

**KENYA POLICE
CHARGE SHEET**

A.B. NO.

POLICE CR. 511/245/2017
DATE TO COURT
COURT FILE 3/2017

Christian Names in full or Name SOFIA	Surname or Father's Name MOHAMED AHMED	Identity Certificate No. 27965822	Sex F	Nationality or tribe KENYAN	Apparent Age A	ADDRESS (include District and Location where) GARISSA COUNTY
CHARGE COUNT I	ABUSE OF OFFICE CONTRARY TO SECTION 46 AS READ WITH SECTION 48 OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO3 OF 2003.					

PARTICULARS OF OFFENCE (See Second Schedule of C.P.C.)
SOFIA MOHAMED AHMED: On 25th March, 2014 at Garissa Township, within Garissa County being a public officer employed by the County Government of Garissa as a Chief Officer of Health, used her office to improperly confer a benefit on Mohamed Salat Dagane by promoting him as the Head Division of Curative and Referral services without the approval of Garissa County Public Service Board.

(FOR OTHER COUNTS, PLEASE SEE OVERLEAF)

If Accused Arrested	Date of Arrest	Without or with warrant	Date Apprehension Report to Court	Bond or Bail and Amount	Is Application made for Summons to Issue
					/////

Remanded or Adjourned to

Complainant and Address

REPUBLIC OF KENYA THRO' ODP

Witnesses...

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. Harun Mohamed Yussuf (HSC) 2. Fardosa Abdikadir Hussein 3. Annette Wambui Muriuki 4. Ahmed Bashir Abdi 5. James Mukoma Mburu 6. Abdirizak Said Adan. 7. Mohamed Ibrahim Abdi 8. Abdisalam Sheikh Mohamed | <ol style="list-style-type: none"> 9. Omar Mahat Ore 10. Siyat Moge Gure 11. Mohamed Salat Dagane 12. Abdi Shale Abdi 13. Farah Amin Hassan 14. Habon Golo Abdi 15. Mohamed Boru 16. Celestine Owiti |
|--|--|

Handwritten signature
09/10/17

Sentence ...
Court and
Date

CM'S COURT GARISSA.....If fine paid.....

Officer In -charge **GARISSA Police Station**



COUNT II

ABUSE OF OFFICE CONTRARY TO SECTION 46 AS READ WITH SECTION 48 OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO 3 OF 2003.

PARTICULARS:

SOFIA MOHAMED AHMED: On 25th March, 2014 at Garissa Township, within Garissa County being a public officer employed by the County Government of Garissa as a Chief Officer Health, used her office to improperly confer a benefit on Omar Mahat by promoting him as the Head of Division of Administration, Human Resource, Finance and Quality Assurance without the approval of Garissa County Public Service Board.

COUNT III

ABUSE OF OFFICE CONTRARY TO SECTION 46 AS READ WITH SECTION 48 OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO 3 OF 2003.

PARTICULARS:

SOFIA MOHAMED AHMED: On 25th March, 2014 at Garissa Township, within Garissa County being a public officer employed by the County Government of Garissa as a Chief Officer Health, used her office to improperly confer a benefit on Abdi Shale Abdi by promoting him as the Head of Planning, Monitoring and Evaluation without the approval of Garissa County Public Service Board.

COUNT IV

ABUSE OF OFFICE CONTRARY TO SECTION 46 AS READ WITH SECTION 48 OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO 3 OF 2003.

PARTICULARS:

SOFIA MOHAMED AHMED: On 25th March, 2014 at Garissa Township within Garissa County being a public officer employed by the County Government of Garissa as a Chief Officer Health, used her office to improperly confer a benefit on Farah Amin Hassan by promoting him as the County Director of Health without the approval of Garissa County Public Service Board.



Handwritten notes and signatures. At the top, "No CC" is written. Below it, "9/10/17" is written. There are several illegible handwritten signatures and scribbles below the date.

COUNT V

ABUSE OF OFFICE CONTRARY TO SECTION 46 AS READ WITH SECTION 48 OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO 3 OF 2003.

PARTICULARS:

SOFIA MOHAMED AHMED: On 25th March, 2014 at Garissa Township within Garissa County being a public officer employed by the County Government of Garissa as a Chief Officer Health, used her office to improperly confer a benefit on Mohamed Salat Dagane by promoting him as the Head, Division of Curative and Referral Service without the approval of Garissa County Public Service Board.

COUNT VI

ABUSE OF OFFICE CONTRARY TO SECTION 46 AS READ WITH SECTION 48 OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO 3 OF 2003.

PARTICULARS:

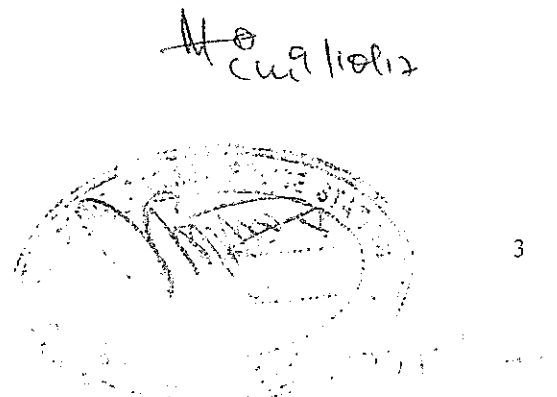
JFIA MOHAMED AHMED: On 25th March, 2014 at Garissa Township within Garissa County being a public officer employed by the County Government of Garissa as a Chief Officer Health, used her office to improperly confer a benefit on Habon Golo Abdi by promoting her the Head, Division of Family Health/EPI logistician without the approval of Garissa County Public Service Board.

COUNT VII

PROVIDING FALSE INFORMATION TO THE GARISSA COUNTY PUBLIC SERVICE BOARD CONTRARY TO SECTION 46 (1) (d) AS READ WITH SECTION 46 (2) OF THE LEADERSHIP AND INTEGRITY ACT, 182 LAWS OF KENYA

PARTICULARS:

JFIA MOHAMED AHMED: On the various diverse dates between the months of January to December, 2014 at County Government of Garissa within Garissa County, knowingly provided false information to the Garissa Public Service Board on appointments of Mohamed Salat Dagane, Omar Mahat Ore, Habon Golo Abdi, Shale Abdi, Farah Amin Hassan and Siyat Moge Gure by recommending that they be confirmed as various Heads of Divisions in the Ministry of Health yet in real sense they were being promoted and not being confirmed as she had recommended.



JUNT VIII

DECEIVING PRINCIPAL CONTRARY TO SECTION 41 AS READ WITH SECTION 48 OF THE ANTI CORRUPTION AND ECONOMIC CRIMES ACTS NO.3 OF 2003

PARTICULARS:

SOFIA MOHAMED AHMED: On various diverse dates between the months of January to December, 2014 at County Government of Garissa within Garissa County, knowingly deceived the Garissa Public Service Board by providing false information on appointment of Mohamed Salat Dagane, Omar Mahat Ore, Habon Golo Abdi, Shale Abdi, Dr. Farah Amin Hassan and Siyat Moge Gure by recommending that they be confirmed as various Heads of Divisions in the Ministry of Health yet in real sense they were being promoted and not being confirmed as she had recommended.

OFFICER COMMANDING *Garissa* POLICE STATION

**I CERTIFY THIS IS A TRUE COPY
OF THE ORIGINAL**

DATE.....DAY OF.....20.....

**.....
CHIEF MAGISTRATE**



Handwritten signature and date:
A. C. M.
09/10/17



REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT AT GARISSA
ANTI-CORRUPTION CASE NO. 3 OF 2017

REPUBLICPROSECUTOR

VERSUS

SOFIA MOHAMED AHMEDACCUSED

RULING

1. Dr. Sofia Mohamed Ahmed is charged with eight counts. In Count I she is charged with the offence of abuse of office contrary to section 46 as read with section 48 of the Anti-Corruption and Economic Crimes Act No. 3 of 2003. The particulars of the offence are that on 25th March, 2014 at Garissa Township within Garissa County being a public officer employed by the County Government of Garissa as a Chief Officer of Health, used her office to improperly confer a benefit on Mohamed Salat Dagane by promoting him as the Head Division of Curative and Referral Services without the approval of Garissa County Public Service Board.
2. Counts 2 to 6 are for the same offence but with respect to the alleged promotion of the following persons:-
3. COUNT II: Omar Mahat as the Head of Division of Administration, Human Resource, Finance, and Quality Assurance without the approval of Garissa County Public Service Board.

4. COUNT III: Abdi Shale Abdi as the Head of Planning, Monitoring and Evaluation without the approval of Garissa County Public Service Board.
5. COUNT IV: Farah Amin Hassan as the County Director of Health without the approval of Garissa County Public Service Board.
6. COUNT V: Mohamed Salat Dagane as the Head, Division of Curative and Referral Services without the approval of Garissa County Public Service Board.
7. COUNT VI: Habon Golo Abdi as the Head, Division of Family Health/EPI Logistician without the approval of Garissa County Public Service Board.
8. COUNT VII: The accused person is charged with the offence of providing false information to the Garissa County Public Service Board contrary to section 46 (1) (d) as read with section 46 (2) of the Leadership and Integrity Act, Cap 182 Laws of Kenya. The particulars of the offence are that on various diverse dates between the months of January to December 2014 at County Government, knowingly provided false information to the Garissa Public Service Board on appointments of Mohamed Salat Dagane, Omar Mahat Ore, Habon Golo Abdi, Shale Abdi, Farah Amin Hassan and Siyat Moge Gure by recommending that they be confirmed as various Heads of Divisions in the Ministry of Health yet in real sense they

were being promoted and not being confirmed as she had recommended.

9. In Count VIII she is charge with the offence of deceiving principal contrary to section 41 as read with section 48 of the Anti-Corruption and Economic Crimes Act No. 3 of 2003. The particulars of the offence are that on various dates between the months of January to December, 2014 at County Government of Garissa within Garissa County, knowingly deceived the Garissa Public Service Board by providing false information on appointment of Mohamed Salat Dagane, Omar Mahat Ore, Habon Golo Abdi, Shale Abdi, Dr. Farah Amin Hassan and Siyat Moge Gure by recommending that they be confirmed as various Heads of Divisions in the Ministry of Health yet in real sense they were being promoted and not being confirmed as she had recommended.

PROSECUTION'S CASE

10. The accused person denied all the charges on 9th October, 2017 when the plea was taken. The case was fixed for hearing on 5th March, 2018. On 5th March, 2018 the prosecutor applied for an adjournment on ground that the prosecution counsel who was conversant with the matter was away in Nairobi. The case was then adjourned to 17th April, 2018.

11. On 17th April, 2018 the prosecution sought for an adjournment on ground that the prosecution counsel seized with the matter was

engaged before the High Court Garissa. The court then gave the prosecution last adjournment and made it clear that no further adjournment would be allowed on similar grounds. The case was then fixed for hearing on 18th and 19th July, 2018.

12. On 18th July, 2018 there were no witnesses except the investigating officer. The prosecutor attempted to explain the whereabouts of the witnesses. He alleged that one of the witnesses Mr. Mohamed Ibrahim Abdi fell sick. No medical document was presented in court to support the allegation.

13. It was alleged that another witness by the name Abdirizak Sheikh Adan was bonded. However, when the investigating officer tried to call him, he failed to pick his calls.

14. It was also alleged that the investigating officer called another witness by the name Aron Mohamed Yusuf who alleged that he was meeting with donors. No document was produced to support the allegation. It was alleged that the said witness had promised to attend court on the next day.

15. The last witness mentioned by the prosecutor was Fardosa Abdikadir Hussein. The prosecutor alleged that the investigating officer tried to call her but she did not pick his calls.

16. The application for adjournment was strongly opposed by the defence team. They alleged that the application for adjournment by

the prosecution was an infringement on the accused person's constitutional right to have her case heard and disposed off expeditiously. The defence further submitted that the prosecution intends to call 16 witnesses but could not avail a single witness who was ready to proceed. They called upon the court to terminate the case claiming that the prosecution's case was "dead".

17. The court adjourned the case to 19th July, 2018 since the case had been fixed for hearing on two consecutive dates. The court however made it clear that the order giving the prosecution last adjournment was still in force.

18. On 19/7/2018 the prosecution availed two witnesses who are investigating officers in this case. The prosecutor tried to apply for an adjournment but the court declined the application.

19. To prove its case the prosecution called a total of two witnesses who happens to be the investigating officers in this case then closed their case.

20. PW1 Mohamed Boru is an investigator with Ethics and Anti-Corruption Commission (EACC) based at Garissa Regional Office. He testified that in the month of July, 2015 their office in Garissa received a complaint that the accused person who was the Chief Officer, Health Department in Garissa County Government irregularly promoted the six officers, who are named in the charge sheet within her department.

21. Upon receipt of the said complaint they wrote a letter dated 30/7/2015 to the County Government of Garissa requesting for the personal files of the six officers mentioned.
22. The County Government of Garissa responded via a letter dated 1st September 2015 whereby they enclosed the following documents:-
1. Job advertisement letter.
 2. Appointment by C.O. Health.
 3. Request for confirmation of promotion.
 4. Confirmation by County Government Public Service Board (CPSB).
 5. A cancellation for confirmation by CPSB.
23. Upon receipt of the aforesaid documents he invited the six officers who were allegedly promoted irregularly to record their statements. He also invited Members of Garissa County Public Service Board to record their statements.
24. After going through the statements and the documents collected he established that the accused person contravened section 59 of the County Government Act which gives the County Public Service Board powers to make appointments including promotions in respect of offices in the County Public Service.
25. The prosecution's case is that the accused person as the Chief Officer of the Department of Health appointed the named six officers on 25/3/2014 and on 15th December, 2014 (see exhibit 6) she wrote to

the Secretary, Public Service Board seeking the Board's approval of the promotion with effect from 1st of April, 2014.

26. Vide a letter dated 28th January 2015 the Board confirmed all the named officers as heads of their respective departments in the Ministry.

27. During cross examination by the defence counsel he (PW1) stated that the complaint was against the County Public Service Board and not the Chief Officer of Health Department. He also confirmed that the officers in issue are still serving as heads of their respective departments in the Ministry.

28. He further said that some of the officers concerned had been seconded to the County Government and that others like Farah Amin Hassan (Count IV) had been acting as the Director of Health. It also came out that the board assigned one board member to assist the accused person to recruit and select staff to fill the positions advertised.

29. PW2 Celestine Owiti is an investigator with EACC. Apart from repeating what his colleague said he said that they received the complaint from Kenya National Union of Nurses. He also said that the Chairman of the Board purported to cancel the promotions through the secretary vide a letter dated 17/7/2015. Later the board met and upheld the decision of the chairman.

30. During cross examination he was referred to the statement of one Mohamed Ibrahim who is a board member. In his statement he recorded that after the said appointments were made the board has never met to discuss again those appointments.

31. He (PW2) also confirmed that the six officers in issue are still in office.

ANALYSIS AND DETERMINATION

32. The issue for the court to determine is whether the prosecution has proved a prima facie case against the accused person to warrant her to be put on her defence.

33. Section 210 of the Criminal Procedure Code provides as follows:-

"If at the close of the evidence in support of the charge and after hearing such summing up submission or argument as the prosecutor and the accused person or his advocate may wish to put forward, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall dismiss the case and shall forthwith acquit him."

34. In the case of *R. T. Bhatt vs Republic* [1957] EA 332 the Court of Appeal of Eastern Africa stated thus:-

"Remembering that the legal onus is always on the prosecution to prove its case beyond reasonable doubt, we

cannot agree that a prima facie case is made out if, at the close of the prosecution case, the case is merely one which on a fully consideration might possibly be thought sufficient to sustain a conviction. This is perilously near suggesting that the court would not be prepared to convict if no defence is made, but rather hopes the defence will fill the gaps in the prosecution case. Nor can we agree that the question whether there is a case to answer depends only on whether there is some irrespective of its credibility or weight, sufficient to put the accused on his defence. A mere scintilla of evidence can never be enough, nor can any amount of worthless discredited evidence."

35. I have considered the evidence adduced by the two investigating officers together with the submissions filed by the defence.

36. In Counts I – VI it is being alleged that the accused person promoted six people without the approval of Garissa County Public Service Board. However this is not true. It is the board which advertised the positions and authorized the accused person to do the recruitment with aid from a member of the board. After the said recruitment the board sat and approved the appointments.

37. It should be noted that no officer from the board was called to come and testify in this case. We are only relying on documents exhibited by the two investigating officers.

38. In Counts VII and VIII it is being alleged that the accused person provided false information or deceived Garissa County Public Service Board. These charges stem from the accused's letter to the County Public Service Board dated 15th December, 2014. The said letter states as follows:-

"RE: PROMOTION

Conducive to Public Service Commission letter Ref No. PSC/ADM/14/IV(53) dated 21st February, 2014 and circular Ref No. PSC/ADM/14/IV(62) dated 11th August, 2014, I wish to recommend the following officers from our department for the above subject with effect from 1st April, 2014 having successfully assessed their eligibility for the same (*emphasis mine*)"

39. The above subject is "promotion". The board had discretion to approve or disapprove the said promotions and in my view the said communication does not convey any false information to the board.

40. Looking at the evidence adduced by the two prosecution witnesses, I am not satisfied that it is sufficient to sustain a conviction against the accused person if the accused opts to remain silent.

41. From the foregoing, I find that the prosecution has failed to prove a prima facie case against the accused person to warrant her to be put on her defence. I therefore acquit her in all the eight counts under section 210 of the Criminal Procedure Code.

C. MAUNDU - CM

16/8/2018

16/8/18

Before: C. M. Maundu (CM)

Court Clerk: Abdikher

Mr. Masisa for the State

Accused: present

Language: present

Mr. Mbugua and Mr. Maroa for the accused person - present

COURT: Ruling delivered in open court.

C. MAUNDU - CM

16/8/18

ORDER: The cash bail to be refunded to the depositor.

C. MAUNDU - CM

16/8/18

MR. MASISA: We request for typed proceedings.

COURT: The prosecution to be provided with typed proceedings.

C. MAUNDU - CM

16/8/18

I CERTIFY THIS IS A TRUE COPY
OF THE ORIGINAL

DATE.....DAY OF.....20.....

.....
CHIEF MAGISTRATE