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REPUBLIC OF KENYA



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27/3/18
Paper laid
by Leader of
Majority Party
Tuesday 27/3/2018
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THE NATIONAL ASSEMBLY



TWELFTH PARLIAMENT- SECOND SESSION

SECOND REPORT
OF THE
COMMITTEE ON APPOINTMENTS

ON THE VETTING OF THE NOMINEE FOR THE POSITION OF ATTORNEY- GENERAL

DIRECTORATE OF COMMITTEE SERVICES
THE NATIONAL ASSEMBLY
PARLIAMENT BUILDINGS
NAIROBI

MARCH, 2018

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LIST OF ABBREVIATIONS AND ACROYNMS

ACC	Advocates Complaints Commission
A-G	Attorney-General
DPP	Director of Public Prosecutions
DCI	Directorate of Criminal Investigations
EACC	Ethics and Anti-Corruption Commission of Kenya
H.E	His Excellency
HELB	Higher Education Loans Board
IEBC	Independent Electoral and Boundaries Commission
KRA	Kenya Revenue Authority
KSL	Kenya School of Law
Rtd.	Retired

ANNEXURES

- Annexure 1 Letter of notification from the appointing authority H.E the President
- Annexure 2 Advertisement inviting submissions of memoranda from the public
- Annexure 3 Advertisement notifying the public of the approval hearing
- Annexure 4 Invitation letter from the Clerk of the National Assembly to the nominee for the approval hearing
- Annexure 5 Letter from the Clerk of the National Assembly to the various Government Agencies requesting for reports on the nominee
- Annexure 6 Higher Education Loans Board clearance letter
- Annexure 7 Kenya Revenue Authority (KRA) clearance letter
- Annexure 8 Ethics and Anti-Corruption Commission (EACC) clearance letter
- Annexure 9 Directorate of Criminal Investigations (DCI) clearance letter

FOREWARD

Pursuant to Article 156 (2) of the Constitution and in accordance with sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, No. 33 of 2011, His Excellency the President nominated **Justice (Rtd.) Paul Kihara Kariuki** for the position of Attorney-General. The nomination was conveyed to the Speaker of the National Assembly through a letter Ref. No. OP/CAB.1/40A and dated 12th March, 2018. The nominee's Curriculum Vitae and Testimonials were enclosed in the reference letter.

On 13th March, 2018 and pursuant to Standing Order 42(1), the Speaker of the National Assembly read the message from H.E. the President communicating the name of the nominee for the position of Attorney-General to the House. Pursuant to section 4 of the Public Appointments (Parliamentary Approval) Act, 2011 and Standing Order 204(4), the name of the nominee was referred to the Committee on Appointments for vetting and reporting to the House within fourteen (14) days.

In compliance with section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011, the Clerk of the National Assembly placed an advertisement in the print media on Wednesday, 14th March, 2018 (*Annexure 2*) inviting the public to submit memoranda by way of written statements on oath (**affidavit**) on the suitability or otherwise of the nominee in conformity with section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011. The advertisement indicated that the submissions were to be received by Wednesday, 21st March, 2018 at 5.00 pm. By close of the submissions deadline, the Committee had not received any submission on the suitability of the nominee or otherwise for appointment to the position of Attorney-General.

Further, in fulfilment of the provisions of Article 118 of the Constitution, section 6(4) of the Public Appointments (Parliamentary Approval) Act, 2011 and Standing Order 45(3), the general public was on Wednesday, 14th March, 2018 notified in the print media by the Clerk of the National Assembly of the intention of the Committee on Appointments to conduct the vetting and approval hearing of the nominee on Thursday, 22nd March, 2018 from 10.00am (*Annexure 3*).

The nominee appeared before the Committee on Thursday, 22nd March 2018 for vetting in accordance with the provisions of the Constitution, the Public Appointments (Parliamentary Approval) Act, 2011 and the National Assembly Standing Orders on his suitability or otherwise for appointment to the position of Attorney-General.

Following the vetting, the Committee observed that:

- (1) In accordance with the requirements set out in Article 78(1) and (2) of the Constitution, the nominee is a Kenyan citizen born in Kiambu County and does not hold dual citizenship.
- (2) In accordance with the requirements set out in Article 156 (3) of the Constitution read together with Article 166 (2) and (3) of the Constitution, the nominee possesses a Law degree from the University of Nairobi, a recognized University, and is an Advocate of the High Court of Kenya. He possess over forty (40) years experience as a legal practitioner, fifteen (15) of which he has served as a judge of a superior court in Kenya. Prior to his

nomination, he had served as the President of the Court of Appeal for five (5) years and a Judge of the High Court for nine (9) years. His academic credentials, professional training and experience meet the standard required under section 6 (7) of the Public Appointments (Parliamentary Approval) Act, No. 33 of 2011.

- (3) The nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity. The Committee further observed that the DCI, KRA, HELB and EACC had sent clearance letters with respect to the nominee. The nominee has not been charged in a Court of Law in the last three years.
- (4) As stipulated under Article 75(1) of the Constitution, the nominee has no potential conflict of interest between his personal interests and his public or official duties.
- (5) The nominee satisfies the requirements of Article 77(1) of the Constitution in that he does not intend to participate in any other gainful employment if he is appointed as the Attorney-General.
- (6) The nominee does not hold office in any political party and hence satisfies the provisions of Article 77(2) of the Constitution.
- (7) The nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Article 75(1) (conflict of interest), Article 76 (financial probity), Article 77(restriction on activities of State Officers) and Article 78(2) (dual citizenship) of the Constitution and is therefore fit to hold office as the Attorney-General.
- (8) The nominee has exhibited immense knowledge of the law and understanding of the environment in which he is expected to serve as the A-G.

May I take this opportunity to thank all the Members of the Committee for their input and valuable contributions and time during the deliberations and vetting exercise. The Committee also takes this opportunity to thank the Offices of the Speaker and of the Clerk of the National Assembly for the logistical support accorded to it during the exercise.

On behalf of the Committee on Appointments and pursuant to Article 124 (4) (b) of the Constitution, section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011 and the provisions of Standing Order 199(6), it is now my singular duty and privilege to present to the House, this Second Report of the Committee on Appointment on the vetting of the nominee for the position of the Attorney-General of the Republic of Kenya **Justice (Rtd.) Paul Kihara Kariuki**.

Hon. Justin B. Muturi, E.G.H., M.P

Speaker of the National Assembly/Chairperson, Committee on Appointments

1.0 PREFACE

ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The Committee on Appointments is established under Standing Order 204(1). Standing Order 204(4) provides that the Committee on Appointments shall consider, for approval by the House, appointments under Article 152 of the Constitution (*Cabinet Secretaries*). Article 152 (1) of the Constitution provides that “*the Cabinet consists of the President, the Deputy President, the Attorney-General and not fewer than fourteen and not more than twenty two Cabinet Secretaries*”.

The Constitution of Kenya in Article 156 (1) of the Constitution provides that “*there is established the Office of the Attorney-General*”. Further Article 156 (2) of the Constitution provides that “*the Attorney-General shall be nominated by the President and with the approval of the National Assembly, appointed by the President*”.

The Committee principally vets Members of the Cabinet who fall under Article 152(1) (c) and (d) of the Constitution and consequently the Speaker of the National, in his Communication to the House on Tuesday, 13th March, 2018 referred the matter of vetting of the nominee to the position of the Attorney-General to Committee on Appointments.

MEMBERS OF THE COMMITTEE

The Committee on Appointments was constituted by the House on Thursday, 14th December, 2017 and comprises of the following Members:

Chairperson:	Hon. Justin Muturi, E.G.H, MP - Speaker, National Assembly
Members:	Hon. Moses Cheboi, CBS, MP - Deputy Speaker
	Hon. Aden Duale, EGH, MP - Leader of the Majority Party
	Hon. John Mbadi, CBS, MP - Leader of the Minority Party
	Hon. Jimmy Nuru Angwenyi - Deputy Leader of the Majority Party
	Hon. Robert Mbui, MP - Deputy Leader of the Minority Party
	Hon. Benjamin Jomo Washiali, CBS, MP – Majority whip
	Hon. Cecily Mbarire, MGH, MP – Deputy Majority whip
	Hon. (Dr.) Eseli Simiyu, MP
	Hon. Yusuf Hassan Abdi, MP
	Hon. David Losiakou Pkosing, CBS, MP
	Hon. David Gikaria, MP
	Hon. (Dr.) Rachael Nyamai, MP
	Hon. Joyce Emanikor, MP
	Hon. Khatib Abdallah Mwashetani, MP
	Hon. Kimani Ichung'wah, MP
	Hon. Peter Kaluma, MP
	Hon. Sabina Wanjiru Chege, MP

Hon. Sarah Korere, MP
Hon. Tom Joseph Kajwang, MP
Hon. David Ole Sankok, MP
Hon. Esther Muthoni Passaris, MP
Hon. Getrude Mbeyu, MP
Hon. Joshua Kimilu, MP
Hon. Lillian Cheptoo Tomitom, MP
Hon. Lydia Haika Mizighi, MP
Hon. Oku Kaunya, MP
Hon. William Chepkut, MP

SECRETARIAT OF THE COMMITTEE

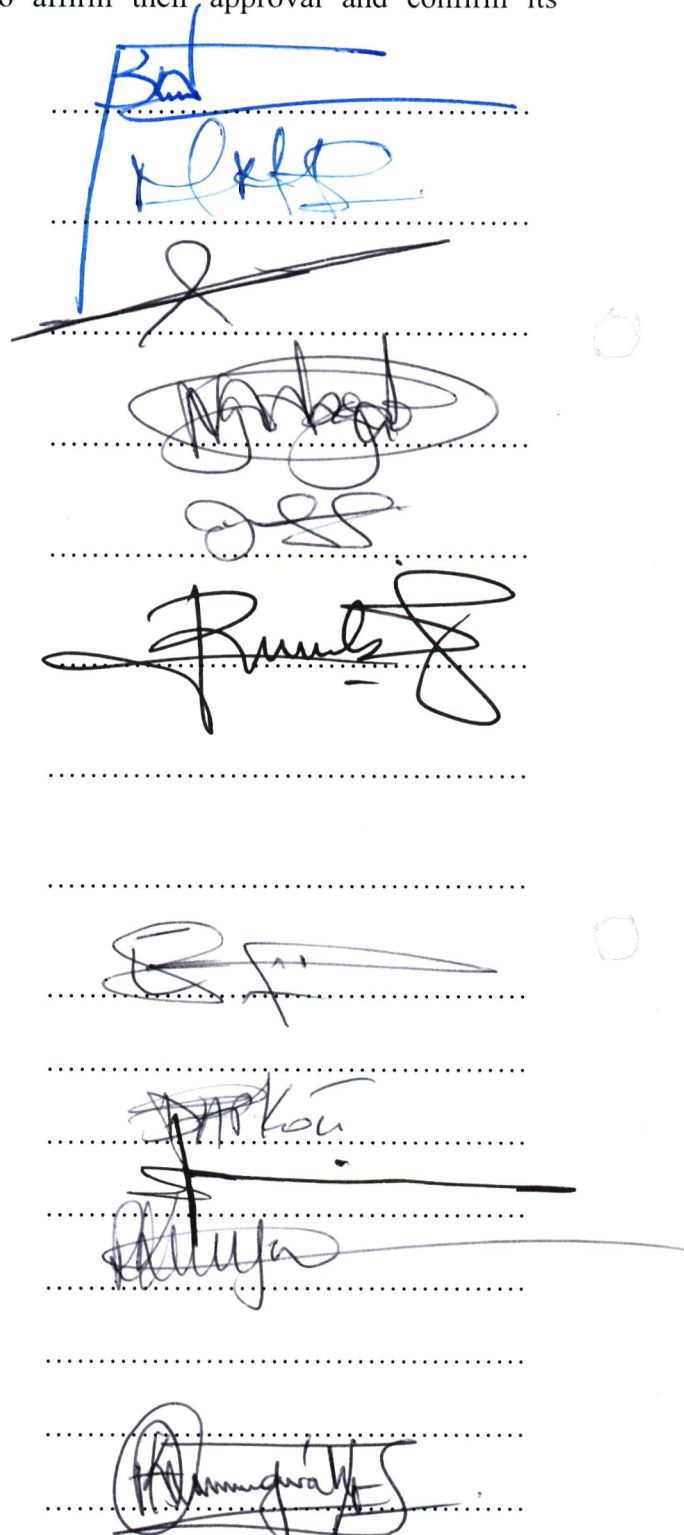
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|--------------------------|-------------------------------------|
| 1. Mr. Jeremiah Ndombi | Senior Deputy Clerk |
| 2. Mr. Peter K. Chemweno | Deputy Director, Committee Services |
| 3. Mr. John Mutega | Principal Clerk Assistant I |
| 4. Ms. Chelagat Tungo | Clerk Assistant II |
| 5. Mr. Jimale Mohammed | Clerk Assistant III |
| 6. Mr. Dennis Abisai | Principal Legal Counsel I |
| 7. Ms. Emma Essendi | Legal Counsel II |
| 8. Ms. Marale Sande | Senior Research Officer |

2.0 ADOPTION OF THE COMMITTEE REPORT

ADOPTION OF THE COMMITTEE OF APPOINTMENTS REPORT ON THE APPROVAL HEARINGS OF **JUSTICE (RTD.) PAUL KIHARA KARIUKI**, NOMINEE FOR APPOINTMENT TO POSITION OF **ATTORNEY-GENERAL**

The Honourable Members of the Committee of Appointments do hereby affix their signatures to this report on the Approval Hearing of **Justice (Rtd.) Paul Kihara Kariuki**, Nominee for Appointment to the position of Attorney-General, to affirm their approval and confirm its accuracy, validity and authenticity:

1. Hon. Justin Muturi, E.G.H, MP
Speaker, National Assembly, Chairperson
2. Hon. Moses Cheboi, CBS, MP
Deputy Speaker
3. Hon. Aden Duale, EGH, MP
Leader of the Majority Party
4. Hon. John Mbadi, CBS, MP
Leader of the Minority Party
5. Hon. Jimmy Nuru Angwenyi
Deputy Leader of the Majority Party
6. Hon. Robert Mbui, MP
Deputy Leader of the Minority Party
7. Hon. Benjamin Jomo Washiali, CBS, MP
Majority whip
8. Hon. Cecily Mbarire, MGH, MP
Deputy Majority whip
9. Hon. (Dr.) Eseli Simiyu, MP
10. Hon. Yusuf Hassan Abdi, MP
11. Hon. David Losiakou Pkosing, CBS, MP
12. Hon. David Gikaria, MP
13. Hon. (Dr.) Rachael Nyamai, MP
14. Hon. Joyce Emanikor, MP
15. Hon. Khatib Abdallah Mwashetani, MP
16. Hon. Kimani Ichung'wah, MP



Handwritten signatures of 16 members of the Committee of Appointments, each on a dotted line. The signatures are in blue and black ink. The first signature is in blue ink and is the most prominent. The other signatures are in black ink. The signatures are arranged vertically, corresponding to the list of names on the left.

17. Hon. Peter Kaluma, MP
18. Hon. Sabina Chege, MP
19. Hon. Sarah Korere, MP
20. Hon. Tom Joseph Kajwang, MP
21. Hon. David Ole Sankok, MP
22. Hon. Esther Passaris, MP
23. Hon. Getrude Mbeyu, MP
24. Hon. Joshua Kimilu, MP
25. Hon. Lillian Cheptoo Tomitom, MP
26. Hon. Lydia Haika Mizighi, MP
27. Hon. Oku Kaunya, MP
28. Hon. William Chepkut, MP

