

COUNTY ASSEMBLY OF BUNGOMA

COUNTY ASSEMBLY DEBATES

DAILY

HANSARD

WEDNESDAY 6TH APRIL, 2022

Morning Sitting

COUNTY ASSEMBLY OF BUNGOMA

HANSARD OFFICIAL REPORT

WEDNESDAY 6TH APRIL, 2022

The House met at 9:30 a.m.

(Mr. Temporary Speaker [Hon. Humphrey Sifuna] in the Chair)

PRAYER

MOTION

REPORT BY THE POWERS AND PRIVILEGES COMMITTEE IN RESPECT TO THE EVALUATION OF THE COMMITTEE'S PERFORMANCE DURING THE TERM OF THE SECOND COUNTY ASSEMBLY

Hon. Paul Wamalwa (Member, Powers): Thank you, Mr. Speaker. I stand here to present a report by Powers and Privileges Committee in respect to evaluation of committee's performance during the term of the Second County Assembly.

Committee Membership

Mr. Speaker Sir, the Committee of Powers and Privileges as currently constituted comprises of the following Members:-

- | | |
|----------------------------|-------------|
| 1. Hon. Emmanuel Situma | Chairperson |
| 2. Hon. Winnie Nyambok | Vice Chair |
| 3. Hon. Jane Ingo | Member |
| 4. Hon. Beatrice Wekesa | Member |
| 5. Hon. Grace Sundukwa | Member |
| 6. Hon. Nathaniel Aseneka | Member |
| 7. Hon. Christine Nge'lech | Member |
| 8. Hon. Jack Kawa | Member |
| 9. Hon. Paul Wamalwa | Member |
| 10. Hon. Charles Nangulu | Member |

1.4 Acknowledgement

Mr. Speaker Sir, the Committee is thankful to the Offices of the Speaker and the Clerk of the County Assembly for the support accorded to it during the exercise as it executed its mandate.

I further wish to express my appreciation to the Honorable Members of the Committee and the secretariat for their commitment throughout the entire training period and by extension during the production of this report.

It is therefore my pleasant duty and privilege, on behalf of the Committee on Powers and Privileges, to table this report and recommend it to the House for adoption pursuant to the provisions of Standing Order No.180.

Mr. Speaker Sir, the Honourable vice- chair of the Committee officially opened the workshop on Monday 28th February 2022. In her opening remarks, she appreciated and congratulated the committee for its hard work and vigilance during its term. She noted that there had been a marked improvement in the conduct of the business of the County Assembly. She further encouraged members to continue conducting themselves with decorum so as to protect their reputation as well as that of the County Assembly. The Honourable vice-chair also acknowledged the presence of the representatives from the office of the County Attorney led by the County Attorney, Mr. Cyril Wayong'o.

She welcomed members to the workshop and urged them to take the workshop as a refresher course to remind themselves of their mandate as they undertake the crucial role of oversight. Members were encouraged to participate in the discussion and voice their opinions on how the committee can improve its service delivery.

A summary of the key areas discussed and or covered during the six days workshop is highlighted as follows:

Mandate of the Committee & Enabling Laws

Mr. Speaker Sir, The County Attorney made a presentation to members concerning their mandate as outlined under the County Assemblies Powers & Privileges Act. He gave an overview of the Committee's authority to enquire into the conduct of members of the County Assembly as provided under Section 15 (4), (5), and (6) of the County Assemblies Powers & Privileges Act. It was further pointed out that the Committee derives its mandate additionally from Section 14 of the County Governments Act, 2012 and standing Order 195 of the Bungoma County Assembly Standing Orders.

Members were reminded that a member of the County Assembly may be found to be in breach of the expected standards/threshold of conduct if the member;

- Contravenes sections 25 of the Powers & Privileges Act (Unauthorized broadcasting of assembly proceedings) ; 26

Mr. Speaker, we need decorum, members are consulting loudly.

Mr. Temporary Speaker: Very well, go ahead.

Hon. Paul Wanyonyi: 26 (1) (assault, threaten, use abusive language, obstruct, molest or insult any member or; while a County Assembly or a committee is sitting create or take part in any unlawful disturbance which interrupts or is likely to interrupt the proceedings of a County Assembly or any committee while a County Assembly or the committee is sitting; or fail to refuse to comply with an instruction by a duly authorized member of staff or a police officer regarding-

- (i) the presence of the public in the precincts of a County Assembly including a meeting within the precincts of a County Assembly; or
- (ii) the possession of any article, including a fire arm, within the precincts;
 - fails without sufficient cause to attend/obey summons to the Assembly/Committee or;
 - Willfully fails or refuses to obey any rule, order or resolution of a county assembly;
 - Contravenes any provision of the Speaker's lawful orders;
 - Conducts himself or herself in a manner which, in the opinion of the Committee on Powers and Privileges, is likely to reflect adversely on the dignity or integrity of a County Assembly.

Mr. Speaker Sir, the County Attorney after having expounded on the above concluded by highlighting the penalties and sanctions provided for in law for the above mentioned breaches.

Ethical Considerations in the Selection & Appointment of Persons to Public Offices.

Mr. Speaker Sir, The County Attorney made a presentation to members of the committee on the ethical considerations factored in public appointments. Members were reminded that being qualified for a position does not necessarily equate to suitability for a position. It was underscored that Public Officers must conduct themselves with dignity both in the professional capacities as well as their private lives so as not to embarrass or bring disrepute to the offices they hold.

Members were reminded to enquire into the following issues during vetting exercises;

- a) Conflict of Interest;
- b) History or lack of it regarding any criminal offences
- c) History of Corruption
- d) Past Contravention of the provisions of the Leadership & Integrity Act, the Public Officers Ethics Act and Chapter 6 of the Constitution.

Mr. Speaker Sir, salient provisions of the Leadership & Integrity Act, the Public Officer Ethics Act and Chapter 6 of the Constitution were also highlighted including emphasis in respect to their application to practical day to day operations of the Honourable Members.

c) In line with Regulation 12 of the Leadership and Integrity Regulations, 2015, all public entities should always ensure that the following provisions on conflict of interest are adhered to;

- opening and maintenance of an open register of conflict of interest in the prescribed form
- publicizing registers of conflict of interest
- maintenance of registers of conflict of interest for 5 years after the last entry in each volume; and
- Compliance of annual reports on conflict of interest declarations.

Mr. Temporary Speaker: Honorable chair, why did you skip page 12?

Hon. Paul Wanyonyi: I'm sorry, Mr. Speaker.

Management of Conflict of Interest in the operations of County Governments

Mr. Speaker Sir, a conflict of interest involves a conflict between a public duty and private interest of a public official in which the public official has private interests which could improperly influence the performance of their official duties and responsibilities.

Types of Conflict of Interest

- a) Potential conflict of interest arises where a public official has private interests that could conflict with their official duties.
- b) Actual conflict of interest arises where there is a direct conflict between a public official's current duties and responsibilities and existing private interests.
- c) Perceived or apparent conflict of interest can exist where it is perceived or appears that a public official's private interests could improperly influence the performance of their duties; whether or not this is in fact the case.

Having an understanding and defining the differences between potential, actual or apparent conflicts of interest assists in identifying when a conflict exists and determining which type of management approach may be the most appropriate.

There is nothing unusual or necessarily wrong in having a conflict of interest. How it is dealt with is the most important thing.

It was highlighted and emphasized that;

A member of the County Assembly shall-

- a) at all times observe the principles of integrity including those set out in Chapter 6 of the constitution; and
- b) promptly declare to the Hon. Speaker any interest that the member has in any matter being discussed in the County Assembly both in its committees and the Plenary. Mr. Speaker, I had read this therefore I will move to page 14.
- (f) maintain an appropriate standard of dress and personal hygiene; and
- (g) discharge any professional responsibilities in a professional manner.

11. No improper enrichment

- (1) A public officer shall not use his office to improperly enrich himself or others.
- (2) Without limiting the generality of subsection (1), a public officer shall not-
 - (a) except as allowed under subsection (3) or (4), accept or request gifts or favours from a person who-
 - (i) has an interest that may be affected by the carrying out, or not carrying out, of the public officer's duties;
 - (ii) carries on regulated activities with respect to which the public officer's organization has a role; or
 - (iii) has a contractual or similar relationship with the public officer's organization;
 - (b) improperly use his office to acquire land or other property for himself or another person, whether or not the land or property is paid for; or
 - (c) for the personal benefit of himself or another, use or allow the use of information that is acquired in connection with the public officer's duties and that is not public.
- (3) A public officer may accept a gift given to him in his official capacity but, unless the gift is a non-monetary gift that does not exceed the value prescribed by regulation, such a gift shall be deemed to be a gift to the public officer's organization.
- (4) Subsection (2) (a) does not prevent a public officer from accepting a gift from a relative or friend on a special occasion recognized by custom.
- (5) Subsection (2) (c) does not apply to the use of information for educational or literary purposes, research purposes or other similar purposes.

12. Conflict of Interest

- (1) A public officer shall use his efforts to avoid being in a position in which his personal interests conflict with his official duties.
- (2) Without limiting the generality of subsection (1), a public officer shall not hold shares or have any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having that interest would result in the public officer's personal interests conflicting with his official duties.
- (3) A public officer whose personal interests' conflict with his official duties shall-
 - (a) declare the personal interests to his superior or other appropriate body and comply with any directions to avoid the conflict; and
 - (b) refrain from participating in any deliberations with respect to the matter.
- (4) Notwithstanding any directions to the contrary under subsection (3)(a), a public officer shall not award a contract, or influence the award of a contract, to-
 - (a) himself;
 - (b) a spouse or relative;
 - (c) a business associate; or
 - (d) a corporation, partnership or other body in which the officer has an interest.

- (5) The regulations may govern when the personal interests of a public officer conflict with his official duties for the purposes of this section.
- (6) In this section, “personal interest” includes the interest of a spouse, relative or business associate

20. Conduct of private Affairs

- (1) A public officer shall conduct his private affairs in a way that maintains public confidence in the integrity of his office.
- (2) A public officer shall not evade taxes.
- (3) A public officer shall not neglect his financial obligations or neglect to settle them

Mr. Speaker Sir, special mention and emphasis was also highlighted in respect to the constitutional provisions as elaborated under chapter six of the constitution, more particularly on the following salient areas;

- Article 75 on Conduct of State Officers;
- Article 76 on financial probity of state officers;
- Article 77 regarding restriction on activities of state officers; and
- Article 193 on the Qualifications or otherwise for election as member of County Assembly.

Mr. Speaker Sir, in the quest of pursuing leadership and integrity there is need for state and public officers to declare their wealth for the following reasons;

- To increase transparency, accountability and the trust of citizens in public administration;
- To help heads of public institutions prevent conflicts of interest among their employees and promote integrity within their institutions; and additionally
- To monitor wealth variations of individual public officials and to help clarify the full scope of illicit enrichment or other illegal activities

Mr. Speaker Sir, members were further reminded of the legislative and policy framework that has been put in place to guide public officers in dealing with conflict of interest. The County Attorney highlighted the following salient provisions of the law;

- Opening and maintenance of an open register of conflict of interest in the prescribed form
- Publicizing Registers of Conflict of Interest
- Maintenance of the register of conflict for 5 years after the last entry in each volume
- Compilation of annual reports on conflict of interest declarations
- Opening and maintenance of gift registers
- Declaration of gifts received on public or official occasions
- Disposal of gifts
- Compilation of annual reports on gifts received, gifts surrendered and gifts disposed

- Requirement/Obligation for every Public officer to submit to the responsible Commission a Declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependant/children under the age of 18 years, once every two years in the prescribed form.

WHEN DECLARATIONS MUST BE MADE (DIALs):

- (1) The declaration shall be submitted in the December of every second year.
- (2) The statement date of a declaration under subsection (1) shall be the first day of November of the year in which the declaration is required.
- (3) Within thirty days after becoming a public officer, the public officer shall submit an initial declaration.
- (4) The statement date of an initial declaration under subsection (3) shall be the date the public officer became a public officer.
- (5) Within thirty days after ceasing to be a public officer, the former public officer shall submit a final declaration.
- (6) The statement date of a final declaration under subsection (5) shall be the date the public officer ceased to be a public officer.
 - Maintain the declarations
 - Develop administrative procedures for declaration of income, assets and liabilities
 - Verify information provided in the declarations
 - Take action against non-submission of declarations
 - Submit annual returns to EACC for enforcement

Mr. Speaker Sir, to demonstrate how personal decisions and conduct may come back to haunt career progression in the public service, the following two Case Studies touching on Integrity issues were cited with definite elaboration;

1. M/S Nancy Baraza case:
2. Mumo Matemu vs. Trusted Society of Human Rights Alliance & 5 Others [2013] ekLR Court of Appeal

2.4 Highlights of Activities/Legislative Business And Reports of Undertaken by the Committee for The Years 2017-2022. I think you have the table which you can read through.

In the last allocation of the previous financial year that ended on 30th June, 2021, the committee received an allocation of Kshs 5,295,941 against a budget proposal of Kshs.10M while in the current financial year 2021/2022; the committee was allocated a sum of Kshs.4, 704,200 against a budget proposal of Kshs.9, 665,500 resulting into a deficit of Ksh.4.9M.

The trend has been an impediment to the committees' priority direction and the achievement of its desired outputs.

The committee has however strived to actualize the full implementation of its annual work plans amidst such budgetary constraints and a worrying decrease in allocation.

Mr. Speaker Sir, The Committees' oversight and general operations are improved based on a programmed approach that ensures quantifiable activities, within strict timelines and performance indicators that are supported by a sufficient budget.

CHAPTER THREE

Mr. Speaker Sir, arising from the evaluation exercise, the following were some of the observations and Recommendations going forward:

Committee Observations

- 1) There is a corruption prevention committee (CPC) in place
- 2) There is an Integrity Assurance Committee (IAC) in place
- 3) There lacks integrity testing programmes through staff integrity screening as provided for under the Anti- Corruption and Economic Crimes Act, 2003 and the Public Officer Ethics Act, 2003

Committee Recommendations

Members agreed that going forward; the following action points should be undertaken by the County Assembly;

- 1) Members of the Committee on Powers and Privileges being the "Spear of Integrity" should strive at all times to be beyond reproach as they are the epitome of integrity and ethics.
- 2) Improved administration and maintenance of the register of Gifts & Donations.
- 3) Put in place administrative mechanisms for the opening and maintenance of a register of Conflicts of Interest
- 4) Carry out periodic workshops and trainings to remind members of the expected code of conduct.
- 5) The County Assembly to fasttrack the development of a service charter as a legislative and institutional framework tool to combat corruption
- 6) There is need for the County Assembly Service Board (CASB) to create and continuously nurture an environment of integrity and ethical behavior through trainings and workshops with the relevant stake holders through adequate budgeting
- 7) The County Assembly should enhance integrity testing programmes through staff integrity screening in compliance with Anti- Corruption and Economic Crimes Act, 2003 and the Public Officer Ethics Act, 2003

CONCLUSION & CLOSING REMARKS

The Honourable Vice-Chair congratulated the Members of the Committee for improving on service delivery and the improved conduct of the 2nd House. She urged members to maintain their high standards of professionalism to serve as an example to future County Assemblies. She thanked everyone for attending and actively participating in the workshop and closed the workshop.

Mr. Speaker Sir, it is now my singular duty to present this report to the House for adoption. May I call upon Hon. Ng'elech to second the motion.

Hon. Christine Ng'elech: Thank you, Mr. Speaker Sir. I stand to second the motion and also urge the members of this House to adopt this report. Thank you.

(Applause)

Mr. Temporary Speaker: Honourable members, a motion having been moved and seconded, I now propose the question.

(Question proposed)

MOTION OF DEFERMENT PURSUANT TO STANDING ORDER 49 (B)

Hon. Sospeter Nyongesa: Thank you, Mr. Speaker. I'm on my feet in respect to the motion under Standing Order 49 (b); that arising from what has transpired in the motion by the Powers and Privileges Committee on respect to the evaluation of the committee performance during the term of the Second County Assembly and issues raised therein; I have consulted members widely and from the consultations, I propose debate on this motion be pushed to Wednesday 6th April 2022 at 2:30 p.m. sitting to allow members have in-depth deliberations on the matters contained in the report. Thank you Mr. Speaker. On this premise I call upon Hon. Wamusai to second the motion.

Hon. Chrispinus Wamusai: Thank you, Hon. Speaker. First of all, I laud Hon. Paul Wamalwa for eloquent moving of the motion. He was up to the task and he deserves our appreciation. He has shown that he is a veteran on matters this House. I'm on my feet to second the motion of adjournment to move this motion to 2:30 p.m. today on the premise that the issues raised in the report are weighty and requires an in-depth deliberation and analysis by the honourable members. I second that debate be moved to the afternoon.

Mr. Temporary Speaker: Honourable members, a motion of deferment having been moved and seconded; I put the question that this House adopts the motion of deferment to 2:30 p.m.

(Question put and agreed to)

The Ayes have it!

(Applause)

Honourable members we adjourn to 2:30 p.m.

(House Adjourns)