

THE COMMISSION ON ADMINISTRATIVE JUSTICE
“Office of the Ombudsman”



Hata Mnyonge ana Haki

“DEATH OF INTEGRITY”

**A REPORT ON INVESTIGATIONS INTO ALLEGED ABUSE OF POWER AND
OFFICIAL MISCONDUCT BY THE EXECUTIVE DIRECTOR, NGO
COORDINATION BOARD**

NOVEMBER, 2016



Serial No. CAJ NO. 35/2016

Foreword

The Commission on Administrative Justice received anonymous complaints against Mr. Yusuf Mahamed Fazul, Executive Director, NGOs Coordination Board alleging that Mr. Fazul was irregularly appointed to the position without the required academic and professional qualifications and relevant work experience; that he promotes and transfers staff against the Board's HR Policy; that he victimises and intimidates staff who have contrary opinion to his decisions which are against the laid down procedures and policies; and that he mismanages imprest (public funds). Mr. Fazul was also accused of single-sourcing for services of Sagana Getway Resort to host a management meeting and also single-sourcing Max Worth Firm to facilitate team building.

The Commission wrote to the Principal Secretary, Ministry of Devolution and Planning to inform him of its decision to conduct investigations into the issues. CAJ investigators conducted interviews with selected public officials from the NGOs Coordination Board and recovered documents relevant to the investigations.

This report is as a result of thoroughly analysed information gathered through interviews with public officials from NGOs Coordination Board and the former Board of Directors. The report was also informed by the examination of documents recovered in the process of investigations.

The Commission has made determinations for the necessary remedial action by relevant authorities based on the findings and conclusions drawn out of the investigation. The adoption and implementations of the recommendations will not only help to restore order in the organisation but also improve public service delivery.

Signed this.....day of November, 2016

Dr. Otiende Amollo, E.B.S

Chairperson of the Commission on Administrative Justice

(Office of the Ombudsman)

Preamble

The Commission on Administrative Justice (Office of The Ombudsman) is a Constitutional Commission established under Article 59 (4) and Chapter Fifteen of the Constitution, and the Commission on Administrative Justice Act, 2011.

The Commission on Administrative Justice (CAJ) has a mandate, inter-alia, to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.

In addition to the CAJ's investigative powers under Article 252 (1) (a), Sections 26, 27, 28 and 29 of the CAJ Act gives the Commission powers to conduct investigations on its own initiative or on a complaint made by a member of the public, issue Summons and require that statements be given under oath, adjudicate on matters relating to Administrative Justice, obtain relevant information from any person or Governmental authorities and to compel production of such information.

Under Section 31 of its Act, CAJ has the power not limited by other provisions to investigate an administrative action despite a provision in any written law to the effect that the action taken is final or cannot be appealed, challenged, reviewed, questioned or called in question.

After undertaking its investigations, the Commission is required under Section 42 of its constitutive Act, to prepare a report to the State organ, public office or organisation to which the investigation relates. The report shall include the findings of the investigation, action the Commission considers to be taken and reasons whereof and recommendations the Commission deems appropriate.

CAJ may upon an inquiry into a complaint, undertake such other action as it may deem fit against a concerned person or persons where the inquiry discloses a criminal offence as provided for under Section 41 of the CAJ Act.

Section 8 (g) of the CAJ Act gives the Commission power to recommend compensation or other appropriate remedies against persons or bodies to which the Act applies.

Section 42 (4) states; If there is a failure or refusal to implement the recommendations of the Commission within the specified time, the Commission may prepare and submit to the National Assembly a report detailing the failure or refusal to implement its recommendations and the National Assembly shall take the appropriate action.

Section 52 (b) and (d) of the CAJ Act 2011, provides that a person who knowingly submits false or misleading information to a member of staff of the Commission commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years or both.

Further, Article 59(2) (j) of the Constitution of Kenya, 2010 empowers the Commission to report on complaints investigated under paragraph (h) and (i) and take remedial actions.

The report addresses the following:

- Introduction to the investigation
- Investigations strategy
- Normative framework
- Analysis and findings
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Acronyms

BOD	Board of Directors
CAJ	Commission on Administrative Justice
CEO	Chief Executive Officer
CV	Curriculum Vitae
DED	Deputy Executive Director
ED	Executive Director
FINAD	Finance and Administration
HR	Human Resource
NGO	Non-Governmental Organisation

Executive summary

CAJ undertook investigations into the alleged irregular appointment of Mr. Yusuf Mahamed Fazul to the position of Executive Director, NGOs Coordination Board without the required academic and professional qualifications, and relevant work experience; irregular promotions and transfers staff; victimisation and intimidation of staff; mismanagement of public funds and unprocedural procurement for services of Sagana Getway Resort to host a management meeting and sourcing for Max Worth Firm to facilitate team building. The investigation was prompted by anonymous complaint letters received by the Commission.

Pursuant to Section 37 of the CAJ Act, 2011, CAJ wrote to the Principal Secretary, Ministry of Devolution and Planning to inform him of its decision to conduct investigations into the allegations. CAJ investigators conducted interviews with selected public officials from NGOs Coordination Board and recovered documents relevant to the investigations. The former Board members were also interviewed. The information collected was analysed leading to the following findings, conclusions and determinations.

Summary of findings

i. Appointment of Mr. Yusuf Mahamed Fazul, the Executive Director, NGOs Coordination Board

Mr. Yusuf Mahamed Fazul was appointed the Executive Director, NGOs Coordination Board in December, 2014 following the resignation of Dr. Hezron O. Mc'Obewa, the former Executive Director. The position was advertised in The Standard Newspaper of 24th October 2014. The key requirements for the position included; Bachelor's degree in social sciences or Business Administration or related field from a recognized university (higher qualifications was an added advantage), at least five (5) years' work experience at senior management level and experience in financial management.

A careful analysis of an earlier advertisement dated 6th June, 2012 for recruitment of the previous Executive Director revealed significant disparities. The key requirements for the same position included; a minimum of a Master's

degree in Social Sciences or Business Administration or related field from a recognised university and at least fifteen (15) years' work experience with non-profit organisations at senior management level or with a relevant regulatory body. It suggests that the Board may have lowered the requirements for Mr. Fazul to secure the position.

CAJ recovered a copy of Mr. Fazul's CV submitted to the NGOs Coordination Board together with his application for the position, indicating that he had a Bachelor's Degree in Biochemistry from Egerton University. Two former members of the Board who interviewed Mr. Fazul for the position stated that Mr. Fazul had presented a Bachelor of Science Biochemistry degree certificate from Egerton University and a CV indicating that he was a graduate of Egerton University. Mr. Fazul emerged top in the interviews and was appointed to the position.

Additionally, the then Board Chairman confirmed that they recruited Mr. Fazul on the basis of Bsc. Biochemistry degree from Egerton University as the Board was satisfied with the papers and that they did not notice any anomaly with the degree certificate.

According to a sworn Affidavit by Ms. Josephine Ngatia, the Human Resource and Development Manager, Mr. Fazul requested for his personal employment file and all the other documents relating to his recruitment upon reporting to the office. The personal file contained his CV and a copy of the degree certificate he purported to have received from the Egerton University. The personal file was still missing by the close of the investigation.

Investigations further revealed that Mr. Fazul was enrolled at the Egerton University in 2007 to pursue a course leading to Bachelor of Science in Agriculture but he transferred to the Faculty of Science to pursue a course in Bachelor of Science (Biochemistry). It was also established that Mr. Fazul was discontinued by the University Senate on 26th August, 2010 for failure to meet academic standards of the University while in his third year of study.

The Commission wrote to The East African University in Kitengela where it was alleged that Mr. Fazul registered in 2013 to pursue a course in Bachelor of

Business Management (Human Resource). In a letter Ref: TEAU/CAJ1/9/16 dated 6th September, 2016 to the Commission, the Academic Registrar, The East African University confirmed that Mr. Fazul joined the University in 2013 to pursue Bachelor of Business Management (Human Resource) and graduated on 11th December, 2015, one year after his appointment. It is clear that Mr. Fazul did not have a degree certificate when he was appointed the Executive Director.

CAJ wrote to Mr. Fazul and invited his response on the allegations to which he responded in writing. The Commission further invited Mr. Fazul and gave him another opportunity to make clarifications on the allegations.

Mr. Fazul, on his visit to the Commission on 20th September, 2016, declined to clarify specific issues raised by the CAJ investigators. He however, recorded a statement and cited Section 30 of CAJ Act regarding CAJ's limitations of jurisdiction. Mr. Fazul stated that the allegations investigated by CAJ were subject to active investigations by EACC, DCI, NGOs Coordination Board of Directors and that the allegations are before a court of law.

In a change of heart, Mr. Fazul wrote a letter dated 26th September, 2016 to the Commission in which he accepted CAJ jurisdiction. He pointed out that he and senior managers of the Board would not have time to attend to CAJ because they were participating in refugee repatriation exercise in Daadab. According to the letter, the officers would be available in December upon completion of the exercise.

The Commission again received another letter dated 5th October, 2016 from Munyao, Muthama & Kashindi Advocates (representing NGOs Coordination Board) demanding CAJ to desist from carrying out the investigations.

Contrary to the positions taken by Dr. Njoki, and in a change of heart, Mr. Fazul wrote a letter dated 26th September, 2016 to the Commission in which he accepted CAJ jurisdiction as provided by section 8 of CAJ Act.

Secondly, some of the allegations under investigations by CAJ were suggesting that Mr. Fazul was in abuse of power because he had declined to implement a

court order Mr. Fazul could not therefore use a court order to quash the investigations and release of the report. It is also clear that the issues before the court and other investigative agencies were different from what CAJ was investigating.

Pursuant to Section 36 of CAJ Act, the Commission wrote to Mr. Fazul vide a letter Ref: CAJ/PE/040/1025/15 dated 25th October, 2016, to accord him a further opportunity to make such representations before the Commission on the findings, conclusions and determinations drawn from the investigation. Mr. Fazul had not responded within the allocated time.

ii. Irregular promotions and transfers of staff at the Board

Investigations established that Mr. Fazul has been promoting officers at the Board against the HR policy. According to NGO Coordination Board's Human Resources Policy, all the promotions must be approved by the Board of Directors.

One of the beneficiaries of the un-procedural promotions is Ms. Joyce Naisiala, the Deputy Executive Director. Mr. Fazul promoted Ms. Joyce Naisiala through a number of managerial ranks without seeking approval from the Board of Directors. Although CAJ noted that Ms. Naisiala was first appointed by the previous Executive Director to the position of the Executive Secretary with effect from 2nd June, 2009 and rose to the position of Human Resource Officer with effect from 21st November, 2013, it is worth noting that she got accelerated promotions to the position of Programs and Partnership Officer with effect from 9th January 2015, to Programs and Partnership Manager from 6th March 2015 and to Guidance and Operations Manager with effect from 29th March 2016. She was then promoted to her current position, Ag. Deputy Executive Director on 29th August 2016. The two positions (Programs and Partnership Officer, and Programs and Partnership Manager) do not exist in the Board's organogram.

CAJ also noted that Ms. Naisiala's HR qualifications are not consistent with the positions of Programs and Partnership Officer, Programs and Partnership Manager and Guidance and Operations Manager.

According to members of staff, Ms. Naisiala was appointed the guidance and operations manager after Ms. Juliana Atieno, the former Guidance and Operations Manager was frustrated by Mr. Fazul and resigned. Further, Ms. Naisiala was appointed to be the Acting Deputy Executive Director after Mr. Andrew Ogombe, the Deputy Executive Director was suspended by Mr. Fazul under unclear circumstances. Mr. Fazul acted in a manner likely to suggest that he frustrated the staff with an intention of creating opportunities for MS. Naisiala to rise through the ranks.

iii. Victimisation and intimidation of staff

Members of staff interviewed, expressed their fear of victimisation, intimidation and harassment by Mr. Fazul. The members of staff who sought anonymity indicated that Mr. Fazul, demotes, interdicts, dismisses or transfers staff to regional offices whenever they have a contrary opinion to his decisions which are not in line with the procedures and policies of the Board.

The investigations revealed that Mr. Fazul transferred Ms. Josephine Ngatia, the Human Resource and Guidance Manager to Garissa Regional Office for asking Mr. Fazul about his personal file and another file containing documents relating to his irregular recruitment. Ms. Josephine had also questioned the recruitment of about 10 employees undertaken in May, 2015, where Mr. Fazul reconstituted a recruitment committee to conduct the recruitment. The HR and the Head of Finance and Administration (Mr. Andrew Ogombe, currently on suspension) were not included in the recruitment team. According to the members of staff interviewed, the reconstitution of the recruitment team was occasioned by Mr. Fazul's intention to hire some selected individuals.

Ms. Ngatia's transfer was also prompted by her inquiries about disparities in the salaries awarded to the employees hired in the recruitment in which she and Mr. Ogombe were not involved.

The positions of Head of Operations, Compliance and Research, and Human and Resource Development Manager are based in the Board's Headquarters, Nairobi.

It is worth noting that Ms. Ngatia went to court to challenge her transfer to Garissa Regional Office. The court ruled in her favour. After the court ruling, Mr. Fazul suspended Ms. Ngatia for allegedly absconding her duties.

Mr. Henry Ochido, the former Head of Operations, Compliance and Research resigned as a result of demotion and frustration by Mr. Fazul. Ms. Juliana Atieno, the former Operations and Guidance manager resigned when she was un-procedurally transferred to Kisumu and Garissa Regional Offices even after pleading with Mr. Fazul that she had a small child and a sick husband. Ms. Jemimah Muraya, former research and policy manager was dismissed under unclear circumstances. Mr. Richard Chesos, Public Relations Manager was transferred to Eldoret Regional Office after questioning transfers done without approval by the Board of Directors. The latest to be suspended is Mr. Andrew Ogombe, Deputy Executive Officer.

iv. Mismanagement of Imprest (public funds)

Mr. Fazul and Mr. Ogombe, the suspended Deputy Executive Director attended a National Task Force Meeting on Anti-Money Laundering and Combating the Financing of Terrorism in Johannesburg, South Africa from 23rd to 28th August 2015.

According to a list attached to a letter dated 10th July 2015 from the Ministry of National Treasury and addressed to Heads of concerned public institutions, one official from the NGOs Coordination Board (Mr. Andrew Ogombe, Deputy Executive Director) was formerly appointed by the Ministry of Treasury to attend the meeting. Mr. Ogombe had been attending such meetings before. However, Mr. Fazul decided to accompany Mr. Andrew Ogombe for the meeting without invitation yet he was not an official member of the Task Force. The trip cost the NGO Coordination Board a total of KSh. 1,026,810 being Daily Subsistence Allowance for both Mr. Fazul and Mr. Andrew Ogombe.

v. Flawed procurement processes

The investigations sought to establish the veracity of an allegation that there was an irregularity in procuring the services of Sagana Getway Resort and Max Worth Firm. The two entities were to host the Board's management while they were on retreat and facilitate team building respectively.

According to the minutes of the Tender and Award Committee dated 16th April, 2015, quotations were sought from three hotels in Mount Kenya region to host the Board's management meeting which had been scheduled for 20th to 25th April, 2015. The Committee evaluated the bidders and Sagana Getway Resort, being the lowest bidder (KSh. 910,000), was awarded the tender to host the meeting.

The investigations team also recovered copies of Procurement Minutes dated 20th April, 2015 indicating that Max Worth Associates Ltd was awarded the tender because it was the lowest bidder (KSh. 278, 400) amongst the three firms which submitted their quotations. The Firm had been hired for the exercise before and their services were satisfactory.

In light of the foregoing, the investigations did not establish any anomaly in procuring the services of both Sagana Getway Resort and Max worth Firm.

Consequential Observations

CAJ received a letter Ref: NGOB/5/30A/8/Vol. XII dated 2nd September, 2016 signed by Dr. Njoki Ndiba, Vice Chairperson, NGOs Board of Directors and copied to EACC, Ministry of Devolution and Planning, DCI and Mr. Fazul. The letter stated that the cases under investigation by CAJ were before court (Petition No. 107 of 2016: Josephine Ngatia Vs. the Executive Director and NGOs Coordination Board, and Petition No. 34 of 2016: Shebby Sakwa and Another Vs. Fazul Mahamed and 3 others) and that there were active investigations carried out by EACC, DCI and NGOs Board of Directors against Mr. Fazul. Dr. Njoki was

of the view that the jurisdiction of CAJ to carry out the investigation was limited by Section 30 of the CAJ Act, 2011.

Investigations revealed that Petition No. 107 of 2016: Josephine Ngatia Vs. The Executive Director and NGOs Coordination Board was determined on 22nd September, 2016 in favour of Ms. Josephine Ngatia, the Human Resource and Development Manager.

CAJ noted that the NGOs Coordination Board has issues related to employment and promotions even before Fazul's tenure.

Investigations noted that the NGOs Coordination Board currently has no chairperson, thereby giving the Executive Director the prerogative to make unilateral decisions.

Conclusions

- i. Mr. Yusuf Mahamed Fazul was appointed the Executive Director, NGOs Coordination Board in December, 2014.
- ii. The Commission faults the then Chairman and members of the NGO Coordination Board for lowering the qualifications requirements in the advertisement for the position.
- iii. The investigations established that the appointment of Mr. Yusuf Mahamed Fazul to the position of the Executive Director, NGOs Coordination Board was irregular as he was hired without meeting the prerequisite qualifications. At the time of the interview, he did not have a degree nor the required professional qualifications and relevant experience which were mandatory requirements for the position.
- iv. Mr. Fazul was hired on the basis of the false degree certificate purported to have been acquired from Egerton University. Investigations confirmed that Mr. Fazul was discontinued by the University Senate on 26th August, 2010 on academic grounds while in his third year, that is, before he graduated and hence does not hold the Bsc. Biochemistry degree of Egerton University.

- v. The Commission found Mr. Fazul culpable of abuse of power for the irregular promotions of staff without seeking approval from the Board of Directors and acting unilaterally in utter disregard of HR policies. The case in hand is Ms. Joyce Naisiala who rose through managerial ranks to become the Deputy Executive Director of the Board within a short span of time.
- vi. The NGOs Coordination Board has systemic issues regarding employment and human resource management.
- vii. The Commission also found Mr. Fazul culpable of abuse of power for travelling to Johannesburg, South Africa to attend a meeting on Anti-Money Laundering and Combating the Financing of Terrorism between 23rd and 28th August 2015 without authority from the Ministry of Treasury. Mr. Andrew Ogombe, the Deputy Executive Director, was the only official from the Board authorised to attend the meeting.
- viii. The investigations fault Mr. Fazul for official misconduct by intimidating and victimising members of staff who questioned his decisions which were against the laid down procedures and policies. As a result of his misconduct, members of staff have gone to court to seek redress while others were overwhelmed by frustration and resigned.
- ix. The Commission faults Mr. Fazul for taking away his personal file which contained document related to his employment from the Human Resource Office. The Personal File is the property of the Government of Kenya and Fazul's action amounts to a criminal offence.
- x. The investigations did not find any irregularity in the way NGO Coordination Board procured services of Sagana Getway Resort and Max Worth Firm.

Determinations

- i. The Cabinet Secretary, Ministry of Devolution and National Planning, and the Chief of Staff and Head of Public Service should remove from office Mr. Yusuf Mahamed Fazul for having been found culpable of abuse of power and official misconduct.
- ii. The Commission recommends that Mr. Fazul should not hold public office for violating Chapter six of the Constitution of Kenya-Leadership and Integrity. He presented forged academic documents and false information during the interview. Even after securing the position, he abused his power by committing the aforementioned maladministration.
- iii. The Director of Criminal Investigations should institute investigations against Mr. Fazul for presenting forged documents and false information to secure the position.
- iv. The Cabinet Secretary, Ministry of Devolution and National Planning should consult His Excellency the President to appoint a Chairperson to the Board of Directors, NGOs Coordination Board for the smooth running of the Organisation.
- v. The Cabinet Secretary, Ministry of Devolution and National Planning should properly reconstitute the NGO Board in line with 'Mwongozo: The code of governance for state corporations'.
- vi. The Cabinet Secretary, Ministry of Devolution and National Planning should direct the NGO Board of Directors to investigate the circumstances surrounding the aggrieved members of staff with a view to reinstating them if they are found innocent.
- vii. The Cabinet Secretary, Ministry of Devolution and National Planning should give a directive to the NGOs Board of Directors to conduct a

thorough vetting of appointments and promotions effected from January, 2015 to date.

- viii. The Principal Secretary, Ministry of Devolution and National Planning in consultation with Public Service Commission should, with immediate effect, look into the systemic issues inherent in the recruitment and management of HR capital in NGOs Coordination Board
- ix. Mr. Fazul should return to the state KSh. 8,535,254 being the net salary he has earned during his tenure as the Executive Director, NGO Coordination Board.
- x. Mr. Fazul should not be paid gratuity as he was not entitled.
- xi. The Director Criminal Investigations should cause investigations against Mr. Fazul for the loss of his personal file.

1.0 Introduction to investigations

The Commission's investigative powers under Article 252 (1) (a) of the Constitution of Kenya and Sections 26, 27, 28 and 29 of the CAJ Act, 2011 gives CAJ powers to conduct investigations on its own initiative or on a complaint made by a member of the public, issue summons, adjudicate on matters relating to Administrative Justice, obtain relevant information from any person or Governmental authorities and to compel production of such information.

In this regard, the Commission undertook investigations based on anonymous complaint letters alleging that Mr. Yusuf Mahamed Fazul, Executive Director, NGOs Coordination Board was irregularly appointed to the position of the Executive Director without the required academic and professional qualifications and relevant work experience required for the position. It was alleged that Mr. Fazul promotes and transfers staff against the HR Policy, and that he victimises and intimidates staff who have a contrary opinion to his decisions which are against the laid down procedures and policies. Mr. Fazul was also accused of single-sourcing for services of Sagana Getway Resort to host management meeting and single-sourcing for Max Worth Firm to facilitate team building.

1.1 Preliminary inquiries

The Commission wrote to Mr. Fazul vide a letter Ref: CAJ/NGO/076/6/15-DKO dated 1st September, 2015 to inform him about the allegations raised in the anonymous complaint letter dated 21st July, 2015 and to request him to respond to the allegations. Mr. Fazul responded to the allegations vide a letter Ref: NGOB/5/30A/8/Vol. XII dated 15th September, 2015 in which he disputed all the allegations raised against him. CAJ then received other anonymous complaint letters against Mr. Fazul (**Annexures A1, A2 and A3**).

Considering Mr. Fazul's response which was not satisfactory as well as other anonymous complaints received, the Commission made a decision to undertake investigations.

1.2 Summary of Issues under Investigation

The following were the allegations investigated by the Commission:

- i. Alleged appointment of Mr. Yusuf Mahamed Fazul as the Executive Director, NGOs Coordination Board without the required academic, professional qualifications and relevant work experience.
- ii. Irregular appointments, promotions and transfers of staff at the Board
- iii. Victimization and intimidation of staff by Mr. Fazul
- iv. Mismanagement of imprest (public funds) at the Board
- v. Unprocedural procurement of services of Sagana Getway Resort and Max Worth Firm

1.3 Investigative Process

1.3.1 Notification

The Commission notified the Principal Secretary, Planning and Statistics vide a letter Ref: CAJ/IE/6/46/16(1) dated 17th August 2016 of its decision to undertake investigations (**Annexure A4**).

1.3.2 List of Interviewees

The list of interviews has been deducted as the Commission reserves the right to disclosure of them.

1.3.3 Documents Recovered

- i. A letter from Egerton University indicating that Mr. Yusuf Mahamed Fazul was a student at the University but was discontinued in 2010 on academic grounds.
- ii. A letter from The East Africa University indicating that Mr. Fazul was a student at the University from 2013 to 2015 and graduated with a degree in BBM(Human Resource Management).

- iii. A letter dated 10th July, 2015 written to various heads of corporations to release senior officers to attend a meeting on Anti-Money laundering and Combating the Financing of Terrorism in Johannesburg, South Africa. The letter contained a list of senior officers from various corporations who are members of the National Task Force.
- iv. A payment Voucher dated October, 2015 indicating that Mr. Fazul and Mr Ogombe, Deputy Executive Director received allowances worth KSh. 1,026,810 to travel to South Africa to attend a meeting on Anti-Money laundering and Combating the Financing of Terrorism.
- v. Ms. Joyce Naisiala's letter dated 29th May, 2009 appointing her to the position of the Executive Secretary with effect from 2nd June 2009.
- vi. A letter dated 21st November, 2013 promoting Ms. Joyce Naisiala to the position of Human Resource and Guidance Officer.
- vii. A letter dated 9th January, 2015 appointing Ms. Joyce Naisiala to the position of Programmes and Partnership Officer.
- viii. A letter dated 6th March, 2015 promoting Ms. Joyce Naisiala to the position of Programmes and Partnership Manager.
- ix. Email dated 1st March, 2016 deploying Ms Joyce Naisiala to the Operations Department as Operations and Guidance Manager.
- x. Email dated 29th August, 2016 appointing Ms Joyce Naisiala to act as the Deputy Executive Director.
- xi. Minutes of the Special Tender and Award Committee Meeting dated 16th April, 2015 to deliberate on a retreat for the Board's management. The Committee awarded Sagana Gateway Resort to host the event at a total cost of KSh. 910,000.

- xii. Minutes for a Procurement Committee meeting held on 20th April, 2015 to evaluate firms that had applied for tender to conduct team building exercise for the members of staff. The members awarded a firm called Max Worth Associates Ltd to conduct the exercise.
- xiii. Ms. Josephine Ngatia's Sworn Affidavit on Mr. Fazul's personal employment file containing his copies of academic credentials and other testimonials.
- xiv. A court order dated 1st August, 2016 stopping the transfer of Ms. Josephine Ngatia to Garisa
- xv. A letter dated 12th August, 2016 from Mburugu and Kanyonge Advocated(representing Ms. Ngatia) to Mr. Fazul complaining about Mr. Fazul's failure to implement the court order dated 1st August, 2016.

2.0 Normative Framework

Following are excerpts of some of the relevant provisions:

Constitution of Kenya

CHAPTER SIX—LEADERSHIP AND INTEGRITY

73. (1) Authority assigned to a State officer—

(a) is a public trust to be exercised in a manner that—

(i) is consistent with the purposes and objects of this Constitution;

(ii) demonstrates respect for the people;

(iii) brings honour to the nation and dignity to the office; and

(iv) promotes public confidence in the integrity of the office; and

(b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.

(2) The guiding principles of leadership and integrity include—

(a) selection on the basis of personal integrity, competence, and suitability, or election in free and fair elections;

(b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;

(c) selfless service based solely on the public interest demonstrated by—

(i) honesty in the execution of public duties; and

(ii) the declaration of any personal interest that may conflict with public duties;

(d) accountability to the public for decisions and actions; and

(e) discipline and commitment in service to the people.

CHAPTER THIRTEEN—THE PUBLIC SERVICE

Part I—values and Principles of Public service

232. (1) The values and principles of public service include—

(a) high standards of professional ethics;

(b) efficient, effective and economic use of resources;

(c) responsive, prompt, effective, impartial and equitable provision of services;

(d) involvement of the people in the process of policy making;

(e) accountability for administrative acts;

- (f) transparency and provision to the public of timely, accurate information;
- (g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
- (h) representation of Kenya's diverse communities; and
- (i) affording adequate and equal opportunities for an appointment, training and advancement, at all levels of the public service, of—
 - (i) men and women;
 - (ii) the members of all ethnic groups; and
 - (iii) persons with disabilities.

(2) The values and principles of public service apply to public service in—

- (a) all State organs in both levels of government; and
- (b) all State corporations.

Commission on Administrative Justice Act, 2011:

Sections 8:

- (a)** *investigate any conduct in state affairs, or any Act or omission in public administration by any state organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice;*
- (b)** *investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector;*
- (c)** *inquire into allegations of maladministration, delay, administrative injustice, discourtesy, incompetence, misbehaviour, inefficiency or ineptitude within the public service.*

Section 52, states:

a person who-

- (b) Submits false or misleading information;*
- (c) Fails to honour summons; or*
- (d) Misrepresents to or knowingly misleads Commission or a member of Staff of the Commission acting under this Act, commits an offence*

and liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

Public Officers Ethics Act, 2003 (Revised 2009)

Section 9 of Public Officer's Ethics Act, 2003 states

"...A public officer shall, to the best of his ability, carry out his duties and ensure that the services that he provides are provided efficiently and honestly

Section 17. *A public officer shall not practice nepotism or favouritism.*

Section 19 of Public Officer's Ethics Act, 2003 states

"...A public officer shall not knowingly give false or misleading information to members of the public or to any other public officer...."

3.0 Analysis of Findings

Analysis and findings of the investigations were guided by the issues investigated by the Commission.

3.1 Appointment of Mr. Yusuf Mahamed Fazul, the Executive Director, NGOs Coordination Board

Mr. Yusuf Mahamed Fazul was appointed the Executive Director, NGOs Coordination Board in December, 2014 following the resignation of Dr. Hezron O. Mc'Obewa, the former Executive Director. Advertisement for the position was made in The Standard Newspaper of 24th October 2014. Among the key requirements highlighted in the advertisement included; Bachelor's degree in social sciences or Business Administration or related field from a recognised university (higher qualifications was an added advantage), at least five (5) years' work experience at senior management level and experience in financial management **(Annexure A5)**.

CAJ investigators recovered an earlier job advertisement dated 6th June, 2012 for the recruitment of the previous Executive Director. Among the key requirements was a minimum of a Master's degree in Social Sciences or Business Administration or related field from a recognised university and at least fifteen (15) years' work experience with non-profit organisations at senior management level or with a relevant regulatory body. **(Annexure A6)**.

Comparison of the two advertisements for the same position revealed that the requirements may have been lowered to allow Mr. Fazul secure the position.

CAJ recovered a copy of Mr. Fazul's CV submitted to the Board together with his application for the position which indicates that he had a Bachelor's Degree in Biochemistry from Egerton University. Two former members of the Board who interviewed Mr. Fazul for the position stated that Mr. Fazul had presented a Bachelor of Science Biochemistry degree certificate from Egerton University and a CV indicating that he was a graduate of Egerton University. Mr. Fazul emerged top in the interviews and was appointed to the position **(Annexure A7)**.

According to a sworn Affidavit by Ms. Josephine Ngatia, the Human Resource and Development Manager, Mr. Fazul requested for his personal employment file and all the other documents relating to his recruitment upon reporting to the office. The personal file contained his CV and a copy of the degree certificate he purported to have received from the Egerton University. The personal file was still missing by the close of the investigation.

Additionally, the then Board Chairman confirmed that they recruited Mr. Fazul on the basis of Bsc. Biochemistry degree from Egerton University as the Board was satisfied with the papers and that they did not notice any anomaly with the degree certificate **(Annexure A8)**.

The Commission wrote to Egerton University, Njoro Main Campus where Mr. Fazul enrolled in 2007 to pursue a Bachelor's degree in Biochemistry. In a detailed letter to the Commission, the Academic Registrar, Egerton University confirmed that Mr. Fazul was enrolled at the University in 2007 to pursue a course leading to Bachelor of Science in Agriculture but he transferred to the Faculty of Science to pursue a course in Bachelor of Science (Biochemistry). The Registrar further elucidated that Mr. Fazul was discontinued by the University Senate on 26th August, 2010 on academic grounds while in his third year of study **(Annexure A9 and Annexure A10)**.

The Commission also wrote to The East African University in Kitengela where it was alleged that Mr. Fazul registered in 2013 for a course leading to the award of Bachelor of Business Management (Human Resource). The University was requested to submit duly certified copies of academic records and any other information on Mr. Fazul's academic qualifications. In a letter Ref: TEAU/CAJ1/9/16 dated 6th September, 2016 to the Commission, the University Academic Registrar confirmed that Mr. Fazul joined the University in 2013 to pursue Bachelor of Business Management (Human Resource) and graduated on 11th December, 2015, one year after his appointment . It is clear that Mr. Fazul did not have a degree certificate when he was appointed the Executive Director **(Annexure A11 and A12)**.

According to a sworn Affidavit by Ms. Josephine Ngatia, the Human Resource and Development Manager, Mr. Fazul asked for his personal employment file and a general file for the Executive Director's recruitment soon after he took up the position. Further, Mr. Ngatia wrote an email to Mr. Fazul requesting him to return the files. In the email, Ms. Ngatia indicated that Mr. Fazul's personal file contained copies of his application letter, Bsc. Biochemistry certificate purported to have been from Egerton University, CV, ID Card, Certificate of Good Conduct and a signed contract with NGO Board. Mr. Fazul never honoured the request. The files were missing by the close of the investigations. **(Annexure A13 and A14).**

CAJ wrote to Mr. Fazul and invited his response on the allegations to which he responded in writing. The Commission further invited Mr. Fazul and gave him another opportunity to make clarifications on the allegations.

Mr. Fazul, on his visit to the Commission on 20th September, 2016, declined to clarify specific issues raised by the CAJ investigators. He however, recorded a statement and cited Section 30 of CAJ Act regarding CAJ's limitations of jurisdiction. Mr. Fazul stated that the allegations investigated by CAJ were subject to active investigations by EACC, DCI, NGOs Coordination Board of Directors and that the allegations are before a court of law **(Annexure A31).**

In a change of heart, Mr. Fazul wrote a letter dated 26th September, 2016 to the Commission in which he accepted CAJ jurisdiction. He pointed out that he and senior managers of the Board would not have time to attend to CAJ because they were participating in refugee repatriation exercise in Daadab. According to the letter, the officers would be available in December upon completion of the exercise **(Annexure A32).**

The Commission again received another letter dated 5th October, 2016 from Munyao, Muthama & Kashindi Advocates (representing NGOs Coordination Board) demanding CAJ to desist from carrying out the investigations **(Annexure A33).**

Contrary to the positions taken by Dr. Njoki, and in a change of heart, Mr. Fazul wrote a letter dated 26th September, 2016 to the Commission in which he accepted CAJ jurisdiction as provided by section 8 of CAJ Act.

Secondly, some of the allegations under investigations by CAJ were suggesting that Mr. Fazul was in abuse of power because he had declined to implement a court order Mr. Fazul could not therefore use a court order to quash the investigations and release of the report. It is also clear that the issues before the court and other investigative agencies were different from what CAJ was investigating.

Pursuant to Section 36 of CAJ Act, the Commission wrote to Mr. Fazul vide a letter Ref: CAJ/PE/040/1025/15 dated 25th October, 2016, to accord him a further opportunity to make such representations before the Commission on the findings, conclusions and determinations drawn from the investigation. Mr. Fazul had not responded within the allocated time **(Annexure A34)**.

3.2 Irregular promotions and transfers of staff at the Board

According to NGO Coordination Board's Human Resources Procedures Manual, the procedure for appointments and promotions is as follows: Appointments and Promotions for managerial positions (NGOB1 to NGOB4) must be done by the Board of Directors while appointments and promotions for lower cadre positions (NGOB5 to NGOB9) are done by the Executive Director but with approval from the Board of Directors.

Investigations revealed that Mr. Fazul has been unilaterally promoting officers at the Board against the HR policy. One of the beneficiaries of the un-procedural promotions is Ms. Joyce Naisiala, the Deputy Executive Director. Mr. Fazul promoted Ms. Joyce Naisiala through a number of managerial ranks without seeking approval from the Board of Directors. Although CAJ noted that Ms. Naisiala was first appointed by the previous Executive Director to the position of the Executive Secretary with effect from 2nd June, 2009 and rose to the position of Human Resource Officer with effect from 21st November, 2013, it is worth noting that she got accelerated promotions to the position of Programs and

Partnership Officer with effect from 9th January 2015, to Programs and Partnership Manager from 6th March 2015 and to Guidance and Operations Manager with effect from 29th March 2016. She was then promoted to her current position, Ag. Deputy Executive Director on 29th August 2016. The two positions (Programs and Partnership Officer, and Programs and Partnership Manager) do not exist in the Board's organogram **(Annexures A15, A16, A17, A18, A19 and A20)**.

CAJ also noted that Ms. Naisiala's HR qualifications are not consistent with the positions of Programs and Partnership Officer, Programs and Partnership Manager and Guidance and Operations Manager.

According to members of staff, Ms. Naisiala was appointed to be the Guidance and Operations Manager after Ms. Juliana Atieno (the officer who held the office) was frustrated by Mr. Fazul and resigned. Further, Ms. Naisiala was appointed to be the Acting Deputy Executive Director after Mr. Andrew Ogombe was suspended by Mr. Fazul under unclear circumstances.

3.3 Mismanagement of Imprest (public funds)

Mr. Fazul and Mr. Andrew Ogombe, the former Deputy CEO, NGO Board attended a National Task Force Meeting on Anti-Money Laundering and Combating the Financing of Terrorism in Johannesburg, South Africa from 23rd to 28th August 2015.

According to a list attached to a letter dated 10th July 2015 from the Ministry of National Treasury and addressed to Heads of interested public institutions indicates that one official from the NGOs Board (Mr. Andrew Ogombe, Deputy Executive Director) was appointed by the Treasury to attend the meeting. However, Mr. Fazul decided to accompany Mr. Andrew Ogombe for the meeting without invitation yet he is not an appointed official member of the Task Force. The trip cost the NGO Coordination Board a total of KSh. 1,026,810 being Daily Subsistence Allowance for both Mr. Fazul and Mr. Andrew Ogombe **(Annexure A21 and A22)**.

The members of the Task Force consist of senior officials drawn from various institutions including Attorney General's Office, Ministry of Foreign Affairs, Ministry of Interior & Coordination of National Government, DPP's Office, NIS, Kenya Police, Immigration Services, CBK, KRA, Capital Markets Authority, IRA, RBA, Financial Reporting Centre, DCI, National Counter Terrorism Centre, Banking Fraud Investigations Department, NGOs Board and Kenya Bankers Association **(See annexure A21)**.

3.4 Victimization and intimidation of staff

Members of staff interviewed, expressed their fear of victimisation, intimidation and harassment by Mr. Fazul. The members of staff who sought anonymity indicated that Mr. Fazul, interdicts, dismisses or transfers staff to regional offices whenever they have a contrary opinion to his decisions which are not in line with the procedures and policies of the Board.

The investigations revealed that Mr. Fazul transferred Ms. Josephine Ngatia, the Human Resource and Guidance Manager to Garissa Regional Office for asking him about his personal file and another file containing documents relating to his recruitment. Ms. Ngatia had also questioned the recruitment of about 12 employees undertaken in May, 2015, where Mr. Fazul reconstituted a recruitment committee to conduct the recruitment. The HR and the Head of Finance and Administration (Mr. Andrew Ogombe, currently on suspension) were not included in the recruitment team. According to the members of staff interviewed, the reconstitution of the recruitment team may have been occasioned by Mr. Fazul's intention to hire his relatives and friends.

Ms. Ngatia's transfer was also prompted by her inquiries about disparities in the salaries awarded to the employees hired in the recruitment in which she and Mr. Ogombe were not involved. It is worth noting that Ms. Josephine went to court to challenge her transfer to Garissa Regional Office. The Court made a ruling on 22nd September, 2016 in Ms. Ngatia's favour. On 23rd September, 2016, a day after the court ruling, Mr. Fazul suspended Ms. Ngatia for allegedly absconding her duties **(Annexures A23, A24, A25 and A26)**.

Investigations revealed that five senior managers and Deputy Executive Director were either transferred, suspended, dismissed or resigned as a result of frustration by Mr. Fazul in a span of less than a year. Mr. Henry Ochido, the former Head of Operations, Compliance and Research resigned as a result of demotion and frustration by Mr. Fazul. Ms. Juliana Atieno, the former Operations and Guidance manager resigned when she was un-procedurally transferred to Kisumu and to Garissa Regional Offices even after pleading with Mr. Fazul that she had a small child and a sick husband. Ms. Jemimah Muraya, former research and policy manager was dismissed under unclear circumstances. Mr. Richard Chesos, Public Relations Manager was transferred to Eldoret Regional Office after questioning transfers done without approval by the Board of Directors. The latest to be suspended is Mr. Andrew Ogombe, Deputy Executive Officer.

The functions of the positions of Head of operations, Compliance and Research, and Human and Resource Development Manager are based in the Board's Headquarters, Nairobi.

3.5 Flawed procurement processes

The investigations sought to establish whether there were irregularities in sourcing for firms and hotel facilities for conferences, seminars, workshops and retreats as indicated in the complaint letter. Specifically, it was alleged that there were irregularities in procuring the services of Sagana Getway Resort to host the management while they were on retreat and Max Worth Firm to facilitate team building.

According to the minutes of the Tender and Award Committee dated 16th April, 2015, quotations were sought from three hotels in Mount Kenya region to host the Board's management meeting which had been scheduled for 20th to 25th April, 2015. The Committee evaluated the bidders and Sagana Getway Resort, being the lowest bidder (KSh. 910,000), was approved to host the meeting **(Annexure A27)**.

Further, the investigations team recovered copies of Procurement Minutes dated 20th April, 2015 indicating that Max Worth Associates Ltd was awarded

the tender because it was the lowest bidder (KSh. 278, 400) amongst the three firms which submitted their quotations (**Annexure A28**).

The investigations revealed that procurement manager wrote a memo dated 17th April, 2015 to the Executive Director to a request for facilitation for the retreat and team building exercise held at Sagana Getway Resort. The Executive Director approved the memo (**Annexure A29**).

In light of the foregoing, the investigations did not establish any anomaly in procuring the services of Sagana Getway Resort and Max worth Firm.

4.0 Consequential Observations

CAJ received a letter Ref: NGOB/5/30A/8/Vol. XII dated 2nd September, 2016 signed by Dr. Njoki Ndiba, Vice Chairperson, NGOs Board of Directors and copied to EACC, Ministry of Devolution and Planning, DCI and Mr. Fazul. The letter stated that the cases under investigation by CAJ were before court (Petition No. 107 of 2016: Josephine Ngatia Vs. the Executive Director and NGOs Coordination Board, and Petition No. 34 of 2016: Shebby Sakwa and Another Vs. Fazul Mahamed and 3 others) and that there were active investigations carried out by EACC, DCI and NGOs Board of Directors against Mr. Fazul. Dr. Njoki was of the view that the jurisdiction of CAJ to carry out the investigation was limited by Section 30 of the CAJ Act, 2011 (**Annexure A30**).

Investigations revealed that Petition No. 107 of 2016: Josephine Ngatia Vs. The Executive Director and NGOs Coordination Board was determined on 22nd September, 2016 in favour of Ms. Josephine Ngatia, the Human Resource and Development Manager (**See annexure A25**).

Investigations noted that the NGOs Coordination Board currently has no chairperson, thereby giving the Executive Director the prerogative to make unilateral decisions.

CAJ noted that the NGOs Coordination Board has issues related to employment and promotions even before Fazul's tenure.

5.0 Conclusions

Mr. Yusuf Mahamed Fazul was appointed the Executive Director, NGOs Coordination Board in December, 2014.

The Commission faults the then Chairman and members of the NGO Coordination Board for lowering the qualifications requirements in the advertisement for the position.

The investigations established that the appointment of Mr. Yusuf Mahamed Fazul to the position of the Executive Director, NGOs Coordination Board was irregular as he was hired without meeting the prerequisite qualifications. At the time of the interview, he did not have a degree nor the required professional qualifications and relevant experience which were mandatory requirements for the position.

Mr. Fazul was hired on the basis of the false degree certificate purported to have been acquired from Egerton University. Investigations confirmed that Mr. Fazul was discontinued by the University Senate on 26th August, 2010 on academic grounds while in his third year, that is, before he graduated and hence does not hold the Bsc. Biochemistry degree of Egerton University.

The Commission found Mr. Fazul culpable of abuse of power for the irregular promotions of staff without seeking approval from the Board of Directors and acting unilaterally in utter disregard of HR policies. The case in hand is Ms. Joyce Naisiala who rose through managerial ranks to become the Deputy Executive Director of the Board within a short span of time.

The NGOs Coordination Board has systemic issues regarding employment and human resource management.

The Commission also found Mr. Fazul culpable of abuse of power for travelling to Johannesburg, South Africa to attend a meeting on Anti-Money Laundering and Combating the Financing of Terrorism between 23rd and 28th August 2015 without authority from the Ministry of Treasury. Mr. Andrew Ogombe, the Deputy

Executive Director, was the only official from the Board authorised to attend the meeting.

The investigations fault Mr. Fazul for official misconduct by intimidating and victimising members of staff who questioned his decisions which were against the laid down procedures and policies. As a result of his misconduct, members of staff have gone to court to seek redress while others were overwhelmed by frustration and resigned.

The Commissions faults Mr. Fazul for taking away his personal file which contained document related to his employment from the Human Resource Office. The Personal File is the property of the Government of Kenya and Fazul's action amounts to a criminal offence.

The investigations did not find any irregularity in the way NGO Coordination Board procured services of Sagana Getway Resort and Max Worth Firm.

6.0 Determinations

- i. The Cabinet Secretary, Ministry of Devolution and National Planning, and the Chief of Staff and Head of Public Service should remove from office Mr. Yusuf Mahamed Fazul for having been found culpable of abuse of power and official misconduct.
- ii. The Commission recommends that Mr. Fazul should not hold public office for violating Chapter six of the Constitution of Kenya-Leadership and Integrity. He presented forged academic documents and false information during the interview. Even after securing the position, he abused his power by committing the aforementioned maladministration.
- iii. The Director of Criminal Investigations should institute investigations against Mr. Fazul for presenting forged documents and false information to secure the position.
- iv. The Cabinet Secretary, Ministry of Devolution and National Planning should consult His Excellency the President to appoint a Chairperson to the Board of Directors, NGOs Coordination Board for the smooth running of the Organisation.
- v. The Cabinet Secretary, Ministry of Devolution and National Planning should properly reconstitute the NGO Board in line with 'Mwongozo: The code of governance for state corporations'.
- vi. The Cabinet Secretary, Ministry of Devolution and National Planning should direct the NGO Board of Directors to investigate the circumstances surrounding the aggrieved members of staff with a view to reinstating them if they are found innocent.
- vii. The Cabinet Secretary, Ministry of Devolution and National Planning should give a directive to the NGOs Board of Directors to conduct a thorough vetting of appointments and promotions effected from January, 2015 to date.

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- viii. The Principal Secretary, Ministry of Devolution and National Planning in consultation with Public Service Commission should, with immediate effect, look into the systemic issues inherent in the recruitment and management of HR capital in NGOs Coordination Board
 - ix. Mr. Fazul should return to the state KSh. 8,535,254 being the net salary he has earned during his tenure as the Executive Director, NGO Coordination Board.
 - x. Mr. Fazul should not be paid gratuity as he was not entitled.
 - xi. The Director Criminal Investigations should cause investigations against Mr. Fazul for the loss of his personal file.