

*Approved
Joss
1st Dec. 2022*

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FIRST SESSION – 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

REPORT ON THE APPROVAL HEARINGS OF:

1. MR. FESTUS NG'ENO, NOMINEE FOR APPOINTMENT AS PRINCIPAL SECRETARY, STATE DEPARTMENT FOR ENVIRONMENT
2. MR. EPHANTUS KIMOTHO NOMINEE FOR APPOINTMENT AS PRINCIPAL SECRETARY, STATE DEPARTMENT FOR FORESTRY
3. MR. ELIJAH MWANGI NOMINEE FOR APPOINTMENT AS PRINCIPAL SECRETARY, STATE DEPARTMENT FOR MINING

CLERK'S CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI

DECEMBER, 2022


 THE NATIONAL ASSEMBLY PARLIAMENT BUILDINGS	
DATE:	01 DEC 2022
TABLED BY:	CHAIR, DC - ENVIRONMENT FORESTRY & MINING HON. DAVID KIGARIA MP
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LIST OF ABBREVIATIONS AND ACRONYMS

H.E.	-	His Excellency
KRA	-	Kenya Revenue Authority
EACC	-	Ethics and Anti-Corruption Commission
DCI	-	Directorate of Criminal Investigations
HELB	-	Higher Education Loans Board
ORPP	-	Office of the Registrar of Political Parties
PAPAA	-	Public Appointments (Parliamentary Approval) Act
CBS	-	Chief of the Burning Spear
UDA	-	United Democratic Alliance
ODM	-	Orange Democratic Movement
NOPEU	-	National Ordinary People Empowerment Union
KUP	-	Kenya Union Party
UPIA	-	United Party of Independent Alliance
WDP	-	Wiper Democratic Party
PhD	-	Doctor of Philosophy
MSc	-	Master of Science
BSc	-	Bachelor of Science
KCA	-	Kenya College of Accountancy
SLDP	-	Strategic Leadership Development Program
KSG	-	Kenya School of Government
DFC	-	Danida Fellowship Centre
TUD	-	Technical University of Denmark
EBK	-	Engineers Board of Kenya
EIK	-	Environment Institute of Kenya
EIA,EA	-	Environmental Impact Assessment & Audit
NEMA	-	National Environmental Management Authority
KIM	-	Kenya Institute of Management
ACCA	-	Association of Chartered Certified Accountants
CPA	-	Certified Public Accountants
ICPAK	-	Institute of Certified Public Accountant of Kenya

ANNEXURES

- Annexure 1: Adoption List
- Annexure 2: Minutes
- Annexure 3: Message from H.E. the President nominating the fifty-one (51) Principal Secretaries
- Annexure 4: Communication from the Speaker
- Annexure 5: Advertisement notifying the public of the approval hearings
- Annexure 6: Letters from the Clerk of the National Assembly inviting the nominees for the approval hearings
- Annexure 7: Letters from the Clerk of the National Assembly to KRA, EACC, DCI, HELB and ORPP requesting for information on the nominees
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CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Environment, Forestry and Mining during the approval hearings of Mr. Festus Ng'eno, nominee for appointment as Principal Secretary, State Department for Environment, Mr. Ephantus Kimotho, nominee for appointment as Principal Secretary, State Department for Forestry and Mr. Elijah Mwangi, nominee for appointment as Principal Secretary, State Department Mining as requested by H.E. the President and communicated to the House by the Hon. Speaker on Thursday, 3rd November 2022.

Pursuant to Article 155(3)(b) of the Constitution, Section 5 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) and Standing Order 45(1), H.E. the President notified the National Assembly of the nomination of fifty-one (51) Principal Secretaries to various State Departments vide a letter dated 2nd November 2022. The Hon. Speaker vide a communication made on Thursday, 3rd November 2022 conveyed to the House the Message from H.E. the President and subsequently referred names of the nominees, curricula vitae, and the report of the selection panel on their recruitment to Departmental Committees for approval hearings. While referring the matter to the Committees, the Hon. Speaker directed that the Committees undertake the vetting exercise within twenty-eight (28) days pursuant to Section 8 of the Public Appointments Parliamentary Approval Act (No. 33 of 2011). The Hon. Speaker further directed the Clerk of the National Assembly to notify the nominees and the general public by placing adverts in two newspapers of nationwide circulation and the Parliamentary Website of the time and place of holding the approval hearings by Friday, 4th November 2022.

In compliance with Article 118 (b) of the Constitution and section 6 (4) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), the Clerk of the National Assembly placed an advertisement in the print media on Friday, 4th November 2022 informing the public of the nomination, date, time and place of the approval hearing. He also invited the public to submit memoranda by way of written statements on oath (*affidavit*) on the suitability of the nominees in conformity with section 6 (9) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011). The memoranda were to be received on or before Friday, 11th November 2022 at 5.00 p.m. (East African Time). At the close of the submission deadline, the Committee had not received any memorandum for or against the nominee's suitability.

The Clerk of the National Assembly also wrote to Kenya Revenue Authority (KRA), Ethics and Anti-Corruption Commission (EACC), Directorate of Criminal Investigations (DCI), Higher Education Loans Board (HELB) and Office of the Registrar of Political Parties (ORPP) seeking references and background checks relating to the suitability of the nominee.

It is worth noting that on 15th November, 2022, the Employment and Labour Relations Court in the Constitution Petition No. E186 of 2022 (*Dr. Magare Gikenyi versus The President of the Republic of Kenya and 55 others*) and in Constitution Petition No. 192 of 2022, (*Law Society of Kenya versus The National Assembly and 4 others*), granted conservatory orders temporarily staying the vetting of persons nominated to be appointed as principal secretaries pending inter-parties hearing which was scheduled for 21st November, 2022. Consequently, the Court lifted the said orders on Tuesday, 29th November, 2022, holding that the petitioners ought to have waited for the conclusion of the vetting process before challenging the

nomination and approval of the persons nominated to be appointed to the Office of Principal Secretary.

Subsequently, the nominees appeared before the Committee on Wednesday, 30th November 2022 for vetting. The Committee examined their suitability based on the criteria set out in Section 7 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011). In addition, the Committee examined their academic credentials, relevant experience, knowledge of sector issues and on leadership and integrity. The Committee paid due regard to the procedure used to arrive at the nominees; any constitutional or statutory requirements relating to the office in question and suitability of the nominees for the appointment proposed having regard to whether the nominees' abilities, experience and qualities meet the needs of the State Departments.

Committee Recommendation

The Committee having held approval hearings for the nominees regarding their suitability, observed that due process was followed on the recruitment process as provided for under Article 155(3) (b) of the Constitution and the Public Appointments (Parliamentary Approval Act) (No. 33 of 2011). The Committee therefore recommends that the National Assembly **APPROVES** the nomination of Mr. Festus Ng'eno for appointment as Principal Secretary, State Department for Environment, Mr. Ephantus Kimotho for appointment as Principal Secretary, State Department for Forestry and Mr. Elijah Mwangi for appointment as Principal Secretary, State Department for Mining.


Acknowledgements

The Committee registers its appreciation to the Offices of the Speaker, Office of the Clerk of the National Assembly, Office of the Director, Departmental Committees and the Committee Secretariat for the technical and logistical support extended during the vetting process.

In addition, the Committee thanks the nominees for their cooperation during the vetting process. Finally, the Committee appreciates KRA, EACC, DCI, HELB and ORPP for providing references and background checks relating to the suitability of the nominees.

I acknowledge and appreciate Members of the Committee for their patience, sacrifice and commitment which enabled the Committee to complete the task within the required timelines.

On behalf of the Departmental Committee on Environment, Forestry and Mining, and pursuant to Article 155(3)(b) of the Constitution and Section 8 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) and provisions of Standing Orders 45(4) and 199(6), it is my pleasant duty to present the Report of the Committee on the approval hearings of Mr. Festus Ng'eno, nominee for appointment as Principal Secretary, State Department for Environment, Mr. Ephantus Kimotho, nominee for appointment as Principal Secretary, State Department for Forestry and Mr. Elijah Mwangi, nominee for appointment as Principal Secretary, State Department for Mining for debate and adoption by the House.



Hon. David Gikaria, MP.

Chairperson, Departmental Committee on Environment, Forestry and Mining

CHAPTER ONE

1. PREFACE

1.1. Establishment and Mandate of the Committee

1. The Departmental Committee on Environment, Forestry and Mining is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - iii. *on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. *To study and review all legislation referred to it;*
 - v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vii. ***To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);***
 - viii. *To examine treaties, agreements and conventions;*
 - ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

1.2. Subjects under the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, the following Subject: Climate change, environment management and conservation, forestry, mining and natural, pollution, waste management.
3. In executing its mandate, the Committee oversees the Ministry of Environment and Forestry, and the State Department for Mining.

1.3. Committee Membership

4. The Departmental Committee on Environment, Forestry and Mining was constituted by the House on 27th October 2022 and comprises of the following Members:

Chairperson

Hon. David Gikaria, MP
Nakuru Town East Constituency
UDA Party

Vice-Chairperson

Hon. Charles Kamuren, MP
Baringo South Constituency
UDA Party

Members

Hon. Mbalu Jessica Nduku Kiko, CBS, MP
Kibwezi East Constituency
WDP Party

Hon. Mwanyanje Gertrude Mbeyu, MP
Kilifi County
ODM Party

Hon. Hiribae Said Buya, MP
Galole Constituency
ODM Party

Hon. Salim Feisal Bader, MP
Msambweni Constituency
UDA Party

Hon. Emathe Joseph Namuar, MP
Turkana Central Constituency
UDA Party

Hon. Joseph Wainaina Iraya, MP
Nominated
UDA Party

Hon. Kemei Beatrice Chepngeno, MP
Kericho County
UDA Party

Hon. Kururia Elijah Njore Njoroge, MP
Gatundu North Constituency
Independent Member

Hon. Masito Fatuma Hamisi, MP
Kwale County
ODM Party

Hon. Nguro Onesmus Ngogoyo, MP
Kajiado North Constituency
UDA Party

Hon. Titus Lotee, MP
Kacheliba Constituency
KUP Party

Hon. Mohamed Tubi Bidu, MP
Isiolo South Constituency
Jubilee Party

Hon. Yakub Adow Kuno, MP
Bura Constituency
UPIA Party

1.4. Committee Secretariat

5. The Committee is facilitated by the following staff:

Mr. Fredrick O. Otieno
Clerk Assistant II/Head of Secretariat

Ms. Rose Natecho
Clerk Assistant III

Mr. Hamdi Hassan Mohamed
Clerk Assistant III

Ms. Mercy Wanyonyi
Senior Legal Counsel

Mr. Joseph Kuria
Research Officer II

Ms. Nancy Chamunga
Fiscal Analyst III

Ms. Catherine Wangui
Senior Sergeant-At-Arms

Mr. Boniface Mushila
Serjeant-At-Arms

Ms. Deborah Mupusi
Media Relations Officer II

Ms. Maryan Gabow
Public Communications Officer III

Mr. Muchiri Mwangi
Audio Recording Officer

CHAPTER TWO

2. BACKGROUND INFORMATION

2.1. Legal Framework

6. Article 155 of the Constitution provides that:

155. (1) There is established the office of Principal Secretary, which is an office in the public service.

(2) Each State department shall be under the administration of a Principal Secretary.

(3) The President shall—

(a) nominate a person for appointment as Principal Secretary from among persons recommended by the Public Service Commission; and

(b) with the approval of the National Assembly, appoint Principal Secretaries.

(4) The President may re-assign a Principal Secretary.

(5) A Principal Secretary may resign from office by giving notice, in writing, to the President.

7. In light of this, H.E. the President nominated fifty-one (51) persons for appointment as Principal Secretaries to various State Departments. The President nominated the following persons for appointment as Principal Secretaries State Department for Environment, State Department for Forestry and State Department for Mining:

- i. Mr. Festus Ng'eno: Nominee for appointment as Principal Secretary, State Department for Environment;
- ii. Mr. Ephantus Kimotho: Nominee for appointment as Principal Secretary, State Department for Forestry; and
- iii. Mr. Elijah Mwangi: Nominee for appointment as Principal Secretary, State Department for Mining.

8. The Departmental Committee on Environment, Forestry and Mining was assigned the role of conducting the vetting of the aforesaid nominees.

9. The following Articles of the Constitution and statutes/provisions were paramount to the Committee as it executed this mandate:

- i. The Public Appointments (Parliamentary Approval) Act (No. 33 of 2011);
- ii. The Public Service Commission Act (No. 10 of 2017) on recommendation for appointment of Principal Secretaries;
- iii. Article 10 of the Constitution on the national values and principles of governance;
- iv. Chapter 6 of the Constitution on leadership and integrity;
- v. Article 77 of the Constitution on restriction on activities of State Officers;
- vi. Article 78 of the Constitution on dual citizenship;
- vii. Article 118 of the Constitution on public participation;
- viii. Article 232 of the Constitution on values and principles of public service;
- ix. The Leadership and Integrity Act (Cap. 182);

- x. The Public Service (Values and Principles) Act (No. 1A of 2015); and
- xi. The Public Officer Ethics Act (Cap. 183).

The Public Appointments (Parliamentary Approval) Act (No. 33 of 2011)

10. Section 7 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), provides for issues which the relevant House of Parliament (in this case, the National Assembly) is supposed to consider in relation to any nomination. These issues include:
- i. the procedure used to arrive at the nominee;*
 - ii. any constitutional or statutory requirements relating to the office in question; and*
 - iii. the suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is being made.*
11. During the approval hearing, section 6 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) provides direction on the conduct of an approval hearing. These are:
- i. An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background (section 6(7) of the Act);
 - ii. The criteria specified in the Schedule shall be used by a Committee during an approval hearing for the purposes of vetting a candidate (section 6(8) of the Act);
 - iii. Any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated (section 6(9) of the Act); and
 - iv. A candidate may, at any time, by notice in writing addressed to the Clerk, withdraw from the approval process and the candidate's nomination shall end (section 6(10) of the Act).

The Public Service Commission Act (No. 10 of 2017)

12. Section 47 (2) of the Public Service Commission Act (No. 10 of 2017) provides for qualifications that one must have so as to be eligible for appointment as a Principal Secretary. These are:
- i. be a citizen of Kenya;
 - ii. hold a degree from a university recognised in Kenya;
 - iii. has at least ten (10) years relevant professional experience, five (5) years of which should have been in a leadership position or at a top management level in the public service or private sector;
 - iv. possess general knowledge of the organisation and functions of Government;
 - v. demonstrates an understanding of the goals, policies and developmental objectives of the nation;
 - vi. has demonstrable leadership and management capacity including knowledge of financial management and strategic people management; and
 - vii. meets the requirements of Chapter Six of the Constitution.

Article 10(2) of the Constitution on national values and principles of governance

13. Article 10(2) of the Constitution provides for the national values and principles of governance which include patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised; good governance, integrity, transparency and accountability; and sustainable development.

Chapter 6 of the Constitution (Leadership and Integrity)

14. There are important provisions in Chapter 6 of the Constitution worth pointing out. Article 73 of the Constitution provides that the authority assigned to a State officer (a Principal Secretary being a state officer under Article 260 of the Constitution) is a public trust to be exercised in accordance to the Constitution, demonstrate respect for the people, bring honour to the nation and dignity to the office and promote public confidence in the integrity of the office. Also, the State officer shall have the responsibility to serve the people, rather than the power to rule them.
15. The guiding principles of leadership and integrity are listed as selection based on personal integrity, competence and suitability, objectivity and impartiality in decision making, selfless service based solely on the public interest, accountability and discipline and commitment in service to the people.

Article 77 of the Constitution (Restriction on activities of State officers)

16. Article 77 of the Constitution provides that a full-time State officer shall not participate in any other gainful employment and that any appointed State officer shall not hold office in a political party.

Article 78 of the Constitution on citizenship and leadership

17. Article 78 of the Constitution states that a person is not eligible for election or appointment to a State office unless the person is a citizen of Kenya. It also provides that a State officer or a member of the defence forces shall not hold dual citizenship.

Article 118 of the Constitution on public access and participation

18. Article 118 of the Constitution provides that:

1. *Parliament shall:*

- a) *conduct its business in an open manner, and its sittings and those of its committees shall be in public; and*
- b) *facilitate public participation and involvement in the legislative and other business of Parliament and its committees.*

2. *Parliament may not exclude the public, or any media, from any sitting unless in exceptional circumstances the relevant Speaker has determined that there are justifiable reasons for the exclusion.*

Article 232 of the Constitution on Values and Principles of Public Service

19. Article 232 of the Constitution provides for the values and principles of public service which include high standards of professional ethics; efficient, effective and economic use of resources; responsive, prompt, effective, impartial and equitable provision of services; involvement of the people in the process of policy making; accountability for administrative acts; transparency and provision to the public of timely, accurate information; fair competition and merit as the basis of appointments and promotions; representation of Kenya's diverse communities; and affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service of men and women; the members of all ethnic groups; and persons with disabilities.

The Leadership and Integrity Act (Cap. 182)

20. The Leadership and Integrity Act provides for a number of obligations of a State officer. These are, among others: to respect and abide by the Constitution and the law, public trust, performance of duties in an honest and accountable manner, professionalism, financial integrity, not to engage in activities that amount to abuse of office, not misuse public resources, accepting gifts that may compromise the officer's duties, wrongful or unlawful acquisition of property, conflict of interest e.t.c.

The Public Service (Values and Principles) Act

21. Section 5 of the Public Service (Values and Principles) Act provides that a public officer shall maintain high standards of professional ethics, including, being honest; displaying high standards of integrity, transparency, accountability, respect to others, objectivity, patriotism, observance of rule of law. (Applies in future upon appointment)

The Public Officer Ethics Act (Cap. 183)

22. The Public Officer Ethics Act provides for obligations to be carried out by a public officer. These include professionalism, carrying out duties in accordance with the law, prohibition from unjust enrichment, avoiding conflict of interest, not using office as a venue for soliciting or collecting harambees; not acting for foreigners; care of property; political neutrality, not practicing nepotism or favouritism, giving impartial advice, conducting private affairs in a way that maintains public confidence, bar from sexual harassment, submission of declaration of income, assets and liabilities once every two years (section 26). (Applies in future after appointment)

2.2. Qualifications for appointment as Principal Secretary

23. In conducting the approval hearings, the Committee was guided by Article 155 (3) (b) of the Constitution, section 47 (2) of the Public Service Act and the provisions of Section 7 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011).

2.3. Message from H.E. the President

24. H.E. the President on **2nd November 2022** communicated the names of the nominees for appointment to the positions of Principal Secretary in the State Departments for Environment, Forestry and Mining to the Speaker for approval by the National Assembly pursuant to Article 155 (3). The Speaker in his communication from the Chair issued on **Tuesday, 3rd November 2022** and pursuant to Standing Order No. 42 referred the names to the Departmental Committee on Environment, Forestry and Mining to conduct approval hearings and report within twenty-eight (28) days.

2.4. Speaker's Communication and Committal to the Committee

25. Pursuant to the provisions of Standing Order No. 42, the Speaker of the National Assembly on **Tuesday, 3rd November 2022** communicated to the House the message from H.E. the President regarding the nominees for appointment as Principal Secretaries for various State Departments. The Speaker informed the House that H.E. the President was seeking approval of the National Assembly on the said nominations before the nominees' appointment.
26. In accordance with Standing Order 45(1), the Speaker read the Message from H.E. the President and referred the names of the nominees, their curricula vitae and report of the Selection Panel on the recruitment process to the Departmental Committee on Environment, Forestry and Mining to conduct approval hearings.
27. While referring the matter to the Committee, the Speaker directed that the Committee undertakes the vetting exercise within twenty-eight (28) days in accordance with Section 8 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011). The Speaker further directed the

Clerk of the National Assembly to notify the nominees and the general public by placing adverts in two newspapers of nationwide circulation and the Parliamentary Website of the time and place of holding the approval hearings by Friday, 4th November 2022.

28. In addition, the Speaker directed that approval hearings should commence on Monday, 14th November 2022 and end on Friday, 18th November 2022. Thereafter, the reports should be tabled in the House not later than Tuesday, 22nd November 2022 so as to enable the House to consider the reports within the statutory timelines.

2.5. Notification to the Public

29. Section 6(9) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), provides that “*any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated*”.
30. The Clerk of the National Assembly on **Friday, 4th November 2022** placed a notification in the print media informing the general public of the intention of the Committee to conduct approval hearings, as provided for by Article 118 (1) (a) (b) and (2) of the Constitution and Section 6(4) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), which allows public participation in committee proceedings. The notification gave provision for the submission of memoranda, by way of written statements on oath (*affidavit*) on the suitability or otherwise of the nominees, by **Friday, 11th November 2022 at 5.00 pm (East African Time)**. At the close of the submission deadline, the Committee had only received one memorandum from Mr. Jackson Akama recommending Mr. Festus Ng’eno, nominee for appointment as the Principal Secretary, State Department for Environment.

2.6. Notification to the Nominee

31. The Clerk of the National Assembly vide an advert placed in the print media on Friday, 4th November 2022 and letters Ref. NA/DDC/EF&M/VETT/2022/001, Ref. NA/DDC/EF&M/VETT/2022/002 and Ref. NA/DDC/EF&M/VETT/2022/003 informed the nominees of the nomination by H.E. the President and requested them to appear for vetting by the Departmental Committee on Environment, Forestry and Mining on **Wednesday, 16th November 2022** in the Mini Chamber, 1st floor, County Hall, Parliament Buildings. The Clerk of the National Assembly further requested the nominees to bring with them their clearance certificates from the Kenya Revenue Authority (KRA), the Higher Education Loans Board (HELB), Ethics and Anti-Corruption Commission (EACC), Directorate of Criminal Investigations (DCI) and Office of the Registrar of Political Parties (ORPP).
32. However, on 15th November, 2022, the Employment and Labour Relations Court in the Constitution Petition No. E186 of 2022 (*Dr. Magare Gikenyi versus The President of the Republic of Kenya and 55 others*) and in Constitution Petition No.192 of 2022, (*Law Society of Kenya versus The National Assembly and 4 others*), granted conservatory orders temporarily staying the vetting of persons nominated to be appointed as principal secretaries pending inter-parties hearing which was scheduled for 21st November, 2022. Consequently, the Court lifted the said orders on Tuesday, 29th November, 2022, holding that the petitioners ought to have waited for the conclusion of the vetting process before challenging the nomination and approval of the persons nominated to be appointed to the Office of Principal Secretary. In light of these circumstances, the nominees appeared before the Committee on **Wednesday, 30th November, 2022** for vetting.

2.7. Clearance Requirements

33. The Clerk of the National Assembly wrote to the Kenya Revenue Authority (KRA), the Higher Education Loans Board (HELB), Ethics and Anti-Corruption Commission (EACC), Office of the Registrar of Political Parties (ORPP) and Directorate of Criminal Investigations (DCI) requesting for tax, education loans, integrity, affiliation to political parties and criminal record status of the nominees. The following institutions wrote back to the National Assembly clearing the nominees-
- (a) KRA (letter Ref. KRA/5/1002/5(8179) dated 14th November 2022) confirmed that the nominees were tax compliant;
 - (b) DCI (letter Ref. DCI/CRO/SEC/6/7/2/A/VOL.XI/208 dated 10th November 2022) confirmed that the nominees were issued with clearance certificates;
 - (c) EACC (letter Ref: EACC.7/10/5 VOL XXI (70) dated 11th November 2022) confirmed that the Commission had not undertaken any investigations where the nominees had been found culpable;
 - (d) HELB (letter Ref. HELB/RR/112009/190 dated 10th November 2022) confirmed that the nominees had no outstanding loans with the Board; and
 - (e) ORPP (letter Ref: RPP/ORG/34 VOL. VI (41) dated 10th November 2022 confirmed that the nominees were not officials of any registered political.

2.8. Report of the Selection Panel on the Nomination of Principal Secretaries

34. Pursuant to Article 155 (3) (a) of the Constitution, the Public Service Commission invited applications from suitably qualified persons for the position of Principal Secretary. The advertisement was published in the print media, Kenya Gazette No. 10536 and on the Commission's Website on 7th September 2022 with a closing date of 20th November 2022.
35. On 20th September 2022, the Commission extended the advertisement period by seven (7) days. The advertisement period lapsed on 27th September 2022 with a total of nine thousand one hundred and fifty-four (9,154) persons submitting applications for consideration.
36. Four hundred and seventy-seven (477) candidates were shortlisted from 3rd to 6th October 2022 and a further review done on 7th October 2022 to bring the shortlist to five hundred and eighty-five (585) candidates so as to cater for gender, marginalised/minority groups and PWDs pursuant to Article 232 (1) (h) of the Constitution. Interviews for the shortlisted persons were conducted from 12th to 22nd October 2022.
37. The Public Service Commission adhered to all provisions of the Constitution in the process of advertising, shortlisting and interviewing the candidates including, merit, gender, ethnic and regional balance.

2.9. Committee proceedings

38. The Committee having received the names of the nominees was obligated to conduct approval hearings and make a determination of the nominees' suitability or otherwise within twenty-eight (28) days as provided for in section 8 (1) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011).

39. The Committee held four (4) sittings during which it examined and reviewed the nominees' certificates, testimonials as well as conducted approval hearings.

CHAPTER THREE

3. APPROVAL HEARINGS

40. The Committee conducted approval hearings for the nominees on **Wednesday, 30th November 2022**. In conducting the vetting exercise, the Committee was guided by, among other documents, the Constitution of Kenya, the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), the Public Service Commission Act and the Standing Orders.
41. The Committee examined the nominees using the guidelines in the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011). The Committee also considered the following in vetting the nominees:
- (a) Academic qualifications;
 - (b) Employment record and work experience;
 - (c) Professional association;
 - (d) Public office, political activities and affiliations;
 - (e) Potential conflict of interest;
 - (f) Suitability to the position;
 - (g) Tax compliance;
 - (h) Vision and leadership;
 - (i) Integrity; and
 - (j) Expectations and Key priorities.

3.1. Eng. Festus Kipkoech Ng'eno

Mr. Ng'eno was orally interviewed by the Committee and responded to questions during vetting as follows:

3.1.1 Personal Background

42. Mr. Ng'eno informed the Committee that his full and official name is Eng. Festus Kipkoech Ng'eno, a Kenyan citizen of identity card number 22188153 and was born in Nakuru County in 1980.

3.1.2 Educational Background

43. Mr. Ng'eno is currently undertaking a Doctor of Philosophy (PhD) Degree in Environmental and Water Engineering from the University of Nairobi, he holds a Master of Science (MSc) and a Bachelor of Science (BSc) Degrees in Environmental and Biosystems Engineering from the University of Nairobi, a Post Graduate Diploma Certificate in Leadership and Corporate Governance from KCA University, Strategic Leadership Development Program (SLDP) from Kenya School of Government (KSG) and Green and Circular Economy Leadership Course under the Danida Fellowship Centre (DFC) from Technical University of Denmark (TUD).
44. He sat for his Kenya Certificate of Secondary Education examination at Kapsabet High School in 1998.

3.1.3 Work experience/career progression

45. Mr. Ng'eno has worked in the public and private sector in the following capacities:
- i. Acting County Executive Committee Member (CECM)/Acting County Minister in Charge of Agriculture, Livestock and Fisheries in the County Government of Nakuru from May, 2022 to Date;
 - ii. House Champion for the Utafiti SERA Project – Water Governance House at Kenya Water and Sanitation Civil Society Network (KEWASNET) from August, 2021 to Date on a Short Term Assignment;
 - iii. County Executive Committee Member (CECM)/County Minister in Charge of Water, Sanitation, Environment, Energy, Climate Change & Natural Resources in the County Government of Nakuru from October, 2017 to Date;
 - iv. Acting County Executive Committee Member (CECM)/Acting County Minister in Charge of Health Services in the County Government of Nakuru from July to November 2018;
 - v. Group Manager, Water Treatment Division at Davis & Shirliff Ltd from April, 2016 to December, 2017;
 - vi. Managing Director at Kericho Water & Sanitation Company Ltd (KEWASCO) from November 2011 to March 2016;
 - vii. Branch Manager at Davis & Shirliff Ltd, Kisii Branch from March to October, 2011;
 - viii. Senior Water Treatment Engineer at Davis & Shirliff Ltd from January, 2007 to February, 2011; and
 - ix. IT Instructor at the Institute of Advanced Technology (IAT) from January to December, 2006.

3.1.4 Professional Associations & Affiliations

46. Mr. Ng'eno is professionally affiliated with the following professional bodies:
- i. Registered Engineer with Engineers' Board of Kenya (EBK) with Registration Number: B 18310 and Certificate of Good Standing from the Engineers' Board of Kenya (EBK) – Reg. No. B 18310.
 - ii. Practising Lead Member, Environment Institute of Kenya (EIK) – Member No. EIK/1/4016.
 - iii. Registered Lead Expert on Environmental Impact Assessment and Audit (EIA, EA), Expert with the National Environmental Management Authority (NEMA) – License No. 6753.
 - iv. Full Member at the Kenya Institute of Management (KIM) – Member No. 46033

3.1.5 Honors and Awards

47. Mr. Ng'eno has received several awards including:
- i. Certificate of Recognition and a Prize from Davis & Shirliff Ltd for being Best 5th Year Student in Environmental and Biosystems Engineering in Water Resources in 2005;
 - ii. Certificate of Merit from the University of Nairobi for being the Best 5th Year Environmental and Biosystems Engineering Student in Water Resources in 2005;
 - iii. Awarded a Commendation Award for the Outstanding Contribution to Davis and Shirliff Ltd in 2010; and

- iv. Awarded a Commendation Award for the Best Business Unit of the Year in 2017 at Davis & Shirliff Ltd.

3.1.6 Net worth

Mr. Ng'eno informed the Committee that he was worth KSh. 89 million. The source of his wealth was annual salary, Consultancy Services, Annual Dividends from shares and farming.

3.1.7 Clearance Requirements

- 48. The Committee confirmed that the nominee had been cleared by KRA, ORPP, DCI, EACC and HELB, having obtained clearance certificates to that effect.

3.1.8 Other issues under consideration

To examine suitability or otherwise of the nominee, the Committee posed questions to the nominee in the following thematic areas:

(a) On how the education and professional background of the nominee has prepared him for the challenging task ahead

The nominee submitted that he has vast knowledge on the policy development of solid waste management, policy development, resource mobilization, and environment water and climate change matters. He informed the Committee that his previous engagements with the county governments, the Council of Governors and other institutions will come in hand in carrying out his daily duties. Under his leadership as County Executive Member, he developed a Solid Waste Management Strategy which became a reference for other counties.

(b) On attainment of the commitment to plant 5 billion trees in the next five years and 10 billion in the consecutive 10 years

The nominee elaborated how enhanced national tree planting campaigns will be achieved through national and county tree planting. He stated that he would engage the Community Forest Associations (CFA's); ensure differentiation in the specificity of the trees to be planted in various areas in the country and support all legislations that would be of benefit to the country.

(c) On Solid Waste Management

The nominee demonstrated how Nakuru County has managed to deal with solid waste and undertook to promote the intergovernmental framework to adopt the circular economy model. He stated that investments should be included in the circular economy starting from the household level to the national level like combining Nairobi and Kajiado counties to have more land to do a sufficient dumping site and decommissioning Dandora dumpsite.

(d) On ensuring acceptable air quality standards in major towns and cities

The nominee submitted that the transport sector is a major source of air pollution. He was of the view that to attain acceptable air quality standards, extended producer responsibility needs to be addressed, promotion of loss and damage funds, and promoting policies on air quality.

(e) On sustaining the gains achieved in the fight against plastic pollution

The nominee stated that he will encourage an intergovernmental framework between the State Department of Environment and the 47 county governments. He stated that he will engage the

Community Based Organizations on recycling of plastics and promote the circular economy (Refuse, Recycle, Reuse and Refurbish).

- (f) **On challenges and successes of the Lake Victoria Environmental Management Project**
The nominee elaborated the successes of the Project as being renovation of water and fish laboratories through supply of modern equipment and facilities, establishment of a mechanism of involving communities, NGOs, CBOs, and county governments as well as capacity building within the Lake Victoria Basin Project. He stated the challenges encountered in the project include low delays in terms of procurement; climate change mitigation issues; pollution from diffuse sources, inadequate public participation and erratic weather patterns.
- (g) **On strengthening and enhancing mechanisms to protect the water towers**
The nominee elaborated on how he will mobilize funds towards fencing of the water towers, proposed demarcation of riparian land around the water towers and advocated for promotion of land restoration by afforestation and conserving the remaining ecosystems.
- (h) **On collaboration in environmental conservation between the two levels of government.**
The nominee submitted that he will establish a good working relationship with the Council of Governors and promote an intergovernmental framework with the county governments.
- (i) **On ensuring environmental conservation as provided in Article 42 of the Constitution**
The nominee stated that he will create awareness to the communities and facilitate planting of 15 billion trees in the next 10 years. He also undertook to promote protection of biodiversity, collaborate with the Ministry of Education to revive 4-K clubs and enhance public participation in environment conservation.
- (j) **On greener forms of energy**
The nominee submitted that 99% of energy consumed in Kenya comes from clean sources such geothermal, wind and solar, and hydro power. That he will seek to subsidize the production of cleaner forms of energy since they are expensive.
- (k) **On sustainable use and management of the major lakes**
The nominee elaborated that he will work with the riparian associations and take advantage of the current political good will on environmental conservation.
- (l) **On National Environment Management Authority (NEMA)**
The nominee informed the committee that he was aware of the status and challenges of NEMA, and undertook to strengthen it by ensuring the necessary legislation and regulations are passed by the National Assembly.
- (m) **On building resilience against climate change**
The nominee elaborated on how he will build resilient foundations with rapid and inclusive development of the people living in both the urban and rural areas.
- (n) **On the Kenya Water Tower Agency and Kenya Meteorological Department**
The nominee indicated that he will introduce Bills to convert the two institutions into Semi-Autonomous Agencies (SAGA) so as to ensure adequate resource allocation.

(o) On Carbon trading

The nominee submitted that he will introduce a Carbon Trading Bill as a matter of priority so as to provide a legal framework on carbon trading.

3.2. Mr. Ephantus Kimotho Kimani

Mr. Kimotho was orally interviewed by the Committee and responded to questions during vetting as follows:

3.2.1 Personal Background

49. Mr. Ephantus Kimotho informed the Committee that his full and official name is Mr. Ephantus Kimotho Kimani, a Kenyan citizen of Identity Card number 14607565 and was born in Kajiado County in 1977.

3.2.2 Educational Background

50. Mr. Kimotho holds a Bachelor of Commerce Degree (Finance) (2009) from Catholic University of Eastern Africa, Association of Chartered Certified Accountant (ACCA) Part I; CPA Part III & II from Vision Institute of Professionals; and CPA Part I from Kenya College of Accountancy.

51. He sat for his Kenya Certificate of Secondary Education examinations at Oloolaiser High School in 1995.

3.2.3 Work experience/career progression

52. Mr. Kimotho has worked in the private sector all his life in the following capacities:

- i. Chief Executive Officer, Heri Homes Limited from 2011 to date;
- ii. Partner Kimotho K & Associates CPA K from 2011 to date;
- iii. Director Leo Capital Holdings Ltd from 2015 to date;
- iv. Financial Consultant at Premier Financial Consultants from 2011 to 2014;
- v. Internal Auditor at the University of Nairobi from 2002 to 2011; and
- vi. External Auditor at Kimani and Associates CPA K from 1999 to 2002.

3.2.4 Professional Associations & Affiliations

53. Mr. Kimotho is an affiliated Member to the Institute of Certified Public Accountants of Kenya under Membership No. 5058.

3.2.5 Net Worth

54. Mr. Kimotho informed the Committee that he was worth KSh. 417.2 million. The source of his wealth was director allowance, project management fees, consultancy fees and rental income.

3.2.6 Clearance Requirements

55. The Committee confirmed that the nominee had been cleared by KRA, ORPP, DCI, EACC and HELB, having obtained clearance certificates to that effect.

3.2.7 Other issues under consideration

To examine suitability or otherwise of the nominee, the Committee posed questions to the nominee in the following thematic areas:

(a) On how his education and professional background has prepared for the challenging task ahead:

The nominee informed the committee that he has adequate knowledge on financial matters; team management and leadership skills which will be very applicable in the State Department. He informed the committee that his networking skills will come in handy while carrying out his daily duties and that he will utilize his mobilization skills to successfully mobilize substantial resources to support the state department on climate change mitigation. Further, that he will utilize his internal and external audit expertise to ensure accountability of the available resources. The nominee undertook to implement national resource accounting mechanisms which will aide in resource allocation and forest conservation. He also indicated that he will provide civic education to make the citizens appreciate conservation and embrace tree planting.

(b) On a proposal to amend the Forest Conservation and Management Act (2016)

The nominee informed the Committee that he will shy away from supporting the amendment the Forest Conservation and Management Act that seeks to bypass the Kenya Forest Service concerning excision and variation of forest boundaries; he indicated that the current arrangement provides for adequate public participation.

(c) On factors that accelerate loss of biodiversity

The nominee stated three major factors that accelerate biodiversity loss that is deforestation, soil erosion and overgrazing. He noted that afforestation is a mitigation measure and community engagement promotes forest conservation.

(d) On the protection of mangrove forests and effectiveness of Mikoko Pamoja project

The nominee indicated that the mangrove forests provide carbon sequestration, a process of capturing and storing atmospheric carbon dioxide and that this was the first blue carbon credit in the world. The nominee was expressed concern since in the current carbon credit framework, the community gets only 8% of the total payment which is not fair. The nominee undertook to establish a taskforce to look into a Carbon Credit Policy and Framework. He gave Ghana as an example where this framework has been successfully implemented to the benefit of local communities and noted that the mangrove forests protect loss of biodiversity.

(e) On Leadership, integrity and public trust

The nominee informed the Committee that he acquired public trust while undertaking his duties as Chief Executive Officer in various companies for the last 10 years. Specifically in Heri Homes Limited, he is involved in selling houses under the off-plan model. That the company has

successfully delivered its promises and obligations to its customers. That he displayed financial fidelity and instilled confidence to diaspora investors by implementing projects on their behalf.

(f) On use of taxpayers' money

The nominee noted that financial integrity, transparency and accountability in use of tax payers' money are key components of good leadership and governance. He undertook to embrace austerity measures, ensure prudent utilization of the available resources, enforce accountability mechanisms and apply technology in forest management to cut costs.

(g) On the Shamba system and Agroforestry

The nominee elaborated that there is a Plantation Establishment Livelihood Improvement Scheme (PELIS) which is implemented by the Kenya Forest Service. He indicated that the project has been successful where 48 million trees have been planted in the last few years. That Community Forest Associations and Kenya Forest Service should work closely to enhance Plantation Establishment Livelihood Improvement Scheme (PELIS) and take advantage of carbon trading.

On Agroforestry, the nominee undertook to encourage community and private land owners to plant fruit trees. He informed the Committee that in order improve forest cover and to encourage the citizens to consider and appreciate trees as assets, he will introduce green fund (green points).

(h) On importation of trees

The nominee informed the Committee that through the implementation of the Seeds and Plant Varieties Act, the Kenya Forestry Research Institute (KEFRI) ensures strict adherence to the Act to avoid a situation where invasive species such as Mathenge trees are imported to the country.

(i) On Baobab exporting

The nominee informed the Committee that he was aware of the emerging issue of Baobab uprooting in Kilifi County. He supported the Cabinet Secretary position on stopping the exportation of the Baobab trees until due diligence is conducted before further action. He undertook to establish regulations in order to put in place benefit sharing and value addition mechanisms.

(j) On Mathenge Trees

The nominee outlined two ways in which invasive species can be dealt with, which include, physically removing them and replace with Acacia trees or employing biological mechanisms. The nominee undertook to establish regulations to allow charcoal burning in the affected counties.

(k) On logging activities

The nominee indicated he was aware of the moratorium and undertook to look into it to ensure there is a balance between tree harvesting and tree planting. To enhance conservation and reduce wastage of the tree products, he indicated that he will support introduction of wood enhancement technology. He also indicated that he will liaise with the National Treasury in order to provide tax exemptions for machines providing wood enhancement technology.

(l) On protection of sacred forests

The nominee undertook to put in place necessary measures to protect the sacred forest against encroachment and involve local communities in conservation of the same. He deduced that community ownership of the forests will allow them to benefit from carbon credits. He indicated that he will support ecotourism to make the communities appreciate their conservation efforts, and undertook to mobilize resources from environmental protection organizations, private partners and other development partners to fence the forests.

(m) On charcoal value chain

The nominee informed the Committee that close to 70% of Kenyans utilize charcoal; he noted that charcoal burning and utilization contributes to climate change by emitting carbon to the atmosphere while tree cutting reduces carbon sequestration. To promote the charcoal value chain, he undertook to work closely with county governments and other government agencies to provide modern kilns to reduce carbon emission and advocate for use of efficient Jikos. He informed the Committee that he will oversee the formation of Community Charcoal Associations to ensure ease of application and enforcement of regulations. He noted that due to adverse effects of climate change, he will advocate and rally behind utilization of alternative sources of energy.

(n) On tea plantations in forests for instance Kinare forest

The nominee undertook to conduct a national audit of forests to determine the number of private tea plantations and the income that they are contributing to the Kenya Forest Service. He proposed adoption of a public private partnership framework to ensure the government benefits from the forest land under tea plantations.

(o) On Human wildlife conflict

The nominee informed the Committee that he will employ a multi-sectoral approach by engaging the Ministry of Tourism and Wildlife to marshal adequate resources to fence the forests.

3.3. Mr. Elijah Gitumbu Mwangi

Mr. Mwangi was orally interviewed by the Committee and responded to questions during vetting as follows:

3.3.1 Personal Background

56. Mr. Elijah Mwangi informed the Committee that his full and official name is Mr. Elijah Gitumbu Mwangi, a Kenyan citizen of Identity Card number 22012124 and was born in Murang'a County in 1979.

3.3.2 Educational Background

57. Mr. Mwangi holds a Master of Business Administration Degree (2017) and Bachelor of Commerce Degree (Accounting Option) (2015) both from the University of Nairobi; and a Certified Public Accountant. He is a trained Champion of Governance from Apogee Institute of Professional Training.

58. He sat for his Kenya Certificate of Secondary Education examinations at Kiambu Boys Secondary School in 1998.

3.3.3 Work experience/career progression

59. Mr. Mwangi has worked in the private sector all his life in the following capacities:

- i. Managing Director, Elijah & CO. Associates since January 2008 to date;
- ii. Director, MWACO Contractors Limited since September 2011 to date;
- iii. Director, JAHEST Enterprises Limited since April 2005 to date;
- iv. Director, Strategic Synergy Consultants Limited since October 2011 to date;
- v. Manager, Muema & Associates from 2004 to 2007; and
- vi. Trainee Management Consultant, Large Corporates & Local Authorities, Muema & Associates.

3.3.4 Professional Associations & Affiliations

60. Mr. Mwangi is an affiliated Member of the Institute of Certified Public Accountants of Kenya, Member No. R. 4364.

3.3.5 Net Worth

61. Mr. Mwangi informed the Committee that he was worth KSh. 430 million. The source of his wealth was rentals and real estate; several SMEs and other businesses; and professional services.

3.3.6 Clearance Requirements

62. The Committee confirmed that the nominee had been cleared by KRA, ORPP, DCI, EACC and HELB, having obtained clearance certificates to that effect.

3.3.7 Other issues under consideration

To examine suitability or otherwise of the nominee, the Committee posed questions to the nominee in the following thematic areas:

(a) On his educational and professional background

The nominee explained that he was a trained accountant with a background in accounting which would enable him effectively perform as a Principal Secretary. The nominee stated his training in Strategic Management would enable him to implement strategic plans, and goals for the State Department. The nominee stated that as a Management Partner in a consultancy firm, he will be able to use his leadership skills in the Mining docket.

(b) On his vision and targets as the Principal Secretary in the State Department for Mining

The nominee stated that he would come up with a database and information on our mining resources as a matter of priority. He would ensure Madini House laboratories are well-equipped to avoid sending minerals abroad for testing and would have up-to-date requisite reports that investors can rely on online and in a timely manner.

(c) On personal and work experience that reflect the principles in Chapter 6 of the Constitution

The nominee submitted that as an accountant, he understood that he will be accountable for the resources entrusted to his management, the parliament as the legislative arm, and the citizens who are the taxpayers. That as a Managing director in his audit firm, he had acquired the requisite leadership skills over the years which he will apply if offered the position.

(d) On strategy to confront rampant corruption and restore public confidence

The nominee intimated that he would properly enforce procedures and regulations to strictly fight corruption and ensure transparency when awarding Mining Licenses. That he would ensure improved working relations between the State Department and other agencies including the Office of the Director of Public Prosecutions (ODPP) and the Ethics and Anti-Corruption Commission (EACC) in the fight against corruption. The nominee stated that he would lobby for inter-departmental meetings between the various government agencies mandated to fight corruption and the ministry to enhance transparency

(e) On occupational health and safety

The nominee stated that the mining sector has not properly evolved in Kenya and if granted the opportunity to serve as Principal Secretary, he would oversee the training of small-scale miners and ensure regulations and safety measures are put in place for their protection.

(f) On the challenges hindering Kenya as a country from increasing mineral exploitation

The nominee submitted that Kenya is a safe destination for mining. However, legislation ought to be reviewed to make it friendlier to foreigners.

(g) On at least five minerals can that can be found in Kenya

The nominee identified the following minerals; Gold in Kakamega, Soda ash in Magadi, Limestone in Athi River, Gemstones in Kwale and Fluospar in Kariandusi.

(h) On Public Participation

The nominee stated that public participation is critical to the success of the State Department and his work as a Principal Secretary. He indicated that the mining sector is holding consultations with the county governments which represent the people. However, he stated that there are still limitations regarding local communities not being adequately represented or in most cases exploited. He promised the committee that he will adhere to constitutional requirements on public participation if nominated.

(i) On Challenges of obtaining mining licenses in Kenya and mitigation measures to make the mining sector get a global appeal

The nominee submitted that mining is a big sector in Kenya that can highly contribute to the Gross Domestic Product of the country as well as raise the tax base. He stated that, there are

gaps in license issuance that need to be addressed by reviewing the regulations. He also acknowledged that the sector is marred by discrimination between established companies and small-scale traders. He vowed to use his knowledge to work on better policies, long-term, medium-term, and short-term policies for the State Department to benefit the nation. He also vowed to make it as transparent as possible by putting forth online licensing as well as adopting one-stop shop model.

(j) On records of mapped minerals

The nominee acknowledged that there is scanty information on the type, quality, and quantity of minerals found in Kenya and few media highlights on explorations. He blamed the cartels for information asymmetry but promised to ensure databases are updated, and source mapping is up to date. He also acknowledged the challenges of funding and lack of adequate equipment which he promised to adequately invest in to make the State Departments progressive.

(k) On human rights violations in the mining sector, environmental exploitation as well as gender-related violations and the interventions he intends to undertake

The nominee acknowledged that the holistic exploitation of the environment and the lack of proper regulations on the post-use of the exploited land has led to increased sand levels in lakes due to soil erosion, which has, in turn, led to rising lake levels over the years. He also acknowledged the regular cases of sexual harassment of women, mostly casual laborers in the sector. He committed to raise awareness as well as gender mainstreaming in the sector. He also indicated that there are cases where men desert their families after making money from the sale of minerals leading to family breakups. He stated that there would be a lot of capacity building for the stakeholders to improve the sector and make it more profitable.

(l) On baobab protection

The nominee stated that he will collaborate with the Ministry of Environment and Forestry to introduce regulations to facilitate protection of the baobab as a natural resource and provide benefit sharing mechanisms.

CHAPTER FOUR

4. OBSERVATIONS AND FINDINGS

63. The Committee observations were guided by Article 155 of the Constitution, section 47 of the Public Service Act and section 7 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) in terms of issues for consideration as follows:

- i. the procedure used to arrive at the nominee;
- ii. any constitutional or statutory requirements relating to the office in question; and
- iii. suitability of the nominees for the appointment proposed having regard to whether the nominees' abilities, experience and qualities meet the needs of the body to which the nomination is made.

64. The Committee made the following observations:

4.1. Eng. Festus Kipkoech Ng'eno

The Committee observed that:

- (a) in accordance with Article 78(1) (2) of the Constitution, the nominee is a Kenyan citizen and does not hold dual citizenship;
- (b) the nominee is currently undertaking a Doctor of Philosophy (PhD) Degree in Environmental and Water Engineering from the University of Nairobi, holds a Master of Science (MSc) and a Bachelor of Science (BSc) Degrees in Environmental and Biosystems Engineering from the University of Nairobi, and a Post Graduate Diploma Certificate in Leadership and Corporate Governance from KCA University.
- (c) the nominee has worked in the public and private sector and is currently the acting County Executive Committee Member (CECM)/Acting County Minister in Charge of Agriculture, Livestock and Fisheries in the County Government of Nakuru;
- (d) the nominee satisfies the requirements of section 47(2) of the Public Service Commission Act (No. 10 of 2017);
- (e) the nominee presented his academic credentials and professional certificates and demonstrated his experience in accordance with the provisions of Section 6(7) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011);
- (f) the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity;
- (g) the nominee has never been charged in a Court of Law in the last three years;
- (h) as stipulated in Article 75(1) of the Constitution, the nominee has no potential conflict of interest;
- (i) 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;
- (j) the nominee does not hold office in any political party hence satisfies the provisions of Article

77(2) of the Constitution;

- (k) the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), 76(*financial probity*), 77 (*restriction of State Officers*) and 78(2) (*dual citizenship*) of the Constitution;
- (l) the procedure used to arrive at the nominee as provided for under Article 155(3)(a) as read with Section 47(3) of the Public Service Commission Act (No. 10 of 2017) was adhered to by the Selection Panel as the nominee was shortlisted for appointment as Principal Secretary;
- (m) by the deadline for submission of memoranda from members of the public, the Clerk of the National Assembly had received no memorandum contesting the suitability of the nominee;
- (n) the Clerk of the National Assembly received memorandum from Mr. Jackson Akama in support of the nominee's nomination as Principal Secretary. The deponent noted that the nominee had diligently promoted the mission to improve the environment, natural resource management, water and sanitation services, climate change and enhanced energy within Nakuru County. However, contrary to section 6(9) of the Act, the memorandum was not a written statement on oath contesting the suitability of the nominee to hold the office to which he had been nominated to; and
- (o) the nominee demonstrated knowledge on topical issues, technical and administrative issues touching on the State Department for Environment and has the requisite abilities, qualifications and experience to serve as the Principal Secretary, State Department for Environment.

4.2. Mr. Ephantus Kimotho Kimani

The Committee observed that:

- (a) in accordance with Article 78(1) (2) of the Constitution, the nominee is a Kenyan citizen and does not hold dual citizenship;
- (b) the nominee holds a Bachelor of Commerce Degree (Finance) (2009) from Catholic University of Eastern Africa, Association of Chartered Certified Accountant (ACCA) Part I; CPA Part III & II from Vision Institute of Professionals; and CPA Part I from Kenya College of Accountancy.
- (c) the nominee has worked in the private sector all his life and is currently the Chief Executive Officer, Heri Homes Limited ; Partner at Kimotho K & Associates and Director at Leo Capital Holdings Ltd;
- (d) the nominee satisfies the requirements of section 47(2) of the Public Service Commission Act (No. 10 of 2017);
- (e) the nominee presented his academic credentials and professional certificates and demonstrated his experience in accordance with the provisions of Section 6(7) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011);
- (f) the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity;
- (g) the nominee has never been charged in a Court of Law in the last three years;
- (h) as stipulated in Article 75(1) of the Constitution, the nominee has no potential conflict of interest;

- (i) 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;
- (j) the nominee does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- (k) the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), 76(*financial probity*), 77 (*restriction of State Officers*) and 78(2) (*dual citizenship*) of the Constitution;
- (l) the procedure used to arrive at the nominee as provided for under Article 155(3)(a) as read with Section 47(3) of the Public Service Commission Act (*No. 10 of 2017*) was adhered to by the Selection Panel as the nominee was shortlisted for appointment as Principal Secretary;
- (m) by the deadline for submission of memoranda from members of the public, the Clerk of the National Assembly had received no memorandum contesting the suitability of the nominee; and
- (n) the nominee demonstrated knowledge on topical issues, technical and administrative issues touching on the State Department for Forestry and has the requisite abilities, qualifications and experience to serve as the Principal Secretary, State Department for Forestry.

4.3. Mr. Elijah Gitumbu Mwangi

The Committee observed that:

- (a) in accordance with Article 78(1) (2) of the Constitution, he is a Kenyan citizen and does not hold dual citizenship;
- (b) the nominee holds a Master of Business Administration Degree (2017) and Bachelor of Commerce Degree (Accounting Option) (2015) both from the University of Nairobi; and is a Certified Public Accountant. He is also a trained Champion of Governance from Apogee Institute of Professional Training;
- (c) the nominee has worked in the private sector all his career life and is currently the Managing Director, Elijah & CO. Associates; Director, MWACO Contractors Limited; Director, JAHEST Enterprises Limited and Director, Strategic Synergy Consultants Limited
- (d) the nominee satisfies the requirements of section 47(2) of the Public Service Commission Act (No. 10 of 2017);
- (e) the nominee presented his academic credentials and professional certificates and demonstrated his experience in accordance with the provisions of Section 6(7) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011);
- (f) the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity;
- (g) the nominee has never been charged in a Court of Law in the last three years;
- (h) as stipulated in Article 75(1) of the Constitution, the nominee has no potential conflict of interest;
- (i) 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;

- (j) the nominee does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- (k) the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), 76(*financial probity*), 77 (*restriction of State Officers*) and 78(2) (*dual citizenship*) of the Constitution;
- (l) the procedure used to arrive at the nominee as provided for under Article 155(3)(a) as read with Section 47(3) of the Public Service Commission Act (*No. 10 of 2017*) was adhered to by the Selection Panel as the nominee was shortlisted for appointment as Principal Secretary;
- (m) by the deadline for submission of memoranda from members of the public, the Clerk of the National Assembly had received no memorandum contesting the suitability of the nominee; and
- (n) the nominee demonstrated knowledge on topical issues, technical and administrative issues touching on the State Department for Mining and has the requisite abilities, qualifications and experience to serve as the Principal Secretary, State Department for Mining.

CHAPTER FIVE

5. RECOMMENDATION

65. Having considered the suitability, capacity and integrity of the nominees, and pursuant to Article 132(2)(d) and Article 155(3) (b) of the Constitution, Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) and Standing Order 216(5)(f), the Committee recommends that the National Assembly **APPROVES** the nomination and subsequent appointment by His Excellency the President, of:

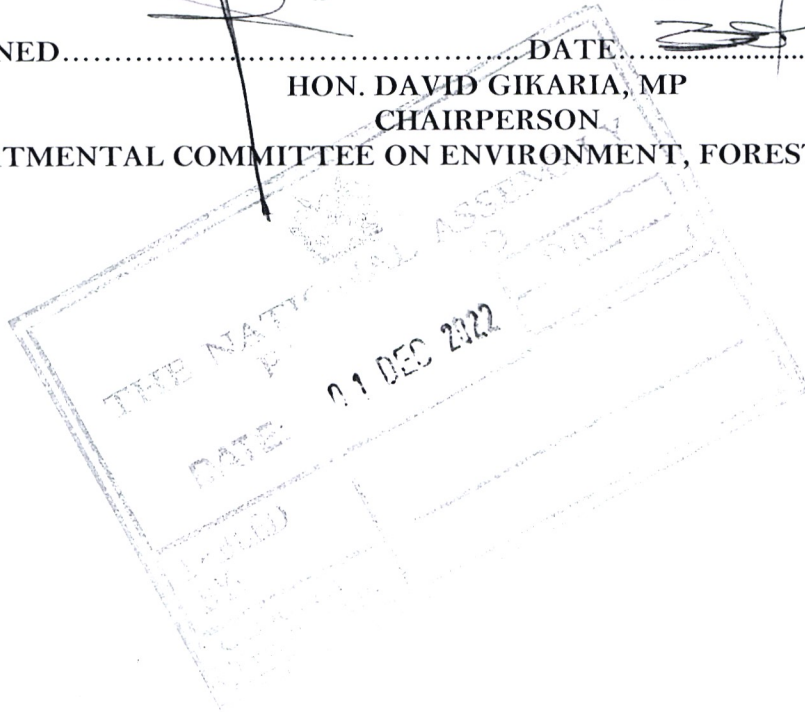
- (a) Eng. Festus Kipkoech Ng'eno to the position of Principal Secretary, State Department for Environment;
- (b) Mr. Ephantus Kimotho Kimani to the position of Principal Secretary for State Department for Forestry; and
- (c) Mr. Elijah Gitumbu Mwangi to the position of Principal Secretary for State Department for Mining.

SIGNED.....

DATE.....

HON. DAVID GIKARIA, MP
CHAIRPERSON

DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING





REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FIRST SESSION, 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING

ADOPTION OF THE REPORT ON VETTING OF NOMINEES FOR APPOINTMENT AS
PRINCIPAL SECRETARIES

We, the undersigned Honorable Members of the Departmental Committee on Environment, Forestry and Mining today Wednesday, 30th November 2022 do hereby affix our signatures to this Report on vetting of Mr. Festus Ngéno; Mr. Ephantus Kimani; and Mr. Elijah Mwangi, nominees for appointment as Principal Secretaries State Departments for Environment; Forestry; and Mining respectively to affirm our approval and confirm their accuracy, validity and authenticity: -

NO.	NAME	SIGNATURE
1.	The Hon. Gikaria David, MP - Chairperson	
2.	The Hon. Charles Kamuren, MP - Vice-Chairperson	
3.	The Hon. Mbalu Jessica Nduku Kiko, CBS, MP.	
4.	The Hon. Hiribae Said Buya, MP.	
5.	The Hon. Mwanyanje Gertrude Mbeyu, MP.	
6.	The Hon. Salim Feisal Bader, MP.	
7.	The Hon. Emathe Joseph Namuer, MP.	
8.	The Hon. Joseph Wainaina Iraya, MP.	
9.	The Hon. Kemei Beatrice Chepngeno, MP.	
10.	The Hon. Kururia Elijah Njore Njoroge, MP.	
11.	The Hon. Masito Fatuma Hamisi, MP.	
12.	The Hon. Mohamed Tubi Bidu, MP.	
13.	The Hon. Nguro Onesmus Ngogoyo, MP.	
14.	The Hon. Yakub Adow Kuno, MP.	
15.	The Hon. Titus Lotee, MP.	



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT - FIRST SESSION, 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 6TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING HELD ON WEDNESDAY 30TH NOVEMBER, 2022 IN TRIBE HOTEL, VILLAGE MARKET, KIAMBU COUNTY AT 8.30PM.

PRESENT.

1. **The Hon. Gikaria David, MP.** -Chairperson
2. **The Hon. Charles Kamuren, MP** -Vice-Chairperson
3. The Hon. Mbalu, Jessica Nduku Kiko, CBS, MP,
4. The Hon. Mwanyanje Gertrude Mbeyu, MP
5. The Hon. Salim Feisal Bader, MP
6. The Hon. Elijah Njore Njoroge, MP
7. The Hon. Emathe Joseph Namuar,MP
8. The Hon. Onesmus Ngogoyo Nguro, MP.

APOLOGY

1. The Hon. Hiribae Said Buya, MP.
2. The Hon. Tubi Bidu Mohamed, MP.
3. The Hon. Masito Fatuma Hamisi, MP.
4. The Hon. Kemei, Beatrice Chepngeno MP
5. The Hon. Yakub Adow Kuno, MP
6. The Hon. Titus Lotee, MP

**IN-ATTENDANCE -NATIONAL ASSEMBLY
THE SECRETARIAT**

- | | | |
|-----------------------------|---|----------------------------|
| 1. Mr. Fredrick Otieno | - | Clerk Assistant II |
| 2. Mr. Mohamed Boru | - | Clerk Assistant II |
| 3. Mr. Hamdi Hassan Mohamed | - | Clerk Assistant III |
| 4. Ms. Rose Natecho K | - | Clerk Assistant III |
| 5. Ms. Mercy Wanyonyi | - | Senior Legal Counsel |
| 6. Mr. Boniface Mushila | - | Sergeant-At-Arms |
| 7. Ms. Chamunga Nancy | - | Fiscal Analyst |
| 8. Mr. Joseph Kuria | - | Research officer III |
| 9. Mr. Clinton Sindiga | - | Legal Counsel II |
| 10. Mr. Moses Esamau Omoit | - | Audio Officer |
| 11. Ms. Edith Chepngeno | - | Media Relations officer II |

MIN/NO.NA/DC-EF&M/2022/029: PRELIMINARIES & ADOPTION OF AGENDA

The Vice-Chairperson called the meeting to order at six O'clock followed by a prayer. The agenda of the meeting was adopted as hereunder having been proposed and seconded by the Hon. Mbalu, Jessica Nduku Kiko, MP and the Hon. Mwanyanje Gertrude Mbeyu, MP respectively.

AGENDA:

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Confirmation of Previous Minutes
5. Matters arising
6. Pending Bills: None
7. Pending Petition(s): None
8. Questions: None
9. Statements: None
10. **Consideration and Adoption of the report on Vetting of Eng. Festus K. Ng'eno, Mr. Ephantus K. Kimani and Mr. Elijah G. Mwangi, nominees for appointment to the positions of Principal Secretaries, States Departments for Environment; Forestry; and Mining respectively.**
11. Any Other Business; and
12. Adjournment

MIN/NO.NA/DC-EF&M/2022/030: CONSIDERATION OF THE REPORT ON VETTING OF ENG. FESTUS K. N'GENO; MR. EPHANTUS K. KIMANI AND MR. ELIJAH G. MWANGI NOMINEES FOR APPOINTMENT TO THE POSITIONS OF PRINCIPAL SECRETARIES, STATES DEPARTMENTS FOR ENVIRONMENT; FORESTRY; AND MINING RESPECTIVELY.

The Committee considered the report and made the following observations:

1. Eng. Festus Kipkoech Ng'eno

The Committee observed that:

- (a) in accordance with Article 78(1) (2) of the Constitution, the nominee is a Kenyan citizen and does not hold dual citizenship;
- (b) the nominee is currently undertaking a Doctor of Philosophy (PhD) Degree in Environmental and Water Engineering from the University of Nairobi, holds a Master of Science (MSc) and a Bachelor of Science (BSc) Degrees in Environmental and Biosystems Engineering from the University of Nairobi, and a Post Graduate Diploma Certificate in Leadership and Corporate Governance from KCA University.
- (c) the nominee has worked in the public and private sector and is currently the acting County Executive Committee Member (CECM)/Acting County Minister in Charge of Agriculture, Livestock and Fisheries in the County Government of Nakuru;
- (d) the nominee satisfies the requirements of section 47(2) of the Public Service Commission Act (No. 10 of 2017);

- (e) the nominee presented his academic credentials and professional certificates and demonstrated his experience in accordance with the provisions of Section 6(7) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011);
- (f) the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity;
- (g) the nominee has never been charged in a Court of Law in the last three years;
- (h) as stipulated in Article 75(1) of the Constitution, the nominee has no potential conflict of interest;
- (i) 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;
- (j) the nominee does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- (k) the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), 76(*financial probity*), 77 (*restriction of State Officers*) and 78(2) (*dual citizenship*) of the Constitution;
- (l) the procedure used to arrive at the nominee as provided for under Article 155(3)(a) as read with Section 47(3) of the Public Service Commission Act (*No. 10 of 2017*) was adhered to by the Selection Panel as the nominee was shortlisted for appointment as Principal Secretary;
- (m) by the deadline for submission of memoranda from members of the public, the Clerk of the National Assembly had received no memorandum contesting the suitability of the nominee;
- (n) the Clerk of the National Assembly received memorandum from Mr. Jackson Akama in support of the nominee's nomination as Principal Secretary. The deponent noted that the nominee had diligently promoted the mission to improve the environment, natural resource management, water and sanitation services, climate change and enhanced energy within Nakuru County. However, contrary to section 6(9) of the Act, the memorandum was not a written statement on oath contesting the suitability of the nominee to hold the office to which he had been nominated to; and
- (o) the nominee demonstrated knowledge on topical issues, technical and administrative issues touching on the State Department for Environment and has the requisite abilities, qualifications and experience to serve as the Principal Secretary, State Department for Environment.

2. Mr. Ephantus Kimotho Kimani

The Committee observed that:

- (a) in accordance with Article 78(1) (2) of the Constitution, the nominee is a Kenyan citizen and does not hold dual citizenship;
- (b) the nominee holds a Bachelor of Commerce Degree (Finance) (2009) from Catholic

University of Eastern Africa, Association of Chartered Certified Accountant (ACCA) Part I; CPA Part III & II from Vision Institute of Professionals; and CPA Part I from Kenya College of Accountancy.

- (c) the nominee has worked in the private sector all his life and is currently the Chief Executive Officer, Heri Homes Limited; Partner at Kimotho K & Associates and Director at Leo Capital Holdings Ltd;
- (d) the nominee satisfies the requirements of section 47(2) of the Public Service Commission Act (No. 10 of 2017);
- (e) the nominee presented his academic credentials and professional certificates and demonstrated his experience in accordance with the provisions of Section 6(7) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011);
- (f) the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity;
- (g) the nominee has never been charged in a Court of Law in the last three years;
- (h) as stipulated in Article 75(1) of the Constitution, the nominee has no potential conflict of interest;
- (i) 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;
- (j) the nominee does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- (k) the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), 76(*financial probity*), 77 (*restriction of State Officers*) and 78(2) (*dual citizenship*) of the Constitution;
- (l) the procedure used to arrive at the nominee as provided for under Article 155(3)(a) as read with Section 47(3) of the Public Service Commission Act (No. 10 of 2017) was adhered to by the Selection Panel as the nominee was shortlisted for appointment as Principal Secretary;
- (m) by the deadline for submission of memoranda from members of the public, the Clerk of the National Assembly had received no memorandum contesting the suitability of the nominee; and
- (n) the nominee demonstrated knowledge on topical issues, technical and administrative issues touching on the State Department for Forestry and has the requisite abilities, qualifications and experience to serve as the Principal Secretary, State Department for Forestry.

3. Mr. Elijah Gitumbu Mwangi

The Committee observed that:

- (a) in accordance with Article 78(1) (2) of the Constitution, he is a Kenyan citizen and does not hold dual citizenship;

- (b) the nominee holds a Master of Business Administration Degree (2017) and Bachelor of Commerce Degree (Accounting Option) (2015) both from the University of Nairobi; and is a Certified Public Accountant. He is also a trained Champion of Governance from Apogee Institute of Professional Training;
- (c) the nominee has worked in the private sector all his career life and is currently the Managing Director, Elijah & CO. Associates; Director, MWACO Contractors Limited; Director, JAHEST Enterprises Limited and Director, Strategic Synergy Consultants Limited
- (d) the nominee satisfies the requirements of section 47(2) of the Public Service Commission Act (No. 10 of 2017);
- (e) the nominee presented his academic credentials and professional certificates and demonstrated his experience in accordance with the provisions of Section 6(7) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011);
- (f) the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity;
- (g) the nominee has never been charged in a Court of Law in the last three years;
- (h) as stipulated in Article 75(1) of the Constitution, the nominee has no potential conflict of interest;
- (i) 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;
- (j) the nominee does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- (k) the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), 76(*financial probity*), 77 (*restriction of State Officers*) and 78(2) (*dual citizenship*) of the Constitution;
- (l) the procedure used to arrive at the nominee as provided for under Article 155(3)(a) as read with Section 47(3) of the Public Service Commission Act (*No. 10 of 2017*) was adhered to by the Selection Panel as the nominee was shortlisted for appointment as Principal Secretary;
- (m) by the deadline for submission of memoranda from members of the public, the Clerk of the National Assembly had received no memorandum contesting the suitability of the nominee; and
- (n) the nominee demonstrated knowledge on topical issues, technical and administrative issues touching on the State Department for Mining and has the requisite abilities, qualifications and experience to serve as the Principal Secretary, State Department for Mining.

MIN/NO.NA/DC-EF&M/2022/031: RECOMMENDATIONS

Having considered the suitability, capacity and integrity of the nominees, and pursuant to Article 132(2)(d) and Article 155(3) (b) of the Constitution, Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) and Standing Order 216(5)(f), the Committee recommends that the National Assembly **APPROVES** the nomination and subsequent appointment by His Excellency the President, of:

- (a) Eng. Festus Kipkoech Ng'eno to the position of Principal Secretary, State Department for Environment;
- (b) Mr. Ephantus Kimotho Kimani to the position of Principal Secretary for State Department for Forestry; and
- (c) Mr. Elijah Gitumbu Mwangi to the position of Principal Secretary for State Department for Mining.

MIN/NO.NA/DC-EF&M/2022/032: ADOPTION OF THE REPORT

The Committee unanimously adopted the Report.

MIN/NO.NA/DC-EF&M/2022/034 ADJOURNMENT.

There being no other business, the meeting was adjourned at 7.00pm. The next meeting will be on notice.

Signed:..... Date: 20/11/2022

(HON. GIKARIA DAVID, M.P.)
(CHAIRPERSON)



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT - FIRST SESSION, 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 5TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING HELD ON WEDNESDAY 30TH NOVEMBER, 2022 IN TRIBE HOTEL, VILLAGE MARKET, KIAMBU COUNTY AT 2.30PM.

PRESENT.

1. The Hon. Gikaria David, MP. -Chairperson
2. The Hon. Charles Kamuren, MP -Vice-Chairperson
3. The Hon. Mbalu, Jessica Nduku Kiko, CBS, MP,
4. The Hon. Mwanyanje Gertrude Mbeyu, MP
5. The Hon. Salim Feisal Bader, MP
6. The Hon. Elijah Njore Njoroge, MP
7. The Hon. Emathe Joseph Namuar,MP
8. The Hon. Joseph Wainaina Iraya, MP
9. The Hon. Onesmus Ngogoyo Nguro, MP.

APOLOGY

1. The Hon. Hiribae Said Buya, MP.
2. The Hon. Tubi Bidu Mohamed, MP.
3. The Hon. Masito Fatuma Hamisi, MP.
4. The Hon. Kemei, Beatrice Chepngeno MP
5. The Hon. Yakub Adow Kuno, MP
6. The Hon. Titus Lotee, MP

IN-ATTENDANCE -NATIONAL ASSEMBLY

THE SECRETARIAT

1. Mr. Fredrick Otieno - Clerk Assistant II
2. Mr. Mohamed Boru - Clerk Assistant II
3. Mr. Hamdi Hassan Mohamed - Clerk Assistant III
4. Ms. Rose Natecho K - Clerk Assistant III
5. Ms. Mercy Wanyonyi - Senior Legal Counsel
6. Mr. Boniface Mushila - Sergeant-At-Arms
7. Ms. Chamunga Nancy - Fiscal Analyst
8. Mr. Joseph Kuria - Research officer III
9. Mr. Clinton Sindiga - Legal Counsel II
10. Mr. Moses Esamau Omoit - Audio Officer
11. Edith Chepngeno - Media Relations officer II

MIN/NO.NA/DC-EF&M/2022/024: PRELIMINARIES & ADOPTION OF AGENDA

The Vice-Chairperson called the meeting to order at half past two O'clock followed by a prayer. The agenda of the meeting was adopted as hereunder having been proposed and seconded by the Hon. Onesmus Ngogoyo, MP and the Hon. Mwanyanje Gertrude Mbeyu, MP respectively. Then everyone present introduced themselves.

AGENDA:

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Confirmation of Previous Minutes
5. Matters arising
6. Pending Bills: None
7. Pending Petition(s): None
8. Questions: None
9. Statements: None
10. **Vetting of Mr. Elijah G. Mwangi nominee for appointment of the position of Principal Secretary, State Department for Mining**
11. Any Other Business; and
12. Adjournment

MIN/NO.NA/DC-EF&M/2022/025: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING.

Confirmation of the minutes of the previous sitting was deferred to the next sitting.

MIN/NO.NA/DC-EF&M/2022/026: VETTING OF MR. ELIJAH GITUMBU MWANGI, NOMINEE FOR APPOINTMENT AS PRINCIPAL SECRETARY, STATE DEPARTMENT FOR MINING.

Mr. Elijah G. Mwangi-nominee for the position of Principal Secretary, State Department for Mining appeared before the Committee on Wednesday 30th November 2022 at 2:30pm and was orally interviewed by the Committee as follows:

1. On his citizenship, date and place of birth, Mr. Mwangi informed the Committee that his full name is Mr. Elijah Gitumbi Mwangi, a Kenyan Citizen born in 1979 in Muranga County and is married.
2. On his academic and professional qualifications, the nominee informed the Committee that he holds a Master of Business Administration (Strategic Management) from the University of Nairobi (2016-2017) and a Bachelor of Commerce (Accounting) from the University of Nairobi (2005). He is also a Certified Public Accountant (CPA-K) by Kenya Accountants and Secretaries National Examinations Board (KASNEB) (2000-2003). He attained Kenya Certificate of Secondary Education (KCSE) from Kiambu Boys High School in 1998.
3. He has undertaken professional trainings which include, Champion of Governance Assessment, Fraud Detection and Prevention by Apogee Institute of Professional Training (2019). He has attended other short courses on various subjects such as Forensic, Fraud and Internal Controls, Leadership and Integrity, Financial Management

and understanding and Implementation of International Organization for Standardization (ISO).

4. On work and professional experience, the nominee informed the Committee that he is the Managing Director of Elijah and Co. Associates since January 2008; he served as the Manager for Large Corporates and Local Authority Consulting Services at Muema & Associates from 2004-2007; and a Management Consultant Trainee in the same Accounting firm from 2003 to 2004.
5. On the issue of potential conflict of interest, the nominee stated that he has no immediate associations that are likely to present conflict of interest when he assumes the position.
6. His Net-worth was approximately Kenya Shillings Four Hundred and Thirty Million (Ksh. 430,000,000)
7. On **leadership and integrity**, the nominee indicated that he has never been dismissed or otherwise removed from office for contravening the provisions of Article 75 of the Constitution. He has also not been adversely associated with practices that depict bias, favoritism or nepotism in the discharge of public duties.
8. The nominee informed the Committee that he has been cleared by KRA, ORPP, DCI, EACC and HELB, having obtained clearance certificates to that effect.
9. While examining his suitability or otherwise of the nominee, the Committee posed questions to the nominee in the following thematic areas:

a) On his educational and professional background

The nominee explained that he was a trained accountant with a background in accounting which would enable him effectively perform as a Principal Secretary. The nominee stated his training in Strategic Management would enable him to implement strategic plans, and goals for the State Department. The nominee stated that as a Management Partner in a consultancy firm, he will be able to use his leadership skills in the Mining docket.

b) On his vision and targets as the Principal Secretary in the State Department for Mining

The nominee stated that he would come up with a database and information on our mining resources as a matter of priority. He would ensure Madini House laboratories are well-equipped to avoid sending minerals abroad for testing and would have up-to-date requisite reports that investors can rely on online and in a timely manner.

c) On personal and work experience that reflect the principles in Chapter 6 of the Constitution

The nominee submitted that as an accountant, he understood that he will be accountable for the resources entrusted to his management, the parliament as the legislative arm, and the citizens who are the taxpayers. That as a Managing director in his audit firm, he had acquired the requisite leadership skills over the years which he will apply if offered the position.

d) On strategy to confront rampant corruption and restore public confidence

The nominee intimated that he would properly enforce procedures and regulations to strictly fight corruption and ensure transparency when awarding Mining Licenses. That he would ensure improved working relations between the State Department and other agencies including the Office of the Director of Public Prosecutions (ODPP) and the

Ethics and Anti-Corruption Commission (EACC) in the fight against corruption. The nominee stated that he would lobby for inter-departmental meetings between the various government agencies mandated to fight corruption and the ministry to enhance transparency

e) On occupational health and safety

The nominee stated that the mining sector has not properly evolved in Kenya and if granted the opportunity to serve as Principal Secretary, he would oversee the training of small-scale miners and ensure regulations and safety measures are put in place for their protection.

f) On the challenges hindering Kenya as a country from increasing mineral exploitation

The nominee submitted that Kenya is a safe destination for mining. However, legislation ought to be reviewed to make it friendlier to foreigners.

g) On at least five minerals can that can be found in Kenya

The nominee identified the following minerals; Gold in Kakamega, Soda ash in Magadi, Limestone in Athi River, Gemstones in Kwale and Fluospar in Kariandusi.

h) On Public Participation

The nominee stated that public participation is critical to the success of the State Department and his work as a Principal Secretary. He indicated that the mining sector is holding consultations with the county governments which represent the people. However, he stated that there are still limitations regarding local communities not being adequately represented or in most cases exploited. He promised the committee that he will adhere to constitutional requirements on public participation if nominated.

i) On Challenges of obtaining mining licenses in Kenya and mitigation measures to make the mining sector get a global appeal

The nominee submitted that mining is a big sector in Kenya that can highly contribute to the Gross Domestic Product of the country as well as raise the tax base. He stated that, there are gaps in license issuance that need to be addressed by reviewing the regulations. He also acknowledged that the sector is marred by discrimination between established companies and small-scale traders. He vowed to use his knowledge to work on better policies, long-term, medium-term, and short-term policies for the State Department to benefit the nation. He also vowed to make it as transparent as possible by putting forth online licensing as well as a adopting one-stop shop model.

j) On records of mapped minerals

The nominee acknowledged that there is scanty information on the type, quality, and quantity of minerals found in Kenya and few media highlights on explorations. He blamed the cartels for information asymmetry but promised to ensure databases are updated, and source mapping is up to date. He also acknowledged the challenges of funding and lack of

adequate equipment which he promised to adequately invest in to make the State Departments progressive.

k) On human rights violations in the mining sector, environmental exploitation as well as gender-related violations and the interventions he intends to undertake

The nominee acknowledged that the holistic exploitation of the environment and the lack of proper regulations on the post-use of the exploited land has led to increased sand levels in lakes due to soil erosion, which has, in turn, led to rising lake levels over the years. He also acknowledged the regular cases of sexual harassment of women, mostly casual laborers in the sector. He committed to raise awareness as well as gender mainstreaming in the sector. He also indicated that there are cases where men desert their families after making money from the sale of minerals leading to family breakups. He stated that there would be a lot of capacity building for the stakeholders to improve the sector and make it more profitable.

l) On baobab protection

The nominee stated that he will collaborate with the Ministry of Environment and Forestry to introduce regulations to facilitate protection of the baobab as a natural resource and provide benefit sharing mechanisms.

MIN/NO.NA/DC-EF&M/2022/027 COMMITTEE OBSERVATIONS ON VETTING OF MR. ELIJAH GITUMBU MWANGI, NOMINEE FOR APPOINTMENT AS PRINCIPAL SECRETARY, STATE DEPARTMENT FOR MINING

The Committee observed that:

- (a) in accordance with Article 78(1) (2) of the Constitution, he is a Kenyan citizen and does not hold dual citizenship;
- (b) the nominee holds a Master of Business Administration Degree (2017) and Bachelor of Commerce Degree (Accounting Option) (2015) both from the University of Nairobi; and is a Certified Public Accountant. He is also a trained Champion of Governance from Apogee Institute of Professional Training;
- (c) the nominee has worked in the private sector all his career life and is currently the Managing Director, Elijah & CO. Associates; Director, MWACO Contractors Limited; Director, JAHEST Enterprises Limited and Director, Strategic Synergy Consultants Limited
- (d) the nominee satisfies the requirements of section 47(2) of the Public Service Commission Act (No. 10 of 2017);
- (e) the nominee presented his academic credentials and professional certificates and demonstrated his experience in accordance with the provisions of Section 6(7) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011);
- (f) the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity;

- (g) the nominee has never been charged in a Court of Law in the last three years;
- (h) as stipulated in Article 75(1) of the Constitution, the nominee has no potential conflict of interest;
- (i) 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;
- (j) the nominee does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- (k) the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), 76(*financial probity*), 77 (*restriction of State Officers*) and 78(2) (*dual citizenship*) of the Constitution;
- (l) the procedure used to arrive at the nominee as provided for under Article 155(3)(a) as read with Section 47(3) of the Public Service Commission Act (*No. 10 of 2017*) was adhered to by the Selection Panel as the nominee was shortlisted for appointment as Principal Secretary;
- (m) by the deadline for submission of memoranda from members of the public, the Clerk of the National Assembly had received no memorandum contesting the suitability of the nominee; and
- (n) the nominee demonstrated knowledge on topical issues, technical and administrative issues touching on the State Department for Mining and has the requisite abilities, qualifications and experience to serve as the Principal Secretary, State Department for Mining.

MIN/NO.NA/DC-EF&M/2022/028: ADJOURNMENT

There being no other business, the meeting was adjourned at four O'clock. The next meeting will be on notice.

Signed:..... Date: 20/11/2022

(HON. GIKARIA DAVID, M.P.)
(CHAIRPERSON)



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT - FIRST SESSION, 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 4TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING HELD ON WEDNESDAY 30TH NOVEMBER, 2022 IN TRIBE HOTEL, VILLAGE MARKET, KIAMBU COUNTY AT 8.00AM.

PRESENT.

1. **The Hon. Charles Kamuren, MP** -Vice-Chairperson
2. The Hon. Mbalu, Jessica Nduku Kiko, CBS, MP,
3. The Hon. Mwanyanje Gertrude Mbeyu, MP
4. The Hon. Salim Feisal Bader, MP
5. The Hon. Emathe Joseph Namuar,MP
6. The Hon. Onesmus Ngogoyo Nguro, MP.
7. The Hon. Joseph Wainaina Iraya, MP

APOLOGY

1. **The Hon. Gikaria David, MP.** -Chairperson
2. The Hon. Hiribae Said Buya, MP.
3. The Hon. Tubi Bidu Mohamed, MP.
4. The Hon. Elijah Njore Njoroge, MP.
5. The Hon. Masito Fatuma Hamisi, MP.
6. The Hon. Kemei, Beatrice Chepngeno MP
7. The Hon. Yakub Adow Kuno, MP
8. The Hon. Titus Lotee, MP

**IN-ATTENDANCE -NATIONAL ASSEMBLY
THE SECRETARIAT**

1. Ms. Esther Nginyo - Clerk Assistant I
2. Mr. Fredrick Otieno - Clerk Assistant II
3. Mr. Mohamed Boru - Clerk Assistant II
4. Mr. Hamdi Hassan Mohamed - Clerk Assistant III
5. Ms. Rose Natecho K - Clerk Assistant III
6. Ms. Mercy Wanyonyi - Senior Legal Counsel
7. Ms. Chamunga Nancy - Fiscal Analyst
8. Mr. Joseph Kuria - Research officer III
9. Mr. Clinton Sindiga - Legal Counsel II
10. Mr. Boniface Mushila - Sergeant-At-Arms

11. Mr. Moses Esamau Omoit - Audio Officer
12. Edith Chepngeno - Media Relations officer II

MIN/NO.NA/DC-EF&M/2022/018: PRELIMINARIES & ADOPTION OF AGENDA

The Vice-Chairperson called the meeting to order at Twenty minutes to Nine O'clock followed by a prayer from the Vice-Chairperson. The agenda of the meeting was adopted as hereunder having been proposed and seconded by the Hon Onesmus Ngogoyo, MP and the Hon Mwanyanje Gertrude Mbeyu, MP. respectively. Then everyone present introduced themselves

AGENDA:

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Confirmation of Previous Minutes
5. Matters arising
6. Pending Bills: None
7. Pending Petition(s): None
8. Questions: None
9. Statements: None
10. **Vetting of Mr. Festus Ng'eno, Nominee for appointment to the position of the Principal Secretary, State Department for Environment and Mr. Ephuntus K. Kimani, nominee for appointment of the position of Principal Secretary, State Department for Forestry**
11. Any Other Business; and
12. Adjournment

MIN/NO.NA/DC-EF&M/2022/019: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING.

Confirmation of the minutes of the previous sitting was deferred to the next sitting.

MIN/NO.NA/DC-EF&M/2022/020: VETTING OF ENG. FESTUS K. N'GENO, NOMINEE FOR PRINCIPAL SECRETARY, STATE DEPARTMENT FOR ENVIRONMENT.

Mr. Festus Ng'eno, nominee for appointment in the position of Principal Secretary, State Department for Environment appeared before the Committee on Wednesday 30th November 2022 at 9.00am and was orally interviewed by the Committee as follows:

1. On his date of birth and citizenship status, Mr. Ng'eno informed the Committee that his full name is Eng. Festus Kipkoech Ng'eno, a Kenyan male citizen born in 1980 in Nakuru County and is Married.
2. On academic and professional qualification, Mr. Ng'eno is currently undertaking a Doctor of Philosophy (PhD) Degree in Environmental and Water Engineering from the University of Nairobi, he holds a Master of Science (MSc) and a Bachelor of Science (BSc) Degrees in Environmental and Biosystems Engineering from the University of Nairobi,

a Post Graduate Diploma Certificate in Leadership and Corporate Governance from KCA University, Strategic Leadership Development Program (SLDP) from Kenya School of Government (KSG) and Green and Circular Economy Leadership Course under the Danida Fellowship Centre (DFC) from Technical University of Denmark (TUD).

3. He sat for his Kenya Certificate of Secondary Education examination at Kapsabet High School in 1998.
4. On work experience, Mr. Ng'eno has worked in the public and private sector in the following capacities:
 - i. Acting County Executive Committee Member (CECM)/Acting County Minister in Charge of Agriculture, Livestock and Fisheries in the County Government of Nakuru from May, 2022 to Date;
 - ii. House Champion for the Utafiti SERA Project – Water Governance House at Kenya Water and Sanitation Civil Society Network (KEWASNET) from August, 2021 to Date on a Short Term Assignment;
 - iii. County Executive Committee Member (CECM)/County Minister in Charge of Water, Sanitation, Environment, Energy, Climate Change & Natural Resources in the County Government of Nakuru from October, 2017 to Date;
 - iv. Acting County Executive Committee Member (CECM)/Acting County Minister in Charge of Health Services in the County Government of Nakuru from July to November 2018;
 - v. Group Manager, Water Treatment Division at Davis & Shirtliff Ltd from April, 2016 to December, 2017;
 - vi. Managing Director at Kericho Water & Sanitation Company Ltd (KEWASCO) from November 2011 to March 2016;
 - vii. Branch Manager at Davis & Shirtliff Ltd, Kisii Branch from March to October, 2011;
 - viii. Senior Water Treatment Engineer at Davis & Shirtliff Ltd from January, 2007 to February, 2011; and
 - ix. IT Instructor at the Institute of Advanced Technology (IAT) from January to December, 2006.
5. Mr. Ng'eno informed the Committee that he was worth KSh. 89 million. The source of his wealth was annual salary, Consultancy Services, Annual Dividends from shares and farming.
6. He also confirmed to the Committee that he had been cleared by KRA, ORPP, DCI, EACC and HELB, having obtained clearance certificates to that effect.
7. While examining his suitability or otherwise of the nominee, the Committee posed questions to the nominee in the following thematic areas:
 - a) **On how the education and professional background of the nominee has prepared him for the challenging task ahead**

The nominee submitted that he has vast knowledge on the policy development of solid waste management, policy development, resource mobilization, and environment water and climate change matters. He informed the Committee that his previous engagements with the county governments, the Council of Governors and other institutions will come in hand in carrying out his daily duties. Under his leadership as County Executive Member, he developed a Solid Waste Management Strategy which became a reference for other counties.

b) On attainment of the commitment to plant 5 billion trees in the next five years and 10 billion in the consecutive 10 years

The nominee elaborated how enhanced national tree planting campaigns will be achieved through national and county tree planting. He stated that he would engage the Community Forest Associations (CFA's); ensure differentiation in the specificity of the trees to be planted in various areas in the country and support all legislations that would be of benefit to the country.

c) On Solid Waste Management

The nominee demonstrated how Nakuru County has managed to deal with solid waste and undertook to promote the intergovernmental framework to adopt the circular economy model. He stated that investments should be included in the circular economy starting from the household level to the national level like combining Nairobi and Kajiado counties to have more land to do a sufficient dumping site and decommissioning Dandora dumpsite.

d) On ensuring acceptable air quality standards in major towns and cities

The nominee submitted that the transport sector is a major source of air pollution. He was of the view that to attain acceptable air quality standards, extended producer responsibility needs to be addressed, promotion of loss and damage funds, and promoting policies on air quality.

e) On sustaining the gains achieved in the fight against plastic pollution

The nominee stated that he will encourage an intergovernmental framework between the State Department of Environment and the 47 county governments. He stated that he will engage the Community Based Organizations on recycling of plastics and promote the circular economy (Refuse, Recycle, Reuse and Refurbish).

f) On challenges and successes of the Lake Victoria Environmental Management Project

The nominee elaborated the successes of the Project as being renovation of water and fish laboratories through supply of modern equipment and facilities, establishment of a mechanism of involving communities, NGOs, CBOs, and county governments as well as capacity building within the Lake Victoria Basin Project. He stated the challenges encountered in the project include low delays in terms of procurement; climate change mitigation issues; pollution from diffuse sources, inadequate public participation and erratic weather patterns.

g) On strengthening and enhancing mechanisms to protect the water towers

The nominee elaborated on how he will mobilize funds towards fencing of the water towers, proposed demarcation of riparian land around the water towers and advocated for promotion of land restoration by afforestation and conserving the remaining ecosystems.

h) On collaboration in environmental conservation between the two levels of government.

The nominee submitted that he will establish a good working relationship with the Council of Governors and promote an intergovernmental framework with the county governments.

i) On ensuring environmental conservation as provided in Article 42 of the Constitution

The nominee stated that he will create awareness to the communities and facilitate planting of 15 billion trees in the next 10 years. He also undertook to promote protection of biodiversity, collaborate with the Ministry of Education to revive 4-K clubs and enhance public participation in environment conservation.

j) On greener forms of energy

The nominee submitted that 93% of energy consumed in Kenya comes from clean sources such as geothermal, wind and solar, and hydro power. That he will seek to subsidize the production of cleaner forms of energy since they are expensive.

k) On sustainable use and management of the major lakes

The nominee elaborated that he will work with the riparian associations and take advantage of the current political good will on environmental conservation.

l) On National Environment Management Authority (NEMA)

The nominee informed the committee that he was aware of the status and challenges of NEMA, and undertook to strengthen it by ensuring the necessary legislation and regulations are passed by the National Assembly.

m) On building resilience against climate change

The nominee elaborated on how he will build resilient foundations with rapid and inclusive development of the people living in both the urban and rural areas.

n) On the Kenya Water Tower Agency and Kenya Meteorological Department

The nominee indicated that he will introduce Bills to convert the two institutions into Semi-Autonomous Agencies (SAGA) so as to ensure adequate resource allocation.

o) On Carbon trading

The nominee submitted that he will introduce a Carbon Trading Bill as a matter of priority so as to provide a legal framework on carbon trading.

**MIN/NO.NA/DC-EF&M/2022/021: COMMITTEE OBSERVATIONS ON VETTING OF
ENG. FESTUS KIPKOECH NG'ENO, NOMINEE FOR APPOINTMENT AS PRINCIPAL
SECRETARY, STATE DEPARTMENT FOR ENVIRONMENT**

The Committee observed that:

- (a) in accordance with Article 78(1) (2) of the Constitution, the nominee is a Kenyan citizen and does not hold dual citizenship;
- (b) the nominee is currently undertaking a Doctor of Philosophy (PhD) Degree in Environmental and Water Engineering from the University of Nairobi, holds a Master of Science (MSc) and a Bachelor of Science (BSc) Degrees in Environmental and Biosystems Engineering from the University of Nairobi, and a Post Graduate Diploma Certificate in Leadership and Corporate Governance from KCA University.
- (c) the nominee has worked in the public and private sector and is currently the acting County Executive Committee Member (CECM)/Acting County Minister in Charge of Agriculture, Livestock and Fisheries in the County Government of Nakuru;
- (d) the nominee satisfies the requirements of section 47(2) of the Public Service Commission Act (No. 10 of 2017);
- (e) the nominee presented his academic credentials and professional certificates and demonstrated his experience in accordance with the provisions of Section 6(7) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011);
- (f) the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity;
- (g) the nominee has never been charged in a Court of Law in the last three years;
- (h) as stipulated in Article 75(1) of the Constitution, the nominee has no potential conflict of interest;

- (i) 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;
- (j) the nominee does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- (k) the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), 76(*financial probity*), 77 (*restriction of State Officers*) and 78(2) (*dual citizenship*) of the Constitution;
- (l) the procedure used to arrive at the nominee as provided for under Article 155(3)(a) as read with Section 47(3) of the Public Service Commission Act (*No. 10 of 2017*) was adhered to by the Selection Panel as the nominee was shortlisted for appointment as Principal Secretary;
- (m) by the deadline for submission of memoranda from members of the public, the Clerk of the National Assembly had received no memorandum contesting the suitability of the nominee;
- (n) the Clerk of the National Assembly received memorandum from Mr. Jackson Akama in support of the nominee's nomination as Principal Secretary. The deponent noted that the nominee had diligently promoted the mission to improve the environment, natural resource management, water and sanitation services, climate change and enhanced energy within Nakuru County. However, contrary to section 6(9) of the Act, the memorandum was not a written statement on oath contesting the suitability of the nominee to hold the office to which he had been nominated to; and
- (o) the nominee demonstrated knowledge on topical issues, technical and administrative issues touching on the State Department for Environment and has the requisite abilities, qualifications and experience to serve as the Principal Secretary, State Department for Environment.

MIN/NO.NA/DC-EF&M/2022/022: VETTING OF MR. EPHANTUS KIMOTHO KIMANI, NOMINEE FOR APPOINTMENT AS PRINCIPAL SECRETARY, STATE DEPARTMENT FOR FORESTRY.

Mr. Ephantus K. Kimani, nominee for appointment as Principal Secretary, State Department for Forestry appeared before the Committee on Wednesday 30th November 2022 at 11.40am and was orally interviewed by the Committee as follows:

1. **On his citizenship, date and place of birth**, the nominee informed the Committee that his full name Mr. Ephantus Kimotho Kimani, a Kenyan Citizen born in 1977 in Kajiado County and he is married.
2. **On academic and professional qualifications**, the nominee holds a Bachelor of Commerce (Finance Option) from The Catholic University of Eastern Africa (2009). He is also a Certified Public Accountant (CPA-K) by Kenya Accountants and Secretaries National Examinations Board (KASNEB) since 2003.
3. **On work and professional experience**, the nominee informed the Committee that he is currently the Chief Executive Officer (CEO) of the Heri Homes Ltd, Kenya/UK/USA since November, 2011; he is a Partner at Kimotho K & Associates from 2011; he is working as a Finance Strategist at Alaba Eco Industrial Sez, Kenya; he is the Chief Executive Officer for Leo Capital Holdings Ltd; he is also the Head of Risk and Audit at Kimotho &

Associates, Kenya since 2011; he was a lead Finance Consultant at Premier Finance Consultants, Kenya since November, 2011 to August, 2014; and was a Senior Internal Auditor at the University of Nairobi since February, 2002 to October, 2011.

4. His Net-worth is approximately Kenya Shillings Four Hundred and Seventeen Million, Two hundred Fifty-Six Thousand Four Hundred and Seventy-Five (Ksh. 417,256,475)
5. On **Leadership and Integrity and Public Trust**, the nominee informed the Committee that he has never been dismissed or otherwise removed from office for contravening the provisions of Article 75 of the Constitution. He has also not been adversely associated with practices that depict bias, favoritism or nepotism in the discharge of public duties.
6. The nominee had been cleared by KRA, ORPP, DCI, EACC and HELB, having obtained clearance certificates to that effect.
7. While examining his suitability or otherwise of the nominee, the Committee posed questions to the nominee in the following thematic areas:

a) **On how his education and professional background has prepared for the challenging task ahead:**

The nominee informed the committee that he has adequate knowledge on financial matters; team management and leadership skills which will be very applicable in the State Department. He informed the committee that his networking skills will come in handy while carrying out his daily duties and that he will utilize his mobilization skills to successfully mobilize substantial resources to support the state department on climate change mitigation. Further, that he will utilize his internal and external audit expertise to ensure accountability of the available resources. The nominee undertook to implement national resource accounting mechanisms which will aide in resource allocation and forest conservation. He also indicated that he will provide civic education to make the citizens appreciate conservation and embrace tree planting.

b) **On a proposal to amend the Forest Conservation and Management Act (2016)**

The nominee informed the Committee that he will shy away from supporting the amendment the Forest Conservation and Management Act that seeks to bypass the Kenya Forest Service concerning excision and variation of forest boundaries; he indicated that the current arrangement provides for adequate public participation.

c) **On factors that accelerate loss of biodiversity**

The nominee stated three major factors that accelerate biodiversity loss that is deforestation, soil erosion and overgrazing. He noted that afforestation is a mitigation measure and community engagement promotes forest conservation.

d) **On the protection of mangrove forests and effectiveness of Mikoko Pamoja project**

The nominee indicated that the mangrove forests provide carbon sequestration, a process of capturing and storing atmospheric carbon dioxide and that this was the first blue carbon credit in the world. The nominee was expressed concern since in the current carbon credit framework, the community gets only 8% of the total payment which is not fair. The nominee undertook to establish a taskforce to look into a Carbon Credit Policy and Framework. He gave Ghana as an example where this framework has been successfully implemented to the benefit of local communities and noted that the mangrove forests protect loss of biodiversity.

e) **On Leadership, integrity and public trust**

The nominee informed the Committee that he acquired public trust while undertaking his duties as Chief Executive Officer in various companies for the last 10 years. Specifically in Heri Homes Limited, he is involved in selling houses under the off-plan model. That the company has successfully delivered its promises and obligations to its customers. That he displayed financial fidelity and instilled confidence to diaspora investors by implementing projects on their behalf.

f) On use of taxpayers' money

The nominee noted that financial integrity, transparency and accountability in use of tax payers' money are key components of good leadership and governance. He undertook to embrace austerity measures, ensure prudent utilization of the available resources, enforce accountability mechanisms and apply technology in forest management to cut costs.

g) On the Shamba system and Agroforestry

The nominee elaborated that there is a Plantation Establishment Livelihood Improvement Scheme (PELIS) which is implemented by the Kenya Forest Service. He indicated that the project has been successful where 4.8 million trees have been planted in the last few years. That Community Forest Associations and Kenya Forest Service should work closely to enhance Plantation Establishment Livelihood Improvement Scheme (PELIS) and take advantage of carbon trading.

On Agroforestry, the nominee undertook to encourage community and private land owners to plant fruit trees. He informed the Committee that in order to improve forest cover and to encourage the citizens to consider and appreciate trees as assets, he will introduce green fund (green points).

h) On importation of trees

The nominee informed the Committee that through the implementation of the Seeds and Plant Varieties Act, the Kenya Forestry Research Institute (KEFRI) ensures strict adherence to the Act to avoid a situation where invasive species such as Mathenge trees are imported to the country.

i) On Baobab exporting

The nominee informed the Committee that he was aware of the emerging issue of Baobab uprooting in Kilifi County. He supported the Cabinet Secretary position on stopping the exportation of the Baobab trees until due diligence is conducted before further action. He undertook to establish regulations in order to put in place benefit sharing and value addition mechanisms.

j) On Mathenge Trees

The nominee outlined two ways in which invasive species can be dealt with, which include, physically removing them and replace with Acacia trees or employing biological mechanisms. The nominee undertook to establish regulations to allow charcoal burning in the affected counties.

k) On logging activities

The nominee indicated he was aware of the moratorium and undertook to look into it to sure there is a balance between tree harvesting and tree planting. To enhance conservation and reduce wastage of the tree products, he indicated that he will support

introduction of wood enhancement technology. He also indicated that he will liaise with the National Treasury in order to provide tax exemptions for machines providing wood enhancement technology.

l) On protection of sacred forests

The nominee undertook to put in place necessary measures to protect the sacred forest against encroachment and involve local communities in conservation of the same. He deduced that community ownership of the forests will allow them to benefit from carbon credits. He indicated that he will support ecotourism to make the communities appreciate their conservation efforts, and undertook to mobilize resources from environmental protection organizations, private partners and other development partners to fence the forests.

m) On charcoal value chain

The nominee informed the Committee that close to 70% of Kenyans utilize charcoal; he noted that charcoal burning and utilization contributes to climate change by emitting carbon to the atmosphere while tree cutting reduces carbon sequestration. To promote the charcoal value chain, he undertook to work closely with county governments and other government agencies to provide modern kilns to reduce carbon emission and advocate for use of efficient Jikos. He informed the Committee that he will oversee the formation of Community Charcoal Associations to ensure ease of application and enforcement of regulations. He noted that due to adverse effects of climate change, he will advocate and rally behind utilization of alternative sources of energy.

n) On tea plantations in forests for instance Kinare forest

The nominee undertook to conduct a national audit of forests to determine the number of private tea plantations and the income that they are contributing to the Kenya Forest Service. He proposed adoption of a public private partnership framework to ensure the government benefits from the forest land under tea plantations.

o) On Human wildlife conflict

The nominee informed the Committee that he will employ a multi-sectoral approach by engaging the Ministry of Tourism and Wildlife to marshal adequate resources to fence the forests.

MIN/NO.NA/DC-EF&M/2022/023: COMMITTEE OBSERVATIONS ON VETTING OF MR. EPANTUS KIMOTHO KIMANI, NOMINEE FOR PRINCIPAL SECRETARY, STATE DEPARTMENT FOR FORESTRY

The Committee observed that:

- (a) in accordance with Article 78(1) (2) of the Constitution, the nominee is a Kenyan citizen and does not hold dual citizenship;
- (b) the nominee holds a Bachelor of Commerce Degree (Finance) (2009) from Catholic University of Eastern Africa, Association of Chartered Certified Accountant (ACCA) Part I; CPA Part III & II from Vision Institute of Professionals; and CPA Part I from Kenya College of Accountancy.
- (c) the nominee has worked in the private sector all his life and is currently the Chief

Executive Officer, Heri Homes Limited ; Partner at Kimotho K & Associates and Director at Leo Capital Holdings Ltd;

- (d) the nominee satisfies the requirements of section 47(2) of the Public Service Commission Act (No. 10 of 2017);
- (e) the nominee presented his academic credentials and professional certificates and demonstrated his experience in accordance with the provisions of Section 6(7) of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011);
- (f) the nominee satisfies the requirements of Chapter 6 of the Constitution on leadership and integrity;
- (g) the nominee has never been charged in a Court of Law in the last three years;
- (h) as stipulated in Article 75(1) of the Constitution, the nominee has no potential conflict of interest;
- (i) 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;
- (j) the nominee does not hold office in any political party hence satisfies the provisions of Article 77(2) of the Constitution;
- (k) the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the provisions of Articles 75(1) (*conflict of interest*), 76(*financial probity*), 77 (*restriction of State Officers*) and 78(2) (*dual citizenship*) of the Constitution;
- (l) the procedure used to arrive at the nominee as provided for under Article 155(3)(a) as read with Section 47(3) of the Public Service Commission Act (*No. 10 of 2017*) was adhered to by the Selection Panel as the nominee was shortlisted for appointment as Principal Secretary;
- (m) by the deadline for submission of memoranda from members of the public, the Clerk of the National Assembly had received no memorandum contesting the suitability of the nominee; and
- (n) the nominee demonstrated knowledge on topical issues, technical and administrative issues touching on the State Department for Forestry and has the requisite abilities, qualifications and experience to serve as the Principal Secretary, State Department for Forestry.

MIN/NO.NA/DC-EF&M/2022/024: ANY OTHER BUSINESS.

There being no other business, the meeting was adjourned at two O'clock. The next meeting to proceed at half past two O'clock.

Signed:..... Date: 20/11/2022

(HON. GIKARIA DAVID, M.P.)
(CHAIRPERSON)



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

13TH PARLIAMENT - FIRST SESSION, 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

MINUTES OF THE 2ND SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT, FORESTRY AND MINING HELD ON TUESDAY 10TH NOVEMBER, 2022 IN THE COMMITTEE ROOM 4, CONTINENTAL HOUSE AT 10.00AM.

PRESENT.

1. **The Hon. Gikaria David, MP.** -Chairperson
2. **The Hon. Charles Kamuren, MP** -Vice-Chairperson
3. The Hon. Mwanyanje Gertrude Mbeyu, MP
4. The Hon. Emathe Joseph Namuar, MP.
5. The Hon. Masito Fatuma Hamisi, MP.
6. The Hon. Kemei, Beatrice Chepogeno MP.
7. The Hon. Onesmus Ngogoyo Nguro, MP.
8. The Hon. Elijah Njore Njoroge, MP
9. The Hon. Yakub Adow Kuno, MP
10. The Hon. Titus Lotee, MP

APOLOGY

1. The Hon. Mbalu, Jessica Nduku Kiko, MP.
2. The Hon. Hiribae Said Buya, MP.
3. The Hon. Salim Feisal Bader, MP.
4. The Hon. Tubi Bidu Mohamed, MP.
5. The Hon. Joseph Wainaina Iraya, MP.

**IN-ATTENDANCE -NATIONAL ASSEMBLY
THE SECRETARIAT**

1. Mr. Fredrick Otieno - Second Clerk assistant
2. Mr. Hamdi Hassan Mohamed - Third Clerk Assistant
3. Ms. Rose Natecho K - Third Clerk Assistant
4. Ms. Mercy Wanyonyi - Senior Legal officer
5. Ms. Catherine Wangui - Serjeant-At-Arms
6. Ms. Chamunga Nancy - Fiscal Analyst
7. Mr. Joseph Kuria - Research officer
8. Ms. Edith Chepogeno - Media Relations officer
9. Mr. Muchiri Mwangi - Audio Officer

MIN/NO.NA/DC-EF&M/2022/005: PRELIMINARIES & ADOPTION OF AGENDA

The Vice- Chairperson called the meeting to order at twenty minutes past ten O'clock and said a prayer. The agenda of the meeting was adopted as hereunder having been proposed and seconded by the Hon. Yakub Adow Kuno, MP and the Hon. Masito Fatuma Hamisi, MP respectively. Then everyone present introduced themselves. Further, the Members were informed that the main agenda was to brief Members on the procedure for vetting. However, it was important to take Members through the

mandate of the Committee and the departments it oversees to enable Members have a better understanding of their mandate.

AGENDA:

1. Prayers
2. Introductions/preliminaries
3. Communication from the Chair
4. Confirmation of Previous Minutes
5. Matters arising
6. Pending Bills: None
7. Pending Petition(s): None
8. Questions: None
9. Statements: None
10. **Pre-vetting meeting on the appointment of the nominees to the position of Principal Secretaries - Briefing by the Legal Counsel, PBO and the Research office.**
11. Any Other Business; and
12. Adjournment

MIN/NO.NA/DC-EF&M/2022/006: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

Minutes of the first sitting held on Tuesday 1st November, 2022 were confirmed as a true record of the proceedings having been proposed and seconded by the Hon. Onesmus Ngogoyo, MP and the Hon. Yakub Adow Kuno, MP respectively.

MIN/NO.NA/DC-EF&M/2022/007: MANDATE OF THE COMMITTEE AND THE MDAs.

The Members were briefed on the mandate of the Committee pursuant to the Standing Order 216 and the Second Schedule of the Standing Orders of the National Assembly with emphasis put on the mandate of the Committee on vetting as provided for in Standing Order 216(5f) which states; *"vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)"*. Members were urged to acquaint themselves with the provisions of the Standing Orders of the National Assembly, the Constitution of Kenya 2010 and the Public Appointments (Parliamentary Approval) Act of 2011

The Committee was also briefed by the Fiscal Analyst on the overview of the budgetary allocations of the Ministry of Environment and Forestry as well as of the State Department for Mining. Members were informed that the role of the Ministry of Environment and Forestry is to formulate, develop and manage the national environmental policy.

The Committee was further informed that the Ministry of Environment and Forestry has Five Semi-Autonomous Government Agencies (SAGAs), which include: NEMA, NETFUND, Kenya Forest Services, Kenya Forestry Research Institute and Kenya Water Towers Agency. It was noted that the Ministry's approved expenditure for FY 2022/23 was Kshs. 15.26 billion. The Ministry is underfunded and experiences delays of exchequer releases among other challenges.

The State Department for Mining also faces challenges of inadequate budget allocation, lack of legal framework and lack of a framework for royalties sharing affecting the development projects.

MIN/NO.NA/DC-EF&M/2022/008: BRIEF BY THE LEGAL COUNSEL

Ms. Mercy Wanyonyi, Legal Counsel briefed the Committee on what is expected during the vetting of nominees highlighting the following, THAT—

Approval Hearing

1. In undertaking the vetting exercise, the Committee must observe the provisions of —
 - (i) The Constitution of Kenya, 2010
 - (ii) The Public Appointments (Parliamentary Approval) Act (No. 33 of 2011)
 - (iii) The National Assembly Standing Orders

Procedure for conducting of approval hearings

2. The procedure for conduct of approval hearings of constitutional appointments is provided for in the Public Appointments (Parliamentary Approval) Act No. 33 of 2011 (hereinafter referred to as “the Act”). Additionally, the Committee shall also be guided by other statutes including the Public Officer Ethics Act (No. 4 of 2003); the Leadership and Integrity Act (No. 19 Of 2012) and the Public Service (Values and Principles) Act (No. 1A of 2015).

Issues for consideration by the Committee

3. In conducting the approval hearings, the Committee shall be guided by the provisions of section 6(7) and (8) of the Act which provides that:
 - (7) *An approval hearing shall focus on a candidate’s academic credentials, professional training and experience, personal integrity and background.*
 - (8) *The criteria specified in the Schedule shall be used by a Committee during an approval hearing for the purposes of vetting a candidate.*
4. Additionally, section 7 of the Act provides that the issues for consideration by the relevant House of Parliament in relation to any nomination shall be—
 - (a) *the procedure used to arrive at the nominee;*
 - (b) *any constitutional or statutory requirements relating to the office in question; and*
 - (c) *the suitability of the nominee for the appointment proposed having regard to whether the nominee’s abilities, experience and qualities meet the needs of the body to which nomination is being made.*
5. The parameters espoused in section 6(7) and (8) and section 7 of the Act shall hence form the basis through which the Committee shall conduct the approval hearings.

Procedure for Nomination

6. On the first issue for consideration by the Committee under section 7 of the Act which is the procedure used to arrive at the nominee, we note that Article 132(2)(d) of the Constitution provides that the President shall nominate and, with the approval of the National Assembly, appoint, Principal Secretaries in accordance with Article 155 of the Constitution.
7. Article 155(3) of the Constitution further provides that the President shall—
 - (a) *nominate a person for appointment as Principal Secretary from among persons recommended by the Public Service Commission; and*
 - (b) *with the approval of the National Assembly, appoint Principal Secretaries.*
8. Section 46(1) of the Public Service Commission Act No. 10 of 2017 provides that where the Commission is required by the Constitution or any legislation to nominate or recommend a person for appointment, the Commission shall—

- (a) abide by the Constitutional requirement of fair competition and merit as a basis of appointment; and
- (b) ensure that the appointment facilitates achievement of a representative public service.
9. Section 47(3) of the Public Service Commission Act further provides that the Commission shall, in making the recommendations under the section, submit to the President a list of nominees for appointment, paying attention to inclusiveness in terms of gender, Kenya's diverse communities, persons with disabilities and the youth.
10. In view of the provisions of Article 155(3) of the Constitution as read with sections 46(1) and 47(3) of the Public Service Commission Act, 2017, the Committee may make reference to the Report of the Public Service Commission on the nomination of the candidates in determining the procedure used to arrive at the nominees in terms of section 7(a) of the Act.

Compliance Certificates

11. The Committee shall also be required to examine and consider the reports of the following relevant bodies in determining the suitability of the candidates:
- (1) *The Higher Education Loans Board;*
 - (2) *The Kenya Revenue Authority;*
 - (3) *The Directorate of Criminal Investigations;*
 - (4) *The Office of the Registrar of Political Parties;*
 - (5) *The Ethics and Anti-Corruption Commission.*

MIN.NO/NA/DC-EF&M/2022/009: BRIEF BY THE RESEARCH OFFICER ON THE NOMINEES CURRICULUM VITAE

The Research Officer gave a brief summary of the nominees' Curriculum Vitae as follows:

- i.) Mr. Festus Kipkoech Ng'eno, is the nominee for Principal Secretary to state department of Environment. The nominee is a Kenyan citizen, born on 11th November, 1980. He is currently undertaking Doctor of Philosophy (PhD) degree in Environmental & Water Engineering at the University of Nairobi. He holds a Master of Science (MSc.) Degree in Environmental & Bio systems Engineering and Bachelor of Science (BSc.) degree in Environmental & Bio systems Engineering from the University of Nairobi, and a Post Graduate Diploma Certificate in Leadership & Corporate from KCA University. The researcher also briefed the members that the nominee has over 15 years' experience in Public, Private and Humanitarian and Development sectors. It's also worth to note that the nominee holds certificate of merit from the University of Nairobi for being the best 5th Environmental Bio system Engineering student in water resources.
- ii.) Mr. Ephantus K. Kimani is the nominee for Principal secretary state department for Forestry. According to his CV he is the Chief Executive Officer (CEO) of the Heri homes Ltd, Kenya/US/USA company that has more than 11 years record of progressive achievement and advancement with an annual construction output of about 600 million making it among the top in building construction and civil engineering in Kenya. However, the researcher informed the members that the nominee failed to give a background on his citizenship, date of birth, and education. The members requested the secretariat to follow up the matter and obtain the information and have them briefed before the vetting date.

iii.) Mr Elijah Gitumbu Mwangi is the nominee as Principal Secretary for State Department for Mining. The nominee holds a Master of Business Administration (Strategic Management) and a Bachelor of Commerce (Accounting) from the University of Nairobi. He is also a Certified Public Accountant (CPA-K) by Kenya Accountants and Secretaries National Examinations Board (KASNEB). He has undertaken professional trainings which include, Champion of Governance Assessment, Fraud Detection and Prevention by Apogee Institute of Professional Training. The nominee is the current Managing Director of **Elijah and Co. Associates**. The members were informed that the nominee did not provide the background information on his date of birth. The lead clerk was asked by members to follow up and get the missing information.

MIN.NO/NA/DC-EF&M/2022/010: OBSERVATIONS

Having been briefed, the Members made the following observations:

1. Mr. Ephantus Kimani, nominee for appointment as Principal Secretary State Department for Forestry did not indicate his citizenship and academic qualifications in his CV. The secretariat was directed to contact the nominee to immediately provide the missing information.
2. The question of gender balance was also raised since it was noted that all the three nominees were all men.
3. Members also raised the issue of required years of work experience and it was noted that it is not provided for under the Public Appointment (Parliamentary Approval) Act, 2011 but provided for in the Public Service Act.

The Secretariat prepares guiding questions focusing on each nominee’s academic credentials, professional qualifications and competence to guide Members during the vetting process;

MIN.NO/NA/DC-EF&M/2022/011: ADJOURNMENT/ DATE OF NEXT MEETING

There being no other business, the meeting was adjourned at one O’clock. The next meeting to be held on notice.

Signed..... Date.....

(HON. GIKARIA DAVID, M.P.)
(CHAIRPERSON)