

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY

OFFICIAL REPORT

Tuesday, 27th October, 2020

The House met at 10.29 a.m.

[The Deputy Speaker (Hon. Museku) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR
COUNTY BUDGET REVIEW AND OUTLOOK PAPER 2020

Hon. Deputy Speaker: Hon. Members, under this Order, we have one Communication and it concerns the County Budget Review and Outlook Paper (CBROP) 2020. Section 118(1) of the Public Finance Management (PFM) Act, 2012 provides that the County Treasury shall prepare a County Budget Review and Outlook Paper in respect of the County for each financial year; and submit the paper to the County Executive Committee by the 30th September of that year.

Further, section 118(4)(a) of the same Act provides that, not later than seven days after the County Budget Review and Outlook Paper is approved by the County Executive Committee, the County Treasury shall arrange for the Paper to be laid before the County Assembly and as soon as practicable after having done so, publish and publicize the Paper.

Pursuant to this provision of the PFM Act the Executive Committee Member for Finance and Economic Planning submitted the Machakos County Budget and Outlook Paper (CBROP) to the Assembly on 21st October, 2020 for tabling. The Paper is hereby tabled and committed to the Budget and Appropriations Committee for consideration and tabling of a report in this House. Thank you, Hon. Members.

STATEMENT

ADDITIONAL BUSINESS BEFORE THE HOUSE FOR 27TH OCTOBER, 2020 AND BUSINESS
BEFORE THE HOUSE FOR 10TH NOVEMBER, 2020

Hon. Deputy Speaker: Hon. Members, under this Order, we have one the House Business Committee to be transacted by Hon. Alex Kamitu, Minority Leader.

Hon. Kamitu: Thank you very much, Hon. Speaker. Hon. Speaker, the House Business Committee met on 19th and 26th October, 2020 to ballot business for the House as forwarded by Committees and Hon. Members pursuant to the provisions of the Standing Order 151(5). The Committee balloted additional business for 27th October, 2020 and business for 10th November 2020. The business balloted for the two days is as follows:

Tuesday, 27th October, 2020

Morning at 10.00 a.m.

- a. Report of Justice and Legal Affairs Committee on Petition by Mr. Urbanus Mativa by Hon. Moffat Maitha, Chairperson, Justice and Legal Affairs Committee.
- b. Report of Youth, Women, Sports and PWDs Committee on County Stadia Programme by Hon. Geoffrey Kamulu, Chairperson.

Afternoon at 2.30 p.m.

- a. Report of Transport and Public Works Committee on Construction of County Government Buildings by Hon. Daniel Mbevi, Chairperson.
- b. Motion by Hon. Mark Muendo, Majority Leader/MCA, Kinanie Ward that pursuant to the approved Calendar of the County Assembly of Machakos for the fourth session, this Honorable House goes on a short recess from Wednesday, 28th October, 2020 to Monday, 9th November, 2020.

Tuesday, 10th November, 2020

Morning at 10.00 a.m.

The Machakos County Agricultural Enterprise Fund Bill 2019, second reading by Hon. Moses Mitaa, Chairperson, Agriculture Committee.

Afternoon at 2.30 p.m.

Report of Agriculture Committee on the Performance report for the Department of Agriculture for FY 2019/2020 by Hon. Moses Mitaa, Chairperson, Agriculture Committee.

MOTIONS

REPORT ON PUBLIC PETITION BY MR. URBANUS MUTINDA MATIVA

(Hon. Maitha on 13.10.2020)

(Resumption of Debate on the Motion tabled on 13.10.2020)

Hon. Deputy Speaker: Hon. Members, under this Order, we have one business which was read last week and seconded and we postponed the debate on the Motion on the request of the Chairman and therefore, I would request the Chair to first of all read the Motion again and then from there we proceed and read the report. Hon. Moffat Maitha, go ahead.

Hon. Maitha:

Hon. Speaker, that aware that Section 15 of the County Governments Act, 2012 provides that a person has a right to Petition the County Assembly to consider a matter within its authority including enacting, amending or repealing any of its legislation;

Aware that the Assembly received a public Petition by Mr. Urbanus Mutinda Mativa against Gazette Notice No. 3633 dated 10th April, 2019 as relates to the appointment of Mavoko Municipality Board Members by Dr. Alfred Mutua, the Governor, Machakos County Government and the nomination, approval and appointment of Mr. Antony K. Ngunga as a Board Member of Mavoko Municipality pursuant to the Standing Order 194;

Noting that, In conducting its investigations, the Committee met with key parties in relation to the Petition including the Petitioner, the accused Mr. Antony K. Ngunga, the Chief Officer, County Law Office and the Chief Officer, Department of Housing and urban Development;

Further aware that the committee reviewed relevant documents from various government institutions including the Directorate of Criminal Investigation, Higher Education Loans Board, Machakos County Department of Housing and Urban Development, Machakos County Law Office, Mavoko Municipal Board and the Petitioner in exercise of ensuring the right to fair administrative Action as stipulated in Article 47(1) of the Constitution;

Hon. Speaker, I therefore wish to give move the motion that this Hon. House discusses and approves report of the Justice and Legal Affairs Committee on public Petition by Mr. Urbanus Mutinda Mativa against the following;

1. Gazette notice No. 3633 dated 10th April, 2019 as relates to the appointment of Mavoko Municipality Board members by Dr. Alfred Mutua, the Governor, Machakos County Government; and
2. The nomination, approval and appointment of Mr. Antony K. Ngunga as a Board Member of Mavoko Municipality.

Thank you, Hon. Speaker. I wish to request Hon---

Hon. Deputy Speaker: There is no need for seconding as I had already indicated it had been seconded just go ahead and read the report.

Hon. Maitha: Thank you, Mr. Speaker. I would wish to request you to allow me to read the document while seated as I have a problem with my knee.

Hon. Deputy Speaker: That is okay; go ahead.

Hon. Maitha: Thank you, Mr. Speaker. Report of justice and legal affairs committee on public Petition by Mr. Urbanus Mutinda Mativa against the following:

- (i) Gazette Notice No. 3633 dated 10th April, 2019 as relates to the appointment of Mavoko municipality board members by Dr. Alfred Mutua, the governor, Machakos County Government; and
- (ii) The nomination, approval and appointment of Mr. Antony K. Ngunga as a board member of Mavoko Municipality.

1.0 INTRODUCTION

1.1 Preamble

Hon. Speaker, a public Petition by a resident of Mavoko Municipality (Mr. Urbanus Mutinda Mativa) was tabled before the Machakos County Assembly and committed to the Sectoral Committee on Justice and Legal Affairs pursuant to Standing Order 201(1) for consideration.

The Petition was against Gazette Notice No. 3633 dated 10th April, 2019 as relates to the appointment of Mavoko Municipality Board Members by Dr. Alfred Mutua, the Governor, Machakos County Government and the nomination, approval and appointment of Mr. Antony K. Ngunga as a Board Member of Mavoko Municipality.

In conducting its investigations; the Committee met with key parties in relation to the Petition including; the Petitioner, the accused Antony K. Ngunga, Chief Officer---

Hon. Mitaa: Point of Order Mr. Speaker. I am actually trying to access the report in my tablet but it is not coming so.....oh it is there? Then maybe I can be assisted because I am not able to access the report.

Hon. Deputy Speaker: Then the IT department can be able to check for you. Go ahead hon. Moffat.

Hon. Maitha: In conducting its investigations; the Committee met with key parties in relation to the Petition including; the Petitioner, the accused Antony K. Ngunga, Chief Officer, County Law Office, Chief Officer, Department of Housing and Urban Development and the Manager Mavoko Municipality Board. In addition, the Committee raised pertinent issues in relation to the Petition at a consultative meeting with the Chief Officer Department of Housing and Urban Development and the Chief Officer, County Law Office held on 3rd August, 2020.

The Committee also reviewed relevant documents from various government bodies' like the Directorate of Criminal Investigations, the Higher Education Loans Board, Machakos County Department of Housing and Urban Development, Machakos County Law Office, Mavoko Municipal Board and the Petitioner. The Committee findings, observations and recommendations arising from this process are contained in this report.

1.1 Mandate of the Committee on Justice and Legal Affairs

The Assembly Sectoral Committee on Justice and Legal Affairs is mandated, under the second schedule of the Machakos County Assembly Standing Orders to, "handle all matters related to Constitutional affairs, the administration of law and justice, including the elections, ethics, integrity and anti-corruption and human rights."

1.2 Committee Membership

The membership of the committee is composed of the following:

1.	Hon. Moffat Maitha	Chairperson
2.	Hon. Jane Nyawira	Vice Chairperson
3.	Hon. Eric Musembi	“
4.	Hon. Alice Nzioka	“
5.	Hon. Dominic Ndambuki	“
6.	Hon. Francis Kalumu	“
7.	Hon. Mohammed Ali	“
8.	Hon. Margaret Mbithi	“
9.	Hon. Robert Kisini	“
10.	Hon. Jacqueline Munyao	“
11.	Hon. Stephen Mwanthi	“
12.	Hon. Jacinta Luka	“
13.	Hon. Angela Munyasya	“

1.3 Committee Secretariat

1)	Ms. Sarah Mwanja	Clerk Assistant
2)	Ms. Dorothy King’oo	Legal Counsel
3)	Ms. Mwikali Mwaniki	Clerk Assistant

1.4 The Petition

A. Background to the inquiry

The mandate of the County Assembly to consider any Petition from members of the public is vested in Article 119 of the Constitution as read together with Section 15(1) of the County Governments Act which provides that, “a person has a right to Petition the County Assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation.”

The Petition by Mr. Urbanus Mutinda Mativa was tabled before this Hon. House as per Standing Order 194 and it was referred to the Assembly Committee on Justice and Legal Affairs pursuant to Standing Order 201 of the Machakos County Assembly Standing Orders.

The Petition was against Gazette Notice No. 3633 dated 10th April, 2019 as relates to the appointment of Mavoko Municipality Board Members by Dr. Alfred Mutua, the Governor, Machakos County Government and the nomination, approval and appointment of Mr. Antony K. Ngunga as a Board Member of Mavoko Municipality.

B. Summary of issues raised in the Petitions

(1) Petition No. 1

Petition against Gazette Notice No. 3633 dated 10th April, 2019 as relates to the appointment of Mavoko Municipality Board members by Dr. Alfred Mutua, the Governor, Machakos County Government

The Petitioner, challenges Gazette Notice No. 3633 of 2019 on the following grounds:

1. That the appointment of members of Mavoko Municipality Board was based on the wrong provisions of the law. This is because Gazette Notice No. 3633 of 2019 was based on Section 13 which relates to Board of Cities instead of Section 14 which provides for the Board of Municipalities of the Urban Areas and Cities Act, 2011;
2. That the Governor appointed the Chairperson and the Vice-Chairperson of the Mavoko Municipality whose appointment is contrary to Section 17(2) of the Urban Areas and Cities Act, 2011 and Section 3.5.1 and 3.7.1 of the Mavoko Municipality Charter which provides that the appointment of Chairperson and Vice Chairperson of Mavoko Municipality Board shall be undertaken by the Board Members from amongst themselves in their first meeting;
3. That the appointment of the Chairperson and Vice-Chairperson of Mavoko Municipality Board by the Governor was erroneous based on the following:
 - (a) The Mavoko Municipality Board members were yet to take oath of office to warrant sitting of first meeting of the Board to perform its duties including the election of Chairperson and Vice-Chairperson as at the time the Petition was submitted; and
 - (b) No Board meeting took place to elect the Chairperson and Vice-Chairperson as may be witnessed by proper Notice from Secretary of the Board or Board's resolution.
4. The Petitioner further states in the Petition that he made efforts to have the matter addressed to the following offices who have failed to act nor give any response on the said matter for the last four months as at the time of submitting the Petition hence negating the spirit of fair administration as provided in Section 4 of the Fair Administrative Action Act, 2015 as relates to expeditious, efficient, lawful, reasonable and procedurally fair administrative action.
 - (a) Letter to Hon. Evelyn K. Mutie (CECM, Lands, Energy and Urban Development dated 2nd May, 2019 and received on 3rd May, 2019
 - (b) Letter to the Governor dated 22nd May, 2019 and received on 23rd May, 2019
5. The Petitioner also states that none of the issues raised in the Petition are pending before any court of law or other constitutional or legal body to the best of his knowledge.

(2) *Prayers to the County Assembly in relation to Petition No. 1*

In light of the above, the Petitioner pray that the Assembly:

- i. Do find that the said Gazette Notice No. 3633, on the appointment of Mavoko Municipal Board, the appointment of the Chairperson and Vice-Chairperson, the purported Board meeting and subsequent election of the Mavoko Municipal Board Chairperson and Vice Chairperson as stated in the public communication of the Governor dated 27th March, 2019 contrary to the Urban Areas and Cities Act, 2011 and the Mavoko Municipal Charter and therefore unlawful, null and void;

- ii. Do find the said Gazette Notice No. 3633, lacking the requisite legitimate administrative authority, legal force and therefore not valid and enforceable in law;
- iii. Do find that the said Gazette Notice No. 3633, frivolous for not having or serving a serious legitimate purpose and value in law and that it does not serve the primal purpose of a Gazette Notice; that of being the *prima facie* evidence in all courts and for all purposes; and
- iv. Do find that the said Gazette Notice No. 3633, unmerited and therefore inform or direct the Governor of Machakos County, H.E Dr. Alfred N. Mutua, to forthwith revoke or cancel the said notice and to subsequently issue another proper and legal Gazette Notice on the appointment of Mavoko Municipal Board.

(3) *Petition No. 2*

Petition against the nomination, approval and appointment of Mr. Antony K. Ngunga as a Board member of Mavoko Municipality

The Petitioner, challenges the nomination, approval and appointment of Mr. Antony k. Ngunga as a Board member of Mavoko Municipality on the following grounds:

1. That the Notification letter by the Clerk to the Nominees dated 4th February, 2019 on nomination of Municipal Board Members and the notification by the Clerk on the Standard Newspaper of 5th February, 2019 on vetting of nominees for the position of Municipal Board Members; both notifications stating the requirement or documents for vetting and approval of the nominees and for which Mr. Antony K. Ngunga did not satisfy or meet as per the notifications;
2. That the Petitioner requested the Clerk of the County Assembly of Machakos by a letter dated 21st May, 2019 for a certified copy of the approved members of the Mavoko Municipality Board by the County Assembly of Machakos. The Clerk by a letter dated 27th May, 2019 Ref: MKSCA/ADM/PETT/Vol.2/4 provided the Petitioner with certified copies of the:
 - (a) Forwarding letter to the County Secretary,
 - (b) Committee report of the approved Mavoko municipality Board Members;
 - (c) HANSARD Report/Official Report on approval hearing for nine persons nominated for the position of Mavoko Municipality Board
3. That the Committee report dated March, 2019 indicated in Pages 13 to 16 as regards to personal integrity of Mr. Antony K. Ngunga that he did not present two of the required documents specifically current compliance Certificate from Higher Education Loans Board and Current Police Clearance Certificate from the Department of Criminal Investigations (DCI Certificate of Good Conduct)
4. That the HANSARD Report dated Wednesday, 20th March, 2019 (4)(vii) on Mr. Antony K. Ngunga purporting that he had the necessarily clearance for purposes of Chapter Six of the Constitution and recommending that he be appointed as a member of the Mavoko Municipality Board was erroneous;

5. That Antony K. Ngunga did not satisfy/meet the requirements of the Constitution; Section 3.4.1 of the Mavoko Municipal Charter; Section 14 of the Urban Areas and Cities (Amendment) Act, 2019, Section 7(8) of the Public Appointments (County Assemblies Approval) Act, 2017 as relates to the nomination, approval and appointment of Board member as a result of not providing the required documents;
6. The Petitioner further states in the Petition that he made efforts to have the matter addressed through a letter dated 29th May, 2019 addressed to the Secretary/CEO, County Public Service Board for which no response has been made for four months as at the time of submitting the Petition to the Assembly hence negating the spirit of fair administration as provided in Section 4 of the Fair Administrative Action Act, 2015 as relates to expeditious, efficient, lawful, reasonable and procedurally fair administrative action.
7. Finally, the Petitioner stated that none of the issues raised in the Petition are pending before any court of law or any other constitutional or legal body to the best of his knowledge.

(4) *Prayers to the County Assembly in relation to Petition No. 2*

In light of the above, the Petitioner prayed that the Assembly:

- i. Do find that the nomination, approval and appointment of Mr. Antony Ngunga as a Board Member of Mavoko Municipality contrary to the law, regulation and procedure and therefore unlawful, null and void for lack of the above two named documents required for nomination, approval and appointment of the Board.
- ii. Do find that the administrative action or decision of the nomination, approval and appointment of Mr. Antony Ngunga as a Board Member of Mavoko Municipality unmerited and to forthwith revoke or cancel the action or decision of the nomination and approval of Mr. Antony Ngunga from the Membership of Mavoko Municipality Board and to accordingly inform or direct the Governor Machakos County, the County Executive Committee Member for Lands, Energy, Housing and Urban Development, the County Public Service Board and the Mavoko Municipal Manager on the repealed decision of the Assembly.

1.5 Acknowledgement

I wish to thank the Justice and Legal Affairs Committee Members for dedicating their time and energy to scrutinize the Petition and in preparation of this report. The Committee is equally grateful to the office of the Speaker and the Clerk of County Assembly for the support accorded as it discharged its mandate. Finally, I would like to thank the Petitioner Mr. Urbanus Mativa and other key parties for finding time to attend to committee meeting to clarify issues stated in the Petition.

2.0 LEGAL PROVISIONS RELATING TO THE PETITION

2.1 The Constitution and relevant Laws

- i. *Role and mandate of the County Assembly*

Article 185 of the Constitution mandates the County Assembly, while respecting the principle of the separation of powers, to exercise oversight over the county executive committee and any other county executive organs.

ii. Right to Petition County Assembly

Article 37 of the Constitution entitles every person the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present Petitions to public authorities. Article 47(1) entitles every person the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

iii. Presentation of Petition

Section 15 of the County Governments Act, 2012 provides that person has a right to Petition a County Assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation. In giving effect to this provision, Standing Order 201 of the County Assembly of Machakos Standing Orders enables members of the public to submit Petitions directly, or through Members of the County Assembly with the consent of the Speaker, to the County Assembly on any matter within the authority of the County Assembly.

iv. Invitation of Witnesses

Article 195(1) of the Constitution of Kenya provides that, a County Assembly or any of its committees has power to summon any person to appear before it for the purpose of giving evidence or providing information.

Further, Section 18 of the County Assemblies Powers and Privileges Act provides that a County Assembly or its committees may invite or summon any person to appear before it for the purpose of giving evidence or providing any information and document in the possession or under the control of what person and in this respect, a County Assembly and its Committees shall have the same powers as the High Court as specified under Article 195 of the Constitution.

v. Municipality Board

Section 4 and 12(1)(a),(b) and (c) of the Urban Areas and Municipalities Act, 2011 establishes Municipalities through classification whose management shall be vested in the County Government and administered on its behalf by:

- (a) Board constituted in line with Section 13 or 14 of the Act;
- (b) Manager appointed under Section 28; and
- (c) Officers of the County Public Service Board.

Section 13 of the Urban Areas and Cities Act, 2011 provides for the establishment of the Board of Cities by outlining the composition and the procedure for appointment while Section 14 of the Act provides for the establishment of the Board of Municipalities and its procedure for appointment. Section 14 of the Urban Areas and Cities Act, 2011 establishes board of municipalities which comprises of the following:

- (a) The county executive member for the time being responsible for cities and urban areas or his representative;
- (b) Three members who shall be appointed by the county governor, with the approval of the County Assembly;

- (c) Four members who shall be nominated by an association and appointed by the county governor, with the approval of the County Assembly;
- (d) The Chief Officer responsible for urban development; and
- (e) The municipal manager appointed under section 28 who shall be the secretary of the Board and an *ex officio* member of the Board.

Section 15 and 17(1) and (2) of the Act provides that the Chairperson or the Vice-Chairperson of Municipality Board shall hold office for five years and shall be elected by Board Members from amongst themselves during the first meeting of the Board or subsequently when a vacancy occurs. Further, members of the Municipality Board shall hold office on part time basis for five years.

Section 19 of the Act provides that instances where a vacancy occurs in municipality Board, the procedure for filling such vacancy be similar to the procedure applicable used in appointing persons for the said positions.

Section 3.1.1, 3.1.2, 3.1.4 and 3.1.5 of the Mavoko Municipality Charter provides that the Mavoko Municipality Board is an entity within the County Government whose management is vested in county government of Machakos. Further Board is based on Agency Relationship with the Principal being the County Government while the Agent is Board and shall be answerable to Governor through Executive Committee Member for matters relating to urban development.

Section 10.1.1 and 10.1.2 of the Mavoko Municipality Charter provides that Mavoko Municipality Board Members and all other persons elected or appointed to any office of profit or trust in the Municipality must take and subscribe to the oath or affirmation. Further, the Charter provides that Municipal Manager must take and subscribe to oath or affirmation before the County Governor or before one of the sworn deputies while all other persons taking and subscribing the oath shall do so before the Municipal Manager.

3.0 COMMITTEE INQUIRY ON THE PETITION

3.1 Submissions to the Petition

Hon. Speaker, during its proceedings, the Committee:

- A. Held meetings with the key parties to the Petition as follows:
 - i. Mr. Urbanus Mativa - The Petitioner
 - ii. Mr. Thomas Kavivya - The Chief Officer, County Department of Housing and Urban Development
 - iii. Mr. James Kathili – The Chief Officer, County Law Office
 - iv. Mr. Antony K. Ngunga – The accused
- B. Reviewed relevant documents from the following persons and institutions:-
 - i. The Petitioner.
 - ii. Directorate of Criminal Investigation
 - iii. The Higher Education Loans Board
 - iv. Manager Mavoko Municipality Board
 - v. County Department of Housing and Urban Development,
 - vi. Machakos County Law Office, Mavoko Municipal Board and
 - vii. Mr. Antony K. Ngunga – The Accused

3.2 COMMITTEE HEARINGS AND EVIDENCE TAKING EXERCISE

Hon. Speaker, the hearing of the witnesses was conducted in compliance with the provisions of Section 4(4)(a) of the Fair Administrative Action Act, 2015. The witnesses testified as follows:

3.21 Submission by Mr. Urbanus Mativa – the Petitioner

The Petitioner indicated as follows;

That as a declaration of interest he was part of the people who were nominated and vetted by the County Assembly as a member of the Board and that the hearing took place because the Assembly followed the due process of vetting him. That the Assembly is a *quasi-judicial* body which resembles the court of law and can interpret as an arbitrator or tribunal with powers similar to those of the Judge. That the Assembly was a party to the Petition because it approved the nominees of the Board and has powers to issue decisions and orders in regard to the Petition.

That there was sequence of administrative action that led him to bring the Petition before the House:

- i. That the Governor, in issuing the Gazette Notice No. 3633 misquoted the Law, never stated the term of office of the Board Members and purported to appoint the Chairperson and Vice-Chairperson of the Board.
- ii. That the Chairperson and Vice-Chairperson of the Board would only be elected by the nine Board Members and not appointed by the Governor when they had not taken an oath of office.
- iii. That he was contesting for the position of Chairperson of Mavoko Municipality Board but when they went for the meeting he was told to sit down and that the appointing authority had powers to appoint who to work with.
- iv. That Mr. Antony Ngunga never submitted all the documents as per the Standard newspaper of 14th February, 2019 page 19 on the vetting of nominees for the position of Municipal Board Members and the notification Letter dated 14th February, 2019 by the Clerk, County Assembly of Machakos stated the requirement for the vetting, nomination and approval for all the nominees.
- v. That the Machakos County Assembly Committee on Labor, ICT and Public Service report dated March, 2019 on the vetting of the Mavoko Municipality Board was the strongest to disqualify Mr. Antony Ngunga from the Committee.
- vi. That the Committee report shows that Mr. Antony Ngunga never submitted two documents and the three documents that he brought are different in terms of sequencing from the rest of the candidates.

3.211 Documents presented by the Petitioner

The Petitioner presented the following documents in Support of his Petition

1. Public Communication by the Governor of Machakos dated 27th March, 2019 on the appointment of Machakos and Mavoko Municipal Boards;

2. Gazette Notice No. 3633 dated 10th April, 2019 and published on 18th April, 2019.
The Gazette Notice No. 3633 of 2019 stated that the Governor by the powers conferred by Section 13 of the Urban Areas and Cities Act, 2011 had appointed the following persons to be members of the Mavoko Municipal Board
 - a) Anthony Ngunga (Mr.) - Chairperson
 - b) Florence Nzomo Loko (Ms.) - Vice-Chairperson
 - c) Stephen Muthiani Kivuva - Member
 - d) Urbanus Mutinda Mativa - Member
 - e) Benedict Nzioki Musembi (Ms.) -Member
 - f) Shadrack Mbuta - Member
 - g) Caroline Ndung'u (Ms) - Member
 - h) Juliet Wamiri (Ms.) - Member
3. Letter to the CECM (Lands, Energy and Housing Development dated 2nd May, 2019 on the Legal effect of Gazette Notice No. 3633 on the appointment of Mavoko Municipal Board written after the meeting of the three municipality Boards on 1st May, 2019);
4. Letter to the Clerk of the County Assembly dated 21st May, 2019 requesting for a certified copy of the approved members of the Mavoko Municipality Board by the County Assembly of Machakos;
5. Letter to the Governor of Machakos County Government dated 22nd May, 2019 on his non-attendance to the meeting held on 21st May, 2019 between the World Bank and the three Municipality Boards of Machakos County on the matter of Kenya Urban Support Programme (KUSP);
6. Response letter by the Clerk, dated 27th May, 2019 forwarding to him the certified copy of the approved members of the Mavoko Municipality Board by the County Assembly of Machakos;
7. The letter to the Machakos County Public Service Board (CPSB) dated 29th May, 2019 on the irregular process of the nomination, vetting, approval and appointment of Mr. Antony Ngunga as a member of the Mavoko Municipal;
8. The Petition dated 30th September, 2019 to the County Assembly against nomination, approval and appointment of Mr. Antony K. Ngunga as a Board Member of Mavoko Municipality;
9. Letter to the Clerk dated 17th October, 2019 requesting for certified copies Constitutional and or Statutory requirement documents or certificates presented to the Clerk by Mr. Antony K. Ngunga during the nomination, vetting, approval and appointment for membership to the Mavoko Municipal Board with relevant annexure;
10. Response letter by the Clerk dated 25th November, 2019 on his request for certified documents or certificates presented to the Clerk by Mr. Antony K. Ngunga. The letter frivolously stated that those are personal documents not for release to the public under Article 31 of the Constitution on right to privacy;
11. The letter to the Clerk dated 1st July, 2020 forwarding his supporting documentation or letter with regard to his two Petition before the Assembly with relevant annexures;
12. Board operations, performance merits review of the three Municipalities of Kangundo/Tala, Mavoko and Machakos dated 8th July, 2020;

13. The Petitioner's written submissions to the County Assembly Committee on Justice and Legal Affairs Sitting on Monday 27th July, 2020 at 2.00 p.m. in the Assembly Chambers with regard to the two Petitions dated 30th September, 2019 and 1st October, 2019 dated 27th July, 2020; and
14. Request for Judicial Notice on the matters of his Petitions against the appointment of Mr. Antony K. Ngunga and the Gazette Notice No. 3633 in regards to the Mavoko Municipal Board and his letter to the Director, DCI dated 28th August, 2020.

3.3 Submission by the Chief Officers of the department of housing and urban development and County Law Office

The County Executive indicated as follows:

That the three Municipalities, namely; Machakos, Mavoko and Kangundo/Tala were established by a Charter signed by H.E the Governor, Dr. Alfred Mutua, on 27th June, 2018 and the enabling law as at the time of such establishment was Urban Areas and Cities Act, No. 13 of 2011.

That according to the provisions of Section 1(2) it is described as an Act of parliament to give effect to Article 184 of the Constitution, to provide for the, classification, governance and management of urban areas and cities, to provide for the criteria of establishing urban areas, to provide for the principal of governance and participation of residents and for purposes.

That the provisions of Sections 13 and 14 of the Urban Areas and cities Act 2011, provides that the Board members of the municipalities are supposed to be appointed by the County Executive with the approval of the County Assembly and there is no dispute that such was the case for Mavoko Municipality.

That the only thing Section 14 introduced on top of what Section 13 provides is the number of members in such a Board and other than that the provision of Section 13 shall apply with respect to the Board of a municipality. This is to mean that Section 13 and 14 of Urban Areas and Cities Act are the same and must be read together.

That the allegation by Mr. Urbanus Mativa that the Mavoko Municipal Board is illegal by dint of gazettelement quoting Section 13 of the Urban Areas and Cities Act 2011 is wrong both in fact and in law and that a typographical error can always be corrected by a subsequent gazettelement.

That the names as proposed by the Executive for Mavoko Municipal Board are the ones which were presented to the Assembly, vetted and approved by the County Assembly and further forwarded for publication in the Kenya Gazette and therefore quoting Section 13 instead of Section 14 of the Urban Areas and cities Act did not and does not make the appointments illegal or null and void.

Borrowing from the provisions of the Constitution, the Chief Officer drew the attention of the Committee to Article 22(3)(d) and Article 159(2)(d) of the Constitution where he elaborated as follows:

That Article 159(2)(d) of the Constitution states that justice shall be administered without undue regard to procedural technicalities and therefore the Hon. Assembly exercising its *quasi-judicial* functions is guided by the said provision in the Constitution not to have undue regard to procedural technicalities while making its findings. The same spirit is also provided under

Article 22(3)(d) of the Constitution which states that “the Court, while observing the rule of natural justice, shall not be unreasonable restricted by procedural technicalities.”

3.31 ON VACATION OF OFFICE

The Chief Officers indicated as follows;

That the Urban Areas and cities Act; No. 13 of 2011 has made provisions for circumstances under which a member of the Board shall cease to hold office and this is provided for under section 16 that states that a member of a Board shall cease to hold office if the member engages in any gross misconduct which is further provided in the Section 3.12 of the Mavoko Municipal Charter.

That the appointing authority invoked the above provision of the law and the Charter establishing the Mavoko Municipal Board and had Mr. Urbanus Mutinda Mativa removed from the membership of the Board of the Mavoko Municipal Board and this decision was accordingly communicated to Mr. Urbanus Mutinda Mativa.

3.311 OPERATIONAL LAW AS AT NOW

The Chief Officers indicated as follows;

That the Urban Areas and Cities Act No. 13 of 2011 was subsequently amended as captured in the Urban Areas and Cities (Amendment) Act No. 3 Of 2019. The amendments included introduction of amendment to Section 14 of the urban Areas and cities Act 2011 by repealing the same and introducing a new category of members to be considered and included in the Boards.

That after amendment, the following offices were incorporated into as mandatory members of the Municipality Boards:

- i. The County Executive Committee member responsible for cities and urban Areas or his representations; and
- ii. The Chief Officer responsible for Urban Development.

Based on the above provisions, the Petition therefore lacks merits in law and ought to be dismissed and therefore prayed that the Hon. Assembly do find the Petition by Mr. Urbanus Mutinda Mativa as vexatious, frivolous and unmerited and proceed to dismiss the same.

3.312 Committee resolutions as relates to the above submissions

Members directed the two Chief Officers responsible for the department of housing and urban development and County Law Office to provide the following documentations to the Committee in support of their submission;

- i. Gazette notice revoking the Mr. Urbanus Mativa appointment;
- ii. Minutes of the Mavoko Municipality Board on the election of Chairperson and Vice Chairperson; and
- iii. Written submission on the presentation that they took members through during the evidence taking exercise.

3.4 SUBMISSIONS BY MR. ANTONY K. NGUNGA

He appeared before the Committee on 17th August, 2020 at 2.00 p.m. and submitted as follows in regards to the two Petitions. That he was not sure of the exact month when the first board meeting took place but could have taken place either in the month of March or April 2019 in which the following members were present.

- 1) Mr. Antony Ngunga
- 2) Mr. Stephen Kivuva
- 3) Mr. Urbanus Mativa
- 4) Ms. Florence Loko
- 5) Mr. Benedict Musembi
- 6) Mr. Shedrack Mbuta
- 7) Ms. Juliet Wamiri
- 8) Ms. Caroline Ndung'u

That the Governor, Machakos County called all the above mentioned persons for the first regular Board meeting while the second Board meeting was called by the Municipal Manager. That before election of the Chairperson and Vice-Chairperson was undertaken they were informed the need of ensuring gender representation in both positions of the Board and that the election of the Chairperson and Vice-Chairperson was by secret ballot with both Petitioner and the accused expressing interest to be elected as the Chairperson.

The accused gained seven votes while the Petitioner got one vote and he oversaw the election of the Vice-Chairperson which was done through a secret ballot and Ms. Florence Loko was elected as the Vice-Chairperson of the Mavoko Municipality Board.

That he was not sure of the date when he took oath of office but he stated that it could be in the month of May, 2020 before the Machakos Chief Magistrates Court. That he was served with a draft Gazette Notice signed by the County Secretary revoking Mr. Urbanus Mativa's appointment as a member of the Mavoko Municipality Board.

3.41 Documents presented by the accused

Mr. Antony K. Ngunga provided to the Justice and Legal Affairs Committee the Certificate of Good Conduct issued on 14th February, 2019 and HELB Certificate issued on 17th August, 2020.

He informed the Committee that he had not brought his HELB Clearance Certificate issued on or before 15th February, 2019 as directed by the Committee in the invitation letter as he thought the Committee had requested for his current HELB Certificate. The Committee directed him to forward to the Office of the Clerk of the Assembly the HELB Certificate issued on or before 15th February, 2019.

3.5 Documents presented by the Municipal Manager - Mavoko Municipality

By a letter ref: MKSCA/ADM/MVKM/Vol.1/1 dated 29th July, 2020, the Clerk of the County Assembly informed the Manager, Mavoko Municipality that the Assembly had received two Petitions for Consideration from Mr. Urbanus Mativa. To enable the Committee make appropriate decision on the said Petitions, the Manager was requested to submit the following information:

1. Resolution of the Mavoko Municipality Board as relates to the appointment of the Chairperson and Vice Chairperson of the Board as stipulated in Section 12(b) of the Urban Areas and Cities Act, 2011 and Section 3.5.1, Section 3.7.1, Section 5.2.1, Section 5.2.2 and Section 5.2.3 of the Mavoko Municipality Charter;
2. Date when the Municipal Manager of Mavoko Municipality was appointed to the Office as stipulated in Section 13A(1) of the Urban Areas and Cities Act, 2011 and Section 6.2.1 and Section 6.2.2 of the Mavoko Municipality Charter; and
3. Copies of Oath of Office or Affirmation of all members of the Mavoko Municipality Board as stipulated in Section 10.1.1 and Section 10.1.2 of the Mavoko Municipality Charter.

By a letter Ref GMC/09/MMCL/8/20 dated 3rd August, 2020, the Municipal Manager, Mavoko Municipality provided the following documents.

1. Mavoko Municipality Board first Regular Meeting and its Election of the Chairperson and Vice-Chairperson of the Board

By a letter Ref: CGM/MCPAL/O1/2019 dated 24th March, 2019, the Municipal Manager, Mavoko Municipality invited the following members for the first meeting of Mavoko Municipality which took place on 27th March, 2019 at 9.00 a.m. in the Governor's Office .

- i. Mr. Stephen Muthami Kivuva
- ii. Mr. Urbanus Mativa
- iii. Ms. Florence Nzomo Loko
- iv. Mr. Benedict Nzioko Musembi
- v. Mr. Shadrack Mbuta
- vi. Mr. Antony Ngunga
- vii. Ms. Juliet Wamiri
- viii. Ms. Caroline Ndung'u.

The agenda for the said meeting included:

- (a) Courtesy call to the Governor.
- (b) Confirmation of Quorum and apologies.
- (c) Election of the Chairperson and Vice-Chairperson.
- (d) Approval of Annual Investment Plan FY 2019/2020
- (e) Approval of IDep

According to the said above mentioned minutes, Mr. Antony Ngunga and Mr. Urbanus Mativa expressed their interests to be elected as the Chairperson of the Mavoko Municipality Board while Ms. Florence Nzomo Loko expressed interest to be elected as the Vice-Chairperson of the Board of Municipality. Upon elections, Mr. Antony K. Ngunga was elected as the Chairperson with seven votes while Ms. Florence Nzomo Loko was elected as the Vice Chairperson unanimously.

2. *Appointment of Manager, Mavoko Municipality Board*

By a letter Ref:20017470 dated 17th December, 2019 issued by the Machakos County Department of Public Service and Quality Management, Mr. Kamende Boniface Ngumbau was re-designated to be Municipal Manager with effect from 1st December, 2019. The said re-designation suspended his previous Appointment Authority letter Ref: MCG/CPSB/APA/Vol. IV/314 dated 7th December, 2019.

3. *Oath of Office or Affirmation of all members of the Mavoko Municipality Board*

On 18th May, 2019, Mr. Boniface K. Kamende took oath of Office as the Municipal Manager, for Mavoko Municipality before the Chief Magistrate Court of Machakos. On 21st May, 2020, the following persons took oath of Office before the Chief Magistrate Court as Members of the Mavoko Municipality Board.

- i. Mr. Stephen Muthami Kivuva
- ii. Ms. Florence Nzomo Loko
- iii. Mr. Benedict Nzioko Musembi
- iv. Mr. Shadrack Mbuta
- v. Mr. Antony Ngunga
- vi. Ms. Juliet Wamiri
- vii. Ms. Caroline Ndung'u

3.6 *Documents presented by the Higher Education Loans Board (HELB)*

By a letter ref: MKSCA/HRM/HELB/Vol.1/31 dated 30th July, 2020, the Clerk of the Assembly notified the Secretary/CEO, HELB that the Assembly Committee on Justice and Legal Affairs was considering a Petition against the nomination, approval and appointment of Mr. Antony K. Ngunga, Chairperson, Mavoko Municipality Board in order to make appropriate recommendation to the House. It was on that basis that the CEO was requested to forward certified copy of the Current compliance Certificate from Higher Education Loans Board presented to Mr. Antony K. Ngunga ID No. 10420222 on or before 15th February, 2019.

By a letter dated 21st September, 2020 Ref: HELB/RR/112009/71, the Chief Executive Office of HELB, notified the Clerk of the County Assembly as follows:
“HELB wishes to inform you that Mr. Antony K. Ngunga ID-10420222 was not a beneficiary of the GoK/HELB loans Scheme.”

3.7 *Documents presented by the Directorate of Criminal Investigations (DCI)*

By a letter ref: MKSCA/ADM/EACC/Vol.3/23 dated 29th July, 2020 the Director, Directorate of Criminal Investigation was notified by the Clerk of the Assembly that the Assembly Committee on Justice and Legal Affairs was considering a Petition against the nomination, approval and appointment of Mr. Antony Ngunga, the Chairperson, Mavoko Municipality Board in order to make appropriate recommendation to the House. It was on that basis that the Director was requested to forward a certified copy of Police Clearance Certificate from Department of Criminal Investigation presented on or before 15th February, 2019 to Mr. Antony K. Ngunga ID No. 10420222.

By a letter dated 5th August, 2020 Ref: CID/CRO/SEC/6/7/A/Vol. VIII/101, the Office of the Directorate of Criminal Investigation, National Police Service, notified the Clerk of the County Assembly that they were in receipt of correspondence Ref: MKSCA/ADM/EACC/Vol.3/23 dated 29th July, 2020. The letter further stated that they issued the named person with a Police Clearance Certificate as indicated below but the same had expired.

Name	ID No.	CERT NO.	Date Generated
Antony K. Ngunga	10420222	PCC-AAAIFQG5	07/02/2019

4.0 COMMITTEE FINDINGS

Hon. Speaker, in relation to the matters raised in the Petition and submissions made before Justice and Legal Affairs Committee by the witnesses, the Committee made the following findings in respect of each Petition:

4.1 Petition against Gazette Notice No. 3633 dated 10th April, 2019 as relates to the appointment of Mavoko Municipalities Board Members by Dr. Alfred N. Mutua, Governor, Machakos County Government

- 1. Whether H.E the Governor appointed members of the Mavoko Municipality Board based on the wrong provisions of the law*

Section 13 of the Urban Areas and Cities Act, 2011 provides for the establishes of the Board of Cities by outlining the composition and the procedure for appointment while Section 14 of the Act provides for the establishment of the Board of Municipalities and its procedure for appointment. Based on the foregoing, the Governor quoted the wrong provisions of the law in Gazette Notice No. 3633 of 2019 because he made reference to Board of Cities in instead of Board of Municipality.

This is because, the County Assembly only approved the Charter for formation of Board of Municipality and not Board of Cities as per the Gazette Notice No. 1499 of 2019 issued on 15th February, publishing and publicizing the Mavoko Municipal Charter.

- 2. Whether H.E the Governor appoint the Chairperson and the Vice-Chairperson of the Mavoko Municipality whose appointment is contrary to Section 17(2) of the Urban Areas and Cities Act, 2011 and Section 3.5.1 and 3.7.1 of the Mavoko Municipality Charter.*
- 3. Whether the Mavoko Municipality Board has undertaken any regular meeting.*
- 4. Whether the election of the Chairperson and Vice Chairperson of the Mavoko Municipality was undertaken by the Mavoko Municipality Board Members.*
- 5. Whether there was any proper notice and Board Resolution on the appointment of the Mavoko Municipality Board Chairperson and Vice Chairperson.*

Section 17(1) and (2) of the Urban Areas and Cities Act, 2011 as read together with Section 3.5.1 and 3.7.1 of the Mavoko Municipality Charter establishes the office of the

Chairperson and Vice-Chairperson of Municipality Boards. The office bearers of the said offices are elected from amongst members of the Board in their first meeting.

According to the documentation presented by the Municipal Manager (annexed), Mavoko Municipality Board, the first regular meeting of the Mavoko Municipality Board took place on 24th March, 2019 in which the following members were present based on the notice issued by the Municipal Manager inviting them for the first Mavoko Municipality Board meeting scheduled to take place on 27th March, 2019 at the Governor's Office as per letter Ref: CGM/MCPAL/01/2019 dated 24th March, 2019.

- i. Mr. Stephen Muthami Kivuva
- ii. Mr. Urbanus Mativa
- iii. Ms. Florence Nzomo Loko
- iv. Mr. Benedict Nzioko Musembi
- v. Mr. Shadrack Mbuta
- vi. Mr. Antony Ngunga
- vii. Ms. Juliet Wamiri
- viii. Ms. Caroline Ndung'u.

According to the minutes, the above mentioned members paid a courtesy call to the office of the Governor who assured them of his support. The first Mavoko Municipality Board meeting was presided over by the Municipal Manager who undertook the following activities:

- (a) Invited all members to the meeting and confirmed their attendance.
- (b) Informed the members that according to the Urban Areas and Cities Act, 2011, they were supposed to elect a Chairperson and Vice Chairperson while taking into consideration that the said positions can only be occupied by person of different gender.
- (c) Conducted and oversaw the election of the Chairperson of the Mavoko Municipality Board in which Mr. Urbanus Mativa and Mr. Antony Ngunga expressed interest to be elected as Chairperson. Upon conclusion of the election, Mr. Antony Ngunga gained seven votes while Mr. Urbanus gained one vote. This resulted to declaration of Mr. Antony Ngunga as the Chairperson of the Mavoko Municipality.
- (d) Conducted and oversaw the election of the Vice-Chairperson of the Mavoko Municipality Board in which Ms. Florence Loko was elected as the Vice-Chairperson.

6. *Whether the appointment of Chairperson and Vice Chairperson of the Mavoko Municipality Board was erroneous.*

On 18th April, 2020, the Kenya Gazette which is registered in newspaper at the Office of the Government Printers published by authority of the Republic of Kenya, published and

publicized Gazette Notice No. 3633 of 2019 on the appointment of Mavoko Municipal Board Members. The said Gazette Notice which was issued by the Governor Machakos County Government appointed among others Mr. Antony Ngunga and Ms. Florence Nzomo Loko to be the Chairperson and Vice-Chairperson respectively of the Mavoko Municipality Board.

Based on supporting documentations presented by the Municipal Manager, the first regular meeting of the Board took place on 27th March, 2020 and during the meeting members elected the Board Chairperson and Vice-Chairperson. The Committee observed that the Governor could only have relied on the Board minutes to appoint the Chairperson and Vice – Chairperson as per the issued Gazette Notice.

7. *Whether members of the Mavoko Municipality Board have taken oath and or subscribed to affirmation before assuming office*

Section 10.1.1 and 10.1.2 of the Mavoko Municipality Charter mandates all members of the Mavoko Municipalities Board to take oath or subscribe to affirmation. Mr. Kamende Boniface Ngumbau was re-designated to be Municipal Manager of Mavoko Municipality Board on 1st December, 2018. The Municipal Manager must therefore take and subscribe the oath before the Governor while the rest of the Board members must take and subscribe the oath before the Municipal Manager---

Hon. Deputy Speaker: Point of order.

PROCEDURAL MOTION
EXTENSION OF TIME

Hon. Ndawa: Thank you, Mr. Speaker. I am standing under Standing Order 27 on the extension of time.

Mr. Speaker, as you are aware, the hours of morning sitting, we are supposed to sit until 12.30 p.m. and Standing Order 27 requires that the motion be moved to seek extension of time:

In this matter, I wish to move the motion that we extend sitting time until the business at hand is completed.

Thank you, Mr. Speaker, Sir. I call upon Hon. Nziva to second my motion.

Hon. (Ms.) Nziva: Hon. I second the motion.

Hon. Deputy Speaker: Hon. Members, this is a procedural item on extension of time so I do believe that since we have a report that is being read, we shall extend time until we finish. Any Member with a contrary opinion? Go ahead, Hon. Maitha.

(The House resumed business as per the Order Paper)

Hon. Maitha: Thank you, Mr. Speaker. The first regular meeting of the Mavoko Municipal Board was held in 27th March, 2019 and on 18th May, 2019, Mr. Boniface K.

Kamende took oath of Office as the Municipal Manager Mavoko Municipality before the Machakos Chief Magistrate Court while the following members took oath of office on 21st May,2020 before the Machakos Chief Magistrate Court as Members of the Mavoko Municipality Board.

- (i) Mr. Stephen Muthami Kivuva
- (ii) Ms. Florence Nzomo Loko
- (iii) Mr. Benedict Nzioko Musembi
- (iv) Mr. Shadrack Mbuta
- (v) Mr. Antony Ngunga
- (vi) Ms. Juliet Wamiri
- (vii) Ms. Caroline Ndung'u

The Committee observed that the manner and time in which the oath was taken and Subscribed was in violation of the provisions of the Mavoko Municipal Charter which all members are expected to comply with.

4.2 Petition against the nomination, approval and appointment of Mr. Antony K. Ngunga as a Board Member of Mavoko Municipality

1. Whether the nomination, approval and appointment of Mr. Antony K. Ngunga as a Board Member was lawful *ab initio*; and
2. Whether Mr. Antony K. Ngunga lacked current compliance Certificate from Higher Education Loans Board and Current Police Clearance Certificate from the Department of Criminal Investigations (DCI-Certificate of Good Conduct) required for nomination, approval and appointment to the Mavoko Municipality Board;

According to the report by the Assembly Committee on Labor, Public Service and ICT on approval hearings for nine persons nominated for the position of Mavoko Municipal Board, the accused only presented the following documents during his approval hearing when he appeared before the Committee on 27th February, 2019 at 10.00 a.m.

- (i) Self-declaration form EACC, 14th February, 2019;
- (ii) Tax Compliance Certificate valid until 16th May, 2019; and
- (iii) Credit Bureau Certificate issued on 8th February, 2019 Metropol.

During the evidence taking exercise held on 17th August, 2020 at 2.00 p.m, the accused presented to the Justice and Legal Affairs Committee Police Clearance Certificate Ref: PCC-AAAIQ5 issued on 14th February, 2019. He also presented to the Office of the Clerk, County Assembly HELB Clearance Certificate issued on 11th February, 2019

3. Whether the Assembly can revoke the appointment of Mr. Antony K. Ngunga as a member of the Mavoko Municipality Board.

Section 18(1),(2)(a),(b) (c),(3) and (4) of the Urban Areas and Municipality Act,2011 provides that a person may be removed from the office of chairperson, vice chairperson or a member of the Municipal Board based on the following grounds;

If a member

- i. Is unable to perform the functions of the office by reason of mental or physical infirmity;
- ii. Is declared or becomes bankrupt or insolvent;
- iii. Resigns in writing to the County Governor;
- iv. Without reasonable cause, the member is absent from three consecutive meetings of the board or committee within one financial year;
- v. Is found guilty of professional misconduct by the relevant professional body;
- vi. Is disqualified from holding a public office under the Constitution;
- vii. Is convicted of an offence and is sentenced to imprisonment for a term of six months or more;
- viii. In any particular case, the member fails to declare his or her interest in any matter being considered or to be considered by the board or committee;
- ix. Engages in any gross misconduct; or
- x. Dies.

A resident of a city or municipality may file a writing Petition with a board for the removal of a chairperson or vice chairperson. Further a Municipal Board member may be removed from office by:

- i. The County Governor;
- ii. By the Board, supported by the vote of at least two-thirds of the members of the Board; or
- iii. Upon Petition by the residents of a city or municipality.

From the foregoing therefore, the Committee does not have the power to revoke Mr. Antony K. Ngunga's appointment but can only recommend that he be removed from office subject to the applicable law.

5.0 Committee General Observations

Hon. Speaker, in respect to the above findings, the Committee on Justice and Legal Affairs made the following general observations;

1. That the Chief Officers responsible for the department of housing and urban development and County Law Office never presented the Gazette Notice revoking Urbanus Mativa as a Member of the Mavoko Municipality Board as directed by the Committee.

Hon. Deputy Speaker: Point of order.

Hon. (Ms.) Munyasya: Sorry, Hon. Speaker; some of the recommendations like 5.0 that I have here is not what the Hon. Member is reading so I do not know if there could be a problem.

Hon. Maitha: Mr. Speaker, it is only No. 1 and it is the one I sought permission from the Chair so that we can go and look at those two conflicting evidence---

Hon. Deputy Speaker: Hon. Maitha, that amendment was not put so I would request you read No. 1 as in the report and if there is any subsequent amendment, it can be done on the floor of the House once the report has been amended because if you want a report to become the property of the House, you need to read it as it is and if there is an amendment to be made, then the notice should have been issue to the Office of the Speaker at least one hour before the House sat. So just read it as was in the original report.

Hon. Maitha:

1. That the Chief Officers responsible for the department of housing and urban development and County Law Office never presented the Gazette Notice revoking Urbanus Mativa as a Member of the Mavoko Municipality Board as directed by the Committee.
2. That Mr. Urbanus Mativa is still a member of Mavoko Municipality Board as his appointment has not yet been revoked.
3. That Mr. Antony K. Ngunga never submitted his Police Clearance Certificate from Department of Criminal Investigation and compliance Certificate from Higher Education Loans Board issued on or before 15th February during the approval hearings as stipulated requirements and as per the Assembly Committee on Labor, Public Service and ICT on the approval hearings for nine persons nominated for the position of member, Mavoko Municipal Board.
4. That Mr. Antony K. Ngunga presented before the Committee on Justice and Legal Affairs during the evidence taking exercise on 17th August, 2020 at 2 p.m. the Police Clearance Certificate Ref: PCC-AAAFQ5 issued on 14th February, 2019.
5. That Mr. Antony K. Ngunga presented to the Office of the Clerk of Assembly HELB Clearance Certificate issued on 11th February, 2019.
6. That the Office of the Clerk wrote to the Director, DCI and CEO, HELB requesting them to confirm and verify the authenticity of Police Clearance Certificate Ref: PCC-AAAFQ5 and HELB Clearance Certificate issued on 14th February and 11th February, 2019 respectively to Mr. Antony K. Ngunga copies of which were attached to the said institutions.
7. That the CEO, HELB By a letter dated 21st September, 2020 Ref: HELB/RR/112009/71, informed the Clerk of the County Assembly that Mr. Antony K. Ngunga was not a HELB beneficiary.
8. That the office of the DCI, National Police Service by a letter dated 5th August, 2020 Ref: CID/CRO/SEC/6/7/A/Vol.VIII/101, informed the Clerk, County Assembly that they had issued Antony K. Ngunga with a Police Clearance Certificate Cert. No. Ref: PCC-AAAFQ5.
9. That the Office of the Clerk, County Assembly received Mr. Antony K. Ngunga Police Clearance Certificate from DCI and compliance Certificate from HELB

issued on or before 15th February, 2019 after the approval hearing of Mr. Antony K. Ngunga for the nomination of the position of Mavoko Municipality Board.

10. That the Petitioner was being victimized for informing the appointing authority of the Mavoko Municipal Board to comply with the law.

6.0 Committee Recommendation

Hon. Speaker, in light of the above, the committee recommends as follows:

1. That the Governor, Machakos County Government issues another Gazette Notice quoting the right provisions of the Law and stating the term of office and revoke the Gazette Notice No. 3633 of 2019 which was based on the wrong provisions of the law.
2. That the appointing authority or its agent involved in the operation and management of the Mavoko Municipality Board should accept and appreciate concept of divergent views in the operation and management of the Board. Further, they must always uphold the rule of Law in the conduct of the affairs of the public office that they hold and must not victimize any person for expressing their views based on the law.
3. The Petitioner should be allowed to participate in the management and affairs of the Mavoko Municipality and should be given an opportunity to express his ideas without discrimination on the management of the affairs of the Mavoko Municipality Board.
4. All members of Municipality Boards must always take and subscribe to the oath of office before assuming duties in the manner prescribed by law.
5. The Petitioner must be paid all outstanding dues as conferred to him by operation of law for being a member of the Mavoko Municipal Board.

7.0 Affirmation and Approval

Hon. Speaker, it is therefore my pleasant duty and privilege, on behalf of the sectoral Committee on Justice and Legal Affairs to table this report on Petition by Mr. Urbanus Mativa in this Hon. House for consideration and approval. Thank you, Mr. Speaker.

(Applause)

Hon. Deputy Speaker: Thank you, Hon. Maitha. Yes, a point of order?

Hon. Ndawa: It is a point of information, Mr. Speaker. I just want to inform the House that the committee has based its argument on a Gazette Notice which has since been revoked by another Gazette Notice. So, Mr. Speaker, I am seeking your indulgence to advise the House whether we should continue debating on a report which has already been revoked. Mr. Speaker, I want to table the---

Hon. Deputy Speaker:.....*(Inaudible)*

Hon. Ndawa: Yes, Yes Sir. Thank you, Sir.

Hon. Mitaa: Thank you, Hon. Speaker. Hon. Speaker, I think it is the norm of the House for a Member not to keep a document which is expected to be used as a subject in this House. So if the Hon. Member, Matuu Hon. Member has a document which he would want to be subjected to the matter at hand in this Hon. House, let it be received in the House in the normal way, Mr. Speaker. Thank you.

Hon. Deputy Speaker: Thank you, let me just advise the Hon. Member that when a Petition is made and brought before the Assembly and committed to a committee and the committee goes ahead and makes a report, any subsequent gazettelements or corrections which have been made would be read together with the report. So I know and I am aware of Gazette Notice dated 19th August, 2020 No. 8488 which was assented to by the Governor and I am aware it has not been presented before the House on the normal way it is supposed to be presented before the House and therefore Members you just take note during the debate that some of the issues which the report might have raised may have been addressed by that Gazette Notice but that would mean that during your debate you just say this has been rectified by a subsequent report...but we cannot stop debate of the report.

We just quote the report and I would like that report to be tabled before the House if the Hon. Member has it should be laid before the House so it can be referenced to. Hon. Members, I think the matters which are on hand have been laid there on the report and the issues the Petitioner requested for a committee has made recommendations on the issues which have been raised in the committee and I therefore would like to just give guidance and let the Hon. House debate on the recommendations.

The issue we are talking about here is that a committee has done a report and made recommendations so all what is there in the report is now past. Let us look at the recommendations and debate on them and remember we are going to vote to adopt the recommendations of the committee or not to adopt the recommendations of the committee. So, I would like the members to debate on the recommendations of the committee. Hon. Judas Ndawa, you may contribute.

Hon. Ndawa: Thank you, Mr. Speaker, Sir, for your guidance. I want first of all to commend the committee for the good job they did because they were very much committed to compile this report. The only problem with the report is that it is based on documents which have since expired. Mr. Speaker, what I want to say is that according to the report which was given here, you can see and everybody can see that this is a fight between two members of the board. That is the Petitioner and the chairperson and Mr. Speaker, I request the House not to be used by people for their self-gain. Mr. Speaker,

Hon. Mitaa: Point of information, Mr. Speaker.

Hon. Deputy Speaker: Point of information, Hon. Moses Mitaa.

Hon. Mitaa: Thank you, Hon. Speaker. I think my senior colleague is misleading this Hon. House, Hon. Speaker. A petition once it is received in this Hon. House is approved. So it means it has passed the merits which any petition can be allowed to be discussed in this Hon.

House. So for him to state that these are wars, it is a fight between two individuals, I think it is also demeaning whoever accepted this petition to be passed to the committee, Hon. Speaker. Let us dwell on the petition not on individuals. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, before you continue Hon. Judas Ndawa I think I have given some guidance so that we can be able to...it is not an issue of county importance so the directions I have given are let us concentrate on the recommendations made by the committee. The committee has gone and done for us all the work. It has done for the Hon. House all the work they have looked at all the evidence, they have looked at all the issues Hon. Judas Ndawa is talking about, they have looked at the issues Hon. Moses Mitaa is talking about.

So let us read their recommendations and contribute whether their recommendations are.....we are in acceptance because remember when we will be voting and I am repeating this again, you will be voting to adopt not the report but the recommendations made by the committee on the report. That is what you will be voting to adopt. Whether we are going to adopt the recommendations as made in the report or we are not going to adopt the recommendations as made by the committee.

So the other issues because we also have another motion which is coming, the other issues which have been clearly written for in the report I would guide that let us stick to the recommendations and see whether they can be able to give us a proper guideline as to the decision the House is going to reach at the end of the day. Hon. Judas Ndawa.

Hon. Ndawa: Thank you, Mr. Speaker. I will just go directly to the recommendations you have requested us to do. Mr. Speaker, I will start with recommendation No. 3; Mr. Speaker, if I can read recommendation it it says that the petitioner should be allowed to participate in the management and affairs of the Mavoko Municipality. Mr. Speaker, according to the new gazette, this petitioner is not a member of Mavoko Municipality and there is no way a stranger can sit in a board so he was that time but as per now, he is not a member and he cannot be allowed to sit in that board.

Hon. Mitaa: Point of order, Mr. Speaker.

Hon. Ndawa: Mr. Speaker, I kindly request for your protection.

Hon. Mitaa: Point of order, Mr. Speaker.

Hon. Deputy Speaker: Hon. Moses, maybe...go ahead but I would say once you give your point of order let him finish his submissions then---

Hon. Mitaa: Thank you, Mr. Speaker. I will but my humble request now that Hon. Ndawa is still insisting on a Notice which has not been received in this Hon. House Mr. Speaker, can that notice be issued to this Hon. House. You can pass the law and accept so that we also check on the Notice which the Hon. Member is holding. Otherwise, to us we do not know whether there is a notice which has been issued. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you. Let me again give some guidance on this and this is now the direction we are going to take Hon. Members. The Gazette Notice as I have told you

came subsequent to the petition and therefore the recommendations which the report has made if there have been superseded by a subsequent Gazette Notice later on then that Gazette Notice the House is going to adopt the recommendations made by the committee based on the evidence they had as at that time.

We are in an evolving situation so if subsequently the Governor goes ahead and issued a Gazette Notice dated 19th August, 2020 No. 8488 which has not been tabled before this House once that Gazette Notice is tabled before the House then the House will take cognizance of that findings of that item in the implementation stage of the report and therefore, for now this report is guided by the Gazette Notice No. 3633 dated 10th April, 2019.

That is the Gazette Notice we are going to concentrate on. If subsequently another gazette notice has been issued, then during the implementation phase that will come into place because as at the time the decision is being made by the House we do not have that document and it was not presented before the committee. Thank you, Hon. Judas and you may conclude your submission.

Hon. Mwanthi: Point of information, Mr. Speaker.

Hon. Deputy Speaker: Let Hon. Ndawa finish his submission.

Hon. Ndawa: Before I finish Hon. Speaker, I would request you to allow me first of all to table this document so that people can speak from a point of---

Hon. Deputy Speaker: Hon. Judas you may table the report but it is not going to take any effect now; it will only take effect only after the report has been adopted by the House. As I have given you guidelines, Hon. Judas Ndawa. Thank you. Do you have any more submissions before I allow.

(Hon. Ndawa tabled the Gazette Notice)

Hon. Ndawa: Yes, Mr. Speaker. It is clear to everyone that a document that emanates from a Government office can only be quashed by an order known as order of *certiorari* so Mr. Speaker, I am saying since now we have the Gazette Notice which has been published, nobody can say no to that Gazette Notice. If anyone is not happy with the Gazette Notice let him or her go and obtain an order of *certiorari* from any High Court of Kenya. Thank you, Mr. Speaker, Sir.

Hon. Deputy Speaker: Thank you. Hon. Steve Mwanthi.

Hon. Mwanthi: Thank you, Hon. Speaker. Hon. Speaker, I believe that the chairman Justice Committee has just read a very lengthy report here in the House and the reasons as to why he has read all that report was or Members to listen and debate on the entire document Hon. Speaker. So in my view I think I need to debate the entire report but not the recommendations of the report only, Hon. Speaker.

(Applause)

On the report Hon. Speaker, what we have just heard is that this petition or the petitioner going through the entire report you will realize that 80 or 90 percent of his prayers were false. The respondent who is Antony Ngunga according to the report and that was received in the Assembly by the Assembly Clerk indicates that this person did not receive HELB from the Government of Kenya meaning whatever the petitioner brought to the committee was false information.

The DCI report also indicated that Antony Ngunga still had the certificate of good conduct by the time the committee was seated so I do not see the reason and again Hon. Speaker, again I am getting worried if a Member can produce evidence of information and debate and then the information if found to be original and authentic then the Speaker says it will not be debated on or used in this Hon. House.

(Applause)

According to me Hon. Speaker, this is not the first time---

Hon. Deputy Speaker: Hon. Steve, you may sit down. Hon. Steve, I have not said that a document is not going to be considered before the House; I have said that the document which has been brought before the House was not in the hands of the committee as at the time they were doing their report which has been read before the House.

(Applause)

That is what I have said and therefore I have said that this report is based on a Gazette Notice dated 23rd of October; when was this committee petition put before your committee Hon. Chair?

Hon. Maitha: It was sometimes when we were doing...I think in March when we were doing *skype*.

Hon. Deputy Speaker: Thank you. So Hon. Steve Mwanthi the committee has been considering a report from Match, 2020 and is bringing a report on the 26th of October and I have a Gazette Notice dated 23rd of October, 2020. Therefore, I have not said this is not valid; it is a legal Gazette Notice which is valid but the report which has been presented before the House was already done before this document was presented and therefore, as I have said debate on the report as it is because that is what was before the committee and that is what the Chair and the members considered and then any subsequent information coming hereafter as I have given direction again will take precedence in that the report going forward, the actions of the report will be guided by the documentation which has been brought before the House after the report has already been accepted as a document of the House.

So now this is now the property of the House and whoever is going...whichever Implementation committee is going to do on the issues recommended here will take into consideration the issues raised in the Gazette Notice and I think that is the right way and that is what I have given direction to and that is what we are going to follow. Thank you.

Hon. Mwanthi: Thank you, Hon. Speaker. Hon. Speaker, going as per your directives, I will read the recommendation number one. Recommendation No. 1 which states that the Governor, Machakos County issues another Gazette Notice quoting the right provisions of the law and stating the term of office and revoke the Notice 3633 of 2019 which is based on the wrong provisions of the law. I believe if that document is authentic, I believe that is what has been done. So why should we again drag ourselves to debate on something that does not add any value to the House, Hon. Speaker. To me and so---

Hon. Mitaa: Point of order, Mr. Speaker.

Hon. Deputy Speaker: Just let the Hon. Member finish and sit down. Go ahead Hon. Steve.

Hon. Mwanthi: I am just concluding that to me I am not seeing the importance of this report to be adopted by this House rather we just quash it and have other business because the issues here have been addressed. Thank you, Hon. Speaker.

Hon. Mitaa: Point of information, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Moses Mitaa. Then from there we go to Hon. Katumo.

Hon. Mitaa: Thank you, Hon. Speaker. Hon. Speaker, in fact, we might also be subjecting a debate on a faulty document, Hon. Speaker. As much as I am yet to receive or else to see what has been tabled on the table, on the Gazette Notice, I guess it is the same Gazette Notice which I have downloaded which itself is faulty, Hon. Speaker. It states; Gazette Notice No. 8488, the Constitution of Kenya 2010 and the Urban Areas and Cities (Amendment) Act No. 3 of 2019. County Government of Machakos. Appointment of Mavoko, Kangundo/Tala and Machakos municipality boards. In exercise of the powers conferred to me by Section 14 of the Urban Areas and Cities (Amendment) Act No. 3 of 2019 as read together with the respective municipal charters, I Governor, County Government of Machakos, appoint the following persons to be Members of Mavoko.

Then it goes ahead Hon. Speaker, I hope it is the same document which has been tabled in this House. It refers, Hon. Speaker, Evelyn Kavuu Mutie (Ms.) as Chief Executive Committee Member and what I know the position of the CECM is not Chief but County. So I do not know whether it is the same document and it reads the same when it comes to Kangundo, when it comes to Machakos. So Hon. Speaker, I hope it is the same document which has been tabled Hon. Ndawa can confirm whether that is the same notice which is being brought to this House when itself is faulty, Mr. Speaker. Please we need your guidance, Sir.

(Applause)

Hon. Deputy Speaker: Thank you.

Hon. Ndawa: Point of information.

Hon. Deputy Speaker: Can I give directions?

Hon. Ndawa: I want to inform the Hon. Member.

Hon. Deputy Speaker: Can I give direction?

Hon. Ndawa: Yes, please.

Hon. Deputy Speaker: That is the reason why the Chair has directed and this is final; this document will only come into effect after the debate and adoption of the report because as you have heard, this is a report which was not before the House which has not been considered by the House. You can see there are already issues being raised on the report which the committee did not have. If the committee had this report or this document with them when they were looking at the report they would have pointed out such errors as the Hon. Member is now pointing out.

You want me to debate on a report which is being challenged on its authenticity. Do you understand my direction on this report? Let us debate on the report as it is presented before the House, any subsequent document which has been brought today will be looked at subsequently. Hon. Justus Katumo.

Hon. Katumo: Thank you, Hon. Speaker for this opportunity. First, before I contribute I want to dwell on the report myself but you remember last time when we were in this House when this report was supposed to be read the committee, through the Chair requested for extension of time this is the same report we had then. I did not see any amendment, I did not see any new information and going by the spirit of the very minority in this House there is a lot to be desired because you request for extension of time try to get a Gazette Notice, which comes just a few days before this report is---

Hon. Maitha: Point of information.

Hon. Deputy Speaker: Point of information by the Chair of Justice and Legal Affairs Committee.

Hon. Maitha: It is unfortunate that Hon. Katumo said we requested for adjournment waiting for Gazette Notice. If we had waited for it, would I not have included it in the committee recommendations?

(Applause)

Let us be man enough to talk the truth. The committee did not discuss about that document. We would have included it here. Thank you.

Hon. Deputy Speaker: Thank you, for the information. Hon. Justus Katumo, you may proceed.

Hon. Katumo: Thank you, Mr. Speaker. I think I was not heard. You should learn to listen; what I said is that there was a request for extension of time then I do not see any amendment, any new information.

Hon. Mwanthi: Point of information.

Hon. Katumo: Then secondly, I said what is taking precedence---

Hon. Deputy Speaker: Let the Hon. Member finish otherwise we will not move forward. I am trying to control the contributions. Conclude Hon. Justus Katumo so that we can move forward.

Hon. Katumo: I am just beginning, I am not concluding. You see, I have just began even I have not contributed to the report but I was just trying to wonder because what is taking precedence is a Gazette Notice that we have not seen but having said that Hon. Speaker, Hon. Members, going by the recommendations first I want to commend the committee because I was invited in this committee when they were doing this report and we contributed and it was very nice.

We had issues that we went through and I think these were the recommendations that we came through but I also want to applaud the petitioner for being man enough as a resident of Machakos in trying to uphold the law. You see, we in the beginning when the Chair was reading the report, he gave the mandate of the County Assembly on matters concerning petitions and the position and what we are supposed to do. I thank the committee and the petitioner for doing this.

When you go through the recommendations, one of the Members said that 80 percent of what the petitioner has said is false. I do not agree with that. When you go to recommendation No. 1, it says the Governor Machakos County Government should issue a Gazette Notice that is coherent with the law of which he did not do according to the observations and what was presented and therefore, the committee directs the appointing authority to follow the law.

Then secondly you find that the appointing authority in trying to involve itself in the operation of the Mavoko Municipal Board should accept the concept of divergent views. If you read through the report and you listened you went along with the Chair when he was reading, one of the mistakes of the petitioner was just to tell or to express that there is need to follow the law and procedure.

Mr. Speaker, when you go to No. 4 and No. 5, from the evidence that was presented in the committee and during its report-writing you find that the procedure for taking the oath and in fact, on how it was done and how it is supposed to be done according to the Charter for those who have gone through the Charter, it was done wrongly and of course the petitioner here requesting the appointing authority, the executive and the County Assembly to make sure that due process is followed I find it important for us and for this committee.

What I find that the committee has not expressed itself coherently very clear is to say that the board is illegitimate. It is illegal because in fact going by what was presented and the findings, here it is true that the board is illegitimate. It is illegally in office. This is not the recommendation that was not done here. The committee was not bold enough to recommend that this board is illegitimate and therefore, I should say we are the custodians of the law, we are the ones who approve the Charters, we are the ones who make laws in this House.

Hon. Deputy Speaker: Point of order Hon. Alex Kamitu?

Hon. Kamitu: Thank you very much, Hon. Speaker. I have just stood here to inform my Hon. Brother that my point of order is that he cannot say the board is illegitimate or illegal. One thing in the report it is clearly indicated that these people the oath of office was taken, was affirmed to them by a Chief Magistrate. That is a legal office so he is misleading the House to say that the board was not legal. It is very legal because in the report dates of oath affirmation when the oath was taken by a Chief Magistrate of the Kenya Government. So what is he talking about when he says the board is illegal? Thank you, Hon. Speaker.

(Applause)

Hon. Deputy Speaker: Hon. Justus Katumo.

Hon. Katumo: I want to conclude Hon. Speaker, but I cannot let the Minority Leader just peddle hearsay in this House. It seems he has not read properly what the Charter pronounces itself as the terms how the oath should be taken. But having of course told him that way I think Hon. Speaker, as custodians of the law, as an oversight we cannot put a spirit overtone on this report as if we are speaking for the executive. We should play our part and they should play their part because if they have done wrong we should tell them and Mr. Speaker, as I conclude, it gives a great impression of what goes on behind the scenes of many things that are not, done or implemented.

What we have passed in the House is not what is done as it is supposed to be done on the other side. Therefore, I want to thank the committee and I want to thank the petitioner for opening our eyes to see the wrongs that the other side is doing. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Hon. Helen?

Hon. (Ms.) Ndeti: I stand also to congratulate the committee but my points are very brief and short. First, I want to state that the petitioner Mr. Mutinda Mativo has a constitutional right to bring a petition to this House if he feels aggrieved. Secondly, the House passed or approved the formation of municipalities and not cities, so I think our Governor erred in using the law of appointing City Board members and not municipality board member.

My other point is also to say that when you go for an exam or an interview, it is very well known that whatever the requirements were in the interview or in the advertisement must be met otherwise, then it will not be a legal interview. It appears like Mr. Antony Ngunga at the time the interviews were being conducted did not meet the criteria. He did not produce a certificate of good conduct from CID.

Hon. Ndawa: Point of information.

Hon. (Ms.) Ndeti: He did not bring the HELB certificate as per the stipulated regulations in the interview.

Hon. Ndawa: Point of information, Hon. Speaker.

Hon. Deputy Speaker: Hon. Judas, you have given several points of information. I want the debate to move on please. I have not heard anything which she has said which---

Hon. Ndawa: I just have little information.

Hon. Deputy Speaker: Let her conclude please so that we can have the---

Hon. (Ms.) Ndeti: Yes, so that you do not interfere with the line of thought.

Hon. Deputy Speaker: Go ahead. Hon. Hellen, you address the Chair please.

Hon. (Ms.) Ndeti: Thank you. Chair but you know sometimes I do not want somebody to interfere with my line of thought.

Hon. Deputy Speaker: Hon. Hellen, please.

Hon. (Ms.) Ndeti: Okay, the other thing that I noted which is grievous is that when these boards were formed the positions of the Chair and Vice Chair were supposed to be done by the members themselves. They should have sat, voted and agreed on who is going to be the Chair and Vice Chair. This did not take place. So why as Members and grown-ups and people have gone to school, why should we continue to encourage an illegality on another illegality.

Hon. Deputy Speaker: Hon. Hellen, I think in the report when it was being read I saw there was a tabulation of a report which saw that happened.

Hon. (Ms.) Ndeti: Thank you, Hon. Chair. I withdraw that point.

Hon. Deputy Speaker: Thank you.

Hon. (Ms.) Ndeti: Thank you, Mr. Chair. But for me to conclude I still feel that as Members of this House, let us not cover issues. Let us speak the truth, let us be transparent and let us make sure that whatever we come up is going to be of benefit to the people of Machakos and the petitioner more so Mr. Mutinda Mativo whom I do not know but let us listen to his petition and his prayers.

Hon. Deputy Speaker: Hon. Members, so that we can be able to move ahead in a yes, I am just making a contribution, a guideline to the House so just give me...I will come back to you Hon. Ikusya. What I am saying is this and the guideline I am giving is this; as a House what Hon. Members are supposed to be looking at is issues no other...concentrate on the issues which have been raised by the petitioner addressed to this House of law, the issues, he has raised. If the issues he has raised are addressed the rest as a House, my guideline is that you should not bother with the rest just look at the legal issues he has raised and see how best as a legal House we can be able to address those issues he has raised and once they are addressed because as for example, as I have told you as I look at this Gazette Notice and it is now stating Section 14 while the other one was reading Section 13.

So some of the issues he had raised here already are being tried to be... because he is talking about issues of the law and we are a House of law, a House of procedure so as we do our debate let us leave alone... I will just give you a guideline forget about the emotions and look at the issues he is raising once those issues he is raising are...as a House of law we concentrate on those issues. Make sure that appointment of that board does not have an issue legally.

That is why you are the legislative arm of the law and once it does not have issues legally we are okay because you are the ones who are supposed to be ensuring that all offices in this County are there based on the law. That is all what we are debating here and not personalities. Let us not look at it as if Antony Ngunga is the brother of Hon. Ngunga and now there are issues raising here. No, my guideline is let us look at the petitioner and the issue the petitioner has raised to ensure that Antony Ngunga remains in office he remains there based on...and properly. That is what we need to concentrate on. Hon. Kaloki.

Hon. Kaloki: Thank you, Mr. Speaker for giving me an opportunity to make a contribution to this report. I think it is important that we dwell on the law and avoid making some recommendations or arriving at decisions that might end up being challenged at a court of law. We need to be seen as a disciplined and a House of order. Mr. Speaker I have heard what the rest of the contributors have said and I have also looked at the report and I want to seek you permission not to deal so much on the recommendations and the qualifications that qualify one to become a member of a board.

If you look at the submissions, the requirements that where requested by the board that was interviewing Antony Ngunga as well as the petitioner, it is very clear that all the documents that where requested and that where required as per the law where presented by the Mr. Antony Ngunga. There is something people need to understand; if you are not a beneficiary of Higher Educations Loans Board (HELB) from my understanding is that, you may not have been a regular student and you may not have benefitted but you still went through the University education and paid for your own school fees, so automatically you do not benefit from HELB loans but you get a clearance certificate showing that you never benefitted which in this case, Antony Ngunga presented before the team that was interviewing him.

It is also very clear that the certificate of good conduct but I do not want to dwell so much on that but of you look at No. 3 on committee recommendations---

Hon. Deputy Speaker: Point of information Hon. Angela.

Hon. (Ms.) Munyasya: Thank you, Mr. Speaker. I would like to correct the Member who is on the floor that Mr. Ngunga did not present the clearance from HELB during the interview. Those are documents that where brought after the interview; so they were not presented before the panel. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Angela; you my proceed Hon. Kaloki.

Hon. Kaloki: Thank you, Mr. Speaker. I want to make it clear that I have sat in several interview panels and I am sure you have done equally the same. Sometimes you may find that a candidate at the time of the interview had the required qualifications but there were some documents that were not available at the time of the interview and they are normally requested to

forward the documents either through email or in person. It is allowed in law Mr. Speaker and we can even peruse what the law says.

If I am requested to appear before an interview and I have a degree or a certificate in a certain qualification and it is not available at the time of interviewing, the board is at its discretion either to ask me to bring the document at a later date---

Hon. Deputy Speaker: Hon. Ikusya, do you have proof that the board requested Antony Ngunga to bring the documents at a later date.

Hon. Kaloki: I do not have that but I was responding to the Member.

Hon. Deputy Speaker: It is my guideline that whatever you state here, if it was there I am sure that committee would have included that in its report and I have not seen anywhere where the interviewing board requested the gentleman to bring any document later on. You may proceed.

Hon. Kaloki: On point No. 3 of the committee recommendations; if you read the report very well, you will find that the petitioner is someone who participated in an election which he lost to Mr. Antony Ngunga. And as a result of that because he was probably never satisfied and he sounds disgruntled, he went ahead to file a petition to challenge. To me, he should have challenged the election of the Members of the board but not the appointment of Mr. Antony Ngunga as the Chair and also as a member of the board. As an Assembly, I do not think it is our responsibility to force the appointing authority to reinstate people who have already been removed from certain body or organization.

Finally, there is a Gazette Notice which has been presented to you by one of the Hon. Members. Mr. Speaker, I want to refer you to the time when we were discussing a court judgement affecting the Governor of Machakos; I remember as at that time we did not have a court order declaring the seat vacant but a motion was almost being discussed. When I raised a point of order I was told that this is a matter in public domain when we had not yet been served.

As we stand here with a Gazette Notice clarifying clearly that, one Mr. Mutinda Mativa is not a Member of the board. It is very clear that he is not a member and it is not right for us to say that we dwell on the recommendations and ignore the Gazette Notice. That Gazette Notice is a legal document.

There is what we call Order 5 of the Civil Procedure Act; when you are serving orders or notices, if it is confirmed to be a legal document, we have a right to admit and accept it as an Assembly and if possible we may even be forced to defer the discussion to allow the House enough time to confirm the authenticity of that document, Mr. Speaker. So, it is also important we look at all the facts that are suitable before we arrive at any serious judgement on this matter. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you. Hon. Moses Mitaa.

Hon. Mitaa: Thank you, Mr. Speaker, for granting me this opportunity to make my official contribution to this report. First, I want to applaud the committee of Justice and Legal for coming up with a very elaborate report. Secondly, I want to be very clear that Mr. Speaker, from the observations and the recommendations which have been passed by this committee, it is in

black and white that the Executive erred somewhere in the process of coming up with this board for Mavoko.

Hon. Speaker, I again want to thank the Executive for trying to come up with a solution on the issues which have been raised by this petitioner. It is true, man is to error and we are dealing with donor funds and they are very sensitive and right not we are trying to come up with 16 more municipalities and it would be very bad Mr. Speaker for those municipalities to suffer because of an error which we could have corrected, Mr. Speaker.

As much as we want more donor funds to come to our county, it is also good that we apply the law the way it is supposed to be applied, Mr. Speaker.

(Applause)

We are not condemning anyone because of this error and as you said earlier, we do not want to character-assassinate or dwell on an individual or individuals, Mr. Speaker. What we would want as a Hon. House, if an error was committed, we own and we correct. I am not in dispute; His Excellency the Governor has gone ahead and corrected the error which was there; we are not at war with the Executive or any individual. What we are requesting as a Hon. House is to apply the law as it is, Hon. Speaker.

Today we are in charge of matters relating to the County Government of Machakos and decisions made by this Hon. House might affect generations to come. So, if we go wrong today, that wrong will be transferred to innocent generations to come Mr. Speaker. My humble request, because I have seen the gazette notice and if I quote the Deputy President what he said yesterday; whatever we are passing today to favour you might work against you tomorrow, Mr. Speaker.

Let us not go that ways want to request this Hon. House, my colleague Hon. Kaloki has just stated something; the Gazette Notice which is being referred as having corrected this mess itself is erroneous from what I have read. I would request the Executive to correct the error immediately Mr. Speaker, because we do not have Chief Executive Officers; what we have is County Executive Committee Member.

When they say about Chief, someone can challenge that issue tomorrow; he or she can say Madam Evelyn Kavuu was not a Chief Officer, she was a County as per the rule which we follow in this House Mr. Speaker. So, Hon. Speaker, I said I do not want to go to persons because a mistake was done, the committee has identified that mistake and the only thing we can do right now is to correct that mistake and we move forward. Mavoko Municipality Board, Kangundo Municipality Board, Machakos Municipality Board; they need to work. I can say I am a beneficiary of this municipalities and I know what it means if that development is denied to our people because of an error which we could have corrected, Mr. Speaker.

I would want we sober up as a Hon. House, yes that mistake was there and it has been corrected even though and this is a word I want to send to the other side, whoever is in charge of coming up with such sensitive documents needs to be very careful to avoid such errors. I assume also this is an error which is very suicidal.

Hon. Speaker, personally I support this report and I thank the committee and I am happy that we are trying to solve the problem and I hope that as soon as possible the small problem which is remaining will be corrected and we move forward in harmony. Thank you, Mr. Speaker.

(Applause)

Hon. Deputy Speaker: Hon. Francis Ngunga.

Hon. Ngunga: Thank you, Mr. Speaker. It is a requirement of law that if a Member has interest before he speaks he needs to voice that interest and I am quoting Standing Order 86 which after listening to most Members here our Standing Orders for a long time have been mutilated. Actually I have been listening to how we conduct our debate and I think we need to go for a seminar because this way we are going to end up wrongly this I must voice with a lot of concern because if a Member raises their hand and they say they need to inform another Member that should be given so that we get that correction so that the House goes in the right direction.

(Applause)

Mr. Speaker, some of us must be credited with the fact that we are the founding Members of this House and when we sit around here, we listen and we can give guidance. Mr. Speaker, that is why I am waking up and I am quoting Standing Order 86 that says:

1. If a Member wishes to speak on any matter in which the Member has a personal interest shall first declare that interest.
2. Personal interests include pecuniary interest, proprietary interest, personal relationships and business relationships.

Mr. Speaker, in this matter here, I would like to declare that the person in question is my little brother, his name is Antony King'oo Ngunga and he is the brother who comes after me and so it is good for the House to know that and as I speak, that is my brother.

So, Mr. Speaker, I want to challenge Members of the House; let us debate openly and let the debate of my brother not look like it is going to divide the House because my brother is an entity and I am an entity. I am a Member of the County Assembly and he is not. He was vetted by this House; I did not sit in the committee that vetted him. He was brought and passed by this same House and I was not even present that day.

Mr. Speaker, if this petitioner had not come up with this issue here I do not know whether the name of my brother would be before this House but thank God this petition arose these issues and here we are now but the question I want to pose to this House is; for how long is this House going to dwell on technicalities that are unending?

Looking at what we are discussing here Mr. Speaker, I have realized we are simply talking about technicalities and technicalities. Look at what Hon. Mitaa is talking about; a Gazette Notice where the difference between 'C' have different meanings where one 'C' means County and the other one means Chief or something like that.

Mr. Speaker, we must align to the fact that Hon. Members have valuable debates that should be ahead of us and that are going to assist us. Today, Mr. Speaker, you are aware that we have Ksh. 1 billion that is lying in the banks here and that needs to be put into considerable use for the benefit of the people who brought us here. Mr. Speaker, the debate before the House has a bearing on when that money is going to be used or not; it does not matter the way the debate goes but it will have a bearing on whether that money is going to be used or not.

Mr. Speaker, let us strive to say Hon. Ndawa has rose here to say that let us also look at petitioners when they come into this House; do they come with clean hands. How do they come, how do they find their way in this House? Because Mr. Speaker it is common knowledge that

one Mr. Urbanus Mativa is known to me very well. He served with me as my junior when I was serving as Deputy Secretary General of KUPPET in this country. He was the second vice chairman and he is a man that is known to me very well.

I served with him for seven years in the headquarters and this is a man that I have always known as a guy who always gets to people especially (...inaudible). I will put this in order so that the House gets to know that I have first of all declared my interest.

Hon. Deputy Speaker: Point of order Hon. George King'ori.

Hon. King'ori: I would like to know whether Hon. Ngunga is in order to insinuate what he is speaking about to a person who cannot defend himself in this House. Thank you, Mr. Speaker.

Hon. Ngunga: Thank you, Mr. Speaker. Just a minute let me just say---

Hon. Deputy Speaker: Hon. Ngunga.

Hon. Ngunga: Yes my brother.

Hon. Deputy Speaker: I have not done anything wrong. What I am advising is; whatever you contribute in this House, be in a position to produce evidence. If it hearsay because saying he is a person who follows on another one, can you give us written evidence before the House on that?

Hon. Ngunga: Let me just respond Mr. Speaker.

Hon. Deputy Speaker: If it is not there, withdraw and proceed, Hon. Ngunga.

Hon. Ngunga: I just wanted to tell you Mr. Speaker when it comes to tabling of evidence, of course are given time. One of the things that you should be asking me given time, Hon. Ngunga, will you be able to table---

Hon. Deputy Speaker: Hon. Ngunga, let me give advice on this; we are contributing on a petition brought by a member of the public and it has specific issues they have raised. As a House, we are not going to sit here and discuss the personality of the petitioner. That is not subject to discussion by Hon. Members because it is not an item before the House.

(Applause)

Let us restrict ourselves to the issues the petitioner has raised and not the personality because the minute we start discussing his personality, we do not have any backup to back that personality you are talking about and this is a House of order and we cannot sit here to discuss about personalities. Kindly restrict yourself to the issues the petitioner raised before the House for the purposes of discussion. Thank you.

Hon. Ngunga: Before I move on Mr. Speaker, I still want to say without of course having to mention a lot about that and say; somebody's action has a lot of bearing on his character. So when I bring in the character of the guy that I wanted to talk about here of course it will give you a basis of how he is behaving.

Mr. Speaker, let me say that when a petitioner brings a petition to this House, it is the onus of this House to look at both the petition and even the petitioner because you must know where the petitioner himself is coming from because like I said, the petitioner here was one of the nominated board member. And this petitioners name was in this House here. So this petitioners name was part of the board and during some stage of the board, the petitioner's name was expunged from the same board.

So, when the petitioner goes round to bring a petition here alleging one or two things where not done; of course Hon. Members you need to look at that with clean hands and ask yourselves; did this petitioner come to this House meaning well? So that he was pointing at issues that the board was limited in.

Mr. Speaker, I went to school with my brother and he did not go to the local universities here he went to universities out and as a family we bore the bearing of his fees. Today when my brother was called before the interview, he did not need to prove that we had any obligations at the HELB.

My brother is married to a Police Inspector one Alice King'oo and I wonder whether my brother would not have been in a position to get a police clearance when his darling is actually a police officer. These are some of the facts that we also need to look as a House and we look at ourselves in the mirror. Do we actually mean well when we talk about some of these things? When I say my sister in law is a police officer? Just a minute Hon. King'ori let me finish this---

Hon. King'ori: Point of order, Mr. Speaker.

Hon. Deputy Speaker: Hon. Ngunga---

Hon. Ngunga: This is a guy who is only waking up to mumble.

Hon. Deputy Speaker: Hon. Ngunga, the House has rules so address the Chair; you are not. When in this House, we need to speak honourably. The House follows Standing Orders and it follows legal things. It does not look at anybody and it does not matter who you are when you are here, you are a Hon. Member of the House and you behave according to the rules of the House.

The Hon. Member has risen on a point of order; you take your seat, he contributes. He represents 30,000 people from Muthwani; you cannot shout him down as if there is nothing he has to offer. Address yourself through the Chair and let the Hon. Member contribute and give you the point of information he wanted and we will continue. Hon. King'ori.

Hon. King'ori: Thank you, Mr. Speaker. Through the Chair, I would like to know if you are a big fish somewhere do you need to produce the documents needed by the law or you just use your name to give those documents because you are known. Whether you give them verbally or you show what is there. So we deal with documents not personalities. I want to know if he had those documents, why he failed to show those documents here instead of telling us about his

history. We do not want to know because what we needed is a person to represent the people of Mavoko. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you. Before you proceed again, Hon. Ngunga, I would like to say that there is a committee report before us and as I have said before, they have looked at all these issues concerning documentation. Let us restrict ourselves to the issues at hand and I think the committee has talked about documentation. President Uhuru Muigai Kenyatta, if he goes for an interview somewhere which requires him to show a certificate of good conduct, the President himself will come with it.

(Applause)

He will not say, since he is the President he is exempted because remember when he went to present himself before the IEBC to be given clearance to run as a President of this country, he had a certificate of good conduct attached with him. So, let us restrict ourselves to the law and not to personalities. You may conclude.

Hon. Ngunga: Thank you, Mr. Speaker. You know as a man who is advantaged for having sat in a class of literature and having taught it for some time, I speak in this way so that I can broaden the minds of people so that they can also see where I am coming from. What I was trying to say is that it would not have been a really big task for the men you are complaining of to come up with that document. So I am saying, since the document was brought here even at that time when the House was asking for it, he could have actually assessed it. That was actually my point.

You know Mr. Speaker, again, you must also give us latitude in which we need to also swim. Some of us have actually for a long time before I sit down have also wondered; for how long shall we not be able to express ourselves in different ways so that even those who are here can also get the kind of men that are here? Some of us are not used to straight talking; we talk in paradox, we talk in proverbs and some of us have a quality of speaking wise sayings.

Mr. Speaker, realize that my background is literature, English and arts and you will give me these excuses. So, Mr. Speaker, going back to this question here, I wanted to ask Members; please, I know for a long time we have dwelt on this side and on that side of the Executive and this side of the Assembly. Let me tell you something Members, it is high time we woke up from those strong positions we have been having and start looking at ourselves as if we were one House; a House that is going to be positive in what we look at here.

As Hon. Mitaa says, mistakes can always be corrected and especially if they are not grievous mistakes. Some of these mistakes before us are mistakes that we say we are sorry about this one, next time do not do it. This House has that prerogative; we are bestowed with that power but Mr. Speaker, when people want to move in one direction that is possible but when they want to take serious turns this will not be possible.

I want to ask my colleague Members here, not for the sake of the guy I have talked about here but for the sake of even future debates; let us make easier for our debates and look at the issues which are there, peel the mistakes and let us cloth the mistakes with the right wordings.

For example, Hon. Mitaa, I wish you were telling the clerk here to substitute this 'C' that meant 'Chief' to now mean 'County'. That is an error of correction and in that way I think we will be a House of honour and we will be a House that is gaining grounds and in that way we

will be a House that cultivating love. Other than a situation where when a petition is brought here what becomes prominent here is to look at it from where he comes from; that is why I declared the interest. Of course this is my brother but I did not even sit in the vetting. I did not even sit here when he was being passed but I feel obliged Mr. Speaker, to say, let us not be polarized by our political positions, that is going to be dangerous.

Members, I want to implore upon you, sometimes when we get into this door here, let us become Hon. Members that are impartial and who will look at issues impartially and that way our debates can only become impartial and that way we can only be fair. That, Mr. Speaker will be my contribution today but before I sit I also want on the same note to ask---

Hon. (Ms.) Mueni: Point of order, Mr. Speaker.

Hon. Deputy Speaker: Point of order from Hon. Mueni. Hon. Ngunga please resume you seat.

Hon. (Ms.) Mueni: Thank you, Mr. Speaker. Machakos County is ours and we can take this report back to the committee so that as *Mheshimiwa* Mitaa has said we do that. The woman who wants to take the chairmanship is from Makueni and Mr. Ngunga is from Machakos. Let us get the money to be eaten in Machakos. I do not want him to give me but we take the report to the Committee, Mr. Speaker. I beg you.

(Laughter)

Hon. Deputy Speaker: Thank you. Hon. Mueni, I have heard you referring to a woman; the report I have before me is of Urbanus Mutinda Mativa. I do not know where the lady you are talking about is which one because the report we are discussing is by one Mr. Urbanus Mutinda Mativa.

Hon. (Ms.) Mueni: Mr. Speaker, point of correction. I am not talking about the petitioner but I am talking about the woman who is competing with Mr. Ngunga. Thank you.

(Laughter)

Hon. Deputy Speaker: Hon. Mueni, you are out of order. You are discussing issues which are not before the House and therefore the House will ignore those comments from Hon. Mueni because she is out of order because she is discussing issues which are not before the House. Hon. Francis.

Hon. Ngunga: Let me just conclude, Mr. Speaker. So, after having pleaded with Members to look at it from the point of being positive, I also want to ask Members; it is also good to revisit, some of these things will challenge us and Hon. Mitaa I want to revisit the Act you are just looking at that is Section 11 of the same Act and this is common knowledge about the Urban and Cities Act and see whether the Governor has the capacity to expunge a Member from the board and when that is done it is actually illegal so that this guides us as Members.

And I think that way we will see from the same point of view---

Hon. Mitaa: Point of information, Mr. Speaker.

Hon. Deputy Speaker: Point of information.

Hon. Mitaa: Thank you, Mr. Speaker, I think I want to be very clear Hon. Ngunga. I would wish to repeat myself Hon. Speaker; I admitted or else it is in record that through this Notice, the current notice which His Excellency the Governor has issued, he is in one way or another trying to correct a mistake which happened. Secondly, the notice itself has an error which I admit, I said human is to error. We cannot correct a Gazette Notice here in the House; it can only be corrected by another Gazette Notice. Correcting that small error which you know very well is very grievous.

So my point is yes we have corrected a mistake which was done either deliberately or not, that is not our issue. Now that going forward we would want this issue to have no problems for any other implementation of these Boards in future. So my humble request Mr. Speaker, if you allow, as *Mheshimiwa* Benedetta has stated as much as she was out of order, Hon. Speaker this report, through the Chair, it was adjourned.

If you can allow Hon. Speaker, it only takes a week to correct an error and I think also we still have special Gazette Notices which can take less than a week to be corrected Hon. Speaker so that.....because my point is the report has got no problem but our solution has a small error which this House cannot correct Hon. Ngunga and that is you know that you are conversant with the law. So our advice is that error to be corrected; it is simple as that, Hon. Speaker.

Hon. Deputy Speaker: Let me give guidelines on that; I will come to you Hon. Ngunga. Hon. Moses, the report is before the House and as I have said the recommendations which are being made by the House, I have given you a guideline, are not cast on stone. There will be an Implementation committee which is supposed to follow up on this document and bring a report before this House within 60 days on the issues which have been raised by this House. Once you adopt this report, that recommendation which will come will say legal notice number this corrected item number one, number two, number three. Legal notice number this it has already been implemented. Item number this the gentleman is no longer a member of the... do you understand what I am talking about.

We are debating a report here now to take it back to the committee, for it to come to include information which has come after the report the report was tabled before the House, then now we will be going to the implementation phase already and that is why I am giving a guideline and say the report does got nothing grievous in it, if it is adopted by the House, then all these corrections can be made and a report will be brought here by the implementation committee within 60 days, there is enough time before the House and give those information that those issues have been done.

Hon. Ndawa: Point of information, Mr. Chair.

Hon. Deputy Speaker: Go ahead.

Hon. Ndawa: Thank you, Mr. Chair. I think according to the Standing Orders of this House and the Constitution, the Speaker who sits on the Chair should not influence the decision that is going to be taken by the House. So when you tell us if we adopt, it is going to be taken for

60 days, it means now you are influencing the decision of the House and that is not allowed in the law. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Hon. Judas Ndawa, I am not influencing; I am guiding the House. Mine is to give guidance. If all the guidance which I am giving here is out of... there is nothing I am going to gain on this report. The Hon. Member has given a suggestion, I was giving a guideline. If the House adopts to return the report and bring it back, that is prerogative of the House but the Chair gives guidelines because that is what I am supposed to be doing here. Giving you guidelines as to how you can effectively do a debate and effectively achieve what the different parties are having.

I am not contributing in any debate; I am just giving a guideline that reports once adopted by the House, have an Implementation committee which brings a report back to the House within a certain period of time. So, because the Hon. Member talked about correcting the error takes a week, I wanted to tell him that; if now you adopt and say the report comes before the House within a week and that week is not possible for it to come here then you will keep on moving. It is better to go to an area where you have yourself a longer period of time to do the things you want to do and that was the guideline I was trying to give. Thank you. I think Hon. Ngunga you conclude because based on the time.

Hon. Ngunga: I was just about to finish before Hon. Mitaa came up with that thinking and I think that is the right way to take and of course, Mr. Speaker as I had earlier indicated, some of us will be here not only speak, but even bite the bullet. It is true what Hon. Ndawa is saying is true, let us be honest about this because when you sit in that Chair of privileged, Mr. Speaker, we have no otherwise other than to listen to you but when you speak on a matter, a matter that is before members here before they conclude Mr. Speaker, and it is like you have given direction of course because the Members might not be of the opinion as Hon. Mitaa has said, they might not also be willing to go with me, but now when you cut the path they start looking at it from there of course that is what we are calling influence.

Mr. Speaker, we would want to ask you when you sit on that Chair, keep quiet let members discuss and only give us position to talk. I am just saying this---

Hon. Deputy Speaker: Thank you, Hon. Ngunga.

Hon. Ngunga: You see now!

Hon. Deputy Speaker: Hon. Ngunga, you are not going to dictate to the Chair, kindly. I have never dictated to you and I always give directions. You are dictating to me what I should do when I am sitting on this Chair. I have given a guideline, that is all what have given and I have said it again. Hon. Kamitu.

Hon. Kamitu: Thank you, Hon. Speaker. Hon. Speaker, it is important that you are giving us some guidelines, Hon. Speaker, we have gone through a well-presented document that has been brought to this House and Hon. Speaker I would like to talk on areas of procedure. This is a House of procedures and actually when reports are brought into this House, Hon. Speaker you are aware that we are also guided by those sections dealing to the report that is being brought into this House.

So on the strength of today's report, the petition brought by one Mativa, is that we clearly understand that one Mativa was also a member of the Mavoko municipality. Hon. Speaker, when I said about procedures is that as per the report, the right procedures were carried out because in this report it is clearly indicated that even a manager was appointed as per the requirements as a municipal manager of Mavoko municipality

If you check at page 15, Hon. Speaker, it is clearly indicating what the manager did regarding the members on the municipality, resolution was carried out, there was a date when the Municipality manager was appointed, there is a copy of oath of office by all members of Mavoko municipality board as stipulated in Section 10(1)(i) and Section 10(1)(ii) of the Municipality Charter. Remembering well that Hon. Speaker there was a Charter, which was brought into this Assembly and it was passed by the same Assembly.

So on that strength Hon. Speaker, it is fully indicated in this report that those procedures were carried out but to my understanding is that a petition was brought just to see a requirements of documents regarding one Antony Ngunga whether he qualified to be a member of the board and as you said Hon. Speaker, things are not cast on stones. It is clearly indicated in this report that; Antony Ngunga qualifies through his academic, documents during the interview that were seen to be missing, they were brought at a later date and if we go by this report, Hon. Speaker---

Hon. Deputy Speaker: Go ahead Hon. Hellen.

Hon. (Ms.) Ndeti: Thank you, Mr. Speaker. I just wanted to say that I am still maybe confused or drunk because if we had an interview and there was a time set and there were documents information that was supposed to be brought on the date of the interview, where does it arise that documents can follow after the interview. What kind of competition is that; I am still not understanding.

Hon. Ndawa: Mr. Speaker, a point of concern.

Hon. Deputy Speaker: Hon. Kamitu, you may finish; please continue with your submission.

Hon. Kamitu: Hon. Speaker, on the strength of the documents that have been presented as a report by this wonderful committee---

Hon. Deputy Speaker: Hon. Ndawa, just a bit; there is no point of concern in our Standing Orders. Mention the point of order and information.

Hon. Ndawa: Mr. Speaker, a point of information.

Hon. Deputy Speaker: Let him continue then you raise now on a point of information. Hon. Kamitu, you may continue.

Hon. Kamitu: Thank you Hon. Speaker. I am saying if all these procedures were carried out and report has been brought into this House by the Justice and Legal Affairs Committee and it is indicating where there is an error can always be corrected. Soberly, Hon. Speaker, we should

not be dwelling on issues that can be corrected by this House for us to move forward, we cannot waste a lot of time and especially when it comes to documents that can be presented.

For instance today, if this House requires that those documents are presented for example there is a Gazette Notice revoking the earlier and it has been brought to this House, so I am not seeing any.....it is not an offence Hon. Speaker if we can move ahead because our intention is one, the intention of municipality is to give services to Machakos County and for this sake Hon. Speaker, I would request this House we should not dwell on issues that can be easily corrected by this House, we cannot deal on issues that can be surmounted by this House.

Hon. King'ori: Mr. Speaker, a point of information.

Hon. Deputy Speaker: Go ahead Hon. King'ori.

Hon. King'ori: Mr. Speaker, I want to be informed, through the Chair, whether is quite okay to say that there are some people who will not follow orders which are there in law or we are just going to speak on speculation or you are going to follow the law which is given. I think this is a way of corruption, Mr. Speaker, and also there is conflict of interest taking account that Hon. Ngunga is a Member of this House and his brother is the one who is seeking on the same. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, I think on the issue you have raised about Hon. Ngunga, when he was participating the Hon. Member correctly quoted his interest on the issue based on Standing Order 86, declaration of interest. "A Member who wishes to speak on any matter in which the Member has a personal interest shall first declare that interest," and he did, so I don't think that is an issue in as far as the Hon. member is concerned, is his brother, he has the Constitutional right to be any office in the country and he has declared his interest.

So Hon. King'ori I don't think that is an issue at hand but the other point you have raised it has been noted by the House, Hon. Kamitu you may continue.

Hon. Kamitu: Thank you, Hon. Speaker. I want to summarize. All these procedures were carried out, appointment of the chairperson, appointment of the members. Now the board is in place and it is really working because there was also an appointment and an election of the Chairperson and Vice Chairperson of the board. Now if all board is in place and in regard to our today's Legal Notice has been brought into this Assembly and one Hon. Ndawa has laid down in this House a legal notice.

So if this legal document has been brought into this House and as per the recommendation of this committee, they are talking of Hon. Speaker, page 22 that that the Governor County government of Machakos issues another Gazette Notice quoting the right provision of the law and stating the term of office and revoke the Gazette Notice No. 3633 of 2019 which was based on the wrong provision of the law and this one has been brought here; what are we talking about? Let us correct the errors and we move ahead as a House.

(Applause)

By so saying we shall benefit because we are talking about grant, we are talking about billions of money that we were really waiting for the benefit to the people of Machakos. Hon.

Speaker, we should be very sober in our minds; anything that is going to benefit us as an Assembly, anything that is going to benefit the executive for one the electorates who brought us here, we should be very sober when we are, making decision.

So, my humble appeal Hon. Speaker is that we should go ahead and those members who are on the board should go ahead and give service delivery to the people of Machakos. Thank you.

Hon. Deputy Speaker: Thank you. Hon. Angela.

Hon. (Ms.) Munyasya: Thank you, Mr. Speaker. I would like to make a contribution towards this. Hon. Members, we have agreed to be sober and to appear to be non-partial and to be a House of order a House of justice and a House that looks at both sides of the coin. Hon. Speaker, we have passionately contributed towards this debate, we have passionately contributed, and we have passionately quoted a few errors here and there, as we are referring to them some of our Hon. Members.

Mr. Speaker, I would like the Hon. Members to put themselves in the shoes of the petitioner as well. The fact that the petitioner is not represented here or does not have maybe I don't know him, I am sure many of us don't know him. If that petitioner was your brother Hon. Speaker, was my brother Hon. Speaker, was Hon. Kaloki's brother, Hon. Katumo's brother, how would we look at this petition.

We would not look at some issues and say that, that is a small issue we can correct, we would not look at this petition and say this is a matter that we should not dwell or let us leave it like that. Hon. Speaker, let us appear to be orderly, let us appear to apply justice, this is the justice committee and much as we have been put here by the electorates, much as we would like the electorates to benefit from the funding from the World Bank, Hon. Speaker, let us look at the grievances of the petitioner and address them because the petitioner is also a Kenyan, he is also from Machakos County and he deserves to be heard.

Hon. Speaker, I would love this matter to rest peacefully, I would love this matter to appear before us and to appear to have been addressed in a proper way where justice has been applied not having to look at issues like, this petitioner is like this, he is not an orderly person. Hon. Speaker, if it was my son we are discussing here and he is the petitioner, I would expect justice to be applied. So if it is somebody's son, somebody's brother, he is also one of us, let us appear to be applying justice on his petition and not applying partial judgement. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you. Hon. Johana Munyao.

Hon. Munyao: Thank you, Mr. Speaker. Mr. Speaker, I want to address myself to a few facts; any resident residing in either within or without Machakos County and wishes to petition on anything has a right to do that. Another fact is that, Mr. Speaker, the committee on Labor and ICT is a sub-set of this House, the committee on Justice and Legal Affairs is also a subset of this House. Mr. Speaker, we are very much aware of the process which led to the formation of Mavoko municipal board. Mr. Speaker, the participant faced at some point the Committee on Labor and ICT, which I have said is a sub-set of this House.

All the facts presented by the various competitors were taken into consideration and Mr. Speaker just to point on one issue which was raised in the petition and which I am also a victim

at some point on maybe the clearance from the police or rather the good conduct, we have had cases where you are invited for an interview, you are supposed to submit a certificate of good conduct, you visit the DCI offices, your fingerprints are taken as a gesture that you don't doubt yourself and before the time when actually they are able to present the real certificate in some institutions we have been allowed even to present the receipts to show that I really visited that office and I was willing to be investigated and the only issue is that it was an issue beyond my control and some institutions, in their discretion, have decided either to interview one or decide to turn you away.

So, Mr. Speaker, in the same consideration in a committee of Labour and ICT, I want to imagine not only the person who is being petitioned against, there were other cases which were tabled before this where in the same committee participants were requested to go and submit some documents even after having faced that committee. Mr. Speaker the same report came to us and we passed it as a House because that was part of us; we looked at it, we read word by word and unanimously as a House we passed that report. Mr. Speaker, because I have said anybody has a right to petition, Mr. Mativa decided to present a petition which was looked at by the committee on Justice and Legal Affairs which is also a sub-set of this House.

Mr. Speaker, I have looked at the report and at some point there are contradictions because the documents which were said not to have been presented are before that Labour and ICT committee, I have seen the office of the Clerk which I believe was under the instructions of the committee on Justice and Legal Affairs writing to the various institutions and I want to believe they wanted to confirm the existence of the documents which are in question.

Some of the questions I have been asking myself are; why do we have to write to DCI over a document? How was it intended to be used by that committee? What was the finding of that committee? How has it contributed in coming up with the recommendations now that we have seen now that some documents were presented on what the DCI said about the documents we sought from them, what the HELB also said about the documents we sought from them.

What were they meant to clear and up to the point of recommendation, did they not even clear? Mr. Speaker, I want to say that to make the recommendations and I am not doubting our committee, we must be guided all along by the evidence we asked to be presented, how we have assessed the evidence and then we need to see consistency as we assess the entire procedure and also the documents presented as evidence.

Mr. Speaker, I want to say that however much this Assembly may wish to exercise its oversight role over the executive, it is also important that we balance so that we don't also at time or at some point appear to maybe give some impunity when we assess people and vet them and approve them, we expect they will work with the appointing bodies, with the appointing authorities as prescribed within either the public code of ethics or the procedures which govern their operations and then we must be able to make the difference so that we may not appear like, I can be appointed anywhere and decide to work my own way and think or wish that somebody will be there to protect me in anyway.

(Applause)

Just to end Mr. Speaker, I want to say that there comes a time when a driver may decide to get rid of a pedestrian and save the lives of some several passengers. It becomes very necessary though very painful; we will occasionally find ourselves in such scenarios. Be it the

Assembly, be it the executive and we must always accept that it happens and it is bound to happen.

I want to close by saying that if Article 159(2)(d) of the Constitution is anything to go by that justice shall be administered without undue regard to procedural technicalities and Article 22(3)(d) of the Constitution is anything to go by, that the court while observing the rule of natural justice shall not be unreasonably restricted by procedural technicalities, Mr. Speaker I would pray that we save the lives of all the areas which are benefiting from the municipality fund and just, I don't want to use the term ignore, we look at it at a very light point that we don't dwell so much on technicalities as to just stop the development of our residents, either in Mavoko, Tala, Machakos and even appear like now we are also creating some grey hairs even for the other proposed municipalities within the county.

I want to stop there and appreciate the report but pray that we try to balance. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you. Hon. Margaret, finally before I call the mover of the motion to respond please.

Hon. (Ms.) Mwikali: Thank you, Hon. Speaker. I wish to take this opportunity, Mr. Speaker to congratulate the committee on justice for burning midnight oil to bring a report to this Hon. House. I note that both the petitioner and the accused are sons of the soil of this country Kenya. Both of them wherever they are they are watching this House and hoping and praying that they will get justice. Each of them Mr. Speaker, is entitled and got rights to be heard wherever even if they have no basis but it will be very, very important for this House to know that they are the only hope this petitioner and the accused have.

Mr. Speaker, I have checked on the recommendations of this committee and I think it is very important that we read them, note them and even try to see what the committee did. This committee used the resources of this County and they went all the way and even quoted law that we must abide to. This House, Mr. Speaker is guided by law and by law we must die or live. I recommend Mr. Speaker that actually the small mistakes that we are calling very small they can be very belaboring later, they might be looking very technical and small but later this county may actually blame us for doing something that we thought was so small.

Mr. Speaker, I know some grant is at stake but it is very important for us as we think of that grant to know that everybody in this County will count on our serious and very sober decision about this. *Bw. Spika*, I think it is very important; first of all let us correct this mistake, it might take a few days, it might take a few months but at the end of this day the two sons of Machakos County will rest assured that this House---

Hon. Ndawa: Point of information.

Hon. (Ms.) Mwikali:.....that this House did not waste there trust on them. I rest my case, Mr. Speaker.

Hon. Deputy Speaker: Thank you. May I call the mover of the motion to respond, please?

Hon. Maitha: Thank you, Mr. Speaker. I want to thank all the Hon. Members for debating this issue in the manner in which they did. It was a very difficult report to write. Remember Mr. Speaker, this petition came about from a report which was done by a committee of this House. The committee recommended the appointment of this person we are talking about. After the committee recommended, that resolution was brought to this House where we are and then when the vote was asked, all of us here said yes, let us pass the committee recommendations.

Then we are talking about this Hon. Person here. I would wish to request the committees when they are doing committee work and recommending some issues like this, let them go through the proper process and even in this House here, do not just stand and applaud that we pass it but go through detail by detail because all of you saw the document and passed it and then some of us are saying the report is not good. I would wish us all to be clear when we are doing all that.

I want to thank my committee on Justice, *Mheshimiwa* Katumo was there when we were trying to come up with resolutions. I had also to call the Speaker on the same to give guidance. Hon. Members, I thank you, and may you all do justice where it is due. Thank you.

(Applause)

Hon. Deputy Speaker: I thank you, very much Hon. Moffat Maitha, the Chairman of Justice and Legal Affairs Committee.

(Question put and negatived)

(Applause)

(Several members stood in their places)

Hon. Members, before I conclude, just have a seat before I conclude for the day. There is a next motion in which I would request the Clerk to go ahead and call it out so that I can be able to decide on it. Go ahead Mr. Clerk on the next order.

(The Clerk at the Table consulted with the Hon. Deputy Speaker)

Hon. Members, I have been told that there are Members who have stood to contest the decision so we are going to do---

Hon. Ndawa: Mr. Speaker, nobody requested for a division. They just stood quietly nobody requested for it.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, can I finish this, please?

Hon. Kaloki: It cannot be done through a Clerk at the Table.

Hon. Ndawa: The Clerk at the Table does not make decisions in this House.

Hon. Deputy Speaker: It is coming from---

(Hon. Ngunga spoke off record)

Hon. Ndawa: Yes. Nobody called for a division.

Hon. Deputy Speaker: Order in the House.

Hon. Kamitu: Nobody called for a division.

Hon. Deputy Speaker: Hon. Minority Leader for the final time. Order in the House. Hon. Members, the Clerk at the Table is giving me a guideline; that is their work. I am not the one who has said. You saw the Clerk at the Table walk to me; the Clerks at the Table are here to give us guidelines. So, the issue here is this, I am making a decision.

Hon. Ngunga: Wait. We also need to talk.

Hon. Deputy Speaker: Hon. Ngunga, I am speaking and I would like the Chair to speak in silence. The issue at hand is this; I am being guided on Standing Order 68 on roll call division claimed. Read your Standing Orders; if, on a question other than a question of procedure, five or more Members rise in their places to support the Member claiming the roll call division, the Speaker shall direct a division to be taken in every instance where the Constitution or national legislation lays down that a fixed majority is necessary to decide any question.

That is the issue I am talking about. Now, that is the Standing Orders and if I am guided by the secretariat on a Standing Order as a Chair---

(Loud consultations)

Hon. Deputy Speaker: Once I put. Order! Order, please. They do not need to call; they simply stand up from their seats.

(Loud consultations)

Hon. Mitaa: We stood.

Hon. Deputy Speaker: So, Hon. Members, what I am saying is this, I had already made a decision---

(Loud consultations)

No! Listen, listen, Order! I do not have to throw somebody out Hon. Members because I am going to, believe you me. I am going to with the repercussions that follow. The Standing Order says once a question has been put and the House has reached a decision and I have said the

Noes have it, they stood. Do you understand me? They stood up. It has to follow that procedure, they cannot stand before.

(Loud consultations)

Hon. Members, why don't we do something very simple and I am giving direction here? Let us do division we finish and we go ahead. Mr. Clerk, can you prepare for a division, please? Those who are saying Noes and those who are saying Yes and I believe Hon. Ngunga whichever way it is going. Anyway, go ahead.

Hon. Ngunga: Mr. Speaker, I wish you could even give us some time to also speak something. If you could listen to this, Mr. Speaker.

Hon. Deputy Speaker: Hon. Ngunga, I have given directions and for the final time, once I made a decision, let us make a division. You may be seated.

Hon. Ngunga: But, I am just asking if you allow me, Mr. Speaker.

Hon. Deputy Speaker: Hon. Ngunga, please have a seat. I know you are interested in this issue---

Hon. Ngunga: I am not interested; I just want for the sake of posterity.

Hon. Deputy Speaker: Let us continue. Mr. Clerk can we have the division, please?

DIVISION

(Division Bell rung)

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, I have given directions. I have said, what I have been directed by the secretariat is that, Hon. Members stood up on their feet and I saw them standing up and they do not have to say division. They just stand up from their seats---

(Loud consultations)

(Hon. Ngunga spoke off record)

Hon. Ngunga, I have said that, and we Hon. Members to listen to this carefully. I am being guided by the Secretariat.

(Loud consultations)

Hon. Mitaa: Point of order Mr. Speaker, if you allow.

Hon. Deputy Speaker: Whichever way it is, Hon. Kamitu---

(Loud consultations)

Hon. Mitaa: Hon. Speaker---

Hon. Ngunga: It is a matter of procedure.

Hon. Mitaa: Hon. Speaker---

Hon. Deputy Speaker: Order, please in the House. Hon. Moses, you may approach the Chair.

(Hon. Mitaa consulted the Hon. Deputy Speaker)

Okay, Hon. Moses Mitaa.

Hon. Mitaa: Hon. Speaker, I think we do not need to look like we are fighting. This House has made improvements on the way we communicate with the outside world and I want to be very clear, I want the outside world to know very clear my stand as a Hon. Member. I would want to vote as a person not as a group and there is a reason for everything. I do not want to carry liability in the future on a mistake which this House might have committed.

We still have a long way to go ahead of us, I do not know about tomorrow whether I will be facing a committee somewhere to interview me, and I as I say, the matter at hand involves donor funds. That camera there, someone in the United States of America is accessing this Hon. House real-time. I think as I said earlier, I have got no personal interest in this report other than stating what I believe is the rightful thing to be done. Let it be that if there is any mistake which has been done before let it be corrected in the right way but as an individual, whether you rule it rightly or wrongly, I do not want to carry liability for days ahead of me. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you. You may stop ringing the bell and close the doors.

Hon. Ngunga: Point of information, Mr. Speaker.

Hon. Deputy Speaker: The door should be locked.

Hon. Ngunga: Point of information Mr. Speaker, kindly before we proceed? Mr. Speaker. I just want to point out something.

Hon. Deputy Speaker: So, Hon. Members, he is pointing out to me we also have a chamber on the outside.

Hon. Ngunga: Yes, but I want to point out something---

Hon. Deputy Speaker: Therefore, I need also to make sure that it is done. So, I want to have one Clerk to count the Noes and I would like when you are doing the division, every Member you just stand up and be able to say you have voted yes or no for the motion individually as a Member so that now we can be able to---

Hon. Ngunga: Mr. Speaker, please.

Hon. Deputy Speaker: Close this matter.

Hon. Ngunga: Just as the way you have allowed him just to point out something. Mr. Speaker, kindly. It is life and death. I swear I need to point out this. Mr. Speaker, please?

Hon. Deputy Speaker: Hon. Members!

Hon. Ngunga: Let me just talk.

Hon. Deputy Speaker: Hon. Members!

Hon. Ngunga: It is going to help us.

Hon. Deputy Speaker: It is a simple division---

Hon. Ngunga: I just want to say something. Please kindly. It is for the sake of this debate by the way. Just a minute.

(Loud consultations)

Hon. Ngunga: Yes. After you have made a decision surely? He has spoken.

Hon. Deputy Speaker: I am going to do that. I am going to give him a chance.

Hon. Ngunga: Let me just say something.

Hon. (Ms.) C. Nzioki: Point of information Mr. Speaker.

Hon. Ngunga: Yes.

Hon. Deputy Speaker: Go ahead.

Hon. Ngunga: Thank you. Mheshimiwa Kamitu, please. *Tafadhali Mheshimiwa Spika---*

Hon. Deputy Speaker: But whatever direction he is going to do---

Hon. Ngunga: No, there is no problem.

Hon. Deputy Speaker: Go ahead.

Hon. Ngunga: But you know *Mheshimiwa Spika*, *mimi nimetangulia na kusema kwamba, kwa hii nyumba lazima tuwe fair* because *Bw. Spika*, it is very clear here when Members can take a Division. Mr. Speaker, this is our bible.

(Hon. Ngunga waved the Standing Orders)

There is no other bible here. Listen *Mheshimiwa Spika*; roll call division claimed. Members, I am reading Standing Order 68. It says; the Speaker shall direct a roll-call vote to be taken if a Member claims a division and-

- a. The Speaker considers that there is a reasonable doubt as to the outcome of the vote in question.

Just a minute this is the Standing Order. I am saying, in the opinion of the Speaker, if for example, we do not know the direction the vote is taking. Mr. Speaker, here had ruled clearly that the Noes had it. So, where is the division coming from?

(Hon. Ngunga waved the Standing Orders)

This is not my Standing order it is the Standing order for Machakos County Assembly. We use it or we reject it.

Hon. Deputy Speaker: Thank you.

Hon. Ngunga: But this is it now.

Hon. Deputy Speaker: Thank you, Hon. Member.

Hon. Ngunga: We must be clear Members of this Assembly surely.

Hon. Deputy Speaker: Thank you, Hon. Member.

Hon. Ngunga: We must be sure to let us not mutilate debate, it is wrong. This I say---

Hon. Deputy Speaker: Hon. Ngunga---

Hon. Ngunga: It is wrong!

Hon. Deputy Speaker: Hon. Ngunga, sit down. Before you say something can I give a guideline because I think it is intentional? The House has been made and ruling intentionally and the issue which we are discussing at hand you cannot call a Division before a question is put and before a decision is made. I want you to understand clearly that the Speaker has to wait for a decision. I have to make a decision first, I have to listen and I make a decision then somebody after that is when they call for a vote.

(Applause)

How do you call for a vote before the Speaker? The Speaker cannot.....I am giving you a guideline based on the Standing Orders. You cannot stand up on a Division before I make a decision. They had to wait until the Speaker makes a decision. So, I made a decision and when I made a decision, they stood up.

(Loud consultations)

Then, listen to me. The secretariat advised me. So, now he cannot mislead me because they are the people who are on procedure, not me. They give the procedure. So, what they have given me is the direction that we go on a vote and therefore, there is nothing wrong to go on a vote because whichever way it is---

Hon. Kaloki: May I say something.

Hon. Deputy Speaker: Go ahead and this is the final because after that we prepare I want to take the Yes and I want to take the Noes and then we go ahead. Go ahead Hon. Kaloki.

Hon. Kaloki: Thank you. Mr. Speaker, I want us to be very fair to one another. The only difference between us and where you are seated is because you have been privileged to be given that Chair. No one and the Act is very clear, no one stood up and shouted or presented a call of a division, it is only the Clerk who whispered just the same way you do not allow a Clerk to whisper to you that *Mheshimiwa* Kaloki wants to say a, b, c, d. We are not going to entertain that, we are not going to allow that, we are not going to give room to our clerks to be interfering with the process of this Hon. House.

We are not going to accept that, if it came from the Members that they wanted a division, we would allow that and kindly Mr. Speaker, from today going forward let us be fair with one another, we are all Members of this Hon. House, we were all No. 1s and we must be listened to, we must be respected.

Hon. Deputy Speaker: Thank you. Now, which Hon. Members stood up for division? I want to know their names. For purposes of the HANSARD, the Members whom I can see stood up for division, there is.....Hon. Ngunga, I hope you are not standing up for Division so sit down.

(Laughter)

So, you better seat down because I can see you are up. Sit down. The Members who have stood up are Hon. Justus Katumo---

Hon. (Ms.) C. Nzioki: Some information Mr. Speaker.

Hon. Deputy Speaker: Hon. Geoffrey Kamulu.

Hon. (Ms.) C. Nzioki: Mr. Speaker, some information.

Hon. Deputy Speaker: Hon. Angela Munyasya.

Hon. (Ms.) C. Nzioki: Information, Mr. Speaker. Please.

Hon. Deputy Speaker: Hon. Constance Mbula, I do not have to throw you out I am simply naming names here then after that, I will give you a chance to give the information you want to.

Hon. (Ms.) C. Nzioki: Mr. Speaker, sorry to say but this will be a passed---

Hon. Deputy Speaker: As far as I have made the ruling it is not passed so that is okay. Hon. Moses Mitaa and Hon. Christine Koki. So, we do have more than five names of Members who stood up and I have been informed they claimed for the Division. So, we are going to go on Division.

Hon. (Ms.) C. Nzioki: Mr. Speaker, can I speak now?

(Loud consultations)

Mr. Speaker, point of information then.

Hon. Deputy Speaker: My friend I am talking to you. You will be taking which ones?

Hon. (Ms.) C. Nzioki: Mr. Speaker, some information, please?

Hon. Deputy Speaker: So, let me have the roll call voting please going on---

Hon. (Ms.) C. Nzioki: Mr. Speaker, some information

Hon. Deputy Speaker: Those who are saying ayes please stand up.

Hon. (Ms.) C. Nzioki: Mr. Speaker, some information, please.

Hon. Deputy Speaker: I want to see on the outside Chamber also so that we can be able to count everybody. Those on Yes on the outside chamber you need to stand up. The Clerk on the outside you need to write the names of the ones on Yes there, please. How many do you have on the outside chamber? Pardon me, I cannot hear you. Clerk, I cannot hear you.

(Question negatived by 23 votes to 17)

(Applause)

Hon. Members, next order, please?

REPORT ON MACHAKOS COUNTY STADIUM PROGRAM

Hon. Deputy Speaker: Hon. Members, we do have that business which is to be transacted by the Hon. Geoffrey Kamulu. Hon. Geoffrey Kamulu and I would like the House to take into consideration the fact that right now looking at my watch it is already 2.30 p.m.

Hon. Ndawa: Point of information Mr. Chair.

Hon. Deputy Speaker: Hon. Members, you have not yet gone for lunch---

Hon. Ndawa: Point of information

Hon. Deputy Speaker: Therefore, I would like to make a decision that, the Hon. Geoffrey Kamulu will move his motion in the afternoon; we will be able to continue with this discussion in the afternoon session.

Before I adjourn the House to the afternoon, put off your mic Hon. Judas Ndawa. Before I adjourn the House to the afternoon, I would like to say a few words which are important. That the purpose of a Chair here is to give guidelines and to give you guidelines in as far as procedure is concerned but the Chair is also given guidelines by the secretariat, that is why they are called the Clerks, that is why you see them seating there, that is their duty.

(Applause)

If they do not advise the Chair then the blame will go on them for lack of following proper procedure and once the Chair is corrected by the Clerks at the Table, the Chair follows the procedures as has been directed by the Table Office and I cannot now rise up and say you have given me that advice based on the procedure and I turn it down.

Secondly, the issues raised by the petitioner and the report which was brought before this House which I have read. You have made your decisions; this is my personal opinion, is that the petitioner was after the law being followed and it is clear that the law was not followed because the executive went ahead and did another gazettelement to correct the previous error which was there.

So, there is nothing wrong with the petitioner, there is nothing wrong with what the petitioner did, there is nothing wrong with the recommendations which were done by the committee because the committee as far as I am concerned recommended that a proper gazettelement be done, recommended that people should listen to one another, recommended that, that gentleman from the time he was appointed to the time he has been de-appointed, he gets his remunerations which he will have to get because that is the law. So, when we vote down a report which is giving good recommendations as a House.

Hon. Ngunga: Point of order, Mr. Speaker. I am just asking.

Hon. Deputy Speaker: Hon. Ngunga. Therefore, today you have really tried my patience but I am going to say I will take it.

(Loud consultations)

Hon. Ngunga, you may get out of the Chamber, please?

(Hon. Ngunga withdrew from the House)

(Applause)

Hon. Members, so as a House of procedure and as a House of law, it is important for us to look at, if a Member of the public brings a petition before the House seeking justice, seeking for the House to look at areas where we even ourselves made a mistake. The Hon. Chairperson of the committee said that those things were brought before the House and we passed resolutions. But a Member outside there saw a mistake in the law and brought it before the House for correction.

Are we saying that when the public sees something which is not against the law and they bring to us we brush them aside? Are we saying that we cannot make mistakes ourselves as a House also? Of course, we can make mistakes, of course, we did make a mistake in this one, of course, the Chairperson of the committee has allowed the same that the report which came here should have considered those items and ensure that the law was followed.

So, we have passed our resolutions on the report but my comment would be this; let us not personalize issues pertaining to the law, the law is the law. If the law says that, a gazettelement needs to be done in this way, then let the gazettelement be done in that way. If the law says that for you to do an interview, come with these documents, then go with the documents. That is the law but we cannot come back later on and start changing facts here simply because we are taking sides.

Tomorrow it will be somebody, after 2022 this team here might be sitting here and this team here might be sitting here and it will be a report which will be brought by the other side which will be having showing errors in law which we will be debating here. Are you going to make a different opinion from what you have made here because what you have done here has gone into history that a petitioner came and I tried to give directions, a petitioner came before this House saying that, this and this law was broken and the House has said it was not broken?

ADJOURNMENT

Hon. Deputy Speaker: Thank you, Hon. Members, with that the House adjourns to resume to Tuesday the 27th day of October, 2020 at 3.30 p.m. Thank you, Hon. Members.

The House rose at 2.28 p.m.