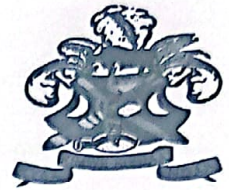


**REPUBLIC OF KENYA
COUNTY GOVERNMENT OF MACHAKOS
COUNTY ASSEMBLY OF MACHAKOS**



**County Hall
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MACHAKOS**

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**THIRD ASSEMBLY
(THIRD SESSION)**

COMMITTEE ON APPOINTMENTS

**THE SIXTH REPORT OF THE COMMITTEE ON APPOINTMENTS OF THE
THIRD ASSEMBLY ON THE VETTING OF NOMINEE FOR
APPOINTMENT TO THE POSITION OF COUNTY EXECUTIVE COMMITTEE
MEMBER FOR DEPARTMENT WATER, IRRIGATION, CLIMATE CHANGE
AND ENVIRONMENT**

JUNE, 2024

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FOREWORD

Pursuant to Article 179(2)(b) of the Constitution as read together with Section 30(2)(d) of the County Governments Act No. 17 of 2012, Her Excellency, the Governor of Machakos County forwarded to the Speaker of the County Assembly a letter Ref. GMC/2/OOG/VOL 1/001 dated 27th May, 2024 (**Annexure 1**) nominating Ms. Elizabeth Katile Mutua for appointment to the position of County Executive Committee Member (CECM), Department of Water, Irrigation, Climate Change and Environment.

Pursuant to Standing Order 39(1) and 42(2), the Speaker of the County Assembly read the message from Her Excellency the Governor, Machakos County, on Wednesday, 29th May, 2024 communicating the name of the nominee. Further, pursuant to Section 7(1) of the Public Appointments (County Assemblies Approval) Act, 2017 and Standing Orders 39(3)(c) and 184(4), the name of the nominee was committed to the Committee on Appointments for approval hearing and reporting to the House within twenty-one days.

Consequently, and in accordance with Article 196(1) of the Constitution, Section 7(5) and (10) of the Public Appointments (County Assemblies Approval) Act, 2017 and Standing Order 42(5) and (6), the Clerk of the County Assembly, through an advert placed in the Daily Nation newspaper dated Friday, 31st May, 2024 (**Annexure 2**) notified members of the public that the Committee on Appointments would conduct approval hearing on Monday, 10th June, 2024 at 11.00 a.m. at the Assembly Chambers.

The advert invited members of public to attend the approval hearing and/or submit any information or comments on suitability or otherwise for appointment of the nominee. The submissions were to be made by way of sworn affidavits and hand-delivered to the Office of the Clerk of the Assembly on or before 6th June, 2024. By close of the submission deadline, the committee had not received any memoranda concerning the suitability of the nominee.

The Committee convened as scheduled at the County Assembly chambers for the approval hearing in accordance with the Constitution, County Governments Act, Public Appointments (County Assemblies Approval) Act, No. 5 of 2017 and the County Assembly of Machakos Standing Orders. The Chairperson of the Committee directed the Serjeant at Arms to look for the nominee and escort her to the Assembly Chambers for the approval hearing. The Serjeant at Arms reported back that the nominee was not within the precincts of the Assembly. The Committee observed that:

- (a) The nominee had not collected the vetting forms despite the advert placed on the Daily Nation newspaper dated Friday, 31st May, 2024 requiring the nominee to collect and submit vetting forms as prescribed under Section 7(9) and the First Schedule of the Public Appointments


(County Assemblies Approval) Act, No. 5 of 2017 by 10.00 a.m. on Thursday, 6th June, 2024.

- (b) The Office of the Clerk of the County Assembly had not received any formal notification on the nominee's withdrawal from the approval process as provided under Section 7(12) of the Public Appointments (County Assemblies Approval) Act, No. 5 of 2017 which provides that a candidate may, at any time, by notice in writing addressed to the Clerk, withdraw from the approval process and the candidate's nomination shall thereupon lapse.
- (c) The Office of the Clerk of the County Assembly made efforts to contact the nominee by way of phone calls and SMS. When the nominee eventually answered the phone call of the Clerk, she stated that she had declined that nomination.
- (d) An approval hearing cannot proceed without the presence of the nominee.
- (e) A report should be compiled for reporting to the House.

The approval hearing having not taken place as provided under Article 179(2)(b) of the Constitution, Section 35 of the County Governments Act and Sections 7, 8 and 9 of the Public Appointments (County Assemblies Approval) Act, No. 5 of 2017, due to unavailability of the nominee and oral reporting that she had declined the nomination, the Committee recommends that this House reports to the appointing authority that the candidate's nomination had lapsed pursuant to Section 7(12) of Public Appointments (County Assemblies Approval) Act, 2017.

The Committee is grateful to the Offices of the Speaker and the Clerk of the County Assembly for the support accorded to it during the accomplishment of this duty. I wish to express my gratitude to the Honorable Members of the Committee for their dedication and participation in this exercise.

On behalf of the Committee on Appointments and pursuant to Section 14(3)(b) of the County Governments Act, Section 9(1) of the Public Appointments (County Assemblies Approval) Act, 2017 and Standing Order 179(6), it is now my duty and privilege to present to the House, the sixth report of the Committee on Appointments on the approval hearing of the nominee to the position of County Executive Committee Member for Department of Water, Irrigation, Climate Change and Environment, Ms. Elizabeth Katile Mutua.

SIGN.....  DATE 15/6/2024

HON. ANNE KIUSYA
SPEAKER OF THE COUNTY ASSEMBLY / CHAIRPERSON, COMMITTEE ON APPOINTMENTS

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. Section 14(3)(a) of the County Governments Act, 2012 provides that, when the Assembly is considering any appointment for which its approval is required under the Constitution, an Act of Parliament or County legislation, the appointment shall be considered first by a committee of the County Assembly.
2. The establishment and mandate of the Committee on Appointments is provided for under Standing Order 184 of the County Assembly of Machakos Standing Orders.

1.2 Committee Membership

3. The Committee on Appointments, as constituted by the House, comprises of the following Honorable Members:

1. Hon. Anne Kiusya - Speaker of County Assembly/Chairperson
2. Hon. Stephen Mwanthi - Deputy Speaker/MCA, Ekalakala Ward
3. Hon. Nicholas Nzioka - Leader of Majority Party/Machakos Central Ward
4. Hon. Judas Mbili Ndawa - Leader of Minority Party/MCA, Matuu Ward
5. Hon. Jackson Ndaka - Deputy Leader of Majority Party/MCA, Tala Ward
6. Hon. Francis Kavyu - Deputy Leader of Minority Party/MCA, Kinanie Ward
7. Hon. John Brian Kisila - MCA, Makutano/Mwala Ward
8. Hon. Winfred Mutua - MCA, Special Elect
9. Hon. Francis Kitaka - MCA, Ndalani Ward
10. Hon. Peter Kilonzo - MCA, Mbiuni Ward

1.3 Committee Secretariat

4. The Committee was facilitated by the following secretariat:

1. Mr. Denis Mutui - Ag. Clerk
2. Mr. Hilary Muthui - HOD, Legal and Library
3. Mr. Dominic Musyoka - HOD, Procedure and Committee Services
4. Mr. Paul Keli - Senior Records Management Officer
5. Mr. Wanyoike Njuguna - Hansard Editor
6. Ms. Susan Kiluva - Clerk Assistant II
7. Ms. Stella Kanini - Clerk Assistant II
8. Mr. Lewis Muoki - Researcher
9. Mr. Jonathan Muli - Commissionaire III

2.0 BACKGROUND

2.1 Notification of Nominations

5. Pursuant to Article 179(2)(b) of the Constitution as read with Section 30(2)(d) of the County Governments Act 2012 and Sections 4 and 6 of the Public Appointments (County Assemblies Approval) Act, 2017, Her Excellency, the Governor of Machakos County forwarded to the Speaker of the County Assembly through a letter GMC/2/OOG/VOL1/001 dated 27th May, 2024 (**Annexure 1**), the name of Ms. Elizabeth Katile Mutua for approval for appointment to the position of County Executive Committee Member, Department of Water, Irrigation, Climate Change and Environment.

2.2 Notification to the House and committal to the Committee on Appointments

6. Pursuant to the provisions of Standing Orders 39(1) and 42(2), the Honorable Speaker, vide a communication dated Wednesday, 29th May, 2024 informed the House of the Governor's message on nomination of a County Executive Committee Member for approval by the County Assembly. Consequently, and in accordance with Section 7(1) of the Public Appointments (County Assemblies Approval) Act, 2017 and Standing Orders 39(3)(c) and 184(4), the name of the nominee was committed to the Committee on Appointments for approval hearing and reporting to the House within twenty-one days.

2.3 Notification to the Public

7. Article 196(1) of the Constitution provides that a County Assembly shall:
 - (a) *Conduct its business in an open manner, and hold its sittings and those of its committees, in public; and*
 - (b) *Facilitate public participation and involvement in the legislative and other business of the assembly and its committees.*
8. Section 7(5) of the Public Appointments (County Assemblies Approval) Act, 2017 provides that the committee shall, by notice in at least one newspaper of national circulation, notify the public of the time and place for holding an approval hearing at least seven days prior to the hearing. Further, Section 7(10) of the same Act provides that any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk of the County Assembly with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated.
9. Pursuant to Article 196(1) of the Constitution as read with Section 7(5) and (10) of the Public Appointments (County Assemblies Approval) Act, 2017 and Standing Order 42(5) and (6), the Clerk of the County Assembly placed an advertisement in the Daily Nation newspaper dated

Friday, 31st May, 2024 (**Annexure 2**) inviting the public to attend the approval hearing and/or submit any information or comments on suitability or otherwise by way of sworn affidavit(s).

10. The advertisement indicated that submissions were to be received in the Office of the Clerk of the County Assembly on or before Thursday, 6th June, 2024 by 10.00 a.m. In addition, the advertisement notified the public that the approval hearing would be conducted on at 11.00 a.m. Monday, 10th June, 2024 at County Assembly chambers along Mwatu wa Ngoma Road.

2.4 Notification to the Nominee

11. Through an advert placed in the Daily Nation newspaper dated Friday, 31st May, 2024, the Clerk of the County Assembly invited the nominee for the approval hearing in accordance with Section 6(4) of the Public Appointments (County Assemblies Approval) Act, 2017. The nominee was requested to collect and submit vetting forms as prescribed under Section 7(9) and the First Schedule of the Public Appointments (County Assemblies Approval) Act, No. 5 of 2017 by 10.00 a.m. on Thursday, 6th June, 2024.

2.5 Clearance and Compliance Requirements

12. Pursuant to Section 8(b) of Public Appointments (County Assemblies Approval) Act, 2017 as read with Section 35(3) of the County Governments Act and Section 4(2) and (4) and Section 44(2) of the Leadership and Integrity Act 2012, the Committee wrote to the following institutions to undertake verification of the information provided as enclosures to the letter of nomination Ref No. GMC/2/OOG/VOL 1/001 dated 27th May, 2024 by Her Excellency, the Governor of Machakos County to the Speaker of the County Assembly:

- (i) Verification of Master of Education degree certificate by the South Eastern Kenya University, requested via letter Ref. MKSCA/ADM/VETT/VOL.2/34 dated 3rd June, 2024. (**Annexure 3**)
- (ii) Verification of Bachelor of Education (Arts) Degree certificate by the University of Nairobi, requested via letter Ref. MKSCA/ADM/VETT/VOL.2/35 dated 3rd June, 2024. (**Annexure 4**)
- (iii) Integrity verification and compliance to Chapter Six of the Constitution by the EACC pursuant to Section 4(2) and (4) and 44(2) of the Leadership and Integrity Act, 2012 was not undertaken since the nominee did not provide a self-declaration details.

2.6 Issues for Consideration during the Approval Hearings

13. Section 7(8) and (9) of the Public Appointments (County Assemblies Approval) Act, 2017 provides that:

(8) *An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background.*

(9) *The criteria specified in the First Schedule and the assessment form specified in the Second Schedule shall be used by a committee during an approval hearing for the purposes of vetting a candidate.*

14. Further, Section 8 of the Public Appointments (County Assemblies Approval) Act, 2017 provides that the issues for consideration by the relevant County Assembly in relation to any nomination shall be:

(a) *The procedure used to arrive at the nominee including the criteria for the short listing of the nominees;*

(b) *Any constitutional or statutory requirements relating to the office in question; and*

(c) *The suitability of the nominee for the appointment proposed having regard to whether the nominee's credentials, abilities, experience and qualities meet the needs of the body to which the nomination is being made.*

15. During the approval hearing, the Committee was guided by the provisions of Section 7(8) and (9) and Section 8 of the Public Appointments (County Assemblies Approval) Act, 2017.

2.6.1 Procedure for Nomination

16. Section 6(1) of the Public Appointments (County Assemblies Approval) Act, 2017 requires the appointing authority, upon nominating a person for appointment, to notify the relevant County Assembly accordingly. In this regard, pursuant to Article 179(2) of the Constitution, Section 30(2)(d) of the County Governments Act, 2012 and Section 6(1) of the Public Appointments (County Assemblies Approval) Act, 2017, the Governor of Machakos County, notified the Assembly of the nomination of Ms. Elizabeth Katile Mutua for appointment to the position of County Executive Committee Member, Department of Water, Irrigation, Climate Change and Environment through letter Ref No. GMC/2/OOG/VOL 1/001 dated 27th May, 2024.

2.6.2 Constitutional and Statutory Requirements

17. The Constitution and the County Governments Act provides for guidelines on how to appoint persons to public office which include:

(i) Two-Thirds Gender Rule

18. Article 27(8) of the Constitution provides that the state shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender. Section 35(1)(b) of the County Governments Act provides that

the Governor shall, when nominating members of the executive committee take into account the principles of affirmative action.

19. In addition, Section 35(2)(a) of the County Governments Act, 2012 provide that the county assembly shall not approve nominations for appointment to the executive committee that do not take into account not more than two thirds of either gender.

(ii) Minorities and marginalized groups Minorities and marginalized groups

20. Section 35(2)(b) of the County Governments Act, 2012 provide that the Governor shall, when nominating members of the executive committee, ensure that to the fullest extent possible, the composition of the executive committee reflects the representation of minorities and marginalized groups and communities.

(iii) Community and Cultural Diversity Community and Cultural Diversity

21. Section 35(2)(c) of the County Governments Act, 2012 provide that the Governor shall, when nominating members of the executive committee, ensure that to the fullest extent possible, the composition of the executive committee reflects the community and cultural diversity of the county.

(iv) Leadership and Integrity

22. The Committee, in determining the suitability of the nominee, was also guided by the provisions on leadership and integrity as outlined under Chapter Six of the Constitution. In particular, Article 73(2) of the Constitution provides that the guiding principles of leadership and integrity include:

- (a) Selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
- (b) Objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices;
- (c) Selfless service based solely on the public interest, demonstrated by—
 - (i) Honesty in the execution of public duties; and
 - (ii) The declaration of any personal interest that may conflict with public duties;
- (d) Accountability to the public for decisions and actions; and
- (e) Discipline and commitment in service to the people.

23. Article 75 of the Constitution requires a State officer shall behave, whether in public or private life, behave in a manner that avoids conflict between personal interests and public or official duties or demeaning to the office held. In addition, this Article prohibits a State Officer who has been removed from office under it from holding any other State Office.

24. Article 77(1) of the Constitution prohibits a full-time state officer from participating in any other gainful employment. Article 77(2) of the Constitution bars an appointed state officer from holding office in a political party. Further, Article 78 of the Constitution disqualifies a person who is not a Kenyan citizen from appointment as a State Officer. In addition, a State Officer is barred from holding dual citizenship.
25. In addition, the Committee considered Section 10 of the Leadership and Integrity Act, 2012 which provides that: A State officer shall, to the best of their ability –
- (a) Carry out the duties of the office efficiently and honestly;
 - (b) Carry out the duties in a transparent and accountable manner;
 - (c) Keep accurate records and documents relating to the functions of the office; and
 - (d) Report truthfully on all matters of the organization which they represent.

2.6.3 Suitability of the nominee to the docket to which the nomination is being made

26. The nominee had not collected and submitted the vetting forms as requested in the advert placed on the Daily Nation newspaper dated Friday, 31st May, 2024, and did not appear for the approval hearing as scheduled and therefore her suitability to the docket for which she had been nominated could not be assessed.

2.6.4 Consideration of memoranda from Members of the Public

27. Section 7(10) of the Public Appointments (County Assemblies Approval) Act, 2017 provides that “any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated.”
28. The Clerk of the County Assembly placed an advertisement in the Daily Nation newspaper on 31st May, 2024 inviting the public to submit any information or comments on suitability or otherwise of the nominee in conformity with Section 7(10) of the Public Appointments (County Assemblies Approval) Act, 2017. By 6th June, 2024, which was the deadline of submission, the County Assembly had not received any sworn statements contesting her suitability.

3.0 APPROVAL HEARING

29. The Committee held a pre-vetting sitting on 3rd and 10th June, 2024 to deliberate on the approval hearing.

3.1 ELIZABETH KATILE MUTUA, NOMINEE COUNTY EXECUTIVE COMMITTEE MEMBER, DEPARTMENT OF WATER, IRRIGATION, CLIMATE CHANGE AND ENVIRONMENT

30. The Committee convened at the County Assembly Chambers as scheduled for the approval hearing.
31. The Committee directed the Serjeant at Arms to look for the nominee and escort her to the Assembly Chambers for the approval hearing. The Serjeant at Arms reported back that the nominee was not within the precincts of the Assembly.
32. The Committee observed that:
- (a) The nominee did not collect and submit vetting forms from the Office of the Clerk by 10.00 a.m. on Thursday, 6th June, 2024 as per the advert placed by the Clerk of the County Assembly on the Daily Nation newspaper dated Friday, 31st May, 2024 and as required under Section 7(9) of the Public Appointments (County Assemblies Approval) Act, 2017.
 - (b) The Office of the Clerk of the County Assembly had not received any formal notification on the nominee's withdrawal from the approval process as provided under Section 7(12) of the Public Appointments (County Assemblies Approval) Act, No. 5 of 2017 which provides that a candidate may, at any time, by notice in writing addressed to the Clerk, withdraw from the approval process and the candidate's nomination shall thereupon lapse.
 - (c) The Office of the Clerk of the County Assembly made efforts to contact the nominee by way of phone calls and SMS. When the nominee eventually answered the phone call of the Clerk, she stated that she had declined that nomination.
 - (d) An approval hearing cannot proceed without the presence of the nominee.
 - (e) A report should be compiled for reporting to the House.

4.0 COMMITTEE RECOMMENDATION

33. The approval hearing having not taken place as provided under Article 179(2)(b) of the Constitution, Section 35 of the County Governments Act and Sections 7, 8 and 9 of the Public Appointments (County Assemblies Approval) Act, 2017, due to unavailability of the nominee and oral reporting that she had declined the nomination, the Committee recommends that this House reports to the appointing authority that the candidate's nomination had lapsed pursuant to Section 7(12) of Public Appointments (County Assemblies Approval) Act, 2017.

SIGN.....*Anne*..... DATE*18/6/2024*.....

HON. ANNE KIUSYA

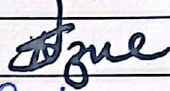
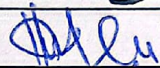
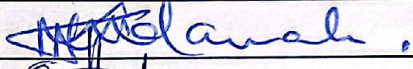

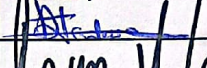
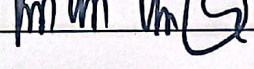
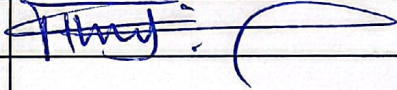
SPEAKER OF THE COUNTY ASSEMBLY / CHAIRPERSON, COMMITTEE ON APPOINTMENTS

REPUBLIC OF KENYA
COUNTY GOVERNMENT OF MACHAKOS
COUNTY ASSEMBLY OF MACHAKOS
COMMITTEE ON APPOINTMENTS

ADOPTION SCHEDULE FOR THE COMMITTEE ON APPOINTMENTS REPORT ON APPROVAL OF A NOMINEE TO THE POSITION OF COUNTY EXECUTIVE COMMITTEE MEMBER FOR DEPARTMENT OF WATER, IRRIGATION, CLIMATE CHANGE AND ENVIRONMENT.

The report was adopted by the following members;

Date: 18th June, 2024.

NO.	MEMBER	SIGNATURE
1.	Hon. Anne Kiusya	
2.	Hon. Stephen Mwanthi	
3.	Hon. Nicholas Nzioka	
4.	Hon. Judas Mbili Ndawa	
5.	Hon. Jackson Ndaka	
6.	Hon. Francis Kavyu	
7.	Hon. John Brian Kisila	
8.	Hon. Winfred Mutua	
9.	Hon. Francis Kitaka	
10.	Hon. Peter Kilonzo	