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TO THE CLERK OF THE SENATE,
C/O PARLIAMENT BUILDINGS,
P.O BOX 41842-00100,
NAIROBI, KENYA.

PETITION TO THE SENATE UNDER ARTICLE 119 OF THE CONSTITUTION AND STANDING ORDER 222(2) FOR INTEREVENTION IN THE ACTIVITIES OF NAKURU COUNTY GOVERNMENT AND COUNTY ASSEMBLY

WE the undersigned, Citizens of Kenya residing in Nakuru County do hereby petition and draw the attention of the Senate for intervention on matters obtaining in Nakuru County Government and County Assembly specifically with regard to activities of the County Government and the Assembly on the following grounds;

a) Serious violation of the Constitution in appointment of CEC for Lands and Secretary to the County Public Service Board by the County Government of Nakuru.

b) Serious violation of the laws of Kenya, especially the Public Procurement and Disposal Act by the County Assembly of Nakuru.

c) Gross misconduct in the performance of functions by the County Government, the Assembly and the Transitional Authority.

d) Incompetence and misuse of public funds contrary to the provisions of the Constitution of Kenya

e) Confusion surrounding Pensions and contributory benefits such as LAPFUND, LAPTRUST and PAYE in Nakuru County.

The facts constituting the grounds are as follows;



FAILURES OF THE COUNTY GOVERNMENT

(a) **Irregularly appointment of Mr. Joseph Motari as County Secretary**

THAT, the affairs of the County Government of Nakuru are conducted in a manner that arouses suspicion from members of the public, due lack of fidelity to the rule of law, disorder and gross abuse of office. During the setting up of the County Government, civil society activists and the Rift Valley Law Society sued Governor,Kinuthia Mbugua accusing him of not following the law when appointing the County Executive Committee Members especially Mr. Joseph Motari as the County Secretary. In fact, the name that was forwarded to the Nakuru County Assembly was for a Mr. J. M. Mogusu.

THAT, Justice AnyaraEmukule made a ruling upholding a decision by the Committee on Appointments from the Nakuru County Assembly to reject the nominees as well as the appointment of Mr. Motari as the County Secretary. Mr. Motari was rejected on the grounds that he was not competitively sourced. According to the Judge, the County Assembly members were right to reject the nominees on the grounds of contravention of the law. Further, Mr. Motari was required to vacate office as he had been appointed to the position on an interim basis by National Transition Authority.

THAT, reference be made to the Kenya Gazette notice dated the 18th June 2013 in which the Governor Nakuru County appointed Mr. Motari as the County Secretary. However, following the above mentioned court process; the names were de-gazetted in a gazette notice dated the 1st July 2013. Both by design and by default, Mr. Motari's name was not in the latter notice and he is still in office and happily purporting to conduct the affairs of the County as Nakuru County Secretary and Head of Public service. This confirms concerns about disregard of the rule of law by the Nakuru County Governor and laxity of the Nakuru County Assembly to implement its mandate of oversight of the executive.

b. Continued Stay in Office by Nakuru County Lands Executive Rachel Maina

THAT, Nakuru County Executive in charge of Lands M/s Rachel Maina faced impeachment after notice of a motion for her removal was given for alleged abuse of office. She was also

accused of being incompetent to run the lands docket. Nakuru County Assembly speaker Ms. Susan Kihika then appointed a committee of five members to investigate the allegations leveled against M/s Maina against a requirement of a third member committee.

Secondly, some allegations of impropriety on her part emerged from Nyandarua County where she previously worked at the Ministry of Lands.M/s Maina has been writing letters to local investors demanding demolition of buildings in the central business district of Nakuru Town, leasing of government land and clearing dubious plans without the consent of the County Assembly. Furthermore, until now, there is no County Boards for Municipalities and development committees. She has been therefore taking unilateral decisions in total disregard of the County Government Act (2012) and the Constitution of Kenya.

THAT, further, according to the Constitution, it's expected that a State officer shall not use the office to unlawfully or wrongfully enrich himself or herself or any other person. Since the CEC for Lands faced impeachment motion, she has been carrying out the functions of the Lands Commission unilaterally, undermining the constitutional requirement that the lands Commission shall work in consultation and co-operation with the National and County governments subject to Article 10 and Article 232 of the Constitution, and further that there is need for the establishment of County Land Management Boards whose nominees must be vetted by the County Assembly for the purposes of managing public Land.

THAT, the County Land Management board is expected to subject to the physical planning and survey requirements, process applications for allocation of land, change and extension of user, subdivision of public land and renewal of leases. To this end, Rachel Maina (The CEC for Lands) has been carrying out land adjudication, approving building plans, and renewing lease documents unilaterally. There are widespread fears that she is transferring public land to private investors for a personal gain and drawing strength from the purported County Secretary who signs consent of documents.

THAT, due to her acts of commission or omission, the urban Centre in Nakuru town has been reduced to a shanty with illegal constructions and intermitted conflicts with residents who are

slowly loosing value of their investments to the street vendors who have encroached their verandas and making them not accessible a situation that has led to them access to insurance covers for their properties. As a result, SMEs in the county and local investors have suffered irreparable losses and damage to their property.

THAT, the county government has been conducting unlawful arrests in the name of a non existing Municipal Council which conducts and uses a government magistrate under court No. 5 which was previously used by the previous Local Authority to enforce its By – Laws. The former municipal council offers who don't have powers to arrest nor to investigate crimes have been conducting arrests with the help of the Administration Police and arraign people in the said court and penalties paid to the said court act as a revenue source for the county and it's never declared or the signatories of the said account are still not disclosed. To this end, the SME's have been trying to seek redress in court but to no avail.

THAT have now become a subject of abuse by the said reinforcement purporting to reinforce county laws and its important to note that the said officers duties have not been restructured now that the local authorities was transited by the county government; and their activities are subject to investigations because they have not been gazette by the police service as well.. Actually they do not have powers to arrest and prosecute thus, their actions are illegitimate and the claims of enforcing the municipal bylaws are illegitimate since the institution does not exist in law.

THAT county Government has been accessing resources meant for legal fees without the approval of the County Assembly. To this end, the County Government has more than 1000 case in court, and some of this litigation are unnecessary and are occasioned by the incompetence of both the said C.E.C and C.E.O .Actually, the duo have been engaging illegitimate groups and the police to harass and detain, solicit for money from the street vendors in exchange for road reserves and Bus parks spaces for them to do business. Until now they have not mapped the land use and needs in the county but have been sneaking people in private properties, a issue that is exposing the needy to loss of money in exchange for some space being awarded by the Biashara Ward representative and some illegitimate sect members (Mungiki), a situation that has caused the re-emergence of this outlawed group and hence, exposing majority of the many desperate

youths to get recruited to the sect. It is important to seek arbitration of the petitions in court since, the costs of these suits are quite exorbitant and some are out of negligence, and incompetence of the said executive members. It is important for the senate to know how these lawyers are sourced for and their services procured because it is feared that one of the lawyers is using undue influence to embezzle monies from the county government.

THAT in the beginning of the year, the Governor declared the Central Business District as a no go zone for the SME's and deployed a team of police officers to patrol the town for more than a month to ensure that the vendors did not access their areas of operation. It is not clear how the decision was arrived at with fears that it was done in the District Security Committee which does not have structures now that security is not a devolved function. The allowances paid to the said officers was equally not clear how it was disbursed now that they are National Government officers and the county does not have the said budgetary allocations. The county has a security department and committee which allocate money to the said National government function illegally to facilitate the allowances. This issue explains the excuse that the revenue brought in the county being used to pay employess ballooning the wage bill further.

c. County Assembly of Nakuru

THAT, the County Assembly has been reduced to a house of convenience and not one of Rules and Procedures. The Speaker has led to legislator's lack of the insight and drive to ably debate bills and thus their role of legislation, oversight, and representation has been usurped by the County Assembly Clerk who has assumed the role of legislation and County Assembly Service Board as follows;

THAT speaker uses intimidation, coercion and its only recently that in an effort to ouster her from offices were frustrated by the County Assembly Clerk who advised her to alter the standing orders and initiate the process of removal of the deputy speaker which she hurriedly did that in the morning when the motion towards her removal was expected to be discussed in the afternoon. In a session which she chaired in her office she proposed and passed amendments to the said standing orders and with the support of goons, armed police officers in civilian

marshaled the mess to the house to enable her to conduct the business of the day. She later had advised that one Hon. Kuria for Biashara ward to pass the notice of a motion towards the amendments of the said standing orders. (Hon.Kuria was expected to shed light on allegations of working with the Mungiki was expected to appear before the committee of the assembly to shed light on the same.)The business of the day was to discuss the motion in favor of the removal of the speaker for gross violation of the constitution and the standing orders. The business of the day was disrupted by the commotions and infighting by the MCA's targeted by the goons, the police who were trying to throw them out of the assembly that day as they resisted the same. Its important to know that until now the speaker has not vacated chair but has been busy strategically aligning members in who are against her removal to chair the sessions to frustrate the process.

THAT, the MCA's who resisted the speaker from accessing the plenary are now subject to further humiliation from the Anti corruption who were well advised by members of the Nakuru Forum about the malpractice in the assembly and have not cared to table any report before the assembly in regard to their findings after conducting the investigations. The issues to be discussed were;

i. **Errors in the Vetting Process of Members of County Executive Committee**:

THAT despite the Constitution demanding that public officers carry out the duties of the office in a manner that maintains public confidence in the integrity of the office, the Committee on Appointments of Nakuru County Assembly has violated the rule of law in appointments on two serious fronts. First, it conducted its affairs without putting in place a legal framework prescribing the procedure to be followed in the vetting process. In addition to this, it made an error of judgment by giving Mr. Samwel Gitau a clean bill of health to become the Nakuru County Trade and Tourism Executive only for allegations to emerge later that he falsified his academic credentials. Mr Gitau resigned in the ensuing storm. Explicitly, this showed lack of due diligence in the way that the committee was doing its work. A situation that members of the County Assembly directed the speaker to allow rotation and change of committees' leadership including the house business that has been frustrating the progressive legislations in the house and the speaker has been undermined. Until now the county has not passed its budgets awaiting

the outcome of the petition by CAF in the senate in order, to afford the speaker an opportune to re appropriate resources for development for her use just in case the senate insists on the ceilings.

ii. **Involvement of the County Assembly in unwarranted litigation: THAT,** time and again, the County Assembly has been involved in unwarranted litigation thereby committing public funds to causes which at times ought to be personal and others which are utterly superfluous. Two examples will suffice; while, it is expected that under the Public Officer Ethics Act,.2003, a public officer demonstrates honesty in the conduct of public affairs and despite, the requirement in a circular dated On 26thjune 2013 from the P.P.O.A which was meant to advise that under Legal Notice No. 60, the Minister for Finance gazetted the Public Procurement and Disposal (County Government) Regulations, 2013 (herein referred to as County Governments Regulations) for the purposes of operationalizing the Public Procurement and Disposal Act, 2005 (the Act), promoting local industry and supporting socio-economic development in the 47 counties established by the Constitution. Consequently, public entities are required to conduct their procurement and disposal activities in accordance with the legislative framework governing public procurement. The speaker didn't care to put the necessary structures to anchor the county assembly as a body corporate that could enter into contracts thus, she went ahead procuring goods and even solicited money from the youth purporting she was going to engage them in cleaning services contracts, only for them to learn later that she did not have that vote. This has led to the county losing millions of shillings since procurement procedures are not followed in the process, and the County Assembly Service Board has been operating with a stranger who was handpicked by the speaker to represent members of the public in the said, institution.

i) **THAT** the Speaker and the Clerk have committed public funds to sue a blogger over allegations of defamation in an online article that he wrote regarding the speakers flamboyant lifestyle as well as the County Assembly Clerk which they have enjoined the Assembly without any minutes confirming the same. However, this matter was also not brought before the County Assembly for it to give consent for public funds to be used in hiring a lawyer Tom Ojienda to prosecute the blogger.

ii) **THAT**, Lack of proper planning and clear policy formulation and legislation has opened a window of corruption at the County Assembly thereby threatening the spirit

of devolution. Due to lack of clarity of the car grants and mortgage loans and the un-practicability of the same, has led to the legislation role in the hands of an incompetent and a non-result oriented Speaker who has introduced unfair competition between legislators e.g. some are offered flights to various training venues while others travel by road. Despite having received the circular from the PPOA CIRCULAR NO. 1/2013 dated 27th JUNE 2013, which sort to issue GUIDELINES ON THE PUBLIC PROCUREMENT AND DISPOSAL (COUNTY GOVERNMENTS) REGULATIONS, 2013) the speaker appointed Family Bank and deposited money to the tune of 210 million to be disbursed in an existent carloan fund and mortgage fund which the board of directors do not exist. Its unfortunate that the regulations have not been gazzetted and hence, illegitimate since, the constitution demands that legislations must be gazzetted before execution and the budget making is a process that cannot be altered and these were fund meant for development and its against the PFM ACT for anyone to alter the budgets of the county and its important for the SRC,Speaker and the County Assembly Clerk

Purported Replacement/Reinstatement of the Leader of Majority in the County Assembly:

The replacement of the leader of Majority at the Nakuru County Assembly by Hon. Samuel Waithuki Njane who is the M.C.A. for Naivasha East and the Deputy majority Hon.Chebor M.C.A for Solai was done in a very crude and suspicious manner. First, some MCAs were called for a meeting and it was later established that they were hoodwinked into signing an attendance sheet which was later turned into a petition for the removal of Hon. Mwaura and Hon. Serem . Later, a caucus of M.C.A.s hurriedly convened by the Speaker at Stem Hotel endorsed the replacement despite clear direction and advice from the National Alliance (TNA) party headquarters and confirmation from URP thereby occasioning a situation where both leaders are men violating the standing orders and the constitution that there should be gender balance in representation. This is repugnant to the observance to the rule of law and an antithesis to the often repeated personal edict of the Hon. Speaker that Nakuru County Assembly is a "House of Rules, Procedures and Laws." It is disheartening that the House seems to show such blatant disrespect to its own rules when it comes to championing some nefarious agendas. Further the purported replacement/reinstatement of the Leader of Majority is illegitimate as it contravenes

Part IV of the County Assembly of Nakuru Standing Orders (As adopted by the County Assembly).However, communication of the speaker in a matter she was in part of the plaintiff's was illegitimate since it's amounts to a matter of conflict of interest since, the speaker was one f the interested parties.

iii) Political Tourism of Members of the County Assembly:

THAT, due to unclear mortgage and car grant policies by the Salaries and Remuneration Commission (SRC), the legislators have been subjected to servitude due to the demands placed upon their income by the car loans. They have to service serious bank debts that have rendered them sycophants so as to keep themselves in the good books of the Speaker. The mortgage which was meant to facilitate their accommodation has been long overdue giving the speaker leeway to continue misleading them purporting to assist them to acquire the same funds. The MCA's cannot bear the burden of sustaining their families as well as service these financial obligations extended to them by SRC insinuating that she was facilitating their tools of trade. They have now been coerced to surrender the logbooks of their cars that they bought with the loans so as to avoid ostensible audit queries.

THAT is important to have the office of Attorney General to devolve her services at the county level to offer guidance on legislations toa avoid passing of substandard legislations for example The Nakuru County Revenue Administration Bill, The Water Bill, and The Nakuru Nuisance bill which lack practicality and are simply a copy and paste of the former Municipal By – Laws.This laws are advocating for the destruction of accountable documents and this will destroy evidence of theft in the county.

THAT the Speaker led Speakers in instituting Petition 368 of 2014[1], in this petition which is against the Commission on Revenue Allocation, Controller of Budget, and the Attorney General, the applicants appeal for more resources against the ceilings prescribed. However, this undermines the sovereignty of our people since they are the ones who put the said institutions through the constitution. The mandate of ensuring budget processes are followed including frameworks for public participation, the economic budget forum, and the strategic plan which

[1] Refer to Petition 368 of 2014

involves informed citizen participation and consultations as advocated article 174 of the Constitution of Kenya (2010) the speaker acted unilaterally in purporting to represent the interests of the Nakuru County Assembly and indeed the whole County. This matter was never brought before the Nakuru County Assembly for it to give the Hon. Speaker the mandate to undertake the actions that she did. The pursuit of 1.2 billion for the County Assembly budget was not a priority for the people of Nakuru and this has enslaved the people who paid taxes expecting services only to be dragged into matters that they least understand. Until, she has declined to have the supplementary budget tabled and debating hoping that the senate will consider revising the ceilings.

THAT, the senate considers aligning the CASB to parliamentary service commission or initiate a commission of representative in order, to have independent institutions mandated with the development of the legislative arm of government to avoid interference of the county budgets with the political gimmicks hence, delaying developments in the county.. It will also be important to safeguard the independence of the County Assemblies as institutions from interference with the SRC which is busy disorientating and micromanaging the Assemblies. in the doctrine of separation of powers its unlawful for the speaker to be in charge of the MCA's salaries since, this exposes them to heroic worship for fears of loosing their allowances and their responsibility allowances which they do once they air different opinion from the speaker occasioning a case of undermine of democracy in the legislative arm of government. Actually, these members cannot afford to pay their loans now; they do not sit even in the minimum committees, a good example is the deputy speaker who faced an axe for fears that he was going to chair the removal of the speaker from office. This was meant to frustrate the motion and deny the members a chance to debate the motion now that the standing orders demand that the motion for the removal of someone takes precedence on the order paper and does not require to be given notice which the house business declined to have it tabled and debated.

THAT, it is important for the senate to know that the government needs to come up with broad based economic empowerment initiatives to address the issues of the bloated wage bill seeking to bring the majority of the youth, women and persons with disability on the tax bracket.

THAT being the majority they are equally the greatest consumers of government services. SRC has denoted these office bearers (Nominated Members) and thus, their representative role has been under facilitated thus, leaving their roles left to unknown fate and has given room for the speaker to continue harassing and abusing these leaders. Sometimes, these leaders help aiding the speaker to manipulate the house, since, they are highly discriminated because they do not access resources meant to facilitate the execution of their mandates. You will find that members who are assertive to resist the speakers unreasonable demands, are frustrated by the speaker who ensures that they cannot access the minimum committees of four causing serious strain on their already mere resources.

THAT a case in example of the humiliation that these subjugated groups get from the government is the recent relocation of hawkers in CBD in Nakuru majority being the women and the youth whereby, the Governor used police and Unlawful sect to harass and evict them from their areas of operation. These has been followed by unlawful arrests by the police where County Government arraigns them in a Municipal Council Court now transited to the County Government and penalties are imposed on them and paid to the County Government Accounts .That the judicial functions are not devolved and the county government cannot purport to have powers to arrest and arraign in court and unfortunately, the penalties levied are a source of undeclared as a County Revenue Resource. There is a group purporting to be Municipal Revenue Officers who undertake the arrests and put them in police cell yet there is are no structures anchoring the said Municipal thereby, a case of impersonation by the said officers now that the defunct local authorities have been transited by the county government. Actually the governor decided to allocate road reserves,drainages,busparks, county government land to settle the said groups and people have moved to court to battle it with the county government and the question remains, does the Governor and the Biashara ward representative have powers to decide allocate, displace people, decide how land is used in the County. Most importantly, it is for the senate to seek know how the decision was arrived at and how the police were paid their allowances now that they are employees of the National Government. .

iii. **Opening of Numerous Bank Accounts by the County Government:** The Public Finance Management Act (201.2) provides in section 119 (2) that "as soon as practicable, each County Treasury shall establish a Treasury Single Account at the Central Bank of Kenya or a bank

approved by the County Treasury through which payments of money to and by the various county government entities are to be made." However, the county government of Nakuru operates numerous accounts into which revenue is banked using pre-designated bank slips as attached. To the best of our knowledge, the County Assembly also operates numerous accounts with several banks. The signatories of these accounts fueling speculation and even creating anxiety as to the motive of such endeavors amidst an illegitimate Revenue Administration Bill that is advocating for the destruction of the accountable documents after seven years. This is a gross violation of the law and the County Executive Committee member for finance as well as the Speaker and Clerk to the County Assembly should shed more light on this.

iv. **LAPFUND and LAPTRUST:** We as Members of the Nakuru County Assembly contribute towards other additional funds namely the Local Authority Provident Fund (LAPFUND) which is a Government of Kenya entity; and the Local Authority Pension Trust Administration Services (LAPTRUST) now rebranded County Pension Fund (CPF); which is a private company. The LAPFUND was established through the Local Authorities Provident Fund Act (1960) with subsequent amendments; while LAPTRUST is established under the Kenya Local Government (Pension) Regulations 1963 (Legal Notice 200 of 1963) and operates under Legal Notice No. 50 of 2007.On or about the 14th of May 2014; the Council of Governors (CoG) unilaterally endorsed LAPTRUST (Umbrella) Retirement Fund (currently referred to as the County Pension Fund or CPF); as the scheme of choice to offer retirement benefits in line with provisions of Section 135 of the County Governments Act which states that;-

"Subject to the transitional provisions herein, all members, officers and staff of a county government shall subscribe to an existing pension scheme for officers and staff of local government." It is prudent to note the following points here;-

i. **THAT** we as Members of the Nakuru County Assembly are strictly speaking; not "members, officers and staff" of the county government

ii. **THAT** the CoG went against its own technical committee's report in endorsing County Pension Fund (CPF) as an umbrella pension for county workers. The cosmetic change of name

from LAPTRUST to CPF is flouts regulation 16 of the Retirement Benefits (Occupational Retirements Benefits Scheme) regulation 2000 made under the RBA Act which requires any amendments to the scheme rules be communicated to the authority for approval. This change of name of the scheme was not communicated to the RBA. As such, it is also worth noting that this CPF is not the same as that suggested by a Presidential Task Force Committee chaired by Abdikadir Mohamed which recommended that LAPTRUST and LAPFUND be merged to create CPF.

iii. **THAT, it** is not clear if LAPTRUST is a private or public scheme since its directors do not report to any ministry and its accounts are not inspected by the Auditor General.

iv. **THAT,** LAPFUND officials say governors have been compromised to support LAPTRUST.

v. LAPFUND has signed agreements with about 30 county assemblies to manage their retirement benefits.

vi. **THAT**, we as Members of the Nakuru County Assembly were not consulted when/if the County Assembly of Nakuru entered into any legally binding arrangement with either LAPTRUST or LAPFUND; bearing in mind that the County Assembly Service Board that purports to have done that was not anchored in any law and thus we require to understand the transitional provisions used then to commit members into LAPTRUST or LAPFUND contributions thereby, occasioning a case of direct fraud.

vii. **THAT**, CPF Financial Services has been embroiled in business tussles with the LAPFUND since the county governments came into being; kindly note my annexure of a letter between the two titled "Defamation & Malicious Falsehood" and newspaper reports over the same matter drawn from various dates.

THAT, the Retirement Benefits Authority (RBA) deregistered LAPTRUST Administration Services with effect from September 4, 2014 over failure by LAPTRUST to comply with directions that had been issued by the authority; accusing LAPTRUST Administration Services Ltd of operating a management structure that has conflict of interest and that the 2.5 per cent

administration fee that LAPTRUST charges to the scheme is above the one per cent industry average. RBA is also concerned about the governance structures of the scheme and has appointed a forensic auditor to investigate the affairs of LAPTRUST retirement benefits scheme. RBA then directed LAPTRUST to surrender its certificates of registration for destruction.

THAT, regarding **Pay as You Earn (PAYE),** it should be noted that there are serious discrepancies between the amounts deducted from the various earnings from our allowances; and the totals that are subsequently remitted to the Kenya Revenue Authority (KRA); with the deductions being amounts being remitted being less than the total deductions.

NOW THEREFORE, your humble petitioners pray that the Senate of the Parliament of Kenya finds;

i. **THAT**, *this petition be dealt with immediately in view of the urgency of the issues raised in order to help reverse the lawlessness that is being seen in Nakuru County.*

ii. **THAT,** *the Senate institutes a tribunal to investigate the conduct of the of the County Government and County Assembly in Nakuru County on the aforementioned matters*

iii. **THAT,** *the senate puts in place the necessary policy frameworks .e.g Economic Budget forums, Standard Accounting Boards, Strategic plans and a feedback mechanism through which citizens can effectively participate in the affairs of the County.*

iv. **THAT,** *the County Assembly should be investigated especially the utilization of funds by the county Speaker to fund local and foreign trips in a manner that is inconsistent with the PFM Act and the Constitution of Kenya.*

v. **THAT,** *the Senate facilitates the Recover lost resources under county government both money and transferable land which has been occasioned by lease, or sale since, the county boards are not in place thereby occasioning a case of looting of public land through illegitimate lease documents and the issuance of illegal title deeds.*

vi. **THAT,** *the Senate help place the county government in the intergovernmental department to help build its revenue collection plans by dissuading the County*

Secretary from opening bank accounts in the name of the County Government. These Accounts should be investigated and reports submitted before the Assembly and their legitimacy established. Including the revenue account for Court whose income is undeclared and advise on the same now that Judiciary is not a function under the county government.

vii. **THAT,** *the Senate should uphold the court ruling regarding the validity of one Mr. Motari who is posing as a County Secretary despite the eligibility being nullified by court. Mr. Motari should be surcharged for the erroneous earnings and losses that the County Government has incurred due to his illegal capacity to head the County Public Service Board. Equally, the senate should define valid time that interim officers stay in office to relieve the Transition Officers who are creating a lot of confusion in the county government.*

viii. **THAT**, *depending with the magnituitude of interfearnce by the unlawful sects, the national government officers, including the police and judiciary the county government be dissolved to avoid exposing members of public to servitude for paying taxes and the same lost in mysterious circumstances.*

ix. **THAT**, *the actions by the Senate should amplify Article 73 (1) (a) (iii) and (iv) of the constitution of Kenya; which states that authority assigned to a State officer, is a public trust to be exercised in a manner that, brings honour to the nation and dignity to the office; and promotes public confidence in the integrity of the office. Intervention of the Senate should also amplify Article 75 (1) (b) and (c) which state that a state officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—*
compromising any public or official interest in favor of a personal interest; or
demeaning the office the officer holds.

Please find the list of Petitioners attached.

GAZETTE NOTICE NO. 9086

THE CONSTITUTION OF KENYA

THE COUNTY GOVERNMENTS ACT

(No. 17 of 2012)

NAKURU COUNTY EXECUTIVE COMMITTEE

REVOCATION OF APPOINTMENT

IN EXERCISE of the powers conferred to me by Article 179 (2) (*b*) of the Constitution as read with sections 30 (2) (*d*), (e) and 35 of the County Governments Act, 2012, I, Kinuthia Mbugua, the Governor of Nakuru County, degazette the following nominees whom I had earlier appointed as County Executive Committee members under Gazette Notice No. 8285 of 2013.

Name of Member	*Responsibilities*
Julius Ogeto (Dr.)	Health Services
Pollyne Anyango Owoko	Information, Communication Technology and e-Government
Stanley K. Chepkwony (Dr.)	Agriculture, Livestock and Fisheries
Mary Kariuki (Prof.)	Lands, Physical Planning and Housing
Joseph Kosgei Tonui	Education, Culture, Youth and Social Services

This notice therefore nullifies the appointments and responsibilities as earlier given immediately.

Dated the 1st July, 2013.

KINUTHIA MBUGUA,
Governor, Nakuru County.

MR/2836553

GAZETTE NOTICE NO. 9087

THE CONSTITUTION OF KENYA

THE COUNTY GOVERNMENTS ACT

(No. 17 of 2012)

MOMBASA COUNTY EXECUTIVE COMMITTEE

APPOINTMENT

IN EXERCISE of the powers conferred by Article 179 (2) (*b*) of the Constitution as read with sections 30 (2) (*d*), (*e*) and 35 of the County Governments Act, 2012, and upon approval by the Mombasa County Assembly in its session held on the 22nd May, 2013, I, Hassan Ali Joho, *Governor of Mombasa County, appoint the persons named in* the first column of the Schedule, to be members of the Mombasa County Executive Committee responsible for the matters respectively specified in the second column of the Schedule.

Name of member	*Responsibilities*
Anthony Mjaramba	Tourism Development
Mohammed Abbas	Transport and Infrastructure
Walid Khalid	Finance and Economic Planning
Tumbo Joab Odhiambo	Health
Tendai Mtana Lewa	Education
Binty Omar	Agriculture, Livestock and Fisheries
Mohamed Ibrahim Abdi	Trade, Energy and Industry

Dated the 20th June, 2013.

HASSAN ALI JOHO,
Governor, Mombasa County.

This Gazette Notice amends Gazette Notice No. 7078 of 2013.

GAZETTE NOTICE NO. 9088

THE CONSTITUTION OF KENYA

THE COUNTY GOVERNMENTS ACT

(No.17 of 2012)

MURANG'A COUNTY EXECUTIVE COMMITTEE

APPOINTMENT

IN EXERCISE of the powers conferred by Article 179 (2) (*b*) of the Constitution as read with sections 30 (2) (d), (e) and 35 of the County Governments Act, 2012, and upon approval by the Murang'a County Assembly in its session held on the 28th June, 2013, I, Mwangi Wairia, Governor of Murang'a County, appoint the persons named in the first column of the schedule, to be members of the Murang'a County Executive Committee responsible for the matters respectively specified in the second column of the schedule.

SCHEDULE

Name of Member	*Responsibilities*
David Wakaba Wawer[illegible]	Education, Information and Technology
David Ndung'uKamau	Trade, Enterprise and Tourism Promotion
Susan Muthoni M. (Dr.)	Health, Water and Sanitation

Dated the 28th June, 2013.

MWANGI WAIRIA,
Governor, Murang'a County.

MR/2728475

GAZETTE NOTICE NO. 9089

THE CONSTITUTION OF KENYA

THE COUNTY GOVERNMENTS ACT

(No. 17 of 2012)

MURANG'A COUNTY EXECUTIVE COMMITTEE

AMENDMENT

IN Gazette Notice No. 7862 of 2013, *amend* the name of *Committee member responsible for Agro Marketing and Co-operative* Development to *read* "Edward Muiruri Maina" *instead* of "Edward Muiruri Njoroge".

Dated the 3rd July, 2013.

MWANGI WAIRIA,
Governor, Murang'a County.

MR/2728475

GAZETTE NOTICE NO. 9090

THE CONSTITUTION OF KENYA

THE COUNTY GOVERNMENTS ACT

(No. 17 of 2012)

NYERI COUNTY EXECUTIVE COMMITTEE

APPOINTMENT

IN EXERCISE of the powers conferred by Article 179 (2) (*b*) of the Constitution as read with sections 30 (2) (*d*), (*e*) and 35 of the County Governments Act, 2012, and upon approval by the Nyeri County Assembly in its sessions held on the 17th June, 2013, and 2nd July, 2013, I, Nderitu Gachagua, Governor of Nyeri County, appoint the persons named in the first column of the Schedule, to be members of the Nyeri County Executive Committee responsible for the matters respectively specified in the second column of the Schedule.

SCHEDULE

Name of member	*Responsibilities*
Timothy Gachanja Ngunyangi	Water, Sanitation, Environment and Natural Resources
Martin Kanyuaigwa Wamwea	Finance and Economic Planning
Charles Githua Githinji (Dr.)	Health Services
Priscilla Muthoni Wanyiri	Public Administration, Information and Communication
John Mwangi Maina	Physical Planning and Housing
Elija Karito Nguyo	Education and I.C.T.
Stanley Kigotho Miano	Trade Investment and Industry
Joseph Wambugu Kirangu (Eng.)	Transport, Roads, Rural Electrification and Public Works

Dated the 3rd July, 2013.

NDERITU GACHAGUA,
Governor, Nyeri County.

"WA02"

THIS IS THE EXHIBIT MARKED WA02
REFERRED TO IN THE ANNEXED
AFFIDAVIT/DECLARATION
BY [illegible]
BEFORE ME THIS 2nd DAY OF Sept 2013
AT NAKURU
COMMISSIONER FOR OATHS

GAZETTE NOTICE NO. 8284

THE CONSTITUTION OF KENYA

THE COUNTY GOVERNMENTS ACT

(No. 17 of 2012)

BARINGO COUNTY EXECUTIVE COMMITTEE

APPOINTMENT

IN EXERCISE of the powers conferred to me by Article 179 (2) (*b*) of the Constitution as read with sections 30 (2) (*d*), (e) and 35 of the County Governments Act, 2012, and upon approval by the Baringo County Assembly in its session held on the 21st May, 2013, I, Benjamin Chesire Cheboi, the Governor of Baringo County, appoint the person named in the first column of the Schedule, to be a member of the Baringo County Executive Committee responsible for the matters respectively specified in the second column of the Schedule.

Name of Member	*Responsibilities*
Geoffrey Kipruto Bartenge	Agriculture, Livestock and Fisheries Management

Dated the 1st June, 2013.

BENJAMIN CHESIRE CHEBOI,
Governor, Baringo County.

MR/2727372

GAZETTE NOTICE NO. 8285

THE CONSTITUTION OF KENYA

THE COUNTY GOVERNMENTS ACT

(No. 17 of 2012)

NAKURU COUNTY EXECUTIVE COMMITTEE

APPOINTMENT

IN EXERCISE of the powers conferred to me by Article 179 (2) (*b*) of the Constitution as read with sections 30 (2) (*d*), (e) and 35 of the County Governments Act, 2012, and upon approval by the Nakuru County Assembly in its session, I, Kinuthia Mbugua, the Governor of Nakuru County, appoint the persons named in the first column of the Schedule, to be members of the Nakuru County Executive Committee responsible for the matters respectively specified in the second column of the Schedule.

Name of Member	*Responsibilities*
Julius Ogeto (Dr.)	Health Services
Pollyne Anyango Owoko	Information, Communication Technology and e-Government
Stanley K. Chepkwony (Dr.)	Agriculture, Livestock and Fisheries
Mary Kariuki (Prof.)	Lands, Physical Planning and Housing
Joseph Kosgei Tonui	Education, Culture, Youth and Social Services
Joseph Mogosi Motari	County Secretary

Dated the 18th June, 2013.

KINUTHIA MBUGUA,
Governor, Nakuru County.

MR/2728118

GAZETTE NOTICE NO. 8286

THE CONSTITUTION OF KENYA

THE COUNTY GOVERNMENTS ACT

(No. 17 of 2012)

MIGORI COUNTY ASSEMBLY SERVICE BOARD

APPOINTMENT

IN EXERCISE of the powers conferred by section 12 of the County Governments Act, 2012, the Migori County Assembly has appointed the following to be members of the County Assembly Service Board.

Name of Member	*Responsibilities*
Gordon Fred Ogola	Speaker of the County Assembly—(*Chairman*)
Johnson Omollo Owiro	Leader of Majority Party—(*Vice-Chairman*)
Charles Nyamohanga Nyangi	Leader of Minority Party
Gladys Akoth Ngere	
Patrick O. Wakine	Interim Clerk of County Assembly—(*Secretary to the Board*)

Dated the 10th June, 2013.

PATRICK O. WAKINE,
Interim Clerk of County Assembly.

MR/2727359

GAZETTE NOTICE NO. 8287

THE CONSTITUTION OF KENYA

THE COUNTY GOVERNMENTS ACT

(No. 17 of 2012)

MAKUENI COUNTY ASSEMBLY SERVICE BOARD

APPOINTMENT

IN EXERCISE of the powers conferred by section 12 of the County Governments Act, 2012, the Makueni County Assembly vide its 12th session held on 11th June, 2013, appointed the following to be members of the Makueni County Assembly Service Board, with effect from 11th June, 2013.

Name of Member	*Responsibilities*
Stephen Mutunga Ngelu	Speaker of the County Assembly—(*Chairman*)
Francis Munyao Mutuku	Leader of Majority Party—(*Vice-Chairman*)
John Muli Mwenze	Leader of Minority Party
Elizabeth Mwelu Masilla	
Robert Mwalu Musyoka	County Assembly Clerk—(*Secretary*)

Dated the 11th June, 2013.

ROBERT M. MUSYOKA,
Clerk to the Makueni County Assembly.

MR/2727362

GAZETTE NOTICE NO. 8288

THE CONSTITUTION OF KENYA

THE COUNTY GOVERNMENTS ACT

(No. 17 of 2012)

NYAMIRA COUNTY PUBLIC SERVICE BOARD

APPOINTMENT

IN EXERCISE of the powers conferred by Article 235 (1) of the Constitution of Kenya as read with sections 57 and 58 of the County Governments Act, 2012, and upon approval by the Nyamira County Assembly in its session, the Nyamira County Assembly has appointed the following to be members of the Nyamira County Public Service Board, with effect from 1st June, 2013:

Peter Nyakundi—(*Chairman*)
Robert Mochache—(*Secretary*)
Mary Achira Nyamwaro
Daniel Magiya Osebe
Beatrice Mokeira Siribah
Stephen Kennedy Oboso

Dated the 30th May, 2013.

J. O. NYAGARAMA,
Governor, Nyamira County.

MR/2727040

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

PETITION NO. 23 OF 2013

AS CONSOLIDATED WITH

PETITION NO. 25 OF 2013

JOHN KIPNG'ENO KOECH.....PETITIONER

VERSUS

NAKURU COUNTY ASSEMBLY
COMMITTEE ON APPOINTMENTS.....1ST RESPONDENT
SPEAKER OF THE NAKURU COUNTY ASSEMBLY.....2ND RESPONDENT

NAKURU COUNTY ASSEMBLY.....3RD RESPONDENT

ATTORNEY-GENERAL.....4TH RESPONDENT

AND

CHRISTOPHER S. ONDIEKI.....1ST PETITIONER

JOSEPH CHESARO KIMOSOI.....2ND PETITIONER

VERSUS

COUNTY GOVERNMENT OF NAKURU.....1ST RESPONDENT

GOVERNOR NAKURU COUNTY GOVERNMENT.....2ND RESPONDENT

JUDGMENT

1. This Judgment relates to two Petitions, namely -

1. High Court of Kenya at Nakuru Petition No. 23 of 2013 (John

Kipngeno Koech vs. (1) Nakuru County Assembly Committee on Appointments, (2) the Speaker of the Nakuru County Assembly (3) The Nakuru County Assembly and (4) the Attorney-General).

2. **High Court of Kenya at Nakuru Petition No. 25 of 2013 between** – (1) Christopher S. Ondieki – First Petitioner, (2) Joseph Chesano Kimosoi (Second Petitioner),
-versus- (1)County Government of Nakuru - First Respondent, and (2)Governor, Nakuru County Government –Second Respondent

2. In Petition No. 23 of 2013 the Petitioner seeks the following prayers -

(1) *A Declaration that the Report by the Nakuru County Assembly Committee on Appointments rejecting the nominees for the County Executive and the County Public Service Board breached the Petitioner's constitutional rights under Articles 3(1), 6, 10(2)(c), 22(1), 43, 47(1), 174, 175 and 176 of the Constitution of Kenya 2010, and is null and void for all intents and purposes.*

(2) *A declaration that the Report was a clear violation of Sections 35 and 38 of the County Governments Act 2012, (No. 17 of 2012) and Section 7 of the Public Appointment (Parliamentary Approval) Act, 2013 (No. 33 of 2013) and was null and void.*

(3) *Pending the hearing and determination of the application inter partes conservatory orders of stay do issue staying the decision of the Respondents rejecting the nomination of the members of the County Executive Committee and the Public Service Board as contained in the Report dated 28th May, 2013.*

(4) *An order of certiorari to remove into this Court and quash the decision of the First and Second Respondents dated 28th May 2013 purporting to reject the nominations of the nominees to the County Executive Committee and Public Service Board.*

(5) *An order of mandamus to compel the Second Respondent to approve the rejected list of nominees.*

(6) *Costs of the Petition.*

(7) *Any other orders that the court may deem fit and just to grant.*

3. In Petition No. 25 of 2013, the Petitioner sought -

(1) *an order and declaration that once the County Assembly has resolved to reject the nominees to the County Executive Committee and given reason for the said refusal, it is not open for the County Government (of Nakuru), to submit the same names again for approval by the same County Assembly which rejected them.*

(2) *An order and a declaration that it is against the principles of separation of powers and against the principles of checks and balances for the executive arm of the County Government and the County Assembly (the Legislative arm of the County), to strike a deal to approve names of candidates which had earlier been rejected.*

(3) *An order and a declaration that it is against national values and principles of County Government for the County Executive to strike a deal with the County Assembly Secretary to the exclusion of the public, without vetting or after they have been vetted and rejected to overturn their own decision and purport to approve the same nominees.*

(4) *That pending the hearing and determination of the Petition, the Court do issue a conservatory order directing and restraining the County Government from submitting*

or resubmitting to the Nakuru County Assembly names of candidates who had earlier been submitted to the County Assembly for Appointment but were rejected; the said nominees being -

(A) (xiii) *Prof. Mary Kariuki,*
(xiv) Prof. Stanley K. Chepkwony,
(xv) Mr. Joseph K. Tunoi,
(xvi) Ms. Pollyne Anyango Awoko,
(xvii) Dr. Julius Ogeto,
(xviii) Ms. Mary Wanjiru Waiganjo.

(B) County Secretary

(ii) J. M. Magosi

(C) County Public Service Board

(i) Chairman James Kiongi Mwaura
(ii) Member – Peter Muriithi Mwarania

(5) The court do give directions and order as to costs.

4. These Petitions *(23 and 25 of 2013)*, were with Consent *(of Counsel for the Petitioners and the Respondents)*, consolidated by orders made on 28/08/2013, as they raised substantially the same issues.

5. ARGUMENTS FOR AND AGAINST PETITION NO. 23 OF 2013

5.01 The Petitioner's case

The Petitioner pleaded that he is a resident of the County of Nakuru and being a person in terms of Articles 12(1) and 20(2) of the Constitution of Kenya

2010, is entitled to each and all fundamental rights and freedoms expressed or implied in the Constitution. Under Article 3, thereof, he is obliged to uphold and defend the Constitution, and in particular to insist that all organs and bodies of the Government be established in strict compliance with the provisions of the Constitution.

5.02 In the Petition therefore, the Petitioner is challenging the decisions made by the First Respondent and adopted by the Third Respondent as contained in the First Report of Vetting Committee of the County Assembly of Nakuru on appointments of nominees for the County of Nakuru Executive Committee, County Public Service Board members and County Secretary dated 28th May 2013 purporting to reject the nominations of the candidates to the said Committee and Board on grounds of not meeting the required constitutional and statutory threshold was unconstitutional.

5.03 The Petition was opposed by the First, Second and Third Respondents through the firm of Gitobu Imanyara & Co. Advocates who filed a Notice of Appointment of Advocates on 19th June 2013, as well as **Grounds of Opposition** in answer to the Petition.

5.04 It was the Respondents' case that the Petitioner herein had not shown

a violation of any right or fundamental freedom or manner of alleged breaches to enable it exercise the rights under Article 22(1) of the Constitution of Kenya, 2010, to have access to this court whenever a right or fundamental freedom is denied, violated, infringed or threatened with such denial, violation or infringement or threat. The Respondent also argued that the Petitioner had not shown that the Respondents had violated any access to information under Article 35, the economic and social rights under Article 43, or the right to administrative action, that is, to expeditious, efficient, lawful, reasonable and procedurally fair action under Article 47(1) of the Constitution. The Respondents urged in the grounds of opposition, that the Petitioner had not shown that the Respondents had undermined the values and principles of governance under Article 10(2) of the Constitution. The Respondents denied the Petitioner's assertion that they had failed to uphold or defend the Constitution. It was these Respondents case that all the decisions relevant to the Petition were arrived at in accordance with the provisions of the Constitution, the County Governments Act, 2012, the Standing Orders of the National Assembly of Kenya, and County Assembly of Nakuru.

5:05. These Respondents also contended that none of the provisions of the

Constitution cited in paragraphs 3, 4, 5, 6 & 7 of the Petition were breached or shown to have been breached in relation to the Petitioner. It was their assertion in particular that the Report by the First Respondent on Appointments on the vetting of the nominees or candidates to the County Executive and County Public Service Board, and County Secretary dated 28th May 2013, met all the constitutional and statutory requirements and were subsequently referred to the County Assembly which adopted them.

5.06 In the alternative, it was these Respondents' averment that even if there were shortfalls to the required constitutional and statutory threshold, the Petitioner had not established any constitutional or statutory right to enable him institute these proceedings (Petition). Though these Respondents admitted that the Petitioner is a person defined under Articles 12(1) and 20(2) of the Constitution, they denied that he is entitled to institute the proceedings herein, or to the grant of the orders sought for lack of specificity in line with the decision of **ANNARITA KARIMI NJERU [1979] KLR 154,** and **[1979] KLR 162.**

5.07 The Respondents also relied on the Replying Affidavit of Joseph Mutua Malinda, the Clerk of the Second Respondent sworn on 19th August 2013, where it was alleged that the Petitioner had in paragraph 2 of the Petition said

that he was a registered voter, he did not disclose whether or not he had exercised the right to vote in the Elections, for the elected members of the County Assembly, so as to show that he had any bona fide interest in the functions of the three arms of the County Government of Nakuru – [the Governor, and Executive Committee, the Public Service Board and the County Assembly]. The absence of such averment was clear evidence of lack of good faith in instituting these proceedings and accordingly though the Petitioner invokes his rights under the Constitution, he should not be made a beneficiary of the court's discretion.

5.08 In any event in so far as the First Respondent was concerned, as a Committee, on Appointments, it only made recommendations to the County Assembly whose function was either to adopt or reject them, in accordance with the Assembly's standing orders. As a Committee, it did not make a decision. It is the County Assembly which received and debated the Committee's recommendations, and thereafter voted, and made its decision accordingly. These Respondents contended that as the Petitioner failed to make any representations to either the Committee or the Assembly, the Petitioner was estopped in law from raising any issues in this court.

5.09 One Joseph Motari Mogosi, the Interim County Secretary for Nakuru County, who is serving in this position as a Nominee of the Transitional Authority swore and had filed a Relying Affidavit on 2nd August 2013. He averred that he was in charge of the process of nomination of the candidates, and presentation of the names to the Nakuru County Assembly. He stated that the process of nomination was competitive and that the Applicants were interviewed by a Selection Panel and by a letter dated 13th May 2013, the Governor of the County of Nakuru forwarded the list of nominees proposed for appointments. He deponed that the nominees were qualified, based on experience, were of high integrity and met the threshold of Chapter Six of the Constitution of Kenya, 2010. He also averred that those who were nominated for appointment had applied for the various positions and were nominated procedurally.

5.10 The Hon. the Attorney-General, the Fourth Respondent did not file any document or make any submissions in relation to these proceedings.

6.0 **PETITION NO. 25 OF 2013**

6.01 As already noted this Petition was consolidated with Petition No. 23 of 2013 *(supra)*. These Petitioners in this Petition were - **Christopher S. Ondieki and Joseph Chesaro Kimosoi.** It was filed on 15th June 2013 against

the County Government Nakuru and the Governor of the County of Nakuru. In this Petition, the Petitioners alleged that the Governor had resubmitted the list of rejected nominees to the County Assembly for appointment subsequent to holding meetings with members of the County Assembly where a deal was struck to appoint rejected members. The Petitioners contend that the resubmission of rejected names in this manner was both against the national values and the principles of governance, transparency, integrity, accountability, rule of law and sovereignty of the people.

6.02 Against this Petition, the Respondents raised a Preliminary Objection by a Notice dated and filed on 21st June 2013, and contended that the court lacks jurisdiction to entertain the matter, that the members of the Committee had already been sworn in, and that the matter had therefore been overtaken by events. In addition the Respondents contended that these Petitioners lacked *locus standi* to present this Petition.

6.03 Against these broad prayers and objections, counsel for the respective Petitioners and Respondents filed and exchanged written submissions. These were highlighted to the court at length on 3.09.2013. After perusing these submissions and the authorities cited and relied upon by counsel, I found these

to be the issues for determination -

(1) *whether the Petitioner's have the locus standi to prosecute the petitions,*

(2) *whether the court has jurisdiction to hear and determine the Petition herein,*

(3) *whether the rejection of the nominees as per the Report dated 28th May 2013 was made in contravention of the Constitution and the County Governments Act, 2013, and*

(4) *whether it is legal for the Governor of the County of Nakuru to resubmit the names of rejected nominees to the National Assembly for appointment.*

7.0 WHETHER THE PETITIONERS HAVE LOCUS STANDI TO PROSECUTE THE PETITION(S)

7.01 The Respondents in the consolidated Petitions argued that the Petitioners herein lacked *locus standi* to institute the Petition. **Firstly** because they failed to categorize the particulars of breach to entitle them to the orders or declarations sought, that the Petitioner (in Petition No. 23 of 2013) was acting in bad faith, as he had neither presented himself during the public hearing nor did he offer any reason for such failure, that he was acting out of a political motive, and oblique considerations and as such the Petition must fail.

7.02 The case of **ANARITA KARIMI NJERU** *(supra)* settled the proposition

that where a person is alleging a contravention or threat of contravention of a constitutional right, he must set out the right infringed and the particulars of such infringement or threat.

7.03 However as recent decisions have shown, that the case of **Anarita Karimi Njeru** though laying an important principle must be seen in the context of Section 84(1) of the Constitution of Kenya *(1969 – Consolidated)* and now repealed). That section provided -

> *"84(1) Subject to subsection (6), if a person alleges that any of the provisions of Section 70 to 83 (inclusive) has been, is being or is likely to be contravened in relation to him (or) in the case of a person who is detained, if another person alleges a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress."*

7.04 ***Locus standi*** under Section 84(1) was established in two respects. **Firstly,** if the contravention related to the Petitioner personally, and **Secondly** if the contravention related to a detained person. Those were the only instances where *locus standi* was conferred upon an individual, under the said Section 84(1) of the repealed Constitution. That is the extent in my humble view of the authority of ANARITA KARIMI NJERU.

7.05 In contrast, the Constitution of Kenya, 2010 confers upon every person in Kenya, the obligation to respect, uphold, protect and defend the Constitution of Kenya, and any attempt to establish a government otherwise than in compliance with this Constitution is unlawful *(Article 3)*, and every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened, (Articles 22(1) and 258 (1) & 2). In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by persons, acting in the public interest (Articles 22(2)(c) and 258(2)(c).

7.06 Articles 22(1) & (2) and 258(1) & (2) of the Constitution 2010, thus confer upon any person the right to bring action in more than two instances **firstly** in the public interest, and **secondly** (where a breach of the Constitution is threatened in relation to a right or fundamental freedom.

7.07 The national values and principles of governance which bind all state organs, state officers, public officers and all persons whenever any of them makes or implements public policy decisions, and these national values and principles of governance include patriotism, national unity sharing and devolution of power, the rule of law, democracy and participation of the people,

good governance integrity transparency and accountability (Article 10, (1)(2)).

7.08 Consequently the Constitution of Kenya 2010, grants the individual much wide scope in terms of *locus standi* than Section 84(1) of the repealed Constitution. The comment in **TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE VS. AG. & 2 OTHERS [2012] eKLR** regarding the decision in **Anarita Karimi Njeru** is very apt. The Judges said -

> *"We do not purport to overrule Anarita Karimi Njeru as we think it lays down an important rule of constitutional adjudication; a person claiming constitutional infringement must give sufficient notice of the violations to allow her adversary to adequately prepare her case and to save the court from embarrassment on issues that are not appropriately phrased as justiciable controversies. However we are of the opinion that the proper test under the new Constitution is whether a Petition as stated raises issues which are too insubstantial and so attenuated that a court of law properly directing itself to the issue cannot fashion an appropriate remedy due to the inability to concretely fathom the constitutional violation alleged.*
>
> *The test does not demand mathematical precision in drawing constitutional Petitions. Neither does it require talismanic formalism in identifying the specific constitutional provisions which are alleged to have been violated. The test is a substantive one and inquires whether the complaints against the Respondents in a constitutional petition are fashioned in a way that gives proper notice to the Respondents about the nature of the claims being made so that they*

can adequately prepare their case."

7.09 In other words under the new Constitution, the Court is bound to inquire and determine matters on their merit, and where the matter in issue could be deciphered from the pleadings, then the court was bound to determine such matter even when the particulars of breach had not been specifically pleaded.

7.10 Emphasizing the point, the Court of Appeal in **MUMO VS. TRUSTED SOCIETY OF HUMAN RIGHTS ALLIANCE & 5 OTHERS** *(supra)*, said -

> *"Our commitment to the values of substantive justice, public participation, inclusiveness, transparency and accountability under Article 10 of the Constitution by necessity and logic broadens access to the courts. In this broader context, this court cannot fashion nor sanction an invitation to a judicial standard of locus standi that places hurdles on access to the courts, except only when such litigations is hypothetical abstract or is an abuse of the judicial process."*
>
> *However, we must hasten to make it clear that the person who moves the court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice. Where a person is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be seized at the instance of such person and must reject the application at the threshold."*

7.11 In addition, Article 258(1) grants every person the right to institute

court proceedings claiming that this constitution has been contravened, or is threatened with contravention. Court proceedings may also be instituted by any person acting in the public interest (Article 258(2)).

7.12 In the present case, the Petitioners filed their Petitions on their own behalf as residents of County of Nakuru, and also in the public interest. They have a genuine interest in the functioning of the County Assembly and in particular over the appointments of members of the County Executive Committee, whose functions not only impact upon them, but also the other ordinary residents of the County of Nakuru.

7.13 There was no evidence of any bad faith or political motivation, in filing the Petitions as alleged by the Respondents. The fact that neither of the Petitioners demonstrated that they voted is, in my view, with respect, not relevant to the Petitions, and does not show any bad faith on the part of the Petitioners. In addition, failure to present their grievances during the deliberations by the First and Second Respondent *(in Petition 23 of 2013)* over the appointments does not in any way bar the Petitioners from presenting the Petitions herein. The court should and will determine the question of the constitutionality of the appointments by the Respondents on its merit.

The Petitioners have the necessary *locus standi*.

8.0 OF WHETHER THE COURT HAS JURISDICTION TO DETERMINE THE ISSUES RAISED

8.01 It was the submission of the Respondents that the exercise of legislative function of the County Assembly are not justiciable and the process commenced by the Petitioners was inherently an abuse of the doctrine of separation of powers and undermines constitutionalism; that these proceedings amount to a back-door and unconstitutional interference with the legislative powers conferred upon the County Assembly of Nakuru, and that since the Respondent were exercising a legislative mandate, then the actions of the Petitioners amount to an encroachment of the doctrine of the separation of powers.

8.02 The Respondents averred that the court is bound by the principle of separation of powers and is not entitled to replace the decision of the legislative branch of the government lawfully arrived at with its own decision on the merits of the County Assembly decision. Though Mr. Lawrence M. Karanja, one of the Counsel for the Respondent, conceded that the court has jurisdiction to determine the issues raised in the Petition, that jurisdiction was however limited

to matters of procedure and not the merits of the decisions of the Respondents. Counsel submitted that the test was legality or unconstitutionality of the decision.

8.03 By definition, *"jurisdiction is the practical authority granted to a formally constituted legal body to deal with and make pronouncements on legal matters and by implication to administer justice within a defined area of responsibility. It is the scope, validity, legitimacy or authority to preside or adjudicate upon a matter.* In the case of **OWNERS OF MOTOR VESSEL "Lillian S" vs CALTEX OIL (K) LTD [1989] KLR 1** the Court defined jurisdiction thus -

> *"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its its decision."*

8.04 It therefore follows that jurisdiction of a court is fundamental and goes to the root of the matter, and without it the court cannot take any step, make any determination or issue any orders thereon, and the entire proceedings would be null and void *ab initio.* In the case of **SAMUEL KAMAU MACHARIA VS. KENYA COMMERCIAL BANK LTD & 2 OTHERS [2012] eKLR** the Supreme

Court of Kenya held -

> *"A court's jurisdiction flows from either the constitution or legislation or both. Thus a court of law can only exercise jurisdiction as conferred (to it) by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by the law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter for without jurisdiction, the court cannot entertain any proceedings.*
>
> *This court dealt with the question of jurisdiction extensively in, "In the Matter of Interim Independent Electoral Commission (Applicant), Constitutional Application Number 2 of 2011. Where the Constitution exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a court of law beyond the scope defined by the Constitution. Where the constitution confers power upon Parliament to set the jurisdiction of a court of law or tribunal the legislature would be within its authority to prescribe the jurisdiction of such court or tribunal by statute law."*

8.05 In the Owners of the **Motor Vessel "Lillian S" vs. Caltex Oil Kenya Oil** *(supra)*, the court said -

> *"where a court has no jurisdiction there would be no basis for a continuation of the proceedings – a court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."*

8.06 It was the Respondents' contention that the appointment of members of the Executive Committee of a County was a matter solely vested on the County Assembly, and that if the court granted the orders sought, it would be acting in contravention of the doctrine of separation of powers.

8.07 The doctrine of the separation of powers postulates that each organ of government is independent and none should interfere with the functions of the other. This doctrine also holds that each organ *(of government)* is to act as a check and balance of the other to ensure that each organ functions within the provisions of the Constitution or Statute. The High Court which is a creature of the Constitution is the only body that is empowered to determine the constitutionality or otherwise of the functions of the other state organs. Under Article 165(d) of the Constitution of Kenya 2010, the High Court is vested with the jurisdiction to hear and determine any question respecting the interpretation of the Constitution including the determination of inter alia -

(i) the question whether any law is consistent with or in contravention of the Constitution,

(ii) the question whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of, the constitution, or

constitutional democracy as well as accord the executive sufficient latitude to implement legislative intent. Yet as the Respondents concede, the courts have an interpretive role including the last word in determining the constitutionality of all government actions"].

8.09 In its decision the subject of appeal in the above, the three judge bench in Trusted Society of Human Rights Alliance vs. Attorney-General & 2 others [2012] eKLR the Court said -

"The doctrine of separation of powers did not disentitle the court from entertaining the controversy surrounding the appointment of the Interested Party. A constructive reading of the Constitution, case law on the question, and comparative jurisprudence from other jurisdictions on the question have led us to the conclusion that the High Court of Kenya would properly review both the procedure of appointment of the Interested party as well as the legality of the appointment of itself – including determining whether the Interested Party met the constitutional threshold, for appointment to the position.

The constitution consciously delegates the sovereign power under it to the three branches of government and expects each will carry out those functions assigned to it without interference from the other two ... this must mean that the courts must show deference to the independence of the legislature as an important institution in the maintenance of our constitutional democracy as well as accord the Executive sufficient latitude to implement legislation intent. Yet ...the courts have an interpretive role, including the last word in determining the constitutionality of all governmental action. That too is an incidence of the doctrine of separation of powers."

8.10 In SPEAKER OF THE NATIONAL ASSEMBLY & OTHERS VS. DE LILLE, M.P. & ANOTHER [297/298] [1999] ZASCA, the Supreme Court, Court of Appeal of South Africa held -

> *"This inquiry must crucially rest with the Constitution of South Africa. It is supreme not Parliament. It is the ultimate source of all lawful authority in the country. No Parliament, however bonafide, or eminent, its membership, no President, however formidable be his reputation or scholarship and no official however efficient or well meaning can make law or perform any act which is not sanctioned by the constitution. Section 2 of the Constitution expressly provides that law or conduct inconsistent with the constitution is invalid and the obligations imposed by it must be fulfilled. It follows that any citizen adversely affected by any decree, order or action of any official or body, which is not properly authorized by the Constitution is entitled to the protection of the courts. No Parliament, no official and no institution is immune from judicial scrutiny."*

8.11 In conclusion, the comparative analysis of case law, I go back to the High Court's decision in **MUMO MATEMU's** case where it is said -

> *"In our view, the test is whether the means applied by the organs of appointment to meet their legal duty has been performed in compliance with the objective and purpose of the Ethics and Anti-Corruption Act as construed in light of Article 79 of the Constitution of Kenya. Under this Act, the courts will not be sitting in appeal over the opinion of the organ of appointment, but will only be examining whether the relevant material and vital aspects having a nexus to the constitutional and legislative purpose*

of integrity were taken into account in the actual process. Stated otherwise, the analysis turns on whether the process had a clear nexus to the constitutional nexus with a determination that the candidates meet the objective criteria established in law rather than a judgment over the subjective state of the mind of the decision maker. This in our view, provides a fact dependent objective test that is judicially administrable in such cases."

8.12 The Court is thus vested with the jurisdiction to determine the constitutionality of the process of appointments by the County Assembly of the nominees by the Governor, as well as the constitutionality of making such appointments by the Governor. The scope of the court's jurisdiction extends to the procedural improprieties, as well as the legality of the appointment decision to determine whether it accords with the constitutional threshold. The court applies an objective test where each case is determined on its own merit.

8.13 Having determined that the Petitioners have the necessary locus standi, and this court is invested with the necessary jurisdiction to determine the matters in question, I now turn to the three vital issues in the determination of the consolidated Petitions herein -

(i) whether the rejection of the nominees of the Governor, to the positions of County Executive Committee, and Public Service Board was contrary to the provisions of the Constitution, and

(ii) whether the orders of certiorari and mandamus ought to be granted,

(iii) whether the names of the rejected nominees can be resubmitted to the County Assembly.

9.00 OF WHETHER THE REJECTION OF THE NOMINEES WAS CONTRARY TO THE PROVISIONS OF THE CONSTITUTION

9.01 Chapter Eleven of the Constitution of Kenya 2010, (Articles 174 to 187), establishes Devolved Government. Those Articles provide for objects of devolution, (Article 174), principles of devolved government (Article 175), County Governments (Article 176), County Executive Committees (Article 179), and legislative authority of county assemblies (Article 185).

9.02 Article 176(1) provides that there shall be a county government for each County, consisting of a **County Assembly and a County Executive.** Article 179(1) provides that the executive authority of the county is vested in, and exercised by a county executive committee comprising of -

(a) the County Governor and Deputy Governor, and

(b) members appointed by the county governor with the approval of the (county) assembly, from among persons who are not members of the assembly."

9.03 Article 186(1) provides for the functions and powers of the national and county governments and Article 186(4) provides that *"for greater certainty*

(of the functions and powers of the county governments), Parliament may legislate for the Republic on any matter.

9.04 The County Governments Act, 2012 *(No. 17 of 2012)* is, I think, the legislation contemplated by or under Article 186(4) of the Constitution. Sections 8 & (44) thereof define the role and procedure, and committees of the County Assembly. Section 8(2) in particular provides -

> *"8(1)*
> *(2) If a County Assembly fails to enact any particular legislation required to give further effect to any provision of this Act, a corresponding national legislation, if any, shall with necessary modifications apply to the matter in question until the County Assembly enacts the required legislation."*

9.05 ***Section 30 and 31*** in turn define the functions and responsibilities and powers of the Governor. Sections 35 and 36 provide for the manner (procedure), for appointment and functions of the County Executive members and functions of the Executive Committee. Section 44 provides for the appointment of the County Secretary and Sections 57 and 58 provide for the establishment and composition of the County Public Service Board.

9.06 Pursuant to the powers vested in the County Governor under Articles 179(2)(b) of the Constitution and Section 30(2)(b) of the County Governments

Act, the Governor of Nakuru County nominated eighteen (18) candidates for appointment to the County Executive Committee, Public Service Board and County Secretary. There is no dispute that the names of the candidates were forwarded to the Speaker of the County Assembly. There was however doubt raised by Counsel for the Petitioner that since fourteen (14) days had expired following the receipt of the List of Nominees, then the County Assembly is deemed to have approved the List, in terms of Section 9 of the **Public Appointments (Parliamentary Approval) Act 2012 (No. 33 of 2012).** Section 9 provides that nominees are deemed approved after the expiration of fourteen (14) days period as prescribed in Section 8 of the said Act.

9.07 There was however no evidence provided by the Petitioner that fourteen days had expired before the County Assembly considered the List of Nominations for the Executive Committee and Public Service Board. The record shows that the List of Nominees was forwarded on 13th May 2013, and the County Assembly submitted its Report on 28th May 2013, that is within the prescribed period of fourteen (14) days. The nominees cannot therefore take benefit of the said provision. I therefore find and hold that the nominees were interviewed within the period prescribed by the Public Appointments *(Approvals)*

Act, 2012.

9.08 Though reference was made to Standing Order No. 185(4) *(of the Nakuru County Assembly)*, neither counsel for the Respondents *(in Petition No. 23 of 2013)* nor the Interim Secretary for the County of Nakuru, availed a copy to the court. Both counsel however made reference to the provisions of the Public Appointments (Approval) Act 2012 and to which provisions, the court shall also as necessary, defer.

9.09 Though it may be considered a technicality, a Committee on approval of appointment is not a body corporate, and has no separate legal status to be a separate party in any action, including a Petition under the Constitution. It is an ad hoc body constituted by the Speaker for good reason from time to time. Though they have their sanction under Statute, I have grave doubts that they are liable to sue or be sued. Their inclusion in an action is in my view incompetent.

9.10 However the names having been forwarded by the Governor pursuant to Article 179(2)(b), (3) and (6) and Article 183 of the Constitution as read with Section 30 and Section 58(d) of the County Governments Act, the Speaker of the County Assembly (who should be the 1st Respondent) duly constituted the Committee on Appointments, which proceeded to hold sessions between 23rd,

26th, May 2013.

9.11 On 18th May 2013, the Clerk of the County Assembly, placed an advertisement in the print media inviting the public to submit memoranda on the suitability of the nominees. The Appointments Committee held sessions between the 23rd and 26th May 2013 when the nominees appeared before the committee and were subjected to vetting. Out of the ten (10) nominees presented by the Governor for appointment to various positions in the County's Executive Committee, only four (4) were found suitable and six (6) were rejected by the County Assembly. The names of those rejected and the reasons for their rejection are as follows -

(a) **Prof. Mary Kariuki (nominee for Lands, Physical Planning and Housing)**
- She failed to convince the committee that she had experience and knowledge as stipulated in Section 35 (3) (d) of the County Governments Act.
- She had not applied for the position.

(b) **Dr. Stanley K. Chepkwony,**
- He lacked experience and knowledge as stipulated in the law.
- he had not applied for this position.

(c) **Joseph K. Tonui**
- he had failed the test as set out in Section 35 (3) (d) of the County Governments Act.
- He was not articulate and had not applied for the

position.

(d) **Pollyne Anyango Awoko**

- she lacked the knowledge and experience required for running ICT and E-Government.
- she had not applied for the docket of Public Service for which she had been nominated.

(e) **Dr. Julius Ogeto**

- he lacked appreciation of important health policies and had a casual approach to cancer management and maternal health care.

(f) **Ms. Wanjiru Waiganjo**

- she lacked knowledge on the docket, did not meet the provisions of Section 35 (3) (d) of the County Governments Act and had not been interviewed for the position for which she had been nominated.

For the position of County Secretary J. M. Moguso was rejected as he had not been competitively recruited as required by Section 44 of the County Governments Act.

The Nominees of the Public Service Board -

(g) **James K. Mwaura**

- he exceeded the age limit for serving in the public service and did not appreciate the role of the youth in the country.

(h) **Peter Murithi Mwarania**

- He did not demonstrate any understanding of the board and more so the policy issues
- he failed to produce a mandatory clearance of good conduct from the Police.

9.12 The First Respondent then prepared a the First Report on the vetting of the nominees dated 28th May 2013 which was tabled before the County Assembly on 28th May 2013 when it was adopted after deliberations. The Petitioner's case was that the First Respondent failed to appreciate the existing constitutional principles and statutory provisions when conducting the vetting process, that it took into account irrelevant considerations which essentially casts doubt on the entire decision-making process.

9.13 As a result therefore the First Respondent breached the nominee's right to administrative action that is lawful, reasonable and procedurally fair under Article 47 (1) of the Constitution. This right envisages that an administrative action must not only accord with the provisions of the empowering statute, but also the rules and principles of common law. It was also contended that by refusing to approve the nominees for appointment to the Nakuru County Executive Committee and the County Public Service Board on illegal, unreasonable grounds, the First, Second and Third Respondents paralyzed the Nakuru County Executive Committee and the County Public Service Board from executing constitutional and statutory functions, thereby denying the residents of Nakuru County their economic and social rights which

include the right to accessible and adequate housing, highest attainable standards of health, freedom from hunger, clean and safe water in adequate quantities, social security and education contrary to Article 43 of the Constitution.

9.14 The main question for determination by this court is whether the First and Third Respondents under the Chairmanship of the Second Respondent took into account irrelevant factors during the vetting process thus breaching the Constitution. The qualifications of candidates for appointment as County Executive Members and Public Service Board are well provided for in Section 35 of the County Governments Act. Appointment of county executive members -

> *(1) The governor shall, when nominating members of the executive committee—*
>
> *(a) ensure that to the fullest extent possible, the composition of the executive committee reflects the community and cultural diversity of the county; and*
>
> *(b) take into account the principles of affirmative action as provided for in the Constitution.*
>
> *(2) The county assembly shall not approve nominations for appointment to the executive committee that do not take into account—*
>
> *(a) not more than two thirds of either gender;*
>
> *(b) representation of the minorities, marginalized groups and communities; and*

(c) community and cultural diversity within the county.

(3) A person is qualified for appointment for the position of the County Public Service Board under Section 58 (3) if he-
(a) satisfies the provisions of Chapter Six of the Constitution;
(b) is not a state or public officer;

in the case of chairperson or vice-chairperson, possesses a minimum qualification of a bachelor's degree from a recognised university and working experience of not less than ten years; and

(d) in the case of any other members-

(i) possesses a minimum of a bachelor's degree from a recognised university and working experience of not less than five years; and

(ii) is a professional, demonstrates absence of breach of the relevant professional code of conduct.

9.15 Section 7 of the **Public Appointments (PARLIAMENTARY Approval) Act 2011 (No. 33 of 2011)** provides that the issues for consideration by the First and Third Respondents during the vetting process in relation to any nomination shall be—

(a) the procedure used to arrive at the nomination,

(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.*

9.16 In their Report, the committee indicated that it interviewed the candidates and examined them the criteria they used in vetting them was based on their academic qualifications, employment record, professional affiliations, potential conflict of interest, knowledge of the relevant field, overall suitability for the position, tax compliance and integrity. The question or issue is whether these were or are the conditions relevant to the vetting of the candidates. They certainly were generally, but are not in accord with the provisions of either **Leadership and Integrity** – Chapter Six of the Constitution or the provisions of Section 35(2) of the County Governments Act 2012 that the County Assembly shall not approve nominations for appointment to the executive committee that do not take into account -

(a) *not more then one two-thirds of either gender,*

(b) *representations of minorities, marginalized groups and communities, and*

(c) *community and cultural diversity within the*

County.

9.17 Or that the nominees did not qualify in terms of being either Kenya citizens holders of first degrees from a recognized university, or did not satisfy and in what manner the requirements of Chapter Six of the Constitution, or that they did not have knowledge, experience and distinguished careers of not less than five years in the field relevant to the portfolio of the department to which the person is appointed, or that they held other public office.

9.18 Under the **Public Appointments (Parliamentary Approval) Act,** which the Committee adopted for use in the hearings, Section 7, requires that an approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background, and the criteria set out in the Schedule shall be used by a committee during an approval hearing for the purpose of vetting a candidate.

9.19 The issues for consideration by the County Assembly like 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,

(c) suitability of the nominee for the appointment

proposed having regard to whether the nominees abilities, experience and qualities meet the needs of the body to which nomination is being made.

9.20 This criteria are cumulative in effect, and none of them should be taken in isolation, or regarded as more important than the other. I did not find any of them cited as grounds for rejection of the nominees for positions of executive committee of County of Nakuru. I therefore find and hold that the Respondents in Petition No. 23 of 2013 acted *ultra vires* the Constitution and the County Governments Act.

9.21 However for the position of appointment of County Secretary, Section 44(2)(a) of the County Governments Act requires that the County Secretary ***"shall be competitively sourced amongst persons who are university graduates with at least ten years experience in administration and management."***

9.22 In his Affidavit sworn on 31st July 2013, the nominee for the position of County Secretary depones that he is the Interim County Secretary for the County of Nakuru and serves in his current position as a nominee of the Transitional Authority and was so appointed by that Authority. Though he may continue serving as Interim County Secretary, pending competitive recruitment of

a substantive holder in terms of Section 44(2)(a) of the County Governments Act, I find and hold that he was not competitively sourced, and the County Assembly of Nakuru acted within the law in rejecting his nomination. The question however remains on whether the orders of certiorari and mandamus ought to be granted in respect of other rejected nominees.

10.00 OF WHETHER ORDERS OF CERTIORARI AND MANDAMUS SHOULD ISSUE

10.01 In his paper, **"Review of Administrative Decisions of Government and Administrative Courts and Tribunals"** presented to the 10th Congress of the International Association of Supreme **Administrative Jurisdictions** (Sydney – March 2010), the Hon. Mr. Justice Alnashir Visram, Judge of Appeal referred to a decision of the Court of Appeal **(Republic vs. Attorney-General and Registrar of Societies – Misc. Application No. 769 of 2004)** and Nyongesa & Others vs. Egerton University College [1990] KLR 693 and Onyango vs. AG [1987] KLR 711 and Kenya Hotels and Allied Workers Union vs. Registrar of Trade Unions [2005] eKLR where that Court observed -

> *"The law relating to Judicial Review had not reached the furthest or the last frontier and the courts must endevour to expand the grounds of intervention depending on the circumstances before them".*
> *(Republic vs. A.G. and Registrar of Societies – supra).*

And

"Courts are loath to interfere with decisions of domestic bodies and tribunals including college bodies. However courts will interfere and quash decisions of any bodies when moved to do so where it is manifest that the decisions have been made without fairly and justly hearing the person concerned or the other side."

10.02 Discussing the remedy of Judicial Review in the case of **REPUBLIC VS. KENYA ROADS BOARD, ex parte HARUN MWAU** *(Misc. Application No. 1372 of 2000),* (On the question of Judicial Review and Parliament), the High Court said -

"The remedy of judicial review is available as a procedure through which the applicant can come to court for the determination on any constitutional issue including striking down legislation which may be unconstitutional. ....In countries with written constitutions, the rule of law implies limitations on legislative power and on all other organs of State. Parliament can only exercise its power within certain parameters for acts of Parliament to be constitutional. The limitations which the law imposes upon the Executive and the legislature can only be meaningful where there is a procedure to interpret the law and examine Executive actions or decisions with finality. This unique power to test the acts of the three arms of State for consistency is vested in the Judiciary. There are what are called Judicial Review Powers. The Judiciary, in such exercise, is also subject to the rule of law."

10.03 Unlike the pre-2010 Constitution when the power to grant

Judicial Review orders of certiorari, mandamus and prohibition were tacked away in Sections 8 and 9 of the **Law Reform Act,** *(Cap. 26 Laws of Kenya)*, today, Article 23(3)(f) provides that in any proceedings brought for enforcement of fundamental rights and freedoms of the individual under Article 22 of the Constitution, the court's jurisdiction and scope to grant those orders is widened and is constitutionally underpinned.

10.04 The question however remains as to when the order of certiorari may be granted. An order of certiorari will issue on grounds of procedural errors or illegality. In the celebrated English case of **COUNCIL OF CIVIL SERVICE UNIONS VS. THE MINISTER FOR CIVIL SERVICE** [1985] AC 374 HL, Lord Diplock said -

> ***"By illegality as a ground for judicial review, I mean that the decision-maker must understand correctly the law his decision making power and must give effect to it."***

10.05 **In the case of Attorney-General vs. Fulham Corporation [1921] 1 ch. 440,** it was held that ***"illegality might also consist of using powers in a manner totally different from that envisaged."*** I have already made reference to Section 35(2) and (3) of the County Governments Act. Similar provision appears at Section 58(2) & (3) of the said Act with regard to

the appointment of a member of Public Service Board.

10.06 It is thus clear to this Court that a County Assembly exercising its administrative function of approval of nominees, has a statutory duty to exercise that function to the fullest extent with the requirements of the enabling law, and failure to do so, may render its findings, determinations and decisions and recommendations *ultra vires* the Act, and in particular Sections 35(2) & (3) and 58(2) & (3) thereof and I grant prayers 1 and 2 in Petition No. 23 of 2013.

10.07 In the circumstances, there shall issue an order of certiorari, to bring to this Court, and quash the findings and decisions of the County Assembly of Nakuru as set out in the First Report of the Committee on the Vetting of Nakuru County Executive Committee Nominees; County Public Service Board, Members and County Secretary dated 28th May 2013 in relation to -

(xiii) Prof. Mary Kariuki,
(xiv) Prof. Stanley K. Chepkwony,
(xv) Mr. Joseph K. Tonui,
(xvi) Ms. Pollyne Anyango Owoko,
(xvii) Dr. Julius Ogeto,
(xviii) Ms. Mary Wanjiru Waiganjo.

And County Public Service Board

(i) Chairman - James Kiongi Mwaura
(ii) Member – Peter Muriithi Mwarania

11.00 OF THE ORDER OF MANDAMUS

11.01 The order of mandamus is an order directing a public body, authority, person or inferior tribunal exercising public duty, to exercise that function or duty if it has not done so. In this case, the County Assembly of Nakuru carried out its mandate and its decision is the subject of an order of certiorari already granted. It must be emphasised that the former prerogative order and now judicial order of *mandamus* is not the equivalent of a mandatory injunction, or specific performance in contract. The order only lies where the statutory or public duty has not been performed or carried out. My favourite example is the liquor licencing bodies – when they fail to meet and consider applications for liquor licences, the courts will direct them to meet and consider the applications, but the court will not direct them to grant licences or make decisions in any one way. There is no legal basis for an order of mandamus. The prayer for the order of mandamus does not lie, and is therefore denied.

12.00 OF WHETHER THE NAMES OF REJECTED NOMINEES CAN BE RESUBMITTED

12.01 Section 10 *(Rejection of Nomination)*, of the Public Appointments (Parliamentary approval) Act, says -

"10. Where the nomination of a candidate is rejected by Parliament, the appointing authority may submit to the relevant house the name of another candidate, and the procedure for approval specified in the Act shall apply accordingly."

12.02 There is no similar provision in the County Governments Act, 2012. The Public Appointments (Parliamentary Approvals) Act 2011 (No. 33 of 2011) is an earlier Act and came into force on 14.11.2011. The County Governments Act is a later Act, and came into effect on 4th or 5th March 2013 depending upon when the final results of the Elections of 4th March 2013 were announced.

12.03 It is thus clear to me that if Parliament had intended the provisions of Section 10 of the Public Appointments (Parliamentary Approval) Act to apply to appointments under the County Governments Act it should have incorporated it expressly. Though Section 14 of the County Governments Act refers to incorporation or adoption of standing orders of the National Assembly, there is no express provision for adoption of the practice under Section 10 of the the Public Appointments (Parliamentary Approval) Act. The provision would in my view only be regarded as directory and not mandatory in relation to rejected nominees. In the circumstances therefore, I decline to grant prayers 1, 2 and 3

(2) there shall be an order of certiorari in relation to the six rejected nominees to the executive committee, and to the two to the Public Service Board.

(3) the County Assembly's decision on the County Secretary is upheld and shall remain in force.

(4) Each party to bear its own costs.

Dated, signed and delivered at Nakuru this 25th day of September, 2013

M. J. ANYARA EMUKULE

JUDGE

CG/NKR/02/14

COUNTY ASSEMBLY OF NAKURU
FIRST SESSION

FIRST REPORT
OF THE
ASSEMBLY COMMITTEE ON APPOINTMENTS ON THE VETTING OF NAKURU COUNTY EXECUTIVE COMMITTEE NOMINEES; COUNTY PUBLIC SERVICE BOARD MEMBERS AND THE COUNTY SECRETARY

28th May 2013

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1.0 PREFACE

On behalf of the Members of the Committee on Appointments and pursuant to the provisions of Standing Order No. 185, it is my pleasure and duty to present to the Assembly, the Committee's Report on the vetting of the County Executive Committee Member Nominees; County Public Service board members and the County Secretary, Nakuru County.

2.0 Appointments Committee Membership

The Committee on Appointments was constituted by the Assembly on Tuesday 25th April, 2013 comprising of the following Members:-

1. Hon. Madam Speaker, Susan Kihika-Speaker- Chair
2. Hon. George Mwaura Njenga- Leader of Majority – Member
3. Hon. Dan Ambale- Leader of Minority- Member
4. Hon. Florence Wambui- Member
5. Hon. Leah Serem- Member
6. Hon. Stephen Kihara- Member

2.1 Committee Mandate

The Committee on Appointments is one of the Select Committees established under Standing Order No. 185 (4) which provides that, ***the Committee on Appointments shall consider, for approval by the Assembly, appointments under Articles 179 (2) (b) of the constitution and Section (30) (2) (d) of the County Government Act N0. 17 of 2012 (County Executive Members)***

2.2 Nomination of the Executive Committee Members; County Public Service Board Members and County Secretary

Pursuant to Articles 179 (2) (b) (3) (6) and 183 read together with Section 30 (d) of the County Government Act 2012 the Governor of The County Government Nakuru, forwarded to the Speaker of the County Assembly, the names of the following Eighteen (18) nominees vide a letter dated 15th May, 2013 for vetting by the Committee on Appointments and consideration for approval by the County Assembly for appointment as County Executive Committee

Members; County Public Service Board members and the County Secretary:-

o.	COUNTY EXECUTIVE NOMINEE	Docket
	Prof. Mary Kariuki Did not interview	Lands, Physical Planning and Housing
	Dr. Stanley Kimaiwa Chepkwony	Agriculture, Livestock and Fisheries Did not ~~ap~~ interview
	Mr. Francis Gatimu Mathea	Finance and Planning
	Mr. Joel Maina Kairu	Roads, Public Works and Transport
	Dr. Julius Ogeto	Health
	Mr. Joseph k. Tonui Did not apply	Education, Culture, Youth and Social Services
	Mr. Richard Kipsang Rop	Natural Resources, Environment, Water and Energy
	Mr. Samuel Ndungu Gitau	Trade, Industrialization, Tourism and Wildlife Management
	Ms. Pollyne Anyango Owoko	Information Communication Technology and E-Government
0.	Ms. Mary Wanjiru Waiganjo	Public Service
	COUNTY SECRETARY	
	Mr. JM Mogosi	County Secretary
	COUNTY PUBLIC SERVICE BOARD	
	James Kiongi Mwaura	Chairman, County public Service Board
	James Mbugua Kuria	Secretary County Public Service Board
	Francisca Kamuren	Member
	Peter Kibe Mbai	Member
	Peter Murithi Marania	Member
	Richard Ochieng Tutah	Member
	Monicah Cherutich	Member

On Friday 16th May, 2013, the Honourable Speaker in a communication to the Members of the Assembly Committee on Appointments through the Clerk of the Assembly informed members of the Assembly she had received the names of the said eighteen (18) nominees from the Governor. She directed that the names and Curriculum Vitae of the said nominees be referred to the

Committee on Appointments for vetting and reporting to the House within 14 days (by 29th May, 2013).

2.3 Committee meetings

The Committee held four Sittings between Thursday 23rd through to Sunday 26th May 2013 during which the said eighteen (18) Nominees appeared before the Committee on Appointments and were vetted in accordance with the Public Appointments (Parliamentary Approval) Act No. 33 of 2011, Section 30 (d) of the County Government Act, 2012 and Standing Order No. 185 on the appointment as County Executive Members; Members of the County Public Service board and the County Secretary.

On behalf of the Committee on Appointment, I have the honour and pleasure to present the Committee's Report on the nominees for appointment as County Executive Committee Members; Members of the County Public Service Board and the County Secretary.

May I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations and vetting of the County Executive Members; Members of the County Public Service board and the County Secretary.

Thank you.

Signed .....
Hon. Susan Kihika
Speaker of the Nakuru County Assembly/Chairperson
Committee on Appointments
Date .....

3.0 ESTABLISHMENT OF THE COMMITTEE ON APPOINTMENTS

The Committee on Appointments is one of the Select Committees established under Standing Order No. 204 (4) with the mandate to consider for approval by the Assembly, appointments of County Executive Members under Articles 179 (2) (b) (3) (6) and 183 read together with Section 30 (d) of the County Government Act 2012; County Public Service Members as provided in Section58 of the County Governments Act 2012 and the County Secretary as provided in Section 44 of the County Government Act2012.

The said Article requires H.E. the Governor to nominate and with the approval of the County Assembly, appoint Executive Committee Members. Section 7(10) of the Public Appointments (Parliamentary Approval) Act 2011, *provides that*, ***where the nomination of a candidate is rejected by Assembly, the appointing authority may submit to the Assembly the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly.***

3.1 APPOINTMENT PROCESS OF THE COUNTY EXECUTIVE MEMBERS; COUNTY PUBLIC SERVICE BAORD MEMBERS AND THE COUNTY SECRETARY

The public was expected to participate in the vetting process through submission of memoranda (affidavit) on the suitability or otherwise of the nominees. On Saturday 18th May, 2013, the Clerk of the County Assembly placed an advertisement in the print media inviting the public to submit memoranda by 22nd May, 2013 on the suitably or otherwise of the said eighteen (18) nominees pursuant to Section 6 (9) of the Public Appointments (Parliamentary Approval) Act 2011.

As a result, several memoranda were received from the public with some commending the nominees while others raised objection on the nomination of the nominees as follows:-

1. Mr. James Gichuhi :- In Support of Mr. Francis Gatimu Mathea, Nominee for Finance and Planning

2. Ms. Alice Nyawai Njoroge and 30 others:- In support of Nominee Mr. Joel Maina Kairu for Roads Public Works and Transport
3. Rachael W. Maina and 30 others: - In support of Mr. Samuel Ndungu Gitau in Industrialization, Trade, Tourism and Wildlife Management.
4. Mr. Joshua N. Nganga: - Against nominee Mr. Samuel Ndungu Gitau citing Financial Impropriety (bounced Cheque) and a Pending Civil Case.
5. Mr. Wycliff Agesa of Nakuru Stakeholders against Nominee Ms. Nancy Wanjiru Waiganjo of Public Service as not competitively recruited.
6. Mr. Wycliff Agesa of Nakuru Stakeholders against Nominee Mr. J.M.Mogusu County Secretary not competitively recruited

The Committee had requested every Nominee to present the following documents during the vetting;

- Clearance from Ethics and Anti-Corruption Commission
- Clearance Certificate from Kenya Revenue Authority (KRA)
- Higher Education Loans Board (HELB) Certificate
- Certificate of Good Conduct

3.2 VETTING OF THE NOMINEES

In conducting the vetting process, the Committee on Appointments examined the nominees against the following criteria, amongst others, in accordance with the Public Appointments (Parliamentary Approval) Act No. 33 of 2011 and the County Government Act 2012 Section 30 (d);

(i) Academic qualifications
(ii) Employment record
(iii) Professional affiliations
(iv) Potential conflict of interest
(v) Knowledge of the relevant field
(vi) Overall suitability for the position
(vii) Tax compliance
(viii) Integrity

During its Sittings held from Thursday 23rd to Sunday 26th May, 2013, at Nakuru County Assembly Chambers, the Committee orally interviewed the eighteen (18) nominees for appointment as County Executive Members; County Public Service Board members, and County Secretary (Refer to the Hansard).

3.2 (A) PROF. MARY KARIUKI NOMINEE FOR LANDS, PHYSICAL PLANNING AND HOUSING

Prof. Mary Kariuki appeared before the Committee on Thursday 23rd May, 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on her suitability or otherwise for appointment to public office, none was received. She stated to the Committee that:-

I. She is a Professor of psychology at the Egerton University, Njoro where she is currently a lecturer.
II. She has been a resident of the county for the last 35 years
III. She has been an active member of the business community among other organizations in Nakuru Town
IV. Although she had inadequate knowledge of her docket, she would rely on technocrats to succeed where technical knowledge is required.
V. She is highly adaptable and would be able to quickly adjust into the docket

3.2 (B) DR. STANLEY KIMAIWA CHEPKWONY NOMINEE FOR AGRICULTURE, LIVESTOCK AND FISHERIES

Dr. Stanley K. chepkwony appeared before the Committee on Thursday 23rd May, 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on his suitability or otherwise for appointment to public office, none was received. He stated to the Committee that:-

1) He is a qualified Doctor of Philosophy in Applied Mathematics and is a University Lecturer.
2) He unsuccessfully contested for a Parliamentary seat for Kuresoi South
3) He has been an ardent champion for revival of the Pyrethrum farming and advocates for better prices

4) Is open to diversification of Agriculture in the county
5) Highlighted possibility of Nakuru having a beef products factory for its Livestock
6) He is against sub-division of land as it reduces the productive agricultural land

3.2 (C) MR. FRANCIS GATIMU MATHEA NOMINEE FOR FINANCE AND PLANNING

Mr. Francis Gatimu Mathea appeared before the Committee on Thursday 23rd May, 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on hisr suitability or otherwise for appointment to public office, none was received. He stated to the Committee that:-

I. He is a graduate of Bachelor of Art and is a Certified Public Accountant of Kenya, CPA (K)
II. He is an Elder of PCEA Church and also a Finance Manager in the same church controlling a portfolio in excess of Kenya shillings 4 Billion
III. He has financial knowledge having worked previously as a Finance Manager in various institutions
IV. Talked of how he would raise County Revenue to support the budget
V. He recognized the role of ICT in enhancing efficiency in service delivery within the county
VI. Pledged to diversify and expand revenue base for the county
VII. He stated he would give incentives to businesses by streamlining licensing
VIII. Push for right allocation of resources to the County

3.2 (D) MR. JOEL MAINA KAIRU NOMINEE FOR ROADS, PUBLIC WORKS AND TRANSPORT

Mr Joel Maina Kairu appeared before the Committee on Thursday 23rd May, 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on his suitability or otherwise for appointment to public office, none was received. He stated to the Committee that:-

I. He is a Quantity Surveyor by profession with a degree in Building Economics form University of Nairobi. He has a Master of Arts in project Planning and Management.
II. He is the serving County Public Works Officer with an experience of over 15 years
III. Pledged to place more roads under tarmac
IV. Discussed funding of roads infrastructure through Public Private Partnerships

3.2 (E) DOCTOR JULIUS OGETO NOMINEE FOR HEALTH

Dr. Julius Ogeto appeared before the Committee on Thursday 23rd May, 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on his suitability or otherwise for appointment to public office, none was received. He stated to the Committee that:-

I. Has been a private medical practitioner for many years in Nakuru town
II. Previously worked for the Government in Machakos and Baringo
III. Track record of initiative and development in Nakuru Town
IV. Talked of strengthening lower cadre health facilities to reduce pressure on Provincial hospital
V. Improving maternal health care for mothers and reduce the current 30% unsafe births
VI. Acknowledge the need to have cancer treatment but was not clear how due to high costs involved

3.2 (F) MR. JOSEPH K. TONUI NOMINEE FOR EDUCATION, CULTURE, YOUTH AND SOCIAL SRVICES

Mr. Joseph K. Tonui appeared before the Committee on Friday 24th May, 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on his suitability or otherwise for appointment to public office, none was received. He stated to the Committee that:-

I. He is currently a Principal with many years in the teaching profession

II. He stated he was not interviewed for this position though ready and competent to serve
III. He pledged to eradicate the drugs menace in schools
IV. He stated he will expand the number of classrooms

3.2 (G) MR. RICHARD KIPSANG ROP NOMINEE FOR NATURAL RESOURCES, ENVIRONMENT, WATER AND ENERGY

Mr. Richard Kipsang Rop appeared before the Committee on Friday 24th May, 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on his suitability or otherwise for appointment to public office, none was received. He stated to the Committee that:-

I. He is an Environmentalist by profession having graduated with a BSC Environmental science form the Egerton University
II. Has worked in the water sector in Kericho, Eldoret and Nakuru
III. Has a good understanding on environment and water management
IV. Articulated his policy focus on water and environment
V. Pledged to return Nakuru to a shining Clean town in the Country

3.2 (H) MR. SAMUEL NDUNGU GITAU NOMINEE FOR TRADE INDUSTRIALIZATION, TOURISM MANAGEMENT AND WILDLIFE

Mr. Samuel Ndungu Gitau appeared before the Committee on Friday 24th May, 2013 and was informed by the Chairperson that an affidavit was received from Mr. Joshua N. Nganga on his suitability on account of integrity and personal character. He stated to the Committee that:-

I. He is BSC graduate of Business Management degree from Brunel University United Kingdom
II. He is a Director of Trasnco Trading Company and is a business person
III. He discussed the set up of a milling plant by inviting an investor to set it up

IV. He pledged to work closely with the relevant Assembly Committee for synergy and success in the docket
V. He said upon appointment he would resign from his private business to serve in the docket
VI. He talked of setting aside designated parking areas for trucks to remove inconveniences on the roads
VII. On allegations he stated that it was a civil matter resulting from commercial engagements with the complainant. He felt it would be settled by court and would not be an obstacle to his performance in the docket

3.2 (I) MS. POLLYNE ANYANGO AWOKO NOMINEE FOR INFORMATION COMMUNICATION TECHNOLOGY AND E-GOVERNMENT

Ms. Pollyne Anyango Awoko appeared before the Committee on Friday 24th May, 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on her suitability or otherwise for appointment to public office, none was received. She stated to the Committee that:-

I. She is a graduate of Bachelor of Arts degree from University of Nairobi in Journalism and Media Studies
II. She has been an active member of Youth leadership and empowerment
III. Has clear knowledge in communication and Journalism
IV. Is good in fundraising for projects
V. Very conversant with technological advancements which she would tap for the county
VI. Promised to set up interactive websites for wards and constituencies for information on government performance
VII. Called for adoption of E-Government and E-billing to enhance efficiency, performance, reduce fraud and corruption
VIII. Shared her vision on a techno-city for Nakuru county

3.2 (J) MS. MARY WANJIRU WAIGANJO NOMINEE FOR PUBLIC SERVICE

Ms. Mary Wanjiru Waiganjo appeared before the Committee on Friday 24th May, 2013 and was informed by the Chairperson that a

complaint had been received from Mr. Wycliff Agesa of Nakuru Stakeholders stating that she had not been competitively nominated. She stated to the Committee that:-

I. She was not interviewed for the position due to distress of the loss of her late Father
II. She contested for County Women Representative and was unsuccessful
III. Pledged to work with Public Service Board to enhance county public service performance
IV. She admitted not to have a clear policy understanding of the docket though nominated
V. On complaint, she admitted not to have attended the interview as it was when she was mourning her late father.

4.0 COUNTY SECRETARY

The Nominee for County Secretary, Mr. Joseph Motari Mogusu, appeared before the Appointments committee on Saturday 25th may 2013. He was informed by the Chairperson that there is a complaint from Mr. Wycliff Agesa of Nakuru Stakeholders against his nomination citing lack of competitive recruitment and nomination. He stated to the committee that:-

I. He was a holder of a Masters degree in Public Administration.
II. He is the immediate District Commissioner of Rongai District in Nakuru County
III. Detailed his wealth of experience in Administration and Management to the committee
IV. He is the Interim County Secretary having been recruited and seconded by the Transition Authority to Nakuru County
V. Told the Committee of his initial competitive recruitment by Transition Authority and hence felt that had served the purpose
VI. Questioned on why he had used initials in the advertisement calling for public participation and responded that it was the Transition Authority that caused the confusion of his names.

5.0 COUNTY PUBLIC SERVICE BOARD

5.1 (A) MR. JAMES KIONGI MWAURA NOMINEE FOR CHAIRMAN COUNTY PUBLIC SERVICE BOARD

Mr. James Kiongi Mwaura appeared before the Committee on Saturday 25th May, 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on his suitability or otherwise for appointment to public office, none was received. He stated to the Committee that:-

I. He is a career administrator having served through the ranks of Provincial Administration to the position of District Commissioner
II. That he was 60 years old and felt need to share wisdom with the county through the Board
III. He stated his long service experience and exposure in public service would serve him well as chairman of the Board
IV. Pledged to be dedicated and focused in establishing a vibrant and well skilled public service
V. Has never been charged in a Court of Law, has no potential conflict of interest, and has fully complied with his tax obligation.
VI. Has never been dismissed from office for contravention of the provisions of Article 75 of the Constitution which deals with conduct of state officers that are adversely mentioned in any reports

5.2 (B) MR. JAMES MBUGUA KURIA, NOMINEE FOR SECRETARY COUNTY PUBLIC SERVICE BOARD

Mr. James Mbugua Kuria appeared before the Committee on Saturday 25th May, 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on his suitability or otherwise for appointment to public office, none was received. He stated to the Committee that:-

I. He was a career public servant having served as a Clerk in many Local Authorities
II. Currently working for the former Othaya Town Council

III. He is qualified Certified Public Secretary, CPS, and also a Certified Public Accountant of Kenya, CPA (K)
IV. He demonstrated a wealth of knowledge and experience in his area of competence
V. Understands the Human resource policies that need to be implemented
VI. Cited the collaboration between County Assembly and County Public Service Board

5.3 (C) MS. FRANCISCA KAMUREN NOMINEE FOR MEMBER COUNTY PUBLIC SERVICE BOARD

Ms. Francisca Kamuren appeared before the Committee on Saturday 25th May, 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on her suitability or otherwise for appointment to public office, none was received. She stated to the Committee that:-

I. She is pursuing a PhD in English and Linguistics and is a lecturer
II. Has sat in many school boards and thus has experience in recruitment and human resource management
III. She is passionate in public service that delivers

5.4 (D) MR. PETER MURITHI MARANIA NOMINEE FOR MEMBER COUNTY PUBLIC SERVICE BOARD

Mr. Peter Murithi Marania appeared before the Committee on Saturday 25th May, 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on his suitability or otherwise for appointment to public office, none was received. He stated to the Committee that:-

I. He voluntarily retired from a career in banking
II. Currently in private business
III. Have the requisite skills to serve as a member of the county public service board
IV. He acknowledged having an expired Certificate of good Conduct

5.5 (E) MR. PETER KIBE MBAE NOMINEE FOR MEMBER COUNTY PUBLIC SERVICE BOARD

Mr. Peter Kibe Mbae appeared before the Committee on Saturday 25th May 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on his suitability or otherwise for appointment to public office, none was received. He stated to the Committee that:-

I. He is the director of Proactive Media
II. A graduate of BA Philosophy and Political Science and a Masters degree in Communication and Media Studies form University of Nairobi
III. Demonstrated clear policy understanding on ICT usage in public service
IV. Pledged to champion open communication within public service for the Nakuru residents to know the activities of their Government
V. Pledged to use his exposure, youthful energy in making an impact within the Board and public service of the county

5.6 (F) MR. RICHARD OCHIENG TUTAH NOMINEE FOR MEMBER FOR COUNTY PUBLIC SERVICE BOARD

Mr. Richard Ochieng Tutah appeared before the Committee on Saturday25th May, 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on his suitability or otherwise for appointment to public office, none was received. He stated to the Committee that:-

I. Has been an active member of Nakuru County advocating for effective service delivery
II. He has a Bachelors degree in Administration and Sociology
III. Previously worked for Homeland Security
IV. Pledged to iinitiate policy within 100 days in office
V. Has a clear understanding of role of County Public Service Board

5.7 (G) MS. MONICAH CHERUTICH NOMINEE FOR MEMBER OF COUNTY PUBLIC SERVICE BOARD

Ms. Monicah Cherutich appeared before the Committee on Saturday 25th May, 2013 and was informed by the Chairperson that despite inviting memoranda from the public, on her suitability or otherwise for appointment to public office, none was received. She stated to the Committee that:-

I. She has been an active KNUT representative of teachers
II. Pledged to champion Performance Contracting if appointed to the board
III. Currently pursuing a degree in Leadership and Management
IV. Her experience as a teacher has equipped her with skills of people management necessary in serving within the Board
V. Showed her passion in having an effective and efficient public service

6.0 COMMITTEE OBSERVATIONS

1. PROF. MARY KARIUKI NOMINEE FOR LANDS, PHYSICAL PLANNING AND HOUSING

The committee having considered her curriculum vitae and heard her oral presentation during the vetting exercise/interviews made the following conclusion;

I. That she is **not suitable** for the position as she admitted it is a new area for her
II. She was not interviewed for the position she had been nominated to serve
III. Does not meet the requirements of County Government Act Section 35 (3) (d) of the County Government Act 2012
IV. Did not present an affidavit to ascertain that her three names as appearing in the certificates referred to one person.

2. DR, STANLEY KIMAIWA CHEPKWONY NOMINEE FOR AGRICULTURE, LIVESTOCK AND FISHERIES

The committee having considered his curriculum vitae and heard his oral presentation during the vetting exercise/interviews made the following conclusion;

I. That he is **not suitable** for the position as he admitted it is a new area for him
II. He was not interviewed for the position he had been nominated to serve
III. Does not meet the requirements of County Government Act Section 35 (3) (d) of the County Government Act 2012
IV. He does not have a current certificate of KRA on Tax compliance

3. MR. FRANCIS GATIMU MATHEA NOMINEE FOR FINANCE AND PLANNING

The committee having considered his curriculum vitae and heard his oral presentation during the vetting exercise/interviews made the following conclusion:

I. That he **is suitable** to serve as nominated in the docket of Finance and Planning being graduate of Bachelor of Art and is a Certified Public Accountant of Kenya, CPA (K)
II. He was found to have necessary qualifications, experience and policy understanding of the docket
III. Meets the provisions of Section 35 (3) (c) and (d) of the County Government Act, 2012

4. MR. JOEL MAINA KAIRU NOMINEE FOR ROADS, PUBLIC WORKS AND TRANSPORT

The committee having considered his curriculum vitae and heard his oral presentation during the vetting exercise/interviews made the following conclusion:

I. That he has the professional qualification, knowledge and experience as the serving County Public Works Officer
II. Meets the provisions of Section 35 (3) (c) and (d) of the County Government Act, 2012 and;

III. Therefore Committee found him **suitable to serve** under the docket for which he was nominated of Roads, Public Works and transport

5. DR. JULIUS OGETO NOMINEE FOR HEALTH

The committee having considered his curriculum vitae and heard his oral presentation during the vetting exercise/interviews made the following conclusion:

I. Not suitable to serve as nominated in the docket of Health. He lacks vision and passion
II. Seems unaware of the health policy needs of the county
III. Had a very poor response to the matter of thirty (30%) unconventional maternal deliveries demonstrating casualness
IV. Very reliant on donor instead of generating homegrown financing solutions

6. MR. JOSEPH K. TONUI NOMINEE FOR EDUCATION, CULTURE, YOUTH AND SPORTS

The committee having considered his curriculum vitae and heard his oral presentation during the vetting exercise/interviews made the following conclusion:

I. The committee found him to be **unsuitable to serve** in the docket as he had not been interviewed for the docket nominated
II. He could not articulate policy issues on education adequately
III. He had applied for the docket of lands and planning for which he had been interviewed.

7. MR. RICHARD KIPSANG ROP NOMINEE FOR NATURAL RESOURCES, ENVIRONMENT, WATER AND ENERGY

The committee having considered his curriculum vitae and heard his oral presentation during the vetting exercise/interviews made the following conclusion:

I. That he **is suitable** to serve as nominated in the docket of Environment, Natural resources, Water and Energy

II. He was found to have necessary qualifications, experience and policy understanding of the docket
III. Meets the provisions of Section 35 (3) (c) and (d) of the County Government Act, 2012

8. MR. SAMUEL NDUNGU GITAU NOMINEE FOR TRADE INDUSTRIALIZATION, TOURISM AND WILDLIFE MANGEMENT

The committee having considered his curriculum vitae and heard his oral presentation during the vetting exercise/interviews made the following conclusion:

I. That he **is suitable** to serve as nominated in the docket of Trade industrialization, Tourism and Wildlife Management
II. He was found to have necessary qualifications, experience and policy understanding of the docket
III. Meets the provisions of Section 35 (3) (c) and (d) of the County Government Act, 2012

9. POLLYNE ANYANGO AWOKO NOMINEE FOR INFORMATION COMMUNICATION TECHNOLOGY AND E-GOVERNMENT

The committee having considered her curriculum vitae and heard her oral presentation during the vetting exercise/interviews made the following conclusion:

I. The committee found her to be **unsuitable to serve** in the docket as she had not been interviewed for the docket nominated
II. Though articulate and passionate on policy, she lacked past experience in the field and was very theoretical
III. She had applied for the docket of member of Public Service Board for which she had been interviewed.

10. MS. MARY WANJIRU WAIGANJO NOMINEE FOR PUBLIC SERVICE

The committee having considered her curriculum vitae and heard her oral presentation during the vetting exercise/interviews made the following conclusion;

I. That she is **not suitable** for the position as she admitted it is a new area for her
II. She was not interviewed for the position she had been nominated to serve
III. Does not meet the requirements of County Government Act Section 35 (3) (d) of the County Government Act, 2012
IV. Her approval would place the exercise and requirement on competitive sourcing and public participation into question

7.0 COUNTY SECRETARY

MR. J.M. MOGUSU

The committee having considered his curriculum vitae and heard his oral presentation during the vetting exercise/ interviews made the following conclusion;

I. That he is **not suitable** to serve for the position as he admitted he had not been competitively sourced as required by Section 44 (2) (b) of the County Government Act 2012
II. He was not interviewed for the position he had been nominated to serve
III. His approval would place the exercise and requirement on competitive sourcing and public participation into question
IV. He has a serious misrepresentation of facts on his actual names and chose to use initials instead of full names

2) She was found to have necessary qualifications, experience and policy understanding of the docket
3) Meets the provisions of Section 35 (3) (c) and (d) of the County Government Act, 2012

4. PETER KIBE MBAE NOMINEE FOR MEMBER COUNTY PUBLIC SERVICE BOARD

The committee having considered his curriculum vitae and heard his oral presentation during the vetting exercise/interviews made the following conclusion:

1) That he **is suitable** to serve as nominated in the docket of Member County Public Service Board
2) He was found to have necessary qualifications, passion, experience and policy understanding of the docket
3) Meets the provisions of Section 35 (3) (c) and (d) of the County Government Act, 2012

5. MR. PETER MURIITHI MARANIA NOMINEE FOR MEMBER OF COUNTY PUBLIC SERVICE BOARD

The committee having considered his curriculum vitae and heard his oral presentation during the vetting exercise/ interviews made the following conclusion:

I. That he is **not suitable** for the position on account of his lack of understanding of the policy needs of the public service
II. Failure to present a current **Certificate of Good Conduct**

6. MR. RICHARD OCHIENG TUTAH NOMINEE FOR MEMBER OF THE COUNTY PUBLIC SERVICE BOARD

The committee having considered his curriculum vitae and heard his oral presentation during the vetting exercise/interviews made the following conclusion:

1) That he **is suitable** to serve as nominated in the docket of Member County Public Service Board
2) He was found to have necessary qualifications, passion, experience and policy understanding of the docket

3) Meets the provisions of Section 35 (3) (c) and (d) of the County Government Act, 2012

7. MS. MONICAH CHERUTICH NOMINEE FOR MEMBER OF THE COUNTY PUBLC SRVICE BOARD

The committee having considered her curriculum vitae and heard her oral presentation during the vetting exercise/interviews made the following conclusion:

1) That she **is suitable** to serve as nominated in the docket of Member County Public Service Board
2) She was found to have necessary qualifications, passion, experience and policy understanding of the docket
3) Meets the provisions of Section 35 (3) (c) and (d) of the County Government Act, 2012

9.0 COMMITTEE'S RECOMMENDATIONS

Pursuant to Articles 179 (2) (b) (3) (6) and 183 read together with Section 30 (d) of the County Government Act 2012 and standing Order No. 185 (4) the Committee recommends that:-

1. The Assembly approves the following four (4) nominees for appointment by the Governor as County Executive Committee members in their respective dockets:-
   1. Mr. Francis Gatimu Mathea
   2. Mr. Richard Kipsang Rop
   3. Mr. Joel Maina Kairu
   4. Mr. Samuel Ndungu Gitau

2. The Committee rejectes the nomination of the following nominees as nominated for respective dockets with the reasons given above:-
   1) Prof. Mary Kariuki
   2) Dr. Stanley K. Chepkwony
   3) Mr. Joseph K. Tonui
   4) Ms. Pollyne Anyango Awoko
   5) Dr. Julius Ogeto
   6) Ms. Mary Wanjiru Waiganjo

8.0 COUNTY PUBLIC SERVICE BOARD

1. MR. JAMES KIONGI MWAURA NOMINEE FOR CHAIRMAN FOR COUNTY PUBLIC SERVICE BOARD

The committee having considered his curriculum vitae and heard his oral presentation during the vetting exercise/interviews made the following conclusion;

I. That he is **not suitable** for the position on account of his age having already attained the maximum retirement age of Public Service of 60 years

II. Failure to appreciate the largest population percentage of Youth in the county during his presentation. Casually referred to Youth as a concept.

2. MR. JAMES MBUGUA KURIA NOMINEE FOR SECRETARY COUNTY PUBLIC SERVICE BOARD

The committee having considered his curriculum vitae and heard his oral presentation during the vetting exercise/interviews made the following conclusion:

1) That he **is suitable** to serve as nominated in the docket of Secretary for the County Public Service Board
2) He was found to have necessary qualifications, experience and policy understanding of the docket
3) Meets the provisions of Section 35 (3) (c) and (d) of the County Government Act, 2012

3. MS. FRANCISCA KAMUREN NOMINEE FOR MEMBER OF THE COUNTY PUBLIC SERVICE BOARD

The committee having considered her curriculum vitae and heard her oral presentation during the vetting exercise/interviews made the following conclusion:

1) That she **is suitable** to serve as nominated in the docket of Member of the county Public Service Board

9.1 COUNTY SECRETARY

The Committee rejects the nomination of the nominee as nominated for the docket of County Secretary on account of disregard of public participation and lack of competitive recruitment as per Section 44 (2) (b) of the County Government Act 2012.

9.2 COUNTY PUBLIC SERVICE BOARD

1. CHAIRMAN MR. JAMES KIONGI MWAURA

The Committee rejects his nomination to be the Chairman of County Public Service Board on account of his age having already attained the maximum retirement age of Public Service of 60 years. He failed to appreciate the largest population percentage of Youth in the county during his presentation casually referred to Youth as a concept.

2. MR. PETER MURITHI MARANIA

The committee rejects his nomination to the position of Member of the County Public Service Board on account of his lack of understanding of the policy needs of the public service. Mr. Marania also failed to present a current **Certificate of Good Conduct.**

CG/NKR/23/14

Chair: Cmmr. Otiende Amollo, EBS
V. Chair: Dr. Regina G. Mwatha, MBS
Member: Cmmr. Saadia A. Mohamed, OGW

THE
COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"

Our Ref: CAJ/CG/NAKURU/063/4/13/VOL.1-MUT

6th September 2013

Mr. Wycliffe Agesa Oguda
Chairman
Nakuru Stakeholders Forum
P.O. Box 227
NAKURU

Dear Sir,

RE: COMPLAINT AGAINST FORMER INTERIM COUNTY SECRETAY MR. JOSEPH MOTARI

Kindly receive warmest compliments from the Commission on Administrative Justice.

We acknowledge receipt of your complaint dated 12th June 2013 addressed the Chairman, Transitional Authority and copied to us.

We are reliably informed that Mr. Joseph Motari tendered his application for the position of County Secretary, Nakuru County, and appeared before the Appointments Committee on 25th May 2013, but the Committee recommended that he was not fit to hold office in the abovementioned position.

In the circumstance, we believe that the issues raised in your complaint have been addressed.

We thank you continued co-operation and assure you of our highest regards.

Yours Sincerely,

CMMR. OTIENDE AMOLLO, EBS
CHAIRPERSON OF THE COMMISSION

Cc: **Hon. Kinuthia Mbugua**
Governor
Nakuru County
P.O. Box 2870-20100
NAKURU

NAKURU STAKEHOLDERS FORUM

Vibrant opinion, better say for Nakuru Residents
P.O Box 227, Nakuru- cell. 0722965408/0704287777 Email: wycliffegesa@yahoo.com

CHAIRMAN'S OFFICE RECEIVED 12 JUL 2013 COMMISSION ON ADMINISTRATIVE JUSTICE

12/7/2013

THE CHAIRMAN
TRANSITIONAL AUTHORITY
NAIROBI.

Dear sir,

RE: CALL TO IMMEDIATE REMOVAL OF NAKURU COUNTY INTERIM SECRETARY MR. JOSEPH MOTARI DUE TO CONFLICT OF INTEREST.

The above refers:

It has come to our conclusion that this officer having been appointed to this position while serving as a District Commissioner Rongai

We are of the view that the total performance of Nakuru county will be hindered by Mr. Motari's impartiality against some members/ officers of the county something that will eventually undermine their confidence and trust to him.

To our understanding this important position calls for an officer who will discharge his duties without being distracted by vested interests; both personal and partisan and its unfortunate Mr. Motari does not meet this threshold especially as far as the cosmopolitan Nakuru county is concerned as he seems to be having personal interests at the expense of the people of this county.

Consequently we hereby demand that he be immediately removed from Nakuru county for in the first place your authority was misadvised to retain him here when his former colleagues were transferred to other counties outside their former stations. And again he never resigned as a District Commissioner as he draws his salary in the said position as well as the interim county secretary, should one draw two salaries in two different positions?

The constitution states clearly that a public officer should not engage in any other gainful activity consequently we request ethics and anti-corruption commission urgently to come on board and investigate the above named officer to ascertain where he gets his salary and how much he earns as an interim county secretary and why? among other issues to be investigated from the above officer

Yours faithfully,

WYCLIFFE AGESA OGUDA
CHAIRMAN

TRANSITION AUTHORITY
CHAIRMAN
12 JUL 2013
BIC-N

C.C

- Ethics and anti- corruption commission
- Chairman commission on administration of justice - Ombudsman

ETHICS AND ANTI - CORRUPTION COMMISSION P.O. Box 61130 - 00200 NAIROBI 12 JUL 2013 RECEIVED

NAKURU STAKEHOLDERS FORUM

P.O.BOX 227-20100 CELL : 0722965408 / 0720988086

25th MAY 2013

THE CLERK TO THE COUNTY ASSEMBLY
COUNTY ASSEMBLY NAKURU
P.O.BOX 138
NAKURU

Dear SIr/Madam

RE: VETTING BY COMMITTEE ON APPOINTMENT OF NAMES OF EXECUTIVE COMMITTEE AND PUBLIC SERVICE BOARD – NAKURU COUNTY

The above matter refers.

We are hereby raising our great concerns on the vetting process. We are in the view that this process is being done in a manner that is contrary to our letter dated 18th May 2013 and affidavit sworn on 20th May 2013. **Mr. J.M MOGOSI** should not in the first place appear before the committee on appointment of this house because he was never interviewed. Why should the law be bent in favour of some individuals? We demand that the said **Mr. J.M MOGOSI** should be disqualified with immediate effect.

Sir, we hope that these concerns must be taken into account.

Yours faithfully

WYCLIFFE AGESA OGUDA

CHAIRMAN

NAKURU STAKEHOLDERS FORUM

P.O. BOX 227-20100, NAKURU CELL: 0722965408/0720988086

18th May, 2013

THE CLERK TO COUNTY ASSEMBLY
COUNTY ASSEMBLY OF NAKURU
P.O. BOX 138
NAKURU

CLERK
NAKURU COUNTY ASSEMBLY
20 MAY 2013
P.O. BOX 138 NAKURU

Dear Sir/Madam,

RE: VETTING BY COMMITTEE ON APPOINTMENT OF NAMES OF EXECUTIVE COMMITTEE AND PUBLIC SERVICE BOARD – NAKURU COUNTY

The above matter refers.

It has come to our Notice of Intention to change positions of those who were interviewed by the vetting board and announced by the Governor as the possible candidates for their respective positions.

M/S PAULINE ANYANGO OWOKO was interviewed and appointed for the position of Public Service (copy attached) pending vetting by your above committee but it has come to our attention that she has been replaced by **M/S MARY WANJIRU WAIGANJO** meaning **Pauline Anyango Owoko** takes over information communication technology and E-Government docket which has just been created we would like to know when the said **Mary Wanjiru Waiganjo** was interviewed and/or vetted by the board that was mandated to do the same work, why **Pauline Anyango Owoko** was removed from the position she applied, interviewed and vetted for? . In this circumstance **Pauline Anyango Owoko** should retain her position, Public Service and **Mary Wanjiru Waiganjo** removed with immediate effect failure to which we shall take legal actions against any vetting of the same.

Secondly we are aware that **Mr. Peter Nyakundi** resigned from Public Service Board as a member immediately he was unveiled and reasons for his resignation are within the public domain, we demand to know the following:

(a) Who replaced the said member
(b) Which procedure used to replace

Thirdly under which provisions of law is the **County Secretary Mr. J.M. Mogosi** to be on the Public Service Board, did he apply to be there, was he vetted by the board.

The vetting board was chaired by a former Chief Magistrate who was dismissed from the Judiciary, of what moral authority was she allowed to chair the board if she has not been cleared by the Judiciary.

Sir, we hope that these concerns must be taken into account.

Yours faithfully

Wycliffe Agesa Oguda
CHAIRMAN

11th May 2016

PUBLIC SERVICE BOARD

TITLE:	NAME
CHAIRMAN:	JAMES MWAURA
SECRETARY:	JAMES MBUGUA
MEMBERS:	FRANSCISCA J. KAMUREN
	MONICAH CHERUTICH
	PETER NYAKUNDI
	PETER MWARANIA
	OCHIENG RICHARD TUTA

EXECUTIVE MEMBERS

1.	HEALTH -	DR. JULIUS OGETO
2.	NATURAL RESOURSES. ENV, WATER & ENERGY:	PROF. RICHARD KIPSANG ROP – Min. Nat
3.	ICT & E-GOVERNMENT:	PETER KIBE MBAE
4.	ROADS PUBLIC WORKS & TRANS.	JOEL MAINA KAIRO
5.	INDUSTRALIZATION TRADE & TOURISM:	SAMUEL NDUNG'U GITAU
6.	AGRICULTURE LIVESTOCK FISHERIES:	PROF. STANLEY CHEPKWONY
7.	FINANCE AND PLANNING:	FRANCIS G. MATHEA
8.	LANDS , PHYSICAL PLANNING AND HOUSING:	PROF. MARY W. KARIUKI
9.	EDUCATION, CULT. YOUTH & SOCIAL S:	JOSEPH K. TANUI
10.	PUBLIC SERVICE:	PAULINE ANYANGO OWOKO

THINK AGAIN | Maina Kiai

Protests can be kept peaceful without riot gear and violence

I recently spent a few days in Mongolia, attending the Seventh Ministerial Conference of the Community of Democracies, a voluntary association of governments committed to democracy.

There is something uplifting being in a country that is on the up economically and politically as Mongolia is. Mongolians have justifiable pride in their achievements since 1991 when they tore themselves from the Soviet axis. It has not been easy, and their achievements are the more incredible considering that Mongolia is landlocked, has a long and very cold winter, is barely arable, and has only two neighbours, Russia and China.

Mongolia was created by the Genghis Khan in 1206. But it later came under the control of the Chinese and then the Soviet Union. The majority live in the capital, Ulaanbaatar, which has an average temperature of 0 degrees centigrade.

Mongolians are traditionally pastoralists, keeping sheep, goats, cows, camels and horses. They share many customs and rituals with our own pastoralist communities, such as the special place of the sheep's tail, and traditional houses which look like traditional Maasai homes but are made from felt due to the cold weather.

One of my highlights during the visit was witnessing a protest at the end of the conference, and how the police handled it.

We trooped out of the meeting hall, led by Nobel Peace Prize Laureate Aung San Suu Kyi of Burma. There was also the President of Mongolia, the Prime Minister of Thailand, the vice-presidents of Nigeria and Costa Rica and numerous ministers from around the world.

And there in front of us were hundreds of loud protesters, with placards and bull-horns denouncing the Mongolian government, claiming that Mongolia was not a democracy and that it had political prisoners.



Turns out that the previous President of Mongolia is serving time in jail for corruption and the protesters were his supporters.

There are many human rights issues in Mongolia and lots of complaints about police corruption and their culture of *Khiiu khiigoo?* But on protests, at least this one, the police were exemplary.

No riot gear

They formed a human chain in front of the protesters keeping them about 50 metres or so from the conference guests. They were in plain uniform — without riot gear — and did not have visible truncheons or guns with them.

Contrast this with our police, who cannot seem to get it that peaceful protests are part of our Constitution. Intimidation, force and violence are the norm.

Yes there have been sporadic improvements — though none in Kisumu, where the use of live bullets continues to be favoured. But the police need to internalise that their role is to both facilitate protests and ensure law and order.

A good starting point would be to keep the riot gear — the rungus, and tear gas — away until it becomes necessary.

On Tuesday, civil society organised a big — and peaceful — protest from Freedom Corner to Parliament against the insatiable greed of our MPs to increase their pay. This is not just about greed. It is also about efforts to openly subvert our Constitution to suit the whims of a few, and if they succeed we can as well say goodbye now to the Constitution.

The police reaction was typical, though the majority of the police officers agreed with the protesters. Heavy intimidating presence complete with dogs, horses, chemically-laced water cannons, tear gas and full riot gear. An arsenal and force that beats the fear-mongers from the rogue when we were under the old, undemocratic Constitution.

The police were alright at the beginning of the protest but then after a few hours their customary brutality emerged and mayhem ensued. They lobbed the tear gas and chemicals in the water, and went around beating anyone in the vicinity, protester or not.

They almost beat up Prof Yash Ghai, but for the quick and brave thinking of some of the youth who circled him and took the rungus aimed at him.

It is baffling why the police insist on beating unarmed people running away from tear gas. What purpose does this brutality exceptionally accept to alienate the police? Can't they learn from their Mongolian counterparts and abide by our Constitution? Or have they taken in the messaging, since the elections, and confirmed by the Mutunga Court, that it is business as usual?

This matter is not over, given the arrogance and obstinacy of our politicians and the question is whether all the Kenyans united against this greed — cutting across partisan politics — will come out and be counted.

mkiai2000@yahoo.com



MAINA KIAI/ NATION

Police keep demonstrators away from the meeting venue of the Seventh Ministerial Conference of the Community of Democracies in the Mongolian capital Ulan-Bator on April 29, 2013.

COUNTY ASSEMBLY OF NAKURU
OFFICE OF THE
CLERK TO THE ASSEMBLY

TEL: (051) 2216472
FAX: (051) 2216473
Email: info@nakurucounty.or.ke
Website: www.nakurucounty.or.ke

COUNTY ASSEMBLY
P.O BOX 138
NAKURU

INVITATION FOR VETTING BY COMMITTEE ON APPOINTMENT

Pursuant to the Provisions of the Constitution of Kenya 2010, The County Government Act 2012, Section 8(a) and the Public Appointments Act 2011, the County Assembly of Nakuru has received the names of the following nominees for appointment as indicated below:-

NO.	NAME	EXECUTIVE COMMITTEE POSITIONS
1.	Prof. Mary Kariuki	Lands, Physical Planning & Housing
2.	Stanley K. Chepkwony	Agriculture, Livestock & Fisheries
3.	Francis Gatimu Mathea	Finance & Planning
4.	Joseph Kosgei Tonui	Education, Culture, Youth & Social Service
5.	Richard Kipsang Rop	Natural Resources, Environment, Water & Energy
6.	Joel Maina Kairo	Roads, Public Works & Transport
7.	Samuel Ndungu Gitau	Industrialization, Trade & Tourism
8.	Anyango Owoko	Information, Communication Technology & E-Government
9.	Mary Wanjiru Waiganjo	Executive Member – Public Service
10.	Dr. Julius Ogelo	Health

COUNTY PUBLIC SERVICE POSITIONS

1.	J.M. Mogosi, MBS	County Secretary
2.	James Klongi Mwaura	Chairman, County Public Service Board
3.	James Kuria Mbugua	Secretary, County Public Service Board
4.	Francisca J. Kamuren	Member, County Public Service Board
5.	Peter Kibe Mbae	Member, County Public Service Board
6.	Peter Murithi Mwaraniа	Member, County Public Service Board
7.	Richard Ochieng Tuta	Member, County Public Service Board
8.	Monicah N. Cherutich	Member, County Public Service Board

VETTING PROGRAMME AT THE COUNTY ASSEMBLY HALL

NOMINEES	
Thursday 23rd May, 2013:	
Prof. Mary Kariuki	9.00a.m.
Stanley Kimaiwa Chepkwony	11.00a.m.
Francis Gatimu Mathea	12.30p.m.
Joel Maina Kairo	3.00p.m.
Dr. Julius Ogelo	4.30p.m.
Friday 24th May, 2013	
Joseph Kipkosgei Tonui	9.00a.m.
Richard Kipsang Rop	11.00a.m.
Samuel Ndungu Gitau	12.30p.m.
Anyango Owoko	3.00p.m.
Mary Wanjiru Waiganjo	4.30p.m.
Saturday 25th May, 2013	
J.M. Mogosi, MBS	9.00a.m.
James Klongi Mwaura	10.30a.m.
James Kuria Mbugua	11.00a.m.
Francisca Jelagat Kamuren	12.00p.m.
Peter Kibe Mbae	2.00p.m.
Peter Murithi Mwaraniа	3.00p.m.
Richard Ochieng Tuta	4.00p.m.
Monicah Namunyak Cherutich	5.00p.m.

The nominees are required to come with the following original documents:-

1. Curriculum Vitae/Personal Credentials/Academic Certificates
2. Compliance Certificate from KRA
3. Clearance Certificate from Higher Education Loans Board
4. Clearance Certificate from Anti-Corruption & Ethics Commission
5. Certificate of Good Conduct

Members of public are invited to attend and submit any information/Memorandum/Petition under oath that may have a bearing on the selection of the candidates.

You may submit your comments to the Chair, Appointment Committee or to the Office of the Clerk not later than 22nd May, 2013.

J.N. MALINDA
CLERK TO COUNTY ASSEMBLY
COUNTY ASSEMBLY OF NAKURU

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NEWS

Another Nakuru county minister faces axe

James Mwembi

Nakuru residents are calling for their county lands and physical planning executive Rachael Maina to step aside to allow independent investigations into an alleged land allocation illegality she is said to have committed in the recent past.

"This is the defining moment for Maina to explain to Nakuru residents she is currently serving how she allocated a public land to her daughter when she was district lands settlement officer at the now Nyandarua county. Maina should step aside for independent investigations to take place as the damning report before a Nyahururu magistrate's court shows a considerable degree of misuse of office," said the chairman of the Nakuru Stakeholders Forum.

The forum chairman Wycliffe Oguda also wants the county government together with its assembly to do a re-vetting exercise and compel a re-submission of credentials especially from the county's executives and chief officers with a view to creating adequate quality controls of the county's services.

The Nakuru county's lands, housing and physical planning executive is being accused by the Nyandarua county of allegedly orchestrating a plot of illegally allocating public land to individuals.

Part of the over 96 acres of land that had been earmarked for the construction of a tertiary college in Nyandarua county is said to have been allocated to Maina's daughter.

The more boggling question over the alleged illegal allocation of the parcel is how Maina's daughter who was a minor then could have benefited solely without any special official accompaniment of some authorities.

It is also on the minor's benefit basis among other circumstances that the Nyandarua county has doubted the allocation of the parcel.

The Nyandarua county through its lands, housing and physical planning offices has written to the Ethics and Anti-corruption Commission to investigate on the sub-division and allocation of the land originally known as Nyandarua/Ol'kalou Salient/11.

Part of the county letter to the EACC dated March 26 this year reads, "...it is our considered view that you are the body suited to undertake investigations into the circumstances giving rise to the illegal actions which are tainted with corruption and abuse of office by the officers concerned".

During the alleged illegal allocation of the land at then Nyandarua district, Maina was the district settlement officer and she is one of the officers the county is accusing of the fraud.



Rachael

Her daughter, Esther Nyambura Maina, who is said to be a beneficiary, was a minor during the land provision work out and the Nakuru lands executive's sanction for the allotment and or allocation of the land to such a minor was an illegality, according to Nyandarua county.

It is on the basis of the alleged illegality and the current investigations on her that Forum and other regional civil society groups are petitioning Governor Kinuthia Mbugua to compel his minister to resign to pave way for the EACC and the county investigations over the matter.

Forum is now threatening to seek legal redress if she will not act in response to their plea in the soonest possible time.

Efforts to get comment from the besieged county lands executive were futile as all the time her phone sounded as if it was switched off.

REPUBLIC OF KENYA

COUNTY ASSEMBLY OF NAKURU
FIRST ASSEMBLY – THIRD SESSION

REPORT OF THE

COMMITTEE ON LANDS, HOUSING AND PHYSICAL PLANNING

ON

THE VETTING OF THE NOMINEES FOR NAKURU COUNTY LAND MANAGEMENT BOARD

FEBRUARY, 2015

3.5 ELIZABETH NJAMBI GACHUHI 11

Qualifications and suitability 12

Changes she expects to bring in the Nakuru County land sector 12

3.6 DOROTHY SHITANDI ASWAN 12

Qualifications and suitability 12

Changes she expects to bring in the Nakuru County land sector 12

RECCOMMENDATIONS 13

CONCLUSION 13

1.3 Nomination of the County Land Management Board

Pursuant to Article 18(6) of the National Land Commission Act, the Land Commission through the County Government Executive Member for Lands, Housing and Physical Planning, forwarded to the Speaker of the County Assembly, the names of seven nominees for vetting by the Sectoral Committee on Lands, Housing and Physical Planning and consideration for approval by the County Assembly for appointment as members of the County Land Management Board. The appointees were as follows;

1. Gaciku Kangari
2. Rose Wanjiru Githua
3. Dorothy Shitandi Aswan
4. Prengei Victor Sitienei
5. Reuben Kipng'eno Korir
6. Peter Oira
7. Elizabeth Njambi Gachuhi

1.4 Committee Meetings

The Committee during its sittings on 6th-8th January, 2015 vetted the nominees. The vetting process was based on national values referred to in Articles 10 and 232 of the constitution of Kenya and the suitability of the individuals towards the job.

1.5 Vetting of the Nominees

In conducting the vetting process, the Committee on Lands, Housing and Physical Planning examined the nominees against the following criteria, amongst others, as set out in chapter six of the constitution of Kenya 2010.

i. Academic qualifications
ii. Professional affiliations
iii. Constituency of residence
iv. Knowledge of the relevant subject
v. Overall suitability for the position
vi. Tax compliance
vii. Integrity

May I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the deliberations and vetting of nominees to the Nakuru County Land Management Board.

On behalf of the Committee, I have the honour and pleasure to present the Committee's Report on the vetting of the process.

Pursuant to Article 18(7) of The National Land Commission Act, 2012, the committee recommends that:-

This house approves the appointment of ; Rose Wanjiru Githua, Reuben Kipng'eno Korir, Prengei Victor Sitienei and Gaciku Kang'ari as members to the Nakuru County Land Management Board.

Peter Oira, Elizabeth Njambi Gachuhi and Dorothy Aswan Shitandi were found unsuitable for appointment.

Thank you.

SIGNED .....

HON. JONATHAN KURIA WAROTHE

CHAIRPERSON, LANDS, HOUSING AND PHYSICAL PLANNING COMMITTEE

DATE 24/02/2015

iii. On 29th December, 2014, a petition against the suitability of the nominee Mr. Reuben Kipngeno Korir by Nakuru Network Forum was received by the Clerk of the County Assembly. The Petition was dismissed by the committee on grounds that the nominee proved that he was a resident of Nakuru west constituency since he possessed a title deed and development plans indicating that he was a resident of London estate.

The Committee therefore resolved that the petition did not have any grounds to stop the vetting process of Mr. Reuben Kipng'eno Korir.

3.0 ROSE WANJIRU GITHUA

Rose Wanjiru Githua appeared before the committee on 6th January 2015.She came with original academic and non-academic certificates as was required in the invitation notice. She is a resident in Bahati constituency.

Qualifications and suitability

Holds a master's degree in Planning, Theology and a registered Physical Planner.

She clearly stated to the committee the need to put in place the necessary development plans in place so as to address land disputes.

Having served as a physical planner in the public service within Nakuru County, she has acquired the necessary experience required in finding lasting solutions in land management issues.

Changes she expects to bring in the Nakuru County land sector

Work in consultation with the county government so as to come up with an advisory plan for the county's posterity.

Sensitize the public on importance of planning so as to avoid unnecessary disputes.

She intends to initiate proper county planning and to resolve land disputes such as issuance of title deeds to persons who possess temporary occupation licenses (TOL's), subdivision of plots and land grabbing.

3.3 PETER OIRA

Peter Oira appeared before the committee on Wednesday 8th January 2014 and presented the relevant identification, academic and professional documents.

Qualifications and suitabilty

An accountant by profession but currently works as a lecturer at Laikipia University.

Resident at Mercy Njeri, in Menengai West Ward since 2003.

Changes he expects to bring in the Nakuru County land sector

He intends to work in consultations with the county government and other board members to ensure that IDP's are resettled and to bring to book all the grabbers of public utility.

The committee found him unsuitable on grounds that he did not have knowledge on pertinent land issues in Nakuru County. The nominee did not also understand the roles of the board in public land management.

3.4 GACIKU KANGARI

Appeared before the committee on 7th, January 2014, with all the relevant documents.

Qualifications and suitabilty

Holds a master's degree in conflict management and peace building, bachelor's degree in education, diploma in social development and certificate in Theology.

Currently works in Bahati constituency as Director of Institute of Directors.

She has vast knowledge in land management issues being a resident of the county and thus suitable for appointment to this post.

Changes she expects to bring in the Nakuru County land sector

Intends to advise the County Government to repossess all the public land that has been grabbed by private developers, including all the corridors round the lakes through consultative efforts.

3.5 ELIZABETH NJAMBI GACHUHI

Appeared before the committee on 8th January 2014 and presented her relevant documents as was required in the advert.

RECCOMMENDATIONS

Noting that the committee approved the appointment of four nominees and rejected three, the committee recommends that:

The National Land Commission appoints other three nominees so as to attain the regional balancing of representatives within the board.

CONCLUSION

The Committee of Lands, Housing and Physical Planning appeals to the Members of this Assembly to adopt the recommendations of the Committee regarding the vetting of appointees to the land management board.

This will enhance effective service delivery in matters pertaining management of public land.

REPUBLIC OF KENYA

COUNTY ASSEMBLY OF NAKURU

NOTICE OF MOTION

(Hon. Margaret Wanjiku Kiiru)

THAT, Pursuant to Section 11(1) of the County Government Act and Nakuru County Assembly Standing Order 63, this House resolves that the Speaker of the Nakuru County Assembly **Susan Kihika** be dismissed from the position of Speaker of the Nakuru County Assembly on the following grounds:

(i) Abuse of office
(ii) Political partisanship
(iii) Conflict of interest
(iv) Mismanagement of funds
(v) Gross violation of the Constitution and County Government Act

10/03/2015

SIGNATURES IN FAVOUR TO IMPEACH THE SPEAKER OF NAKURU COUNTY ASSEMBLY MISS SUSAN KIHIKA.

The underlisted Members have unanimously agreed to impeach the speaker Susan Kihika on the following grounds

(1) Abuse of office
2) Mismanagement and Embezzlement of funds at the assembly.
3) Grand corruption at the assembly.
4) Failure to discharge her responsibility impartially as the speaker.

This allegations will be substantiated when the motion of impeachment is debated.

~~1. Hon (Arch)~~

1. Hon (Arch) Steve Kihara [signature] Dundori
2. Hon George Mwaura Mlenga [signature] Mosop
3. Hon Leah Jepkoech Sawm [signature] Keringet
4. Jane W [illegible] [signature] Gilgil
5. [illegible] Nachara [signature] [illegible]

6 David Malel - 11248341 -

7. NGUGI MUUGAI 13127323

8. JOSEPH MIANGARI 7917567

9. NEWTON KABUU 9815408

10 SAMUEL MWANGI 24837180

11 PETER MACHARIA 25653086

12 MOSES GICHANGI 22886914

13 JANET MUCHERU 12472576

14 FLORENCE WAMBUI NJOROGE 3041075

15. BENJAMIN IRUNGU GHONGA 23091287

16. FRANCIS NJOROGE NJOGU 25707426

17. Penna Sortnor 21854449

18. Kosir Leonard 25825905

19 AGNES SALIMU 21042532

20 John Chege 10937235

21 Kamau Githeyi 9823534

22 Zoalua Wilson Mattil 0460784

23 EMMA MBUGUA 23459808

24 Stephen Ngethe 13130792

25 Peter Palanga 20792828

26 Munjing'a Kariuki 0875001

NGWARE NGANGA 22529689

Jane Simita 8750686

Edward GITAU KAMAU 5583966

MARGARET WANJIKU [illegible] 23135644

31	JOEL	KARUHI MAINA	22655164	
32.	GILLIAH	ROTICH	23944578	

Documents' strength: Sam Gitau presented forged papers while applying for Trade minister post and was hired

Revealed: County minister uttered fake certificates to get job

BY ALEX KIPROTICH

A county minister in Nakuru presented forged academic certificates to the recruiting panel, *The Standard on Sunday* can authoritatively report.

Investigation by *The Standard on Sunday* in collaboration with a Non-Governmental Organisation, Counties Efficiency in Development (CEDEV), reveals that Nakuru County Trade Minister Sam Gitau presented forged certificates while making application to be considered for the position on April 17, 2013, and on the strength of the documents he was hired.

In the application addressed to the interim county secretary, Gitau indicates that he holds a [redacted] (Bsc [redacted]

In a correspondence from the university, the institution, through its Senior Awards Officer Gen Rodriguez, said after investigating Gitau's degree certificate and transcripts, for which we had sent for authentication and verification, the university said it did not issue it neither did they find in their records the name Gitau.

"Thank you for your recent verification request attaching a scan of a certificate and transcript for Samuel Ndung'u Gitau," reads the letter.

"After investigation, I can confirm that we have no record in the name of Samuel Ndung'u Gitau and that award Gitau claims to have is false as per your suspicions. Furthermore, I can confirm that the certificate and [redacted]ipt attached are [redacted]



Showing otherwise..

The University of Brunel, through its Senior Awards Officer Gen Rodriguez, said after investigating Gitau's degree certificate and transcripts, which had been sent for authentication and verification, said it did not issue it neither did they find in their records the name Gitau.

Investigations further revealed that Gitau did not score B- in KCSE as he indicated in the application form.

Whereas Gitau indicates in his application for the CEC job that he attained 571 marks, certified copies of the results of the 34 candidates at Matimbei Primary School in 1990 show that the highest pupil was Wanjiku Hanhah with 507 marks. Gitau, who appears in the list as Ndung'u Samuel, scored 378 marks.

Business Management from the University of Brunel in London, England.

"I hold a Bachelor of Science degree Bsc in Business Management from The University of Brunel in London, England and over the years I have gained a wide and valuable experience in business management, trade and investments," reads the application he tendered and to which he attached his resumé, copy of CID clearance, copy of Ethics and Anti-Corruption Commission clearance, Higher Education Loans Board and Kenya Revenue Authority clearance certificates.

On the education background section, Gitau attached a copy of a university degree certificate showing he graduated on July 17, 2005 with first class honours. The certificate is signed by a Prof Julia Buckingham.

In the same section, he indicated that between 1991 and 1994, he attended Gatamaiyu High School in Kiambu, where he attained a mean grade of B- (minus), and between 1982 and 1990, he attended Matimbei Primary School and attained 571 marks out of 700 in the 1990 Kenya Certificate of Primary Education.

It is not clear why Gitau did not include his KCPE and KCSE certificates when he was submitting his CV and how the interim secretary, Joseph Motari or the shortlisting panel failed to demand such from him.

However, investigations by *The Standard on Sunday* in partnership with CEDEV national chairman James Maina Mugo reveal that Gitau neither went to The University of Brunel nor did he attain the marks he stated in his KCPE and KCSE results.

not official documents issued by Brunel University," reads the response from Rodriguez.

Serious view

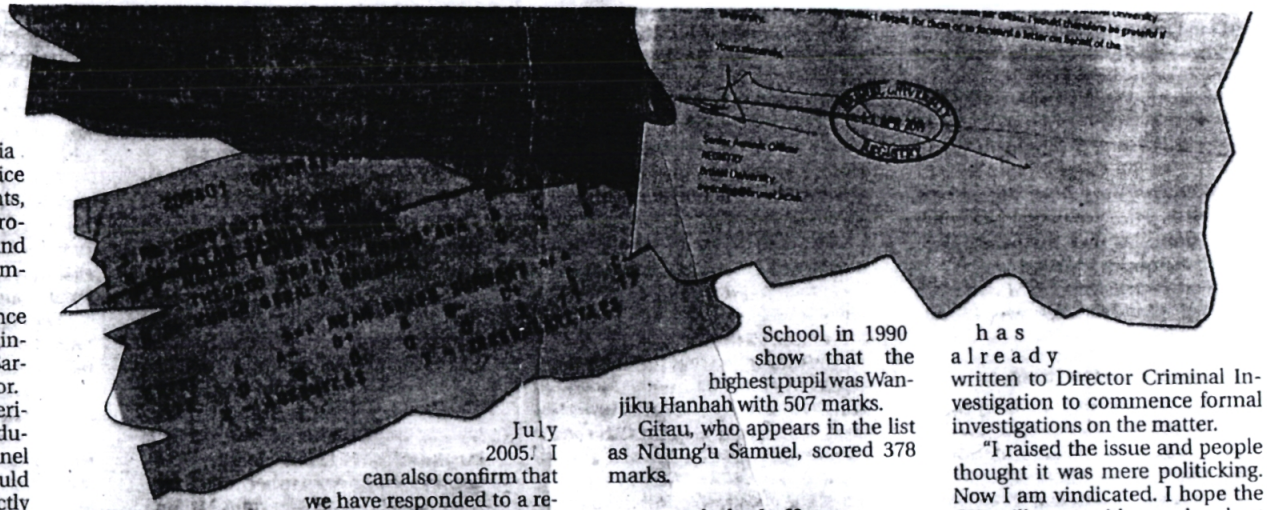
The university says Prof Julia Buckingham, the designated vice chancellor in Gitau's documents, was the head, division of Neuroscience and Mental Health and professor of Pharmacology, Imperial College London.

At the time of alleged issuance of the certificate in 2005, the institution says, Prof Mansoor Sarhadi was acting vice chancellor.

"The university takes a serious view of anyone who fraudulently claims to have a Brunel University degree and we would like to raise this matter directly with Mr Gitau. I would therefore be grateful if you would agree to provide contact details," reads the letter.

Another officer at the university, Jeffrey Wagland, the Head of Brand and Communications, wrote to *The Standard on Sunday* to confirm earlier communication by Rodriguez.

"Further to your email of May 2, addressed to Gen Rodriguez, I can confirm that we have no record of Samuel Ndung'u Gitau being awarded a Bachelor of Science degree by this university in July 2005. I can also confirm that we have responded to a request from CEDEV with the same information," said Wagland.



Nakuru County Trade Minister Sam Gitau.

> "Now that we have documents indicating that Gitau committed a fraud, the law should take its course.
>
> **– Kimani Ngunjiri, Bahati MP**

The investigations further revealed that Gitau did not score B- in KCSE as he indicated in the application form. *The Standard on Sunday* has seen the KNEC results print out for Gatamaiyu High School, which were also certified by the school principal, a Mr Karugu on April 3, 2014.

In that year, the school entered 112 candidates and none attained a mean grade of B-, which Gitau purports to have scored. The highest score was C+. "From our records, Samuel Ndungu Gitau scored D+. We are not aware of any other Gitau who got B- because the highest score that year was C+," said the principal.

The minister also falsified his KCPE results according to our investigations. Whereas Gitau indicates in his application for the CEC job that he attained 571 marks, certified copies of the results of the 34 candidates who sat for KCPE at Matimbei Primary School in 1990 show that the highest pupil was Wanjiku Hanhah with 507 marks.

Gitau, who appears in the list as Ndung'u Samuel, scored 378 marks.

Criminal offence

Falsifying academic documents is a criminal offence under the Penal Code Section 313. Uttering the same document is also an offence under Section 337 of the law. The offences attract a three-year jail term for both falsification and uttering documents.

Interestingly the official went through the vetting exercise by the county assembly without any of the members of the County Assembly detecting the anomaly.

Gitau is one of the prominent businessmen who were behind Governor Kinuthia Mbugua's campaigns in the last General Election. When the county was still reconstituting its ministers, Mbugua appointed Gitau to act as Executive Committee member for Health besides his Trade portfolio. Bahati MP Kimani Ngunjiri, who blew the whistle on the officer's academic qualifications in March, has called for Gitau's arrest.

Yesterday, Ngunjiri called on the minister to resign. He said he has already written to Director Criminal Investigation to commence formal investigations on the matter.

"I raised the issue and people thought it was mere politicking. Now I am vindicated. I hope the CID will move with speed and act on the matter".

He said the previous service board and the Governor should take responsibility because they have been slow to act even after raising the issue. Maina said the county government should take responsibility and already they have written to the Governor to take action.

"We are in the age of transparency and the governor cannot ignore letters demanding for action on his minister. He should be sacked," he said.

Maina said he would soon be recording a statement at the CID over the matter.

"Now that we have all the documents indicating that Gitau committed a fraud, the law should take its course," he said.

When contacted on the matter, Gitau, who is on an official trip to Rwanda with the governor, said: "I am away and would not wish to talk to you on phone. I want us to meet and discuss the issue".

Odhiambo & Odhiambo Advocates

Advocates, Legal Consultants, Legal Auditors, Notaries Public, Commissioners for Oaths & Patent Agents

Our Ref: OO/DEM/32/2014 Your Ref: TBA Date: 6th October, 2014

ATT: ELIJAH KINYANJUI

The Administrator,

Nakuru County Online News,

Dear Sir;

RE: CEASE AND DESIST ALL DEFAMATION OF HON. SUSAN KIHIKA AND JOSEPH MALINDA'S CHARACTER AND REPUTATION

The above matter refers:

We have been instructed by Hon. Susan Kihika and Joseph Malinda. If you are represented by legal counsel, please direct this letter to your advocate immediately and have your advocate notify us of such representation.

Our clients are both educated, respected professionals in the community with Susan Kihika and Joseph Malinda being the Hon. Speaker and Clerk of the County Assembly of Nakuru respectively. They have spent years as public servant serving the community in her capacity as a public officer and building a positive reputation. Our clients have learnt, through various publications by yourselves, that you have engaged in spreading false, destructive, malicious, and defamatory rumours about them.

Under Kenyan law, the Defamation Act Cap 36, it is unlawful and illegal to engage in defamation of another's character and reputation. Defamation consists of:

* Prof. T.O Ojienda, S.C. IIb (Hons) (Nbi) IIm (Kings) IId (SA)
Dr. R. Aura Odhiambo, IIb (Hons) (Nbi) IIm (UZ) MPS (Forte Hare) IId (UP)
P.A Okoth, IIb (Hons) (Nbi) IIm (Hull)
I.H. Said, IIb (Hons) Dip (Ksl)
F. Maura, IIb (Hons) Dip (Ksl)
A. Yoni, IIb (Hons) Dip (Ksl)
C. Odhiambo, IIb (Hons) Dip (Moi)

Nakumatt Westside Mall
2nd Floor
kenyatta Avenue
Next to KFA Roundabout
P.O Box 15142-20100
Nakuru

Silverpool Office Suites
Suite No. A8 Jabavu Lane
off Argwings Kodhek Rd.
Kilimani, Nairobi

Tel: +254-051-2213149/ 2215622
Fax: +254-051 221 5622
Pin No. P051108886N
VAT No. 0143418R

Email: odhiamboandodhiamboadvs@gmail.com
Web: www.odhiamboodhiamboadvs.co.ke

i. A statement that tends to injure reputation;

ii. Communicated to another; and

iii. That the speaker knew or should have known was false.

Your defamatory statements involved a story carried out on a Facebook page you run as an administrator on the 5th of October, 2014 under the title, **"Kihika Named In Multiple Million Shillings Potential Scandal".** The offending passages in your article read:

> ***"Some Nakuru MPs and MCAs are doing investigations linking companies said to be associated with local county assembly Speaker Susan Kihika with doing business with the House which is prohibited.***
>
> ***The leaders we spoke to said they've commenced a probe to establish the veracity of allegations that Kihika-linked companies are supplying mineral water, supplies of grossly overpriced computers and undertaken the ongoing renovation of the assembly at a Sh 32m contract.***
>
> ***The Speaker reportedly also wanted over Sh 60m set aside to buy a plot to build an official residence of the Speaker but this was rejected and removed from the current budget proposal with the August House ruling that it's not a priority for Nakuru County residents benefit.***
>
> ***We were told that the rejection sparkled off bad blood between her and some MCAs who are since mid this year reportedly being frustrated by her office and removed from crucial committee chairs plus other positions.***
>
> ***"We are also investigating the source of her at-least- once-per-month travel abroad and other allegations that she's bought a Sh 140m house in the leafy Nairobi suburban residential area of Karen", said the sources who didn't want to be named for fear of victimisation.***
>
> ***We were told some documents available indicate that a tender awarded to one of 'her' company for the supply of 75 laptops whose calculations suggest that each laptop cost an average of Sh 213,000.***

An MP told us that in what amounts to gross misuse of funds, the renovation of that assembly is costing taxpayers over Sh 30m compared for instance to Migori County where new buildings and everything was put up from scratch at a modest cost of only Sh 20m.

"We shall also raise the issue of a brand new Mercedes Benz that's reportedly running private errands in Nairobi yet bought by assembly funds plus ask for her foreign account to be probed as the law bars such state officials from having such an account in a bid to establish transactions therein, movement of money in it plus its sources", said our informants who add that once proven to be true the Speaker will face impeachment "without mercy".

We could not reach Kihika and House Clerk Joseph Malinda for comments although the duo have of late gained a reputation of ignoring calls from media personalities based in Nakuru.

We are in possession of some documents regarding the allegations which we are still studying."

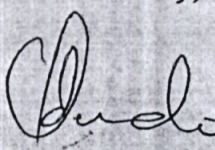
What this article, which was published without proper verification and authentification of facts from our clients, allege is that our clients are persons of suspicious repute and character. The implication to the public, generally, and the residents of Nakuru County, specifically, to whom our clients are public servants, therefore is that Hon. Susan Kihika and Joseph Malinda are morally unfit to hold public office.

Accordingly, we demand that you (A) immediately cease and desist your unlawful defamation of Hon. Susan Kihika and Joseph Malinda and (B) provide us with a prompt written assurance and public apology in your publication within **three (3) days** that you will cease and desist from further defamation of our clients' character and defamation.

If you do not comply with this cease and desist demand within this time period, our clients are entitled to seek monetary damages and equitable relief for your defamation. In the event that you fail to meet this demand, please be advised that our clients have asked us to communicate to you that they will pursue all available legal remedies, including seeking monetary damages, injunctive reliefs, and an order that you pay court

costs and advocate's fees. Your liability and exposure under such legal action could be considerable.

Yours faithfully,



Odhiambo & Odhiambo Advocates

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 67 OF 2014

SUSAN KIHIKA :: 1ST PLAINTIFF/ APPLICANT

JOSEPH MALINDA :: 2ND PLAINTIFF/APPLICANT

COUNTY ASSEMBLY OF NAKURU :::::::::::::::::::::::::::::::::::: 3RD PLAINTIFF/ APPLICANT

VERSUS

ELIJAH KINYANJUI T/A NAKURU COUNTY NEWS ONLINE ::::: DEFENDANT/ RESPONDENT

CERTIFICATE OF URGENCY

I, **HON. PROF. TOM ODHIAMBO OJIENDA, SC** an advocate of the High Court of Kenya do certify this application to be of utmost urgency and ought be heard *pronto*, and on a priority basis, for reasons that:

I. The 1st Plaintiff/ Applicant is apprehensive that the County Assembly of Nakuru might initiate impeachment proceedings against her while the 2nd Plaintiff/ Applicant is uneasy that the County Assembly Board might relieve him off his position based on malicious and false publications by the Respondent.

II. The Respondent published libelous information against the Plaintiffs/Applicants without any justification, rationalization and/or good reason whatsoever.

III. The provision of socio-economic services to the residents of Nakuru County is at stake because of tortuous acts of the Respondent which may, in the least, scare away potential and existing donors and investors in the County.

IV. The integrity, reputation and credibility of Plaintiffs/Applicants is at stake which integrity, reputation and credibility are essential for the running of the County Assembly, specifically, and the County Government, generally.

V. The residents of Nakuru County are up in arms and there's already existing discordance within the County Assembly as a result of the unwarranted, unjustified and misguided actions of the Respondent and this may ultimately precipitate an acrimonious and unproductive struggle between the residents and the county government.

VI. The County Assembly is currently dysfunctional as a result of suspicions, farcical and ludicrous fears over allegations by the Respondent of ineptness of the Plaintiffs/Applicants to perform their duties as is required by law.

VII. The Applicants are likely to suffer irreparable harm if the Respondent is not restrained henceforth.

VIII. It is in the interest of justice and protection of fundamental human rights as envisaged under the Constitution of Kenya 2010 that this application be certified urgent.

DATED at NAKURU this 13th day of November 2014

HON. PROF. TOM ODHIAMBO OJIENDA, SC
ADVOCATE FOR THE APPLICANTS

DRAWN & FILED BY:

Odhiambo & Odhiambo,
Advocates,
Westside Mall, Nakumatt Bld.,
Second Floor,
P.O. Box 15142 - 20100
NAKURU

TO BE SERVED UPON:

ELIJAH KINYANJUI

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. OF 2014

SUSAN KIHIKA :: 1ST PLAINTIFF/ APPLICANT

JOSEPH MALINDA :: 2ND PLAINTIFF/APPLICANT

COUNTY ASSEMBLY OF NAKURU :::::::::::::::::::::::::::::::::::::: 3RD PLAINTIFF/ APPLICANT

VERSUS

ELIJAH KINYANJUI T/A NAKURU COUNTY NEWS ONLINE ::::: DEFENDANT/ RESPONDENT

NOTICE OF MOTION

(Under Order 40 Rule 2 of the Civil Procedure Rules and Section 63(e) and 1A, 1B and 3A of the Civil Procedure Act and all other enabling provisions of the law)

TAKE NOTICE that this Honourable Court shall be moved on the 14th day of October 2014 at 9 O'clock in the forenoon or soon thereafter as may appear in the daily cause list as counsel for the Applicant may be heard on an application for ORDERS:

1. That the application herein be certified urgent and be heard *ex parte*.
2. That a temporary injunction do issue restraining the Respondent from in any way further publishing, circulating, conveying, distributing defamatory material either by himself, friends, agents or servants against the Plaintiffs/Applicants herein pending the hearing and determination of the application *inter partes*.

3. That a temporary injunction do issue restraining the Respondent from in any way further publishing, circulating, conveying, distributing defamatory material either by himself, friends, agents or servants against the Plaintiffs/Applicants herein pending the hearing and determination of this suit.
4. That the OCPD Central Police station, within Nakuru County, ensures compliance of the orders sought hereinabove.
5. That the Respondent bear the costs of this application.

ON THE GROUNDS THAT:

a. That on 5th October, 2014 the Respondent published and/or caused to be published defamatory words in his online Facebook page, dubbed Nakuru County Online News, which has a worldwide circulation with the title **"Kihika Named In Multiple Million Shillings Potential Scandal"** and went ahead to publish thus in relevant portions:

> ***"Some Nakuru MPs and MCAs are doing investigations linking companies said to be associated with local county assembly Speaker Susan Kihika with doing business with the House which is prohibited.***
>
> ***The leaders we spoke to said they've commenced a probe to establish the veracity of allegations that Kihika-linked companies are supplying mineral water, supplies of grossly overpriced computers and undertaken the ongoing renovation of the assembly at a Sh 32m contract.***

The Speaker reportedly also wanted over Sh 60m set aside to buy a plot to build an official residence of the Speaker but this was rejected and removed from the current budget proposal with the August House ruling that it's not a priority for Nakuru County residents benefit.

We were told that the rejection sparkled off bad blood between her and some MCAs who are since mid this year reportedly being frustrated by her office and removed from crucial committee chairs plus other positions.

"We are also investigating the source of her at-least- once-per-month travel abroad and other allegations that she's bought a Sh 140m house in the leafy Nairobi suburban residential area of Karen", said the sources who didn't want to be named for fear of victimisation.

We were told some documents available indicate that a tender awarded to one of 'her' company for the supply of 75 laptops whose calculations suggest that each laptop cost an average of Sh 213,000.

An MP told us that in what amounts to gross misuse of funds, the renovation of that assembly is costing taxpayers over Sh 30m compared for instance to Migori County where new buildings and everything was put up from scratch at a modest cost of only Sh 20m.

"We shall also raise the issue of a brand new Mercedes Benz that's reportedly running private errands in Nairobi yet bought by assembly

funds plus ask for her foreign account to be probed as the law bars such state officials from having such an account in a bid to establish transactions therein, movement of money in it plus its sources", said our informants who add that once proven to be true the Speaker will face impeachment "without mercy".

We could not reach Kihika and House Clerk Joseph Malinda for comments although the duo have of late gained a reputation of ignoring calls from media personalities based in Nakuru.

We are in possession of some documents regarding the allegations which we are still studying."

b. The words published by the Respondent in their totality are false, malicious, and without any iota of truth and have the effect of, in addition to interfering with integrity and the business image and acumen of the 3rd Plaintiff/ Applicant, the words also have the effect of disparaging the reputation of the 1st and 2nd Plaintiffs/ Applicants in the image of the Kenyan public, generally, and those of Nakuru county, specifically, in addition to members of the international community, most of whom fund development projects within the county.

c. The effect of the publication by the Respondent has the effect, directly or indirectly, of lowering the reputation of the Applicants in the estimation of right-thinking members of the national and international community while subjecting them to public odium, ridicule, derision and loss of credibility.

d. The words published by the Respondent are not justified, inaccurate and false and are only calculated to incite and excite the public over what a ruse.

e. The acts of the Respondent not only run contrary to the freedoms of expression, thought and speech, but are also damaging to the reputations and goodwill of the Plaintiffs/ Applicants which has yet to be besmirched to date over any such inane allegations.

f. The 1st Plaintiff/ Applicant is apprehensive that the County Assembly of Nakuru might initiate impeachment proceedings against her based on malicious and false publications by the Respondents.

g. The Plaintiffs/ Applicants are likely to suffer irreparable harm if the Respondents are not restrained henceforth.

h. The Respondent's accusations are not founded on any empirical evidence or facts.

i. That it is in the interest of justice that the application herein be allowed as prayed.

AND FURTHER GROUNDED on the Supporting Affidavit sworn by **JOSEPH MALINDA**, filed herewith, and on such other grounds and reasons as may be adduced and/or canvassed at the hearing hereof.

DATED at NAKURU this 9th day of January 2014

ODHIAMBO & ODHIAMBO
ADVOCATES FOR THE APPLICANTS

DRAWN & FILED BY:

Odhiambo & Odhiambo,
Advocates,
Westside Mall, Nakumatt Bld.,
Second Floor,
P.O. Box 15142 - 20100
NAKURU

TO BE SERVED UPON:

ELIJAH KINYANJUI

"If any party served does not appear at the time and place above mentioned such orders will be made and proceedings taken as the Court may think just and expedient"

REPUBLIC OF KENYA
REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. OF 2014

SUSAN KIHIKA :: 1ST PLAINTIFF/ APPLICANT

JOSEPH MALINDA :: 2ND PLAINTIFF/APPLICANT

COUNTY ASSEMBLY OF NAKURU :::::::::::::::::::::::::::::::::::: 3RD PLAINTIFF/ APPLICANT

VERSUS

ELIJAH KINYANJUI T/A NAKURU COUNTY NEWS ONLINE ::::: DEFENDANT/ RESPONDENT

SUPPORTING AFFIDAVIT

I, **JOSEPH MALINDA**, of Post Office Box 907-20100 Nakuru do hereby make an oath and state as follows:

1. **THAT** I am the 2nd Plaintiff/ Applicant in this case and the Clerk of the 3rd Plaintiff/ Applicant to which the 1st Plaintiff/ Applicant is the Hon. Speaker and with the authority of both Plaintiffs herein and hence competent to swear this affidavit.
2. **THAT** my true place of abode is Nakuru Town within the County of Nakuru in the Republic of Kenya.
3. **THAT** on 5th October, 2014 the Respondent published and/or caused to be published defamatory words on his online Facebook page, dubbed Nakuru County

Online News, which has a worldwide circulation with the title **"Kihika Named In Multiple Million Shillings Potential Scandal"** and went ahead to publish thus in relevant portions:

> ***"Some Nakuru MPs and MCAs are doing investigations linking companies said to be associated with local county assembly Speaker Susan Kihika with doing business with the House which is prohibited.***
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>
> ***"We are also investigating the source of her at-least- once-per-month travel abroad and other allegations that she's bought a Sh 140m house***

in the leafy Nairobi suburban residential area of Karen", said the sources who didn't want to be named for fear of victimisation.

We were told some documents available indicate that a tender awarded to one of 'her' company for the supply of 75 laptops whose calculations suggest that each laptop cost an average of Sh 213,000.

An MP told us that in what amounts to gross misuse of funds, the renovation of that assembly is costing taxpayers over Sh 30m compared for instance to Migori County where new buildings and everything was put up from scratch at a modest cost of only Sh 20m.

"We shall also raise the issue of a brand new Mercedes Benz that's reportedly running private errands in Nairobi yet bought by assembly funds plus ask for her foreign account to be probed as the law bars such state officials from having such an account in a bid to establish transactions therein, movement of money in it plus its sources", said our informants who add that once proven to be true the Speaker will face impeachment "without mercy".

We could not reach Kihika and House Clerk Joseph Malinda for comments although the duo have of late gained a reputation of ignoring calls from media personalities based in Nakuru.

We are in possession of some documents regarding the allegations which we are still studying."

Annexed and marked "**JM-1**" is a true copy of relevant Facebook page bearing the publication.

4. THAT I, together with the other Plaintiffs/ Applicants understood the published words to mean:

   (i) That the Plaintiffs/Applicants are corrupt individuals/ entities with no sense of public decency;

   (ii) That we are scheming conspirators, conspiring with corrupt cartels to defraud the residents of Nakuru County who have entrusted us with public office office;

   (iii) That we are fraudsters;

   (iv) That we are rapacious and predator preying on public property and resources;

   (v) That we are replete with moral decadence; and

   (vi) That we lack in integrity and are unethical.

5. **THAT** the subsequent comments on the published post by the Defendant/ Respondent illustrates the negative mentality and seeds of discord sowed in the minds of Nakuru residents with respect to the Plaintiffs/ Applicants herein.

6. **THAT** the Respondent's Facebook page boasts of over ten thousand (10,000) members who are capable of sharing the Respondent's posts to an un-limited

g. Production of the official report of all speeches made in the House (Hansard)

h. Providing clerks for other committees of the House

Annexed and marked **"JM-7"** is a true copy of the National Assembly website page illustrating the functions of the Clerk of the National Assembly which with relevant modifications as provided under Section 13(3) form part of the functions of the Clerk of the County Assembly.

15. **THAT** the 1st Plaintiff/ Applicant is the Hon. Speaker of the Nakuru County Assembly, elected as such under Articles 177 and 178 of the Constitution of Kenya 2010 and Section 7 of the County Government Act, 2012, and who is charged with the responsibility of presiding over the sittings of the County Assembly.

16. **THAT** a threat to the myself and the 1st Plaintiff/ Applicant herein is invariably a threat to the functions of the 3rd Plaintiff/ Applicant, being the County Assembly herein, and subsequently would compromise delivery of services to the residents of Nakuru County.

17. **THAT** in this regard, the Constitution of Kenya 2010 under Article 185 and Section 8 of the County Government Act, 2012, provide that the County is mandated to:

a. Exercising legislative authority;

b. Exercising oversight over the county executive committee and any other county executive organs;

c. Vetting and approving nominees for appointment to county public offices;

d. Approving the budget and expenditure of the county government;

e. Approving the borrowing by the county government;

f. Approving county development planning and policies; and

g. Performing any other role as may be set out under the Constitution or legislation.

18. **THAT** further, the 1st Plaintiff/ Applicant is apprehensive that the County Assembly of Nakuru might initiate impeachment proceedings against her based on malicious and false publications by the Respondent.

19. **THAT** I verily believe that in publishing the defamatory words, the Respondent calculated to mislead, and did mislead the public, into believing that the Plaintiffs/ Applicants are corrupt; incessant violators of laid down laws and procedures; scheming conspirators; imprudent; reckless; swindlers; lack any semblance of integrity; and unworthy of holding public office.

20. **THAT** it would be reckless for anyone to insinuate that myself, the Clerk of the County Assembly of Nakuru, the distinguished Hon. Speaker of the said County Assembly and the County Assembly are corrupt entities only bent on defrauding the residents of Nakuru County without any shred of credible evidence.

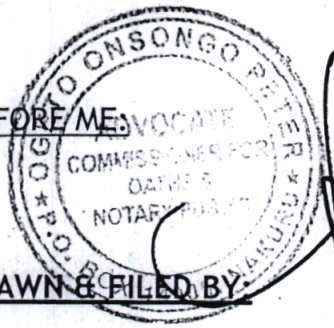
21. **THAT** I verily believe that the impugned publication is a sleaze on the reputation and character of the Plaintiffs/ Applicants herein, and is only meant to injure their standing among right thinking members of the society since there is no plausible evidence to support the same.

22. **THAT** I verily believe that the impugned defamatory words as widely published by the Respondent are malicious, false and reckless and beyond the frontiers of the freedom of expression as recognised under the Constitution of Kenya 2010.

23. **THAT** it is in the interest of justice and fairness that the application be granted as prayed.

24. **THAT** what is deposed to herein before is true to the best of my knowledge, information and belief save and except where otherwise expressly stated.

SWORN at **NAKURU** by the said)
JOSEPH MALINDA):::::::::::::::::::::::::::::::::::::
) **DEPONENT**
)
This 13th day of October 2014)
)
)
)
)
)



BEFORE ME:

DRAWN & FILED BY:

Odhiambo & Odhiambo,
Advocates,
Westside Mall, Nakumatt Bld.,
Second Floor,
P.O. Box 15142 - 20100
NAKURU

TO BE SERVED UPON:
ELIJAH KINYANJUI

Nakuru County News Online
October 5 at 7:29pm ·

Like Page

Kihika Named In Multiple Million Shillings Potential Scandal

By Our Reporter
October 5 2014

Some Nakuru MPs and MCAs are doing investigations linking companies said to be associated with local county assembly Speaker Susan Kihika with doing business with the House which is prohibited.

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We are in possession of some documents regarding the allegations which we are still studying.

Like · Comment · Share

5 people like this. Top Comments

1 share

Write a comment...

Sa Abo Ben Ukichimbia mwenzio shimo uwe mwangalifu kwa kimo usijetumbukia mwenyewe. Kihika ushajikaanga
Like · Reply · 2 · October 5 at 11:36pm

Musa Amdany Thats money mashinani
Like · Reply · 1 · October 5 at 10:19pm

Ojiambo Bonface They'r all corupt.
Like · Reply · 1 · October 5 at 7:52pm

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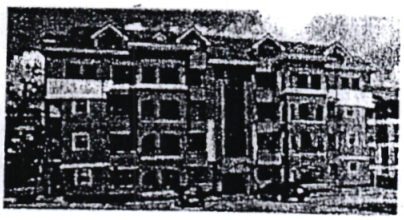

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THIS IS REFERRED TO IN THE DECLARATION OF Joseph Malinda SWORN BEFORE ME THIS 15th DAY OF October, 2014 COMMISSIONER FOR OATHS

REPUBLIC OF KENYA

TEL.: (051) 2216472
Email: clerkassembly@nakurucounty.or.ke
Website: www.nakurucounty.or.ke

COUNTY HALL
P.O BOX 907
NAKURU

COUNTY GOVERNMENT OF NAKURU
COUNTY ASSEMBLY OF NAKURU

PRE-QUALIFICATION AND TENDER FOR SUPPLY OF GOODS, WORKS AND SERVICES 2013/2014

The County Assembly of Nakuru invites interested and eligible suppliers to apply for tender/prequalification for supply and provision of the listed goods, works and services for the financial year 2013-2014 on "as-and when is required basis."

CATEGORY A-TENDER

	CATEGORY	ITEM DESCRITION
1	CAN/T/1/2013/14	Supply and delivery of security printed documents
2	CAN/T/2/2013/14	Supply of fuel, oil and lubricants
3	CAN/T/3/2013/14	Provision of internet services
4	CAN/T/4/2013/14	Provision of Cleaning Services
5	CAN/T/5/2013/14	Provision of air travel services (IATA REGISTERED)
6	CAN/T/6/2013/14	Provision of sanitary services
7	CAN/T/7/2013/14	Supply and delivery of cleaning materials, disinfectant & detergents
8	CAN/T/8/2013/14	Supply and delivery of bottled water, beverages and soft drinks

CATEGORY B-PREQUALIFICATION

	TENDER NO	ITEM DESCRIPTION
1	CAN/P/1/13/14	Prequalificationfor Supply, servicing and delivery of Computers, Printers, Photocopiers and accessories.
2	CAN/P/2/13/14	Prequalification for supply and delivery of general office stationery
3	CAN/P/3/13/14	Prequalification for supply and delivery of office furniture and equipment
4	CAN/P/4/13/14	Prequalification for provision of consultancy services-(employee satisfaction)
5	CAN/P/5/13/14	Prequalification for supply and delivery of uniforms and protective clothing's
6	CAN/P/6/13/14	Prequalification for provision of legal services
7	CAN/p/7/13/14	Prequalification for supply of electrical items, fittings and maintenance
8	CAN/P/8/13/14	Prequalification for building contractors
9	CAN/P/9/13/14	Prequalification for provision of ICT consultancy services
10	CAN/P/10/13/14	Prequalification for Supply and delivery of firefighting equipment and training
11	CAN/P/11/13/14	Prequalification for supply cabinets and shredders
12	CAN/P/12/13/14	Prequalification for supply, installation &commissioning of stand-by power generator
13	CAN/P/13/13/14	Prequalification for supply and installation and maintenance of air-conditioning equipment's
14	CAN/P/14/13/14	Prequalification for supply, installation and backing of CCTV security system ,digital billboard, digital recording system
16	CAN/P/16/13/14	Prequalification for provision of Insurance Services(Brokers)
17	CAN/P/17/13/14	Prequalification for training services for Staff&MCAs in Strategic planning, Corporate Governance, teambuilding, minute and report writing, meetingprocedure's and report submission.

The tender document (s) may be obtained from the County Assembly of Nakuru upon payment of a non-refundable fee of Ksh 3000 per document. Payment may be by Cash or Bankers Cheque payable to the County Assembly of Nakuru. Between 8.00am to 5.00pm during normal working days.

Bidders MUST attach

- a copy of VAT/PIN Registration Certificate
- a copy of valid Tax Compliance Certificate
- a copy of official receipt issued
- a copy of Certificate of Incorporation
- a detailed company/business profile

Youth, women and physically challenged individuals from Nakuru County are encouraged to apply. Such groups and individuals should attach a copy of business registration certificate, PIN Certificate and VAT Certificate. Previous experience under this category is not required.

Complete Tender/Prequalification documents in plain sealed envelopes clearly marked TENDER NO…SHOULD BE ADDRESSED TO:

The Interim Clerk to County Assembly
County Assembly of Nakuru
P.O BOX 907 NAKURU

Or be deposited in the tender box situated at the County Assembly Offices so as to reach us on or before 29th July 2013 at 12.00pm. Late bids will not be accepted after closing date and time.

Tenders will be opened immediately thereafter at the County Assembly Hall in presence of bidders or their representatives who wish to attend.

INTERIM CLERK TO COUNTY ASSEMBLY

COUNTY GOVERNMENT OF NAKURU

Name.....

t Name: County Government of Nakuru

East Sub-County Code : 3321000

	REVENUE CODE	AMOUNT	BANK NAME	ACCOUNT NO.
.....	.....	.....	Family Bank	018000053211
.....	.....	.....	Co-op Bank	01141521630800
.....	.....	.....	Equity Bank	0130261954816
.....	.....	.....	National Bank	0100065283400
TOTAL		.....	K.C.B	1140746057

'ed By .....

COUNTY GOVERNMENT OF NAKURU

; Name.....

REPUBLIC OF KENYA
OFFICE OF THE GOVERNOR
NAKURU COUNTY

Telegrams "PROVMED"Nakuru
Tele: Nakuru 2216710 Fax 2210350
When replying please quote

CHIEF OFFICER, HEALTH SERVICES
P.O. BOX 2060
NAKURU COUNTY

REF:MOH/NKU/VO1/10

2ND July, 2014

THE CHIEF OFFICER,
FINANCE AND ECONOMIC PLANNING
NAKURU COUNTY

Here below are the bank balances as 30th June, 2014.

FACILITY	BANK BALANCES AS AT 30TH JUNE 2013			
P.G.H NAKURU	99,396,341.90			
P.G.H ANNEX	11,322,741.50			
NAIVASHA D. HOSP	27,211,573.05			
BAHATI HOSP.	3,783,039.25			
GILGIL HOSP.	5,219,082.50			
ELBURGON HOSP.	1,158,800.40			
OLENGURUONE HOSP.	1,846,622.95			
MOLO HOSP.	2,884,471.45			
TOTAL	**152,822,673.00**			

Mary Wangari
Head of Accounting Unit,
Ministry of Health.

COUNTY GOVERNMENT OF NAKURU
MINISTRY OF FINANCE & ECONOMIC PLANNING

Telephone 2214142 (051)

Office of the Chief Officer-Finance
Nakuru County
P.O. BOX 2870-20100
NAKURU

E-Mail:nakurucounty.governor@gmail.com

Our Ref: **NKR.C/COF/Assembly/Vol./11** **Date**: 2/7/ 2014

The Clerk
County Assembly of Nakuru
P.O Box 138-20100
NAKURU

RE: CONFIRMATION OF BANK BALANCES AS AT 30TH JUNE 2014 IN COMMERCIAL BANK ACCOUNT

This is confirm that this were true balances in various Commercial Banks as analysed below:

• Equity Bank	Ksh.	15,976,918.00
• Family bank		8,200,000.00
• Kenya Commercial Bank		17,590,000.00
• Kenya Commercial Bank		3,050,179.00
• National Bank		3,309,878.00
• Cooperative Bank		102,557,849.00
• Reccurent account Central bank		658,347,564.00
• Development account Central bank		70,000,000.00
• Kenya Commercial bank		4,841.40
• Equity Bank		30,061.75
• Cooperative bank		252,679.00
• Equity		165.40
• National bank		3,055.95
• Kenya Commercial bank		13,035.70
• Cooperative bank		2,607,083.75

SUPPLEMENTARY BUDGET ANALYSIS

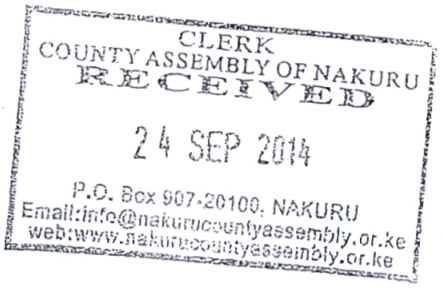
Ministry	Recurrent	Development	Totals
County Treasury	35,949,315.00		35,949,315.00
Ministry of Public Service Management	2,181,472.00		2,181,472.00
Ministry of Trade	872,015.00	40,000,000.00	40,872,015.00
Ministry of Heath	209,459,792.00	147,568,882.00	357,028,674.00
Ministry of Environment , Water and Natural Resources		86,393,976.00	86,393,976.00
Ministry of Lands,		15,000,000.00	15,000,000.00
Ministry of Roads, Transport and Public Works		248,056,456.00	248,056,456.00
Ministry of ICT and E-Government		8,818,400.00	8,818,400.00
Ministry of Education	55,000,000.00	129,801,234.00	184,801,234.00
Ministry of Agriculture		10,157,003.00	10,157,003.00
County Assembly	73,331,141.00		73,331,141.00
	376,793,735.00	685,795,951.00	1,062,589,686.00

SOURCES		
County Revenue Funds		906,247,013.00
DANIDA (HEALTH SUPPORT)		3,520,000.00
Facility Improvement facility		152,822,673.00
	Total	1,062,589,686.00

REPUBLIC OF KENYA
COUNTY ASSEMBLY



Hon. Margaret W. Kiiru (M.C.A.)
Nakuru County Assembly



Nakuru County Assembly
P.O. Box 907 – 20100
Nakuru, Kenya

Tel: 051 – 221 6472
0712 583 508
E-mail: maggy@nakurucountyassembly.com

24th September 2014

The Whip of Majority Party
Nakuru County Assembly
P.O. Box 907 – 20100
Nakuru, Kenya

Dear Sir,

RE: CONTESTATION OF THE PURPORTED REPLACEMENT/REINSTATEMENT OF THE LEADER OF MAJORITY IN THE NAKURU COUNTY ASSEMBLY

The above matter refers;

I have written a letter (which is hereto attached) to the Hon. Speaker of the County Assembly of Nakuru over the purported replacement of the leader of majority in our coalition. In the same vein, I wish to draw your attention to a letter from the Secretary General TNA over the reinstatement of Hon. George Mwaura Njenga as the leader of majority in the Nakuru County Assembly.

As I have reiterated to the Hon Speaker, in the interest of democracy and transparency in the County Assembly, as well as the respect for the rule of law, I wish to call upon you as well; not to recognize the appointment of Hon. Samuel Waithuki Njane as the Leader of the Majority party. As per Part IV of the County Assembly of Nakuru Standing Orders (As adopted by the County Assembly of Nakuru) the Leader of the majority party is supposed to be democratically elected in a meeting by the coalition MCAs;-

(1) The largest party or coalition of parties in the Assembly shall elect -

(a) a member of the Assembly belonging to the party or coalition of parties to be the Leader of the Majority Party;

(b) a member of the Assembly belonging to the party or coalition of parties to be the Deputy Leader of the Majority Party.

After such an election, you as the whip of the Jubilee Coalition of parties which at the moment constitutes the majority in the Assembly; communicates to the speaker in writing; the decision together with the minutes of the meeting as outlined in Part IV paragraph 5 which states that;-

> "The whip of the largest party or coalition of parties in the Assembly shall forthwith, upon a decision being made under this Standing Order, communicate to the Speaker, in writing the decision together with the minutes of the meeting at which the decision was made."

I wish to implore you not to continue indulging in the illegitimate acts over the appointment of the leader of Majority which clearly contravenes the Standing Orders. The standing orders as quoted provide for an election by the party; and to the best of my knowledge in the first place, our party held no elections to replace Hon. George Mwaura Njenga as Leader of Majority with Hon. Samuel Waithuki Njane. It is high time that you as the Majority whip seeks to mobilize our party MCAs with a view to holding elections for the position of Leader of Majority and his/her deputy so as to put this matter to a rest once and for all.

It is my humble advice that political caucuses such as the one held at the Stem Hotel on 23rd September 2014; and which was not communicated to me as a person who is interested in contesting the position of Leader of Majority; is detrimental to democracy, transparency and the spirit of the rule of law in the constitution.

Yours faithfully,

Hon. Margaret W. Kiiru (M.C.A.)
Nakuru County Assembly

CC. The Secretary General - TNA
The Governor - Nakuru County
The Hon Speaker, - Nakuru County Assembly
All Honorable Members - Nakuru County Assembly

THE SPEAKER
NAKURU COUNTY ASSEMBLY
NAKURU

The National Alliance
George Padmore Rd, Off Marcus Garvey Rd
Off Agwing Kodhek Rd
P.O BOX 13913-00800
NAIROBI
EMAIL: tnasecretariat2018hq@gmail.com
WEBSITE: www.TNA.co.ke
Tel. 0770 871 545

Date
17th September 2014

In reply please quotes
our reference TNA/NOB/ SG/NAKURU ASSEMBLY /017

your reference T.B.A

Dear Sir,

RE: PURPORTED REPLACEMENT AND REINSTATEMENT OF THE MAJORITY LEADER IN NAKURU COUNTY ASSEMBLY.

Refer to the above.

It has come to our attention that sometime around June 2014 your office purported to have replaced the County Majority Leader without following due process. This unprocedural act had the effect of undermining democracy, transparency and party leadership in the Assembly.

The court has since moved to correct and reinstate the said Majority leader to his position vide its order of 1st July 2014. The purpose of this letter is to let you know that we take great exception to such untoward act against the party leadership, and to advice that the party still recognizes Hon. George Mwaura Njenga as the Majority leader having been elected at a duly constituted Assembly of the county.

Kindly be apprised that the party will not hesitate to take disciplinary action against its members who collude to undermine the rule of law, justice and democratic ideals, values which we hold dear.

Be adviced.

Yours faithfully,

Onyango Oloo.
SECRETARY GENERAL

CC: Chief Whip - Nakuru County Assembly
Majority Leader - Nakuru County Assembly
The Governor - Nakuru County

CG/NKR/05/14

NAKURU STAKEHOLDERS FORUM

P.O BOX 227, NAKURU.

TEL: 0722 965 408

4th January, 2014

THE SPEAKER
COUNTY ASSEMBLY OF NAKURU
NAKURU COUNTY

SPEAKER
COUNTY ASSEMBLY OF NAKURU
RECEIVED
04 JAN 2014
P.O. Box 907-20100, NAKURU
Email:Speaker@nakurucountyassembly.or.ke
web:www.nakurucountyassembly.or.ke

Dear Madam/Sir,

RE: PUBLIC CONCERN

The above matter refers:-

It has come to our attention that there are serious issues that need to be addressed urgently and they are as follows:-

1. Gender discrimination in committees, thus unfair remuneration and salary disparity.
2. Rwanda, Burundi, Uganda safaris- costs & Report
3. US Safaris- costs & reports
4. Public gallery
5. Public participation in Budget Appropriation
6. Public participation in Finance Bill
7. Ward oversight committees
8. Youth Tender Awards, Notices, Advertisement, Budgetary Allocation
9. Kamukunji Reports
10. Payroll- December and January (SRC Gazette Notice)
11. Measures in place to assist in revenue collection
12. Committee Reports on various oversight visits
13. Committee deliberations and reports that have been tabled in the house.
14. County development plan
15. Reports on Speaker's International trips

NAKURU COUNTY
SENATOR'S OFFICE
04 FEB 2014
RECEIVED
P.O. Box 3206 - 20100 NAKURU

05 FEB 2014

16. Public participation in ward offices identification

- Assembly Overheads Costs.
- Allowances individually paid.
- Tax remittance documents.
- Tender committee reports.
- Misuse of resources e.g. vehicles, speakers residence.
- Procurement of Members of the County Assembly medical cover and purchase of vehicles. (Procedures that were followed).

Kindly Madam/ Sir confirm or deny that there are some MCAS who were to travel to U.S.A on the ongoing tour but they have not despite having been paid allowances. Last but not least we demand to be informed in writing of the issues raised above within the next seven days failure to which will be seeking legal re-dress.

Thanking you in advance.

Yours Faithfully,

WYCLIFFE AGESA OGUDA

CHAIRMAN

CC

1. PUBLIC PROCUREMENT OVERSIGHT AUTHORITY
2. ETHICS AND ANT-CORRUPTION COMMISSION
3. GOVERNOR NAKURU COUNTY
4. TRANSITION AUTHORITY
5. ALL MPS
6. SENATORS

NAKURU COUNTY ASSEMBLY

MEMBERS STATEMENT

13-May-2014

MEMBERS NAME	MARGARET WANJIKU KIIRU
PIN NO.	A004773611Z
ID NO	23538640

COMMITTEE NAME	GROSS ALLOANCE	SITTING DATE	TAX	NET INCOME
PLENARY SESSIONS	3,900.00	1-Apr-14	1,170.00	2,730.00
PLENARY SESSIONS	3,900.00	2-Apr-14	1,170.00	2,730.00
PLENARY	3,900.00	2-Apr-14	1,170.00	2,730.00
PLENARY	3,900.00	3-Apr-14	1,170.00	2,730.00
PLENARY	3,900.00	8-Apr-14	1,170.00	2,730.00
PLENARY	3,900.00	9-Apr-14	1,170.00	2,730.00
PLENARY	3,900.00	9-Apr-14	1,170.00	2,730.00
PLENARY	3,900.00	10-Apr-14	1,170.00	2,730.00
PLENARY	3,900.00	15-Apr-14	1,170.00	2,730.00
PLENARY	3,900.00	16-Apr-14	1,170.00	2,730.00
PLENARY	3,900.00	16-Apr-14	1,170.00	2,730.00
PLENARY	3,900.00	17-Apr-14	1,170.00	2,730.00
HEALTH SERVICES	3,900.00	4-Apr-14	1,170.00	2,730.00
HEALTH SERVICES	3,900.00	11-Apr-14	1,170.00	2,730.00
PLENARY	3,900.00	22-Apr-14	1,170.00	2,730.00
PLENARY	3,900.00	23-Apr-14	1,170.00	2,730.00
PLENARY	3,900.00	23-Apr-14	1,170.00	2,730.00
PLENARY	3,900.00	29-Apr-14	1,170.00	2,730.00
ENVIRONMENT AND NATURAL RESOURCES	3,900.00	1-Apr-14	1,170.00	2,730.00
ENVIRONMENT AND NATURAL RESOURCES	3,900.00	8-Apr-14	1,170.00	2,730.00
ENVIRONMENT AND NATURAL RESOURCES	3,900.00	15-Apr-14	1,170.00	2,730.00
ENVIRONMENT AND NATURAL RESOURCES	3,900.00	22-Apr-14	1,170.00	2,730.00
AGRICULTURE	3,900.00	10-Apr-14	1,170.00	2,730.00
AGRICULTURE	3,900.00	3-Apr-14	1,170.00	2,730.00
	93,600		**3,080.00**	**65,520.00**

REPUBLIC OF KENYA
COUNTY ASSEMBLY



CLERK
COUNTY ASSEMBLY OF NAKURU
RECEIVED
12 FEB 2015
P.O. Box 907-20100, NAKURU
Email:info@nakurucountyassembly.or.ke
web:www.nakurucountyassembly.or.ke

Hon. Margaret W. Kiiru (M.C.A.)
Nakuru County Assembly

Nakuru County Assembly
P.O. Box 907 – 20100
Nakuru, Kenya

Tel: 051 – 221 6472
0712 583 508
E-mail: maggy@nakurucountyassembly.com

19th December 2014

The County Executive Committee Member
Finance & Economic Planning
County Government of Nakuru
P.O. Box 2870 – 20100
Nakuru, Kenya

Dear Sir,

RE: NAKURU COUNTY ASSEMBLY MORTGAGE, CAR AND HOUSE LOANS

The above matter refers;

On 17th December 2014, you caused to be circulated to Members of the Nakuru County Assembly, a leter referenced NKRC/MIN.F/ASSEMBLY/Vol.I/(111). In the said letter, you made reference to the release of funds on Mortgage, Car and House Loans; Instructing that the clerk ensures that the said Mortgages, Car and House Loans are fully secured by the relevant members by charging their logbooks and Title Deeds. You further directed that no one should be exempted.

Kindly take notice that as of today, we as Members of the Nakuru County Assembly have not had the good fortune of securing any mortgages. We are therefore severely amazed, deeply perturbed and gravely flabbergasted that you refer to the "release of the funds" on those mortgages while we are still paying rent to landlords with monies that would otherwise be servicing the same.

Further, I wish to advice you that the money with which MCAs purchased cars was not initially tied to car loans and that is why the log books were not charged then. It was viewed that they like the legislators in the Senate and National Assembly serve the interests of Kenyans and should be treated equally; hence the granting of the monies for purposes of acquisition of cars as tools of trade. We therefore feel and strongly so, that MCAs are not obligated to present their logbooks to be charged and your insistence on doing so may be a breach of our privacy to enjoy our remuneration as we please.

Finally, in all fairness and truth; there are reservations the on MCAs ability to service these huge loans given our salaries and allowances; and again considering that we are well into the five- year election cycle, the repayment may be in breach of the rule that requires workers to take home at least a third of their gross salaries. You good sir, are in danger of driving MCAs into corruption to boost their pay and be able to service these loans.

Yours faithfully,

Hon. Margaret W. Kiiru (M.C.A.)
Nakuru County Assembly

CC. The Governor - Nakuru County
The Hon. Speaker - Nakuru County Assembly
The Majority Leader - Nakuru County Assembly
The ~~Majority~~ Clerk - Nakuru County Assembly
The Majority Whip - Nakuru County Assembly
The Minority Leader - Nakuru County Assembly
All Honorable Members - Nakuru County Assembly
The Chair - Salaries & Remuneration Commission

List of Petitioners

	NAME	ID NUMBER	SIGNATURE
1	Hon. MARGARET KIRU	23538640	
2	MOSES GICHANGI	22886914	
3	VITALIS O. OKELLO	9127132	
4	Samuel Mwangi	24837180	
5	Peter Kaugethe	11249066	
6	PAUL THUO MWANGI M.CA	20232010	
7	NJUGUNA G/CAMP	13548524	
8	ESTHER A MICHAGI	10651899	
9	GITAU KAMAU	5583966	
10			
11			
12			
13			
14			
15			