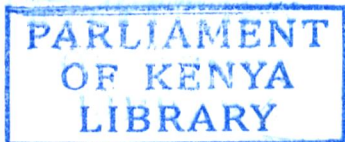


Approved for tabling, *Pat SNA*  
4/12/18

REPUBLIC OF KENYA




THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION, 2018

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THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON THE PETITION FOR THE ENACTMENT OF THE  
ADMIRALTY COURT ACT

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 DEC 2018	
DAY: WED, MORNING	
TABLED BY:	CHAIR, JUSTICE & LEGAL AFFAIRS COMMITTEE
DESK AT THE TABLE:	Moses Lemwa

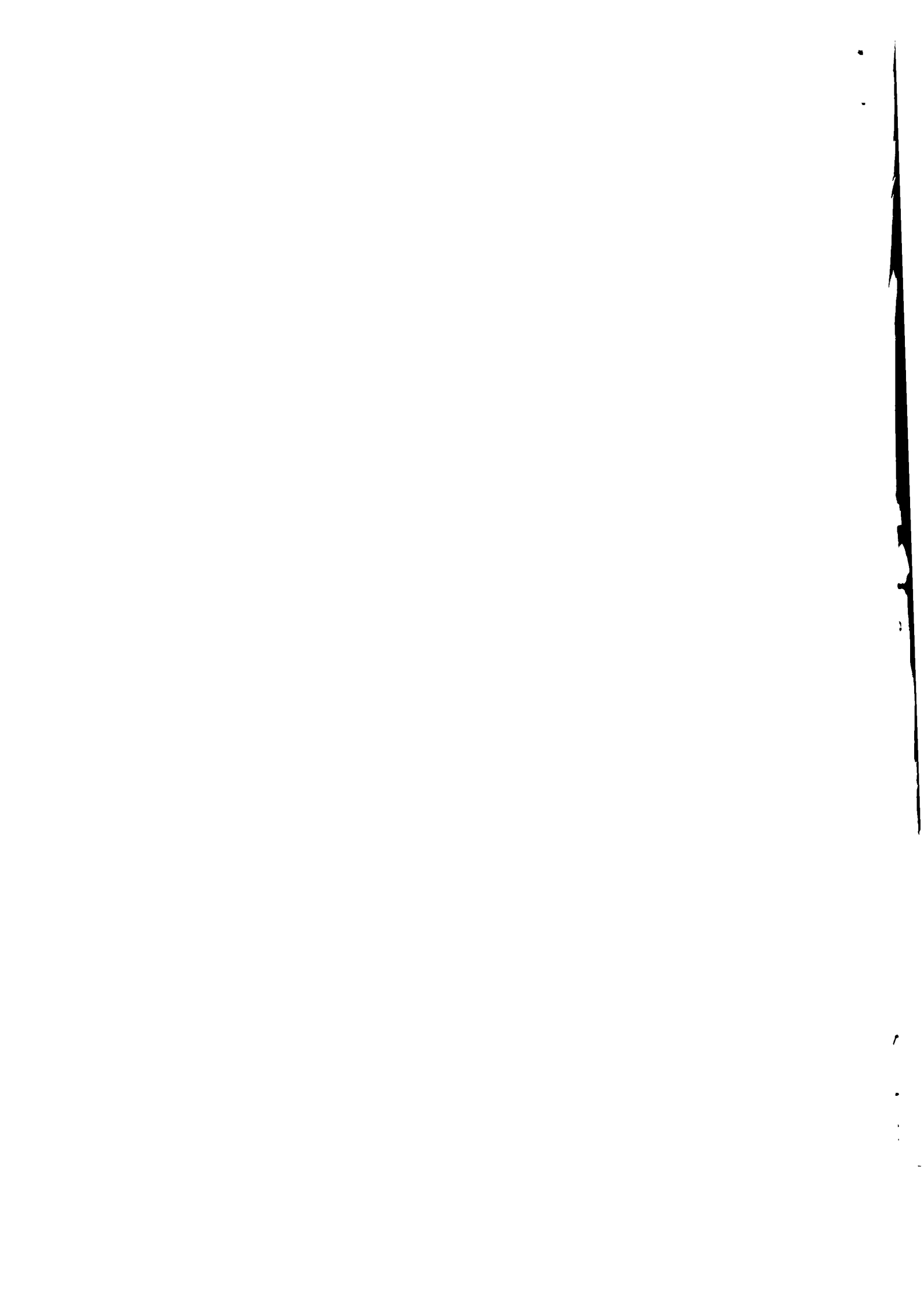
DIRECTORATE OF COMMITTEE SERVICES

CLERK'S CHAMBERS

PARLIAMENT BUILDINGS

NAIROBI

DECEMBER, 2018



## Table of Contents

ABBREVIATIONS AND ACRONYMS .....	3
LIST OF ANNEXES .....	4
CHAIRMAN’S FOREWORD .....	5
CHAPTER ONE .....	6
1.0 PREFACE.....	6
Mandate of the Committee.....	6
1.1. Committee Membership.....	7
1.2. Committee Secretariat.....	8
CHAPTER TWO .....	9
2.0 CONSIDERATION OF THE PETITION .....	9
2.1 Submissions by the Petitioner Mr. Derrick Otieno Okadia .....	9
CHAPTER THREE.....	16
COMMITTEE FINDINGS AND RECOMMENDATIONS .....	16
3.1 Committee Findings.....	16
3.2 Committee Recommendations.....	16

## **ABBREVIATIONS AND ACRONYMS**

CAP	-Chapter
Hon	- Honourable
M.P.	- Member of Parliament
NA	-National Assembly
Ref	- Reference



**LIST OF ANNEXES**

**A. Adoption List**

**B. Committee Minutes**

### **CHAIRMAN'S FOREWORD**

The Speaker, Hon. Justin Muturi, conveyed this petition to the House on 24<sup>th</sup> July, 2018 in accordance with the provisions of Standing Order No. 225 (2) (b). The petition seeks to have Parliament-

- (a) Enact an Admiralty Court Act taking the relevant circumstances within the Kenyan Jurisdiction; and
- (b) Repeal sections of Statutes that confer jurisdiction on the Admiralty Court based on the United Kingdom laws or any other jurisdiction not being a Kenyan jurisdiction.

The Petition was referred to the Departmental Committee on Justice and Legal Affairs for consideration and preparation of a report within sixty days in line with the requirements of Standing Order 227.

In considering the Petition, the Committee, during its sitting held on 13<sup>th</sup> November 2018, met with the petitioner Mr. Derrick Otieno Okadia. The meeting was aimed at inquiring into the issues raised in the Petition.

The Committee appreciates the assistance provided by the Office of the Speaker and the Clerk of the National Assembly that enabled it to discharge its functions in considering the petition.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my duty to table on the Floor of the House the Report of the Committee on the petition.

**Hon. William Cheptumo, MP**

**Chairperson, Departmental Committee on Justice and Legal Affairs**

## CHAPTER ONE

### **1.0 PREFACE**

#### **Mandate of the Committee**

The Departmental Committee on Justice and Legal Affairs derives its mandate from Standing Order No. 216(5) which provides for the functions of Departmental Committees as follows:-

- (a) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- (b) *study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;*
- (c) *study and review all legislation referred to it;*
- (d) *study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- (e) *investigate and enquire 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;*
- (f) *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)*
- (g) *examine treaties, agreements and conventions;*
- (h) *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- (i) *consider reports of Commissions and Independent Offices submitted to the House pursuant to provisions of Article 254 of the Constitution; and*
- (j) *examine any questions raised by Members on a matter within its mandate.*

The Second Schedule of the Standing Orders on Departmental Committees further outlines the Subjects of the Committee, as follows-

- (a) Constitutional affairs;

- (b) The administration of law and Justice
- (c) The Judiciary;
- (d) Public prosecutions;
- (e) Elections;
- (f) Ethics, integrity and anti-corruption; and
- (g) Human rights.

### **1.1. Committee Membership**

The Committee was constituted on Thursday, 14<sup>th</sup> December, 2017 and comprises the following Honourable Members-

Hon. William Cheptumo, M.P.	–	<i>Chairperson</i>
Hon. Alice Muthoni Wahome, M.P.	–	<i>Vice Chairperson</i>
Hon. John Olago Aluoch, M.P.		
Hon. Roselinda Soipan Tuyu, M.P.		
Hon. Charles Gimose, M.P.		
Hon. Johana Ng'eno, M.P.		
Hon. William Kamoti Mwamkale, M.P.		
Hon. Ben Orori Momanyi, M.P.		
Hon. Peter Opondo Kaluma, M.P.		
Hon. Jennifer Shamalla, M.P.		
Hon. Beatrice Adagala, M.P.		
Hon. Gladys Boss Shollei, CBS, M.P.		
Hon. John Munene Wambugu, M.P.		
Hon. George Gitonga Murugara, M.P.		
Hon. Anthony Githiaka Kiai, M.P.		
Hon. John Kiarie Waweru, M.P.		
Hon. Japheth Mutai, M.P.		
Hon. Adan Haji Yussuf, M.P.		
Hon. Zuleikha Hassan, M.P.		

## **1.2. Committee Secretariat**

Mr. George Gazemba	-	Principal Clerk Assistant II
Mr. Denis Abisai	-	Principal Legal Counsel I
Ms. Doreen Karani	-	Legal Counsel II
Ms. Halima Hussein	-	Clerk Assistant III
Ms. Fiona Musili	-	Research Officer III
Mr. Omar Abdirahim	-	Fiscal Analyst III
Mr. Joseph Okongo	-	Media Liaison Officer
Mr. HakeemKimiti	-	Audio Officer
Ms. RoselyneNdegi	-	Serjeant-at-Arms
Mr. Richard Sang	-	Serjeant-at-Arms

## CHAPTER TWO

### **2.0 CONSIDERATION OF THE PETITION**

The Committee commenced its consideration of the Petition by meeting the Petitioner on 13<sup>th</sup> November 2018. During the meeting, written and oral evidence was adduced as noted hereunder:-

#### **2.1 Submissions by the Petitioner Mr. Derrick OtienoOkadia**

Mr. Derrick OtienoOkadia introduced himself as an Advocate of the High Court of Kenya practising in Shipping and Maritime Law under the firm name of JuluOkadia Advocate domiciled in Nairobi. He submitted as follows in support of his Petition-

#### **On Kenya's Sovereignty and Legislative Authority**

- (i) Article 1 of the Constitution of Kenya, 2010 vests sovereignty on the people and such sovereign power is to be exercised through organs such as the National Assembly;
- (ii) However, *Section 4 (2) of the Judicature Act*, appears to depart from this provision as far as the Admiralty Court Jurisdiction is to be considered. The section so provides that "The admiralty jurisdiction of the High Court shall be exercisable—  
(a) over and in respect of the same persons, things and matters; and (b) in the same manner and to the same extent; and (c) in accordance with the same procedure, as in the High Court in England, and shall be exercised in conformity with international laws and the comity of nations";
- (iii) Consequently, the interpretation of the court on this provision has been that unless the United Kingdom Parliament amends its laws then the Kenyan Courts cannot develop jurisprudence which departs from the English Laws that confer Admiralty Jurisdiction;

- (iv) Resultantly, this legal position has advanced a position that it is only the English Parliament that has authority to enact Admiralty Laws intended for application in Kenya. This position, violates the spirit of Article 1 of the Constitution of Kenya, 2010 for the sovereign power in relation to legislative authority on Admiralty laws in Kenya has been abdicated and vested to the English Parliament;
- (v) For instance, prior to 1998, the English Supreme Court Act of 1981 was the authoritative legislative governing our Admiralty Court Jurisdiction. In 1998, the English Parliament passed the Civil Procedure Rules, known as the White Book. Upon this enactment, after 2001, when these 1998 Rules came to effect, any Admiralty matter filed in the Kenyan Admiralty Court citing the 1981 Act was dismissed for want of form with the Kenyan Judges in Kenyan Courts seeking to enforce the 1998 Rules; and
- (vi) Evidently, the regime as it stands doesn't lend much credibility to Kenyan sovereign power.

### **Independence of the Kenyan Judiciary**

- (vii) A further consequence of the above is the effect on the Kenyan Judiciary. Article 159 of the Constitution of Kenya, 2010 provides that the Judicial authority is derived from the people which is further reinforced by Article 160 which provides for the independence of the Judiciary;
- (viii) It is expected that the laws of a Foreign State should not cripple and be the sole determinant or factor in the administration of justice by the Kenyan Courts. However, with appreciation to reception clauses, the regime on Admiralty Jurisdiction in Kenya doesn't allow the Judicial officers much consideration departing from the English Law;
- (ix) In the case of *Pembe Flour Mills Ltd vs. Owners of the Motor Vessel "Ioannis G"* [2017] eKLR, in consideration of an application before the court, Hon. Lady



Justice NjokiMwangi, stated that “An Admiralty claim filed in Kenya must be on all fours with an Admiralty claim filed in England”. In essence, there can be no judicial departure by a Kenyan Court from the English Court;

(x) Further, it is noteworthy, that the Kenyan legal system is that of common law to which the doctrine of precedence is a key element. Accordingly, it is so expected that the Superior Courts are to develop laws if not offer guidance on the general disposition of the country on certain matters of law;

(xi) Unfortunately, in Admiralty matters, it would appear that a decision of the Kenyan Court of Appeal is to be superseded by a decision of the High Court of England. In the case of *Kenya Marine Contractors EPZ LTD vs. Owners of Motor Vessel “Omimos”* [2006] eKLR Hon. Justice L. Njagi, stated that “I sympathize with counsel when he argues that the English authority does not take precedence over the Court of Appeal of Kenya. While that statement is generally true, it does not and cannot be applicable to this Court in as much as our own Judicature Act enjoins this Court to apply the English Law, hook line and sinker, while exercising Admiralty Jurisdiction. To that extent, English decisions will take precedence over those of our own court”; and

(xii) Whereas it is appreciated that the Kenyan Courts consider decisions and legal provisions from other jurisdictions, the same shouldn't be so to the extent that it cripples our own judicial pronouncements.

### **Civil Law Practice in light of Constitution of Kenya, 2010**

(xiii) Closely linked to the exercise of judicial authority, is the access to courts by litigants. This access is currently guided by the Constitution as well as the Civil Procedure Rules, 2010. To this end it is crucial to consider the repulsive approach that the English laws have to our civil practice;



(xiv) In a bid to ensure administration of justice, the courts are guided by *Sections 1A,1B and 3A of the Civil Procedure Act* as well as *Article 159 (2) (d) of the Constitution, 2010*. The salient elements of these provisions being that the Courts are to have undue regard to technicality of the matters before them. Further *Order 51, Rule 10 (2) of the Civil Procedure Rules, 2010* states that, “No application shall be defeated on a technicality or for want of form that does not affect the substance of the application”;

(xv) However, it appears that matters before the Kenyan Admiralty Court are not subject to the aforementioned provisions. As such, it creates inconsistency in the jurisprudence on civil practice before our courts. In the aforementioned case of *Pembe Flour Mills Ltd vs. Owners of the Motor Vessel “Ioannis G” [2017] eKLR*, the Court stated that “Kenya applies the law in England as the Parliament of Kenya has not enacted an Admiralty Jurisdiction Act. The English Civil Procedure Rules of 1998 and Practice Directions are therefore binding on Admiralty practice in Kenya. For the said reason, failure by the respondent to follow the laid down rules and practice directions cannot be brushed off as a mere technicality that is curable under Article 159 (2)(d) of the Constitution of Kenya. This court declines to lower the bar for the respondent just because the admiralty claim was filed in Kenya”;

(xvi) It is noteworthy that in the matter cited in Paragraph 17 above, there was real or apparent jeopardy/injustice likely to be suffered by either party on account of the Forms lodged in court being non-conforming to the Forms provided for under the English Laws;and

(xvii) Accordingly, there should be a consistent application of the Constitutional provisions across every court in Kenya, the Admiralty Court not being an exception.

### **Specialized Courts**

(xviii) Article 162 (2) of the Constitution of Kenya, 2010 provides for specialized courts being the Employment and Labour Relations Court as well as the Environment and Land Court. Whereas it is appreciated that these courts are indeed competent to handle matters within the general purview of such sphere of the law, it is important that appreciation is lent to the fact that these courts could handle matters previously within the ambit of the Admiralty Court;

(xix) The Admiralty Court Jurisdiction Act, would avail an opportunity for clarity and guidance to these specialized courts when adjudicating on a matter that has a leaning on maritime commerce. To this end, the contemplated Act of Parliament would further prompt amendment, if not, amend certain laws that touch on the jurisdiction of these specialized court with a view of creating harmony between these courts;

(xx) In the case of *Didovsky Igor & 11 Others vs. International Bulk Carrier Spa & 2 Others* [2015] eKLR, Hon. Justice James Rika, when presiding over a labour matter concerning seafarers, stated that, “The continued reliance on the procedure of the High Court of England in dealing with our admiralty matters, appears to this court as out-dated. There have been calls for amendment of Section 4 of the Judicature Act, and for development of home-grown admiralty legal regime.” His opinion on the matter clearly depicts the agony that Judges suffer in Admiralty matters. There is a plethora of judgments reflecting these sentiments by the Honourable Judge;

(xxi) He further went on in the above case to state that, “Kenya ratified the *International Labour Organization Maritime Labour Convention 2006* [MLC 2006] in July 2014. The Convention covers the minimum requirements for Seafarers to work on a Ship, conditions of employment, accommodation, recreational facilities, food, catering, health, welfare, grievance procedures, enforcement and social security protections. These are obligations which Kenya

may not adequately discharge, without a proper admiralty legal regime, aligned to the Constitution of Kenya. This demands for among other things, amendment of the laws and rules governing the proceedings of the Industrial Court, to facilitate the exercise of the admiralty labour and employment jurisdiction”;and

(xxii) Away from the Employment and Labour Relations Court, it is noteworthy that there are environmental issues that arise from the use of the oceans and sea. To this extent, a majority of the conventions by the International Maritime Organization, touch on environmental issues and concerns. Accordingly, the same opinion by Hon. Justice James Rika should be adopted on the Environment and Land Court.

### **On Generality of Maritime Commerce Activities**

(xxiii) Conclusively, the contemplated Act should be in a position to spur the nation towards establishing itself as a major maritime nation within the region and the world at large. With such laws in place, the confidence of players in the maritime world on Kenyan waters is boosted;

(xxiv) Currently, the position is that an Admiralty Judge is any judge who sits at the Admiralty Court in Mombasa. This notion appears contrary to progression on enhancing Kenya’s Blue Economy as the underlying assumption is that maritime commerce only takes place within Mombasa hence the need for the Admiralty judge to be stationed there;

(xxv) Significantly, in the advent of the county governments post Constitution, 2010, activities have increased in counties surrounding the Lake Victoria and Lake Turkana. It would be incongruous to suggest to litigants whose area of maritime commerce is within Lake Victoria or Lake Turkana to file their matters in Mombasa; and

(xxvi) Accordingly, the enactment of this Act would provide an avenue for consideration of establishment or stationing of an Admiralty Judge within these lakes.

In conclusion the petitioner submitted that-

(xxvii) The petition for the Admiralty Court Act provides an opportunity for this country to advance its participation and contribution on maritime and admiralty matters in the world.

(xxviii) However, it should not be taken that the enactment is a complete departure from the appreciation of the century old maritime nations to which the Legislature could borrow practice from. In this regards, consideration should be on the United Kingdom, Singapore, Japan, Norway, and China.

**The petitioner therefore prays** that Parliament-

- (a) Enacts an Admiralty Court Act taking the relevant circumstances within the Kenyan Jurisdiction ; and
  
- (b) Repeals sections of Statutes that confer jurisdiction on the Admiralty Court based on the United Kingdom laws or any other jurisdiction not being a Kenyan jurisdiction.



## CHAPTER THREE

### COMMITTEE FINDINGS AND RECOMMENDATIONS

#### **3.1 Committee Findings**

The Committee made the following observations from the evidence adduced in the meetings-

- (i) That shipping and maritime was one area with a lot of potential for legal practitioners and found it necessary for the country to have in place proper legislation for the purposes of administration of justice;
- (ii) That, the Petitioner as a practitioner in Shipping and Maritime Law should-
  - (a) Submit to the Committee precedents pointing to the gaps in the United Kingdom and Kenyan maritime laws;
  - (b) Develop draft legislation to jumpstart the process of enacting legislation to enact an Admiralty Court and repeal of sections of statutes that confer jurisdiction to the Admiralty Court based on the United Kingdom laws or any other jurisdiction not being Kenyan jurisdiction; and
  - (c) Identify stakeholders in the shipping and maritime industry for the purposes of public participation in legislation making for example the Kenya Maritime Authority

#### **3.2 Committee Recommendations**

In response to the prayers by the Petitioner, the Committee recommends as follows-

**That, Parliament-**

- (a) Enacts an Admiralty Court Act taking the relevant circumstances within the Kenyan Jurisdiction ; and**

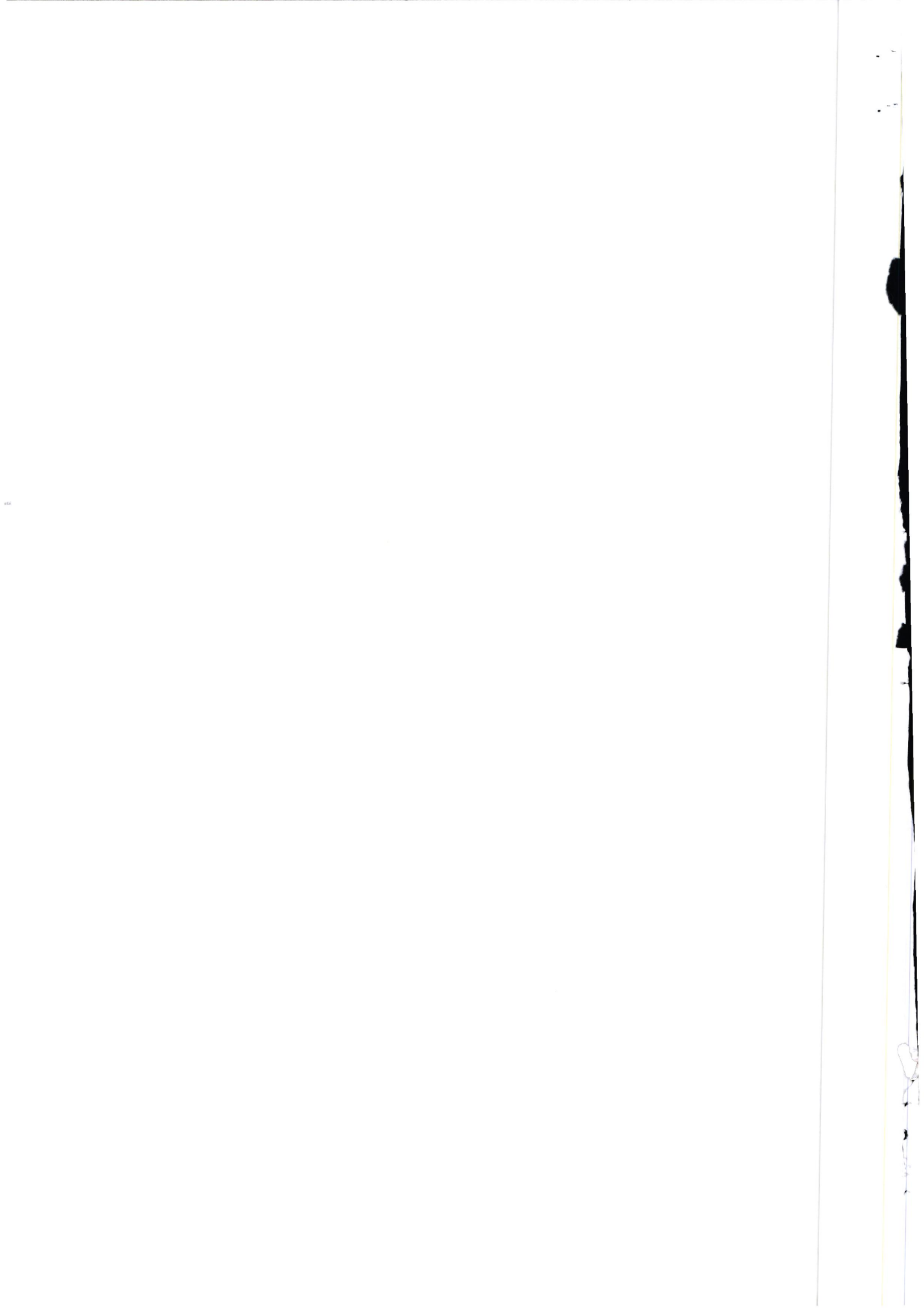
**(b) Repeals sections of Statutes that confer jurisdiction on the Admiralty Court based on the United Kingdom laws or any other jurisdiction not being a Kenyan jurisdiction.**

Sign.......... Date.....4.12.18.....

**Hon. William Cheptumo, MP**

**Chairman, Departmental Committee on Justice and Legal Affairs**

# **ADOPTION LIST**





KENYA NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS


ATTENDANCE REGISTER FOR MEMBERS

DATE... 27/11/2018 ... TIME... 11:30 ...

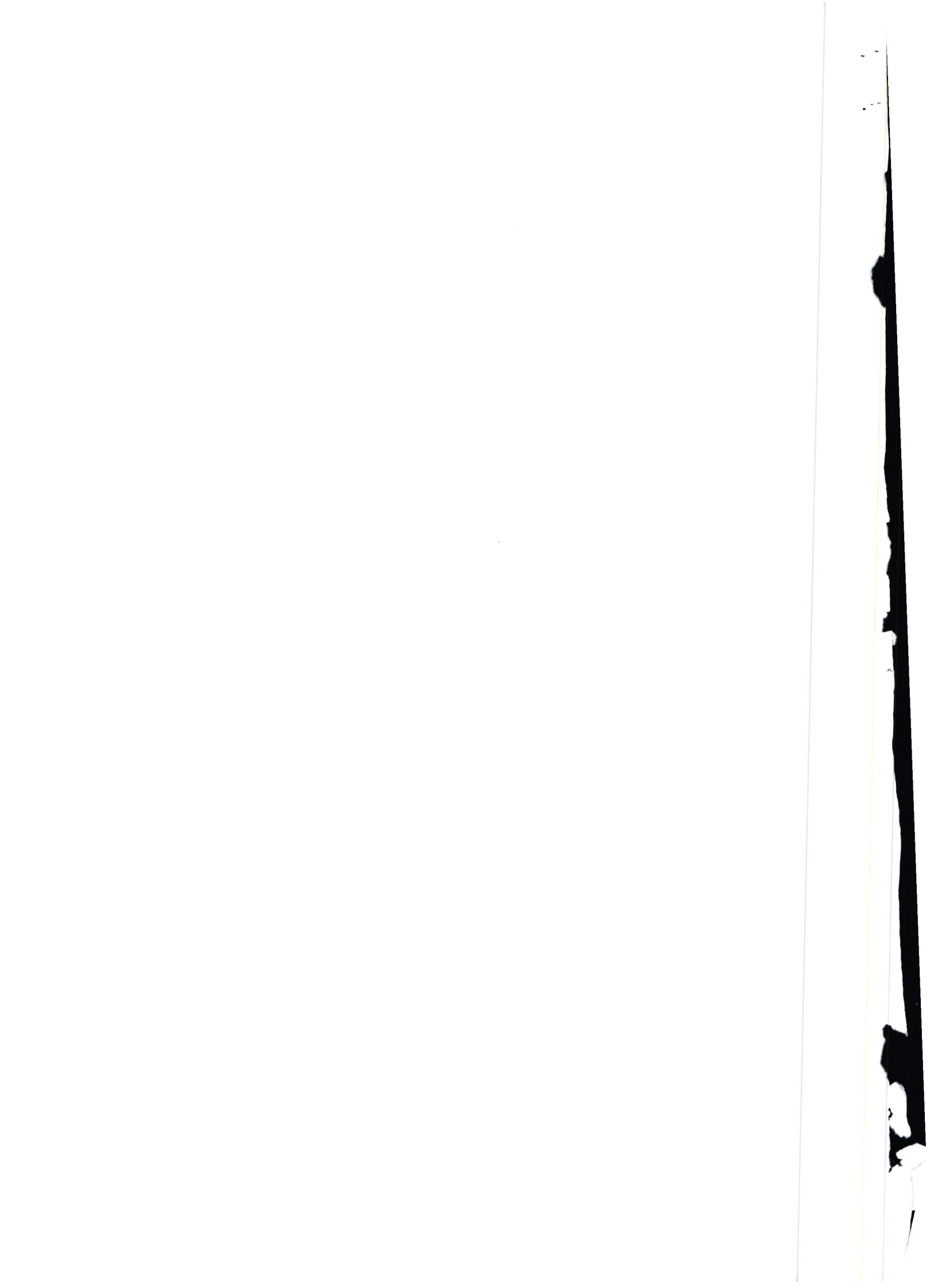
VENUE... CPA ROOM ...

NO.	NAME	SIGNATURE
	Hon. William Cheptumo, M.P. – Chairperson	
	Hon. Alice Wahome, MP. - Vice Chairperson	
	Hon. John Olago Aluoch, MP.	
	Hon. Roselinda Soipan Tuyu, MP.	
	Hon. Ben Momanyi, MP.	
	Hon. Mwamkale William Kamoti, MP.	
	Hon. Peter Opondo Kaluma, MP.	
	Hon. Charles Gimose, MP.	
	Hon. Johana Ngeno Kipyegon, MP.	
	Hon. Zuleikha Hassan, MP.	
	Hon. John Kiarie Waweru, MP.	
	Hon. George Gitonga Murugara, MP.	

13.	Hon. Adan Haji Yussuf, MP.	
14.	Hon. Japheth Kiplangat Mutai, MP.	
15.	Hon. Anthony Githiaka Kiai, MP.	<i>K. A.</i>
16.	Hon. Jennifer Shamalla, MP.	<i>Shamalla</i>
17.	Hon. Beatrice Adagala, MP.	<i>Beady</i>
18.	Hon. John Munene Wambugu, MP.	
19.	Hon. Boss Shollei, CBS, MP.	<i>Boss Shollei</i>

  
 GEORGE GAZEMBA, ACI Arb  
 For: CLERK OF THE NATIONAL ASSEMBLY

**MINUTES OF THE  
COMMITTEE SITTINGS**



MINUTES OF THE NINETY-SECOND SITTING OF THE  
DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS  
HELD ON TUESDAY, 13<sup>TH</sup> NOVEMBER, 2018 AT 10.00 A.M. IN THE  
COMMISSION BOARDROOM ON FIRST FLOOR, COUNTY HALL,  
PARLIAMENT BUILDINGS

PRESENT-

1. Hon. William Cheptumo, M.P. - Chairperson
2. Hon. Alice Muthoni Wahome, M.P. - Vice Chairperson
3. Hon. Jennifer Shamalla, M.P.
4. Hon. Charles Gimose, M.P.
5. Hon. George G. Murugara, M.P.
6. Hon. John M. Wambugu, M.P.
7. Hon. Ben Momanyi, MP.
8. Hon. Anthony G. Kiai, M.P.
9. Hon. Peter O. Kaluma, M.P.
10. Hon. John Olago Aluoch, M.P.
11. Hon. Beatrice Adagala, M.P.
12. Hon. Japheth Mutai, M.P.
13. Hon. Adan Haji Yussuf, M.P.
14. Hon. William K. Mwamkale, M.P.

ABSENT WITH APOLOGIES-

1. Hon. Gladys Boss Shollei, CBS, M.P.
2. Hon. Roselinda Soipan Tuya, M.P.

ABSENT-

1. Hon. Zuleikha Hassan, M.P.
2. Hon. Johana Ng'eno, M.P.
3. Hon. John Kiarie Waweru, M.P.

IN ATTENDANCE-

COMMITTEE SECRETARIAT

1. Michael Sialai - Clerk of the National Assembly



- |                       |   |                                 |
|-----------------------|---|---------------------------------|
| 2. Michael Karuru     | - | Deputy Director, Legal Services |
| 3. Mr. George Gazemba | - | Principal Clerk Assistant II    |
| 4. Mr. Denis Abisai   | - | Principal Legal Counsel I       |
| 5. Ms. Fiona Musili   | - | Research Officer III            |
| 6. Mr. Hakeem Kimiti  | - | Audio Officer                   |
| 7. Mr. Simon Maina    | - | Library/ Office Superintendent  |

**MIN No. 341/2018:-**

**PRELIMINARIES**

The chairperson called the meeting to order at 10.00 a.m. which was followed by a word of prayer by Hon. Charles Gimose.

**MIN No. 342/2018:-**

**CONSIDERATION OF PETITIONS**

- (i) **Consideration of Petition by Mr. Peter Mugo Munya seeking to amend Article 9(3) of the constitution of Kenya to declare 9<sup>th</sup> March, as the national peace day**

Mr. Peter Mugo Munya submitted as follows in support of his petition-

- (i) His decision to petition the House was informed by the 9<sup>th</sup> March, 2018 handshake between President Uhuru Kenyatta and former Prime Minister Raila Odinga after the hotly contested 2017 Presidential elections and the best gift Kenyans could give them would be the declaration of 9<sup>th</sup> March a national peace day for commemoration;
- (ii) The handshake marked a renaissance in the country's history after several years of elusive peace occasioned by disputed presidential election results and would be a gateway to greater cohesion, peaceful co-existence, tranquillity and sense of nationhood;
- (iii) The aftermath of the handshake would be a key pillar to social economic growth as the country endeavours to achieve Vision 2030; and
- (iv) He had studied the Public Holidays Act, Cap 110 and concluded that 9<sup>th</sup> March could only be declared national holiday through a constitutional amendment by Parliament and not by the Cabinet Secretary.

The Committee observed as follows-

- (i) The Petitioner had a noble idea but was of the view that it was still too early to celebrate results of the handshake; and
- (ii) There were many holidays in Kenya which was not in the best interest of the business community thus no need for declaration of more holidays. The Petitioner however argued that China had many holidays some running for as long as one (1) month yet it excelled economically compared to Kenya.
- (ii) Consideration of Petition by Mr. Derrick Otieno Okadia to legislate on Admiralty Courts

Mr. Derrick Otieno Okadia introduced himself as an Advocate of the High Court of Kenya practising in Shipping and Maritime Law under the firm name of Julu Okadia Advocate domiciled in Nairobi. He submitted as follows in support of his Petition-

- (i) The Admiralty Court in Kenya as currently constituted relied heavily on the United Kingdom's jurisdiction by dint of the Judicature Act. This had caused confusion amongst practitioners as to what position to adopt in the Kenyan constitution given the prevailing circumstantial context in the United Kingdom and Kenya.
- (ii) His concerns had been raised by Judges in their various pronouncements in court but relevant authorities had not taken action to address the situation.

The Committee observed that shipping and maritime was one area with a lot of potential for the legal practitioners and found it necessary for the country to have in place proper legislation for the purposes of administration of justice.

The Committee directed the Petitioner as follows-

- (i) To submit to the Committee precedents pointing to the gaps in the United Kingdom and Kenyan maritime laws;
- (ii) Develop draft legislation to jumpstart the process of enacting legislation to enact an Admiralty Court and repeal of sections of statutes that confer jurisdiction to the Admiralty Court based on the United Kingdom laws or any other jurisdiction not being Kenyan jurisdiction.
- (iii) Identify stakeholders in the shipping and maritime industry for the purposes of legislation making and share with the Committee.



**(iii) Consideration of Petition by Hon. Robert Mbui on compensation to victims and survivors of the Kyanguli Secondary School fire tragedy**

The Member submitted that despite a court judgement in 2016, the Government was yet to compensate victims and survivors of the Kyanguli Secondary School fire tragedy which occurred in the year 2000, an amount of Kshs.40,000,000.00 whereas there was no pending appeal against the judgement.

It was agreed between the Committee and the Member that the petition be addressed through a question in the House whereby the Attorney-General would appear before the Committee and the Member prosecutes the question.

**MIN No. 343/2018: ANY OTHER BUSINESS**

**(i) The Parliamentary Service Bill, 2018**

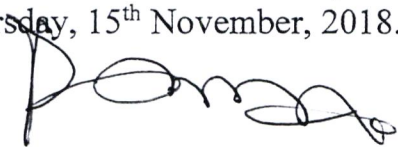
Whereas Members were concerned that the Bill did not make any provision on their welfare, the Clerk of the National Assembly informed the Committee that there was a pending court case relating to the subject, the judgement of which was to be delivered on 4<sup>th</sup> December, 2018 and that it would be prudent for the provision to be made depending on the outcome of the court case.

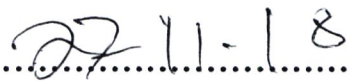
The Clerk was of the view that provision on monitoring and evaluation of constituency programmes and activities by Members of the National Assembly be made in the Bill. He was also of the view that further provision be made on the establishment of a tribunal to be making recommendations on Members' Welfare as opposed to the Salaries and Remuneration Commission (SRC) determining.

The Committee resolved that the Chairperson should consult the House leadership on whether or not to delay the tabling of the report pending further proposed amendments based on the outcome of the court case.

**MIN No. 344/2018: ADJOURNMENT**

There being no other business to transact, the Chairperson adjourned the meeting at 1.00 p.m. till Thursday, 15<sup>th</sup> November, 2018.

Signed.....  
  
Chairperson

Date.....  
  
Date.....



**MINUTES OF THE NINETY - FOURTH SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS HELD ON TUESDAY, 27<sup>TH</sup> NOVEMBER, 2018 AT 11.30 A.M. IN CPA ROOM, MAIN PARLIAMENT BUILDINGS**

**PRESENT-**

1. Hon. William Cheptumo, M.P. - Chairperson
2. Hon. Ben Momanyi, MP.
3. Hon. John Olago Aluoch, M.P.
4. Hon. William K. Mwamkale, M.P.
5. Hon. Charles Gimose, M.P.
6. Hon. Jennifer Shamalla, M.P.
7. Hon. Anthony G. Kiai, M.P.
8. Hon. George G. Murugara, M.P
9. Hon. Beatrice Adagala, M.P
10. Hon. Gladys Boss Shollei, CBS, M.P
11. Hon. John Kiarie Waweru, M.P.

**ABSENT WITH APOLOGIES**

1. Hon. Alice Muthoni Wahome, M.P. - Vice Chairperson
2. Hon. Peter O. Kaluma, M.P.
3. Hon. Roselinda Soipan Tuya, M.P.
4. Hon. Japheth Mutai, M.P.
5. Hon. John M. Wambugu, M.P.
6. Hon. Adan Haji Yussuf, M.P.

**ABSENT**

1. Hon. Zuleikha Hassan, M.P.
2. Hon. Johana Ng'eno, M.P.

**IN ATTENDANCE**

1. Ms. Halima Hussein
2. Ms. Fiona Musili

**COMMITTEE SECRETARIAT**

- Third Clerk Assistant
- Researcher Officer III

**MIN No. 349/2018**

**PRELIMINARIES**

The chairperson called the meeting to order at 11.30 A.m. which was followed by a word of prayer from Hon Beatrice Adagala, MP.

**MIN No. 350/2018**

**CONFIRMATION OF PREVIOUS MINUTES**

The following Minutes of the previous Sittings were confirmed as below;

1. Minutes of the 93<sup>rd</sup> Sitting held on Wednesday 14<sup>th</sup> November, 2018 at 11.00 am in Committee Room 9 were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. George G. Murugara, M.P and seconded by Hon. Beatrice Adagala, MP.
2. Minutes of the 92<sup>nd</sup> Sitting held on Tuesday 13<sup>th</sup> November, 2018 at 10.00 am in Commission Boardroom were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Anthony Kiai, M.P and seconded by Hon. Charles Gimose, MP.
3. Minutes of the 91<sup>st</sup> Sitting held on Monday 12<sup>th</sup> November, 2018 at 3.00 pm in Country Hall, Windsor Gold Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Ben Momany, M.P and seconded by Hon. George G. Murugara, MP.
4. Minutes of the 90<sup>th</sup> Sitting held on Monday 12<sup>th</sup> November, 2018 at 9:30 am in Country Hall, Windsor Gold Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Ben Momany, M.P and seconded by Hon. George G. Murugara, MP.
5. Minutes of the 89<sup>th</sup> Sitting held on Thursday 8<sup>th</sup> November, 2018 at 11:55 am in Committee Room 7 were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, M.P and seconded by Hon. George G. Murugara, MP.
6. Minutes of the 88<sup>th</sup> Sitting held on Thursday 1<sup>st</sup> November, 2018 at 7:30 am in Maria Room, Hotel Intercontinental were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, M.P and seconded by Hon. Beatrice Adagala, MP.
7. Minutes of the 87<sup>th</sup> Sitting held on Saturday 27<sup>th</sup> October, 2018 at 2:30 pm in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. John Olago, M.P and seconded by Hon. Willaim Kamoti, MP
8. Minutes of the 86<sup>th</sup> Sitting held on Saturday 27<sup>th</sup> October, 2018 at 10:00 am in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. John Olago, M.P and seconded by Hon. Willaim Kamoti, MP
9. Minutes of the 85<sup>th</sup> Sitting held on Friday 26<sup>th</sup> October, 2018 at 2:30 pm in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. Jennifer Shamalla, M.P and seconded by Hon. Charles Gimose, MP



10. Minutes of the 84<sup>th</sup> Sitting held on Friday 26<sup>th</sup> October, 2018 at 9:50 am in Weldon Room, Tamarind Village Hotel were confirmed as true record of the proceedings and signed by the Chairperson after being Hon. George G. Murugara, M.P and seconded by Hon. Beatrice Adagala, MP.

11. Minutes of the 83<sup>rd</sup> Sitting held on Tuesday 23<sup>rd</sup> October, 2018 at 10:00 am in Boardroom, second Floor, Protection House were confirmed as true record of the proceedings and signed by the Chairperson after being proposed by Hon. John Olago, M.P and seconded by Hon. Willaim Kamoti, MP

**MIN No. 351/2018**

**MATTERS ARISING**

**Under Min.No.314/2018 – Any Other Business**

Hon Jennifer Shamalla's concerns over the difficulties she encountered while surrendering her imprest were not captured.

**MIN No. 352/2018**

**CONSIDERATION AND ADOPTION OF THE  
DRAFT REPORTS ON LEGISLATIVE  
PROPOSALS AND PETITIONS**

The Committee considered and unanimously adopted the following draft reports.

1. Report on the legislative proposal for the Institute of Directors of Kenya Bill, 2018 by Hon. (Dr). Chris Wamalwa, MP that seeks to establish the Institute of Directors to provide for the registration and regulation of the standard and practice of members of Boards
2. Report on the legislative proposal for the Law of Contract (Amendment) Bill, 2018 by Hon. Waititu Francis Munyua, MP that seeks to amend the Law of Contract Act, CAP 23 to require a creditor to first realise the security of a principal debtor in case of default payment of a loan.
3. Report Of the legislative proposal for the Anti-Corruption and Economic Crimes (Amendment) Bill, 2018 that seeks to amend Section 48 of the Anti-Corruption and Economic Crimes Act, 2003 to impose a life sentence on any person convicted of corruption or any other economic crimes.
4. Report on the petition to introduce a new National Peace Day on 9<sup>th</sup> March by Mr. Petr Mugo Mukua
5. Report on the petition on the compensation of the parents/guardians of victims and survivors of the Kyanguli Secondary School fire tragedy by Hon Robert Mbui, MP

6. Report of the petition to amend Article 171 (2) (f) of the Constitution of Kenya to vacate the fifteen (15) years' experience as a mandatory requirement for eligibility for election as member of the Judicial Service Commission representing the Law Society of Kenya by Law Society of Kenya
7. Report on the petition to amend Section 18 of the La Society of Kenya Act to vacate the fifteen (15) years' experience as a mandatory requirement for eligibility for election as President or Vice President of the Law Society of Kenya Council by Law Society of Kenya
8. Report on the petition for the enactment of the admiralty court act by Mr. Derrick Otieno Okadia.

**MIN No. 353/2018**

**ANY OTHER BUSINESS**

Members raised concerns over the consistent absence of some Committee Members. The Chairperson undertook to follow up on the matter and update the Committee in its subsequent meeting

**MIN No.354/2018:**

**ADJOURNMENT**

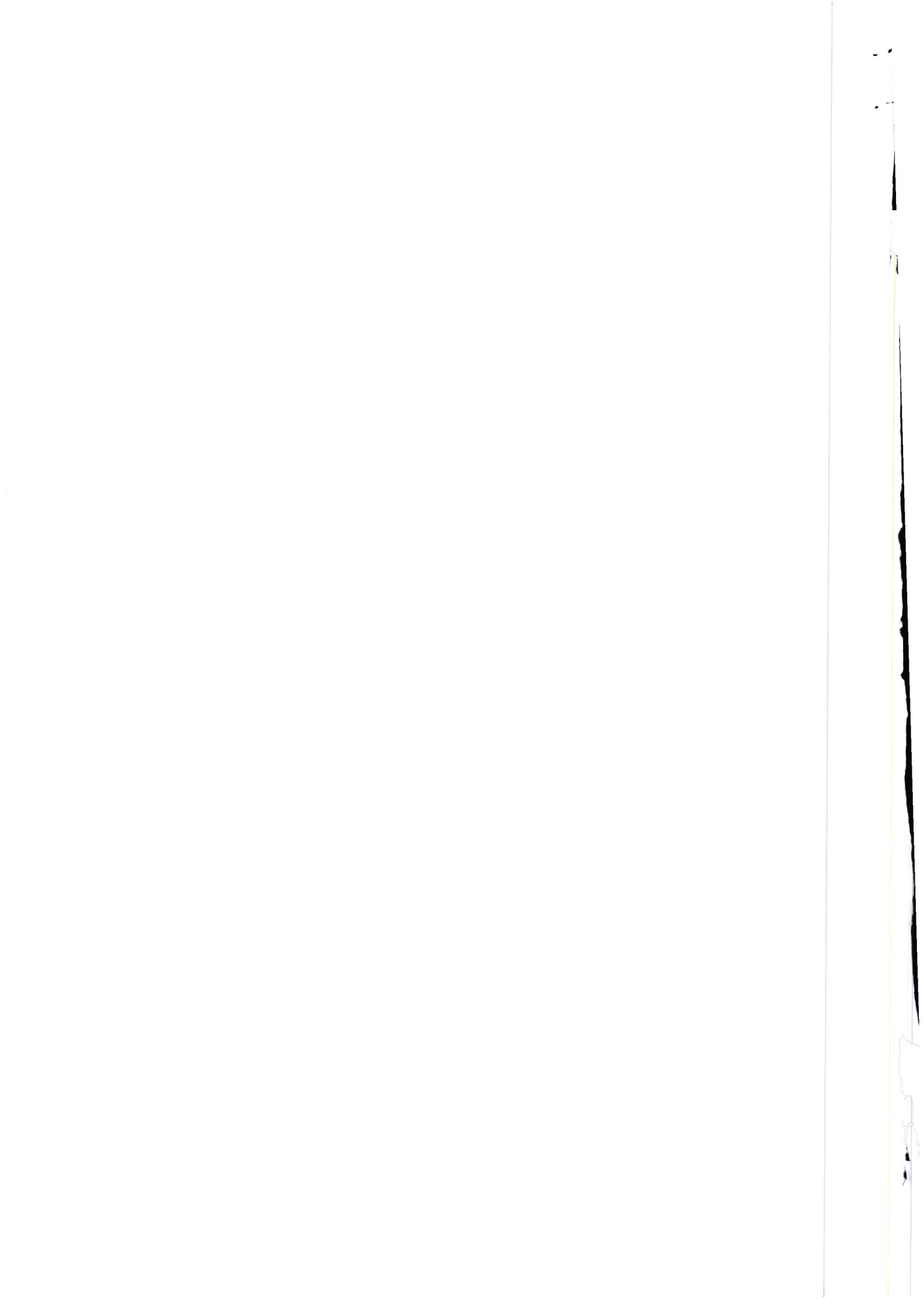
There being no other business to transact, the Chairperson adjourned the meeting at 12.50 p.m.

Signed.....

Chairperson

Date.....4.12.18.....

**COPY OF THE  
PETITION**



PETITION TO PARLIAMENT ACT

[Section 3]

FORM OF PETITION

I, the undersigned,

Being an Advocate of the High Court of Kenya practicing in Shipping and Maritime Law and practicing as such under the firm of Julu Okadia Advocates, Suite 505 B, 5<sup>th</sup> Floor, Pioneer House, Moi Avenue, P.O. Box 12-00502, Karen, Nairobi and a Resident of Nairobi County within the Republic of Kenya;

DRAW the attention of the National Assembly to the following:

THAT the Admiralty Court as currently constituted and jurisdiction conferred has a crippling reliance on the United Kingdom's jurisdiction by dint of the Judicature Act. Resultantly, this causes a state of confusion among practitioners as to what position to adopt in the Kenyan jurisdiction given that the prevailing circumstances in consideration of the laws in the United Kingdom do not necessarily match the position in the Kenyan context. Further, the Statutes need to be in harmony with the Constitution of Kenya, 2010 in light of the specialized courts under Article 162 of the Constitution, 2010. Hence need for Parliament to enact an Admiralty Court Act.

THAT this question has been raised on several occasions by Judges in their various pronouncements in the Courts of Law for several years spanning into decades. However, the various bodies that these courts have implored upon to take action have not recorded any significant steps known neither to Practitioners of the Law or the Judges adjudicating before the Admiralty Court.

THAT the petition to have an Admiralty Court Act in Kenya is currently not under consideration by any entity by way of points of law before the Honorable Courts of Law or any other relevant body tasked with the drafting and overseeing such promulgation of Laws.

HEREFORE your humble petitioner Prays that Parliament:-

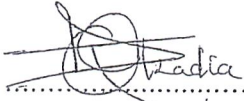
- a) Shall consider this Petition with urgency;
- b) Repeal sections of Statutes that confer Jurisdiction on the Admiralty Court based on the United Kingdom laws or any other Jurisdiction not being Kenyan Jurisdiction;
- c) Shall enact an Admiralty Court Act taking the relevant circumstances within the Kenyan Jurisdiction.

And your PETITIONER will ever Pray.

PETITION FOR AN ADMIRALTY COURT ACT






<i>Name of Petitioner</i>	<i>Full Address</i>	<i>National ID or Passport No.</i>	<i>Signature/Thumb Impression</i>
DERRICK OTIENO OKADIA	P.O. BOX 12-00502, KAREN-NAIROBI	27799662/ A2001686	 ..... 23/04/2018

PETITION concerning the enactment of an Admiralty Court Act given that the court as currently constituted and conferred jurisdiction has a crippling reliance on the United Kingdom's jurisdiction by dint of the Judicature Act. Resultantly, this causes a state of confusion among practitioners as to what position to adopt in the Kenyan jurisdiction given that the prevailing circumstances in consideration of the laws in the United Kingdom do not necessarily match the position in the Kenyan context. Further, the Statutes need to be in harmony with the Constitution of Kenya, 2010 in light of the specialized courts under Article 162 of the Constitution, 2010. Hence need for Parliament to enact an Admiralty Court Act.

Name of Petitioner

DERRICK OTIENO OKADIA

Signature

  
.....  
23/04/2018

