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Rt. Hon. Speaker
The report is in order.
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Eli
22/11/24

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE

REPORT ON-

CONSIDERATION OF PUBLIC PETITION NO. 50 OF 2023 REGARDING DELAYED
PAYMENT OF PENSION BY KENYA RAILWAYS CORPORATION BY THE HON. (DR.)
CHARLES ONCHOKE, MP

NOVEMBER 2024

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 NOV 2024	DAY: Wednesday
TABLED BY:	Hon. Njirō Mbatia (Chairperson)
CLERK-AT THE-TABLE:	Womale

Directorate of Legislative & Procedural Services
Clerk's Chambers
Main Parliament Buildings
NAIROBI

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CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Public Petition No. 50 of 2023 regarding delayed payment of Pension by Kenya Railways Corporation. The petition was presented to the House pursuant to Standing Order No. 225(2)(a) by the Member of Parliament for Bonchari Constituency, Hon. (Dr.) Charles Onchoke, MP on behalf of Mr. Benson Mocheo.

The Petitioner prayed that the Committee recommends payment of the delayed pension of Mr. Benson Asiago Mocheo and action be taken on the officers occasioning the delay. The Committee considered the Petition by engaging the Petitioner, University of Nairobi and Kenya Railways Corporation and observed that the Corporation's delay in processing Mr. Mocheo's pension for his seventeen (17) years of service, by failing to remit his pension to the University of Nairobi or promptly complete the necessary processing, violated Mr. Mocheo's rights under sections 5 and 6 of the Pensions Act (Cap. 189).

The Committee recommends that the Kenya Railways Corporation promptly and adequately pays the pension owed to Mr. Mocheo for his seventeen (17) years of service within thirty (30) days of the report being tabled and fast-tracks any other pending pension payment owed to its former employees.

The Committee expresses appreciation to the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support during the discharge of its duties. The Chairperson extends gratitude to the Committee Members for their devotion and commitment to duty throughout the consideration of the petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to lay the Report on the Table of the House.



HON. NIMROD MBITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date.....20/11/2024.....

PART ONE

1 PREFACE

1.1 Establishment and Mandate of the Committee

The Public Petitions Committee is established under the provisions of Standing Order 208A with the following terms of reference:

- a) considering all public petitions tabled in the House;
- b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommending whether the findings arising from consideration of a petition should be debated; and
- d) advising the House and reporting on all public petitions committed to it.

1.2 Committee Membership

The Public Petitions Committee was constituted in October 2022 and comprises the following Members:

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.
Kitui East Constituency
United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.
Turbo Constituency
United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.
Mavoko Constituency
Wiper Democratic Movement-Kenya
(WDM-K)

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency
Wiper Democratic Movement-Kenya
(WDM-K)

Hon. Ernest Kivai Ogesi Kagesi, M.P.
Vihiga Constituency
Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency
United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency
United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.
Awendo Constituency
Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere South Constituency
Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South
Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.
Machakos Town Constituency
Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.
Taveta Constituency
Wiper Democratic Movement-Kenya
(WDM-K)

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency
Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency
United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency
Wiper Democratic Movement-Kenya
(WDM-K)

1.3 Committee Secretariat

The Public Petitions Committee was facilitated members of the secretariat:

Lead Clerk
Mr. Ahmed Kadhi
Principal Clerk Assistant II

Ms. Anne Shibuko
First Clerk Assistant

Ms. Miriam Modo
First Clerk Assistant

Mr. Willis Obiero
Clerk Assistant III

Ms. Isaac Nabiswa
Legal Counsel II

Ms. Patricia Gichane
Legal Counsel II

Mr. Martin Sigei
Research Officer III

Ms. Roselyne Njuki
Senior Serjeant-at-Arms

Mr. Paul Shana
Serjeant-at-Arms

Mr. Calvin Karungo
Media Relations Officer III

Mr. Peter Mutethia
Audio Officer

PART TWO

2 BACKGROUND TO THE PETITION

2.1 Introduction

1. Public Petition No. 50 of 2023 regarding delayed payment of pension by Kenya Railways Corporation was presented by the Hon. (Dr.) Charles Onchoke, MP, Member for Bonchari Constituency on 17th August 2023 on behalf of Mr. Benson Asiago Mocheo.
2. The Petitioner stated that Mr. Benson Mocheo had worked for Kenya Railways Corporation (KRC) for seventeen (17) years from 8th January 1968 to 30th April 1985 as a station manager on permanent and pensionable terms.
3. In 1984, the University of Nairobi (UON) advertised the position of assistant accountants, which Mr. Benson Asiago Mocheo successfully applied and transferred his service in 1985 after being cleared and released by KRC. Consequently, he worked for UON for twenty-two (22) years until his retirement in 2006.
4. The University of Nairobi and Kenya Railways Corporation had severally agreed that the KRC would pay Mr. Mocheo's pension for the seventeen (17) years of service at the Corporation. Despite the agreement, the University of Nairobi paid Mr. Mocheo's pension for the period worked, but the Kenya Railways Corporation had not paid his dues.
5. Twice, Mr. Mocheo had sought redress in court without success as the courts deemed the matter time barred. The Kenya Railways Corporation further alleged that –
 - (i) The University of Nairobi ought to have paid his pension for both the twenty- two (22) years and seventeen (17) years;
 - (ii) Mr. Mocheo had refused to accept a pension payment of Kshs. 527.20 per month absorbed by the Corporation;
 - (iii) Mr. Mocheo had refused to pick a pension cheque issued in 2007 by the Corporation; and
 - (iv) Mr. Mocheo had refused to fill all the census forms.
6. Contrary to the allegations by Kenya Railways Corporation, Mr. Mocheo claimed to have been filing the census forms every year and was not aware of any cheque made in 2007. Further, that the Kshs. 527.20 per month offered by the Corporation was lower than his rightful entitlement of Kshs. 9,002.45 as calculated using his last salary in the year 2006.

2.1 Prayers

7. The Petitioners prayed that the Committee—

- (i) Inquiries into the matter and recommend an appropriate mechanism for resolving the matter for the benefit of the petitioner;
- (ii) Recommends action be taken on all those involved in the continued violation of Mr. Benson Asiago Mocheo's right to fair administrative action as provided under the Constitution of Kenya 2010 and the Fair Administrative Act (Cap. 7L);
- (iii) Recommends payment of the delayed pension of Mr. Benson Asiago Mocheo; and
- (iv) Makes any other recommendation or action order that it deems fit in addressing the plight of the Petitioners.

PART THREE

3 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1 The Petitioner

On 28th November, 2023, the Hon. (Dr.) Charles Onchoke, M.P. appeared before the Committee and submitted as follows—

8. Benson Asiago Mocheo served Kenya Railways from 8th January 1968 to 30th April 1985 on permanent and pensionable status as an assistant station master for seventeen (17) years and three (3) months.
9. On 30th April 1985, his services were transferred to the University of Nairobi on terms that his seventeen (17) years and three (3) months service would be paid by Kenya Railways Corporation after retiring from the University of Nairobi at the age of sixty (60) years; and that the retirement dues would be calculated basing the retiring earned salary as per the Pension Act.
10. A sum of Kshs. 44,964.75 which was thirty-one (31) per cent of his total pension endowment was to be transferred to the University of Nairobi as starting pensions (which stood as five per cent contributions) and university to top up twenty (20) per cent but the university is able to account for this money.
11. On 11th August 2006, there was a meeting between Kenya Railways Corporation and the University of Nairobi, and each agreed to pay for the rendered service. The University of Nairobi paid him Kshs. 44,964.75 but Kenya Railways Corporation has not paid him.
12. Railway Trustees started promising him payment from 2005 to 2015 with letter from the managing director, chief accountant, human resource management, finance accountant, and pension's manager. All these letters were fake because all these positions ceased to exist in 2004, when Kenya Railways Corporation was bought by Rift Valley Railways and all these positions were retired or retrenched.
13. He refused to take the erroneous cheque prepared in 2007 until 2015, based on the fact that the cheque was prepared based on the salary he earned in 1985, when he exited service at thirty-eight (38) years of age against the salary he was earning in 2006 upon retirement at sixty (60) years.
14. Errors in the cheque were that the lumpsum of Kshs. 621,170.80 was changed to read Kshs. 42,176.25, and that the monthly pensions of Kshs. 9,002.45 were changed to read Kshs. 527.20.
15. Efforts by Mr. Mocheo to have the matters addressed by the courts on two instances were not fruitful. The Kenya Railways Corporation alleges that he was paid all his dues in 1985 with no proof or evidence.

16. Section 90 of the Employment Act, 2007 state that with fundamental freedoms of an individual cannot be time barred in terms of Article 22(1) as read with Article 22(3) of the Constitution. Section 4(1)a thereof provides for six (6) years of limitation period for suits based on contracts. In his case it was three (3) years against six (6) years, therefore, the three (3) years of ruling was unfair).

3.2 The University of Nairobi

On Tuesday, 19th March 2024, Mr. Benard Njuguna, the Registrar, Administration, University of Nairobi appeared before the Committee on behalf of the Vice Chancellor, Prof. S.G Kiama, PhD and submitted as follows—

17. Mr. Mocheo was appointed as an Assistant Accountant on permanent and pensionable terms in the Finance Department of the University of Nairobi on 5th March 1985.
18. On 29th April 1985, the Kenya Railways Corporation wrote to the University of Nairobi to confirm acceptance of Mr. Mocheo's services with the Corporation to be transferred to the University, subject to him joining the then Superannuated Retirement Benefit Scheme applicable to university staff.
19. On 12th June 1985, the University wrote to the Kenya Railways Corporation conveying the acceptance to transfer Mr. Mocheo's service to the University. The Corporation was requested to proceed and process the transfer.
20. The KRC did not transfer Mr. Mocheo's pension benefits to the University of Nairobi for the period he worked at the Corporation.
21. Mr. Mocheo retired from the service of the University of Nairobi through early retirement on 31st December 2006 after serving for twenty-two (22) and was informed that he would be paid his retirement benefits in accordance with the rules of the University of Nairobi Pension Scheme.
22. On 11th August 2006, a meeting was held between the University and the Corporation noting that Mr. Mocheo had retired. The Administrator being the University of Nairobi Pension Scheme, and the Executive Trustee, Kenya Railways Pension Scheme discussed the matter of Mr. Mocheo's pension payment. It was agreed that Kenya Railways Corporation was to pay him for eighteen (18) years and UON to pay for the twenty-two (22) years he had worked for the University.
23. The meeting noted that although the KRC transferred Mr. Mocheo's service to the University, it did not transfer his accrued pension benefits. The Corporation opted to retain these benefits until Mr. Mocheo's retirement. On the meeting of 11th August 2006, KRC confirmed that they owed Mr. Mocheo as he transferred the services, but they had retained his pension.

24. The meeting agreed that the University would formally inform the Corporation on Mr. Mocheo's retirement date to enable it to start processing his pension benefits for the period Mr. Mocheo served the Corporation.
25. On its part, the University would process Mr. Mocheo's benefits for the period he had served the University as per the rules and regulations of the University of Nairobi Pension Scheme.
26. The University of Nairobi Pension Scheme (UNPS) paid Mr. Mocheo his pension dues for the twenty-two (22) years he served at the University, between 5th March 1985, and 31st December 2006. The total amount paid was Kshs 723,111.00 as lump sum less the withholding tax vide UNPS Voucher Number 11237 dated 6th December 2006.
27. The mandate of the University was to only pay terminal and retirement benefits calculated from the date Mr. Mocheo worked for it until the date he retired from employment which it did. Mr. Mocheo was receiving a monthly pension of about Kshs. 1800 from the University even after getting the lumpsum which was a defined benefit.
28. In September 2007, the University of Nairobi Pension Scheme was converted from that operating as a 'defined benefit' to one operating as a 'defined contribution scheme'. This necessitated an actuarial valuation of the Scheme as of 28th February 2007. Mr. Mocheo's share as a Member of the Scheme was calculated to be Kshs. 10,003.
29. The University paid Mr. Mocheo all his pension dues for the period he served at the University and did not owe him. The Kenya Railways Corporation should pay Mr. Mocheo his pension dues for the period he worked with the Corporation.
30. The University was guided by the Public Service Commission Human Resource Manual that an employee was not expected to lose pension after transfer of service as the two institutions were expected to harmonize. The transfer of service was accepted but the policy allowed, and Mr. Mocheo opted to transfer his pension. Therefore, the KRC pension scheme was to send the pension to UON after a computation, however that was not done.

3.3 The Kenya Railways Corporation

On 24th April 2024, the General Manager, Human Resource and Administration, Mr. Asava Kadima on behalf of the Managing Director, Kenya Railways Corporation appeared before the Committee and submitted as follows—

31. Mr. Mocheo was appointed by the Kenya Railways Corporation on 18th January 1968 and worked for the Corporation on permanent and pensionable terms until 30th April 1985 when he transferred his service to the University of Nairobi with effect from 1st May 1985.

32. On 14th October 1986, the Chief Accountant at Kenya Railways Corporation prepared a statement of aggregate pensionable emoluments, which was channelled through the Chief Personnel Manager to forward to the University of Nairobi.
33. The University of Nairobi vide letter dated 10th November 2005 acknowledged receipt of the statement but noted that a cheque should have accompanied the statement.
34. The correct procedure as per the Kenya Railways Corporation Pension Regulations 1983 was that the Corporation should have paid thirty-one (31) per cent of the aggregate pensionable emoluments to the pension Scheme of the University of Nairobi.
35. The payment of Kshs. 44,964.74 which was thirty-one (31) per cent of the total pensionable emoluments to the pension Scheme of the University would have settled the claim. This amount was never paid as at Mr. Mocheo's retirement date. He was paid benefits to the service he rendered to the University minus service worked under the Corporation.
36. A joint meeting held between the Corporation and the University of Nairobi agreed that Kenya Railways Corporation should pay Mr. Mocheo for the seventeen (17) years he worked.
37. A computation for the dues was done based on the last salary earned in 1985 and certified by the Auditor General on 20th September 2007. A voucher was prepared in favor of the above for Kshs. 52,193.05. This included Kshs 42,176.25 being lumpsum and Kshs.10,116.80 representing arrears of pension at the rate of Kshs. 527.20 per month from 1st January 2007 to 31st July 2008. A Cheque No. 104067 for Kshs. 52,193.05 was done in favor of the above but Mr. Mocheo declined to collect the payment which was held by the Corporation.
38. Mr. Mocheo was introduced to the Kenya Railways Staff Retirement Benefit Scheme pension payroll in August 2018. His monthly pension was raised to a minimum of Kshs. 1,000 as per the actuarial advice setting the minimum pension to Kshs. 1,000. His pension was suspended in the month of May 2010 since the member did not submit the census form when the Scheme was conducting pensioner's census.
39. It was not true that Mr. Mocheo was unaware of any cheque made. Further, Mr. Mocheo had not been filling in the census forms as alleged and there were no documents to support assertions that he was filling the census forms. It was however in record that Mr. Mocheo requested to have the initial cheque replaced and this was being processed.

40. The Corporation was not aware of the claimant's computations resulting to a pension rate of Kshs. 9,002.45 per month instead of Kshs. 527.20 as computed by the Corporation.
41. The Corporation factored in his last salary as one of the considerations in calculating his pension under the defined benefit scheme, which amounted to Kshs. 527 at the time. However, the trustees of the Kenya Railways Scheme had approved annual increases to the pension, with the initial pension being Kshs. 1,000 and the current pension standing at approximately Kshs. 6,000 as of 2008, and not Kshs. 527. Therefore, Mr. Mocheo's claim that his entitlement was computed incorrectly was not factual.
42. The Kenya Railways Staff Retirement Benefits Scheme confirmed to the Retirement Benefits Authority vide a letter dated 21st September 2015 that Mr. Mocheo joined the scheme payroll in August 2008 (Pensioner Number 83644) through the approval of the Sponsor and was a pensioner in receipt of monthly pension as per the Scheme Trust Deed and Rules. His lumpsum was to be paid by the sponsor under the concession agreement through a World Bank funded project.
43. The last attempt to engage Mr. Mocheo for negotiations took place when Mr. Mocheo visited Kenya Railways Corporation offices to inquire about his cheque in January 2023. However, he did not receive the payment, and the finance team provided an explanation, which was that it was undergoing internal resolution.
44. The Corporation did not respond to the letter from the University regarding remittance of Mr. Mocheo's pension, but instead decided to pay directly for which calculation of the pension was ongoing.
45. The Corporation factored in Mr. Mocheo's last salary in calculating his pension under the defined benefit scheme, which amounted to Kshs. 527 at the time. However, the trustees of the Kenya Railways Scheme had approved annual increases to the pension, with the initial pension being Kshs. 1000 and the current pension standing at approximately Kshs. 6000 as of 2008, and not Kshs. 527.
46. The lumpsum gratuity payment was determined based on the years worked and that was not disputed by any party. The gratuity was calculated up to the point Mr. Mocheo was leaving the KRC, and there was no disagreement regarding the gratuity amount.
47. The Corporation would provide Mr. Mocheo with his rightful pension up to date, amounting to Kshs. 6500 monthly from 2008 when he joined the payroll, along with any outstanding arrears. However, it was deemed necessary for the three parties involved: UON, KRC, and Mr. Mocheo to engage in a tripartite discussion to synchronize the agreed pension terms for the retired employee's benefit.

PART FOUR

4 COMMITTEE OBSERVATIONS

48. Upon hearing from the Petitioner, the University of Nairobi and the Kenya Railways Corporation, the Committee observed that—

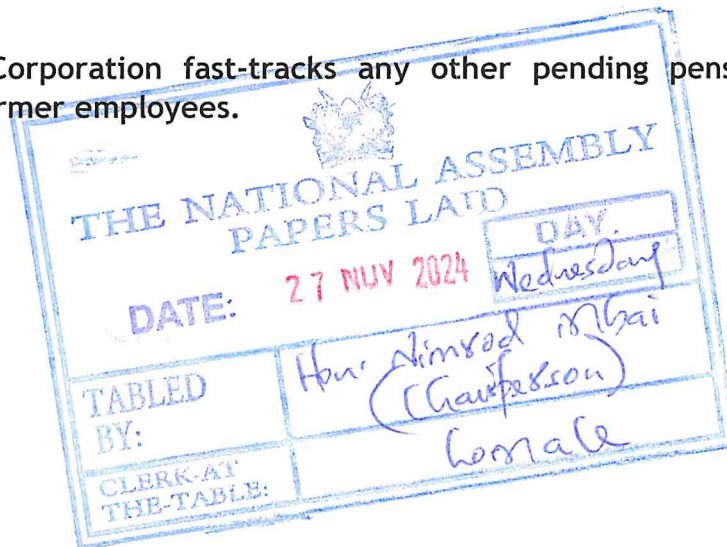
- (i) The Kenya Railways Corporation's delay in processing Mr. Mocheo's pension for his seventeen (17) years of service, by failing to remit his pension to the University of Nairobi or promptly complete the necessary processing, violated Mr. Mocheo's rights under sections 5 and 6 of the Pensions Act (Cap. 189).
- (ii) The Kshs. 527.20 per month offered by the Corporation was unreasonable as calculated using his last salary in the year 2006.
- (iii) The Kenya Railways Corporation failed to transfer Mr. Mocheo's pension benefits for the eighty (18) years of service to the University despite the request made by the University.

PART FIVE

5 COMMITTEE RECOMMENDATIONS

49. Pursuant to the provisions of Standing Order 227, the Committee recommends as follows—

- (i) On the prayers that the Committee inquires into the matter and recommends an appropriate mechanism for resolving the matter for the benefit of the petitioner; and recommends payment of the delayed pension of Mr. Benson Asiago Mocheo, the Committee recommends that, the Kenya Railways Corporation promptly and adequately pays the pension owed to Mr. Mocheo for his seventeen (17) years of service within thirty (30) days of the report being tabled.
- (ii) On the prayer that the Committee recommends action be taken on all those involved in the continued violation of Mr. Benson Asiago Mocheo's right to fair administrative action as provided under the Constitution of Kenya 2010 and the Fair Administrative Act No.4 of 2016, the Committee notes that the primary issue raised in the petition pertains to the delayed payment of pension, attributed to the Corporation. Therefore, the Committee recommends that the Corporation initiates administrative procedures to identify and deal with any negligence or fault by the officers responsible for processing the pension.
- (iii) The Kenya Railways Corporation fast-tracks any other pending pension payment owed to its former employees.



Signed: 

Date: 29/11/2024

THE HON. NIMROD MBITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

ANNEXURES

- Annex 1: The Adoption List
- Annex 2: Public Petition No. 50 of 2023 regarding Delayed Payment of Pension by Kenya Railways Corporation
- Annex 3: Minutes of 85th Sitting of 2023 held on 28th November 2023
- Annex 4: Minutes of 10th Sitting of 2024 held on 19th March 2024
- Annex 5: Minutes of 29th Sitting of 2024 held on 24th April 2024
- Annex 6: Minutes of the 60th Sitting held on 9th November 2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE

ADOPTION SCHEDULE
OF THE REPORT ON CONSIDERATION OF PUBLIC PETITION NO. 50 OF 2023
REGARDING DELAYED PAYMENT OF PENSION BY KENYA RAILWAYS CORPORATION

DATE..... 9TH NOVEMBER 2024

We, the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the consideration of Public Petition No. 50 of 2023 regarding Delayed Payment of Pension by Kenya Railways Corporation to confirm our approval and confirm its accuracy, validity and authenticity:

NO.	NAME	DESIGNATION	SIGNATURE
1.	Hon. Nimrod Mbithuka Mbai, M.P.	Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, M.P.	Vice Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	Member	
4.	Hon. Joshua Chepyegon Kandie, M.P.	Member	
5.	Hon. John Walter Owino, M.P.	Member	
6.	Hon. Ernest Ogesi Kivai, M.P.	Member	
7.	Hon. Maisori Marwa Kitayama, M.P.	Member	
8.	Hon. Edith Vethi Nyenze, M.P.	Member	
9.	Hon. Bidu Mohamed Tubi, M.P.	Member	
10.	Hon. Caleb Mutiso Mule, M.P.	Member	
11.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	Member	
12.	Hon. Peter Mbogho Shake, M.P.	Member	
13.	Hon. Suzanne Ndunge Kiamba, M.P.	Member	
14.	Hon. John Bwire Okano, M.P.	Member	
15.	Hon. Sloya Clement Logova, M.P.	Member	

