

THE COMMISSION ON ADMINISTRATIVE JUSTICE
“Office of the Ombudsman”



'Hata Mnyonge Ana Haki'

Press Statement for Immediate Release

THE OMBUDSMAN RECOMMENDS DISCIPLINARY ACTION AGAINST POLICE OFFICERS OVER INACTION, NEGLIGENCE AND ABUSE OF POWER

The Commission on Administrative Justice has recommended disciplinary action against five police officers found culpable of inaction, unresponsiveness and abuse of power in defilement and abduction cases involving a minor in Kayole. An investigation by the Commission revealed that, inter alia, a police officer lost witness statements and a medical report in a case involving sexual assault of a minor. The Commission wants the Nairobi County police Commander to re-open and assign new teams of investigators to promptly and conclusively investigate the cases.

The Commission lodged investigations into the incidents following a complaint by Ms. Fatuma Bakari, the mother of the minor allegedly sexually assaulted, and kidnapped in two separate occasions in August and September of 2011. The cases were reported to Kayole and Soweto Police Stations, respectively but were handled in sloppy and careless manner in spite of the seriousness of the alleged offenses.

Investigations by the Commission into the sexual assault claim has revealed the incident was indeed reported to Kayole Police Station and was assigned to Police Constable Ruth Maithya who failed to open a case file on the matter. The Constable claims to have proceeded on leave soon after she was tasked to investigate the case. The Commission established that the Constable lost statements of the complainant and the daughter, as well as the medical report. The Officer must thus be held liable for inaction and negligence. The loss of the crucial documents and medical report which would have served as evidence in a Court of Law shows slackness and irresponsible behaviour by the officer and has denied the minor justice in a serious offence such as this.

The findings also faulted the Officer Commanding the Station, Chief Inspector Wilson Cheruiyot, for dereliction and negligence of duty, specifically failing to ensure the issue was investigated. Further, the OCPD Kayole, Mr Moses Lubisia, was found culpable for improper social conduct with the mother of the minor, thereby, compromising investigations. Mr Lubisia contravened the Public Officers Ethics Act, CAP 183, the Laws of Kenya. Mr. Lubisia also failed in his supervisory role even though the complainant had called him to seek help.

The Commission has recommended disciplinary action against the investigating officer, Police Constable Ruth Maithya and Chief Inspector Wilson Cheruiyot for unresponsiveness and negligence, and Mr Lubisia for gross misconduct with a vulnerable client.

On the alleged kidnapping case, CAJ has recommended stern action against the then Officer Commanding Soweto Police Station (currently OCS Londiani Police Station), Chief Inspector Julius Mwamrizi , for misuse of power with respect to ordering a junior officer to prefer a lesser charge (creating disturbance) against the accused, Mr Enock Wekesa, while facts and circumstances indicated that it was an abduction. Additionally, CAJ has recommended that the Nairobi County Police Commander takes disciplinary action against the arresting and investigating officer, Corporal Samuel Mwadime, for changing the charge to a lesser offence, misplacing statements and failing to take appropriate actions including arresting the accused.

The Commission has recommended that the office of the Inspector-General indicates clear time-frames within which the two matters would be concluded to secure justice for the minor.

Article 59(2) (j) of the Constitution empowers the Commission to report on complaints investigated and take remedial actions.

23rd February 2014 Nairobi