20th May 2019

JOINT STATEMENT ON THE JUDGMENT DELIVERED BY THE NAIROBI EMPLOYMENT AND LABOUR RELATIONS COURT ON THE 17TH MAY 2019 IN PETITION NO 122 OF 2018; EVANS MURIUKI MUTHURI & OTHERS VS NPSC, THE IG AND THE AG

The National Police Service Commission and the Inspector General of the National Police Service have taken note of the judgment delivered on Friday the 17th May 2019 by Justice Byram Ongaya which has been featured in the media both print and audio-visual locally and would wish to point out as follows;

1. Prior to the filing of this Petition the Commission and Inspector General had discovered unprocedural salary upgrades in the Service payroll mostly based on acquisition of degree certificates by officers without following the due process. This informed its decision to order for stoppage of any new changes in the payroll and an audit of the payroll and the degree certificates of all officers to verify their authenticity. The report on the audit is being compiled and will be presented to the full Commission for deliberation and lawful directions.

2. The Commission and the Service would also like to clarify that there is an established procedure where police officers wishing to pursue degree courses after recruitment are required to seek approval or consent from the Service. Thus, officers who acquire degrees without following the due procedures and obtaining the necessary approvals cannot claim any benefit or privileges based on the same.

3. In as much as the Commission and the Service are committed to the strict observance of the rule of law and respect of judicial pronouncements, they take exception with the decision and reasoning of the court in the judgment. It is apparent that the court's decision and resultant orders are not grounded on specific provisions of any known law, regulation or policy but purely predicated upon a press release and a 1995 letter by Gaylord Avedi, the then Permanent Secretary, Directorate of Personnel without due regard that the National Police Service did not exist by then and new laws and regulations on ranking and promotion have since been put in place.

4. The judgment therefore presents great legal and financial implications concerning its compliance. The orders issued cannot be reasonably implemented without structured and coordinated multi-government agencies consultative policy approach. Further, the National Police Service being a disciplined service cannot function effectively with a distorted command where the inspectorate rank overshoot the establishment whose net effect is a command structure distorted at the middle. The principle of equal pay for equal work requires that remuneration is linked to function and therefore police officers performing NCO functions cannot claim remuneration of an inspector just by virtue of a
university degree without acquiring the requisite police training and experience for promotion to such ranks.

5. If 1774 graduate NCO's excluding 335 prison officers are paid as inspectors of police in job group J as ordered by the court, it would have serious financial implication on the budget since the government will require Kshs. 928 million annually to service the new wage bill for services not rendered. This is not tenable.

6. It should also be noted in all fair terms that at the time of recruitment, for a youth to be recruited in the National Police Service with a grade D and later convert to a graduate NCO mid-way ranking system is in practical terms denying opportunity to deserving youth with grade D who would have been recruited during that year of recruitment. The need for graduate NCO's cannot be determined midway but only at recruitment time and therefore this is dishonest on the side of police officers.

In view of these observations, the Commission would urgently constitute a full Commission's meeting to deliberate on the judgment, seek legal opinion and give necessary directions concerning the orders of the Court. We advise our police officers that there is need to always exhaust all administrative provisions and opportunity for dialogue in resolving disputes.

The NPS and the NPSC remain committed to the welfare and professional development of our officers in the most fair manner without disadvantaging any of our officers.

Thank you.

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CHAIRPERSON
NATIONAL POLICE SERVICE COMMISSION

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