

The Commission on Administrative Justice

Office of the Ombudsman



“Hata Mnyonge ana Haki”

Devolved Deviance

**An Investigation Report on Misuse of Public Funds by some Members of
the County Assembly of Migori**

July 2015

Foreword

Pursuant to its mandate as stipulated under Section 8 of its constitutive Act, the Commission on Administrative Justice undertook investigations into allegations of misuse of public funds by some members of the County Assembly of Migori. Four members of the Assembly received per diem meant to cater for a trip to India but failed to travel.

The investigations were undertaken based on an anonymous complaint received at CAJ offices on the 11th October 2014.

The Commission wrote to the four MCAs seeking their response to the allegations within 21 days. Before the expiry of the 21 days, CAJ decided to initiate investigations.

Prior to investigations, the Commission notified the Speaker, Migori County Assembly vide a letter Ref. CAJ/CG/MIGORI/108/3, 4, 5&6/14 dated 27th October 2014 of its decision to investigate the matter.

The compilation of this report was informed by analysis of documents recovered from Migori County Assembly Clerk's Office as well as interviews and statements obtained from the officers.

The Commission has made findings on the allegation of misuse of public funds by some members of the Migori County Assembly and has made further recommendations to this regard.

Signed this.....day of July, 2015

Cmmr. 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 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 organization 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 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
- Conclusions
- Recommendations, Determinations and Remedial Action

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Acronyms

CAJ Commission on Administrative Justice

EALA East African Legislative Assembly

MCA Member of County Assembly

Executive Summary

The Commission on Administrative Justice received an anonymous letter of complaint on 11th October 2014 alleging misuse of public funds by four members of the Migori County Assembly. The letter stated that the four Members of Migori County Assembly signed for per diem and other travel allowances but did not travel to India as scheduled. The anonymous complaint prompted the Commission to investigate the matter.

The Commission wrote to the four MCA's seeking their response to the allegations within 21 days. Before the expiry of the 21 days, CAJ decided to initiate investigations.

The Commission's decision to undertake investigations was communicated to the Speaker of Migori County Assembly vide a letter ref. CAJ/CG/MIGORI/108/3, 4, 5 & 6 dated 27th October 2014.

CAJ sought to look into misuse of public funds by the mentioned MCA's.

Summary of findings

Investigations revealed that there were two trips during the period 20th July, 2014 and 25th July, 2015 to India and Tanzania. The trips were said to have been sanctioned by the Migori County Assembly Service Board. The two trips were facilitated by the Migori County Assembly at a total cost of KSh. 13,279,328. This was to cater for per diem and other travel allowances for the Speaker, the Clerk and thirty six MCA's.

The Assembly sanctioned the Speaker, the Clerk of the Assembly and thirty six MCA's to travel to India. Out of thirty six who were to travel to India, four MCA's, Hon. Boaz Okoth Owiti, the Deputy Speaker and MCA North Kadem, Hon. William Abed Maroa, the MCA representing Masaba ward and the Chair of the County Assembly Budget and Appropriations Committee, Hon. Samwel Rioba Kongani, MCA Nyamosense-Komosoko ward and Hon. Bernard Abwao Ochieng, MCA Godjope ward did not travel.

Hon. Boaz Okoth Owiti, the Deputy Speaker received KSh. 130,000, while the other three Hon. William Abed Maroa, Hon Samwel Rioba Kongani and Hon. Bernard Abwao Ochieng received KSh. 152,850 each on the 18th July 2014.

Hon. Boaz Okoth Owiti, the Deputy Speaker and Hon. William Abed Maroa, the MCA representing Masaba ward and the Chair of the County Assembly Budget and Appropriations Committee allegedly travelled to Arusha, Tanzania to attend a seminar on financial management organized by the East African Legislative Assembly.

Following the failure to travel to India despite receiving per diem, the Clerk to Migori County Assembly sought explanations from Hon. Samwel Rioba Kongani and Hon. Bernard Abwao Ochieng vide a letter dated 30th July 2014.

The investigations team recovered response letters from Hon. Abwao and Hon. Kongani explaining reasons for failing to travel to India and authorizing the Clerk, Migori County Assembly to recover the per diem from their salaries. To date only Hon. Bernard Abwao Ochieng has fully refunded the per diem given to him.

Summary of conclusion

A total of KSh. 13, 279, 328 was drawn from the Assembly budget to facilitate the Speaker, the Clerk of the Assembly and thirty six MCA's travel to India in terms of per diem and other travel allowances.

Four MCA's, Hon. Boaz Okoth Owiti, the Deputy Speaker and MCA North Kadem ward, Hon. William Abed Maroa, MCA Masaba ward and Chair of the County Assembly Budget and Appropriations Committee, Hon. Samwel Rioba Kongani, MCA Nyamosense-Komosoko ward and Hon. Bernard Abwao Ochieng, MCA Godjope ward received per diem but did not travel to India.

Hon. Boaz Okoth Owiti, the Deputy Speaker and Hon. William Abed Maroa, Chair to the County Assembly Budget and Appropriations Committee provided stamped passports purporting to have travelled to Arusha, Tanzania. They did not provide a conference report, proof of accommodation in Arusha or any other document to proof attendance of the conference. The Commission is therefore compelled to draw an adverse inference that they did not travel.

Hon. Boaz Okoth Owiti, the Deputy Speaker and Hon. William Abed Maroa, Chair to the County Assembly Budget and Appropriations Committee were served with notices requiring production of specific documents. Even after being served with the notices, the two MCA's failed to produce the documents.

It is inferred that Hon. Boaz Okoth Owiti and Hon. William Abed Maroa are unresponsive and discourteous state officers.

The investigating team contacted the author of the invitation letter to Tanzania Mr. Kennedy Akolo, Programme Manager – EALA Programme WFD through email and phone to confirm the workshop. Mr. Akolo promised to revert but never did.

By failing to travel to Arusha despite receipt of per diem and in misleading the Commission and the County Assembly that they travelled, Hon. Boaz Okoth Owiti, the Deputy Speaker and Hon. William Abed Maroa, Chair to the County Assembly Budget and Appropriations Committee are found culpable of improper conduct and misuse of public funds.

Hon. Bernard Abwao Ochieng and Hon. Samwel Rioba Kongani confessed that, despite receiving per diem and other travel allowances, they did not travel. Hon. Bernard Abwao Ochieng fell sick and was admitted to Oruba Nursing and Maternity Home. Hon. Samwel Rioba Kongani did not have a valid passport by the day of travel. Consequently, they authorized the Clerk to Migori County Assembly to recover the imprest from their salaries.

Hon. Bernard Abwao Ochieng deposited cheque number 000034 for KSh. 152,850 on 1st April 2015, payable to Migori County Assembly at the Kenya Commercial Bank, Migori Branch, vide banking slip transaction number 0104014519214620117.

Hon. Bernard Abwao Ochieng and Hon. Samwel Rioba Kongani are found culpable of improper conduct for failing to notify the Clerk that they would not travel to India with the other members of the delegation.

Hon. Samwel Rioba Kongani is found culpable of improper conduct for accepting per diem whilst knowing very well that he did not have a valid passport to allow him travel.

Pursuant to section 36 of CAJ Act, CAJ wrote to Hon. Boaz Okoth Owiti, the Deputy Speaker, Hon. William Abed Maroa, Chair to the County Budget and Appropriations Committee, Hon. Bernard Ochieng Abwao and Hon. Samwel Rioba Kongani vide letters Ref: CAJ/CG/MIGORI/108/6/14,

CAJ/CG/MIGORI/108/7/14, CAJ/CG/MIGORI/108/8/14 and CAJ/CG/MIGORI/108/9/14 dated 9th June 2015 to seek their responses on the findings, conclusions and recommendations drawn out of the draft report.

The Deputy Speaker, Hon Boaz Owiti, Hon. William Abed Maroa, Chair to the County Budget and Appropriations Committee responded to CAJ vide letters dated 2nd July, 2015 and 20th June, 2015 respectively the contents of which CAJ has noted.

The Commission is in receipt of a letter from Hon. Ochieng Abwao, an MCA, Migori County Assembly dated 6th July, 2015 forwarding KCB bank deposit slip for KSh. 152, 850. The deposit slip dated 1st April, 2015 indicates that the deposit was made to the Migori County Assembly Operational Account. In his letter, Hon. Ochieng Abwao confirmed that the payment was in respect of the imprest he received to facilitate his trip to India.

The Commission is also in receipt of undated letter from Hon. Samwel Rioba Kongani admitting having received an imprest of KSh. 152, 850 for the trip to India but did not travel. Although in his letter, he indicated having requested clerk to the County Assembly to recover the imprest from his salary, there is no evidence of repayment.

It should be noted that the two Members of the Migori County Assembly were prompted by CAJ's investigations to repay the imprest which they had failed to surrender within the specified time period of 48 hours upon return from an official trip. The Commission therefore, concludes that the Members conducted themselves in a manner not befitting state officers and in contravention of Chapter Six of the Constitution of Kenya, 2010.

Recommendations, Determinations and Remedial Action

1. The Clerk to Migori County Assembly Mr. Patrick Wakiine should recover KSh. 130,000 from Hon. Boaz Okoth Owiti, the Deputy Speaker and KSh. 152,850 from Hon. William Abed Maroa, Chair of the County Assembly Budget and Appropriations Committee and report back to CAJ within ninety (90) days, being the money they were given as per diem.
2. The Clerk to Migori County Assembly Mr. Patrick Wakiine should exercise stringent financial controls in line with the Public Finance Management Act, 2012, Treasury Circulars no. 16 of 2nd November 1970 and no. 2 of 21st March

1983 by putting in place measures for approval of expenditure, including trips by members and surrendering of imprest within 48 hours.

3. Members and staff of County Assemblies who fail to surrender imprest within 48 hours should be surcharged in line with the Public Finance Management Act, 2012, Treasury Circulars no. 16 of 2nd November 1970 and no. 2 of 21st March 1983.
4. Clerks to County Assemblies should ensure that members and staff of the Assemblies are not paid travel allowances until the trips are confirmed and documented.
5. Clerks of County Assemblies should exercise fiscal discipline by ensuring that public money is used in a prudent and responsible manner in line with Article 201 (d) and (e) of the Constitution of Kenya, 2010 and Public Finance Management Act section 102 1(a) and (b).
6. Clerks to County Assemblies should ensure that reports of study or training by members and staff of the Assembly are prepared within 14 days after the visitor training and tabled in the County Assemblies for discussion and record.
7. CAJ will monitor the implementation of these recommendations by the Clerks of County Assemblies as envisaged in the performance contracting arrangement.
8. CAJ has entered the names of Hon. Boaz Okoth Owiti, the Deputy Speaker and MCA North Kadem ward, Hon. William Abed Maroa, MCA Masaba ward and Chair of the County Assembly Budget and Appropriations Committee, Hon. Samwel Rioba Kongani, MCA Nyamosense-Komosoko ward and Hon. Bernard Abwao Ochieng, who have been found culpable in this investigation, in the CAJ Register of Public/State Officers guilty of misbehaviour in office and unresponsiveness.
9. CAJ will share this report with the IEBC for purposes of vetting the state officers in future elections/appointments.

Introduction to investigations

The Commission received an anonymous complaint regarding misuse of public funds by some members of Migori County Assembly. In the anonymous complaint letter, it is indicated that a delegation of Members of Migori County Assembly were to travel to India between 21st and 27th July, 2014. They were booked in Ibis Hotel, Bombay Walon Ka Bagh, Ajmer Road, Civil Lines, Jaipur. It is alleged that four Members of the County Assembly received money for accommodation and facilitation for their stay in India but did not travel.

(Annexure A1)

The Commission wrote letters ref CAJ/CG/MIGORI/108/3, 4, 5 & 6/14 dated 3rd October, 2014 to four members of Migori, County Assembly, who were the target of the anonymous complaint, seeking explanation as to why they didn't travel to India despite receiving per diem. **(Annexures A2, A3, A4 & A5)**

Summary of Issues under Investigation

- Abuse of Office
- Improper conduct
- Misuse of public funds

Investigative Process

Notification

The Commission notified the Speaker Migori County Assembly, vide a letter Ref: CAJ/CG/MIGORI/108/3, 4, 5 & 6/14 dated 27th October, 2014 of its decision to undertake investigations regarding alleged abuse of office, improper conduct and misuse of public funds by some members of the County Assembly at Migori County. **(Annexure A6)**

Offices Visited.

The following offices were visited for investigations:

- Speaker, Migori County Assembly
- Clerk, Migori County Assembly
- Finance Manager, Migori County Assembly

List of Interviewees

- The Speaker, Migori County Assembly
- Deputy Speaker, Migori County Assembly

- Clerk, Migori County Assembly
- Finance Executive, Migori County Assembly
- Member of County Assembly representing Masaba Ward
- Member of County Assembly representing Godjope Ward
- Member of County Assembly representing Nyamosense-Komosoko Ward
- Member of County Assembly representing North Kadem Ward

Documents recovered

- a) Documents Recovered Copy of circular reference MSPS 18/2A/(89) dated 12th November 2009
- b) Copy of an Imprest Warrant (F.O. 24) serial number 2002860 dated 18th July 2014 for KSh.130,000 in respect of Hon. Boaz Okoth
- c) Copy of an Imprest Warrant (F.O. 24) serial number 2002936 dated 18th July 2014 for KSh. 152,850 in respect of Hon. Samwel Rioba Kongani
- d) Copy of an Imprest Warrant (F.O. 24) serial number 2002939 dated 18th July 2014 for KSh. 152,850 in respect of Hon. Benard O. Abwao
- e) Copy of an Imprest Warrant (F.O. 24) serial number 2002940 dated 18th July 2014 for KSh. 152,850 in respect of Hon. Abedi Maroa
- f) Copy of letter from Clerk Migori County Assembly to Hon. Bernard Abwao dated 30th July 201
- g) Copy of letter from Clerk Migori County Assembly to Hon. Samwel Rioba Kongani dated 30th July 201
- h) Copy of letter from Hon. Bernard Abwao dated 2nd August 2014
- i) Copy of letter from Hon. Samwel Rioba Kongani dated 5th August 2014
- j) Copy of letter from the Clerk, Migori County Assembly to Finance Officer dated 17th October, 2014.
- k) Copies of invitation letters from India and Tanzania.
- l) Copy of Passport no. A2096410 in the names of Bernard Abwao Omondi Ochieng.
- m) Copy of Passport no. A2185937 in the names of Samwel Rioba Kongani.

Statements recorded

- a) Statement from Hon. Samwel Rioba Kongani MCA Nyamosense-Komosoko
- b) Statement from Hon. Bernard Abwao Omondi Ochieng MCA Godjope
- c) Statement from Hon. William Abedi Mwita Maroa MCA Masaba

- d) Statement from Mr. Maurice Chacha Finance Officer
- e) Statement from Hon. Boaz Owiti Okoth Deputy Speaker and MCA North Kadem.
- f) Statement from Mr. Patrick Wakiine Clerk Migori County Assembly.

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 TWELVE—PUBLIC FINANCE

201. *The following principles shall guide all aspects of public finance in the Republic—*

(a) there shall be openness and accountability, including public participation in financial matters;

(d) public money shall be used in a prudent and responsible way; and

(e) financial management shall be responsible, and fiscal reporting shall be clear.

207. (1) There shall be established a Revenue Fund for each county government, into which shall be paid all money raised or received by or on behalf of the county government, except money reasonably excluded by an Act of Parliament.

(2) Money may be withdrawn from the Revenue Fund of a county government only—

(a) as a charge against the Revenue Fund that is provided for by an Act of Parliament or by legislation of the county; or

(b) as authorised by an appropriation by legislation of the county.

(3) Money shall not be withdrawn from a Revenue Fund unless the Controller of Budget has approved the withdrawal.

Part 4 – Revenue Allocation

215. (1) There is established the Commission on Revenue Allocation.

216. (1) The principal function of the Commission on Revenue Allocation is to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government—

(2) The Commission shall also make recommendations on other matters concerning the financing of, and financial management by, county governments, as required by this Constitution and national legislation.

224. On the basis of the Division of Revenue Bill passed by Parliament under Article 218, each county government shall prepare and adopt its own annual budget and appropriation Bill in the form, and according to the procedure, prescribed in an Act of Parliament.

226. (1) An Act of Parliament shall provide for—

(a) the keeping of financial records and the auditing of accounts of all governments and other public entities, and prescribe other measures for securing efficient and transparent fiscal management; and

(b) the designation of an accounting officer in every public entity at the national and county level of government.

(2) The accounting officer of a national public entity is accountable to the National Assembly for its financial management, and the accounting officer of a county public entity is accountable to the county assembly for its financial management.

(5) If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any

loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not.

Part 6— financial officers and institutions

228. (1) There shall be a **Controller of Budget** who shall be nominated by the President and, with the approval of the National Assembly, appointed by the President.

(4) The Controller of Budget shall oversee the implementation of the budgets of the national and county governments by authorising withdrawals from public funds under Articles 204, 206 and 207.

The Public Finance Management Act, 2012

102. County Governments responsibilities in public finance

(1) Each county government shall ensure adherence to—

(a) the principles of public finance set out in Chapter Twelve of the Constitution

(b) the fiscal responsibility principles provided in section 107 under this Act;

(c) national values set out in the Constitution; and

(d) any other requirements of this Act.

(2) The County Executive Committee shall observe principles of collective responsibility in exercising their functions under this Act.

(3) In making decisions a county assembly shall take cognisance of Article 216 (2) of the Constitution.

103. Establishment of County Treasuries

(1) There is established for each county government, an entity to be known as County Treasury

(2) The County Treasury shall comprise —

(a) the County Executive Committee member for finance;

(b) the Chief Officer; and

(c) the department or departments of the County Treasury responsible for financial and fiscal matters.

(3) The County Executive Committee member for finance shall be the head of the County Treasury.

104. Responsibilities and Powers of a County Treasury

(1) Subject to the Constitution, a County Treasury shall monitor, evaluate and oversee the management of public finances and economic affairs of the county government including—

(a) developing and implementing financial and economic policies in the county;

(b) preparing the annual budget for the county and co-ordinating the preparation of estimates of revenue and expenditure of the county government;

(c) co-ordinating the implementation of the budget of the county government;

(d) mobilising resources for funding the budgetary requirements of the county government and putting in place mechanisms to raise revenue and resources;

105. Powers of a County Treasury

(1) A County Treasury has such powers as are necessary to enable it to carry out its functions and responsibilities under this Act including-

(a) with prior notice, access any system of public financial management used by any of the county government entities and the internal controls used to monitor the system;

(b) taking appropriate measures, including the stoppage of funds, to deal with any failure of a county government entity to comply with this Act;

(c) with prior notice, accessing the premises of a county government entity and inspecting all records and other documents relating to the financial affairs of that county government entity, kept by that entity;

(d) requiring county government entities to comply with all applicable norms or standards regarding accounting practices, budget classification systems and other public financial management systems as prescribed by the Accounting Standards Board;

(e) requiring any public officer employed by a county government or county government entity to provide explanations, information and

assistance in respect to matters relating to the county government's public finances:

Provided that a person providing the information shall not be liable if at the time of providing the information, that person, in writing, objected to providing such information on grounds that the information may incriminate him or her;

(f) issuing guidelines to accounting officers for the county government entities, or public officers employed by those entities, with respect to the financial affairs of that Government or those entities, and monitoring compliance with those guidelines; and Public Finance Management

(g) ensuring that county government entities operate a financial management system that complies with national standards as prescribed by the Accounting Standards Board.

(2) A County Treasury may, in writing, authorise any of its officers to carry out a specified responsibility, or exercise a specified power, on its behalf.

(3) When carrying out a responsibility, or exercising a power, on behalf of a County Treasury, an authorised officer shall, if requested to do so by the person in relation to whom the responsibility or power is being carried out or exercised, produce the officer's authorisation for inspection and failure to comply with such a request invalidates any subsequent action purporting to be taken under the authority of the authorisation.

(4) An authorisation given under subsection (3) remains in force for such period as is specified in it or, if no such period is specified, until it is revoked by the County Treasury concerned.

(5) A County Treasury may, in writing, revoke or vary an authorisation given under subsection (3).

120. Management of cash at the county government level.

(1) A County Treasury shall manage its cash within a framework established by the county assembly and by regulations.

(2) Every county government entity shall submit an annual cash flow plan and forecasts to the County Treasury in a form and manner directed by County Treasury, and shall send a copy to the Controller of Budget.

(3) The County Treasury may invest subject to any regulations that may be prescribed, any money kept in a bank account of the county government.

(4) Except as otherwise provided by other legislation, the following are payable into the County Exchequer Account—

(a) all interest received from investments made under subsection (3);

(b) all money received from the redemption or maturity of the investments, and from the sale or conversion of securities relating to the investments.

(5) The County Treasury may incur costs, charges and expenses in connection with negotiating, placing, managing, Public Finance Management servicing, or converting any investment entered into under subsection (3).

(6) Any costs, charges or expenses incurred under subsection (5) are payable from the County Exchequer Account.

128. County Executive Committee member for finance to manage budget process at county government level.

(1) The County Executive Committee member for finance shall manage the budget process for the county.

(2) Not later than the 30th August in each year, the County Executive Committee member for finance shall issue a circular setting out guidelines to be followed by all of the county government's entities in the budget process.

(3) The County Executive Committee member for finance shall include in the circular—

(a) a schedule for preparation of the budget, specifying the key dates by which the various processes are to be completed;

(b) the methodology for the review and projection of revenues and expenditures;

(c) key policy areas and issues to be taken into consideration when preparing the budget;

(d) the procedures to be followed by members of the public who wish to participate in the budget process;

(e) the format in which information and documents relating to the budget are to be submitted;

(f) the information to be in conformity with standard budget classification systems as prescribed by regulations; and

(g) any other information relevant to the budget process.

(4) A county government entity shall comply with the guidelines and, in particular, shall adhere to the key dates specified in the schedule referred to in subsection (3)(a).

152 of the Public Finance Management Act, 2012 states,

(1) An accounting officer for a county government entity may authorize payment of cash advances to public officers employed in the entity to be used to enable those officers to make payments for the entity or in the course of their duties.

(2) The power to authorize cash advances is subject to any limitations imposed by the regulations.

(3) A public officer to whom a cash advance is made shall account for the use of the advance within a reasonable time.

(4) A public officer shall return the balance of the cash advance together with signed supporting documents for the cash expended in accordance with any requirement set out in any of the following -

(a) the documents used to apply for or authorize the advance;

(b) any regulation prescribed for the purpose of this section; or

(c) a written notice given to the officer by the accounting officer.

(5) If a public officer to whom a cash advance has been made under subsection (1) fails to account for the use of the advance, or fails to return it as required by subsection (4)-

(a) the amount of the advance not accounted for or not returned becomes a debt owed by the officer;

(b) the debt becomes subject to the payment of interest at a rate prescribed by the regulations made for the purpose of this subsection; and

(c) the debt, including the interest on it, is recoverable by that entity by making a deduction from any salary or other amount that is payable to the officer.

203. Liability of public officer for certain losses sustained by county government.

(1) A public officer is personally liable for any loss sustained by a county government that is attributable to—

(a) the fraudulent or corrupt conduct, or negligence, of the officer; or

(b) the officer's having done any act prohibited by section 196, 197 and 198.

(2) The County Treasury may, by civil proceedings brought in a court of competent jurisdiction, recover damages from a public officer for any loss for which the officer is liable under subsection (1).

CHAPTER THIRTEEN—THE PUBLIC SERVICE

Part 1—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;*

(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.*

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 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....”

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, misbehavior, inefficiency or ineptitude within the public service.*

Analysis and Findings

Analysis of documents recovered at Migori County Assembly

The CAJ investigations team visited Migori County Assembly and recovered documents that give insight to the matter under investigations. The following is the analysis of the documents recovered.

1) Copy of circular reference MSPS 18/2A/(89) dated 12th November 2009

This is a circular from the Ministry of State for Public Service in the then Office of the Prime Minister giving guidelines on accommodation and subsistence allowance for public officers travelling on duty within and outside Kenya.

2) Copy of an Imprest Warrant (F.O. 24) serial number 2002860 dated 18th July 2014

This was an imprest of KSh. 130,000/= (one hundred and thirty thousand) given to Hon. Boaz Okoth, MCA Migori County Assembly for travel.

3) Copy of an Imprest Warrant (F.O. 24) serial number 2002936 dated 18th July 2014

This was an imprest of KSh. 152,850/= (one hundred and fifty two thousand eight hundred and fifty) given to Hon. Samwel Rioba Kongani, MCA Migori County Assembly for travel to India.

4) Copy of an Imprest Warrant (F.O. 24) serial number 2002939 dated 18th July 2014

This was an imprest of KSh. 152,850/= (one hundred and fifty two thousand eight hundred and fifty) given to Hon. Bernard O. Abwao, MCA Migori County Assembly for travel.

5) Copy of an Imprest Warrant (F.O. 24) serial number 2002940 dated 18th July 2014

This was an imprest of KSh. 152,850/= (one hundred and fifty two thousand eight hundred and fifty) given to Hon. Abedi Maroa, MCA Migori County Assembly for travel.

6) Copy of letter from Clerk Migori County Assembly dated 30th July 201

This is a letter from the Clerk Migori County Assembly addressed to Hon. Bernard Ochieng Abwao, MCA Godjope Ward in Migori County, to show

cause why action should not be taken against him for failing to travel to India despite having been paid per diem and other travel allowances. The letter is copied to the Hon. Speaker of Migori County Assembly and the Finance Officer.

7) Copy of letter from Clerk Migori County Assembly dated 30th July 201

This is a letter from the Clerk Migori County Assembly addressed to Hon. Samwel Rioba Kongani, MCA Nyamosense-Komosoko Ward in Migori County, to show cause why action should not be taken against him for failing to travel to India despite having been paid per diem and other travel allowances. The letter is copied to the Hon. Speaker of Migori County Assembly and the Finance Officer.

8) Copy of letter from Hon. Bernard Abwao dated 2nd August 2014

This is a letter addressed to the Clerk, Migori County Assembly by the Hon. Bernard Abwao, MCA Godjope explaining his failure to travel to India and authorizing the Clerk to recover per diem and other travel allowances paid to him from his salary. Attached to the letter is a copy of Discharge Summary from Oruba Nursing and Maternity Home limited dated 24th July, 2014.

9) Copy of letter from Hon. Samwel Rioba Kongani dated 5th August 2014

This is a letter addressed to the Clerk, Migori County Assembly by the Hon. Samwel Rioba Kongani, MCA Nyamosense-Komosoko ward explaining his failure to travel to India and authorizing the Clerk to recover per diem and other travel allowances paid to him from his salary.

10) Copy of letter from the Clerk, Migori County Assembly to Finance Officer dated 17th October, 2014.

This is a letter from the Clerk giving the Finance Officer authority to deduct salaries of Hon. Bernard Ochieng Abwao and Hon. Samwel Rioba Kongani, to recover monies paid to them as per diem and travel allowances to India after they failed to travel.

11) Copy of invitation letter to India dated 24th April 2014

This is a letter authored by Mr. Sam Odera, Managing Partner FACTOR CONNECT LIMITED and addressed to the speaker Migori County Assembly. It is an invitation for a conference in Mumbai India on Agricultural, food

sustainability, cottage industry and health for County Assembly and Governments.

12) Copy of invitation letter to Tanzania dated 10th July 2014

This is an email letter authored by Kennedy Akoko, Programme Manager, EALA Programme WFD and addressed to the Clerk Migori County Assembly. It is an invitation for a workshop in Arusha Tanzania on capacity building for young assemblies on legislation of financial bills.

Findings

The investigations revealed that there were allegedly two trips during the period 20th July, 2014 and 25th July, 2014 to India and Tanzania. The trips were said to have been sanctioned by the Migori County Assembly Service Board. **(Annexures A 7 & A 8)**

The two trips were facilitated by the Migori County Assembly at a total cost of KSh. 13, 279, 328 (each MCA received KSh. 152, 850). This was to cater for per diem and other travel allowances for the Speaker, the Clerk and thirty six MCAs. **(Annexure A9)**

Thirty eight members of the County assembly were meant to travel to India. However, only thirty four (the Speaker, the Clerk and 32 MCAs) travelled. Four MCAs who did not travel to India are Hon. Boaz Okoth Owiti, the Deputy Speaker and MCA representing North Kadem ward, Hon. William Mwita Abed Maroa, the MCA representing Masaba ward and Chair to the County Budget and Appropriations Committee, Hon. Samwel Rioba Kongani, MCA Nyamosense-Komosoko ward and Hon. Bernard Abwao Ochieng, MCA Godjope ward. **(See annexure A1)**

Hon. Boaz Okoth Owiti, the Deputy Speaker and Hon. William Abed Maroa, Chair to the County Budget and Appropriations Committee allegedly travelled to Arusha, Tanzania to attend a seminar on financial management organized by the East African Legislative Assembly, on 22nd July 2014 by road using a Subaru Forester registration number KBV 012M belonging to Hon. William Abed Maroa, the Chair of County Budget and Appropriations Committee. Hon. Boaz Okoth Owiti received KSh.130, 000 and Hon. William Abed Maroa received KSh. 152,850 as per diem. However to date there is no report submitted to the County Assembly on the Tanzanian trip. **(Annexures A10, A11, A12 and A13)**

Hon. Bernard Abwao Ochieng, MCA Godjope ward did not travel because he had a diabetic attack while at the bus station waiting to board a bus to Nairobi. He was subsequently admitted to Oruba Nursing and Maternity Home on 19th July 2014 and discharged on 24th July 2014. Hon. Samwel Rioba Kongani, MCA Nyamosense-Komosoko ward did not travel due to delay in acquisition of a passport. **(Annexure A14)**

CAJ investigators, in their visit to the Clerk's Office confirmed that the Clerk to Migori County Assembly wrote letters to Hon. Samwel Rioba Kongani and Hon. Bernard Ochieng Abwao seeking their explanation as to why action couldn't be taken against them for failure to travel even after receiving per diem and other travel allowances. Each of the two MCA's had received KSh. 152,850. **(Annexures A15, A16, A17 and A18)**

The investigations team also found response letters from Hon. Bernard Ochieng Abwao and Hon. Samwel Rioba Kongani explaining reasons for failing to travel to India and authorizing the Clerk, Migori County Assembly to recover the money from their salaries. **(Annexures A19 & A20)**

Consequently, the Clerk of Migori County Assembly wrote to the Finance Officer and gave a copy of the letter to the Speaker of the Assembly authorizing deductions to be made from the salaries of Hon. Samwel Rioba Kongani and Hon. Bernard Ochieng Abwao towards the recovery of per diem and other travel expenses. **(Annexure A 21)**

Hon. Bernard Ochieng Abwao deposited cheque number 000034 KShs. 152,850/= on 1st April 2015, payable to Migori County Assembly at the Kenya Commercial Bank Migori Branch, vide banking slip transaction number 0104014519214620117. **(Annexure A 22)**

However, no deductions have been effected on Hon. Samwel Rioba Kongani's salary despite his letter to the Clerk giving authority for the same. No explanation has been forth-coming from the Clerk of Migori County Assembly and the Finance Officer as to why this has not been effected. **(See Annexure A19)**

Conclusion

A total of KSh. 13, 279, 328 was drawn from the Assembly budget to facilitate the Speaker, the Clerk of the Assembly and thirty six MCAs travel to India in terms of per diem and other travel allowances. Incidentally, Hon. Boaz Okoth Owiti, Hon. William Abed Maroa, Hon. Samwel Rioba Kongani and Hon. Bernard Ochieng Abwao did not travel despite receiving their travel allowances.

It is alleged that two MCA's travelled to Arusha, Tanzania. Hon. Boaz Okoth Owiti, the Deputy Speaker and Hon. William Abed Maroa, Chair to the County Budget and Appropriations Committee travelled to Arusha, Tanzania. The two MCA's had to be served with notices to produce documents to prove their travel to Arusha, Tanzania. **(Annexure A23, A24, A25& A26)**

The two MCA's failed to produce the documents listed on the notices despite being served with notices. It is inferred that Hon. Boaz Okoth Owiti and Hon. William Abed Maroa are unresponsive, unco-operative and disrespectful state officers. The Commission is also compelled to draw an adverse inference that they did not travel. **(See Annexures A23, A24, A25 & A26)**

Hon. Boaz Okoth Owiti, the Deputy Speaker and Hon. William Abed Maroa, Chair to the County Budget and Appropriations Committee are therefore found culpable of abuse of office, improper conduct and misuse of public funds.

The investigating team contacted the author of the invitation letter to Tanzania Mr. Kennedy Akolo, Programme Manager – EALA Programme WFD through email and phone to confirm the workshop. Mr. Akolo promised to revert but never did. **(Annexure A 27)**

Hon. Bernard Ochieng Abwao and Hon. Samwel Rioba Kongani confessed that, despite receiving per diem and other travel allowances, they did not travel due to illness and delay in getting passport. Consequently, they authorized the Clerk to Migori County Assembly to recover the imprest from their salaries.

Hon. Bernard Ochieng Abwao and Hon. Samwel Rioba Kongani are found culpable of abuse of office, improper conduct and misuse of public funds. It is obvious they only undertook to refund the imprests after commencement of investigations by CAJ.

Looking at a copy of the report on the trip to India by members of the Migori County Assembly, it lacks substance to redeem the integrity of those who travelled. No mention is made of any tangible learning experiences gained in India on which the County can benchmark. **(Annexure A 28)**

Pursuant to section 36 of CAJ Act, CAJ wrote to Hon. Boaz Okoth Owiti, the Deputy Speaker, Hon. William Abed Maroa, Chair to the County Budget and Appropriations Committee, Hon. Bernard Ochieng Abwao and Hon. Samwel Rioba Kongani vide letters Ref: CAJ/CG/MIGORI/108/6/14, CAJ/CG/MIGORI/108/7/14, CAJ/CG/MIGORI/108/8/14 and CAJ/CG/MIGORI/108/9/14 dated 9th June 2015 to seek their responses on the findings, conclusions and recommendations drawn out of the draft report. **(Annexure A29, A30, A31 and A32)**

The Commission is in receipt of a letter from Hon. Ochieng Abwao, MCA, Migori County Assembly dated 6th July, 2015 forwarding KCB bank deposit slip for KSh. 152, 850. The deposit slip dated 1st April, 2015 indicates that the deposit was made to the Migori County Assembly Operational Account. In his letter Hon. Ochieng Abwao confirmed that the payment was in respect of the imprest he received to facilitate his trip to India **(Annexure A33)**

The Commission is also in receipt of undated letter from Hon. Samwel Rioba Kongani admitting having received an imprest of KSh. 152, 850 for the trip to India but did not travel. Although in his letter, he indicated having requested clerk to the County Assembly to recover the imprest from his salary, there is no evidence of repayment **(Annexure A34)**.

It should be noted that the two Members of the Migori County Assembly were prompted by CAJ's investigations to repay the imprest which they had failed to surrender within the specified time period of 48 hours upon return from an official trip. The Commission therefore, concludes that the Members conducted themselves in a manner not befitting state officers and in contravention of Chapter Six of the Constitution of Kenya, 2010.

Recommendations, Determinations and Remedial Action

1. The Clerk to Migori County Assembly Mr. Patrick Wakiine should recover KSh. 130,000 from Hon. Boaz Okoth Owiti, the Deputy Speaker and KSh. 152,850 from Hon. William Abed Maroa, Chair of the County Assembly Budget and Appropriations Committee, being the money they were given as per diem and report back to CAJ within ninety (90) days.
2. The Clerk to Migori County Assembly Mr. Patrick Wakiine should exercise stringent financial controls by putting in place measures for approval of expenditure, including trips by members and surrendering of imprest within 48 hours in line with the Public Finance Management Act, 2012, Treasury Circulars no. 16 of 2nd November 1970 and no. 2 of 21st March 1983.
3. Members and staff of County Assemblies who fail to surrender imprest within 48 hours should be surcharged in line with the Public Finance Management Act, 2012, Treasury Circulars no. 16 of 2nd November 1970 and no. 2 of 21st March 1983.
4. Clerks to County Assemblies should ensure that members and staff of the Assemblies are not paid travel allowances until the trips are confirmed and documented.
5. Clerks of County Assemblies should exercise fiscal discipline by ensuring that public money is used in a prudent and responsible manner in line with Article 201 (d) and (e) of the Constitution of Kenya, 2010 and Public Finance Management Act section 102 1(a) and (b).
6. Clerks to County Assemblies should ensure that reports of study or training by members and staff of the Assembly are prepared and tabled in the County Assemblies for discussion and record within 14 days after the visit or training.
7. CAJ will monitor the implementation of these recommendations by the Clerks of County Assemblies as envisaged in the performance contracting arrangement.

8. CAJ has entered the names of Hon. Boaz Okoth Owiti, the Deputy Speaker and MCA North Kadem ward, Hon. William Abed Maroa, MCA Masaba ward and Chair of the County Assembly Budget and Appropriations Committee, Hon. Samwel Rioba Kongani, MCA Nyamosense-Komosoko ward and Hon. Bernard Abwao Ochieng, who have been found culpable in this investigation, in the CAJ Register of Public/State Officers guilty of misbehaviour in office and unresponsiveness.
9. CAJ will share this report with the IEBC for purposes of vetting the state officers in future elections/appointments.