

COUNTY GOVERNMENT OF BUNGOMA



**COUNTY ASSEMBLY OF BUNGOMA
OFFICE OF THE CLERK**

THIRD SESSION

POWERS AND PRIVILEGES COMMITTEE

**REPORT ON A COMPLAINT LAID BY HON. JERUSA ALEU AGAINST HON.
SHEILA SIFUMA.**

**Clerks Chambers
County Assembly Buildings
P.O BOX 1886 - 50200
BUNGOMA, KENYA**

JUNE, 2024



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CHAPTER ONE

1.0 PREFACE

Hon. Speaker,

The Committee of Powers and Privileges is established in accordance with Section 15 of the County Assemblies Powers and Privileges Act, 2017 herein after referred to as 'the Act.' The committee in execution of its mandate considered an allegation referred to it by Hon. Jerusa Aleu against Hon. Sheila Sifuma. The committee during its internal meetings invited the complainant, the respondent and witnesses to give their oral submissions that formed part of this report. The committee was guided by the Powers and Privileges Act, 2017, Bungoma County Assembly Standing Orders (2nd Edition), Leadership and Integrity Act 2012 and Public Officers Ethic Act 2003.

1.1 Committee Membership

Hon. Speaker,

Section 15 (1) of the County Assemblies Powers and Privileges Act, 2017 provides that:-

There is established, for each County Assembly, a Committee known as the Committee of Powers and Privileges consisting of:

- (a) The Speaker, who shall be the Chairperson of the Committee; and
- (b) Such other members of the County Assembly as may be provided in the Standing Orders of the County Assembly.

The Committee of Powers and Privileges as currently constituted comprises of the following Members:

	Name		Designation
1.	Hon. Emmanuel	Situma	Speaker /Chairperson
2.	Hon. Brigid	Katasi	Vice Chairperson
3.	Hon. Ali	Machani	Member
4.	Hon. Miliarh	Masungo	Member
5.	Hon. Vitalis	Wangila	Member
6.	Hon. Tony	Barasa	Member

7.	Hon. Jack	Kawa	Member
8.	Hon. Orize	Kundu	Member
9.	Hon. Benard	Kikechi	Member
10.	Hon. Eunice	Kirui	Member
11.	Hon. Moureen	Wafula	Member

1.2 Mandate of the Committee

Hon. Speaker,

The Committee's broad mandate is to handle matters concerning powers, privileges, immunities and ethics of Members and the County Assembly at large. The Committee executes its mandate in accordance with the provisions of Section 15 (4) (5) (6) and (7) of the Act. Additionally, the Committee derives its mandate from Section 14 of the County Governments Act, 2012 and Standing Order 215(3), (4), (5) & (6) of the County Assembly of Bungoma Standing Orders.

Standing Order 215(3) provides that the functions of the Committee shall be amongst others 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.

Paragraph (4) of the County Assembly Standing Orders provides that the Committee of Powers and Privileges shall, either on 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 the County Assembly Privileges, or is likely to reflect adversely on the dignity and integrity of the Assembly or of the Members.

- (5) The Committee shall, within fourteen days of the conclusion of an inquiry, table its findings in the County Assembly together with such recommendations as it considers appropriate.
- (6) The County Assembly shall, in accordance with its Standing Orders, consider the report and the recommendations therein and may take such action against the member concerned as may be appropriate.

The Committee can in the execution of its functions, derive its mandate from Parliamentary dictates derived from long standing Practice and Procedures.

Article 194 (1) (b) of the Constitution provides that:

The office of a Member of a County Assembly becomes vacant if the Member is absent from eight sittings of the Assembly without permission, in writing, of the Speaker of the Assembly, and is unable to offer satisfactory explanation for the absence.

Consequently the County Assembly Standing Order 256 assigns to the Committee of Powers and Privileges the duty to inquire into allegations of absence by Members from House proceedings exceeding eight sittings. The Committee, by extension is mandated to enforce the Codes of Conduct under Chapter Six of the Constitution, the Leadership and Integrity Act, 2012 and the Public Officer Ethics Act, 2003 and to recommend necessary sanctions following a disciplinary hearing.

Further, as envisaged under Article 195 of the Constitution of Kenya as read with Section 18 of the Act, the Committee as constituted has the same powers as the High Court with respect to summoning of witnesses for purposes of providing information.

1.3 Acknowledgement

Hon. Speaker,

The Chairperson of the Committee takes this opportunity to thank all the Members of the Committee for their invaluable contribution towards the production of this report. The Committee wishes to also thank the Offices of the Hon. Speaker and the Clerk of the County Assembly for the necessary support extended to it in the execution of its mandate. On behalf of the Committee of Powers and Privileges, I have the honour and pleasure to table this report and recommend it to the House for consideration.

Sign.....



Date

25/6/2024

The Hon. Emmanuel Situma

Speaker of the County Assembly/Chairperson

CHAPTER TWO
LEGAL FRAMEWORK

2.1 Conduct constituting breach of privilege

Hon. Speaker,

The committee during its inquiry referred to various legal frameworks as highlighted.

2.1.1 The County Assembly Powers and Privileges Act, 2017

There are acts which impede the County Assembly in the execution of its functions. The actions may also obstruct any Member or officer of the County Assembly in the discharge of his/her duty or may have a tendency, directly or indirectly, to produce such results. Any disorderly, contemptuous or disrespectful conduct in the presence of the House or a Committee constitutes a breach of privilege which may be committed by members of the public, witnesses or by Members of the County Assembly. Determination of what constitutes contempt is as set out in Section 16 of the Act.

Section 16 of the Act states what constitutes a breach of privilege while Section 15 of the Act gives the Committee the mandate to inquire into conduct of a Member whose conduct is alleged to constitute a breach of privilege in terms of Section 16. The Act, under section 17 provides for determination of breach of privilege while Section 26 provides for the prohibited Acts in respect of a County Assembly and its Members.

Hon. Speaker,

Section 16 of the Act provides that the Committee of Powers and Privileges may find a Member to be in breach of privilege if the Member:

- (a) contravenes Sections 25, 26(1), 27 or 29;
- (b) commits an act mentioned in Section 28(1) (a), (b) (c) or (2)
- (c) willfully fails or refuses to obey any rule, order or resolution of a county assembly;
- (d) contravenes any provision of the Speaker's Orders issued under Section 38 of the Act; or
- (e) conducts himself or herself in a manner which, in the opinion of the Committee of 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.

Prohibited acts in respect of a County Assembly and its Members pursuant to Section 26(1) of the Act

Hon. Speaker,

Such acts include:

- (a) assaulting, threatening, using abusive language, obstructing, molesting or insulting any Member proceeding to, being within or leaving the precincts of a County Assembly, or endeavor to compel any Member by force, insult or menace to declare himself or herself in favour of or against any proposition or matter pending or expected to be brought before a County Assembly or any Committee;
- (b) assaulting, threatening, using abusive language, interfering with, molesting, resisting or obstructing any member of staff while in the execution of his or her duty;
- (c) assaulting or threatening a Member or unlawfully depriving a Member of any benefit on account of the Member's conduct in a County Assembly;
- (d) while a County Assembly or a Committee is sitting, a person shall not 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
- (e) failing or refusing 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 firearm, within the precincts.

A person, including a Member who contravenes the provisions above commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding two years or to both.

Section 17 (3) provides that 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; issue a formal warning, a reprimand, an order to apologize to the

County Assembly or a person in a manner to be recommended by the Committee of Powers and Privileges, 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, the removal or suspension for a specified period of time of the Member from any County Assembly position occupied by the Member, such fine in terms of the Member's monthly salary and allowances as the House may determine, 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 or vacation of seat pursuant to Articles 75(2)(b) and 194(1)(c) of the Constitution.

Where a County Assembly finds a Member has committed a breach of privilege, the County Assembly may, where appropriate, instead of or in addition to the imposition of a penalty highlighted above, refer the matter to the Director of Public Prosecutions.

Any fine imposed shall be paid by the Member into such bank account of the County Assembly as shall be specified by the accounting officer of the County Assembly, be deducted from the Member's salary or where it is not recovered, it shall be recovered by means of a civil action in court.

A Member who has been suspended 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 shall leave the precincts of the County Assembly and shall not, during the period of suspension, without the written permission of the Speaker enter the precincts for whatever purpose or participate in any activity of the County Assembly or a Committee of the County Assembly.

2.1.2 Bungoma County Assembly Standing Orders.

Hon. Speaker,

Pursuant to paragraph (3) of Standing Order 120, a Member commits an act of gross disorderly conduct if the Member:

- a) Defies a ruling or direction of the Speaker or Chairperson of Committees.
- b) Declines to retract use of unparliamentarily language or offer apologies, despite having been ordered to do so by the Speaker.
- c) Fails to declare personal interest in a matter before the House or a

Committee in accordance with Standing Order 102.

- d) Persistently makes serious allegations without, in the Speaker's opinion, adequate substantiation.
- e) Deliberately gives false information to the County Assembly.
- f) Votes more than once in breach of the Standing Orders or persistently fails to record abstention in a division.
- g) Votes on any question in which the Member has a pecuniary interest contrary to Standing Order 102 (2)
- h) demonstrates or makes disruptive utterances against the suspension of a named Member
- i) Attempts to or causes disorder of whatever nature during an address by the Governor or visiting dignitary pursuant to Standing Order 28 and 29.
- j) Uses violence against a Member, an officer of the County Assembly or other person in the House or Committee.
- k) Disrupts or attempts to disrupt the Speaker's procession.
- l) Removes or attempts to remove or actual seizure of the mace from its place in the Chamber.
- m) Commits any other breach of the Standing Orders, which in the opinion of the Speaker, constitutes gross disorderly conduct.

The Speaker may call a Member whose conduct is gross disorderly to order, and shall order the Member to withdraw immediately from the precincts of the County Assembly:

On first occasion, for a maximum of three sitting days, including the sitting day of the suspension

On the second or subsequent occasion during the same session, for a minimum of seven sitting days and a maximum of twenty one sitting days, including the day of suspension.

2.1.3 Leadership and Integrity Act, 2012

Section 11 of the Act on professionalism highlights that A State officer shall—

- (a) Carry out duties of the office in a manner that maintains public confidence in the integrity of the office;
- (b) Treat members of the public and other public officers with courtesy and respect;
- (c) Not discriminate against any person, except as is expressly provided by the law;

(d) To the extent appropriate to the office, maintain high standards of performance and level of professionalism within the organisation; and

(e) If the State officer is a member of a professional body, observe and subscribe to the ethical and professional requirements of that body in so far as the requirements do not contravene the Constitution or this Act.

Further, Section 46 provides that:

(1) A person shall not—

(a) Without justification or lawful excuse, obstruct, hinder, assault or threaten a person undertaking his or her duties under this Act;

(b) Deceive or knowingly mislead the Commission, a public entity or a person undertaking his or her duties under this Act;

(c) Destroy, alter, conceal or remove documents, records or evidence that the person believes, or has grounds to believe may be relevant to an investigation or proceedings under this Act; or

(d) Provide false information to the Commission, a public entity or a person acting under this Act.

2.1.4 Public Officers Ethics Act 2003.

Section 9 of the Act provides that;

(1) A public officer shall-

(a) Carry out his duties in a way that maintains public confidence in the integrity of his office;

(b) Treat the public and his fellow public officers with courtesy and respect;

(c) To the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organisation;

(d) If a member of a professional body, observe the ethical and professional requirements of that body; Publication of specific Codes. Part sets out general Code.

(e) Observe official working hours and not be absent without proper authorization or reasonable cause;

(f) Maintain an appropriate standard of dress and personal hygiene; and

(g) Discharge any professional responsibilities in a professional manner.

CHAPTER THREE

Committee inquiry

3.1 Determination of breach of privilege

Hon. Speaker,

The Committee of Powers and Privileges shall inquire into the conduct of a Member whose conduct is alleged to constitute a breach of the County Assembly Privileges either on its own motion or as a result of a complaint made by any person. In considering the conduct of a Member, the Committee may recommend any or all the sanctions under section 17 of the County Assemblies Powers and Privileges Act, 2017 under which sub section (1) and (2) provide that:

- 1) *A County Assembly shall have all the powers necessary for inquiring into and pronouncing upon any act or matter constituting breach of privilege in terms of section 16.*
- 2) *An inquiry by a county assembly into a matter shall not preclude criminal investigation or criminal proceedings against a Member in connection with the matter concerned.*

3.2 Events preceding the inquiry of the alleged misconduct

1. On 30th October 2023, Hon. Jerusa Aleu launched a complaint against Hon. Sheila Sifuma.
2. On 8th November 2023, the committee of powers and privileges was informed of a complaint lodged by Hon. Jerusa Aleu against Hon. Sheila Sifuma.
3. On 13th February 2024, a letter of invitation was issued to Hon. Jerusa Aleu to appear before the committee of powers and privileges on 19th February 2024.

3.3 Oral Submission by Hon. Jerusa Aleu

On 19th February 2024, Hon. Jerusa Aleu appeared before the committee. However, during the deliberations, the Committee noted that the messages from complainant were not conclusive. Members could therefore not ascertain the senders and recipients of the said messages. The Committee resolved that the complainant gets the entire conversation in its original form as captured in their forum (**annexed**) and submit to the committee by Wednesday 21st February, 2024 and have the hearing slated for the next meeting.

On 26th February 2024, Hon. Jerusa Aleu appeared before the committee as earlier

requested.

The Hon. Jerusa Aleu, MCA Milima Ward took oath administered by the legal counsel. She thereafter submitted as follows:

1. **THAT**, elected female MCAs had been invited to Kericho on 11th October, 2023 through the invitation of the Deputy Governor.
2. **THAT**, nominated MCAs raised complaints in reference to the invitation. She named them as; Hon. Moureen Wafula, Hon. Catherine Kituyi, Hon. Sheila Sifuma, Hon. Eunice Kirui and Hon. Metrine Nangalama.
3. **THAT**, she had raised the complaint with the Committee of Powers and Privileges after the Hon. Sheila referred to her as a bootlicker. In her submission, the terminology was utterly offensive.

According to the Cambridge dictionary a **bootlicker** is someone who praises or is extremely polite to a more powerful or rich person in a way that is not sincere, usually in order to get an advantage for themselves.

4. She further submitted **THAT**, her witnesses were, Hon. Everlyne Mutiembu, Hon. Joan Kirong, Hon. Miliar Masungu and Hon. Grace Sundukwa.

3.4 Oral submissions of witnesses

The complainant had named four witnesses but only Hon. Everlyn Mutiembu appeared before the committee.

In her submission, the Hon. Everlyne Mutiembu submitted as follows:

1. The elected women MCAs had travelled to Kericho
2. Nominated women MCAs wanted to know where their colleagues were. Thereafter, they started using derogatory terms against the elected leaders. The case was forwarded to the Committee for consideration after Hon. Sheila Sifuma referred to them as bootlickers and idlers.

3.5 Invitation of the respondent

On 21st May 2024, Hon. Sheila Sifuma was invited through a letter to appear before the committee on 28th May 2024 to respond to allegations against her by Hon. Jerusa Aleu.

3.5.1 Oral submission by Hon. Sheila Sifuma

On 28th May, 2024 Hon. Sheila Sifuma appeared before the committee. The aforementioned Honorable Member took oath administered by the legal counsel and thereafter submitted as follows:

1. **THAT**, she is a nominated female MCA.
2. **THAT**, the engagement with Hon. Jerusa Aleu was not within the precincts of the County Assembly.
3. **THAT**, she did not use any abusive language in the evidence that had been submitted by Hon. Jerusa Aleu. That using the term **booty licking** was not an insult.
4. **THAT**, Hon. Jerusa has a tendency of picking on her.
5. **THAT**, Hon. Jerusa's accusations were out of pretense.
6. **THAT**, she also deserves an apology from Hon. Jerusa Aleu.

CHAPTER FOUR

4.1 Committee observations

Hon. Speaker,

- i. The committee noted that only the elected women MCAs had been invited to Kericho to attend celebrations of International day of the girl child which raised concerns among some Nominated Women MCAs.
- ii. The complainant Hon. Jerusa Aleu felt offended by the utterances directed to her by Hon. Sheila Sifuma.
- iii. The respondent didn't acknowledge that the alleged utterances were offensive.
- iv. The committee finds Hon. Sheila Sifuma to have contravened section 26 (1) (a) of the County Assemblies Powers and Privileges Act, 2017.
- v. The general language in the WhatsApp does not depict the conduct expected of the Honorable Members and constitutes conduct unbecoming.



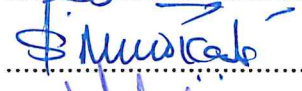

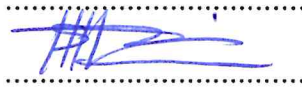
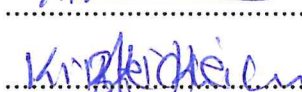
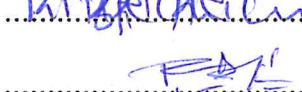

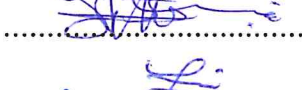
4.2 Committee recommendations

The committee recommends the following:

- i. **THAT**, Honorable Members should treat members of the public and other public officers with courtesy and respect as provided by section 9 (1) (b) of the Public Officers Ethics Act 2003.
- ii. **THAT**, Hon. Sheila Sifuma should appear before the House and render an apology to the complainant Hon. Jerusa Aleu and to the entire House for her utterances within seven days from the date of adoption of this report.
- iii. **THAT**, in default of the apology as recommended in ii above, the Hon. Speaker shall refer to Standing Order 120 (5).

ADOPTION SCHEDULE

We, the undersigned Members of the committee on Powers and Privileges do append our signatures adopting this report with the contents therein.

MEMBER		DESIGNATION	SIGN
1. Hon. Emmanuel	Situma	Chairperson	
2. Hon. Brigid	Katasi	Vice Chairperson	
3. Hon. Ali	Machani	Member	
4. Hon. Milliah	Masungu	Member	
5. Hon. Vitalis	Wangila	Member	
6. Hon. Benard	Kikechi	Member	
7. Hon. Tony	Barasa	Member	
8. Hon. Jack	Kawa	Member	
9. Hon. Orize	Kundu	Member	
10. Hon. Eunice	Kirui	Member	
11. Hon. Maureen	Katila	Member	