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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FOURTH SESSION - 2025
PUBLIC PETITIONS COMMITTEE

REPORT ON-

CONSIDERATION OF PETITION NO. 67 OF 2023 REGARDING DISMISSAL FROM
EMPLOYMENT OF MR. GERALD MULI KIILU BY ABSA BANK (FORMERLY BARCLAYS
BANK) PRESTIGE CENTRE

APRIL, 2025

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 23 APR 2025	DAY: Wed
TABLED BY:	CHAIRPERSON, PUBLIC PETITIONS Committee
CLERK-AT THE-TABLE:	PMUIGA

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. 67 of 2023 regarding dismissal from employment of Mr. Gerald Muli Kiilu by ABSA bank (formerly Barclays Bank). The petition was presented to the House pursuant to Standing Order No. 225 (2) (a) by the Member of Parliament for Central Imenti Constituency, Hon. Moses Kirima, M.P on behalf of Mr. Gerald Muli Kiilu.

The Committee considered the Petition and observed that the subsequent suits by the Petitioner were unsuccessful based on the doctrine of *res judicata*. This doctrine is enshrined under section 7 of the Civil Procedure Act (Cap. 21) and it bars a court from trying a suit involving same parties raising the same issues which have been sufficiently determined by another court of competent jurisdiction. The Committee undertook this inquiry by listening to the petitioner and the management of ABSA Bank and notes that this was a dispute between an employer and employee that arose in 2005 out of an employer-employee relationship and the Petitioner was paid dues totalling Kshs992,894.20 which was subject to PAYE and other statutory deductions and loans.

The Committee appreciates the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support without which its work would not have been possible. The Chairperson expresses gratitude to the Committee Members for their devotion and commitment to duty during 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. KAGESI ERNEST OGESI KIVAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date.....  - 22, 04, 2025

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 first constituted in October 2022 and reconstituted in March 2025 and comprises the following Members:

Chairperson

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

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

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

Hon. Beatrice Kadeveresia Elachi, CBS, M.P.
Dagoretti North Constituency
Orange Democratic Movement (ODM)

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

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

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

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

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

Hon. Peter Irungu Kihungi, M.P.
Kangema Constituency
United Democratic Alliance (UDA)

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

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. Nancy Akinyi
Research Officer III

Ms. Patricia Gichane
Legal Counsel II

Mr. Paul Shana
Sergeant-at-Arms

Ms. Roselyn Njuki
Senior Sergeant at Arms

Mr. Peter Mutethia
Audio Officer

Mr. Calvin Karungo
Media Relations Officer

PART TWO

2 BACKGROUND OF THE PETITION

2.1 Introduction

1. Public Petition No. 67 of 2023 regarding dismissal from employment of Mr. Gerald Muli Kiilu by ABSA bank (formerly Barclays bank) prestige Centre was presented to the House on 23rd November, 2023 by the Member of Parliament for Central Imenti Constituency, Hon. Moses Kirima, M.P on behalf of Mr. Gerald Muli Kiilu.
2. The petitioner stated that through a letter dated 31st January 2005, one Mr. Gerald Muli Kiilu was wrongly terminated by Absa Bank (formerly, the Barclays Bank of Kenya Ltd).
3. Absa Bank claimed that in the course of duty, Mr. Gerald Muli Kiilu incurred a loss of Kshs. 149,000 money which was borrowed from him by the then Retail Manager.
4. On the spot investigations done on 30th November 2004 by the Senior Retail Manager revealed that Mr. Gerald Muli Kiilu had a shortage of Kshs. 366.10.
5. The evidence of investigation revealed a loss of Kshs. 366 through a process that appeared to target an individual. The report of investigation of another colleague was found to have shortage of about Kshs. 30,000 was not terminated from employment, despite the amount being higher than what he had lost.
6. The Petitioner claims to be a victim of witch-hunting, discrimination, intimidation, nepotism and malice.
7. Mr. Gerald Muli Kiilu lodged a trade dispute with the Ministry of Labour and Social Protection. In a judgement dated 7th February 2008, the Ministry recommended that he be reinstated without loss of benefits or break in years of service, be paid ten (10) months gross salary as compensation for wrongful and /or unfair termination; and, any other relief the management would deem fit.

2.2 Petitioner's Prayers

8. The Petitioners prayed that the National Assembly through the Public Petitions Committee -
 - (i) Inquire into the dismissal of Mr. Gerald Muli Kiilu by Absa Bank (formerly, the Barclays Bank of Kenya Ltd);
 - (ii) Recommends that Absa Bank considers reinstating the Petitioner without loss or break in years of service; and,
 - (iii) Makes any other recommendation or action it deems fit in addressing the plight of the Petitioner.

PART THREE

3 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1 The Petitioner

On Wednesday 12th June, 2024, the Member for Central Imenti Constituency, Hon. Moses Kirima, M.P accompanied by Mr. Gerald Muli Kiilu, appeared before the Committee and submitted as follows –

9. Through a letter dated 31st January 2005, the Petitioner's employment contract was wrongly terminated by Absa Bank (formerly, the Barclays Bank of Kenya Ltd).
10. The matter was heard through internal mechanism of Absa Bank who dismissed the matter to his unsatisfaction, compelling the petitioner to seek redress in the labour tribunal.
11. Following his termination by the bank, the Petitioner lodged a trade dispute with the Ministry of Labour and Social Protection. In a judgement dated 7th February 2008, it was recommended that he be reinstated without loss of benefits or break in years of service, be paid ten (10) months gross salary as compensation for wrongful and/or unfair termination; and, any other relief the management would deem fit.
12. The bank had not honoured the directives issued by the Ministry of Labour and Social Protection.
13. The petition before the Committee was not an appeal of a court decision as the court did not consider the case brought by the petitioner based on a preliminary objection.
14. The Petitioner prayed for assistance to obtain justice and the deserved compensation for the years he had served before dismissal. The petitioner requested that despite his prayer of reinstatement to work as directed by the tribunal, the Committee should consider compensation of Kshs. 46 million as recommended by the tribunal.

3.2 The Management of ABSA Bank

On 10th September, 2024, the Director, Legal Compliance, ABSA Bank, Mr. Kenneth Kangarati appeared before the Committee and submitted as follows–

15. The Petitioner, Mr. Gerald Muli Kilu was employed by Barclays Bank Kenya Limited (now Absa Bank Kenya PLC) on 2nd June 1993 and worked for 12 years before suspension on 20th December 2004. The reason for termination was that the Petitioner was involved in irregular lending of money in his custody and care at the till to another member of staff.
16. Investigations were conducted, a hearing held, and the termination of his employment was communicated to him on January 31, 2005. On 4th April 2005,

he appealed the decision to terminate his employment. The appeal was considered and the decision to terminate him was upheld.

17. In 2009, he filed the matter at the then Ministry of Labour and Human Resource Development requesting for a determination. This was done through the Banking, Insurance and Finance Union of Kenya (BIFU). The dispute proceeded to conciliation and on December 16, 2009 the Conciliator issued a certificate of unresolved dispute Ref: ML/ IR/52/8/2009.
18. On 15th February, 2010 the Petitioner instituted a claim for wrongful termination against the Bank in the Industrial Court. The matter was registered as Industrial Court Cause No.124 of 2010 Gerald Muli Kiilu vs. Barclays Bank of Kenya. The claim was brought under the then Employment Act, 2007.
19. The claim was determined in an Award dated 29th October, 2010. The Industrial Court dismissed the claim because it was time barred having been filed 5 years after the date of termination. The Petitioner appealed to the Court of Appeal the appeal was registered as Civil Appeal No. 10 of 2011 - Gerald Muli Kiilu v Barclays Bank of Kenya.
20. The Court of Appeal heard the Appeal and determined it in a judgment dated 22nd April, 2016. The Court of Appeal upheld the decision of the Industrial Court and determined that it was wrong for the Petitioner to base his claim on a law that came into effect after his termination to seek remedies that were not available during the subsistence of the repealed laws (Employment Act Cap 226 & Trade Disputes Act Cap 234).
21. The Petitioner reported the dispute once again before the Commissioner of Labour. That dispute was referred to a Conciliator on 12th July, 2017. The Conciliator compiled a Report dated 4th September, 2017 recommending reinstatement without loss of benefits and 10 months gross salary as compensation.
22. The Report was sent to the Bank on 4th October, 2017 and the Bank responded on 6th October, 2017 informing the Conciliator that there was divergence on the findings considering the previous findings and determinations of the dispute.
23. In 2019, the Petitioner commenced Judicial Review proceedings - Judicial Review Application 137 of 2019 Gerald Muli Kiilu v Cabinet Secretary, Ministry of Labour and Social Protection & another; Barclays Bank of Kenya (Interested Party). This time the Petitioner was seeking orders that the Court to compel the Cabinet Secretary, Ministry of Labour and Social Protection to refer the dispute to the Employment and Labour Relations Court for the dispute to be adjudicated upon.
24. The Court determined the Judicial Review Application in a Ruling delivered on February 7, 2020. The Court dismissed the application on the basis that the matters had been previously determined and the dispute was time barred.

25. The Petitioner filed another claim before the Employment and Labour Relations Court - *ELRC Cause No. E606 of 2020 Geral Muli Kiilu v. Absa Bank Kenya PLC, the Cabinet Secretary Ministry of Labour & Social Protection and the Attorney General*. The Court determined that case on 17th May, 2021 and held that the dispute had been definitively determined.
26. The Petition before the Committee is not any different from the dispute that was declared in the year 2009. Furthermore, the Courts have had an opportunity to consider the matters presented in the Petition presented severally and determined them conclusively. The Legislature should not be turned into an avenue of appeal and overturning of decisions of the Judiciary.
27. On 13th September 2024, the representative of ABSA Bank made submissions vide a letter Ref. B20/1453/L/24AGM regarding the following additional information requested by the Committee—
- a) The nature and contents of the Petitioner's Employment Contract;
 - b) The Report by the Disciplinary Hearing Panel;
 - c) Documents indicating the dues paid to the Petitioner;
 - d) Information regarding the Petitioner's pension;
 - e) Information regarding the Petitioner's loans; and
 - f) The Petitioner's disciplinary record.
28. In response, ABSA Bank provided documentation as follows:
- (i) The Petitioner's Employment Contract dated May 13, 1993 clause 4 of which provides that the Petitioner was barred from lending to colleagues.
 - (ii) The Investigation Report dated December 28, 2004 containing the findings of irregularities at the Moi Avenue Prestige Centre Branch involving the Petitioner.
 - (iii) Minutes of the Disciplinary Hearing held on January 6, 2005 confirmed and signed by the Petitioner on January 17, 2005.
 - (iv) Letters dated February 9, 2005 confirming that the Petitioner's terminal dues had been processed.
 - (v) Letter dated April 25, 2005 confirming that the Petitioner had also been paid one-month salary in lieu of notice being Kshs54,218 from which Kshs.42,858 was applied to the Petitioner's loan account before an additional payment of Kshs.35,650 outstanding leave days.
 - (vi) The Petitioner's letter dated February 22, 2008 requesting for his pension.
 - (vii) The Bank's response dated March 6, 2008 confirming to the Petitioner that his pension of Kshs819,871 had been processed and credited to his account in February 2005.
 - (viii) Letter dated February 4, 2005 and the account statement of the Petitioner confirming that his pension had been credited to his account.
 - (ix) Letter dated April 29, 2008 from the Retirement Benefits Tribunal to the Petitioner confirming that his benefits were paid.
 - (x) Cash Shortage Report dated July 11, 1997 for the sum of Kshs1,200 involving the Petitioner.

- (xi) Report dated August 22, 1998 regarding the loss of Kshs5,000 by the Petitioner.
- (xii) Letter dated August 24, 1998 by the Petitioner acknowledging the loss of Kshs.5,000.
- (xiii) Letter dated August 29, 1998 recommending that the Petitioner be issued a reprimand.
- (xiv) Letter of reprimand dated September 3, 1998.

3.3 Kenya Bankers Association

On 10th September, 2024, the Ag. CEO of Kenya Bankers Association, Mr. Raimond Molenje appeared before the Committee and submitted as follows—

29. The matter had been brought to their attention. However, the matter was best dealt with by ABSA as a disciplinary matter within the organization.

3.4 Ministry of Labour and Social Protection

On 3rd December 2024, the Cabinet Secretary for the Ministry of Labour and Social Protection, Hon. (Dr.) Alfred Mutua submitted as follows on the Petition—

30. The Petitioner, Mr. Gerald Muli Kiilu was employed by Barclays Bank Kenya Limited (now Absa Bank Kenya PLC) on 2nd June, 1993. His employment was terminated on 31st January, 2005 when he was serving as a Bank Teller (Cashier) at Moi Avenue, Prestige Centre branch. The reason for termination was that the Petitioner was involved in irregular lending of money in his custody and care at the till to another member of staff.

31. Before Mr. Muli's termination, there was an investigation which commenced on 1st December, 2004 and completed on 19th December, 2004. He underwent a disciplinary hearing on 6th January, 2005. He appealed the decision to terminate his employment. The appeal was considered and the decision to terminate was upheld.

32. His dues totalling Kshs992,894.20 which was subject to PAYE and other statutory deductions and loans was calculated and paid as follows—

- | | | |
|-------|--|-----------------|
| (i) | One (1) month salary in lieu of notice pay | -Kshs 54,218 |
| (ii) | Twenty (20) days leave pay | -Kshs 35,650.20 |
| (iii) | Pension | -Kshs 903,026 |

33. Mr. Gerald Muli Kiilu was a member of Banking Insurance and Finance Union which reported a Trade Dispute under Section 62(1) of the Labour Relations Act 2007. The issue in dispute was wrongful dismissal from employment of Mr. Gerald Muli Kiilu. The dispute No. ML/IR/52/8/2009 was not resolved and the Conciliator issued a Certificate of Unresolved Trade Dispute through a letter Ref No. ML/NBI/TD/GMM/23/09 dated 16th December, 2009.

34. Mr. Gerald Muli Kiilu filed a case in the Industrial Court of Kenya Case No. 124 of 2010, ***Gerald Muli Kiilu Vs Barclays Bank of Kenya*** where the issue in dispute was wrongful termination of Gerald Muli Kiilu by the respondent.
35. On 29th October 2010, the judgement registered an award dismissing the entire claim with no order on the costs. The Petitioner, thereafter, lodged an appeal in the Court of Appeal at Nairobi in Civil appeal No. 10 of 2011, ***Gerald Muli Kiilu and Barclays Bank of Kenya***.
36. On 22nd April 2016 the Court of Appeal dismissed the appeal and ordered each party to pay their own costs.
37. The Petitioner through the Banking Insurance and Finance Union (BIFU) again registered a formal Trade Dispute with the Minister for Labour against Barclays Bank of Kenya. The issue in dispute was *wrongful dismissal from employment of Gerald Muli Kiilu*. The Conciliator through letter Ref No. MEACL&SP/LD/IR/52/37/2017 dated 4th September 2017 recommended as follows—
- (i) That the management should reinstate the Grievant without loss of benefit or breaking years of service;
 - (ii) That the grievant be paid ten (10) months gross salary as compensation for wrongful and/or unfair termination;
 - (iii) Any other relief the Management may deem fit.
38. The Management disagreed with the recommendations through a letter dated 6th October 2017. It was unfortunate that the Parties did not bring up to the attention of the Conciliator that the dispute had previously been reported to the Ministry and determined, and that the matter was the subject of a court determination. It was worth mentioning that the Conciliator was wrong to recommend both reinstatement and compensation.
39. The Petitioner filed a judicial review miscellaneous application No. 137 of 2019 between ***Gerald Muli Kiilu vs Cabinet Secretary, Ministry of Labour and Social Protection. (1st Respondent) Hon. Attorney General (2nd Respondent) Barclays Bank of Kenya. (Interested Party)***
40. On 7th February, 2020 the court declined to grant leave to commence judicial review proceedings and issued no order on costs. The Petitioner filed a suit at the Employment and Labour Relations Court Cause No. E606 of 2020, ***Gerald Muli Kiilu (Claimant) vs Absa Bank Plc (Barclays Bank of Kenya) (1st Respondent Cabinet Secretary (2nd Respondent) Ministry of Labour and Social Protection, and Attorney General (3rd Respondent)***. In a ruling delivered at Nairobi on 17th May 2021 the Court dismissed the suit.

41. On the prayer that the Committee recommends that Absa Bank considers reinstating the Petitioner without loss or break in years of services, the decisions of the Courts as highlighted are superior and the Cabinet Secretary for the Ministry of Labour and Social Protection cannot order reinstatement or challenge the Court Awards.
42. The Cabinet Secretary cannot act to address the plight of the Petitioner thus recommends this matter be closed.

PART FOUR

4 COMMITTEE OBSERVATIONS

Upon hearing from the Petitioner, Management of ABSA Bank and Kenya Bankers Association, the Committee observed that—

43. The matter was a dispute between an employer and employee that arose in 2005 out of an employer-employee relationship. Then, the resolution of such dispute was governed section 87 of the Employment Act (Cap. 226) (repealed). The Act provided that an aggrieved party may lodge a complaint with the labour officer or file a suit in the Industrial Court.
44. When the labour officer failed to resolve the dispute, the Petitioner filed a suit with the Industrial Court which was dismissed based on the limitation of actions pursuant to section 90 of the Employment Act (Cap. 226) (repealed). An appeal to the Court of Appeal was also struck out on the same basis.
45. The subsequent suits by the Petitioner were unsuccessful based on the doctrine of *res judicata*. This doctrine is enshrined under section 7 of the Civil Procedure Act (Cap. 21) and it bars a court from trying a suit involving same parties raising the same issues which have been sufficiently determined by another court of competent jurisdiction.
46. The Petitioner's dues totalling Kshs 992,894.20 which was subject to PAYE and other statutory deductions and loans was calculated and paid as follows—

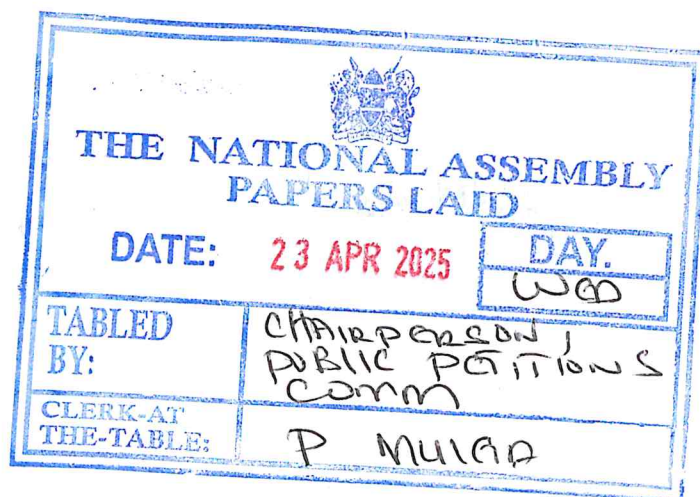
(i)	One (1) month salary in lieu of notice pay	-Kshs 54,218
(ii)	Twenty (20) days leave pay	-Kshs 35,650.20
(iii)	Pension	-Kshs 903,026

PART FIVE

5 COMMITTEE RECOMMENDATIONS

47. Pursuant to the provisions of Standing Order 227, the Committee responds to the Petition as follows—

- (i) On the prayer that the Committee inquires into the dismissal of Mr. Gerald Muli Kiilu by Absa Bank (formely, the Barclays Bank of Kenya LTD), the Committee undertook this inquiry by listening to the petitioner and the management of ABSA Bank and notes that this was a dispute between an employer and employee that arose in 2005 out of an employer-employee relationship and the Petitioner was paid dues totalling Kshs992,894.20 which was subject to PAYE and other statutory deductions and loans.
- (ii) On the prayer that Absa Bank considers reinstating the Petitioner without loss or break in years of service, the Committee rejects this prayer on the premise that various courts, which have jurisdiction to determine employment disputes, have pronounced themselves sufficiently over this matter.



Signed: [Signature] Date: 22nd April 2025.

HON. ERNEST KIVAI OGESI KAGESI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FOURTH SESSION - 2025
PUBLIC PETITIONS COMMITTEE

ADOPTION SCHEDULE
OF THE REPORT ON CONSIDERATION OF PETITION NO. 67 OF 2023 REGARDING
DISMISSAL FROM EMPLOYMENT OF MR. GERALD MULI KIILU BY ABSA BANK
(FORMERLY BARCLAYS BANK) PRESTIGE CENTRE

DATE.....11-04-2025.....

We, the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the consideration of regarding **DISMISSAL FROM EMPLOYMENT OF MR. GERALD MULI KIILU BY ABSA BANK (FORMERLY BARCLAYS BANK) PRESTIGE CENTRE** to confirm our approval and confirm its accuracy, validity and authenticity:

NO.	NAME	DESIGNATION	SIGNATURE
1.	Hon. Ernest Ogesi Kivai Kagesi, M.P.	Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, CBS, M.P.	Vice Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	Member	
4.	Hon. Nimrod Mbithuka Mbai, M.P.	Member	
5.	Hon. Joshua Chepyegon Kandie, M.P.	Member	
6.	Hon. Beatrice Kadeveresia Elachi, CBS, 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. (Eng.) Bernard Muriuki Nebart, M.P.	Member	
11.	Hon. Peter Mbogho Shake, M.P.	Member	
12.	Hon. Suzanne Ndunge Kiamba, M.P.	Member	
13.	Hon. John Bwire Okano, M.P.	Member	
14.	Hon. Peter Irungu Kihungi, M.P.	Member	
15.	Hon. Sloya Clement Logova, M.P.	Member	

