

THE COMMISSION ON ADMINISTRATIVE JUSTICE
“Office of the Ombudsman”



Hata Mnyonge ana Haki

**AN INVESTIGATION REPORT ON ALLEGED ABUSE OF POWER BY THE MANAGING
DIRECTOR OF NAIROBI CITY WATER AND SEWERAGE COMPANY**

JANUARY, 2022

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Foreword

The Commission on Administrative Justice (CAJ) pursuant to its mandate as stipulated under Section 8 of CAJ Act, undertook an investigation into allegations of abuse of power by the Managing Director (MD) Nairobi City Water and Sewerage Company for facilitating and aiding industrial facilities/factories to illegally discharge dangerous chemicals into public sewer and verbally intimidating the complainant in execution of enforcement roles and subsequently unfairly transferring him.

CAJ wrote to the MD Nairobi City Water and Sewerage Company on the 18th January, 2021 to notify him of its decision to conduct the investigation. The investigations team visited Nairobi City Water and Sewerage Company offices, conducted interviews and recovered documents relevant to the investigations. This report was informed by the analysis of the information gathered and examination of documents recovered during the investigation.

The Commission has made recommendations to the Nairobi City Water and Sewerage Company for implementation. It is expected that full adoption and implementation of the recommendations will improve NCWSC's service delivery.

Signed this...^{28th} day of January, 2022



HON. FLORENCE KAJUJU, MBS

CHAIRPERSON, COMMISSION ON ADMINISTRATIVE JUSTICE

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Acronyms

| | |
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| CAJ | Commission on Administrative Justice |
| DHRA | Director Human Resources and Administration Services |
| ECD | Environment and Compliance Department |
| MD | Managing Director |
| NCWSC | Nairobi City Water and Sewerage Company |
| NEMA | National Environment Management Authority |

Executive Summary

Two complaints were received on 17th and 18th February, 2020 from Simon Itubo, an employee of Nairobi City Water and Sewerage Company (NCWSC) alleging abuse of power by the Managing Director NCWSC for facilitating and aiding industrial facilities/factories to illegally discharge dangerous chemicals into public sewer and verbally intimidating him in his execution of enforcement roles and subsequently unfairly transferring him.

Pursuant to section 8 of the CAJ Act, the Commission carried out investigations to ascertain the veracity of the aforementioned allegations. The Commission notified the MD of NCSWC of its decision to undertake the investigation. A team of investigators visited NCSWC head offices, conducted interviews with staff of NCSWC and recovered documents relevant to the issues under investigation.

It was established that the transfer of the complainant to Ngethu treatment plant was unfair and done in bad faith but this was remedied by his second transfer to Kabete Treatment plant following an appeal the complainant lodged. The allegations that there were no investigative functions at the Kabete plant was unfounded

It was also noted that, the allegation that the MD had verbally intimidated the officers taking enforcement action against industries considered to be non-compliant was founded. Investigations revealed several incidents that demonstrated that the MD had verbally intimidated the security team whenever they undertook necessary action against industries considered to be non-compliant by the Security Department.

Pursuant to Section 36 of the CAJ Act, the Commission wrote to the MD on 8th November 2021 to accord him an opportunity to respond to the findings and recommendations against him. The MD made his representations through a letter dated 19th November 2021, denying the adverse findings against him.

In light of these findings, the Commission recommends, *inter-alia*, that NCWSC to consider assigning the Complainant to a duty station with roles/responsibilities that are in line with his contract, in order to efficiently utilize his expertise as an

investigations officer; that the Company should develop a transfer policy to come up with clear procedures for the transfers of employees in order to avoid abuse and to report on this to CAJ within one (1) year of this Report; NCWSC Board of Directors to further investigate the allegations of verbal intimidations by the MD on the complainant or any other officer and the existing communication breakdown between the MD's office and the security department with a view of resolving it for a smooth running of business and promptly report back to the Commission the steps taken to rectify the situation within three months.

1.0 Introduction

The Commission received a complaint from Simon Itubo, an employee of NCWSC alleging abuse of power by the Managing Director for:

- i. Facilitating and aiding industrial facilities/factories to illegally discharge dangerous chemicals into public sewer.
- ii. Verbally intimidating him in execution of enforcement roles and subsequently unfairly transferring him.

The complaint prompted the Commission to carry out the investigation pursuant to its mandate under Section 8 of its constitutive Act.

1.1 Overview of the mandate of NCWSC

NCWSC is a wholly owned subsidiary of Nairobi City County incorporated in December 2003 under the Companies Act cap 486. It has its area of jurisdiction divided into six administrative regions, namely: Northern, Eastern, North Eastern, Central, Southern and Western. The mandate of the Company is to provide clean water and sewerage services to the residents of Nairobi County, in a financially sustainable manner and within the Government regulations. It owns two out-stations: One is Ngethu Treatment Plant located in Kiambu County and the other is Kabete Treatment Plant in Nairobi.

1.2 Issues under Investigations

The investigations looked into the following allegations:

- i. Abuse of power by MD for facilitating and aiding industrial facilities/factories to illegally discharge dangerous chemicals into public sewer.
- ii. Allegations of unfair Transfer.
- iii. Any other maladministration issues

1.3 Investigation Process

1.3.1 Notification

The NCWSC was informed of the Commission's decision to undertake investigations on the matter vide a letter Ref: **CAJ/IE/6/94/2020** dated 18th January 2021.

1.3.2 Offices Visited

NCWSC Headquarters.

1.3.3 List of interviewees

- i.** The Complainant;
- ii.** The Managing Director;
- iii.** Director Human Resources and Administration Services;
- iv.** Water Production Manager, Ngethu Water works;
- v.** The then Kabete water treatment works coordinator, currently serving as an Engineering Coordinator at HQ;
- vi.** Security Manager NCWSC;
- vii.** Environment Coordinator NCWSC.

1.3.4 Documents Relied on

- i.** Complainant's Transfer Letter to Ngethu Treatment Works dated 12th June, 2018 ;
- ii.** Complainant's Protest letter/ appeal dated 18th June, 2018 ;
- iii.** Complainant's Transfer letter to Kabete Water Treatment Works dated 6th July, 2018 ;
- iv.** Complainant's letter of appointment dated 6th April, 2009 ;
- v.** Complainant's last Contract Renewal dated 20th March, 2020 ;
- vi.** NCWSC HR Policy/Manual ;
- vii.** NCWSC Security Structure ;
- viii.** A memo dated 13th February, 2018 on shortage of Security staff and recommendations ;
- ix.** Copies of summons ;
- x.** Response letters from non-compliant industries;
- xi.** Investigation's report dated 20th May 2019 ;

- xii. Conditional Effluent discharge licenses for some industries;
- xiii. Witness statements.

1.4 Legal Framework

The following legal documents provided a framework which guided the investigation.

1.4.1 Constitution of Kenya

The Constitution of Kenya recognizes provision of water and sanitation services as a basic right as provided for in Articles 43 (1 (b) right to accessible and adequate housing, and to reasonable standards of sanitation; (d) Right to clean and safe water in adequate quantities

The constitution under Article 252(1) also provides *inter-alia* that "each commission and each holder of an independent office may conduct investigations on its own initiative or on a complaint made by a member of public."

1.4.2 Commission on Administrative Justice Act, 2011

Section 8 of the CAJ Act provides that 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.

Sections 26-29 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 the Act, the Commission 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.

1.4.3 Water Act, 2016

The Water Act 2016 Section 108 deals with control of trade effluent. Section 108(1) states that “it shall be the duty of the licensee receiving trade effluent into its sewerage system to ensure that it has in place measures for the receipt and handling of the effluent without causing (a) pollution of the environment, (b) harm to human health, (c) damage to the sewerage system, (d) a contravention of applicable laws or standards set by the Regulatory Boards.”

Section 108 (c) of Water Act 2016 empowers NCWSC to ensure that effluents are treated before discharged into the public sewer to avoid blockages. Subsection 2 prohibits any person from discharging trade effluents to sewers of a licensee without consent of the licensee. Subsection 3 sets the nature of application for consent, while subsection 4 sets conditions of acceptance that may include pretreatment and payment of charges. Section 144 provides the remedies of default including cleanup of water resources, and removal or destruction works or plants employed for the purpose of the contravention. Section 147 gives the general penalties related to water offences.

1.4.4 Water Quality Regulation, 2006

Water quality Regulations in Section 13, presupposes that all industries before discharge into sewers operated by Municipal or other operators shall be licensed. Schedule 5 sets the standards for the discharge into public sewers while Schedule 11 sets the fees to be paid to the regulator.

1.4.5 The NCWSC HR Manual

The HR Manual guides on the employee and employer relations at the company including disciplinary process and normal work-related issues. Section 4.9.5 of the manual provides for the changes in Terms and Conditions of Employment. That any changes in terms or conditions of employment will be communicated in writing to employees within (30) days by the Director of Human Resource and Administrative Services (DHRAS). Such changes may include:

- i. Adjustment in salary
- ii. Change of Job title
- iii. Change of Location of Employment
- iv. Change of part time or full time
- v. Promotion
- vi. A combination of the above

The written amendments of employment will include details of the amendments, date on which the amendment was effective and confirmation that the amendment has been accepted/received by the employee.

Section 4.13 indicates that the duty station is any designated company station. An employee can be deployed to work in any of the Company's stations as long as they possess the skills required for the operations to be carried out in such a station. Section 7.2 provides that Employee transferred to new duty stations shall be oriented within the first two weeks of reporting.

2.0 Analysis and Findings

2.1 Allegations of abuse of power by MD for facilitating and aiding industrial facilities/factories to illegally discharge dangerous chemicals into public sewer

Background of the Allegation

The Complainant alleged that:

- i. NEMA closed non-compliant factories found discharging poisonous substances into Nairobi River through the public sewer following the expose by daily nation on 27th August 2019 on toxic flow into Nairobi River yet those companies had licenses to operate from NCSWC and that the MD had direct involvement.
- ii. More than 100 non-compliant industries were summoned by Nairobi Water Enforcers but no action was taken as the acting MD warned and stopped the security manager from enforcing the summons and the complainant who was leading the enforcement team during the period under review was victimized through a transfer

Investigation Findings

It was established that the MD was appointed as the Ag. MD from August 2017 to May 2020. He became a substantive MD in May 2020, a position he holds to date.

That the Environment and Compliance Department is a Department within NCWSC that is charged with monitoring of industrial effluents and licensing of industries which meet standards for the discharge of treated industrial effluents into the public sewer infrastructure. Any non-conformity noted is forwarded to the Security Department whose roles are to enforce the Water Act, 2016 and Water Quality Regulation, 2006 by summoning, charging and prosecuting non-compliant industries. Summons are issued to industries found to be discharging untreated effluents to the sewer line.

NCWSC receives and evaluates applications from industries that wish to obtain licenses for discharging effluents into the public sewer by inspecting the facilities with a view to verifying its compliance with Water Act 2016 and National Environment Management Authority Discharge Conditions. If satisfied a

conditional license for discharge is issued. The license is valid for one year and can be revoked if the attendant conditions are not met.

Industries found to be non-compliant are issued with summons and are required to report to the security manager's office within 24 hours from the date of the summon for necessary action.

The Security department which plays a role in enforcement is under the MD's office; the Security Manager reports to the MD. Thus, the MD has direct control over the investigative and enforcement roles of the Security Department.

From the analysis of documents and Statements recorded by NCWSC officials The following can be deduced:

- i.** The MD is reported to have verbally intimidated and threatened to transfer the Complainant if he (the Complainant) continues to summon heads of industries considered to be non-compliant by the Security Department.
- ii.** That in late 2016, the Complainant, while in the course of his duties, carried out inspections at Chandaria Industries in Baba Dogo and allegedly found out that the factory was discharging untreated effluent into the public sewer yet it had a conditional license. The officer issued the industry's head with a summon to appear before the Security Manager within 24 hours for non-compliance. Soon after, Eng. Muguna, the then Technical Director (Current MD) summoned the Complainant to appear in his office the following morning. While at his office, he asked the Complainant to stop disturbing Chandaria Industries stating that he would sack him should he execute the summons.
- iii.** That in early 2017, the Complainant issued summons to Syrensins Limited for discharging untreated effluents into the sewer in contravention of Water Act 2016. Following the summon, Eng. Muguna, the then Technical Director, summoned the Complainant's supervisor in his presence, complaining that the Complainant had issued the Summon. Eng. Muguna informed the complainant that he is the one who had connected Synresins Ltd to the public sewer and that no further enforcement should be taken against it. The MD

further complained that the Complainant was causing problems through the enforcement action and instructed the Security Manager verbally to transfer him for summoning the company. It was not specified to which station the complainant would be transferred. The Security Manager did not effect the instructions as they were verbal and not detailed.

When summoned, the MD informed CAJ that he instructed the Security Manager not to charge the factory with non-compliance as he was aware of their sewerage situation at the company where allegedly a defective sewer line caused sewer backflow on Syrensins premises . He had not briefed the Security Department on the said sewer backflow on the premises but stopped them from enforcing compliance. This raised a concern on why he remained silent considering that it was within his knowledge and the Security Manager is the head of the Department. The enforcement team learnt about the alleged defective sewer line when the Commission sought for clarification of the same from them.

- iv.** That in January 2018, Quick pack Limited was issued with a summon dated 18th January 2018 after re-inspections found out that the industry was non-compliant. The Commission recovered a summon dated 18th January 2018 to Quick pack Limited issued for discharging un-treated effluent, discharging effluent without license and that it had also failed to respond to the summon of the year 2017. Thereafter, the MD called the Security Manager instructing that no further enforcement action should be taken against Quick pack Limited.

CAJ also recovered a response letter to the MD dated 18th January 2018 from Quick pack Industry indicating that they had made an order for effluent treatment plant which once received and installed the industry would apply for the license. The MD instructed that the industry be issued with an invoice to pay for the license despite lacking the treatment plant. The security manager instructed the complainant to act as per the MD's instructions. The MD informed the Commission that he could not recall any conversation with

the Security Manager with regards to the summon issued to Quick pack limited

- v. That in February 2018, Wire product Ltd was served with a summon for non-compliance. Investigations recovered a summon dated 12th February 2018 given to the industry found discharging untreated effluent, indicating a lack of effluent treatment plant into sewer line contrary to the law. Following the Summon, as a follow-up and accompanied by the environmental officer, the Complainant visited Wire product to check whether the industry had met the requirements for discharge into the sewer. They were denied inspection in Wire products citing protection from the MD. The industry's HR Manager, Ford Owino informed them that Wire Products CEO and NCWSC CEO were in communication. He also intimated that soon they would be kicked out of NCWSC for summoning the industry. It was established soon after that, the Complainant received a transfer letter to Ngethu Treatment Works. The MD denied these allegations .
- vi. Other companies with conditional licenses that were summoned for discharging untreated effluent into the sewer were: Kenafric in November 2017(which led to the then deputy governor complaining of harassment so the complainant was asked to give a report); Kayole Slaughter House in February 2018(Which led to an internal engagement within NCSWSC whether it's the Environment or security department that should have actioned and whether it should have been a summon or an environmental order);Sila Africa Industries in February,2018;Colas East Africa in April 2018;United Aryan EPZ in March 2018;Mumu Slaughter House In April 2018;Spinx Pharmaceuticals in November 2017;Wrigley East Africa In December 2017;Dodhia Packaging Kenya Limited in May 2018;Nationwide Electrical Industries in January 2018;Raj Metals in January 2018. Most of these industries responded to the summons through letter requesting for grace period to be able to fix their treatment plants

The above incidences indicate that the MD employed verbal intimidation and harassment to the security manager and his team in order to dissuade them from

enforcing some of the summons issued to non-compliant industries. It was also established from most of the summons issued in 2017 and 2018 that most industries with conditional licenses were actually non-compliant to the conditions set as a pre requirement for the issuance of the conditional license and were in the process of setting up or repairing treatment plants(as deduced from their responses to the summons) but still discharged untreated effluent to the public sewer.

2.2 Allegations of unfair transfer

Background of the allegation

The Complainant alleged that his transfer to Ngethu and Kabete Treatment Plants was victimization due to the enforcement and investigative roles that he was undertaking on non-compliant industries that were either found to be discharging untreated effluent into the sewer line or discharging Effluent without a license,

Investigation Findings

That the Complainant was employed on 6th April, 2009 on a 3-year Contract at the Company Headquarters .His contract has been renewed periodically and was lastly renewed on 20th March, 2020 for a period of 5 years. His responsibilities included Managing Criminal Investigations related to the Company and providing Technical guidance to criminal investigations as well as enforcement of the Water Act 2016.The Complainant's Letter of Appointment states that the Complainant would be based at the Company's Head Quarters along Kampala Road, Industrial Area but could be required to serve and represent NCWSC in any part of the country .

That the Security department is divided into two; Physical Security section and Investigations and Inspections Section each with distinct skills and functions. Physical security section deals with physical Security matters while the Investigations Section deals with internal Investigations and enforcement of Water Act 2016.

According to the MD, the Director Human Resources and Administration Services and the Security Manager the transfer process of an employee can be initiated as follows: A serving officer can write a request to the DHRA through the supervisor; Secondly, the supervisor can request the office of MD or DHRA for a transfer; thirdly, a transfer can originate from the MD's office where the MD can decide to transfer a staff when a need arises; fourthly, a transfer can occur as a result of staff rotation; fifthly, as a result of the restructuring of the organization. All transfers are effected upon approval by the MD.

The MD stated that all NCWSC staff can be transferred to serve at any of its duty station when the management deems it fit and that most of staff had been transferred on a regular basis. This was corroborated by some technical officers who stated that inter-departmental transfers are common especially departments with related roles.

2.2.1 Transfer to Ngethu Treatment Plant

The first transfer from Headquarters to Ngethu was prompted by an official request made by the Ngethu Treatment Plant Production Manager. CAJ recovered an internal Memo dated 13th February 2018 addressed to the MD by Ngethu Production Manager requesting for provision of fifteen (15) Security Assistants and one (1) Security Supervisor. In the Memo, the Ngethu, Production Manager stated there was personnel deficit and that the available personnel number could not allow for a redundant shift to relieve the staff. The deficit led to some installations left partially guarded.

Following the request, the DHRA and the MD after discussions resolved to enhance security by posting a representative of management at job scale 5 at Ngethu Treatment Plant .It is then that the Complainant was transferred to Ngethu Treatment Plant to take charge of security. This was effected vide a letter dated 12th June 2018.

The memo for transfer of the Complainant from Headquarters to Ngethu Treatment Plant did not contain his new job descriptions since his roles and

position had changed from investigations Officer to Security Officer. Further, it was established that the transfer from the Company Headquarters to Ngethu was a re-designation to a position that was not requested for by the Ngethu Production Manager. The Ngethu Production Manager had requested for provision of fifteen (15) Security Assistants and one (1) Security Supervisor.

It was noted that NCWSC Manual under Section 4:13 provides that: 'An employee can be deployed to work in any of the Company's stations as long as they possess the skills required for the operations to be carried out in such a station.

The period prior to the transfer(late 2017 and early 2018) saw the complainant summoning so many non-compliant companies and as corroborated by his then Supervisor and the environmental coordinator, some of those incidences(discussed in 2.1) demonstrate that the MD resorted to verbal intimidation(threats to transfer the complainant) whenever he was not in agreement with enforcement actions against industries considered to be non-compliant by the Security Department.

The Appeal

The Complainant appealed the transfer before reporting to Ngethu Treatment Plant vide an Appeal dated **18th June, 2018** where he stated that he had a sick wife and a brother living with him who was in dire need of his care. He also raised a concern on change of his designation from Investigation Officer to a Security Officer.

After submitting the Appeal, the Complainant proceeded on leave. Two weeks while on leave, he was called by the DHRA who requested that the Complainant in the company of the Security Manager and DHRA see the MD on this Appeal.

During the meeting, the MD sought to know why the Security Manager approved the Complainant's leave yet he had already been transferred. In response, the Security Manager stated that he was not aware of the transfer and that he learnt about it after he had approved the leave after Simon copied a protest letter to

him. The MD stated that he was transferring the Complainant because he was misusing his office. The MD informed the Commission that he could not remember whether the Security Manager was consulted with respect to the Complainant's transfer

2.2.2. Transfer to Kabete Treatment plant

After the Appeal for transfer to Ngethu was considered, the Complainant was subsequently transferred to Kabete Treatment Plant **as an investigations officer in charge of both physical security and investigations**

In his statement, the MD acknowledged the appeal by the Complainant and stated that the Complainant was instead transferred to Kabete Treatment Works from the earlier station he had been transferred to.

Three weeks after the meeting at the MD's office, it was agreed that he be transferred to Kabete Treatment Works which is near Nairobi. Thereafter, the Complainant was transferred to Kabete Water Treatment through a letter dated 6th July 2018 to be in-charge of both physical security and Investigations.

Though the Complainant's job title as an investigation officer was reinstated and that his terms and conditions of employment remained the same, an aspect of physical security which is ordinarily undertaken by security officers(a separate position from an investigations officer) was added to his duties.

The then Kabete Production Manager in his interview indicated that when the complainant reported, he treated him like a security officer by harmonizing his duties with the security objectives of the station and revising his targets to fit the duties of the station. Even though the complainant had alleged that NCWSC security structure organogram does not provide for investigations position at Kabete Treatment Plant it was noted that security issues may arise at the plant that may require investigations. The Kabete Production Manager, in his interview listed issues including theft cases, staff grievances, and accidents by NCWSC vehicles and complaints from Kabete neighborhood that can be investigated at Kabete duty Station.

The DHRA informed the Commission that the Complainant's services are required at Kabete Treatment Plant where he is expected to deal with all security issues that may require investigations. DHRA acknowledged that at HQ, investigations functions are more pronounced but also stated that Kabete Treatment plant has infrastructure that calls for both security and investigation roles in case an incident arises. She furthered stated that the complainant is heading physical security at Kabete Treatment Plant. The DHRA mentioned a case example involving theft of Impeller shaft for Uthiru pump at Kabete Pump house by three maintenance personnel where the Complainant carried out an investigation whose findings were used to dismiss the staff involved. This was corroborated by the complainant who admitted having investigated the theft issue at Kabete Treatment Plant. The Commission recovered an investigation report on the same dated 20th May 2019

DHRA further stated that the transfer was in good faith and for growth and also mentioned that staff are transferred from one duty station to another when need arises. The complainant is bound by both his employment contract and the HR manual that states clearly that a staff of the Company can work at any duty station of the .

Though in line with the companies policy that the company staff can be transferred to work anywhere, the complainant transfer to Kabete expanded the complainants duties to physical security(which is more pronounced in Kabete and not part of his job description) and that of investigations(which is less pronounced in Kabete). Since his transfer in 2018,the complainant alleges to have only investigated one case and this is corroborated by the DHRA and the then Kabete production manager.

It was established that the NCWSC manual is silent on transfer.

3.0 Consequential observations

The following issues were noted in the course of investigations that may require further investigations by the NCWSC board:

- i.** Allegations of employment of unqualified staff;
- ii.** Allegations of irregular promotions of staff;

- iii. Allegations of unfair treatment of staff;
- iv. Alleged unaccounted water deliveries.

4.0 Analysis of Response by the MD

CAJ wrote to the MD on 8th November 2021 to accord him an opportunity to respond to the findings and recommendations against him. Analysis of his response dated 19th November 2021 is as follows:

- i. The MD, in his response, indicated that he had supplied the Commission with compliance reports and licenses for the alleged non-compliant industries. A review of the documents supplied indicates that the licenses supplied were only for Chandaria and Syrensins. Other industries alleged were quick pack and wire products whose licenses were never supplied. Furthermore, the non-compliance was based on the fact that though licensed, the industries continued to discharge untreated trade effluent to the public sewer contrary to sec 108 of the Water Act,2016. The MD also confirmed in his response that companies found to be non-conforming are issued with conditional licenses and are required to improve on the effluent. The big question is what happens to untreated trade effluent discharged into the public sewer by licensed non-conforming industries in the intervening period before they improve on their effluent as is the case of many summoned industries.
- ii. The MD also indicated in his response that his office was not aware of any issue of non-compliance of industries. Evidence from the summons issued and witness statement recorded reveals that the MD was aware of the sewerage conditions of some of the industries (Syrensins and quick pack) summoned for non-compliance. It was noted that he had an agreement with the industries on effluent quality measures being undertaken for continuous improvement. This indicates a breakdown in communication between the MD's office and the security department on issuance and enforcement of summons, exposing the companies weakness to external stakeholders.

- iii. The MD stated that at no point in time did he verbally threaten or intimidate the security department staff or the complainant. However, two witnesses corroborated the complainant's assertion that there were verbal intimidations after conducting inspections and summoning industries considered non-compliant by the security department.
- iv. The MD responded that the complainant's transfer was done in line with the Company's Human Resource Policy and Procedures Manual. Investigations established that the transfer to Ngethu followed a series of verbal threats and intimidations following the complainant's work in summoning industries considered to be non-compliant by the Security Department. However, the transfer to Kabete though procedural, added the roles of physical security that are not in his investigations officers job description.

5.0 Conclusions

From the investigation's findings, the following can be deduced:

- i. The MD employed verbal intimidation and harassment to the security manager and his team in order to dissuade them from enforcing some of the summons issued to non-compliant industries. It was also established from most of the summons issued in 2017 and 2018 that most industries with conditional licenses were actually non-compliant to the conditions set as a pre requirement for the issuance of the conditional license and were in the process of setting up or repairing treatment plants (as deduced from their responses to the summons) but still discharged untreated effluent to the public sewer.
- ii. Some of the industries alleged to be non-compliant by the complainant actually had conditional effluent discharge licenses indicating that NCWSC was aware of the measures being taken by the industries for continuous improvement. Yet, seemingly the security department tasked with enforcing non-compliant industries was not aware thus went ahead to issue and enforce the summons. This communication breakdown created discord between the MD's office and the security department.

- iii. Transfer of the complainant to Ngethu Treatment Plant, though done in line with the company procedure, was found to be unfair and done in bad faith as it was established that prior to it, the MD had verbally intimidated the Complainant for summoning industries considered to be non-compliant and had also threatened to sack/transfer him. The transfer also was meant to redesignate the complainant from an investigations officer to a security officer. After his appeal, the complainant though transferred as an investigations officer, had physical security roles added to him. Physical security is not in the job description of an investigations officer at NCSWC.
- iv. That the Company HR manual is silent on the procedure to be followed when transferring the Company employees.

6.0 Recommendations

- i.) NCWSC Board of Directors to further investigate the allegations of verbal intimidations by the MD on the complainant and or any other officer and the existing communication breakdown between the MD's office and the security department with a view of resolving it for a smooth running of business and promptly report back to the Commission the steps taken to rectify the situation within three months.
- ii.) NCWSC board to review the issuance of conditional licenses to non-conforming industries to indicate the period the industries are expected to undertake the continuous improvement thus preventing constant discharge of untreated trade effluent unto the public sewer. NCWSC should report this to CAJ within one (1) year.
- iii.) NCWSC board to consider assigning the Complainant to a duty station with roles/responsibilities that are in line with his contract/Job Description, in order to efficiently utilize his expertise as an investigations officer since his current work station has less investigations roles and includes physical security which is not in his contract.
- iv.) That the Company should develop a transfer policy that will spell clear procedures for the transfers of the Company employees to ensure

objectivity in transfers and avoid abuse. NCWSC should report this to CAJ within one (1) year.

- v.)** NCWSC to develop and implement Standard Operating Procedure (SOP) Manual to guide the process of issuance and enforcement of summons to non-compliant industries to mitigate contradictory feedback to their external customers once summons have been issued.
- vi.)** NCWSC to proactively disclose to their staff, information of all licensed industries and reasons for conditional licensing to specific industries to reduce speculations that non-compliant industries have been licensed or are being protected by the company.