

RECORDS SECTION
COUNTY ASSEMBLY OF BUNGOMA

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COUNTY ASSEMBLY OF BUNGOMA
(LPCS)

05 MAR 2025

By: Hon. Tony Bora

COMMITTEE OF POWERS AND PRIVILEGES

REPORT ON CONFLICT OF INTEREST

COUNTY ASSEMBLY OF BUNGOMA
(LPCS)

05 MAR 2025

January, 2025

NOTICE ISSUED
By: Hon. Tony Bora

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

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CHAPTER ONE

1.0 PREFACE

The Committee of Powers and Privileges is established in accordance with Section 15 of the County Assemblies Powers and Privileges Act, 2017 and the County Assembly of Bungoma Standing Order 215.

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. The Hon. Emmanuel Situma	Speaker /Chairperson
2. The Hon. Ali Machani	Member
3. The Hon. James Mukhongo	Member
4. The Hon. Miliah Masungo	Member
5. The Hon. Vitalis Wangila	Member
6. The Hon. Tony Barasa	Member
7. The Hon. Edwin Opwora	Member
8. The Hon. Jack Kawa	Member

9. The Hon. Caleb Wanjala	Member
10. The Hon. Orize Kundu	Member
11. The Hon. Benard Kikechi	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 pursuant to the provisions of Standing Order 202 (7).

Sign..... Date

The Hon. Emmanuel Situma

Speaker of the County Assembly/Chairperson

CHAPTER TWO

2. o Introduction

A conflict of interest refers to a situation where there exists a conflict between the private interests and the official responsibilities of a person in a position of trust. It has the potential to undermine ones impartiality in decision making due to a clash between professional interest or the public interest and personal interest.

A conflict of interest occurs when an individual or organization has multiple interests, one of which could corrupt the motivation or decision-making of that person or entity. Conflicts of interest can arise in various situations, such as in business, politics, law, and other fields, and typically occur when personal interests, financial interests, or relationships interfere with professional duties or responsibilities. Conflict of interest might occur if a state or public officer makes a decision that benefits a company they have a financial stake in.

In many cases, conflicts of interest are addressed by disclosure, recusal from decision-making, or by setting up independent oversight to ensure transparency and fairness.

Such conflicts pose significant consequences as a result of compromised decision making. It could also leave one vulnerable to allegations of impropriety. Some of the key consequences include:

a) Compromised decision-making

When an individual, State, public officer or institution has personal, financial or other conflicting interests that interfere with professional duties, it can lead to biased or unfair decisions. Such interests may compromise the integrity of decision-making processes and deliberations, as decisions may be made based on personal gain and interests rather than the best interest of the parties.

b) Loss of trust

Perceptions of bias or dishonesty resulting from a conflict of interest can erode public trust and damage reputations of State and public officers. It's always the

expectation of the public that decisions are made with the highest level of integrity. If a conflict of interest exists, it can lead to reduced confidence, loss of trust and reduced credibility.

c) Legal implications

Whenever a conflict of interest violates provisions of the law, regulations or results in unethical conduct; it may lead to legal or unethical consequences such as law suits and fines.

d) Inequitable outcomes in decision making

Conflicts of interest may result in decisions that disproportionately favour certain individuals, groups, or companies over others. This can lead to unfair competition, inequality, and exploitation especially in situations where resources, contracts, or benefits are being allocated.

e) Decreased organizational effectiveness

Within organizations and institutions, conflicts of interest can affect performance of duty, reduce productivity and overall effectiveness. Decision makers or leaders who are influenced by personal interests may prioritize their own agendas over the collective goals of the organization, leading to inefficiency, poor performance, or even internal conflicts.

f) Strained relationships

In political, professional or business environments, unresolved conflicts of interest can strain relationships with customers, stakeholders, colleagues, or business partners. These strained relationships can hinder collaboration, damage partnerships, and create an unhealthy work environment.

g) Unfair competitive advantage

Conflicts of interest can lead to one party gaining an unfair advantage over others by making decisions that benefit their investments at the expense of competitors or stakeholders who are unaware of the conflict.

h) Inefficiency in allocation of resources

When decisions are influenced by conflicts of interest, resources may not be allocated efficiently. For instance, in procurement or public sector projects, a conflict of interest could lead to selecting overpriced suppliers hence wasting public or organizational funds.

i) Undermining fairness and equity

Conflicts of interest can lead to unfair treatment of individuals or groups, as decisions may be made to benefit one person or party at the expense of others. This can lead to inequitable outcomes in decisions, business practices, legal proceedings, or policy implementations

Prioritizing matters of conflict of interest is crucial to any public entity for the following:

a) Upholding public trust

State officers are entrusted with significant power and responsibility. Prioritizing the management of conflicts of interest ensures that their decisions are in the interest of the public, which is critical for maintaining public trust in government institutions.

b) Preventing corruption

Conflict of interest is a breeding ground for corruption if left unchecked. By prioritizing its management, a public entity can curb misuse of power for personal gain and reduce opportunities for corrupt practices.

c) Ensuring impartial decision-making

State officers, especially those in high-ranking positions, are involved in decision-making that affects national policy, economy, and public welfare. Conflicts of interest can compromise their impartiality, leading to biased or unfair outcomes that do not reflect the broader public's needs.

d) Promoting accountability and good governance

Clear policies on conflict of interest create accountability mechanisms for state and public officers. This promotes ethical governance by making officers responsible for disclosing potential conflicts and ensuring they do not act on personal interests when carrying out their duties.

e) Protecting the public interest

State and public officers have access to sensitive information, resources, and influence. If conflicts of interest are not managed, there's a risk that public resources could be misused or allocated inefficiently to serve private interests, rather than the needs of the society.

f) Setting ethical standards

Prioritizing conflict of interest issues sets a strong ethical standard within government institutions. It reinforces the expectation that state officers must act with integrity and prioritizes the public good over personal gain.

g) Enhancing transparency

By addressing conflicts of interest, governments promote transparency in how decisions are made. This deters secrecy and hidden agendas, ensuring that state officers' actions can be scrutinized and understood by the public and other oversight bodies.

2.1 Types of interests

a) Pecuniary interests

A pecuniary interest refers to a financial interest that an individual or entity has in a particular matter or transaction. This interest can involve the potential for financial gain or loss. They may also result from close associates such as friends, relatives etc

b) Proprietary interests

A proprietary interest refers to a situation where an individual (or entity) has a vested ownership or financial stake in a business, asset, or venture, which could influence their professional judgment, decisions, or actions.

c) Personal relationships

A personal relationship refers to a close, non-professional connection between an individual and another person (such as family members, friends, or romantic partners) that could influence the individual's professional judgment, decisions, or actions. This type of relationship can create a conflict if the individual is in a position where their personal loyalty or attachment could bias their decisions in ways that are not aligned with their professional responsibilities.

2.2 General Situations which could represent conflicts of interest include:

- Lobbying Members of the legislature on matters related to your area of work.
- Using your position as an employee of the House to lobby Members of Parliament for private purposes.
- Instances where your work activities could be used for private purposes or gain, such as using information obtained at work to invest in particular companies
- Acceptance of gifts and hospitality which might reasonably be seen as designed to influence you in the performance of your duties; for details of restrictions and registration of offers, see section
- Buying goods or services in an official capacity from a company with which you have personal, family or financial interests or connections.
- Involvement in any procurement process with suppliers, contractors or clients with whom you have personal, family or financial interests or connections

- A personal or family relationship with colleagues where there is a potential to collude or to grant favours, for example if you authorize transactions for, line manage or report to someone with whom you have such a relationship
- Influencing or deciding upon the appointment, employment terms or conditions of anyone with whom you have a personal or family relationship.

2.3 Conflict of interest Legal Framework

The Constitution of Kenya (2010)

Chapter Six: Leadership and Integrity

Public officers are required to adhere to the principles of integrity and avoid situations that may give rise to a conflict of interest.

Article 73: Responsibilities of leadership

The Article emphasizes that public officers must act in a manner that brings honor and dignity to the office and avoids personal interests conflicting with official duties.

73 (2) (C) (ii):

One of the principles of leadership and integrity spelt out in chapter six is:-

(c) Selfless service based solely on the public interest demonstrated by:-

(ii) The declaration of any personal interest that may conflict with public duties

Article 75: Conduct of state officers

It prohibits public officers from engaging in any activity that conflicts with their public duties or compromising the dignity of their office.

Article 75 (1) states that a state officer shall behave, whether in public and official life, in private life, or in association with other persons in a manner that avoids-

(a) Any conflict between personal interests and public or official duties;

(b) Compromising any public or official interest in favour of a personal interest

The Public Officer Ethics Act, 2003

Section 12 (1) of the Act provides that a public officer shall use his best 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.

The Leadership and Integrity Act, 2012

The Act gives effect to Chapter Six of the Constitution on leadership and integrity.

Section 16 (1) of the Act states that a State officer or a public officer shall use the best efforts to avoid being in a situation where personal interests conflict or appear to conflict with the State officer's or public officer's official duties.

(2) Without limiting the generality of subsection (1), a State officer or 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 a conflict of the State officer's or public officer's personal interests and the officer's official duties.

(3) A State officer or a public officer whose personal interests conflict with their official duties shall declare the personal interests to the public entity or the Commission.

(4) The Commission or a public entity may give direction on the appropriate action to be taken by the State officer or public officer to avoid the conflict of interest and the State officer or public officer shall—

(a) comply with the directions; and

(b) refrain from participating in any deliberations with respect to the matter.

(5) Notwithstanding any directions to the contrary under subsection (4), a State officer or a public officer shall not award or influence the award of a contract to—

(a) himself or herself;

(b) the State officer's or public officer's spouse or child;

(c) a business associate or agent; or

(d) a corporation, private company, partnership or other body in which the officer has a substantial or controlling interest.

(6) In this section, "personal interest" includes the interest of a spouse, child, business associate or agent or any other matter in which the State officer or public officer has a direct or indirect pecuniary or non-pecuniary interest.

(7) Where a State officer or a public officer is present at a meeting, where an issue which is likely to result in a conflict of interest is to be discussed, the State officer or public officer shall declare the interest at the beginning of the meeting or before the issue is deliberated upon.

(8) A declaration of a conflict of interest under subsection (7) shall be recorded in the minutes of that meeting.

(9) Subject to Article 116(3) and (4) of the Constitution, a member of Parliament or a member of a County Assembly shall declare any direct pecuniary interest or benefit of whatever nature in any—

(a) debate or proceeding of the body of which he or she is a member;

(b) debate or proceeding in any committee of that body; and

(c) transaction or communication which the State officer may have

with other members of the body, State officers, public officers or government officers.

(10) For purposes of subsection (9), the Clerk of the Senate, the National Assembly or a county assembly shall maintain a register of conflicts of interest, which shall be open to the public for inspection.

(11) Every public entity shall maintain an open register of conflicts of interest in the prescribed form in which an affected State officer or public officer shall register the particulars of registrable interests, stating the nature and extent of the conflict.

(12) For purposes of subsection (11), the registrable interests include the interests set out in the Second Schedule.

(13) A public entity shall keep the register of conflicts of interest for five years after the last entry in each volume of the register.

(14) It shall be the responsibility of the State officer or public officer to ensure that an entry of registrable interests is updated and to notify the public entity or the Commission of any changes in the registrable interests, within one month of each change occurring.

The Anti-Corruption and Economic Crimes Act (2003)

The Act criminalizes corruption and economic crimes, including the abuse of office for personal gain.

Section 42: Conflicts of interest

(1) If an agent has a direct or indirect private interest in a decision that his principal is to make the agent is guilty of an offence if—

(a) the agent knows or has reason to believe that the principal is unaware of the interest and the agent fails to disclose the interest; and

(b) the agent votes or participates in the proceedings of his principal in relation to the decision.

(2) A private body may authorize its agent to vote or participate in the proceedings of the private body and the voting or participation of an agent as so authorized is not a contravention of subsection (1).

(3) An agent of a public body who knowingly acquires or holds, directly or indirectly, a private interest in any contract, agreement or investment emanating from or connected with the public body is guilty of an offence.

(4) Subsection (3) does not apply with respect to an employment contract of the agent, or a related or similar contract or agreement or to any prescribed contract, agreement or investment.

The Public Procurement and Asset Disposal Act, 2015

The Public Procurement and Asset Disposal Act, 2015 regulates the public procurement process and asset disposal.

Corrupt, coercive, obstructive, collusive or fraudulent practice, conflicts of interest

Section 66(1) of the Act provides that a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding.

(2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence.

(3) Without limiting the generality of the subsection (1) and (2), the person shall be—

(a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or

(b) if a contract has already been entered into with the person, the contract shall be voidable.

(4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have.

(5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—

(a) shall not take part in the procurement proceedings;

(b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and

(c) shall not be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

(6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity.

(7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the

contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer.

(8) For the purpose of this Section, a person has a conflict of interest with respect to a procurement if the person or a relative of the person—

(a) seeks, or has a direct or indirect pecuniary interest in another person who seeks, a contract for the procurement; or

(b) owns or has a right in any property or has a direct or indirect pecuniary interest that results in the private interest of the person conflicting with his duties with respect to the procurement.

(9) The ownership of, or right in, any property referred to in subsection (8)

(b) shall not include rights arising by virtue of owning shares in publicly listed companies.

(10) For the purpose of subsection (8), the following are persons seeking a contract for a procurement—

(a) a person submitting a tender, proposal or quotation; or

(b) if direct procurement is being used, a person with whom the procuring entity is negotiating.

(11) In this section, "relative" means—

(a) a spouse, child, parent, brother or sister;

(b) a child, parent, brother or sister of a spouse; or

(c) any other prescribed persons.

(12) Any person who contravenes the provisions of this section commits an offence.

Bungoma County Assembly Standing Orders

Standing Order 102 on declaration of interest provides that:

- (1) A Member who wishes to speak on any matter in which the Member has a personal interest shall first declare that interest.
- (2) Personal interests include but not limited to pecuniary interest, proprietary interest, personal relationships and business relationships.

2.4 Case Study

In the case of ***Ethics and Anti-Corruption Commission v Moses Kasaine Lenokulal & another [2019] eKLR*** the gist of this matter was the claim that the 1st applicant being the governor Samburu County used his office to influence awards to his business (the 2nd applicant/respondent –oryx petrol station) for the supply of petroleum products to the county government. According to the EACC, this was an illegal act and in conflict with the Public Officer Ethics Act No. 4 of 2003 specifically Section 12(1) of the Public Officer Ethics Act provides that -

“A Public Officer shall use his best efforts to avoid being in a position in which his personal interest conflict with his official duties”.

The court observed that according to Ifmis transactions produced, there was evidence that the county government of Samburu did pay Oryx Petrol huge sums of money for the period 22nd August 2014 to 29th May 2018. This evidence was not disputed. Indeed, there was no distinction between Oryx Petrol Station and the governor. That they are one and the same thing. The money that Oryx received is indirectly money paid to the governor hence suspected to have been obtained through corrupt conduct given the element of conflict of interest alleged.

Since there was already suspicion in the manner in which the award for the supply of petroleum products was made in favour of the Governor, it was the court's finding that there was reasonable suspicion that the money may have been obtained through illegitimate means hence the justification in issuing freezing orders in respect of his account. The court further found that the fact that such money is mixed with some legitimate sources of income like salaries which goes through the same account number

does not mean that the account cannot be frozen. The court further held that preservation of the account is necessary pending further proceedings

CHAPTER THREE

3.0 Recommendations and Conclusion

3.1 Recommendations

a) Develop conflict of interest registers

The County Assembly should make use of the conflict of interest registers that should be used during meetings by both state and public officers. This will ensure comprehensive records of conflict-of-interest disclosures and actions taken.

b) Develop Clear Policies

The County Assembly should come up with clear, detailed policies on what constitutes a conflict of interest, covering both personal and professional situations.

c) Regular Training

There is need for regular training, for State officers, employees, board members, and stakeholders to help them recognize conflicts of interest in various situations.

d) Disclosure of Conflicts

- **Mandatory Disclosure:** It requires State officers and public officers to disclose any potential conflicts of interest at regular intervals or when a situation arises.
- **Transparent Reporting:** It ensures that disclosures are easily accessible and reviewed by appropriate parties, such as ethics committees or human resources.

e) Assessment

Evaluate the Conflict: When a potential conflict arises, the Assembly should assess its impact on objectivity, fairness, and decision-making and take appropriate action depending on the severity. The action can include recusal

from decisions, restructuring roles, or even separation from certain activities or positions.

f) Recusal and Avoidance

- **Recuse from Decision-Making:** If someone with a conflict of interest is involved in a decision, they should recuse themselves from participating in the discussion or decision-making process.
- **Alternative Oversight:** Appoint neutral third parties to make decisions or provide oversight when conflicts are present.

g) Regular Monitoring

- **Ongoing Review:** The Assembly should conduct regular monitoring and evaluation of activities and decisions to identify any new or ongoing conflicts of interest.
- **Audit and Compliance:** The Assembly should have independent audits or reviews to ensure compliance with conflict-of-interest policies.

h) Promote a Culture of Integrity

- **Lead by Example:** The top management should model transparency and ethical behavior, setting the tone for everyone involved.
- **Encourage Open Communication:** The Assembly should create an environment where individuals feel comfortable reporting potential conflicts without fear of retaliation.

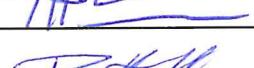
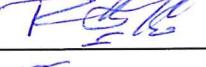
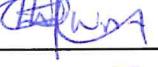
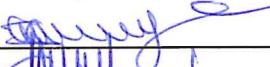
3.2 Conclusion

Managing conflicts of interest is essential to ensure fairness, transparency, and ethical decision-making in the County Assembly. Addressing conflicts of interest can foster an environment of integrity and accountability.

Overall, addressing conflicts of interest is crucial to maintain fairness, trust, and integrity in any setting.

ADOPTION SCHEDULE

We, the undersigned Members of the Committee of Powers and Privileges affix our signatures adopting this report with the contents therein.

NO.	MEMBER'S NAME	DESIGNATION	SIGN
1.	Hon. Emmanuel Situma	Speaker/Chairperson	
2.	Hon. Ali Machani	Member	
3.	Hon. James Mukhongo	Member	
4.	Hon. Miliah Masungo	Member	
5.	Hon. Vitalis Wangila	Member	
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