

THE COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"



Hata Mnyonge ana Haki

**AN INVESTIGATION REPORT ON THE ALLEGATIONS OF WRONGFUL DISMISSAL OF
VINCENT ONJORO FROM UGENYA HIGH SCHOOL**

AUGUST, 2021



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Foreword

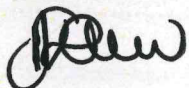
The Commission undertook investigations into the allegations of wrongful dismissal of one Vincent Onjoro from Ugenya High School. It was alleged that Vincent was engaged by the school as a bursar from July 2013 and was wrongfully dismissed from service in January 2017.

The Commission notified the Principal Secretary, State Department of Early Learning and Basic Education as well as the County Director of Education, Siaya, of the Commission's decision to undertake the investigation. A team of investigators conducted interviews with the complainant, current and previous members of staff and Board of Management at Ugenya High School, and the County Director for Education, Siaya. Documents and records relevant to the investigation were also recovered.

This report was informed by the analysis of the information gathered and the examination of documents recovered in the process of the investigations.

The recommendation was based on the limitation of jurisdiction as per section 30(c) of the Commission on Administrative Justice Act..."the Commission shall not investigate a matter pending before any court or judicial tribunal".

Signed this.....^{17th} day of August, 2021



HON. FLORENCE KAJUJU, MBS

CHAIRPERSON, COMMISSION ON ADMINISTRATIVE JUSTICE

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Acronyms

CAJ	Commission on Administrative Justice
NG-CDF	National Government Constituency Development Fund
NSSF	National Social Security Fund
BOM	Board of Management
CDE	County Director of Education
MOE	Ministry of Education
ADR	Alternative Dispute Resolution
SACCO	Savings and Credit Co-operative Society



Executive Summary

The Commission received a complaint from Vincent Onjoro alleging wrongful dismissal from the position of a bursar at Ugenya High School in January 2017 by the then Principal. He further alleged that the Principal made irregular submissions of employees' NSSF deductions and irregularly awarded tenders in a project funded by the National Government-Constituency Development Fund (NG-CDF), Ugunja Constituency.

The Commission notified the Principal Secretary, State Department of Early Learning and Basic Education and the Siaya County Director of Education, of the Commission's decision to undertake the investigation. A team of investigators visited Ugenya High School and other offices under the Ministry of Education (MOE), conducted interviews with the complainant, staff at the school and MOE staff at Siaya County, and recovered documents relevant to the issues under investigation.

Investigations established that Vincent Onjoro was engaged at Ugenya High School from July 2013 at the accounts department but his employment was never formalized. He was dismissed in January 2017 without notice or fair hearing. In the course of the investigations, it also came to light that Vincent had filed a case at Ukwala Law Courts against the Principal and Board of Management (BOM) Ugenya High School for wrongful dismissal.

In light of these findings, the Commission recommended that that the Commission closes the matter and the judicial process to take its course pursuant to section 30(c) of the CAJ Act.





1.0 Introduction

The Commission received a complaint dated 24th January 2018 from Vincent Onjoro alleging unfair dismissal from Ugenya High School where he had been engaged as a bursar from 24th July 2013 to 4th January 2017 when he was suspended from duty indefinitely and without cause by the school's principal. He further alleged that in March 2017 he wrote a letter to the school's Board of Management requesting to know the status of his employment but he did not receive a response on the same. He also alleged that the Principal was engaging in corrupt practises trough irregular submissions of staff NSSF deductions and irregular awarding of tenders in a school dormitory construction project funded by NG-CDF.

The Commission commenced an inquiry through correspondence to the Principal Ugenya High School requesting him to respond to the allegations. Subsequent correspondence with the Principal and the complainant as well as supporting documents availed by the compliant did not provide sufficient information to bring the matter to a conclusive end, and so it was recommended that the complaint be resolved by way of an investigation. However, the allegations on corruption were not investigated as they do not fall within the purview of the Commission's mandate.

Pursuant to section 8 of its constitutive Act, the Commission carried out an investigation on the issues mentioned below.

1.1 Issues under investigation

- i. Whether Vincent Onjoro was employed at Ugenya High School and under what terms.
 - ii. Circumstances surrounding his dismissal if indeed he was employed at the school.
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1.2 Investigation Process

1.2.1 Notification

The Principal Secretary, State Department of Early Learning and Basic Education as well as the County Director of Education, Siaya were notified of the Commission's decision to conduct investigations on the matter vide a letter Ref: **CAJ/IE/6/93/2020(1)** dated 23rd February 2021.

1.2.2 Offices/Sites Visited

- i. County Director of Education's office, Siaya
- ii. Sub-County Director of Education office, Ugenya
- iii. Ugenya High School
- iv. Ukwala Law Courts

1.2.3 List of interviewees

- i. Complainant
- ii. Principal, Ugenya High School
- iii. Former Principal Ugenya High School
- iv. Senior Teacher, Ugenya High School
- v. Member, Board of Management Ugenya High School
- vi. County Director of Education, Siaya

1.2.4 Documents Recovered

- i. Copy of the complainant's NSSF statement of account
- ii. Copies of payroll and pay schedule for Ugenya High School
- iii. Copies of correspondences between Ugenya High School and the complainant
- iv. Copy of letter from Ugenya High School to Elimu Sacco
- v. Copies of minutes of the BOM Ugenya High School meetings
- vi. Copies of court documents with respect to the matter
- vii. MOE guidelines for implementation of free day secondary education
- viii. Copies of supporting documents availed by the complainant during the inquiry



1.3 Legal Framework

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

1.3.1 Constitution of Kenya, 2010

Article 47 of the constitution provides *inter-alia* that:

- 1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- 2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

1.3.2 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. Section 30 (c) of the Act limits the Commission from investigating any matter pending before court or judicial tribunal.

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, reasons whereof and recommendations the Commission deems appropriate.

1.3.3 Employment Act, 2007

Section 8 provides that the provisions of the Act shall apply to oral and written contracts.

Section 9 of the Act provides *inter-alia* that:

"(1) A contract of service-

- (a) For a period or a number of working days which amount in the aggregate to the equivalent of three months or more; or
- (b) Which provides for the performance of any specified work which could not reasonably be expected to be completed within a period or a number of working days amounting in the aggregate to the equivalent of three months, shall be in writing.

(2) An employer who is a party to a written contract of service shall be responsible for causing the contract to be drawn up stating particulars of the employment and that the contract is consented by the employee in accordance with subsection 3."

Section 35 provides *inter-alia* that:

"(1) A contract of service not being a contract to perform specific work, without reference to time or to undertake a journey, shall if made to be performed in Kenya, be deemed to be-

..(b) Where the contract is to pay wages or salary periodically at intervals of or exceeding one month, a contract terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing..."

1.3.4 Fair Administrative Action Act, 2015

Section 4(3) provides *inter-alia* that: "where an administrative action is likely to adversely affect the rights and fundamental freedoms of any person. The administrator shall give the person affected by the decision-

- a) Prior adequate notice of the nature and reasons for the proposed administrative action
- b) An opportunity to be heard and to make representations in that regard
- c) Notice of a right to review or internal appeal against an administrative decision..."

1.3.5 Basic Education Act, 2013

Section 54(7) of the Act prescribes the functions of the County Director for Education as among others, implementing the education policies as well as co-ordination and supervision of all education officers and support staff at the county level.

Sections 55 and 58 of the Act provide for a Board of management in every basic education institution whose function includes among others, recruitment, employment and remuneration of such number of non-teaching staff as may be required by the institution in accordance with the Act. Section 62(1) provides that the head of a basic institution shall be the secretary to the Board of Management.

2.0 Analysis and Findings

2.1 Vincent Onjoro's Employment at Ugenya High School

Background of the allegation

Vincent Onjoro alleged that he had been employed at Ugenya High School as the school bursar from July 2013 to January 2017 when he was suspended indefinitely by the then principal. In a letter dated 23/02/2018 addressed to the Commission, the current principal denied having any knowledge of Vincent's employment at the school and that the position of a bursar had never existed in the school as the school does not fulfill the threshold required to employ a bursar.

Investigation Findings

It was established that Vincent was engaged as an accounts clerk at Ugenya High School from July 2013. A formal contract was not done with respect to his employment but records obtained including his NSSF statement of account and copies of Ugenya High School payment schedules show that he indeed drew a monthly salary from the school.


In his statement, Vincent stated that he was engaged by the school as an accounts clerk/bursar from 1st July 2013 on permanent and pensionable terms. He stated that he was issued with a letter of appointment which he has since misplaced. The then Principal Mr. Oyugi confirmed that Vincent was engaged informally as an accounts clerk at the school from mid-2013. He stated that the school was then inadequately funded since it had been established in 2011 and was still in its formative years. It is for this reason that Vincent as well as all other staff then, were engaged informally without any written contracts of employment. He further stated that the school did not meet the requirement of having at least five streams so as to employ a bursar and so Vincent was an accounts clerk and not a bursar. However, one of the copies of the school's payment schedule dated 30/7/2016 show his designation as bursar.

The current principal confirmed that when he joined Ugenya High School in December 2017 Vincent was not a member of staff. It came to his attention that Vincent was an employee when he received a letter from CAJ on the allegations of Vincent's unfair dismissal. He stated that through his own inquiry, he was able to confirm that Vincent had previously been engaged as an accounts clerk by the school. There was however no letter of employment or records showing the terms of engagement between the school and Vincent. He confirmed that all employees who had by then been engaged through the Board of Management did not have formal contracts of employment and upon this realization, he ensured the said employments for serving staff were formalized.

The senior teacher at Ugenya High School who is also the teacher's representative at the BOM as he was during the period when Vincent was engaged at the school, confirmed that Vincent was indeed engaged at the school from the year 2014 to 2017. He stated that Vincent was engaged as an accounts clerk but he was not aware of his terms of engagement and neither were they discussed at any board meeting then.

The CDE Siaya stated that he was not aware of the status of Vincent's employment. He however stated that for staff engaged in schools through the BOM, the positions should be advertised and shortlisting done after applications are received. Interviews are thereafter conducted where the interviewing panel consists of a representative from the Ministry of Education (MOE). Appointments are then done formally and confirmed through a letter of appointment. He however confirmed that for schools in their formative stages, employees may be engaged on a casual basis since most of these schools are not funded adequately to the extent of engaging staff on permanent basis. He further stated that employment of staff by the school Boards of Management are governed by the Employment Act as well as a circular from MOE dated 19th October 2017 ref: MOE. HQS/3/13/3.

Evidence therefore points to the fact that Vincent Onjoro was indeed engaged at Ugenya High School at the accounts department from July 2013 to February



2017 and that he received a monthly salary for the period that he was engaged. For the period July 2013 to February 2017, the school only availed to the Commission payment schedules for the months ending 30th June 2014 and 30th July 2016, and could not retrieve copies of payrolls for the rest of the period from their records. A copy of Vincent's NSSF statement of account however revealed that the school made remittances to NSSF on his behalf from July 2013 to February 2017. The terms under which he was engaged are unclear as there was no formal contract of employment. The principal and Board of Management neglected their responsibility of ensuring that a contract of employment was drawn in accordance to section 9 (1) & (2) of the Employment Act, 2007.

2.2 Allegation on unfair dismissal


Background to the Allegation

Vincent Onjoro alleged that he was suspended indefinitely by the Principal Ugenya High School on 4th January 2017. He alleged that this was as a result of him pointing out irregular submissions of NSSF returns and irregular awarding of tenders by the then principal Mr. Oyugi. He further alleged that on 8th March 2017 he wrote to the school's BOM requesting to be given a chance to make his representations and confirm the status of his employment but he never received a response.

Investigations Findings

In his statement, Vincent states that the Principal sent him home indefinitely in January 2017 under the guise that he was underperforming in his duties. He stated that the suspension was by word of mouth and was never communicated to him formally. To date, he has not received any communication from the school with respect to the status of his employment.

The former Principal stated that for the period Vincent was engaged at the school, he was underperforming his duties as he could not prepare books of accounts on time. He however did not communicate this formally. He stated that



as a result of Vincent's underperformance, in early 2017 he engaged someone to assist in preparing books of account at the school. He stated that Vincent thereafter left the school and never reported back on duty. He never notified him of his leaving and neither did he seek to find out why he left. He confirmed that on 10th March 2017 a letter addressed to the BOM by Vincent Onjoro requesting to know the status of his employment was received and discussed at a board meeting. He then explained to the BOM that he had engaged Vincent at the school informally. A board committee of three was assigned the task of looking into the matter but he stated that he is not aware of the findings or recommendations of the committee.

Investigations confirmed that indeed on 8th March 2017 Vincent wrote a letter to the BOM and copied to the Principal Ugenya High School enquiring on his terms of service. Copies of minutes of BOM meeting held on 10th March 2017 confirm that the letter was received and the matter was discussed at the meeting. It was noted that Vincent had written to the board seeking to be advised accordingly on his state of employment. It was proposed that the finance committee comprising of three members should look into the matter. One of the committee members Mr. Peter Ochiel indicated in his statement that the committee did not look into the matter as Vincent had already filed the matter in court. However, records show that the matter was filed in court on 27th August 2019.

Further, a copy of a letter from the then Principal Mr. Oyugi dated 5th June 2017 addressed to Elimu SACCO in which Vincent was member, was obtained. The letter informed the SACCO that Vincent was no longer an employee of the school as from 31st January 2017 and that no further remittances with respect to him would be channeled to the SACCO.

Evidence therefore points out to the fact that Vincent was wrongfully dismissed from duty without notice and never given a chance at fair hearing contrary to section 35 1(b) of the Employment Act, section 4(3) of the Fair Administrative Action Act and Article 47 of the Constitution.

2.3 Matter in court

Investigations revealed that Vincent Onjoro filed a Civil Petition no. 54 of 2019 against the Principal Ugenya High School and the BOM Ugenya High School, at Ukwala Law Courts. It is worth noting that this fact was unknown at the commencement of the Commission's investigations as neither the complainant nor the school had previously brought it to the Commission's attention, and it only came to light during the investigation.

Documents recovered show that the matter was filed in court on 27th August 2019 by Enock Otieno & Co. Advocates on behalf of Vincent Onjoro. Vincent sought compensation for wrongful dismissal and any other relief that the court may deem fit. The Attorney General's office undertook to represent Ugenya High School in the matter as evidenced in a notice of appointment. Correspondence from Ukwala Law Courts confirmed that the matter is still pending in court but is yet to commence for hearing.

In his further statement, the complainant confirmed that he resorted to filing the matter in court as an alternative channel to attain justice after he felt that the Commission was delaying in resolving the matter. He stated that he has appeared for two mentions but his advocate never appeared in either of the mentions. He further indicated that his advocate had agreed to represent him pro-bono but later on advised him to seek the services of a different advocate. He indicated that he has since been unable to do so as he cannot afford one. He further stated that he was willing to withdraw the matter from court with the hope that the Commission will assist in resolving the matter. He stated that his aim is to get a fair hearing by the school with respect to his employment and any other remedies that may be deemed fit.

The CDE Siaya indicated that he is open to resolving Vincent's issue as long as the complainant is also ready to approach his office, as his roles include conflict resolution in schools under his jurisdiction. The current Principal also indicated his willingness to resolve the matter through consultation with the school's BOM.

3.0 Conclusions

i. Employment of Vincent Onjoro

It was confirmed that Vincent Onjoro was employed at Ugenya High School at the accounts department from July 2013 to January 2017. However, no formal contract of employment was done to confirm his terms of service. The onus of drawing the contract as per the Employment Act, 2007 was on the Principal and BOM Ugenya High School.

ii. Dismissal of Vincent Onjoro

Vincent was wrongfully dismissed from Ugenya High School on 31st January 2017 and his request to the school for a fair hearing was never granted.

iii. Court Dispute

Vincent filed a case against wrongful dismissal on 27th August 2019 at Ukwala Law Courts. The matter is still pending in court but is yet to commence for hearing.

4.0 Consequential Issues

The allegations against the former Principal on irregular submission of NSSF deductions and irregular awarding of tenders in a NG-CDF funded project were not investigated as they do not fall under the purview of the Commission.

5.0 Recommendation

The matter to proceed to its conclusion in court pursuant to section 30(c) of the CAJ Act... "the Commission shall not investigate a matter pending before any court or judicial tribunal".

