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REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (SECOND SESSION)

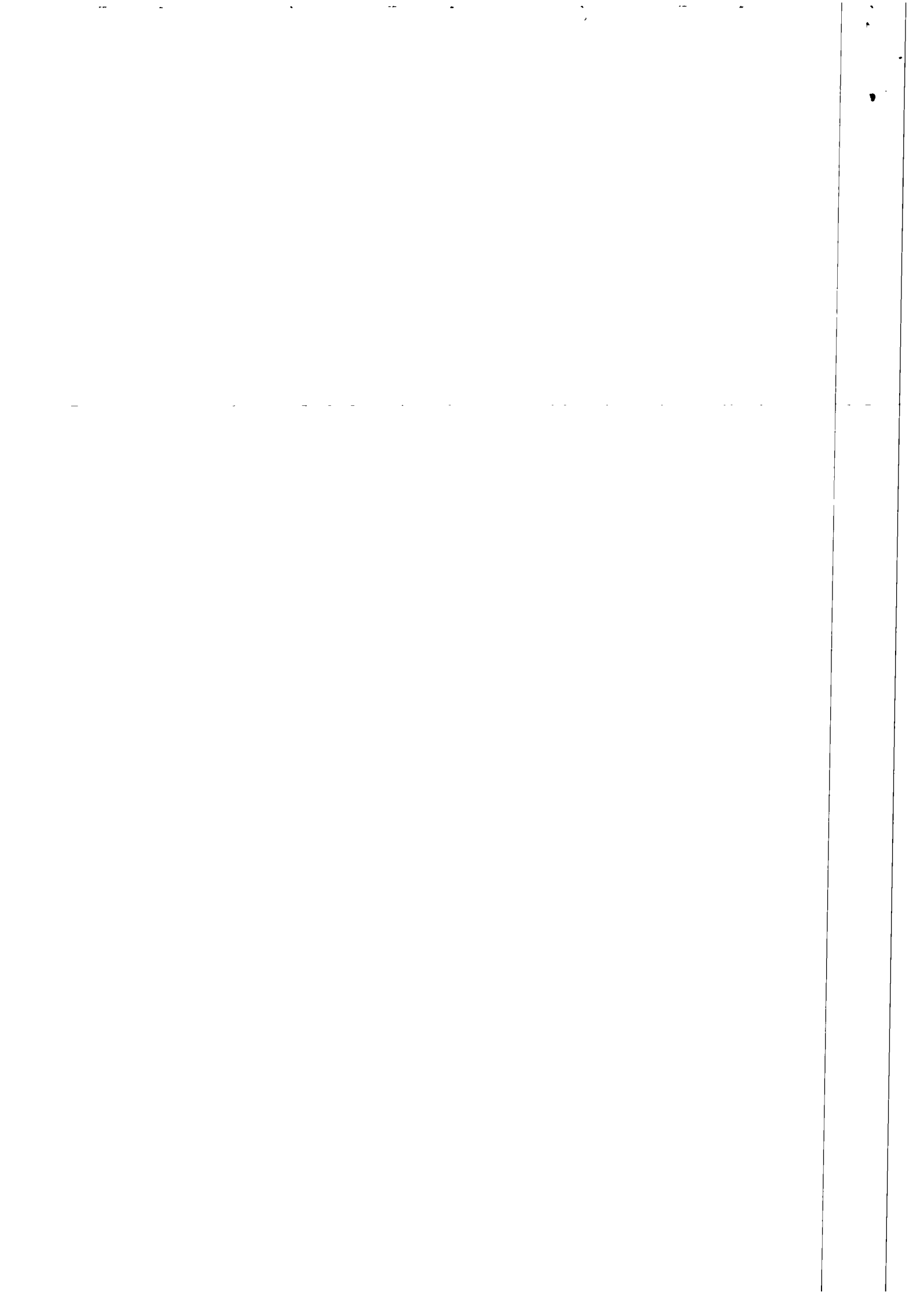


REPORT OF

THE COMMITTEE OF POWERS AND PRIVILEGES ON THE INQUIRY
INTO ALLEGED UNETHICAL CONDUCT OF HON. PAUL ONGILI, MP
(MEMBER FOR EMBAKASI EAST CONSTITUENCY) AND THE HON.
CHARLES NJAGUA KANYI, MP (MEMBER FOR STAREHE
CONSTITUENCY)

National Assembly,
Parliament Buildings,
NAIROBI

November 2018



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Preface

The Committee of Powers and Privileges is established pursuant to Section 15 of the Parliamentary Powers and Privileges Act 2017. The Committee comprises of the Speaker as Chairperson and fourteen other Members. The Committee is broadly responsible for handling matters concerning powers, privilege and immunities of the House, members and staff. In particular, the Committee is mandated to, either of its own motion or as a result of a complaint made by any person, inquire into the conduct of a member alleged to constitute breach of privilege, and report to the House its findings together with such recommendations as it considers appropriate.

Further, the National Assembly Standing Orders assigns to the Committee the duty to inquire into allegations of absence by Members from parliamentary proceedings exceeding eight sittings within a session; enforce the Codes of Conduct under Chapter Six of the Constitution, the Leadership and Integrity Act, the Public Officer Ethics Act and the Fourth Schedule of the Parliamentary Power and Privileges Act, and to recommend necessary sanctions following a disciplinary hearing.


The Constitution of Kenya (2010), which is now in its eighth year of implementation, heralded a paradigm shift in the enforcement of the principles of leadership and integrity for holders of public and state offices. Consequently, this new dispensation necessitated enactment of various legislations on leadership and integrity, together with Codes of Conduct. The law relating to the powers, privileges and immunities of Members was also reviewed to accord with the new Constitution. Effectively, the Eleventh Parliament passed into law the Parliamentary Powers and Privileges Act in June 2017 thus repealing the National Assembly (Powers and Privileges) Act, Chapter 6 of the Laws of Kenya.

The current Committee of Powers and Privileges, which was re-constituted in February 2018, is the first to operate and decide on matters of powers, privileges, immunities and ethics under the new law. Apart from being responsible for powers, privileges, immunities and ethics of Members, the House and staff, the committee is also responsible for matters relating to the absence of members from proceedings of the House, the registration of members' interests and the enforcement of the Codes of Conduct that apply to members under the various statutes.

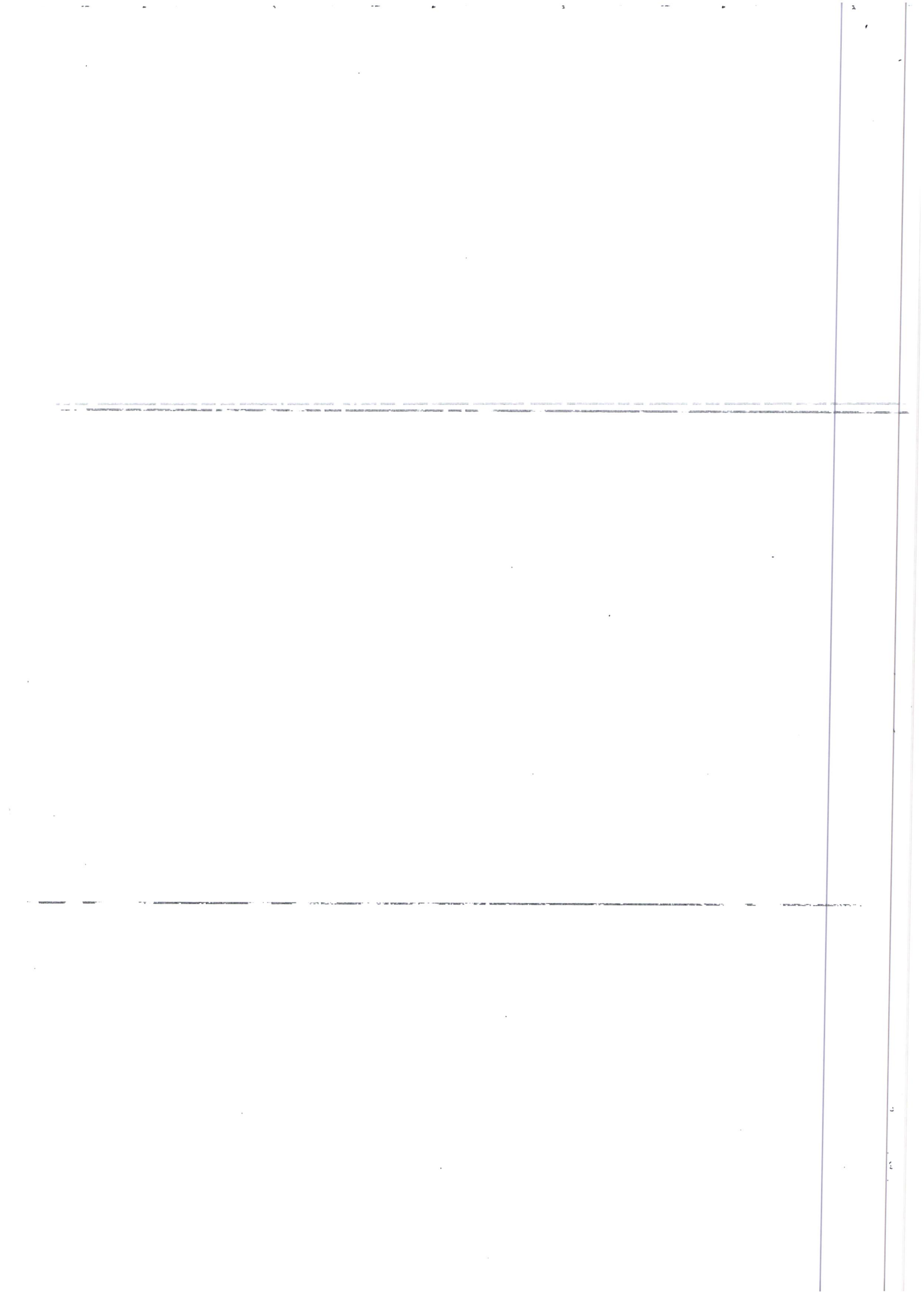
Acknowledgement

The Chairperson of the Committee takes this opportunity to thank all the Members of the Committee for their immense contribution to the inquiry that culminated in this Report. The Committee wishes to also thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate. The Committee further wishes to record its appreciation for the services rendered by the staff of the National Assembly that enabled the production of this Report.

On behalf of the Committee of Powers and Privileges, I have the honour and pleasure to present the Report to the House.



The Hon. Justin B. Muturi, EGH, MP
Speaker of the National Assembly/Chairperson



Part I: Establishment and Membership of the Committee

1. Establishment of the Committee of Powers and Privileges

The Committee of Powers and Privileges of the National Assembly is established under Section 15(1)(a) of the Parliamentary Powers and Privileges Act, 2017. The Committee consists of fifteen Members, being the Speaker as the Chairperson and fourteen other Members of the House appointed in accordance with the Standing Orders.

2. Membership of the Committee of Powers and Privileges

The membership of the current Committee comprises of the following Members –

Speaker/Chairperson

The Hon. Justin B. N. Muturi, EGH, MP

Members

1. The Hon. Peter Mungai Mwathi, M.P.
2. The Hon. Andrew Mwadime, MP
3. The Hon. Jude L. Kangethe Njomo, M.P.
4. The Hon. Francis Chachu Ganya, M.P.
5. The Hon. Shimbwa Omar Mwinyi, MP
6. The Hon. James Mathew Onyango K' Oyoo, MP
7. The Hon. Beatrice Pauline Cherono Kones, M.P.
8. The Hon. Anthony Githiaka Kiai, M.P.
9. The Hon. Vincent Kipkurui Tuwei, M.P.
10. The Hon. Gladwell Jesire Cheruiyot, M.P.
11. The Hon. Marselino Malimo Arbelle, M.P.
12. The Hon. Capt. (Rtd) Didmus Wekesa Barasa Mutua, M.P.
13. The Hon. Danson Mwakuwona Mwashako, MP
14. The Hon. Vincent Kernose Mogaka, MP

Committee Secretariat

The Committee's operations are facilitated by a Secretariat comprising of the following officers -

1. Mr. Kipkemoi arap Kirui - Principal Clerk Assistant
2. Ms Jemimah Waigwa - Legal Counsel
3. Mr. Benson Inzofu - Third Clerk Assistant
4. Ms. Anne Shibuko - Third Clerk Assistant

Part II: Mandate of the Committee

The Committee of Powers and Privileges draws its mandate from the Constitution, the Public Officers Ethics Act, 2003, the Leadership and Integrity Act, 2012, the Parliamentary Powers and Privileges Act, 2017 and the National Assembly Standing Orders which assigns to the Committee various functions, which include the following:

1. Inquiring into the conduct of a member whose conduct is alleged to constitute breach of privilege

Section 15(4)(a) of the Parliamentary Powers and Privileges Act, 2017 mandates the Committee to inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege in terms of section 16 of the Act. The breaches contemplated under section 16 are –

- (a) unauthorized publication of any journal, if the publication of the journal is prohibited by or in terms of the Standing Orders or an order or resolution of Parliament, any journal purporting that it has been published under the authority of Parliament or a committee or the Speaker while it has not been published under such authority, or any journal purporting that it is a verbatim account of the proceedings of Parliament or a committee while it is not such account;
- (b) assaulting, obstructing, molesting or insulting etc.; improper influence in contravention of sections 25, 26 or 28 of the Act;
- (c) committing offences relating to witnesses¹, including -
 - (i) failing to attend at the time and place specified in a summons, without sufficient cause, having been duly summoned;
 - (ii) failing to remain in attendance until excused from further attendance by the person presiding at the inquiry;
 - (iii) refusing to be sworn in or to make an affirmation as a witness;
 - (iv) failing or disobeying, without sufficient cause, to answer fully and satisfactorily all questions lawfully put to the person;
 - (v) failing or disobeying to produce any document, paper, book or record in the person's possession, custody or control which the person has been required to produce; and on conviction such offences attract a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both;
- (d) other serious offences relating to witnesses², including -

¹ Section 27(1)(a), (b) or (2) and (3)(d), (e), (f) or (g) Parliamentary Powers and Privileges Act, 2017

- (i) threatening, obstructing, assaulting or insulting a member of staff or police officer carrying out service of summons issued under the Act;
 - (ii) using abusive language directed at a member, a committee or a House of Parliament;
 - (iii) threatening or obstructing another person in respect of evidence to be given before Parliament or a committee;
 - (iv) inducing another person to refrain from giving evidence to or to produce a document before Parliament or a committee; or
 - (v) inducing another person to give false evidence before Parliament or a committee;
 - (vi) assaulting or penalising or threatening another person or deprives the person of any benefit on account of the giving or proposed giving of evidence before Parliament or a committee;
 - (vii) with intent to deceive or mislead Parliament or a committee, producing a false, untrue, fabricated or falsified document; or
 - (viii) wilfully furnishing Parliament or a committee with information which is false or misleading or makes a statement before Parliament or committee that is false or misleading; and on conviction such offences attract a fine not exceeding five hundred thousand or a term of imprisonment not exceeding one year or to both such fine and imprisonment;
- (e) willfully failing or refusing to obey any rule, order or resolution of Parliament;
 - (f) contravening any provision of the Speaker's orders³; or
 - (g) conducting himself or herself in a manner which, in the opinion of the Committee, is intended, or is likely to reflect adversely on the dignity or integrity of Parliament, or of the Members or to be contrary to the best interests of Parliament or its Members.

The Committee may inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege either of its own motion (*suo moto*) or as a result of a complaint made by any person.

Upon conclusion of the inquiry, the Committee may recommend any or all the sanctions under Section 17 of the Act. Where the relevant House finds that a Member has committed a breach of privilege, the relevant House may, in addition to any other penalty to which the Member may be liable under a specific law, issue a formal warning, a reprimand, an order to

² *Ibid*

³ Section 37, Parliamentary Powers and Privileges Act, 2017

apologize to the House or a person in a manner to be recommended by the Committee of Powers and Privileges, the withholding, for a specific period of time, of the member's right to the use or enjoyment of any specified facility provided to Members by Parliament, the removal or suspension for a specified period of time of the Member from any parliamentary position occupied by the Member, such fine in terms of the Member's monthly salary and allowances as the House may determine, the suspension of the Member for such period as the House may decide, whether or not Parliament or any of its committees is scheduled to meet during that period or vacation of seat pursuant to Articles 75(2)(b) and 103(1)(c) of the Constitution.

In the case of an inquiry arising from a complaint, the Parliamentary Powers and Privileges Act envisages such inquiry to be concluded within fourteen days of receipt of such complaint. Moreover, the Committee is expected to table its findings in the House, together with such recommendations, as it considers appropriate for consideration, within fourteen days of the conclusion of such an enquiry. However, section 36 of the Act permits the Committee to seek an extension of time for inquiring into a complaint.

2. Absences

Article 103(1)(b) as read together with Standing Order 258 of the National Assembly Standing Orders (NASO) assign to the Committee of Powers and Privileges the function of determining claims of absence of a Member from the House without the permission of the Speaker or where, upon a complaint, a satisfactory explanation for the absence is tenable to the Committee. A State Officer (including a Member) who does not behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids any conflict between personal interests and public or official duties, or behaves in a manner compromising any public or official interest in favour of a personal interest, or demeans the office the officer holds (*and thus contravening Articles 75(1), 76, 77 or 78 (2)*) shall be subject to the applicable disciplinary procedure for the relevant office; and may, in accordance with the disciplinary procedure, be dismissed or otherwise removed from office⁴. National Assembly Standing Orders Standing Order 258 provides that if, during any Session, a Member is absent from eight sittings of the Assembly without the Speaker's written permission, the Speaker reports the matter to the Assembly and the matter stands referred to the Committee of Powers and Privileges for hearing and determination.

The Committee inquires into the matter within fourteen days from the date the matter is referred to it and thereafter submits a report to the House. If the report of the Committee

⁴ Article 75(2)(b) of the Constitution

finds that the Member has offered a satisfactory explanation for the Member's absence, the matter ends.

If the report of the Committee finds that the Member has not offered a satisfactory explanation for the Member's absence, the Chairperson or a Member of the Committee designated by the Committee for that purpose, upon submitting the report, must give a three days' notice of a Motion that, "This House notes the Report of the Committee of Privileges laid on the Table of the House on ... regarding..."

The Motion is debated in the usual manner, except that –

- (a) no amendment to the Motion is permitted;
- (b) the debate of the Motion cannot be anticipated by a Motion for the adjournment of the House, and no dilatory Motion is allowed in relation to the business, and the business cannot be interrupted; and
- (c) at the conclusion of the debate, the Speaker does not put a question but declares that, pursuant to Article 103 (1) (b) of the Constitution, the office of the Member concerned has become vacant.

It is however important to note that Article 105 of the Constitution provides that the High Court shall hear and determine any question whether the seat of a member has become vacant. The question must however be heard and determined within six months of the date of lodging the petition.

3. Enforcement of the Rules Governing the conduct of Members of Parliament

Chapter Six of the Constitution of Kenya prescribes leadership and integrity benchmarks for holders of State and public offices. Article 75 of the Constitution assigns the Committee the role to exercise penal authority over contravention of the Leadership and Integrity Code.

It states –

- (2) *A person who contravenes clause (1), or Article 76, 77 or 78 (2) –*
 - (a) *shall be subject to the applicable disciplinary procedure for the relevant office; and*
 - (b) *may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.*

The Public Officer Ethics Act, 2012 also assigns to the Committee the function of investigating and enforcing compliance with the Code of Conduct and Ethics. Section 35(1)

provides that the responsible Commission for a public officer may investigate to determine whether the public officer has contravened the Code of Conduct and Ethics.

The General Leadership and Integrity Code contained in the Leadership and Integrity Act, 2012 is also within the ambit of the Committee of Powers and Privileges with respect to misconduct by Members of Parliament.

Section 37(3) of the Parliamentary Powers and Privileges Act also provides for a Code of Conduct for Members of Parliament, provided in the Fourth Schedule to the Act. Rule 12 of the Code specifically obligates the Committee of Powers and Privileges to enforce the Code and recommend penalties for its breach.

4. Registration of Members' Interests

Registration of Members' Interests is regulated by Section 16 of Leadership and Integrity Act, 2012, and the Second Schedule of the Act, and Rule 6 of the Code of Conduct for Members of Parliament contained in the Fourth Schedule to the Parliamentary Powers and Privileges Act, 2017.

Rule 6 of the Code of Conduct for Members of Parliament provides that Members shall register with the relevant Speaker all financial and non-financial interests that may reasonably influence their parliamentary actions; declare any relevant interest in the context of parliamentary debate or the matter under discussion before contributing to debate in the House or its Committees, or communicating with State Officers or other public servants; and observe any rules agreed of the House in respect of financial support for Members or the facilities of the House.

Whereas Rule 6 envisages Members' registering their personal interests with the relevant Speaker, the Committee of Powers and Privileges handles questions of Members' interests on behalf of the Speaker.

5. Contempt

Contempt are acts or omissions which obstruct or impede either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his/her duty or which has a tendency, directly or indirectly, to produce such results. Any disorderly, contemptuous or disrespectful conduct in the presence of either House or a committee constitutes a contempt, which may be committed by members of the public, parties, witnesses or by Members of either House.

Determination of what constitutes contempt is as the House would determine on occurrence of an incidence and is the power of the House to punish for contempt being discretionary to the House itself. It is notable that although the Act does not define what acts or omissions

can be termed as being contemptuous, such matters can arguably be determined following the dictates of usages, forms, customs, precedence, procedures and traditions of Parliament as envisaged in section 14 of the Parliamentary Powers and Privileges Act.

6. Declaration of wealth by state officers

The Committee of Powers and Privileges is also responsible for handling matters relating to the declaration of wealth by State officer and holders of independent Commissions. Custody of the wealth declaration forms by State Officers is vested in the 'responsible Commission'. Section 3 the Public Officer Ethics Act No. 4 of 2003 defines the responsible Commission for the purposes of members and other designated officers as the Committee of Powers and Privileges of the National Assembly.

Part III: Procedure for considering the Report by the Committee

The manner of considering a Report of the Committee of Powers and Privileges is anchored in the Third Schedule to the Parliamentary Powers and Privileges Act. Section 1 of Schedule provides that –

“every Report by the Committee concerning any inquiry into the conduct of a Member shall, as soon as possible after it has been completed, be laid by a member of that Committee on the Table of the House.”

Section 2 of the Schedule contemplates that *“if the Report does not recommend any disciplinary action, there shall be no further proceedings whatsoever in respect of it, other than (where necessary) further inquiry and Report by the Committee may be needed.”*

Pursuant to section 3(1) of the Schedule, *“if the Report recommends disciplinary action, a member of the Committee must as soon as possible after the report has been laid, but after giving at least one day's previous notice, move that the House adopts the Report.”*

Motion for adoption of a Report of the Committee of Powers and Privileges is debated in the usual manner and in the open; except that –

- (i) in exceptional circumstances to be determined by the Speaker, strangers may be ordered to withdraw throughout the debate; and
- (ii) no amendment may be moved, other than an amendment of the disciplinary action recommended by the Report or an amendment to the effect that the Report be referred back to the Committee for further inquiry.

Where the House adopts any recommendation of the Report for disciplinary action, with or without amendment, the Speaker is required to forthwith take action accordingly.

Part IV: Referral of the Matter of Hon. Ongili and Hon. Kanyi to the Committee

The Office of the Speaker of the National Assembly received a letter from the Ethics and Anti-Corruption Commission (EACC), dated October 12, 2018. In the letter, the EACC requested the National Assembly to investigate and take necessary action against the Member for Embakasi East Constituency, Hon. Paul Ongili, MP, alias *Babu Owino* and the Member for Starehe Constituency, Hon. Charles Kanyi, MP, alias *Jaguar* for unethical conduct and breach of privilege relating to a scuffle between them within the precincts of Parliament on 10th October 2018. The Speaker noted the contents of the letter and referred it to the Committee of Powers and Privileges for consideration.

On 9th November 2017, the Office of the Speaker received a Petition signed by one Bernard Abuya Momanyi, a resident of Embakasi East Constituency. The Petitioner claimed that the Member acted in a manner that demeaned his office contrary to the provisions of Chapter Six of the Constitution and in contravention of section 16(e) of the Parliamentary Powers and Privileges Act, 2017. He prayed that the National Assembly investigate the conduct of the Member for Embakasi East Constituency, Hon. Paul Ongili Owino and recommended the vacation of office by the Member pursuant to Article 103(1)(c) of the Constitution.

The Speaker conveyed the Petition to the House on Thursday 14th December 2017 and referred it to the Committee of Powers and Privileges for consideration.

Part V: Events of October 10, 2017

On Tuesday, 10th October 2017 at about 2.50pm during a sitting of the National Assembly, the Member for Embakasi East Constituency the Hon. Paul Ongili Owino (alias *Babu Owino*) proceeded to the Parliament Media Centre to seek the assistance of the Principal Media Relations Officer to hold a Press Conference. Upon entering the Media Centre for the presser, he was confronted by the Member for Starehe Constituency the Hon. Charles Njagua Kanyi (alias *Jaguar*), who was reported to have been trailing him. A scuffle that ensued between the two Members attracted security officers who were on duty at the Main Parliament Buildings.

The security team swiftly rushed to the scene and found Parliamentary Media Relations Staff attempting to separate the two Members who were engaged in a vicious verbal exchange. The Security Officers took immediate control, contained the scuffle and whisked the two Members away and escorted them separately back to the Chamber.

Parliament Security filed a report with the Clerk of the National Assembly, detailing the occurrence and stating that no physical fight occurred between the two Members. Further, no parliament-owned property was damaged and none of the Members involved reported any kind of injury or damage of personal property.

The Report indicated that the incident happened in full glare of the media, who recorded and shared videos of the scuffle on social and public media, thereby drawing varied reactions from the public.

Part VI: The Aftermath of the Events of October 10, 2017

The Speaker of the National Assembly received two complaints relating to the incident.

1. Letter from the Ethics and Anti-Corruption Commission (EACC)

The Ethics and Anti-Corruption Commission (EACC) filed the first complaint by way of a letter dated 12th October 2017. In the letter, the EACC contented that the conduct by the Hon. Ongili and Hon. Kanyi “constitutes serious ethical breaches and is contrary to the integrity and ethical requirements governing the conduct of State Officers as laid down under Chapter Six of the Constitution, the Leadership and Integrity Act, 2012, the Public Officer Ethics Act, 2003 and the Parliamentary Powers and Privileges Act, 2017.”

The EACC cited various provisions relating to conduct of State Officers and the standards vested in State Officers. In particular, the EACC quoted Articles 73(1)(a) (i) - (iv) and 75(1)(c) of the Constitution; section 11 of the Leadership and Integrity Act, 2012; section 37(3) of the Parliamentary Powers and Privileges Act, 2017 and Rules 7, 8, 10 and 11 of the Code of Conduct for Members of Parliament.

The EACC requested the National Assembly, through the Committee of Powers and Privileges to “inquire into the conduct of the two Members of the National Assembly and take appropriate action pursuant to Section 15(5) of the Parliamentary Powers and Privileges Act, 2017, Rule 12 of the Code of Conduct for Members of Parliament and the relevant Standing Orders of the House.” The Commission also requested that the House shares with it the findings and action taken at the conclusion of the inquiry.

On 17th October 2017 the Speaker committed the request to the Committee of Powers and Privileges for consideration.

2. Petition by Mr. Bernard Abuya Momanyi

The second complaint touching on the scuffle between the Member for Embakasi East and the Member for Starehe Constituency was a Petition by citizen Mr. Bernard Abuya Momanyi of National Identification Card Number 24466892. The Petition was made pursuant to the provisions of Articles 37, 75, 103(1)(c) and 119 of the Constitution, the Petitions to Parliament (Procedure) Act, sections 16, 17 and 37(3) of the Parliamentary Power and Privileges Act, 2017; the Code of Conduct for Members of Parliament and Standing Orders 219, 223 and 227 of the National Assembly Standing Orders.

In the Petition, Mr. Abuya stated that on 10th October 2017, the Hon. Paul Ongili Owino attempted to fight the Hon. Charles Njagua Kanyi over what appeared to be a brawl relating to the former's description of the President as ‘caretaker President.’ The Petitioner alleged that by engaging the Member for Starehe Constituency in a fight within the precincts of

Parliament, the Member for Embakasi East Constituency acted in a manner that demeaned his office contrary to Chapter Six of the Constitution and further that the Member contravened Section 16(e) of the Parliamentary Power and Privileges Act, 2017 by conducting himself in a manner likely to reflect adversely on the dignity and integrity of Parliament and its Members.

The Petitioner then prayed that the National Assembly investigates the claim and further recommended that the Member for Embakasi East Constituency, pursuant to Article 103(1)(c) of the Constitution, vacates his/her office.

The Speaker conveyed the Petition to the House on Thursday 14th December 2017 and referred it to the Committee of Powers and Privileges for consideration.

Part VII: Applicable Provisions of the Law on the Alleged Unethical Conduct Of Members Of Parliament

1. The Constitution of Kenya

Article 75(1) of the Constitution (1)(iii) bestows upon State Officers the responsibilities of leadership and requires authority assigned to a State officer to bring honour to the nation and dignity to the office. Further, Article 75(1)(c) of the Constitution provides that “A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids demeaning the office the officer holds.” Further, Articles 75(2) and 103(1) of the Constitution details sanction for contravention of Article 75(1) of the Constitution.

2. The Leadership and Integrity Act, 2012

This law was enacted pursuant to Article 80 of the Constitution to give effect to the provisions of Chapter Six of the Constitution on Leadership and Integrity. Section 11(b) of the Act requires a State Officer to “*treat members of the public and other public officers with courtesy and respect.*” Section 41(1) provides that, “*subject to subsection (2), a breach of the Code amounts to misconduct for which the State officer may be subjected to disciplinary proceedings. ... Where an allegation of breach of the Code has been made against a State officer in respect of whom the Constitution or any other law provides the procedure for removal or dismissal, the question of removal or dismissal shall be determined in accordance with the Constitution or that other law.*”

3. The Public Officer Ethics Act, 2003

Most provisions of this Act replicate those of the Leadership and Integrity Act, 2012. Nonetheless, section 20 (1) provides that ‘*a public officer shall conduct his private affairs in a way that maintains public confidence in the integrity of his office.*’

4. The Parliamentary Powers and Privileges Act, 2017

Section 16(e) of the Parliamentary Powers and Privileges Act provides that ‘*the Committee of Powers and Privileges may find a Member to be in breach of privilege if the Member if a Member conducts himself or herself in a manner which, in the opinion of the Committee of Powers and Privileges, is intended, or is likely to reflect adversely on the dignity or integrity of Parliament, or of the Members or to be contrary to the best interests of Parliament or its Members.*’

The Fourth Schedule to the Parliamentary Powers and Privileges Act made pursuant to section 37(3) of the Act prescribes a Code of Conduct for Members of Parliament. Rule 7(a) of the Code compels a Member to uphold the dignity and integrity of the House by promoting respect for the House and its institutions at all times while Rule 8 requires a

Member to treat other Members with respect and strive to have cordial relations with all other members. Further, Rule 11 of the Code obligates Members to comply with the General Leadership and Integrity Code set out in Part II of the Leadership and Integrity Act, 2012, hence committing them to the sanctions under the said Act for breach of the Code.

Finally, Rule 12 places the jurisdiction over the conduct of Members of Parliament on the Committee of Powers and Privileges of the relevant House. Section 16 and 17 of the Act read together with Rule 12 vests in the Committee of Powers and Privileges the authority to inquire into, report on and to recommend penalties for breach of privilege and the Code.

Part VIII: Committee Sittings

The Committee held five (5) sittings to gather and consider evidence on the matter. At the first sitting held on Wednesday, 27th June 2018 in Committee Room 9, the Committee held preliminary deliberations on the matter and thereafter heard submissions from the Hon. Paul Ongili, Member for Embakasi East Constituency and the Hon. Charles Njagua Kanyi, Member for Starehe Constituency in the same sitting.

During the second sitting held on Wednesday, 4th July 2018 at the same venue, the Committee had anticipated to hear evidence from the Petitioner, Bernard Abuya Momanyi. However, the Petitioner did not appear before the Committee despite being invited vide a letter dated 28th June 2018 and numerous attempts by the Secretariat to reach him. Accordingly the Committee resolved to proceed to consider the Petition without his input.

At the third sitting held on Thursday, 5th July 2018 the Committee reviewed a Report submitted to the Clerk of the National Assembly by the Parliament Security and Safety Department on the scuffle between the Hon. Ongili and Hon. Kanyi and thereafter proceeded to hear submissions from the Deputy Chief Parliament Security and Safety Officer on the matter.

At the fifth and sixth sittings held on November 16, 2018 the Committee considered and adopted its Report on the matter.

The minutes of the relevant sittings form part of the Report and are appended hereto in accordance with the Standing Orders. Hansard record, both audio and written transcripts, are separately preserved by the Clerk of the National Assembly.

Part IX: Evidence

The Committee obtained evidence and reviewed documents, video clips submitted to it and received oral submissions from several witnesses.

1. Review of documents and videos

The Committee considered the contents of the letter from the Ethics and Anti-Corruption Commission and observed that indeed the issue relating to the scuffle between Hon. Babu Owino and Hon. Charles Kanyi raised issues of potential violation of Article 75 of the Constitution, Leadership and Integrity Act, Public Officer Ethics Act and the Parliamentary Powers and Privileges Act and that the conduct of the two Members of Parliament could have reflected adversely on the dignity of the Members and the House.

The Committee also watched a video clip attached to the letter by the EACC which further cast light on the events relating to the scuffle between Hon. Babu Owino and Hon. Charles Kanyi.

The Committee also noted the Petition by Mr. Bernard Abuya Momanyi which averred that the conduct of the Member for Embakasi East Constituency reflected adversely on the dignity of Parliament and of Members of Parliament. The Petitioner then prayed that the National Assembly finds the Member to have acted in contravention of Chapter Six of the Constitution, and further recommended that the Member for Embakasi East Constituency, pursuant to Articles 75, 80, 103(1)(c) of the Constitution and Section 41 of the Leadership and Integrity Act, vacates office.

2. Proceedings

The Committee took evidence from the following witnesses –

- (1) The Hon. Paul Ongili Owino and Hon. Charles Kanyi Njagua appearing jointly;
- (2) The Petitioner, Mr. Bernard Abuya Momanyi; and
- (3) Chief Security Officer, Department of Security and Safety.

(a) Member for Embakasi East Constituency Hon. Paul Ongili Owino, MP

~~On Wednesday, 27th June 2018, the Hon. Paul Ongili, MP appeared before the Committee submitted to the Committee that –~~

- (1) indeed on 10th October 2017 he went to the Parliament Media Centre to make a Press Conference on the political situation in the country;
- (2) the Member for Starehe Constituency had trailed him to the Media Centre without his knowledge and when the two encountered each other at the Media Centre, they had a verbal exchange;

- (3) what ensued was an altercation and not a physical scuffle as alleged by the EACC and the Petitioner, Mr. Abuya;
- (4) the alleged altercation was occasioned by the then delicate political environment surrounding the disputed Presidential Elections held in August 2017 and an impending repeat of the election on October 26, 2018 that elicited frosty political relationship and bad blood between supporters of the National Super Alliance (NASA) and the Jubilee Party. He is a Member of the NASA Coalition while the Hon. Njagua belongs to the Jubilee Party;
- (5) after retrospection, he had since realized that the matter was not as small as he initially thought and deeply regretted the incident, and had since reached out to and reconciled with the Member for Starehe Constituency;
- (6) he tenders unreserved apology for the conduct and undertook not to ever act in a manner demeaning his own integrity or that of the House;
- (7) he pleaded for leniency from the Committee in the spirit of national reconciliation.

(b) The Member for Starehe Constituency Hon. Charles Kanyi Njagua, MP

The Member for Starehe Constituency appeared on Wednesday 27th June 2018 and submitted to the Committee as follows –

- (1) that he indeed accosted the Member for Embakasi East Constituency at the Parliament Media Centre on the afternoon of 10th October, 2017;
- (2) that he never intended to cause a scuffle with the Hon. Ongili but had stormed the media House to stop the Member for Embakasi East from holding a press conference;
- (3) that his action was spurred by fears that the Member for Embakasi East Constituency, being from the NASA Coalition, might have intended to use the press conference to make disparaging remarks about President Uhuru Kenyatta, since the NASA Coalition had not yet recognized the Presidency;
- (4) that he highly regretted the scuffle that occurred between him and the Member for Embakasi East Constituency;
- (5) that he had reconciled with the Member for Embakasi East and that the two were even engaged in joint businesses and had instituted plans for joint development initiatives to benefit youths in their respective constituencies as a sign of their reconciliation;
- (6) that the Committee pardons him and the Member for Embakasi East Constituency for the scuffle that arose due to the prevailing political situation in the country;

(c) **The Petitioner, Mr. Bernard Abuya Momanyi**

Through the Office of the Clerk, the Committee invited Mr. Bernard Abuya Momanyi to appear before the Committee on 4th July 2018 to make submissions on the alleged unethical conduct of the Member for Embakasi Constituency.

Despite numerous attempts by the secretariat the Petitioner could not be reached. The Committee deemed him to have forfeited the right to be heard on the matter and resolved to proceed to conclude and prepare a report on the Petition.

(d) **Chief Security Officer, Parliament's Department of Security Safety**

On Thursday 5th July 2018, the Deputy Chief Security Officer, Maj. (Rtd.) Kirungu Majiba appeared before the Committee and submitted that –

- (1) On Tuesday, 10th October 2017 at about 2.50pm during a Sitting of the National Assembly, the Member for Embakasi East Constituency (Hon. Paul Ongili Owino, MP), alias *Babu Owino* proceeded to the Parliament Media Centre with an intent to issue a press statement;
- (2) Upon entering the Media Centre and as he was being assisted by Principal Media Relations Officer, he was confronted by the Member for Starehe Constituency;
- (3) A scuffle ensued between the two Members drawing the attention of security officers who were on duty at the Main Parliament Buildings;
- (4) The security team swiftly rushed to the scene and found Parliamentary Media Relations Staff attempting to separate the two Members who were engaged in a heated argument;
- (5) The Security Officers took immediate control, contained the scuffle, whisked the two Members away and escorted them separately back to the Chamber;
- (6) Thereafter both Members remained calm in the House as they participated in the proceedings of the House normally, no further signs of animosity being witnessed between them;
- (7) No physical fight occurred between the two Members and none of the Members, Security officers, and media staff at the Media Centre reported any physical injury arising from the scuffle;
- (8) The incident happened in full glare of both internal and external media practitioners;
- (9) The external media recorded and circulated the video clips of the scuffle on social and public media; and

Part X: Action Sought from the Committee

(a) Ethics and Anti-Corruption Commission

The Ethics and Anti-Corruption Commission sought that the Committee –

- (1) inquires into the conduct of the two Members of the National Assembly in light of Article 75 of the Constitution, Section 11(b) of the Leadership and Integrity Act and Rules 7 and 8 of the Code of Conduct for Members of Parliament contained in the Parliamentary Powers and Privileges Act, 2017;
- (2) takes appropriate action pursuant to Section 15(5) of the Parliamentary Powers and Privileges Act, 2017, Rule 12 of the Code of Conduct for Members of Parliament; and
- (3) shares with the Commission the findings and action taken against the two Members upon the conclusion of the inquiry.

(b) The Petitioner

The Petitioner, Mr. Bernard Abuya Momanyi, seeks that the Committee finds that the Member for Embakasi East Constituency contravened Chapter Six of the Constitution and recommends the vacates the seat of Member of Parliament pursuant to Article 103(1)(c) of the Constitution.

Part XI: Procedural Fairness

The Committee was guided by principles of procedural fairness in considering the actions sought from it by the Ethics and Anti-Corruption Commission and Mr. Bernard Abuya. In determining whether the Members were guilty or innocent, the Committee applied principles of procedural fairness at all stages.

Accordingly, and in the interest of fairness, the members accused of breach of the code of conduct and breach of privilege were given –

- (a) a prompt and clear statement of the precise allegations against them;
- (b) adequate opportunity to consider taking legal advice and have legal assistance throughout;
- (c) the opportunity to be heard in person;
- (d) the opportunity to call relevant witnesses at the appropriate time;
- (e) the opportunity to examine other witnesses; and
- (f) the opportunity to attend meetings at which evidence is given, and to receive transcripts of evidence.

Part XII: Disciplinary process and sanctions for breach of the Code of Conduct

In considering the actions sought by the EACC and the Petitioner on the alleged unethical conduct by the Hon. Paul Ongili, MP and Hon. Charles Kanyi, MP, the Committee was guided by the provisions of sections 16 and 17 of the Parliamentary Powers and Privileges Act, 2017 relating to conduct that constitute breach of privilege and determination of breach of privilege, respectively.

Section 16(e) of the Act provides that the Committee may find a Member to be in breach of privilege if the Member –

(e) conducts himself or herself in a manner which, in the opinion of the Committee of Powers and Privileges, is intended, or is likely to reflect adversely on the dignity or integrity of Parliament, or of the Members or to be contrary to the best interest of Parliament or its Members.

Section 17(1) of the Act provides that –

(1) The relevant House of Parliament shall have all the powers necessary for enquiring into and pronouncing upon an act or any matter constituting breach of privilege in terms of Section 16.

Accordingly, the Committee's inquiry was focused on making a determination as to whether the claims made by the EACC and Mr. Bernard Abuya Momanyi on alleged unethical conduct by the Member for Embakasi East Constituency and the Member for Starehe Constituency did constitute breach of privilege, hence warranting the sanctions prescribed in section 17(3) of the Parliamentary Powers and Privileges Act.

Section 17(3) of the Parliamentary Privileges Act, 2017 provides that:

(3) Where the relevant House of Parliament finds that a Member has committed a breach of privilege, the relevant House of Parliament may, in addition to any other penalty to which the Member may be liable under this Act or any other law, impose any or more of the following penalties—

(a) a formal warning;

(b) a reprimand;

(c) an order to apologize to the House or a person in a manner to be recommended by the Committee of Powers and Privileges;

(d) the withholding, for a specific period of time, of the member's right to the use or enjoyment of any specified facility provided to Members by Parliament;

(e) the removal or suspension for a specified period of time of the Member from any parliamentary position occupied by the Member;

(f) such fine in terms of the Member's monthly salary and allowances as the House may determine;

(g) the suspension of the Member for such period as the House may decide, whether or not Parliament or any of its committees is scheduled to meet during that period;

(h) vacation of seat pursuant to Articles 75(2)(b) and 103(1)(c) of the Constitution.

Article 75(2)(b) and 103(1)(c) of the Constitution referred to in paragraph (h) above provides as follows –

75(2) A person who contravenes clause (1), or Article 76, 77 or 78 (2) –

(a) shall be subject to the applicable disciplinary procedure for the relevant office; and

(b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

103(1) The office of a member of Parliament becomes vacant –

(c) if the member is otherwise removed from office under this Constitution or legislation enacted under Article 80;

The aforementioned provisions formed the basis upon which the Committee premised its observations, findings and recommendations.

Part XIII: Observations, Findings and Recommendations

1. Observations and Findings

Having reviewed the video clip submitted by the Ethics and Anti-Corruption Commission, the contents and prayers of the Petition by Mr. Bernard Abuya Momanyi, the evidence in the report by Parliament Security and Safety Department as well as the oral evidence adduced by the Hon. Paul Ongili Owino, the Hon. Charles Kanyi Njagua and, (Deputy Chief of Security and Safety Department) Maj. (Rtd) Kirungu Majiba, the Committee observed –

- (1) that the scuffle between the Hon. Paul Ongili Owino and the Hon. Charles Kanyi Njagua reflected adversely on the dignity and integrity of the National Assembly and its Members in terms of section 16(e) of the Parliamentary Powers and Privileges Act, 2017;
- (2) that the two Members engaged in a scuffle in public and full glare of the media at the Parliament Media Centre, hence subjecting the dignity and integrity of the House and its Members to public opprobrium;
- (3) that the scuffle was connected to and fuelled by the then prevailing political situation in the country at the moment arising from the contested August 2017 general elections; and
- (4) that the two Members apologized to the Committee for the unethical conduct and sought leniency.

In light of the foregoing, the Committee finds that notwithstanding the then prevailing political environment in the country, the Hon. Paul Ongili Owino and Hon. Charles Kanyi Njagua conducted themselves in a manner that reflected adversely on the dignity and integrity of the National Assembly and its Members, and that their actions were a breach of privilege and punishable in accordance with Section 41 of the Leadership and Integrity Act, 2012 and Section 17(3) of the Parliamentary Powers and Privileges Act, 2017.

2. Recommendations

In consideration of the above observations and findings, the Committee recommends that the House -

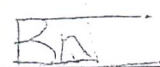
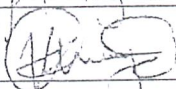

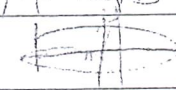
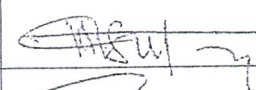
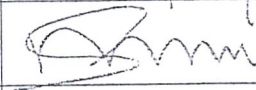
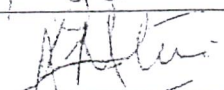
- (1) pursuant to section 17(3)(b) of the Parliamentary Powers and Privileges Act, 2017, ~~reprimands the Hon. Paul Ongili Owino and Hon. Charles Kanyi Njagua~~ for conducting themselves in a manner that reflected adversely on the dignity and integrity of the National Assembly and its Members, contrary to section 16(e) of the Parliamentary Powers and Privileges Act, 2017; and
- (2) pursuant to section 17(3)(c) of the Parliamentary Powers and Privileges Act, 2017, orders the Hon. Paul Ongili Owino and Hon. Charles Kanyi Njagua to apologize to the House and the Members for conducting themselves in a manner that reflected adversely on the dignity and integrity of the National Assembly and its Members contrary to section 16(e) of the Parliamentary Powers and Privileges Act, 2017.

THE COMMITTEE OF POWERS AND PRIVILEGES

ADOPTION OF REPORT OF THE COMMITTEE ON ALLEGED UNETHICAL CONDUCT OF THE HON. PAUL OWINO ONGILI, MP, MEMBER FOR EMBAKASI EAST CONSTITUENCY AND THE HON. CHARLES NJAGUA KANYI, MP, MEMBER FOR STAREHE CONSTITUENCY

We, the undersigned Members of the Committee of Powers and Privileges do append our signatures in support of the adoption of the Report of the Committee of Powers and Privileges on the Alleged Unethical Conduct of the Hon. Paul Owino Ongili, MP, Member for Embakasi East Constituency and the Hon. Charles Njagua Kanyi, MP, Member for Starehe Constituency on

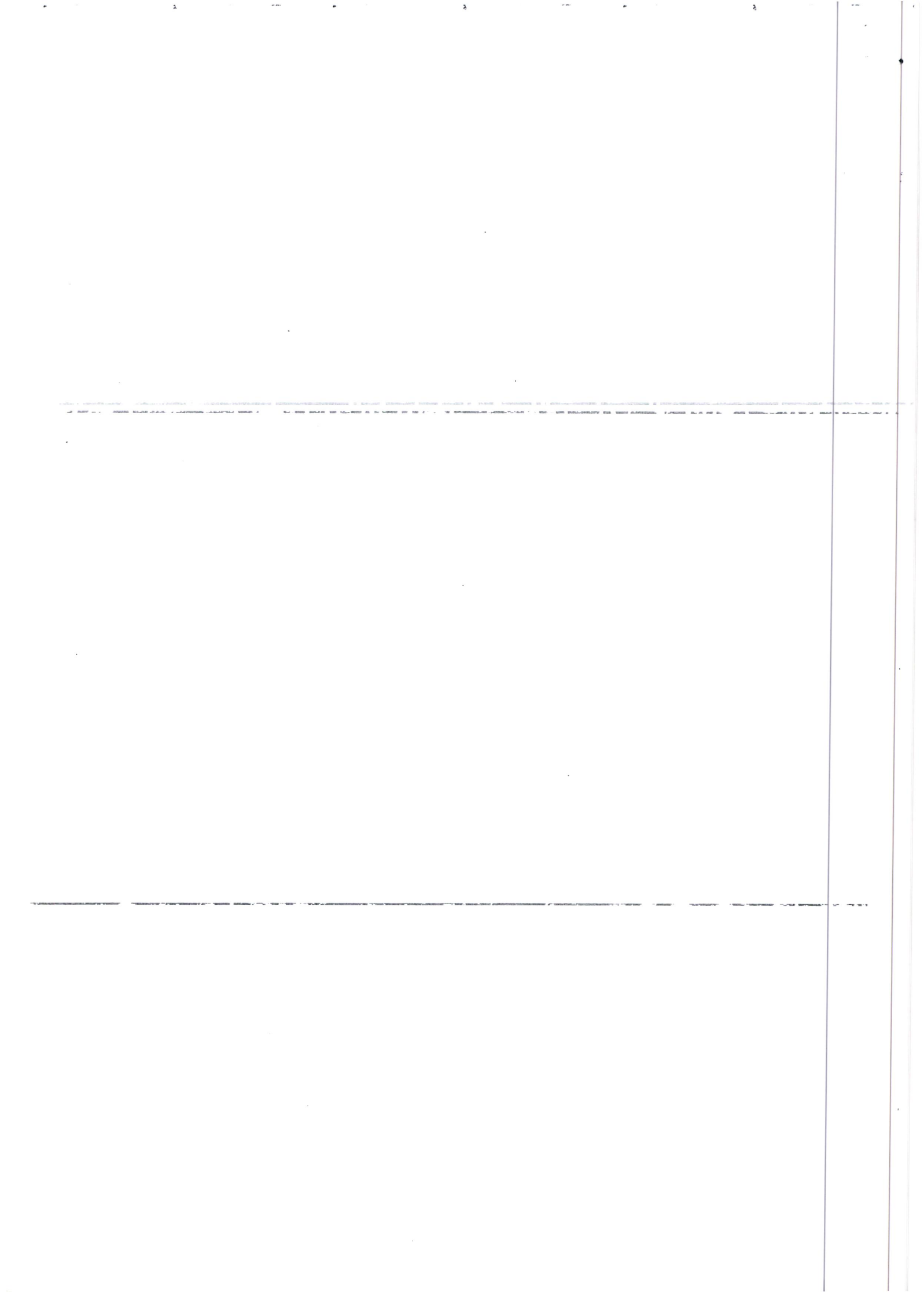
FRIDAY, NOVEMBER 16, 2018

NO.	NAME	DESIGNATION	REMARKS	SIGNATURE
1.	The Hon. Justin Muturi, EGH, MP	Speaker/Chairperson		
2.	The Hon. Kiai, Anthony Githiaka, M.P.	Member		Apologies
3.	The Hon. Tuwei Vincent Kipkurui, M.P.	Member		
4.	The Hon. Kones, Beatrice Pauline Cherono, M.P.	Member		Apologies
5.	The Hon. Cheruiyot, Gladwell Jesire, M.P.	Member		Apologies
6.	The Hon. Arbelle, Marselino Malimo, M.P.	Member		
7.	The Hon. Njomo, Jude L. Kangethe, M.P.	Member		Apologies
8.	The Hon Mwathi Peter Mungai, M.P.	Member		
9.	The Hon. Ganya, Francis Chachu, M.P.	Member		Apologies
10.	The Hon. Shimbwa, Omar Mwinyi, MP	Member		
11.	The Hon. Mwashako, Danson Mwakuwona, MP	Member		
12.	The Hon. Mogaka, Vincent Kemose, MP	Member		Apologies
13.	The Hon. Mwadime, Andrew, MP	Member		



Part XIV: Appendices

- (1) Letter from the Ethics and Anti-Corruption Commission, dated October 12, 2018, requesting the National Assembly to investigate and take necessary action against the Member for Embakasi East Constituency, Hon. Paul Ongili Owino, MP, alias *Babu Owino* and the Member for Starehe Constituency, Hon. Charles Kanyi Njagua, MP, alias *Jaguar* for unethical conduct.
- (2) Petition by Mr. Bernard Abuya Momanyi, a resident of Embakasi East Constituency regarding alleged breach of privileges and violation of the Code of Conduct for Members of Parliament by the Member for Embakasi East Constituency, Hon. Paul Ongili Owino, MP, alias *Babu Owino*.
- (3) Petition by Mr. Bernard Abuya conveyed to the House by the Speaker.
- (4) Report of the Parliament Security and Safety Department on the scuffle between the Hon. Paul Ongili, MP and the Hon. Charles Kanyi, MP.
- (5) Minutes of Sitzings of the Committee held to consider the matter.



APPENDIX I:

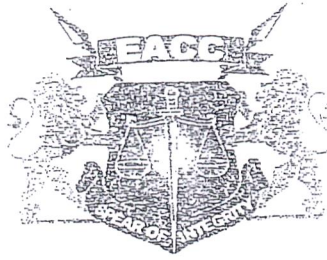
LETTER FROM THE ETHICS AND ANTI-CORRUPTION COMMISSION,
DATED OCTOBER 12, 2018, REQUESTING THE NATIONAL ASSEMBLY TO
INVESTIGATE AND TAKE NECESSARY ACTION AGAINST THE MEMBER
FOR EMBAKASI EAST CONSTITUENCY, HON. PAUL ONGILI OWINO, MP,
ALIAS *BABU OWINO* AND THE MEMBER FOR STAREHE CONSTITUENCY,
HON. CHARLES KANYI NJAGUA, MP, ALIAS *JAGUAR* FOR UNETHICAL
CONDUCT.



NATIONAL ASSEMBLY
RECEIVED

13 OCT 2017

SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.



ETHICS AND ANTI-CORRUPTION COMMISSION

INTEGRITY CENTRE (Valley Rd./Jakaya Kikwete Rd. Junction) P.O. Box 61130 – 00200, NAIROBI, Kenya

TEL.: 254 (020) 2717318 / 2720722, MOBILE: 0729 888881/2/3

Fax: 254 (020) 2717473 Email: eacc@integrity.go.ke Website: www.eacc.go.ke

When replying please quote:

OUR REF: EACC.7/10/1 VOL.X (200)

12th October 2017

Justin Muturi, EGH
Speaker of the National Assembly
Parliament Buildings
P O Box 41842-00100
NAIROBI

Dear Hon Muturi,

*Noted: CNA
Kindly initiate action as
appropriate
SNA
17/10/17*

**RE: UNETHICAL CONDUCT BY HON. PAUL ONGILI ALIAS BABU OWINO
MEMBER OF NATIONAL ASSEMBLY- EMBAKASI EAST CONSTITUENCY AND
HON. CHARLES KANYI ALIAS JAGUAR MEMBER OF NATIONAL ASSEMBLY
STAREHE CONSTITUENCY**

The Ethics and Anti-Corruption Commission is established under Section 3 of the Ethics and Anti-Corruption Commission Act, 2011 pursuant to Article 79 of the Constitution with the mandate of combating and preventing corruption and unethical conduct in Kenya. Under section 4 of the Leadership and Integrity Act 2012, the Commission is mandated to oversee and enforce implementation of the Leadership and Integrity Act which seeks to ensure that State and Public Officers uphold high standards of integrity and ethical conduct while discharging public duty.

The Commission's attention has been drawn to reports appearing in both the print and electronic media of an incident that happened within the precincts of the National Assembly on or about 10th September 2017 where Members of National Assembly for Starehe Constituency Hon. Charles Kanyi alias Jaguar and the Member of National Assembly for Embakasi East Constituency Hon. Paul Ongili alias Babu Owino were involved in a scuffle within the precincts of Parliament.

The Commission notes that the conduct of the two members constitute serious ethical breaches and is contrary to the integrity and ethical requirements governing the conduct of State officers as laid out under Chapter Six of the Constitution, the Leadership and Integrity Act, 2012, the Public Officer Ethics Act, 2003 and the Parliamentary Powers and Privileges Act, 2017

The Commission wishes to particularly draw your attention to the provisions of Article 73(1) (a)(i)(ii)(iii)(iv) and Article 75 (1)(c) of the Constitution and Sections 11(a) and (b) of the Leadership and Integrity Act which bind public officers to carry out their duties in a manner that maintains public confidence in the integrity of their respective offices.

Article 73(1) (a) (i) of the Constitution states: *Authority assigned to State officer/public officer is a public trust to be exercised in a manner that;*

Article 73(1) (a) (ii) *demonstrates respect for the people;*

Article 73(1) (a) (iii) *brings honour to the nation and dignity to the office;*

Article 73 (1) (a) (iv) *promotes public confidence in the integrity of the office;*

Article 75(1) (c) *A State officer shall behave, whether in public and official, in private life, or in association with other persons, in a manner that avoids demeaning the office the officer holds;*

Section 11(b) of Leadership and Integrity Act, 2012 states that *A State officer shall treat members of the public and other public officers with courtesy and respect;*

The Commission wishes to draw your attention to Section 37(3) of the Parliamentary Powers and Privileges Act, 2017 which provides for the Code of Conduct for Members of Parliament in the Fourth Schedule of the Act and in particular Rules 7,8 10,11 and 12 of the Code of Conduct for Members of Parliament which states *inter alia*:

Rule 7: that a member of the House shall uphold the dignity and integrity of the House;

(a) By promoting respect for the House and its institutions at all time

(b) Ensuring that the member's non-parliamentary activities do not interfere with or compromise the member's official duties or bring the House into disrepute.

Rule 8: *that a member of the House shall treat other members with respect and strive to have cordial relations with all other members;*

Rule 10: *members undertake to abide by this Code upon taking the oath of office and at the start of each Parliament;*


Rule 11: *provides that a member of the House shall comply with the requirements imposed under the General Leadership and Integrity Code set out in Part II of the Leadership and Integrity Act, 2012.*

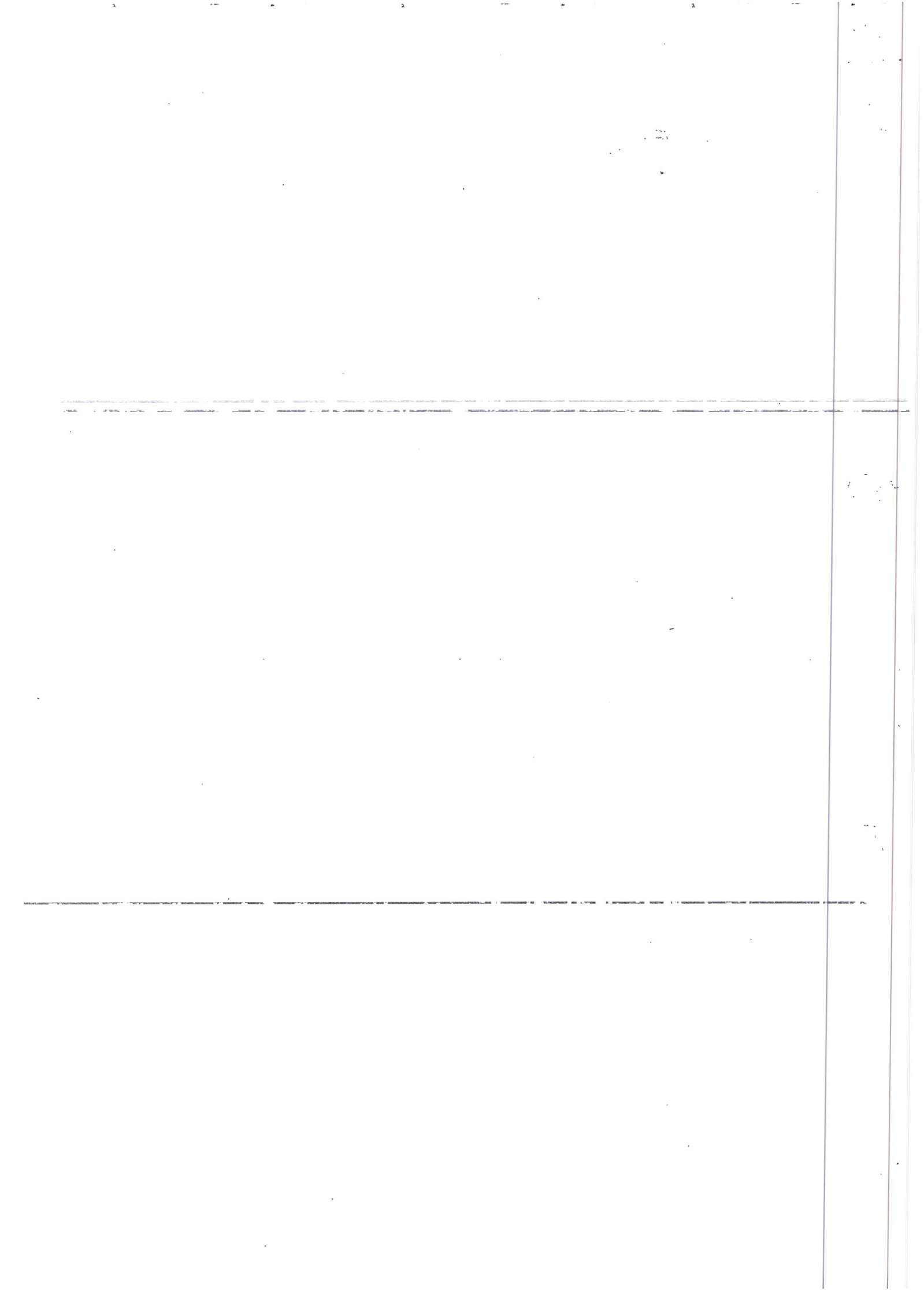
To this end, the Commission advises that you inquire into the conduct of the two Members of the National Assembly and take appropriate action pursuant to Section 15(5) the Parliamentary Powers and Privileges Act, 2017, Rule 12 of the the Code of Conduct for Members of Parliament and the relevant standing Orders of the House.

Kindly share with us your findings and action taken.

Enclosed please find a copy of the clip regarding the incident for your attention.

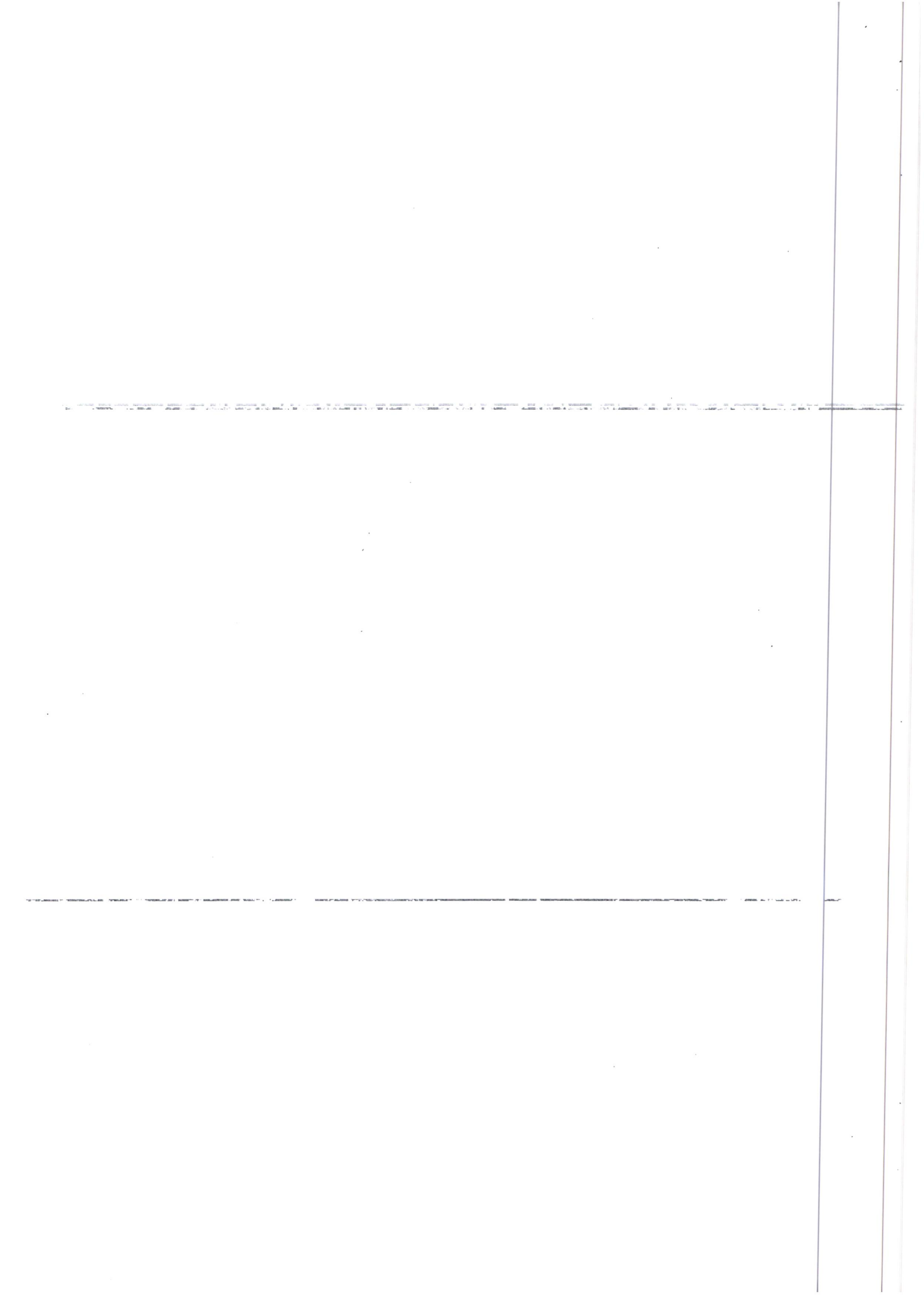
Yours *Sincerely*.


MICHAEL K. MUBEA, EBS
DEPUTY SECRETARY/CEO-TECHNICAL SERVICES
FOR: SECRETARY/CHIEF EXECUTIVE OFFICER
EKI/ek



APPENDIX II:

PETITION BY MR. BERNARD ABUYA MOMANYI, A RESIDENT OF EMBAKASI EAST CONSTITUENCY REGARDING ALLEGED BREACH OF PRIVILEGES AND VIOLATION OF THE CODE OF CONDUCT FOR MEMBERS OF PARLIAMENT BY THE MEMBER FOR EMBAKASI EAST CONSTITUENCY, HON. PAUL ONGILI OWINO, MP, ALIAS *BABU OWINO*.



PETITION TO PARLIAMENT UNDER ARTICLES 37, 75, 103(1)(c) AND 119 OF THE CONSTITUTION, THE PETITIONS TO PARLIAMENT (PROCEDURE) ACT, SECTIONS 16, 17 AND 37(3) OF THE PARLIAMETARY POWERS AND PRIVILEGES ACT, 2017, THE CODE OF CONDUCT OF THE MEMBERS OF PARLIAMENT AND STANDING ORDER 219, 223 AND 227 OF THE NATIONAL ASSEMBLY STANDING ORDERS RELATING TO CONDUCT CONSTITUTING A BREACH OF PRIVILEGE BY THE HONOURABLE BABU OWINO MEMBER FOR EMBAKASI EAST CONSTITUENCY.

TO: The Honourable Speaker
National Assembly,
Parliament Buildings,
P.O Box 41842-00100,
NAIROBI.

①
CNA to advice on the way forward.

BAJ SNA 9/11/17
② AGDLS
w/ notes for

I, Benard Abuya Momanyi of P. O Box 1020-0521, Nairobi, a resident and registered voter of Embakasi East Constituency submit this Petition pursuant to Standing Orders of the House and wish to draw the attention of this House to the following-

House
Matters
to the
House
CMT
9/11/17

1. THAT the Honourable Babu Owino is the elected Member of Parliament for Embakasi East Constituency.
2. THAT on 10th October, 2017 the Honourable Member Babu Owino engaged the Member for Starehe Constituency Honourable Charles Kanyi in a physical fight within the precincts of Parliament matters that are within the public domain.
3. THAT the Honourable Babu Owino attempted to fight Honourable Charles Kanyi over what appeared to be a brawl relating to the words used by the Honourable Babu Owino in describing the President as a "caretaker President".
4. THAT it took the intervention of Parliamentary officers to separate the Honourable Babu Owino from exchanging blows with the Honourable Charles Kanyi matters that are also within the public knowledge.

RECEIVED
09 NOV 2017
CLERKS OFFICE

NATIONAL ASSEMBLY
RECEIVED
08 NOV 2017
SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

PETITION TO PARLIAMENT UNDER ARTICLES 37, 75, 103(1)(c) AND 119 OF THE CONSTITUTION, THE PETITIONS TO PARLIAMENT (PROCEDURE) ACT, SECTIONS 16, 17 AND 37(3) OF THE PARLIAMETARY POWERS AND PRIVILEGES ACT, 2017, THE CODE OF CONDUCT OF THE MEMBERS OF PARLIAMENT AND STANDING ORDER 219, 223 AND 227 OF THE NATIONAL ASSEMBLY STANDING ORDERS RELATING TO CONDUCT CONSTITUTING A BREACH OF PRIVILEGE BY THE HONOURABLE BABU OWINO MEMBER FOR EMBAKASI EAST CONSTITUENCY.

5. THAT Article 75(1)(c) of the Constitution provides that a state officer shall behave whether in public and official life, in private life or in association with other persons in a manner that avoids demeaning the office the officer holds.
6. THAT the Member for Embakasi East Honourable Babu Owino as a State Officer, in fighting the Member for Starehe Constituency and hurling abusive words which did not bring honour to the office of the President contravened the provisions of Article 75(2) of the Constitution by demeaning the office of a Member of Parliament.
7. THAT further the conduct of the said Member for Embakasi East Constituency constitute a breach of privilege in terms of the provisions of section 16(e) of the Parliamentary Powers and Privileges Act, 2017 as by engaging in a public scuffle with the Member for Starehe East, Honourable Babu Owino conducted himself in a manner intended, or that was likely to reflect adversely on the dignity or integrity of the National Assembly, or of the Members of the National Assembly.
8. THAT the Honourable Babu Owino upon taking oath of office of a Member of Parliament in accordance with the provisions of Article 74 of the Constitution also undertook to abide by the Code of Conduct of Parliament.
9. THAT paragraph 7(a) of the Code of Conduct of Members of Parliament provides that a member of the House shall uphold the dignity and integrity

PETITION TO PARLIAMENT UNDER ARTICLES 37, 75, 103(1)(c) AND 119 OF THE CONSTITUTION, THE PETITIONS TO PARLIAMENT (PROCEDURE) ACT, SECTIONS 16, 17 AND 37(3) OF THE PARLIAMETARY POWERS AND PRIVILEGES ACT, 2017, THE CODE OF CONDUCT OF THE MEMBERS OF PARLIAMENT AND STANDING ORDER 219, 223 AND 227 OF THE NATIONAL ASSEMBLY STANDING ORDERS RELATING TO CONDUCT CONSTITUTING A BREACH OF PRIVILEGE BY THE HONOURABLE BABU OWINO MEMBER FOR EMBAKASI EAST CONSTITUENCY.

of the House by promoting respect for the House and its institutions at all times.

10. THAT contrary to paragraph 7(a) of the Code of Conduct of Members of Parliament by engaging in a public scuffle with the Member for Starehe Constituency, the Honourable Babu Owino did not uphold the dignity and integrity of the House.
11. THAT paragraph 8 of the Code of Conduct of Members of Parliament further provides that a member of the House shall treat other members with respect and strive to have cordial relations with all other members.
12. THAT contrary to paragraph 8 of the Code of Conduct of Members of Parliament by engaging in a public scuffle with the Member for Starehe Constituency, the Honourable Babu Owino did not treat the member for Starehe Constituency with respect.
13. THAT, the Member for Embakasi East has therefore contravened the provisions of Chapter Six of the Constitution and in particular Article 75(1)(c) of the Constitution as read with the Parliamentary Powers and Privileges Act, 2017 and should be subjected to the disciplinary procedures of a Member of Parliament.
14. THAT Article 75(3) as read with Article 99 (2)(h) of the Constitution disqualifies the Honourable Member for Embakasi East Constituency if found culpable from holding any state office including the office of a Member of Parliament.

PETITION TO PARLIAMENT UNDER ARTICLES 37, 75, 103(1)(c) AND 119 OF THE CONSTITUTION, THE PETITIONS TO PARLIAMENT (PROCEDURE) ACT, SECTIONS 16, 17 AND 37(3) OF THE PARLIAMETARY POWERS AND PRIVILEGES ACT, 2017, THE CODE OF CONDUCT OF THE MEMBERS OF PARLIAMENT AND STANDING ORDER 219, 223 AND 227 OF THE NATIONAL ASSEMBLY STANDING ORDERS RELATING TO CONDUCT CONSTITUTING A BREACH OF PRIVILEGE BY THE HONOURABLE BABU OWINO MEMBER FOR EMBAKASI EAST CONSTITUENCY.

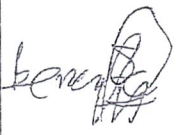
15. THAT there has been no efforts made to have the matters raised in this Petition addressed by a relevant body as the National Assembly is the only body mandated pursuant to Article 75(2)(a) of the Constitution as read with section 17 of the Parliamentary Powers and Privileges Act to inquire into and pronounce upon any act or matter constituting breach of privilege.

16. THAT the matters raised in this Petition are not pending before any court of law or other constitutional or legal body.

THEREFORE your humble petitioner do pray that the National Assembly-

1. Pursuant to Article 75(2)(a) of the Constitution and section 17 of the Parliamentary Powers and Privileges Act, 2017, the relevant Committee under whose mandate the issues raised in this Petition fall under does conduct investigations and inquire into all matters raised in this Petition.
2. Pursuant to Article 75(2)(b) of the Constitution and sections 16(e) and 17(3)(h) of the Parliamentary Powers and Privileges Act, 2017 the relevant Committee make recommendations that the Member for Embakasi East Constituency has breached the provisions of Chapter Six of the Constitution in particular Article 75(1)(c) of the Constitution and order for vacation of his seat in terms of Article 103(1)(c) of the Constitution.
3. Pursuant to the National Assembly Standing Order 227, the relevant Committee of the House does respond to me, the Petitioner, and table a Report to the National Assembly on its findings.

PETITION TO PARLIAMENT UNDER ARTICLES 37, 75, 103(1)(c) AND 119 OF THE CONSTITUTION, THE PETITIONS TO PARLIAMENT (PROCEDURE) ACT, SECTIONS 16, 17 AND 37(3) OF THE PARLIAMETARY POWERS AND PRIVILEGES ACT, 2017, THE CODE OF CONDUCT OF THE MEMBERS OF PARLIAMENT AND STANDING ORDER 219, 223 AND 227 OF THE NATIONAL ASSEMBLY STANDING ORDERS RELATING TO CONDUCT CONSTITUTING A BREACH OF PRIVILEGE BY THE HONOURABLE BABU OWINO MEMBER FOR EMBAKASI EAST CONSTITUENCY.

Name	Address	I.D Number	Signature
Benard Abuya Momanyi	1020-0521 Nairobi and resident of Embakasi Constituency	24466892	

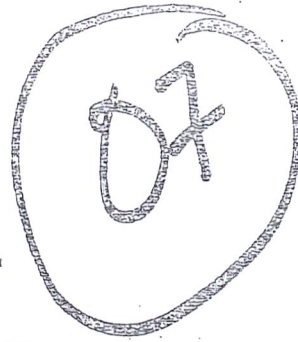
NATIONAL ASSEMBLY
DIRECTORATE OF LEGAL SERVICES
RECEIVED
09 NOV 2017
P. O. Box 41842 - 00100,
NAIROBI

APPENDIX III:

PETITION BY MR. BERNARD ABUYA CONVEYED TO THE HOUSE BY THE
SPEAKER.



REPUBLIC OF KENYA



TWELFTH PARLIAMENT
(FIRST SESSION)
THE NATIONAL ASSEMBLY

PETITION

(No.005 of 2017)

CONVEYANCE OF A PETITION REGARDING ALLEGED BREACH OF
THE PARLIAMENTARY POWERS AND PRIVILEGES ACT AND
VIOLATION OF CODE OF CONDUCT OF MEMBERS OF PARLIAMENT
BY A MEMBER

Honourable Members,

Pursuant to the provisions of Standing Order 225(2) (b), I hereby convey to the House a Petition signed by one Benard Abuya Momanyi regarding alleged breach of parliamentary privileges and violation of code of Conduct for Members of Parliament by a Member.

Honourable Members,

The Petitioner contends that Rule 7 of the Code of Conduct for Members of Parliaments provides that a Member of the House shall uphold dignity and integrity of the House by promoting respect for the House and its institutions at all times. Further, that Rule 8 provides that a Member of the House shall treat other Members with respect and strive to have cordial relations with all other Members. In this regard, the Petitioner alleges that on the 10th October, 2017, the Member for Embakasi East Constituency engaged the Member for Starehe Constituency in a physical fight within the precincts of Parliament.

Honourable Members,

The Petitioner states that Article 73(1)(iii) of the Constitution provide for authority assigned to a State Officer is a public trust to be exercised in a manner that bring honour

to the nation and dignity to the office and promotes public confidence in the integrity of the office. In addition, Article 75 of the Constitution provides that a State Officer shall behave whether in public or official life, in private life, or in association with other persons, in a manner that avoids demeaning the office the Officer holds.

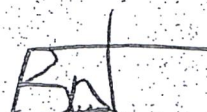
Honourable Members,

The Petitioner alleges that the Member for Embakasi East Constituency in engaging in a fight with the precincts of Parliament with the Member for Starehe Constituency acted in a manner that demeaned his office contrary to the provisions of Chapter Six of the Constitution. The Petition further avers that the Member contravened the provisions of Section 16(e) of the Parliamentary Powers and Privileges Act, 2017 by conducting himself in a manner likely to reflect adversely on the dignity and integrity of Parliament or its Members.

Honourable Members,

In this regard, the petitioner prays that the National Assembly investigates that matter raised in the Petition and recommend the vacation of office by the Member pursuant to Article 103(1)(c) of the Constitution. This Petition therefore stands committed to the Committee on Powers and Privileges for consideration. The Committee is required to examine the issue raised and prayer sought in this Petition and report its findings in accordance with the provision of Standing Order 227(2).

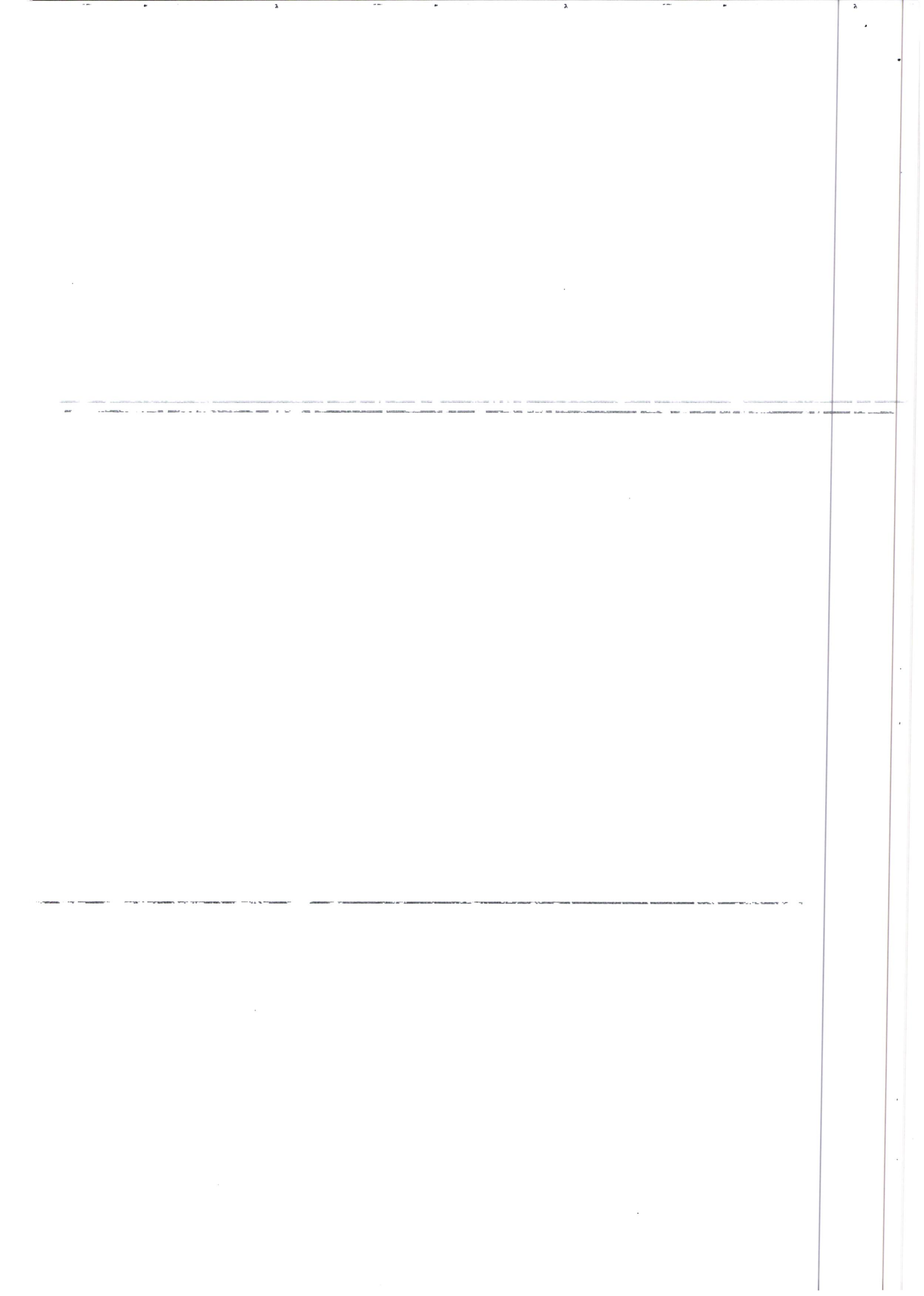
I, Thank you!



THE HON. JUSTIN B.N. MUTURI, E.G.H, MP
SPEAKER OF THE NATIONAL ASSEMBLY
THURSDAY, 14TH DECEMBER, 2017

APPENDIX 1V:

REPORT OF THE PARLIAMENT SECURITY AND SAFETY DEPARTMENT
ON THE SCUFFLE BETWEEN THE HON. PAUL ONGILI, MP AND THE HON.
CHARLES KANYI, MP.



CONFIDENTIAL
INCIDENT REPORT

TIME: 14:50 HRS

DATE: 10/10/2017

LOCATION/ADDRESS:

MAIN PARLIAMENT MEDIA CENTRE

INCIDENT DESCRIPTION:

SCUFFLE BETWEEN HON BABU OWINO PAUL ONGILI, MP. AND HON CHARLES KANYI NJAGUA, MP.

INTRODUCTION

On Tuesday 10/10/2017, at about 1450 hours while the Parliament house sessions were proceeding, our security officers on duty inside the main buildings heard a commotion at the media Centre which is situated at the rear entrance to the main buildings. Immediately, they rushed into the media centre where they found Hon Paul Ongili Babu Owino, MP, Embakasi East and Hon. Charles Njagua, MP Starehe constituency in a scuffle with the Parliament media staff separating them. The security officers took charge of the situation and brought it under control.

PRELIMINARY INVESTIGATION REPORT

Our preliminary investigations revealed the following;

1. Hon Paul Ongili had gone to the media center with an intention to address a press conference, upon arrival at the Principal Media Relations officers' desk; he was confronted by Hon Charles Njagua who was trailing him.
2. The two MPs Hon Paul Ongili and Hon Charles Njagua engaged in a heated argument which almost escalated into a physical confrontation but were separated and controlled by the Parliament Media Relations staff and Security officers.
3. The incident happened in the full glare of the media who recorded the incident and shared the pictures and clips to the public media.
4. No physical injuries were noticed on the Hon Members after the scuffle nor reported by the members to the security officers who quelled the scuffle.


5. No Parliament owned equipment was damaged during the scuffle.

ACTIONS TAKEN

- 1 On realizing that the scuffle would attract support from other Hon Members who were at the precincts the security team whisked away the two MPs and escorted them back to the Chambers.
- 2 The OCS Parliament Police Station and Parliament OIC Directorate of Criminal Investigations were immediately notified about the incident and directed to carry out further investigations into the matter.

RECOMMENDATIONS

- 1 The scuffle between the two MPs be taken as an incident within precincts of Parliament and be handled by the Committee of Privileges as per the laid down rules and regulations to resolve the case conclusively.
- 2 The Serjeant-at-Arms and with the support of Security department ensure continuous and intensified security patrols within Parliament buildings when the House sessions are in progress.

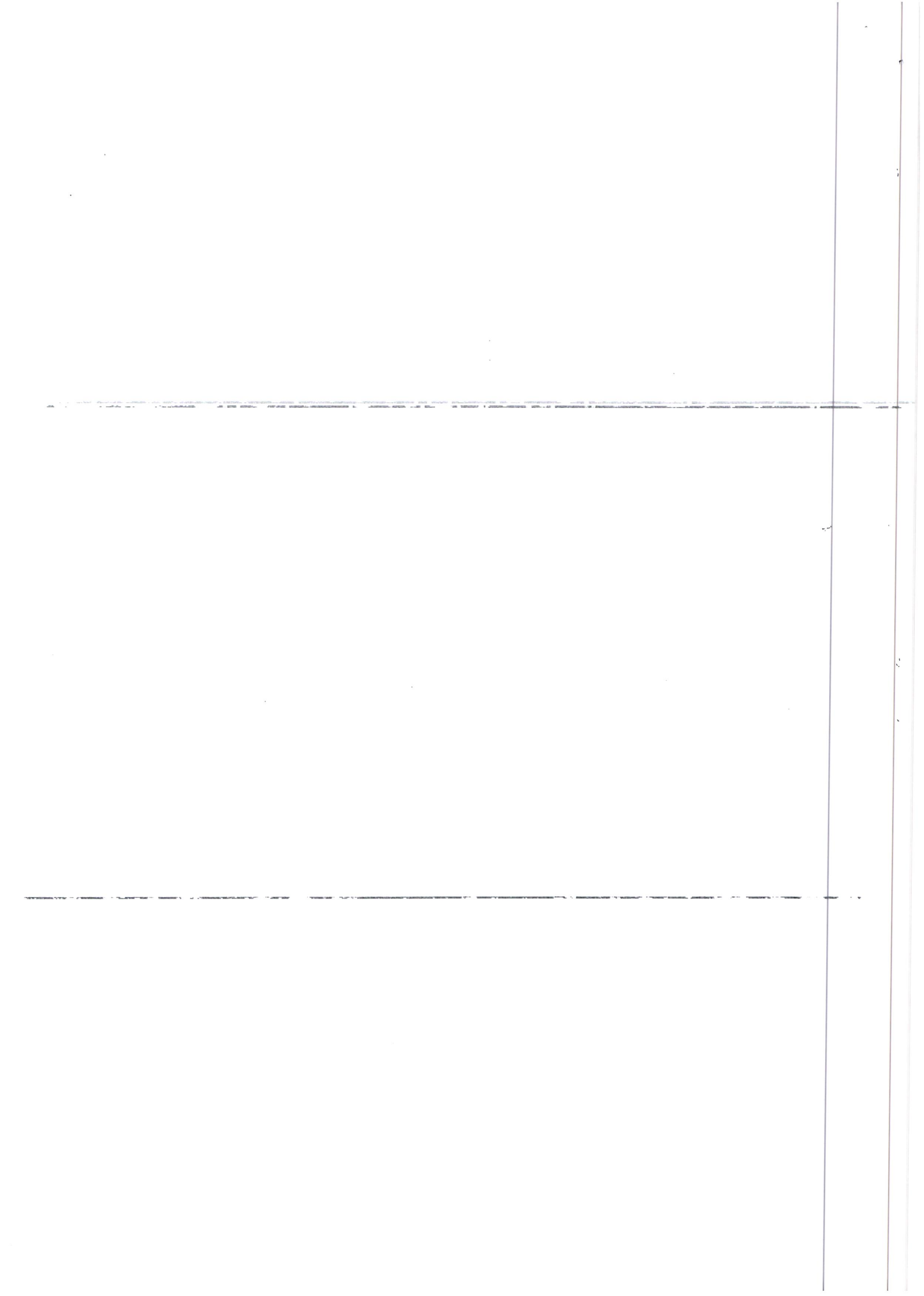


MAJ. KIRUNGU-MAJIBA (RTD)

AG. DEPUTY CHIEF SECURITY & SAFETY

APPENDIX V:

MINUTES OF SITTINGS OF THE COMMITTEE HELD TO CONSIDER THE
MATTER.



MINUTES OF THE SIXTH MEETING OF THE COMMITTEE OF POWERS
AND PRIVILEGES HELD ON THURSDAY, 19TH APRIL 2018 IN SPEAKER'S
BOARDROOM, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M

PRESENT

1. The Hon. Justin B. N. Muturi, EGH, M.P. - Speaker, National Assembly/Chair
2. The Hon. Anthony Githiaka Kiai, M.P.
3. The Hon. Gladwell Jesire Cheruiyot, M.P.
4. The Hon. Marselino Malimo Arbelle, M.P.
5. The Hon. Jude L. Kangethe Njomo, M.P.
6. The Hon. Shimbwa Omar Mwinyi, MP
7. The Hon. Peter Mungai Mwathi, M.P.
8. The Hon. Andrew Mwadime, M.P.
9. The Hon. Beatrice Kones, M.P.
10. The Hon. Capt. (Rtd.) Didmus Wekesa Barasa Mutua, M.P.
11. The Hon. Francis Chachu Ganya, M.P.

ABSENT WITH APOLOGIES

1. The Hon. James Mathew Onyango K' Oyoo, M.P.
2. The Hon. Danson Mwakuwona Mwashako, M.P.
3. The Hon. Vincent Kipkurui Tuwei, M.P.
4. The Hon. Vincent Kemose Mogaka, M.P.

IN ATTENDANCE

1. Mr. Michael Karuru - Ag. Director, Legal Services
2. Mr. Kipkemoi arap Kirui - Principal Clerk Assistant I
3. Ms. Jemimah Waigwa - Legal Counsel II
4. Mr. Benson Inzofu - Clerk Assistant III
5. Ms. Anne Shibuko - Clerk Assistant III
6. Ms. Esther Ngechu - Serjeant-at-Arms

MIN.NO. 30/CoPP/2018: PRELIMINARIES

The Chairperson called the meeting to order at half past Eleven O'clock and thereafter, prayers were said by the Hon. Beatrice Pauline Cherono Kones, MP.

MIN. NO. 31/CoPP/2018: ADOPTION OF AGENDA

The Chairperson took Members through the proposed Agenda for the meeting. The Committee unanimously adopted the Agenda as proposed.

MIN.NO. 32/CoPP/2018: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Minutes of the previous sittings were confirmed by Members present as true record of the proceedings, and signed by the Chairperson, as follows –

1. Minutes of the First Sitting held on Tuesday, February 27, 2018 were proposed by the Hon. Didmus Baraza, MP and seconded by the Hon. Beatrice Kones, MP;
2. Minutes of the Second Sitting held on Thursday March 8, 2018 in the morning were proposed by the Hon. Jude Njomo, MP and seconded by the Hon. Omar Mwinyi, MP;
3. Minutes of the Third Sitting held on Thursday March 8, 2018 in the afternoon were proposed by the Hon. Omar Mwinyi, MP and seconded by the Hon. Andrew Mwadime, MP;
4. Minutes of the Fourth Sitting held on Friday, March 9, 2018 in the morning were proposed by the Hon. Anthony Kiai, MP and seconded by the Hon. Marselino Arbele, MP; and
5. Minutes of the Fifth Sitting held on Friday, March 9, 2018 in the afternoon were proposed by the Hon. Hon. Anthony Kiai, MP and seconded by the Hon. Peter Mwathi, MP.

There were no matters arising.

MIN. NO. 33/CoPP/2018: CONSIDERATION OF THE DRAFT INDUCTION WORKSHOP REPORT

The Principal Clerk Assistant I, Mr. arap Kirui, took Members through the Draft Report of the Committee's Induction Workshop, held from March 8 to 9, 2018 at Serena Beach Hotel,

Mombasa County. The Committee unanimously adopted the Report and directed the Secretariat to institute mechanisms for implementation of the Workshop Resolutions.

MIN.NO. 34/CoPP/2018: CONSIDERATION OF THE DRAFT COMMITTEE WORK PLAN

Mr. arap Kirui took the Committee through the proposed Work Plan prepared by the Secretariat.

The Committee approved the proposed activities and further proposed to include –

- a) the consideration of the request by the Ethics and Anti-Corruption Commission (EACC) to access the Declaration of Assets and Liabilities Forms for Prof. Mohamed Swazuri and Abigael Mbagaya, Chairperson and Vice-Chairperson of the National Land Commission, respectively;
- b) the consideration of a complaint filed by the Hon. Caleb Amisi, MP concerning alleged threatening text messages received from the Hon. Chris Wamalwa, MP; and
- c) scheduling some of the proposed benchmarking visits to be undertaken within the current Financial Year 2017/2018.

The Secretariat was tasked to revise the Work Plan to accommodate the changes endorsed by the Committee.

MIN.NO. 35/CoPP/2018: THE MATTER OF THE PETITION BY MR. BERNARD ABUYA MOMANYI AND COMPLAINT BY THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) ON THE CONDUCT OF THE HON. PAUL ONGILI, MP AND THE HON. CHARLES NJAGUA KANYI, MP

The meeting was informed of a case of alleged breach of privilege by the Hon. Paul Ongili Owino, Member for Embakasi Constituency and the Hon. Charles Njagua Kanyi, Member for Starehe Constituency who engaged in a scuffle within the precincts of Parliament on October 10, 2017 vide a complaint filed by the Ethics and Anti-Corruption Commission (EACC) dated October 12, 2017, and a Petition by Mr. Bernard Abuya Momanyi conveyed by the Speaker to the House on December 14, 2017 praying that the National Assembly inquires into the conduct of the members. The committee resolved to consider the matter on May 4, 2018.

MIN.NO. 36/CoPP/2018: REQUEST BY THE ETHICS AND ANTI-CORRUPTION COMMISSION TO ACCESS THE DECLARATION OF ASSETS AND LIABILITIES FORMS FILED BY PROF. MOHAMMED SWAZURI AND MS. ABIGAEL MBAGAYA, COMMISSIONERS OF THE NATIONAL LAND COMMISSION

The Committee's attention was drawn to the contents of a letter from the Ethics and Anti Corruption Commission, dated March 20, 2018, requesting access to the Declaration of Assets and Liabilities forms for the period between 2013 and 2017 for the Chairperson and Vice Chairperson of the National Land Commission (NLC).

The Legal Counsel to the Committee explained that the request was anchored on the provisions of section 30 of the Public Officer Ethics Act No. 4 of 2003 which permits the contents of a declaration to be accessed or clarification sought by any person upon application to the responsible Commission in the prescribed manner if the applicant shows to the satisfaction of the responsible Commission that he or she has a legitimate interest and good cause in furtherance of the objectives of the Act. Counsel further clarified that prior to the responsible Commission making an affirmative decision, it shall grant the opportunity to the affected party to make representations on the matter. The responsible Commission in terms of section 3 of the Act is the Committee of Privileges.

Accordingly, the Committee resolved that –

- (a) the request by the EACC to access Declaration of Assets and Liabilities forms filed by Prof. Swazuri and Ms. Mbagaya be granted; and
- (b) ~~the two affected Commissioners of the National Land Commission be invited to~~ appear before the Committee of Powers and Privileges, not later than May 15, 2018, to be informed of the request by EACC and be accorded the opportunity to make submissions on the matter prior to the granting of the access to their declaration forms by the EACC.

MIN.NO. 37/CoPP/2018: COMPLAINT FILED BY HON. CALEB AMISI, MP, CONCERNING THREATENING TEXT MESSAGES FROM THE HON. CHRIS WAMALWA, MP

The Chairperson drew the attention of the Committee to the contents of a letter from the Hon. Caleb Luyayi Amisi, MP, Member for Saboti Constituency, dated April 11, 2018, in which the Hon. Amisi had filed a complaint regarding alleged threatening text messages from the Hon. Chrisantus Wamalwa, MP, the Member for Kiminini Constituency.

The Committee resolved to consider the matter on May 4, 2018.


It was resolved that a pre-hearing meeting be held prior to the hearings.

MIN.NO. 38/CoPP/2018: ANY OTHER BUSINESS

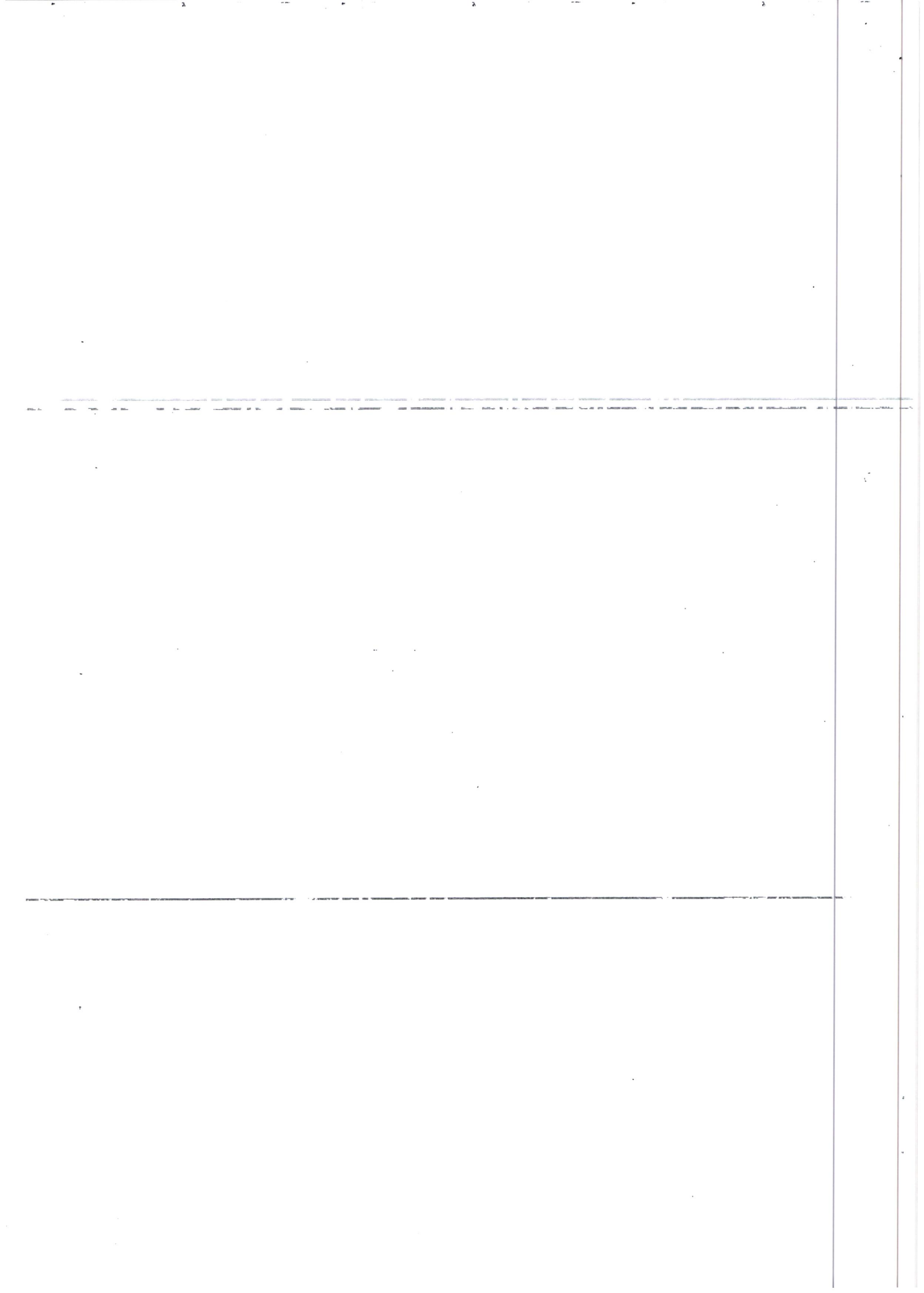
The Chairperson informed the meeting that prior to the meeting he had held discussions with a delegation from the Peoples' Republic of China led by the outgoing Chinese Ambassador to Kenya H.E. Liu Xianfa. He added that part of their discussions touched on matters relating to ethics of Members, which in the People's Republic of China fall within the ambit of political Parties. He informed the committee that both countries will continue to engage and share experiences on matters concerning the ethics of Members.

MIN.NO. 39/CoPP/2018: ADJOURNMENT

The Chairperson adjourned the meeting at twenty minutes to One O'clock. The date for the next meeting would be communicated by notice.

Sign:.....
(Chairperson)

Date: 5/9/18.....



MINUTES OF THE EIGHTH MEETING OF THE COMMITTEE ON POWERS AND PRIVILEGES HELD ON WEDNESDAY, 27TH JUNE 2018 IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M

PRESENT

1. The Hon. Justin B. N. Muturi, EGH, MP - Speaker of the National Assembly/Chairperson
2. The Hon. Anthony Githiaka Kiai, MP
3. The Hon. Beatrice Pauline Cherono Kones, MP
4. The Hon. Gladwell Jesire Cheruiyot, MP
5. The Hon. Marselino Malimo Arbelle, MP
6. The Hon. Jude L. Kangethe Njomo, MP
7. The Hon. Capt. (Rtd) Didmus Wekesa Barasa Mutua, MP
8. The Hon. Peter Mungai Mwathi, MP
9. The Hon. Omar Mwinyi Shimbwa, MP
10. The Hon. James Mathew Onyango K' Oyoo, MP
11. The Hon. Danson Mwakuwona Mwashako, MP
12. The Hon. Vincent Kemose Mogaka, MP
13. The Hon. Andrew Mwadime, MP

ABSENT WITH APOLOGIES

1. The Hon. Francis Chachu Ganya, MP
2. The Hon. Vincent Kipkurui Tuwei, MP

IN ATTENDANCE

(A) WITNESSES

- | | | |
|--------------------------------|---|--------------------------------------|
| 1. The Hon. Charles Njagua, MP | - | Member for Starehe Constituency |
| 2. The Hon. Babu Owino, MP | - | Member for Embakasi Constituency |
| 3. The Hon. Chris Wamalwa, MP | - | Member for Kiminini Constituency |
| 4. The Hon. Caleb Amisi, MP | - | Member for Saboti Constituency |
| 5. Prof. Mohamed Swazuri | - | Chairman, National Land Commission |
| 6. Mrs. Abigael Mbagaya | - | Vice Chair, National Land Commission |

(B) PARLIAMENTARY STAFF

1. Mr. Kipkemoi arap Kirui - Principal Clerk Assistant I
2. Ms. Jemimah Waigwa - Legal Counsel II
3. Mr. Benson Inzofu - Clerk Assistant III
4. Ms. Anne Shibuko - Clerk Assistant III
5. Ms. Esther Ngechu - Serjeant-at-Arms
6. Mr. Rodgers Kilungya - Audio Recording Officer

MIN.NO. 46/CoPP/2018: PRELIMINARIES

The Chairperson called the meeting to order at half past Eleven O'clock and invited the Hon. Vincent Kemose Mogaka, MP to say the prayers.

MIN.NO. 47/CoPP/2018: ADOPTION OF AGENDA

The Chairperson took Members through the proposed agenda for the meeting, which was unanimously adopted by the Committee. Thereafter, the Chairperson guided Members on the manner of considering each of the items listed on the Agenda.

MIN.NO. 48/CoPP/2018: CONSIDERATION OF A REQUEST BY THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) TO ACCESS WEALTH DECLARATION FORMS FOR THE CHAIRPERSON AND VICE CHAIRPERSON OF THE NATIONAL LAND COMMISSION

The Chairperson briefed Members on the request by the Ethics and Anti-Corruption Commission to access wealth declaration forms for the Chairperson and Vice Chairperson of the National Land Commission. He explained the provisions of section 30 of the Public Officers Ethics Act, 2003 and the obligation of the Committee in respect of the release, for public access, declaration of wealth forms in respect of public officers on whom the Committee, being the responsible Commission has jurisdiction to take custody of their wealth declaration forms. He also clarified that the role of the Committee in considering a request for such documents was confined to affording a public officer, whose wealth declaration forms are in the Committee's custody, the opportunity to make representations on the matter as dictated by the provisions of section 30 of the Public Office Ethics Act, 2003.

Pursuant to the said provisions of the Act, the Committee received representations from the Vice-Chairperson and Chairperson of the National Land Commission as follows –

(1) Representations by Ms. Abigael Mbagaya, Vice Chairperson of the National Land Commission

The Vice Chairperson of the National Land Commission (NLC), Ms. Abigael Mbagaya, appeared before the Committee in the company of Mr. Tom Aziz Chavangi, the Secretary/Chief Executive Officer of the National Land Commission on invitation of the Committee.

After introductions, the Chairperson briefed Ms. Mbagaya of the purpose of her invitation to the Committee. He took her through the contents of two letters before the Committee. The first letter, dated 24th January 2018, was by the CEO of the National Land Commission, Mr. Chavangi Tom Aziz, responding to a request by the Ethics and Anti-Corruption Commission (EACC) to access wealth declaration forms of the Chairperson and Vice Chairperson of the National Lands Commission for the period between 2013 and 2017. In the letter, the CEO had referred the EACC to the National Assembly, which by law had custody over wealth declaration forms for Commissioners of independent Commissions.

The Chairperson then read to Ms. Mbagaya a letter, dated 20th March 2018, by Mr. Abdi A. Mohamud, MBS, Director Investigations at the Ethics and Anti-Corruption Commission. In the letter, Mr. Mohamud indicated that the Commission was carrying out investigation in respect of the Chairperson and Vice-Chairperson of the National Lands Commission and requested for the certified copies of the wealth declaration forms of the two public officers.

The Chairperson informed Ms. Mbagaya that the Committee of Powers and Privileges deliberated on the request by the EACC and resolved that, before a decision on whether or not to grant the request by the EACC is made, she be notified of the request and invited to make representations to the Committee in accordance with the provisions of section 30 of the Public Officers and Ethics Act, 2003.

Upon invitation by the Chairperson, the Ms. Mbagaya thanked the Committee for granting her the opportunity to make her representation on the matter. She registered her concerns that to the best of her knowledge, she was not aware of any investigations by the EACC or any other investigatory agency in respect of her credibility or that of the Chairperson of the NLC. She added that she was aware that the EACC had written to the NLC requesting for her wealth declaration forms but EACC had not indicated that the request was to aid the Commission to conduct investigation relating to her. She was curious that EACC had singled her out and the Chairperson for investigations out of the entire Commission.

Ms. Mbagaya averred that she was a forthright state officer and would be able to account for and defend the assets she had acquired and liabilities incurred, if invited to do so. She informed the Committee that she had no objection on the Committee handing over her declaration of wealth forms to the EACC for the stated period. She also clarified that she worked with the Ethics and Anti-Corruption Commission until 20th February 2013 prior to joining the National Land Commission. Hence, as her former employer, the EACC did not have to request for her wealth declaration forms for the year 2013 from the National Assembly since they had access to her exit report on her wealth.

After the Committee had noted her concerns, the Chairperson requested Ms. Mbagaya to check and confirm that her wealth declaration forms for the years 2013, 2015 and 2017 submitted to the National Assembly were sealed and had not been tampered with.

Having confirmed that the envelopes were sealed, Ms. Mbagaya requested the CEO to check the handwriting thereon and confirm as well since it was him who submitted them to the National Assembly. Mr. Tom Aziz Chavangi did confirm to the Committee that, acting on basis of delegated authority as the CEO of the National Land Commission, he submitted to the National Assembly wealth declaration forms of all the Commissioners. He positively recognized the sealed envelopes presented to him and the handwriting thereon as those he submitted. He further confirmed that the contents therein were in respect of Ms. Mbagaya as submitted to his Office by the Director of Human Resource Department, which was responsible for coordinating the submission of wealth declaration forms as required by law.

In her final submission, Ms. Mbagaya restated that she had absolutely no objection with the Committee handing over copies of her wealth declaration forms to the Ethics and Anti Corruption Commission. She thanked the Committee for inviting her to the meeting.

(2) Representations by Prof. Mohamed Swazuri, Vice Chairperson of the National Land Commission

The Chairperson of the National Land Commission (NLC), Prof. Mohamed Swazuri, appeared before the Committee in the company of Mr. Tom Aziz Chavangi, the Secretary/Chief Executive Officer of the National Land Commission on invitation of the Committee.

In a similar procedure as that of the Vice Chairperson, proceedings commenced with introduction led by the Chairperson. Thereafter, the Chairperson briefed Prof. Swazuri of the

purpose of his invitation to the Committee. He read to him contents of two letters before the Committee that culminated informed his invitation to the Committee.

The first letter, dated 24th January 2018, was by the CEO of the National Land Commission, Mr. Chavangi Tom Aziz, responding to a request by the Ethics and Anti-Corruption Commission to access wealth declaration forms of the Chairperson and Vice Chairperson of the National Land Commission for the period 2013 to 2017. In the letter, the CEO referred the EACC to the National Assembly, which by law had custody over wealth declaration forms for Commissioners of independent Commissions.

The Chairperson then read to Prof. Swazuri a letter, dated 20th March 2018, by Mr. Abdi A. Mohamud, MBS, Director Investigations at the Ethics and Anti-Corruption Commission. In the letter, Mr. Mohamud indicated that the Commission was carrying out investigation in respect of the Chairperson and Vice Chairperson of the National Land Commission and requested for the certified copies of the wealth declaration forms of the two state officers. The Chairperson also informed Prof. Swazuri that the Committee of Powers and Privileges deliberated on the request by the EACC and resolved that, before a decision on whether or not to grant the request by the EACC is made, he be notified of the request and invited to make representations to the Committee in accordance with the provisions of section 30 of the Public Officers and Ethics Act, 2003.

Upon invitation by the Chairperson, Prof. Swazuri thanked the Committee for inviting him to make representation on the matter. He informed the Committee that he had no objection to the request by the EACC, stating that it was a statutory requirement that every state or public officer is expected to comply with.

The Chairperson directed that the sealed wealth declaration forms for the years 2013, 2015 and 2017 be handed to the Chairperson of the National Land Commission for verification and authentication that they were indeed those he submitted to the National Assembly. Prof. Swazuri confirmed that he did fill the wealth declaration forms and invited the CEO, who was responsible for submitting them to the National Assembly to check the handwriting thereon and confirm as well since it was him who submitted them to the National Assembly.

Mr. Tom Aziz Chavangi, CEO, stated that he processed Prof. Swazuri's wealth declaration forms in liaison with the Director of the Human Resource Department on account of delegated authority of the National Land Commission. He positively identified the envelopes presented to him as being the ones he received from the Director of the Human Resource and henceforth

submitted to the National Assembly. He averred that the contents therein were in respect of Prof. Swazuri.

Finally, Prof. Swazuri thanked the Committee for inviting him and restated that the Committee was at liberty to release his wealth declaration forms for the requested years to the Ethics and Anti Corruption Commission.

(3) Committee's observations

The Committee deliberated on the representations made by the Vice Chairperson and Chairperson of the National Land Commission, respectively and observed that both the Chairperson and the Vice Chairperson of the National Land Commission had no objections to the Committee releasing their wealth declaration forms to the Ethics and Anti Corruption Commission. Accordingly, the Committee resolved as follows –

- (a) that the request by Ethics and Anti-Corruption Commission to access certified copies of wealth declaration forms for the period between 2013 and 2017 in respect of the Chairperson and Vice Chairperson of the National Land Commission be acceded to;
- (b) the Committee does release only certified copies and not the originals of the wealth declaration forms, noting that as the responsible Commission it is has to retain custody of the original declaration forms to be able to deal with future possible requests for access by any other person in terms of section 30 of the Public Officer Ethics Act;
- (c) the certified copies of the wealth declaration forms be formally handed over to the CEO, Ethics and Anti-Corruption Commission or his designee in a Committee sitting;
- (d) that in view of paragraphs (a) and (b), the CEO, Ethics and Anti-Corruption Commission be invited to appear before the Committee to –
 - (i) witness the opening of the sealed wealth declaration forms in respect of the Chairperson and Vice Chairperson of the National Land Commission for the period between 2013 and 2017;
 - (ii) witness the making of copies of the original forms and certification thereof by the Chairperson of the Committee of Powers and Privileges;
 - (iii) witness the resealing of the original forms; and
 - (iv) formally receive the certified copies of the requested document;
- (e) that in observance of the principle of fair administrative action under Article 47 of the Constitution and the Fair Administrative Action Act No. 4 of 2015, the Chairperson and Vice-Chairperson of the National Land Commission be accorded the opportunity to be present at the unsealing of the envelopes containing their wealth declaration

forms; photocopying; certification of the copies; resealing of the original forms thereof; and subsequent handing over of the certified copies to the CEO or designee of the Ethics and Anti-Corruption Commission and;

- (f) that the Committee reconvenes on Wednesday, July 4, 2018 at 11.00am to conclude on the matter.

Action: Committee Secretariat

MIN. NO. 49/CoPP/2018: A COMPLAINT BY THE ETHICS AND ANTI-CORRUPTION COMMISSION (EACC) AND A PETITION BY MR. BERNARD ABUYA MOMANYI CONCERNING THE CONDUCT OF THE MEMBER FOR EMBAKASI EAST CONSTITUENCY, HON. PAUL ONGILI, M.P., AND THE MEMBER FOR STAREHE CONSTITUENCY, HON. CHARLES NJAGUA KANYI, M.P. ON OCTOBER 10, 2017

1. Background

The Chairperson drew the attention of the meeting to the contents of a letter received from the Ethics and Anti Corruption Commission, dated October 12, 2018, and a Petition submitted by one Bernard Abuya Momanyi and conveyed to the House on December 14, 2018. The letter and the Petition respectively raised complaints regarding unethical conduct and breach of privilege by the Member for Embakasi East Constituency (Hon. Paul Ongili, alias Babu Owino) and the Member for Starehe Constituency (Hon. Charles Kanyi, alias Jaguar) and sought action of the National Assembly in accordance with the Constitution and applicable law.

He also took Members through the mandate of the Committee of Powers and Privileges in respect to complaints on alleged breach of privilege by a Member of Parliament and the prescribed sanctions that the Committee may recommend to the House upon conclusion of an inquiry into alleged breach of privilege referred to it.

The Committee deliberated on the complaint and agreed to invite the two Members to be heard jointly.

The Chairperson invited Members of the Committee to introduce themselves and went on to introduce the secretariat before inviting the witnesses to introduce themselves.

The Chairperson informed the Member for Embakasi East Constituency and Starehe Constituency that the purpose of them being invited to the Committee was consequent to a letter from the Ethics and Anti-Corruption Commission and the Petition by Mr. Bernard Abuya Momanyi regarding their unethical conduct on October 10, 2018 within the precincts of Parliament. He read out to the two Members the contents of the letter and the Petition and the action sought thereof and invited them

to tender their submissions to the Committee in light of the alleged breach of privilege committed under section 16 of the Powers and Privileges Act, 2017.

The Committee proceeded to receive presentations from the two Members as follows-

2. Submissions by the Member for Embakasi East Constituency

Upon invitation by the Chairperson, the Hon. Paul Ongili, MP informed the Committee that indeed an incidence occurred between him and the Member for Starahe Constituency in the Media Centre on October 10, 2017. He alluded the alleged altercation to the then delicate political environment associated to the disputed Presidential Elections held in August 2017 and the then impending fresh Presidential election on October 26, 2018 that elicited frosty political relationship and bad blood between supporters of the National Super Alliance (NASA) and the Jubilee Party.

~~He informed the Committee that what ensued was an altercation and not a physical scuffle as~~ alleged by the EACC and the Petitioner. The Hon. Ongili said that after retrospection on the incident, he realized it was not a small matter as he thought. He went on to say that he deeply regretted the incident and had since reached out to and reconciled with the Member for Starehe Constituency.

3. Submissions by the Member for Starehe Constituency

On invitation by the Chairperson, the Member for Starehe Constituency informed the Committee that he highly regretted the action. He added that he reiterated the assurance made by the Member for Embakasi East that the two Members had since reconciled and were even doing joint businesses and had plans underway for joint development initiatives to benefit youths in their respective constituencies as a sign of their reconciliation. He said he never intended to cause a scuffle but had stormed the media House to stop the Member for Embakasi East from holding a press conference that he assumed was intended to defame H.E. the Presidency.

4. Observations of the Committee

~~the legislators neither seemed to have taken the complaint before them seriously nor realized the~~ Having listened to the representations by the two Members, the Committee was of the opinion that the gravity of the attendant consequences. The Committee was emphatic that the conduct of the two legislators was in breach of section 16(e) of the Parliamentary Powers and Privileges Act, 2017 to the extent that it not only demeaned their personal dignity but also lowered the dignity, integrity and honour of the entire institution of Parliament.

Further, the Committee put it to the two Members that they had acted in contravention of the provisions of Article 75 of the Constitution on leadership and integrity and Rules 7 and 9 of the

Code of Conduct for Members of Parliament. The Committee proceeded to inform the two Members of the sanctions prescribed in section 17 of the Parliamentary Privileges Act, 2017 that may be recommended against them if found culpable of breach of privilege. The Committee also emphasized that the Members risked losing their seats pursuant to the provisions of Article 103(1)(c) of the Constitution

The Committee informed the two leaders to recognize that as youthful legislators, young people across the country looked upon them as role models. Further, the two Members were challenged to appreciate that they represent cosmopolitan constituencies and were dutybound to conduct themselves in a manner that promotes unity in their constituencies and national cohesion.

5. Final submissions

On invitation by the Chairperson, both the Hon. Ongili and Hon. Njagua tendered their sincere apologies for the unethical conduct. They undertook not to ever act in a manner demeaned their own integrity or that of the House. In their concluding submissions, the two Members pleaded for leniency in the spirit of national reconciliation.

The Chairperson then informed Hon. Ongili and Hon. Njagua that the Committee will review their submissions in light of the applicable law and table a Report in the House thereof containing the Committee's recommendations as required under section 15(6) and (7) and the Third Schedule to the Powers and Privileges Act, 2017. Thereafter, the Chairperson released the two legislators from the meeting.

Thereupon, the Chairperson informed the Members of the Committee that it also expected to hear the Petitioner, Mr. Bernard Abuya. He reported that efforts to reach him had not yielded fruit since he never provided a mobile phone number. He added that, should he be reached, the Committee would engage him on the grounds raised and prayers sought in his petition.

MIN.NO. 50/CoPP/2018: CONSIDERATION OF A COMPLAINT FILED BY MEMBER FOR SABOTI CONSTITUENCY, HON. CALEB AMISI, MP, CONCERNING ALLEGED THREATENING TEXT MESSAGES FROM THE MEMBER OR KIMININI CONSTITUENCY, HON. CHRIS WAMALWA, M.P.

The Chairperson briefed the Committee on a complaint filed by the Member for Saboti (Hon. Caleb Luyayi Amisi) on alleged receipt of threatening messages from the Member for Kiminini Constituency (Hon. Chrisantus Wamalwa) on the April 10, 2018. The Member for Saboti sought intervention to have the Member for Kiminini restrained from bullying and threatening his life.

The Committee noted the contents of the complaint and observed that in the interest of time, the matter be deferred to a subsequent meeting so as to be accorded ample consideration.

Accordingly, the Committee resolved to have the two Members jointly appear before it to be briefed on the complaint and notification of deferment of the inquiry in their respect.

Consequent to the Committee's resolution, the Member for Saboti Constituency and the Member for Kiminini Constituency were ushered into the meeting room.

The Chairperson invited Members of the Committee to introduce themselves, then he introduced the Secretariat and thereafter asked the two witnesses to introduce themselves in turn. The Chairperson briefed the Member for Kiminini of the contents of a letter by the Member for Saboti Constituency, dated April 11, 2018, alleging that, on April 10, 2018 at 1748hrs, he had sent threatening text messages to the Member for Saboti Constituency.

The Chairperson observed that the Committee was not in a position to hear them since it had to adjourn to another day to allow him and Members of the Committee to prepare for a Sitting of the House that was due to commence thereafter.

The Member for Kiminini agreed with the proposal by the Chairperson but raised a question as to whether the Committee had jurisdiction to hear and determine the complaint. He cited correspondence by his lawyers (Milimo and Muthomi & Co. Advocates), dated June 25, 2018, suggesting that the matter was *subjudice* since he had instituted criminal proceedings in court against the Member for Saboti Constituency, whom he alleged had defamed him.

The Chairperson did confirm he had received the said letter and referred it to the Committee of Powers and Privileges forthwith. He was categorical that there was no indication in the said letter by Milimo and Muthomi & Co. Advocates that legal proceedings relating to the complaint before the Committee had commenced in any court of law. Notwithstanding, the Chairperson stressed that even if the matter was in court, it would be of no consequence to the proceedings of the Committee since matters relating to privileges of Members of Parliament are within the exclusive ambit of Parliament. He was emphatic that issues relating to parliamentary privileges, particularly those touching on the conduct of Members are heard and determined *inter se* by Parliament, through internally established structures and in the manner prescribed by the privilege law.

The Chairperson clarified that no court had jurisdiction over matters of conduct of Members of Parliament, other than judicial review upon Parliament making a determination on any complaint of breach of privilege. He therefore advised the Member for Kiminini to refrain from advancing that argument when he appears before the Committee in its subsequent sitting.

With the consensus of the witnesses, the Committee resolved to defer the hearing of the complaint until Wednesday, July 4, 2018 at 11.00am at the same venue. It was further resolved that the Office of the Clerk engages the relevant mobile telephone service provider with a view to obtaining transcripts of text messages that the Member for Kiminini Constituency allegedly sent to the Member for Saboti Constituency, to enable the Committee make an informed decision of the issues under consideration.

Action: Committee Secretariat

MIN.NO. 51/CoPP/2018: ANY OTHER BUSINESS

There was no other business.

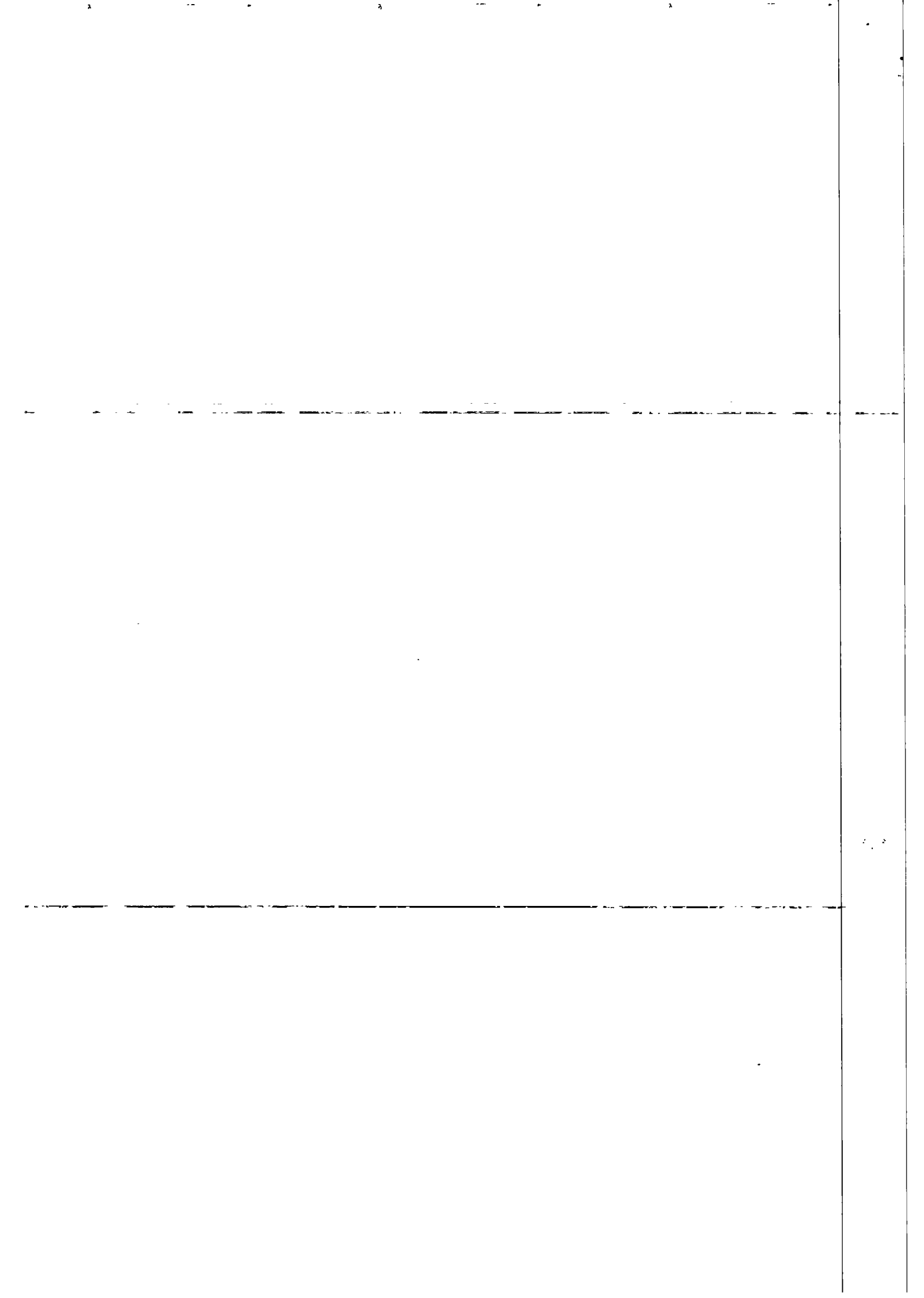
MIN.NO. 52/CoPP/2018: ADJOURNMENT

The Chairperson adjourned the meeting at five minutes past One O'clock. The next meeting would be held on Wednesday July 4, 2018 at 11.00am at the same venue.

Sign:.....

(Chairperson)

Date:.....



MINUTES OF THE NINETH MEETING OF THE COMMITTEE OF POWERS
AND PRIVILEGES HELD ON WEDNESDAY, 4TH JULY 2018 IN COMMITTEE
ROOM 9, MAIN PARLIAMENT BUILDINGS AT 11.00 A.M

PRESENT

1. The Hon. Justin B. N. Muturi, EGH, MP - Speaker of the National Assembly/Chairperson
2. The Hon. Anthony Githiaka Kiai, MP
3. The Hon. Beatrice Pauline Cherono Kones, MP
4. The Hon. Gladwell Jesire Cheruiyot, MP
5. The Hon. Marselino Malimo Arbelle, MP
6. The Hon. Jude L. Kangethe Njomo, MP
7. The Hon. Capt. (Rtd) Didmus Wekesa Barasa Mutua, MP
8. The Hon. Francis Chachu Ganya, MP
9. The Hon. Omar Mwinyi Shimbwa, MP
10. The Hon. James Mathew Onyango K' Oyoo, MP
11. The Hon. Danson Mwakuwona Mwashako, MP.
12. The Hon. Vincent Kemose Mogaka, MP
13. The Hon. Andrew Mwadime, MP

ABSENT WITH APOLOGIES

14. The Hon. Vincent Kipkurui Tuwei, MP
15. The Hon. Peter Mungai Mwathi, MP

IN ATTENDANCE

(A) WITNESSES

1. Prof. Muhammad Swazuri - Chairman, National Land Commission
2. Mrs. Abigael Mbagaya - Vice Chair, National Land Commission
3. Mr. Abdi A. Mohamed - Director, Investigations, EACC
4. Mr. David Too - Director, Legal Services, EACC
5. Mr. Patrick Owiny - Deputy Director, Ethics & Leadership, EACC

6. Ms. Nancy Chepchieng - Investigator, EACC
7. The Hon. Chris Wamalwa, MP - Member for Kiminini Constituency
8. The Hon. Caleb Amisi, MP - Member for Saboti Constituency

(B) PARLIAMENTARY STAFF

1. Mr. Michael Sialai, EBS - Clerk of the National Assembly
2. Mr. Michael Karuru - Ag. Director, Legal Services
3. Ms. Jemimah Waigwa - Legal Counsel II
4. Mr. Benson Inzofu - Clerk Assistant III
5. Ms. Anne Shibuko - Clerk Assistant III
6. Ms. Esther Ngechu - Serjeant-at-Arms
7. Mr. Rodgers Kilungya - Audio Recording Officer

MIN.NO. 53/CoPP/2018: PRELIMINARIES

The Chairperson called the meeting to order at half past Eleven O'clock and invited the Hon. Anthony Githiaka Kiai, MP to say the prayers.

MIN.NO. 54/CoPP/2018: ADOPTION OF AGENDA

The Chairperson took Members through the proposed agenda for the meeting. The Committee resolved to prioritize consideration of a request by the Ethics and Anti-corruption Commission (EACC) to access Wealth Declaration Forms for the Chairperson and Vice Chairperson of the National Land Commission as the witnesses were all present, then proceed to the other items.

The Chairperson also clarified that proceedings of the Committee were open to the public and media in accordance to the provisions of Article 118(2) of the Constitution and the applicable Standing Orders.

MIN.NO. 55/CoPP/2018: CONFIRMATION OF MINUTES

The Minutes of the Eight Sitzings of the Committee held on June 27, 2018 were confirmed as a true record of proceedings as proposed by Capt. (Rtd) Didmus Wekesa Barasa Mutua, MP and seconded by the Hon. Andrew Mwadime, MP. Thereupon, the Chairperson signed the Minutes.

MIN.NO. 56/CoPP/2018:

CONSIDERATION OF A REQUEST BY THE
ETHICS AND ANTI-CORRUPTION
COMMISSION (EACC) TO ACCESS WEALTH
DECLARATION FORMS FOR THE
CHAIRPERSON AND VICE CHAIRPERSON OF
THE NATIONAL LAND COMMISSION

(1) Background

The Chairperson informed Members that the matter had been conclusively considered in the previous meeting and what remained was to formally hand over the wealth declaration forms for the Chairperson and Vice Chairperson of the National Land Commission to the EACC. He advised Members that, since the Committee had no interest in the contents of the forms requested by the EACC, they should confine their questions to matters relating to the role of the Committee as the responsible Commission and the process for granting the request at hand as provided for in section 30 of the Public Officer Ethics Act. Thereafter, the Chairperson directed that Prof. Swazuri, Mrs. Mbagaya and the team from the EACC be ushered into the meeting room.

After introductions, the Chairperson briefed the witnesses that their invitation to appear before the Committee was consequent to a letter by Mr. Abdi A. Mohamud, Director Investigations at the Ethics and Anti-Corruption Commission, dated 20th March 2018 concerning an ongoing investigation in respect of the Chairperson and Vice-Chairperson of the National Lands Commission and requesting for the Certified Copies of the Wealth Declaration Forms of the two public officers. The Chairperson explained the provisions of section 30 of the Public Officers Ethics Act, 2003 pertaining to access to contents of a declaration or any clarification tenable to any person upon application to the responsible

(2) Verification and certification of Wealth Declaration Forms of Prof. Muhammad Swazuri, Chairperson of the National Land Commission

Upon invitation by the Chairperson, the Chairperson of the National Land Commission (NLC), Prof. Mohamed Swazuri, the Clerk of the National Assembly handed over the sealed envelopes containing his wealth declaration forms for the

periods 2013 to 2017. Prof. Swazuri unsealed the envelopes and confirmed that the forms therein were in the same form as submitted by him. The Committee Secretariat proceeded to make copies thereof and handed them back to Prof. Swazuri for verification.

The Clerk of the National Assembly led Prof Swazuri and the Director, Legal Services, Ethics and Anticorruption Commission, Mr. David Too in verifying that the copies were a true reflection of the original versions. Having confirmed the fact, the Clerk of the National Assembly certified the copies in the presence Prof. Swazuri and the Director, Legal Services, Ethics and Anticorruption Commission, who received them and signed an acknowledgement form.

The Chairperson directed that the original wealth declaration forms be handed back to Prof. Swazuri to seal them afresh in new envelopes since the previous envelopes had been tampered with during unsealing. Having confirmed that the original forms handed back to him by the Clerk of the National Assembly were indeed his, Prof. Swazuri sealed them in the new envelopes, personally labeled the envelopes and returned to the Chairperson for safe custody by the Office of the Speaker as the administrator of the responsible Commission.

(3) Verification and certification of Wealth Declaration Forms of Ms. Abigael Mbagaya, Vice Chairperson of the National Land Commission

The Chairperson invited the Vice Chairperson of the National Land Commission (NLC), Ms. Abigael Mbagaya to approach the Clerk of the National Assembly who handed over her sealed envelopes containing wealth declaration forms containing his wealth declaration forms for the periods 2013 to 2017. Mrs. Mbagaya unsealed the envelopes and confirmed that the forms therein were in the same form as submitted by her. The Committee Secretariat proceeded to make copies thereof and handed them back to Mrs. Mbagaya for verification.

The Clerk of the National Assembly led Mrs. Mbagaya and the Director, Legal Services, Ethics and Anticorruption Commission, Mr. David Too in verifying that the copies were a true reflection of the original versions. Having confirmed the fact, the Clerk of the National Assembly certified the copies in the presence of Mrs. Mbagaya and the Director, Legal Services, Ethics and Anticorruption Commission who received them and signed an acknowledgement form.

The Chairperson then directed that the original wealth declaration forms be handed to Mrs. Mbagaya to seal them afresh in new envelopes since the previous envelopes had been tampered with during unsealing. Having confirmed that the original forms handed back to her by the Clerk of the National Assembly were indeed hers, Mrs. Mbagaya sealed them in the new envelopes, personally labeled the envelopes and returned them to the Chairperson for safe custody by the Office of the Speaker as the administrator of the responsible Commission.

(4) Formal handing over of certified Wealth Declaration Forms of the Chairperson and Vice Chairperson of the National Land Commission to the Ethics and Anti Corruption Commission.

The Chairperson directed the Clerk of the National Assembly to formally hand over the certified copies of the Wealth Declaration Forms for Prof. Muhamad A. Swazuri and Mrs. Abigaeil Mbagaya Mukolwe to the designated officer from the Ethics and Anticorruption Commission, being Mr. David Too, the Director, Legal Services, Ethics and Anticorruption Commission. Mr. Too received the certified copies of the wealth declaration forms in respect of receipt of certified copies of the forms of each of Prof. Swazuri and Mrs. Mbagaya.

For accountability, Mr. Too signed an acknowledged form on behalf of the receiving body/institution while the Clerk of the National Assembly signed for the responsible Commission, being the Committee of Powers and Privileges.

The Chairperson informed the meeting that it was the first time that the Ethics and Anti Corruption Commission had requested for release of the Wealth Declaration Forms of public officers. He restated that as the responsible Commission, the Committee of Powers and Privileges had no interest in the contents of wealth declaration forms it has custody over and that they are kept in utmost confidentiality and secrecy.

Finally, the Director Investigations at the Ethics and Anti-Corruption Commission, Mr. Abdi A. Mohamud, MBS, thanked the Committee for enabling the Commission to access the forms in furtherance of the performance of its mandate.

The Chairperson thanked the witnesses for attending the meeting and released them.

MIN.NO. 57/CoPP/2018: SUBMISSIONS BY MR. BERNARD ABUYA MOMANYI AND THE PARLIAMENT SECURITY DEPARTMENT ON THE CONDUCT OF THE HON. PAUL ONGILI, M.P., MEMBER FOR EMBAKASI EAST CONSTITUENCY, AND THE HON. CHARLES NJAGUA KANYI, M.P., MEMBER FOR STAREHE CONSTITUENCY ON OCTOBER 10, 2017

The Chairperson reminded the meeting of the contents of a letter received from the Ethics and Anti Corruption Commission, dated October 12, 2018, and a Petition submitted by one Bernard Abuya Momanyi and conveyed to the House on December 14, 2018 raised complaints regarding unethical conduct and breach of privilege by the Member for Embakasi East Constituency (Hon. Paul Ongili, MP, alias Babu Owino) and the Member for Starehe Constituency (Hon. Charles Kanyi, MP, alias Jaguar) and sought action of the National Assembly in accordance with the Constitution and applicable law. During its sitting of Wednesday, 27th June, 2018, the Committee had invited the two Members to receive representations on the matter.

The Chairperson informed the Committee that efforts by the Secretariat to contact the Petitioner, Mr. Bernard Abuya Momanyi had not been successful. However, officers from the Security Department of Parliament were available to make their submissions. The Committee discussed and agreed that during the next meeting of Thursday 5th July 2018, the Committee would invoke the provisions of the Fair Administrative Action Act, 2015 and invite the two Members of Parliament to and allow witnesses to tender evidence that they may have on the matter.

In view of the foregoing, the matter was deferred to a later date.

MIN.NO. 58/CoPP/2018: CONSIDERATION OF A COMPLAINT FILED BY MEMBER FOR SABOTI CONSTITUENCY, HON. CALEB AMISI, MP, CONCERNING ALLEGED THREATENING TEXT MESSAGES FROM THE MEMBER OR KIMININI CONSTITUENCY, HON. CHRIS WAMALWA, M.P.

The Chairperson directed that the Member for Saboti Constituency and the Member for Kiminini Constituency be ushered in. He took the Committee through a recap of the complaint filed by the Member for Saboti (Hon. Caleb Luyayi Amisi) on alleged receipt

of threatening messages from the Member for Kiminini Constituency (Hon. Chrisantus Wamalwa) on the April 10, 2018. The Member for Saboti had sought intervention to have the Member for Kiminini restrained from bullying and threatening his life.

The matter had been deferred in the previous meeting due to limited time. The Chairperson observed that the Committee was not in a position to hear them since the previous item on the Agenda had taken longer than anticipated.

The Committee observed that the two Members be accorded an opportunity to avail witnesses if any. Both Members were confident that they would be able to sufficiently explain themselves and therefore did not require witnesses. The Members requested that the Committee fast tracks their matter as it was long overdue.

The Committee deliberated on the matter and resolved that a sitting of the Committee be held on Thursday July 5, 2018 at 09.00am to consider the matter.

MIN.NO. 59/CoPP/2018: ANY OTHER BUSINESS

There was no other business.

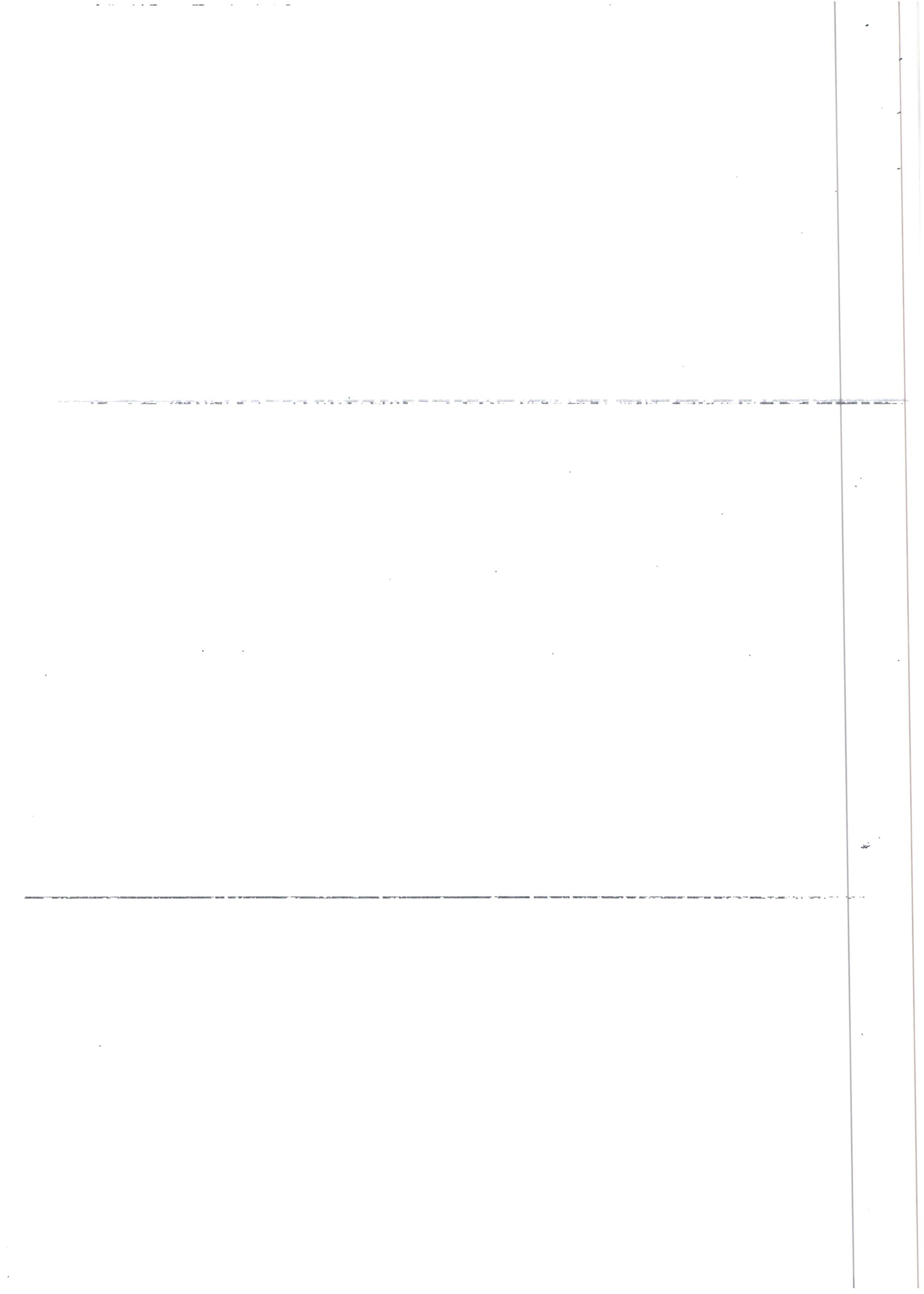
MIN.NO. 60/CoPP/2018: ADJOURNMENT

The Chairperson adjourned the meeting at seven minutes to One O'clock. The next meeting would be held on Thursday July 5, 2018 at 09.00am in the Speaker's Boardroom.

Sign:.....

(Chairperson)

Date: 5/9/18.....



MINUTES OF THE TENTH MEETING OF THE COMMITTEE OF POWERS AND PRIVILEGES HELD ON THURSDAY, 5TH JULY 2018 IN THE SPEAKER'S BOARDROOM, MAIN PARLIAMENT BUILDINGS AT 09.00 A.M

PRESENT

1. The Hon. Justin B. N. Muturi, EGH, MP - Speaker of the National Assembly/Chairperson
2. The Hon. Anthony Githiaka Kiai, MP
3. The Hon. Vincent Kipkurui Tuwei, MP
4. The Hon. Gladwell Jesire Cheruiyot, MP
5. The Hon. Marselino Malimo Arbelle, MP
6. The Hon. Jude L. Kangethe Njomo, MP
7. The Hon. Capt. (Rtd.) Didmus Wekesa Barasa Mutua, MP
8. The Hon. Peter Mungai Mwathi, MP
9. The Hon. Francis Chachu Ganya, MP
10. The Hon. Omar Mwinyi Shimbwa, MP
11. The Hon. Danson Mwakuwona Mwashako, MP

ABSENT WITH APOLOGIES

1. The Hon. Beatrice Pauline Cheron Kones, MP
2. The Hon. James Mathew Onyango K' Oyoo, MP
3. The Hon. Vincent Kemose Mogaka, MP
4. The Hon. Andrew Mwadime, MP

IN ATTENDANCE

(A) WITNESSES

1. The Hon. Chris Wamalwa, MP - Member for Kiminini Constituency
2. The Hon. Caleb Amisi, MP - Member for Saboti Constituency
3. Maj. (Rtd.) Kirungu Majiba - Deputy Chief Security and Safety Officer

(B) PARLIAMENTARY STAFF

1. Mr. Michael Karuru - Ag. Director, Legal Services
2. Ms. Jemimah Waigwa - Legal Counsel II
3. Mr. Benson Inzofu - Clerk Assistant III

4. Ms. Anne Shibuko - Clerk Assistant III
5. Ms. Esther Ngechu - Serjeant-at-Arms
6. Mr. Rodgers Kilungya - Audio Recording Officer

MIN.NO. 61/CoPP/2018: PRELIMINARIES

The Chairperson called the meeting to order at half past Nine O'clock and invited the Hon. Anthony Githiaka Kiai, MP to say the prayers.

MIN.NO. 62/CoPP/2018: ADOPTION OF AGENDA

The Chairperson took the Members through the proposed agenda for the meeting. The Committee adopted the proposed agenda unanimously, subject to deferment of Confirmation of Minutes and Matters Arising to the subsequent meeting.

MIN.NO. 63/CoPP/2018: CONSIDERATION OF A COMPLAINT FILED BY THE MEMBER FOR SABOTI CONSTITUENCY, HON. CALEB AMISI, MP, CONCERNING ALLEGED THREATENING TEXT MESSAGES FROM THE MEMBER OR KIMININI CONSTITUENCY, HON. CHRIS WAMALWA, M.P.

The Chairperson reminded the Committee of a resolution made in the previous meeting that the Office of the Clerk of the National Assembly obtains transcripts of text messages allegedly sent by the Member for Kiminini to the the Member for Saboti to enable the Committee to authenticate the claim in the case. He reported to the meeting that he was in receipt of a brief from Parliament Security Department detailing the engagement with Safaricom Ltd., in which the service provider had advised that such information could only be released upon a formal request from the Criminal Investigation Department. He added that the CID had requested for two weeks to handle the request. In light of the foregoing, the Chairperson advised that the Committee would determine whether or not to pursue the request based on the hearing.

The Committee also deliberated on whether or not the nature of the complaint necessitated examining the witnesses on oath pursuant to the provisions of section 20 of the Parliamentary Powers and Privileges Act, 2017 and resolved that the two Members be examined on oath. The Committee also agreed that the two Members appear and be heard jointly. Thereupon, the Member for Saboti Constituency (Hon. Caleb Amisi Luyayi) and the Member for Kiminini Constituency (Hon. Chrisantus Wakhungu Wamalwa) were ushered into the meeting room and an oath administered to them in that order.

The Chairperson then read out to the witnesses the complaint filed by the Member for Saboti (Hon. Caleb Luyayi Amisi) through a letter dated 11th April 2018, alleging receipt of threatening

messages from the Member for Kiminini Constituency (Hon. Chrisantus Wamalwa) on the April 10, 2018 and seeking Speaker's intervention to have the Member for Kiminini restrained from bullying and threatening his life. The Chairperson invited the Hon. Amisi to make his submissions on the matter.

Submissions by the Member for Saboti Constituency, Hon. Caleb Amisi Luyayi, MP

On invitation by the Chairperson, the Member for Saboti confirmed that he had filed the complaint to the Speaker through a letter dated 11th April, 2018. He stated that he took that action based on persistent threat from the Member for Kiminini Constituency, whom he alleged had been previously involved in an altercation with other persons, for instance the Member for Tongaren in an entertainment establishment in Kitale. He also reported that the Hon. Wamalwa had been consistently visiting his constituency (Saboti) without the courtesy of notifying him and in the company of his opponents who tarnish his reputation and threaten his life in the company of the Hon. Wamalwa. He added that the Hon Wamalwa had severally incited crowds to boo him at various public gatherings, especially during funerals. He also informed the Committee that he was being targeted by virtue of being the only legislator elected on an Orange Democratic Party (ODM) ticket in a dominantly Ford Kenya zone and coming from the minority *Maragoli* sub-tribe in the largely Bukusu Constituency. He submitted to the Committee that when the Member for Kiminini send him threatening text messages in these circumstances, he was moved to fear for his life and decided to seek protection of the Speaker to have the Hon. Wamalwa restrained.

The Member then requested to play a *WhatsApp* audio clip to support his explanation. The Committee agreed to the request and upon playing the clip, he clarified that the comments he made in which he referred to one "Chris" were in response to a question from a journalist in respect to his failure to attend a Church *harambee* in his Constituency whereas the Hon. Chris had made a contribution yet he comes from a different Constituency. He stressed that his comments were aimed at explaining that he had not received an invitation to attend the *harambee*, and that the said Chris who may have had information about the *harambee* could not be trusted to have passed the invitation to him since he was a liar.

The Hon. Amisi clarified to the Committee that the Chris he referred to in in the *WhatsApp* audio clip was not the Member for Kiminini but a different Chris from Saboti. He said that if Hon Wamalwa had thought he was the one mentioned in the interview, he should have sought clarification on the matter instead of sending threatening text messages to him. He stated that if the

Member for Kiminini had thought it was him he referred to as a liar in the radio interview, he was tendering his apology for the misunderstanding.

He concluded by clarifying to the Committee that his intention of writing to the Speaker was not to have the Hon. Wamalwa punished but only wished to obtain the Speaker's protection from Hon. Wamalwa's threats and have him advised to be courteous to inform him whenever he visited his Constituency and restrained from moving in his Constituency in the company of persons he defeated in the election who taint his name.

Submissions by the Member for Kiminini Constituency, Hon. Chris Wamalwa, MP

The Chairperson invited the Member for Kiminini to make his submissions to the Committee. He began by affirming that he indeed sent to the Member for Saboti the messages and *WhatsApp* audio clip at the centre of the inquiry. He explained that the genesis of the matter was a church *harambee* at St. Peter's Clever's Catholic Parish, Kitale, to which he had been invited by one Dr. Diana. The *harambee* was presided over by Bishop Maurice Anthony Crowley, presiding Bishop of the Catholic Diocese of Kitale and West Pokot. He was categorical that he did not attend the fundraiser but sent his contribution. He stressed that he was a staunch Catholic and has always supported church activities.

The Member informed the Committee that he felt no need of informing the Hon. Amisi of the *harambee* since he had not intended to attend in person and that the card he had received also bore the name of the Hon. Amisi as the area Member of Parliament. He informed the Committee that he was sure that the Member had been equally invited by the host and was aware of the event to be held in his constituency. He submitted to the Committee a soft copy of the invitation and the Committee did confirm that both the Hon. Wamalwa and Hon. Amisi were among the invited guests. The Chairperson directed him to send the card to the official email of the Clerk of the National Assembly for further verification.

The Member for Kiminini informed the Committee that he got reports that after acknowledging his contribution at the *harambee*, Bishop Crowley publicly commented that the area Member of Parliament, Hon. Amisi, never participates in church functions yet Hon. Wamalwa from the neighbouring Constituency honours invitations by attending or sending his contribution.

He was therefore upset by the comments made on radio by the Member for Saboti, which amounted to character assassination to the extent that the Member for Saboti described him as "*mtu wa fitina*." He explained that the defamatory nature of the comments made by the Member for Saboti moved him to write to Hon Amisi cautionary text messages and attached the audio clip containing

the said comments for reference. He averred that he did not threaten the Member for Saboti whatsoever. He proceeded to clarify the context and meaning of the words used in his messages as follows –

- (i) “*watch your tongue*” meant to warn the Member for Saboti against making defamatory utterances and unsubstantiated allegations against him; and
- (ii) “*discipline you accordingly*” to imply taking appropriate action, including instituting civil proceedings against the Member for Saboti.

He informed the Committee that he proceeded to contact his lawyer, Milimo and Muthomi & Co. Advocates to write to the Member for Saboti a letter of ‘intention to sue’ for defamation and character assassination unless the Member for Saboti offers an explanation and tenders a formal apology in respect of the comments made against him. He tabled a letter from Milimo and Muthomi & Co. Advocates to the Hon. Amisi, to which he said he had not received a response from the Member for Saboti. Accordingly, he had instructed his lawyers to proceed to file a defamation case against the Hon. Amisi. He alleged that the Member for Saboti had written to the Speaker to seek refuge in the Committee of Powers and Privileges so as to avoid the impending civil proceedings after realizing that he had been sued for defamation.

The Hon. Wamalwa admitted that he visits Saboti Constituency on invitation from his relatives, religious or political leaders for various social functions. He clarified that he has attachment to the neighbouring Constituency since both Saboti and Kiminini Constituencies share common ancestry and were carved out of the then Kiminini Constituency. On the matter of him letting Hon. Amisi’s opponents attack the area Member in his presence, he said that he had no control over the comments leaders make in public gatherings, whether in his presence or not.

He finally refuted claims by the Hon Amisi that he exhibited violent tendencies and had previously fought with the Member for Tongaren. He stressed that he was a Christian and has always been peaceful to others. He even reported to the Committee that in spite of the defamatory comments the Member for Saboti had made against him, he invited him to his homecoming party in Kiminini as proof that he was a peace loving leader who does not hold grudges with anyone.

Committee’s observations

The Committee observed that both Members had agreed having shared the text messages and therefore the earlier resolution to seek authentication from *Safaricom* Ltd. was no longer tenable.

The Committee agreed that since there was no contention on the fact and contents of the text messages, there was no need to engage the Criminal Investigation Department further.

The Committee observed that the Member for Saboti could not satisfactorily convince the Committee that the 'Chris' mentioned in his comments in a radio interview was not the Hon. Chris Wamalwa, Member for Saboti for two reasons. First, as he could not tell the Committee the second name of the said Chris, whom he claimed was his political point man, a person expected to be ordinarily well known to him. Second, the context in which the name Chris is mentioned fits a Chris who is supportive of church activities and not otherwise. To the Committee, it was clear that the contextual meaning of the name 'Chris' was in no doubt in reference to the Member for Kiminini Constituency as the Member was a staunch catholic who frequently visited the Bishop.

The Committee also noted a contradiction in the allegations made by the Member for Kiminini that the Member for Saboti had sought refuge from the Speaker to avoid civil proceedings after receiving a letter of intention from the lawyer for the Member for Kiminini. The Committee had confirmed that the *harambee*, which sparked the exchange of messages was held on 8th April, 2018; the Hon. Wamalwa sent the alleged threatening messages to the Hon. Amisi on 10th April, 2018. Thereafter, the Hon. Amisi filed his complaint on 11th April 2018 whereas Hon. Wamalwa's lawyer had written to the National Assembly on 23rd April, 2018. It was therefore not true that Hon. Amisi had written to the Speaker as a way of seeking refuge on the matter.

Final submissions/clarifications by the Hon. Caleb Amisi

The Member for Saboti explained that he had not been served on any matter regarding the exchange of text messages with the Hon. Chris Wamalwa despite the fact that the mode of delivery stated on the Hon. Wamalwa's lawyer's letter was '*Hand delivery*.' He reportedly heard of the letter at first when he appeared before the Committee of Powers and Privileges on 27th June, 2018.

The Member informed the Committee that he had indeed attended the homecoming ceremony of the Hon. Wamalwa on 6th May, 2018 upon invitation by the latter and the event had gone on smoothly hence signifying no bad blood between them.

He reaffirmed his position that the Chris mentioned in the interview was not the Member for Kiminini and if it had been wrongly construed as such, he was unreservedly apologetic. He restated that his intention of writing to the Speaker was not to necessarily to have the Member for Kiminini punished but to seek protection in respect of the continuous misgivings between them. He gave an

indication to the Committee of his intention to withdraw the complaint so as to let the matter between him and the Member for Kiminini resolved amicably.

Final Submissions/clarification by the Hon. Chris Wamalwa

The Member for Kiminini was categorical that he has never and would not even imagine influencing a man of God of the caliber of Bishop Crowley to comment on political issues like the one that sparked controversy between him and the Member for Saboti. He reaffirmed his earlier position that he sent the text messages as a cautionary measure to the Member for Saboti for publicly damaging his reputation.

He was clear that if indeed the Member for Saboti can unequivocally confirm that the 'Chris' mentioned in his comments in a radio interview was not him, he was much obliged to withdraw the civil proceedings he had instituted against the Member for Saboti. In light of the claims by the Member for Saboti, he urged the Committee to consider retiring the matter from its purview to allow him to resolve it with the Member for Saboti using alternative mechanisms.

Conclusion

The Chairperson reminded the Hon. Wamalwa of the guidance he has consistently given to the House, urging Members to be courteous enough to inform their colleagues whenever they are invited to functions in their areas of jurisdiction. He advised him that as a good practice, he should be courteous and inform his colleague of future constituency visits, even if the invitation is by relatives.

The Chairperson also cautioned the Hon. Wamalwa against allowing leaders to make disparaging remarks about his colleague Member for Saboti in his presence. He also reminded the two legislators of the responsibility they have in building unity and cautioned them against making inflammatory remarks about each other.

Regarding the plea by the Member for Saboti to withdraw the matter from the jurisdiction of the Committee, the Chairperson guided him that since the Committee was already seized of the complaint, he should follow the due process if he feels desirous of withdrawing it. He advised him to place his request in writing for consideration by the Committee.

Both Members thanked the Committee and committed to work in harmony with each other. They demonstrated reconciliation by shaking hands as a sign of good faith.

The Committee agreed to conclude the matter in subsequent meeting, taking into account the submissions made and whether or not the Member for Saboti would have placed a formal request for withdrawal of the complaint.

MIN.NO. 64/CoPP/2018: SUBMISSIONS BY THE PARLIAMENT SECURITY DEPARTMENT ON THE CONDUCT OF HON. PAUL ONGILI, MEMBER FOR EMBAKASI EAST CONSTITUENCY AND THE HON. CHARLES NJAGUA KANYI, MEMBER FOR STAREHE CONSTITUENCY ON OCTOBER 10, 2017;

The Deputy Chief Security Officer, Maj. (Rtd.) Kirungu Majiba took the Committee through the Report submitted to the Office of the Clerk on 10th October, 2017 following a scuffle between the Member for Embakasi East Constituency (Hon. Paul Ongili) and the Member for Starehe Constituency (Hon. Charles Kanyi) at the Media Centre on that day.

He informed the Committee that Parliament Media staff present at the Media Centre and the swift support of Parliament Security staff on patrol at the moment managed to contain the exchange between the two Members before escalating into a physical fight. He reported that the political animosity surrounding the disputed Presidential Election that infiltrated the House had necessitated Security and Serjeant-at-Arms Departments and jointly increase security surveillance. As a result, the altercation between the Hon. Ongili and Hon. Kanyi was swiftly managed and no Parliamentary equipment had been damaged.

The Committee noted the Report and agreed to take into account the contents therein when making its recommendations on the matter.

The Committee observed that despite the numerous efforts of the secretariat to reach the Petitioner, Mr. Abuya to appear before it and make submission on the Petition he filed regarding alleged unethical conduct of the two Members, the Petitioner could not be reached. In this regard, the Committee resolved to proceed to conclude and prepare a report on the Petition.

MIN.NO. 65/CoPP/2018: ANY OTHER BUSINESS

There was no other business.

MIN.NO. 66/CoPP/2018: ADJOURNMENT

The Chairperson adjourned the meeting at twenty-five minutes past Eleven O'clock. The date of the next meeting would be communicated by notice.

Sign:.....

RA

(Chairperson)

Date:.....

5/9/18

