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KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – FOURTH SESSION

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JOINT REPORT BY THE DEPARTMENTAL COMMITTEE ON HEALTH,  
COMMITTEE ON DELEGATED LEGISLATION AND THE COMMITTEE ON  
EQUAL OPPORTUNITY

ON

THE APPOINTMENT OF THE DIRECTOR, KENYA  
MEDICAL TRAINING COLLEGE

---

(Submitted pursuant to the direction of the House of 1<sup>st</sup> December, 2009)

Clerks Chambers,  
Parliament Buildings,  
NAIROBI.

April, 2010

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## **PREFACE**

### **Mr. Speaker,**

On Tuesday, 1<sup>st</sup> December, 2009, the Member for Mutito (Kiema Kilonzo) asked the Minister for Medical Services a Question by Private Notice seeking to know the procedure followed to appoint the current director of the Kenya Medical Training College (KMTC).

The House was not satisfied with the Minister's response, especially to supplementary questions. In this regard, the Speaker directed that the matter be examined by the Departmental Committee on Health, jointly with the Committees on Delegated Legislation and Equal Opportunity.

Pursuant to the directive, the Committees held four joint meetings to examine the matter.

### **Mr. Speaker,**

The Committee on Delegated Legislation is established under Standing Order 197 to, among other functions;

- i) ensure that statutory instruments are laid before the House as may be provided under any written law and scrutinize such instruments to ensure that they are consistent with parent statutes;
- ii) Unless otherwise provided for either expressly or by implication under any written law ,all subsidiary legislation shall be tabled before the House upon publication in the Kenya Gazette; and
- iii)The Committee may recommend that the House resolves that any particular subsidiary legislation be annulled.

The Committee on Equal Opportunity is established under Standing Order 192 and mandated to:-





- (vii) The Hon. Francis Chachu Ganya, M.P
- (viii) The Hon. Olago Aluoch, M.P.
- (ix) The Hon. Maison Leshoomo, M.P
- (x) The Hon. Baiya Njoroge, M.P.
- (xi) The Hon. B.C. Muturi Mwangi, MP
- (xii) The Hon. Joseph Lekuton, MP
- (xiii) The Hon. Fahim Twaha, MP
- (xiv) The Hon. Cyprian O. Omolo, M.P
- (xv) The Hon. Thomas Mwadeghu, M.P
- (xvi) The Hon. Fred Kapondi, M.P
- (xvii) The Hon. Luka Kigen, M.P
- (xviii) The Hon. Millie Odhiambo-Mabona, M.P
- (xix) The Hon. Ephraim Maina, M.P
- (xx) The Hon. Nuh Nassir, MP
- (xxi) The Hon. (Dr.) Eseli Simiyu, MP
- (xxii) The Hon. Gitobu Imanyara, MP
- (xxiii) The Hon. Kioko Munyaka, MP
- (xxiv) The Hon. Fredrick Outa, M.P
- (xxv) The Hon. Kiema Kilonzo, M.P
- (xxvi) The Hon. Raphael Letimolo, M.P
- (xxvii) The Hon. Sheikh Muhammad Dor, M.P
- (xxviii) The Hon. Joseph Oyugi Magwanga, M.P

**Mr. Speaker,**

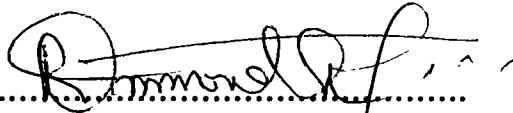
In its examination of the matter, the Joint Committee sought to answer the following questions- whether the Minister followed the right procedure in appointing the Director; whether the law confers discretion upon the Minister to disregard the advice of the Board; whether the Minister's action in disregarding the Board's advice was justified.


The Committee held a meeting with the Minister for Medical Services and also examined additional information submitted before it. The findings of the Joint Committee are contained in this Report.

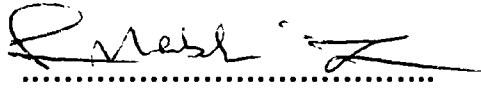
The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

**Mr. Speaker,**

It is our pleasant duty, on behalf of the Committees to present and commend this Report to the House for adoption.

Signed:   
.....  
Hon. Robert R. Monda, MP, Co-Chairperson.

Signed:   
.....  
Hon. Amina Abdalla, MP, Co-Chairperson.

Signed:   
.....  
The Hon. Mohamed Affey, M.P, Co-Chairperson

Dated: April 7, 2010

## INTRODUCTION

1. On Tuesday, 1<sup>st</sup> December, 2009, the Member for Mutito (Kiema Kilonzo) asked the Minister for Medical Services the following Question by Private Notice.
  - (a) *How was the current Director, Kenya Medical Training College (KMTTC) selected and could he provide the list of the shortlisted candidates and explain how the final selection was done?*
  - (b) *Could the Minister explain why the former Director's contract was not renewed despite recommendation by the Board?*
  - (c) *Could the Minister provide the report of the human resource firm contracted by the Board to interview the shortlisted candidates?*

2. The House was not satisfied with the Minister's response, especially to supplementary questions. In this regard, the Speaker directed as follows:-

***"Hon. Members! In light of the interest that this matter has attracted, I direct that the Committee on Equal Opportunity, Committee on Delegated Legislation and Committee on Health jointly commence investigations into this matter and file a report within the next four week."***

3. Pursuant to the directive, the Departmental Committee on Health, jointly with the Committees on Delegated Legislation and Equal Opportunity held meetings to examine the matter.

### **Meetings of the Committee**

4. The Joint Committee held a total of four meetings, the first one being on February 18, 2010, wherein the Committee noted that, prior to the direction, the Committee on Delegated Legislation had initiated the process of examining the legality of the appointment. The Joint Committee also observed that the issue before them was that of "delegated power" as opposed to delegated legislation. At the Meeting, the Committee identified the following as issues to ask the Minister for Medical Services-

- (i) Explain the process followed in appointing the current director of KMTC;
- (ii) How do you compare the process to the one followed in appointing previous directors of the college?
- (iii) Who prompted the appointment and subsequent advertisement for the post of the KMTC director?
- (iv) Did you receive the four names (4) of the shortlisted candidates from the Board?
- (v) Are you aware of the fact that the individual you appointed as the KMTC Director did not apply for that job and was never interviewed?
- (vi) What methodology did you use to select his name?
- (vii) Are you conversant with the provisions of the KMTC Act relating to the appointment of the KMTC Director?
- (viii) Which provision of the KMTC Act confers discretion upon the Minister to disregard the advice of the Board?
- (ix) Are you aware that, by acting contrary to the law in appointing the Director, you offended the Public Officers Ethics Act, 2003?

5. Thereafter, the Joint Committee held a meeting with the Minister on February 19, 2010. The Committee also met on March 25<sup>th</sup> and April 6, 2010 wherein they analysed the evidence of the Minister, additional information and compiled this report. The Report was unanimously adopted at the Joint Committee's meeting of April 7, 2010, attended by a majority of the Members.

## **EVIDENCE AND ADDITIONAL INFORMATION**

### **Evidence by the Minister for Medical Services**

6. Appearing before the Joint Committee on February 19, 2010, the Minister for Medical Services informed the Members as follows:-
- (a) That, the KMTC Act states that " There shall be a Principal of the College who shall be appointed by the Minister on the advice of the Board of Management";

- (b) That, pursuance thereto, the he consulted the Board which thereafter hired a human resource firm;
- (c) That, the HR firm placed an advertisement in the local dailies and shortlisted the applicants;
- (d) That, the Board submitted to him four (4) names (Dr. Jebich Maswani, Dr. Mildred Mudany, Dr. Maurice Simiyu and Dr. Timothy King'onde) to appoint a Director from amongst them;
- (e) That, he decided not to appoint the Director from the four names submitted to him due to the "incompetence" of KMTTC Board of Management. He alluded that, while the recruitment process was going on, the he had requested the Efficiency Monitoring Unit (EMU) to investigate the state of affairs and management of the College. The report submitted implicated three (3) of the four individuals submitted him;
- (f) That, having read the report by EMU, he was of the view that the Board's integrity and ability to competently undertake the recruitment exercise was questionable. Consequently, even their ability to objectively advice the Minister on the recruitment was doubtful. He therefore disregarded the list as submitted;
- (g) That, with respect to Dr. Maurice Simiyu, who was ranked third, he decided not to appoint him as he had just been deployed on a special and equally important task at the Coast Province;
- (h) That, time was running out and the College needed leadership. For proper management, it was not prudent to have the acting director continue holding

the position for a longer period. Further, the then acting director was also adversely mentioned by the EMU in their Report.

- (i) That, he thereafter requested for the full list and C.V's of all the applicants to the position and appointed Dr. Olang'o Onundi as the KMTC Director. He considered him most qualified on account of his prior exemplary record at the Ministry of Health;
- (j) That, the decision to appoint Dr. Onundi was made in the best interest of the College and the Country;
- (k) That, after the appointment Dr. Onundi invited the Minister to a party in his rural home, during the Christmas festive season. The Minister honored the invitation by attending the party;
- (l) That, Dr. Onundi hails from his constituency.

7. On Criteria the followed to appoint the Director, the Minister informed the Joint Committee that, having examined the criteria used by the Board and the Consultancy firm to arrive at the four names, it was clear to him, that **none** of the persons nominated by the Board could have scored better than Dr. Onundi. Moreover, Dr. Onundi had held various positions in the Ministry of Health and he had served all over the Republic thus he was the most suitable candidate.
8. Asked on what legal basis the Minister disregard the advice of the Board, the Minister informed the Members that, in his view, the word "advice" as used in the KMTC Act is a broad with different connotation of "inform, offer consultation or counsel". Once the Board submits names to him, he has the discretion to disregard their advice;

9. He further informed the Committee that he found the Board's advise to be misleading. Asked why he could not submit the process to the Board for reconsideration, he clarified that he was of the opinion that the Board was incompetent to handle the matter.
10. Asked whether he may have contravened the provisions of the Public Officers Ethics Act by acting contrary to the law, the Minister asserted that his actions were within the law and given similar circumstances, he would handle the matter in the same manner.
11. The Minister was not clear whether he sought legal advice on the "discretionary appointment" from the officers or the state law office.

**Report of the Consultant (M/s. Hawkins Associates, Ltd)**

12. The Committee examined the report of M/s Hawkins Associates Ltd, the human resource consultancy firm contracted by the KMTC Board of Management to carry out the exercise. The consultant was given the following terms of reference-
  - (i) To develop an appropriate advertisement for the position and place it in the press.
  - (ii) To receive and evaluate all the applications against the job and person specification.
  - (iii) To interview qualifying candidates.
  - (iv) To shortlist the ten most suitable candidates.
  - (v) To forward to KMTC Board, a report on the assignment including profiles and scores of the candidates shortlisted.
13. According to the report dated 25<sup>th</sup> May, 2009, the advertisement appeared in *The Standard* newspaper on 24<sup>th</sup> April, 2009 and in *The Daily Nation* on 27<sup>th</sup> April, 2009. A total of forty three (43) applications were received by the closing date of 11<sup>th</sup> May, 2009.
14. Upon evaluating each of the application against the job and person specification, a total of eighteen (18) applicants were found to have attained the minimum requirement for the position and were therefore shortlisted for a first in-depth interview with the Consultant. Of the 18 qualifying applicants, 16 of them attended the interviews held at

the Consultant's office between Thursday 14<sup>th</sup> and Saturday 23<sup>rd</sup> May 2009. One candidate was out of the country and another was not interviewed since he had previously been interviewed by the Consultant, albeit for a different position.

15. Subsequent to the interview of the 16 candidates by the Consultant, the candidates were ranked in order of their score and a shortlist of the following top ten candidates was arrived at-

| <b>Name of Candidate</b> | <b>Ranking</b> |
|--------------------------|----------------|
| James Aggrey Oloo        | 1              |
| Timothy M. Kingondu      | 2              |
| John Martin Okoth        | 3              |
| Robert K. Ayisi          | 4              |
| Jebichi F. Maswan        | 5              |
| Maurice P. Siminyu       | 6              |
| Maryanne Ndonga          | 7              |
| Joshua O Lusi            | 8              |
| Milred A. Mudany         | 9              |
| Waqo D. Ejersa           | 10             |

16. The names together with brief notes on each of them were forwarded for the final interview by the Board of Management of the KMTC.
17. Upon receipt of the names of the ten candidates, the Board in consultation with the Consultant prepared a list of proposed interview questions and a proposed interview scoring form which were to be used by the interview panel during the interview process.
18. The interviews were held in the Board Room of the KMTC on Tuesday, 9<sup>th</sup> and Wednesday 10<sup>th</sup> June 2009 and based on the scores obtained by each candidate, the interview panel ranked the candidates as follows-



|                          |   |             |
|--------------------------|---|-------------|
| 1. Dr. Jebich Maswani    | - | 75 per cent |
| 2. Dr. Mildred Mudany    | - | 72 per cent |
| 3. Dr. Maurice Simiyu    | - | 71 per cent |
| 4. Dr. Timothy King'onde | - | 70 per cent |
| 5. Dr. John Okoth        | - | 66 per cent |
| 6. Dr. Waqo Ejersa       | - | 66 per cent |
| 7. Dr. Joshua Lusi       | - | 64 per cent |
| 8. Dr. Robert Ayisi      | - | 64 per cent |
| 9. Dr. Maryanne Ndonga   | - | 64 per cent |
| 10. Dr. James Oloo       | - | 60 per cent |

19. Thereafter, the interview panel resolved that the four highest ranked candidates in order of preference were: **1. Dr. Jebichi F. Maswan; 2. Dr. Mildren A. Mudany; 3. Dr. Maurice P. Simiyu; and 4. Dr. Timothy M. King'onde.** It was further resolved that the Chairman of the Board should forward the names of these four candidates to the Appointing Authority for appointment.

**Why the Minister disregarded the advice of the Board**

20. During his appearance before the joint Committee, the Minister for Medical Services explained that he disregarded the advice of the Board to appoint any one of the listed persons as the Director of KMTTC for the following reasons-

- (a) That, while the recruitment process was ongoing, the Minister had requested the Efficiency Monitoring Unit (EMU) to investigate the state of affairs and management of the College. **The report submitted implicated three (3) of the four persons proposed** by the Board for appointment;
- (b) That, the **Members of the then KMTTC Board of Management were adversely mentioned in the EMU Report.** As such, even their advise on the appointment exercise was unreliable. According to the Minister, the Board's integrity and competence was questionable;

(c) That, in his view and considering reasons (a) and (b) enumerated above, the credibility of Consultancy firm, Ms. Hawkins Associates Ltd was doubtful;

(d) That, having discredited the ability of the Board to advise him, and considering that **time was of essence**, he asked for the C.Vs of all the applicants and arrived at the name of Dr. Olang'o Onundi as the most suitable candidate;

(e) That, in the Ministers opinion, had the recruitment been fair and aboveboard, Dr. Olang'o Onundi should have scored better than any of the ten (10) individuals who were shortlisted and later interviewed by the Board.

#### **Report by the Efficiency Monitoring Unit**

21. According to a Report dated January 2010 prepared by the Efficiency Monitoring Unit (EMU) on system audit and investigation into allegations of corruption at the KMTC, the report adversely mentioned the senior officers of the College and recommended disciplinary action against the members of the Management Committee.
22. Of the officers adversely mentioned in the *EMU Report* only Dr. T. King'onde was a Board member. Dr. T. King'onde, the then KMTC Director was ranked **fourth** amongst the four names submitted to the Minister for selection, notwithstanding the fact that at the time of recruitment, he had already ceased to be a Board member. None of the other nine (9) candidates in the final shortlist were adversely mentioned in the *EMU Report*.

#### **Procedure for Appointment under the Kenya Medical Training College Act**

23. The procedure for appointment of the Principal of the Kenya Medical Training College is set out in section 8(1) of the Kenya Medical Training College Act which provides that:-
- 8.(1) There shall be a Principal of the College who shall be appointed by the Minister on the Advice of the Board of Management.*

**Does the Act confer discretion upon the Minister in the appointment process?**

24. It is apparent from a plain reading of the above provision that the appointment of the Principal of the KMTC is vested upon two entities, *viz*,
- i. The Board of Management of KMTC established under Section 9 of the KMTC Act and,
  - ii. The Minister.
25. The Act does not confer exclusive appointing power on any of the above entities, but it rather shares the same between the Board of Management and the Minister of Medical Services. Nonetheless, the Act is very specific that the Minister can only appoint the Principal on the advice of the Board. It is therefore explicit that the role of the Board is limited only to selecting a suitable candidate(s) and advising the Minister on the same. The Minister is therefore vested with the ultimate appointing authority **albeit** on the advice of the Board.
26. From the foregoing, it is very clear that the KMTC Act envisage the sharing of the appointing responsibility between the **Board of Management and the Minister**. The appointing process is therefore a participatory and consultative process and all the functionaries must act collectively to reach an agreed decision.
27. However, it should be noted that the KMTC Act, although enacting the legal procedure for the appointment of the Principal, is silent on the specific procedure to be followed by the Board of Management prior to rendering its advice to the Minister. Invariably, it would follow that the Board would employ a transparent and open process. Nonetheless, it is **implicit** that it is the Board's mandate to forward the name(s) of the shortlisted candidate(s) to the Minister for the final appointment. The Act therefore envisages that both entities should work hand in hand in the appointing process.

**The use of the word "shall" in statutes.**

28. In its analysis, the Joint Committee held that, it is a canon rule in construction of statutes that the use of the word "*shall*" when used in a statute raises a presumption that a

particular provision is imperative<sup>1</sup>. Similarly, when a statute requires that something shall be done, or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, such a requirement is regarded as **mandatory**<sup>2</sup>. Further, in statutes conferring a power to be exercised on certain condition, the conditions prescribed are normally held to be mandatory and a power inconsistent with those conditions is impliedly negated<sup>3</sup>.

29. Even the leading English treatise on interpretation of statutes **CRAIES: Statute Law, 6<sup>th</sup> Edition** pp.264 has put it thus-

*“An affirmative statute prescribing the conditions for exercise of power conferred by it, is construed as mandatory and if an affirmative statute which is introductive of a new law directs a thing to be done in a certain way, that thing shall not, even if there be no negative words, be done in any other way”*

30. Similarly, section 51(2) of the Interpretation and General Provisions Act Cap 2 provides as follows-

*51 (2) “Where the power or duty of a person under this section is exercisable upon the recommendation , or is subject to the approval or consent of another person, then the power shall, unless a contrary intention appears be exercisable only upon that recommendation or subject to that approval or consent.”*

### **COMMITTEE OBSERVATIONS**

31. In its observations, the Committee sought to answer the following questions-
- (i) Does the law confer the Minister with the discretion to disregard the Board's advice?
  - (ii) Was the Ministers action to disregard the advice of the Board justified?
  - (iii) Was the correct procedure complied with in the present appointment?

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<sup>1</sup> See Maxwell on The Interpretation of Statutes 12<sup>th</sup> Ed pp.315-317 and Principles of Statutory Interpretation by J.P Singh 7<sup>th</sup> Ed pp.298.

<sup>2</sup> Ibid

<sup>3</sup> Principles of Statutory Interpretation by J.P Singh 7<sup>th</sup> Ed pp.308.

32. In answer to the first question, the role of the Board in the appointment process came to an end upon presenting the names of the four (4) shortlisted candidates to the Minister and what was left was for the Minister as the appointing authority to conclude the process by **selecting** one name from the submitted list and appointing him/her as the Principal of KMTTC. Indeed, this process is not new as it also applies in the appointment of chief executives/Directors of other State Corporations such as the Kenya Roads Board and Capital Markets Authority. **Had the Legislature wished the Minister to be the sole appointing authority, then the Act should have stated so as it is in the case of other statutes.**
33. There is no doubt that the Minister is the appointing authority, but the law demands of the Minister to seek the advice of the Board before making the appointment. Section 8(1) of the KMTTC Act does not confer any discretion on the Minister to disregard the advice of the Board. Section 8(1) of the KMTTC Act is couched in an imperative form in that it uses the word “*shall be*” before the word “appointed” therefore making it mandatory upon the Minister to seek the advice of the Board in the appointment of the Principal.

**Was the Minister’s action to disregard the advice of the Board justified?**

34. Having scrutinized the report prepared by the Efficiency Management Unit, (titled *Report of Efficiency Monitoring Unit on System Audit and Investigation into Allegations of Corruption at the KMTTC, January 2010*) the Joint Committee found out that-
- (i) the report adversely mentioned only one (1) member of the KMTTC Board of Management, Dr. Timothy King’ondou, the then KMTTC Director who ranked fourth on the list submitted to the Minister for selection. Further, at the time of recruitment, he had ceased to be a Board Member;
  - (ii) the composition of the Board of Management of the KMTTC as provided in Section 9 of the KMTTC Act (cap 261) comprises of a chairman, vice-chairman and an honorary treasurer, all appointed by the President; the Director of Medical Services; the Principal; the Permanent Secretaries in the

Ministries responsible for Health, Finance and Education; the Chief nursing Officer; the Director of Personnel Management; the Director, Kenyatta National Hospital; the Principal, College of Health Sciences of the University of Nairobi, the Director, KEMRI; two representatives of the constituent centers appointed by the Minister and not more than three persons co-opted by the Board of Management from time to time, not being public officers or employees of the College to represent the public interest.

- (iii) None of the other nine (9) candidates who were in the final shortlist was adversely mentioned in the EMU report. Most of the individuals implicated in the *EMU Report* were senior officers (staff) at the College and not members of the Board of Management;
- (iv) Given that the said *EMU Report* is dated January 2010 while the exercise was concluded by August, 2009, could the assertion by the Minister that he relied on the said Report to discredit the Board and the candidates hold water?

**35.** According to the procedure laid down in Section 8(1) of the KMTC Act, the Board of Management executed its mandate in the appointment process rightly in that it:-

- (i) initiated the process of recruiting a director for the College;
- (ii) contracted a credible human resource consulting firm to lead the search for the Principal of KMTC;
- (iii) interviewed 10 candidates shortlisted for the final interview by the human resource consultant;
- (iv) forwarded the names of the top four scoring candidates to the Minister for appointment as provided under the Act.

36. The role of the Board of Management in the appointment process came to an end upon presenting the names of the four (4) shortlisted candidates to the Minister and what was left was for the Minister as the appointing authority to conclude the process by **selecting** one name from the submitted list and appointing him/her as the Principal of KMTC;
37. The Committee also noted that an amount of Ksh. 1,878,926.00, made up of Ksh. 662,988 being board allowances and Ksh. 1,215,935 as the consultancy fees, was spent on the exercise.
38. The Minister used the *EMU Report* to unjustly discredit the credibility of the Board and the Consultancy firm before the Committee and the House.

### **CONCLUSION**

39. The Joint Committee finds that;
- (i) by disregarding the advice of the KMTC Board of Management, the Minister for Medical Services did not follow the laid down procedure as enacted under Section 8(1) of the KMTC Act;
  - (ii) the appointment of the Director of KMTC as made by the Minister of Medical Services contravened Section 8(1) of the Kenya Medical College Act;
  - (iii) the appointment was contrary to the spirit of the National Cohesion and Reconciliation Act in that it was not fair and it failed to accord equal opportunity to all qualified persons to be considered;
  - (iv) by failing to follow due process, the expenditure on the recruitment exercise totaling Ksh. 1,878,926.00 (made up of 662,988 being board allowances and Ksh. 1,215,935 as the consultancy fees) was an avoidable expenditure of public funds; and

(v) the Minister failed to demonstrate that the KMTTC Board of Management (save for Dr. King'onde) and the Consultancy firm, M/s. Hawkins Associates Ltd was corrupt, inefficient and incompetent, as alluded in his response in the House and before the Committee.

**Registration of dissenting view- (Hon. Olago Aluoch, M.P)**

40. During a meeting held by the Joint Committee on March 24, 2010, the Hon. Olago Alouch, MP recorded dissenting view on the assertion that the Minister contravened the law in appointing the director. The Member was of the view that the use of the word "*shall*" in Section 8 of the KMTTC Act does not confer a mandatory obligation on the Minister, and therefore the Minister can exercise his discretion.

**RECOMMENDATIONS**

41. The Committee recommends that-

- (i) the House expresses displeasure and reprimands the Minister for Medical Services for misleading the House and the Joint Committee on the role of KMTTC Board of Management and the Consultancy firm, M/s. Hawkins Associates Ltd in the recruitment process and resolves that the process of appointment of the Director of KMTTC as followed by the Minister was an irregularity; and,
- (ii) the House directs the Minister for Medical Services to follow the due process of the law and regularize the appointment of the Director of KMTTC within sixty (60) days.

.....end.....



**ANNEX I:**

**MINUTES OF THE JOINT COMMITTEES**

**MINUTES OF THE FIRST JOINT SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH AND COMMITTEES ON DELEGATED LEGISLATION AND EQUAL OPPORTUNITY HELD IN THE MAIN COMMITTEE ROOM, 1<sup>ST</sup> FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS ON MONDAY 8<sup>TH</sup> MARCH 2010 AT 2.55.P.M.**

**PRESENT**

The Hon. (Dr.) Robert Monda, MP (Co-Chairperson)

The Hon. Amina Abdallah, M.P (Co-Chairperson)

The Hon. Mohamed A. Affey, M.P (Co-Chairperson)

The Hon. (Dr.) Nuh Nassir Abdi, MP

The Hon. Fredrick Outa, MP

The Hon. Joseph Oyugi Magwanga, MP

The Hon. (Dr.) Victor K. Munyaka, MP

The Hon. (Dr.) Eseli Simiyu, M.P

The Hon. (Dr.) Boni Khalwale M.P

The Hon. Raphael L. Letimalo, M.P

The Hon. Kiema Kilonzo, M.P

The Hon. Chachu Ganya, M.P

The Hon Njoroge Baiya. M.P

**ABSENT**

The Hon. Joseph Lekuton, M.P

The Hon. Cyprian Omolo, M.P

The Hon. Thomas Mwadeghu, M.P

The Hon. John Olago Aluoch, M.P

The Hon. Ababu Namwamba, M.P

The Hon. (Dr.) Julius Kones, M.P

The Hon. Barnabas Muturi Mwangi, M.P

The Hon. Fahim Twaha, M.P

The Hon. Fred Kapondi, M.P

The Hon. Luka Kigen, M.P

The Hon. Millie Odhiambo-Mabona, M.P

The Hon. Maison Leshoomo, M.P

The Hon. Ephraim Maina, M.P

**IN ATTENDANCE:**

**NATIONAL ASSEMBLY**

|                     |   |                        |
|---------------------|---|------------------------|
| Mr. Samuel Njoroge  | - | Second Clerk Assistant |
| Mr. Abdullahi Aden  | - | Third Clerk Assistant  |
| Mr. Muvengei Ngwele | - | Third Clerk Assistant  |
| Mr. Salad M. Guyo   | - | Third Clerk Assistant  |

**MIN. NO. 001/2010**

**OPENING REMARKS**

The meeting opened with prayers by the Committee Clerk.

**MIN. NO. 002/2010**

**MATTER OF APPOINTMENT OF DIRECTOR, KMTC**

Members deliberated at length the matter of appointment of KMTC Director and:

- (i) noted the contents of the *direction by the Chair* of December 1, 2009, that the three Committees jointly examine the matter;
- (ii) noted that, prior to the direction, the Committee on Delegated Legislation had initiated the process of examining the legality of the appointment;
- (iii) observed that the issue is that of “delegated power” as opposed to delegated legislation;
- (iv) broadly analysed the legal opinion submitted by the Secretariat and;

(v) asserted the need request the Minister for Medical Services appear before them, as scheduled, on March 9, 2010;

The Committee also outlined the following as lead issues to be asked to the Minister for Medical Services-

- (i) Explain the process followed in appointing the current director of KMTC?
- (ii) How do you compare the process to the one followed in appointing previous directors of the college?
- (iii) Who prompted the appointment and subsequent advertisement for the post of the KMTC director?
- (iv) Did you receive the four names (4) of the shortlisted candidates from the Board?
- (v) Are you aware of the fact that the individual you appointed as the KMTC Director did not apply for that job and was never interviewed?
- (vi) What methodology did you use to select his name?
- (vii) Are you conversant with the provisions of the KMTC Act relating to the appointment of the KMTC Director?
- (viii) Which provision of the KMTC Act confers discretion upon the Minister to disregard the advice of the Board?
- (ix) Are you aware that, by acting contrary to the law in appointing the Director, you offended the Public Officers Ethics Act, 2003?

MIN. NO. 003/2010

ADJOURNMENT

And there being no other business, the Co- chairs adjourned the Sitting at 3.45 pm. The next meeting will be held on March 9<sup>th</sup>, Tuesday 2010 at 9.30 am.

Signed: Hon. (Dr.) Robert R. Monda, MP  
(CO-CHAIRPERSON)

Signed: Hon. Amina Abdalla, MP  
(CO-CHAIRPERSON)

Signed: Hon. Mohamed Affey, MP  
(CO-CHAIRPERSON)

Date: March 25, 2010.

**MINUTES OF THE SECOND JOINT SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH AND COMMITTEES ON DELEGATED LEGISLATION AND EQUAL OPPORTUNITY HELD ON TUESDAY, MARCH 9, 2010 IN COMMITTEE ROOM 2<sup>ND</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.30 AM.**

**PRESENT**

The Hon. Robert Monda, M.P. - Co-Chairperson  
The Hon. Mohamed Affey, M.P - Co-Chairperson  
The Hon. Amina Abdalla, M.P - Co-Chairperson  
The Hon. Ababu Namwamba, M.P  
The Hon. Bonny Khalwale, M.P  
The Hon. Nuh Nassir, MP  
The Hon. (Dr.) Eseli Simiyu, MP  
The Hon (Dr) Julius Kones, M.P  
The Hon.Gitobu Imanyara, MP  
The Hon. Kioko Munyaka, MP  
The Hon. Fredrick Outa, M.P  
The Hon Kiema Kilonzo, M.P  
The Hon. Francis Chachu Ganya, M.P  
The Hon. Raphael Letimolo, M.P  
The Hon. Sheikh Muhammad Dor, M.P  
The Hon. Joseph Oyugi Magwanga, M.P

**ABSENT WITH APOLOGY**

The Hon. Olago Aluoch, M.P.

**ABSENT**

The Hon.B.C.Muturi Mwangi, MP  
The Hon. Joseph Lekuton, MP  
The Hon. Baiya Njoroge, M.P.

The Hon.Fahim Twaha, MP  
The Hon. Cyprian O. Omolo, M.P  
The Hon. Thomas Mwadeghu, M.P  
The Hon. Fred Kapondi, M.P  
The Hon. Luka Kigen, M.P  
The Hon. Millie Odhiambo-Mabona, M.P  
The Hon. Maison Leshoomo, M.P  
The Hon. Ephraim Maina, M.P

**IN ATTENDANCE**

**NATIONAL ASSEMBLY**

|                     |   |                        |
|---------------------|---|------------------------|
| Mr. Samuel Njoroge  | - | Second Clerk Assistant |
| Mr. Abdullahi Aden  | - | Third Clerk Assistant  |
| Mr. Muvengei Ngwele | - | Third Clerk Assistant  |
| Mr. Salad M. Guyo   | - | Third Clerk Assistant  |

**MIN.NO.04/2010 PRELIMINARY**

The Co- Chairperson called the meeting to order at 1100 a.m. and welcomed the Minister for Medical Services. He explained the basis of the meeting and the proposed procedure for the enquiry.

**MIN.NO.05/2009 EVIDENCE OF THE MINISTER FOR MEDICAL SERVICES**

The Minister for Medical Services Hon. Anyang Nyong'o, M.P, appeared before the Committee accompanied by the following:

- (i) Dr. Wycliffe N. Mogo - Deputy Director of Medical Services
- (ii) Alfred N. Mogere - Senior Deputy Secretary, Ministry of Medical
- (iii) Mr. Joe Donde - Vice Chair, KMTC Board of Management

On the questions posed by the Committee, the Minister responded as follows-

**i) Process followed in the Appointment of the KMTC Director**

- (a) That, the KMTC Act states that “ There shall be a Principal of the College who shall be appointed by the Minister on the advice of the Board of Management”;
- (b) That, Pursuance thereto, the he consulted the Board which thereafter hired a Human Resource (HR) Firm;
- (c) That, the HR firm placed an advertisement in the local dailies and shortlisted the applicants;
- (d) That, the Board submitted to the Minister four (4) names (Dr. Jebich Maswani, Dr. Mildred Mudany, Dr. Maurice Simiyu and Dr. Timothy King’onde) to appoint a Director from amongst them;
- (e) That he decided not to appoint the Director from the four names submitted to him due to the “incompetence” of KMTC Board of Management. He alluded that, while the recruitment process was going on, the he had requested the Efficiency Monitoring Unit (EMU) to investigate the state of affairs and management of the College. The report submitted implicated three (3) of the four individuals submitted him;
- (f) That, having read the report by EMU, he was of the view that the Board’s integrity and ability to competently undertake the recruitment exercise was questionable. Consequently, even their ability to objectively advice the Minister on the recruitment was doubtful. He therefore disregarded the list as submitted;



- (g) That, with respect to Dr. Maurice Simiyu, who was ranked third on the Minister decided not to appoint him since he had just been deployed on a special and equally important task at the Coast Province;
- (h) That time was running out and the College needed leadership. For proper management, it was not prudent to have the acting director continue holding the position for a longer period. Further, the then acting director was also adversely mentioned by the EMU in their Report.
- (i) That, the Minister thereafter requested for the full list and C.V's of all the applicants to the position and appointed Dr. Olang'o Onundi as the KMTC Director. He considered him most qualified on account of his prior exemplary record at the Ministry of Health;
- (j) That, the decision to appoint Dr. Onundi was made in the best interest of the College and the Country;

**ii) What Criteria did the Minister apply in appointing the Director**

The Minister informed the Joint Committee that, having examined the criteria used by the Board and the Consultancy firm to arrive at the four names, it was clear to him, that none of the persons nominated by the Board was better than Dr. Onundi. Moreover, Dr. Onundi had held various positions in the Ministry of Health and he had served all over the Republic thus he was the most suitable candidate.

**iii) On what legal basis did the Minister disregard the advice of the Board.**

The Minister informed the Members that, in his view, the word "advice" as used in the KMTC Act is a broad with different connotation of "inform, offer consultation or counsel". Once the Board submits names to him, he has the discretion to disregard the advice of the Board;

He further informed the Committee that he found the Board's advise to be misleading. Asked why he could not submit the process to the Board for reconsideration, he clarified that he was of the opinion that the Board was incompetent to handle the matter.

Asked whether he may have contravened the provisions of the Public Officers Ethics Act by acting contrary to the law, the Minister asserted his actions were within the Law and given similar circumstances, he would handle the matter in the same manner.

The Minister was not clear whether he sought legal advice on the "discretionary appointment" from the officers or the state law office.

**MIN.NO.06/2010**

**JOINT COMMITTEE DELIBERATIONS**

The Joint Committee deliberated on the Ministers response and resolved to examine the following additional information in their next meeting of Tuesday, March 16, 2010-

- (i) Report of Efficiency Monitoring Unit on Management aspect at KMTC;
- (ii) Report of the Consultant, M/s Hawkins Associate on the recruitment;
- (iii) The Advertisement by the Consultant, inviting applications for the post;
- (iv) An account of expenditure on the recruitment exercise;

The Secretariat was asked to avail the documents and information in good time.



**MINUTES OF THE THIRD JOINT SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH AND COMMITTEES ON DELEGATED LEGISLATION AND EQUAL OPPORTUNITY HELD ON THURSDAY, MARCH 25, 2010 IN COMMITTEE ROOM 9, PARLIAMENT BUILDINGS AT 10.30AM.**

**PRESENT**

The Hon. Amina Abdalla, M.P - Co-Chairperson  
The Hon. Robert Monda, M.P. - Co-Chairperson  
The Hon. Mohamed Affey, M.P - Co-Chairperson  
The Hon. Ababu Namwamba, M.P  
The Hon. Bonny Khalwale, M.P  
The Hon (Dr) Julius Kones, M.P  
The Hon. Francis Chachu Ganya, M.P  
The Hon. Olago Aluoch, M.P.  
The Hon. Maison Leshoomo, M.P

**ABSENT WITH APOLOGY**

The Hon. Baiya Njoroge, M.P.

**ABSENT**

The Hon.B.C.Muturi Mwangi, MP  
The Hon. Joseph Lekuton, MP  
The Hon.Fahim Twaha, MP  
The Hon. Cyprian O. Omolo, M.P  
The Hon. Thomas Mwadeghu, M.P  
The Hon. Fred Kapondi, M.P  
The Hon. Luka Kigen, M.P  
The Hon. Millie Odhiambo-Mabona, M.P  
The Hon. Ephraim Maina, M.P  
The Hon. Nuh Nassir, MP

The Hon. (Dr.) Eseli Simiyu, MP  
The Hon. Gitobu Imanyara, MP  
The Hon. Kioko Munyaka, MP  
The Hon. Fredrick Outa, M.P  
The Hon Kiema Kilonzo, M.P  
The Hon. Raphael Letimolo, M.P  
The Hon. Sheikh Muhammad Dor, M.P  
The Hon. Joseph Oyugi Magwanga, M.P

**IN ATTENDANCE**

Mrs. Florence Abonyo  
Mr. Samuel J. Njoroge  
Mr. Jacob Ngwele  
Mr. Salad Guyo  
Mr. Abdullahi Aden

**NATIONAL ASSEMBLY**

First Clerk Assistant  
Second Clerk Assistant  
Third Clerk Assistant  
Third Clerk Assistant  
Third Clerk Assistant

**MIN.NO.08/2010 PRELIMINARY**

The Co- Chairperson called the meeting to order at 1100 a.m. followed by a word of prayer.

**MIN.NO.09/2010 CONFIRMATION OF THE MINUTES PREVIOUS SITTINGS**

The Minutes of first sitting of the Joint Committee was confirmed as true record of the deliberation of the sitting and signed by the co-chairpersons. The proposal to confirm the Minutes was made by Hon. Ganya Chachu and seconded by Hon. Dr. Boni Khalwale.

The Minutes of Second sitting of the Joint Committee was confirmed as true record of the deliberation of the sitting and signed by the co-chairpersons. The proposal to confirm the Minutes was made by Hon. (Dr.) Julius Kones and seconded by Hon. Ababu Namwamba.

The Joint Committee deliberated and the following documents as was submitted by the Secretariat;

- a) Systems Audit Report of Efficiency Monitoring Unit on KMTC, dated January 2010;
- b) Report by M/s. Hawkins Associate on the recruitment exercise.
- c) Advertisement by the consultant.
- d) Account of expenditure on the recruitment exercise

After going through the documents, the Committee noted that-

- (i) In the report of Efficiency Monitoring Unit, **only one** Member of the KMTC Board of Management was adversely mentioned. Dr. Timothy King'onde, the then KMTC Director ranked fourth on the list submitted to the Minister for selection. Further, at the time of recruitment, Dr. King'onde had ceased to be a Board Member;
- (ii) **None** of the other nine (9) candidates who were in the final shortlist was adversely mentioned in the EMU report. Most of the individuals implicated in the *EMU Report* were senior officers (staff) at the college and not members of the Board of Management;
- (iii) Given that the said *EMU Report* was dated January 2010 while the exercise was concluded by August, 2009, the Committee questioned how the Minister could have relied on it to discredit the Board;
- (iv) The expenditure of the recruitment exercise totaled Ksh. 1,878,926.00 made up of Ksh. 662,988 being board allowances and Ksh. 1,215,935 as the consultancy fees.

The Committee observed that-

- a) The Minister was not consistent with facts both in the House and before the Committee.
- b) The Minister allegedly based his action on EMU Report, but *EMU Report* cleared the first three candidates. Therefore the Minister misled the House and the Committee. The said *EMU Report* came out on January 2010 after the Exercise was concluded on August, 2009.
- c) There was apparent discrepancy in the Minister's allegation that the entire Board of Management was adversely mentioned in the Emu report, yet the report implicated only the Management Committee of the college.
- d) There was an element of discrimination in the Ministers action, which is contrary to provision of National Cohesion and Integration Acts.
- e) The Minister admitted having attended a celebratory party at Dr. Onundi's rural home.
- f) The Minister failed to demonstrate that the KMTC Board of Management was corrupt, inefficient and incompetent.

The Committee recommended -

- (i) That, the House resolves that the appointment of the Director of KMTC as made by the Minister of Medical Services is a nullity; and,
- (ii) That, the House directs the Minister for Medical Services to regularize the appointment within sixty days;
- (iii) That, since the Minister failed to demonstrate that the KMTC Board of Management was corrupt, inefficient and incompetent, as alluded in his response in the House and before the Committee, the amount of Kshs. 1,878,926.00 incurred in the recruitment exercise be recovered from the Minister; and,







MINUTES OF THE FOURTH JOINT SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH AND COMMITTEES ON DELEGATED LEGISLATION AND EQUAL OPPORTUNITY HELD ON TUESDAY, APRIL 6, 2010 IN COMMITTEE ROOM 9, PARLIAMENT BUILDINGS AT 12.50.P.M.

PRESENT

The Hon. (Dr.) Robert Monda, MP **(Co-Chairperson)**

The Hon. Amina Abdallah, M.P **(Co-Chairperson)**

The Hon. Fredrick Outa, MP

The Hon. Joseph Oyugi Magwanga, MP

The Hon Njoroge Baiya. M.P

The Hon. John Olago Aluoch, M.P

The Hon. Ababu Namwamba, M.P

The Hon. (Dr.) Julius Kones, M.P

The Hon. Gitobu Imanayara, M.P

The Hon. Cyprian Omolo, M.P

ABSENT WITH APOLOGY

The Hon. B.C. Muturi Mwangi, M.P

ABSENT

The Hon. Mohamed A. Affey, M.P **(Co-Chairperson)**

The Hon. Joseph Lekuton, M.P

The Hon. Thomas Mwadeghu, M.P

The Hon. Fahim Twaha, M.P

The Hon. Fred Kapondi, M.P

The Hon. Luka Kigen, M.P

The Hon. Millie Odhiambo-Mabona, M.P

The Hon. Maison Leshoomo, M.P

The Hon. Ephraim Maina, M.P

The Hon. (Dr.) Nuh Nassir Abdi, MP  
The Hon. (Dr.) Victor K. Munyaka, MP  
The Hon. (Dr.) Eseli Simiyu, M.P  
The Hon. (Dr.) Boni Khalwale M.P  
The Hon. Raphael L. Letimalo, M.P  
The Hon. Kiema Kilonzo, M.P  
The Hon. Chachu Ganya, M.P  
The Hon. Sheikh Muhammad Dor, M.P

**IN ATTENDANCE:**

**NATIONAL ASSEMBLY**

|                    |   |                        |
|--------------------|---|------------------------|
| Mr. Samuel Njoroge | - | Second Clerk Assistant |
| Mr. Salad M. Guyo  | - | Third Clerk Assistant  |
| Mr. Abdullahi Aden | - | Third Clerk Assistant  |
| Mr. Jacob Ngwele   | - | Third Clerk Assistant  |

**MIN. NO. 12/2010**

**PRELIMINARY**

The Co-Chairperson called the meeting to order at 1.00 p.m. followed by a word of prayer.

**MIN. NO. 13/2010**

**CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING**

The Minutes of Third joint sitting was read through and proposed as true record of deliberation by the Hon. Ababu Namwamba and seconded by the Hon. Amina Abdalla.

**MIN.NO.14/2010**

**MATTERS ARISING.**

The Committee corrected typos in the Minutes and observed that there may be need to recast recommendation No. (iii) on page 36 and 37 of the Minutes (Min.No. 010/2010) to remove the requirement for recovery/surcharge of the expenditure.

**MIN. NO. 14/2010**

**ADOPTION OF THE REPORT.**

Members read through the Draft Report and:-



**MINUTES OF THE FIFTH JOINT SITTING OF THE DEPARTMENTAL COMMITTEE ON HEALTH AND COMMITTEES ON DELEGATED LEGISLATION AND EQUAL OPPORTUNITY HELD ON WEDNESDAY, APRIL 7, 2010 IN COMMITTEE ROOM 7, PARLIAMENT BUILDINGS AT 12.45.P.M.**

**PRESENT**

The Hon. (Dr.) Robert Monda, MP (Co-Chairperson)

The Hon. Mohamed A. Affey, M.P (Co-Chairperson)

The Hon. Amina Abdallah, M.P (Co-Chairperson)

The Hon. Fredrick Outa, MP

The Hon. Joseph Oyugi Magwanga, MP

The Hon Njoroge Baiya. M.P

The Hon. John Olago Aluoch, M.P

The Hon. Ababu Namwamba, M.P

The Hon. (Dr.) Julius Kones, M.P

The Hon. Gitobu Imanayara, M.P

The Hon. Cyprian Omolo, M.P

The Hon. Joseph Lekuton, M.P

The Hon. B.C. Muturi Mwangi, M.P

The Hon. (Dr.) Victor K. Munyaka, MP

The Hon. (Dr.) Eseli Simiyu, M.P

The Hon. Chachu Ganya, M.P

**ABSENT WITH APOLOGY**

The Hon. (Dr.) Nuh Nassir Abdi, MP.

The Hon. (Dr.) Boni Khalwale M.P

**ABSENT**

The Hon. Thomas Mwadeghu, M.P

The Hon. Fahim Twaha, M.P

The Hon. Fred Kapondi, M.P  
The Hon. Luka Kigen, M.P  
The Hon. Millie Odhiambo-Mabona, M.P  
The Hon. Maison Leshoomo, M.P  
The Hon. Ephraim Maina, M.P  
The Hon. Raphael L. Letimalo, M.P  
The Hon. Kiema Kilonzo, M.P  
The Hon. Sheikh Muhammad Dor, M.P

**IN ATTENDANCE:**

**NATIONAL ASSEMBLY**

|                    |   |                        |
|--------------------|---|------------------------|
| Mr. Samuel Njoroge | - | Second Clerk Assistant |
| Mr. Salad M. Guyo  | - | Third Clerk Assistant  |
| Mr. Abdullahi Aden | - | Third Clerk Assistant  |
| Mr. Jacob Ngwele   | - | Third Clerk Assistant  |

**MIN. NO. 16/2010**

**PRELIMINARY**

The Co-Chairperson called the meeting to order at 12.45 p.m. followed by a word of prayer.

**MIN. NO. 17/2010**

**CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING**

The Minutes of Fourth joint sitting was confirmed as a true record of deliberation of the day and signed by the Co-Chairpersons. The proposal to adopt the Minutes was made by the Hon. Gitobu Imanyara, MP and seconded by the Hon. Joseph Oyugi Magwanga, M.P.

**MIN. NO. 18/2010**

**ADOPTION OF THE REPORT**

Having read through the *Draft Report*, the joint Committee unanimously adopted the *Report* with the following recommendations-

- (i) That, the House expresses displeasure and reprimands the Minister for Medical Services for misleading the House and the Joint Committee on the role of KMTC Board of Management and the Consultancy firm, M/s. Hawkins Associates Ltd in the recruitment process and resolves that the process of appointment of the Director of KMTC as followed by the Minister was an irregularity; and,
  
- (ii) That, the House directs the Minister for Medical Services to follow the due process of the law and regularize the appointment of the Director of KMTC within sixty (60) days.

The Joint Meeting also resolved that the Co-Chairs sign and present the Report to the House on Thursday, April 8, 2010.

**MIN.NO.19/2010            ADJOURNMENT**

And there being no other business, the Co- Chairs adjourned the Sitting at 1.40 pm.

**Signed:**            .....

**( CO-CHAIRPERSON)**

**Signed:**            .....

**( CO-CHAIRPERSON)**

**Signed:**            .....

**( CO-CHAIRPERSON)**

**Date:**            .....