

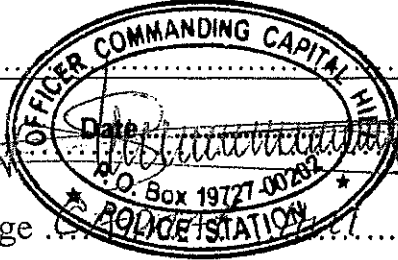
**KENYA POLICE  
CHARGE SHEET**

POLICE CASE NO. 145/226/2014  
DATE TO COURT .....19/11/2014  
COURT FILE NO. ACC. 25/2014

**OB. NO. 18/7/11/2014**

Christian Names in full or Name <b>1. ALPHONCE MUTUA 2. PETER ONYANGO</b>	Surname or Father's Name <b>VATA MORRE</b>	Identity Certificate No. <b>1891383 1864533</b>	Sex <b>M M</b>	Nationality or tribe <b>KAMBA LUO</b>	Apparent Age <b>A A</b>	ADDRESS(include District and Location where Applicable) <b>EMBU SIAYA</b>
<b>CHARGE COUNT I</b>	<b>CORRUPTLY SOLICITING FOR A BENEFIT CONTRARY TO SECTION 39(3) (a) AS READ WITH SECTION 48(1) OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO. 3 OF 2003</b>					
<b>PARTICULARS OF OFFENCE</b> (See Second Schedule of C.P.C.)	<b>1. ALPHONCE MUTUA VATA</b> On the 13 <sup>th</sup> day of August 2014, at Huruma Chief's Camp, Nairobi within Nairobi City County, being a person employed by a public body, to wit, Ministry of Interior and Co-ordination of National Government as a Senior Chief Huruma Location Nairobi, corruptly solicited for a benefit of KShs. 2,000/= from Philip Munywoki Kilonzo as an inducement so as to return repair tools to the said Philip Munywoki Kilonzo, a matter related to the affairs of the said public body. <b>(SEE ATTACHED SHEET FOR COUNT II)</b>					
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	
<b>YES</b>	<b>7/11/2014</b>	<b>W/O</b>	<b>19/11/2014</b>	<b>Out on Cash Bail KShs. 4,000/=</b>		
Remanded or Adjoined to						
Complainant and Address	<b>REPUBLIC OF KENYA THROUGH ODPP (EACC)</b>					
Witnesses.	<b>1. PHILIP MUNYWOKI KILONZO 2. FIVE OTHERS TO BE STATED</b>					
Sentence Court and Date ...	<b>ANTI-CORRUPTION COURT NAKURU ON .....If fine paid.....</b>					

Signature.....  
Officer In Charge ..... Police Station



I CERTIFY THIS IS TRUE COPY OF THE ORIGINAL  
DATE: 27/5/15  
[Signature]

POLICE CASE NO. 145/226/2014 CF. MILIMANI ACC. 25/2014

CHARGE

**COUNT II**

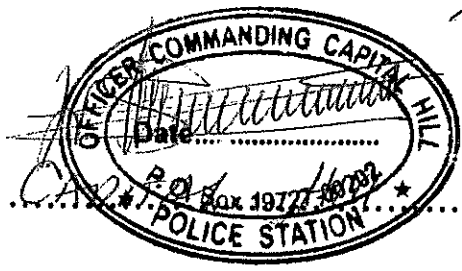
**CORRUPTLY RECEIVING A BENEFIT CONTRARY TO SECTION 39(3)**

**(a) AS READ WITH SECTION 48(1) OF THE ANTI-CORRUPTION AND ECONOMIC CRIMES ACT NO. 3 OF 2003**

**PARTICULARS OF THE OFFENCE**

**2. PETER ONYANGO MORRE:** On 13<sup>th</sup> day of August 2014, in Huruma Chief's Office Nairobi, within Nairobi City County, being a Village Elder at Huruma Chief's Camp, corruptly received a benefit of cash KShs. 2,000/= from Philip Munywoki Kilonzo as an inducement so as to return repair tools to the said Philip Munywoki Kilonzo, a matter related to the affairs of the said public body.

*h* 17/8/2014



Officer in Charge: ..... POLICE STATION

**REPUBLIC OF KENYA**

**IN THE CHIEF MAGISTRATES COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**REPUBLIC.....COMPLAINANT**

**VS**

**ALPHONCE MUTUA VATA.....1<sup>ST</sup> ACCUSED**

**PETER ONYANGO MORE.....2<sup>ND</sup> ACCUSED**

**RULING**

Two Counts are preferred in this matter against the Accused, both under provisions of the Anti Corruption and Economic Crimes Act-No 3 of 3003.

In Count 1, the 1<sup>st</sup> Accused is charged under Section 39(3) (a) as read with Section 48 of the Act, with the offence of corruptly soliciting for a benefit.

Particulars to the Charge are that on 13<sup>th</sup> August 2014, at Huruma Chief's Camp, being a person employed by a Public Body, to wit, Ministry of Interior and Co-ordination of National Government as a Senior Chief, Huruma Location, Nairobi, corruptly solicited for a benefit of Ksh 2000/= from Philip Munyoki Kilonzo, as an inducement so as to return repair tools to the said Philip Munyoki Kilonzo, a matter related to the affairs of the said Public Body.

In Count II, the 2<sup>nd</sup> Accused Peter Onyango Morre, is charged with the offence of Receiving a benefit. This offence lies under the same provisions as the one against the 1<sup>st</sup> Accused. Particulars in support o the charge against the 2<sup>nd</sup>

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Accused are that on the same date, namely 13<sup>th</sup> August 2014, the 2<sup>nd</sup> Accused, being a Village Elder at Huruma Chief's Camp, corruptly received a benefit of ksh. 2000/= from Philip Munywoki Kilonzo as an inducement to return repair tools to the said Philip Munywoki Kilonzo, a matter related to the affairs of the said Public Body.

Plain reading of the charge against the 2<sup>nd</sup> Accused shows that the same is defectively drawn. It is unclear from the particulars, which public body is the employer of the 2<sup>nd</sup> Accused.

A total of seven prosecution witnesses have been called in support of the charges. At close of evidence, Mr Kamwendwa, Counsel for the Accused and Ms Awino for the State filed written submissions, which they respectively orally highlighted on 8/12/2015.

I have carefully considered the evidence and submissions by Counsel.

The role of the Court at this stage is to establish whether on the evidence, a prima facie case is established sufficiently to warrant the placement of the Accused to their defence. What constitutes a prima facie case is defined in one of the cases cited herein by Mr Kamwendwa, the well-known *Ramanlal Bhatt vs Republic [1957] EA 332.* At page 334. The parameters are well known and need not be repeated here.

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Relying on this case, and aspects of the evidence which he highlights in the submission, Mr Kamwendwa submits that the state has not met the evidentiary threshold laid out in *Ramanlal Bhatt*.

He contends *inter alia* that the evidence in this case does not show an express and explicit demand for ksh 2000/= by the 1<sup>st</sup> Accused. He cites for this proposition, the case of *Peninah Kimuyu vs Republic [2014] eKLR* He further submits that there is no evidence at all to show that the 2<sup>nd</sup> Accused demanded ksh 2000/- from the complainant. He submits that the offence under Section 39(3)(a) not being a strict liability offence, the mere receipt of money per se, even if proved against the 2<sup>nd</sup> Accused, which the Defence denies, cannot be an offence.

He urges the Court to find that the Complainant herein, Philip Munywoki Kilonzo (PW1) was not a credible witness. He cites, amongst others, *Kiilu and Ano. Vs Republic [2005]IKLR* in which the Court stated as follows:

*'The witness, upon whose evidence it is proposed to rely should not make an impression in the mind of the Court that he is not a straight forward person, or raise a suspicion about his trustworthiness, or do or say something that indicates that he is a person of doubtful integrity, and therefore an unreliable witness which makes it unsafe to accept his evidence'*

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Mr Kamwendwa further submits that the evidence adduced is inconsistent with the particulars in support of the charges and also that no evidence is adduced to prove that the Accused are 'public' officers in terms of the definition in the Act.

In her submission, Ms Awino contends that the evidence adduced is sufficient to prove the charges against both Accused and prays that they be put to their defence.

She has run the Court through the testimonies of Prosecution witnesses, which according to her, leads to this conclusion. She specifically places emphasis on the Transcripts of Audio Recordings admitted herein which according to her, show that the 1<sup>st</sup> Accused solicited for a bribe, and that the 2<sup>nd</sup> Accused received a benefit in the sum of ksh. 2000/=. She quotes from the Transcript, a statement by the 1<sup>st</sup> Accused, in his recorded conversation with the Complainant, in which the 1st Accused asked the Complainant to '*buy some lunch*'. According to her, 'lunch' was understood by the Complainant to mean 'bribe.'. She concedes in the submission that no amount was specified for the said 'Lunch'.

I have paid particular attention to the Audio Recordings as captured in Pros Exhibits 4(a) (Original) and 4(b) (Translated), while also considering the submission by the Defence that the translation was not done by an independent translator. It is indeed a fact that the Investigation Officer herein Sgt Richard Mbith( PW7) did the Translation of the Original Transcript from a mixture of Kamba, Swahili and 'sheng' to English. The translated version does not even

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have a Certificate on the document. The Investigator instead did a separate Certificate. I think the Certificate should be on the same document. The Defence raised an issue on this and I agree with them. I find that the Defence is right in objecting to this translation. Clearly Investigator Mbithi was ill-suited to undertake the Translation, being actively involved in this case.

Defence also submitted that the Audio Recording was not audible. I do not find merit in this submission, having listened to it in Court. In this regard, i do not think the statement of PW2 that the same was not audible is wholly credible.

That said, however, the Defence did not raise an objection to the actual admission of the Documents in this matter and i must refer to them. I will consider the issue the Defence raises as a matter of weight.

It is clear from the said Exhibits, that there was no specific mention of the amount of ksh 2000/= in the conversation both between the 1<sup>st</sup> Accused and the complainant Philip Munywoki Kilonzo (PW1) nor between the said Complainant and the second accused, Peter Onyango Morre. During cross examination, the Investigator herein stated as follows:

*'I do not know whether the 1<sup>st</sup> Accused demanded for any money. He is in Court because a transaction was done in his Office'.*

The Complainant stated during cross-examination;

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*'The 1<sup>st</sup> Accused did not specifically demand for ksh 2000/= from me. He demanded for money'*

The Charge Sheet before Court shows that the Accused solicited for ksh 2000/=.

It begs the question where the Investigator got this amount from.

Another confusing scenario in this respect is revealed in the testimony of PC Reuben Njagi (PW5). He was apparently requested by Sgt Mbithi to treat five Ksh 1000 Notes with APQ Chemical, which normally leaves traces upon contact. He did as required and also made a photocopy of the Currency Notes. (Pros Exh.2). He put the money in a Half Cut envelope (Pros Exh 3) It emerged that he did not prepare an Inventory for this money. Defence submits that there is no proof that the money was given to the complainant, which in these circumstances, is true.

The intriguing thing however is the request for ksh 5000/=. It again begs the question how the amount was arrived at. In his testimony, the Complainant confirms that he was given ksh. 5000/= in a Half Cut Envelope. He also testified later that he gave the 2<sup>nd</sup> Accused, Ksh 2000/=. Clearly something does not add up in this testimony. How did he isolate the Ksh 2000/= That he gave the 2<sup>nd</sup> Accused, without tampering with the processing of the exhibit?

I have concluded from the evidence adduced that there is no demand for either ksh 2000/= or even ksh 5000/= attributable to the 1<sup>st</sup> Accused. I do not agree that his statement about 'Lunch' can translate to the equivalent of a demand for



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a bribe, let alone, a demand for ksh 2000/- as suggested by the Prosecution. I am guided by the authorities cited by Counsel in this regard, and especially the case of *Geoffrey Ombogo Makworo vs Republic [2014]Eklr* Where it is stated at page 3;

*'For the offence of soliciting to be proved, the act or conduct of the accused must be explicit and unequivocal, so as to leave no doubt that it is intended to be so..*

There was nothing explicit and unequivocal pointing to a demand or a general or specific bribe by the 1<sup>st</sup> Accused.

This case raises a curious situation in which the alleged corrupt transaction is spread across two people. It is suggested that the 1<sup>ST</sup> Accused did the 'soliciting' while the 2<sup>nd</sup> Accused did the 'Receiving'.

Normally, the two events would repose on the same person.

With respect to the charge facing the 2<sup>nd</sup> Accused, the evidence shows that when the complainant went, armed with the ksh 5000/- Trap money to the Office of the 1<sup>st</sup> Accused at Juja, he did not find him. He instead found the 2<sup>nd</sup> Accused, whom he handed over ksh 2000/= of the Ksh 5000/=. He testified that the 2<sup>nd</sup> Accused had 'instruction' by the 1<sup>st</sup> Accused, to receive the money and

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return construction tools earlier seized from the complainant's employee John Muema Wambua (PW2)

I have read page 9 of the Translated transcript where conversation happens between the complainant and the 2<sup>nd</sup> Accused. There is nothing in that conversation to show that the 2<sup>nd</sup> Accused was instructed to receive ksh 2000/= on behalf of the 1<sup>st</sup> Accused. What emerges from the conversation, and which might probably explain how the amount of ksh 2000/= herein came about, is that it is the Complainant himself, who suggests the sum of ksh 2000/=. When the Complainant enquired about the money, whose amount he suggested himself, the 2<sup>nd</sup> Accused responded that it was for Construction. There is therefore absolutely no nexus between the Receipt of the ksh 2000/= and the 1st Accused.

I have already found in this Ruling that the evidence adduced does not prove that the 1<sup>st</sup> Accused made a demand for a bribe as alleged in the Charge Sheet. There is no evidence adduced in Court to show that the 2<sup>nd</sup> Accused made a separate demand for the Ksh 2000/= that he clearly received from the complainant, and which was recovered from him by Corporal James Wachira (PW6) together with his EACC Colleagues Sophie Nyambu (PW6) and the Investigator herein.

Although the 2<sup>nd</sup> Accused received the Ksh 2000/=:, it is not shown that he corruptly received it. This would only have been possible if the essential

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connection was made in the evidence between the receipt and the alleged solicitation by the 1<sup>st</sup> Accused. I refer to the case of *Peninah Kimuyu* cited by the Defence. It is not possible for the 2<sup>nd</sup> Accused to corruptly receive what he never demanded.

It would seem from the design of the case that the 2<sup>nd</sup> Accused was merely a conduit for the 1<sup>st</sup> Accused. He is however charged in a manner that suggests the benefit was his own. This results in a situation where the evidence adduced and the charges, especially against the 2<sup>nd</sup> Accused are at variance.

Defence has raised other matters that equally reveal weakness in the prosecution case. I highlight two of them. No adequate evidence is before the court to prove that the Accused persons herein are public officers working for a Principal- The Ministry of Interior and Co-ordination of National Government. The Investigator easily conceded this during cross-examination.

I was also referred in the Defence submissions, to the demeanor of the Complainant. It is clear in cross examination, that the Complainant had a dispute between himself and a Mrs Muiruri that the 1<sup>st</sup> Accused had referred to his Superior Gerald Morara Omoke (PW2). It also emerged that the Complainant had filed a Civil suit, after his complaint and this case, in which the 1<sup>st</sup> Accused is a party.

In his own testimony, he explained that when he learnt that the 1<sup>st</sup> Accused had seized tools from his fundi-PW2, he 'suspected' corruption and went straight to the EACC offices to report. Clearly there had been no demand made from him then. He took mere suspicion to the EACC. who apparently decided to act on it.

In these circumstances, I am persuaded that the complainant had an axe to grind with the 1<sup>st</sup> Accused which is manifested clearly by his decision to sue the 1<sup>st</sup> accused in a civil court, even after this matter. The submission therefore, that he is not a credible witness has plenty merits.

In the end, and in view of the foregoing, it is clear that no prima facie case as defined in Ramanlal Bhatt is made out in the evidence against either accused.

I acquit both accused under section 210 CPC. R/A 14 Days.

**FELIX KOMBO, PM**

Delivered in open court this.....<sup>21<sup>st</sup></sup> day of .....<sup>DEC</sup>.....2015

I CERTIFY THIS IS TRUE COPY  
OF THE ORIGINAL.  
DATED:.....<sup>11/12/2015</sup>.....  
.....  
CHIEF MAGISTRATE  
ANTI-CORRUPTION COURT  
NAIROBI