

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY

OFFICIAL REPORT

Wednesday, 18th July, 2018

The House met at 2.53 p.m.

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

PRAYERS

Hon. Speaker: Good afternoon, Hon. Members? Let us start this sitting and I call upon Mr. Clerk to proceed.

COMMUNICATION FROM THE CHAIR

Hon. Speaker: Hon. Members, under this Order, there is one communication that I wish to make. Allow me to get my eyes like Hon. Mutiso the other day said.

(Applause)

UNAVAILABILITY OF CONFERENCE FACILITIES DUE TO INOPERATIONAL IFMIS SYSTEM

Hon. Speaker: Hon. Members, allow me to communicate to you about conferences or what we call retreats. Hon. Members, you are aware that the Integrated Financial Management Information System (IFMIS), which is normally used in Government offices to make payments closed following the end of the last financial year and that is a closure that is nationwide and it is awaiting the uploading of budgets like the one you passed by the Controller of Budget.

It is also waiting the uploading of procurement plans into the systems for purposes of compliance with the Executive order by the President of the Republic of Kenya on publication of tenders, as you are aware. What this means, Hon. Members, is that, the Assembly is finding it difficult to procure conference services and what Members, you are advised is to try and undertake site visits for the time being as the Assembly awaits the opening and the operation of the IFMIS.

I have made inquiries because these impacts on the operations of the Assembly; there are some matters that we must undertake like trainings must be undertaken in conferences. I am sure assured by the Procurement Directorate that the issue of procurement will be finalized in the first week of August as they advertise for tenders and that they are going to complete the listing of the

service providers by the first week of August and so that they are able to comply with the Executive Order.

As for the IFMIS opening, I am advised that normally it opens in or about the second week of August. So, Hon. Members, in the meantime, let us undertake the work locally that we are doing as Committees. Thank you. Mr. Clerk, proceed.

PAPER LAID

Hon. Speaker: Hon. Members, under this Order, we have one business by the Hon. Museku.

REPORT ON ALLEGED BREACH OF PRIVILEGES

Hon. Museku: Thank you, Madam Speaker. Hon. Speaker, pursuant to Standing Order 190(5), I wish to lay the following paper on the table of the Assembly today, 18th July 2018; the report of the Powers, Privileges and Procedure and Rules Committee on alleged breach of privileges. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Museku. Mr. Clerk, proceed.

NOTICE OF MOTION

Hon. Speaker: Under this Order, Hon. Members we have one business by Hon. Museku. Hon. Museku.

REPORT ON ALLEGED BREACH OF PRIVILEGES

Hon. Museku: Thank you.

Hon. Speaker, that aware that all legislative Houses enjoy and exercise parliamentary privileges and performance of their mandate, roles and functions; The rationale behind privileges is to allow Houses and their Members to conduct their businesses according to the rules they set and free from undue influence from those outside the House;

This is envisaged in Article 196(3), of the Constitution that provides that the Parliament shall enact legislation providing for the Powers, Privileges and Immunities of County Assemblies, their Committees and Members;

Hon. Speaker, further aware that, Section 15(5) of Powers and Privileges Act 2017 and Standing Order 189(a), states that, there shall be a Select Committee to be designated, the Powers and Privileges Committee whose mandate shall be to inquire into the conduct of a Member whose conduct is alleged to constitute a breach of privileges in terms of Section 16;

Acknowledging that, the Committee is in receipt of a formal complaint of alleged breach of conduct and conducted investigations as envisaged in Section 4(1), of fair administrative action Act 2015;

Noting that the Committee considered all the evidence given according to the relevant laws and compiled a report;

Hon. Speaker, I wish to give notice of Motion that the House discusses and approves the Powers and Privileges and Procedure and Rules Committees, the report on the alleged breach of privileges.

Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Museku.

(Applause)

Mr. Clerk, proceed.

STATEMENTS

Hon. Speaker: Hon. Members, under this Order, there are two statements; maybe on your appendix there will be just one but there is another one that I had admitted because of the nature and importance of the statement and the first one is by the Hon. Kiteng'u.

THE FOURTH KICOSCA GAMES, 2018

Hon. Kiteng'u: Thank you, Madam Speaker and Hon. Members. Madam Speaker, I wish to issue Statement on the forthcoming KICOSCA 2018 Games. Members are advised to liaise with the KICOSCA *ad hoc* Secretariat specifically Ms. Loise Kithuka, the Team Leader and register for their interested games. Members are however advised to register for maximum of two games to avoid challenges similar to those that were observed in the previous KICOSCA games with regard to participation in the disciplines.

Information about the training fields, practice materials, captains and any other related information will be provided by the team leaders. With regard to the CASA 2018 games, the County Assembly has been preparing for the KICOSCA games and as a result, KICOSCA will take precedence. However, in the next financial year, the Assembly shall participate in CASA games. Thank you, Madam Speaker.

(Applause)

Hon. Speaker: Thank you, Hon. Kiteng'u. Hon. Members, this is a statement that is a communication from the Member; he is the Chair of the KICOSCA *ad hoc* Committee to prepare for the games and if I may just emphasize on what he has said, Hon. Members, you are aware that we have been participating in games that are called KICOSCA for the County Assemblies, Executive and also Assembly side where going forward, the County Assemblies Forum (CAF) felt that they needed to strengthen a sector of County Assemblies of their own.

That is the one they are calling CASA, this is a matter that has been discussed at the top level of the CAF Governing Council and the feeling is that, the County Assemblies need to de-link from KICOSCA so that they do the games on their own but you notice that Members particularly Machakos County Assembly had been preparing for the KICOSCA games this year, I think in Kisii.

So, the Chairman now is communicating that you continue preparing and you register for the disciplines you want to participate in but going forward, that is next year, you put your

attention and all your energies in the CASA games which are purely for County Assemblies. Thank you.

Next, Hon. Stephen Mwanthi.

IDENTIFICATION OF PROJECTS COVERED BY URBAN DEVELOPMENT GRANTS

Hon. Mwanthi: Thank you, Madam Speaker. Madam Speaker, pursuant to Standing Order 41 (1), I wish to seek a statement on Urban Development Grants of Ksh. 1,18,320,500 allocated to the Machakos County Government on the following issues;

1. Whether public participation was conducted and if it was, was it advertised and maybe the dates that it was advertised.
2. The criteria that was used to identify the projects in different Wards in the Municipalities.

Thank you, Madam Speaker.

(Applause)

Hon. Speaker: Thank you, Hon. Stephen Mwanthi. What I am getting from that Statement being sought by the Member is a matter that the Members may want to ventilate upon because it is a matter of County importance; it is about the Charters that you passed the other day, you approved for Mavoko, Machakos, Tala and Kangundo Municipalities. So, Members may want to ventilate so that the concerns of the Member, Hon. Stephen Mwanthi may be addressed by this House. Hon. Winfred.

Hon. (Ms.) Mutua: Thank you, Madam Speaker. That is a very important and crucial matter in Machakos County because in the past we have seen money coming and the money has been named under a Party. If it the budget we that passed, we saw the Governor reading the budget and saying the *Chap Chap* will initiate the projects.

So it is good to know when the Public Participation was held because so many projects when they are using the County money, it is named to be public money but not *Maendeleo Chap Chap*. Thank you, Madam Speaker.

(Applause)

Hon. Museku: Thank you, Madam Speaker. Madam Speaker, the Statement which has been sought by the Hon. Member is a very important statement which needs urgent attention. I was at home last week and I got a message from the Sub-County Director of Machakos Sub-County at 9.35 a.m. inviting me for an important meeting to discuss County business in the Social Hall including this Charter.

I got that message at 9.35 a.m. to attend a meeting at 12.00 p.m. and I went back to him and I told him that it was belatedly being called and that such a matter is a serious issue which needs to be given proper timelines and guidelines in doing it.

Madam Speaker, this House approved a budget of Ksh. 1.18 billion. That budget was approved by this Assembly so that it can be able to provide the County Government with access to money for three municipalities; Tala/Kangundo, Machakos and Mavoko. Now, Ksh. 1.18 billion is not small money and what we are saying is this; proper public participation must be

done in the entire area---

(Applause)

All the Members, all the residents of those three municipalities must be involved in the determination of which projects are going to under taken in those areas.

(Applause)

We are also aware that we saw an advert which purportedly was calling for establishments of Boards to be able to run these Municipalities. Proper public participation must be done as envisaged in the Constitution.

(Applause)

What we are saying is that, we cannot sit back and have Machakos being given Ksh. 300 million, Kangundo getting over Ksh. 400 million, Mavoko getting over Ksh. 400 million and this Hon. House which approved the budget is not aware of any procedures which have been out in place, which are the phases? What is going to be phase 1, what is going to be entailed in phase 1, how much money is that phase 1 going to cost? Who are the specific stakeholders involved in that?

This Assembly must be furnished with proper details concerning the implementation of those three Charter Municipalities.

(Applause)

That is why I am agreeing that, that statement sought by that Member is very key and unless those issues are provided, we are going to write to the Controller of Budget and indeed to the World Bank who is sponsoring these grants not to disperse any funds until that information has been provided for and approved by this Assembly. Thank you, Madam Speaker.

(Applause)

Hon. Speaker: Thank you, Hon. Museku. Hon. Mitaa.

Hon. Mitaa: Thank you, Madam Speaker for granting me this opportunity. I also want to thank Hon. Stephen Mwanthi for the timely request for that statement. Madam Speaker, I must state that on Tuesday this week, we were called as leaders from Kangundo and Tala and the purpose of the call was to deliberate on the issues to with these funds, that is for Kangundo/Matungulu Municipality.

Madam Speaker, as a Member of that area, I was surprised actually to realize that there is a Committee which has been working on this thing, it has gone ahead, identified projects to be done, it has gone ahead and issued letters on who is supposed to sit in this Committees and upon asking questions, I think the whole forum turned into a political arena and I think this Assembly has the mandate, it has the powers, we have knowledge, we cannot allow people to think on our behalf---

(Applause)

We cannot allow people to make decisions on our behalf; we are here to represent the people. During that session, inasmuch as I tried to ask questions, I cannot say I left that place with any relevant answer. I am happy that my colleague has brought up this matter in this House.

(Applause)

Madam Speaker, in fact, the invitation was for stakeholders meeting but during the presentations, it was indicated as a public participation. I tried to ask the difference between public participation and stakeholders meeting.

Madam Speaker, I think as I always advocate, we have the mandate, and we have the power to bring things to order. I request this Assembly, if possible, to call upon all relevant people, concerned persons and get the relevant, the right answers on how it has allowed issues to reach the stages where they are. Thank you, Madam Speaker.

(Applause)

Hon. Speaker: Thank you, Hon. Mitaa. Hon. Majority Leader, Mark Muendo.

(Applause)

Hon. Muendo: Thank you, Hon. Speaker. This is indeed a serious matter, and I would like to thank the Member for Ekalakala for bringing this Statement. Madam Speaker, it has been a norm in this County, money from outside is channeled and is squandered by the executive without the knowledge of the House.

(Applause)

Madam Speaker, yesterday they were in Athi River; what Deputy Governor is doing is playing politics with that money which is donor money.

(Applause)

There is a procedure when this money comes in, there is a program laid down by the donor, there is a team which must work with the team of the County and there is a timeline and also the phases. This House we have seen Deputy Governor going to Kangundo, going to Athi River with nothing because I was expecting we as from the municipal of Athi River, the four leaders we go sit down, we call our people to bring their ideas on what they want because that is what is supposed is to be done.

What happened yesterday, Madam Speaker, was a group carried to come and boo others and to launch things which were not in program.

(Applause)

Let me say, Madam Speaker, if we continue the way this County has been doing things, this Hon. House is going to be blamed by everybody in the County. Ksh. 1 billion has been launched, the Hon. Members were not aware, when the Deputy Governor was here, he read the budget as if that money is coming from the kitty of Machakos County.....that is donor's money being misused.

Madam Speaker, already the Ksh. 40 million is already released, they are using that money now to do that participation. We do not know this program is going to run up to when, we do not know it is under which Department in this County. Let me say, Madam Speaker, sometimes I get irritated when I see people thinking that we are leaders and we are like fools because I do not see why when we pass that charter here, I stood here to say, let us pass this charter because of the deadline.

Did I know somebody is waiting for that money? We were used like rubber stamps, Madam Speaker, to pass just a Charter then somebody else is going to wait for the money on the other side.

(Applause)

I am saying, as Majority Leader today of this House, I will put *pesa ya Machakos pilipili*; we are not going to allow that anymore.

(Applause)

I said in the morning, all the money coming from the donor we must know, we must be accounting that money because we are given that money by the people who normally contribute that money and it must come here and be used well. So, Madam Speaker, as the Leader in this House, I am going to make sure we are going to write a letter not even tomorrow but today, to the Auditor General not to release any single money unless we get the program; Phase one, Phase two and also the money should be released in phases.

Phase one sewer in Mlolongo, phase two, phase three.....you know, in that order not just to bring it in the County Treasury and put the money there and then they channel it out. We are not going to allow that.

(Applause)

So, Madam Speaker, I think the Committee which is supposed to be dealing with that kind of money should do it and move very fast. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Majority Leader Mark Muendo. Hon. Hellen Matee.

Hon. (Ms.) Ndeti: Thank you, Madam Speaker. I thought when we were passing this money for the Charter, we read that there is a procedure that must be followed. Public participation, we must have Boards formed and vetted by this House.

We must have a Secretariat to manage that money. It is very annoying to hear that the money has already been utilized. I think it is the high time we involved the Anti-Corruption because we must learn to do things the right way.

(Applause)

Hon. Speaker: She has finished. The Hon. Member has finished contributing.

(Laughter)

Hon. Mutiso.

Hon. P.J. Mutiso: Thank you, Madam Speaker. I thank the Hon. Member for Ekalakala to have come up with this good statement. My worry is, it was on a Friday when I was called at around 10.05 a.m. being informed of the public participation which was to be done at the Social Hall. I was not aware about it but my worry is, and I have never seen that thing print in media or rather in local media; I have never heard about it.

(Applause)

I know that is a procedure, it is a must if you are doing any public participation you pass through print media and local media. If the leaders of this House are not aware about it, how about the local people who are outside there? We are the people to mobilize our people, come up with the project which has been done but we were not aware about it.

So, Madam Speaker, what I want to say is that, we want to reverse whatever they have done because we are the people to come up with the people who are supposed to be there. Nobody knows about my people in Machakos Central Ward, I know who is who and where. So, I am supposed to give out Members to them and then the Members come up with a person who will be the Chairman, who will head that Board or that Committee.

(Applause)

So, I think Members of this House must be serious on such issues because for example, in Machakos Town, it is for all of us; not even people of Machakos County, all Kenyans belong here with Machakos being the first City of Kenya.

(Applause)

So, I am not happy when I am not happy when I hear that there were some people who were seated somewhere and come up with projects which are supposed to be done in my Ward. So Madam Speaker, we want to reverse this process that they have gone through so that we may come up with a good idea and things that will be done in this County because---

Hon. Speaker: Hon. Members, please put your hands down.

Hon. P.J. Mutiso: It is not only in Machakos, even Mua....I think Machakos---

Hon. Speaker: Hon. Mutiso, I am speaking.

Hon. P.J. Mutiso: Yes, I am sorry.

Hon. Speaker: I appreciate that you are hosting all of us here so just be listening. I am saying when a Member is contributing let me not see other Members putting up their hands. I have eyes to see when the Member finishes then I will look and I give you an opportunity. You do not put up your hands when a Member is still on their feet.

(Applause)

Hon. P.J. Mutiso: Thank you, for your protection. What I want to say is that, Machakos Municipal is not here Machakos Town; it is 519 kilometers squared, that is what we call Machakos Municipal. So, Members from Mua, from Ngelani, you must support this idea of reversing whatever was done by that other side. *Wanajuana*, it is not a laughing matter. Thank you, Madam Speaker.

(Laughter)

Hon. Speaker: When you start in English also finish in English. Do not include Kiswahili. Hon. Kisila.

Hon. Kisila: Madam Speaker, I am sorry I was not here when the Charter was being passed but I think the Member is in order to ask for that information based on the fact that this is World Bank money.

(Applause)

We need to be careful between ourselves and the Assembly not to fight and lose that money. So, we need to sit down together and ensure the guidelines put by the World Bank are followed. I am a very strong proponent of public participation.

Madam Speaker, you came to my Ward and you saw what public participation is including I have got Village Management Committees in place, I have got some drifts which are being done and the *mamas* who are managing those drifts are old *mamas* who know a sample of Y8 what it means and the contractor must put Y8 in that bridge.

So, I do not think we are differing and I think obvious that report was committed to a Committee and I think Madam Speaker---

Hon. Speaker: Point of order Hon. Koki.

(Applause)

Hon. (Ms.) C. Koki: I think it is quite in order for the Hon. Member, Makutano/Mwala to note that, we are not differing in any way; we are only performing our role as MCAs of oversight. Thank you, Madam Speaker.

Hon. Speaker: Hon. Brian Kisila?

Hon. Kisila: Point of order noted. I was just saying that I am trying to say that we need to ensure that there is harmony in the execution of this Ksh. 1.18 billion money and it needs to be well planned and if the World Bank said there must be public participation...what is public participation? Public participation is not calling stakeholders meeting; public participation, Members, is from *mashinani*, from the village management committees.

(Applause)

Please, it is important that we understand what is and the reason why we will go home or we will stay here is the way we are going to ensure we have functional village management committees guiding us. I am a very strong advocate and I am inviting members to come and see what village management committees can actually do.

You will be impressed by an old *mama* managing a project for you when you are in the Assembly. So, I support the motion and I think we should work together with the executive and ensure that the information being sought has been granted. Thank you, Madam Speaker.

(Applause)

Hon. Speaker: Thank you, Hon. Kisila, Hon. Minority Leader?

Hon. Kamitu: Thank you very much Madam Speaker. Madam Speaker, as a member of this Assembly, let me talk of sentiments and talk of a committee that I belong to that is committee on environment. Madam Speaker, as you normally advise us there are some areas that we cannot be blind. Blind, why? Madam Speaker, this Charter was brought into this House and I want Members, I want us to approach this issue because it is a very important issue with very sober minds.

Madam Speaker, the Charter was brought into this House and on that regard a committee which is a representative of other members, committee for environment were called in and we were taken on a retreat on the same issue. Hon. Members, I am not standing to argue or to put as if I am against this Charter, it is a very important Charter for the Machakos County, for the people of Machakos and it is on this strength that Madam Speaker, that I am standing saying that there is a letter which communicated the statement that has been brought by Hon. Stephen.

A good Statement that Hon. Members are supposed to be furnished with, the way and the right direction that we are supposed to take. So, as one of the committee members of this House, the committee on environment we went out on a retreat and we came out with Hon. Members who are here who are supposed to furnish this Hon. House---

Hon. Speaker: Hon. Mueni what are you saying? Point of information? Hon. Minority Leader, allow yourself to be informed by Hon. Mueni.

(Laughter)

Hon. Mueni, go ahead

Hon. (Ms.) Mueni: Thank you, Madam Speaker. I want to inform the Minority Leader that even if you were called for a retreat, we were not called.

(Laughter)

So, the Mheshimiwa is very right to bring the Statement so that even the people down there in the ground can understand because we are asked by the people; who is working here, is it the Governor, is it the National Assembly or is it what? So, Minority Leader, let us all understand and belong to one group with you. So keep quiet and let the people be.

(Laughter)

Hon. Speaker: Hon. Mueni, you do not have that mandate to tell a Member to keep quiet.

Hon. (Ms.) Mueni: I apologize.

Hon. Speaker: Thank you. Hon. Minority Leader, please finish.

(Laughter)

Order, Members!

Hon. Kamitu: Thank you, Hon. Speaker. Let me continue; as I was saying, it is very important that we approach this issue because it is a very important issue with very sober minds. Madam Speaker, as I continue and I do not want to correct Hon. Mueni in regard that she was not called in.

I am clearly stating that a committee belonging to this House was summoned and we went to a retreat to discuss the subject matter that is the statement that was brought here honorably by our Hon. Stephen Mwanthi. So, Hon. Speaker, on that strength---

Hon. Speaker: Hon. Minority Leader, allow me also to inform you. The retreat by the lands and environment committee is the report that was tabled before the House and the house adopted the report in time for the Charters to be given to those three municipalities. So, if I understand the Member Hon. Stephen where he is coming from is now from that adoption forwards; not backwards.

(Applause)

So, when you say the lands committee was called for a retreat and brought a report here it is not an issue; we have passed that stage. We are at the stage of going forward to implement the use of the money. So that is where we are.

(Applause)

Hon. Kamitu: Agreed, Madam Speaker, I stand to be guided and thanks because we are reading on the same line. So, my humble request, Madam Speaker, as I stand here all is not lost because the questions and the Statement that has been made here is very relevant to this House. So, my humble appeal is that if there was anything that was omitted, even there were any directions or procedures that were omitted, as I said,, all is not lost, this House is ready to listen for us to follow all the procedures so that Members can be furnished with the right direction.

Otherwise, we are all together as a team of this House and for the benefit of the three municipalities because, Madam Speaker, as a committee member we were really given the information, the procedures and the evaluation team from the World Bank. So, in that regard Madam Speaker---

Hon. Speaker: I will not accept that point of correction. Allow the member to finalize his submissions.

Hon. Kamitu: So, Madam Speaker, as I said and I do not want to repeat myself, if there is anything that Members feel that has not...as I said all is not lost, we are here to endeavor to follow the exhibition so that all the Members of this House will be satisfied for the benefit of those three municipalities. Thank you, Madam Speaker.

Hon. Speaker: Hon. Maitha.

Hon. Maitha: Thank you, Madam Speaker. I want to support the sentiment of the member who had requested for this statement.

(Applause)

In fact, Madam. Speaker, like what many of the members are saying we all got late information of a meeting to be held in our areas by the executive. It is fortunate that we attended those meetings but whatever was there it was not public participation; it was something to be told, this will be done and that one will be done.

What I am asking, Madam Speaker, the executive and everybody; if this money requires public participation, which is mandatory, let us all be involved and talk of the issues and also talk about the projects which should be undertaken in those municipalities. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Maitha. Hon. Kieti?

Hon. Kieti: Thank you, Madam Speaker. I want to say that I am a member of that committee for environment and lands and as we brought the report for the Charter in the house it was in good faith because we wanted the charter to be passed so that we do not lose that grant from World Bank but it is my humble request that the guidelines that were given on the Charter concerning the implementation of the whole process should be adopted as we adopted it in this Hon. House so that the World Bank does not read fishy issues in the whole business because if there are any grey areas within the implementation of this grant, I know we are likely to lose any other grant that will be forthcoming because this is a grant as we were told which is likely to come on our side for the next five or so years.

So, it is my humble request that the executive should read the mood of the House and adopt the Charter as it is so that if there are areas where we need public participation as it is contained and as the Hon. Members are demanding for, it is done and then the money is disbursed the way it appeared within the charter.

When we were taken through the process, it was very clear if it is Machakos Municipality it was very clear on the areas that will be covered by Machakos Municipality. The wards to be covered like Mua, Machakos Central, Mumbuthi North, Kalama, Kiima Kimwe and if it is Kangundo it was also very clear on the area of coverage and also Athi River.

So, we should not hear cases where the money has been allocated in one ward or two wards within the municipalities because by so doing we are compromising the Charter that we passed so that we get the grant. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Kieti. Hon. Margaret?

Hon. (Ms.) Mwikali: Thank you, Madam Speaker. I thank you and Hon. Members for empathizing with us and standing with our family for the demise of my father. Now I wish to take this opportunity to thank and congratulate the Member Hon. Stephen for bringing this important statement in this House.

Now, Madam Speaker, we have heard every sentiment and the mood of these Members that if there has been no public participation, then it is our request and mostly so that this monies should be frozen and the Auditor General informed after proper procedures have been adhered to and the procedures must be proper and serious public participation because we are here for that reason.

We are not here to just have our executive now implement; we are supposed to be part and parcel our people on the ground must be part and parcel of that public participation. So, Madam Speaker, I am here to suggest that the money should be frozen properly; frozen until we have proper public participation. Thank you, Hon. Speaker.

Hon. Speaker: Hon. Betty.

Hon. (Ms.) B. Nzioki: Thank you, Madam Speaker. First, I want to thank Hon. Stephen Mwanthi for this Statement because, Madam Speaker, this is a house of law and I think each and every one of us has a mandate especially to our electorates and we are answerable to our electorates.

Madam Speaker, this is not a request; it is a must that the executive has to follow the procedures on the layout on how these monies and the projects on how they are supposed to be done to the people.

(Applause)

Madam Speaker, it is too unfair when a Member of the County Assembly who is representing his people and the people have faith in him that they are not fully involved in the whole thing and in the whole procedure. You also find that, Madam Speaker, when these projects are being done, there are other posts that are being put besides the projects. For example you find that it is being written *Maendeleo Chap Chap* while this is a World Bank project that is funding

the people.

(Applause)

Madam Speaker, I want to request that the executive to follow the procedures and the rules of everything to be done the way it is supposed to be done. Thank you, Madam Speaker.

Hon. Speaker: Hon. Members, this is not a motion that you were debating. It is a very important matter that was brought to you, to this House by way of a Statement by the Hon. Stephen Mwanthi and if I am hearing the Members, it is that they are asking for transparency in the implementation of the project and every Member here would agree with that.

(Applause)

So, what we need to do Hon. Members, I am going to refer this matter to the joint committee on environment, energy, lands and natural resources and trade economic, planning and industrialization and because of the urgency of the matter, the joint committee should bring a report to this House urgently on the 25th of July, 2018 at 10 a.m.

Hon. Members, so let us have a report from that particular joint committee. It is going to liaise with the executive and the purpose is to ensure transparency in the implementation of the matter and remember every Member her is talking about public participation.

So, any member who has an issue to submit please appear before that committee and the committee is at liberty to summon whichever CEC or CO in charge of that department and interrogate and bring a report to this House. Thank you.

(Applause)

Mr. Clerk, proceed

MOTION

VETTING OF SEVEN NOMINEES FOR APPOINTMENT AS COUNTY EXECUTIVE COMMITTEE MEMBERS

Hon. Speaker: Hon. Members under this order we have one business as per appendix by the Hon. Brian Kisila. Point of order?

Hon. Mulatya: I stand under Standing Order---

Hon. Speaker: Just a moment.

Hon. Mulatya: Standing Order 49(b) on adjournment of motion and debate without notice seeking that debate on that motion be adjourned to a later date preferably after the outcome of the appeal by His Excellency Dr. Alfred Mutua the Governor Machakos in the Supreme Court of Kenya in the Election Appeal No. 11 and 14 of 2018 consolidated which arose from the Court of Appeal Election Petition No. 18 of 2018 which had nullified the election of the Governor.

Madam Speaker, until that time, nobody knows who will be on that seat since there is a possibility of re-election, elections being held afresh; the position, in this debate we are going to debate are personal to that office. The Supreme Court has already given dates for this process of appeal and it will be prudent for this Hon. House to know the outcome first. Thank you, Madam Speaker.

Hon. Speaker: Hon. Members, I am now left for a word; I personally chaired that committee on appointments. Hon. Mulatya, you are seeking that we adjourn the debate on the report? What are the reasons?

Hon. Mulatya: Because, as we all know, Madam Speaker, that we have a court case in the Supreme Court and these are public offices and we have been patient for one good year waiting for these nominees to come in this House. I do not see what the hurry is for; to wait just for three weeks, Madam Speaker.

Hon. Speaker: Point of order Hon. Maitha?

Hon. Maitha: Madam Speaker, the appointment of the CECs and the case which is in the court for Governor Mutua and others are not relevant to this case.

(Applause)

Because even if we go through the list and they are appointed, whoever will come after the election, let us assume that Mutua will lose the case, that person has a mandate to also appoint his own people.

Hon. Speaker: Hon. Maitha you said it is a point of order; I thought you were talking about a procedure. Now what you have said is debating his motion so if you want to ventilate on the motion, let me know but not just saying point of order and when I am expecting you to tell us we are out of order, then you go into the merits of the motion. Hon. Members, what is your views can we hear the views of the members. Hon. Ndawa.

Hon. Ndawa: Thank you, Madam Speaker---

Hon. Speaker: On the motion to adjourn which is given without notice?

Hon. Ndawa: Yes, Madam Speaker, I am standing to oppose the motion because this report is long overdue. Madam Speaker, members of this County Assembly have been requesting the County Executive to bring names to be vetted and that is exactly what was done and we are in another stage. Madam Speaker, you have confirmed that you chaired the meeting or you chaired the committee that went through or which was looking on the nominees and---

Hon. Speaker: Hon. Ndawa, proceed

Hon. Ndawa: Okay, thank you, Madam Speaker. I am saying you have confirmed to us that you chaired the committee which was working on the issue of the nominees.

Hon. Speaker: Up to late last night.

Hon. Ndawa: Upto late last night and I believe Madam Speaker, most of the members did not attend the plenary yesterday morning and afternoon because they were working on the same report. So, Madam Speaker, delaying the discussion of the report will also jeopardize the affairs of this County of Machakos.

Madam Speaker, the issue before court has nothing to do with the report. The court will do its part and we do our part so Madam Speaker, I would oppose the application brought about by Hon. Mulatya on the grounds that---

Hon. Speaker: Hon. Mulatya, hold on and let the Hon. Member finish.

Hon. Ndawa: Yes, kindly give me protection Madam Speaker.

(Laughter)

I can see today things are not going the way they are supposed to be going; it is evident but I will request this Hon. House kindly let us do what brought us to this House. We were elected by the electorate to come and do their work, so please, let us have the report, we discuss it so that we can have CECs in office so that Machakos can go ahead.

If another Governor comes, he or she is at liberty to bring other CECs so we cannot hold until the matter is determined because we cannot know when the matter will be determined. Thank you, Madam Speaker.

Hon. Speaker: The Hon. Member has finished his submissions, Hon. Kieti. Hon. Ikusya.

Hon. Kaloki: Thank you, Madam Speaker. I stand here this afternoon to oppose the motion that has just been tabled by Hon. Mulatya to postpone the presentation of the report from the committee on appointments. Madam Speaker, I want to say that this County Assembly has waited for over a year to get these CECs and it had become a chorus every other time we stand here, we want the CECs to be brought.

The same members have been asking for the CECs to be brought to this House and I am surprised to hear that now that our committee on appointments which has spent sleepless nights, worked tirelessly to come up with a very good report up to yesterday late in the evening, the same report and also after spending quality time and finances of this County Assembly the same report is being postponed by a Hon. Member of this House.

I want to say this it is almost one year since we were elected; if this motion was to be pushed forward, then it means one year is gone. By the time we do not even know when the cases will be concluded, it means another almost five, six months to come; almost one and a half years wasted for the people of Machakos County. The other day we just got rumors that the budget that we passed the other day has already been assented to by His Excellency the Governor of this County.

When shall we ever get to business and implement and also work for the people who elected us? We might become an Assembly that is always busy in pushing things forward; backward you know that kind of thing. Kindly, members, if we know what and I know and I am

sure we know what brought us here, let us get down to business and have this report tabled, we look at it and we pass the CECs so that we can get down to business and implement the budget that has just been assented to. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Ikusya. Hon. Minority Leader.

Hon. Kamitu: Thank you, very much, Hon. Speaker. Madam Speaker, you have put it right that you are the chairperson of the appointments committee and it is on this regard that even I am sure during your recommendation; you are going to tell the Hon. Members the way we spent sleepless nights trying to write a report for the purpose of this Hon. House.

Madam Speaker, I do not want to repeat what Hon. Ikusya has said; it is true that all these Hon. Members have been requesting, we have been seeking to have the CECs in place in the offices so that we can move forward and when all the efforts have been made, we are trying to pull ourselves back. I would urge and request this Hon. House, ask my dear brother Hon. Mulatya to just say we continue because there is need for us to have CECs in place so that in case the budget is going to be passed, there will be officers where we shall be having CECs who will be questioned in regard to the budget policies.

As we are talking, it is true that we have a government in place, Madam Speaker. We cannot cheat ourselves that we do not have a government in place. We have our Governor so in that regard Madam Speaker, I am not seeing any reason why we should adjourn this meeting because we are elected members. A committee in that regard mandated to go and discuss the CECs whereby as I said Madam Speaker, you are the chairperson of that committee and we did all the best we could so that we may bring the CECs so that on approval of this House we may be seen to be a working Hon. Assembly of Machakos, the Second Assembly and you want to drive us back.

Madam Speaker, I seek your guidance in this regard on how to move forward; we cannot do backward movements. Thank you, Madam Speaker.

(Laughter)

Hon. Speaker: Hon. Cosmus Masesi?

Hon. Masesi: Thank you, Madam Speaker. Madam Speaker, I stand to support the adjournment of the report. Hearing the sentiments of the Member Tala Ward, he has assured us there is a sitting Governor and so we want to believe and they have been telling us that there is no vacuum; if there is no vacuum I don't see the hurry. As Hon. Mulatya has argued, let us be patient and wait for the outcome of the court case. Madam Speaker, we have always been assured that when the new CECs come, they will take over from the current CEC who are already in officer.

I want to believe that from where we sit, we don't know the contents of the report, we have no malice on the report; what we are asking is to be patient up to the conclusion of the court case. Thank you, Madam Speaker.

Hon. Speaker: Hon. Katumo.

Hon. Katumo: Thank you Hon. Speaker. I support my Majority Whip Hon. Mulatya on the motion on adjournment. Madam Speaker, we have been here for long and the Bible says in the Book of Isaiah; those who wait upon the Lord patiently---

Maybe the court case before us, knowing for sure it is of county importance, the direction it will take will move us forward or backward; but I know it has been there and the delay is a blessing in disguise. Therefore, if we have been waiting for that long, the minority side keep on telling us let us wait; now we are telling them, just wait for a moment.

(Laughter)

You have jokingly been telling us to wait; we are now telling you to just wait and it is going to happen. What we are requesting is that we have something before us which is very important and we want to see the conclusion of the same. So, I call on Members as we support this motion, that we also be patient. Thank you.

Hon. Speaker: Thank you, Hon. Katumo. Hon. Kiteng'u.

Hon. Kiteng'u: Thank you, Madam Speaker. I would like to support the adjournment of the report and I would like to advise the House that the House is not failing the report, it is such seeking for three weeks or a month, waiting for Supreme Court to give its verdict on the Governorship of Machakos County, knowing that this House has been patiently and honorably been waiting for the CECs and I have heard Hon. Kamitu issuing his concerns that in Machakos County, we have a Governor; yes we do have, we accept, but Hon. Mulatya is seeking for adjournment so that we can have a clarity because it is of importance to the entire county of Machakos.

We need to read from the same page. We just passed a budget of Ksh. 12.2 billion and when the county is on toes, or it is not comfortable because of the case in court, we are risking. We have just discussed a statement where the Executive has already consuming the entire grant of Ksh. 1 billion from World Bank.

Hon. Speaker: Point of order, Hon. Kiteng'u.

Hon. Kamitu: Madam Speaker on a very sincere note; is it in order for an Hon. Member to say that the one billion has been consumed; it is a charter and that money has not been given by the World Bank.

Hon. Speaker: The money is not yet consumed; that is what you are being informed Hon. Kiteng'u. Hon. Kamitu, please resume your seat.

(Laughter)

Hon. Kiteng'u: Madam Speaker, I stand guided but what I meant is that the statement is showing that the money is about to start being consumed. As a Hon. House, we were elected to represent the people and I must say that the same issue of the CECs, we had five who were brought here before and I must attach that they were rejected by this House and right now we have three of them who are still in the offices and we are going to hold the report because in all

those ministries, we have the CECs who are acting; they will still continue acting so you don't have to worry.

The House should not worry because the government is still in place but we wait for the Supreme Court to issue its final verdict. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Kiteng'u. Hon. Muthoka.

Hon. Muthoka: Thank you, Madam Speaker. Nobody doubts the ability of the committee on appointments, you have done a good job; we have not discussed anything, we are just saying, set aside this thing until we substantiate who is going to be the Governor of Machakos County. Who is the appointing authority of these names; if his election has been put in question, it is like taking a doctor who was been questioned on his capability to go and operate a patient.

(Laughter)

So, there is no need of us to hurry; just wait because the Supreme Court said on 6th (sic) we are going to know what is going to happen and then you bring back the report. Thank you, Madam Speaker.

Hon. Speaker: Hon. Angela.

Hon. (Ms.) Munyasya: Thank you, Madam Speaker. I support the motion that we postpone the presentation of the Committee on Appointment report. Being a compassionate House, it will not be in order for us to approve the appointment of a CEC only for them to be turned down after a few months because we have a new Governor. So, in that regard, I think it will be in order to postpone the appointments, the House as an able participation of Hon Members who are capable, able and willing to carry out their mandate.

We have CECs in their acting capacity with who we can continue working with up to a point where they can be changed. So, Hon. Speaker, I wish to support the motion that we postpone the Committee of Appointments report.

Hon. Speaker: Thank you, Hon Angela. Hon. Museku.

Hon. Museku: Thank you Madam Speaker. I support that motion for adjourning the motion being tabled by Hon. Kisila from the Committee of Appointments. As various Members have put it here, since we came into this Assembly in September 2017, the House has been seeking to be given CECs; we were brought five out 10, we vetted them, they did not meet the criteria and we took back the report.

They continued staying in office even after the Assembly said they should not be in office; we continued requesting His Excellency the Governor to provide us with CECs at a time of peace when there was no Supreme Court, no court issue, when there was no nothing (??) and he refused to bring those CECs---

Hon. Speaker: I am hoping Hon. Museku, you are not saying that we are at time of war?

Hon. Museku: No, Madam Speaker; it is a paraphrase, a symbolic phrase which means that at a time when there were no issues in court.

Hon. Speaker: Okay, I hear you.

Hon. Museku: I meant at a time when we did not have any issue in court. Therefore, if we all recall back when President Uhuru Kenyatta; when the Supreme Court nullified his elections and they were supposed to go back again and do elections, even before the nullification of the elections, the President could not appoint a cabinet until such a time when the Supreme Court determined his case.

(Applause)

We are in a similar situation here; whereby the case of the governorship of this county is before the Supreme Court and the Supreme Court has given proper guidelines and timelines; we know at the very most, it is going to be a month and half before we know the outcome of the Supreme Court. Why would we then, as an Assembly, not wait if we have waited from September, 2017?

Waiting for another one month is also human for the people whom you want to appoint because it becomes inhuman to appoint someone today as a CEC and give him a portfolio, he leaves whatever he is doing and sits on that seat and one month down the line, you are telling the person that he is jobless, if the Supreme Court rules otherwise.

So, prudence means that even for their own sake, let us withhold the report. When the case is determined, then we shall be able to debate the report and we give them an appointment if they pass. We give them an appointment that is holding without giving somebody an appointment, they leave whatever they are doing and then we take them back in a month's time because I believe we will be taking them back again pretty soon. Thank you, Madam Speaker.

(Applause)

Hon. Speaker: Thank you, Hon. Museku. Hon. Caleb.

Hon. Mule: Thank you Madam Speaker for giving me this chance to contribute. On the proposal to defer this report, I do not support because we do not know when the court case will be determined. Hon. Mulatya is talking as if he knows it will be determined two months, next month or so and if it is determined this year, what about by elections; by-elections will be done next year---

Hon. Mulatya: Point of information, Madam Speaker.

Hon. Speaker: Hon. Caleb, please resume your seat briefly; I am allowing the point of information.

Hon. Mulatya: Thank you, Madam Speaker. I want to inform the Hon. Member Caleb that it is in public domain and the court dates are well set. So we know what is happening in the case and we are not in this Assembly to pretend.

Hon. Kaloki: Point of information.

Hon. Speaker: A point of information on information? Hon. Caleb, please proceed.

Hon. Mule: Thank you, Madam Speaker. The proposal for Hon. Mulatya to postpone this report and not to move on with the approval of the CEC, I can call it as a contempt of court because we have against the Supreme Court stay orders saying that Governor Mutua stays in office. So, if we start saying that we are waiting for another Governor to come and appoint CECs, that is a contempt of court, according to me---

Hon. Speaker: It is not contempt of court because...Hon. Caleb, let me inform you, and I will inform you from an informed point of view, I am a lawyer. It is not about challenging the sitting of His Excellency the Governor Dr. Alfred Mutua, it is about the appointment of CECs. So, please don't stretch the expression of contempt of court unnecessarily.

Hon. Mule: Madam Speaker, if I understand very well about stay orders, it means the position stay as it is.

Hon. Speaker: I have given you the directions Hon. Caleb; can you proceed with your submissions.

Hon. Mule: Okay, Madam Speaker. Governor Mutua is a full Governor of Machakos County; that is why he assented to the budget of this County. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Caleb. Hon. Nziva.

Hon. (Ms.) Nziva: Thank you, Madam Speaker and Members present. I would wish to oppose the motion that has been moved by Hon. Mulatya who is the Majority Whip, reason being that when Hon. Kamitu stood here some weeks back, he asked for some extension for this motion to be moved and we agreed that on 17th July, 2018 the motion is supposed to be moved today. I am a Member of the HBC and we also balloted the same business.

(Applause)

The committee of appointments has done a wonderful job; I believe, and they have spent sleepless nights to make sure the report gets in the House today and they have spent government money to do the same.

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

Hon. Masesi: I want to inform the Hon. Member that all those committees are answerable to this Hon. House. Thank you, Madam Speaker.

Hon. Speaker: Hon. Nziva.

Hon. (Ms.) Nziva: Thank you, Madam Speaker. I also believe there was a case in court when we set, as a HBC, to ballot the same. So, I wonder; has the case just come in yesterday? Remember the people of Machakos are watching

(Applause)

I believe---

(Hon. Nziva touched the gooseneck microphone)

Hon. Speaker: Even as you compliment the Member, please make sure you don't overdo it. Firstly, you are even hurting yourself then you could even break the property of the Assembly. Just appreciate them in a reasonable manner.

Hon. (Ms.) Nziva: Okay Madam Speaker. You know we are politicians and we usually stress things when we are talking. Sorry for that.

Hon. Speaker: You can emphasize in a reasonable manner.

Hon. (Ms.) Nziva: Okay, Madam Speaker. Again, I think there is freedom to change the cabinet, if another Governor comes in there is a provision of that law. A cabinet can be changed when that time comes and again do we wait until the case is finalized so that CECs are in place?

(Loud consultations)

Hon. Speaker: Members, unless you are contributing, please don't answer.

Hon. (Ms.) Nziva: I don't want to be answered. So, Madam Speaker, I totally oppose this motion and ask the House to move on and pass this report so that Machakos County can move on. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Nziva. Hon. Johana.

Hon. Munyaio: Thank you Madam Speaker. I oppose the motion that we adjourn the presentation of the report on Committee on Appointments because we are not talking of the appointment and as it was put by one of our Hon. Members, the appointment was done when the time was peaceful as it was put a while ago. The communication was done in this Hon House and the same business was committed to the relevant committee; then the committee retreated and spent all the time and resources to come with the report.

I cannot understand why we waited up to today and decided to mix issues because the court is doing their part, we know the set dates and the submissions which are awaited for presentations in the court; that has nothing to do with any ruling.

We have a case of Wajir which is also going through a similar situation and it was the first case and yet up to today, a decision has not been arrived at. Are we telling Machakos people that we are going to keep them in darkness without a cabinet because that has been the cry all along in this House that we lack the---

Hon Speaker: Point of information, Hon. Johanna. You are looking at me like you don't want to be informed; allow yourself to be informed. Hon. Mulatya.

Hon. Mulatya: Madam Speaker I would like to inform the Hon. Member that these offices are not vacant, these CECs are still in those offices in acting capacity and services are still being given to the people of Machakos. So, we are just waiting patiently because the matter in court is political---

Hon. Speaker: Hon. Mulatya, a point of information is never long. You don't go making a whole book on a point of information. So, you need to be brief.

Hon. Mulatya: I think he has been informed.

Hon. Speaker: Hon. Johanna, please continue.

Hon. Munyao: Thank you, Madam Speaker. My concern was because we have been talking of having no people we can hold accountable and at some point we also discussed about us not being able to pass the budget because we were not very sure of whom we are handing over the budget to; then after assenting to the budget just a day ago, we assemble here to say that we don't want to approve a report which is presenting the implementers of the just assented budget.

So, I am shocked and I wish to just stop there to absorb the shock because it is very serious.

(Laughter)

Hon. Speaker: Hon. Kalumu.

Hon. Kalumu: Thank you, Madam Speaker for granting me this chance to contribute on this matter. The motion for adjournment of the report, I totally support it because the bearers of those offices are subject to the occupant of the Governorship of Machakos County and when we say we hold on; we mean we are not rejecting the report.

(Applause)

We are just telling them to hold for the case to be determined so that we don't have.....if the case comes otherwise because us as Hon. Members are not judges, we don't know the outcome; so why not wait. We have waited for nine months, we have requested for those for long, we have said we don't have people we can put the blame on if the county money is misused, but now it has come a time where the report is ready; why do we put people in offices and then after two months we tell them vacate the office; they will take us to court. We will be subjected as a county to---

Hon. Speaker: Point of order, Hon. Kalumu.

Hon. Kamitu: Thank you, Madam Speaker. Is the Hon. Member properly laying his statement when he is talking of him being aware that CECs are supposed to be in place and like this time the budget has been assented by the Governor; is he in order to refuse the CECs report to be approved by this House so that as an MCA, he can be seen accountable---

Hon. Speaker: Hon. Kamitu, that was not a point of order; you are submitting and you had already submitted and the Hon. Member is within his right to give his views just like every other Member. So, Hon. Kalumu, please finalize.

Hon. Kalumu: Thank you, Madam Speaker, for your protection.

Hon. Speaker: You were not being fought physically; I didn't give any protection.

(Laughter)

Hon. Kalumu: I am saying that we are not rejecting the report; even now we have been here for the last one year and those acting CECs can continue up to the time when we feel it is now okay to pass the report and put people in those offices. For example, who can we put to account for the nine months where those other CECs who are in place now? That is a good question.

(Laughter)

The offices are still being held by people; are those not people?

Hon. Munyao: Point of information.

Hon. Speaker: I will not allow that, let the Member finish. You even heard him say it is a good question by himself. Please finish your submission, Hon. Kalumu.

Hon. Kalumu: We are telling this House that we are also subject to the matter because before the case was there, we requested for those CECs to be in place but the Executive took its time; we don't know what the delay was for and an explanation was not given---

Hon. Speaker: Please stick to the motion at hand.

Hon. Kalumu: Now that the time has come that there is a case pending in court and it is subject to the Governorship and those subjects, there is interest; you can't say when in court, I am not yet declared the as MCA of Kithimani, for example; somebody can appoint my employees in office to work for me while I am not yet declared as the MCA.

So, let us hold on for a time, maybe we don't know the time but let us hold on for the time that the case will be determined. Thank you, Madam Speaker.

Hon. Speaker: Hon. Members, let me just make a comment on this matter. Hon. Kisila, I will express your position. Hon. Members, the matter at hand which you are asking debate be postponed is a matter that was handled by the Appointments Committee and I sit in that

committee. Hon. Kisila is one of the Members. Hon Members, we have done our work; we brought a report to this House and it is the business of the House from now henceforth.

What you want to do with the report is your own issue but I must give you; I must give you some guidelines. The issue of CECs is personal to the Governor and what that means is that any Governor who is in office has the option of deciding who he or she is to serve, that is the position of the law. Hon. Members, the other issue you need to ask yourselves, as you decide on this matter, is whether if you postpone debate on this matter if there are going to be vacancies in the executive. That is another matter you need to think about as you go ahead to make a decision on this matter.

Hon. Members, there is also the issue of timelines, time lines in the law. The Public Appointments (County Assemblies Approvals) Act Section 9 requires the committee to bring the report to the House within 21 days and then the House is to debate like you came today to debate that report. Then after you have passed your resolution, after you have decided which way to go, then the Clerk is to communicate your decision to the executive within 14 days.

What you notice from that is there is no timeline that the Assembly has been given to debate and finalize on the issue. It is up to you to decide what reasonable period you need to do and in our position as the committee, is to say that we have done our work; if you want to stay with the report for eternity, it is up to you.

I have given you results, I have given you the position as to the CECs in relation to the Governor, I have given you the position on vacancies in the executive and it is for you as a House to make a decision. Thank you, Hon. Members.

And on that basis, I will put the question.

(That as proposed by the Hon. Member Mulatya, the debate on the report by the Appointments committee, the second report on the committee on appointments of the Second Assembly on the vetting of nominees for appointment to the position of County Executive Committee Member be postponed from today and he came under Standing Order 49(b))

DIVISION

(Question put and the House divided)

(Several Members stood in their places)

Alright order, order members! What that means is that we are going on a division. Mr. Clerk, you are going to count? Please Hon. Members, resume your seats, I want one Clerk Assistant who is going to count the 'yes' and another Clerk Assistant who is going to count the noes. Hon. Members, just a moment; we are going to ring the bell, right so that if any member is outside and wants to come and vote, should come in. Serjeant at Arms, please ring the bell 10 minutes.

(Division Bell rung for 10 minutes)

Hon, Members, the 10 minutes have expired and if you look at Standing Order 66, we are supposed to do an electronic voting but we do not have electronic voting here where you will just

buzz yes or no. So, we still have to use manual for yes or no and that is at the point we will have the Clerk Assistants, one clerk on the side of yes, one on the side of no.

That is assumed to be electronic voting under Standing Order 66. Remember you are voting yes to a postponement of the debate of the second committee on appointments on the CECs nomination and a no if you do not want a postponement.

(Question carried by 31 votes to 18)

Hon. Members, at this point because the report you are holding is still a business of the House, I am asking that each member submits the reports that you are holding. Please give it to that Serjeant at Arms, each member must give their report. Hon. Ndawa, I need that report, let it come here. Each member must give the report back. The Serjeant at Arms must ensure that all the reports are back. The Speaker is still---

Hon. Mitaa: Hon. Phoebe has not given hers please.

Hon. Speaker: Hon. Phoebe, please give the report that you have.

(Loud consultations)

Hon. Phoebe, give the report that you have. Hon. Members, Hon. Phoebe, where is your report?

(Loud consultations)

You are not going to scream; Hon. Phoebe Koki, sit down. Every member had a report; let us know how many reports are available.

(Serjeant at Arms collected the reports)

Order, Hon. Members! Hon. Mutiso what is the issue?

(Hon. P.J. Mutiso spoke off the record)

You are consulting with your hands up? Hon. Ngunga had his report as well?

Hon. Members: Yes.

Hon. Speaker: He left. Mr. Clerk, you will follow for the reports with Hon. Ngunga, he left it? It was collected? Thank you. Whose phone is that? Sergeant at Arms---

(Laughter)

If you are not to submit your phones to the Sergeant at Arms, just let me know. Whose phone is it? Alright. Thank you, Hon. Minority Leader, just put the phone here. Hon. Members, we have a business which we have not concluded; the reports are collected if there is any issue, if

there is any leakage of this report, the House will be able to judge which source of that report that is the leakage.

It is expected that Hon. Members, please hold yourselves honourably. You may have looked at the report because then you expected it to be debated, but let us leave it as such until this House debates it and makes it a property of the House and hence of the public. Thank you. Hon. Members, the report will go back to the House Business Committee for the necessary balloting. Thank you.

(Applause)

REPORT ON ALLEGED BREACH OF PRIVILEGES

Hon. Speaker: Hon, Members, under this Order, we have one business by the Hon. Museku.

Hon. Museku: Thank you, Madam Speaker.

Hon. Speaker, that aware that all legislative Houses enjoy and exercise parliamentary privileges and performance of their mandate, roles and functions; The rationale behind privileges is to allow Houses and their Members to conduct their businesses according to the rules they set and free from undue influence from those outside the House;

This is envisaged in Article 196(3), of the Constitution that provides that the Parliament shall enact legislation providing for the powers, privileges and immunities of County Assemblies, their Committees and Members;

Hon. Speaker, further aware that, Section 15(5) of Powers and Privileges Act 2017 and Standing Order 189(a), states that, there shall be a Select Committee to be designated, the Powers and Privileges Committee whose mandate shall be to inquire into the conduct of a Member whose conduct is alleged to constitute a breach of privileges in terms of Section 16;

Acknowledging that, the Committee is in receipt of a formal complaint of alleged breach of conduct and conducted investigations as envisaged in Section 4(1), of fair administrative action Act 2015;

Noting that the Committee considered all the evidence given according to the relevant laws and compiled a report;

Hon. Speaker, I wish to give notice of Motion that the House discusses and approves the Powers and Privileges and Procedure and Rules Committees, the report on the alleged breach of privileges.

Thank you, Madam Speaker. I request Hon. Mutinda to second my motion.

Hon. Speaker: Thank you, Hon. Museku. Hon. Mutinda.

Hon. Mutinda: I am on the floor to second the report. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Mutinda. Hon. Museku.

Hon. Museku: Thank you, Madam Speaker. Hon. Members, you have a report with you from the Powers and privileges and procedure and Rules Committees; report of alleged breach of privileges.

Madam Speaker, all legislative Houses enjoy and exercise parliamentary privileges in the performance of their mandates, roles and functions. The rationale behind privileges is to allow Houses and their Members to conduct their business according to the rules they set free from undue influence from those outside the House. This is envisaged in Article 196(3) of the Constitution that provides that the Parliament shall enact legislation providing for the powers, privileges and immunities of County Assemblies, their committees and members.

Madam Speaker, further to the above provision, Section 16 of the County Governments Act, 2012 provides that no legal proceedings, whether criminal or civil can be instituted against any Member for words spoken before or written in report to a County Assembly or its Select Committee; or for any other matter in the course of a member executing their duties.

Section 10 of County Assemblies Powers and Privileges Act, 2017 states ‘that no proceedings or decision of a County Assembly or the Committee of Powers and Privileges, acting in accordance with this Act, shall be questioned in any court.’

COMMITTEE’S MANDATE

Madam Speaker, the Committee on Powers and Privileges is established pursuant to Section 15(5) of Powers and Privileges Act, 2017 and Standing Order 189(a) states that there shall be a select committee to be designated the Powers and Privileges Committee, consisting of:

- a. The Speaker who shall be the chairperson;
- b. The Chairperson of Committees; and
- c. Not more than three other Members who shall be nominated by Assembly parties and approved by the House at the commencement of every Session, reflecting the relative majorities of the seats held by each of the Assembly parties in the Assembly and taking into consideration the interests of Independents.

Section 15(4) of the County Assemblies Powers and Privileges Act, 2017 provides that the functions of the Committee of Powers and Privileges shall be to:

- a. Inquire into the conduct of a member whose conduct is alleged to constitute a breach of privilege in terms of Section 16.

(6) The Committee of Powers and Privileges shall, within fourteen days of the conclusion of an inquiry, table its findings in the relevant County Assembly together with such recommendations as it considers appropriate.

COMMITTEE’S MEMBERSHIP

Madam Speaker, the Committees of Powers & Privileges and Procedure & Rules comprises of the following Hon. Members;

- | | | |
|----|----------------------------|---------------|
| 1. | Hon. Florence M. Mwangangi | - Chairperson |
| 2. | Hon. Paul Museku | -Member |
| 3. | Hon. Margaret Ndalana | “ |
| 4. | Hon. Moses Mitaa | “ |
| 5. | Hon. Thomas Mutinda | “ |
| 6. | Hon. Constance Nzioki | “ |
| 7. | Hon. Jane Nyawira | “ |

8. Hon. Paul Nyanzi

“

BACKGROUND

Madam Speaker, on 9th July, 2018, a letter from Hon. Moses Mitaa was received in the Office of the Clerk alleging that Hon. Phoebe Koki insulted both Hon. Moses Mitaa and the Hon. Speaker on 29th June, 2018 during the official opening ceremony of Agricultural Society of Kenya Show, Machakos Branch (*Copy of the letter is attached*).

The letter was forwarded to the Committee on Powers and Privileges for action pursuant to Section 15(4)(a) of Powers and Privileges Act, 2017 which provides that the Committee on Powers and Privileges shall inquire into the conduct of a member whose conduct is alleged to constitute a breach of privilege in terms of Section 16.

Further, Section 15(5) of the same Act provides that the Committee of Powers and Privileges shall, either of its own motion or as a result of a complaint made by any person, inquire into the conduct of a Member whose conduct is alleged to constitute a breach of privilege in terms of Section 16, within fourteen days of receipt of a complaint.

COMMITTEE SITTING

Madam Speaker, on 10th July, 2018, a joint meeting of Powers and Privileges and Procedure and House Rules was held and the substantive agenda of the meeting was breach of conduct of Hon. Phoebe Koki as contained in the letter from Hon. Moses Mitaa to the committee. This was done pursuant to Standing Order 182(1) that provides that two committees of the Assembly considering similar matters may, with the approval by Speaker, hold joint sittings.

Madam Speaker, during the meeting, both Hon. Speaker and Hon. Moses Mitaa were exempted from attendance pursuant to Standing Order 164 that states that a Member who is adversely mentioned in a matter under deliberation by a Committee shall not be present at any meeting at which the Committee is deliberating on the matter, but the Member may appear to adduce evidence as a witness before the Committee.

The committee resolved that another joint meeting be held on Monday, 16th July, 2018 at 8.30 a.m. in the Assembly Boardroom and Hon. Phoebe Koki be invited to respond to the allegations leveled against her.

EVIDENCE TAKING

Madam Speaker, on 16th July, 2018 at 8.30 a.m. a joint meeting of the two stated committees was held and both Hon. Phoebe Koki and Hon. Moses Mitaa appeared before the committee to give their views regarding the matter in question. This was done pursuant to Section 4(1) of Fair Administrative Action Act 2015 which provides that every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

Further, to the same Act, Section 4(4)(a) provides that the Administrator shall accord the person against whom administrative action is taken an opportunity to;

- (a) Attend proceedings, in person or in the company of an expert of his choice.
- (b) Be heard.

Response from Hon. Phoebe Koki

Madam Speaker, the above mentioned member was interviewed under oath pursuant to Section 19(a) of County Assembly Powers and Privileges Act, 2017 that states that where a County Assembly or a committee requires that any information be verified or otherwise ascertained by the oral examination of a witness, the county assembly or the committee may cause such witness to be examined on oath.

The video clip that contained Hon. Phoebe Koki's speech on 29th June, 2018 during the official opening of ASK show was tabled before the committee and was played for the member's hearing as part of evidence (*The video clip is available for Hon. Member's confirmation*). The member responded as follows;

- That the matter was done outside the Assembly and so it is not warranted for the committee to question it.
- That questioning her on this matter which was done outside the Assembly is an act of intimidation.
- That she did not insult Hon. Moses Mitaa and Hon. Speaker and if any of them was insulted should seek intervention of the court of law and she will be available to defend herself.
- That it is a common practice for politicians to utter insults in public and so she did not commit any offence. The member cited Hon. Gladys Wanga of the National Assembly whom she claimed abused the President and no action was done.
- That Hon. Moses Mitaa abused her by calling her *Mwenyu* and barmaid.
- That in a public rally held in Tala (*Date not provided*) which Hon. Moses Mitaa and Hon. Alex Kamitu were present, Hon. Mitaa informed the public that he is the one who initiated the establishment of Kangundo, Mavoko and Machakos Municipalities as tabled by the Committee on Environment on 26th June, 2018. But Hon. Phoebe Koki could not produce any evidence before the committee in support of her allegations.
- That in a certain Whatsapp group, Hon. Moses Mitaa called her a barmaid by posting a write up "*The kingdom of Mitaa has been made through a barmaid.*"

Response from Hon. Moses Mitaa

Madam Speaker, Hon. Moses Mitaa was also interviewed under oath pursuant to the provisions of the above stated Section 19(a) of County Assembly Powers and Privileges Act, 2017.

The video clip containing the speech of Hon. Moses Mitaa regarding the initiated charter for establishment of Municipalities was availed for committee confirmation as evidence (*Video clip is available for Hon. Members' confirmation*). The member responded as follows:

- That it was procedural for him to report this act of intimidation in public to the relevant authority of County Assembly of Machakos.
- That as H.E, the Governor of Machakos was making his speech during the opening ceremony of ASK show on 29th June, 2018, several members were shouting his name *Mitaa* and that act of embarrassment annoyed him.
- That it is out of that act of embarrassment which made him utter the words *Mitaa ni Mwenyu* but he did not direct the utterance to a specific person.

(Laughter)

- That in the video clip which was availed to the committee regarding establishment of charter for Municipalities, he did not elevate himself as having championed establishment of municipalities.
- That in the same event he did not mention ANYBODY by name during his Speech.
- That he posted the write up “*The kingdom of Mitaa has been made through a barmaid*” but he did not direct or refers to a specific person.

Utterances directed to Hon. Speaker of County Assembly of Machakos

The video clip that contained Hon. Phoebe Koki’s speech on 29th June, 2018 during the official opening of ASK show was tabled before the committee and was again run for the member’s hearing as part of evidence (*The video clip is available for Hon. Members to view*). The committee gathered the following hints from the video clip;

- That Hon. Speaker has become a partisan in politics of Machakos County.
- That Hon. Speaker should resign from her position and seek for election as politician just like the other Hon. Members.
- That the *neck does not surpass the Head*.
- That Hon. Speaker favors the Wiper party more than the other side of Maendeleo Chap Chap.

COMMITTEE FINDINGS

In making its determination, the committee was guided by the following questions;

Did this action take place within or outside the precincts of the Assembly?

Section 2(f) on Interpretation of Speaker’s Rules defines precincts of assembly as the area of land and every building or part of a building under the Assembly’s control including all other buildings or parts of a building provided or used in connection with the proceedings of an Assembly or its committees while so used by the Assembly including such premises as may be leased by an Assembly.

The action in question took place in the show ground during the official opening of ASK show. Members of the Assembly had been released officially to attend the ASK show. Further the County Assembly of Machakos had set a desk in the showground to show case the activities and programs that are done in the Assembly. Therefore, according to the judgement of the committee, the action was done within precincts of the Assembly.

The action done by the accused Hon. Member (Hon. Phoebe Koki); is it an act of insult?

The English Oxford Dictionary defines insult as; to speak to or treat with disrespect or scornful abuse. Section 10(a) and (b) of the Leadership and Integrity Act, 2012 states that; 'a State Officer shall:

- a. Carry out the duties of his or her office in a manner that maintains public confidence in the integrity of the office.
- b. Treat members of the public, staff and other state and public officers with courtesy and respect.

Madam Speaker, guided by the above definition of insult and Section 10(a) and (b) of the above stated Act, the accused Hon. Member disrespected hence insulted Hon. Mitaa in presence of members of public who had attended the ASK show.

Does the law allow State Officers to utter insults in public as purported by the accused Hon. Member (Hon. Phoebe Koki)?

Madam Speaker, according to the committee, it is unlawful for a State Officer to insult in public. This is supported by the fact that Section 7 of Leadership and Integrity Act, 2012 states a State Office is a position of public trust and the authority and responsibility vested in a State Officer shall be exercised by the State Officer in the best interest of the office and the people of Kenya.

Further, Section 10(b) of the Leadership and Integrity Act, 2012, A State Officer shall treat members of the public, staff and other state and public officers with courtesy and respect.

Summary of Findings

Madam Speaker, based on the answers of the guiding questions and submissions from the witnesses, the accused Hon. Phoebe Koki breached the following provisions;

1. Section 16(e) of Powers and Privileges Act, 2017 that states that the Committee of Powers and Privileges may find a member to be in breach of privileges if the member conducts himself or herself in a manner which, in the opinion of the Committee on Powers and Privileges, is intended, or is likely to reflect adversely on the dignity or integrity of a County Assembly, or of the Members or to be contrary to the best interests of a County Assembly or its Members.
2. Section 13(1)(j) and (k) of the Leadership and Integrity Act, 2012 that states that; A State Officer shall:
 - j. Not engage in fighting or physical confrontation with any person;
 - k. Maintain high standards of etiquette at all times.
3. Section 10 (a) and (b) of the same Act, that states that:

A State Officer shall:

 - a. Carry out the duties of his or her office in a manner that maintains public confidence in the integrity of the office;
 - b. Treat members of the public, staff and other state and public officers with courtesy and respect.

RECOMMENDATIONS

Madam Speaker, in making its recommendations, the committee was guided by the following provisions;

Section 17(3) of Powers and Privileges Act, 2017

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

- a. formal warning;
- b. a reprimand;

- c. an order to apologize to the county assembly or a person in a manner to be recommended by the Committee of Powers and Privileges;
- d. the withholding, for a specific period of time, of the member's right to the use or enjoyment of any specified facility provided to Members by a County Assembly;
- e. the removal or suspension for a specified period of time of the Member from any a County Assembly position occupied by the Member;
- f. such fine in terms of the Member's monthly salary and allowances as the House may determine;
- g. the suspension of the Member for such period as the House may decide, whether or not the county assembly or any of its committees is scheduled to meet during that period;
- h. vacation of seat pursuant to Articles 75(2)(b) and 194(1)(c) of the Constitution of Kenya.

Madam Speaker, the committee therefore recommends that:

1. Hon. Phoebe Koki alias Caro be suspended for eight (8) sitting days pursuant to Section 17(3)(g) of Powers and Privileges Act, 2017.
2. The accused Hon. Member is advised to write to the Committee on Powers and Privileges the accusation of abuse alleged to have been done by Hon. Moses Mitaa for consideration.

CONCLUSION

Madam Speaker, the key objects of the leadership and integrity code is to establish standards of integrity and ethical conduct in the leadership and management of public affairs of the County Assembly. This can be achieved ensuring that the State Officers respect the values, principles and provisions of the Constitution of Kenya, 2010 and other applicable laws or policies on the standards of conduct and performance expected of holders of public office in the discharge of their duties.

Based on the above statement of intent, the Committee wishes to remind members to conduct themselves in a manner which depicts the status of the office they hold. Madam Speaker, it is therefore my privilege, on behalf of the committee to table this report and recommend it to the House for adoption. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Museku. Do you have a seconder?

(Loud consultations)

It was seconded at the motion stage; thank you.

(Question proposed)

Hon. Members, I will open the matter for debate so that the views of the members can be heard on the motion. I have proposed the question. Hon. Ndawa, thank you.

Hon. Ndawa: Thank you, Madam Speaker for giving this chance to air my views on this report. Madam Speaker, the committee has brought the report but according to me, Madam Speaker, the committee is exceeding its mandate. Standing Order 104 up to Standing Order 106 is very clear on the issues where a Member of a County Assembly has committed the alleged offence---

Hon. Speaker: Hon. Stephen Mwanthi.

Hon. Mwanthi: Thank you, Madam Speaker. I want to correct the Hon. Member because he was holding the Constitution and not the Standing Orders. Thank you.

Hon. Speaker: Thank you, Hon. Stephen Mwanthi.

Hon. Ndawa: Thank you, very much my brother, Hon. Stephen. If we go to Standing Order 104, it is very clear that any Member may at any time, on a point of order invite the Speaker or the Chairperson of the committee to name a member who grossly disorderly conduct but the decision whether or not to do so shall remain with the Speaker or the Chairperson. So, Madam Speaker, according to my interpretation it is the Speaker who has the powers to declare whether one has committed the offence or not---

Hon. Mulatya: Point of information, Madam Speaker.

Hon. Speaker: Hon. Ndawa, point of information. Hon. Mulatya.

Hon. Mulatya: I want to inform the Hon. Member that the Speaker is also the Chairperson in this committee. Thank you.

Hon. Speaker: Hon. Ndawa, please proceed.

Hon. Ndawa: Thank you and I will request Hon. Members to be patient; I will not talk for long. What I was saying, according to the recommendation brought by this Hon. Committee, Standing Order 106 is very clear, they are recommending that the Hon. Member be suspended for eight sitting days and our Standing Order is very clear, Madam Speaker.

It says 'if a member is suspended under Standing Order number 104, the Member may be suspended after being named, the suspension on the first occasion shall be for four sitting days including the day of suspension.'

Madam Speaker, the Hon. Member whom we are talking about this is the first suspension; she has never been suspended. So, this is the reason why I am saying the committee is exceeding its mandate and its decision, to me, is *ultra vires* because it has gone beyond the boundaries.

I will request that they stick to this Standing Order and if they want to do something outside this Standing Order, let them change the Standing Order. The other issue, Madam Speaker, which I would like to---

Hon. Speaker: Point of information from Hon. Museku.

Hon. Museku: Madam Speaker, I would like to inform the member the House in making its deliberations is guided by the constitution, Acts of Parliament and Standing Orders; if you listened to me carefully, I talked about Powers and Privileges Act 2017. Thank you, Madam Speaker.

Hon. Speaker: Point of information on information. Hon. Maitha.

Hon. Maitha: Yes, Madam Speaker. To the Member who was talking, Madam Speaker, we are talking of the member being named; the member in question has not been named by you the Chair of Chairs.

(Applause)

So if she has not been named, how can the committee now sit and deliberate on her, Madam Speaker.

(Applause)

Hon. Speaker: Hon. Ndawa, you were proceeding.

Hon. Ndawa: Thank you, Madam Speaker. The other issue that I disagree with the committee, they have talked about the offence being committed within the premises of the Assembly. Madam Speaker, the Assembly premises is within the Chambers and the compound not outside that compound; should anything happen on that other side showground that is not the location of the Assembly and if one is asked to direct someone to the Machakos County Assembly.

Hon. (Ms.) C. Koki: Point of information.

Hon. Speaker: Point of information from Hon. Koki.

Hon. (Ms.) C. Koki: Thank you, Madam Speaker. I would like to inform the Member, Hon. Ndawa, he is my uncle and with all due respect that a Hon. Member should not be a chameleon---

Hon. Speaker: I will not allow that she is on a point of information.

Hon. (Ms.) C. Koki: The way we conduct ourselves in this Hon. House should be same way whenever we are elsewhere in the entire county; we swore the oath of integrity.

(Applause)

Hon. Speaker: When you are informing, Hon. Koki, you do not go giving more stories. Hon. Ndawa, please proceed.

Hon. Ndawa: Thank you, Madam Speaker. I was saying showground is not the premises of the Assembly and I will request this Hon. Members to be patient; once I sit down, you can---

Hon. Mutinda: Point of information.

Hon. Speaker: I will not allow that, I will not allow.....Hon. Mutinda, please hold. Please be patient. Hon. Ndawa please, proceed and finalize.

Hon. Ndawa: Thank you, Madam Speaker for that protection. I do not know why these people are against---

Hon. Speaker: Please proceed and finalize.

Hon. Ndawa: Yes, I was saying showground is another entity and that is why it is labeled showground; Machakos County Assembly is labeled here Machakos County Assembly. So, we cannot be made to understand that the action which is purported to have been committed by one of our Hon. Members was committed within the premises.

The other issue, Madam Speaker, there what is called Bill of Rights and bill of right is very clear; it says every Kenyan remains innocent until proven guilty. It is as if the committee has proven the Hon. Member to be guilty. Madam Speaker, I would request the committee is made to protect the Hon. Members not to pin down Hon. Members, So kindly---

On the other issue, Madam Speaker, the issues which happen within the premises of the... or whatever affect the county also affect the nation. Sometimes back Hon. Mulyungi from Kitui was heard taking about having a long tail than His Excellency the President of the republic of Kenya and the same matter we have never heard Hon. Mulyungi being dismissed from the National Assembly because of those utterances.

(Applause)

Hon. Mwanthi: Point of information, Madam Speaker.

Hon. Ndawa: So comparing the magnitude of these allegations, because there are just mere allegations, that one of Hon. Mulyungi has a lot of weight than this one.

The other issue, Madam Speaker; if it comes to the issue of insult when a Kenyan is insulted by another Kenyan, he or she has a right to report to the nearest police station because the issue we are talking about is under penal code and the police are the one who are mandated to investigate whether actually was insulted or not insulted.

Madam Speaker, if we entertain this kind of practice, this House is going to be house of witch hunting. Everybody will be looking at the weaknesses of the other member, so Madam Speaker, I would request this Hon. House and the committee to rescind that decision and if possible warn that Hon. Member if at all committed the alleged offence.

Madam Speaker, the time which is alleged that Hon. Phoebe Koki uttered such words, I was present in that dais; I was seated next to other Hon. Members. What she talked and what she said, she just informed, she never insulted anybody. It was just informing not insulting. When we went to the showground, we went as a team and then later Hon. Mitaa joined us there.

So, the moment the members saw Hon. Mitaa, they started celebrating that we have another Member. When Members saw Hon. Mitaa they started celebrating that we have another member so the number is growing big and bigger. So, I do not know how Hon. Mitaa understood it instead of appreciating that we are receiving him---

Hon. Speaker: Hon. Ndawa, I can actually cite you for disorderly manner because you are giving a fact which is false; please be careful. There is a video clip that has been watched so stick to the report. Don't give misleading information; it is also a source of being punished especially now that you are submitting to the House.

Hon. Ndawa: Thank you, Madam Speaker. I am staunch believer of Salvation Army and members of the Salvation Army do not tell lies. So, Madam Speaker, whatever I am saying because I was there and I witnessed exactly what transpired, nobody had ill feeling on Hon. Mitaa.

Hon. Speaker: Hon. Ndawa, please don't make it harder. There is a clip that has been referred to; please address yourself to the clip and we always say let us stick to relevant issues that are on the table. So, if it is greetings, excitement nobody has talked about it; talk about the clip please that is the complaint of the Hon. Members.

Hon. Museku: Point of order, Madam Speaker, please.

Hon. Speaker: Point of Order.

Hon. Museku: Is the Hon. Member in order to be standing when the Hon. Speaker is standing and talking?

Hon. Speaker: He is lucky; I did not see that; so proceed.

Hon. Ndawa: Thank you, for the correction; we learn through mistakes Mr. Chair of Chairs, Deputy Speaker. I was trying to bring the scenario of how things went so as to reach that--

Hon. Speaker: You needed to go to the committee and give that evidence. Hon. Ndawa, please restrain yourself to the question at hand; the clip and if you don't have anything on it I will tell you to sit down.

Hon. Ndawa: Thank you, Madam Speaker, I am guided. I want to finalize by saying 'man is to error' and anybody can commit a mistake, we are not angels. Since this is the first case that has been reported, I am humbly requesting this Hon. Members, kindly let us have mercy on this Hon. Member and if possible let us just warn her. Thank you, Madam Speaker.

Hon. Mulatya: Point of information.

Hon. Speaker: Hon. Members, let me just say something just to put you in the light. I do chair the Powers and Privileges Committee and I also chair the House Rules and Procedure

committee; this is an exercise that was undertaken by the joint committees their roles are almost similar and if you look at the report, Hon. Members, carefully, I recused myself; I excused myself from chairing that joint committee for the reason that I have also watched the clip and, of course, there is what has been said about the Speaker.

I wouldn't chair a committee that is hearing the case substantively, especially when I have also been named. I have also seen on the report that the Hon. Member, Mitaa, also did not participate; that was for fairness. Hon. Ndawa you talked about one being judged guilty before or in advance, I have seen the report, because I was not there that hearing. The Hon. Member was called Hon. Phoebe and so was Hon. Mitaa called, that is due procedure, fair hearing and its good they appeared and gave their evidence then when the committee made this report.

I agree that I could proceed and name any other Member who is in breach under Standing Order 104 but I have not done that. I am a person who will insist on fairness being done and remember, the matter that is at hand touched on the Speaker; you can tell the Speaker in their personal name anything you want but remember, the Speaker and any other Member has a right to good reputation not only under the Standing Orders but under the Constitution, under all the laws.

(Applause)

But because the Speaker was named and remember, the Speaker is actually the representation of this House. You are looking at the House, not the Speaker, not the short lady who stands before you Members; you are looking at that symbol of the House. You insult the Speaker, you disparage the Speaker in the eyes of the public, you are disparaging yourself, you are disparaging the House and that is this matter; that is why the matter is to be decided by the House.

As the House agree whether you want to be disparaged, in the name of the Speaker or whether you want it to continue like that but let me tell you, Hon. Members, the matter of the Hon. Member, being in the joint committee is a matter that all of you need to be interested in and address it as objectively as possible. You have not even voted, you will decide on which way to vote and I decided to stay away and hear. I will not take part in voting; I am only giving you guidelines.

I am only sending a caution; the fact that you are a politician does not give you the liberty to go destroying others people's names, wherever you are.

(Applause)

Be it in the Assembly, be it in the streets, be it wherever, in fact you are committing a crime under our laws, you are behaving dishonorably under the Privileges Act, you are also behaving dishonorably, under the Constitution Article, Chapter 6 and then the Leadership and Integrity Act; how do the people see you out there?

Don't talk about what happened outside there with Hon. Mulyungi, with Hon. who and I urge you Members, don't behave in such a manner because you are bringing disrepute to yourself and to the House and more so the likelihood of being sued in very many suits. So, Members, let us discuss this matter with sobriety.

I want to remind you that, if the Speaker had not been named in this matter, this is a matter that I would have finalized long time because they are other matters that have been

pending and decided by the same committee on the same Member. I have urged the committee to give that Member time, not to take action. Hon. Ndawa, I hope you are well informed and all the other Members as well. Hon. Members, Hon. Mutinda.

Hon. Mutinda: Thank you, Madam Speaker. Madam Speaker, I was there in the committee and maybe, Madam Speaker, I wish to say that this is not the first offence. This is the second time this thing is happening; we had this issue in the committee before for other Members and now this direction we are moving is growing and this I request this committee to approve this report, because this is what we should not allow to continue.

If we are abusing each one of us, Hon. Members, here maybe you are not abused in your ward, maybe you are not abused in any other places and you come to be abused in the presence of the County Assembly, then it is worrying.

If it goes up to have the Speaker to be involved in these talks, then that is not the direction we should go, Madam Speaker. I think this another incident that has happened after a series of others and I request the House to approve and I think, there was a time other Members have been involved in this, having been abused.

There was a time a gooseneck microphone was broken here; it was reported by the Director of Procedure of Legal and Committee Services. There was another time, another Hon. Member was abused, Madam Hellen Ndeti and those reports have been coming and that is not the way we should go, Madam Speaker.

Hon. Speaker: Who is abusing who; who is breaking the gooseneck?

Hon. Mutinda: The gooseneck was broken by the member in question, Hon. Koki and that report was in the committee of Power and Privileges; a complaint that came to that committee and Hon. Members have been affected by this. Hon. Mark Muendo was also affected and many more while in the precincts of the County Assembly and I would request that we have a standard so that anytime we are able to say when we remember what happened or any action which can be taken for this mistaken for this mistake then we have to be fearing whatever action has been taken.

Hon. (Ms.) Mwikali: Point of order.

Hon. Speaker: Point of order Hon. Mwikali. Hon. Mutinda, please resume your seat briefly.

Hon. (Ms.) Mwikali: Madam Speaker, I stand on a point of order on a Standing Order 52(2) that despite paragraph (1), the Speaker may in exceptional circumstances, allow a Member to move an amendment to a motion before the House at any time in consideration of the motion. Madam Speaker, I plead that I move an amendment because the procedures committee gave a small punishment.

I am proposing, Madam Speaker, that the same punishment should be extended for three to six months because the same Hon. Member and really feel bad when speaking about this because this Hon. Member is of my gender; she is a member, not the first time to be in this Hon. House.

Madam Speaker, when we came to this House, I remember we swore, we took our Bibles and we are living on oath of Chapter Six of our Constitution. When we are at home, wherever we are, when we are in the bedroom, wherever we are, Madam Speaker, we are guided by procedures of integrity.

Madam Speaker, I move the amendment that the punishment should be extended to six months and I ask Mheshimiwa Koki to second me, Madam Speaker. Thank you.

(Laughter)

Hon. Speaker: Hon. Members, the member has moved under Standing Order 52(2); can you first execute that business. What point of order? She has finished speaking.

Hon. Kaloki: Point of information.

Hon. Speaker: Point of information to whom? Hon. Koki, proceed. Please hold on Hon. Ikusya.

Hon. (Ms.) C. Koki: Thank you, Madam Speaker. I stand to second the motion on the basis that it is a disgrace to the womenfolk to have a lady Hon. Member behaving in such manner; it is even more of a disgrace that the member in question we share the same name. I feel embarrassed---

(Laughter)

I would like to second the amendment that the punishment should be extended as the Hon. Member Mwikali has just proposed. Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, it is the discretion of the Speaker to allow an amendment of a motion not in writing and during a deliberation on the motion. I will use my discretion not to allow the request to amend. Proceed. Hon. Ikusya, Hon. Mutinda was still on his feet.

Hon. Mutinda: Thank you, Madam Speaker. I was still on the floor and I was saying the Hon. Tariq Mulatya was also a victim and there was Hon. Stephen Mwanthi who was a victim and I think heads must roll and some things must come to an end. So, I request this House to take action on this member support this report so that we have a nice place to work at. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Mutinda. Hon. Ndalana.

Hon. (Ms.) Ndalana: Thank you, Madam Speaker for giving me this chance. We have two Hon. Members, ladies who are wearing party attire in this House and it is not the first time, Madam Speaker. Thank you.

Hon. Speaker: Hon. Koki, (??) the party attire is not an offence to wear in the Assembly.

(Applause)

As long as the Member is not disturbing the Assembly. So, Hon. Ikusya.

Hon. Kaloki: Thank you, Madam Speaker for giving me an opportunity to make a contribution to this motion. I want to say that one, I am not supporting this report but again I would like to say it is not that bad; you can still discipline in the Assembly but Madam Speaker, I want us to be very clear and keen on what and the precedence we are setting in this House.

One scholar said that when a dog bites a man, it is not an offence but when man bites the dog it becomes news. Madam Speaker, there are so many cases of this nature which have gone unreported and I would like to say that I one time witnessed during our first selection committee, a member of this House who is seated here called another member who is also seated here unprintable words and action was never taken. Madam Speaker, a lot has been said out here but--

Hon. Speaker: Let me inform you Hon. Ikusya; as Chair; just resume your seat briefly. As Chair of the powers and privileges committee, if any report of a member committing disorder is brought to that committee, I will deal with it. I am not an angel, the committee is not an angel; I was not there and the Members were not there if that matter came to the attention of the committee, the necessary action would be taken and Hon. Members, please take it, even going forward, that is why I am calling upon you to behave in an orderly manner because going forward, that committee will do its work. It will do its work.

Hon. Kaloki: Thank you, Madam Speaker. That is why I said we are setting a precedent and this I think it will instill discipline to this Assembly. Less than 10 minutes ago, Madam Speaker and the House, this is a House of honor and respect, and we were shocked and the Serjeant at arms can bear us witness.

When Hon. Koki walked out I do not know what she was going to go outside, she was followed and few minutes after, we found one of the Hon. Members Christine Koki trying to wrestle her down forcing her to come back to the Assembly and people wondered whether some people have started assuming the powers of Serjeant at Arms. The matter has been reported to the Serjeant at Arms.

Hon. Speaker: Serjeant at Arms, the powers and privileges committee wants that report before the end of the day.

Hon. Kaloki: Yes. Thank you, Madam Speaker and we were really shocked. If it were not for Hon. Betty, it would have been chaos out there and the question was why do you walk in, sign and walk out; why would a member walk out follow another member to force her back to the Assembly.

Madam Speaker, as I said this is going to instill discipline to this Assembly; if a member goes out there and as I said, if I bite a dog, it becomes news but when a dog bites me it is not news at all. We would want all of us to be treated equally, we will treat each other equally and to Hon. Members, kindly let us not find vendetta or ways of settling scores in this Assembly; well this has not been reported.

I have heard clips from Hon. Members of this House who have recorded other members insulting other members and these issues have never been brought to this House.

Hon. Muthoka: Point of information, Madam Speaker.

Hon. Speaker: Hon. Ikusya, please resume your seat briefly. Hon. Muthoka.

Hon. Muthoka: Let me inform the member, you are very clear no complaint has come. If anybody feels that they have been insulted, let them bring the complaint; you are not the Judge Hon. Ikusya.

Hon. Kaloki: Thank you, Madam Speaker. If you understand English, I have just said this is a precedent which is being set; in future, if some of us are also ill-treated by our fellow members, then now we have known the procedures to follow.

My humble plea to this Hon. House is that Hon. Phoebe Koki is not the only member who has committed similar offense although the other members have not been reported. Kindly, let us accord her an average judgment.

We are members of this House and if we continue, I am telling you this will be the trend this will be the business of the day almost every other day there will be complaints, issues, cases and we are going to walk out a divided House if we are not going to be careful. Thank you, Madam Speaker.

Hon. Speaker: Hon. Members, Hon. Ikusya has asked that you be treated equally; it is good. All of you, if you behave in a disorderly manner, then you will be treated equally and I can assure you. As long as the report is brought to that committee, we are going to ensure that there is discipline in the House and I think that is for the best of you foremost and the best of the people you present; you must behave in an orderly manner throughout. Hon. Kamitu.

Hon. Kamitu: Thank you very much, Madam Speaker. Madam Speaker, I have gone through the report that was brought by our Deputy Speaker and it is on that regard that, Madam Speaker, we stand to be guided and I do not want to take long because as a Hon. Member and an elder in this House, I would say that we are hearing you and it is important for Hon. Members to behave like Hon. Members but when a situation comes where somebody is reported to have been disorderly, taking into consideration, if we can open our Standing Orders.

Madam Speaker, Standing Order 103; I don't want to read all of it but then it is talking about grossly disorderly conduct whereby if we go to Standing Order 104 it is talking also where a member may be suspended after being named and my understanding, Standing Order 104(2)(a) if the breach has been committed by such a Member in the House a motion shall be made by any other member present.

Having said that, Madam Speaker, I am not saying that any utterances outside the House as you have guided us should not be cautioned but in this case, Madam Speaker, in my understanding, this is now one of the reports which has been brought to this House and as Mheshimiwa Ndawa has said there are those punitive measures on the way somebody is supposed to be disciplined.

Otherwise, when in regard to the recommendation by this committee it will be very punitive and again Madam Speaker, I do not want to go back referring to some issues if any

member feels that he has been insulted, now we do not want to open some bad moves that our Assembly may be cited by our electorate as if we came here to deliberate things that are supposed to be beneficial to them but turning this Assembly to the Assembly of lesser Hon. Members who are supposed to be honored.

So, Madam Speaker, what am saying is that we have preferences and I do not want to add serious issues that I may be seen as if I am promoting some discontent or dissatisfaction among the Members but I am only saying that in this Assembly we have reports even in HANSARD whereby as our Speaker said we should protect the face and the image of our Speaker.

(Applause)

We are supposed to be here and also protect the image of other Hon. Members likewise as Hon. Members we are supposed to stand here and protect the name of the President; equally our Governor because even in some HANSARD reports in this House where our Governor has been named as ex-Governor. He is not an ex-Governor and I am not standing to protect the Governor.

So, if you want us to go in the right direction, we should stand in respect each other; whether outside the Assembly because that is the way our Hon. Speaker wants us to take the direction that we must be honored by what we stand to be. So, equally let us honor the state officers, we honor ourselves as Hon. Members and we honor our honorable people, either in the executive or in this Assembly. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Kamitu. I call upon the mover of the motion to reply.

Hon. Museku: Thank you, Madam Speaker. Thank you, members for your active participation in this motion and for your sentiments. I really thank you for bringing to the fall the core issue on concern here; the core issue of concern here is how do we behave as Hon. Members that at any one given time we should behave in a manner which suits that name of Mheshimiwa.

We should behave with dignity, we should uphold Chapter Six of the Constitution, we should make sure that we are living to that. I think from all the members whom we have heard contributing here, nobody has disputed the fact that a breach has been done and I thank you for that because all of you have acknowledged that a breach has been done.

We might be able to do any other things but we cannot afford to disparage the integrity of this Hon. House; the minute you move from disgracefully handling Hon. Members of the House and now moving to disgracing the Chair, Madam Speaker who heads this House then we are disparaging this House and we are moving this House and putting it into conflict for no reason.

Madam Speaker, I wish to request this Hon. House to adopt the report which has been brought by the Powers and Privileges committee on the punishment to be meted on the so-called Hon. Member so that we can be able to instill discipline on the---

Hon. Speaker: Hon. Museku, why are you saying the so-called? A Hon. Member is a Hon. Member.

Hon. Museku: Apologies; that was a slip of the tongue. On the Hon. Member accused on the report so that we can be able to instill discipline, we can be able to come out with a way forward of Members behaving in this Assembly. Hon. Members, I urge you to support this and we urge you in future to even put stiffer measures to any other person who does this because they will now be doing it knowingly because of what we have read here before the House. Thank you, Madam Speaker.

Hon. Speaker: Hon. Members, I now put the question.

(Questioned put and negatived)

(Applause)

(Several Members stood in their places)

Hon. Members, we have come to the closure of the business. There is a division, please resume your seats.

(Loud consultations)

DIVISION

I called for the vote and the YES were lower than the NOES and when I said the NOES have it, is for the YES if they feel they want a division to stand up.

(Loud consultations)

Can I see who are standing up to call for a Division? Alright, Serjeant at Arms, ring the bell for ten minutes. Order in the House.

(Division Bell rung for 10 minutes)

Serjeant at Arms, if any member wants to go, please give them the way to go. I have given the permission to leave.

(Several Members withdrew)

Did anyone utter a word when they were walking out? The procedure must be followed. Allow any Member wanting to take a short break to do so as long as you are back within the 10 minutes, Members can take a break. Hon. Rozina, during Division, we are still in the House. 10 minutes are over, Hon. Members; calling House to order. Hon. Members, after I pronounced the NOES have it, Hon. Members demanded a Division.

The moment of the roll call being taken in the Division electronic voting is through manual.

(Question carried by 26 votes to 2)

(Applause)

Hon. Members, the effect of the voting of YES to the motion that had just been discussed in the House is to the effect that the Hon. Phoebe Koki alias Caro is named and suspended for eight sitting days pursuant to Section 17(3)(g) of the Powers and Privileges Act 2017 and the Serjeant at Arms and the office of the Clerk are directed to ensure compliance with that decision of the House.

ADJOURNMENT

Hon. Speaker: Hon. Members, we adjourn the sittings of the House to resume on.....Clerks at the Table, give me the dates of the next sitting. Hon. Members, the sitting of the House is adjourned to resume on 24th July, 2018 at 10.00 a.m. Have a pleasant evening; you have had a long day and you deserve a rest. Good evening.

The House rose at 6.05 p.m.