

MURIMI, MBAGO & MUCHELA

ADVOCATES, COMMISSIONERS FOR OATHS & NOTARIES PUBLIC

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MBAGO A. OMONDI LL.B (HONS) MOI
MUCHELA A. ONG'ENGE LL.B (HONS) MOI
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Our Ref: K206/001

Your Ref: 20190442730

Date: 26.06.2023

The Secretary Disciplinary Committee,
Office of the County Secretary and Head of the Public Service
County Government of Bungoma
P. O. Box 437,
Bungoma.

Attention: Monica S. Fedha

Dear Madam,

Re: Invitation to Appear before the Disciplinary Committee - Welikhe Isaac Mukenya

The above matter refers.

We confirm that we have been instructed to represent the above named person with regards to the subject invitation for the disciplinary proceedings.

The written submissions with regards to his defence is therefor as contained in this correspondence and/or as shall be raised during the said proceedings.

PRELIMINARY OBJECTION

TAKE NOTICE that our client shall raise preliminary objection prior to the commencement of the proceedings on the following grounds:-

- 1) The legality of the composition of the committee
- 2) The legality of the constitution of the committee
- 3) The constitutionality of the committee

PRELIMINARY ISSUES

TAKE NOTICE that our client shall require the following:-

- 1) The proceedings to be held in public and not in camera. The client reserves the right to call members of the fourth estate (media) to be part of the proceedings)

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ADVOCATES

- 2) The proceedings be recorded verbatim hence and hansard recording be availed. The client will want the minutes of the meeting and the proceedings to be signed by all the parties immediately after the meeting.
- 3) A confirmation that the witnesses whom the client desires to cross examine shall be summoned to attend the proceedings (the complainants who have made the allegations that resulted into all the particularized charges MUST be availed for cross examination)
- 4) Any documentary or material evidence relied on against the client be shared with us at least 48 hours before the hearing commences otherwise the client shall reserve the right to seek an adjournment of the meeting should he feel ambushed with evidentiary material.

MEMORANDUM OF RESPONSE

1. With regard to the 1st alleged charge /offence on the issue of mismanagement and misappropriation of funds, the client denies the same *in toto* and invites strict proof thereof. The client thus seeks further and better particulars with regards to the following:
 - a. Which specific funds were misappropriated
 - b. Period when the funds were misappropriated
 - c. Amount of funds that were misappropriated
 - d. Audit report confirming such misappropriate on
 - e. Details of the audit committee that came up with such report if any
 - f. Any evidence of the clients involvement with such loss of funds
2. With regard to the first charge, the client seeks the committee to summon the following persons for cross examination and to shed more light.
 - a. His Excellency the Governor Hon Kenneth Lusaka.
 - b. Chief Officer Finance
3. With regard to the 2nd charge the client denies the same and states that he had no improper orders to report as alleged or whatsoever, the client invites strict proof of the same with a clarification on which orders are in question.
4. The client equally demands to be given further and better particulars of which improper orders are being referred to. As far as the client is concerned orders from court are always valid unless challenged and overturned in a court of law. The list of employees from the defunct Local Authority came from court and the county public service board together with the various departments conducted a suitability and verification exercise before reabsorbing the said employees. The client was not part of this process.
5. **TAKE NOTICE** The client further brings to the committee's attention that this case ELRC No.1 of 2019 is still active in court and it is His Excellency the Governor Hon Kenneth Lusaka who is supposed to answer to contempt of court charges before the Judge. It is thus unconstitutional and unlawful for this issue to be discussed and determined in his proceedings as it will be prejudicial to existing court proceedings.
6. On the 3rd allegation, the client reiterates that the recruitment, training and deployment of the Village Administrators was a function of the County Public service Board. It is the County Public Service Board that acted under the provisions of the Devolved Units Act and created these offices.

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ADVOCATES

The relevant department made the intent to recruit and the Board proceeded with the recruitment process. The budget for such offices had been approved.

7. That this matter was taken to court and the courts did not stop the recruitment. The matter was reported to the Ethics and Anti-Corruption Commission, the County Assembly Committee and even a taskforce on the same and no offences were ever disclosed.
8. It is further emphasized that the client did not recruit any village administrator and as such if there was any illegal, irregular or unjustified recruitment, then the recruiting body, being the County Public service board should be one to respond to the same.
9. The client could thus not report an irregularity that he was not aware of. Strict proof is invited for any such irregularity or illegality.
10. It is even surprising that these village administrators are still working for the county the client is being accused of failing to report an alleged illegal recruitment process
11. The client thus seeks that the following witness be summoned to shed light on this:
 - a. Secretary of County Public Service Board.
12. With regard to the 4th charge of mismanagement of government vehicles, the client demands for further and better particular being the specific vehicle that was mismanaged, the dates for mismanagement, the relevant work tickets and any specific loss to the county.
13. With regard to the 5th Allegation on the charge of single sourcing of fuel. The client reiterates that the county did conduct a corruption risk assessment which was done by the EACC. Part of the recommendation by EACC was to avoid the system in which drivers carry lots of cash for purposes of fuelling of vehicles. The cabinet thereafter approved the proposal that an open tender be floated for the provision of fuelling services for county vehicles and one of the specifications was that the provider must be able to provide payment by card services. The tender was floated and Total Petrol Station was awarded the tender. As such it is not true that this was done by single sourcing. These services are still being used to date hence there was no illegality. If indeed any illegality was done then it is the procurement department that ought to clarify on the same.
14. With this regard the client seeks the following witness be summoned during the hearing:-
 - 1.1 Head of Procurement
15. The client thus traverses all the allegations levelled against him and demands that strict proof of each and all be provided.
16. The client reiterates that he has been a public servant who has executed his duties with all diligence and in compliance with the law but is now being prosecuted for the simple reason that there is a new executive and he is perceived as being a sympathiser of the former regime.
17. That the claims against the client should thus be dismissed in totality and the client be reinstated fully to perform his duties.

MURIMI, MBAGO & MUCHELA
ADVOCATES

Yours faithfully,

For: Murimi, Mbago & Muchela Advocates

Muchela Aston Ung'enge

Advocate & Commissioner for Oaths

MUCHELA ASTON 2779-20100

Encl.

cc. H.E The Governor

WELIKHE ISAAC MUKENYA

P/No. 20190442730

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Date: 26.06.2023

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Office of the County Secretary and Head of the Public Service
County Government of Bungoma
P. O. Box 437,
Bungoma.

Attention: Monica S. Fedha

Dear Madam,

Re: Invitation to Appear before the Disciplinary Committee - Joseph Wakoli Wambati

The above matter refers.

We confirm that we have been instructed to represent the above named person with regards to the subject invitation for the disciplinary proceedings.

The written submissions with regards to his defence is therefor as contained in this correspondence and/or as shall be raised during the said proceedings.

PRELIMINARY OBJECTION

TAKE NOTICE that our client shall raise preliminary objection prior to the commencement of the proceedings on the following grounds:-

- 1) The legality of the composition of the committee
- 2) The legality of the constitution of the committee
- 3) The constitutionality of the committee

PRELIMINARY ISSUES

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- 2) The proceedings be recorded verbatim hence and hansard recording be availed. The client will want the minutes of the meeting and the proceedings to be signed by all the parties immediately after the meeting.
- 3) A confirmation that the witnesses whom the client desires to cross examine shall be summoned to attend the proceedings (the complainants who have made the allegations that resulted into all the particularized charges MUST be availed for cross examination)
- 4) Any documentary or material evidence relied on against the client be shared with us at least 48 hours before the hearing commences otherwise the client shall reserve the right to seek an adjournment of the meeting should he feel ambushed with evidentiary material.

MEMORANDUM OF RESPONSE

1. With regard to the 1st alleged charge /offence on the issue of failure to submit the Assumption of The Office of Governor Report, the client states the following.
 - a. The delay in submission of the report was caused by the actions of His Excellency the Governor Hon Kenneth Lusaka who increased the inauguration budget from a sum of kshs Six Million (Kshs 6,000,000/=) as had been approved by the County Assembly to a budget in excess of Kshs 18,000,000/=. This variation was supposed to be approved by the cabinet and ratified by the assembly. A function which was not done by reason of absence from the office by the members of C.E.Cs ikuweikuwe.com
 - b. The Governor had included extraneous expenses with suppliers who had not been approved and such was to be ratified and/or approved.
 - c. Some of the committee members like the then County Commissioner retired before signing the report, the representative from the Ministry of Devolution was in Nairobi and the said person took time before signing the report.
 - d. The Governor was always briefed on the report and his concurrence to have the report submitted was always sought but he delayed in giving his feedback for reasons best known to him. That on 29th October 2022 a written communication was sent to the governor and copied to the county attorney raising this issue but there was no response by the time of my suspension.
2. With regard to the first charge, the client seeks the committee to summon the following persons for cross examination.
 - a. His Excellency the Governor Hon Kenneth Lusaka.
 - b. CECM – Finance and Economic Planning
 - c. Mr. Cyril Wayong'o
 - d. Chief Office Finance
 - e. The Clerk to the County Assembly
3. With regard to the 2nd charge of the alleged failure to establish a cabinet secretariat, the client posits that it is the duty of the County Public Service Board to establish a cabinet secretariat. As the County Secretary he did make the proposal for the establishment of the secretariat but the board has not done so. He could thus only act with the approval of the board.

MURIMI, MBAGO & MUCHELA

ADVOCATES

The client will thus seek that the following witness be summoned for cross examination during the hearing:-

- a. Secretary of the County Public Service Board
4. With regard to the 3rd charge of granting a holiday to workers. The client denies the same and reiterates that he has never granted any holiday, he has no powers to grant or even declare a holiday and this is the preserve of the Cabinet Secretary for the Ministry of Interior and Coordination of National Government, Prof. Kithure Kindiki. Our client thus seeks that the gazette notice/circular through which the Holiday was granted be adduced. The client, in the same breath demands that any evidence in which the client asked workers not to report for duty by adduced, the client also request that any loss of revenue as a result of the client's actions be adduced.
5. If indeed there was any illegal absence from duty by workers, then specific action ought to have been taken against the said worker.
6. With regard to this allegation the client seeks that the following witness be summoned:-
 - a. Secretary of County Public Service Board. ikuweikuwe.com
7. With regard to the allegations in the 4th Charge, the client denies the same *in toto* and states that he never appointed anyone to an office known as Acting Chief Officer Irrigation. Strict proof of the existence of such office and appointment is demanded.
8. The client further clarifies that Mr. Onesmus Makahanu was given added responsibilities after the resignation of Chief Officer John Wasilwa and this was done by the Governor, and as the County Secretary, the client simply communicated the decision of the Governor.
9. The Job group of the said Mr. Onesmus Makanu was not changed neither was his remuneration changed.
10. The client will give a combined response for allegation 5 and 6 and states that the recruitment, training and deployment of the Village Administrators was a function of the County Public service Board. It is the County Public Service Board that acted under the provisions of the Devolved Units Act and created these offices. The relevant department made the intent to recruit and the Board proceeded with the recruitment process. The budget for such offices had been approved.
11. That this matter was taken to court and the courts did not stop the recruitment. The matter was reported to the Ethics and Anti-Corruption Commission, the County Assembly Committee and even a taskforce on the same and no offences were ever disclosed.
12. It is further emphasized that the client did not recruit any village administrator and as such if there was any illegal, irregular or unjustified recruitment, then the recruiting body, being the County Public service board should be one to respond to the same.
13. The client could thus not report an irregularity that he was not aware of, the client equally states that he did not and has never been a member of the County Public Service Board hence he could not and did not interfere with the recruitment, training and deployment of the Village Administrators. The client thus demands strict proof of the allegations.
14. It is even surprising that it is alleged that the recruitment was done without any minute of the County Public Service Board yet all these village administrators are still working for the county

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ADVOCATES

and are in the payroll. If indeed there was no such meeting, the board should be the first to answer how they were recruited.

15. The client thus seeks that the following witness be summoned:

a. Secretary of County Public Service Board.

16. With regard to the 7th charge the client denies the same and states that he has never falsified any records as alleged or whatsoever, the client invites strict proof of the same with a clarification on which record is in question.

17. The client equally demands to be given further and better particulars of which improper orders are being referred to. As far as the client is concerned orders from court are always valid unless challenged and overturned in a court of law. The list of employees from the defunct Local Authority came from court and the county public service board together with the various departments conducted a suitability and verification exercise before reabsorbing the said employees. The client was not part of this process.

18. **TAKE NOTICE** The client further brings to the committee's attention that this case ELRC No.1 of 2019 is still active in court and he was personally absolved of any wrong doing and it is His Excellency the Governor Hon Kenneth Lusaka who is supposed to answer to contempt of court charges before the Judge. It is thus unconstitutional and unlawful for this issue to be discussed and determined in his proceedings as it will be prejudicial to existing court proceedings.

19. With regard to the 8th Allegation on the charge of single sourcing of fuel. The client reiterates that the county did conduct a corruption risk assessment which was done by the EACC. Part of the recommendation by EACC was to avoid the system in which drivers carry lots of cash for purposes of fuelling of vehicles. The cabinet thereafter approved the proposal that an open tender be floated for the provision of fuelling services for county vehicles and one of the specifications was that the provider must be able to provide payment by card services. The tender was floated and Total Petrol Station was awarded the tender. As such it is not true that this was done by single sourcing. These services are still being used to date hence there was no illegality. If indeed any illegality was done then it is the procurement department that ought to clarify on the same.

20. With this regard the client seeks the following witness be summoned during the hearing:-

1.1 Head of Procurement

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21. On the 9th charge of unlawfully absorbing community empowerment officers, the client requires and demands strict proof of which officer was put on permanent and pensionable terms, when such appointments were done and who did the appointment. If this was done, the County Public Service Board ought to provide details on the same.

22. The client thus seeks that the following person be summoned to be cross examined and to shed light on the same:-

a. Secretary County Public Service Board.

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ADVOCATES

23. The client specifically denies the claims for mismanagement of government vehicles and seeks for clear, better and proper particulars on the same be provided. On the vehicle 39CG 043A the client confirms that the vehicle was procedurally requested for by a government institution and it was used for the purposes of aiding functions within the county.
24. The client thus traverses all the allegations levelled against him and demands that strict proof of each and all be provided.
25. The client reiterates that he has been a public servant who has executed his duties with all diligence and in compliance with the law but is now being prosecuted for the simple reason that there is a new executive and he is perceived as being a sympathiser of the former regime.
26. That the claims against the client should thus be dismissed in totality and the client be reinstated fully to perform his duties.

Yours faithfully,

For: **Murimi, Mbago & Muchela Advocates**

Advocate & Commissioner for Oaths

P.O. Box 2779-2010

MUCHELA ASTON Nakuru

Encl.

cc. H.E The Governor

JOSEPH WAKOLI WAMBATI

P/No. 20190025560

MURIMI, MBAGO & MUCHELA

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The Secretary Disciplinary Committee,
Office of the County Secretary and Head of the Public Service
County Government of Bungoma
P. O. Box 437,
Bungoma.

Attention: Monica S. Fedha

Dear Madam,

Re: Invitation to Appear before the Disciplinary Committee - Isaac Aruput Juma

The above matter refers.

We confirm that we have been instructed to represent the above named person with regards to the subject invitation for the disciplinary proceedings.

The written submissions with regards to his defence is therefor as contained in this correspondence and/or as shall be raised during the said proceedings.

PRELIMINARY OBJECTION

TAKE NOTICE that our client shall raise preliminary objection prior to the commencement of the proceedings on the following grounds:-

- 1) The legality of the composition of the committee
- 2) The legality of the constitution of the committee
- 3) The constitutionality of the committee

PRELIMINARY ISSUES

TAKE NOTICE that our client shall require the following:-

- 1) The proceedings to be held in public and not in camera. The client reserves the right to call members of the fourth estate (media) to be part of the proceedings)

MURIMI, MBAGO & MUCHELA
ADVOCATES

- 2) The proceedings be recorded verbatim hence and hansard recording be availed. The client will want the minutes of the meeting and the proceedings to be signed by all the parties immediately after the meeting.
- 3) A confirmation that the witnesses whom the client desires to cross examine shall be summoned to attend the proceedings (the complainants who have made the allegations that resulted into all the particularized charges MUST be availed for cross examination)
- 4) Any documentary or material evidence relied on against the client be shared with us at least 48 hours before the hearing commences otherwise the client shall reserve the right to seek an adjournment of the meeting should he feel ambushed with evidentiary material.

MEMORANDUM OF RESPONSE

1. With regard to the 1st charge the client denies the same and avers that all recruitment is conducted by the County Public Service Board and the client does not sit in the said board. If any of his relative has been employed by the county in any department, then the same must have been after a competitive or procedural process by the board. Should there be an anomaly with the process, then the right body to shed light on the same is the county public service board.
2. With regard to this the client seeks that the committee summons the following witnesses for cross examination.
 - a. The secretary County Public Service Board.
3. With regard to the 2nd alleged charge /offence on the issue of negligence of duty, the client denies the same *in toto* and invites strict proof thereof. The client thus seeks further and better particulars with regards to the following:
 - a. Which specific duty was handled negligently
 - b. Period of negligence
 - c. Details of the county property that was lost.
 - d. Any evidence of the client's involvement with such loss.
4. With regard to the 3rd alleged charge /offence on the issue of mismanagement and misappropriation of funds, the client denies the same *in toto* and invites strict proof thereof. The client thus seeks further and better particulars with regards to the following:
 - a. Which specific funds were misappropriated
 - b. Period when the funds were misappropriated
 - c. Amount of funds that were misappropriated
 - d. Audit report confirming such misappropriate on
 - e. Details of the audit committee that came up with such report if any
 - f. Any evidence of the client's involvement with such loss of funds.
5. With regard to the Allegation on the charge of single sourcing of fuel. The client states that this was a procurement function under the directorate of Procurement and never a purely departmental function. The client reiterates that the county did conduct a corruption risk assessment which was done by the EACC. Part of the recommendation by EACC was to avoid the system in which drivers carry lots of cash for purposes of fuelling of vehicles. The cabinet thereafter approved the proposal that an open tender be floated for the provision of fuelling services for county vehicles and one of the specifications was that the provider must be able to provide payment by card services. The tender was floated and Total Petrol Station was awarded the tender. As such it is not true that this was done by single

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sourcing. These services are still being used to date hence there was no illegality. If indeed any illegality was done then it is the procurement department that ought to clarify on the same.

6. With this regard the client seeks the following witness be summoned during the hearing:-

1.1 Head of Procurement

7. With regard to the 4th charge of mismanagement of government vehicles, the client demands for further and better particular being the specific vehicle that was mismanaged, the dates for mismanagement, the relevant work tickets and any specific loss to the county.
8. On the charge of unlawfully appointing 61 casuals, the client states that this process was undertaken by the County Public Service Board. On the advice of the controller of Budget, the department was advised to convert the casuals to contract employees. It is the board that came up with the contract terms and issued the contract letters. The client thus denies any personal wrong doing. Strict proof of the contrary is thus invited.
9. The client further stated that he never appointed any persons to any substantive position as this would have been the preserve of the County Public Service Board. If an office did not have a substantive holder of the office, someone would be allocated the necessary responsibilities so as to avoid a situation where work is not done. The client never changed any job groups for any employee neither was there any financial loss for the county.
10. The client thus seeks that the following person be summoned to be cross examined and to shed light on the same:-
 - a. Secretary County Public Service Board.
11. The client thus traverses all the allegations levelled against him and demands that strict proof of each and all be provided.
12. The client reiterates that he has been a public servant who has executed his duties with all diligence and in compliance with the law but is now being prosecuted for the simple reason that there is a new executive and he is perceived as being a sympathiser of the former regime.
13. That the claims against the client should thus be dismissed in totality and the client be reinstated fully to perform his duties.

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Yours faithfully,

For: **Murimi, Mbago & Muchela Advocates**

Muchela Aston Ong'enge
Advocate & Commissioner for Oaths

P.O. Box 2779-2010

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MUCHELA ASTON

Encl.

cc. H.E The Governor

ISAAC ARUPUT JUMA
P/No. 19970016025

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Date: 26.06.2023

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County Government of Bungoma
P. O. Box 437,
Bungoma.

Attention: Monica S. Fedha

Dear Madam,

Re: Invitation to Appear before the Disciplinary Committee - Abidan Kimkerick Kapchanga

The above matter refers.

We confirm that we have been instructed to represent the above named person with regards to the subject invitation for the disciplinary proceedings.

The written submissions with regards to his defence is therefor as contained in this correspondence and/or as shall be raised during the said proceedings.

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 - b. The Governor had included extraneous expenses with suppliers who had not been approved and such was to be ratified and/or approved. ikuweikuwe.com
 - c. Some of the committee members like the then County Commissioner retired before signing the report, the representative from the Ministry of Devolution was in Nairobi and the said person took time before signing the report.
 - d. The Governor was always briefed on the report and his concurrence to have the report submitted was always sought but he delayed in giving his feedback for reasons best known to him. That on 29th October 2022 a written communication was sent to the governor and copied to the county attorney raising this issue but there was no response by the time of my suspension.
2. With regard to the first charge, the client seeks the committee to summon the following persons for cross examination.
 - a. His Excellency the Governor Hon Kenneth Lusaka.
 - b. Mr. Cyril Wayongo
 - c. CECM Finance and Economic Planning.
 - d. Chief Office Finance
 - e. The Clerk to the County Assembly
3. With regard to the 2nd charge of the alleged illegal extension of the Provision of Security Services Contract the client states that his actions were well within the law and justified. Be that as it may our client states that this issue was already raised through a show cause letter dated 3rd October 2022 and the same was responded to vide a response dated 14th October 2022. The issue was thus

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ADVOCATES

concluded as no action was taken against the client and as such the client cannot suffer double jeopardy by having this issue raised up again in this new proceedings. The said show cause and the response are attached for you records.

4. The client will give a combined response for allegation 3 and 4 and states that the recruitment, training and deployment of the Village Administrators was a function of the County Public service Board. It is the County Public Service Board that acted under the provisions of the Devolved Units Act and created these offices. The Client's department made the intent to recruit and the Board proceeded with the recruitment process. The budget for such offices had been approved.
5. That this matter was taken to court and the courts did not stop the recruitment. The matter was reported to the Ethics and Anti-Corruption Commission, the County Assembly Committee and even a taskforce on the same and no offences were ever disclosed.
6. It is further emphasized that the client did not recruit any village administrator and as such if there was any illegal, irregular or unjustified recruitment, then the recruiting body, being the County Public service board should be one to respond to the same. ikuweikuwe.com
7. The client could thus not report an irregularity that he was not aware of, the client equally states that he did not and has never been a member of the County Public Service Board hence he could not and did not interfere with the recruitment, training and deployment of the Village Administrators. The client thus demands strict proof of the allegations.
8. The client thus seeks that the following witness be summoned:
 - a. CEO/Secretary County Public Service Board.
9. With regard to the 5th Allegation of General Abuse of office the client states as follows:-
 - a. On the charge of single sourcing of fuel. The client states that this was a procurement function under the directorate of Procurement and never a purely departmental function. The client reiterates that the county did conduct a corruption risk assessment which was done by the EACC. Part of the recommendation by EACC was to avoid the system in which drivers carry lots of cash for purposes of fuelling of vehicles. The cabinet thereafter approved the proposal that an open tender be floated for the provision of fuelling services for county vehicles and one of the specifications was that the provider must be able to provide payment by card services. The tender was floated and Total Petrol Station was awarded the tender. As such it is not true that this was done by single sourcing. These services are still being used to date hence there was no illegality. If indeed any illegality was done then it is the procurement department that ought to clarify on the same.
 - b. With this regard the client seeks the following witness be summoned during the hearing:-
 - 1.1 Head of Procurement
 - c. The client specifically denies the claims for mismanagement of government vehicles and or mismanagement of fund and seeks for clear, better and proper particulars on the same be provided. The client thus seeks the following witnesses be summoned:-
 - 2.1 Head of transport
 - 3.1 Chief Finance Office
10. The client thus traverses all the allegations levelled against him and demands that strict proof of each and all be provided.

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ADVOCATES

11. The client reiterates that he has been a public servant who has executed his duties with all diligence and in compliance with the law but is now being prosecuted for the simple reason that there is a new executive and he is perceived as being a sympathiser of the former regime.
12. That the claims against the client should thus be dismissed in totality and the client be reinstated fully to perform his duties.

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Yours faithfully,

For: Murimi, Mbago & Muchela Advocates

Muchela Aston Ong'enge
Advocate & Commissioner for Oaths
P.O. Box 2779-2010
Nakuru

MUCHELA ASTON

Encl.

Cc. H.E The Governor

ABIDAN KIMKERICK KAPCHANGA
P/No. 20200094946

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Our Ref: K206/001

Your Ref: 199400115752

Date: 26.06.2023

The Secretary Disciplinary Committee,
Office of the County Secretary and Head of the Public Service
County Government of Bungoma
P. O. Box 437,
Bungoma.

Attention: Monica S. Fedha

Dear Madam,

Re: Invitation to Appear before the Disciplinary Committee - Chrispinus Nyongesa Simiyu

The above matter refers.

We confirm that we have been instructed to represent the above named person with regards to the subject invitation for the disciplinary proceedings.

The written submissions with regards to his defence is therefor as contained in this correspondence and/or as shall be raised during the said proceedings.

PRELIMINARY OBJECTION

TAKE NOTICE that our client shall raise preliminary objection prior to the commencement of the proceedings on the following grounds:-

- 1) The legality of the composition of the committee
- 2) The legality of the constitution of the committee
- 3) The constitutionality of the committee

PRELIMINARY ISSUES

TAKE NOTICE that our client shall require the following:-

- 1) The proceedings to be held in public and not in camera. The client reserves the right to call members of the fourth estate (media) to be part of the proceedings)

MURIMI, MBAGO & MUCHELA
ADVOCATES

- 2) The proceedings be recorded verbatim hence and hansard recording be availed. The client will want the minutes of the meeting and the proceedings to be signed by all the parties immediately after the meeting.
- 3) A confirmation that the witnesses whom the client desires to cross examine shall be summoned to attend the proceedings (the complainants who have made the allegations that resulted into all the particularized charges MUST be availed for cross examination)
- 4) Any documentary or material evidence relied on against the client be shared with us at least 48 hours before the hearing commences otherwise the client shall reserve the right to seek an adjournment of the meeting should he feel ambushed with evidentiary material.

MEMORANDUM OF RESPONSE

1. With regard to the 1st alleged charge /offence on the issue of misappropriation of Kenya Devolution Support Program funds, the client denies the same *in toto* and invites strict proof thereof. The client thus seeks further and better particulars with regards to the following:
 - a. Which specific amount of fund were used outside the approved activities
 - b. Which activities were not in the approved work plan
 - c. The approved work plan be availed during the hearing. ikuweikuwe.com
 - d. Audit report confirming such misappropriation
 - e. Details of the audit committee that came up with such report if any
 - f. Any evidence of the client's involvement with such loss of funds
2. With regard to the first charge, the client seeks the committee to summon the following persons for cross examination and to shed more light.
 - a. Chief Officer Finance
3. With regard to charge 1b the client denies the same and states that the staff ID cards were delivered. The same was done in two phases. Phase one was completed IDs supplied and phase two was waiting procurement. Indeed there is evidence that the relevant departments collected the same. Proof to the contrary is therefore strictly invited.
4. With regard to the 3rd charge of granting a holiday to workers. The client denies the same and reiterates that he has never granted any holiday, he has no powers to grant or even declare a holiday and this is the preserve of the Cabinet Secretary for the Ministry of Interior and Coordination of National Government, Prof. Kithure Kindiki. Our client thus seeks that the gazette notice through which the Holiday was granted be adduced. The client, in the same breath demands that any evidence in which the client asked workers not to report for duty by adduced, the client also request that any loss of revenue as a result of the client's actions be adduced.
5. If indeed there was any illegal absence from duty by workers, then specific action ought to have been taken against the said worker.
6. With regard to this allegation the client seeks that the following witness be summoned:-
 - a. Secretary of County Public Service Board.
7. With regard to the 3rd charge the client denies the same and states that he has never falsified any records and/or failed to report any improper orders as alleged or whatsoever, the client invites strict proof of the same with a clarification on which record is in question.

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ADVOCATES

8. The client equally demands to be given further and better particulars of which improper orders are being referred to. As far as the client is concerned orders from court are always valid unless challenged and overturned in a court of law. The list of employees from the defunct Local Authority came from court and the county public service board together with the various departments conducted a suitability and verification exercise before reabsorbing the said employees. The client was not part of this process.
9. **TAKE NOTICE** The client further brings to the committee's attention that this case ELRC No.1 of 2019 is still active in court and he was personally absolved of any wrong doing and it is His Excellency the Governor Hon Kenneth Lusaka who is supposed to answer to contempt of court charges before the Judge. It is thus unconstitutional and unlawful for this issue to be discussed and determined in his proceedings as it will be prejudicial to existing court proceedings.
10. The client equally demands to be given further and better particulars of which improper orders are being referred to. As far as the client is concerned orders from court are always valid unless challenged and overturned in a court of law. The list of employees from the defunct Local Authority came from court and the county public service board together with the various departments conducted a suitability and verification exercise before reabsorbing the said employees. The client was not part of this process.
11. **TAKE NOTICE** The client further brings to the committee's attention that this case ELRC No.1 of 2019 is still active in court and it is His Excellency the Governor Hon Kenneth Lusaka who is supposed to answer to contempt of court charges before the Judge. It is thus unconstitutional and unlawful for this issue to be discussed and determined in his proceedings as it will be prejudicial to existing court proceedings.
12. With regard to the 4th alleged charge /offence on the issue of mismanagement and misappropriation of funds, the client denies the same *in toto* and invites strict proof thereof. The client thus seeks further and better particulars with regards to the following:
 - a. Which specific funds were misappropriated
 - b. Period when the funds were misappropriated
 - c. Amount of funds that were misappropriated
 - d. Audit report confirming such misappropriate on
 - e. Details of the audit committee that came up with such report if any
 - f. Any evidence of the client's involvement with such loss of funds.
13. With regard to the Allegation no. 5.i on the charge of single sourcing of fuel. The client reiterates that the county did conduct a corruption risk assessment which was done by the EACC. Part of the recommendation by EACC was to avoid the system in which drivers carry lots of cash for purposes of fuelling of vehicles. The cabinet thereafter approved the proposal that an open tender be floated for the provision of fuelling services for county vehicles and one of the specifications was that the provider must be able to provide payment by card services. The tender was floated and Total Petrol Station was awarded the tender. As such it is not true that this was done by single sourcing. These services are still being used to date hence there was no illegality. If indeed any illegality was done then it is the procurement department that ought to clarify on the same.
14. With this regard the client seeks the following witness be summoned during the hearing:-

1.1 Head of Procurement

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ADVOCATES

15. On the charge of unlawfully absorbing community empowerment officers, the client requires and demands strict proof of which officer was put on permanent and pensionable terms, when such appointments were done and who did the appointment. If this was done, the County Public Service Board ought to provide details on the same.
16. The client thus seeks that the following person be summoned to be cross examined and to shed light on the same:-
 - a. Secretary County Public Service Board.
17. On the claim for misuse of government vehicle, the client denies the same and demands strict proof of the same including particularised detail of the vehicle in question, the dates of misuse, the work tickets, the authorisation for the alleged misuse, and any evidence of the client's involvement.
18. The client specifically denied knowledge of any vehicle listed as KBY 386C in charge 5.iv and further clarifies that all vehicles under his department are still in the county's possession and use. Strict proof to the contrary is invited. ikuweikuwe.com
19. The client thus traverses all the allegations levelled against him and demands that strict proof of each and all be provided.
20. The client reiterates that he has been a public servant who has executed his duties with all diligence and in compliance with the law but is now being prosecuted for the simple reason that there is a new executive and he is perceived as being a sympathiser of the former regime.
21. The client avers that he has received honours for outstanding work as a civil servant and as such the allegations against him for abuse of office are purely premised on malice.
22. That the claims against the client should thus be dismissed in totality and the client be reinstated fully to perform his duties.

Yours faithfully,

For: Murimi, Mbago & Muchela Advocates

Muchela Aston Ougenge
Advocate & Commissioner for Oaths

Muchela Aston Ougenge
P.O. Box 2779-2010
MUCHELA ASTON Nakuru

Encl.

cc. H.E The Governor

CHRISPINUS NYONGESA SIMIYU
P/No. 19940015752

MURIMI, MBAGO & MUCHELA

ADVOCATES, COMMISSIONERS FOR OATHS & NOTARIES PUBLIC

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Our Ref: K206/001

Your Ref: 20070003315

Date: 26.06.2023

The Secretary Disciplinary Committee,
Office of the County Secretary and Head of the Public Service
County Government of Bungoma
P. O. Box 437,
Bungoma.

Attention: Monica S. Fedha

Dear Madam,

Re: Invitation to Appear before the Disciplinary Committee - Maurice Wabwile Marango

The above matter refers.

We confirm that we have been instructed to represent the above named person with regards to the subject invitation for the disciplinary proceedings.

The written submissions with regards to his defence is therefor as contained in this correspondence and/or as shall be raised during the said proceedings.

PRELIMINARY OBJECTION

TAKE NOTICE that our client shall raise preliminary objection prior to the commencement of the proceedings on the following grounds:-

- 1) The legality of the composition of the committee
- 2) The legality of the constitution of the committee
- 3) The constitutionality of the committee

PRELIMINARY ISSUES

TAKE NOTICE that our client shall require the following:-

- 1) The proceedings to be held in public and not in camera. The client reserves the right to call members of the fourth estate (media) to be part of the proceedings)

MURIMI, MBAGO & MUCHELA
ADVOCATES

- 2) The proceedings be recorded verbatim hence and hansard recording be availed. The client will want the minutes of the meeting and the proceedings to be signed by all the parties immediately after the meeting.
- 3) A confirmation that the witnesses whom the client desires to cross examine shall be summoned to attend the proceedings (the complainants who have made the allegations that resulted into all the particularized charges MUST be availed for cross examination)
- 4) Any documentary or material evidence relied on against the client be shared with us at least 48 hours before the hearing commences otherwise the client shall reserve the right to seek an adjournment of the meeting should he feel ambushed with evidentiary material.

MEMORANDUM OF RESPONSE

1. With regard to the 1st alleged charge /offence on mismanagement and vandalism of machinery and motor vehicles, the client states the following.
 - a. There is no clarity on which machinery and/or motor vehicle was vandalised.
 - b. Vandalism would have required a wilful damage or destruction to property. The client refutes any such acts attributed to him.
 - c. Any machinery and motor vehicles in the client's department were directly under the operational control of the directorate of Transport and Safety. Acts of misuse of the vehicles allegedly attributed to the client should be shown by the task assignment with regard to a specific vehicle. In the client's capacity as Chief Officer, he was never under any direct control of any machinery or vehicle.
2. On the 2nd charge of payment of contractors for work not done, the client denies such allegations *in toto*. Strict proof is therefore invited. All audits that were done and letters of management issued were aptly discussed and dispensed off by the county assembly. In all these instances, there were no outstanding issues relating to the allegations raised. All payments were done through IFMIS and the approval process involves a chain of personnel. The client cannot make a unilateral payment for work not done.
3. With regard to this the client demands that the documents regarding the specific works that were paid for be tabled and the entire approval process be tabled. This should include the Project Design/Identification, project costing, project reviews and approvals, budget approval, project procurement, project execution and project inspection. For a payment to be done, there had to be an approval for all these stages. ikuweikuwe.com
4. With regard to the Allegation on the charge of single sourcing of fuel. The client states that this was a procurement function under the directorate of Procurement and never a departmental decision. The client reiterates that the county did conduct a corruption risk assessment which was done by the EACC. Part of the recommendation by EACC was to avoid the system in which drivers carry lots of cash for purposes of fuelling of vehicles. The cabinet thereafter approved the proposal that an open tender be floated for the provision of fuelling services for county vehicles and one of the specifications was that the provider must be able to provide payment by card services. The tender was floated and Total Petrol Station was awarded the tender. As such it is not true that this was done by single sourcing. These services are still being used to date hence there was no illegality.

MURIMI, MBAGO & MUCHELA
ADVOCATES

5. On the allegation for mismanagement and misuse of government vehicles the client denies the same and demands that further and better particulars be provided including but not limited to the registration number of the vehicle, the date and/or period of misuse, the work tickets, the concerned driver to the vehicle and any evidence confirming the client's involvement in the misuse.
 6. On the issue of forcefully and/or authorizing constructing roads on private property, the client states that this allegation is not only absurd but purely malicious. The client states that as a chief officer he can only oversee the construction of approved county roads and these roads are well demarcated in the relevant Maps. It is the skilled project supervisors and contractors who do the actual construction of the roads and they cannot construct on private property as when and if they do so, it will be an issue of encroachment. The contractor will be held responsible if they go beyond the scope of their mandate. Such skilled supervisors and contractors have a professional responsibility with regards to their work.
 7. The client thus requires some specific identification of the property in which the client authorised for the construction of the road. The claimant should avail the specific authorizations by the client indicating the instructions, approval and dates in which he authorized the construction of a road on any specific private property.
- ikuweikuwe.com
8. On the issue of having county machinery grounded on private property, the client states that there are instances of breakdowns due to wear and tear. There has been no report of any breakdown that was attributed to negligence. In any event, whenever there is a breakdown of a machinery that is not within the county premises, the county already has a contracted service provider under a framework agreement who would be called to take over the repair of the machinery. It must be noted that some plant and machinery cannot be easily moved once they have a breakdown unless one has very powerful cranes. In such instances, it is only logical that the machinery be pushed to the nearest holding facility for safety of the machinery and also other road users. Once a breakdown is reported, it is the service provider who undertakes the process of ensuring the machinery is well restored and the custody of the machinery is thus under the hands of the service provider.
 9. It is thus not true that the client negligently allowed any county plant and machinery to remain grounded on private property
 10. The client avers that at the time of his suspension there was no machinery that was unaccounted for. Strict proof of any contrary position is invited.
 11. The client reiterates the averments in paragraphs 2 and 3 as a response to charge 4.iv
 12. With regard to charge 4.v the client denies the same *in toto* and demands further and better particulars on the allegation of improper performance of duty. The client states that in fact during the year 2021 – 2022, his department was ranked and honoured as the best county department in the entire country. The then CECM was awarded as the best in the entire country. In the years 2020 - 2021 the client's department was ranked as the 2nd best and this was done by the Kenya Roads Board.
 13. It is the client's contention that such ranking which was a public expression of good performance could not have been so if the client wilfully, carelessly and improperly performed his duties.

MURIMI, MBAGO & MUCHELA
ADVOCATES

14. The client thus traverses all the allegations levelled against him and demands that strict proof of each and all be provided.
15. The client reiterates that he has been a public servant who has executed his duties with all diligence and in compliance with the law but is now being prosecuted for the simple reason that there is a new executive and he is perceived as being a sympathiser of the former regime.
16. That the claims against the client should thus be dismissed in totality and the client be reinstated fully to perform his duties.

Yours faithfully,

For: **Murimi Mbago & Muchela Advocates**

Muchela Aston Ougenge
Advocate & Commissioner for Oaths
P.O. Box 2779/2016

MUCHELA ASTON

Encl.

cc. H.E The Governor

MAURICE WABWILE MARANGO
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