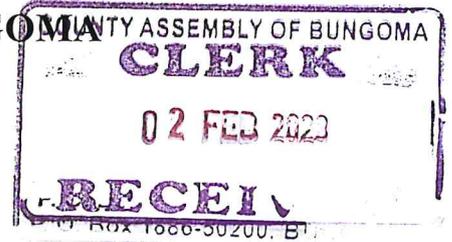


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COUNTY GOVERNMENT OF BUNGOMA COUNTY ASSEMBLY OF BUNGOMA



COUNTY ASSEMBLY OF BUNGOMA

THIRD ASSEMBLY, FIRST SESSION

**REPORT OF THE COMMITTEE OF POWERS AND PRIVILEGES ON  
CONDUCT THAT CONSTITUTES BREACH OF COUNTY ASSEMBLY  
PRIVILEGES**

*Clerk's Chambers*

*JANUARY, 2023*

*County Assembly Buildings,*

*P.O Box 1886-50200,*

*BUNGOMA, KENYA.*

*Report of the Committee of Powers and Privileges; January, 2023*

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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 herein after referred to as ‘the Act.’

### 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:

<b>Name</b>	<b>Designation</b>
1. The Hon. Emmanuel Situma	Speaker /Chairperson
2. The Hon. Brigid Katasi	Vice Chairperson
3. The Hon. Joseph Juma	Member
4. The Hon. Miliyah Masungu	Member
5. The Hon. Vitalis Wangila	Member
6. The Hon. Tony Barasa	Member
7. The Hon. Eunice Kirui	Member
8. The Hon. Jack Kawa	Member
9. The Hon. Moureen Wafula	Member
10. The Hon. Orize Kundu	Member
11. The Hon. Everton Nganga	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 adoption pursuant to the provisions of Standing Order 202 (7).

Sign.  Date ..... 8/1/2023

**The Hon. Emmanuel Situma**

**Speaker of the County Assembly/Chairperson**

## CHAPTER TWO

### 2.0 INTRODUCTION

#### 2.1 CONDUCT CONSTITUTING BREACH OF PRIVILEGE

**Hon. Speaker,**

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.*

The breaches contemplated under section 16 are:

### **2.1.2 Broadcasting of proceedings under Section 25 of the Act**

A person shall not broadcast, televise or otherwise transmit by electronic means the proceedings of a House or a Committee of a County Assembly or any part of those proceedings except by Order or under the authority of the relevant Speaker or Chairperson of a Committee of a County Assembly and in accordance with the Standing Orders and the conditions and directions determined by the Speaker.

However, subsection (2) of Section 25 provides that a person shall not be liable to civil or criminal proceedings in respect of the broadcasting, televising or electronic transmission of proceedings of a County Assembly or a Committee if it has been authorized and complies with the conditions, if any, determined by the Speaker.

Further, the right of access to information under Article 35 and freedom of the media under Article 34 of the Constitution shall be limited as specified under section 25 of the Act for the purposes of facilitating the immunities of the Houses and the Committees of a County Assembly and for facilitating the freedom of speech and debate as set out in Article 117 of the Constitution of Kenya, 2010.

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

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 endeavour 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.

#### **2.1.4 Offences relating to witnesses as contemplated in Section 27 of the Act**

Sub section (1) provides that a person commits an offence where the person having been duly summoned in terms of Section 18 of the Act; which provides for invitation and summoning of witnesses fails, without sufficient cause to attend at the time and place specified in the summons or remain in attendance until excused from further attendance by the person presiding at the inquiry.

When called upon under section 18 of the Act, a person commits an offence where the person refuses to be sworn in or to make an affirmation as a witness or fails or disobeys without sufficient cause to answer fully and satisfactorily all questions lawfully put to them under Section 18 or to produce any document, paper, book or record in the person's possession, custody or control which the person has been required to produce under section 18.

A person who commits the offences mentioned above is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

Other offences relating to witnesses include:

- (a) threatening, obstructing, assaulting or insulting a member of staff or police officer carrying out service of summons issued under the Act;
- (b) using abusive language directed at a member of a county assembly or its committees;
- (c) threatening or obstructing another person in respect of evidence to be given before a County Assembly or a Committee;
- (d) inducing another person to refrain from giving evidence to or to produce a document before a County Assembly or a Committee or inducing another person to give false evidence before a County Assembly or a Committee;
- (e) assaulting or penalizing or threatening another person or depriving that person of any benefit on account of the giving or proposed giving of evidence before a County Assembly or a Committee;
- (f) with intent to deceive or mislead a County Assembly or a Committee, producing a false, untrue, fabricated or falsified document; or
- (g) willfully furnishing a County Assembly or a Committee with information which is false or misleading or making a statement before a County Assembly or Committee that is false or misleading.

A person who commits any other offence relating to witnesses as specified above is liable, on conviction, to a fine not exceeding five hundred thousand or a term of imprisonment not exceeding one year or to both such fine and imprisonment.

### **2.1.5 Improper influence of Members as contemplated in Section 28 of the Act**

Section 28 sub section (1) of the Act provides that a person shall not, by fraud, intimidation, force, insult or threat of any kind, or by the offer or promise of any inducement or benefit of any kind, or by any other improper means influence a Member in the performance of the Member's functions as a Member, induce a Member to be absent from a County Assembly or a Committee at a particular time or attempt to compel a member to declare himself or herself in favour or against a matter pending before or proposed or expected to be submitted to a County Assembly or a Committee.

Further, the Act provides that a member shall not solicit, receive or accept any fee, compensation, gift, reward, favour or benefit of any kind for the Member or another person for in respect of voting in any particular manner or not voting on a matter before a County Assembly, promoting or opposing anything pending before or proposed or expected to be submitted to a County Assembly or making a representation to a County Assembly.

Consequently, a person who contravenes section 28 of the Act commits an offence.

### **2.1.6 Speaker's Orders**

Pursuant to the provisions of Section 16 of the Act, the Committee of Powers and Privileges may find a Member to be in breach of privilege if the Member willfully fails or refuses to obey any rule, order or resolution of a County Assembly or contravenes any provision of the Speaker's orders issued under Section 38 of the Act which stipulates that:

The Speaker may, from time to time, issue such orders as may be necessary or expedient for the better carrying out of the purposes of the Act. The Speaker's Orders may provide for the admittance of members of the public to the precincts of a County Assembly, the deduction of any monies due to a Member in respect of refreshments or other facilities made available to Members within the precincts of a County Assembly or the appropriate dress code for Members.

Additionally, the Speaker may, from time to time as may be expedient, issue a Code of Conduct regulating the conduct of Members of the County Assembly whilst within the precincts of the County Assembly other than the Chamber.

In view of the aforementioned, the Clerk authenticates copies of Orders and Code of Conduct made pursuant to section 38 and ensures that they are made available to each Member and are conspicuously exhibited for the benefit of the public within the Precincts of the County Assembly.

For the purposes of Article 94(6) of the Constitution, the purpose and objective of the delegation under Section 38 of the Act is to enable the Speaker to give directions for the orderly conduct of Members, members of staff and the public generally within the Precincts of a County Assembly. Therefore, the Orders made under the section shall be of such nature, scope and within the limits as specified under Section 38 of the Act.

The principles and standards applicable to the order and Code of Conduct made under section 38 of the Act are the usages, forms, precedence, customs, procedures and traditions of the Parliament of Kenya and other jurisdictions to the extent that they are applicable to Kenya.

In conclusion, a Member may be found to have breached a privilege if the Member conducts himself or herself in a manner which, in the opinion of the Committee on 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.

## **2.2 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.*

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.

Further, the protection of the right to property under Article 40 of the Constitution and the right of access to justice under Article 48 of the Constitution shall be limited as specified under Part IV of the Act on Breach of Privileges for the purposes of protecting the privileges and immunities of a County Assembly or its Committees conferred by the Act and for facilitating the orderly conduct of business and affairs of a County Assembly.

### **2.3 DUTY OF COURT REGISTRAR**

Section 29 of the Act provides that where a Member has been convicted of an offence and sentenced to a period of imprisonment of six months or more without the option of a fine, the Registrar of the relevant court shall inform the Speaker of the nature of the offence and the sentence imposed and any appeal that is lodged against the conviction or the sentence and the outcome of the appeal. A State officer who is convicted of an offence under the Act shall be deemed to have committed an act of gross misconduct within the meaning of Article 251(1) (b) of the Constitution.

## **2.4 DISORDELY CONDUCT AND GROSS DISORDERLY CONDUCT**

### **2.4.1 Disorderly Conduct**

Standing Order 120 (1) of the County Assembly of Bungoma Standing Orders provides that a Member is disorderly if the Member:

- a) creates disorder
- b) knowingly raises a false point of order
- c) unnecessarily interrupts proceedings or consults in a disruptive manner
- d) fails to record abstention in a division
- e) makes allegations without, in the Speaker's opinion, adequate substantiation: or
- f) commits any other breach of the Standing Orders that, in the opinion of the Speaker, constitutes disorderly conduct.

The Speaker may then call a Member whose conduct is disorderly to order and:

Caution the member; or

Order the Member to withdraw from the Precincts of the House for the remainder of the day's sitting.

### **2.4.2 Gross Disorderly Conduct as provided for in Standing Order 120 (3)**

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 unparliamentary 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:

- a) On first occasion, for a maximum of three sitting days, including the sitting day of the suspension
- b) 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.

In respect to Standing Order 120 (3) (a) for minimum of five days and a maximum of twenty eight days, including the day of suspension.

Finally, in respect to Standing Order 130 (3) (l) for a maximum of twenty eight days, including the day of suspension and shall be liable to pay the total cost of the new mace in case of damage. A Member who is suspended shall also forfeit all sitting allowances payable during the period of such suspension.

#### **2.4.3 Refusal to withdraw pursuant to Standing Order 124**

The Standing Order provides that if a Member refuses to withdraw when required to do so by or under the County Assembly Standing Orders, the Speaker as the case may be, having called the attention of the House to the fact that recourse to force is necessary in order to compel such Member to withdraw, shall order such Member to be removed and such Member shall thereupon without question put be suspended from the service of the County Assembly for a minimum of

ninety one calendar days and a maximum of one hundred and eighty calendar days, including the day of the suspension.

Notably, during such suspension, such Member shall forfeit the right of access to the Precincts of the County Assembly.

## CHAPTER THREE

### 3.0 RECOMMENDATIONS AND CONCLUSION

#### 3.1 RECOMMENDATIONS

**Hon. Speaker,**

This Committee recommends that all Chairpersons and Members should adhere to the provisions of the County Assemblies Powers and Privileges Act, 2017 and the County Assembly of Bungoma Standing Orders to enable the County Assembly perform its functions efficiently and effectively.

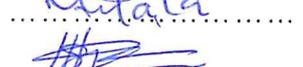
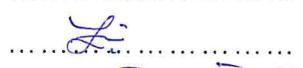
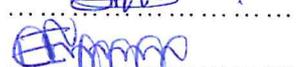
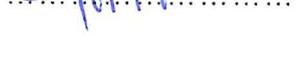
#### 3.2 CONCLUSION

**Hon. Speaker,**

It is my request therefore that the House adopts this report by the Committee of Powers and Privileges on conduct that constitutes breach of County Assembly Privileges.

### 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. The Hon. Emmanuel Situma	Speaker /Chairperson	
2. The Hon. Brigid Katasi	Vice Chairperson	
3. The Hon. Joseph Juma	Member	
4. The Hon. Miliar Masungu	Member	
5. The Hon. Vitalis Wangila	Member	
6. The Hon. Tony Barasa	Member	
7. The Hon. Eunice Kirui	Member	
8. The Hon. Jack Kawa	Member	
9. The Hon. Moureen Wafula	Member	
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11. The Hon. Everton Nganga	Member	

