

**“BN 6”**

## **Our letter to Tobiko on Malicious Prosecution**

**Esther Wairimu, Genesio M’pathia and Blamuel Njururi**

P O Box 50932 00200

Nairobi

Tel: 0722863323

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March 19, 2014

Hon Keraiko Tobiko  
Director of Public Prosecution  
NSSF Building  
Nairobi

Dear Sir,

**RE: MALICIOUS ARREST, DETENTION AND CHARGES ON FALSEHOODS:**

We, the undersigned are, with great humility, seeking your intervention on a matter of we consider to be grounded on (a) Abuse of Office, (b) Conspiracy to Abet and Commit Crime (c) Attempt to Subvert Justice and (d) Conflict of Interest by the Officer Commanding Buru Buru Police Station, Mr **Johnstone Matoke**.

We are facing a of charge of having “willfully and unlawfully damaged (destroyed) a fence valued at Ksh 39,000 (Thirty Nine Thousand, six hundred only) the Property of Pink Court.” We first appeared in court on December 10, 2013 and made an appearance on December 23, 2013.

We appeared before a Makadara Court yesterday March 18, 2014, for the hearing of the case but the hearing did not proceed because the prosecution said there were amendments to be made to the charges. We were not informed of the nature of the new charges or when they arose.

Suffice to say ample evidence from the attached part of witness statements clearly show that the charges we are facing are based on fabrications and falsehoods by the complainant a Mr **Alex Oloyo Omungara** and his witnesses who should have been charged with the offence of giving false information to public officers.

We did not write to you earlier because we did not wish to appear as if we were obstructing justice on a *sub-judice* matter.

It is clear to us now that Buru Buru OCS, along with the complainant and the witnesses, intends to use the oppressive pre-New Constitution era methods by the police of arbitrary arresting people, detaining them without informing them why they were arrested and charging them without any caution, as it happened to us. The victims of police physical and psychological brutality would then be paraded in courts for long periods before withdrawing such cases or entering *nolle prosequi*.

By the time of withdrawal the innocent victims will have suffered the irreparable humiliation of arrest, detention and court appearances, but the police and the false accusers would be happy they meted out their desired punishment. Many innocent Kenyans lost money on advocates, valuable time and their businesses suffered – some ended up in bankruptcy.

Sir, we would like to know whether Buru Buru Police sought advice and or permission from your office to charge us and take us to court on what we believe is a charge driven by false information, malice and attempts to cover up Public Nuisance illegalities. We are convinced that no meaningful investigations were conducted and the police acted under reasons other than pursuit of justice perhaps under the influence of financial compromise.

**A scrutiny of attached witness statements and letters written to the Independent Police Oversight Authority (IPOA) reveals the depth of the rot at Buru Buru Police Station. The IPOA and Inspector General of Police office have conducted investigations into this matter that could be useful to your office.**

Meanwhile we propose that Mr **Johnstone Matoke** should be investigated for the following:

**1. Abuse of office:**

He maliciously ordered malicious arrest, detention and charging of innocent people after being ordered by a civilians **Alex Oyolo Omumgara** and **Evans Kamau Macharia**, who both admit calling him and asking for police officers in statements to the police. The arrests were made without any investigation to ascertain those responsible for the alleged offense. Indeed, the two say they personally identified who was to be arrested.

Mr **Matoke** was fully aware that one of those singled out for arrest and who was dragged from his business premises along with his wife Mr **Genesio M'puthia** had only one week earlier complained in a letter to the police that **Alex Omungara** was threatening his life and harassing his family.

Mr **Matoke** did not cause any investigation into the serious claims but instead sent his hit squad to brutalize Mr **M'puthia** alongside his wife and in breach of Children's Protection Law, and subjecting the young children, aged between 6 and 3 years, to psychologically torture after they were left without parental care for a whole night and day.

Mr **Matoke** initially denied Mr **M'puthia** a police P3 to document assault by a police officer and even when one was availed after the OCPD intervention, no action has been taken against the offending policeman close to four months since the incident.

The OCS also ordered the arrest, detention and charging of Mr **Blamuel Njururi**, a veteran journalist when he went to inquire why the young couple had been arrested. Indeed, at the suspects inspection parade at 11 am on November 29<sup>th</sup>, Mr **Matoke** asked Mr **Njururi**, "*Mzee kama wewe unakwenda kufuja ukuta ya wenyewe kwa nini?*" (How does an old man like you go about destroying other people's fence? That means he had already made up his mind even before conducting investigation or had colluded on charges to be preferred with his paymasters for a job well done.

When Mr **Njururi** introduced himself and informed the OCS that he was a journalist and asked for his name, he retorted; "*Unakaa Buru Buru na hunijui? Mimi naitwa OCS.*" - reminiscent of the Deputy Chief justice and the guard.

## **2. Conspiracy to abet and commit offences:**

Mr **Matoke** allowed or hired out his officers to go and supervise the willful obstruction of a County of Nairobi access road linking Buru Buru County Estate with Harambee and Uhuru estates through Pink Court.

Mr **Omungara** says in his statement to the police that they requested for the officers who supervised the erection of a metallic sheets barrier across the access road instead of a “Temporary barbed wire fence with a gate” as had been authorized by the County government in the letter he quotes as authority to block the access road.

The willful obstruction of the access road is a Public Nuisance County of Nairobi bylaw breach. The temporary fence was to be removed on February 11<sup>th</sup> 2014, which it has not been and continues to stand in breach of the bylaw.

### 3. **Attempt to Subvert Justice:**

After realizing that his actions in this matter were actionable the OCS tried to use local Chief Mr **Masinde (Tel: 0723222250)** to get Mr **M’puthia** and his wife to negotiate a withdrawal of the case but I advised them against it. That way he would purport to clear his malicious guilt.

He made it impossible to get OB abstract report after ripping off pages from the Occurrence Book into which our arrest was recorded on November 22, 2013. The available OB starts with records of November 29<sup>th</sup>, 2013 but clearly shows the preceding pages were torn off.

That has denied us the benefit of what police recorded in the OB and names of arresting officers. We have also been denied police officers’ statements even with a Court order.

### 4. **Conflict of interest:**

Within the Buru Buru County estate and its neighbourhood, it is public knowledge that Mr **Matoke** has a relationship with a lady living in the Pink Court where Mr **Omungara** is chairman. The lady, (name withheld) was allegedly introduced to the OCS by Mr **Omungara** – a fellow Luhya tribesman.

Does that relationship blind the OCS of his public duty in preference to his personal exploits to the extent that he takes orders from a civilian Mr **Omungara**, who refers to himself as “*Serikali*” and calls Buru Buru police officers his “*German Shepherds*”?

Is that relationship the reason why the OCS cannot investigate Mr **Omungara** when he threatens other people’s lives?

Besides being brutalized by Mr **Matoke**'s police officer, Mr **M'puthia** was attacked by armed men at his business premises on February 14<sup>th</sup> 2014. He was denied a P3 by the OCS when his report was booked under OB No 88/14/02/014, and told to go and get one from **Mama Lucy Kibaki Hospital** where he was treated after the attack. (Police have refused to investigate **M'puthia**'s attack and numerous verbal abuses by a witness against him **Evalyne Agutu**.)

Sir we wish you Good Health and God's Guidance, Strength and Wisdom in the execution of the heavy burden on your shoulders to fight Corruption, Criminal Elements and Abuse of Office. The social evils popularly referred to as impunity that has stripped Kenya, our Motherland, of her pride by public officers, robbed of her wealth by corruption and denied her the opportunity to be the land of milk and honey, where her citizens would live in Liberty, Peace and Prosperity.

Millions of Kenyans are looking upon you to change their lives and the course of history for our Motherland to a Nation of Plenty and a Haven of Social Justice.

Yours faithfully  
*Signed*

**Esther Wairimu**

**Genesio Mputhia**

**Blamuel Njururi**