

REPUBLIC OF KENYA
COUNTY ASSEMBLY OF MACHAKOS
OFFICIAL REPORT

Tuesday, 29th November, 2022

The House met at 10.33 a.m.

[The Speaker (Hon. (Mrs.) Kiusya) in the Chair]

PRAYERS

PAPERS LAID

PAPER LAID

REPORT ON THE PROPOSED REMOVAL FROM OFFICE OF
THE CHAIRPERSON, SECRETARY AND TWO MEMBERS OF
THE COUNTY PUBLIC SERVICE BOARD OF MACHAKOS

Hon. Speaker: May I call upon Hon. Stephen Mwanthi to lay the Paper.

Hon. Stephen Mwanthi (Ekalakala, WDM-K): Thank you, Hon. Speaker. Hon. Speaker, I wish to lay the following paper on the table of the House today Tuesday 29th November, 2022; the report of Select Committee investigating the proposed removal from Office of the Chairperson, the Secretary and two members of the County Public Service Board of Machakos. Thank you, Madam Speaker.

NOTICES OF MOTIONS

REPORT ON THE PROPOSED REMOVAL FROM OFFICE OF
THE CHAIRPERSON, SECRETARY AND TWO MEMBERS OF
THE COUNTY PUBLIC SERVICE BOARD OF MACHAKOS

Hon. Speaker: We have three notices of motions. One by Stephen Mwanthi, the Deputy Speaker then by Hon. Charles Mbuva and by Hon. Nicholas Nzioka, the Majority Leader. I call upon the three members to give their notices in that order.

Hon. Stephen Mwanthi (Ekalakala, WDM-K): Thank you, Madam Speaker. Hon. Speaker, that aware that pursuant to Section 58(5) of the County Governments Act, 2012 as read with Article 251(1) of the Constitution and in accordance with Standing Order 62 (*with necessary modifications*), a motion was tabled in the Assembly on 15th November, 2022 by Hon. Nicholas Nzioka, the Leader of the Majority Party and Member for Machakos Central Ward and approved on the same date recommending to the Governor for the removal from

office of Mr. George Kioko Luka as the Chairperson of Machakos County Public Service Board (CPSB), Mr. Onesmus Muia Mutisya as the Secretary of Machakos County Public Service Board (CPSB), Ms. Cecilia Mbinya Sereka and Ms. Stella Ndinda Muthoka as Members of the of Machakos County Public Service Board (CPSB) on the grounds of serious violation of the Constitution, gross misconduct and incompetence;

Aware that in accordance with Standing Order 62(8), the House, in the same sitting constituted a Select Committee comprising of the five members appointed on the basis of relative majorities of the seats held by each of the Assembly parties to investigate whether the allegations against the CPSB members are substantiated;

Further aware that the Select Committee held meetings to hear the mover of the Motion, Hon. Nicholas Nzioka, witnesses and the respondents and also requested for written memoranda and there after compiled a report;

Hon. Speaker, I wish to give notice of motion THAT pursuant to the provisions of Section 58(5) of the County Governments Act, 2012 and Standing Order 62(11), this House approves the report of the Select Committee investigating the allegations on the removal from office of Mr. George Kioko Luka and Mr. Onesmus Muia Mutisya as Chairperson and the Secretary of Machakos County Public Service Board (CPSB) respectively, Ms. Cecilia Mbinya Sereka and Ms. Stella Ndinda Muthoka as Members of the Machakos CPSB on the grounds of serious violation of the Constitution, gross misconduct and resolves to recommend to the Governor the removal from office of;

- (1) Mr. George Kioko Luka, Chairperson Machakos County Public Service Board on grounds of serious violation of the Constitution, County Governments Act, 2012, Public Officers Act 2012 and other laws and gross misconduct;
- (2) Mr. Onesmus Muia Mutisya, Secretary of Machakos County Public Service Board on grounds of serious violation of the Constitution, County Governments Act, 2012, Public Officers Act 2012 and other laws and gross misconduct;
- (3) Ms. Cecilia Mbinya Sereka, Member of the Machakos County Public Service Board on grounds of serious violation of the Constitution, County Governments Act, 2012, Public Officers Act 2012 and other laws and gross misconduct; and
- (4) Ms. Stella Ndinda Muthoka, Member of the Machakos County Public Service Board on grounds of serious violation of the Constitution, County Governments Act, 2012, Public Officers Act 2012 and other laws and gross misconduct;

Hon. Speaker: Thank you, Hon. Deputy Speaker. Proceed, Hon. Mbuva.

AGRICULTURAL INPUTS DISTRIBUTION AND ISSUANCE POLICY

Hon. Charles Mbuva (Kangundo West, GDDP): Thank you, Madam Speaker.

Hon. Speaker, that aware that food Security is listed as Agenda 1 among the Big 4 Agenda and that agriculture is one of the key enablers of attaining the vision 2030 policy goals;

Further aware that pursuant to Article 21(2) of the Constitution of Kenya, 2010, the State shall take legislative, policy and other measures including the setting of standards, to achieve the progressive realization of the rights guaranteed in Article 43 of the Constitution;

Cognizant that pursuant to Article 185 of the same Constitution, legislative function is vested in the County Assembly; Aware that a public policy is a guide to legislative action and it provides a broad strategy that a government uses to deliver services to its citizens;

Remembering that the Department of Agriculture, Machakos County has for the recent years undertaken critical roles such as seed distribution, fertilizer issuance, chick distribution and other agricultural related inputs without a defined policy on agricultural input issuance;

Informed that in the absence of the said policy there has been challenges in need assessment, incorporation of public participation, data on residents with critical needs, officers to administer issuance, time of issuance of inputs in relation to rainfall cycles and monitoring of effectiveness of the use of the inputs after issuance;

Hon. Speaker, I wish to give notice of Motion THAT this House resolves that the County Government of Machakos develop for approval by the Assembly an agricultural inputs distribution and issuance policy to guide on procedures of issuance and ensure effective use of inputs by farmers for utmost realization of food security in the County.

Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Member. Hon. Majority Leader.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Madam Speaker.

Hon. Speaker, I beg to give notice of Motion THAT, pursuant to Articles 37 and 119 of the Constitution of Kenya, this County Assembly resolves to petition the National Assembly individually and collectively as the County Assemblies Forum (CAF) vide the annexed draft petition for the National Assembly to intervene and ensure:

- (1) That, the County Wards Equitable Development Fund be incorporated in the proposed Constitutional Amendment Bill before the National Assembly by the Hon. Stephen Mule, MP and the Hon. Gichimu Githinji, MP alongside other proposed funds namely the National Government Constituencies Development Fund (NGCDF), National Government Affirmative Action Fund (NGAF), the Senate Oversight Fund and the Economic Stimulus and Empowerment Fund either prior to the publication of the said Bill or before it is referred to the Senate in accordance with rules of procedure of Parliament.
- (2) THAT, the proposed Constitutional Amendment Bill in amending Article 204 of the Constitution should provide for the following with respect to County Wards Equitable Development Fund:

- (i) That each County Government shall allocate funds comprising of a certain percentage of the respective total County's Annual Budget Estimates or as shall be advised by the Commission on Revenue Allocation (CRA) during the enactment of the County Allocation of Revenue Act to cater for County Wards Equitable Development Fund;
- (ii) That all monies allocated to County Wards Equitable Development Fund shall be considered as funds allocated to Wards pursuant to Article 206 (2) (c) to be administered in accordance with the provisions of an Act of Parliament; and
- (iii) That Parliament shall enact a legislation to provide for the administration of the County Wards Equitable Development Fund.

Thank you, Madam Speaker.

STATEMENT

BUSINESS FOR THE HOUSE FOR 29TH NOVEMBER, 2022

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Hon. Speaker, the House Business Committee met on Friday, 25th November, 2022 to prioritize business for the House as forwarded by Committees and Honorable Members pursuant to the provisions of the Standing Order 151(6)(d). The Committee balloted as follows:

Tuesday, 29th November, 2022

Morning at 10.00 a.m.

Motion on approval of report of Select Committee investigating the proposed removal from office of the Chairperson, the Secretary and two members of the County Public Service Board of Machakos.

Afternoon at 2.30 p.m.

Motion on development of an Agricultural inputs distribution and issuance policy.

Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Member.

MOTION

APPROVAL OF REPORT ON THE PROPOSED REMOVAL FROM
OFFICE OF THE CHAIRPERSON, SECRETARY AND TWO MEMBERS
OF THE COUNTY PUBLIC SERVICE BOARD OF MACHAKOS

Hon. Speaker: May I call Hon. Stephen Mwanthi, Chairperson of the Select Committee to move the motion.

Hon. Stephen Mwanthi (Ekalakala, WDM-K): Thank you, Madam Speaker. Hon. Speaker, that aware that pursuant to Section 58(5) of the County Governments Act, 2012 as read with Article 251(1) of the Constitution and in accordance with Standing Order 62, with necessary modifications, a motion was tabled in the Assembly on 15th November, 2022 by Hon. Nicholas Nzioka, the Leader of the Majority Party and Member for Machakos Central Ward and approved on the same date recommending to the Governor for the removal from office of Mr. George Kioko Luka as the Chairperson of Machakos County Public Service Board (CPSB), Mr.

Onesmus Muia Mutisya as the Secretary of Machakos County Public Service Board (CPSB), Ms. Cecilia Mbinya Sereka and Ms. Stella Ndinda Muthoka as Members of the of Machakos County Public Service Board (CPSB) on the grounds of serious violation of the Constitution, gross misconduct and incompetence;

Aware that in accordance with Standing Order 62(8), the House, in the same sitting constituted a Select Committee comprising of the five members appointed on the basis of relative majorities of the seats held by each of the Assembly parties to investigate whether the allegations against the CPSB members are substantiated;

Further aware that the Select Committee held meetings to hear the mover of the Motion, Hon. Nicholas Nzioka, witnesses and the respondents and also requested for written memoranda and there after compiled a report;

Hon. Speaker, I wish to move the motion THAT pursuant to the provisions of Section 58(5) of the County Governments Act, 2012 and Standing Order 62(11), this House approves the report of the Select Committee investigating the allegations on the removal from office of Mr. George Kioko Luka and Mr. Onesmus Muia Mutisya as Chairperson and the Secretary of Machakos County Public Service Board (CPSB) respectively, Ms. Cecilia Mbinya Sereka and Ms. Stella Ndinda Muthoka as Members of the Machakos CPSB on the grounds of serious violation of the Constitution, gross misconduct and resolves to recommend to the Governor the removal from office of;

- (1) Mr. George Kioko Luka, Chairperson Machakos County Public Service Board on grounds of serious violation of the Constitution, County Governments Act, 2012, Public Officers Act 2012 and other laws and gross misconduct;
- (2) Mr. Onesmus Muia Mutisya, Secretary of Machakos County Public Service Board on grounds of serious violation of the Constitution, County Governments Act, 2012, Public Officers Act 2012 and other laws and gross misconduct;
- (3) Ms. Cecilia Mbinya Sereka, Member of the Machakos County Public Service Board on grounds of serious violation of the Constitution, County Governments Act, 2012, Public Officers Act 2012 and other laws and gross misconduct; and
- (4) Ms. Stella Ndinda Muthoka, Member of the Machakos County Public Service Board on grounds of serious violation of the Constitution, County Governments Act, 2012, Public Officers Act 2012 and other laws and gross misconduct;

I call upon Hon. Grace Bahati to second.

Hon. Speaker: Hon. Bahati proceed.

Hon. Grace Bahati (Kyeleni, IND): Thank you, Hon. Speaker. I second. Thank you.

(Question proposed)

MESSAGE

RESIGNATION OF MR. GEORGE KIOKO LUKA AS CHAIRPERSON OF MACHAKOS COUNTY PUBLIC SERVICE BOARD

Hon. Speaker: Before we debate, Hon. Members, I have received this communication which I would straight away communicate to you. I have received the following message from Her Excellency Wavinya Ndeti, the Governor of Machakos County pursuant to Standing Order 39. Resignation of George Kioko Luka as Chairperson of Machakos County Public Service

Board; Hon. Members I have this morning received a letter from County Attorney notifying the County Assembly on the resignation of Mr. George Kioko Luka as Chairperson of the Machakos County Public Service Board on medical grounds.

Further the house is notified that Her Excellency Wavinya Ndeti, the Governor of Machakos County in a letter dated 29th November, 2022 has acknowledged the resignation of Mr. George Kioko Luka.

Thank you, Hon. Members. I have the letter with me here we have just received it. Thank you, Members. We may now proceed from there but before we debate the report I would request to invite the mover of that motion Hon. Mwanthi to take the House through the report. Welcome Hon. Mwanthi.

Hon. Stephen Mwanthi (Ekalakala, WDM-K): Thank you, Madam Speaker.

1.0 INTRODUCTION

1.1 Background

1. Pursuant to Section 58(5) of the County Governments Act, 2012 as read with Article 251(1) of the Constitution and in accordance with Standing Order 62 (*with necessary modifications*), a motion dated 14th November, 2022 (**Annex 1**) and approved on the same date recommending to the Governor for the removal from office of Mr. George Kioko Luka and Mr. Onesmus Muia Mutisya as Chairperson and the Secretary of Machakos County Public Service Board (CPSB) respectively, Ms. Cecilia Mbinya Sereka and Ms. Stella Ndinda Muthoka as Members of the Machakos CPSB on the grounds of serious violation of the Constitution, gross misconduct and incompetence was tabled in the Assembly on 15th November, 2022 by Hon. Nicholas Nzioka, the Majority Party Leader and Member for Machakos Central Ward. The Motion was accompanied by a statutory declaration that the particulars in the motion were true to his knowledge and also contained signatures of at least a third of Members of the Assembly in support of the motion.
2. Section 58(5) of the County Governments Act, 2012 provides that, the members of the CPSB may only be removed from office—
 - (a) On grounds set out for the removal of members of a constitutional commission under Article 251(1) of the Constitution; and
 - (b) By a vote of not less than seventy five per cent of all the members of the county assembly.
3. Article 251(1) of the Constitution provides that a member of a commission, other than an ex officio member, or the holder of an independent office, may be removed from office only for—
 - (a) Serious violation of this Constitution or any other law, including a contravention of Chapter Six;
 - (b) Gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
 - (c) Physical or mental incapacity to perform the functions of office;
 - (d) Incompetence; or
 - (e) Bankruptcy.
4. Standing Order 62 with necessary modifications provides that-
 - (1) A Member may give notice of motion in writing to the Clerk requiring the Governor to remove from office, a member of the County Public Service Board under section 58(5) of the County Governments Act, 2012.

- (2) The notice of Motion shall be signed by the Member and shall be accompanied by a statutory declaration by the member affirming that the particulars contained in the motion are true to his or her knowledge and the declaration shall contain full names, national identification number and postal address of the Member.
 - (3) The motion shall be supported by at least one third of all the Members, who shall append their signatures and date in support of the motion as endorsed on the motion.
 - (4) The Clerk shall submit the proposed motion to the Speaker for approval.
 - (5) The Motion shall be tabled in the immediate next committee meeting of House Business Committee for balloting.
 - (6) The House Business Committee, shall ballot the notice of the motion which shall be given in the next sitting of the Assembly.
 - (7) After the notice of motion is given, the motion shall be placed in the Assembly Order Paper for the next sitting; provided that if the Assembly is not sitting, the Speaker shall call a Special sitting for the motion to be considered.
 - (8) If the motion is supported by at least one third of all the Members, the Assembly shall in the same sitting appoint a Select Committee comprising of five (5) members appointed on the basis of relative majorities of the seats held by each of the Assembly parties, to investigate on the matter.
 - (8A) The Select Committee appointed under paragraph (8) shall within ten (10) days report to the Assembly whether the allegations against the members of the County Public Service Board are substantiated.
 - (9) The Clerk shall immediately in writing inform the affected members of the County Public Service Board the resolution of the Assembly.
 - (10) The County Public Service Board Member has right to appear and be represented before the select committee during its investigations.
 - (11) If the select committee reports that it finds the allegations-
 - (a) Unsubstantiated, no further proceedings shall be taken; or
 - (b) Substantiated, the Assembly shall vote on whether to approve the resolution requiring the County Public Service Board member to be dismissed.
 - (12) If a resolution under paragraph (11)(b) is supported by at least 75 percent of all members of the Assembly –
 - (a) The Speaker shall promptly deliver the resolution to the Governor; and
 - (b) The Governor shall dismiss the County Public Service Board member.
5. The motion was tabled in the House Business Committee on 14th November, 2022 and balloted to be tabled in the House on 15th November, 2022 pursuant to Standing Order 62(5),(6) and (7). The notice of motion was given on 15th November, 2022 in the morning sitting and the motion placed in the Order Paper for discussion on 15th November, 2022 at 2.30 p.m. in the afternoon sitting and was supported by 23 members of the Assembly who were more than a third of the members required under Standing Order 62(8) to constitute a select committee to investigate the matter.

1.2 Committee Membership

6. In accordance with Standing Order 62(8), the House, in the same sitting constituted a Select Committee comprising of the following members appointed on the basis of relative majorities of the seats held by each of the Assembly parties:

- (1) Hon. Stephen Mwanthi
- (2) Hon. Raphael Nzau Lucky
- (3) Hon. Brian Kisila
- (4) Hon. Grace Bahati
- (5) Hon. Phillip Ndolo

1.3 Committee Secretariat

7. The Committee was facilitated by the following secretariat members:

- (1) Mr. Dominic Musyoka - HOD, Procedure and Committee Services
- (2) Mr. Hilary Muthui - HOD, Legal and Library
- (3) Ms. Norah Muteti - Senior Clerk Assistant
- (4) Mr. Dalmas Masila - Senior Research Officer
- (5) Mr. Wanyoike Njuguna - Deputy Hansard Editor
- (6) Mr. Brian Muthusi - Legal Counsel 1
- (7) Mr. Harrison Mulonzi - Clerk Assistant II
- (8) Mr. Lewis Muoki - Research Officer II
- (9) Mr. Erastus Mutua - Commissionaire

2.0 PREPARATIONS FOR THE INVESTIGATIONS

2.1 Meetings of the Select Committee

8. The Select Committee held its first meeting on Wednesday, 16th November, 2022 at 12.00 p.m. At that meeting, the committee elected Hon. Stephen Mwanthi and Hon. Grace Bahati unopposed as the Chairperson and Vice Chairperson respectively. The Committee proposed to hold further meetings to:

- (a) Prepare a work plan on how to carry out the task;
- (b) Hear the mover of the motion and receive his evidence and establish whether he had witnesses;
- (c) Hear the respondents;
- (d) Receive any documents that will have been submitted by the public;
- (e) Undertake report writing; and
- (f) Deal with any other matter related to the mandate of the Committee.

2.2 Terms of reference for the Committee

9. Pursuant to Standing Order 62(8A), the committee adopted the terms of reference as to investigate whether the motion recommending the removal from office of the four office bearers of the Machakos CPSB on grounds of serious violation of the Constitution, gross misconduct and incompetence are substantiated and report to the House. The four office holders are:

- (1) Mr. George Kioko Luka, Chairperson Machakos County Public Service Board;
- (2) Mr. Onesmus Muia Mutisya, Secretary of Machakos County Public Service Board;
- (3) Ms. Cecilia Mbinya Sereka, Member of the Machakos County Public Service Board; and
- (4) Ms. Stella Ndinda Muthoka, Member of the Machakos County Public Service Board;

2.3 Work plan for the Events

10. Following the election of the Chairperson and Vice Chairperson, the Committee considered an indicative programme of events for the Committee guided by Article 196 of the Constitution, Standing Orders 62(8A) and 63 of the County Assembly of Machakos Standing Orders.
11. Standing Order 62(8A) provides that the select committee has ten (10) days to report to the Assembly whether the allegations against the members of the CPSB are substantiated. Further, Standing Order 63(1)(a) provides that *whenever the Constitution, any written law or the Standing Orders requires the Assembly to consider a petition or a proposal for the removal of a person from office, the person shall be entitled to appear before the relevant Committee of the Assembly considering the matter and shall be entitled to legal representation*. In addition, Standing Order 63(2) requires that the person being removed from office to be availed with the report of the select committee, together with any other evidence adduced and such note or papers presented to the Committee at least three days before the debate on the motion.
12. Based on these provisions of the Constitution and the Standing Orders, the Committee developed a work plan (**Annex 2**) to guide it in executing the task. The Committee observed that pursuant to Standing Order 62(8A), it had up to 25th November, 2022 to table a report in the House. Additionally, as required by Article 196 of the Constitution, the Committee needed to place an advertisement in the print media informing members of the public and the respondents of the proposed removal of the Secretary and the three Members of the CPSB and to request them to provide any information on the matter.
13. To ensure reasonable adequate notice to the respondents and members of the public, the Committee observed that the Secretary and the three Members of the CPSB be invited to appear before the Committee on 21st November, 2022. Further, the Committee required time to compile a report and also three days to avail the report to the respondents as per Standing Order 63(2). All these requirements meant that the select Committee could not table its report on Wednesday, 23rd November, 2022 which was the last sitting of the week for the Assembly. Consequently, the Committee agreed to urge the House to resolve to extend its time of reporting by four (4) days to report on Tuesday, 29th November, 2022.

2.4 Notification and Submission of Memoranda on Removal of the Secretary and three Members of the County Public Service Board

14. Article 196(1) of the Constitution provides that, *a county assembly shall—*
 - (a) *Conduct its business in an open manner, and hold its sittings and those of its committees, in public; and*
 - (b) *Facilitate public participation and involvement in the legislative and other business of the assembly and its committees.*
15. In accordance with this provision of the Constitution, members of the public were notified through the print media (**annex 3**) on Thursday, 17th November, 2022 that the County Assembly was investigating the conduct of Mr. George Kioko Luka and Mr. Onesmus Muia Mutisya as Chairperson and the Secretary of Machakos County Public Service Board respectively, Ms. Cecilia Mbinya Sereka and Ms. Stella Ndinda Muthoka as Members of the Machakos County Public Service Board. Members of the public were notified that the Chairperson, Secretary and the members of the board will appear before the select committee investigating them on 21st November, 2022. Members of the public were also requested to submit any information, comments or complaints relating to the said persons.

Written memoranda by way of sworn statements or affidavits accompanied by any documentary evidence were to be submitted to the Clerk of the County Assembly on or before 19th November, 2022 at 10.00 a.m.

2.5 Invitations to Appear

16. Section 18(1) of the County Assemblies Powers and Privileges Act, 2017, 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, paper, book, record or document in the possession or under the control of that 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.*
17. Standing Order 171 of the County Assembly of Machakos Standing Orders provides that *Committees shall enjoy and exercise all the powers and privileges bestowed on Assembly by the Constitution and statute, including the power to summon witnesses, receive evidence and to request for and receive papers and documents from the Government and the public.*
18. Pursuant to Section 18 of the County Assemblies Powers and Privileges Act, 2017 as read with Standing Orders 62(10), 63(1) and 171, the Chairperson, the Secretary and the two members of the Board were invited to appear before the Committee on 21st November, 2022 through the print media (**Annex 3**) on Thursday, 17th November, 2022. Further, individual invitations to appear before the select committee were served in person to their offices and through last known email addresses and the mobile messaging application - WhatsApp, to the last known mobile phone number (**Annex 4a, 4b, 4c, 4d**). The persons were represented at the hearing by two legal representatives namely:
 - (a) Mr. Rono Kibet
 - (b) Mr. Douglas Muumbi
19. Further, pursuant to Section 18 of the County Assemblies Powers and Privileges Act, 2017 as read with Standing Order 171, the Committee invited the mover of the motion, Hon. Nicholas Nzioka on 17th November, 2022 vide letter ref: MKSCA/ADM/CPSB/VOL.1/8 dated 17th November, 2022 (**Annex 5**) to provide evidence on the motion tabled on the removal from office of the Chairperson, Secretary and the two members of the CPSB. Hon. Nzioka appeared before the Committee on 17th and 18th November, 2022 where he tabled documentary evidence supporting the removal of the said persons. Hon. Nzioka further informed the Committee that he had three witnesses who were ready to testify in support of the removal of the four persons. The witnesses were:
 - (a) Mr. Franklin Musila Makola – Member of the CPSB;
 - (b) Ms. Hellen Mutheu Musau; and
 - (c) Ms. Caroline Nzioka.
20. The Committee further invited the named witnesses to appear before it on 18th November, 2022 vide letter ref: MKSCA/ADM/CPSB/VOL.1/5,6&7 dated 17th November, 2022 (**Annex 6a, 6b, 6c**) to receive their statements and establish whether they were ready to testify against the named persons on 21st November, 2022.

3.0 HEARINGS

3.1 MR. GEORGE KIOKO LUKA, CHAIRPERSON OF THE COUNTY PUBLIC SERVICE BOARD

21. The hearing of Mr. George Kioko Luka before the Committee commenced at 10.00 a.m. with the reading out of the particulars of the allegations as served to him. The charges are as set out in (**Annex 7**)

3.1.1 SERIOUS VIOLATION OF THE CONSTITUTION, COUNTY GOVERNMENTS ACT, 2012, PUBLIC OFFICERS ETHICS ACT, 2012 AND OTHER LAWS

22. The following were the specific matters canvassed under this charge:
- (a) Failing to practice and promote the principle that Public Officers should be selected on the basis of integrity, competence and suitability.
23. The Mover of the Motion in the Particulars of Allegations stated THAT GEORGE KIOKO LUKA, had violated Section 22 of the Public Officers Ethics Act, 2003, Sections 66 and 68(a) of the County Governments Act, 2012. On 26th April, 2021 Mr. George Kioko Luka shared a list of his preferred officers for recruitment to all Board Members in anticipation of an advertisement that was due to run in the newspaper. The advertisement was run in May 2021 and closed on 23rd May, 2021. The advertisement was of 21 positions, twenty (20) medical Officers and one General Surgeon. After the closure of the exercise he personally and deceitfully added four medical officers and one surgeon making a total of 26. In support of the allegations the Mover of the motion made reference to the following documents;
- (i) An email from George Luka on 26th April, 2021 at 7:10 p.m. to CPSB Members (**Annex 8**).
- (ii) An advert by CPSB for twenty (20) medical officers, five (5) medical laboratory technicians III and one (1) surgeon (**Annex 9**).

Witness – Mr. Franklin Makola

24. The witness Mr. Franklin Makola told the committee that prior to the advert, the Chairperson of the Board shared a list to all Board Members via their emails. The witness informed the committee that, the user Department had earlier requested for recruitment of 40 doctors which was declined by the Board due to lack of budget. He told the committee that the number of doctors agreed upon for recruitment was 20.

Response

25. In response, Mr. George Kioko Luka stated that there was never such a list of preferred officers and the recruitment was done procedurally as per the law, as evidenced by two (2) cabinet approvals and two (2) request letters which confirmed availability of budget and vacancies. The Chairperson further stated that under Article 201(d) of the Constitution, public funds should be used in a prudent way and thus the board could not advertise afresh because they picked from the existing pool of doctors.

Observations of the Select Committee

26. The Committee observed that:
- (i) There was no advert for the four additional medical officers and one surgeon. The Chairperson admitted that there was no need to re-advertise for application of the extra medics and had stated that they used the list of the existing applicants.

- (ii) The Committee observed that Board under the leadership of Mr. George Kioko Luka recruited the extra four (4) medical officers and one extra surgeon.
- (iii) The cabinet approvals and request by user department cited by the Chairperson were not availed to the committee.

(b) *Failure to advertise positions widely and promote equity*

27. The Mover of the Motion in the Particulars of Allegations stated THAT GEORGE KIOKO LUKA, had violated Article 73(2)(c)(i) of the Constitution on honesty in execution of public duties, Sections 66 and 68(a) of the County Governments Act, 2012 by presiding over the inclusion of four (4) persons into the payroll by purporting to reinstate them while the said persons were never employees of the County Government of Machakos.

28. In support of the above allegations the mover of the motion made reference to a letter ref: GMC/PS,QM&ICT/CPSB/VOL.I/85 dated 27th July, 2021 (**Annex 10**) from the County Executive Committee Member (CECM) for Public Service, Quality Management & ICT addressed to the Secretary to the Board and copied to the Chairman CPSB.

Witness – Mr. Franklin Makola

29. Mr. Franklin Makola, expressed concerns on the manner in which the matter on the reinstatement of the four officers was handled by the Board. He stated that the push was driven by ill motive.

Response

30. In response, Mr. George Kioko Luka stated that the officers were suspended following a criminal case in Machakos HCCC No.8 of 2012. The accused persons were acquitted on 10th February, 2020 and legally they are entitled to reinstatement. The reinstatement of the officers was done procedurally by the Board. The Board received a court order to reinstate the four officers after which it sought an advisory from the County Legal Office. The advisory was that the Board should proceed with the reinstatement. The Board proceeded to reinstate the officers as per the court order and the advisory. Mr. Gorge Kioko Luka provided the following documents to support his submissions (**Annex11**):

- (i) The court judgment; (**Annex 11(10)**)
- (ii) Advisory from the County Attorney; (**Annex 11(5)**)
- (iii) Letter dated 25th October, 2021 from Chief Officer, Department of Public Service and Quality Management; and (**Annex 11(4)**)
- (iv) Letter dated 22nd April, 2021 from Chief Officer, Department of Public Service and Quality Management (**Annex 11(6)**)

Observations of the Select Committee

31. The Committee observed that:
- (i) Notwithstanding the court order and the views held by the various departments, the main matter of concern was the procedure followed by the Board to reinstate the officers into the payroll. The committee was not shown the Board minutes of the resolution to reinstate the four officers.
 - (ii) Despite the advisory by the CECM, Public Service, Quality Management & ICT (**annex 10**) on the procedure to be followed to reinstate the four officers, no

correspondence between the CPSB and the Public Service Commission on the procedure for the reinstatement of the four was availed to the committee.

(c) *Acting through others by directing a person under his supervision to contravene the Code of Conduct and Ethics*

32. The Mover of the Motion in the Particulars of Allegations stated THAT GEORGE KIOKO LUKA, had violated Section 24 of the Public Officers Ethics Act, 2012 by letting the board operate without a substantive Accounting Officer and went into alliance with the Secretary who has usurped the powers of both the Chief Executive Officer of the Secretariat and the Accounting Officer to serve his interests at the expense of professionalism expected in the institution. This is a demonstration of incompetence on his part.
33. In support of the above allegations the mover made reference to the legal opinion on the appointment of an accounting officer (**annex 13**).

Response

34. In response, Mr. George Kioko Luka stated that the accounting officer for the Board is neither appointed by the Chair nor by the Board and cited a circular issued by Transition Authority (TA) Ref: TA/7/5 Vol. III (72) dated 16th February, 2015 (**Annex 11(7)**). Mr. George Kioko Luka reiterated that the Secretary to the Board is also the Chief Executive Officer (CEO).

Observations of the Select Committee

35. The Committee observed that the circular referred to by the Chairperson Ref: TA/7/5 Vol. III (72) dated 16th February, 2015 was very specific and explained on the management of County Public Service Boards during the onset on devolution in Kenya. The circular cited Section 57 of the County Governments Act, 2012 which states that, *there is established a County Public Service Board in each County, which shall be-*
 - (a) *A body corporate with perpetual succession and a seal; and*
 - (b) *Capable of suing and being sued in its corporate name.*
36. The circular also cited Section 58(1) which provides for the composition of the CPSB to comprise:
 - (a) A chairperson appointed in accordance with Section 58A;
 - (b) At least three but not more than five members appointed in accordance with section 58A;
 - (c) A certified public secretary of good professional standing nominated and appointed by the governor, with the approval of the county assembly, who shall be the secretary to the board.
37. Further the circular cited Section 148(1), (2) and (3) of the Public Finance Management Act, 2012 which provides that:
 - (1) A County Executive Committee member for finance shall, except as otherwise provided by law, in writing designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation.
 - (2) Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity.

- (3) A County Executive Committee member for finance shall ensure that each county government entity has an accounting officer in accordance with Article 226 of the Constitution.
38. Based on the foregoing legal provisions and evidence relied on by the mover, the committee observed that:
- (i) The legal opinion tabled by the mover of the motion could not be authenticated as it had no reference or identity of the author.
 - (ii) Although there was no legal provision that expressly provided that the Secretary of the CPSB is responsible for administration of the CPSB as a County Government entity nor the accounting officer, the Board acted on the guidance by TA which was also copied to all County Secretaries, Chairpersons and Secretaries County Public Service Boards advising that the CPSB being a replica of the Public Service Commission (PSC) at the county level, the secretary is usually head of the Secretariat/chief executive officer (CEO) and the accounting officer.
 - (iii) The responsibility of designating persons as accounting officers to be responsible for managing the finances of the county government entities lies with County Executive Committee member for finance.
- (d) *Failing to take action on irregularity of the process*
39. The Mover of the Motion in the Particulars of Allegations stated THAT GEORGE KIOKO LUKA, has violated Article 10 on National Values and principles of governance of the Constitution of Kenya, 2010 and Section 75 of the County Governments Act, 2012 that requires the board to action on irregularity of process by failing to address the County's huge wage bill which is currently at 55.4 per cent instead of 35 per cent according to regulation 25(1)(b) of the Public Finance Management (County Governments) Regulations, 2015. Instead he has been presiding over the payment of huge amounts of money in terms of illegal extraneous and other allowances to his relatives among them Regina Wakio Kioko and the Vice Chairperson's relatives as well as others working for different considerations. For instance most employees of the CPSB are on extraneous allowances despite the fact that they report to work at 8.00 a.m. and leave at 5.00 p.m. A look at the list of thirteen among them his daughter, includes cleaners who are paid extraneous allowances for just what doing what they were employed to do.
40. In support of the above allegations the mover of the motion made reference to recommendations of the report of the Labour, Public Service and ICT Committee of the Second Assembly tabled and approved on 4th May, 2022 (**annex 14**).

Witness – Mr. Franklin Makola

41. Mr. Franklin Makola, reiterated that it was the responsibility of the Board to advise the County Government on wage bill. He cited irregular promotions and awarding of extraneous allowance as some of the contributing factors to the increase in wage bill and accused the Chairperson as being responsible by disregarding the County Assembly report of the Labour, Public Service and ICT Committee (**annex 14**).

Response

42. In response, Mr. George Kioko Luka stated that the wage bill was controlled by the executive and its appointed accounting officers who are Chief Officers. He further argued that before the board commits any funds in hiring of staff, there is always a confirmation of budget from the executive/accounting officers.

Observations of the Select Committee

43. The Committee observed that:
- (i) There was no policy presented before the Committee on awarding extraneous allowance in the County Public Service.
 - (ii) Extraneous allowance was arbitrarily granted to officers.
 - (iii) The payment of extraneous allowances has contributed to the ballooning wage bill in the County.
 - (iv) The Chairperson, in his own submissions to the Committee on Appointments during approval hearings on 24th February, 2020 appreciated the County had a bloated wage bill and committed to address it. However, the Chairperson, has not demonstrated this resolve and presided over granting of unqualified allowances and promotions unprocedurally.
 - (v) The Chairperson stated that it was not the duty of the Board to control the wage bill.
44. Despite the first CPSB awarding extraneous allowances to officers without proper policy, the Current Board under the leadership of Mr. George Kioko Luka contravened Section 75 of the County Governments Act, 2012 that requires the Board to take corrective actions of any irregularities made prior.
45. By selectively awarding extraneous allowances to a few members of staff, the Board under the leadership of Mr. George Kioko Luka contravened Article 10 of the Constitution on values that bind all State organs, State officers, public officers and all persons whenever any of them (a) applies or interprets this Constitution; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions. The Chairperson did not demonstrate values of good governance, integrity, transparency and accountability as well as sustainable development in the execution of their mandate.
- (e) *Failure to evaluate and report to the County Assembly on the extent to which the values and principles referred to in Article 10 and 232 of the Constitution are complied with in the County Public Service*
46. The Mover of the Motion in the Particulars of Allegations stated THAT GEORGE KIOKO LUKA, had violated Section 59(1)(f) of the County Governments Act, 2012 that requires the Board to report on the extent to which the values and principles referred to in Articles 10 and 232 of the Constitution are complied with to the County Assembly. The Chairperson of the CPSB had presided over a board that has never reported to the County Assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with to the County Assembly.

Response

47. In response, Mr. George Kioko Luka stated that Board reported on its activities to the County Assembly on a quarterly basis and not on annual basis. He however, stated that

copies of the received reports and the delivery book could not be accessed because the offices had been locked.

Observations of the Select Committee

48. The Chairperson in his response misled the Committee by stating that the Board had been submitting quarterly reports. The Committee observed that the Board only submitted one quarterly operational report in April, 2021 (**Annex 15**) and described it as the report contemplated under Section 59(1)(f) of the County Governments Act, 2012. On further perusal of the report, the Committee observed that the contents of the report were in compliance with Section 59(1)(d) of the County Governments Act, 2012 and not section 59(1)(f) of the same Act.
49. Section 59(1)(d) of the County Governments Act, 2012 provides that *the functions of the CPSB shall be, on behalf of the county government to prepare regular reports for submission to the county assembly on the execution of the functions of the Board.*
50. Further, Section 59(1)(f) provides that *the functions of the County Public Service Board shall be, on behalf of the county government to evaluate and report to the county assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the county public service.*
51. The quarterly report submitted by the CPSB in April, 2021 reported on the activities of the committees of the board namely: Career Progression and Compliment Committee, Recruitment and Selection Committee, Audit and Compliance Committee and Finance and Procurement Committee. The activities reported included approval of: renewal of contracts, promotions, confirmations of appointments, re-designations, extraneous allowance, special duty allowance, responsibility allowance, transfer of service, recruitment on contract, disciplinary matters, advertisements, re-advertisements and delegated authority. The board also reported on its procurement of goods and services among other operational activities.
52. Section 59(5) of the County Governments Act, 2012 as read with Section 59(1)(f) of the same Act requires the report of the Board to include:
 - (i) All the steps taken and decisions made by the board;
 - (ii) Specific recommendations that require to be implemented in the promotion and protection of the values and principles;
 - (iii) Specific decisions on particulars of persons or public body who have violated the values and principles, including action taken or recommended against them;
 - (iv) Any impediment in the promotion of the values and principles; and
 - (v) The programmes the board is undertaking or has planned to undertake in the medium term towards the promotion of the values and principles.
53. The Committee notes that the report of the Board clearly fell short of what is required by Section 59(1)(f) of the County Governments Act, 2012 which should be delivered each December to the County Assembly and fits in the report described in 59(1)(d) of the County Governments Act, 2012 as it was on the execution of its functions.

54. On whether the Chairperson could not access CPSB offices to get documents, no evidence was provided by the legal representative that Mr. George Kioko Luka could not be able to access the CPSB offices to get documents to support.

Findings of the Select Committee on serious violation of the Constitution, County Governments Act, 2012, Public Officers Act 2012 and other laws

55. Mr. George Kioko Luka has violated:
- (i) Section 75 of the County Governments Act, 2012 that requires the Board to take corrective actions of any irregularities made prior, by not taking corrective action on payment of extraneous allowances leading to high wage bill of the County above 35 per cent as stipulated by Regulation 25(1)(b) of the Public Finance Management (County Governments) Regulations, 2015. These allowances were being earned by officers performing their normal duties from 8.00 a.m. to 5.00 p.m. like cleaners, office attendants, secretaries, the CEO to the board and his daughter who has never worked as a deputy sub – county administrator.
 - (ii) Article 10 of the Constitution on national values and principles of governance that bind all State organs, State officers, public officers and all persons whenever any of them (a) applies or interprets this Constitution; (b) enacts, applies or interprets any law; or (c) makes or implements public policy decisions and did not demonstrate good governance, integrity, transparency and accountability by:
 - (a) Not re-advertising recruitment of four medical officers and one surgeon;
 - (b) Selectively awarding extraneous allowances to un-deserving members of staff;
 - (c) Failure to follow advisory by CECM – PSQM&ICT to consult PSC on the matter of re-instating four officers of the defunct Municipal Council of Machakos suspended for criminal allegations but later acquitted.
 - (iii) Section 59(1)(d) and (f) County Governments Act, 2012 on providing regular and annual reports to the Assembly. The Board has submitted one quarterly report pursuant Section 59(1)(d) of the County Governments Act, 2012 since the Chairperson was appointed in March 2020 and has not provided implementation reports to the Assembly as required by Article 183 (3) of the Constitution and Standing Order 181 of the County Assembly of Machakos Standing Orders. The Board has not implemented the resolutions of the report of the Labour, Public Service and ICT Committee of the Second Assembly on allegations of corruption, abuse of office by some members of the CPSB tabled and approved by the House on 4th May, 2022.
 - (iv) Articles 10 and 232 of the Constitution for failure to submit to the County Assembly annual reports on the extent to which the values and principles referred to in are complied with.
56. Pursuant to Section 58(5) of the County Governments Act, 2012 and Standing Order 62 (11) of the County Assembly Standing Orders, the Committee finds this charge substantiated.

3.1.2 GROSS MISCONDUCT

57. The following were the specific matters canvassed under this charge:
- (a) Involvement in irregular recruitment processes

58. The Mover of the Motion in the Particulars of Allegations stated THAT GEORGE KIOKO LUKA, had violated Articles 10 and 73(2)(a) of the Constitution on selection on the basis of personal integrity, competence and suitability and Section 46 of the Anti-Corruption and Economic Crimes Act, 2003 by:
- (i) Un-procedurally conferring a benefit by purporting to allocate an official vehicle to the Vice Chairperson, KBX 810T for the single purpose of facilitating the hiring of her son, Samson Sereka as a driver. Consequently he was hired on a three year contract at Job Group D. The Officer was not qualified for the Job. The mover of the motion relied on minutes of Recruitment and Selection Committee on 26th February, 2021 (**Annex 16**).

Witness – Mr. Franklin Makola

59. Mr. Franklin Makola witnessing against Mr. George Kioko Luka told the committee that all Members of the Board were entitled to a driver. However, the provision of employing a self-driver was pegged on availability of an official vehicle. The vehicle in question was not in good condition and that it operated for a short while and was grounded. The vehicle was brought to the CPSB premises in the disguise of creating an employment for the Vice Chairperson's son.

Response

60. In response, Mr. George Kioko Luka stated that the vehicle KBX 810T was procedurally allocated to the Vice Chairperson. The allocated vehicle later broke down necessitating the Board to terminate the recruited driver in line with Section 75 of the County Governments Act, 2012.

Observations of the Select Committee

61. The Committee observed that:
- (i) The vehicle KBX 810T was allocated to the CPSB vide letter ref: GMC/2/CS/FTM/VOLIII/65 dated 14th August, 2020 (**Annex 17**) Chief Officer Roads and Transport.
 - (ii) The secretary CPSB requested for funds to repair the vehicle from County Treasury on vide letter ref: MCG/20/CPSB/TMV/VOL.II/199 dated 22nd September, 2020. (**Annex 18**)
 - (iii) The vehicle was allocated to a driver by the name Joseph Muema of PFNO. 20130053833 between 22nd December, 2020 and 28th May, 2021 as evidenced from check in and check form and work tickets (**Annex 19**)
 - (iv) The Committee visited the CPSB offices and observed that the vehicle had broken down.
 - (v) The Recruitment and Selection Committee in which the Vice Chairperson was present approved for appointment by full Board Mr. Samson Sereka, the son to the Vice Chairperson on 26th February, 2020. (**Annex 16**)
 - (vi) At the time of appointment and three months later, the said vehicle had a driver by the name of Joseph Muema and Samson Sereka was paid for doing nothing.
- (ii) Facilitated the hiring of nine Officers among them son of the Vice Chairperson, Ms. Cecelia Mbinya Sereka being Boniface Mutunkei Sereka of ID 29961233. Through abuse

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of delegated authority on 6th August, 2020. The Officers were employed on contract effective 4th January, 2021 to September, 2022. The son was employed at entry level of Job Group K, without the necessary qualifications. On the 5th October, 2021, in a meeting convened and Chaired by the Vice Chairperson, mother to Boniface Mutunkei, the terms of the nine officers were illegally changed to permanent and pensionable terms. This is without regard to the fact that the officers were all being employed in a constitutional office whose term was to end in August, 2022. The mover of the motion tabled minutes of 6th August, 2020 on request for delegated authority by the Office of the Deputy Governor (**Annex 20**). Further the mover tabled an extract of minutes of 5th October, 2021 changing the terms of service of Boniface Mutunkei Sereka (**Annex 21**).

Response

62. In response, Mr. George Kioko Luka stated that the officers were recruited by the office of the Deputy Governor under a delegated authority given by the Board. The Board adopted and approved the recommended individuals during which the vice chair registered conflict of interest and excused herself from the exercise. The conflict of interest register could not be accessed from the office. The Board operates through committees constituted via resolution of the Board namely: Recruitment and Selection, Career and Progression, Finance and Audit Committees. Extract of the minutes provided showed that the chairman is not the chair of the recruitment and selection committee nor a member.

Observations of the Select Committee

63. The Committee observed that:
- (i) In full knowledge of the Chairperson, through a meeting of the career progression committee, without following the due process changed the terms of employment of nine employees who were previously on contract in the office of the Deputy Governor to permanent and pensionable terms.
 - (ii) The terms of employment of the contractual staff were changed before the end of the three year contract period.
 - (iii) Further there was no evidence of the request from the office of the Deputy Governor on the grounds for change of terms of the contractual staff to permanent terms.

Findings of the Select Committee on the charge gross misconduct

64. Mr. George Kioko Luka contravened Articles 10 and 73(2) of the Constitution by:
- (i) Failure to request for declaration of personal interest in the proceedings of Career and Progression Committee resulting to approval of change of terms of employment of nine contractual staff working in the Office of the Deputy Governor before the end of the three year contract period where the son of the vice chairperson was one of the beneficiaries. The Chairperson bears the responsibility of the decisions made by the Board and its committees.
 - (ii) Furthering nepotism and favouritism by not advertising recruitment of the personal driver of the Vice Chairperson of the Board and instead employing the son of the vice Chairperson.

65. Pursuant to Section 58(5) of the County Governments Act, 2012 and Standing Order 62 (11) of the County Assembly Standing Orders, the Committee finds this charge substantiated.

3.2 MR. ONESMUS MUIA MUTISYA, SECRETARY OF THE COUNTY PUBLIC SERVICE BOARD

66. The hearing of Mr. Onesmus Muia Mutisya before the Committee commenced at 12.40 p.m. with the reading out of the particulars of the allegations as served to him. The charges are as set out in (**Annex 22**)

3.2.1 SERIOUS VIOLATION OF THE CONSTITUTION, COUNTY GOVERNMENTS ACT, 2012, PUBLIC OFFICERS ETHICS ACT, 2012 AND OTHER LAWS

67. The following were the specific matters canvassed under this charge:

(a) Improperly enriched himself and abused office by using his office to improperly confer a benefit to himself and other officers

68. The Mover of the Motion in the Particulars of Allegations stated THAT ONESMUS MUIA MUTISYA, violated Articles 10, 73(2)(a) and (c) and 232(1)(a) and (b) of the Constitution on selection on the basis of personal integrity, competence and suitability, values and principles of public service being high standards of professional ethics, efficient, effective and economic use of resources, Section 46 of the Anti-Corruption and Economic Crimes Act, 2003 and Section 11 of the Public Officers Ethics Act, 2012 by:

- (i) Presiding over the unlawful payments of extraneous allowances to twenty-four (24) officers working in the CPSB including yourself. This is a serious violation on Chapter six of the Constitution of Kenya.
- (ii) Irregularly listing yourself as a beneficiary of Extraneous allowances of Kshs. 25,000 per month knowing well that Board Members are not entitled to the allowance and without knowledge of other Board Members.
- (iii) Listing one Mr. Joseph Wambua Deputy Secretary/CEO for extraneous allowances of Kshs. 25,000 knowing very well that such a position does not exist in the Board and therefore that would be a violation of law. This is misuse of public funds, violation of the Constitution and incompetence.
- (iv) Involvement in the awarding of extraneous allowances to thirteen (13) officers including the Daughter of the Board's Chairperson, Ms. Regina Wakio Kioko and dishonestly concealing the surname to hide identity.

69. In support of this, the mover of the motion tabled a letter from Onesmus Muia Mutisya to the Chief Officer, Department of Public Service and Quality Management (**Annex.23**) dated 27th April, 2020 that conveyed a decision of the Machakos CPSB on approval of payment of extraneous allowances for twenty four officers. Mr. Onesmus Muia Mutisya and Mr. Joseph Wambua was first and second in the list and were to be paid Kshs. 25,000 extraneous allowance per month. The designation of Joseph Wambua, according to the letter, was Deputy Secretary/ CEO which according to the mover, a position was not provided for in any law.

70. The mover of the motion also tabled another letter to Onesmus Muia Mutisya from the Chief Officer, Public Service and Quality Management (**Annex. 24**) dated 15th July, 2021

instructing Mr. Onesmus Muia Mutisya to refund any payment made to him in regard to extraneous allowances.

71. The mover also tabled minutes of the Career Progression Committee (**Annex. 25**) held on 5th October, 2021 where Onesmus Muia Mutisya was present. The Committee during that meeting approved the award of extraneous allowances to thirteen officers. Number eleven on the list was Regina Wakio Kioko, Deputy Sub County Administrator awarded extraneous allowance of Kshs. 25,000 per month. In addition to the minutes, the mover also tabled a letter from Onesmus Muia Mutisya, the Secretary of the CPSB to the Chief Officer Public Service and Quality Management (**Annex. 26**) dated 18th October, 2021 conveying a decision of the CPSB on award of extraneous allowance to 13 Officers. Number two on the list was Regina Wakio Kioko whom the mover confirmed is the Daughter of the Chairperson, George Kioko Luka whose Job Designation was Deputy Sub County Administrator awarded Kshs. 25,000 as extraneous allowances per month.

Witness – Mr. Franklin Makola

72. The witness, **Franklin Makola** in his oral submissions made reference to letters (**Annex. 23**) tabled by the mover citing that the twenty four (24) listed officers in the letter were being paid extraneous allowances for doing the work they had been appointed to do. The letter dated 27th April, 2020 from the Secretary of the CPSB enlisted Joseph Wambua, the Deputy Secretary/ CEO as a beneficiary of Ksh. 25,000 per month meant for extraneous allowances.
73. Mr. Franklin Makola also cited the Board minutes of 5th October, 2021 (**Annex 25**) approving the award of thirteen (13) extraneous allowance. Number eleven on the list was Regina Wakio Kioko, Deputy Sub County Administrator awarded extraneous allowance of Kshs. 25,000 per month. The witness confirmed that Regina Wakio Kioko is the daughter of George Kioko Luka, Chairperson of the CPSB. The witness also submitted that Regina Wakio Kioko has never served as a Deputy Sub County Administrator but has been working in the Office of the Governor and therefore did not deserve to earn extraneous allowances.

Response

74. In his response, Mr. Onesmus Muia Mutisya stated that the Secretary does not make decisions on his own but communicates the decisions of the Board. The Board procedurally approved the said extraneous allowances as evidenced by the minutes of the Board, which could not be accessed because the offices were locked. According to him, he does not owe the Government any unlawful payment of which can be confirmed from the personal file and the payroll. The Secretary was working overtime to clear the backlog and extraneous allowances were approved as a blanket for all the officers (**Annex 27(1)**).
75. Mr. Onesmus Muia Mutisya further replied that the Board procedurally approved the payment of extraneous allowances to Joseph Wambua who was substantively appointed as an Administrator (Deputy CEO/Secretary) during the tenure of the previous Board. He was therefore substantively working.

76. In further response Mr. Onesmus Muia Mutisya submitted that the payment of extraneous to thirteen (13) officers including the Chairperson's daughter was procedurally approved by the Board as requested by the Office of the Governor with confirmation of the Budget.

Observations of the Select Committee

77. The Committee observed that the Secretary did not seek for an advisory from Salaries and Remuneration Commission on the payment of the extraneous allowances. The Commission is mandated with advising the National and County Governments on remuneration and benefits of all other public officers as provided for in Article 230(4)(b) of the Constitution.

(b) Sexually harassed fellow public officers

78. The Mover of the Motion in the Particulars of Allegations stated THAT ONESMUS MUIA MUTISYA, had violated Articles 232(1) (a) and 236 of the Constitution on the values and principles of public service, Section 23 (1) of the Sexual Offences Act, 2006, Section 21 of the Public Officers Ethics Act, 2012 and Section 6 of the Employment Act, 2007 which prohibits sexual harassment of a member of the public or a fellow public officer. In the month of August, 2021, Mr. Onesmus Muia Mutisya was accused of sexual harassment and intimidation by two officers through letters to the County Secretary and the County Executive Committee Member for Public Service and Quality Management, which letters were copied to all Board Members through their individual emails together with evidence inform of electronic messages. The Officers were Hellen Musau and Caroline Nduku Nzioka.
79. The Mover of the motion in his submission cited a letter from Caroline Nzioka to the County Attorney alleging that Onesmus Muia Mutisya had harassed and intimidated her sexually. The letter was dated 23rd September, 2022. The complainant, Caroline Nzioka stated that she had previously reported the acts of sexual harassment to the County Secretary, Ms. Grace Munguti and members of the CPSB on 16th August, 2021 but action was taken. The complainant was instead suspended, denied promotion and transferred her to from the County Public Service Baard to Department of Public Service and Quality Management (**Annex 28(1)**).
80. Annexed to the letter were screenshots of *WhatsApp* messages exchanges (**Annex 28(14-19)**) alleged to be between Hellen Musau and Onesmus Muia Mutisya. Efforts to have the complainant assisted by the Board were futile and Hellen was later transferred to the Department of Lands, Energy and Urban Development.

Witness – Mr. Franklin Makola

81. The Witness, Franklin Makola in his oral submission cited the cases of Hellen Musau and Caroline Nzioka against Onesmus Muia Mutisya. He stated that both cases were discussed in Board meetings and he personally felt that the Board was not in a position to handle such cases and should leave the police to investigate the matters since they had been reported and police Occurrence Book (OB) numbers taken.

Witness – Ms. Hellen Musau

82. The Witness, Hellen Musau in her written submissions (**Annex 28**) gave the following chronology of events in relevance to the matter under consideration;
- (a) On 3rd February 2014, Hellen was given an appointment letter, hired as a Senior Human Resource Management Officer Job group L with a KCSE Certificate mean grade C plain attained in 1989 under names 'Kitele Hellen Mutheu'; a transcript for a diploma course dated 31st January 1994 in Co-operative Management and an ICDL Certificate attained in 2006 (**Annex 28(51)**).
 - (b) On 5th August 2014, Hellen received confirmation of appointment letter from Board on permanent and pensionable terms as a Senior Human Resource Management Officer Job group L (**Annex 28(52)**).
 - (c) In the year 2017; Hellen attained her Bachelor's Degree from St Paul University in Business Administration and Management (Human Resource Management) awarded on 6th day of October in the year 2017 (**Annex 28(55)**).
 - (d) On 1st September, 2017 Hellen received a letter from the Chief Officer – Public Service & Quality Management (PSQM), Mrs. Grace Munguti varying her designation to Senior Human Resource Management Officer Job group L with effect from 3rd February, 2014 (**Annex 28(54)**).
 - (e) On 14th October, 2020 Helen received a response through a letter reference No: MCG/27/BOARD/CONP/VOL.XVIII/963 from Onesmus Mutisya the Secretary/CEO to the Board declining her request for promotion on the grounds that she produced her degree in 2017, 3 years after her appointment. Further it stated that her degree was not admissible by the fact that she did not have minimum qualifications in KCSE to undertake the degree (**Annex 28(8)**).
 - (f) On 3rd December, 2020, Hellen received a letter of transfer from the Board to the Department of PSQM signed by Grace M Munguti (County Secretary and Head of Public Service) (**Annex 28(20)**).

PROCEDURAL MOTION
EXTENSION OF SITTING TIME

Hon. Mbili Ndawa (Matuu, MCCC): Thank you Madam Speaker. I am rising on Standing Order 27

Hon. Speaker, aware that Standing Order 27(2) provides that the Speaker shall interrupt business at 12.30 in the morning sitting;

Aware that Standing Order 27(3) provides that the House may resolve to extend its sitting time;

Aware that Standing Order 27(4) requires motion to extend sitting time to be moved at least 30 minutes before the time appointed of adjournment;

Hon. Speaker, I therefore beg to move the motion that the House resolves to extend its sitting time until the business on hand is completed.

I request Hon. Bahati to second my motion.

Hon. Grace Bahati (Kyeleni, IND): Thank you, Madam Speaker. I do second.

(Question proposed)

(Question put and agreed to)

(Applause)

Hon. Stephen Mwanthi can you proceed to read this report.

Hon. Stephen Mwanthi (Ekalakala, WDM-K): Thank you, Madam Speaker.

- (g) On 23rd August, 2021 Hellen wrote to Kimeu Kimeu CECM PSQM seeking his intervention on sexual harassment / intimidation / injustice at her work place by the CEO of the Board (**Annex 28(3)**).
 - (h) On 26th August 2021, acknowledgment letter by Kimeu Kimeu CECM PSQM acknowledging receipt of a letter from Hellen (**Annex 28(6)**).
83. Ms. Hellen Musau in her oral submissions stated that, the CEO/Secretary to the Board started sending messages to her at around March to May 2019 but she refused his sexual advances hence the CEO started harassing her. The CEO/Secretary to the Board had earlier been removed from office following a petition by staff in the CPSB but was later reinstated.
84. Hellen indicated that she sought for assistance from one of the members of the CPSB, Mr. Franklin Musila Makola who was the only member available and willing to assist. Attempts to reach the Chair to the Board were in vain, she indicated that Chair turned her down. Hellen confirmed that she did not forward a formal complaint to the Chair Board on sexual harassment.
85. She further claimed that her name was scrapped from a list of shortlisted candidates for promotion. Hellen informed the committee that a sub-committee was formed under the influence of the CEO to investigate and produce a report on her sexual harassment complaint. She informed the committee that the case was never reported to the relevant authorities since she wanted to exhaust all internal measures. However she later reported to the police and had a police OB number.
86. She indicated that her transfer from the Board was making her suffer financial loss because her extraneous allowance was discontinued. It was not done out of justice hence she requested that the matter to be concluded fairly to enable her continue with her studies.

Witness – Caroline Nzioka

87. The Witness, Caroline Nzioka in her written submission (**Annex 29**) gave the following chronology of events in relevance to the matter under consideration;
- (a) Letter promoting Caroline dated 12th May, 2021 to the position of Human Resource Management Assistant 1 job group ‘K’ with effect from **1st January, 2021** by the Chief Officer- Public Service & Quality Management (**Annex 30**).
 - (b) Sexual Harassment complaint to the County Secretary in a letter dated 6th August, 2021 (**Annex 29(4)**).
 - (c) Demand letter to Caroline by the CEO’s Advocates, O.N Makau & Mulei Advocates dated 16th August 2021 demanding that Caroline retracts and offers an apology about the sexual harassment complaint letter (**Annex 29(7)**).
 - (d) Suspension letter to Caroline by the Deputy Secretary to the Board dated 1st September, 2021 (**Annex 29(9)**).

- (e) Letter conveying decision to withdraw Caroline's promotion to Human Resource Management Assistant 1 Job group 'K' effective 1st January 2021 by a resolution of Board via a letter dated 14th September, 2021 written by the Chief Officer- Public Service & Quality Management dated the 22nd September, 2021 (**Annex 29(14)**).
 - (f) Letter suspending Caroline's promotion by the Deputy Secretary to the Board following a resolution of Board in a full Board meeting held on 28th September, 2021 dated 28th September, 2021 (**Annex 29(15)**).
 - (g) Board's warning letter to Caroline by the Deputy Secretary to the Board with findings on her sexual harassment allegations and assault of a workmate dated the 28th September, 2021 (**Annex 29(15)**).
 - (h) Demand letter to the Board on suspension of Caroline by her Advocates, F Katunga dated 22nd September, 2021 (**Annex 29(10)**).
 - (i) Request for submission of diploma certificate by the Board dated 28th September 2021 (**Annex 29(26)**).
 - (j) Response to illegal suspension of Caroline by the CEO's Advocates, BM Mung'ata and Company Advocates dated 30th September, 2021 (**Annex 29(10)**).
 - (k) Demand Letter to Caroline by the CEO's Advocates, BM Mung'ata and Company Advocates dated 12th October, 2021 demanding that Caroline retracts and offers an apology about publication of defamatory statements (**Annex 29(19)**).
 - (l) Response to demand for apology by Caroline's Advocates, F Katunga and Company Advocates dated 18th October 2021 (**Annex 29(22)**).
 - (m) Caroline's response on request to submit diploma certificate on 18th November, 2021 stating that the college was closed during the period when Covid – 19 cases were high (**Annex 29(25)**).
 - (n) Matter live in Court under Civil Case No. 611 of 2021 in the Chief Magistrate's Court at Machakos between Mr. Onesmus Mutisya Muia (CEO/Secretary to the Board) versus Caroline Nduku Nzioka (**Annex 29(17)**).
88. Ms. Caroline Nzioka in her oral submissions stated that, she started working as a casual employee in 2013 but was appointed in 2014 as a clerical officer in Job Group J. Her confirmation in appointment was done four years down the line from the date of appointment. She indicated that the CEO/Secretary of the Board started sexually harassing her by calling her to his office then telling her to put off her phone so that she cannot record their conversation. This escalated further and the CEO started threatening her that he will kill her husband. At one point she indicated that he held her hand tight and tried to kiss her. Upon refusal of the sexual advances, she has been harassed since April 2021.
89. She reported the matter to the police and CEO/Secretary of the Board began a counter attack saying that she wanted to kill him. She indicated that she feared to report the case since two other employees who had initially reported the matter were transferred. She finally decided to report the matter to the County Secretary via letter dated 8th June, 2021. The County Secretary advised her to report the matter to the police. On 16th June 2021 she dropped a letter to the County Secretary and an email to all Board members. She was thereafter approached by the Vice Chairperson, Cecilia Sereka who informed her to drop the case, terming it as nonsense.
90. She was called to appear before the Board without notice and was chased away after requesting for some time to compose herself. She sought advice from a lawyer since no one was ready to listen to her. She was suspended from work on 1st September, 2021.

91. The committee was further informed of an incident where Caroline claims she had a miscarriage after she fell over a chair in the office of Mr. Onesmus Muia while trying to free herself as he was pulling her near him in an attempt of rape.

Response

92. Mr. Onesmus Muia Mutisya in his response submitted that the Board and the County Assembly investigated the accusations against him. The report of the Second Assembly (Six Session) confirmed the sexual harassment allegations were unsubstantiated and were falsely aimed at securing promotions without merit. The matter is in court for defamation (**Annex 27**).

Observations of Select Committee

93. The Committee observed that the board in handling the matters of sexual harassment, did not conduct due diligence and fair administration of justice. Since the cases had been reported to the police, the Board would have waited for the full investigation report for necessary action to be taken.
94. Transfer of the two mentioned officers was illegal and grounds of such actions were not justified.
95. In the oral submissions of the Hellen Musau and Caroline Nzioka, the Committee notes that Mr. Onesmus Muia Mutisya had been pestering the two by calling them frequently in his office demanding sexual favours.
96. Section 23(1) of the Sexual Offences Act 2006 provide that, any person, who being in a position of authority, or holding a public office, who persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty of the offence of sexual harassment and shall be liable to imprisonment for a term of not less than three years or to a fine of not less than one hundred thousand shillings or to both.
97. Further Section 23(2) of the Sexual Offences Act 2006 stipulates that, it shall be necessary to prove in a charge of sexual harassment that:
- (a) The submission or rejection by the person to whom advances or requests are made is intended to be used as basis of employment or of a decision relevant to the career of the alleged victim or of a service due to a member of the public in the case of a public officer;
 - (b) Such advances or requests have the effect of interfering with the alleged victim's work or educational performance or creating an offensive working or learning environment for the alleged victim or denial of a service due to the member of the public from a public office
98. Section 6(1)(a) of the Employment Act, 2007 provides that, an employee is sexually harassed if the employer of that employee or a representative of that employer or a co-worker directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express—
- (i) Promise of preferential treatment in employment;
 - (ii) Threat of detrimental treatment in employment; or

- (iii) Threat about the present or future employment status of the employee;
 - (iv) Uses language whether written or spoken of a sexual nature;
 - (v) Uses visual material of a sexual nature; or
 - (vi) Shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction.
99. As per Section 23(1) and (2) of the Sexual Offences Act 2006 and Section 6 of Employment Act 2007, the Committee notes that Mr. Onesmus Muia Mutisya used various methods to lure Hellen Musau and Caroline Nzioka to accept his sexual advances. On refusal, the two suffered consequences of:
- (i) Being transferred from the CPSB immediately after reporting sexual harassment to the Board members instead of being given a chance to explain themselves.
 - (ii) Their extraneous allowances being stopped on being transferred from CPSB while officers not in the CPSB like in the case of the Chairperson's daughter earned it and for the case of Caroline Nzioka being surcharged whereas she earned while at the CPSB.
 - (iii) Withholding promotion letters for the said officers and revoking the same as was the case for Caroline Nzioka.
100. Based on written and oral submission presented the committee found Mr. Onesmus Mutisya to have violated sections 23(1) and (2) of the Sexual Offences Act 2006 and Section 6 of Employment Act 2007.

Madam Speaker, I wish to call upon the Committee Vice-Chair Hon. Grace Bahati, at least to proceed.

Hon. Speaker: Sorry. May be you can be helped by her.

Hon. Stephen Mwanthi (Ekalakala, WDM-K): Thank you. That was really a lot of work you have done.

Hon. Grace Bahati (Kyeleni, IND): Thank you, Madam Speaker.

(c) *Failure to promote equity in the County Public Service*

101. The Mover of the Motion in the Particulars of Allegations stated THAT ONESMUS MUIA MUTISYA, had violated Article 236(b) of the Constitution of Kenya, Section 68A of the County Governments Act no. 17 of 2012 on promotion of equity by the County Public Service Boards and Section 21(2) of the Public Officers Ethics Act, 2012 and Section 6 of the Employment Act, 2007 which prohibits sexual harassment of a fellow public officer.
102. By a letter dated 12th May, 2021 Ms. Caroline Nduku Nzioka was promoted to the position of Human Resource Management Assistant 1 with effect from 1st January 2021 but her letter was withheld by Mr. Onesmus Muia Mutisya during which time he was demanding for sexual favors from her. When the same did not succeed and she reported the matter, he went ahead and purported to withdraw the same via letter dated 22nd September, 2021 without the due process. In support the mover tabled a letter on promotion (**Annex**

30) dated 12th May, 2021 addressed to Caroline Nduku Nzioka conveying a decision of the CPSB to promote her from Clerical Officer to Human Resource Assistant 1 with effect from 1st January, 2021. The promotion was later withdrawn via a letter dated 22nd September, 2021 (**Annex 29(15)**) citing unsorted issues related to her certificates.

Hon. Nicholas Nzioka (Majority Leader): Madam Speaker, I beg for your indulgence.

Hon. Speaker: Mheshimwa majority Leader.

Hon. Nicholas Nzioka (Majority Leader): Hon. Speaker, the report before us is quite bulky and I would request that Members be given time to go through it and it be referred again to the House Business Committee for re-balloting. I also cite Standing Order 117 that no more than one stage of a Bill in this case this Motion should be taken in one sitting to support my request.

Hon. Speaker: What is the prayer?

Hon. Nicholas Nzioka (Majority Leader): I pray that since the the report is quite bulky that we give Members some time to ventilate about the report and also that it be referred again to the House Business Committee for re-balloting. Thank you Madam Speaker. I also request Mheshimiwa Vincent to second my proposal.

Hon. Speaker: Proceed Mheshimiwa Vincent.

Hon. Vincent Mutie (Upper Kaewa/Iveti, WDM-K): Thank you, Madam Speaker. You realize following through the reading is taking toll order on Members inasmuch as our concentration level was high in the morning but it is going down. I prefer that Members be given ample time to read for themselves so that we can save the narrators the pain of having to read as the Members follow and also the other procedures as requested by the Majority leader to be effected. I second.

Hon. Speaker: Thank you. Mheshimiwa Ngunga what do you want to say?

Hon. Francis Ngunga (Mua, MCCP): Madam Speaker, you know when I wake up I had a lot to say but I would be very brief this time round because in my six years of legislating, this is the first time I am seeing a Member reading a report and another one indulging saying that, that other Member is tired. However, I want to go with what the Majority Leader is pleading because in a lighter term this is called adjournment, Mr. Majority Leader.

What you would have said is that you are praying for this motion to be deferred to later date or owing in to the fact that Mheshimiwa Leader of Majority Leader you have no numbers. Mheshimiwa Speaker, I want to raise and second the proposal that Hon. Nzioka Motion is seconded at the House Business Committee for a later date but let us be blank and blunt about this; it is about numbers Mheshimiwa Speaker. I want to support you and in the spirit of consultation, Madam Speaker---

Hon. Speaker: Mheshimiwa Ngunga, do not put words to anybody.

Hon. Francis Ngunga (Mua, MCCP): Yes.

Hon. Speaker: Just say what you wanted to say.

Hon. Francis Ngunga (Mua, MCCP): I wanted to say Madam Speaker, that---

Hon. Vincent Mutie (Upper Kaewa/Iveti, WDM-K): Point of Information, Madam Speaker.

Hon. Speaker: Hon. Ngunga, let me hear the point of information.

Hon. Vincent Mutie (Upper Kaewa/Iveti, WDM-K): I want to inform the Member that, it does not matter whether the cat is black or white as long as it can catch the mouse.

(Laughter)

Hon. Speaker: Thank you, Mheshimiwa Vincent. Mheshimiwa Ngunga, you are done?

Hon. Francis Ngunga (Mua, MCCP): No I am not yet done. I was just saying Madam Speaker, while many point of orders could be coming, I am asking for your protection Madam Speaker so that I---

Hon. Speaker: I am actually protecting you so---

Hon. Francis Ngunga (Mua, MCCP): It is always good Madam Speaker to have another way of looking at it and my way has always been the other way and sometimes it could be the right way. I am just saying that this is a House of procedure and I know the motion before us is very emotive, that I know. I live in this County and I know.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Point of Information.

Hon. Speaker: Proceed, Hon. Majority Leader.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): I think the Member on the floor is casting aspersions on my intentions. The Hon. Member is casting aspersions on my intention. I have just asked a request that you give members time to read through and also for re-Oballoting; nothing more. He is actually anticipating debate that is going to come in future

Hon. Speaker: That is actually what I heard. What you have said is what I heard and Hon. Ngunga please restrict yourself to purely supporting.

Hon. Francis Ngunga (Mua, MCCP): Yes, Madam Speaker, but in supporting, I must say what I wanted to say.

Hon. Speaker: You have made your point, Thank you.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Madam Speaker, I think the Hon. Member is also out of order by saying he must; he cannot order you Madam Speaker.

Hon. Speaker: I have ruled over this matter. Mheshimiwa Ngunga, you made your point.

Hon. Francis Ngunga (Mua, MCCC): I support that the motion be deferred to House Business Committee because they have no numbers. Thank you.

(Loud consultations)

Hon. Speaker: Mheshimiwa Ndawa.

Hon. Mbili Ndawa (Matuu, MCCC): Thank you, Hon. Speaker. I just want to inform the House together with the Chair that the request was just for members to be given time. Nothing else. So it is either we agree or we disagree. So I am requesting that you put the question across then we agree that were ballot and defer for a later date.

Hon. Speaker: I want to conclude this matter. Mheshimiwa Kilonzo what do you want to say?

Hon. Peter Kilonzo (Mbiuni, UDA): Thank you, Madam Speaker---

Hon. Speaker: Are you opening up another page?

Hon. Peter Kilonzo (Mbiuni, UDA): I am not opening up another page.

Hon. Speaker: Are you supporting?

Hon. Peter Kilonzo (Mbiuni, UDA): I am supporting it by the fact that the document is voluminous and we need to have time. Thank you.

Hon. Speaker: Thank you, Mheshimiwa Brian.

Hon. Brian Kisila (Makutano/Mwala, MCCC): Madam Speaker, I stand to support what Majority Leader is pleading for but let people not start putting words in his mouth. He is not asking for a later date. Madam Speaker, there comes a time when the reason of people is put before any other interest. It looks like there are people in this House who have other interests apart from the County. We stand here as Members of this County Assembly very firm on the commitment of ensuring that sanity comes to this County of Machakos.

It might take one hour, it might take one day but Madam Speaker, the truth is coming out and those Men and Women of this Assembly who stand by the truth will carry the day. I support.

(Applause)

Hon. Speaker: Thank you, Members. Hon. Dee you make your remarks very fast and you are going to be the last.

Hon. Mutisya Kivuva (Nominated, WDM-K): Thank you, Madam Speaker, for catching my eye. As a former paramilitary trained officer, I think what the Majority Leader has done is good for all of us. It is called in military terms, tactical retreat. We are coming back and we are going to win. The naysayers, be warned we will be back. Thank you I support.

Hon. Speaker: Thank Hon. Members. I hereby put this across that the motion is referred back to the House Business Committee for balloting.

ADJOURNMENT

Hon. Speaker: With those remarks we adjourn the House to 2.30 p.m. today. Thank you.

The House rose at 12.24 p.m.