

**COUNTY GOVERNMENT OF BUNGOMA**

**COUNTY ASSEMBLY OF BUNGOMA**

**COUNTY ASSEMBLY DEBATES**

**THE DAILY HANSARD**

**TUESDAY 28<sup>TH</sup> MARCH, 2023**

**Afternoon Sitting**

**3<sup>rd</sup> County Assembly**

**2<sup>nd</sup> Session**

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# COUNTY ASSEMBLY OF BUNGOMA

## HANSARD OFFICIAL REPORT

TUESDAY 28<sup>TH</sup> MARCH, 2023

The House met at 2:30 p.m.

(Mr. Speaker [Hon. Emmanuel Situma] in the Chair)

### PRAYER

### PAPER

REPORT BY THE SECTORAL COMMITTEE ON YOUTH AFFAIRS AND SPORTS ON THE IMPLEMENTATION STATUS OF BUNGOMA COUNTY YOUTH FUND

**Hon. Caleb Wanjala:** I table the Report on Sectoral Committee of Youth Affairs and Sports on the Implementation Status of Bungoma County Youth Fund

**Mr. Speaker:** Honourable Members, a report by the Committee on Youth Affairs and Sports on the Implementation Status of Bungoma County Youth Fund is hereby tabled; it now becomes the property of the House.

### NOTICE OF MOTION

THAT THIS HOUSE ADOPTS THE REPORT BY THE SECTORAL COMMITTEE ON YOUTH AFFAIRS AND SPORTS ON THE IMPLEMENTATION STATUS BUNGOMA COUNTY YOUTH FUND

**Hon. Caleb Wanjala:** Thank you Hon. Speaker. I issue a notice of motion that this House adopts the Report by the Sectoral Committee on Youth Affairs and Sports on the Implementation Status of the Bungoma County Youth Fund.

**Mr. Speaker:** Honourable Members, a notice of motion having been duly issued by the Sectoral Committee on Youth Affairs and Sports on the Implementation Status of the Bungoma County Youth Fund, I hereby direct the Clerks at table to share the report with the Honourable Members on their gadgets. It will form business on our Order Paper in the course of next week.

## STATEMENTS

STATEMENT PURSUANT TO THE PROVISIONS OF STANDING ORDER 47 (2) (A) INFORMING THE COUNTY ASSEMBLY OF THE BUSINESS FOR THE WEEK COMMENCING TUESDAY THE 28<sup>TH</sup> OF MARCH TO THURSDAY THE 30<sup>TH</sup> MARCH, 2023

**Mr. Speaker:** Hon. Ipara is the one giving us the report on behalf of the Committee.

**Hon. Johnston Ipara:** Thank you so much Mr. Speaker Sir. I beg to issue a statement informing the County Assembly of the Weekly Program of Business for the week commencing Tuesday 28<sup>th</sup> of March to Thursday 30<sup>th</sup> March, 2023.

On Tuesday 28<sup>th</sup> March, 2023 at 2:30 p.m., the Order of Business has already stated from

Prayers

Administration of Oath

Communication from the Chair

Messages

Petition

Papers

- Report by the Sectoral Committee on Youth Affairs and Sports on the Implementation Status of the Bungoma County Youth Fund.

Notice of Motion

- THAT, this House adopts the Report by the Sectoral Committee on Youth Affairs and Sports on the Implementation Status of the Bungoma County Youth Fund.

Statement

- A Statement informing the County Assembly of the Weekly Business coming before the House from Tuesday 28<sup>th</sup> to Thursday 30<sup>th</sup> March, 2023

Motions

- THAT this House adopts the Report by Powers and Privileges Committee on conduct that constitutes a breach of the County Assembly Privileges.

On Wednesday 29<sup>th</sup> March, 2023 at 9:30 a.m.

Papers

- Report by the Committee on Justice, Cohesion and Legal Affairs on the status of the pending cases in Bungoma County.

Notices of motion

- THAT, this House adopts the Report by the Committee on Justice, Cohesion and Legal Affairs on the status of the pending cases in Bungoma County.

Motion

THAT this House adopts the Report by the Sectoral Committee on Tourism, Water, Environment and Natural Resources on the status of KOICA I and KOICA II projects in Bungoma County.

On Wednesdays 29<sup>th</sup> March, 2023 at 2:30 p.m.

Papers

- Report by the Sectoral Committee on Labour Relations, Members Services and Facilities on the Bungoma County Public Service Board Annual Report of the Year 2022.

Notice of Motion

- THAT this House adopts the Report by the Sectoral Committee on Labour Relations, Members Services and Facilities on the Bungoma County Public Service Board Annual Report of the Year 2022

Motions

- THAT this House adopts the report by the Sectoral Committee on Lands, Urban, Physical Planning and Housing on the Assessment of Implementation status of Kimilili and Bungoma Municipalities since inception.

On Thursday 30<sup>th</sup> March, 2023 at 2:30 p.m.

Papers

- I. Report from the Office of the Auditor General on the County Executive of Bungoma for the year ended 30<sup>th</sup> June, 2022
- II. The County Assembly Service Board Annual Report for the period January 2022 to December 2022

Statements

Pursuant to the provisions of Standing Order 47 (2) (a) a Statement informing the County Assembly of the Weekly Business Coming before the House from Tuesday 4<sup>th</sup> to Thursday 6<sup>th</sup> April, 2023.

Motions

- THAT this House adopts the Report by the Committee on Justice, Cohesion and Legal Affairs on the status of pending cases in Bungoma County.

Hon. Speaker Sir, I beg to table the program

**Mr. Speaker:** Thank you Hon. Ipara. Members were wondering what you were going to read when you were moving forward. They were surprised to see you unleashing the program from your...

## MOTION

**THAT, THIS HOUSE ADOPTS THE REPORT BY COMMITTEE ON POWERS AND PRIVILEGES ON CONDUCT THAT CONSTITUTES A BREACH OF THE COUNTY ASSEMBLY PRIVILEGES**

**Hon. Tony Barasa:** Thank you Hon. Speaker. County Government of Bungoma, County Assembly of Bungoma, third Assembly First Session; Report by Powers and Privileges Committee on Conduct that constitutes a breach of the County Assembly Privileges.

**Mr. Speaker:** Members as he is doing so, you are at liberty to look at Standing Order No. 120 that equally covers the same provision. Let me just confirm, I think it is 120, that is good for us to go through.

**Hon. Tony Barasa:** Preface- The Committee of Powers and Privileges is established in accordance with Section 15 of the County Assembly Powers and Privileges Act, 2017 herein referred to as the Act.

### COMMITTEE MEMBERSHIP

The Section 15 (1) of the County Assembly Powers and Privileges Act, 2017 provides that there shall be established for each County Assembly a Committee known as the Committee of Powers and Privileges consisting of the Speaker who shall be the Chairperson of the Committee, and such other Members of the County Assembly as maybe provided in the Standing Orders of the County Assembly. The Committee of Powers and Privilege as currently constituted comprises of the following Members

1. Hon. Emmanuel Situma (Speaker, Chairperson)
2. Hon. Brigid Katasi (Vice chairperson)
3. Hon. Joseph Juma (Member)
4. Hon. Milliah Masungu (Member)
5. Hon. Vitalis Wangila (Member)
6. Hon. Tony Barasa (Member)
7. Hon. Eunice Kirui Member
8. Hon. Jack Kawa (Member)
9. Hon. Maureen Wafula (Member)
10. Hon. Orize Kundu (Member)
11. Hon. Everon Nganga (Member)

### 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 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.

## **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).

Signed by Hon. Emmanuel Situma, Speaker of the County Assembly/Chairperson

## **CHAPTER TWO**

### **INTRODUCTION**

#### **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:

### **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.

### **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.

### **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) Wilfully 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.

#### 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.

#### 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 wilfully 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.

#### 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.

## 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.

## DISORDERLY CONDUCT AND GROSS DISORDERLY CONDUCT

### 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.

### 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:

1. Defies a ruling or direction of the Speaker or Chairperson of Committees.
2. Declines to retract use of unparliamentarily language or offer apologies, despite having been ordered to do so by the Speaker.
3. Fails to declare personal interest in a matter before the House or a Committee in accordance with Standing Order 102.

4. Persistently makes serious allegations without, in the Speaker's opinion, adequate substantiation.
5. Deliberately gives false information to the County Assembly.
6. Votes more than once in breach of the Standing Orders or persistently fails to record abstention in a division.
7. Votes on any question in which the Member has a pecuniary interest contrary to Standing Order 102 (2)
8. Demonstrates or makes disruptive utterances against the suspension of a named Member
9. Attempts to or causes disorder of whatever nature during an address by the Governor or visiting dignitary pursuant to Standing Order 28 and 29.
10. Uses violence against a Member, an officer of the County Assembly or other person in the House or Committee.
11. Disrupts or attempts to disrupt the Speaker's procession.
12. Removes or attempts to remove or actual seizure of the mace from its place in the Chamber.
13. 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.
- c) In respect to Standing Order No. 120 (3) (a), for a minimum of five days and a maximum of 28 days including the day of the suspension.
- d) Finally, in respect to Standing Order 130 (3) (1) 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.

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 91 calendar days and a maximum of 180 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

### RECOMMENDATIONS AND CONCLUSION

#### 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.

#### 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 with the Members of the Committee on Powers and Privileges have pursuant to Standing Order 202 (5) adopted the report and appended our signatures to affirm and approve the contents therein.

All 11 Honourable Members have signed. I call upon Hon. Milliah Masungu to second the report.

**Hon. Milliah Masungo:** Thank you Hon. Speaker. First and foremost, let me applaud Hon. Tony Barasa who has eloquently read for us the report for the Committee of Powers and Privileges. The Committee on Powers and Privileges is self-explanatory; it is constituted in the assemblies to remind members on the code of conduct as elected leaders whether in the Assembly or outside in the public. Therefore, the report has been read, Honourable Members have been very keen following the report, all that has been read is purely talking about us and guiding us on how we should treat our affairs as Honourable Members. I want to urge this House to approve the report the way it is and as I sit down, I second.

**Mr. Speaker:** Thank you Hon. Milliah, allow me propose a motion....

*(Motion proposed)*

**Hon. Ali Machani:** Thank you Hon. Speaker. I support the report that has been brought to this House. It is laying out the rules that will guide us as Honourable Members. How we should



behave in this House, how we should conduct ourselves while debating. I am happy that the Member who has seconded one day in this House during the last regime she faced the consequences of the same law. I am happy that may be the next victims are here.

This directs an Honourable Member to behave both in public and private life as an Honourable Member. Characters of shouting and making unnecessary alarms both within the compound and outside; when we report to this House; these are the laws the Speaker and the team would want to follow. Hon. Speaker, sometimes we put our minds before others through anger. This is the only law within this Assembly that can moderate Members.

I remember one time a Member who is in this House wanted to jump on me and I reported but the Speaker was more of a pastor that he could not act. If we can find a way of taking these Members somewhere so that they can be taken through to understand, digest and internalize the report and I think you will not see them going against because this is a guide that will bring sanity amongst leaders.

When you engage as leaders, even if you differ, there must be boundaries and this must be demonstrated even outside this Assembly. When the Speaker is on his feet, a member should always assume his seat. I am happy that even members who came in during the Third Assembly have also participated in coming up with these laws. The only thing you are supposed to do; I know you are a chairperson elsewhere; talk to your Vice Chairperson and other members if you can find a way...the way you are smiling I think you have accepted this request. Thank you Mr. Speaker, I support the report.

**Mr. Speaker:** Thank you Hon. Machani. It's good that you have reminded me of that occasion but he has not specified my question to him as to whether the Member wanted to jump on him perpendicularly or horizontally. On that basis, I declined to act. I think the said Honourable Member will request to speak and clarify on what happened.

**Hon. Anthony Lusena:** Thank you, Hon. Speaker. I also stand to support the report. Hon. Speaker, these rules will guide us on how we are supposed to operate and behave in this County Assembly. Every institution has its own rules and they must be abided by. My only concern is that they should apply equally to all the members. Let us not use those rules to may be intimidate or punish any member you may feel that is not doing the right thing. Honourable Members, in the last Assembly those rules were there as alluded to by Hon. Ali Machani and some of us were victims. I want to request that let the rules apply to all members not selectively as was in the last Assembly.

**Hon. Vitalis Wangila:** Thank you, Mr. Speaker. I expected my fellow Honourable Member Machani to request for a seconder when he said that we need enough time to go through report.



The truth of the matter is that I was once a victim of the Committee and that time I did not know the laws of the Committee. Now by good luck, I am a member of the Committee and I have learnt a lot. I never knew that in my position it is wrong to receive a gift. Through this document I have been informed that in my position, I am not allowed to receive gifts from members of the public in respect to Section 14. For that reason, I say that though still learning, I still need more time to go through the document to understand more. I support the report.

**Hon. Violet Makhanu:** Thank you Hon. Speaker. I also want to take this opportunity to applaud Hon. Tony for reading the report properly to enable some of us who are slow learners move together with him. This is one report that has a lot of laws and if you are not keen in listening to it, you might even end up resting your eyes. I was sitting here with my colleague Hon. Waiti and I was like what is being read on the floor of the House and he indicated that he doesn't know and can't even contribute. It is not about my neighbour here alone; I know most of us are in the same scenario. Therefore, I want to support my good friends who in the last regime found ourselves in a nice scenario...

**Mr. Speaker:** Are you confirming that you are the one who wanted to jump on him?

**Hon. Violet Makhanu:** I wish you saw his body language when he mentioned this. He was appreciating that it was done in a nice way. I want to support Hon. Ali Machani that this is a report that us Honourable Members need to have enough time so that we go through word by word to understand all these laws... what is supposed to be done where and at what time.

As Honourable Members, we have been inducted right from the time we came to this Assembly and there are some of the things that we have tried to adhere to but there are areas some of us are unable to. I want to request my colleague Honourable Members in this House that once you are elected to this House, you become an Honourable Member and as we go out, we need to carry ourselves honourably because we also need to understand the meaning of the word 'honourable.'

The essence of being bossy among others can't take us anywhere. There are times you go to hotels and you find an Honourable Member being harsh to those waiters. A waiter comes to attend to you, you are harsh reminding them that you are an Honourable Member and treating them in a funny way. Some of us sit back and observe but it is not an honourable way of addressing such issues because those guys working in hotels are working to put food on the table and something for their children to go to school. Just because you are an Honourable Member and you want to behave as if you are on the top of the world; I think it has been happening because we had not had this report on the floor of the House.

I am sure that going through this report systematically and understanding our roles as Members and understanding on how we are supposed to carry ourselves outside there; not necessarily in

the Assembly but outside this Assembly we will change and carry ourselves as Honourable Members. I support the report.

**Hon. Benard Kikechi:** Thank you, Mr. Speaker Sir for giving me the opportunity to contribute to the just moved motion. To be sincere, I keenly listened to the mover of motion and what I captured most was his eloquence and the way he pronounced those words. In reality it was a technical motion which requires further simpler way of telling most of us Honourable Members to understand well. Basically it is talking about how we should behave both in this House and outside this House as pointed out by Hon. Violet Makhanu. You will find that you meet a colleague along the corridors and he or she shouts at you and commands you. I feel such people should be explained to properly such rules so that we can be in a position to relate with each other as Honourable Members. Otherwise, anything to do with rules on how we are supposed to behave, I support.

**Hon. Johnston Ipara:** Thank you Mr. Speaker. I rise to support the report and say the following. What has been spelled out in this Honourable House is the rules of engagement and inside those rules of engagement, the consequences that attracts on the conduct of the personality has also been said. Based on that Hon. Speaker; and when I read on the tittle on the powers based on your office and immunities that you practice and the privileges that you have; I want to request you kindly to allow the request of the honourable members that we retreat so that we understand this subject called powers and privileges; that has consequences that can make one be suspended for more than 90 days from this House; and more so suffer the consequences of not receiving the allowances.

Honourable Speaker, I request you if you can consider having a retreat for a minimal period of days so that we get to understand this particular subject in detail, so that when we are punished, we shall be there to blame ourselves. I support the report Mr. Speaker.

**Mr. Speaker:** Thank you Hon. Ipara, is there any other contribution? Hon. Joseph Nyongesa; and then Hon. Tony should prepare to reply to the motion accordingly.

**Hon. Joseph Nyongesa:** Thank you Mr. Speaker. I also want to support the report. I support my colleagues for saying that they need time so that they can slowly go through the document. I am lucky because since 2013, I have been serving in this committee. In 2013, I was the Vice Chairperson in that committee so sometimes I am very keen because I am well versed with these issues.

The critical issue that makes me to stand and say something is this issue that a Member may lose the seat because of the eight sittings. You know Members, it is very critical that the Standing Orders permit the Speaker to denounce your name and you lose a seat only because you have missed plenary sittings. We should be very keen so that even if we are not being paid but ensure that you are attending. You know for the MPs, it is very fair to say eight consecutive sittings; but

for us it says eight sittings cumulatively. So, Members should be keen on that so that we ensure that we won't make such small mistakes to make us lose our seats. Before even planning for a retreat, we can also take time so that we can also go through; and ensure that we are aware of these small mistakes we make that may make the Speaker denounce it and it may cause problems to us. Otherwise Mr. Speaker, I support the report.

**Mr. Speaker:** Thank you. Yes Hon. Kawa.

**Hon. Jack Kawa:** Thank you Mr. Speaker. As a Member of the Committee, first allow me to thank your office and the office of the secretariat for the good work. Secondly; I want to congratulate the Members of the Committee for the tireless work they have done to make sure that the report comes on the floor of this House. As my leader has said; I am also one Member that has served in the Powers and Privileges Committee before and this is now my third time. I want to appreciate the Honourable Members; and also support them that as a Member. One day cannot make something or an egg to rot. That we look for an appropriate time so that we take the whole Assembly outside critically because we have very good people that are our secretariat; and they will take us through. We can also be divided into groups so that when we come from there if I make a mistake, it will be my own problem. Otherwise I support the report.

**Mr Speaker:** Thank you. Hon. Tony. Reply to the motion accordingly.

**Hon. Tony Barasa:** Thank you Mr. Speaker. First, I want to applaud my colleagues for supporting the motion for the House adoption.

Secondly, we have listened to all of them and the critical thing here is for them to have a session so that they can familiarise themselves with the Standing Orders on the issues to do with powers and privileges for Honourable Members. The Honourable Members should not just underline the words to do with the relationship between honourable members and honourable members, the report is also mentioning how you have to conduct yourself with the staff; and how the staff must conduct themselves within the precincts of the House. There should be mutual respect between the Honourable Members and the staff so that there is no one who is above the law.

Having said that even though in the wisdom that we are going to take Honourable Members to familiarise with Powers and Privileges Act, it is my prayer that we also find time for us with the Honourable Members and the staff, so that we don't find the staff on the wrong side and that Honourable Members are on the safe side. We must also have an engagement with the staff so that they can also go through these powers and privileges so that each one of us is better and able to live within the Powers and Privileges Act in this Assembly. Having reached there, I wish to take this opportunity to thank all the Honourable Members as they prepare to adopt this report.

**Mr. Speaker:** Thank you Hon. Tony for your response to the motion before the House. Honourable Members allow me proceed and put a question to the said motion for the House to make its decision.

*Question put and agreed to*

The report is adopted accordingly. I will urge Members that as we are seeking for avenues to have you trained accordingly; you can access the copy of the Powers and Privileges Act and equally continue looking at our Standing Order Nos. 120-130 so that when we go to that training, you will be having some knowledge ahead of other members. Thank you.

*(Applause)*

Honourable Members, looking at our Order Paper on our first day of resumption; that was the only motion we had. We will adjourn for now and resume tomorrow the 29<sup>th</sup> of March, 2023 for our 9:30 a.m. session.

*(House adjourns)*