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**COUNTY ASSEMBLY OF BUNGOMA**

**THIRD ASSEMBLY, SECOND SESSION**

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*5/25/23*

COUNTY ASSEMBLY OF BUNGOMA  
(T.PCS)  
**23 OCT 2023**  
**FILED**  
By: *Ben B. Keken*

**REPORT OF THE COMMITTEE OF POWERS AND  
PRIVILEGES ON COMPLIANCE WITH WEALTH  
DECLARATION BY HONOURABLE MEMBERS**

COUNTY ASSEMBLY OF BUNGOMA  
(LPCS)  
**24 OCT 2023**  
**NOTICE ISSUED**  
By: *Ben B. Keken*

*Clerk's Chambers*

*County Assembly Buildings,*

*P.O Box 1886-50200,*

*BUNGOMA, KENYA.*

June, 2023

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## **ACRONYMS**

CAPPA – County Assemblies Powers and Privileges Act

DIALS – Declaration of Income, Assets and Liabilities

EACC – Ethics and Anti-Corruption Commission

LIA – Leadership and Integrity Act

POEA – Public Officer Ethics Act

## CHAPTER ONE

### 1.0 PREFACE

**Mr. Speaker Sir,**

The objectives of the Report are:

- a) To establish the level of compliance by Members of the County Assembly in initial declaration of their income, assets and liabilities
- b) To make recommendations for enhancing compliance on the implementation of DIALs.

### 1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The County Assembly Committee of Powers and Privileges is established under section 15(1) of the County Assemblies Powers and Privileges Act, 2017 (CAPPA) and the County Assembly of Bungoma Standing Order 215.

### 1.2 MEMBERSHIP

The Committee as currently constituted comprises of the following Members:

<b>Name</b>	<b>Designation</b>
1. Hon. Emmanuel Situma	Speaker /Chairperson
2. Hon. Brigid Katasi	Vice Chairperson
3. Hon. Joseph Juma	Member
4. Hon. Miliar Masungo	Member
5. Hon. Vitalis Wangila	Member
6. Hon. Ali Machani	Member
7. Hon. Tony Barasa	Member
8. Hon. Jack Kawa	Member
9. Hon. Orize Kundu	Member
10. Hon. Eunice Kirui	Member

### **1.3 MANDATE OF THE COMMITTEE**

The Committee on Powers and Privileges derives its mandate from the Constitution of Kenya 2010; the County Assemblies Powers and Privileges Act, 2017; the Leadership and Integrity Act, 2012; the Public Officer Ethics Act, 2003 and the County Assembly of Bungoma Standing Orders.

Specifically, the Committee is mandated under Section 15 (4) ((5) and (6) of the County Assemblies Powers and Privileges Act, 2017 to check the conduct of Members of the County Assembly amongst other roles. The Committee further executes its mandate in accordance with the provisions of Standing Order 215(3) of the County Assembly of Bungoma Standing Orders which provide that the functions of the committee shall be to;

a) Inquire into the conduct of a Member whose conduct is alleged to constitute a breach of privileges;

b) Perform such other functions as may be specified by an Act of Parliament or any other legislation of Powers, Immunities and Privileges of Members.

Further, in the execution of its mandate as outlined above, the Committee is guided by core Constitutional principles, established customs, traditions and the best Commonwealth Parliamentary Practices and Usages.

Article 196(3) of the Constitution of Kenya 2010, provides that-

*Parliament shall enact Legislation providing for the powers, privileges and immunities of County Assemblies, their committees and members.*


It is against this background that the County Assemblies Powers and Privileges Act, No.6 of 2017 was enacted with its key objective being to breathe life into the provisions of Article 196(3) of the Constitution; to provide for the powers, privileges and immunities of County Assemblies; their committees and members; to make provision regulating admittance to and conduct within the precincts of County Assemblies; and for connected purposes.

Important to note is that the Committee of Powers and Privileges in the meaning of the County Assemblies Powers and Privileges Act No.6 of 2017 is the only Committee that has an Act of Parliament governing its operations.

**1.4 ACKNOWLEDGEMENT**

The Chairperson of the Committee takes this opportunity to thank all Members of the Committee for their immense contribution. In equal measure, the Committee conveys its gratitude to the Offices of the Speaker and Clerk of the County Assembly for the support accorded to it in the execution of its mandate during the compilation of the report.

It is therefore my pleasant duty and privilege on behalf of the Committee of Powers and Privileges, to present the report to the House.

SIGN  DATE 18/07/2023

**HONOURABLE EMMANUEL SITUMA**  
**SPEAKER OF THE COUNTY ASSEMBLY/CHAIRPERSON**

## CHAPTER TWO

### 2.1 BACKGROUND

**Mr. Speaker Sir,**

The fight against corruption provides detailed information on the value of asset and interest declaration systems and how to effectively implement them. Public disclosure of private assets of public officials and family members does not clash with the rights to privacy and data protection. Both rights are not absolute and can be restricted provided there is a basis in law and a legitimate public interest justifies the restriction. Prevention of corruption and exposing unexplained wealth of officials are serious and legitimate public interests.

Access to declared information can greatly increase the ability of disclosure systems to deliver results. Further, limitations on the privacy of public officials by requiring them to disclose their income, assets and liabilities serves the public interest.

In the quest of pursuing leadership and integrity, asset declaration systems have increasingly become a multipurpose tool. In this regard, there is need for state and public officers to declare their wealth for the following reasons:

- a) To increase transparency, accountability and the trust of citizens in public administration;
- b) To help heads of public institutions prevent conflicts of interest among their employees, build and promote broader integrity within their institutions;
- c) To monitor wealth variations of individual state and public officers as it contributes to transparency of ownership and support supervision efforts;
- d) To help clarify the full scope of illicit enrichment or other illegal activity by providing additional evidence. Consequently, this helps detect unjustified assets.

Declaration of Income, Assets and Liabilities therefore, combines prevention and enforcement purposes.

### 2.2 LEGAL FRAMEWORK

The Public Officer Ethics Act, 2003 (POEA) requires that each public officer adheres to a code of conduct and ethics for public officers and further requires financial declaration

from certain public officers. Section 3 of the Public Officer Ethics Act, 2003 assigns different Commissions or Committees to be in charge of the implementation of the provisions of the said Act.

Section 3(2) (a) partly states that the Committee of the National Assembly responsible for the ethics of Members is the responsible Commission for implementation of the Act with respect to Members of the National Assembly. This section applies to the County Assembly with necessary modifications. Further, Section 3(11) provides that a body that is the responsible Commission for a public officer by virtue of exercising disciplinary control over that public officer remains the responsible Commission. In line with the aforementioned, the County Assembly Committee on Powers and Privileges is the responsible Commission/Committee for purposes of implementing the Public Officer Ethics Act, 2003 pursuant to section 3(2) and (11) of the Act as outlined above.

The National instruments that form part of the legal framework for DIALs include: The Constitution of Kenya, 2010; Leadership and Integrity Act (LIA), 2012; Public Officer Ethics Act (POEA), 2003; Public Officer Ethics Regulations, 2003; Public Officer Ethics (Management, Verification and Access to Financial Declarations) Regulations, 2011; and National Ethics and Anti-Corruption policy, 2018.

### **2.2.1 The Constitution of Kenya, 2010**

The Constitution of Kenya provides the normative framework for good governance and an ethical society. Articles 10, 73, 74, 75 and 232 of the Constitution set out the principles of governance and national values which bind all State organs, State and Public Officers. In essence, the above provisions of the Constitution encompass everything that is required to set, maintain or raise the standards in management of public affairs.

Chapter Six of the Constitution specifically outlines the guiding principles of leadership and integrity which include selfless service based solely on the public interest. This is demonstrated by honesty in the execution of public duties and the declaration of any personal interest that may conflict with public duties. The implementation of the Constitution directly rests on the legislation and/or statutes which include; the



Leadership and Integrity Act, 2012 and the Public Officer Ethics Act, 2003 that provide a framework on principles of public service.

### **2.2.2 Leadership and Integrity Act, 2012 (LIA)**

The Leadership & Integrity Act No. 19 of 2012 was enacted pursuant to Articles 79 & 80 of the Constitution. The Act was enacted for the purpose of giving effect to and establishing procedures and mechanisms for effective administration of Chapter Six of the Constitution. The primary purpose of the Act is to ensure that state and Public Officers respect the values, principles and requirements of the Constitution. Section 6 of the Act states that the provisions of the Public Officer Ethics Act (2003) form part of the Leadership and Integrity Act by virtue of subsection (3). This includes the provision on the declaration of income, assets and liabilities under part IV of the Public Officer Ethics Act, 2003.

### **2.2.3 Ethics and Anti-Corruption Commission Act, 2011**

Article 79 of the Constitution provides that Parliament shall enact legislation to establish an independent Ethics and Anti-Corruption Commission with the status of independent Commissions under Chapter 15 of the Constitution. All public institutions are required to prepare and submit to the EACC their specific code of conduct for approval by the EACC. Further to the provisions of the LIA, the EACC Act mandates the EACC to oversee enforcement of codes of conduct of public entities. With reference to state officers, the Commission is mandated by Section 11 of the Act to:

- a) develop and promote standards and best practices in integrity and anti-corruption
- b) develop a code of ethics
- c) work with other state and public officers in development and promotion of standards and best practices in integrity and anti-corruption
- d) receive complaints for breach of code of ethics by public officers
- e) investigate and recommend to the director of public prosecutions crimes related to anti-corruption and economic crimes

- f) recommend appropriate action against state officers engaged in unethical conduct
- g) oversee enforcement of codes of conduct

#### **2.2.4 Anti-Corruption and Economic Crimes Act, 2003**

The Act provides for the prevention, investigation and punishment of corruption and economic crimes. It sets out various offences that relate to public office holders. In this regard, the public office holder commits an offence if he or she:

- a) acquires private gain in a contract, agreement or investment connected with a public body;
- b) offers gain to another person or soliciting a benefit to give advice
- c) takes part in bid rigging (giving, receiving or soliciting or agreeing to receive a benefit that is an inducement or reward; withdrawing or changing a tender, proposal or bid)
- d) fraudulently fails to pay taxes, fees or levies chargeable by a public body or fraudulently acquires public property
- e) abuses office to improperly confer a benefit to himself or anyone else
- f) deals with suspect property
- g) attempts, conspires, or incites another to commit an offence involving corruption or economic crime

#### **2.2.5 Public Officer Ethics Act, 2003 (POEA)**

The Public Officer Ethics Act, 2003 (POEA) is another extensive legislation that was enacted to advance the ethics of public officers by providing for a code of conduct and ethics for public officers under Part III. Further, Part IV of the Act provides for declaration of income, assets and liabilities by public officers. Section 26 makes it mandatory for every public officer to submit their declaration once every two years to a responsible commission for self, spouse(s) and dependent children under the age of 18 years. The statement date for a biennial declaration is the 1<sup>st</sup> day of November of the year in which the declaration is required. A public officer is also required under Section 27 to submit an initial declaration within thirty days of joining public service. The statement date is the first date the officer becomes a public officer. An officer who exits

the public service is required to further submit a final declaration within thirty days after ceasing to be a public officer. The statement date of a final declaration is the date the public officer ceases to be a public officer.

### **Section 26. Declaration required**

Under Section 26, every public officer shall, once every two years as prescribed by section 27, submit to the responsible commission for the public officer a declaration of the income, assets and liabilities of himself, his spouse or spouses and his dependent children under the age of 18 years. The declaration shall be in the form set out in the Schedule and shall include the information required by the form.

### **Section 27. When declarations must be made**

Section 27 of the Act provides that:

- (1) The declaration shall be submitted in 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.
- (7) The following shall apply with respect to a person who is a public officer on the day the administrative procedures relevant to that public officer are first published under section 33

- (a) the public officer shall submit an initial declaration within sixty days after the administrative procedures are published; and

(b) the statement date of an initial declaration under paragraph (a) shall be the date the administrative procedures are published.

### **Section 28: Clarifications**

(1) A person who has submitted a declaration to a Commission shall provide, without undue delay, any clarification requested by the Commission if the request is in writing and is made within six months after the declaration was submitted to the Commission.

(2) Without limiting what a request for clarification may include, such a request may include –

(a) a request that any information that may have been omitted be provided; or

(b) a request that any discrepancy or inconsistency, including a discrepancy or inconsistency arising because of information other than information included on the declaration, be explained, or corrected.

### **Section 29: Information to be correct**

A person submitting a declaration or providing a clarification shall ensure that the declaration or clarification is correct, to the best of his knowledge.

### **Section 30: Access to declarations**

The Section provides that the contents of a declaration or clarification under the POEA shall be accessible to any person upon application to the responsible Commission in the prescribed manner if the applicant shows to the satisfaction of the responsible Commission that he or she has a legitimate interest and good cause in furtherance of the objectives of the Act.

Further, no information obtained shall be published or in any way made public except with prior written authority of the responsible Commission. Any person who contravenes the provisions shall be guilty of an offence and liable on conviction to imprisonment for five years or to a fine not exceeding five hundred thousand shillings or to both.

### **Section 31: Retention of information**

A Commission shall keep information collected under this Part concerning a person for at least five years after the person ceased to be a public officer.

### **Section 32: Offences**

A person who fails to submit a declaration or clarification as required under this Part or who, submits, in such a declaration or clarification, information that he knows, or ought to know, is false or misleading, is guilty of an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding one year or to both.

### **Section 33: Administrative procedures**

(1) Each Commission shall establish procedures for the administration of Part IV of the POEA with respect to the public officers for which it is the responsible Commission.

(2) The administrative procedures shall be established and published in the Gazette within ninety days after the commencement of the Act.

(3) In relation to a Commission that is prescribed by regulation under section 3(10) to be a responsible Commission, subsection (2) shall apply as though the reference in that subsection to the commencement of this Act were a reference to the commencement of the regulation.

(4) Nothing in section 27 requires a public officer to submit a declaration before publication, under this section, of the relevant administrative procedures by the responsible Commission.

#### **2.2.6 The Public Officer Ethics Regulations, 2003**

The Regulations were developed pursuant to section 42 of the Public Officer Ethics Act, 2003. It provides for additional public officers covered by the Act, additional responsible commissions and Regulations relating to the code of conduct and ethics and its enforcement.

### **2.2.7 The Public Officer Ethics (Management, Verification and Access to Financial Declarations) Regulations, 2011**

The Regulations provide the mechanisms for the management, verification, and access to financial declarations. It outlines the procedures for storage and access to information in declarations of income, assets and liabilities; management of declarations and general provisions for responsible commissions to establish a committee responsible to its chief executive, to oversee the management, verification, and access to declarations. These Regulations were established pursuant to Section 42 of the Public Officer Ethics Act, 2003.

The responsible commissions are required to undertake the following functions with regard to the financial declarations: receive and keep custody of declarations, verify and seek clarifications on the declarations, investigate breaches, take administrative action on breaches, develop and implement administrative procedures for management of the declaration process, and monitor compliance on the declarations by public officers.

### **2.2.8 National Ethics and Anti-Corruption Policy, 2018**

The National Ethics and Anti-Corruption Policy, sessional paper No. 2 of 2018, is anchored on the Political Pillar of Kenya Vision 2030. The development of the Policy is also informed by the historical developments in the fight against corruption. The policy proposes the development of mechanisms and legal framework for conducting lifestyle audit and enhance management of DIALs by public officers.

## **CHAPTER THREE**

### **3.1 STATUS OF COMPLIANCE WITH PART IV OF THE POEA ON DIALS FOR THE INITIAL DECLARATION**

**Mr. Speaker Sir,**

The declaration of income, assets and liabilities (DIALs) by public officers is one of the fundamental strategies employed by many countries that is geared towards promotion of ethics and integrity through lifestyle audits. As a result, it is a major tool employed in the fight against corruption.

Part IV of POEA which was enacted to enhance ethical standards provides for declaration of income, assets and liabilities by public officers. Each public officer is required to make an initial declaration within thirty (30) days of assuming public office, a biennial declaration after every two years and a final declaration within 30 days of ceasing to be a public officer. Declarations are to be submitted to a designated responsible commission as provided under Section 3 of POEA. Further, responsible commissions are expected to identify any breaches of the declaration requirements and take appropriate action, including administrative sanctions and submit to EACC a report on the status of compliance with the law relating to DIALS.

Public officers are required to make a declaration of income, assets and liabilities for themselves, their spouse(s) and dependent children under the age of 18. These declarations are submitted to a designated responsible commission.

### **3.2 Mandate of Responsible Commission**

Section 3 of POEA designates various public entities as responsible commissions for the management of DIALs by state and public officers under their jurisdiction. The mandate of the responsible commission under POEA in relation to part IV on DIALs includes the following:

- a) Verify and keep custody of declarations;
- b) Investigate and take administrative sanctions on breaches;
- c) Develop and implement administrative procedures for management of the declaration process;

- d) Monitor compliance on declarations made by public officers; and
- e) Seek clarification of the declarations within six months from the date of submission by public officers.

Regulation 30 of the Leadership and Integrity Regulations, 2015, provides that where there has been a violation of the code of conduct and ethics for public officers, the commission or a public entity may recommend a warning, suspension, dismissal or any other appropriate action against such officer. Responsible commissions and public entities are also empowered to integrate the wealth declaration requirements as part of their codes of conduct and ethics.

In this regard, the Committee gathered secondary data from the submission on the declaration of income, assets and liabilities by Members of the County Assembly. The secondary details from the Human Resource Department on the status of compliance which has culminated into this report encompassed a total of sixty three (63) Members of the County Assembly.



## **CHAPTER FOUR**

### **OBSERVATION AND RECOMMENDATION**

#### **4.1 OBSERVATION**

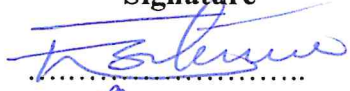






1. The Committee established that during the initial declaration, all Members of the County Assembly declared their income, assets and liabilities within the provided time frame. This means there was 100% compliance level with the law.

#### **4.2 RECOMMENDATION**

1. To continue enhancing compliance, the responsible commission should monitor compliance, including issuance of timely notifications when the declarations are due.

### Adoption Schedule

We, the Members of the Committee of Powers and Privileges, have pursuant to Standing Order 202 (5) adopted the report. We append our signatures to affirm our approval of the contents therein.

Name	Designation	Signature
1. Hon. Emmanuel Situma	Speaker /Chairperson	
2. Hon. Brigid Katasi	Vice Chairperson	
3. Hon. Joseph Juma	Member	
4. Hon. Miliar Masungu	Member	
5. Hon. Vitalis Wangila	Member	
6. Hon. Ali Machani	Member	
7. Hon. Jack Kawa	Member	
8. Hon. Tony Barasa	Member	
9. Hon. Orize Kundu	Member	
10. Hon. Eunice Kirui	Member	
11. Hon. Moureen Wafula	Member	