respondent's Group Disciplinary Policy at pages 59 to 69 of my bundle of documents).**

29. Upon reinstating my employment, the Respondent paid me my previously withheld salaries for the two months of January and February 2020 without applying the Home Owner Tax Relief and Life Insurance Tax Relief.

30. My net pay for those two months' salaries therefore had a total shortfall of Kshs 68,981.25. The Respondent refused to compensate me for the excess tax deduction, urging me instead to follow up with the Kenya Revenue Authority. I have never received the tax refund from the tax authority despite promptly filing my tax returns in which I claimed the refund.

31. Mr Amogola later telephoned me to confirm that I should to return to work on 9th March 2020. Upon my return, I was issued with a new laptop as my previous work laptop had been reformatted and assigned to another employee.

32. All the records that I had archived in the Respondent's server had also been purged. This inevitably impacted my job performance momentum negatively.

33. It was only on 14th April 2020 that the Respondent sent an email to some of my former customers re-introducing me as their Relationship Manager. Only those customers who were re-assigned back to me received the communication. ***(Reference is made to the email of 14th April 2020 at pages 93 to 94 of my bundle of documents)***

34. The size of my customer portfolio was reduced by about half in terms of portfolio revenue, as Mr Amogola retained several of my previous customers that were generating significant revenue for the Respondent. This is an action that I considered an act of constructive demotion.

35. Prior to the termination of employment, Mr Amogola did not have any customer portfolio that he was managing.

36. The Respondent then gave me my annual Pay-Performance-Potential (P3) letter showing that I had underperformed in the year 2019, and therefore denied me an annual salary increment and payment of variable compensation ("bonus"). ***(Reference is made to the 2019 P3 compensation statement at pages 95 to 96 of my bundle of documents)***

37. I felt so deprived and discriminated, noting that my colleagues had received on average 5% salary increment and millions of shillings paid to them as bonuses. It is instructive that there was no end-of-year performance appraisal that had been carried out for me for the year 2019.

38. There was therefore no basis for Mr Amogola to deny me my adjustable annual bonus payment of Kshs. 1,165,500/= for which he set my Individual Performance Modifier at 0% whilst a maximum adjustment of up to 200% i.e. Kshs. 2,331,000/= was permissible as per the Respondent's 2019 P3 Review Compensation Guide. This essentially denied the me entirely the adjustable annual bonus without justification.

39. It is indeed also instructive that for all the three years 2018, 2019 and 2020 in which Mr Amogola was my supervisor, he had never completed an annual performance review for me. A copy of the Performance Appraisal History displayed on the Respondent's employee portal shows that I have only been appraised for the years 2015, 2016 and 2017 when I worked under a different

line manager. ***(Reference is made to the Performance Appraisal History at page 97 of my bundle of documents)***

40. The lack of performance appraisals for the three years that I worked under Mr Amogola resulted in me being deprived of annual salary increments, which deprivation is an act of discrimination by the Respondent.

41. The inactions by Mr Amogola adversely affected my career and salary progression, and constitute breaches of Articles 2, 5, 6 and 9 of the Respondent's Fair Pay Charter. ***(Reference is made to the Respondent's Fair Pay Charter at page 79 of my bundle of documents)***

42. The attached Compensation History displayed in the Respondent's employee portal shows that I have never received any salary increment after April 2018 when Mr Amogola became my line manager. ***(Reference is made to the Compensation History at pages 98 to 105 of my bundle of documents)***

43. Other employees of the Respondent who had performed lower than me were paid their adjustable annual bonus payment which actions I consider discriminatory.

44. I wrote an email to the Respondent's Speaking-Up (whistleblowing) team to report on the various injustices meted out to me by the Respondent before and after the reinstatement of my employment. ***(Reference is made to my emails raising the various concerns at pages 106 to 112 of my bundle of documents)***

45. My whistleblowing case was assigned to Ms. Diana Tabara who ultimately sent me an email on 7th June 2020 that cynically dismissed my concerns as unsubstantiated and advised that the Respondent's position on my grievances was final. ***(Reference is made to the email from Diana Tabara at pages 113 to 114 of my bundle of documents)***

46. The said Ms. Diana indicated that my portfolio was reduced as part of an exercise to close low-revenue accounts, and said that Mr Amogola would meet with me to explain the situation. She also failed to address my request for compensation for the financial turmoil I suffered owing to the Respondent withholding my salary for the two months period before my reinstatement. This was contrary to the Respondent's Group Speaking-Up Procedure, the Group Speaking Up Policy and the Group Grievance Standard at pages ***(Reference is made to Speaking up procedure at pages 115 to 126, Group Speaking Up Policy at pages 127 to 135 and the Grievance Standard at pages 136 to 141 of my bundle of documents)***

47. The acts by the Respondent amounted to a total breach of the terms of employment to the extent that it made the contract non-performable.

48. After some time, there was an announcement by the Respondent's Group's CEO that the Commercial Banking unit in which I worked would be integrated with the Global Banking unit globally. The integrated unit would be known as the Corporate, Commercial and Institutional Banking (CCIB) business unit. Speculation was rife in the bank that there would consequently be a retrenchment exercise.

49. On 28th August 2020 the Acting Head of Commercial Banking, Mrs Francisca Korir, sent an email to some employees including myself inexplicably directing us to proceed on annual leave for a minimum period of ten days within the month of September 2020. ***(Reference is made to the email from Francisca Korir at pages 142 of my bundle of documents)***

50. I construed this to be a premeditated move by the Respondent to reduce the cost of a planned retrenchment by reducing the number of accrued leave payable in the event of retrenchment.

51. I also considered it a breach of my rights to be directed to proceed on leave at a time and for a duration that I had not planned for or requested.

52. Four days later on 1st September 2020, all of Global Banking and Commercial Banking employees were ambushed with an impromptu virtual meeting for which only a few hours' notice had been given.

53. It was at this meeting that, for the first time, an impending redundancy and retrenchment exercise was announced by the newly appointed Head of Corporate, Commercial and Institutional Banking (CCIB), Mr Birju Sanghrajka.

54. The said Mr Birju announced that there would be a selection process involving job interviews to determine those employees who would be retained and those who would be declared redundant.

55. Strangely, he also said that for those who will opt not to go through the interview process, the Respondent would retain discretion on whether or not to retain an employee.

56. After the meeting, Mr Birju sent out an email summarizing the salient points about the new CCIB structure and redundancy process. The email was silent on details of the severance pay and benefits that would be available to employees. ***(Reference is made to the email of 1st September 2020 of Mr. Birju concerning the CCIB structure which is at pages 143 to 144 of my bundle of documents)***

57. This is unlike in December 2018 when the Respondent had sent out an email broadcast clearly documenting the severance pay and benefits that were on

offer during a retrenchment exercise. ***(Reference is made to the Voluntary Separation Scheme dated 7th December 2018 at pages 145 to 146 of my bundle of documents)***

58. By not documenting details of the severance package, the Respondent acted in breach of Section 9 of the Respondent's Group Wellbeing and Benefits Standard that requires that "all benefits must be formally recorded. ***(Reference is made to the Respondent's Group Wellbeing and Benefits Standard at pages 72 to 78 of my bundle of documents)***

59. The Respondent's redundancy exercise was irregular and unlawful since it failed to factor the Last-In First-Out selection process. There were other employees within my Commercial Banking department with the same functional role and title as myself, whose hiring dates fell chronologically after mine.

60. The said employees were retained while I was laid off in the retrenchment / redundancy exercise. These employees included Hillary Chelanga (Bank Employee ID: 1537234), Lily Isiche (Bank Employee ID: 1521237) and Vitalis Muthoka (Bank Employee ID: 1523116). Their Employee IDs are sequentially newer than my own Bank Employee ID 1515973, which signifies that they were hired later than myself and hence deserved more than myself to be laid off.

61. On 4th September 2020, I received an email from the Human Resources department giving me only one business day to submit my updated Curriculum Vitae to be considered for a purported new role that was been applied by a number of other employees.

62. *This email of 4th September 2020 was actually sent to me after I had sought for information pertaining the new applications which I had heard my colleagues talk about.* ***(Reference is made to my email and tthe email from Shako Keziah Wakesho sent on 4th September 2020 at page 147 of my bundle of my documents)***

63. I actually noted that the new role had similar job description as my job as at that time and during the interview for this new role, held on the 16th of September 2020, this was a concern that I raised. The interview mainly focused on my performance which at the time was an issue before this honourable court.***(Reference is made to the job description at page 148 to 151 of my bundle of documents)***

64. Through my email dated 7th September 2020, I objected to being subjected to a performance based interview on the ground that it be subjudice to the ongoing case but the Head of Human Resources, Mr. Evans Munyori disagreed with me in his response. ***(Reference is made to my email and the response***

from Evans Munyori sent on 7th September 2020 at pages 152-153 my bundle of documents)

65. The interview was held on the 16th of September 2020.

66. Ironically, an email that I later received from Senior Human Resources Manager, Morris Mandere on 29th October 2020 admitted that various aspects of the redundancy/retrenchment process were *sub judice*. ***(Reference is made to the email from Mandere Morris sent on the 29th of October 2020 at page 154 -of my bundle of documents)***

67. I attempted to get reprieve from court but was issued with a letter of caution on the 23rd of September 2020. ***(Reference is made to the email from Mr Birju sent on the 23rd of September 2020 which is at page 155 of my bundle of documents)***

68. The letter meant to intimidate me as it contained a threat of unspecified disciplinary action against me. The letter is a violation of the overriding Clause 21.3 of the Contract of employment contract, and Clauses 3.2 and 4.9.2 of the Respondent's Group Speaking-Up (whistleblowing) Procedure that grant me unfettered liberty to make disclosures to any relevant external authority.

69. On 28th September 2020, the Respondent advised me that I was not successful at the job interview. I was therefore issued with a 30 days' Notice of risk of redundancy on the following day dated 29th September 2020. ***(Reference is made to the Notice of Risk of Redundancy dated 29th September 2020 at pages 156 of my bundle of documents)***

70. Despite the notice indicating it was a 30 days' notice, it advised me to immediately cease my normal duties.

71. In fact, a few days later on the 7th of October 2020, the Acting Head of Commercial Banking, Mrs Francisca Korir, directed me to hand over my duties to other colleagues. ***(Reference is made to the email of Francisca Korir sent on the 7th of October 2020 which is at pages 157-158 of my bundle of documents)***

72. I was rendered idle at work as the status of my employment remained in limbo during the period of notice of risk of redundancy. This is because customer accounts were re-assigned to other Relationship Managers in bank systems, hence I ceased having access to customer information stored in the bank systems.

73. On the 31st of October 2020, I was declared redundant through a Notice which also served a severance pay letter. ***(Reference is made to the Notices which are at pages 159 to 166 of my bundle of documents)***

74. I was amused since at the time of being declared redundant is when the Respondent had put in writing the details of the severance pay and benefits. These are details that I had been following up on for many days including through an email dated 7th October 2020. ***(Reference is made to my follow up email of 7th October 2020 which is at pages 167 to 169 of my bundle of documents)***

75. The severance pay included a Variable Compensation Pay (bonus) of an unspecified amount that was payable in the month of March of the following year 2021.

76. At a virtual online meeting on the same day, 31st October 2020 that I held with the Head of Corporate Commercial and Institutional Banking, Mr Birju Sangrajka, and a Senior Human Resources Manager, Mr Morris Mandere, the two persons confirmed to me that my employment had already been terminated on account of redundancy. During this meeting, Mr Birju advised me that the Respondent had evaluated my eligibility for continued employment based on various criteria, which included the revenue size of my portfolio.

77. The size of my revenue portfolio was an unfair criteria to use noting that the Respondent had reduced the size of my customer portfolio after reinstating my employment following my first termination.

78. I was further informed that historical performance was another determining factor for my redundancy. In my case, there had never been any completed performance appraisal exercise for the three years from 2018 to 2020, due to the failure of my supervisor Mr Amogola to complete the appraisal process in the Respondent's employee appraisal system. ***(Reference is made to the Performance Appraisal History at page 97 of my bundle of documents)***

79. On the very day of 11th December 2019 that the Respondent commenced disciplinary proceedings leading to an unfair termination of my employment, the Respondent introduced to all employees a Vantage Insurance policy against retrenchment. I was unable to promptly apply for the insurance policy due to the ensuing disciplinary process that culminated in termination of employment a few days later. ***(Reference is made to the vantage plain email and application form at pages 170 to 177 of my bundle of documents)***

80. It was only upon reinstatement of my employment that I was able to apply for the insurance policy in April 2020. I subsequently started making monthly

premium payments to Standard Chartered Insurance Agency Limited, a wholly owned subsidiary of the Respondent. The insurance policy had a requirement of a waiting period of at least 9 months from inception for any claims to be acceptable to the insurer.

81. This therefore meant that I was unable to get any benefits and which was fully occasioned by the lateness in applying caused by the Respondent and further the redundancy. On 7th October 2020, I sent an email to the Respondent's senior management expressing concern that I would suffer detriment in case I were to be retrenched, as I would not be able to meet the insurer's requirement of the minimum waiting period. I told the Respondent that I would otherwise require them to pay me the money that would have been paid by the insurer. ***(Reference is made to my follow up email of 7th October 2020 which is at pages 167 to 169 of my bundle of documents)***

82. The Respondent snubbed me by remaining silent on the matter. I have suffered consequential damages of Kshs 5,598,331.20 being 12 months' salary that the insurer would have paid me. These are damages for which I seek to be awarded by the court. ***(Reference is made to my payslips at pages 178 to 179 of my bundle of documents)***

83. On March 2021, the Respondent paid me a gross variable compensation amount of Kshs 312,500 based on a unilateral rating of my performance for the year 2020 as being average. This bonus amount was short of the official target amount of Kshs 1,000,000 that had been formally set for the performance year 2020. ***(Reference is made to the Respondent's Guidelines on Total Variable Compensation for Hiring and Retention and the Performance management Guidelines at pages 180 to 193 of my bundle of documents)***

84. The indeterminate payment of a lower bonus amount for a period in which the Respondent created an environment that was not conducive to my good performance is a breach of Articles 2, 5 and 9 of the Respondent's Fair Pay Charter.

85. I further seek an award for Expectation Damages of Kshs 700,000 being an average cost of Golf Club Membership fees around Nairobi based on internet sources, which membership is a benefit that I was eligible for at the Respondent's cost at the point of termination of employment. The said eligibility is consistent with Global Benefits Principles as set out in the Respondent's Group Wellbeing and Benefits Standard, and as well as Articles 3, 5 and 6 of the Respondent's Fair Pay Charter given my role in the Bank as a Corporate Relationship Manager.

86. My two colleagues in the same department and performing the same role as myself, Ms Lily Isiche and Ms Berline Okeyo, were accorded the same benefit

by the Respondent. However, the closure of many Clubs during the Covid-19 pandemic prevented me from applying for the same benefit after reinstatement of my employment.

87. I also seek an award of Kshs 10,000 being telephone allowances for the two months of January to February 2019 when I was out of employment prior to being reinstated. I used to have a company-issued iPhone for which the Respondent used to pay Kshs 5,000 per month airtime.

88. I believe that the Respondent's actions were in total breach of its own Group Code of Conduct. ***(Reference is made to the Group Code of Conduct which is at page 195 to 226 of my bundle of documents)***

89. I pray that my claim as set out in my amended memorandum of claim be allowed as prayed.

THAT IS ALL I WISH TO STATE.

NAME: CHARLES JOHN OSACHARA

SIGN:.....

DATE: 13/06/2023

IN THE PRESENCE OF

.....

ADVOCATE

CATHERINE N. MAYENDE
Advocate & Commissioner for Oaths
P.O. Box 14016
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Standard Chartered

Employee Communication Standards

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Table of Contents

Version Control Table

Name	Changes made	Materiality	Approved by	Version number	Date
Julie Gibson	First draft incorporating feedback from CABM MT	High	Jonathan Tracey		17 July 2019

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1. INTRODUCTION AND PURPOSE

Communication is a vital component of our corporate and brand identity, as well as our reputation.

Employees may be perceived as official representatives or spokespersons for the Group. The Employee Communication Standards ("the Standards") set out how colleagues must communicate in accordance with the Group's interests. Such communication includes email, letters, telephone conversations, social media posts, internet forum discussions and communication through any other relevant channel.

The Standards are mapped to the Primary Reputational Risk sub-type within the Reputational Risk Type Framework.

2. SCOPE

The Standards apply to all employees, including Non-Employed Workers ("NEWs") within the Group.

3. REFERENCE DOCUMENTS

The Standards are to be read in conjunction with the following documents:

a. **Group Reputational Risk**
   - Reputational Risk Policy & Standards

b. **Group Compliance**
   - Group Code of Conduct
   - Group Privacy Policy & Procedure
   - Group Communications with Regulators Standard

c. **Group Information and Cyber Security**
   - Group Information and Cyber Security Policy & Information Security Awareness Standards

d. **Group CABM**
   - Brand Management GPS
   - Sustainability Engagement & Reporting Standards

e. **Group HR**
   - Group Student Hiring Policy

4. COMMUNICATIONS IN A PERSONAL CAPACITY

4.1 Appropriate Communication

Employees can be perceived as representatives and ambassadors of the Group. When communicating in a personal capacity, colleagues must:

- Not discuss or allude to any bank matters that have not already been made publicly available by the Group.
- Communicate appropriately, by not:

- making disparaging or derogatory comments about the Group, its employees or stakeholders. Any issues can be raised with the employee's people manager or using the speaking up channel.
- discussing or sharing information about clients, facts or figures about the business.
- sharing product details or rates or comments or articles that could be interpreted as financial promotion/financial advice.
- responding to comments about the Group.
- making illegal or offensive statements or acting in a bullying or threatening manner to other colleagues, clients and other stakeholders.

- Show proper consideration for colleagues' privacy by not disclosing personal or private information about colleagues in any public forum.
- Use disclaimers to make it clear that their personal views do not represent those of the Group particularly where it can be inferred that they are an employee, e.g. by way of a biography, introduction statement, or other relevant documentation.
- Not include (verbally or in presentations) any non-public information obtained through their employment with the Group in any external speaking engagement executed in a personal capacity.

4.2 Communication using Social Media

In addition to section 4.1 - Appropriate Communication, communications made via personal social media should not be considered private, regardless of user settings. Colleagues must:

- Use judgement and common sense and avoid uploading/posting news and information that could negatively impact the Group's reputation. This includes participating in any negative and derogatory discussion about the Bank by adding comments to discussion threads.
- Be clear when posting content, that all views expressed are their own and not representative of the Bank.

While employees can say where they work in their biography, profile or 'About' sections, under no circumstances can they:

- Use the name of the Bank, or any of its brand marks in their handle, to give the impression that what is being published is part of official Bank output.
- Post any images that reveal confidential or internal Bank information e.g. screens, documents, ID passes.
- Actively reach out to clients to engage in any Bank-related or inappropriate communication.
- Respond to comments about the Bank or commit the Bank to any resolution on issues raised. Please refer any conversations or queries to Corporate Affairs, Brand & Marketing.

5. COMMUNICATIONS ON BEHALF OF THE BANK

5.1 External Speaking Engagements

5.1.1 Global Research Speaking Engagements

- Global Research Staff must comply with the Global Research Compliance Manual.

5.1.2 Non-Global Research Speaking Engagements

The speaker must adhere to the following standards:

1. Before accepting speaking engagement

   - Find out if media will be present.
   - If media is present, do not agree to any one-on-one requests or interviews with the media without informing Corporate Affairs, Brand & Marketing, even if the interview is part of the speaking opportunity.
   - Obtain people manager approval for the speaking opportunity.

2. When preparing presentation material

   - Only publicly available information can be included.
   - Client case studies which include publicly available information can only be included if the client gives written consent.
   - No forward-looking statements on performance or headcount are permitted.
   - Adhere to the standards in the Brand Management GPS published on the Bridge
   - Presentation material (including speaking notes) must be approved by the people manager and reviewed by Corporate Affairs, Brand & Marketing from a branding and reputational risk perspective.

3. During speaking engagement

   - Keep to their area of expertise and responsibilities, and not comment on areas beyond these.
   - Project a positive image of the Bank at all times.
   - Refer any media requests for interview to the appropriate Corporate Affairs, Brand & Marketing representative, even if the speaker is media trained.
   - If audience involves academic institutions or students, adhere to the Group Student Hiring Policy and refer any prospective candidates to the sc.com careers section.

5.2 Media Engagements

5.2.1 Media Interaction

- All media queries must be referred immediately and without comment to Corporate Affairs, Brand & Marketing to determine the next course of action.
- All proposed media interaction must be reviewed by Corporate Affairs, Brand & Marketing.
- Global Research Staff engaging in media interaction must also follow the protocols set out in the Global Research Compliance Manual.
- For all other media interactions, Corporate Affairs, Brand & Marketing must:
  - Manage the scheduling of the media interaction and brief the speaker.
  - Be in attendance in all media interaction with media spokespersons, either in person or via telephone/ video conference, except in a live interview environment where it is not possible to sit in.
  - Take and retain notes or brief recordings of Group MT key media interaction points.

5.2.2 Media Spokespersons

- All media spokespersons must be approved by Corporate Affairs, Brand & Marketing.

- Only trained, authorised media spokespersons are permitted to speak with the media.
- Media spokespersons must only comment on topics that they are authorised to discuss. Non-public, price sensitive or inside information or client confidential information must not be communicated at any time and media spokespersons must not affirm or otherwise respond to any such information put to them by the media.
- Media spokespersons must not discuss regulatory investigations or settlements or comment on relations with regulators.
- Media spokespersons must be careful not to say anything after the interview is over and be aware that they are still on the record until they have left the interview venue.

5.2.3 Media Training

- All Staff media training must be organised by Corporate Affairs, Brand & Marketing.
- Corporate Affairs, Brand & Marketing will only arrange media training for employees who meet the eligibility criteria for media spokespersons (see Appendix 1 – Media Spokesperson Eligibility) and where there is a need for subject-matter-expert coverage. This is generally confined to the topics listed in Appendix 2 - Topic Guidelines for Media Spokespersons.
- Media training must not be given in lieu of professional presentation training for employees who are required to speak publicly on behalf of the Group.
- Media training will be arranged as detailed in Appendix 3 - Process to Arrange Training for Media Spokespersons
- Corporate Affairs, Brand & Marketing is responsible for keeping a record of all media trained employees including name, job title, date of training, refresher date and name of media trainer. Group Media Relations will keep these records for Group level executives managed by Group Media Relations.
- Media spokespersons must receive refresher training at least once every three years

5.2.4 Media Training Agency Selection

- All agencies engaged to train Standard Chartered media spokespersons must be selected by Corporate Affairs, Brand & Marketing.

5.3 Communication with Regulators

- All communication with Regulators must be done in accordance with the Group Communications with Regulators Standard or referred to Compliance.

5.4 Communication on Sustainability Topics

- All communication on sustainability topics must be done in accordance with the Sustainability Engagement and Reporting Standard.

5.5 Unsolicited Communication received using Bank systems

- To protect against inadvertently communicating non-public information through unsolicited emails or other forms of social engineering (e.g. phishing/ vishing), all colleagues must adhere to the Group Information & Cyber Security Policy and Standards on Information Assets.

6. COMMUNICATION DURING A CRISIS

In the event of a crisis:

- All media enquiries must be referred to Corporate Affairs, Brand & Marketing.
- Only Staff authorised to do so, in accordance with the Crisis Communication Plan(s), can communicate on behalf of the Bank.

7. DISPENSATION

- Dispensations to this Standard will only be granted in exceptional cases by the Standard owner.
- Standards dispensation templates are available on RiskPod.

APPENDICES

Appendix 1 – Media Spokesperson Eligibility

Spokesperson Category	Pre-approval Requirement
1. Management team, Board members, country CEOs, senior management of function/country business or product group (ordinarily managing directors and above).	No approval required for MT level Staff. For Staff below MT level, their people manager and Country or Regional Head of Business/Function approval is required.
2. Subject matter experts in areas not covered by category 1, e.g. economists, investment strategists and others authorised to give the "house view" on their specific areas of expertise only.	People manager and Country or Regional Head of Business/Function approval is required.
3. Corporate Affairs, Brand & Marketing, employees who speak to the media in a professional capacity.	No approval required for: 1. Group Media Relations Team 2. Regional and Country Heads, Corporate Affairs, Brand & Marketing All other Corporate Affairs, Brand & Marketing staff require people manager approval.

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Appendix 2 – Topic Guidelines for Media Spokespersons

Spokesperson	Stories/topics	Media
• Group Chief Executive • Chairman • Group Chief Financial Officer • CEO Corporate, Commercial and Institutional Banking • CEO, Retail Banking and Wealth Management • CEO, Private Bank • Global Business Head • Other members of Group Management Team	• Major industry, economic and trade trends • Corporate strategy/results • Thought leadership/opinion • Conduct and Fighting Financial Crime • Sustainability	• Global tier one media (e.g. FT, WSJ, The Economist, Fortune, Business Week) • National tier one media (e.g. The Times, South China Morning Post, Economic Times of India, The Straits Times)
• Global Product Head	• As above for their respective geographies or business	• As above • Global trade media (e.g., Euromoney, the Banker)
• Regional, Country CEO	Regional/country-specific: • Industry, economic and trade trends • Strategy/results • Appointments • Thought leadership/opinion • Sustainability	• Regionals • Nationals
• Regional Business Head • Regional Product Head • Country Business Head • Country Product Head	• Country trends • Country strategy • Market trends/industry trends • Product/service/people stories	• Regionals • Nationals • Global trade media • Regional/national trade media
• Country Business Head /Product Specialist	• Specific relevant product/ service topics and deals	• Global trade media • Specialist trade media (e.g. Project Finance) • Nationals

Please note: these are guidelines and there may be instances where spokespeople may be permitted to speak to media on topics other than those specified above at the discretion of Corporate Affairs, Brand & Marketing.

Appendix 3 – Process to Arrange Training for Media Spokespersons

- Corporate Affairs, Brand & Marketing will book a training session with approved media training agency [see **Appendix 4 – Media Training Agency Attributes**].
- Corporate Affairs, Brand & Marketing will arrange the meeting rooms and audio-visual support where required and provide confirmation of the training date and venue to the candidate via email.
- The number of candidates attending each media training session must be kept to a maximum of three to achieve the greatest benefit from the session.
- Corporate Affairs, Brand & Marketing will advise the candidate and people manager of the cost of the training session and this cost will be billed to the candidate's cost centre.
- The candidate will provide Corporate Affairs, Brand & Marketing with a summary of the candidate's prior training and media exposure, if any, and areas the candidate wishes to focus on during training.
- If the candidate does not pass the training they will not be authorised to speak to the media and a follow up session should be scheduled following the same process (if the candidate's business agrees to fund the session).

Appendix 4 – Media Training Agency Attributes

- Clear and demonstrable experience of print and TV media (either as PRs or journalists) at a senior level.
- A proven track record in working with large businesses and media training senior employees, with references if possible.
- The equipment and facilities to be able to give professional TV interview training in a realistic scenario.
- The ability to provide comprehensive feedback to candidates, HR and Corporate Affairs, Brand & Marketing teams, on the candidates' performance, readiness to undertake media interviews and any further training requirements.
- A clear and structured media training programme incorporating the elements detailed on pages 1 and 2 of the 'Standard Chartered Media Training – Agency Brief' document.

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Appendix 5 – Glossary

The definitions provided here should be read together with the Glossary of Master Definitions.

Term	Definition
Crisis	A crisis is defined as any emergency or controversy that results or could result in extensive media coverage and public scrutiny, resulting in negative public perception or reputation to the Group.
Media interaction	Any communication, interview, activity, presentation, research report, campaign or product launch that would normally include a media component.
Non-public information	All information other than publicly available information, including confidential, commercially-sensitive, client-related information and price sensitive / inside information.
Publicly available information	Information that is already legitimately available in the public domain (e.g. information available on external websites, Group key messages, information contained in Group external publications such as the annual reports).
Social Engineering	The use of deception to manipulate Staff into divulging valuable information (e.g. confidential or personal information). This includes phishing and vishing.
Social media	Any online tools, websites and interactive media that enable users to interact with each other by sharing information, opinions, knowledge and interests. Social media covers sites and applications including but not restricted to Facebook, Twitter, Instagram, Flickr, YouTube, LinkedIn, blogs, discussion forums, wikis and any sites which may emerge after this Standard is published.
Sustainability topics	Sustainability topics can encompass a wide number of themes, but are best framed as those underpinning the 17 United Nations Sustainable Development Goals (UN SDGs).