REPUBLIC OF KENYA

Mr. Speaker
Please approve for tabling.
Pjavelos.
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THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT

(THIRD SESSION)

NA.L&P.2015/COMM (024)

31st March, 2015

PAPER LAID

Hon. Speaker, I beg to lay the following Paper on the Table of the House, today, **Tuesday 31st March, 2015:**

THE SECOND REPORT OF THE COMMITTEE OF PRIVILEGES ON ALLEGED BREACH OF PRIVILEGE AND/OR CODE OF CONDUCT BY THE MEMBERSHIP OF PUBLIC ACCOUNTS COMMITTEE (VOLUME I)

(CHAIRPERSON, COMMITTEE OF PRIVILEGES)

Copies to:

The Speaker — Approved NA 31/3/15
Deputy Speaker
The Leader of the Majority Party
The Leader of the Minority Party
The Clerk
Hansard Editor
Hansard Reporters
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REPUBLIC OF KENYA

ELEVENTH PARLIAMENT

THE NATIONAL ASSEMBLY

(THIRD SESSION)

THE COMMITTEE OF PRIVILEGES

- SECOND REPORT -

ALLEGED BREACH OF PRIVILEGE AND/OR CODE OF CONDUCT BY THE MEMBERSHIP OF PUBLIC ACCOUNTS COMMITTEE

(VOLUME I)

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I. PREFACE

Hon. Speaker,

1. On behalf of the Members of the Committee of Privileges, inquiring into matters of alleged breach of privilege and/or code of conduct by the membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit, I am pleased to present this Report to the House.

2. On 4th March 2015, during the afternoon sitting of the House, the Leader of the Majority Party raised a question of privilege pursuant to Standing Order 52(h) and sought the Speaker's direction on the following-

   (a) Whether the claims made by Members of the Public Accounts Committee against the Chairperson of Public Accounts Committee and against each other constitute breach of privilege and/or code of conduct of Members of Parliament; and

   (b) Whether, following the allegations, the Public Accounts Committee would be in order to continue discharging its mandate of offering oversight to other Government institutions and agencies, on behalf of the House.

3. Several Members including the Deputy Leader of the Minority Party, subsequently contributed to the debate, raising issues peripheral to those raised by the Leader of the Majority Party, including-

(a) Whether criminal culpability accrues to a group of persons or to an individual person and whether it is prudent to condemn a whole membership, either of a Committee or of the House, merely on account of an allegation that is directed or is connected to a particular individual(s);

(b) Whether the House should entertain allegations against its Members without substantiation by the person or other Members alleging, as required under Standing Order 91;

(c) Whether a matter that has been investigated by a Committee of the House and an outcome delivered in the Committee can be revisited by the plenary of the House or by another Committee of the House; and

(d) Whether allegations of breach of privilege or ethics by Members of the House should be dealt with by their respective political parties or by the House through an inquiry.

The Communication from the Speaker

Hon. Speaker,

4. Following the request by Leader of the Majority Party and interpellation in the House on matters touching on recent claims of malpractices within the Public Accounts Committee as a whole including its chairperson as provided for in the House rules, the Speaker of the National Assembly made a communication in the House on the 5th March, 2015, offering guidance on the matters and directing, amongst others, that –

a) the Committee of Privileges enquires into the matters of alleged breach of privileges and/or code of conduct by the membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit, and submit a report to House in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya) within twenty one days from the date of the communication;

b) the Committee is at liberty to interrogate the submissions made by the individual Members in the Public Accounts Committee on 26th February, 2015 which were captured in the *Hansard*, including any related correspondences by any Member of the Public Accounts Committee to the Clerk or the Speaker.

5. In the Communication, the Speaker also indicated that given the seriousness of an allegation of bribery, the standard of proof required to substantiate the claims ought to be very high. The Speaker thereupon suspended the operations of the Public Accounts Committee until the expiry of the twenty one days period or such earlier time the House would make a resolution following an earlier submission of the report of the Committee of Privileges. The Speaker also referred to the Committee, the letter by the Chairperson of the Public Accounts Committee dated 25th February, 2015 addressed to the Speaker, in which he sought direction on certain matters of privilege of Members and the *Hansard* Report of the Public Accounts Committee meeting

6. The Speaker also appointed the Hon. Moses Cheboi, the First Chairperson of Committees to chair the Committee of Privileges during the period of the

Inquiry on behalf of the Speaker. The Committee of Privileges was also permitted to co-opt not more than three other sitting Members who have served for more than one term to assist in the Inquiry. The Speaker also directed the Committee of Privileges to develop and propose to the House a code of conduct for Members of Parliament as required under Section 37 of the Leadership and Integrity Act, 2012, before the end of August, 2015. The Code of conduct is therefore **not** Part of this Report.

Sittings and Summary of findings

Hon. Speaker,

7. The Committee held a total of eighteen (18) Meetings and took evidence from the Leadership of the Public Accounts Committee, its Members, the Leadership of the political parties, the Principal Secretary for Defence, amongst others persons.

Summary of Findings

8. Having taken evidence, the Committee settled on three issues for determination as enumerated on PART VII of this Report. A key finding of the Committee was that the audio recording by the Hon. Ababu Namwamba could not be admitted as evidence before the Committee, as it could not satisfy basic requirements for admission of electronic evidence. The Committee also finds a number of Members of the Public Accounts Committee as having breached the privileges accorded to them as Members of Parliament. In proposing the recommendations contained in PART XI, the Committee was informed by the need to set a sound precedence whilst also deterring the tendency for Members to make sensational and unsubstantiated claims against their colleagues. This Report was unanimously adopted by

most Members of the Committee. The Hon. Zuleikha Hassan, MP recorded **dissenting views** on the proposal to dissolve the Public Accounts Committee.

Hon. Speaker,

9. I wish to record the Committee's gratitude to the House, for having entrusted us with the execution of the onerous and important duty of contributing to the efforts of restoring the image and place of the institution of Parliament. The Committee is thankful to the Chairperson and Members of the Public Accounts Committee, the Leader of the Majority Party, Leader the Minority Party and the Deputy Leader of the Minority Party for honouring requests to appear before the Committee, even on short notice. May I also thank you Hon. Speaker and the Office of the Clerk of the National Assembly for the invaluable support you accorded to the Committee during the Inquiry.

Hon. Speaker,

10. Finally, it is now my pleasant duty, on behalf of the Committee of Privileges, to present and commend this Report for immediate consideration and adoption by the House. The Committee also requests the House to make the resolutions proposed in this Report.

SIGNED: .....

THE HON. MOSES CHEBOI, MP

CHAIRPERSON, COMMITTEE OF PRIVILEGES

Dated this **31st** day of **March, 2015**

II. CONSIDERATION AND ADOPTION OF THE REPORT BY THE COMMITTEE

13. **WE**, the undersigned Members of the Committee of Privileges, having considered this Report on the Inquiry into the alleged breach of privilege and/or code of conduct by the Membership of the Public Accounts Committee, do hereby confirm our agreement with the content of the Report and request the Chairperson to present the Report to the House-

	Name	**Signature**
(i)	The Hon. Moses Cheboi, MP	.....
(ii)	The Hon. Peter Shehe, MP	.....
(iii)	The Hon. Kimani Ichung'wah, MP	.....
(iv)	The Hon. Jamleck Kamau, MP	.....
(v)	The Hon. Barchelei Kipruto, MP	.....
(vi)	The Hon. Dr. James Murgor, MP	.....
(vii)	The Hon. Bedzimba Rashid Juma, MP	.....
(viii)	The Hon. Simon Ogari, MP	.....
(ix)	The Hon. Zuleikha Juma Hassan, MP	.....
(x)	The Hon. Joyce Emanikor, MP	.....
(xi)	The Hon. James Onyango K'oyoo, MP	.....
	Co-opted Members	.....
(xii)	The Hon. Mohamed I. Elmi, MP	.....
(xiii)	The Hon. Ali Wario, MP	.....
(xiv)	The Hon. Joseph Lekuton, MP	.....

III. THE INQUIRY INTO PRIVILEGES: RELEVANT LAWS

The Constitution

12. Article 75(2)(a) of the Constitution (on *Leadership and Integrity*) provides that-

> *"where a person contravenes Article 76 of the Constitution he or she shall be subject to the applicable disciplinary procedure for the relevant office".*

13. Further, Article 125 of the Constitution, gives powers to Committees of the House to summon any person to appear before them for purposes giving evidence or providing information.

The National Assembly (Powers & Privileges) Act, CAP 6

14. Section 10(4) of the National Assembly (Powers and Privileges) Act (Cap 6 Laws of Kenya) provides as follows-

> *(4) The Committee of Privileges shall, either of its own motion or as a result of a complaint made by any person, inquire into any alleged breach by any member of the Assembly of the Code of Conduct issued under section 9, or into any conduct of any member of the Assembly within the precincts of the Assembly (other than the Chamber) which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the member thereof, or to be contrary to the best interests of the Assembly or the members thereof.*
>
> *(5) The Committee of Privileges shall, after such inquiry as is referred to in subsection (4), report its findings to the Assembly together with such recommendations as it thinks appropriate.*

15. Under section 10, the Assembly is mandated to consider the report and the recommendations thereon and may take disciplinary actions against the Member concerned, including suspension of the Member from the service of

the Assembly. Section 14 of the Act empowers the Assembly and its Committee to order any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person.

Provisions of other relevant laws

16. Section 3(10) of the Public Officer Ethics Act, 2003 provides that-

> *"..(10) The responsible Commission for a public officer for which no responsible Commission is otherwise specified under this section is the commission, committee or other body prescribed by regulation"*

17. Section 41(2) of the Leadership and Integrity Act, 2013 provides as follows-

(2) Where an allegation of breach of the Code has been made against a State officer in respect of whom the Constitution or any other law provides the procedure for removal or dismissal, the question of removal or dismissal shall be determined in accordance with the Constitution or that other law.

Code of conduct applicable to Members of Parliament

18. Section 37 of the Leadership and Integrity Act obligates every public entity to prescribe a specific Leadership and Integrity Code for the State officers in that public entity. The Code prescribed is to include all the requirements in the general Leadership and Integrity Code established under the Act and may provide for the manner in which any requirements of the specific or general Code may be satisfied. Section 38 adds that until such a code as is contemplated under section 37 is prescribed, the general code under the Act is to apply.

19. Currently, no specific leadership and integrity code has been prescribed for Members of Parliament and therefore the general code prescribed under the

Act applies in matters of inquiry into the conduct of and/or discipline of Members. The code obligates Members to—

(a) respect and abide by the Constitution and the law;

(b) exercise the responsibility and authority conferred upon him/her in the best interest of Kenyans;

(c) take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office he or she holds;

(d) carry out the duties of the office efficiently and honestly; in a transparent and accountable manner; keep accurate records and documents relating to the functions of the office; and report truthfully on all matters of the organization which they represent;

(e) observe professionalism;

(f) not use the office to unlawfully or wrongfully enrich himself or herself or any other person or accept a personal loan or benefit which may compromise the State officer in carrying out his or her duties;

(g) observe and maintain the following ethical and moral requirements—

(i) demonstrate honesty in the conduct of public affairs subject to the Public Officer Ethics Act (No. 4 of 2003);

(ii) not to engage in activities that amount to abuse of office;

(iii) accurately and honestly represent information to the public;

(iv) not engage in wrongful conduct in furtherance of personal benefit;

(v) not misuse public resources;

(vi) not discriminate against any person, except as expressly provided for under the law;

(vii) not falsify any records;

(viii) not engage in actions which would lead to the State officer's removal from the membership of a professional body in accordance with the law; and

(ix) not commit offences and in particular, any of the offences under Parts XV and XVI of the Penal Code (Cap. 63), the Sexual Offences Act (No. 3 of 2006), the Counter-Trafficking in Persons Act (No. 8 of 2010), and the Children Act (Cap. 141);

(h) not receive a gift which is given with the intention of compromising the integrity, objectivity or impartiality of the State officer and, other than in the circumstances prescribed under the Act, treat all gifts to the officer as gifts to the State;

(i) not use the office to wrongfully or unlawfully influence the acquisition of property;

(j) use the best efforts to avoid being in a situation where personal interests conflict or appear to conflict with the State officer's or public officer's official duties.

(k) not participate in a tender for the supply of goods or services to a public entity in which he or she is serving or is otherwise similarly associated;

(l) not solicit for contributions from the public for a public purpose or participate in a public collection of funds in a way that reflects adversely on that State officer's integrity, impartiality or interferes with the performance of the official duties;

(m) not open or continue to operate a bank account outside Kenya without the approval of the Commission;

(n) not be an agent of, or further the interests of a foreign government, organisation or individual in a manner that may be detrimental to the security interests of Kenya, except when acting in the course of official duty;

(o) take all reasonable steps to ensure that public property in the officer's custody, possession or control is taken care of and is in good repair and condition and refrain from using public property, funds or services that are acquired in the course of or as a result of the official duties, for activities that are not related to the official work of the State officer.

(p) not directly or indirectly use or allow any person under the officer's authority to use any information obtained through

or in connection with the office, which is not available in the public domain, for the furthering of any private interest, whether financial or otherwise;

(q) carry out the duties of the office with impartiality and objectivity in accordance with Articles 10, 27, 73(2)(b) and 232 of the Constitution and not practice favouritism, nepotism, tribalism, cronyism, religious bias or engage in corrupt or unethical practices;

(r) where required, give honest, accurate and impartial advice without fear or favour;

(s) not participate in any other gainful employment where serving on a full time basis;

(t) not allow himself or herself to be influenced in the performance of their duties by plans or expectations for or offers of future employment or benefits;

(u) not be engaged by or act for a person or entity in a matter in which the officer was originally engaged in as a State officer, for at least two years after leaving the State office.

(v) not knowingly give false or misleading information to any person;

(w) not falsify any records or misrepresent information to the public;

(x) upon election or appointment to a State office, not take office before officially renouncing any other citizenship in

accordance with the provisions of the Kenya Citizenship and Immigration Act, 2011, (No. 12 of 2011);

(y) conduct private affairs in a manner that maintains public confidence in the integrity of the office.

(z) pay any taxes due from him or her within the prescribed period and attend to their financial or legal obligations;

(aa) not bully any person;

(bb) Not cause anything to be done through another person that would constitute a contravention of the Code if done by the State officer; or allow or direct a person under their supervision or control to do anything that is in contravention of the Code; and

(cc) report to the Commission anything required of the officer that is in contravention of the Code or is otherwise improper or unethical.

IV. PARLIAMENTARY PRIVILEGE: COMPARATIVE LITERATURE

20. This brief is informed by practice in the Commonwealth parliaments, particularly in Kenya, the United Kingdom, New Zealand, Canada and India-

Privilege defined

21. The classic definition of parliamentary privilege is found in *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament:*

> *"Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively... and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law"*

22. These "peculiar rights" are largely divided into two categories: those extended to Members individually, and those extended to the House collectively. Each grouping can be broken down into specific categories. For example, the rights and immunities accorded to Members individually are generally categorized under the following headings-

    (i) freedom of speech;

    (ii)freedom from arrest in civil actions;

    (iii) exemption from jury duty;

    (iv) exemption from attendance as a witness.

23. The rights and powers of the House collectively may be categorized as follows-

(a) the power to discipline its Members who are "guilty" of disgraceful conduct;

(b) the regulation of its own internal affairs;

(c) the authority to maintain the attendance and service of its Members;

(d) the right to institute inquiries and to call witnesses and demand papers;

(e) the right to administer oaths to witnesses; and,

(f) the right to publish papers containing defamatory material.

24. It is generally an accepted principle in the Commonwealth, that the individual Member's privileges and rights are subordinate to those of the House as a whole in order to protect the collectively of the House against any abuses or breach by individual Members.

Is privilege an exemption from general law?

25. In most commonwealth legislatures, it is generally agreed that, a House of Parliament has the authority to invoke privilege **where its ability has been obstructed in the execution of its functions or where Members have been obstructed in the performance of their duties.** It is only within this context that privilege can be considered an exemption from the general law. It is obvious that Members of Parliament are not outside or above the law which governs the general citizenry. The privilege of freedom of speech is secured to Members **not** for their personal benefit, but to enable them to discharge their functions of representing their constituents without fear of civil or criminal prosecution for what might be said in the House and committees. They are enjoyed by Parliament for the protection of its Members and the vindication of its own authority and **dignity**.

26. *Robert Marleau* and *Camille Montpetit* of the House of Commons of Canada, in a brief titled "*Procedure and Practice*" (2000 Edition) observe that, ultimately, a Member of Parliament is not "above the law". The Member is, however, entitled to the full protection of the law, including the application of both corporate and individual parliamentary privilege and is subject to the criminal law and the protection it provides. Parliamentary privilege ought not to be construed as privilege of an "elite group" but rather a necessary component of what is required for the electorate's representatives to conduct public business on behalf of all persons free from interference and intimidation.

27. Certain claims, most notably bribery, the acceptance of fees and corrupt practices, are dealt with first as questions of privilege and later by law. Over the years, Members in Canada and UK House of Commons have regularly brought to the attention of their Houses instances which they believed were attempts to obstruct, impede, interfere, intimidate or molest them, their staff or individuals who had some business with them or their respective Houses. In a technical sense, such actions are considered to be contempt of the House and not breaches of privilege.

Privilege and contempt of the House

28. Privilege essentially belongs to the House as a whole; individual Members can only claim privilege insofar as any denial of their rights, or threat made to them, would impede the functioning of the House. In addition, individual Members cannot claim privilege or immunity on matters that are unrelated to their functions in the House. Any conduct which offends the authority or

dignity of the House may amount to either breach of privilege or contempt of the House. Contempt may be an act or an omission; it does not have to actually obstruct or impede the House or a Member- it merely has to have the tendency to produce such results. Defiance of House rules, including discussing committee proceedings in public or criticising speaker's decisions outside the House, is mostly considered as contempt. A House of Parliament can adjudicate and punish breaches of its privilege or contempt by its Members.

Raising matters of privilege

29. Practice in the Commonwealth indicate that a complaint of a breach of privilege or of any other type of contempt, or any matter dealing with the privilege of the House, may be raised by a member in one of four different ways-

    (a) in writing to the Speaker; or

    (b) on motion, following notice having been given in the normal way; or

    (c) on the floor of the House without notice; or,

    (d) by way of a petition.

30. The most common means of raising a matter of privilege is to raise it with the Speaker. A matter of privilege must be raised with the Speaker at the **earliest** opportunity, otherwise it cannot be accorded any precedence over other business.

31. In the case of a matter relating to the proceedings of a select committee, a member has until the commencement of the first sitting of the House following the day of the next meeting of the committee to raise it with the Speaker. The member can in the meantime place the matter on the

committee's agenda for its consideration. However, the member still retains the right to raise the matter with the Speaker by the next sitting of the House, regardless of the views expressed by the committee on the merits of the matter.

Informing other members

32. It is considered decent for the member raising a matter of privilege with the Speaker to forward a copy of the letter sent to the Speaker to any other Member who is implicated in it. This ought to be done as soon as reasonably practicable **after** the matter has been raised.

References to active matters of privilege

33. Members are not under any duty to keep confidential a matter that they intend to raise or that they have raised with the Speaker. However, most Speakers would deprecate the circulation of letters that had been written to them raising a matter of privilege. On the other hand, a member making public statements about a matter of privilege that has been raised with the Speaker or circulating copies of such letters would not be protected against any liability in defamation by the absolute privilege attaching to proceedings in Parliament. Further, it is considered out of order to refer, in the House, to a matter that has already been raised with the Speaker. Raising that matter outside the House or raising a matter that is under active inquiry by a Committee of Privileges is considered to be contempt of the House.

Speaker's role

34. In New Zealand and UK House of Commons, privilege rules require the Speaker to consider the nature of the matter that has been raised and to determine whether a question of privilege is involved. The Speaker's role is to

determine whether, on the face of the claims or complaint, a breach of privilege or contempt **could** have occurred. Formerly, the Speaker was required to rule whether a *prima facie* case of breach of privilege or contempt had been made out. This was changed in 1979 in New Zealand. The Standing Orders Committee (which considered the procedure for raising matters of privilege and recommended changes) felt that ruling that a *prima facie* case existed gave an unwarranted impression that the Speaker thought that a breach of privilege or contempt had actually been committed.

35. It is also the case that not all matters of privilege involve allegations that a breach of privilege or contempt has occurred. In this case, the role of the Speaker is to consider, on the face of it, whether the facts alleged could, if true, amount to a breach of privilege or contempt of the House or whether they do otherwise raise a matter seriously affecting the privileges of the House. The Speaker would **not** inquire into the validity of evidence or information presented, and would not hold any inquiry as this is the function of the Committee of Privileges. A factor that the Speaker is enjoined to consider in ruling on matters of privilege is **the degree of seriousness** of the matter that has been raised. The Speaker is required to exercise judgment on the desirability of the matter proceeding further, having regard to its intrinsic worth.

36. Members affected by a matter of privilege may make representations to the Speaker about it before that matter is referred to the Committee of Privileges. Thereafter, it is expected that any members who are implicated in a complaint of breach of privilege or contempt will be accorded an opportunity to respond to the complaint or claim. Where a matter of privilege

involves the Speaker **personally**, Speakers have delegated the responsibility for ruling on it to the Deputy Speaker.

If no question of privilege is involved

37. If the Speaker considers that no question of privilege is involved, the Speaker makes this determination known by informing the member who raised the matter of the decision. That would signify the end the matter as far as the Speaker is concerned.

If a question of privilege is involved

38. The Speaker's determination that a question of privilege is involved in the complaint is the authorisation for it to proceed to a full hearing before the Committee of Privileges. For this purpose, the Speaker reports the matter to the House at the first opportunity. Normally, the Speaker reports to the House on a question of privilege in a ruling given immediately after prayers. There is no particular form this ruling must take but, in response to a request from the Committee of Privileges, the Speaker attempts to express the ruling in terms that are sufficient to make clear the nature of any breach of privilege or contempt that is alleged. Once the Speaker has ruled that a question of privilege is involved, the matter automatically stands referred to the Committee of Privileges without any question.

Committee of Privileges

39. The Committee of Privileges possesses the same powers and is subject to most of the same procedural rules as other select committees, except that it may, on its motion, or following referral inquire into conduct in another committee, by a member. The Committee would be concerned with allegations made against Members and other persons that they have

breached privilege or committed a contempt. In these circumstances, the Committee is called upon to conduct an Inquiry, and to make findings against members and others. Therefore, the Committee endeavours to act and to conduct its proceedings in accordance with normal judicial principles, including ruling on the standard of proof required to establish whether a contempt has been committed. Persons appearing before the Committee of Privileges have long been permitted to have the assistance of their legal counsel if they wish. The nature of an inquiry by the Privileges Committee has been described as *sui generis* (unique). Its proceedings do not fall into any general category of inquiries by select committees.

40. Once a matter of privilege has been referred to it, it is for the Committee of Privileges to determine the scope of its inquiry. In particular, once the Committee of Privileges is seized of a question of privilege, it is not necessarily confined to considering only issues referred to by the Speaker in making the ruling.

41. In making a finding as to whether a breach of privilege or contempt has occurred, the Committee of Privileges is bound by the rules of natural justice. In doing so, The Committee considers the totality of the admissible evidence and then ask itself if it is satisfied on the basis of compelling evidence that a breach of privilege or contempt has occurred.

42. The Committee took cognizance of comparative literature on the manner of **punishing** breach of privilege or contempt as later exemplified in Paragraphs 290 to 293 of this Report.

V. THE INQUIRY: TERMS OF REFERENCE, WITNESSES & PRIMARY DOCUMENTS

Terms of reference

43. In his Communication to the House on 5th March, 2015, the Speaker determined that the accusations and counter-accusations of bribery, compromise, deceit or inducements made by the Members of the Public Accounts Committee against themselves and including against the Chairperson **relate** to privilege of Members of Parliament.

44. In order to undertake the task, the Committee summarised its terms of reference as three-fold, i.e-

    (i) To inquire into whether any Member of the Public Accounts Committee, including the Chairperson, did actually make claims of bribery, compromise or inducement against the Chairperson or against any of the Members of the Committee and whether there was any substantiation;

    (ii) To recommend to the House, appropriate action against the Chairperson and any Member of the Public Accounts Committee who, having made the claims of bribery, compromise or inducement, fails to substantiate their claims before the Committee of Privileges; and,

    (iii) To recommend to the House, any actions against the Chairperson and any of the Members of the Public Accounts Committee against whom the claims made were substantiated

before the Committee of Privileges and which claims constitute breach privilege and/or the code of conduct of Members of Parliament.

Co-option and sittings

45. The Committee held their First Sitting on Monday, 9th March, 2015 wherein they co-opted Honourables Mohamed I. Elmi, Joseph Lekuton and Ali Wario. In total, the Committee held 18 sittings and took evidence from a number of witnesses, some of whom appeared more than once.

Witnesses

46. The Committee took evidence from the following Members of the Public Accounts Committee (PAC) who had allegations of breach of privilege made against them or who made allegations against their colleagues in the PAC-

    (i) The Hon. Ababu Namwamba;
    (ii) The Hon. Cecily Mbarire;
    (iii) The Hon. Omondi Anyanga;
    (iv) The Hon. James Bett;
    (v) The Hon. Ahmed Abbas;
    (vi) The Hon. Kareke Mbiuki; and
    (vii) The Hon. Samuel Arama, (*formerly* a Member of the Public Accounts Committee)

47. The Committee also held meetings with the Hon. Aden Duale, Leader of the Majority Party, the Hon. Francis Nyenze, Leader of the Minority Party and the Hon. Jakoyo Midiwo, Deputy Leader of the Minority Party.

48. The Committee also invited the Hon. Sakwa Bunyasi to its meeting to corroborate certain evidence adduced by the Hon. Ababu Namwamba, MP.

49. The Committee also held a meeting with Mr. Mutea Iringo, Principal Secretary in the Ministry of Defence. Later the Committee also invited Corporal Bernard Odako, a police officer assigned to the Hon. Ababu Namwamba.

50. After formal invitations, the following Members of the Public Accounts Committee expressed interest and appeared before the Committee of Privilege-

    a) The Hon. Katatha Maweu
    b) The Hon. Jackson Rop
    c) The Hon. Alice Chae
    d) The Hon. Andrew Mwadime
    e) The Hon. Silvance Osele
    f) The Hon. Joseph Manje
    g) The Hon. Manson Nyamweya
    h) The Hon. Julius Melly
    i) The Hon. Peter Anyanga
    j) The Hon. John Mbadi
    k) The Hon. Jessica Mbalu

51. The Committee received written submissions from Mr. George Gazemba, Senior Clerk Assistant and Mr. Johnstone Kioko, Second Clerk Assistant. **(See Appendix 8)**.

52. The Committee also, invited submissions from the general public, by way of published invitations in the dailies. As at the time of considering the report,

only one memorandum had been submitted, but which did not relate to the matters before the Committee of Privileges **(See Appendix 10).**

Primary documents

53. From the Speaker's Communication, the Committee deduced the following as the primary documents in the Inquiry-

    a) Hansard records of the House proceedings of 4th and 5th March 2015;
    b) The Speakers Communication of 5th March 2015;
    c) Hansard recordings of the proceedings of Public Accounts Committee of 26th February 2015;
    d) Minutes of the Meeting of Public Accounts Committee of 26th February 2015; and,
    e) Letter written to the Speaker by the Chairperson of the Public Accounts Committee dated 25th February 2015.

Speakers Communication of 5th March, 2015

54. On 4th March, 2015, the Leader of the Majority Party raised a question or privilege regarding the accusations and counter-accusations of bribery on the membership of the Public Accounts Committee, seeking guidance on certain matters of privilege. The Speaker made a *Communication from the Chair*, on 5th March, 2015. In the Communication, the Speaker established that the accusations and counter-accusations of bribery constituted a question of breach of privileges and/or code of conduct of Members of Parliament and thereupon committed the matter to inquiry before the Committee of Privileges. The Speaker's communication of 5th March, 2015 is annexed to this Report as **Appendix 2.**

The Hon. Ababu Namwamba's Letter to the Speaker

55. The Hon. Ababu Namwamba, Chairperson of the Public Accounts Committee wrote a letter to the Speaker of the National Assembly dated 25th March 2015. The subject of the letter was "*Integrity and ethical issues in Public Accounts Committee*".

56. The Hon. Ababu Namwamba later informed the Committee of Privileges that, the letter, which was initially dated 26th March, 2015, was a result of the Public Account Committee's meeting with the Speaker on Wednesday, 18th February 2015 and in response to the motion of no-confidence in his chairmanship. The letter raised several issues in five broad subjects, which he attributed to the problems facing the Public Accounts Committee, i.e-

    (a) failed conspiracy to save Mr. Mutea Iringo on KSH. 2.9 Billion confidential expenditure;

    (b) reported bribery allegation in respect of the Judiciary Inquiry;

    (c) attempts to procure improper favours from a subject of inquiry in Hyderabad, India;

    (d) Interference in the investigations by the Committee Clerk, Mr. George Gazemba; and,

    (e) PAC taken hostage by multiple interests relating to-

        (i) the IEBC inquiry;

        (ii) the inquiry into the Judiciary;

        (iii) the Office of the President;

        (iv) Jubilee and ODM/CORD political intrigues;

        (v) the inquiry and report on the "*Hustler's Jet*" ; and,

        (vi) systemic institutional weaknesses in the National Assembly.

57. In the letter, Hon. Ababu concluded that he was a "victim of the classical case of the vampire of corruption fighting back viciously". He also indicated that he was willing to collaborate with the EACC and other agencies in this respect. Appearing before the Committee on 12th March 2015, the Hon. Ababu Namwamba admitted that he had not forwarded copies of the letter to the Ethics and Anti-Corruption Commission and the Director of Public Prosecutions, despite the hand-written inscription showing that the letter was copied to the two institutions.

58. In the letter, the Member also confirmed that he had in his possession, an original audio recording as evidence that Mr. Mutea Iringo met the Honourables Omondi Anyanga, James Bett, Ahmed Abbas and Samuel Arama and had given them a bribe of KSH. 1.5 million, and promised to offer business opportunities at the Department of Defence with a view to compromising the work of the Committee during the Inquiry into the confidential expenditure by the Office of the President.

59. In the letter, he also made claims that, during a Committee fact-finding mission related to procurement of Biometric Voter Registration Kits by the IEBC, the Hon. Omondi Anyanga demanded that the delegation accepts favours from M/s. 4G Identity Solutions Ltd of India, which was a subject of the Committee's inquiry. The firm had offered to meet accommodation expenses for the delegation. He claimed that the Honourables James Bett, John Sakwa Bunyasi, Jessica Mbalu, Kyengo Katatha Maweu, Omondi Anyanga and Gonzi Rai were also part of the delegation.

60. In the letter, he also indicated that the PAC Vice Chairperson, Hon. Cecily Mbarire had alleged that the disparaging inference made in the February

2015 edition of the *Nairobi Law Monthly* pointed to her. The published inference was that "*bribes linked to the former Judiciary Chief Registrar, Mrs. Gladys Shollei, had been conveyed to some members of the Committee through a vocal female MP from Eastern Province....known for her corrupt dealings".*

61. In the letter, he indicated that he had complained verbally on numerous occasions to the Director of Committee Services on the conduct of Mr. George Gazemba, the Clerk in-charge of the Public Accounts Committee.

Hansard Record of the Public Accounts Committee Meeting of 26th February, 2015

62. The Committee noted that during the 187th sitting of Public Accounts Committee, various matters were raised, including alteration/doctoring of Committee reports especially on the Committee findings and recommendations; premature disclosure of Committee reports to the media; defamatory contents of the article appearing in the February edition of the Nairobi Law Monthly magazine; highhandedness on the part of the Chairperson especially relating to arranging of meetings, nomination of delegations to international trips, making of unilateral decisions; and, allegations of bribery on the Chairperson and Members of the Committee.

Minutes of the Meeting of Public Accounts Committee of 26th February 2015

63. The Minutes of the Public Accounts Committee of in its 187th indicates that the grounds contained in the motion of no-confidence on the PAC Chairperson were as follows-

(a) Alteration/doctoring of Committee reports especially on the Committee findings and recommendations; and inclusion of resolutions that were not passed and adopted by the Committee; for instance, recommendations of the Committee report on the 2012/2013 Auditor General's report were altered without consultation to Members, and signatures collected to purport that the report had been adopted by the Committee; and alteration of the Office of the President's Committee report on the unexplained expenditure of 2012/2013.

(b) Leaking of Committee reports to the media before such reports are tabled for discussion by the National Assembly, e.g. the report on the hire of a jet for use by the Deputy President in 2014; and the article appearing on the February edition of the Nairobi Law Monthly magazine whose source is attributed to the Chairman.

(c) Tendency to schedule and cancel meetings at his own whims and setting out venues at his own convenience. For instance the workshop in Kisumu was set in such a way that coincided with the Chairman's program to attend to Party matters within the region.

(d) High handedness and making of unilateral decisions on Committee issues without consulting Members; and gagging and being disrespectful to Members with divergent views and preventing free expression during Committee proceedings.

(e) Serious bribery allegations that touch on the integrity of the Chairman and conduct of the Members of the Committee. Instances of bribery claims including-

(i) The Ministry of Provincial Administration unexplained expenditure in 2012/2013 where money is alleged to have been paid to the Chairman to alter reports on the Committee's findings and conclusions; and,

(ii) The Judicial Service Commission Committee report where claims were made of money having given out to influence the findings and conclusions on the report.

64. Twenty four (24) Members were present at the meeting. When the question was put, The "Nays" had it as thirteen Members (13) voted in favour of the motion while nine (9) voted against it. Voting was by secret ballot. Two Members abstained.

65. It is worth noting that, at this time, the Hon. Samuel Arama, MP was not a member of the Public Accounts Committee as he had been discharged from the Committee by the nominating Party.

VI. EVIDENCE RECEIVED FROM WITNESSES

A. Exclusion of the public

66. Owing to the nature of the Inquiry, the Committee sought the Speaker's permission to hold its sittings in *Camera.* The Speaker granted the permission. However, the Committee, on a number of occasions, held its proceedings in public upon requests by the persons appearing before it to adduce evidence.

B. The Hon. Ababu Namwamba, Chairperson, Public Accounts Committee.

First Appearance

The Hon. Ababu Namwamba, Chairperson of the Public Accounts Committee first appeared before the Committee of Privileges on Wednesday, 11th March 2015 and submitted that—

67. He had confidence in the competence of the Committee of Privileges and that he preferred having the proceedings in public.

68. On 10th March 2015, he had written a letter to the Hon. Speaker after receiving a letter from the Clerk of the National Assembly to appear before the Committee. In the letter he—

    (a) sought clarifications on whether he was on trial as Hon. Ababu Namwamba;

    (b) demanded that his hearing be held in public;

(c) noted that in his opinion the letter introduced new issues not covered under the ruling made by the Hon. Speaker.

(d) proposed that, in executing its mandate, Committee of Privileges should review all the works of the PAC both concluded and pending, specifically the Report of the Public Accounts Committee on the Hire of an Aircraft for the Deputy President for a Tour of Four African Nations. The Report was tabled in the House on 24th April, 2014 but has never been balloted for debate by the House.

69. The genesis of the whole issue that led to the Speaker's ruling was an allegation of bribery against him in the motion of no confidence moved against him on 26th February 2015. His letter to the Hon. Speaker dated 25th February 2015 was in response to the motion. According to him, it was only proper for his accusers to appear first before the Committee to substantiate their allegations before he takes the Committee through the contents of his letter and provides any evidence in his possession.

70. The Hon. Ababu Namwamba's second letter to the Speaker dated 10th March 2015 is annexed hereto as **Appendix 4.**

Second Appearance

The Hon. Ababu Namwamba appeared for a second time before the Committee on Thursday 12th March 2015 accompanied by the Hon. Peter Kaluma as Legal Counsel and about nineteen (19) other Members. He submitted that—

71. He appreciated the manner the Committee was handling the proceedings and further for allowing the proceedings to be in public with the press in attendance.

72. His letter to the Hon. Speaker dated 25th February 2015 was prompted by the impending vote of no confidence against him by the PAC Members and also his meeting with the Speaker where he shared information with the Speaker on the happenings within PAC.

73. No allegations raised by Members during the meeting on 26th February 2015 were ever substantiated in accordance with Standing Order 91.

74. He had in his possession an original audio recording as evidence that Mr. Mutea Iringo met Honourables Omondi Anyanga, James Bett, Ahmed Abbas and Samuel Arama at Silver Springs Hotel. Mr. Iringo was to provide money and facilitate business opportunities at the Department of Defence for the Members. The Members were to exonerate Mr. Iringo from any possible blame on the investigations into confidential expenditure by the Office of the President in the PAC report on the Accounts for 2012/2013.

75. The four voices in the recording were his, Hon. Arama, Hon. Junet Mohammed and the former Prime Minister, Hon. Raila Odinga. A fifth voice on the recording belonged to an employee of the establishment they were at whom he would not name. The meeting between the persons in the recording took place before the motion of no confidence was moved against him. In his opinion, the source, maker, date and place of recording was

irrelevant and the Committee of Privileges was sufficiently empowered to admit the recording and its contents.

76. With regard to the JSC Inquiry, allegations had been made by Hon. Mbarire that he was the source of a story that ran in the Nairobi Law Monthly alleging that a female Member of Parliament from Eastern Province was bribed to influence the JSC report. Hon. Mbarire later withdrew the allegation against him.

77. With regard to the Committee trip to India, logistics were arranged by the secretariat in consultation with the High Commission in New Delhi. However in the course of preparations, it was realized that the investigations would extend to Hyderabad, India. The High Commission had no contact in Hyderabad which meant that the delegation would have to rely on information and contacts provided by 4G Solutions. The delegation was received by officials from 4G Solutions on arrival in Hyderabad.

78. 4G Solutions hosted the delegation for dinner and had made prior arrangements to pay but Members paid for their bills. As leader of the delegation, he insisted that Members pay for their dinner. The cumulative bill was paid using Hon. John Sakwa Bunyasi's credit card and the rest of the delegation was to refund Hon. Bunyasi later.

79. When it came to his attention that a subject of the inquiry was expected to have paid the hotel bill, he called a crisis meeting of the entire delegation and made it clear that everyone was to meet their expenses due to the apparent conflict of interest involved. Every Member accepted this apart from Hon. Anyanga. The issue of the arrangements made for 4G Solutions to guarantee

the payment of their Hotel bills did not come to his attention on the night the delegation arrived. The arrangement was cancelled immediately it came to his attention. The management of Trident Hotel can confirm the cancellation of the commitment. Everybody paid their bills thereafter.

80. With regard to the interference by the Committee Clerk in investigations by the Public Accounts Committee, he had complained verbally on numerous occasions to the Director, Committee Services on the conduct of clerk George Gazemba. Other Members also had a myriad of complaints against the clerk. The complaints touched on the questionable character of the clerk, his poor work ethic, indolence, disrespectful manner and incompetence. At one time he directed the clerk to withdraw from a meeting of the Committee in Kisumu. Issues such as disappearance of supporting documents submitted by witnesses and audit institutions and the deliberate drafting of the judiciary report in a manner intended to favour key witnesses highlighted his concerns. He had no personal issues with the officer and the Parliamentary Service Commission (PSC) should deal with him administratively.

81. PAC has become a victim of multiple interests and forces, namely IEBC, the Judiciary, the Office of the President, Jubilee and Cord political intrigues and institutional and systemic weaknesses in the National Assembly. The operations of PAC seem to have been paralysed just as the Committee was about to conclude its report on procurement of BVR Kits by IEBC and had drawn up a list of witnesses for that purpose.

82. He did not send his letter addressed to the Hon. Speaker to the Ethics and Anti-Corruption Commission (EACC) and the Director of Public Prosecution (DPP) as indicated on its last page.

83. He is happy with the progress and process of the proceedings. The inquiry should be extended to other committees. His life is in danger, noting that the calibre of witness who were scheduled to appear before PAC prior to the inquiry and are or have been the subject of the PAC investigations include the Office of the President, IEBC, JSC and the Deputy President.

84. The verbatim transcript of the audio recording as contained in the flash disk tabled by the Hon. Ababu are annexed hereto as **Appendix 14.**

Third Appearance

The Hon. Ababu Namwamba appeared for a third time before the Committee on Tuesday 24th March 2015 with the Hon. Peter Kaluma as legal counsel and submitted that—

85. He appreciated the opportunity from the Committee, and the manner in which it has handled the inquiry. He had not accused any of his colleagues of anything and that when the allegations of bribery arose within PAC, they took him completely by surprise. Mr. Johnston Kioko, PAC Clerk, can confirm that up to the time that the matter erupted, the Committee was working perfectly. In passing a verdict, the Committee of Privileges should look at the work done and pending before the PAC.

86. He does not have any evidence to substantiate allegations and does not seek to have any evidence. The audio recording he tabled before the Committee

on 12th March 2015 was recorded using his cell phone but without his knowledge. This was done by his bodyguard, Mr. Bernard Odako, 22nd February 2015 at Fairview Hotel, Nairobi.

87. The Committee of Privileges should not pass a group judgment on PAC and its Members. Each individual should carry their own responsibilities. PAC has some of the finest Members of the National Assembly and it would be a terrible injustice for them to suffer on behalf of others.

88. In his opinion, PAC can survive the recent allegations and counter-allegations and continue working in harmony. Committees find a way of resolving their issues and moving on. PAC has not degenerated to any level worse than any other Committee and the relationship between its Members can heal.

89. The mandate of Committee of Privileges should be expanded to provide a safety net for Members against some of the allegations in the House

C. The Hon. Cecily Mbarire, Vice-Chairperson, Public Accounts Committee

The Hon. Cecily Mbarire appeared before the Committee on Thursday 12th March 2015 and submitted that—

90. With regard to the alleged bribe of Kshs. 1.5 million, the last time she saw Mr. Iringo was when PAC summoned him to appear before it while investigating the Office of the President's Vote in the 2012/2013 Accounts. She is not aware of the alleged meeting at Silver Springs Hotel with Mr. Iringo. No person or Member shared with her any money given by Mr. Iringo.

91. In her opinion, the audio recording tabled by Hon. Ababu was in response to the impending no confidence vote by the Members of PAC and may have been recorded Sunday 22nd February 2015. She recalls Hon. Ababu having promised to drag all members of the Public Accounts Committee into the corruption allegations after one of the PAC meetings in the lead-up to the meeting of 26th February 2015.

92. It had come to her attention that a story published in the February issue of the *Nairobi Law Monthly* magazine alleged bribery of the Public Accounts Committee to influence the JSC report. The bribery was allegedly coordinated by a Member whose description was tailored to fit her. It was her belief that the PAC Chairperson was the source of the story and she confronted Hon. Ababu before PAC. She later withdrew the allegation before PAC. The Public Accounts Committee was divided on whether to invite the publisher of the *Nairobi Law Monthly* to appear before it and shed more light on the allegations.

93. She had never heard of the allegation that PAC Members had been bribed with Kshs. 10 Million to alter its reports. She did not attend the PAC retreat organized in December 2014 in Mombasa to compile the report on the 2012/2013 Accounts, where the alleged bribe was to be shared. She wonders how she influenced the report yet she was not present at the meeting.

94. She is on record as having seconded the PAC chairperson on the floor of the House when the report on the 2012/2013 Accounts was being debated. She was alerted later by Hon. Jude Njomo that the recommendations that PAC

had agreed on in Mombasa with regard to the treatment of confidential expenditure had been altered. On consulting the PAC Chairperson on the issue, the Chairperson noted that nothing had been altered in the report.

95. She did not have any issues with the PAC clerk, Mr. George Gazemba and believed the PAC Chairperson had a good working relationship with the clerk at the beginning of the 11th Parliament. The clerk was well-versed in PAC matters having clerked PAC during the 10th Parliament. She did not understand why the relationship between the PAC Chairperson and the clerk deteriorated thereafter.

96. In her opinion, PAC has lost the moral authority to adequately discharge its watchdog role due to the nature of the allegations made against its membership. The issues that PAC had with its Chairperson were not trivial as highlighted by the fact that nearly half of the Members supported the motion on a vote of no-confidence on 26th February 2015. Allegations that the Chairperson ran PAC like a private property had merit.

97. A mechanism should be put in place to regulate how information in the public concerning Members should be handled. Malice, rumors, allegations and innuendo affect Members and the House. The mechanism also ought to look into resolving conflict among members before it escalate into a scenario such as the one facing Public Accounts Committee. The provisions on making and substantiating allegations and evidence before the House and Committees, should be strengthen.

D. The Hon. Omondi Anyanga, Member, Public Accounts Committee

First Appearance

The Hon. Anyanga first appeared before the Committee on Wednesday 11th March 2015, acknowledged receipt of a letter from the Clerk dated 10th March 2015 and tabled a statement in reply. He submitted that—

98. He did not meet and has never met Mr. Mutea Iringo at Silver springs Hotel as alleged by Hon. Ababu. He has never solicited and/or received any money or Kshs.1.5 million, as alleged from Mr. Iringo to influence the work of Public Accounts Committee or to exonerate Mr. Iringo from possible blame. He has never discussed matters related to the Public Accounts Committee with Mr. Iringo.

99. During the deliberations of the Public Accounts Committee leading up to the motion of no-confidence against the Chairperson of the Committee, Hon. Ababu alleged to have a tape recording mentioning his name but did not play the tape for the benefit of either him or the other Members.

100. At the inception of the 11th Parliament he aspired to be and vied for the position of Chairperson of the Public Accounts Committee. Just like any politician, he had ambitions and in any event he considered himself to be the most experienced Member of the Committee.

101. The trip to India to investigate the procurement process for Biometric Voter Registration (BVR) Kits by the Independent Electoral and Boundaries Commission (IEBC) was the first time he travelled with the Public Accounts Committee out of the country. The hotel bookings and travel arrangements—

were done by the Committee clerks and it was his belief that the Chairperson must have known about the arrangements.

102. The issue of the firm under inquiry, 4G Identity Solutions Limited (4G Solutions), paying for the Committee expenses while in Hyderabad came up after they had stayed in the Hotel for three (3) days. It was brought to their attention by the Hon. Ababu. He wondered how the Committee ended up being booked in hotels by a firm they were investigating, yet Hon. Ababu was in charge of the trip. He confirmed that he personally settled all of his bills related to the trip and further assisted some of the Committee clerks to settle their bill for the hotel. At no time did he ever procure favours for Committee work from any person or entity.

103. In the run-up to the no confidence motion, he was called by the Hon. Ababu and informed that the Hon. Arama, who had been de-whipped from the Public Accounts Committee, had alleged that he had received money from Mr. Iringo to distribute to other PAC Members in order to influence the report by PAC on the accounts for the 2012/2013 financial year. In his opinion, it appeared that the Chairperson of PAC was attempting to blackmail him after noting his position on the petition to remove him.

104. During the vote of no-confidence against Hon. Ababu, he did mention the Chairperson's attempts to compromise Hon. Arama. The allegations against Hon. Ababu in the motion of no confidence were issues of bribery, alteration of Committee reports, leaking of the work of the Committee to the media, arrogance, highhandedness and foreign trips. Before the vote of no confidence, the Chairperson of PAC approached him with a drafted statement

and two letters and requested him to read the documents before the press to exonerate him. He declined to read the statements before the press.

105. He signed the petition seeking removal of the Chairperson of PAC believing the originators had tangible evidence to support the allegations. However, when it turned out that there was no evidence to support the allegations, he withdrew his support for the motion. The mover of the Motion seeking removal of the Chairperson was Hon. Abbas, seconded by Hon. Mbiuki.

106. The work of PAC was compromised by the serious problems of rumour-mongering hence a lot of confusion in the Committee mostly attributed to Hon. Junet Mohammed. He could not substantiate the allegation against Hon. Junet and therefore withdrew it.

107. In his opinion, it is impossible for the PAC as presently constituted to continue to work together owing to the bad blood and publicity arising from the allegations of compromises and bribery. Parliament should look into dealing with matters of integrity, breach of privileges and or code of conduct by committee members or individual Members by establishing a Standing Committee to deal with ethics and privileges matters as and when they arise.

108. The statement and the two documents allegedly given to the Hon. Anyanga by the Hon. The Hon. Ababu Namwamba as tabled are annexed hereto as **Appendix 5.**

Second Appearance

The Hon. Anyanga appeared before the Committee for a second time on Wednesday 18th March 2015. He tabled a further statement and submitted that—

109. In the event the audio recording tabled by Hon. Ababu is to be admitted as evidence, the Hon. Ababu Namwamba was in breach of Standing Order No. 87 for using offensive language against him. The use of the word "crook" against him, ostensibly by the Hon. Ababu Namwamba was defamatory and constituted gross disorderly conduct. The Committee should refer to the provisions on the Evidence Act, Cap. 80 of the Laws of Kenya in deciding whether to admit the audio recording.

110. Instead of defending himself against the motion of no confidence, Hon. Ababu resorted to vilification, condemnation and blackmail of PAC Members, the Leadership of Parliament, the Executive and the political coalitions in the House. The Committee of Privileges ought to dismiss the audio recording as it failed to meet minimum legal requirement for admission as evidence.

111. On 25th February, 2015 a day before the motion of no-confidence against the Chairperson of the Public Accounts Committee, the Hon. Ababu Namwamba called him and asked him to withdraw his support for the motion. He added that the Hon. Ababu Namwamba also drafted two letters, which he forwarded to him asking him to sign and submit to the Clerk, signifying his withdrawal of support to the motion of no-confidence.

112. With regard to the claims of attempts to compromise the Public Accounts Committee during the Committee's October 2014 investigative trip to Hyderabad, India, he was part of the delegation and that he left Nairobi aboard a different flight from the rest of the Members. He could not give any evidence on the claims of the attempted comprise on the PAC during the dinner organized by 4G Identity Solutions as he did not join his colleagues for the dinner.

113. It is true that the representatives of 4G Solutions offered to pay hotel accommodation for PAC Members, but he objected to the offer when the Chairperson consulted the Members. The Chairperson also objected to the offer, causing the delegation to meet their individual bills.

114. In his opinion, the Public Accounts Committee as presently constituted cannot work together following the claims of bribery and bad blood between the Members. The PAC Chairperson cannot lead the Committee anymore following the myriad of claims he has made against the Members of the Committee. Further, the Standing Orders ought to be amended to provide that the Public Accounts Committee comprises of senior Members of Parliament and leadership of the House who have been thoroughly vetted and fulfil the requirements of Chapter Six of the Constitution.

115. In his view, the mandate of the Committee of Privileges ought to be expanded to include continuous oversight on ethics of Members of Parliament.

116. The further statement tabled by Hon. Anyanga is annexed hereto as **Appendix 5.**

E. The Hon. Ahmed Ibrahim Abbas, Member, Public Accounts Committee

First Appearance

The Hon. Abbas first appeared before the Committee on Wednesday, 11th March 2015 and acknowledged receipt of a letter from the Clerk dated 10th March 2015. He submitted that—

117. He has never solicited for a bribe from or even met Mr. Mutea Iringo as alleged. He did not attend the Committee retreat in Mombasa to finalise the report on the accounts for the 2012/2013 financial year, where it is alleged that members of PAC were paid to influence the outcome of the report and exonerate Mr. Iringo.

118. He learnt of the alleged bribing of PAC members while on a visit to the Office of the President to follow up on matters related to his constituency. He was informed by senior officer in the Office of the President that members of PAC had failed in fulfilling the deal of exonerating Mr. Mutea Iringo from possible blame. The official disclosed that Members in PAC from the Coalition for Reforms and Democracy (CORD) were given Kshs. 5million to assist in exonerating Mr. Iringo and the Office of the President during the Mombasa Retreat where the Committee was to write a report. The Kshs. 5million was delivered to Hon. Ababu at Fairview Hotel.

119. During an in-house Committee meeting, in which foreign trips and the allegations of bribery of Committee members in the *Nairobi Law Monthly* Magazine were discussed, he informed the PAC Chairperson of the

information of Kshs. 5 million alleged to have been given to him by the Office of the President. The Chairperson did not deny or rebut the allegations.

120. He is not able to disclose the source of his information but requested the Committee to allow him time to think and talk to the source on the issue.

121. With regard to the Judiciary inquiry, the report was bungled by the Chairperson, where in two retreats, the Chairperson covered himself by blaming Committee Clerks.

122. He moved the motion of no confidence against the Chairperson because of the manner the Chairperson treats Members of the Committee and his irregular manner of calling meetings, among other issues.

123. He had on one occasion considered witting to the CORD leadership seeking to be de-whipped from the Committee, citing the leadership of the Hon. Ababu as the reason.

124. In his opinion the problems in PAC revolve around the Hon. Ababu who has sucked in other members of the Committee and the House into his own problems. Further, the mandate of the Committee of Privileges ought to be expanded to include inquiring into claims of compromises on Members and attempted resolution of such crises before matters get out of control.

Second Appearance

125. The Hon Abbas appeared before the Committee on 12th March, 2015 to substantiate the various allegations made against the Hon. Ababu. It was his testimony that his testimony that he believed wholeheartedly that the

information he had shared with the Committee was credible but the source had not agreed to be named and was not ready to appear before the Committee to corroborate the information. He thereupon withdrew the allegations.

F. The Hon. James Bett, Member, Public Accounts Committee

The Hon. Bett appeared before the Committee on Wednesday 11th March 2015 and submitted that—

126. He was not aware of the allegation that he received kshs.1.5million until he learnt of the allegations from the newspapers and the letter from the Clerk of the National Assembly summoning him to appear before the Committee of Privileges.

127. He was part of the PAC delegation to India to investigate 4G Solutions, which was involved in procurement of BVR Kits by IEBC in the last general Elections. All members paid for their Hotel and meal bills and did not in any way try to procure favours from the firm. The Members of delegation paid for their bills on the last day of their three (3) days' stay at Trident Hotel which had initially been booked on their behalf by 4G Solutions. The firm had wanted to pay for a dinner for the Members but most of the Members refused the gesture. Members briefly debated the issue of the settlement and those who wanted to pay their own bills included Hon. Sakwa Bunyasi. Hon. Bunyasi settled the bill for the dinner on the understanding that we would reimburse him later. While in India, the delegation never met to discuss the payments of hotel bills. He had left Nairobi without knowing the hotel he was going to stay in while in India.

128. The Chairperson PAC leaked the PAC report on the Judicial Service Commission exclusively to the Star newspapers. The story was ran by the newspaper on 25th February 2015. He could not further substantiate this allegation and withdrew it.

129. He only learnt of the allegations that PAC Members had received a bribe of Kshs. 10million through the press and is not aware of any allegations of bribery against the PAC Chairperson.

130. The motion against the PAC Chairperson was motivated by other issues Members had, not bribery. The PAC Members had held a meeting before the collection of signatures in support of the motion and many members felt that they did not have confidence in the Chair. Members felt that the purpose of the retreat in Kisumu to consider the JSC Report which aborted was to make time for activities related to the Homa Bay by-election and other activities by the Chair. The issue of the allocation of foreign trips to Members had also come up.

131. He opposed the recommendations of the report into the 2013/2013 Accounts on confidential expenditure as it was not what PAC agreed on during the Mombasa retreat. It had been agreed in Mombasa that a policy needs to be developed on how confidential expenditure should be audited. PAC had interrogated the pattern of the expenditure over the years and confidential expenditure featured even before the 2012/2013 financial year. He signed the 2012/2013 report at adoption but noted while on the floor that the Recommendation part was altered. He consulted Hon. Jude Njomo on the

issue, who agreed that the recommendations had been altered. He was not sure who altered the report and recommended that there should be sufficient time between the signing of a report and its tabling to enable detection of any alteration.

132. One day while having lunch at the Parliament restaurant, the Chairperson PAC approached him and said that he wanted to talk to Mr. Iringo on his phone since the Hon. Ababu's phone had low battery. He did not know what the Chairperson and Mr. Iringo spoke about. His relationship with Mr. Iringo is formal as he has previously worked in public service.

133. In his opinion, the issues affecting PAC have been blown out of proportion and as a result tainted the whole House. The mandate of the Committee of Privileges needs to be expanded to enable it to receive grievances from committees including the manner in which reports and investigations are handled. That the leadership of PAC should be disbanded.

G. The Hon. Samuel Arama, Former Member, Public Accounts Committee

The Hon. Arama appeared before the Committee on Thursday 12th March 2015 and submitted that—

134. He did not meet and has never met Mr. Mutea Iringo at Silver springs Hotel as alleged by Hon. Ababu. He has never solicited and/or received any money from Mr. Iringo to influence the work of the Public Accounts Committee or to exonerate Mr. Iringo from possible blame in the PAC report on the 2012/2013 Accounts. Further, he has never discussed matters relating to the investigations of the Public Accounts Committee with Mr. Iringo. The

allegations of bribe-taking only came to his attention through the media which surprised him as he had been de-whipped by the CORD Coalition from PAC in September 2014.

135. In the recent past, he has not met or held any meeting with the former Prime Minister, Hon. Raila Odinga, or Hon. Junet Mohammed where Hon. Ababu was present. The last time he recalls having met the former Prime Minister was immediately after he won his seat in the 2013 general elections. In 2014, he wrote to the former Prime Minister, as party leader of the Orange Democratic Movement (ODM), seeking reasons why he was de-whipped and also to be addressed on when he would be reinstated to PAC. He has never got an answer from the party.

136. He has never solicited or sought assistance from the PAC Chairperson or any Member to help him be reinstated to PAC. The Chairperson PAC would be the last person to do so as he was one of the persons behind him being de-whipped in the first place.

137. During the time he was a PAC Member, the only wrangles he recalls were on the issue of Members' allocation of foreign trips.

138. He is not aware of any attempts made by other persons or entities to influence PAC Reports. He recalls contributing to the discussion of the PAC report on the 2012/2013 Accounts but did not sign it at adoption as at that time he was no longer a Member of PAC.

139. In his opinion, there is need to change the leadership of PAC for it to adequately discharge its watchdog role.

H. The Hon. Kareke Mbiuki, Member, Public Accounts Committee

The Hon. Mbiuki appeared before the Committee on Thursday 12th March 2015, tabled a statement and submitted that—

140. He was thankful to the Committee for the opportunity to shed light on the allegations levelled against him and the operations of PAC. In his opinion, Hon. Ababu was peddling falsehoods in an attempt to retain a powerful position in the Assembly, having found himself in a sea of corruption allegations.

141. There was no truth in the allegations by Hon. Ababu as he has never received any bribe from any person or persons or any inducement to influence or alter PAC reports.

142. He was in a position to account for his whereabouts on the day of his alleged meeting with Mr. Iringo and any tangible evidence provided against him can easily be verified by service providers. Further, the persons speaking on the audio recording tabled by Hon. Ababu should be called to substantiate their allegations.

143. He only learnt of the allegation that PAC Members received a bribe of Kshs. 10 Million from a member of PAC who tabled a newspaper – *the Citizen Weekly*— which alleged the Hon. Ababu had used his position as chair of PAC to rent-seek and that other members had their pockets overflowing with money. There was no evidence to substantiate the allegation.

144. In his opinion, Hon. Ababu made the allegations against other PAC Members to shift the attention from himself and the allegations made against him. The PAC Chairperson has not conducted himself with honour at any point during the issue and has disgraced himself and the entire House. As Chairperson the Hon. Ababu has personalized PAC activities and made it a one man show where all activities revolve around him. He cannot delegate even to the vice chairperson. His conduct borders on highhandedness as most committee meetings and trips are arranged to his convenience and he does not even allow any Member to lead the meetings or a delegation in his absence, leading to cancellation of meetings and trips.

145. As Vice-chairperson of the Departmental Committee on Agriculture, he was not a very active Member of PAC. He had no issues with the PAC Clerk though he was aware of the Chairperson directing Mr. Gazemba to withdraw from meetings, one instance being during the consideration of the JSC Report in Kisumu. The clerk had not carried the relevant materials and caused the meeting to abort. We did not have any issues with the clerk during the preparation of the reports of the various financial years. Issues only arose with regard to the JSC report.

146. He is not aware of any alteration of PAC reports and he was present during the Mombasa retreat that agreed on the recommendations on the 2102/2013 Accounts. The report, including the recommendations, were tabled in the form adopted. PAC was doing well in the last two (2) years of it operations and the JSC report is on course to be concluded.

147. With regard to the allegations published in the February issue of the *Nairobi Law Monthly* Magazine on bribery of PAC Members, there was a general consensus within PAC not to summon the publisher of the magazine to appear before it.

148. In his opinion, the mandate of the Committee of Privileges should be enhanced to address any allegations and counter allegations made by Members before rocking activities of Committees in the manner PAC has been affected. PAC also needs to be reconstituted as he has lost confidence in its leadership and the current membership has a highly dented image as a result of the allegations.

149. The statement tabled by the Hon. Mbiuki is attached hereto as **Appendix 6.**

I. The Hon. John Sakwa Bunyasi, Member, Public Accounts Committee

The Hon. Bunyasi appeared before the Committee on Thursday 12th March 2015. He acknowledged receipt of a letter from the Clerk of the National Assembly dated 10th March 2015 and submitted that—

150. He is a Member of three Committees including PAC and has worked in various international assignments before joining the National Assembly. He was part of the delegation of PAC members to Hyderabad, India to inquire into the procurement of BVR Kits by IEBC. The delegation was received by officials from 4G Identity Solutions who provided them with transport to their Hotel—the Trident Hotel.

151. It was his believe that the Hotel was booked by the secretariat after consultations with the Kenya High Commission and 4G Solutions. 4G

Solutions had without the knowledge of the delegation guaranteed payment of all bills. The delegation held an informal session to discuss the issue and to agree that individual members of the delegation pay their respective bills. The PAC Chairperson was categorical that the arrangement by 4G Identity Solutions would have to be cancelled. Opinion was divided among the Members but the delegation concluded that it was unethical and inappropriate to accept payments made by 4G Solutions. Hon. Anyanga, Hon. Rai, Hon. Mbalu and Hon. Bett were indifferent and not in favour of refusing the commitment by 4G Identity Solutions. Members nevertheless paid for their bills.

152. At the close of investigations, 4G Identity Solutions had organized for dinner for the delegation in consultation with the secretariat and had made plans to pay for the dinner. He impressed upon the delegation that they meet the cost of the dinner as it would be improper for an entity PAC was investigating to meet Members' expenses. The mood of the Members changed. The Members must have thought he was showing off. He paid for the entire bill using his credit card on the understanding that the Members would reimburse him later. Hon. Ababu had offered to refund the expense immediately, but he declined. He is yet to be reimbursed. The Hon. Anyanga did not join the delegation for the dinner.

153. He finds the PAC clerk to be rather inefficient and obstinate. The clerk often had problems with the PAC Chairperson. He believes the differences may have been due to the heavy workload of PAC.

154. In his opinion, the Standing Orders of the National Assembly are silent on the question of the applicable code of conduct and need to be amended to incorporate the provisions of Article 75 and 76 of the Constitution on leadership and integrity, gifts and donations. Members should be oriented on the applicable code of conduct, privilege, and why they should be cautious to accept favours especially from persons under investigation. Political parties should be requested to nominate Members to PAC and the Public Investment Committee (PIC) who can stand the integrity test due to the kind of pressures in the two committees.

J. The Hon. Jessica Mbalu, Member, Public Accounts Committee

The Hon. Mbalu appeared before the Committee on Thursday 12th March 2015 and submitted that—

155. She had been misquoted in the letter she received from the Clerk of the National Assembly, as she had based her contribution set out on pages 12 and 13 of the Hansard record of the PAC meeting held on 26th February 2015 on what she had read in the *Citizen Weekly* newspaper. The newspaper alleged that Members of PAC had received a bribe of Kshs. 10million. She noted that she was not able to substantiate the generalised allegation and withdrew it.

156. She had no problem with the PAC Clerk and the other officers of the secretariat but noted that the clerk had been "ejected" from a meeting in Kisumu.

157. In her opinion, corruption should not be condoned in Committees of the House and any allegations should be properly substantiated or withdrawn.

K. The Hon. Kyengo K. Maweu, Member, Public Accounts Committee

The Hon. Maweu appeared before the Committee on Wednesday 18th March 2015 and submitted that—

158. There had been no differences between the PAC Members for the last two years. To the best of his knowledge, the PAC Chairperson has worked very hard to bring the Members together. The allegations against and amongst the PAC membership came as a surprise and could not be verified. He and other Members tried to bring the Members at odds together but some Members seemed misguided.

159. He went to India along with other Members including the PAC Chairperson to investigate the procurement of BVR Kits by IEBC. In India, nothing material happened. Nobody solicited or received bribes. When 4G Solutions wanted to pay bills for the delegation, Hon. Anyanga categorically refused and said there was enough money from Parliament to sustain the Members. Hon. Anyanga was the first person to say that it was improper to accept the payment. The delegation was received by some staff of the High Commission as well as officers from 4G Solutions. 4G Solutions provided transport for the delegation from the airport to Trident Hotel.

160. PAC had a problem with the clerk—Mr. Gazemba— who has since exited and been replaced by another clerk. He was not following the instructions he got from the Chairperson and the Members.

161. There is no problem with PAC. It is salvageable as long as the Chairperson and the Vice-chairperson exit. The only other Members that may be

discharged from the PAC for it to be salvaged are the Members who have been making allegations against each other.

L. The Hon. Jackson Rop, Member, Public Accounts Committee

The Hon. Rop appeared before the Committee on Wednesday 18th March 2015 and submitted that—

162. PAC has been working well for the last two years until recently when a housekeeping issue spiralled into the current scenario. Being a Christian, he was irritated by the reports in the media that he was given money to influence a committee report. He was perturbed and had to come and clear his name as PAC Members are being collectively condemned.

163. In his view, the PAC Chairperson appeared to be very domineering and had no respect for other Members of the Committee. The meeting in Kisumu seemed to have been arranged to the Chairperson's convenience so that he could attend a political party meeting. The meeting was later called off on the pretext that the logistics were poorly coordinated and that the standard of the draft report was poor.

164. In his opinion, all the allegations against the PAC and its Members are hearsay. He is not privy to any information on bribery within PAC. Following the allegations, it is not possible for the respective Members of PAC to continue working together or even trust each other. However, disbanding PAC will be an indictment on all PAC Members as corrupt. PAC has been working closely but as of now, most Members do not have trust in its leadership.

M. The Hon. Alice Chae, Member, Public Accounts Committee

The Hon. Chae appeared before the Committee on Wednesday 18th March 2015 and submitted that—

165. She felt it was good to come before the Committee as the allegations touched on her as a PAC Member. When the allegations were made within PAC they could not be substantiated. PAC Members divided themselves along lines on the issue instead of upholding the mandate of the committee. As a Christian, she was not involved in any form of bribery.

166. There were too many divisions within PAC and in her opinion, the induction of new Members to Parliamentary business and procedures ought to be done properly. Before joining the House, she had expectations of joining an institution of rules and procedure, which she has since discovered are not adhered to. There should be proper mechanisms to ensure proper observance of House rules.

167. She never voted in the Motion against the PAC Chairperson on 26th February 2015 as, in her opinion, it did not raise any substantive issues. The only issue with PAC is a lack of proper coordination between the Chairperson and the Vice-chairperson. The House should consider having the leadership of a Committee such as PAC come from one Parliamentary Party.

168. There should be stiffer penalties and punishment to ensure that Members making claims against other Members offer substantiation. While admitting that it would be difficult for the membership of the Public Accounts Committee to work together following the allegations, she also proposes that,

instead of disbanding the entire Committee, the Members who made the unsubstantiated claims against each other should be discharged from the Committee.

N. The Hon. Andrew Mwadime, Member, Public Accounts Committee

The Hon. Andrew Mwadime appeared before the Committee on 18th March, 2015 and submitted that—

169. PAC has had leadership problems. When PAC Members wanted to remove the Chairperson on 26th February 2015, he abstained from voting as the allegations made were not substantiated. He has been talking to the PAC Chairperson about foreign trips which are only allocated to PAC Members who are friends of the Chairperson.

170. The PAC Chairperson has various leadership issues like quarrelling the clerks in front of the Committee and using unparliamentary language, which is not proper. Further, the Chairperson was the only one asking questions during PAC meetings.

171. It will be difficult for the PAC to work together again after the accusations. It would have been better for the PAC to retreat and have a session of introspection and forgiveness.

O. The Hon. Joseph Manje, Member, Public Accounts Committee

The Hon. Manje Appeared before the Committee on Wednesday 18th March 2015 and submitted that—

172. He could not provide much information with respect to the allegations as he was indisposed between December 2014 and January 2014. When he came back, he noticed the issues being raised by the various factions within PAC. There was a tug of war between the PAC leadership and some members of the Committee. Some Members alleged that some money was given to be shared among the CORD Members in PAC.

173. The PAC Chairperson was leading the committee in the right way and had put PAC on the international map through the networks created with other regional accountability bodies. The PAC Vice-chairperson hardly attended any meetings and when she did, the appearances were technical. Even though the Chairperson of the PAC appears to be highhanded and domineering, that is a matter of personality and not failure.

174. In his opinion, there is need to change the Chairperson and Vice-Chairperson of PAC, especially following their claims against their colleagues and the non-committal attitude of the Vice-Chairperson. Any Member of PAC who made unsubstantiated claims against another Member should also be discharged from PAC. The rest of the Members of PAC should be retained to maintain institutional memory.

P. The Hon. Paul Melly, Member, Public Accounts Committee

The Hon. Paul Melly appeared before the Committee on Wednesday, 18th March 2015 and submitted that—

175. PAC had worked well until sometime towards the end of 2014 when disquiet developed amongst the Members due to the leadership style of the Hon.

Ababu. Cases such as the Chairperson unilaterally calling for meetings; domineering in meetings; assigning foreign trips to himself and only a few other Members contributed to this disquiet.

176. Even though he was not very active in PAC at the time since he was the acting chairperson of the Committee on Education, he was aware that the Clerk Assistant who as the lead secretary to the PAC, Mr. George Gazemba, initially worked well with the Chairperson. It was not until the Clerk insisted on using the conventional format of minutes and report writing that they started disagreeing with the Chairperson. In his opinion, the officer was right.

177. In light of the allegations, the Committee cannot work together anymore and that the Chairperson's leadership style has greatly contributed to the PAC falling apart.

Q. The Hon. John Mbadi, Member, Public Accounts Committee

The Hon. Mbadi appeared before the Committee on Wednesday 18th March 2015 and submitted that—

178. He attended his first PAC meeting of the year on 17th February 2015. The allegations against the PAC Chairperson related to a bribe of Kshs. 5 million, leaking committee reports to the media and the public and altering reports of the Committee. He opposed the Motion to remove the Chairperson as the claims made were not substantiated.

179. It is not possible for the PAC to work together again as the relationship among its Members has become very acrimonious. As a party leader, the

Orange Democratic Movement has nothing to do with allegations against the Chairperson of PAC.

180. In his view, the Hon. Speaker could have saved PAC if he had informally summoned the individual Members making the claims and those against whom claims were made with a view to establishing the veracity of the claims before asking the Committee of Privileges to deal with the matter.

181. The work of the Committee's Clerk, Mr. Gazemba, compounded the problems of the PAC as he was not cooperating with the Chairperson.

182. PAC should be dissolved and reconstituted afresh in which case, the House should ensure that Members of PAC who had claims made against them and those who had made unsubstantiated allegations should not be considered for reappointment. Retaining some Members in PAC will ensure continuity especially for the purposes of concluding pending reports on the JSC and the IEBC. The justification for disbanding PAC outweighs the need for continuity or retaining institutional memory.

R. The Hon. Manson Nyamweya, Member, Public Accounts Committee

The Hon. Nyamweya appeared before the Committee on Wednesday 18th March 2015 and submitted that—

183. PAC has worked harmoniously over the two (2) year period since it was constituted and has concluded a lot of work.

184. Standing Order 91 must be upheld and Members should not be allowed to make unsubstantiated allegations. He has no claims against any Member of

the PAC or the Chairperson, but it is only prudent for the PAC to be dissolved and reconstituted afresh leaving out the Leadership, those who had failed to substantiate their claims or bribery against others and also those who had claims of bribery made against them.

185. The Speaker and the presidium of the House should consider punishing Members who make reckless claims against their colleagues as this amounts to imputing improper motives on them and taints their individual reputations and that of Parliament. The Committee of Privileges should find ways of inquiring into the conduct of Members of other Committees where similar claims have been made. Dissolution should also apply to other committees.

S. The Hon. Silvance Osele, Member, Public Accounts Committee

The Hon. Osele appeared before the Committee on Wednesday 18th March 2015 and submitted that—

186. In the three meetings where the allegations of bribery were discussed, PAC tried to follow the Standing Orders, especially Standing Order No. 91. All the meetings ended up without any substantiated claims. The bribery allegations were only targeted at changing the leadership of PAC.

187. He has not personally witnessed any corruption within PAC. In his opinion, PAC is being dragged in the mud by outside forces that are afraid of the work it is doing. There are two important reports that are pending and one that has not been balloted for debate in the House. The Committee should save the Public Accounts Committee, and protect its Members from unsubstantiated allegations and collective condemnation.

188. The Committee Clerk, Mr. Gazemba, started off very well with the Chairperson and the rest of the PAC but at some stage, he could not draft properly.

189. If the Hon. Speaker had received a letter from the PAC Chairperson on allegations of corruption within the Committee, that is an admission that PAC is unable to handle its affairs.

T. Mr. Mutea Iringo, CBS, Permanent Secretary, Ministry of Defence

Mr. Iringo appeared before the Committee on Monday 23rd March 2015 accompanied by Mr. Gerald Sakwa, Parliamentary Liaison Officer in the Ministry of Defence and Mr. Martin Mwiti, his Personal Assistant. He submitted that—

190. The allegations of bribery touching on him have been in the public domain and he would not mind the session being held in public. He is not privy to the contents of Hon. Ababu's letter dated 25th February 2015 or the contents of the Hansard record of the PAC meeting of 26th February 2015. He was however in a position to respond to the allegation that he extended a bribe to PAC Members to influence the report on the 2012/2013 Accounts.

191. He sat with PAC for three (3) days in September and October 2014 and explained everything related to the issue of confidential expenditure by the Office of the President raised in the 2012/2013 Accounts.

192. He has never bribed any Member of PAC. He could not bribe to cover what constituted his official duties. No one has ever solicited for a bribe from him and he only does what he is legally mandated to do.

193. His relationship with the Hon Ababu and the rest of the Members of PAC was formal. He only met them on 29th September , 1st and 2nd October, 2014 when appearing before PAC. He has never had any meeting with Hon. Anyanga, Hon. Bett, Hon. Abbas, or Hon. Arama at Silver Springs Hotel or anywhere else.

194. The Committee of Privileges should look at what he submitted to PAC on the confidential expenditure. All the money was spent according to laid down law and procedures of the Kenya Government. Whoever wrote the report did not appear to take into account his submissions at any point. The expenditure is not unique and is a worldwide practice. The government even sent a team to ten (10) countries in the world which revealed that confidential expenditure is not unique to Kenya. What he explained verbatim and what was written in the PAC report on the 2012/2013 accounts are totally different.

195. He does not recall if the Hon. Abbas was in the meeting when he came before PAC during the consideration of the 2012/2013 Accounts. He has never given any gift or contribution to Hon. Ababu. He has never met Hon. Anyanga. It is not true that he spoke to Hon. Ababu through Hon. Bett's phone. Hon. Ababu has his number and can call him at any time.

196. After the report on the 2012/2013 Accounts was tabled, he called Hon. Mbarire to complain on why the report did not take into account his submissions to PAC. The answer by the Hon. Mbarire was that, there was no

consensus between the PAC Membership on some of the recommendations contained in the report, and that some of the Members did not sign the report. He just called Hon. Mbarire like he would call any other Member.

197. The information he gave with regard to confidential expenditure related to the 2012/2013 Accounts is in the Hansard report of PAC. He also submitted a written report on the issue to PAC.

198. He knew Hon. Bett even before he became an MP. Hon. Bett used to work at the Government Printer when he was Permanent Secretary in the Ministry of Interior. He has many personal friends, some of who are Members of Parliament.

199. The PAC report on the 2012/2013 Accounts is not representative of the submissions he gave to PAC where he accounted for every cent and yet the report made him seem like a thief. In his opinion, the allegations of bribery constitute a deliberate scheme to tarnish his name and to tarnish the name of Government.

200. He cannot rule out having received a call from the Hon. Bett, but he is sure he never spoke to the Hon. Ababu through Hon. Bett's phone. He is not aware that he was supposed to provide money to PAC Members. It is not his role to give business to any person at the Ministry of Defence, as there are procurement procedures in place to handle such a process.

U. CPL Bernard Odako, Police officer and Bodyguard to the Hon. Ababu Namwamba.

Cpl. Odako appeared before the Committee on Wednesday 25th March 2014. He was sworn and submitted that—

201. Due to his work as a police officer, he is prohibited from saying anything he may have witnessed in the course of his duties without permission from his superiors specifically the Inspector General or the Deputy Inspector General of Police.

202. He could not specifically quote the applicable law that prohibited him from giving evidence before the Committee but would be willing to give evidence only once the permission was obtained.

Consent of the IG

203. The Committee sought the appearance of Cpl. Odako through the Deputy Inspector General of Police. Cpl. Odako further appeared before the Committee on Thursday 26th March 2015, was sworn and submitted that—

Further appearance

204. He is the bodyguard of Hon. Ababu Namwamba, who is like a brother to him and he has known him before joined Parliament. He personally decided to use his intelligence to assist Hon. Ababu due to the various allegations of bribery that had been made against him in the lead up to the motion of no confidence of 26th February 2015.

205. He is the one who made the recording tabled by Hon. Ababu on 12th March 2015. He made the recording without any help from other persons. The

recording was made on 22nd February 2015 at Fairview Hotel, Nairobi. He had accompanied Hon. Ababu to Fairview Hotel without knowledge of the agenda to be discussed. Hon. Ababu met with Hon. Junet Mohammed and Hon. Samuel Arama who they found at the Hotel at around 10.00 to 10.20 pm. The former Prime Minister, Hon. Raila Odinga, arrive at the Hotel after approximately ten (10) to twenty (20) minutes later.

206. At the time the former Prime Minister arrived, he believed that the nature of the discussions that were about to take place would potentially be of assistance to Hon. Ababu. He decided to record the conversation through Hon. Ababu's cellphone. He was not sure what was to be discussed. He normally handles Hon. Ababu's cellphone and was with it at the time.

207. The Hon. Ababu, Hon. Junet and Hon. Arama moved from where they were sitting and went to join the former Prime Minister. He switched on the cellphone recorder and proceeded to hand the cellphone over to Hon. Ababu before Hon. Ababu sat down at the former Prime Minister's table. He did not utter any word while handing over the cellphone to Hon. Ababu.

208. The meeting lasted for approximately fifteen (15) to twenty (20) minutes after which Hon. Ababu left. He switched off the recording in the car when Hon. Ababu handed the cellphone back to him after the meeting. There were no calls missed by Hon. Ababu during the duration of the meeting.

209. Two to three days after the meeting, Hon. Ababu told him that what he had recorded was useful. He did not listen to the content of the conversation on the day of the recording and has not listened to it in its original form. In the

conversation he cannot tell exactly what was said. He cannot tell whether there was any alteration or modification of the recording. All he has heard of the recording is from the media, specifically the Kenya Broadcasting Corporation.

210. He has previously recorded a conversation of a similar nature involving Hon. Ababu. He was not a police officer at the time. This was around August or September 2006. Hon. Ababu had gone to meet some of the leaders in the opposition who were backing his rivals for the Budalang'i parliamentary seat. The meeting was so strict and he could not be allowed to sit where the discussions were being held. He handed his cellphone to Hon. Ababu with the recording on and Hon. Ababu took it without comment. Since Hon. Ababu was meeting with rivals, he knew that there was something fishy going on they wanted to share with Hon. Ababu. When he informed Hon. Ababu of the recording after the meeting, there was no reaction.

211. Hon. Ababu came straight from the meeting at Fairview Hotel and handed over the cellphone to him. He was standing less than ten (10) metres from the place of the meeting. He switched off the recording before they got into Hon. Ababu's car.

212. In recording the conversation, he was not targeting the former Prime Minister. At no point, including when handing the cellphone over to Hon. Ababu, did he utter any words to the effect that Hon. Ababu would need his cellphone.

213. The distance between where he was standing and where the Fairview meeting was taking place was about fifteen (15) Meters. He was not able to

see Hon. Ababu, Hon. Junet, Hon. Arama and the former Prime Minister from where he was standing. The four of them were seated in one of the cubicle areas at the Hotel and his focus was to be alert on security. He was standing near the entry area but not at the parking bay.

214. The recording from the cellphone is the original one. He used approximately one (1) minute after the meeting to switch off the recording and give back the phone to Hon. Ababu. Since he is not an expert he cannot identify the voices in the recording.

215. Other people could not have joined the meeting at Fairview without him knowing as he had a clear view of all the entries into the cubicle. Nobody else joined the meeting, only the four people were there during the entire duration of the recording.

216. Security does not involve using a gun to defend against the enemy. Security is proactive well as reactive and one must use intelligence and that he is ready and willing to provide the same information he had provided to the Committee to other external investigative agencies.

217. The Letter to the Deputy Inspector General of Police is annexed hereto as **Appendix 11.**

V. The Hon. Jakoyo Midiwo, Deputy Leader of the Minority Party

The Hon. Midiwo appeared before the Committee on Wednesday 18th March 2015. His request that the media and the public be allowed into the proceedings was granted and he submitted that—

218. In his opinion, referring the claims of bribery and compromises to the Committee of Privileges was the most judicious alternative for the Hon. Speaker, as the House ought to first examine the matters through an internal body, before any other institution can take them up. However, such bodies, including the EACC can also take up the matters on their own motion.

219. There is need for the Committee of Privileges to exercise good judgement on the matters of privilege and/or breach of the applicable code of conduct before it and cushion the process from possible influence by political parties.

220. There is a new trend by Members to make reckless allegations against each other in the public without offering any substantiation or proposing motions to discuss the conduct of their colleagues as contemplated under Standing Order No. 87. The claims in PAC and other Committees are denting the image of Parliament, especially if they are left to go unsubstantiated.

221. The leadership and membership of the Public Accounts Committee and the Public Investment Committee require the highest level of integrity as the two Committees are the pioneer committees of the House and the key watch-dog committees.

222. Discussion in the media of matters that are active before the Committee of Privileges by some Members of the PAC and other House Membership amounts to contempt of the House and should not go unpunished.

223. If it is true that the any parliamentary party was indeed responsible for the intrigues in the PAC, such party should be reminded to invoke the provisions

of Standing Order No. 176 to discharge their Members from committees, instead of meddling with the affairs of the particular committee. However, parties ought to use their political muscle to fight graft and compromises on their members and not defend them.

224. He proposes the amendment of the Standing Orders to provide that the two Watchdog Committees (Public Accounts Committee and Public Investment Committee) be headed by Members of the Minority Party, but who hold leadership positions in the National Assembly. Particularly, the PAC should be headed by the Leader of the Minority Party. Further, assigning of Chairing of other Committees should take into account the service of members in the House and the political party ranking in the House.

225. Due to the allegations and counter allegations of bribery, he proposes that the current Public Accounts Committee be disbanded and parties asked to propose fresh names to reconstitute the Committee.

226. On the disciplining of Members, there is need to adopt comprehensive rules that prescribe stiffer penalties to prevent lawlessness in the House and ensure commensurate sanctions. This should include forced resignations, or stepping aside from committee memberships to allow for inquiries.

W. The Hon. Aden Duale, Leader of the Majority Party

The Hon. Duale appeared before the Committee on Wednesday 18th March 2015. The Committee allowed his request that the Media and the public be allowed into the proceedings. He tabled a statement and submitted that—

227. The matters before the Committee are similar to the historic cases in the UK House of commons including the 1990s, "cash-for questions" and "Arms to Iraq" scandals and the 2009 case of Members' claims.

228. The outcome of the UK Parliament's processes in dealing with the scandals were fourfold—

(a) the establishment of the Office of Commissioner of Standards by the then Prime Minister;

(b) the untimely resignation of Speaker Michael Martin attributable to the manner in which he mishandled the allegations in 2009;

(c) the historic passage and enactment of the Parliamentary Standards Bill, in a record time of one Month by the two Houses; and

(d) the judicial conviction, in 2010, of three MPs (two former and one sitting) for charges related to the expenses scandal.

229. Having noted the resolution of the Leadership retreat in Mombasa, where the House leaders agreed to confront challenges in the House, he decided to raise the matter of compromises amongst the PAC Membership in the House. It would have been irresponsible for the House to appear to be blind and imagine that the allegations of bribery were settled by way of a vote in PAC. The question of whether or not there was any bribe taken or given is for the Committee of Privileges to inquire into. In his view, the inquiry will ensure that, never again, will Members of Parliament cast reckless accusations against each other, unless they have some form of evidence to sustain their claims.

230. The Committee should follow the example of the United Kingdom and amend the National Assembly (Powers and Privileges) Act, to achieve the following—

(a) Expanding the role and the title of the Committee from Privileges to Standards, Ethics and Privilege covering inquiry into claims of financial nature related to work of Members of Parliament within and outside the precincts of Parliament;

(b) Creating the office of the Administrator of Parliamentary Standards within Parliament, to be appointed for a fixed term with the approval of the Houses of Parliament, with the role of advising the Houses and their respective Committees of Privileges on matters of breach of code of conduct and cases of financial impropriety;

(c) Requiring Members to register their interests with the Administrator of Parliamentary Standards who should also keep custody of such information; and

(d) Empowering Political Parties to discharge and discipline errant Members from Committees under Standing Order 176 on the basis of sufficient evidence.

231. From 1970s up to December 2008, PAC was a Sessional Committee. Further, from 1992 to 2008, the Chairing of PAC was reserved for the Leader of the Official Opposition, a practice informed by the need to reenergise the Membership of PAC, and most importantly, to give a solid tenure to the holder of that office. He recommends that the Leader of the Minority Party be the automatic Chairperson of PAC.

232. PAC may not discharge its duties as mandated and as currently constituted due to allegations facing its Membership. It should be disbanded.

233. The statement tabled by Hon. Duale is annexed hereto and **Appendix 7.**

X. The Hon. Francis Nyenze, Leader of the Minority Party.

The Hon. Nyenze appeared before the Committee on Thursday 19th March 2015 accompanied by a Researcher attached to his office and submitted that—

234. As part of the leadership of the House, he was troubled by the claims of bribery of the Membership of the Public Accounts Committee, particularly because the claims threatened the reputation of its Membership and the image of Parliament. Contrary to claims, his Coalition was not and would not want to remove or antagonize the Chairperson of the PAC.

235. The Committee of Privileges should endeavour to confirm the allegation of internal obstructions to the work of the Public Accounts Committee and ensure that it not only proposes practical solutions, but also sets a reasonable precedent.

236. Though it would be strenuous for the holder of the Office of the Leader of the Minority Party to also be the automatic chairperson of the Public Accounts Committee, it would be a sensible option to explore given the need to protect the office holder from possible threats of removal. It could also be counterproductive and may subject PAC Members to institutional tyranny where they cannot question or remove their Chairperson. As a person, he is not interested in the position.

Y. Mr. George Gazemba, Senior Clerk Assistant

Mr. George Gazemba, Senior Clerk Assistant and formerly the head of the Secretariat of the Public Accounts Committee provided a written brief to the Committee dated 18th March 2015 where he submitted that—

237. Other than the PAC which he clerked for six (6) years he has since employment been the lead clerk of seven (7) other Departmental Committees. He left PAC for the Departmental Committee on Justice and Legal Affairs in January, 2015 following a reshuffle affecting several Committee clerks. No questions of integrity, poor work ethics, indolence, incompetence and disrespectful demeanor have ever been formally raised against him before and PAC has never discussed his performance and/or conduct as a clerk.

238. He encountered numerous difficulties while clerking PAC and detailed how advice given by the secretariat would be dismissed casually in the presence of Committee Members. Further, arbitrary accusations of incompetence were often levelled against the secretariat and Members' positions on drafts of committee reports would also be arbitrarily changed. Meetings at PAC retreats would commence at late hours of the day which led to unnecessary extension of sitting hours.

239. The PAC chairperson once used insulting language against him during a PAC retreat in Kisumu in the presence of other Members. In instances where the Chairperson made unilateral and unpopular decisions, the membership, instead of challenging the Chairperson, would take it out on the secretariat. During his time in the PAC, meetings would be called and ones that had been

scheduled cancelled at the convenience of the Chairperson which put the secretariat at odds with PAC Members and made planning Committee work unnecessarily difficult. Further, the insistence that the Secretariat arrange for the attendance of witnesses at short notice despite House guidelines on adequate notice being given would often put the secretariat in the firing line from witnesses especially those from the Kenya National Audit Office (KENAO).

240. He had always briefed the Director of Committees and the Clerk of the National Assembly on frustrations at PAC and even requested to be transferred to another Committee. He was urged to stay on untill completion of taking evidence and report writing on the accounts for the financial years 2010/2011, 2011/2012 and 2012/2013.

241. There have been incidents and circumstances where he was asked to withdraw from PAC sittings including the one on the JSC report where he had differed with the Chairperson on the established format of report writing.

242. He was not present at the time the Committee made a tour of the Kenya Police Housing Units as he was in Lilongwe, Malawi for training. On his return, he travelled to Mombasa for the PAC retreat to write reports on the accounts for 2011/2012 and 2012/2013 relating to confidential expenditure and the Housing Units. The issue of documents missing was never discussed by PAC as all documents required for the retreat were available. No request was made to the secretariat to produce any document and he is learning of the allegation for the first time. It is unfair for the Chairperson to allege that

he was compromised to cause the disappearance of the documents in favour of a particular witness without substantiation.

243. He was not involved in the meetings that adopted the reports on the 2012/2013 Accounts and is therefore unable to confirm whether there was any alteration of the recommendations in the report.

244. He had differed with the Chairperson on the structure of the JSC report and had explained that an executive summary of a report is done once a Committee has agreed on the final content of the report. The main content of the executive summary is the key findings and recommendations which the Committee has agreed on. He could not write draft observations and findings since, instead of being asked to explain how he reached his draft findings, he had earlier been accused of having been compromised to exonerate persons under investigation by PAC. These technical differences led to his ejection from the retreat and not incompetence or improper influence on the report as alleged.

245. In his opinion, the working documents generated by the secretariat with regard to the JSC report; and the deliberations on the draft report were not handled as per parliamentary practice by the PAC Chairperson.

246. At no point has there been any written complaint filed with the PSC over his conduct. Contrastingly, his efforts were crucial and noted in all the reports tabled before the 11th Parliament by PAC.

247. Based on his experience as clerk of PAC in the 11th Parliament he recommends that Committees of the House should constitute Steering Sub-

Committees comprising the Chair, Vice Chair, one or two experienced Members and the secretariat to provide direction. These Steering Committees should discuss draft reports of Committees before report writing retreats and be able to guide Members accordingly during the retreats.

248. In his opinion, Committees of the House which spend public funds on assignments like report writing retreats and fail to do the assignments should be surcharged for loss of public funds and in addition to such surcharge, Committees should show cause to the House Leadership why further sanctions should not be taken against them including disbandment. Further, Committees should ensure proper planning of their business and should have in place annual work plans and programmes that should be adhered to. The House leadership should provide timelines within which Committees must conclude investigations, which timelines should only be extended by leave of the House.

249. The National Assembly should develop proper guidelines on report writing which Committees should adhere to and original reports of Committees should be countersigned on each page by the Chairperson and one or two other Members after adoption. Any bad decisions purportedly made on Members' behalf by a Chairperson ought to be challenged without fear or favour to ensure proper decisions are made.

250. The written submission from Mr. Gazemba is annexed hereto as **Appendix 8.**

Z. Mr. Johnston Kioko, Second Clerk Assistant

Mr. Johnson Kioko, Second Clerk Assistant and part of the Secretariat of the Public Accounts Committee provided a written brief to the Committee dated 18th March 2015 where he submitted that—

251. He was the delegation secretary when the Committee undertook the investigative trip to India

252. With regard to the trip to India, after attempts to secure an appointment with 4G Identity Solutions through the Ministry of Foreign affairs had reportedly failed and owing to the urgent need to conclude the fact-finding tour phase of the investigation into the procurement of BVR Kits by IEBC, PAC mandated him to try the alternative route of directly communicating with 4G Solutions to secure a formal appointment. The appointment was secured and the formal invitation documents were forwarded to the Director of Committee Services to commence preparations for the trip.

253. The itinerary for the trip would included a courtesy call on the Kenya High Commission in New Delhi and the delegation was to thereafter proceed o headquarters of 4G Identity Solutions in Hyderabad.

254. Before departing from New Delhi, the High Commission had recommended three (3) hotels in which they could stay in in Hyderabad but specifically encouraged them to consider Trident Hotel since another Kenyan delegation would be residing there at the same time. He had informed the management of 4G Identity Solutions that the delegation would be staying at Trident Hotel.

255. At the airport in Delhi, they were informed of a 6-hour delay to their flight to Hyderabad due to harsh weather. At around 10.00am he received a call from one of the managers of 4G Identity Solutions—a Mr. Rajesh—who had gone to check on the delegation at Trident Hotel. He informed Mr. Rajesh of the delay and asked for assistance in organizing three taxis for the delegation due to the change in the time of arrival and the fact that he had lost contact with a taxi company that was referred to the delegation in New Delhi.

256. On arrival at Hyderabad airport, the delegation met Mr. Rajesh who had come with his car and two taxis and, in a convoy, they departed to the Hotel. As he was checking-in the Members, Mr. Rajesh informed him that he had paid for the taxis and made arrangements for 4G Identity Solutions to foot the accommodation bill for the Members in the delegation. When informed of the development, the Chairperson was surprised and called Hon. Sakwa Bunyasi and Mr. Rajesh aside for discussions. The Chairperson thereafter informed the Members of the development and that he had declined the offer because the Members had been adequately facilitated for the trip.

257. The Chief Executive of 4G Identity Solutions, Dr. Sreeni Tripuraneni, later visited the delegation where he told Members that the gesture for the payment of accommodation was typical Indian generosity and was not meant to influence their work. He added that 4G Identity Solutions did not expect any favour from the delegation since the BVR tender had already been awarded and executed by other parties.

258. In the evening, all Members, except Hon. Anyanga had dinner with two representatives of 4G Identity Solutions. However, when the representative

from 4G Solutions was preparing to pay, the Chairperson again declined and instead gave him a VISA card belonging to Hon. Sakwa Bunyasi to pay for the dinner. The Members present were to refund Hon. Bunyasi. He did not witness any other attempt by 4G Solutions to provide any accommodation, travel or entertainment for any of the Members of the delegation.

259. He is not aware of the allegations regarding the PAC Report on Accounts for 2012/2013. He did not witness any instance of alteration after the adoption of the said Report.

260. In his view the current PAC has achieved much considering the backlog that existed before the commencement of its tenure. However, considering that a committee can only be as good as its members; their unity, resolve and unanimity is important in achieving the unity of purpose required to meet its mandate. Parliament should consider—

(a) making PAC a Sessional Committee;

(b) revising the Standing Orders to provide for a platform for determining whether a matter meets the threshold for investigation by a watchdog committee of the House in order to reduce incidences where committees of the House singularly resolve to investigate a matter even when it may not be properly before it; and

(c) revising the Standing Orders to stipulate the period by which any matter under investigation by watchdog committees should be disposed of and a report tabled in the House.

261. The Parliamentary Service Commission should consider further strengthening its administrative mechanisms to cushion the Committee Secretariat/ staff from political intrigues.

262. Mr. Kioko's letter is annexed hereto as **Appendix 9.**

VII. ISSUES FOR DETERMINATION

263. Having taken evidence, the Committee established the issues for determination as—

(a) Whether the Audio recording tabled by Hon. Ababu Namwamba is admissible in evidence;

(b) Whether there was a breach of privilege and/or code of conduct by the Membership of the Public Accounts Committee;

(c) What sanctions apply to the breach of privilege and/or the code of conduct disclosed by the allegations by and against the Membership of PAC.

VIII. ANALYSIS OF EVIDENCE, OBSERVATIONS AND FINDINGS

264. On the basis of the issues for determination, the Committee analyzed the evidence and made observations and findings as hereunder—

A. Whether the Audio recording tabled by Hon. Ababu Namwamba is admissible in evidence

265. In considering the admissibility of the recording tabled by Hon. Ababu, the Committee was guided by section 78A of the Evidence Act, Cap. 80 of the Laws of Kenya which provides for the admissibility of electronic and digital evidence as follows—

> ***78A.*** *(1) In any legal proceedings, electronic messages and digital material shall be admissible as evidence.*
>
> *(2) The court shall not deny admissibility of evidence under subsection (1)* ***only*** *on the ground that it is not in its original form.*
>
> *(3) In estimating the weight, if any, to be attached to electronic and digital evidence, under subsection (2), regard shall be had to—*
>
> *(a) the reliability of the manner in which the electronic and digital evidence was generated, stored or communicated;*
>
> *(b) the reliability of the manner in which the integrity of the electronic and digital evidence was maintained;*
>
> *(c) the manner in which the originator of the electronic and digital evidence was identified; and*
>
> *(d) any other relevant factor.*
>
> *(4) Electronic and digital evidence generated by a person in the ordinary course of business, or a copy or printout of or an extract from the electronic and digital evidence certified to be correct by*

a person in the service of such person, is on its mere production in any civil, criminal, administrative or disciplinary proceedings under any law, the rules of a self-regulatory organization or any other law or the common law, admissible in evidence against any person and rebuttable proof of the facts contained in such record, copy, printout or extract.

266. The Committee noted that the provision allows the admissibility of electronic and digital evidence either in its original or copied form and further that, in refusing to admit such evidence, reasons other than the fact that the evidence is not in its original form must be provided.

267. In light of the above provision, the Committee considered—

(i) Whether the accuracy of the recording was proved by the maker through satisfactory evidence

268. Drawing from the Communication of the Hon. Speaker of 5th March 2015 on the issue of the standard of proof required in the inquiry to be conducted by the Committee, regard was given to the manner in which the audio recording was authenticated by its maker. Despite Hon. Ababu and the maker of the recording- Cpl. Bernard Odako- providing information on the location where the recording was made, the date on which the recording was made and the approximate time it was made; Cpl. Odako failed to adequately prove the accuracy of the recording to the Committee.

269. In his testimony, Cpl. Odako—

(a) stated that he switched on the recording on Hon. Ababu's cellphone and handed it to Hon. Ababu and switched of the

recording after the meeting without listening to the content of the recording. The question of whether the device could and did record the conversation that is alleged to have taken place on 22nd February 2015 was never sufficiently addressed; It was not possible to confirm that the recording presented by the Hon. Ababu was the same recording that Cpl. Odako claimed have made.

(b) stated that he could not see the persons claimed to be in the recording from where he was standing. Questions of whether any conversation took place during the recording or who indeed spoke during the course of the meeting are therefore left begging.

(c) stated that he did not utter any words, even to the effect that Hon. Ababu would need his cellphone when he handed it over, and that Hon. Ababu ***was not seated***. In Hon. Ababu's testimony of 24th March 2015, he is on record stating that Cpl. Odako said "*Mheshimiwa, you might need your cellphone*" and placed the cellphone on the table in front of where ***he was seated***. The Committee observes that any words uttered by Cpl. Odako would have been captured in the recording, which is not the case.

(d) failed to provide the Committee with a timeline corresponding with the exact length of the recording tabled by Hon. Ababu. The Committee notes that the exact length of the recording

tabled by Hon. Ababu is 14 minutes, 58 seconds , while as per Cpl. Odako's testimony, Hon. Ababu's cellphone, as operated by Cpl. Odako, was recording for an approximate period of sixteen (16) to twenty one (21) minutes.

(ii) Whether every possibility of tampering with the recording was ruled out

270. The Committee noted that the maker of the recording, Cpl. Odako, is on record as having never listened to the recording after making it; and only learnt of the usefulness of its contents two to three days after he handed it over to Hon. Ababu. Cpl. Odako could not verify its contents or the manner in which it was handled after it was made.

271. The Committee further observed that on 12th March 2015, Hon. Ababu is on record as having stated that the recording he tabled before the Committee is an exact copy of the original. In his testimony, Hon. Ababu proceeded to identify himself and three other persons, and noted a **fifth** voice on the recording as that of a waitress. Cpl. Odako on his part, is on record as having categorically stated that no other person joined Honourables Ababu, Samuel Arama, Junet Mohamed and the former Prime Minister during the sixteen (16) to twenty-one (21) minute period of the meeting.

272. The Committee observed it could not rule out the possibility that the recording was tampered with to achieve a particular purpose or exclude scrutiny of other persons recorded at the same time and within the same context.

(iii) Whether the voices of the speakers were identified by the maker of the recording

273. The Committee observed that the maker of the recording, Cpl. Bernard Odako, could **not** identify the voices of the persons in the recording. He indicated that he was not "a voice expert" to discern the voices. He also said that he has never heard Hon. Arama speak anywhere and could not recognise his voice. In the event, Cpl. Odako was not in a position to substantively confirm the sequence in which the voices spoke and the exact words that the voices uttered in the recording.

(iv) Whether the statements in the recording are relevant to the inquiry and not hearsay

274. The Committee observed that the statements contained in the recording were relevant to its inquiry in so far as they contained allegations that disclosed a possible breach of privilege and/or the code of conduct of the National Assembly. However, the Committee further noted that only the persons making the allegations against named Members of the House in the recording is in a position to substantiate the allegations. The Committee may only put Hon. Members to task on allegations that have been formally brought before it and adequately substantiated as per the Standing Orders of the National Assembly

275. The voice in the recording that made the allegations against Hon. Members and owned up to the receipt of a compromise was not adequately identified by the maker of the recording. Further, of all the witnesses who appeared before the Committee to give evidence, none reiterated the allegations made by the voice or sought to substantiate the allegations.

276. **In light of the above observations, the Committee concluded that the audio recording tabled by the Hon. Ababu was inadmissible in evidence before it.**

B. Whether there was a breach of privilege and/or code of conduct by the Membership of the Public Accounts Committee

277. The Committee observed that some of the allegations disclosed in the Hansard record of the PAC Meeting of 26th February 2015 were either subsequently not raised before the Committee of Privileges or put in their proper context by the Members concerned.

278. The Committee noted that the Hon. Mbarire withdrew her allegations that the Chairperson of the Public Accounts Committee was the source of the defamatory claims published in the *Nairobi Law Monthly* magazine of February 2015. The Hon. Mbarire made the allegations during a meeting of the Public Accounts Committee of 26th February, 2015 and later withdrew the allegations **during the same sitting**.

279. **The Committee further observed that the making of allegations without substantiation by Members within the prescribed period and discussion of matters currently before the Committee constituted a breach of privilege and contempt of the House, respectively.**

280. The following Members of the Public Accounts Committee, including the Chairperson, made claims and/or provided information on possible claims of

bribery, compromise or inducement against other Members **which the Committee found to constitute a breach of privilege —**

(i) <u>The Hon. Ababu Namwamba, MP:</u>

He alleged that—

(a) The Honourables Samuel Arama, Ahmed Abbas, Omondi Anyanga and James Bett solicited and accepted a share of a bribe of Kshs. 1.5 Million from Mr. Mutea Iringo at Silver Springs Hotel to influence the PAC Report on the 2012/2013 Accounts;

(b) The Honourables Kareke Mbiuki and Cecily Mbarire accepted a share of a bribe of Kshs. 1.5 Million to influence the PAC Report on the 2012/2013 Accounts; and

(c) The Hon. Omondi Anyanga attempted to procure improper favours from a subject of inquiry in Hyderabad, India.

(ii) <u>The Hon. Ahmed Abbas, MP</u>

He alleged that the Hon. Ababu Namwamba, MP, accepted a bribe of Kshs. 5 Million from the Office of the President to influence the PAC Report on the 2012/2013 Accounts.

(iii) <u>The Hon. James Bett, MP</u>

The Member alleged that the Hon. Ababu leaked the JSC draft Report of the Public Accounts Committee to the *Star Newspaper.*

(iv) The Hon. Omondi Anyanga

The Member alleged that the Hon. Ababu promised to reinstate Hon. Samuel Arama to the Public Accounts Committee to spearhead his defence in the no-confidence vote by alleging misdeeds against fellow Members.

281. From the outset, the Committee notes that from the evidence given, **no allegation or claim of compromises, corruption and deceit as disclosed from the Hansard of the PAC meeting of 26th February 2015 or the letter written by Hon. Ababu to the Hon. Speaker was substantiated as per the requirements of the Standing Orders and the high standard of proof set by the Hon. Speaker in the Communication of 5th March 2015.**

282. The Committee observed that even though the National Assembly (Powers and Privileges) Act, Cap 6 of the Laws of Kenya clearly sets out the privilege accorded to Members of Parliament and that Standing Order No. 91 and 107 clearly requires Members to substantiate allegations **instantly or on the next sitting day** after obtaining leave from the Speaker. These provisions of the rules that govern the conduct of Members in the House and during Committees were largely breached.

283. Evidence received from the Hon. Ababu and the Hansard of the PAC Meeting of 26th February 2015 indicates that the Chairperson had severally demanded that the allegations of bribery made against him by Hon. Abbas be substantiated or withdrawn in line with Standing Order 91. In as much as the Hon. Abbas subsequently withdrew the allegation that the PAC Chairperson had received a bribe of Kshs. 5 Million from the Office of the President, this

was done before the Committee of Privileges on Thursday 12th March 2015, **fourteen days after** the allegation was formalized in the Motion proposing a vote of no confidence against Hon. Ababu. Maintaining the allegation against Hon. Ababu for a period outside that contemplated under Standing Order No. 91 and 107 unfairly subjected the Member, the Public Accounts Committee and the House to contempt and ridicule.

284. The Committee observed that such conduct **constitutes an abuse of the privileges** accorded to Hon. Abbas by virtue of his membership of the House which insulates him against any civil action for utterances made while in the course of transacting business in the House or in Committee sittings. Freedom of speech as expanded for Members within the House is to allow for the transaction of Parliamentary business without unnecessary fetters; **It is however not a licence to make allegations that cannot be substantiated.**

285. The Committee further observed that the **Hon. Ababu** authored his letter to the Hon. Speaker dated 25th February 2015 in response to the allegations made against him in the motion of no confidence. In the letter as reproduced in the Hansard of the PAC meeting held on 26th February 2015 and reiterated in his appearance before the Committee on 12th March 2015, he made allegations against Honourables James Bett, Samuel Arama, Omondi Anyanga, Ahmed Abbas, Cecilly Mbarire and Kareke Mbiuki.

286. The only piece of evidence submitted to substantiate the allegations was the audio recording tabled before the Committee on 12th March 2015 which the Committee has ruled inadmissible for reasons given at paragraphs 265-275 of

this Report. The Committee finds that the Chairperson, in initially making the allegations in his letter to the Hon. Speaker and before the PAC meeting of 26th February 2015 on the basis of evidence he was aware could not be fully relied upon as admissible, **abused the privileges and immunities afforded to him by virtue of his Membership of the House and PAC.** Maintaining the allegations against the Members for a period outside that contemplated under Standing Order No. 91 and 107 unfairly subjected the Members, the Public Accounts Committee and the House to contempt and ridicule.

287. The Committee observed that the allegation by **the Hon. Ababu** that Hon. Omondi Anyanga attempted to procure improper favours from a subject of an inquiry in Hyderabad, India was not substantiated. In his appearance before the Committee on 12th March 2015, Hon. Ababu mentioned that Hon. Bunyasi was in a position to corroborate his allegation. From the evidence given by Hon. Bunyasi, Hon. Bett, Hon. Maweu and Mr. Kioko, who were part of the delegation, it is not apparent that the Hon. Anyanga induced 4G Identity Solutions Limited to meet the hotel expenses of Members. The Committee finds that the conduct of Hon. Ababu in maintaining the allegation against Hon. Anyanga **for a period outside** the one contemplated by Standing Order 91 and 107 of the National Assembly Standing Orders **abused the privileges and immunities afforded to him by virtue of his membership of the House and PAC.** The nature of the allegation made against Hon. Anyanga is of such a nature as to subject the member, the Public Accounts Committee and the House to **contempt and ridicule.**

288. **The Hon. Anyanga**, during the PAC meeting of 26th February 2015 alleged that Hon. Ababu had promised to reinstate Hon. Samuel Arama to the Committee to spearhead his defence in the no-confidence vote by alleging misdeeds against fellow Members. This allegation was never substantiated during the said meeting or before the Committee of Privileges. The Committee finds that the conduct of Hon. Bett in maintaining the allegation against Hon. Ababu for a **period outside** the one contemplated by Standing Order 91 and 107 of the National Assembly Standing Orders abused the privileges and immunities afforded to him by virtue of his membership of the House and Public Accounts Committee. **The allegation made against Hon. Ababu was of such a nature as to subject the member, Public Accounts Committee and the House to contempt and ridicule.**

289. **The Hon. Bett,** during the PAC meeting of 26th February 2015 reiterated allegations he had previously made against Hon. Ababu with regard to the leakage of the JSC Report to the *Star Newspaper*. This allegation was withdrawn by Hon. Bett when he appeared before the Committee of Privileges on Tuesday 11th March 2015 and was required to withdraw the allegation if he could not substantiate it. The Committee finds that the conduct of Hon. Bett in maintaining the allegation against Hon. Ababu for a **period outside** the one contemplated by Standing Order 91 and 107 of the National Assembly Standing Orders abused the privileges and immunities afforded to him by virtue of his membership of the House and Public Accounts Committee. **The allegation made against Hon. Ababu was of such a nature as to subject the member, Public Accounts Committee and the House to contempt and ridicule.**

C. What sanctions apply to the breach of privilege and/or the code of conduct disclosed by the allegations by and against the Membership of PAC

290. The Committee noted that where it is established that a breach of privilege and/or code of conduct has occurred, the House must decide whether to take any action to punish persons who have been identified as having transgressed against it, or whether the breach disclosed is not worth further notice. If the House decides to take the matter further, there are a number of options open to it regarding the types of sanction or "punishment" it may inflict or the means it may employ to express its displeasure.

291. The Committee observed that section 10 of the National Assembly Powers and Privileges Act, Cap. 6, provides that after an inquiry, the Committee is to report its findings to the Assembly together with such recommendations **as it thinks appropriate.** The House is to thereafter consider the report and the recommendations and take such disciplinary action, including suspension from the House, against the Member concerned. The Committee further observed that the Standing Orders provide for the withdrawal of Members from sittings and their naming and subsequent suspension from sittings of the House for grossly disorderly conduct at Standing Order 107 and 108.

292. The Committee observed that Parliamentary practice in comparative jurisdictions in the Commonwealth such as New Zealand and Canada, sanctions for breach of privilege and/or the code of conduct include—

(a) demand for an apology to be issued at the Bar;

(b) censure or rebuke by the House;

(c) suspension or expulsion from Committees;

(d) suspension from the House;

(e) expulsion from the House;

(f) resolution for the prosecution at law of errant Members;

(g) impeachment (mostly for Speaker and Members who are also Cabinet Ministers);

(h) exclusion from the precincts of the House (mostly invoked on strangers or to members when the House and Committees are on recess);

(i) Exclusion from the Parliamentary Press Gallery (invoked against offending media houses);

(j) order for recovery of expenses related to restoration of any damaged property of the House;

(k) imposition of a fine; and

(l) committal to imprisonment by order of the House.

293. The Committee further noted that while most of the Commonwealth legislatures have not invoked any of the severe alternatives to punish breach in the recent times, available literature indicates the following possibilities merit consideration by the House as suitable sanctions as they are widely accepted and common—

(a) demand for an apology (tendered personally in the House);

(b) summary debate on the conduct of an offending member, without notice of motion;

(c) censure at the Bar (reprimand or admonition made personally by the Speaker on behalf of the House, mostly with the Member standing at the Bar);

(d) suspension from the service of the House for a specified period;

(e) revocation of appointment into a Committee;

(f) discharge of a member from an office bestowed on the member by the House;

(g) order for recovery of expenses or surcharge for restoration of damaged items of the House;

(h) order for investigations into conduct by other persons/offices external to the House;

(i) resolution for prosecution at law (*where a matter is raised as a question of privilege and, after considering it, the House concludes that a criminal offence may have been committed, it may, in addition, if it wishes, to punishing any contempt, direct that the offender be also prosecuted in the courts for the offence)*; and

(j) exclusion from the Parliamentary Press Gallery

IX. GENERAL OBSERVATIONS

A. PAC Report on Hire of Aircraft for the Deputy President.

294. The Committee observed that the Hon. Ababu, in his letters addressed to the Speaker dated 25th February 2015 and 10th March 2015, referred to the PAC Report on the Hire of an Aircraft for the Deputy President for a Tour of Four African Nations and stated that though tabled on 24th April 2014, the Report is yet to be balloted for debate by the House. The Committee notes that the Speaker's letter dated 17th March 2015 to Hon. Ababu indicates that the report was scheduled for debate for twelve (12) consecutive days from 6th August 2014 to 28th August 2014.

B. Conflict of Interest

295. The Committee observed that there were several attempts by a subject of an inquiry to compromise PAC during its trip to Hyderabad, India. From the evidence received from the PAC Chairperson, Hon. Bunyasi, Hon. Bett, Hon. Anyanga, Hon. Maweu and Mr. Kioko, the delegation rejected the commitment by 4G Identity Solutions to pay their Hotel bills and the offer to meet their dinner expenses. The delegation however used vehicles sourced by and paid for by 4G Identity Solutions from the airport to their hotel. These three incidents disclose a particular intention by 4G Identity Solutions to carry favour with the delegation for a purpose that is not apparent.

296. The Committee notes that Parliamentary Staff accompanying Members during foreign travel are charged with organizing ground travel for official purposes. The Members in the delegation may not therefore have been aware of the arrangement made by 4G Identity Solutions with regard to transport and the

resolution by the delegation to resist the compromises offered by 4G Identity Solutions are laudable. Members of the House must always uphold the provisions of the Leadership and Integrity Act, especially in relation to the acceptance of gifts or compromises that constitute a conflict of interest in relation to their oversight and investigative roles.

C. Referring to matters before the Committee of Privileges

297. The Committee observed with particular concern the conduct of Members of the House, particularly some Members who appeared before it in the course of its inquiry, breaching House procedure and commenting on matters surrounding the inquiry with the Media. This was despite the Hon. Speaker through his Communication of 11th March, 2015 reiterating a rule that is known to all Members of the House and substantively covered by Standing Order 86. In this regard, **the Committee therefore finds the conduct of the Hon. Ababu Namwamba, the Hon. Anyanga and the Hon. Samuel Arama to constitute contempt against the Committee and the House.**

D. Communication between Members and the public on House business

298. The Committee further observed that as per the testimony of Mr. Mutea Iringo, it is apparent that communication between Members of the House and other persons, including officials in the Executive arm of government, on business before the House is not being done through the proper channels. The Committee notes that any communication concerning business before the House and any other persons ought to be on record and under the hand of the Clerk to maintain the privilege of the House. It would be contemptuous

for any Member to communicate official Committee business outside the formal channels.

E. Rising incidents of unsubstantiated claims

299. From the evidence adduced by the Leadership of the political coalitions, the Committee notes with concern that there has been an increase in the incidences of unsubstantiated claims, some of which border or irresponsibility and contempt of the House. Having noted the extensiveness of the Code of Conduct applicable to Members of Parliament under the Leadership and Integrity Act, it was the view of the Committee rising incidents may be attributable to-

(a) absence of instantaneous and commensurate punishment against members making such claims; and,

(b) ignorance of the existence and content of the Code of Conduct applicable to Members of Parliament under the Leadership and Integrity Act.

F. The future of PAC in light of the allegations by and against its Membership

300. The Committee observed that majority of the witnesses who appeared before it, including PAC Members, were of the opinion that PAC **cannot** continue to effectively discharge its mandate as currently constituted. Various proposals were made on alteration to the Membership of PAC, including—

(a) discharge of the leadership of the Committee;

(b) discharge of all Members adversely mentioned in the allegations and counter allegations affecting PAC, leaving out those who had neither made claims against others nor had claims made against them; or

(c)dissolution of the entire committee.

301. The Committee notes that the Committee on Selection nominates Members to Committees and that the House may discharge Members from Committees as sanction for breach of the Standing Orders. Parliamentary parties also have a right to "de-whip" members from House Committees.

302. In detailing the sanctions available to the House with regard to the breach of privilege established by its inquiry, the Committee noted that any disciplinary measures to be taken would have to be **personally** borne by individual Members. However, the Committee is alive to the nature and the impact of the allegations and counter-allegations made by and against the Membership of PAC and the sentiments of the witnesses who appeared before it.

303. The confidence expressed in the Public Accounts Committee by its Membership, the House and the general public is as important as the legitimacy it derives from the Standing Orders of the House. The Committee observes that in order to restore the esteem of PAC, and indeed that of the House, **it is necessary to reconstitute the Membership of PAC**. Such an action must be done in a manner that does not unduly fetter the right of PAC Members to elect its leadership and/or the role of the Committee on Selection in nominating Members preferred by the various parliamentary parties.

304. From the evidence given by witnesses, the Committee noted a number of proposals regarding the optimal model for selection of PAC leadership and Membership. The general consensus was that, due to the mandate of the Committee, there is need to ensure that it comprises of Members of the highest integrity and who can withstand the pressures of its activities.

305. Proposals were made on amending the Standing Orders to make PAC a sessional Committee and reserve its leadership for the leaders of the Minority Party in the House. The Committee notes that reserving the leadership of PAC for the leaders of the Minority Party in the House would lead to an absurd result in the event a President is elected with a minority representation in the National Assembly. Additionally, the sentiments of the Leader of the Minority Party, the Hon. Nyenze, resonate with the Committee on the issue of a PAC chairperson who may become unaccountable to the PAC Membership.

G. Referral of claims to external agencies

306. In considering the admissibility of the audio recording tabled by the Hon. Ababu Namwamba, the Committee **did not touch on the merit of the admission and allegations revealed by its contents,** as it did not admit the recording as evidence in the Inquiry. The Committee however noted with concern the nature of the compromises admitted to and alleged in the recording and observed that external agencies with the proper investigative mandate and resources at their disposal would be in a position to authenticate the recording and process any submissions made by witnesses on the matter.

307. Indeed, the Hon. Ababu revealed his intention of including external agencies in the matter in his letter addressed to the Hon. Speaker dated 25th February 2015 by "copying" the letter to the EACC and DPP despite thereafter admitting that the letter was not delivered to the two State Organs. Cpl. Bernard Odako, the maker of the recording, also expressed willingness to appear before any external agencies to provide the same evidence he had given before the Committee of Privileges.

H. Mandate of the Committee of Privileges and the conduct expected of Members

308. The Committee notes that the witnesses who appeared before it were of the opinion that the mandate of the Committee is limited and ought to be expanded to include—

(a) standards, ethics and privilege, covering inquiry into claims of financial nature related to work of Members of Parliament within and outside the precincts of Parliament;

(b) investigation of claims of compromises against Members and resolution of crises such as the one facing PAC before they get out of control;

(c) receipt of regular advice on matters of breach of the applicable code of conduct and cases of financial impropriety from an office of the Administrator of Parliamentary Standards within Parliament; and,

(d) requiring Members to register their interests with the Administrator of Parliamentary Standards.

309. The proposal for the establishment of an independent office of the Administrator of Parliamentary Standards warrants consideration as it would significantly enrich the work of the Committee of Privileges which is currently mandated under Section 10 of the National Assembly (Powers and Privileges) Act, Cap 6, to inquire into any alleged breach by any member of the Assembly of the Code of Conduct applicable to the House or the privilege of the House.

310. An independent office would provide an avenue of monitoring and evaluation of applicable parliamentary standards and provision of regular advice for consideration by the Committee and the House.

I. Working relationship between Committee Members and Parliamentary Staff.

311. The Committee notes that the working relationship between the PAC Membership and Mr. George Gazemba, a Clerk formerly attached to PAC, was strained.

312. Particular instances were highlighted where the PAC requested the Clerk to withdraw from Committee meetings for various alleged misdeeds but no formal complaint was lodged with his seniors, the Clerk of the National Assembly or the Parliamentary Service Commission in that regard. Such victimization of Parliamentary Staff borders on breach of privilege. Committees of the House and Parliamentary Staff attached to Committees should strive to maintain a professional working relationship at all times.

J. Administrative matters within PAC

313. The Committee notes that several members raised concerns relating to administrative issues within PAC. Concerns raised include alleged unfair allocation of foreign trips to Members, lack of delegation by the Chairperson, high handedness, *ad hoc* scheduling and cancellation of meetings and the mode of interrogation of witnesses adopted by the Chairperson. These matters **do not** touch on the privilege of Members and are best left to be resolved by the Members and their leadership in their respective committees.

K. Conduct of Corporal Bernard Odako

314. The Committee noted that the efforts of Cpl. Bernard Odako, though argued to be well intentioned by the Officer, fell outside the scope of his official duties. The circumstances under which the recording was made, where the Officer ought to have been more focused on ensuring the physical security of Hon. Ababu and not other individual ends depict his conduct on 22nd February 2015 to be highly unprofessional.

X. SANCTIONS PRESCRIBED

315. In dealing with the matters before it and pursuant to the provisions of section 10 of the National Assembly (Powers and Privileges) Act, Cap 6, Committee of Privileges prescribed the following sanctions against the respective offences-

(i) discussing Committee proceedings in the Media- **Demand for apology at the Bar of House;** Repeat offender**: suspension for 1 to 3 days and demand for apology at the Bar**

(ii) failure to make substantiation within the period required under the Standing Orders**- reprimand at the Bar by the Speaker and offer apology to the House;** Repeat offender**: suspension for 4 to 7 days**

(iii) a combination of both failure to make substantiation within the period required under the Standing Orders and, discussing Committee proceedings in the Media- **Demand for apology and Reprimand at the Bar**

(iv) failure to apologise under (i) or (iii) **: suspension for 3 days**

XI. COMMITTEE RECOMMENDATION AND RESOLUTIONS SOUGHT

The Committee therefore recommends –

Reprimand for failure to make substantiation within the period required under the Standing Orders

316. **THAT**, the House resolves to demand apology at the Bar from the following Members, who having made claims resulting to improper motive against their colleagues in the meeting of the Public Accounts Committee of 26th February, 2015, failed to substantiate their allegations **within** the period required under Standing Order 91-

(i) The Hon. Ababu Namwamba, MP;

(ii) The Hon. Ahmed Abass, MP

(iii) The Hon. James Bett, MP

(iv) The Hon. Omondi Anyanga, MP.

317. **THAT**, the House resolves that Speaker reprimands, at the Bar, the Members mentioned in paragraph **316**.

Discussing Committee proceedings in the Media

318. **THAT**, the House resolves to demand apology at the Bar, from the Honourables Ababu Namwamba, Omondi Anyanga, and Samuel Arama, for their contemptuous conduct of discussing, in the media, matters related to the Inquiry into claims of breach of privilege and/or code of conduct of Members of Parliament by the Committee of Privileges, even after the Speaker cautioned the House from doing so on 11th March, 2015.

Failure to submit

319. **THAT**, the House resolves that any Member who fails to submit to any of the resolutions of the House under paragraphs **316** to **318**, be suspended from the House for a period of four days, including the day of suspension.

Dissolution of the Public Accounts Committee

320. **THAT**, the House resolves to rescind its resolutions of 16th May, 2013 and 8th October, 2013 on the appointment of Members to the Public Accounts Committee and requires the Committee on Selection to nominate, within seven days, for consideration by the House, another list of membership of the Public Accounts Committee.

Criteria for nomination

321. **THAT**, the House resolves that, in nominating the list under paragraph **320**, the Committee on selection shall not include-

(i) the Members of the **Committee of Privileges**, including the **co-opted Members,** who served in the Committee during the Inquiry on the claims of breach of privilege on the membership of Public Accounts Committee Accounts Committee, so as not to benefit from their recommendation to dissolve the Public Accounts Committee; and,

(ii) the following Members of the Public Accounts Committee who made allegations against others, and failed to substantiate their allegations **<u>within</u>** the period required under Standing Order 91-

(a) The Hon. Ababu Namwamba, MP;

(b) The Hon. Ahmed Abass, MP

(c) The Hon. James Bett, MP

(d) The Hon. Omondi Anyanga, MP, and

(e) The Hon. Ceclily Mbarire, MP.

322. **THAT**, the House resolves that the application of paragraph **321** applies only during the period of the current Third Session and without prejudice to the appointment of the named Members to other Committees.

Preservation of ongoing work

323. **THAT**, and in order to preserve the ongoing work of the Committee, the House **orders** that the Committee on Selection nominates at least six of the previous Members of the Public Accounts Committee (from either side of the Majority and Minority coalitions) and that papers, including draft reports, minutes, *Hansard* record and briefs belonging to the previous Public Accounts Committee are safeguarded for handing-over to the reconstituted Committee.

Secretariat of the Public Accounts Committee

324. **THAT**, the Clerk of the National Assembly ensures that the Secretariat of the Public Accounts Committee is headed by an officer not below the rank of a Principal Clerk Assistant.

Further Investigations by other Agencies

325. **THAT**, since the Committee of Privileges did not inquire into matters outside breach of Privilege and/or code of conduct applicable to Members of Parliament, the House **resolves** to refer the claims of bribery on the Membership of the Public Accounts Committee relating to the PAC's examination of Confidential Expenditure under the Office of the President (2012/2013), to the investigative state agencies for investigations.

Amendment of CAP 6

326. **THAT,** the House urgently commences the process of amending the National Assembly (Powers and Privileges) Act, Cap 6, to-

(i) expand the role of the Committee of Privileges to include continuous examination of standards and ethics, including examination of claims of financial nature on Members of Parliament within and outside the precincts of Parliament, relating to the work of the MPs in Parliament;

(ii) establish the office of the **Administrator of Parliamentary Standards** within Parliament, who will be appointed for a fixed term, with the approval of the Houses of Parliament, to be advising the Houses and their respective Committees of Privileges on matters of breach of privilege, the code of conduct of Members of Parliament and cases of breach of standards, ethics and financial impropriety; and,

(iii) require Members of Parliament to register their financial interests with the Administrator of Parliamentary Standards who shall be the custodian of the register of standards of Members of Parliament.

Amendment of the Standing Orders

327. **THAT**, the House resolves that, the Procedure and Rules Committee, immediately commences the process of considering amendments to the Standing Orders with a view to submitting a report to this House, within fourteen (14) days to ensure that PAC is among the Sessional Committees

and providing expanded scope of application of Standing Order No. 91 and 107 to attach additional punitive measures on failure to substantiate any allegations, claims or statements made in the House or Committees.

XII. REPORT ON MINORITY VIEW

Dissenting View

328. The Hon. Zuleikha J. Hassan, MP, recorded a **dissenting view** on the recommendations to dissolve the Public Accounts Committee under paragraphs **320, 321** and **322.** She was of the **opinion** that the House ought to maintain the membership of the Public Accounts Committee as its dissolution may be construed as vilifying the membership on the basis of unsubstantiated allegations.

XIII. LIST OF ANNEXURES: VOL I

1. Minutes of the Committee of Privileges

2. Speakers Communications of 5th March, and 11th March, 2015

3. Public Invitation for Memorandum

4. The Hon. Ababu Namwamba's letters

5. Statement and Documents laid by the Hon. Anyanga. MP,

6. Statement by the Hon. Kareke Mbiuki, MP

7. Statement by the Leader of the Majority Party

8. Written submission by Mr. George Gazemba

9. Written submission by Mr. Johnston Kioko

10. Memorandum by Mr. L G Kamweti

11. Copies of Correspondences by the Committee of Privileges

XIV. LIST OF ANNEXURES: VOL II

12. Transcript of the Recording submitted by the Hon. Ababu Namwamba, MP

13. PAC Hansard of 26th February, 2015

14. Minutes of the Public Accounts Committee of 26th February, 2015

15. Hansard Proceedings of the Committee of Privileges

APPENDIX I

MINUTES OF THE COMMITTEE OF PRIVILEGES

MINUTES OF THE FIRST SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON MONDAY, MARCH 09, 2015 IN THE SPEAKER'S BOARDROOM, MAIN PARLIAMENT BUILDINGS AT 02.30PM.

PRESENT:

1. The Hon. Moses Cheboi, MP – **Chairperson**
2. The Hon. Peter Shehe, MP
3. The Hon. Kimani Ichung'wa, M.P.
4. The Hon. Jamleck Kamau, MP
5. The Hon. Barchilei Kipruto, M.P.
6. The Hon. Dr. James Murgor, M.P
7. The Hon. Bedzimba Rashid Juma, MP
8. The Hon. Simon Ogari, MP
9. The Hon. Zuleikha Juma Hassan, MP

ABSENT WITH APOLOGY

1. The Hon. Joyce Emanikor, MP
2. The Hon. James Onyango Koyoo, MP

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative & Procedural
Mr. Ronald Walala - Legal Counsel, Directorate of Legal Services.

MIN. NO. 1/2015: INTRODUCTION

The Chairperson called the meeting to order at 02.37p.m after prayers were said. He welcomed Members and other persons present in the meeting. He further informed Committee that the agenda items for consideration are:-

(i) Prayers;
(ii) Adoption of the agenda;
(iii) **Inquiry into alleged breach of privilege and or code of conduct by Members of the Public Accounts Committee;**
(iv) Schedule/Programme of activities;
(v) Any other business.

The proposed agenda was adopted by the Members present.

MIN. NO.02/2015: CO-OPTION INTO THE MEMBERSHIP OF THE COMMITTEE OF PRIVILEGES

The Committee noted the Speakers' advise to co-opt not more than three other sitting Members who have served for more than one term to assist the Committee in the Inquiry. In this regard, the Committee after deliberations, resolved to co-opt the following Members.

1. **The Hon. Mohamed I. Elmi, MP** - Member for Tarbaj Constituency
2. **The Hon. Joseph Lekuton, MP** - Member for Laisamis Constituency
3. **The Hon. Ali Wario, MP** - Member for Bura Constituency

Further, the Committee directed that a letter be done to the three Members inviting them for the Committee meeting scheduled for **Tuesday, March 10, 2015 at 4.00 p.m.**

MIN. NO.03/2015: INQUIRY INTO ALLEGED BREACH OF PRIVILEGE AND/OR CODE OF CONDUCT BY MEMBERS OF THE PUBLIC ACCOUNTS COMMITTEE

The Committee noted the contents of the Speaker's ruling on the alleged breach of privilege and or code of conduct by the Members of Public Accounts Committee, as follows:-

(i) On 4th March 2015 during the afternoon Session of the National Assembly the Leader of the Majority Party sought directions on—

a) Whether the claims made by Members of the Public Accounts Committee against the Chair and against each other constitute a breach of the privileges and/or code of conduct of Members of Parliament ;and

b) Whether, following the allegations, the Public Accounts Committee would be in order to continue discharging its mandate of offering oversight to other Government institutions and agencies, on behalf of the House.

(ii) Several Members subsequently contributed to the debate, raising issues peripheral to those raised by the Leader of the Majority Party such as—

a) Whether criminal culpability accrues to a group of persons or to an individual person and whether it is prudent to condemn a whole membership, either of a Committee or of the House, merely on account of an allegation that is directed or is connected to a particular individual.

b) Whether the House should entertain allegations against its Members without substantiation by the person alleging as required under Standing Order 91;

c) Whether a matter that has been investigated in a Committee and an outcome delivered in the Committee can be revisited by the plenary of the House or by another Committee of the House;

d) Whether allegations of breach of privilege or the ethics by Members of the House should be dealt with by their respective political parties or by the House.

(iii) The Hon. Speaker relied on previous determinations by his peers in the New Zealand House of Representatives who had been faced with a similar question on whether they had jurisdiction to reopen matters concluded by Committees and determined that a question of breach of privilege was within his jurisdiction. Relying on Section 220 and 222 of Mason's Manual of Legislative Procedure, 2010 Edition, the New Zealand House of Representatives Parliamentary Practice (page 744) and Section 100 of the Rules of the House of the Philippines House of Representatives the Hon. Speaker determined that the matters raised by Hon. Duale and other Members relate to Privilege of the House and are therefore subject to the consideration and decision of the House.

(iv) The Hon. Speaker further relied on the Constitution of Kenya, the Leadership and Integrity Act, 2012, the Public Officer and Ethics Act, 2003 and the National Assembly (Powers and Privileges) Act (Cap 6 Laws of Kenya) determined that the allegations of compromises, prejudices, deceit or corruption against the members of the Public Accounts Committee related to financial probity of State Officers. He referred in particular to Article 76(2)(b) of the Constitution, sections 6 and 12 of the Leadership and Integrity Act, 2012 and section 11 of the Public Officer Ethics Act, 2003.

(v) The Hon. Speaker noted that under the Constitution (Article 75 (2)) the breach of privilege or code of conduct the applicable disciplinary procedure for the relevant office and that under section 3(10) of the Public Officer Ethics Act, 2003 the responsible Commission for a public officer for which no responsible Commission is otherwise specified is the commission, committee or other body prescribed by regulation. This led to the Speaker's determination that the "commission" responsible for the conduct and discipline of Members of Parliament to be the Committee of Privileges established by section 10(4) of the National Assembly (Powers and Privileges) Act (Cap 6 Laws of Kenya). He noted further that as per Erskine May, the acceptance by a Member of either House of a bribe to influence his conduct in connection with any matter submitted or intended to be submitted before the House is contempt and an abuse of privilege and is a gross affront to the dignity of the House and an attempt to pervert the parliamentary process implicit in Members' free discharge of their duties to the electorate and determined that it is within the purview of the Committee of Privileges to inquire into the alleged conduct of any Member who commits a breach of privilege or code of conduct within the precincts of Parliament. Other outside investigative bodies may only deal

with the matters if the Committee of Privileges recommends so and the House approves such recommendations.

(vi) Relying on Parliamentary practice in Canada Honourable Members, it was the Speaker's determination that a House has authority to require the attendance of any of its Members, whether they are Ministers or not and that hen a Member has been ordered to appear before the House or a committee, the Member is under the same obligations to answer questions before the Committee just like a member of the public. Where a Member objects to a question in a committee, the objection must be raised and determined by the committee, and not by the House. The Hon. Speaker concluded by directing that—

a) the Committee of Privileges enquires into the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit, and submit a report to this House in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya) within twenty one days from the date of this communication. The House is to deliberate on the report within three days thereafter.

b) The Committee be at liberty to interrogate the submissions made by the individual Members in the Committee on February 26, 2015 which were captured in the Hansard of the House, including any related correspondences by any Member of the Committee to the Clerk or the Speaker.

c) given the seriousness of an allegation of bribery, the standard of proof required to substantiate the claims ought to be very high;

d) the operations of the Public Accounts Committee are stand suspended until the expiry of the period have prescribed for the inquiry or such earlier time the House makes a resolution following an earlier submission of the Report by the Committee of Privileges.

e) The suspension of the operations of the Public Accounts Committee does not amount to disbanding the Committee nor discharging any Member from the Committee;

f) Hon. Moses Cheboi, the First Chairperson of Committees chair the Committee of Privileges during the period of this Inquiry on behalf of the Speaker.

g) The Committee of Privilege is at liberty to co-opt not more than three other sitting Members who have served for more than one term to assist them in the Inquiry.

h) Co-opted Members not be allowed to vote in the Committee, nor be counted for purposes of quorum.

i) The Committee should hold its first meeting on Monday, the 9th day of March, 2015 at 2.30 pm.

j) Committee of Privileges develops, for consideration by this House, a code of Conduct for Members of Parliament as required under Section 37 of the Leadership and Integrity Act, 2012. This should be submitted on or before the end of August, this year.

Further, the Committee deliberated on the allegations and counter allegations raised in the Public Accounts Committee meeting held on Tuesday, February 26, 2015, as follows:-

1. **Hon. Ababu Namwamba (Chairperson PAC)** - It was alleged —

   a) by Hon. Abbas Ahmed that the Member accepted a bribe of Kshs. 5 Million to influence the PAC Report on the 2012/2013 Accounts (Hansard page 34, 55);
   b) by Hon. Omondi Anyanga that the Member promised to reinstate Hon. Samuel Arama to the Committee to spearhead his defence in the no-confidence vote by alleging misdeeds against fellow Members (Hansard page 48);
   c) by Hon. Jude Njomo that the Member had tea with the publisher of the Nairobi Law Monthly at Panafric Hotel. The Magazine later published details alleging bribery of PAC Members in the Judiciary Inquiry (Hansard page 18);
   d) that the Member accepted bribes to influence the Judiciary inquiry (Hansard page 50, 55).

2. **Hon. Omondi Anyanga** - It was alleged by Hon. Ababu Namwamba that the Member—

   a) solicited and accepted a share of a bribe of Kshs. 1.5 Million at Silver Springs Hotel to influence the PAC Report on the 2012/2013 Accounts (Hansard Page 44);
   b) solicited and accepted favours from 4G Identity Solutions Limited while on Committee Business in Hyderabad, India (Hansard Page 50).

3. **Hon. James Bett** - It was alleged by Hon. Ababu Namwamba that the Member solicited and accepted a share of a bribe of Kshs. 1.5 Million at Silver Springs Hotel to influence the PAC Report on the 2012/2013 Accounts (Hansard Page 44).

4. **Hon. Abbas Ahmed** - It was alleged by Hon. Ababu Namwamba that the Member solicited and accepted a share of a bribe of Kshs. 1.5 Million at Silver Springs Hotel to influence the PAC Report on the 2012/2013 Accounts (Hansard Page 44).

5. **Hon. Samuel Arama** - It was alleged by Hon. Ababu Namwamba that the Member solicited and accepted a share of a bribe of Kshs. 1.5 Million at Silver Springs Hotel to influence the PAC Report on the 2012/2013 Accounts (Hansard Page 44).

6. **Hon. Kareke Mbiuki** - It was alleged by Hon. Ababu Namwamba that the Member accepted a share of a bribe of Kshs. 1.5 Million at Silver Springs Hotel to influence the PAC Report on the 2012/2013 Accounts (Hansard Page 45, 49).

7. **Hon. Cecily Mbarire (Deputy Chairperson PAC)** - It was alleged—
   a) by Hon. Ababu Namwamba that the Member accepted a share of a bribe of Kshs. 1.5 Million at Silver Springs Hotel to influence the PAC Report on the 2012/2013 Accounts (Hansard Page 45, 49);
   b) that the Member accepted bribes to influence the Judiciary inquiry (Hansard Page 50).
8. **General** - There was a general allegation by Hon. Jessica Mbalu that the Members of the Committee were said to have received bribes of Kshs. 10 Million (Hansard Page 13).

MIN. NO.04/2015: DELIBERATION ON THE PLAN OF ACTION

The Committee deliberated on the schedule of activities and approved it but will be subject to change noting the progress of the evidence that will be adduced by the Members of the Public Accounts Committee.

Monday, March 9, 2015 at 2.30pm	Committee's First Meeting: – Plan of action/programme of activities Members to also agree/acclimatize themselves with the- (i) TOR (ii) Issues for Inquiry (iii)List of witnesses (iv)Mode of operation
Tuesday, March 10, 2015 at 4.00 pm:	Committee's First Meeting: – Plan of action/programme of activities. Members to also agree/acclimatize themselves with the:- (i) TOR (ii) Issues for Inquiry (iii)List of witnesses (iv)Mode of operation
Wednesday, March 11, 2015 at 10.00 am:	**Evidence:** Chairperson, The Public Accounts Committee and at least three other Members of the Committee, **Separately**
Wednesday, March 11, 2015 at 4.00 pm	**Evidence:** Chairperson, The Public Accounts Committee and/or at least other Members of the Committee, **Separately**
Thursday, March 12, 2015 at 09.00a.m.	**Evidence:** other members of Public Accounts Committee

Monday or Tuesday, March 16/17, 2015 at 0230pm/09.00a.m.respetively	**Evidence**: **Vice** Chairperson , Public Accounts Committee
March 17 (Tuesday) and 18, (Wednesday) 2015 starting at 10.00a.m and 4. pm, respectively	- **Evidence** : First external person/s - **Evidence:** Other interested Members of the House
Thursday, March 19, 2015 at 09.00a.m	**Evidence** : Other external person/s
Friday, March 20, 2015 at 9.30 am	**Evidence:** (Reply opportunity): Chairperson, The Public Accounts Committee and any other least three other Members of the Committee, **Separately**
March 21 and 22, 2015	Drafting of Report: Secretariat only
March 26-29, 2015	**Report**: Committee to Retreat and consider the Report.
March 31, 2015	**Submission of Report in the House**

Further, the Committee resolved to invite the Hon. Ababu Namwamba, Chairperson, Public Accounts Committee for a meeting on Wednesday, March 11, 2015 at 10.00a.m. The Meeting is to discuss among other things, to inquire into the various matters raised in his letter to the Speaker and the following other claims that relate to abuse of privilege and/or breach of code of conduct for Members of Parliament-

(i). that, the Chairperson of the Public Accounts Committee was bribed in respect of the Committee's recent examination of irregularities in the Judiciary;

(ii) that, a member of the Committee received a bribe of Ksh.10 million "to share out with other Members of the Public Accounts Committee";

(iii) that there were attempts to compromise the Committee in order to exonerate one Mr. Mutea Iringo from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;

(iv) that, the Chairperson of the Public Accounts Committee received a bribe of Ksh.5 million from the Office of the President to exonerate certain persons from possible blame;

(v) that there were attempts to compromise the Committee and procure improper favours from the Chairperson of the Public Accounts Committee during a recent investigative trip to Hyderabad, India, including claims of attempts by the firm under investigation to settle hotel bills for the Committee Members; and,

(vi) alleged compromise of a discharged Member of the Public Accounts Committee to allege misdeeds against fellow Members on the promise of being reinstated into the Membership of the Public Accounts Committee;

MIN. NO. 05/2015: ANY OTHER BUSINESS

The Committee deliberated on the following issues.

a.) EXCLUSION OF MEDIA AND MEMBERS OF PUBLIC: MEETINGS OF THE COMMITTEE OF PRIVILEGES- MARCH 9 TO 31ST, 2015

The Committee noted that the nature of matters under inquiry necessitates the exclusion of the media, members of the public and other Members of Parliament who are not members of the Committee from its meetings. In this regard and in accordance with the provisions of Article 118 of the Constitution and Standing Orders 198(2) and 252, the Committee resolved to **seeks the Speaker's permission to conduct its proceedings *in camera*.**

b.) PRESS BRIEFING

The Committee noted that the nature of matters under inquiry has attracted wide media scrutiny and therefore the need to regularly update the media on the progress and any other issues that may not be confidential. The Committee therefore resolved that the media will be regularly briefed by the Chairperson, only on matters that are not confidential.

c.) INVITATION OF MEMORANDA FROM THE PUBLIC

Following a Communication by the Speaker of the National Assembly dated 5th March 2015 directing the Committee of Privileges to inquire into matters of alleged breach of privileges and/or the code of conduct by the membership of the Public Accounts Committee, the Committee of Privileges resolved to invite submission of memoranda by any member of the public with relevant information on the subject of inquiry.

MIN NO.06/2015: ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the Chair adjourned the meeting at 4.27p.m. The next meeting will be held on **Tuesday, March 10, 2015 in Speaker's Boardroom, main Parliament Buildings at 4.00p.m.**

Signature..... **Date**10th March 2015

(Hon. Moses Cheboi, MP)

MINUTES OF THE SECOND SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON TUESDAY, MARCH 10, 2015 IN THE SPEAKER'S BOARDROOM, MAIN PARLIAMENT BUILDINGS AT 4.00PM.

PRESENT:

1. The Hon. Moses Cheboi, MP – **Chairperson**
2. The Hon. Peter Shehe, MP
3. The Hon. Kimani Ichung'wa, M.P.
4. The Hon. Jamleck Kamau, MP
5. The Hon. Barchilei Kipruto, M.P.
6. The Hon. Dr. James Murgor, M.P
7. The Hon. Bedzimba Rashid Juma, MP
8. The Hon. Simon Ogari, MP
9. The Hon. Zuleikha Juma Hassan, MP
10. The Hon. Joyce Emanikor, MP
11. The Hon. James Onyango Koyoo, MP
12. The Hon. Mohamed I. Elmi, MP - Co-opted Member
13. The Hon. Joseph Lekuton, MP - Co-opted Member
14. The Hon. Ali Wario, MP - Co-opted Member

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative & Procedural
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 07/2015: INTRODUCTION

The Chairperson called the meeting to order at 04.07p.m after prayers were said. He welcomed Members and other persons present in the meeting. He further informed Committee that the agenda items for consideration are:-

1. Prayers;
2. Communication from the Chair;
3. Confirmation of Minutes of the First Sitting;
4. Matters Arising;
5. **List of witnesses;**

6. **Matters to be raised with witness 1;**
7. Any Other Business;
8. Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present. The Chair further congratulated and welcomed Co-opted Members.

MIN. NO. 08/2015: CONFIRMATION OF MINUTES

Minutes of the First Sitting of the Committee held on Monday, March 09, 2015 were confirmed as true record of the Committee deliberations by Members present, having been proposed and Seconded by Hon. Peter Shehe and Kimani Ichung'wa respectively. Thereupon, the minutes were signed by the Chairperson.

MIN. NO.09/2015: MATTERS ARISING

(i) **Under MIN. NO. 2/2015: CO-OPTION INTO THE MEMBERSHIP OF THE COMMITTEE OF PRIVILEGES**

The Committee noted that the co-opted Members were in attendance and the Chair on behalf of the Committee congratulated and welcomed them to the Committee.

(ii) **Under Min. No. 3/2015: Precedence in other jurisdictions**

The Committee requested for information regarding the process and verdict in other jurisdiction such as the New Zealand and Philippines on matters whether a committee of Privileges had jurisdiction to reopen matters concluded by Committees of the House and inquiry into breach of privilege. The Meeting was however informed that the Speaker cited such authorities to show that opening of matters of privilege is not unprecedented. It was agreed that precedence of Inquiries on similar cases be studied and compared during compilation of the Report.

(iii) **Under Min. No. 5/2015: Invitation of memoranda from the public**

The Committee of Privileges noted that an invitation to submit memoranda by any member of the public with relevant information on the subject of inquiry has been sent out and resolved to commenced consideration of such memos on Wednesday, March 18, 2015.

(iv) **Under Min. No. 5/2015: Summary of allegations**

It was agreed that, even though the letters to the first witness (PAC Chairperson) had been sent, during his first appearance, the Committee would dwell mostly the substantiation of claims he had made against other Members, before asking him questions related to allegations made against him. Such allegations will be informed by his letter to the Speaker of February 25, 2015.

MIN. NO.010/2015: LIST OF WITNESSES

The Committee after deliberations resolved that the following will constitute a list of witnesses and the list may change depending on the receipt of evidence, as more witness may be revealed.

1. Hon. Ababu Namwamba (Chairperson PAC)
2. Hon. Omondi Anyanga
3. Hon. James Bett
4. Hon. Abbas Ahmed
5. Hon. Samuel Arama
6. Hon. Kareke Mbiuki
7. Hon. Cecily Mbarire (Deputy Chairperson PAC)
8. General - Hon. Jessica Mbalu
9. Committee Clerk – Gazemba Jusa- to submit a written brief
10. Hon. Sakwa Bunyasi
11. Hon. Aden Duale;
12. Hon. Jakoyo Midiwo;
13. Mr. Mutea Iringo – PS Ministry of Defence;
14. Any other Member of PAC who express interest
15. Other Members of Parliament who express interest
16. Members of the General Public who express interest

MIN. NO.011/2015: MATTERS TO BE RAISED WITH WITNESSES

1. **Hon. Ababu Namwamba**

The Committee resolved to inquire from the Hon. Ababu Namwamba, Chairperson, Public Accounts Committee for a meeting on Wednesday, March 11, 2015 at 10.00a.m the following allegations:-

(i) the various matters raised in his letter to the Speaker dated 25th March 2015;

a. failed conspiracy to save Mr. Mutea Iringo on Kshs.2.9 Billion confidential expenditure;
b. reported bribery allegations in respect of the Judiciary inquiry
c. attempts to procure improper favours from subject of an inquiry in Hyderabad India;
d. interference in investigations by Gazemba Jusa;
e. PAC taken hostage by multiple interest and forces.

(ii) claims that relate to abuse of privilege and/or breach of code of conduct for Members of Parliament;
(iii) Matters raised in the Hansard and Committee meeting of 26th February 2015;

a) that, the Chairperson of the Public Accounts Committee was bribed in respect of the Committee's recent examination of irregularities in the Judiciary;
b) that, a member of the Committee received a bribe of Ksh.10 million "to share out with other Members of the Public Accounts Committee";
c) that there were attempts to compromise the Committee in order to exonerate one Mr. Mutea Iringo from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;
d) that, the Chairperson of the Public Accounts Committee received a bribe of Ksh.5 million from the Office of the President to exonerate certain persons from possible blame;
e) that there were attempts to compromise the Committee and procure improper favours from the Chairperson of the Public Accounts Committee during a recent investigative trip to Hyderabad, India, including claims of attempts by the firm under investigation to settle hotel bills for the Committee Members; and,
f) alleged compromise of a discharged Member of the Public Accounts Committee to allege misdeeds against fellow Members on the promise of being reinstated into the Membership of the Public Accounts Committee;

2. <u>Hon. Peter Edick Omondi Anyanga</u>

The Committee resolved to inquire the various matters contained in the *Hansard* Record of 26th February 2015 and matters raised in the Chairperson's Letter to the Speaker. They include:-

a) That, you solicited and accepted a share of a bribe of KES.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee and or to exonerate one **Mr. Mutea Iringo** from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;

b) That, you favoured attempts to compromise the Committee and procure improper favours from the Chairperson of the Public Accounts Committee during a recent investigative trip to **Hyderabad**, India, including claims of attempts by the firm under investigation to settle hotel bills for the Committee Members;

c) That, the Chairperson of the Public Accounts Committee attempted to compromise a discharged Member of the Committee (Hon. Samuel Arama) to allege misdeeds against fellow Members on the promise of being reinstated into the Membership of the Public Accounts Committee; and,

d) allegations that the Public Accounts Committee was bribed in respect of the Committee's recent examination of irregularities in the Judiciary;

e) to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including your proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

3. <u>Hon. Ahmed Ibrahim Abbas</u>

The Committee resolved to inquire the various matters contained in the *Hansard* Record of 26th February 2015 and matters raised in the Chairperson's Letter to the Speaker. They include:-

a) that you solicited and accepted a share of a bribe of KES.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee and or to exonerate one **Mr. Mutea Iringo** from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;

b) that the Chairperson of the Public Accounts Committee received a bribe of KES. 5 Million from the Office of the President to influence the outcome of recent investigations by the Public Accounts; and,

c) allegations that the Public Accounts Committee was bribed in respect of the Committee's recent examination of irregularities in the Judiciary;

d) to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including your proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

MIN. NO. 012/2015: ANY OTHER BUSINESS

Visit to Tanzania: The Committee was informed that the National Assembly of Tanzania had written through the Ministry of Foreign Affairs, indicating that the proposed visit to Tanzania during the months of March/April, 2015 ought to reschedule as the Country was preparing for a referendum on their proposed new Constitution during the month of April, 2015.

MIN NO.013/2015: ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the Chair adjourned the meeting at 6.45p.m. The next meeting will be held on **Wednesday, March 11, 2015 in Committee Room 9, main Parliament Buildings at 10.00a.m.**

Signature..... Date.....

(Hon. Moses Cheboi, MP)

MINUTES OF THE THIRD SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON WEDNESDAY, MARCH 11, 2015 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 10.00A.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – **Chairperson**
2. The Hon. Peter Shehe, MP
3. The Hon. Kimani Ichung'wa, M.P.
4. The Hon. Jamleck Kamau, MP
5. The Hon. Barchilei Kipruto, M.P.
6. The Hon. Dr. James Murgor, M.P
7. The Hon. Bedzimba Rashid Juma, MP
8. The Hon. Simon Ogari, MP
9. The Hon. Zuleikha Juma Hassan, MP
10. The Hon. Joyce Emanikor, MP
11. The Hon. James Onyango Koyoo, MP
12. The Hon. Mohamed I. Elmi, MP - Co-opted Member
13. The Hon. Joseph Lekuton, MP - Co-opted Member
14. The Hon. Ali Wario, MP - Co-opted Member

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative & Procedural
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 014/2015: INTRODUCTION

The Chairperson called the meeting to order at 10.07a.m after prayers were said. He welcomed Members and other persons present in the meeting. He further informed Committee that the agenda items for consideration are:-

1. Prayers;
2. Confirmation of Minutes of the First Sitting;
3. Matters Arising;
4. **Meeting with Hon. Ababu Namwamba, Chair, Public Accounts Committee;**
5. Any Other Business;

6. Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present.

MIN. NO. 015/2015: CONFIRMATION OF MINUTES

Confirmation of Minutes of the Second Sitting of the Committee held on Tuesday, March 10, 2015 was postponed to a later date.

MIN. NO.016/2015: HON. ABABU NAMWAMBA, CHAIRPERSON, PUBLIC ACCOUNTS COMMITTEE

The Chairperson welcomed The Hon. Ababu and introduced the Committee Members Present. He further requested the Hon. Ababu to introduce himself.

The Chairperson informed the sitting that the Hon. Ababu Namwamba, Chairperson, Public Accounts Committee was not on trial as Hon. Ababu Namwamba, Member for Budalangi but is being investigated alongside the Members of Public Accounts Committee into claims that relate to abuse of privilege and/or breach of code of conduct for Members of Parliament. The Chairperson also informed the Member that he was before the Committee to shed light on the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit, the matters raised in the Hansard records of 26/2/2015 during PAC meeting and those raised in his letter dated 25/2/2015 to the Speaker.

The Hon. Ababu Namwamba summarized the contents of his further letter to the Speaker of March 10, 2015, in which he sought certain clarifications including asking to be allowed to have his appearance made public. He also informed the Committee that:-

(a) He has confidence in the Committee and expect it to undertake their work justly, fairly and under the rules;
(b) He wrote to the Speaker on the 10/3/15 raising that a number of issues to be clarified, they are:-

(i) Whether he is on trial as Hon. Ababu Namwamba;
(ii) Whether the matter is to be held in public;
(iii) Introduction of new issues;

(iv) The process being undertaken by the Committee is unprecedented anywhere in the Commonwealth;

(v) Procedural legality of the process.

(c) He agrees with the Speaker's ruling on the matter as noted in his letter dated 25/2/2015;

(d) Whether the inquiry has any implication on the work of Public Accounts Committee both concluded and pending;

(e) The Clerks letter requesting him to appear before the Committee seems to have introduced one matter for which, in his opinion, no claims had been made by anyone. The letter from the Clerk requested that he answer the following:-

a) to inquire into the various matters raised in his letter dated 25/02/15 to the Speaker;

b) the Chairperson of the Public Accounts Committee was bribed in respect of the Committee's recent examination of irregularities in the Judiciary;

c) claims that a member of the Committee received a bribe of Ksh.10 million "to share out with other Members of the Public Accounts Committee";

d) claims of attempts to compromise the Committee in order to exonerate one Mr. Mutea Iringo from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;

e) Allegations that the Chairperson of the Public Accounts Committee received a bribe of Ksh.5 million from the Office of the President to exonerate certain persons from possible blame;

f) there were attempts to compromise the Committee and procure improper favours from the Chairperson of the Public Accounts Committee during a recent investigative trip to Hyderabad, India, including claims of attempts by the firm under investigation to settle hotel bills for the Committee Members; and,

g) alleged compromise of a discharged Member of the Public Accounts Committee to allege misdeeds against fellow Members on the promise of being reinstated into the Membership of the Public Accounts Committee.

After deliberations, the Committee resolved as follows, that:-

(a) During the appearance of Hon. Ababu the hearings will be in camera;

(b) Those making claims against Hon. Ababu would be allowed to first make those claims before the Committee prior to asking provide an explanation;

(c) The Chair of the Committee of Privileges and the Chair PAC should not go to the media and public, and or address the press on matters before the Committee;

(d) No new matters should be introduced during the inquiry and that the matters to be raised during the inquiry are those in the Hansard recording of 26/2/2015, Hon. Ababa's letters to the Speaker dated 25/02/2015 and 10th March 2015 to the Speaker and Clerk of the National Assembly and Minutes of the PAC meeting of 26/2/2015 respectively;

(e) In his first appearance, the Committee would dwell mostly on the substantiation of claims he had made against other Members, before asking him questions related to allegations made against him. Such allegations will primarily be informed by his letter of February 25, 2015 to the Speaker.

The Committee agreed that Hon. Ababu appears again on Thursday, March 12, 2015 at 9.00 am.

MIN. NO. 017/2015: ANY OTHER BUSINESS

The Committee deliberated on the following issues.

(a) The Committee be supplied with copy of the Motion of no confidence with the Chair, PAC moved on 26/2/2015; and,

(b) Except for the hearing for Hon. Ababu, the Committee holds it proceedings in camera;

MIN NO.018/2015: ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the Chair adjourned the meeting at 13.15p.m. The next meeting will be held on **Wednesday, March 11, 2015 in Committee Room 9, main Parliament Buildings at 3.00p.m.**

Signature..... Date.....

(Hon. Moses Cheboi, MP)

MINUTES OF THE FOURTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON WEDNESDAY, MARCH 11, 2015 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 3.00PM.

PRESENT:

1. The Hon. Moses Cheboi, MP – **Chairperson**
2. The Hon. Peter Shehe, MP
3. The Hon. Kimani Ichung'wa, M.P.
4. The Hon. Jamleck Kamau, MP
5. The Hon. Barchilei Kipruto, M.P.
6. The Hon. Dr. James Murgor, M.P
7. The Hon. Bedzimba Rashid Juma, MP
8. The Hon. Simon Ogari, MP
9. The Hon. Zuleikha Juma Hassan, MP
10. The Hon. Joyce Emanikor, MP
11. The Hon. James Onyango Koyoo, MP
12. The Hon. Mohamed I. Elmi, MP - Co-opted Member
13. The Hon. Joseph Lekuton, MP - Co-opted Member
14. The Hon. Ali Wario, MP - Co-opted Member

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative & Procedural
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 019/2015: INTRODUCTION

The Chairperson called the meeting to order at 3.17p.m after prayers were said. He welcomed Members and other persons present in the meeting. He further informed Committee that the agenda items for consideration are:-

1. Prayers;
2. Confirmation of Minutes;
3. Matters Arising;
4. **Meeting with Hon. Omondi Anyanga(at 3.30pm), Hon. Abbas Ahmed(at 4.15pm) and Hon. James Bett(at 5.00pm);**

5. Any Other Business;
6. Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present.

MIN. NO. 020/2015: CONFIRMATION OF MINUTES

Confirmation of Minutes of the Second and Third Sitting of the Committee was postponed to a later date.

MIN. NO.021/2015: HON. PETER EDICK OMONDI ANYANGA, MEMBER, PUBLIC ACCOUNTS COMMITTEE

The Chairperson welcomed Hon. Anyanga and introduced the Committee Members present. He further informed the Hon. Anyanga that he is appearing to shed light on the matters for inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament including, that he :-

(i) Is not on trial but is being investigated alongside the Members of PAC into claims that relate to abuse of privilege and/or breach of code of conduct for Members of Parliament;

(ii) Is to assist in inquiring into the various matters contained in the *Hansard* Record of 26/2/2015, most of which were also replicated in the Chairperson's Letter dated 25/02/2015 to the Speaker;

(iii) Is alleged to have solicited and accepted a share of a bribe of KES.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee and or to exonerate one **Mr. Mutea Iringo** from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;

(iv) Is alleged to have sought favours to compromise the Committee and procure improper favours from the Chairperson of the Public Accounts Committee during a recent investigative trip to **Hyderabad**, India, including claims of attempts by the firm under investigation to settle hotel bills for the Committee Members;

(v) alleged that the Chairperson of the Public Accounts Committee attempted to compromise a discharged Member of the Committee (Hon. Samuel Arama) to allege misdeeds against fellow Members on the promise of being reinstated into the Membership of the Public Accounts Committee; and,

(vi) alleged that the Public Accounts Committee was bribed in respect of the Committee's recent examination of irregularities in the Judiciary;

(vii) is invited to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including his proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

The Hon. Anyanga, acknowledging receipt of a letter from the Clerk of the National Assembly dated 10th March 2015 inviting him for a meeting and indicating what he is supposed to answer before the Committee, informed the Committee, as follows, that:-

(i) He did not meet and has never met one Mr. Mutea Iringo at Silver Springs Hotel as alleged by Hon. Namwamba. He never solicited and or received any money or Kshs.1.5 million as alleged from Mr. Mutea Iringo to influence the work of Public Accounts Committee and or to exonerate him from possible blame;

(ii) He has never discussed matters of Public Accounts Committee with Mr. Mutea Iringo;

(iii) He is aware that Hon. Ababu had alleged that he has an Audio recording mentioning his name but did not play the tape during the Committee meeting of 26/02/2015;

(iv) It is true that he wanted to be Chairperson of Public Account Committee, just like any politician, he has ambitions;

(v) He travelled out of the Country for the first time as Public Accounts Committee Member to India. The hotel bookings and travel arrangements were done by the Committee clerks and he believes that the Hon. Ababu, Chairperson, Public Accounts Committee must have been involved in the arrangements;

(vi) The issue of the firm under inquiry paying for the Committee expenses while in Hyderabad came up after the delegation stayed in the Hotel for three (3) days. This was brought to the delegation's attention by the Hon. Ababu. He inquired from the Chair, Public Accounts Committee how the Committee ended up being booked in the hotel by the same firm they were investigating;

(vii) He informed the Chair that the arrangements by the firm should not surprise him yet the matter is under his docket;

(viii) He paid all his hotel expenses and assisted some of the clerks to settle bills; he therefore never attempted to seek or procure favours for the Committee from anybody;

(ix) In the run-up to the no confidence motion against Hon. Ababu, He was called by the Chair and informed that the Hon. Arama, who the Chair was considering reinstating to Public Accounts Committee, has alleged that he received money from Mr. Mutea Iringo to share out with Public Accounts Committee Members; this was to influence the ongoing investigations. In his opinion, it appeared that the Chairperson of Public Accounts Committee was attempting to blackmail him noting his position on the petition to remove him;

(x) During the vote of no confidence motion, He did mention the Chairperson attempts to compromise Hon. Arama;

(xi) The allegations against Hon. Ababu in the motion of no confidence were – issues of bribery, alteration of Committee reports, leaking of the work of the Committee to the media, arrogance, highhandedness and handling of foreign trips;

(xii) Before the vote of no confidence emotion, the Chairperson of PAC approached him with a drafted statement and two letters and requested him to read in the press to exonerate him, which Hon Anyanga declined.

(***Hon. Anyanga tabled the two letters drafted allegedly for him by Hon. Ababu – Appendix II***);

(xiii) He signed the petition seeking removal of the Chairperson of PAC believing the mover or originators had tangible evidence to support the allegations. However, when it turned out that there was no evidence to support the allegations, he withdrew his support for the motion;

(xiv) The mover of the Motion seeking removal of the Chairperson was Hon. Abbas and seconded by Hon. Kareke Mbiuki;

(xv) The work of PAC was compromised by the serious problems of rumour mongering hence a lot of confusion in the Committee mostly attributed to Hon. Junet Mohammed;

(xvi) On way forward for PAC and in dealing with matters of integrity, breach of privileges and or code of conduct by committee Members or individual Members, he proposed that:-

a. The Committee establishes a Standing Committee in Parliament to deal with matters of ethics and privileges as and when they arise; and,

b. It is impossible for the PAC as presently constituted to continue to work together owing to the bad blood and publicity arising from the allegations of compromise and bribery.

MIN. NO.022/2015: HON. AHMED IBRAHIM ABBAS, MEMBER, PUBLIC ACCOUNTS COMMITTEE

The Chairperson welcomed Hon. Abbas and introduced the Committee Members present. He further informed the Hon. Abbas that he is to shed light on the matters for inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament including that, he :-

i. Is not on trial but is being investigated alongside the members of PAC into claims that relate to abuse of privilege and/or breach of code of conduct for Members of Parliament;

ii. Is to assist in the inquiry into the various matters contained in the *Hansard* Record of 26/02/2015, most of which were also replicated in the Chairperson's Letter to the Speaker.

iii. Is alleged to have solicited and accepted a share of a bribe of Kshs.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee and or to exonerate one **Mr. Mutea Iringo** from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;

iv. Alleged that the Chairperson of the Public Accounts Committee received a bribe of KES. 5 Million from the Office of the President to influence the outcome of recent investigations by the Public Accounts; and,

v. alleged that the Public Accounts Committee was bribed in respect of the Committee's recent examination of irregularities in the Judiciary;

vi. is invited to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including his proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

The Hon. Abbas, acknowledging receipt of a letter from the Clerk of the National Assembly dated 10th March 2015 indicating what he is supposed to answer before the Committee, informed the Committee, as follows; that he-

(a) is an economist by profession and has never solicited for bribe from Mr. Mutea Iringo . He never attended the Committee retreat in Mombasa, where it is alleged that Members of Public Accounts Committee were paid to influence and exonerate Mutea Iringo;

(b) learnt of the alleged bribing of Public Accounts Committee Member while on a visit to Office of the President to follow up matters of his constituency. He was informed by a senior officer in Office of the President that they failed as Members in fulfilling the deal of exonerating Mutea Iringo from possible blame;

(c) Cord Members in Public Accounts Committee were given Kshs.5 million to assist and specifically during the Mombasa Retreat, where the Committee was to write a report. The Kshs.5million were delivered to the Hon. Ababu Namwamba at Fairview Hotel;

(d) During Public Accounts Committee meeting, in which foreign trips and the allegations in the Nairobi Law Monthly Magazine were discussed, he informed the Chair of the information that Kshs.5million was alleged to have been given to him in the Office of the President. The Chair has not denied or rebutted the allegations.

(e) He is not able to disclose the source of his information but requested the Committee to allow him time to think and talk to the source;

(f) On the Judiciary inquiry, the report has been bungled by the Chairperson, where in two retreats, the Chair has stage managed it by blaming the secretariat(Clerks), who included George Gazemba, Victor Weke and Chelangat Tungo);

(g) He has never received any bribe and never met Mr. Mutea Iringo as alleged by the Chair; Public Accounts Committee;

(h) The manner of writing and presenting a draft report had been the source of disagreement between the Chairperson and the Secretariat;

(i) He had moved the motion of no confidence on the Chairperson because of the manner he treats Members of the Committee and the irregular manner of calling meetings, among other issues;

(j) He intended to write to Cord Coalition leadership seeking to be de-whipped from the Committee, sighting the leadership of the Hon. Ababu Namwamba;

(k) On way forward, the whole problems in PAC revolve around the Hon. Ababu. The Hon. Ababu problem in PAC has dragged the entire Committee and hence Parliament;

(l) The Mandate of Committee of Privileges ought to be expanded to include inquiring into claims of compromises on Members and attempting to resolve such crisis before matters get out of control;

After deliberations, the Committee resolved as follows, that:-

i. The Hon. Abbas appears to substantiate his claims and further inform the Committee on the source of his allegations regarding bribery by one Mr. Mutea Iringo, on Thursday, March 12, 2015 at 08.50am;

ii. Pursuant to Standing Order 91, the Members either to substantiate as per the rules or withdraw the allegations;

The Committee released Hon. Abbas and requested him to appear again on Thursday, March 12, 2015 at 8.50 am.

MIN. NO.023/2015: <u>HON. JAMES BETT, MEMBER, PUBLIC ACCOUNTS COMMITTEE</u>

The Chairperson welcomed Hon. Bett and introduced the Committee Members present. He informed the Hon. Bett that he is to shed light on the matters for inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament including that he :-

i. Is not on trial but is being investigated alongside the Members of PAC into claims that relate to abuse of privilege and/or breach of code of conduct for Members of Parliament;

ii. is alleged to have solicited and accepted a share of a bribe of KES.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee and or to exonerate one **Mr. Mutea Iringo** from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;

iii. attempted to compromise the Committee and procure improper favours from the party under investigation by the Committee during a recent investigative trip to **Hyderabad**, India, (in which he was part of the delegation) including claims of attempts by the firm under investigation to settle hotel bills for the Committee Members;

iv. being a Member of Public Accounts Committee accepted bribes of about Kshs.10 million that was shared out to Committee Members;

v. alleged that the Public Accounts Committee was bribed in respect of the Committee's recent examination of irregularities in the Judiciary;

vi. is invited to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including his proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

The Hon. Bett informed the Committee, as follows, that: -

i. he is not aware of any allegations of receipt of kshs.1.5million. He learnt of the allegations from the newspapers and letters summoning him to appear;

ii. He was part of the delegation to India to investigate a firm – 4G Solutions, which was involved in procurement of IEBC equipments in the last General Elections. All members paid for their Hotel bills and meals; and did not in anyway try to procure favours from the firm;

iii. The Members of delegation paid for their bills on the last day of their 3 days stay in a Hotel booked by the firm to be investigated. The firm wanted to pay for a dinner however Members refused but not all of them. Those who wanted the firm to settle bills included Hon. Anyanga, while those who wanted to pay their own bills included Hon. Sakwa Bunyasi;

iv. While in India, the delegation never met to discuss the payments of hotel bills. The delegation left Nairobi not knowing the hotel they will stay in while in Hyderabad, India;

v. The Chair leaked the Public Accounts Committee report exclusively to the Star newspapers of 25/2/2015. He however withdrew his allegations;

vi. On the Kshs.10million alleged bribe to Members of Public Accounts Committee, he learnt the allegations through the press;

vii. He called Mr. Mutea Iringo using his phone while in Parliament on behalf of the Chair, who then spoke to Mr. Mutea Iringo;

viii. The Chair has altered the recommendation of the PAC report. However he signed the adoption of the report;

ix. The Motion seeking removal of the Chair was based on the following;-
   a. Bribery allegations;
   b. Gagging of members of Public Accounts Committee;
   c. Manner of handling and calling Committee meetings;
   d. Highhandedness;
   e. Manner of nominating members to trips;

x. On the way forward on matters of breach of privilege and or code of conduct, he proposed the following, that:-
   a. The leadership of Public Accounts Committee be disbanded noting the handling of the matter by the Membership;
   b. That the mandate and powers of the Committee of Privileges be expanded to include receipt of grievances from committees including the manner in which Committees handle reports and investigations;

MIN. NO. 024/2015: ANY OTHER BUSINESS

Noting the evidence so far adduced, the Committee resolved that in the Sitting of Thursday, March 12, 2014 starting at 08.30a.m, the sequence in the appearance of Witness is as follows;-.

1. Hon. Ahmed Ibrahim Abbas to appear at 08.50am;
2. Hon. Ababu Namwamba to appear at 09.00am;
3. Hon. Samuel Arama to appear at 10.30am;
4. Hon. Cecily Mbarire to appear at 11.15am;
5. Hon. Kareke Mbiuki to appear at 12.00noon;
6. Hon. John Sakwa Bunyasi to appear at 3.30pm);
7. Hon. Jessica Mbalu to appear at 4.15pm;

MIN NO.025/2015: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chair adjourned the meeting at 06.25p.m. The next meeting will be held on **Thursday, March 12, 2015 in Committee Room 9, main Parliament Buildings at 8.30a.m.**

Signature..... Date.....

(Hon. Moses Cheboi, MP)

MINUTES OF THE FIFTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON THURSDAY, MARCH 12, 2015 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 08.30 A.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – **Chairperson**
2. The Hon. Peter Shehe, MP
3. The Hon. Kimani Ichung'wa, M.P.
4. The Hon. Jamleck Kamau, MP
5. The Hon. Barchilei Kipruto, M.P.
6. The Hon. Dr. James Murgor, M.P
7. The Hon. Bedzimba Rashid Juma, MP
8. The Hon. Simon Ogari, MP
9. The Hon. Zuleikha Juma Hassan, MP
10. The Hon. Joyce Emanikor, MP
11. The Hon. James Onyango Koyoo, MP
12. The Hon. Mohamed I. Elmi, MP - Co-opted Member
13. The Hon. Joseph Lekuton, MP - Co-opted Member
14. The Hon. Ali Wario, MP - Co-opted Member

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative & Procedural
Mr. Ronald Walala - Legal Counsel, Legal Services

MIN. NO. 026/2015: INTRODUCTION

The Chairperson called the meeting to order at 8.45a.m after prayers were said. He welcomed Members and other persons present in the meeting. He further informed Committee that the agenda items for consideration are:-

1. Prayers;
2. Confirmation of Minutes;
3. Matters Arising;
4. Meeting with:-
   a. Hon. Ahmed Ibrahim Abbas to appear at 08.50am;
   b) Hon. Ababu Namwamba to appear at 09.00am;
   c) Hon. Samuel Arama to appear at 10.30am;

d) **Hon. Cecily Mbarire to appear at 11.15am;**
e) **Hon. Kareke Mbiuki to appear at 12.00noon;**
f) **Hon. John Sakwa Bunyasi to appear at 3.30pm);**
g) **Hon. Jessica Mbalu to appear at 4.15pm;**

5. Any Other Business;
6. Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present.

MIN. NO. 027/2015: CONFIRMATION OF MINUTES

Confirmation of Minutes of the Second, Third and Fourth Sittings of the Committee was postponed to a later date.

MIN. NO.028/2015: HON. AHMED IBRAHIM ABBAS, MEMBER, PUBLIC ACCOUNTS COMMITTEE

The Chairperson welcomed Hon. Abbas, noting that he is appearing for the Second time to substantiate or withdraw his allegation that the Chair and Members of PAC were given Kshs.5 million from the Office of the President. He informed the Committee that he :-

(a) believes wholeheartedly that the information he had shared with the Committee were credible however his source has not agreed to be named nor ready to appear before the Committee to corroborate this information;

Noting the provisions of Standing Order 91, he withdrew the allegation regarding bribery that the Chair and Members of PAC were allegedly given Kshs.5 million from the Office of the President.

MIN. NO.029/2015: IN-HOUSE COMMITTEE MEETING

The Committee deliberated on the following:-

a. whether to allow the press during the interrogation of Hon. Ababu Namwamba arising from his letter dated 10th March , 2015;
b. whether to allow witnesses to appear accompanied by their counsel;
c. matters to be raised with witnesses;

After deliberations, the Committee resolved as follows:-

a. to allow the media/public during Hon. Ababu Namwamba appearance;
b. to allow counsel to accompany witnesses, however the witnesses are only to consult counsel; Counsel are not to answer questions or any clarifications on behalf of the witnesses;
c. that matters to be considered and interrogated are those emanating from and raised in:-
   (i) the Hansard recording of 26/2/2015;
   (ii) Speaker's ruling of March 5, 2015;
   (iii) Hon. Ababu's Letter to the Speaker on 25/2/2015 and 10/3/2015;
   (iv) Allegations made by the Membership of Public Accounts Committee during the Public Accounts Committee meeting on 26/2/2015;

MIN. NO.030/2015: <u>HON. ABABU NAMWAMBA, CHAIRPERSON, PUBLIC ACCOUNTS COMMITTEE</u>

The Chairperson welcomed Hon. Ababu and introduced the Committee Members Present. The Hon. Ababu Namwamba appeared before the Committee in the company of nineteen (19) Members of Parliament who, upon introduction, indicated that they were predominantly from counties/constituencies in his region and that they were interested in the matters under Inquiry. The Chairperson further informed the meeting-

(a) the Committee had agreed to allow the interrogation to be in public, therefore the media is allowed in, unless the Hon. Ababu had any objection;
(b) the witnesses are allowed to be accompanied by counsel;
(c) the matters to addressed are those in the Hansard recording of 26/2/2015 which includes allegation made by Members of Public Accounts Committee, Speaker's ruling of March 5, 2015 and letter to the Speaker dated 25/2/2015 and 10/03/15;
(d) there will be no introduction of new items or opening up inquiry into the matters that were being considered or pending before Public Accounts Committee;

In summary, in addition to the allegations contained in his letter to the Speaker of February 25, 2015, the Hon. Ababu was appearing to shed light on the matters of the inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament including that: -

(i) alleged that the Public Accounts Committee was bribed in respect of the Committee's recent examination of irregularities in the Judiciary;

(ii) alleged that a member of the Committee received a bribe of Ksh.10 million "to share out with other Members of the Public Accounts Committee;

(iii) he alleged that there were attempts to compromise the Committee in order to exonerate one Mr. Mutea Iringo from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013 and **that he had electronic evidence in support**;

(iv) he is alleged to have received a bribe of Ksh.5 million from the Office of the President to exonerate certain persons from possible blame;

(v) there were attempts to compromise the Committee and procure improper favours from the Chairperson of the Public Accounts Committee during a recent investigative trip to Hyderabad, India, including claims of attempts by the firm under investigation to settle hotel bills for the Committee Members;

(vi) he alleged compromise of a discharged Member of the Public Accounts Committee to allege misdeeds against fellow Members on the promise of being reinstated into the Membership of the Public Accounts Committee, and;

(vii) He is invited to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including his proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

The Hon. Ababu informed the Committee, as follows, that:-

i. He appreciated the manner the Committee has handled the proceedings and further for allowing the proceedings to be in public and more so allowing the media;

ii. He will first respond to matters raised in his letter to the Speaker dated 25/2/2015, the Speaker's ruling of march 5, 2015 and Hansard recordings of 26/2/2015;

iii. He was appearing accompanied by his Counsel, the Hon. Peter Kaluma;

On the matters on his letter of 25th February 2015, he informed the Committee as follows:-

(a) His letter was as a result of an impending vote of no confidence by the PAC Members and also as result of his meeting with the Speaker, and sharing with the Speaker on the happenings in PAC. Therefore it was in context of the motion;

(b) That not a single allegations raised by Members during the meeting on 26/2/2015 were ever substantiated pursuant to Standing Order 91;

On claims to exonerate Mr. Mutea Iringo

(a) He has Audio recording that Mutea Iringo met four Members of the Committee at Silver Springs Hotel. They are Honourables Omondi Anyanga, James Bett, Ahmed Abbas and Samuel Arama. Mr. Mutea Iringo was to provide money and facilitate business opportunities at the Department of Defence. The Members of Public Accounts Committee, were to exonerate Mr. Mutea Iringo from any possible blame on the investigations into confidential expenditures under the Office of the President;

(b) The Audio recordings confirms that the Members and their liaison with Mutea Iringo;

(Hon. Ababu Namwamba table a flash disk containing Audio recordings)

(c) He indicated that how the maker obtained the Audio recordings is irrelevant. the Committee should interrogate the audio recording in order to arrive in deciding its admissibility;

(d) The Committee may apply rules of interrogating electronic evidence; it is after interrogating the evidence submitted that the Committee can question the author/maker/producer;

(e) The brief details of the content of the audio recording is found under paragraph one of his letter dated 25/02/2015 – ***"Failed conspiracy to save Mutea Iringo on Kshs2.9 billion confidential expenditure;***

On the Judiciary inquiry,

(a) the allegations were made by Hon. Mbarire over a story in the Nairobi Law Monthly publication, alleging that a female Member of Parliament from Eastern Province has been involve in the bungling the judiciary report in PAC;

(b) the Hon. Mbarire had alleged that the Chair had leaked the story to the publisher as the Chair was seen in a meeting with the publisher;

(Hon. Ababu Namwamba displayed to the Committee a copy of Nairobi law Monthly, February, 2015 Edition)

On Hyderabad, India Trip

(a) Logistic for the trip were made by the secretariat in consultation with the High Commission in New Delhi; However in the course of preparation, they realized that the investigations will extend to Hyderabad, India. This therefore meant that the 4G Solutions was to provide contacts for the Hotel; When they transferred to Hyderabad, they were received by the 4G Solutions officials on arrival at the airport;

(b) The firm under inquiry hosted the delegation for dinner and had made prior arrangements for paying for the dinner but Members paid for their bills. This follows when he learnt as leader of the delegation; he insisted that Members must pay for their dinner. The delegation paid their bills as one single bill using Hon. John Sakwa Bunyasi credit card. The rest of the delegation were to refund expenses to the Hon. Bunyasi;

(c) He was shocked when Hon. Anyanga demanded that the delegation accepts favours from 4G Solutions, specifically payments of hotels bills, meals and local travel;

(d) He held a meeting with regard to payment of Hotel and meal Bills with the delegation, where he raised serious concerns regarding conflict of interest should the firm meet any expenses for the delegation;

(e) Hotel reservations were done by the 4G Solutions with commitments to pay. He gave instructions to the Hotel that every Member of the delegation should pay his/her bills and that if any arrangements were made with anybody or party, it should be cancelled;

On the Interference by the Committee Clerk – Gazemba

(a) He complained verbally, but never in writing, on numerous occasions to the Director, Committees on the conduct of the clerk - George Gazemba. Other Members have a myriad of complaints against the said clerk;

(b) The complaints touch on the Clerk's questionable character, poor work ethics, indolence disrespectful manner and incompetence. He threw Mr. Gazemba out of a meeting of the Committee in Kisumu.

(c) Mr. Gazemba has the following serious breaches of integrity and ethics – disappearance of supporting documents submitted by witnesses and audit institutions, deliberately drafting the judiciary report in a manner suspiciously intended to favours key witnesses;

(d) He has no personal issues with the officer and that PSC should deal with him administratively;

On the PAC being a victim of multiple Interest and Forces, he informed the Committee that PAC has been held hostage by the following interests:-

i. IEBC;
ii. Judiciary;
iii. Office of the President;
iv. Jubilee and or Cord political intrigues;
v. Institutional and systemic weaknesses in Kenya National Assembly;

(Hon. Ababu Tabled copy of the list of witnesses who are scheduled to appear before the Public Accounts Committee on the IEBC inquiry)

He further said that he did not send copies of his letter to the Speaker of 25/2/2015 to the EACC and office of the Director of Public Prosecutions as indicated.

The Committee resolved to listen to the audio recording tabled earlier by Hon. Ababu and sought clarifications audio. Hon. Ababu informed the Committee that:-

a. The mode of dealing with the Audio is up to the Committee; what matters to the Committee is the content and what to do with it;
b. The recording was not intended to clear him of any allegations;

c. The recordings was in response to the impeding motion of no confidence;
d. source is irrelevant;
e. He did not infringe on the privacy of the those recorded without consent as stipulated in the Bill of rights;
f. The voices on the recording are – the first is Hon. Arama, the Second Hon. Junet Mohammed, the third is his party leader, Hon Raila Odinga and fourth is his voice;
g. His letter to the Speaker is indicated as copied to Ethics and Anti-corruption Commission and the office of director of Public prosecution; However had not sent as indicated as he awaited the Speaker's direction;

In conclusion, the Hon. Ababu noted that he was happy with the progress and process of the proceedings. He requested that it be extended to other Committees and finally informed the Committee that his life was in danger, noting the caliber of witness who were to appear before PAC include OP, IEBC, JSC and Deputy president.

The Committee on the other hand agreed to summon to respond on further issues that may be raised by other witnesses, subject to settling the question of admissibility of the phone recording.

MIN. NO. 031/2015: MEETING WITH OTHER WITNESSES

The Committee noted the progress of the proceeding and notwithstanding an earlier decision of the sequence of appearance by witnesses, resolved that in the Sitting of Thursday, March 12, 2014 starting at 3.00p.m, the sequence in the appearance of witnesses is as follows;-.

1. Hon. Samuel Arama to appear at 3.30pm;
2. Hon. Cecily Mbarire to appear at 4.15pm;
3. Hon. Kareke Mbiuki to appear at 5.00pm;
4. Hon. John Sakwa Bunyasi to appear at5.15pm;
5. Hon. Jessica Mbalu to appear at 6.00pm;

MIN NO.032/2015: ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the Chair adjourned the meeting at 3.00p.m. The next meeting will be held on **Thursday, March 12, 2015 in Committee Room 9, main Parliament Buildings at 03.00p.m.**

Signature..... Date.....15TH MARCH 2015

(Hon. Moses Cheboi, MP)

MINUTES OF THE SIXTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON THURSDAY, MARCH 12, 2015 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 3.00 P.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – **Chairperson**
2. The Hon. Peter Shehe, MP
3. The Hon. Kimani Ichung'wa, M.P.
4. The Hon. Jamleck Kamau, MP
5. The Hon. Barchilei Kipruto, M.P.
6. The Hon. Dr. James Murgor, M.P
7. The Hon. Bedzimba Rashid Juma, MP
8. The Hon. Simon Ogari, MP
9. The Hon. Zuleikha Juma Hassan, MP
10. The Hon. Joyce Emanikor, MP
11. The Hon. James Onyango Koyoo, MP
12. The Hon. Mohamed I. Elmi, MP - Co-opted Member
13. The Hon. Joseph Lekuton, MP - Co-opted Member
14. The Hon. Ali Wario, MP - Co-opted Member

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative & Procedural
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 033/2015: INTRODUCTION

The Chairperson called the meeting to order at 03.15p.m after prayers were said. He welcomed Members and other persons present in the meeting. He further informed Committee that the agenda items for consideration are:-

1. Prayers;
2. Confirmation of Minutes;
3. Matters Arising;
4. **Meeting with:-**
   a) Hon. Samuel Arama to appear at 3.30pm;
   b) Hon. Cecily Mbarire to appear at 4.15pm;
   c) Hon. Kareke Mbiuki to appear at 5.00pm;

d) Hon. John Sakwa Bunyasi to appear at5.15pm;
e) Hon. Jessica Mbalu to appear at 6.00pm;

5. Any Other Business;
6. Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present.

MIN. NO. 034/2015: CONFIRMATION OF MINUTES

Confirmation of Minutes of the Second, Third, Fourth and Fifth Sittings of the Committee was postponed to a later date.

MIN. NO.035/2015: HON. SAMUEL ARAMA, MEMBER, PUBLIC ACCOUNTS COMMITTEE

The Chairperson welcomed Hon. Samuel Arama, introduced the Committee Members present in the Meeting and informed the Hon. Arama that he is to shed light on the matters for inquiry relating into abuse of privilege and/or breach of code of conduct for Members of Parliament. The Chair further briefed the Member that he was requested to apprise the Committee on the following matters, that he:-

(i) is alleged to have solicited and accepted a share of a bribe of KES.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee and or to exonerate one Mr. Mutea Iringo from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;
(ii) alleged that the Chairperson of the Public Accounts Committee attempted to compromise him to allege misdeeds against fellow Members of the Public Accounts Committee on the promise of him being reinstated into the Membership of the Public Accounts Committee;
(iii) is also invited to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including his proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

The Hon. Arama informed the Committee that:-

(a) he did not meet and has never met one Mr. Mutea Iringo at Silver springs Hotel as alleged by Hon. Namwamba and therefore never solicited or received any money

nor Kshs.1.5 million from Mutea Iringo to influence the work of Public Accounts Committee or to exonerate him from possible blame;

(b) He has never discussed matters of Public Accounts Committee with Mutea Iringo;

(c) he never solicited a bribe from anybody and most of the allegations, he has never heard them except in the newspapers;

(d) he was de-whipped by his party – Cord Coalition in September 2014;

(e) he has not met or held a meeting with Hon. Raila Odinga nor with Hon. Junet Mohammed, where Hon. Ababu Namwamba was present;

(f) there were no wrangles in Public Accounts Committee while he was a Member apart issues on foreign trips;

(g) In 2015, he wrote to his party leader seeking reasons why he was de-whipped and regarding his reinstatement back to Public Accounts Committee. He never got an answer from the party;

(h) He has never solicited or sought assistance from any member to be reinstated to Public Accounts Committee;

(i) On the way forward, he recommended that the leadership of Public Accounts Committee need to be changed;

The Committee agreed to invite him to listen to the audio recording tabled by Hon. Ababu later in the course of the Sitting.

MIN. NO.036/2015: HON. CECILY MBARIRE, MEMBER, PUBLIC ACCOUNTS COMMITTEE

The Chairperson welcomes Hon. Cecily Mbarire and introduced the Committee Members present. He further informed the Hon. Mbarire that she is to shed light on the matters for inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament including that she :-

i. Is not on trial but is being investigated alongside the Members of PAC into claims that relate to abuse of privilege and/or breach of code of conduct for Members of Parliament;

ii. Is alleged to have received a share of a bribe of Kshs.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee and or to exonerate one **Mr. Mutea Iringo** from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;

iii. Alleged that the Chairperson of the Public Accounts Committee disclosed an Interim Reports of the Public Accounts Committee to the Publisher of *The Nairobi Law Monthly;*

iv. Alleged as Member of the Public Accounts Committee accepted or received bribes of about Kshs.10 million that she was to share out with Committee Members; and

v. is invited to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including her proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

The Hon. Mbarire informed the Committee, as follows, that she-

Alleged bribe of Kshs.1.5 million

i. has not met with Mr. Mutea Iringo, she last saw him when the Committee was investigating and interrogating the Office of the President Vote;

ii. She is not aware of the alleged Silver Spring Hotel meeting with Mr. Mutea Iringo and therefore no one brought her money. She never received the share of the alleged Kshs.1.5 million;

iii. Learnt that the Audio recording by Hon. Ababu was in response to the impeding no confidence vote by the Members of Public Accounts Committee and may have been recorded on Sunday March 22, 2015;

iv. Notes that the Hon. Ababu did promise that he will drag all members of the Committee into the corruption allegations fiasco;

The story on the Nairobi Law Monthly Magazine

i. alleged that the chair disclosed the Judiciary interim report to the Star newspaper;

ii. The Committee had divided opinion on inviting the publisher of Nairobi law monthly to appear before it.

On the alleged Kshs.10 million bribe and On alteration of Committee Reports

i. she never heard of the alleged Kshs.10 million;

ii. she was not in attendance of the Public Accounts Committee meeting that took place in Mombasa to compile a report, where the alleged bribe was to be shared,. It is also not possible to be assisting a person yet you do not attend a meeting;

iii. She was alerted by Hon. Jude Njomo, during debate on PAC report, that the Committee recommendations were altered;

Relationship with Mr. George Gazemba, Committee Clerk

(j) She did not have any issues with the clerk – George Gazemba and believed the Chair had good working relationship with the clerk at the Beginning;

On the Way forward

i. On the issues affecting Public Accounts Committee are that more than Half the Members do not have confidence in the Chair;
ii. The Public Account Committee has lost the moral authority noting the level of allegations being peddled in the Committee;
iii. The Hon. Ababu run the Committee as private property;
iv. There should be a mechanism of handling public information about Members – malice, rumors, allegations and innuendos. Mechanism for resolving conflict among members;
v. Strengthen the mechanism of submitting and substantiating allegations and evidence be established

The Committee agreed to invite her to listen to the audio recording tabled by Hon. Ababu later in the course of the Sitting.

MIN.NO.037/2015: HON. KAREKE MBIUKI, MEMBER, PUBLIC ACCOUNTS COMMITTEE

The Chair welcomed Hon. Mbiuki and introduced the Committee Members present. He further informed the Hon. Mbiuki that he is to shed light on the matters for inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament including that he :-

(i) Is not on trial but is being investigated alongside the Members of Public Accounts Committee into claims that relate to abuse of privilege and/or breach of code of conduct for Members of Parliament;
(ii) Is alleged to have received a share of a bribe of Kshs.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee and or to exonerate one **Mr. Mutea Iringo** from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;
(iii) Is alleged that as Member of the Committee accepted or received bribes of about Kshs.10 million that was to be shared out to Committee Members; and
(iv) is invited to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of

Parliament, including his proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

Thereupon, the Hon. Mbiuki thanked the Committee for the opportunity to shed light on the allegations level against him and the operations of Public Accounts Committee. He averred that Hon. Ababu is peddling falsehood in an attempt to retain a powerful position in the Assembly having found himself in sea of corruption allegations, thus trying to save himself. He also informed the Committee as follows, that-

On the Kshs.1.5 million bribe,

i. he notes that there is no truth as he never received any bribe from any person or persons or any inducement including from Mr. Mutea Iringo;
ii. It possible to account for his whereabouts on the day of alleged meeting with Mr. Mutea and any evidence can easily be verified by service providers and those recorded be called to account their insinuations;

On the Kshs.10 million bribe,

iii. He learnt this from a member of the Committee who table a newspaper – Citizen Weekly newspaper that alleged that the Hon. Ababu has used his position as chair of Public Accounts Committee to seek rent and that other members have their pockets overflowing with money. The Member could not substantiate the allegations.
iv. Hon. Ababu is trying to shift the attention from himself and allegation of corruptions made against him;

On the conduct of Hon. Ababu Namwamba, that he

v. Notes that Hon. Ababu had not conducted himself with honour at any point during the entire fiasco. He has disgraced himself and the entire house;
vi. Hon. Ababu has personalized Public Accounts Committee activities and made it a one man show and all activities revolve him. He cannot delegate even to the vice chairperson.
vii. He also indicated that the Public Accounts Committee chairperson, conduct bordered on highhandedness as most committee meetings and trips are arranged to the convenience of the Chairperson. That he would not even allow any Member to lead the meetings or a delegation in his absence, leading to cancellation of meetings and trips.

On the relationship with Committee Clerk – George Gazemba.

viii. He had no issues though he was aware of the Chairperson directing Mr. Gazemba to withdraw from meetings and throwing the Clerk because of the judiciary report;

ix. The Committee was doing well in the last 2 years of it operations and that the judiciary report is on course;

x. Not aware of any alteration of committee reports as the he was present in Mombasa retreat that agreed on the alleged altered report;

On way forward

xi. The powers and privileges Committee mandate be enhanced to address many allegations and counter allegations made by Members before rocking activities of Committees;

xii. The Public Accounts Committee be re-constituted noting the lost confidence in the current membership and its leadership and highly dented image;

The Committee agreed to invite him to listen to the Audio recording tabled by Hon. Ababu later in the course of the Sitting.

MIN. NO.038/2015:HON. JOHN SAKWA BUNYASI, MEMBER, PUBLIC ACCOUNTS COMMITTEE

The Chair welcomes Hon. John Sakwa Bunyasi and introduced the Committee Members present and further informed the Hon. Sakwa that he is to shed light on the matters for inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament including that he :-

(i) Is not on trial but is being investigated alongside the Members of Public Accounts Committee into claims that relate to abuse of privilege and/or breach of code of conduct for Members of Parliament;

(ii) And other were alleged that there were attempts to compromise the Committee and procure improper favours from the Chairperson of the Public Accounts Committee during a recent investigative trip to **Hyderabad**, India, (in which you were part of the delegation), including claims of attempts by the firm under investigation to settle hotel bills for the Committee Members;

(iii) that the Committee accepted bribes of about Kshs.10 million that was shared out to Committee Members; and

(iv)is invited to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of

Parliament, including his proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

The Hon. Sakwa Bunyasi, acknowledging receipt of a letter from the Clerk of the National Assembly dated 10th March 2015 indicating what he is supposed to answer before the Committee, informed the Committee, as follows, that:-

a) he sits in three Committees including Public Accounts Committee and have worked in international assignment's before joining the National Assembly;
b) he was part of the delegation of Public Accounts Committee Members to Hyderabad, India where they were to inquire into the procurement of BVR equipments by the IEBC;
c) they were received by the 4G Solutions officials and provided transport to the Hotel;
d) The Host Company, 4G Solutions had made arrangements to meet hotel, meal and dinner bills for the delegation. The delegation held a session on the first day to discuss the attempts by the firm to pay bills and to agree that Members of the delegation to pay their respective bills. Opinion was divided though concluded that it was unethical and inappropriate to accept payments from the 4G solutions;
e) Those who were indifferent included Hon. Anyanga;
f) The delegation paid for their bills;
g) The firm organized for dinner for the delegation in consultation with the secretariat and had plans for the firm to pay for the dinner. However He paid for the dinner on behalf of the delegation using his credit card. The rest of the delegation had promised to refund him cash and he is yet to be refunded;
h) The Hotel was booked by the Kenya High Commission in consultation with 4G Solution. 4G Solutions guaranteed payments;
i) He had no problems or issues with regard to Committee Clerk Mr. George Gazemba but noted that the Clerk had problems with the Chair. He believed that the problems that the Clerk has been experiencing may be because of the workload involved in the Committee;

On way forward,

a) the standing orders be amended to incorporate the provisions of Article 75 and 76;
b) Parties should be requested to nominate Members to PAC/PIC who can stand integrity and ethical issues and the kind of pressures in those two committees.

MIN.NO.39/2015: HON. JESSICA KOKI MBALU, MEMBER, PUBLIC ACCOUNTS COMMITTEE

The Chair welcomes Hon. Jessica Mbalu and introduced the Committee Members present and further informed the Hon. Mbalu that she is to shed light on the matters for inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament including that she :-

i. Is not on trial but is being investigated alongside the members of Public Accounts Committee into claims that relate to abuse of privilege and/or breach of code of conduct for Members of Parliament;
ii. Is alleged that the Committee accepted bribes of about Kshs.10 million that was shared out to Committee Members.
iii. is invited to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including her proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

The Hon. Mbalu informed the Committee, as follows, that:-

i. She had been misquoted by the letter from Clerk of the National Assembly, as she based her notes on Citizen weekly newspaper that alleged that the Committee received Kshs.10million. she noted that she is not able to substantiate therefore withdraws them;
ii. on the Clerk of the Committee, she had no problems with the officers but noted that the clerk was thrown out of the meeting when the Committee was in Kisumu;
iii. on the way forward, she recommends that:-
   a. corruption should not be condone in Committees of the Assembly;
   b. that allegations should be properly substantiated or withdrawn;

MIN NO.040/2015: ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the Chair adjourned the meeting at 7.15p.m. The next meeting will be held on **Monday, March 17, 2015 in Committee Room 9, Main Parliament Buildings at 10.00a.m.**

Signature..... Date 18th March 2015.....

(Hon. Moses Cheboi, MP)

MINUTES OF THE SEVENTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON TUESDAY, MARCH 17, 2015 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 10.00A.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – **Chairperson**
2. The Hon. Peter Shehe, MP
3. The Hon. Kimani Ichung'wa, M.P.
4. The Hon. Jamleck Kamau, MP
5. The Hon. Barchelei Kipruto, M.P.
6. The Hon. Dr. James Murgor, M.P
7. The Hon. Bedzimba Rashid Juma, MP
8. The Hon. Simon Ogari, MP
9. The Hon. Joyce Emanikor, MP
10. The Hon. James Onyango K'oyoo, MP
11. The Hon. Mohamed I. Elmi, MP - Co-opted Member
12. The Hon. Joseph Lekuton, MP - Co-opted Member
13. The Hon. Ali Wario, MP - Co-opted Member

ABSENT WITH APOLOGY

The Hon. Zuleikha Juma Hassan, MP

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative & Procedural
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 041/2015: INTRODUCTION

The Chairperson called the meeting to order at 10.10a.m after prayers were said. He welcomed Members and other persons present in the meeting. He further informed Committee that the agenda items for consideration are:-

1. Prayers;
2. Confirmation of Minutes of the First Sitting;
3. Matters Arising;
4. **Meeting with Mr. Mutea Iringo;**

5. **Consideration of the admissibility of the Audio recording;**
6. **List of witness;**
7. Any Other Business;
8. Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present.

MIN. NO. 042/2015: CONFIRMATION OF MINUTES

Confirmation of Minutes of the Second, Third, Fourth, Fifth and Sixth Sittings of the Committee was deferred to a later date.

MIN. NO.043/2015: NON - APPEARANCE BY MR. MUTEA IRINGO, PRINCIPAL SECRETARY, MINISTRY OF DEFENCE

The Committee noted with concern, the contents of letter Ref. No. MOD/17/08 of March 13, 2014 in which Mr. Mutea Iringo, Principal Secretary for Defence indicated that would not be able to appear before the Committee on March 17, 2015 as requested. He conveyed that he was travelling to India on an official benchmarking visit and that he was available to meet the Committee any day from March 23rd, 2015. After deliberations, the Committee resolved that Mr. Mutea Iringo appears before them on **Monday, March 23, 2015 in the Committee Room No.9, Main Parliament Buildings, at 10.00 am.**

MIN NO.043/2015: LIST OF WITNESSES

The Committee was notified that, as at close of business on March 16th, 2015, no formal views on the matters before it had been received from the general public despite an invitation published in the print dailies.

The Committee resolved to also invite the following other persons-

a.) All Members of Public Accounts Committee. This would be by way of an invitation to them, seeking expression of interest to attend before the Committee. Only those interested will the asked appear before the Committee;
b.) The Leader of the Majority Party;
c.) The Leader of the Minority Party (if he expresses interest following a formal request)
d.) The Deputy Leader of the Minority;
e.) Any member(s) of public who formally submits information relevant to the Inquiry

MIN NO.044/2015: ADMISIBILITY OF THE AUDIO RECORDING

The Committee after deliberations, agreed to attend to the question of admissibility of the audio recording submitted by the Hon. Ababu at a later date. The Committee reaffirmed its resolve to concluding its task and tabling its Report within the permitted timeline, which ends on 31st March 2015;

MIN NO.045/2015: ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the Chair adjourned the meeting at 3.00p.m. The next meeting will be held on **Wednesday, March 18, 2015 in Committee Room 9, main Parliament Buildings at 10.00a.m.**

Signature..... Date 25th March 2015

(Hon. Moses Cheboi, MP)

MINUTES OF THE EIGHTH SITTING OF THE COMMITTEE OF PRIVILEGE HELD ON WEDNESDAY, MARCH 18, 2015 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 10.00A.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – **Chairperson**
2. The Hon. Peter Shehe, MP
3. The Hon. Jamleck Kamau, MP
4. The Hon. Barchelei Kipruto, M.P.
5. The Hon. Dr. James Murgor, M.P
6. The Hon. Bedzimba Rashid Juma, MP
7. The Hon. Simon Ogari, MP
8. The Hon. Zuleikha Juma Hassan, MP
9. The Hon. Joyce Emanikor, MP
10. The Hon. Mohamed I. Elmi, MP - Co-opted Member
11. The Hon. Ali Wario, MP - Co-opted Member

ABSENT WITH APOLOGY

1. The Hon. Kimani Ichung'wa, M.P.
2. The Hon. James Onyango K'oyoo, MP
3. The Hon. Joseph Lekuton, MP - Co-opted Member

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative & Procedural
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 046/2015: INTRODUCTION

The Chairperson called the meeting to order at 10.13a.m after prayers were said. He welcomed Members and other persons present in the meeting. He further informed Committee that the agenda items for consideration are:-

1. Prayers;
2. Confirmation of Minutes of the First Sitting;
3. Matters Arising;

a) Meeting with

- **Hon. Jakoyo Midiwo (10.00am);**
- **Hon. Aden Duale(10.45am)**
- **Hon. Francis Nyenze (11..00am);**

4. Any Other Business;
5. Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present.

MIN. NO. 047/2015: CONFIRMATION OF MINUTES

Confirmation of Minutes of the Second, Third, Fourth, Fifth, Sixth and Seventh Sittings of the Committee was deferred to a later date.

MIN. NO.048/2015: MEETING WITH HON. JAKOYO MIDIWO, DEPUTY LEADER OF THE MINORITY

The Chairperson welcomed Hon. Jakoyo Midiwo, MP, and Deputy Leader of the Minority Party and introduced the Committee Members present. He further briefed the Deputy Leader of the Minority Party on the purpose of his appearance before the Committee. The Deputy Leader of the Minority Party requested the Committee to allow the meeting to be in public.

Thereupon, the Committee consented and opened the meeting to the public, including the media. The Deputy Leader of the Minority Party apprised the Committee on the reasons for supporting the raising the matter in the House. He also briefed the Committee as follows-

(i) That, in his opinion, referring the claims of bribery and compromises to the Committee of Privileges was the most judicious alternative for the Speaker, as the House ought to first examine the matters through an internal body, before any other institution can take them up. However, such bodies, including the EACC can also take up the matters on their own motion;

(ii) That, there is need for the Committee to exercise good judgement on the matters of privilege and/or breach of conduct before them and cushion the process from possible political parties influence;

(iii) That, there is a new trend by colleagues to make reckless allegations against each other in the public without offering any substitution or proposing motions to discuss conduct of their colleagues as contemplated under Standing Order 87.

The claims in PAC and other Committees are denting the image of Parliament, especially if they are left to go unsubstantiated;

(iv) That, the leadership and memberships of the Public Accounts Committee and the Public Investment Committee require the highest level of integrity as the pioneer committees of the House and the key watch-dog committees;

(v) That, by discussing in media, matter that are active before the Committee of Privileges by some Members of the PAC and other House Membership amounts to contempt of the House and should not go unpunished; and,

(vi) That, if it is true that the any parliamentary party was indeed responsible for the intrigues in the PAC, then such party should be reminded to invoke the provisions of Standing Order 176 to discharge their Members from committees, instead of meddling with the affairs of the particular committee. However, parties ought to use their political muscle to fight graft and compromises on their members and not defend them.

The Deputy Leader of the Minority Party proposed the following as way forward-

(a) That the standing orders ought to me amended to provide that the two Watchdog Committees (Public Accounts Committee and Public Investment Committee) be headed by Members of the Minority Party, but who hold leadership positions in the National Assembly. Particularly, the PAC should be headed by the Leader of the Minority Party.

(b) Assigning of Chairing of other Committees should take into account the service of members in the House and the political party ranking in the House;

(c) That, due to the allegations and counter allegations of bribery, the current Public Accounts Committee should be disbanded and the parties asked to proposes fresh names to form the new Committees; and,

(d) That, on the disciplining of Members, there is need to adopt comprehensive proper rules that prescribe stiffer penalties to prevent lawless in the House, ensuring commensurate sanctions. This should include forced resignations, or stepping aside from committee memberships to allow inquiries;

MIN. NO.049/2015: MEETING WITH HON. ADEN DUALE, LEADER OF THE MAJORITY PARTY

The Chairperson welcomed the Leader of the Majority Party and, upon his request, opened the meeting to the public and the media. Thereupon, the Leader of the Majority Party made his submission, commencing with a brief on how the matters before the Committee related to the historic cases in the UK House of commons. He cited the 1990s, "cash-for questions" and "Arms to Iraq" scandals in the UK Parliament and the 2009 case of embers claims.

He also summarized the outcome of the UK Parliament's processes as fourfold-

a.) the establishment of the Office of Commissioner of Standards by the then Prime Minister;
b.) the untimely resignation of Speaker Michael Martin attributable to the manner in which he mishandled the allegations in 2009;
c.) the historic passage and enactment of the Parliamentary Standards Bill, in a record time of one Month by the two Houses; and
d.) the judicial conviction, in 2010, of three MPS (two former and one sitting) for charges related to the expenses scandal

On matters of PAC, he indicated that, having noted the resolution of the Leadership retreat in Mombasa, where the House leaders agreed to "confront Challenges in the House; he decided to raise the matter of compromises amongst the PAC Membership in the House. He added that, it would have been irresponsible for the House to appear to be blind and imagine that the allegations of bribery were settled by way of a vote in PAC. The question of whether or not there was any bribe taken or given is for this Committee of Privileges to inquire into. He also added that, in his view, the inquiry will ensure that, never again, will members of parliament cast reckless accusation against each other, unless they have some form of evidence to sustain their claims.

He implored upon the Committee to follow the example of the United Kingdom to amend the Privileges Bill to achieve the following-

(a) Expanding the role and the title of the Committee beyond Privileges to be Committee on Standards, Ethics and Privilege, to include deliberate examination of claims of financial nature on its Members within and outside the precincts of Parliament. The claims must however be related to work of the MPs in Parliament and not in their private life;

(b) Creating the office of the Administrator of Parliamentary Standards within Parliament, who will be appointed for a fixed term, with the approval of the Houses of Parliament, to be advising the Houses and their respective Committees of Privileges on matters of breach of code of conduct and cases of financial impropriety; and,

(c) Requiring Members to register their interests with the Administrator of Parliamentary Standards who should also keep custody of such information.

The Leader of the Majority Party also recommended the following-

(i) That, since it was doubtful, for the membership of PAC to work together, following the myriad accusations and counter- accusations, the Committee on Selection should reconstitute the PAC afresh; and,

(ii) That, the from 1970s up to and December 2008, the PAC was a Sessional Committee, meaning that its Membership was up for renewal by the House at the beginning of each session. Further, from 1992 to 2008, the Chairing of PAC was a reserved for the Leader of Official Opposition; this old practice was informed by the need to reenergise the Membership of this Committee, and most importantly, to give it a solid tenure the holder of that office. He therefore recommends that the Leader of the Minority Party to be the automatic Chairperson of PAC. The Chairing of PAC should be a preserve for the holder of the office of Leader of the Minority Party to cushion the chairperson from constant threats of removals by way of vote in the committee.

MIN NO.050/2015: <u>LIST OF WITNESSES</u>

Following formal expression of interest, the Committee resolved to meet the following other Members in the afternoon of that day-

(i) Hon. Francis Nyenze
(ii) The Hon. Katatha Maweu
(iii)The Hon. Jackson Rop
(iv)The Hon. Alice Chae
(v) The Hon. Andrew Mwadime
(vi)The Hon. Silvance Osele
(vii) The Hon. Joseph Manje

(viii) The Hon. Mason Nyamweya
(ix)The Hon. Julius Melly
(x) The Hon. Peter Anyanga
(xi)The Hon. John Mbadi

MIN.NO.051/2015: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chair adjourned the meeting at 13.02p.m. The next meeting will be held on **Wednesday, March 18, 2015 in Committee Room 9, Main Parliament Buildings at 3.00p.m.**

Signature..... Date.....
(Hon. Moses Cheboi, MP)

MINUTES OF THE NINTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON WEDNESDAY, MARCH 18, 2015 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 3.00P.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – **Chairperson**
2. The Hon. Peter Shehe, MP
3. The Hon. Kimani Ichung'wa, M.P.
4. The Hon. Jamleck Kamau, MP
5. The Hon. Barchelei Kipruto, M.P.
6. The Hon. Dr. James Murgor, M.P
7. The Hon. Bedzimba Rashid Juma, MP
8. The Hon. Simon Ogari, MP
9. The Hon. Zuleikha Juma Hassan, MP
10. The Hon. Joyce Emanikor, MP
11. The Hon. James Onyango K'oyoo, MP
12. The Hon. Mohamed I. Elmi, MP - Co-opted Member
13. The Hon. Joseph Lekuton, MP - Co-opted Member
14. The Hon. Ali Wario, MP - Co-opted Member

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative & Procedural
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 052/2015: INTRODUCTION

The Chairperson called the meeting to order at 3.13p.m after prayers were said. He welcomed Members and other persons present. In his communication to the Committee, he enumerated the agenda for the day as follows-

1. Prayers;
2. Confirmation of Minutes;
3. Matters Arising;
4. Meeting with-
   (a) The Hon. Katatha Maweu
   (b) The Hon. Jackson Rop
   (c) The Hon. Alice Chae

(d) The Hon. Andrew Mwadime
(e) The Hon. Silvance Osele
(f) The Hon. Joseph Manje
(g) The Hon. Mason Nyamweya
(h) The Hon. Julius Melly
(i) The Hon. Peter Anyanga
(j) The Hon. John Mbadi
(k) The Hon. Francis Nyenze

5. Any Other Business; and,
6. Adjournment and Date of the next meeting.

The agenda was adopted by the Members present.

MIN. NO. 053/2015: CONFIRMATION OF MINUTES

Confirmation of Minutes of the Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Sittings of the Committee was deferred to a later date.

MIN. NO.054/2015: MEETING WITH HON. KATATHA MAWEU, MEMBER, PUBLIC ACCOUNTS COMMITTEE

(In camera)

Upon introductions, the Hon. Maweu, informed the Committee, that -

(i) he had no personal differences with the chairperson of the Public Accounts Committee. He affirmed that he was oblivious of what may have gone wrong in the Committee, as bribery allegations were impulsively made in the Committee just recently. He added that, prior to the claims, the Public Accounts was very cohesive and focused. Further, in his view, those making the allegations were misguided and had taken the impulsive claims too far;

(ii) he was part of the Committee's delegation to Hyderabad, India in October, 2014 wherein the Committee, which was a fact finding mission as part of the Committee's investigations on alleged irregularities at the IEBC in their 2012/2013 Accounts.

(iii) there was not any occasion where anybody attempted to solicit or receive any favours or bribery from the firm under investigation, Ms/ 4G Solutions Ltd. Even though the firm representatives who received them in Hyderabad had offered to pay their accommodation and one dinner. The delegation declined the offer for settlement of accommodation expenses and the

dinner after Hon. Anyanga first objected terming the offer as unethical. He however confirmed that, on arrival in India, the delegation was received by officials of the Kenya High Commission, New Delhi and representatives of M/s. 4G Solutions. Further, transport from Airport to Hotel was provided by the M/s. 4G Solutions. He indicated that he had no recollection of any meeting, informal or otherwise, to discuss the offers by the firm.

(iv) the Committee had objected to the manner in which Mr. George Gazemba, who was heading the Committee's Secretariat was "clerking" the Committee. It was his view that the officer was not cooperating with the Chairperson and that he occasionally declined to take instructions.

The Member asked the Committee of Privileges to be judicious but not to propose the disbanding of PAC, noting that the problems in PAC ought to be attributed to the Chairperson, the Vice-Chairperson and other Members of the Committee who were making claims against each other. In his view, the Members of PAC who had not made such claims and who were working well should be distinguished from the rest and allowed to continue serving in the Committee.

MIN. NO.055/2015: <u>MEETING WITH HON. JACKSON ROP, MEMBER, PUBLIC ACCOUNTS COMMITTEE</u>

(In camera)

The Hon. Jackson Rop, MP appeared before the Committee and informed the Members that-

(i) He chose to appear before the Committee of Privileges so as to clear his name as it appears that all PAC Members had been condemned in public as having been involved in corruption. He termed the allegations as "mere hearsay";

(ii) In the past two years, the Public Accounts Committee was cohesive and was working very well, but towards the end of the *Third Session* members started raising issues with the manner in which the Chairperson was steering the Committee. He indicated that the problems in PAC were compounded by the leaking of their draft Report to the *Nairobi Law Monthly* and allegation of bribery against the Chairperson;

(iii) Contrary to claims, he had not been approached by any person or party to support the removal of the chairperson of the Committee, but he voted for the motion as the only option to save the Committee from imminent leadership failures ; and,

(iv) In his view, the Chairperson appeared to be very domineering and had no respect for other Members of the Committee. He cited a case in Kisumu where the

Chairperson appeared to have arranged the meeting to suit his convenience to attend a political party meeting, but later called off the meeting on the pretext that the logistics of the meeting were poorly coordinated and that the draft report was of poor standard.

The Member indicated that following the allegations, it was not possible for the respective Members of the Committee to continue working together or even trust each other. However, a resolution of the House to disband the Committee would show the claims of bribery as being factual.

MIN. NO.056/2015: MEETING WITH HON. ALICE NYANCHOKA CHAE, MEMBER, PUBLIC ACCOUNTS COMMITTEE

(In camera)

The Hon. Alice N. Chae, MP, informed the Committee that as a Christian, she was not involved in any form of bribery in the Public Accounts Committee and that the allegations were not substantiated in the Committee when they were made, which had led to a near acrimony. She added that, it was very possible that the problems of the Committee were influenced by wrangling in political parties;

The Member asked for stiffer penalties and punishment to ensure that those making claims do offer substantiation. While admitting that it would be difficult for the membership of the Public Accounts Committee to work together following the allegations, she also proposed that, instead of disbanding the entire Committee, the Members who made the unsubstantiated claims against each other should be discharged from the Committee.

MIN. NO.057/2015: MEETING WITH HON. ANDREW MWADIME, MEMBER, PUBLIC ACCOUNTS COMMITTEE

(In camera)

The Hon. Mwadime informed the Committee that prior to the allegations of bribery the Committee was working well despite having leadership problems attributable to the personality of the Hon. Ababu. He added that the PAC Chairperson was using unparliamentary language and was evidently domineering whenever the Committee is taking evidence from public officers. He also informed the Committee that, in his opinion, he most qualifies to Chair the Public Accounts Committee, being an accountant.

He stated that, on the 26th of February, 2015, he chose to abstain during the vote of no confidence on the PAC Chairperson as the allegations leveled against him on corruption and highhandedness were not substantiated by the claimants.

The Member also indicated that the problems in the PAC were related to the leadership style of the Chairperson. He cited cases of Chairperson solely deciding on the list of delegations to international forums and that, the Chairperson normally declines to

delegate to other Members. He indicated that it would be difficult for the individual Members of the PAC to steer the Committee again after the accusations. He indicated that it would have been better for the Committee to retreat and have a session of introspection and forgiveness.

MIN. NO.058/2015: MEETING WITH HON. JOSEPH MANJE, MEMBER, PUBLIC ACCOUNTS COMMITTEE

(In camera)

Hon. Manje informed the Committee that he was appalled by the claims of bribery amongst his colleagues and that he had not been attending meetings of the Committee in the months of November 2014/January, 2015 as he was indisposed.

He confirmed that some members of the Committee were bitter with the leadership of the Committee, especially following claims that the Chairperson had received a bribe of Kshs.5 million to share out amongst the Members of the PAC from the CORD Coalition.

He also said that the vice-chairperson appeared to be "sketchy" and non-committal to the affairs of the Committee, citing her making of "technical" appearances in the Committee. He indicated that, even though the Chairperson of the PAC appears to be highhanded and domineering, that is a matter of personality and not failures.

Asked to propose a way forward, he said that there is need to change the Chairperson and Vice-Chairperson of PAC, especially following their claims against their colleagues, which have dented the image of the Committee and the non-committal attitude of the Vice-Chairperson. He also proposed that any Member of the Committee who had made unsubstantiated claims against another Member should also be discharged from the Committee. To maintain institution memory, he proposed that the rest of the Members of PAC should be retained.

MIN. NO.059/2015: MEETING WITH HON. PETER EDICK ANYANGA, MEMBER, PUBLIC ACCOUNTS COMMITTEE

(In camera)

Appearing before the Committee for the second time and having listened to the audio record submitted as evidence before the Committee, the Hon. Peter E. Anyanga, MP informed the Committee as follows, that-

(i) if the tape was to be admitted as evidence, the Hon. Ababu Namwamba was in breach of standing order no 87 for using offensive language against him. He cited use of the word " crook" against him, ostensibly by the Hon. Ababu Namwamba as defamation and gross disorderly conduct;

(ii) instead of defending himself against the motion of no confidence, Hon. Ababu Namwamba resulted to vilifying, condemnation and blackmail of his colleagues in the Committee, the Leadership of Parliament, the Executive and the political coalitions in the House;

(iii) Hon. Arama is a disaffected member of ODM who was de-whipped from the PAC. He denied the allegations leveled against him by the Hon. Arama in the recording. At this point, the chairperson reminded him that the Committee was yet to address itself to the admissibility of the audio recording submitted by the PAC Chairperson;

(iv) the Committee of Privileges ought to dismiss the audio recording as it failed to meet minimum legal requirement for admission as evidence, where no one but Hon. Ababu was in control of the discussion;

(v) on February 25th, 2015 a day before the motion of no-confidence against the Chairperson of the Public Accounts Committee, the Hon. Ababu Namwamba called him and asked him to withdraw his support for the motion. He added that the Hon. Ababu Namwamba also drafted two letters, which he forwarded to him asking him to sign and submit to the Clerk, signifying his withdrawal of support to the motion of no-confidence.

Regarding the claims of attempts to compromise the Public Accounts Committee during the Committee's October 2014 investigative trip on M/s. 4G Solutions Ltd in Hyderabad, India, he informed the Committee, that-

(a) he was part of the delegation and that he left Nairobi sometime in October, 2014 for India aboard a different flight from the rest of the Members. He joined the other Members in New Delhi. The fact that they did not manage to secure any appointment while in New Delhi was immaterial as the Committee's main objective was to visit M/s. 4G Solutions Ltd in Hyderabad;

(b) he could not give any evidence on the claims of the attempted comprise on the Committee during the dinner of 14th October, 2014 as he did not join his colleagues for the dinner;

(c) it is true that the representatives of M/s. 4G Solutions Ltd offered to pay hotel accommodation for Members, but that he objected to the offer when the Chairperson consulted the Members. He also said the Chairperson also objected to the offer, causing the delegation to meet their individual bills;

On the way forward, he proposed that-

(i) The Public Accounts Committee as presently constituted cannot work together following the claims of bribery and bad blood between the Members. He added that the Committee's chairperson could not lead the Committee anymore following the myriad of claims he had made against the Members of the Committee;

(ii) The Standing Orders ought to be amended to provide that Public Accounts Committee comprises of senior Members of Parliament and leadership of the House who have been thoroughly vetted and who fulfils the requirements of Chapter Six of the Constitution; and,

(iii) The mandate of the Committee of Privileges ought to be expanded to include continuous oversight on ethics of Members of Parliament;

MIN. NO.060/2015: MEETING WITH HON. JULIUS MELLEY, MEMBER, PUBLIC ACCOUNTS COMMITTEE

(In camera)

The Hon. Julius Melley, MP informed the Committee that the Public Accounts Committee had been working well until sometime towards the end of 2014 when there developed disquiet amongst the Members due to the leadership style of the Hon. Ababu Namwamba. He cited cases such as; the Chairperson unilaterally calling for meetings; domineering in meetings; assigning foreign trips to himself and only a few other Members and running the Committee in a "haphazard" manner and "with highhandedness"

He added that even though he was not very active in PAC at the time when he has been the acting chairperson of the Committee on Education, he was aware that the Clerk Assistant who as the lead secretary to the Committee, Mr. George Gazemba was initially working well with the chairperson. It was not until he insisted on using the conventional format of minutes and report writing, that they started disagreeing with the chairperson. He added that, in his opinion, the officer was right.

On the way forward, he indicated that the Committee could not work together anymore and that the Chairperson's leadership style had greatly contributed to the Committee's falling apart.

MIN. NO.061/2015: MEETING WITH HON. JOHN MBADI, MEMBER, PUBLIC ACCOUNTS COMMITTEE

(In camera)

The Hon. John Mbadi informed the Committee that he was a Member of the Public Investment Committee of the 10th Parliament until his appointment into the Executive. He is also a Member of PAC in the 11th Parliament and that on 17th February 2015, during a meeting of PAC, he was shocked to hear colleagues in PAC accusing each other of bribery and dishonesty. He added that most of the allegations emanated from a story published in the Nairobi Law Monthly Magazine.

He added that the allegations against the Chairperson of PAC as raised by Members of the Committee related to receiving a bribe of KSh. 5 million, leaking reports of the Committee to the media and public and altering reports of the Committee. Later, when the motion for removal of the Hon. Ababu as the Chairperson of PAC, he did not vote for the removal as he did not find the claims to be unsubstantiated . He also affirmed that it was not possible for the Committee to work together again as the relationship had turned to be very acrimonious. He indicated that, as party leader, his party had nothing to do with the plight of the Chairperson of PAC.

He was also of the view that, probably, the Speaker would have saved the Committee initially had he summoned the individual Members making the claims and those against whom claims were made with a view to establishing the veracity of the claims before asking the Committee of Privileges to deal with the matter. He added that the working of the Committee's Clerk, Mr. Gazemba compounded the problems of the Committee as he was not cooperating with the Chairperson.

On the way forward, he suggested that the Committee be dissolved and reconstituted afresh in which case, the House should ensure that Members of PAC who had claims against them and those who had made unsubstantiated allegations should not be considered for reappointment. Retaining some Members would ensure continuity especially for the purposes of concluding pending reports on the Irregularities at the Judiciary and the IEBC. He however noted that the justification for disbanding the Committee outweighs the need for continuity or institutional memory.

MIN. NO.062/2015: MEETING WITH HON. MANSON NYAMWEYA, MEMBER, PUBLIC ACCOUNTS COMMITTEE

(In camera)

The Hon. Nyamueya we informed the Committee that Public Accounts Committee had been working well prior to November 2014 when Members started raising modest concerns on its leadership. He added that he had no claims against any Member of the Committee or the Chairperson, but it was only prudent for the Committee to be dissolved and reconstituted afresh leaving out the Leadership, those who had failed to substantiate their claims of bribery against others and also those who had claims of bribery made against them.

He also suggested that the Speaker and the Presidium of the House should punish Members who make reckless claims against their colleagues as this amounts to imputing

improper motives on them and taints their individual reputations and that of Parliament. He asked the Committee to also find ways of inquiring into the conduct of Members of other Committees where similar claims have been made.

MIN. NO.063/2015: MEETING WITH HON. SILVANCE OSELE, MEMBER, PUBLIC ACCOUNTS COMMITTEE

(In camera)

The Hon. Osele informed the Committee that he was appalled by the allegations being made against his colleagues in the PAC which he termed as rumours and hearsay. He attributed the problem in the Public Accounts Committee to renewed scramble for Leadership of the Committee and attempts by the corrupt to derail the fight against corruption. He cited the two reports which the Committee was about to Table as being part of the attempts to curtail their work.

He wondered why the matter of PAC had been referred to the Committee of privilege, yet there are similar cases in other Committees, which he did not mention. He added that the Committee Clerk started off very well with the Chairperson and the rest of the Committee but at some stage, he could not work well.

He asked the Committee to save the Public Accounts Committee, and protect its Members from unsubstantiated allegations and collective condemnation.

MIN NO. 064/2015: DEFERRED EVIDENCE

The Committee deferred hearing evidence from the Leader of the Minority Party and the Chairperson of the Public Accounts Committee to the following day, Thursday, March 19, 2015 commencing at 10.15 am.

MIN NO.065/2015: ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 19.05 hrs. The next meeting will be held on **Thursday, March 19, 2015 in Committee Room 9, main Parliament Buildings at 10. 00a.m.**

Signature..... **Date**.....March 30, 2015.....

(Hon. Moses Cheboi, MP)

MINUTES OF THE TENTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON THURSDAY, MARCH 19, 2015 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 10.00A.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – Chairperson
2. The Hon. Peter Shehe, MP
3. The Hon. Kimani Ichung'wa, M.P.
4. The Hon. Dr. James Murgor, M.P
5. The Hon. Bedzimba Rashid Juma, MP
6. The Hon. Simon Ogari, MP
7. The Hon. Joyce Emanikor, MP
8. The Hon. James Onyango K'oyoo, MP
9. The Hon. Mohamed I. Elmi, MP - Co-opted Member
10. The Hon. Joseph Lekuton, MP - Co-opted Member
11. The Hon. Ali Wario, MP - Co-opted Member

ABSENT WITH APOLOGY

1. The Hon. Jamleck Kamau, MP
2. The Hon. Barchelei Kipruto, M.P.
3. The Hon. Zuleikha Juma Hassan, MP

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative & Procedural
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 066/2015: INTRODUCTION

The Chairperson called the meeting to order at 10.05a.m after prayers were said. He welcomed Members and confirmed the agenda items for consideration as hereunder:-

1. Prayers;
2. Confirmation of Minutes of the First Sitting;
3. Matters Arising;
4. **Meeting with –**
5.
   a) **The Hon. Francis Nyenze – 10.15a.m;**
   b) **The Hon. Ababu Namwamba – 11.00a.m;**
6. Any Other Business;
7. Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present.

MIN. NO. 067/2015: CONFIRMATION OF MINUTES

Confirmation of Minutes of the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Sittings of the Committee was postponed to a later date.

MIN. NO.068/2015: MEETING WITH HON. FRANCIS NYENZE, LEADER OF THE MINORITY PARTY

(Meeting held in camera)

The Hon. Nyenze appeared before the Committee on Thursday 19th March 2015 accompanied by a Researcher attached to his office and submitted that—

(i) As part of the leadership of the House, he was troubled by the claims of bribery of the Membership of the Public Accounts Committee, particularly because the claims threatened the reputation of its Membership and the image of Parliament. Contrary to claims, his Coalition was not and would not want to remove or antagonize the Chairperson of the PAC.

(ii) The Committee of Privileges should endeavour to confirm the allegation of internal obstructions to the work of the Public Accounts Committee and ensure that it not only proposes practical solutions, but also sets a reasonable precedent.

(iii) Though it would be strenuous for the holder of the Office of the Leader of the Minority Party to also be the automatic chairperson of the Public Accounts Committee, it would a sensible option to explore given the need to protect the office holder from possible threats of removal. It could also be counterproductive and may subject PAC Members to institutional tyranny where they cannot question or remove their Chairperson. As a person, he is not interested in the position.

MIN. NO.069/2015: MEETING WITH HON. ABABU NAMWAMBA, CHAIRPERSON, PUBLIC ACCOUNTS COMMITTEE

The Committee deferred the Meeting to a later date in absence of the Hon. Ababu Namwamba.

MIN NO.070/2015: ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the Chair adjourned the meeting at 11.55 a.m. The next meeting will be held on **Monday, March 23, 2015 in Committee Room 9, main Parliament Buildings at 10.00a.m.**

Signature..... Date March 30, 2015

(Hon. Moses Cheboi, MP)

MINUTES OF THE ELEVENTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON MONDAY, MARCH 23, 2015 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 10.00A.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – **Chairperson**
2. The Hon. Peter Shehe, MP
3. The Hon. Jamleck Kamau, MP
4. The Hon. Kimani Ichung'wa, M.P.
5. The Hon. Dr. James Murgor, M.P
6. The Hon. Bedzimba Rashid Juma, MP
7. The Hon. Simon Ogari, MP
8. The Hon. Joyce Emanikor, MP
9. The Hon. James Onyango K'oyoo, MP
10. The Hon. Mohamed I. Elmi, MP - Co-opted Member

ABSENT WITH APOLOGY:

1. The Hon. Barchelei Kipruto, M.P.
2. The Hon. Zuleikha Juma Hassan, MP
3. The Hon. Joseph Lekuton, MP - Co-opted Member
4. The Hon. Ali Wario, MP - Co-opted Member

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative & Procedural
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 071/2015: INTRODUCTION

The Chairperson called the meeting to order at 10.03a.m after prayers were said. He welcomed Members and other persons present in the meeting. He further informed Committee that the agenda items for consideration are:-

a) Introduction;
b) Confirmation of Minutes;
c) Matters Arising;

d) Meeting with
   a. **Mr. Mutea Iringo (10.00am);**
   b. **Hon. Ababu Namwamba(11.45am)**
e) Any Other Business;
f) Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present. Thereafter, the Committee deliberated on the following and resolved that:-

a.) the Committee will not allow the media/public when Mr. Mutea Iringo appears unless He makes a request;
b.) The Committee will meet to consider Minutes of Wednesday, March 25, 2015 and this will mark the last sitting of the Committee in terms of receiving evidence and meeting witnesses;
c.) To meet Hon. Ababu Namwamba on Wednesday, March 25, 2016 at 11.00am;
d.) The Committee will deliberate on the admissibility of the tape at a later date;

MIN. NO. 072/2015: CONFIRMATION OF MINUTES

Confirmation of Minutes of the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Sittings of the Committee was postponed to a later date.

MIN. NO.073/2015: PUBLIC VIEWS ON THE INQUIRY

The Committee deliberated on the submission by one L.G. Kamweti received on 19th March 2015, and resolved that the content of his submission were not relevant to the inquiry as they relate to the alleged conduct of the Hon. Ababu Namwamba, when he was the Chair of the Departmental Committee of Justice and Legal Affairs in the 10th Parliament during the vetting of nominees to the Judicial Service Commission.

MIN. NO.074/2015: MEETING WITH MR. MUTEA IRINGO, PRINCIPAL SECRETARY, MINISTRY OF DEFENCE

Mr. Iringo appeared before the Committee on Monday 23rd March 2015 accompanied by Mr. Gerald Sakwa, Parliamentary Liaison Officer in the Ministry of Defence and Mr. Martin Mwiti, his Personal Assistant. He submitted that—

(i) The allegations of bribery touching on him have been in the public domain and he would not mind the session being held in public. He is not privy to the contents of Hon. Ababu's letter dated 25th February 2015 or the contents of the Hansard record

of the PAC meeting of 26th February 2015. He was however in a position to respond to the allegation that he extended a bribe to PAC Members to influence the report on the 2012/2013 Accounts.

(ii) He sat with PAC for three (3) days in September and October 2014 and explained everything related to the issue of confidential expenditure by the Office of the President raised in the 2012/2013 Accounts.

(iii) He has never bribed any Member of PAC. He could not bribe to cover what constituted his official duties. No one has ever solicited for a bribe from him and he only does what he is legally mandated to do.

(iv) His relationship with the Hon Ababu and the rest of the Members of PAC was formal. He only met them on 29th September, 1st and 2nd October, 2014 when appearing before PAC. He has never had any meeting with Hon. Anyanga, Hon. Bett, Hon. Abbas, or Hon. Arama at Silver Springs Hotel or anywhere else.

(v) The Committee of Privileges should look at what he submitted to PAC on the confidential expenditure. All the money was spent according to laid down law and procedures of the Kenya Government. Whoever wrote the report did not appear to take into account his submissions at any point. The expenditure is not unique and is a worldwide practice. The government even sent a team to ten (10) countries in the world which revealed that confidential expenditure is not unique to Kenya. What he explained verbatim and what was written in the PAC report on the 2012/2013 accounts are totally different.

(vi) He does not recall if the Hon. Abbas was in the meeting when he came before PAC during the consideration of the 2012/2013 Accounts. He has never given any gift or contribution to Hon. Ababu. He has never met Hon. Anyanga. It is not true that he spoke to Hon. Ababu through Hon. Bett's phone. Hon. Ababu has his number and can call him at any time.

(vii) After the report on the 2012/2013 Accounts was tabled, he called Hon. Mbarire to complain on why the report did not take into account his submissions to PAC. The answer by the Hon. Mbarire was that, there was no consensus between the PAC Membership on some of the recommendations contained in the report, and that some of the Members did not sign the report. He just called Hon. Mbarire like he would call any other Member.

(viii) The information he gave with regard to confidential expenditure related to the 2012/2013 Accounts is in the Hansard report of PAC. He also submitted a written report on the issue to PAC.

(ix) He knew Hon. Bett even before he became an MP. Hon. Bett used to work at the Government Printer when he was Permanent Secretary in the Ministry of Interior. He has many personal friends, some of who are Members of Parliament;

(x) The PAC report on the 2012/2013 Accounts is not representative of the submissions he gave to PAC where he accounted for every cent and yet the report made him seem like a thief. In his opinion, the allegations of bribery constitute a deliberate scheme to tarnish his name and to tarnish the name of Government.

(xi) He cannot rule out having received a call from the Hon. Bett, but he is sure he never spoke to the Hon. Ababu through Hon. Bett's phone. He is not aware that he was supposed to provide money to PAC Members. It is not his role to give business to any person at the Ministry of Defence, as there are procurement procedures in place to handle the procurement process.

MIN. NO.075/2015: MEETING WITH HON. ABABU NAMWAMBA, CHAIRPERSON, PUBLIC ACCOUNTS COMMITTEE

The Committee noted that the Hon. Ababu Namwamba was not available, therefore resolved that the Hon. Ababu Namwamba should met the Committee on Wednesday, March 25, 2015 at 10.00a.m. The Hon. Ababu will appear and respond to:-

a. Any new evidence;
b. Information regarding the audio recording; and
c. Clarify on the already submitted evidence.

MIN. NO.076/2015: ANY OTHER BUSINESS

The Committee noted that following, that:-

a. It will consider the written submission by the Public Accounts Clerks on Wednesday, March 25, 2015;
b. The committee will retreat after exhausting receipt of evidence to write the report on Sunday, March 29, 2015.

MIN NO.077/2015: ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the Chair adjourned the meeting at 12.20p.m. The next meeting will be held on **Monday, March 23, 2015 in Committee Room 9, main Parliament Buildings at 3.00p.m.**

Signature..... Date...March 30, 2015.....

(Hon. Moses Cheboi, MP)

MINUTES OF THE TWELFTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON MONDAY, MARCH 23, 2015 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 3.00P.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – **Chairperson**
2. The Hon. Peter Shehe, MP
3. The Hon. Kimani Ichung'wa, M.P.
4. The Hon. Dr. James Murgor, M.P
5. The Hon. Bedzimba Rashid Juma, MP
6. The Hon. Simon Ogari, MP
7. The Hon. Zuleikha Juma Hassan, MP
8. The Hon. James Onyango K'oyoo, MP

ABSENT WITH APOLOGY:

1. The Hon. Joyce Emanikor, MP
2. The Hon. Jamleck Kamau, MP
3. The Hon. Barchelei Kipruto, M.P.
4. The Hon. Mohamed I. Elmi, MP - Co-opted Member
5. The Hon. Joseph Lekuton, MP - Co-opted Member
6. The Hon. Ali Wario, MP - Co-opted Member

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative & Procedural
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 078/2015: INTRODUCTION

The Chairperson called the meeting to order at 3.24p.m after prayers were said. He welcomed Members and other persons present in the meeting. He further informed Committee that the agenda items for consideration are:-

a) Introduction;
b) **Confirmation of Minutes;**
c) Matters Arising;

d) Any Other Business;
e) Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present.

MIN. NO. 079/2015: CONFIRMATION OF MINUTES

Minutes of the Second, Third, Fourth, Fifth and the Sixth Sitting of the Committee held were confirmed as true record of the Committee deliberations by Members present, respectively. Thereupon, the Chairperson signed the Minutes.

MIN. NO.80/2015: MATTERS ARISING

Under MIN. NO.016/2015:
The Committee also resolved that no Member should address the media and that all its proceedings will be in Camera;

MIN. NO.081/2015: ANY OTHER BUSINESS

After deliberations, the Committee:-

a. Directed the secretariat to ensure all the Minutes are done well and should capture the correct position of the evidence as adduced;
b. Noting the request by Hon. Ababu that he will be available on Tuesday, March 24, 2014, resolved therefore to meet on Tuesday, March 24, 2015 at 10.00a.m and also meet on Wednesday, March 25, 2015 to consider the Minutes and any other outstanding issues; and
c. Thereafter, retreat at the Windsor Golf Hotel and Country Club for Report writing on Sunday, March 29, 2015

MIN NO.082/2015: ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the Chair adjourned the meeting at 4.30p.m. The next meeting will be held on **Tuesday, March 24, 2015 in Committee Room 9, main Parliament Buildings at 10.00a.m.**

Signature..... Date March 30, 2015

(Hon. Moses Cheboi, MP)

MINUTES OF THE THIRTEENTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON TUESDAY, MARCH 24, 2015 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 10.00A.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – **Chairperson**
2. The Hon. Peter Shehe, MP
3. The Hon. Kimani Ichung'wa, M.P.
4. The Hon. Dr. James Murgor, M.P
5. The Hon. Joyce Emanikor, MP
6. The Hon. Zuleikha Juma Hassan, MP
7. The Hon. James Onyango K'oyoo, MP
8. The Hon. Bedzimba Rashid Juma, MP
9. The Hon. Joseph Lekuton, MP - Co-opted Member

ABSENT WITH APOLOGY:

1. The Hon. Jamleck Kamau, MP
2. The Hon. Barchelei Kipruto, M.P.
3. The Hon. Simon Ogari, MP
4. The Hon. Mohamed I. Elmi, MP - Co-opted Member
5. The Hon. Ali Wario, MP - Co-opted Member

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services;
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative & Procedure;
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 083/2015: INTRODUCTION

The Chairperson called the meeting to order at 10.16a.m after prayers were said. He welcomed Members and other persons present in the meeting. He further informed Committee that the agenda items for consideration are:-

a) Prayers;
b) Introduction;
c) Confirmation of Minutes;
d) Matters Arising;
e) **Meeting with Hon. Ababu Namwamba;**
f) Any Other Business;
g) Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present.

MIN. NO. 084/2015: CONFIRMATION OF MINUTES

Confirmation of Minutes of the Seventh, Eighth, Ninth, Tenth, Eleventh and Twelfth Sittings of the Committee was postponed to a later date.

MIN. NO.085/2015: MEETING WITH HON. ABABU NAMWAMBA, CHAIRPERSON, PUBLIC ACCOUNTS COMMITTEE

(In Camera)

The Hon. Ababu Namwamba appeared for a third time before the Committee on Tuesday 24th March 2015 with Hon. Peter Kaluma as legal counsel and submitted that—

(i) He appreciated the opportunity from the Committee, and the manner in which it has handled the inquiry. He commended the Committee of Privileges for not allowing the substance of its proceedings into the media and public, noting that the inquiry has been conducted in a professional manner. The inquiry is not about PAC or Privilege Committee but the Honour of the House;

(ii) He had not accused any of his colleagues of anything and that when the allegations of bribery arose within PAC, they took him completely by surprise. Mr. Johnston Kioko, PAC Clerk, can confirm that up to the time that the matter erupted, the Committee was working perfectly. In passing a verdict, the Committee of Privileges should look at the work done and pending before the PAC.

(iii) He does not have any evidence to substantiate allegations and does not seek to have any evidence. The audio recording he tabled before the Committee on 12th March 2015 was recorded using his cell phone but without his knowledge. This was done by his bodyguard, Mr. Bernard Odako, 22nd February 2015 at Fairview Hotel, Nairobi.

(iv) The Committee of Privileges should not pass a group judgment on PAC and its Members. Each individual should carry their own responsibilities. PAC has some of the finest Members of the National Assembly and it would be a terrible injustice for them to suffer on behalf of others.

(v) In his opinion, PAC can survive the recent allegations and counter-allegations and continue working in harmony. Committees find a way of resolving their issues and moving on. PAC has not degenerated to any level worse than any other Committee and the relationship between its Members can heal;

(vi) The mandate of Committee of Privileges should be expanded to provide a safety net for Members against some of the allegations in the House;

(vii) He believes that two things may have played a key role in the Public Accounts Committee issues;-

a) Nature of Public Accounts Committee work, which is bound to attract interest. The Committee should have ensured that their work is protected from external interest. This should also apply to other Committees of the House;

b) a lot of Politics have been part of this process, many attempts have been made to interfere with the work of PAC. Here most of the issues were a result of Politics.

(viii) On way forward:-

a) Amend the Standing Order to strengthen Powers and Privileges Committee to provide for ways in which Members can raise issues both in Committee and House;

b) Committee of Privileges should not allow Political parties to use PAC issues to punish Members or resolve parties' issues.

(ix) The Censure motion on the Speaker has no relation to matters affecting PAC. He is not party to the motion, because as far as he is concerned, the motion lacks substance;

MIN. NO. 86/2015: ANY OTHER BUSINESS

After deliberations, the Committee agreed to meet on Wednesday, March 25, 2015 to consider the Minutes and any other outstanding issues, including the admissibility of the audio recording.

MIN NO.087/2015: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chair adjourned the meeting at 12.20p.m. The next meeting will be held on **Wednesday, March 25, 2015 in Committee Room 9, Main Parliament Buildings at 11.00a.m.**

Signature..... **Date**March 30, 2015.....

(Hon. Moses Cheboi, MP)

MINUTES OF THE FOURTEENTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON WEDNESDAY, MARCH 25, 2015 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 11.00A.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – **Chairperson**
2. The Hon. Peter Shehe, MP
3. The Hon. Kimani Ichung'wa, M.P.
4. The Hon. Dr. James Murgor, M.P
5. The Hon. Joyce Emanikor, MP
6. The Hon. Jamleck Kamau, MP
7. The Hon. Barchelei Kipruto, M.P.
8. The Hon. Mohamed I. Elmi, MP - Co-opted Member
9. The Hon. Zuleikha Juma Hassan, MP
10. The Hon. James Onyango K'oyoo, MP
11. The Hon. Ali Wario, MP - Co-opted Member

ABSENT WITH APOLOGY:

1. The Hon. Bedzimba Rashid Juma, MP
2. The Hon. Simon Ogari, MP
3. The Hon. Joseph Lekuton, MP - Co-opted Member

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative & Procedure;
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 088/2015: INTRODUCTION

The Chairperson called the meeting to order at 11.18a.m after prayers were said. He welcomed Members and other persons present in the meeting. He further informed Committee that the agenda items for consideration are:-

a) Prayers
b) Introduction;
c) **Confirmation of Minutes**;
d) Matters Arising;
e) Any Other Business;
f) Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present.

MIN. NO. 089/2015: CONFIRMATION OF MINUTES

Minutes of the Seventh and Eighth Sitting of the Committee were confirmed as true record of the Committee deliberations by Members present and thereupon, they were signed by the Chairperson.

MIN. NO.90/2015: MATTERS ARISING

a. **Under MIN. NO.044/2015:**
   The minute should be titled LIST OF WITNESSES;

b. **Under MIN. NO.045/2015:**
   The minute should be titled LIST OF ADMISSIBILITY OF THE AUDIO RECORDING;

c. **Under MIN. NO.051/2015:**
   The minute should be titled LIST OF WITNESSES;

MIN. NO.091/2015: ADMISIBILITY OF THE AUDIO RECORDING

After deliberations, the Committee noted the following:-

a. The audio was recorded on 22/02/15 in the Fairview Hotel, Nairobi using Hon. Ababu's cellphone by one Cpl. Bernard Odako, the bodyguard of the Hon. Ababu;
b. The phone was brought to the venue of the meeting by the bodyguard , while the phone was already in a recording mode;
c. Those who were recorded were not aware that recording was going on, including the Hon. Ababu. This affect the credibility and truthfulness of his evidence;
d. The recording was meant to counter allegation of corruption against Hon. Ababu and thus a means of substantiating his counter allegations;
e. The recorder(maker) should have been in the audio as he brought it already recording;

In considering the admissibility of the recording tabled by Hon. Ababu, the Committee was guided by section 78A of the Evidence Act, Cap. 80 of the Laws of Kenya which provides for the admissibility of electronic and digital evidence as follows—

78A. (1) In any legal proceedings, electronic messages and digital material shall be admissible as evidence.

(2) The court shall not deny admissibility of evidence under subsection (1) **only** *on the ground that it is not in its original form.*

(3) In estimating the weight, if any, to be attached to electronic and digital evidence, under subsection (2), regard shall be had to—

(a) the reliability of the manner in which the electronic and digital evidence was generated, stored or communicated;

(b) the reliability of the manner in which the integrity of the electronic and digital evidence was maintained;

(c) the manner in which the originator of the electronic and digital evidence was identified; and

(d) any other relevant factor.

(4) Electronic and digital evidence generated by a person in the ordinary course of business, or a copy or printout of or an extract from the electronic and digital evidence certified to be correct by a person in the service of such person, is on its mere production in any civil, criminal, administrative or disciplinary proceedings under any law, the rules of a self-regulatory organization or any other law or the common law, admissible in evidence against any person and rebuttable proof of the facts contained in such record, copy, printout or extract.

The Committee noted that the provision allows the admissibility of electronic and digital evidence either in its original or copied form and further that, in refusing to admit such evidence, reasons other than the fact that the evidence is not in its original form must be provided. The Committee therefore resolved to invite the recorder , Cpl. Bernard Odako for further clarification of the audio. The Committee agreed to meet him on Wednesday, March 25, 2015 at 3.00p.m.

MIN. NO.092/2015: ANY OTHER BUSINESS

After deliberations, the Committee observed that there is need to proposed the various options available for raising matters of privilege and should include through a complaint and writing to the Committee of privilege.

MIN NO.093/2015: ADJOURNMENT/DATE OF THE NEXT MEETING

There being no other business, the Chair adjourned the meeting at 11.45a.m. The next meeting will be held on **Wednesday, March 25, 2015 in Committee Room 9, main Parliament Buildings at 3.00p.m.**

Signature..... **Date**.March 30, 2015.....

(Hon. Moses Cheboi, MP)

MINUTES OF THE FIFTEENTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON WEDNESDAY, MARCH 25, 2015 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 3.00 P.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – Chairperson
2. The Hon. Peter Shehe, MP
3. The Hon. Kimani Ichung'wa, M.P.
4. The Hon. Jamleck Kamau, MP
5. The Hon. Barchelei Kipruto, M.P.
6. The Hon. Dr. James Murgor, M.P
7. The Hon. Bedzimba Rashid Juma, MP
8. The Hon. Simon Ogari, MP
9. The Hon. Zuleikha Juma Hassan, MP
10. The Hon. Joyce Emanikor, MP
11. The Hon. James Onyango K'oyoo, MP
12. The Hon. Mohamed I. Elmi, MP - Co-opted Member
13. The Hon. Ali Wario, MP - Co-opted Member

ABSENT WITH APOLOGY

1. The Hon. Joseph Lekuton, MP - Co-opted Member

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services;
Mr. Rana Tiampati - Principal Clerk Assistant, Legislative and Procedure;
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 094/2015: INTRODUCTION

The Chairperson called the meeting to order at 3.15 pm after prayers were said. He welcomed Members present and confirmed the agenda items for consideration as:-

1. Prayers;
2. Confirmation of Minutes of the First Sitting;
3. Matters Arising;
4. **Meeting with Cpl. Benard Odako, Police Officer/Security assigned to Hon. Ababu Namwamba,MP**
5. Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present.

MIN. NO. 095/2015: CONFIRMATION OF MINUTES

Confirmation of Minutes of the Ninth, Tenth, Eleventh, Twelfth, Thirteenth and Fourteenth sitting was deferred to a later date.

MIN. NO.096/2015: MEETING WITH CPL. BENARD ODAKO, POLICE OFFICER, BODYGUARD ASSIGNED TO HON. ABABU NAMWAMBA, MP.

The Clerk administered oath to Corporal Benard Odako, Police Officer and bodyguard assigned to the Hon. Ababu Namwamba, MP;

Thereupon, the witness informed the Committee that, being a serving officer of the National Police Service, he felt constrained to adduce any evidence before the Committee without a formal summon and consent from his seniors. He undertook to give evidence to the Committee once the consent is formally is granted.

The Committee discharged the officer from the meeting and requested him to be ready to avail himself the following day, Thursday, March 26, 2015 at 3.30 pm upon service of a summon through the Deputy Inspector-General of Police in-charge of Administration Police. The officer obliged.

MIN.NO.097/2015: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 3.45 p.m. The next meeting will be held on **Thursday, March 26, 2015 in Committee Room 9, main Parliament Buildings at 11.00am.**

Signature..... Date March 30, 2015

(Hon. Moses Cheboi, MP)

MINUTES OF THE SIXTEENTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON THURSDAY, MARCH 26, 2015 IN COMMITTEE ROOM NO. 9, MAIN PARLIAMENT BUILDINGS AT 11.00A.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – Chairperson
2. The Hon. Peter Shehe, MP
3. The Hon. Jamleck Kamau, MP
4. The Hon. Barchelei Kipruto, M.P.
5. The Hon. Dr. James Murgor, M.P
6. The Hon. Bedzimba Rashid Juma, MP
7. The Hon. Simon Ogari, MP
8. The Hon. Zuleikha Juma Hassan, MP
9. The Hon. Joyce Emanikor, MP
10. The Hon. James Onyango K'oyoo, MP
11. The Hon. Mohamed I. Elmi, MP - Co-opted Member

ABSENT WITH APOLOGY

1. The Hon. Kimani Ichung'wa, M.P.
2. The Hon. Joseph Lekuton, MP - Co-opted Member
3. The Hon. Ali Wario, MP - Co-opted Member

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services;
Mr. Rana Tiampati - Principal Clerk Assistant, legislative Services;
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 098/2015: INTRODUCTION

The Chairperson called the meeting to order at 11.09am after prayers were said. He welcomed Members present and confirmed the agenda items for consideration as:-

1. Prayers;
2. Confirmation of Minutes of the First Sitting;
3. Matters Arising;
4. **Meeting with Cpl. Benard Odako, Police Officer, Bodyguard assigned to Hon. Ababu Namwamba, MP**
5. Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present.

MIN. NO. 099/2015: CONFIRMATION OF MINUTES

Confirmation of Minutes of the Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth and Fifteenth sitting was deferred to a later date.

MIN. NO.100/2015: MEETING WITH CPL. BENARD ODAKO, POLICE OFFICER, BODYGUARD ASSIGNED TO HON. ABABU NAMWAMBA, MP.

A senior police officer ushered Cpl. Benard Odako, into the meeting room and indicated that he had instructions from the Deputy Inspector-General of Police in-charge of Administration Police to ensure that the officer attended the meeting of Committee of Privileges. Thereupon, the Senior Officer withdrew from the meeting room.

The Clerk administered oath to Mr. Cpl. Benard Odako, Police Officer and bodyguard assigned to the Hon. Ababu Namwamba, MP. Thereupon, the witness informed the Committee, that: -

(i) he was a serving Administration Police Officer and had been one of the two bodyguards assigned to the Hon. Ababu Namwamba, MP, since 2010;

(ii) On 22nd February, 2015, he noticed that the Member was sorrowful, which prompted him to think about recording the Member's conversation with the persons he was meeting that evening for security expediency;

(iii) On February 22nd, 2015 at around 10pm or 10.20 pm at the Fairview Hotel, Nairobi, he saw the Hon. Ababu Namwamba being joined by the Honourables Junet Mohamed and Samuel Arama. The group sat together, about 10 to 15 metres away from him and had a short chat, while seated. At this time, he was holding the mobile telephone of the Hon. Ababu Namwamba, MP as that it was ordinary for him to keep the phone and answer to calls whenever the Member is in a meeting;

(iv) Later, after about 20 minutes, the former Prime Minister Hon. Raila Odinga arrived and the delegation of Hon. Ababu joined him where he was seated. At this time, as they were about to settle down, he activated the recording application of the mobile phone and handled over the phone to the Hon. Ababu Namwamba, without letting him know that he had activated the recording application. The Member placed the phone on the table;

(v) the meeting between the Hon. Ababu and the other three persons took about 15-20 minutes. He added that, even though from where he was standing (about 15 meters away), he could not see the group or hear their conversations, he had sight of all entrances and exits to their location, such that he confirmed that the group was NOT joined by any other person in their "*cubicle*", not even any of the hotel's waiters;

(vi) Later, as they were in the Member's vehicle, he disclosed to him that he had pressed the recording button and therefore took the phone and turned off the recoding. All this time, there was silence and they only started conversing after he had switched it off; asked whether the device could have

recorded the group as they were bidding farewell to each other, he said he could not confirm. Upon follow-up questioning, he withdrew the information that he had switched off the recording while in the car and indicated that, he actually switched off the recording upon the Member handing over back the phone to him at the place where he was standing which was about 10-15 metres away from the place where the Member was sitting with the other persons. He indicated that he had actually switched off the recording as he was walking towards the car;

(vii) About two days later, Hon. Ababu Namwamba, having known that that the conversation was recorded, commended the officer;

(viii) he had not listened to the tape, not even in the media, but he was sure the recording being reported in the public was the one he had made on 22nd February using the Hon. Ababu Namwamba's mobile phone. Later in the meeting, he said that even if he was to listen to the audio recording, he could not confirm whether it related to the recording he made, nor could he discern the voices of the people in it, or confirm what they said;

(ix) That it was not the first time for him to make such recordings, as he had made similar recording before being recruited as a police officer. This was sometime in September 2006 ahead of the 2007 elections when he used his phone to make recording between the Mr. Ababu Namwamba's and his political rivals, with a view to establishing whether the rivals had any ulterior motives against the candidate ahead of the elections;

Asked why he made the recording upon arrival of the former Prime Minister, he indicated that he expected the group to make confessions as the former Prime Minister was a father figure to them.

Asked how he you could confirm that the recording was made by the device he activated, or even that there was any recording anyway, during the particular incident of, February 22, 2015 as he had said that he could not discern the voices in the recording and that he had not listened to it, the officer gave contradicting responses. The Committee resolved to deliberate on the question of admissibility of the Audio Recording at a later date.

MIN. NO. 101/2015: <u>ADJOURNMENT AND DATE OF THE NEXT MEETING</u>

There being no other business, the Chairperson adjourned the meeting at 5.45 p.m. The next meeting will be held on Sunday, March 29, 2015 at 7.00 pm.

Signature..... **Date**.....March 30, 2015.....

(Hon. Moses Cheboi, MP)

MINUTES OF THE SEVENTEENTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON MONDAY, MARCH 30, 2015 IN LAKE ROOM, WINDSOR HOTEL AT 03.00P.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – Chairperson
2. The Hon. Peter Shehe, MP
3. The Hon. Jamleck Kamau, MP
4. The Hon. Kimani Ichung'wa, M.P.
5. The Hon. Dr. James Murgor, M.P
6. The Hon. Simon Ogari, MP
7. The Hon. Zuleikha Juma Hassan, MP
8. The Hon. Joyce Emanikor, MP
9. The Hon. James Onyango K'oyoo, MP
10. The Hon. Joseph Lekuton, MP - Co-opted Member
11. The Hon. Ali Wario, MP - Co-opted Member
12. The Hon. Mohamed I. Elmi, MP - Co-opted Member

ABSENT WITH APOLOGY

1. The Hon. Barchelei Kipruto, M.P.
2. The Hon. Bedzimba Rashid Juma, MP

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services;
Mr. Rana Tiampati - Principal Clerk Assistant, legislative Services;
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 0102/2015: INTRODUCTION

The Chairperson called the meeting to order at 09.15am after prayers were said. He welcomed Members present and confirmed the agenda items for consideration as:-

Prayers;

a) Introduction;
b) Confirmation of Minutes of 9th, 10th, 11th, 12th, 13th, 14th, 15th and 16th Sitting;
c) Matters Arising;
d) **Consideration of the Draft Report on the Inquiry into alleged breach of privilege and or code of Conduct;**
e) Any Other Business; and
f) Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present.

MIN. NO. 0103/2015: CONFIRMATION OF MINUTES

Minutes of the Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth and Sixteenth sitting were confirmed by Members present and thereupon signed by the Chair.

MIN. NO. 0104/2015: MATTERS ARISING

a. **Under MIN. NO.068/2015:**
The minute should clearly capture the evidence as adduced;

b. **Under MIN. NO.074/2015:**
The minute should clearly capture the evidence as adduced;

c. **Under MIN. NO.085/2015:**
The minute should clearly capture the evidence as adduced;

d. **Under MIN. NO.091/2015:**
The minute should clearly capture the evidence as adduced;

MIN. NO.0105/2015: ADMISSIBILITY OF THE AUDIO RECORDING

In considering the admissibility of the recording tabled by Hon. Ababu, the Committee was guided by section 78A of the Evidence Act, Cap. 80 of the Laws of Kenya which provides for the admissibility of electronic and digital evidence as follows—

78A. (1) In any legal proceedings, electronic messages and digital material shall be admissible as evidence.

(2) The court shall not deny admissibility of evidence under subsection (1) **only** *on the ground that it is not in its original form.*

(3) In estimating the weight, if any, to be attached to electronic and digital evidence, under subsection (2), regard shall be had to—

(a) the reliability of the manner in which the electronic and digital evidence was generated, stored or communicated;

(b) the reliability of the manner in which the integrity of the electronic and digital evidence was maintained;

(c) the manner in which the originator of the electronic and digital evidence was identified; and

(d) any other relevant factor.

(4) Electronic and digital evidence generated by a person in the ordinary course of business, or a copy or printout of or an extract from the electronic and digital evidence certified to be correct by a person in the service of such person, is on its mere production in any civil, criminal, administrative or disciplinary proceedings under any law, the rules of a self-regulatory organization or any other law or the common law, admissible in evidence against any person and rebuttable proof of the facts contained in such record, copy, printout or extract.

The Committee noted that the provision allows the admissibility of electronic and digital evidence either in its original or copied form and further that, in refusing to admit such evidence, reasons other than the fact that the evidence is not in its original form must be provided. In light of the above provision, the Committee considered—

(i) ***Whether the accuracy of the recording was proved by the maker through satisfactory evidence***

Drawing from the Communication of the Hon. Speaker of 5th March 2015 on the issue of the standard of proof required in the inquiry to be conducted by the Committee, regard was given to the manner in which the audio recording was authenticated by its maker. Despite Hon. Ababu and the maker of the recording- Cpl. Bernard Odako- providing information on the location where the recording was made, the date on which the recording was made and the approximate time it was made; Cpl. Odako failed to adequately prove the accuracy of the recording to the Committee. In his testimony, Cpl. Odako—

(a) noted that he switched on the recording on Hon. Ababu's cellphone and handed it to Hon. Ababu and switched of the recording after the meeting without listening to the content of the recording. The question of whether the device could and did record the conversation that is alleged to have taken place on 22nd February 2015 was never sufficiently answered.

(b) noted that he could not see the persons claimed to be in the recording from where he was standing. Questions of whether any conversation took place during the recording or who indeed spoke during the course of the meeting are therefore left begging.

(c) noted that he did not utter any words, even to the effect that Hon. Ababu would need his cellphone when he handed it over, and that Hon. Ababu ***was not seated***. In Hon. Ababu's testimony of 24th March 2015, he is on record stating that Cpl. Odako said "*Mheshimiwa, you might need your cellphone*" and placed the cellphone on the table in front of where *he was seated*. The Committee observes that any words uttered by Cpl. Odako would have been captured in the recording, which is not the case;

(d) failed to provide the Committee with a timeline corresponding with the exact length of the recording tabled by Hon. Ababu. The Committee notes that the exact length of the recording tabled by Hon. Ababu is 14.58 minutes, while as per Cpl. Odako's testimony, Hon. Ababu's cellphone, as operated by Cpl. Odako, was recording for an approximate period of sixteen (16) to twenty one (21) minutes.

(ii) ***Whether every possibility of tampering with the recording was ruled out;***

The Committee noted that the maker of the recording, Cpl. Odako, is on record as having never listened to the recording after making it; and only learnt of the usefulness of its contents two to three days after he handed it

over to Hon. Ababu. Cpl. Odako could not verify its contents or the manner in which it was handled after it was made.

The Committee further observed that on 12th March 2015, Hon. Ababu is on record as having stated that the recording he tabled before the Committee is an exact copy of the original. In his testimony, Hon. Ababu proceeded to identify himself and three other persons, and noted a fifth voice on the recording as that of a waitress. Cpl. Odako on his part, is on record as having categorically stated that no other person joined Hon. Ababu, Hon. Arama, Hon. Junet and the former Prime Minister during the sixteen (16) to twenty-one (21) minute period of the meeting.

The Committee observed it could not rule out the possibility that the recording was tampered with to achieve a particular purpose or exclude scrutiny of other persons recorded at the same time and within the same context.

(iii) *Whether the voices of the speakers were identified by the maker of the recording*

The Committee observed that the maker of the recording, Cpl. Bernard Odako, could not identify the voices in the recording. He indicated that he was not "a voice expert" to discern the voices. In the event, Cpl. Odako was not in a position to substantively confirm the sequence in which the voices spoke and the exact words that the voices uttered in the recording.

(iv) *Whether the statements in the recording are relevant to the inquiry and not hearsay*

The Committee observed that the statements contained in the recording were relevant to its inquiry in so far as they contained allegations that disclosed a possible breach of privilege and/or the code of conduct of the National Assembly. However, the Committee further noted that only the speaker making the allegations against named Members of the House in the recording is in a position to substantiate the allegations. The Committee may only put Hon. Members to task on allegations that have been formally brought before it and adequately substantiated as per the Standing Orders of the National Assembly.

The voice in the recording that made the allegations against Hon. Members and owned up to the receipt of a compromise was not adequately identified by the maker of the recording. Further, of all the witnesses who appeared before the Committee to give evidence, none reiterated the allegations made by the voice or sought to substantiate the allegations.

In light of the above observations, the Committee concluded that the audio recording tabled by the Hon. Ababu was inadmissible in evidence before it.

MIN. NO.0106/2015: CONSIDERATION OF THE DRAFT REPORT

The Committee considered the Draft Report as follow:-

1. **PART IV – PARLIAMENTARY PRIVILEGE:COMPARATIVE LITERATURE**

   The Committee noted the following, that:-

   a) It should recommend the signing of the existing code of conduct by Members of Parliament;
   b) The National Assembly should strive to create awareness on the Code of Conduct obtaining for Members among the Membership of the National Assembly;

   After deliberations, the Committee agreed to PART IV.

2. **PART III – INQUIRY INTO PRIVILEGES: RELEVANT LAWS**

   After deliberations, the Committee agreed to PART III;

3. **PART V – THE INQUIRY:TERMS OF REFERENCE, WITNESSES AND PRIMARY DOCUMENT**

   After deliberations, the Committee agreed to PART V;

4. **PART VI – EVIDENCE RECEIVED**

   The Committee noted that the Members who accompanied the Hon. Ababu Namwamba be indicated;

   After deliberations, the Committee agreed to PART VI;

MIN. NO. 107/2015: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1.35 p.m. The next meeting will be held on Monday, March 30, 2015 at 3.00 pm.

Signature..... **Date**.....March 30, 2015.....

(Hon. Moses Cheboi, MP)

MINUTES OF THE EIGHTEENTH SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON MONDAY, MARCH 30, 2015 IN LAKE ROOM, WINDSOR HOTEL AT 3.00P.M.

PRESENT:

1. The Hon. Moses Cheboi, MP – Chairperson
2. The Hon. Peter Shehe, MP
3. The Hon. Jamleck Kamau, MP
4. The Hon. Kimani Ichung'wa, M.P.
5. The Hon. Dr. James Murgor, M.P
6. The Hon. Simon Ogari, MP
7. The Hon. Zuleikha Juma Hassan, MP
8. The Hon. Joyce Emanikor, MP
9. The Hon. James Onyango K'oyoo, MP
10. The Hon. Joseph Lekuton, MP - Co-opted Member
11. The Hon. Ali Wario, MP - Co-opted Member
12. The Hon. Mohamed I. Elmi, MP - Co-opted Member
13. The Hon. Barchelei Kipruto, M.P.

ABSENT WITH APOLOGY:

The Hon. Bedzimba Rashid Juma, MP

IN ATTENDANCE - THE NATIONAL ASSEMBLY

Mr. Samuel Njoroge - Deputy Director, Legislative & Procedural Services;
Mr. Rana Tiampati - Principal Clerk Assistant, legislative Services;
Mr. Ronald Walala - Legal Counsel, Legal Services.

MIN. NO. 0108/2015: INTRODUCTION

The Chairperson called the meeting to order at 3.06pm after prayers were said. He welcomed Members present and confirmed the agenda items for consideration as:-

Prayers;

1. Introduction;
2. Confirmation of Minutes of the 17th Sitting;
3. Matters Arising;
4. **Consideration of the Draft Report the Committee of Privileges on the Inquiry into alleged breach of privilege and or code of Conduct;**
5. Any Other Business;
6. Adjournment and Date of the next meeting.

The proposed agenda was adopted by the Members present.

MIN. NO. 0109/2015: CONFIRMATION OF MINUTES

Minutes of the Seventeenth sitting were confirmed by Members present and thereupon signed by the Chair.

MIN. NO.0110/2015: CONSIDERATION OF THE DRAFT REPORT

The Committee considered the Draft Report as follow:-

1. **PART VIII – ANALYSIS OF EVIDENCE, OBSERVATION AND FINDINGS**

   After deliberations, the Committee agreed to PART VIII;

2. **PART IX - GENERAL OBSERVATIONS**

   After deliberations, the Committee agreed to PART IX;

3. **PART X – RECOMMENDATION**

After deliberations, the Committee resolved to prescribe sanctions against the respective offences as follows:-

a. **PRESCRIPTION OF PUNISHMENT**

The Committee pursuant to the provisions of section 10 of the National Assembly (Powers and Privileges) Act, Cap 6, Laws of Kenya, the Committee prescribed the following sanctions against the respective offences-

(i) failure to make substantiation within the period required under the Standing Orders- reprimand at the Bar by the Speaker and offer apology to the House and a repeat offender: suspension for not more than 7 days, Reprimand and demand for apology;
(ii) discussing Committee proceedings in the Media- Demand for apology at the Bar of House and that a repeat offender: suspension for not more than 4 days and demand for apology;
(iii) a combination of both failure to make substantiation within the period required under the Standing Orders and, discussing Committee proceedings in the Media- Demand for apology in the House- Reprimand and Apology;
(iv) failure to apologise under (iii) : suspension for 4 days

b. **RECOMMENDATIONS** - The Committee considered the following recommendation:-

1. Reprimand for failure to make substantiation within the period required under the Standing Orders - THAT, the House resolves to demand apology at the Bar from the following Members, who having made claims resulting to improper motive against their colleagues, in the meeting of the Public Accounts Committee of 26th February, 2015, failed to substantiate their allegations within the period required under Standing Order 91-
   (i) The Hon. Ababu Namwamba, MP;

(ii) The Hon. Ahmed Abass, MP
(iii) The Hon. James Bett, MP
(iv) The Hon. Omondi Anyanga, MP.

2. THAT, the House resolves that Speaker reprimands, at the Bar, the Members mentioned in paragraph (1)
3. Discussing Committee proceedings in the Media - THAT, the House resolves to demand apology at the Bar, from the Honourables Ababu Namwamba, Omondi Anyanga, and Samuel Arama, for their contemptuous conduct of openly discussing matters related to the Inquiry into claims of breach of privilege and/or code of conduct of Members of Parliament by the Committee of Privileges, even after the Speaker cautioned the House from doing so on 11th March, 2015.
4. Failure to submit - THAT, the House resolves that any Member who fails to submit to any of the resolutions of the House under paragraphs (1) to (3), be suspended from the House for a period of four days, including the day of suspension.
5. Dissolution of the Public Accounts Committee - THAT, the House resolves to rescind its resolution of 18th October, 2013 on the appointment of Members to the Public Accounts Committee and requires the Committee on Selection to nominate, within seven days, for consideration by the House, another list of membership of the Public Accounts Committee.
6. Criteria for nomination - THAT, the House resolves that, in nominating the list under paragraph (5), the Committee on selection shall not include-
   (i) the Members of the Committee of Privileges, including the co-opted Members, who served in the Committee during the Inquiry on the claims of breach of privilege on the membership of PAC should not be eligible for nomination for the remainder of the Session, so as not to benefit from their recommendation to dissolve the Public Accounts Committee; and,
   (ii) the following Members of the Public Accounts Committee who made allegations against others-

      (a) The Hon. Ababu Namwamba, MP;
      (b) The Hon. Ahmed Abass, MP
      (c) The Hon. James Bett, MP
      (d) The Hon. Omondi Anyanga, MP.
      (e) The Hon. Cecily Mbarire, MP; and,

7. THAT, the House resolves that the application of paragraph 6 applies only during the period of the current Third Session and without prejudice to the appointment of the named Members to other Committees.
8. Preservation of ongoing work - THAT, and in order to preserve the ongoing work of the Committee, the House orders that the Committee on Selection nominates at least six of the previous Members of the Public Accounts Committee (from either side of the Majority and Minority

coalitions) and that papers, including draft reports, minutes, *Hansard* record and briefs belonging to the previous Public Accounts Committee are safeguarded for handing-over to the reconstituted Committee.

9. Secretariat of the Public Accounts Committee - THAT, the Clerk of the National Assembly ensures that the Secretariat of the Public Accounts Committee is headed by an officer not below the rank of a Principal Clerk Assistant.
10. Further Investigations by other Agencies - Since the Committee of Privileges did not inquire into matters outside breach of Privilege, the House resolves to refer the claims of bribery on the Membership of the Public Accounts Committee relating to the PAC's examination of Confidential Expenditure under the Office of the President.
11. Amendment of CAP 6 - THAT, the House urgently commences the process of amending the National Assembly (Powers and Privileges) Act, Cap 6, to-
    (i) expand the role of the Committee of Privileges to include continuous examination of standards and ethics, including examination of claims of financial nature on Members of Parliament within and outside the precincts of Parliament, relating to the work of the MPs in Parliament;
    (ii) establish the office of the Administrator of Parliamentary Standards within Parliament, who will be appointed for a fixed term, with the approval of the Houses of Parliament, to be advising the Houses and their respective Committees of Privileges on matters of breach of privilege, the code of conduct of Members of Parliament and cases of breach of standards, ethics and financial impropriety; and,
    (iii) require Members of Parliament to register their financial interests with the Administrator of Parliamentary Standards who shall be the custodian of the register of standards of Members of Parliament.

12. Amendment of the Standing Orders - THAT, the House resolves that, the Procedure and Rules Committee, immediately commences the process of considering amendments to the Standing Orders with a view to submitting a report to this House, within 14 days to ensure that PAC is among the Sessional Committees and providing expanded scope of application of Standing Order No. 91 and 107 to attach additional punitive measures on failure to substantiate.

After deliberations, the Committee agreed to the recommendations.

REPORT ON MINORITY VIEW

Dissenting View

The Hon. Zuleikha J. Hassan, MP, recorded a **dissenting view** on the recommendation to dissolve the Public Accounts Committee. She was of the **opinion** that the House ought to maintain the membership of the Public Accounts Committee as its dissolution may be construed as vilifying the membership on the basis of unsubstantiated allegations.

Thereupon, the Committee agreed to the resolutions and PART X of the draft report.

4. **PART I – PREFACE**

   After deliberations, the Committee agreed to PART I.

5. **PART XI – LIST OF ANNEXURES VOL I, II**

   After deliberations, the Committee agreed to PART XI.

6. **PART II – CONSIDERATION AND ADOPTION OF THE REPORT BY THE COMMITTEE**

   After deliberations, the Committee agreed to PART II following signing of the report by the Members.

The Committee adopted the report and mandated the Chair to table the report on Tuesday, March 31, 2015.

MIN. NO. 111/2015: <u>ADJOURNMENT AND DATE OF THE NEXT MEETING</u>

There being no other business, the Chairperson adjourned the meeting *sine die.*

Signature..... **Date**March 30, 2015.....

(Hon. Moses Cheboi, MP)

APPENDIX II

SPEAKERS COMMUNICATIONS OF 5TH MARCH, AND 11TH MARCH, 2015

REPUBLIC OF KENYA

ELEVENTH PARLIAMENT- (THIRD SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

ON THE ALLEGED BREACH OF PRIVILEDGE BY MEMBERS OF THE PUBLIC ACCOUNTS COMMITTEE

Honourable Members,

You will recall that yesterday during the afternoon sitting, the Leader of the Majority Party the Hon. Aden Duale, MP sought the guidance of the Chair on the recent claims of malpractices within the Public Accounts Committee as a whole including its chairperson. In particular, the Leader of the Majority Party sought directions on the following issues-

(i) *Whether the claims made by Members of the Public Accounts Committee against the Chair and against each other constitute a breach of the privileges and/ or code of conduct of Members of Parliament ;and*

(ii) *Whether, following the allegations, the Public Accounts Committee would be in order to continue discharging its mandate of offering oversight to other Government institutions and agencies, on behalf of the House.*

Several Members including, the Deputy Speaker, Honourables Midiwo, Manje, Wandayi, Yusuf, Osele, Ngeno, Abdikadir, Baiya and the Chairperson of the Public Accounts Committee subsequently contributed to the debate, raising issues peripheral to those raised by the Leader of the Majority Party. Amongst the issues raised were-

(i) Whether criminal culpability accrues to a group of persons or to an individual person and whether it is prudent to condemn a whole membership, either of a Committee or of the House, merely on account of an allegation that is directed or is connected to a particular individual.

(ii) Whether the House should entertain allegations against its Members without substantiation by the person alleging as required under Standing Order 91;

(iii) Whether a matter that has been investigated in a Committee and an outcome delivered in the Committee can be revisited by the plenary of the House or by another Committee of the House;

(iv) Whether allegations of breach of privilege or the ethics by Members of the House should be dealt with by their respective political parties or by the House.

Honourable Members, before I make my decision known to the House, allow me to revisit the question of the place of the Public Accounts Committee as I had done sometime last year. There has been growing interest in parliamentary accountability and oversight as part of the wider interest in stronger political institutions and structures.

The popularity of 'parliamentary public accounts committees' is regarded as having originated in the nineteenth century Britain with the establishment of 'Select Committee of Public Account' in 1861 which was a precursor to the earlier notably sporadic committees and commissions of public accounts. This trend has developed in most Parliaments with many legislatures having equivalent of Public Accounts Committees to scrutinize government funds. In this regard, 'watchdog' committees like the parliamentary public accounts committees, have been established to deal with these matters. In our case, the Public Accounts Committee (PAC) and the Public Investments Committee (PIC) have been established by Standing Orders 205 and 206 respectively.

The Committee draws it power from the provisions of the Constitution of Kenya in particular Articles 95 and 229 which give the National Assembly powers to appropriate funds for expenditure by the National Government and State Organs through approval of the Budget and subsequently offer oversight over the national revenue and its expenditure. On the other hand, the Auditor General is required to audit and report on accounts of the National Government and State organs among others, and submit such reports to Parliament.

Honourable Members, The Auditor General thus has a direct responsibility to Parliament and the Committee whose work is made more credible by the support of the Auditor General. It follows therefore that the work and the reports of the

Public Accounts Committee must of essence maintain the values of accountability, integrity and reliability, and latitude of independence from any person or authority.

Erskine May, a leading authority in parliamentary practice notes that the oversight role of PACs is concerned with whether policy is carried out efficiently, effectively and economically rather than with the merits of government policy. **The primary role of these committees therefore is the safeguarding of public interest.** The stature of PACs has traditionally been placed above other Committees and they are seen as the apex for financial oversight and scrutiny. The Committees, most of which are usually headed by Members of the Opposition or Minority Parties in many jurisdictions, are seen as the embodiment of the overall oversight image of Parliament.

Honourable Members, That brief now brings me to the question of whether the Speaker or the House has jurisdiction on a matter that has been canvassed or indeed settled in a Committee.

Faced with a similar question, Speaker Statham of the New Zealand House of Representatives ruled in 1921 that, "*The House has no cognisance of anything taking part before a Committee, unless it is reported by the Committee through its Chairperson, or the matter relates to a question of privilege*". Later in 1979, Speaker Harrison of the same House, upholding the ruling of his predecessor, observed that, *"The Speaker has no jurisdiction or authority whatsoever to get involved in proceedings of a select committee, unless approached by the Chairperson following a resolution of the Committee calling the Speaker to adjudicate on any matter, or if the matter is one of the Privilege of the House or Personal Privilege of a Member of that Committee"*

Honourable Members, You will recall that the Leader of the Majority Party indicated that his submission was a question of Privilege and had posed the question whether the House should bury its head in the sand as if nothing had happened.

The Question therefore for me to determine is whether the matters raised yesterday afternoon constitute Privilege. *Mason's Manual of Legislative Procedure, 2010 Edition, Section 220,* defines a Question of Privilege as one that relates to the body or to its members in such a manner as to affect proper functioning of the body. The Manual goes on to note that *"It is necessary that these questions be under* <u>*immediate*</u> *control of the body. They relate to the rights and privileges of the body or to any of its members in their official capacity, or to the comfort and convenience of the body or its members in the performance of their official duties"* . The Manual further indicates on *Sec.222* that

Questions of Privilege take precedence over all other questions except a motion of adjournment or an objection to the quorum of the House. I put emphasis on the words "immediate" and "precedence."

According to the New Zealand House of Representatives Parliamentary Practice, " A Member may raise a matter of Privilege at any time during a Sitting... and it must be in connection with something affecting the House or its Members in their capacity as such"(Page 744). In addition, Section 100 of the Rules of the House of the Philippines House of Representatives provides that questions of privilege are those affecting the duties, conduct, rights, privileges, dignity, integrity or reputation of the House or its Members, individually or collectively.

Honourable Members, The allegations and counter-allegations of bribery or inducements made by the Members of the Public Accounts Committee against themselves including against the Chairperson are matters of public notoriety. You will all agree with me a matter of this magnitude cannot be swept under the carpet on the basis that the Committee had dealt with it. The public who bestowed you with the honour of representing them in this August House deserves answers.

From the foregoing, I find that the matters raised by Hon. Duale and other Members who spoke after him indeed relate to Privilege of the House and are therefore subject to the consideration and decision of the House as what goes on in the Committees affect the integrity and reputation of the House and its Members, individually or collectively and cannot be wished away.

The next question that arise is, now that these are matters of Privilege, what then do we do?

Honourable Members, To answer this question, allow me now to interrogate the relevant provisions of the Constitution of Kenya, the Leadership and Integrity Act, 2012, the Public Officer and Ethics Act, 2003 and the National Assembly (Powers and Privileges) Act (Cap 6 Laws of Kenya). The allegations of compromises, prejudices, deceit or corruption against the members of the Public Accounts Committee relate to financial probity of State Officers which is governed by Article 76 of the Constitution. In particular, I draw your attention to Article 76(2)(b) which provides "*that a State Officer shall not seek or accept a personal loan or benefit in circumstances that compromise the integrity of the State Officer*". This provision is replicated under section 12 of the Leadership and Integrity Act, 2012. A similar provision is provided for under section 11 of the Public Officer Ethics Act, 2003.

Section 6 of the Leadership and Integrity Act further prescribes a general Code of Conduct for State Officers. It provides as follows-

> *(1) This Part prescribes a general Leadership and Integrity Code for State officers.*
>
> *(2) The provisions of Chapter Six of the Constitution shall form part of this Code.*
>
> *(3) Unless otherwise provided in this Act, the provisions of the Public Officer Ethics Act shall form part of this Code.*
>
> *(4) If any provision of this Act is in conflict with the Public Officer Ethics Act, 2003 this Act shall prevail.*

Honourable Members.

Having made those observations, let me now interrogate the relevant legal provisions governing the consequences of any alleged breach of privilege or code of conduct of Members of Parliament. Firstly, Article 75(2)(a) of the Constitution provides that *"where a person contravenes Article 76 of the Constitution he or she shall be subject to the applicable disciplinary procedure for the relevant office"*. Secondly, section 3(10) of the Public Officer Ethics Act, 2003 provides that-

> *"..(10) The responsible Commission for a* **public officer** *for which no responsible Commission is otherwise specified under this section is the commission, committee or other body prescribed by regulation*

Thirdly, Section 41(2) of the Leadership and Integrity Act, 2013 provides as follows-

(2) Where an allegation of breach of the Code has been made against a State officer in respect of whom the Constitution or any other law provides the procedure for removal or dismissal, the question of removal or dismissal shall be determined in accordance with the Constitution or that other law.

Lastly, section 10(4) of the National Assembly (Powers and Privileges) Act (Cap 6 Laws of Kenya) provides as follows-

> *(4) The Committee of Privileges shall, either of its own motion or as a result of a complaint made by any person, inquire into any alleged breach by any member of the Assembly of the Code of Conduct issued under section 9, or into any conduct of any member of the Assembly within the precincts of the Assembly (other than the Chamber) which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the member thereof, or to be contrary to the best interests of the Assembly or the members thereof. (5) The Committee of Privileges shall, after such*

inquiry as is referred to in subsection (4), report its findings to the Assembly together with such recommendations as it thinks appropriate.

Honourable Members, Though our Rules of procedure are silent on the manner of disposing questions of privilege, comparative jurisdiction from the Indian Lok Sabha for instance provide, under rule 225, that the House may consider a question of privilege or refer it to a Committee of Privileges and the Speaker may issue such directions as may be necessary for regulating the procedure in connection with all matters connected with the consideration of the question of privilege either in the Committee of Privileges or in the House. Erskine May notes that the acceptance by a Member of either House of a bribe to influence his conduct in connection with any matter submitted or intended to be submitted before the House is contempt and an abuse of privilege and is a gross affront to the dignity of the House and an attempt to pervert the parliamentary process implicit in Members' free discharge of their duties to the electorate.

It is therefore my considered opinion that a general reading of the aforementioned provisions and practice from other Parliamentary jurisdictions suggest that it is within the purview of the Committee of Privileges to inquire into the alleged conduct of any Member who commits a breach of privilege or code of conduct. May I also hasten to add that issues of conduct of Members within the precincts of Parliament is solely the mandate of the Committee of Privileges and other outside investigative bodies may only deal with the matters if the Committee of Privileges recommends so and the House approves the recommendations.

Honourable Members, Further, a study of the practice in the Commonwealth of Canada reveals the following-

(a) A House has authority to require the attendance of any of its Members, whether they are Ministers or not. It should be borne in mind that the House has always claimed a right to exercise a substantial degree of control over its own Members when the matter in any way relates to the privileges of the House, including in respect of attendance upon the service of the House, attendance before another House, and even conflicts between Members.

(b) When a Member has been ordered to appear before the House or a committee, the Member is under the same obligations to answer questions before the Committee just like a member of the public. Further, where a Member objects to a question in a committee, the

objection must be raised and determined by the committee, and not by the House.

Arising from the above, and in order to protect the integrity of the National Assembly of the Republic of Kenya as whole and to give a fair hearing to Members of the Public Accounts Committee, I now direct as follows-

(i) **THAT**, the Committee of Privileges enquires into the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit, and submit a report to this House in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya) within twenty one days from the date of this communication. The House will be expected to deliberate on the report within three days thereafter. The Committee is at liberty to interrogate the submissions made by the individual Members in the Committee on February 26, 2015 which captured in the Hansard of the House including any related correspondences by any Member of the Committee to the Clerk or the Speaker. May I also remind the Committee that, given the seriousness of an allegation of bribery, the standard of proof required to substantiate the claims ought to be very high;

(ii) **THAT**, invoking the provisions of Standing Order 1, the operations of the Public Accounts Committee are hereby suspended until the expiry of the period I have prescribed or such earlier time the House shall make a resolution following an earlier submission of the Report by the Committee of Privileges. Let me make it clear that, this direction does not amount to disbanding the Committee nor discharging any Member from the Committee;

(iii) **THAT**, the Hon. Moses Cheboi, the First Chairperson of Committees is hereby appointed to chair the Committee during the period of this Inquiry on behalf of the Speaker. The Committee of Privilege is at liberty to co-opt not more than three other sitting Members who have served for more than one term to assist them in the Inquiry. Such co-opted Members will however not be allowed to vote in the Committee, nor will they be counted for purposes of quorum. **The Committee should hold its first meeting on Monday, the 9th day of March, 2015 at 2.30 pm.**

(iv) **THAT**, the Committee of Privileges develops, for consideration by this House, a code of Conduct for Members of Parliament as required under

Section 37 of the Leadership and Integrity Act, 2012. This should be submitted on or before the end of August, this year.

Honourable Members, Having said that, Let me make it clear that, by referring this matter to the Committee of privileges. It is not to put the Public Accounts Committee under trial, but it is to allow the relevant body of this House as required by the law and practice of the House to attend to the allegations of breach of privilege and/or code of conduct so as to assist the House to make a decision. Similarly, the Chairperson of the Public Accounts Committee asked me confirm whether anybody is at liberty to divulge information shared with the Speaker in confidence. Certainly, an attempt to do so would be out of order. However, I can confirm that the submission the Chairperson was referring to was formally made to the Speaker in writing and seeking guidance. It was neither personal nor peculiar. Indeed, the matters contained in that letter were canvassed during the Committee's Meeting of February 26, 2015. The letter is passed over to form part of the Committee inquiry.

Honourable Members, As I conclude, I wish to call upon this House to search their souls and conscience as to whether some of our actions befit the status of Members of this House. One famous British politician, Winston Churchill stated that and I quote:

> "If you have integrity, nothing else matters. If you don't have integrity, nothing else matters."

May I also paraphrase a saying of **Confucius**, one of the greatest philosophers, "That, the strength of a Nation derives from the integrity of Parliament" . In our case, this strength is founded in Article 94(2) of the Constitution of Kenya, which provides that Parliament manifests the diversity of the nation, represents the will of the people and exercises their sovereignty. We therefore must have moral authority to be the peoples' representatives and to perform the mandate they have bestowed upon us.

I Thank you!

THE HON. JUSTIN B. N. MUTURI, EGH,

SPEAKER OF THE NATIONAL ASSEMBLY

March 5, 2014

REPUBLIC OF KENYA

ELEVENTH PARLIAMENT – THIRD SESSION

THE NATIONAL ASSEMBLY

COMMUNICATION FROM THE CHAIR

ON COMMENTING AND PREMATURE RELEASE OF THE PROCEEDINGS OF THE COMMITTEE

Honourable Members,

As you are aware, on **March 5, 2015**, I directed that the Committee of Privileges enquires into the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit, and submit a report to this House.

Honourable Members,

It is indeed true that the Committee has commenced the inquiry, however; my attention has been drawn by the Committee of Privileges on the continued reporting and premature disclosure of the Committee proceedings and Members making comments contrary to provisions of the House rules. Standing Order No. 86, provides that:-

> ***86.*** *No Member shall refer to the substance of the proceedings of a Select Committee before the Committee has made its report to the House.*

Honourable Members,

Arising from the above, I wish to caution Members to refrain from commenting and/or disclosing matters before the Committee until such a time when the Committee has tabled its report in the House. Any member commenting on matters before the Committee or making disparaging remarks against their fellow Members in whatever forum, in breach of the Standing Orders will be held personally responsible and will face the full wrath of the House. I urge members with any information relevant to the inquiry should either present it before the Committee or to any government investigative agency. I wish to advise that some of these comments/

remarks amount to libel and given that they are being peddled away from the Committee sitting or in the Chamber are therefore not privileged. Further, pursuant to Standing Orders 198 and 252, I have also granted leave to the Committee to conduct its proceedings in camera, but may brief the media on the progress of the inquiry without going into the substance of the proceedings.

I thank you!

THE HON. JUSTIN B.N. MUTURI, EGH, MP

SPEAKER OF THE NATIONAL ASSEMBLY

Wednesday, March 11, 2015

APPENDIX III

PUBLIC INVITATION FOR MEMORANDUM

REPUBLIC OF KENYA

PARLIAMENT

THE NATIONAL ASSEMBLY

IN THE MATTER OF INQUIRY INTO CLAIMS OF BREACH OF PRIVILEGES AND/OR CODE OF CONDUCT BY THE MEMBERSHIP OF THE PUBLIC ACCOUNTS COMMITTEE

INVITATION FOR MEMORANDA

Following a Communication by the Speaker of the National Assembly dated 5th March 2015 directing the Committee of Privileges to inquire into matters of alleged breach of privileges and/or the code of conduct by the membership of the Public Accounts Committee, the Committee of Privileges hereby invites any member of the public with relevant information on the subject to submit memoranda to the Clerk of the National Assembly for onward transmission to the Committee. The Memoranda should be hand delivered to the Clerk's Office, First Floor, Main Parliament Buildings on or before Friday, March 14, 2015 during working hours, and a copy may be emailed to: clerk@parliament.go.ke

A person submitting such memoranda should clearly indicate his or her name, National Identity Card Number and contacts and **be willing to attend before the Committee to provide oral testimony** as from 17th March 2015. Pursuant to the Article 118 (2) of Constitution and Standing Orders 198 (2) and 252 of the National Assembly Standing Orders, the Speaker of the National Assembly has granted the Committee leave to conduct its proceedings *in camera.*

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

March 9, 2015

REPUBLIC OF KENYA

KENYA NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT

In the Matter of consideration by the National Assembly of the Constitution of Kenya (Amendment) Bill, 2015 and Constitution of Kenya (Amendment) (No.2) Bill, 2015

Article 118(1)(b) of the Constitution provides that "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees." Standing Order 127(3) states that "the Departmental Committee to which a Bill is committed shall facilitate public participation and shall take into account views and recommendations of the public when the Committee makes its report to the House."

SUBMISSION OF MEMORANDA

The Constitution of Kenya (Amendment) Bill, 2015 and Constitution of Kenya (Amendment) (No.2) Bill, 2015 have undergone First Reading as stipulated in the standing Orders of the House. The Bills, having been read for the First time, stood committed to the Departmental Committee on Justice and Legal Affairs for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) and Standing Order 127(3), the Committee invites interested members of the Public to submit any representations they may have on The Constitution of Kenya(Amendment) Bill, 2015 and The Constitution of Kenya (Amendment) (No.2) Bill. The representations may be forwarded to the **Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi**; hand-delivered to the **Office of the Clerk, Main Parliament Buildings, Nairobi**; or emailed to **clerk@parliament.go.ke**; to be received **on or before Monday, March 16th, 2015 at 5:00pm.**

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

PARLIAMENT

THE NATIONAL ASSEMBLY

IN THE MATTER OF INQUIRY INTO CLAIMS OF BREACH OF PRIVILEGES AND/OR CODE OF CONDUCT BY THE MEMBERSHIP OF THE PUBLIC ACCOUNTS COMMITTEE

INVITATION FOR MEMORANDA

Following a Communication by the Speaker of the National Assembly dated 5th March 2015 directing the Committee of Privileges to inquire into matters of alleged breach of privileges and/or the code of conduct by the membership of the Public Accounts Committee, the Committee of Privileges hereby invites any member of the public with relevant information on the subject to submit memoranda to the Clerk of the National Assembly for onward transmission to the Committee. The Memoranda should be hand delivered to the Clerk's Office, First Floor, Main Parliament Buildings on or before Friday, March 14, 2015 during working hours, and a copy may be emailed to: **clerk@parliament.go.ke**

A person submitting such memoranda should clearly indicate his or her name, National Identity Card Number and contacts and **be willing to attend before the Committee to provide oral testimony** as from 17th March 2015. Pursuant to the Article 118 (2) of Constitution and Standing Orders 198 (2) and 252 of the National Assembly Standing Orders, the Speaker of the National Assembly has granted the Committee leave to conduct its proceedings *in camera*.

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

March 9, 2015

APPENDIX IV

THE HON. ABABU NAMWAMBA'S LETTERS

REPUBLIC OF KENYA
PARLIAMENT

Hon. Ababu Namwamba, EGH., MP
CHAIRMAN, Public Accounts Committee (PAC)
Kenya National Audit Commissioner

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Secretary-General, East African Association of Public Accounts Committees (EAAPAC)

The Speaker
Kenya National Assembly
Parliament Buildings
Nairobi

Wednesday, 25th February, 2015

Mr. Speaker,

RE: INTEGRITY AND ETHICAL ISSUES IN PUBLIC ACCOUNTS COMMITTEE (PAC)

On Wednesday, 18th February 2015, in your chambers, I briefed you at length on the happenings in the Public Accounts Committee (PAC), which have pretty much crippled operations of this key Committee. Among the measures you and I agreed on was that the Ethics and Anti-Corruption Commission (EACC) be invited to investigate allegations of impropriety attributed to some members of the Committee. You subsequently attended a meeting of the Committee that same day, where a section of the members vehemently opposed my motion to call in the EACC.

In view of the very loose and manifestly speculative dimension this matter has since taken, am obliged to put on record the gist of the issues discussed with you at the said 18th February meeting, together with further details that have since emerged.

From the outset, let me reiterate my already stated view that the issues here are weighty and deserve substantive attention; but the said issues now unfortunately run the risk of being clouded by partisan politics and self serving pontificating. The issues primarily revolve around three investigations by the Committee, namely:

Human Rights Academe (Washington College of Law) Fulbrighter (HHFP); LLB (Hons) (Nrb); Dip Law (KSL); Young Global Leader (World Economic Forum
... Golden Heart (EGH)

1. Confidential Expenditure under the 2012/13 annual audited accounts of government;

2. Inquiry into diverse transactions by the Judiciary; and

3. Inquiry into procurement of five sets of electoral equipment by the IEBC in the run up to the 2013 General Elections.

Let me enumerate here four key issues emanating from these three investigations that have come to my knowledge, and which touch on both ethics and integrity of the Committee:

1. FAILED CONSPIRACY TO SAVE MR. MUTEA IRINGO ON KSHS 2.9 BILLION "CONFIDENTIAL" EXPENDITURE

I have reliably gathered that even as a majority of us in the Committee worked overtime to clear the 3-year backlog of audited accounts, some members of the Committee were busy engaging persons under investigation with the motive of receiving favours to improperly influence findings of the Committee.

I have it on record that Defence PS, Mr. Mutea Iringo, met four members of the Committee at Silver Springs Hotel for this purpose. They were Hon Omondi Anyanga, Hon James Bett, Hon Abbas Ahmed and Hon Samuel Arama. At the meeting, it was agreed that Mr. Iringo would provide money and facilitate business opportunities at the Department of Defence (DoD). Kshs 1.5 million was collected from Mr. Iringo by Hon Anyanga, who shared with the named members, including Hon Kareke Mbiuki and Hon Cecily Mbarire. I was to be kept in the dark, because I am "not flexible".

The assignment for these members was to ensure that anything adverse to Mr. Iringo would be expunged from the Committee's final report. This, however, was not achieved. Mr. Iringo is reportedly upset that he paid for a service not rendered, a fact that has left the involved members quite shaken, and upset with me for firmly protecting the integrity of the report, which returned a damning verdict on the PSs in office when the questionable Kshs 2.9 billion expenditure was undertaken.

A recorded confession and phone records of the named members easily and unequivocally confirm the liaison between Mr. Iringo and the named members. The findings and recommendations in the final report tabled in the House in December, 2014 by myself on behalf of the Committee confirm that this scheme failed.

2. REPORTED BRIBERY ALLEGATIONS IN RESPECT OF THE JUDICIARY INQUIRY

At a sitting of the Committee held on Tuesday, February 17th, 2014, the Vice-Chair, Hon Cecily Mbarire tabled the February edition of the Nairobi Law Monthly (NLM), which had published allegations of bribery. The story, on page 17 of the magazine, reported that bribes linked to the former Judiciary Chief Registrar, Mrs. Gladys Shollei had been conveyed to some members of the Committee through "*a vocal female MP from Eastern…known for corrupt dealings*". The last tranche of the bribe loot was Kshs 4 million collected by this member to be shared with others.

Hon Mbarire submitted that this inference pointed to her. She further claimed that she had reliable information that this story had been leaked by myself to Mr. Ahmednasir Abdullahi, the NLM publisher. After defending myself against this allegation, Hon Mbarire withdrew her accusation. But the serious bribery allegations published in the respected Nairobi Law Monthly remains on the Committee record.

Curiously, my motion to invite the publisher of the Nairobi Law Monthly to shed more light on this matter before the Committee was strongly opposed by Hon Mbarire. Tellingly, in her opposition Hon Mbarire was stridently supported by Hon Anyanga. Hon Abbas, Hon Mbiuki and Hon Bett. How this initial allegation against Hon Mbarire swiftly mutated to a full-blown accusation of impropriety against myself was the masterstroke in the grand conspiracy to save Hon Mbarire from published allegations, by casually dropping false accusations against me in a cynical manner that grossly violated Standing Orders of the House.

This matter is alive and cannot be wished away. Whatever political games are played, we must get to the root of the matter.

3. ATTEMPT TO PROCURE IMPROPER FAVOURS FROM A SUBJECT OF INQUIRY IN HYDERABAD, INDIA

In December, 2014, I led a delegation of five (5) members of the Committee and two clerks to India on the final leg of our preliminary inquiry into the five IEBC transactions. The members, besides myself, were Hon John Sakwa Bunyasi, Hon Jessica Mbalu, Hon Kyengo Katatha Maweu, Hon Omondi Anyanga and Hon Gonzi Rai. Logistics for our stay in New Delhi were made by the Kenyan High Commission. THOMAS BETT

When we transferred to Hyderabad, we were received by officials of 4G Identity Solutions, the Indian firm at the heart of our inquiry. As leader of delegation, it came to me as a

shattering shock when Hon Anyanga demanded that the delegation accepts favours from 4G Identity Solutions, specifically payment of hotel bills, meals and local travel. I flatly rejected this on ethical grounds, and got the hotel to cancel a bills payment arrangement they had already made with 4G. This did not go down well. Hon Omondi Anyanga was particularly upset with me for rejecting what he described as the "*common practice everywhere we travel*". Hon John Sakwa Bunyasi, other honest members of the delegation, 4G Identity Solutions, and TRIDENT Hotel, Hyderabad can all corroborate this information.

To be fair, the rest of the delegation accepted my verdict, except Hon Anyanga. He has never tired to complain about this incident. As recently as two days ago, Hon Anyanga told me this "*rigid principles*" is one of the reasons some members have a problem with me. This "rigid" narrative of Hon Anyanga is indeed consistent with subsequent evidence that has emerged as this saga has unfolded. In recorded evidence in respect of the confidential expenditure, a member clearly says the bribery schemers could not involve me because I was too inflexible and would not accept to play ball.

4. INTERFERENCE IN INVESTIGATIONS BY COMMITTEE CLERK, MR. GEORGE GEZEMBA

The full picture of the integrity crisis in PAC, and the National Assembly by extension, would not be complete without paying attention to the serious challenges in committee clerking services. As PAC chair, I have on numerous occasions complained to the Director of Committee Services, Mrs. Florence Abonyo, over the conduct of one particularly notorious clerk, Mr. George Gezemba, who, quite unfortunately clerked PAC for about three years. Other members also had myriad complaints against Mr. Gezemba.

My complaints touched on Mr. Gezemba's questionable integrity, poor work ethic, indolence, incompetence and disrespectful demeanor. After countless complaints from myself and other members, I literally threw out Mr. Gezemba from a Committee retreat in Kisumu last December that was to discuss the draft report of the Judiciary inquiry. I duly briefed the Director of Committees, who finally withdrew Mr. Gezemba from PAC and replaced him with Mr. Mutunga.

Among the serious breaches of integrity and ethics by Mr. Gezemba include:

1. Disappearance of supporting documents submitted by auditors and witnesses. While concluding the report on Confidential Expenditure and Housing Units for police, some key documents tabled by lead Auditor, Mr. Esau Ndeda, just vanished. We had to desperately fly Mr. Ndeda to Mombasa to fill in the gaps. We also made frantic efforts to have the

Director of Committee Services dispatch to us raw electronic recording of Committee proceedings in our desperation to salvage critical evidence that appeared to have been deliberately "lost" by Mr. Gezemba.

2. Mr. Gezemba also deliberately drafted the Judiciary report in a manner suspiciously intended to favour a key person under investigation. On three occasions, I personally led the Committee to see that his drafts were grossly at variance with evidence and testimonies rendered to the Committee. These mischievous yet dangerous games by Mr. Gezemba seriously compromised the pace of the key Judiciary inquiry, as two report writing retreats aborted because of doctored reports that I found unacceptable. These are among the key reasons why I insisted Mr. Gezemba be removed from the Committee.

PAC TAKEN HOSTAGE BY MULTIPLE INTERESTS AND FORCES

I submit that the crucial Public Accounts Committee (PAC) has been taken hostage by five distinct interests:

1. Independent Electoral and Boundaries Commission (IEBC):

This week PAC was scheduled to commence open hearings on the procurement of 5 sets of equipment used in the 2013 general elections. Chairman Mr. Isaack Hassan was listed as the first witness to appear before the Committee, to testify on the basis of a special audit report prepared for PAC by the Auditor General and reports of independent preliminary inquiries conducted by the Committee. For some reasons, IEBC-linked interests are scared dead of having me in the chair as we commence this crucial process. They have hatched a plot to remove me and install a puppet chair that would cause them no "headache". Their choice is Ijara MP, Hon Ahmed Abbas, and for obvious reasons. Majority Leader, Hon Aden Duale is reportedly at the heart of this conspiracy.

2. The Judiciary

The eruption of this saga was triggered by the Judiciary inquiry. Among the key Committee agenda for the week commencing February 16th was to conclude the long-delayed report on expenditure impropriety in the Judiciary. With past games played by clerk George Gezemba in respect of draft reports, and the posturing of some members over this matter, it is certain that some very powerful forces are hell-bent on influencing the report in a particular direction. Those forces obviously do not trust I will play ball with them.

3. Office of the President (OP)

President Uhuru Kenyatta is on record for admitting that corruption is endemic in government, with its tentacles firmly anchored at OP. The PAC report on government's 2012/13 accounts clearly demonstrates this, particularly through the Committee's exposé on the so called "*Confidential Expenditure*". The Lords of graft and impunity have been shaken to the bone marrow by this exposure, which is the first time ever. Their panic is further manifest in efforts to tie the hands of the Auditor General through the Audit Bill, whose shamefully unconstitutional provisions like clause 40 are tailor-made to protect their theft from ever again being audited and scrutinised by PAC. This matter gets murkier by revelations that OP mandarins, through PS Mutea Iringo, bribed some members of the Committee to influence the PAC report. That their evil scheme failed has upset them. They have brought pressure to bear on their marionettes in the Committee. Who in turn must remove me to demonstrate that they have dealt with the "obstacle".

4. Jubilee and ODM/CORD political intrigues.

Internal ODM/CORD feuds and supremacy wars have somehow found a perfect point of confluence with Jubilee interests of killing oversight in the National Assembly. The result is a crippled PAC with irreparably damaged public image.

5. Systemic institutional weaknesses in the Kenya National Assembly

The conduct of clerk George Gezemba could be a microcosm of a deep-sited institutional crisis that has serious implications on integrity and ethical image of the National Assembly. It also important to interrogate how PAC's *"Hustler"* Jet Report, concluded and tabled in the House by myself in April, 2014 has never been balloted by the House Business Committee for debate – a year after tabling. Majority Leader Hon Aden Duale has reportedly vowed that the *"Hustler"* Jet Report will never be debated, because it touches on his boss. I have complained countless times – on the floor of the House, to the Hon Speaker, to Hon Duale, and to the House Business Committee, to no avail. What kind of brinkmanship and impunity is this? What forces exactly control the operations of the National Assembly? Who is this that can decide to trash House rules and traditions with such abandon?

CONCLUSION

In conclusion, my submission is that I am a victim of the classical case of the vampire of corruption fighting back viciously. Indeed it's quite ironical that it is me, the victim, the one known by members as inflexibly principled, who is in the dock. It feels pretty much like the trial of a lamb in the court of a pack of wolves with blood dripping from their murderous paws.

I am proud of my performance as PAC Chairman. In less than two years, under my stewardship, the Committee performed the unprecedented miracle of clearing a backlog of audited accounts going back five years. Besides the five reports on audited accounts (our core mandate) tabled in a single calendar year (a first in the history of Parliament), we also successfully concluded the "*Hustler's Jet*" inquiry. Curiously, though, the House leadership has stubbornly thwarted my efforts to have the "Hustler's Jet" report debated by the House, since I tabled it almost a year ago in April, 2014. The Committee is also at a very advanced stage in the inquiry into the IEBC and Judiciary.

These impressive achievements have come against the difficult backdrop of political intrigues and selfish personal interests.

I implore you, Mr. Speaker, to use PAC as an example to tackle head-on the integrity and ethical issues enveloping the Kenya National Assembly. Am ready and willing to collaborate with the EACC and other agencies in this respect.

Thank you.

Hon Ababu Namwamba, EGH, MP

CC. Ethics and Anti-Corruption Commission (EACC)

CC. DPP

"Though I walk through the valley of the shadow of death, I shall fear no evil"

REPUBLIC OF KENYA
PARLIAMENT

Hon. Ababu Namwamba, EGH., MP
CHAIRMAN, Public Accounts Committee (PAC)
Kenya National Audit Commissioner

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Secretary-General, East African Association of Public Accounts Committees (EAAPAC)

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10th, March, 2015.

The Clerk
Kenya National Assembly
Parliament Buildings
Nairobi

RE: MEETING WITH THE COMMITTEE OF PRIVILEGES

Your letter on the above matter dated today, Tuesday March 10th, 2015 refers:

1.Please confirm if this is an inquiry into activities of PAC as a Committee or of myself as Chairman of PAC and Honourable Member of the House.

2.If this inquiry is about me, as one can infer from your letter, then we must abide by established procedure. One, whoever my accusers are must be clearly named and their specific accusations framed, the evidence availed and any witnesses made known to me in advance. Two, the proper procedure must be that my accusers appear first so that the case against me is framed before I am then called respond. One cannot answer to non-existent charges from unknown persons

3.Indeed if my conduct is the subject of inquiry, then I submit that we must follow the proper procedure as clearly spelt out in Standing Order 87 (4) that governs discussion of the conduct of a member. Otherwise we would end up with a highly irregular trial by peers in a politically poisoned atmosphere, which process would in any case be a violation of the Standing Orders and customs of the House.

4.The source of this matter is the proceedings of the PAC meeting of Thursday, February 26th, 2015, which is fully captured on hansard. The issues are clearly on record. I notice, however, an attempt by the Powers and Privileges Committee, through yourself, to introduce and frame new issues that are not on record. Who is the source of the new issues? Under what rules of procedure have they been introduced? And what exactly is the motive? I have reason to believe that this is an attempt to manufacture substance where none exists, since the hansard record of 26th February discloses no single charge in accordance with Standing Order 91. It opens the door to perpetuation of endless but baseless witch-hunting that has defined this whole matter.

5.Please note that I have already informed the Speaker that I want my session with the Committee to be public due to the keen public interest in the matter and the need for openness and fairness of process.

I invite a substantive determination of the five issues raised hereinabove before we proceed any further. And let me reiterate my already stated view that these kind of matters would be best handled by specialised independent agencies like the Ethics and Anti-Corruption Corruption Commission (EACC).

Thank you.

Hon.Ababu Namwamba, EGH, MP

Cc. 1.The Chairman, Powers and Privileges Committee
2. Mr. Speaker.

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REPUBLIC OF KENYA
PARLIAMENT

Hon. Ababu Namwamba, EGH., MP

CHAIRMAN, Public Accounts Committee (PAC)
Kenya National Audit Commissioner

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Secretary-General, East African Association of Public Accounts Committees (EAAPAC)

NATIONAL ASSEMBLY
RECEIVED
CLERK'S OFFICE
P. O. Box 41842, NAIROBI

The Speaker
Kenya National Assembly
Parliament Buildings
NAIROBI

Tuesday, 10th March, 2015

Mr. Speaker,

RE: THE PUBLIC ACCOUNTS COMMITTEE (PAC)

I have received invitation from the Clerk of the National Assembly to appear before the Powers and Privileges Committee in respect of the matters subject of your ruling of Thursday, March 5th, 2015. I wish to draw your attention to the following issues.

1. I am surprised that you have granted the Committee's request to hold its sittings in *camera*. It is my humble view that this is a matter of great public interest which cannot be conducted in secrecy. The proceedings are akin to a historic trial of the integrity of the House. Parliament is a public institution that represents the people. Nothing should be hidden from the same people we represent. I demand a public hearing.

2. While your directions were for the Committee to investigate matters arising from proceedings in the Public Accounts Committee (PAC), specifically the matters considered by the Committee at its sitting of February 26th, 2015, I note with concern that the Privileges Committee has purported to introduce entirely new issues that were never subject of this matter over the last three weeks it has been under consideration. This opens the door to limitless witch-hunting. I demand that the process sticks to the issues already raised and properly on hansard record. This issue is particularly significant because while my name has continued to be casually dragged through the mud over alleged impropriety, there is no record anywhere of exactly what I am being accused of. The hansard records of the Committee and the House do not have a single charge against me confirmed in

accordance with Standing Order 91. One is left to wonder as to exactly what this trial is all about in the absence of accusers and charges on record. The attempt by the Committee to introduce new issues appears tailor made to plug this loophole so that a pre-determined guilty verdict is arrived at by all means possible.

3. This exercise is unprecedented anywhere in Commonwealth Parliamentary custom and practice. Indeed I have reservations about the procedural legality and ultimate intent of the process. My view has been and remains that Parliament cannot sit in trial of itself, when the Constitution has established competent organs such as the Ethics and Anti-Corruption Commission (EACC). But out of respect for the authority of your office, I agreed to abide by your ruling, my concerns notwithstanding. However, in view of the alarming new developments, I am concerned that this process is likely to be held hostage by the vicious political interests that are in fact at the very center of crippling the Public Accounts Committee. I reiterate my position stated in my letter to you of February 25th, that this matter would be best handled by the EACC and other competent external agencies.

4. The foregoing issues notwithstanding, as stated on Hansard during debate on the Wednesday March 4th Motion, in executing its mandate, the Powers and Privileges Committee must review all the works of the Public Accounts Committee, both concluded and pending, specifically:

   a) The *"Hustler's Jet"* Report tabled in the House on 24th April, 2014 by myself on behalf of PAC *(copy attached for reference);*

   b) The three reports on government accounts for the three financial years, 2010/11, 2011/12 and 2012/13 tabled in the House on 2nd December, 2014 and adopted by the House on Tuesday, 3rd March, 2015. Particular attention should be paid to the Committee's findings and recommendations on Confidential Expenditure, State House, Housing Units for Police, Judiciary and IEBC *(summaries of the reports attached).*

   c) Ongoing special inquiry into spending by the Judiciary; and

   d) Ongoing special inquiry into the IEBC over five key pre-2013 elections transactions.

   It is quite easy to track the trail of compromised investigations, as well exemplified when the House rejected in outrage the report on the Westgate attack prepared jointly by the Committee on Defence & Foreign Relations and that of National Security. If anyone in PAC was compromised, what exactly they were compromised for must be clearly indicated, and whether

the improper motive succeeded. This is easy to confirm by interrogating the work of the committee over the last 18 months indicated above.

5. While on the work of the Committee, I invite the Privileges Committee to also inquire into the circumstances surrounding the Hustler's Jet Report, which I tabled in the House on April 24th, 2014, but quite strangely the House Business Committee has never balloted it for debate by the House - a whole year now since tabling. I believe this integrity probe must extend to all facets of House operations that affect the Committee's work.

I reiterate my already stated view that integrity of the House is paramount and must be guarded jealously all the time at all costs. But any endeavor in this noble respect must be holistic, comprehensive and just. Any process that is selective and actuated by political malice will not be acceptable. Indeed if this 11th Parliament under you leadership is setting a precedent through this process, then it better be a landmark precedent that will bring pride and not odium to this House.

Thank you.

Sincerely,

Hon.Ababu Namwamba, EGH, MP

Attached: *Copy of letter to you of 25th February, 2015*

APPENDIX V

STATEMENT AND DOCUMENTS LAID BY THE HON. OMONDI ANYANGA, MP

16th March 2015

The Chairman
Powers and Privileges Committee
National Assembly
Nairobi

FURTHER STATEMENT ON ALLEGATIONS OF BREACH OF CODE OF CONDUCT/PRIVILEGE

Mr. Chairman, I have already delivered a statement to you on the matters raised in your letter dated 10th March 2015. I now wish to make a further statement.

1. **Standing Order Number 87(3) and (4) of the National Assembly** states as follows;

   (3) **It shall be out of order to use offensive or insulting language whether in respect of members of the House or other persons.**

   (4) **No member shall impute improper motive to any other member or to a Senator except upon a specific substantive motion of which at least three days' notice has been given calling in question the conduct of that member or senator.**

These Standing Orders are based on even more fundamental principles concerning the dignity and authority of Parliament. They are designed to protect the honour and respect of each member so as to enhance the exalted and central place parliament occupies in our democracy.

Flowing from these principles is the power of the House to punish members for disorderly and disrespectful conduct which is analogous with the authority inherent in the courts of law to prevent or punish conduct which tends to obstruct, impede,

prejudice or abuse the power or authority of parliament in the performance of its functions.

2. **Standing Order No. 193 (1) of the National Assembly** gives any committee of the House power to pass a vote of no confidence in the Chairperson or Vice Chairperson by a resolution of a majority of its members. The grounds for removal of the Chairperson or Vice Chairperson are not set out in the standing orders or in any statute or the Constitution. It is a matter left entirely to the Committee to decide so long as the procedural requirements are met. However, it is assumed that there must be cogent and compelling reasons for a committee to make such a decision.

3. Despite following the law and the Standing Orders when the question of the removal of the Chairperson arose, the Chairman Hon. Ababu Namwamba went at a tangent and instead of confronting the motion for his removal he embarked on a misadventure to vilify, condemn and blackmail the members of the Public Accounts Committee, the leadership of parliament, the executive, the political coalitions (Cord and Jubilee) and ODM.

4. It is well known that Hon. Samuel Arama is a disaffected member of ODM who has been dewhipped. How he ended up in a meeting with the Leader of CORD, the Secretary General and the Director of Elections of ODM in circumstances where no one but Hon. Ababu Namwamba was in control of the discussion and the live recording thereof is not an ordinary tale. A proper confession cannot be obtained in sordid circumstances where an invisible and secret trap is laid. It is an ignoble disgrace and a violation of the integrity, dignity and privacy of an individual living in a free and democratic society.

5. The allegations of bribery or favours are based on wild allegations, not even hearsay. The audio recording of the alleged conversations have not met the legal requirements of the Evidence Act. Hon. Arama has dismissed it. The other persons alleged to have been present during its recording have not confirmed its authenticity

or otherwise. The recording manufactured by Hon. Ababu Namwamba is a project of blackmail and subversion of the law and the customs, procedures and traditions of parliament. It serves no purpose in law or morality. It is a self-serving enterprise of a person who believes in the romanticised escapades and adventures of a Sherlock Holmes or a James Bond. It was a quest to obtain exculpatory material for the Chairman's defence. In the end it did not amount even to a proper or sound statement delivered for purposes of mitigation.

6. The recording cannot therefore be evidence. The more serious the allegation the higher the burden of proof. The meeting alleged to have taken place at Silver Springs Hotel is a fantasy and a figment of imagination in the face of the denials and refutations by Hon. Samuel Arama and in the absence of concrete and corroborative evidence.

7. There is a clear administrative protocol for arranging trips for members of parliament both inside and outside the country. It is unusual for parliamentary delegations to travel without prior arrangements being made to cater for accommodation, transport and allowances. The clerks involved in the trip to Hyderabad can throw some light in this entire episode. Whereas the committee's objective and mandate in India was specific, for the Chairman, it was a pleasure trip and a tourist adventure the highlights of which he posted in the social media including a glamorous visit to the Taj Mahal with his wife who became more or less part of the committee during the trip.

8. Hon. Samuel Arama is a discharged member of the Public Accounts Committee. Hon. Ababu Namwamba made vain attempts to recruit him in the affairs of the Public Accounts Committee. The entry of Hon. Samuel Arama into the current affairs of the committee cannot be explained on any other reasonable hypothesis other than to unwittingly be made to play a part in the grand scheme to discredit some of the members of the Committee who had lost faith in the leadership of the Committee. The script did not work obviously as Hon. Samuel Arama has now made allegations

that the Chairman received a bribe of Kshs. 5,000,000/=. Hon Samuel Arama has said this openly in media interviews as opposed to the imaginary taped conversation in a smoked-filled room of a hotel. This time not the Silver Springs Hotel.

9. I have suggested that an Ethics Committee be established to provide a mechanism for constant oversight on parliamentary committees and the general conduct of members so that the institution of parliament does not fall into disrepute. The membership of the Committee should consist of senior members of Parliament and the leadership of the House who have been thoroughly vetted and who pass the test of leadership and integrity under Chapter Six of the Constitution. To enable the committee to operate fairly and impartially rules must be made to ensure that members do not suffer inquisition. The Chief Justice should assign an advocate of the High Court of repute to the committee whose assignment can be withdrawn if there are justified accusations of incompetence, inability or misconduct made against him. Accusations on issues of integrity generally and corruption in particular should be made promptly to the committee and should not be discussed in public by members until a proper case has been made for scrutiny and determination.

HON. EDICK OMONDI ANYANGA

11/03/2015

The Chairman

Powers and Privileges Committee

National Assembly

Nairobi

MY STATEMENT ON ALLEGATIONS OF BREACH OF CODE OF CONDUCT/PRIVILEGE

Mr. Chairman and Hon Members of the Committee of Powers and Privileges, the following is what I wish to state on the matters raised in your letter dated 10th March, 2015 addressed to me, which I only received today (11/03/2015) at around noon.

1. I did not meet Mr. Mutea Iringo at Silver Springs Hotel as alleged by Hon. Namwamba or at all. I have actually never met Mr. Mutea Iringo at Silver Springs Hotel. I did not solicit and I have never received any money or the sum of Kshs. 1.5 million from Mr. Iringo as alleged. Mr. Iringo has never given me any money to influence the work of the Public Accounts Committee or to exonerate him from possible blame. In fact, I have never discussed with Mr. Iringo anything to do with the work of the Public Accounts Committee. Mr. Iringo is personally known to me and on the occasions I have spoken to him, it has had nothing to do with my work in Parliament or PAC.

I first heard about the allegations that I received a bribe from Mr. Iringo when the allegation was made by Hon. Ababu Namwamba. The allegation is totally false.

2. The first time I travelled out of the Country a as PAC Member was when the Committee went to India, Hyderabad. The arrangements for hotel bookings and accommodation were done by the Committee Clerks and I believe the Chairman, Hon. Ababu Namwamba, was involved in the arrangements,. I was personally not involved at all. The issue of the firm under investigation paying for the Committee's expenses in Hyderabad came up after we had stayed in the hotel for three (3) days. When Hon. Ababu Namwamba mentioned this matter, I took issue with him by asking him to explain how we ended up being booked by the firm we were investigating and yet he was supposed to be the person in charge of the trip organization. I told him to his face that he could not pretend at that point to be surprised about the arrangement yet the matter was under his docket. I told him I did not believe him and asked him to explain why he had only seen it fit to raise the issue late in the day. I was specifically concerned that even the Clerks who earn much less per diem were actually booked in the same hotel and the Clerks were now raising the question of how they were going to pay for the expensive hotel. I personally paid all my bills and even helped some Clerks to settle

bills. It is not therefore true that I favoured attempts to compromise the Committee or procure favours from anybody.

3. In the run up to the hearing of the petition which sought the removal of Hon. Ababu Namwamba as the Chairman of Public Accounts Committee, he called me one evening and alleged that he had information from Hon. Arama whom he was considering for a return to the Public Accounts Committee, that I had been given money by Mr. Iringo to distribute to the Committee Members to influence the ongoing investigations by PAC. I straight away asked him why he was trying to black-mail me and he then disconnected the phone abruptly. I saw blackmail in his allegation because it was not true and he already had information that I was one of the PAC Members who had signed the petition seeking his removal. At the hearing of the petition for the removal of the Chairman, I did mention his attempt to compromise Hon. Arama because he had mentioned it to me himself. In fact, Hon. Namwamba did not stop there. He later drafted a statement which he requested me to read to the press exonerating him. I declined to do this. I was therefore not surprised when he later made allegations against me.

4. I signed the petition seeking the removal of the Chairman of PAC, Hon. Ababu Namwamba, believing that the originators of the allegations had tangible evidence to support the bribery allegations. I saw an opportunity for structured investigations to be conducted

into the allegations by PAC, considering the seriousness of the allegations. When it turned out that there was no evidence to support the allegations, I did not support the petition as can be seen from my contribution during the Committee hearing of 26th February, 2015. I do not know who originated the bribery allegations.

5. My way forward in dealing with mattes of integrity, breach of privilege or code of conduct by a Committee or individual Members of Parliament is to have a Standing Committee of Parliament to deal with all such matters as and when they arise. Such a Committee can be called **Ethics Committee**. This is because I believe in Parliament handling all its issues independently. On the matter at hand, I suggest that this Committee (Powers and Privileges) should deal with the matter conclusively and propose the creation of a specific committee for such issues for the future.

That is all I wish to say.

HON. P. E. O. ANYANGA

STATEMENT ON WRANGLES IN PAC 24th February, 2015.

After gathering sufficient details and carefully considering all factors, i have come to the very firm conclusion that what is going on in the Public Accounts Committee(PAC) is nothing but Partisan politics and malicious witch hunt against our committee Chairman, Hon.Ababu Namwamba.

Those peddling allegations against him have failed to provide any shred of evidence whatsoever. They have also been ~~willing~~ unable to disclose their own identities, only appearing in the press as "unnamed sources". I find this quite suspicious.

I am concerned that this malicious scheme is now becoming very petty and personal. It was particularly shocking to see a story in some gutter press splashing out Hon.Namwamba's home as a product of impropriety. I am fully aware that Hon. Namwamba constructed this home seven years ago using parliament mortgage during our first term. This is grave Malice.

In view of the foregoing I completely disassociate myself from this malicious scheme obviously hatched to damage the public image of Hon. Namwamba and ~~insure~~ ensure his rising career. I refuse to be used as a pawn in a cheap game of political brink~~man~~ship. This has also virtually crippled the very serious work of the crucial Public Accounts Committee. It is unacceptable, it must stop.

I have accordingly written to the clerk of the National Assembly withdrawing forthwith my signature from the petition intended to crucify Hon.Ababu Namwamba. Because I believe he is innocent. I urge my colleagues in PAC to let reason, sense and justice prevail so that our committee can settle down to address the serious business before us.

Thank you.

Hon.Edrick Omondi Anyanga. MP
MP Nyatike & PAC Member.

24th February, 2015.

THE CLERK
Kenya National Assembly
P.O.BOX 41842
Parliament Buildings
NAIROBI.

RE: WITHDRAWAL OF MY SIGNATURE FROM PETITION TO REMOVE THE PAC CHAIR.

This is to inform you that I have withdrawn forthwith my signature from the petition purporting to remove the chairman of PAC. My conscience cannot reconcile itself with a scheme to persecute an innocent man because of malice and politics. The scheme which is completely unnecessary, is also poisoning the committee and crippling its operations.

Thank you.

Hon.Edrick Omondi Anyanga, MP
MP Nyatike & PAC Member.

Paper Laid by the Hon Anyanga, MP regarding Requesting the Committee of Public Accounts on 11/03/

APPENDIX VI

STATEMENT BY THE HON. KAREKE MBIUKI, MP

REPUBLIC OF KENYA
PARLIAMENT

Hon. Japhet Kareke Mbiuki, MP.

Maara Constituency

Vice Chairperson, Departmental Committee on Agriculture, Livestock & Co operatives

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12th March 2015.

The Chairman,
Powers And Privileges Committee,
Natonal Assembly.

RE: INTEGRITY AND ETHICAL ISSUES IN THE PUBLIC ACCOUNTS COMMITTEE.

Honourable Members I wish to start by thanking you for giving me this opportunity to appear before you as a Member of the suspended Public Accounts Committee to shed light on the allegation made against me and the operation of this Committee.

I am deeply saddened and disturbed by the manner in which Hon. Ababu Namwamba resorted to peddling falsehoods in an attempt to retain a powerful position within the National Assembly. As this Honourable Member has found himself drowning in a sea of corruption allegations, he has resorted to clutching at straws in a desperate attempt to save himself.

KSH.1.5 MILLION BRIBES ALLEGATION

It has been alleged by Hon. Ababu Namwamba, M.P. that I received monies from the Principal Secretary in the Ministry of Defense, Mr. Mutea Iringo, who used the Hon. Omondi Anyanga, M.P. to channel the said monies to me. The Honourable Member for Budalangi Constituency has alleged that Mr. Mutea Iringo paid those monies to me as part of a bribe in order for me to render illegal and illicit support to him as part of an alleged wider conspiracy to subvert the investigations of the Public Accounts Committee into alleged possible misappropriation of funds within Mr. Iringo's Interior Ministry.

I wish to state unequivocally and on the Record that there is not even an iota of truth to any of those allegations. For the avoidance of doubt I wish to emphatically state that I have **NEVER** received any bribe or inducement from any person or persons with regard to any matter; and I did not receive or demand any monies from Mr. Iringo. I wish to further state that I am a complete stranger to Hon. Namwamba's allegations and I know nothing about the issues that he has raised.

In these days of smart technology it is not difficult for a person to account for his or her whereabouts at any given time by reference to their 'electronic footprint.' Therefore any electronic evidence adduced by Hon.Ababu Namwamba can easily be verified by the service providers and the members captured in the recording called to account for their utterances and insinuations

The allegations made by the Hon. Member are extremely grave. They go towards the very core of the integrity of the House and the probity of how it conducts its affairs. It is very unfortunate that rather than processing these allegations through the proper laid down channels and procedures Hon. Namwamba has instead chosen to play to the gallery by making selected leaks of his 'information' to the Mainstream Media as well as conducting an all pervasive social-media campaign of disinformation and defamation.

My life is an open book. I have nothing to hide. I welcome the scrutiny of this Committee as it gives me an opportunity to clear my name and reputation which have been dragged into the mud by the malicious words and conduct of an Honourable Member whom I once held in the highest esteem. I invite further scrutiny from the relevant agencies; including the National Police Service and the Ethics and Anti Corruption Commission, who will no doubt find me entirely innocent of all the spurious, defamatory and malicious allegations made against me.

THE 10MILLION BRIBE TO THE COMMITTEE.

One Member of the Committee Hon.Jessica brought to the attention of the Committee an article in Citizen weekly Newspapers that Hon. Namwamba has been using his position as Chairperson of the Public Accounts Committee as an avenue for rent seeking. I have heard whispers that the Honourable Member's pockets are suddenly overflowing with money and that he has embarked on fantastically expensive personal projects.

JMEM

While I am not in a position of information or knowledge that would allow me to either confirm or deny those allegations and insinuations, I wish to say that it is manifestly clear that Hon. Namwamba wishes to shift the attention from himself and allegations of corruption made against him. Hon. Namwamba is misdirecting the attention of the audience from what he is really accused of by manufacturing false claims of corrupt activities by other persons.

All I ask of Hon. Namwamba is that he keeps me and my family-name out of the filth that has engulfed him. To Hon. Namwamba; bear your own cross my brother !!

THE PERSON OF HON. ABABU NAMWAMBA

Perhaps it is not my place to say this but I feel I must voice my opinion on Hon. Namwamba's conduct in this Matter. Being a Member of Parliament is a noble calling. We as Members of the August House given the title 'honourable.' With the greatest respect to the gentleman; he has not conducted himself with honour at any point during this entire fiasco. In my opinion, he has disgraced not only himself but the House in which he is privileged to sit in. He has, in my opinion, brought shame to his Constituents who expect a principled leader and not a peddler of falsehoods who freely admits to walking around Nairobi covertly recording every person he talks to. Hon. Ababu as the Chairman of PAC has personalized the committee activities,he has made PAC a one man show where every activity revolves around him.Here is a man full of himself,a know it all character.In his eyes majority members of the committee neither grip nor understand the committee agendas and no wonder he doesn't delegate the Chairmanship of the Committee even to his Vice Chairperson ;or any other Member.Incase of any foreign trip he must be the leader of the delegation and incase he is not available the trip won't take off !!!

Finally Hon. Members, I wish to propose that the 'Powers' of the Privileges Committee should be enhanced to address many allegations and counter allegations made by members before rocking the activities of various Committees and the entire house.This Privileges Committee should be the first port of call when disagreements and allegations are made by colleague Members .I also wish to state that the public image of Public Accounts Committee has been highly dented and the public has lost confidence with the current Members and its leadership .I therefore humbly submit that the committee should be reconstituted afresh to give it a new lease of life.

I thank you Hon. Chairman and members for according me the opportunity to shed light on the goings in PAC.

Asanteni Sana.

HON.KAREKE MBIUKI,M.P
MAARA CONSTITUENCY.

II. CONSIDERATION AND ADOPTION OF THE REPORT BY THE COMMITTEE

13. **WE**, the undersigned Members of the Committee of Privileges, having considered this Report on the Inquiry into the alleged breach of privilege and/or code of conduct by the Membership of the Public Accounts Committee, do hereby confirm our agreement with the content of the Report and request the Chairperson to present the Report to the House-

	Name	**Signature**
(i)	The Hon. Moses Cheboi, MP	.....
(ii)	The Hon. Peter Shehe, MP	.....
(iii)	The Hon. Kimani Ichung'wah, MP	.....
(iv)	The Hon. Jamleck Kamau, MP	.....
(v)	The Hon. Barchelei Kipruto, MP	.....
(vi)	The Hon. Dr. James Murgor, MP	.....
(vii)	The Hon. Bedzimba Rashid Juma, MP	.....
(viii)	The Hon. Simon Ogari, MP	.....
(ix)	The Hon. Zuleikha Juma Hassan, MP	.....
(x)	The Hon. Joyce Emanikor, MP	.....
(xi)	The Hon. James Onyango K'oyoo, MP	.....
	Co-opted Members	.....
(xii)	The Hon. Mohamed I. Elmi, MP	.....
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APPENDIX VII

STATEMENT BY THE LEADER OF THE MAJORITY PARTY

Bill, in a record time of one Month by the two Houses; and (3) was judicial conviction, in 2010, of three MPS (two former and one sitting) for charges related to the expenses scandal.

The matter of PAC

7. Coming to the matter of PAC and the allegations against its Members, I had the choice of remaining silent as if nothing has happened. But given the background of the UK as I have stated, and the fact that we agreed in Mombasa as leaders to "confront our Challenges" I decided to raise it in the House. I this regard, I want to state three points-

(i) It was going to be evil for us as a House, to burry our heads in the sand and imagine that the allegations of bribery have been settled by way of a vote in PAC. The question of whether or not there was any bribe taken or given is for this Committee to find out. However, one thing is now clearer-out of this process, **never again, will members of parliament cast reckless accusation against each other, unless they have some form of evidence to sustain their claims;**

(ii) I will remind this Committee that, from 1970s up to and December 2008, the PAC was a Sessional Committee. That means that its Membership was up for renewal by the House at the beginning of each year! Further, from 1992 to 2008, the Chairing of PAC was reserved for the Leader of Official Opposition (*give short history*). Probably, this old practice was informed by the need to have reenergise the Membership of this Committee, and most importantly, to give it a solid holder of that office, whose tenure is not threatened by constant collection of signature. I still hold that we need to designate the Leader of the Minority Party to be the automatic Chairperson of PAC; and,

(iii) Regarding the membership of PAC, I doubt they can still work together following these accusations and counter-accusations. Should this Committee finds it fit, the Committee on Selection should reconstitute the PAC afresh.

3. **Finally, Hon. Chairperson,** The National Assembly Powers and Privileges Bill is now before this Committee, I urge the Committee to use the Bill to propose the following three items-

(a) Expanding the role and indeed the <u>title</u> of the Committee beyond Privileges, to include deliberate examination of claims of financial nature on its Members within and outside the precincts of Parliament. The claims must however be related to work of the MPs in Parliament and not our private life. I suggest the name, Committee on Standards, Ethics and Privilege. That way, we will succeed in having an internal mechanism of stemming these claims and redeem the image of the House like the United Kingdom did in 2009;

(b) Creating the office of the **Administrator of Parliamentary Standards** within Parliament, who will be appointed for a fixed term, with the approval of the Houses of Parliament, to be advising the Houses and their respective Committees of Privileges on matters of breach of code of conduct and cases of financial impropriety; and,

(c) Requiring Members to **register their interests** with the Administrator of Parliamentary Standards who should also keep custody of such information.

I thank you

The Hon. Aden Duale, EGH, MP
<u>LEADER OF THE MAJORITY PARTY</u>
March 18, 2015

INQUIRY INTO CLAIMS OF COMPROMISES, BREACH OF PRIVILEGE AND CODE OF CONDUCT ON MEMBER AND CHAIRPERSON OF PAC

SPEAKING NOTES BEFORE THE COMMITTEE OF PRIVILEGES

Background

1. Hon. Chairperson, Let me start with thanking your Committee for inviting me to this meeting to share my thoughts on the very weighty matters before you. Indeed, I admit that I did raise this matter in the House and sought the Speaker's guidance on how to address the allegations and counter-allegations of compromises, prejudices and deceit on the Membership of the Public Accounts Committee as a whole, including its Chairperson. To demonstrate why I sought the Speaker's guidance on these matters, allow me to take this Committee on a short journey of history of such claims in the United Kingdom.

Brief history

2. Until the early 1990s, the Parliament of the United Kingdom enjoyed exclusive and unchallenged right to regulate the conduct of its own Members, including regulating the sharing of information as to who of its members had breached privilege. Even though it was known, in the corridors of House of Commons, that some Members were involved financial misconduct, these matters were never discussed openly or taken over by anyone; not even the Speaker as he was supposed to be "blind" to such "internal matters". Indeed, even part of the general public and membership of the Commons assumed that privilege extended to criminal matters.

3. It was not until the 1990s, during the "cash-for questions" and "Arms to Iraq" scandals that questions of how Member's conduct should be relegated and by whom, became contentious. These contributed to a general atmosphere of what became to be known as "sleaze". There was general feeling that corruption and questionable behaviour generally had become increasingly common in British political life. Parliamentary self-regulation was seen to have failed- **not because it was a bad thing; but because nobody was taking any action in Parliament!**

4. What followed is of interest to this Committee. In October 1994, the then British Prime Minister, John Major responded by creating an independent body known as the Committee on Standards in Public Life to investigate the claims and make recommendations. He even appointed a renowned senior judge, Lord Norlan to be its Chairperson. The Committee did not have any representatives from Parliamentarians. It should be remembered that, even at this time, the House of Commons had a Committee of Privileges, which had been replicated in the entire commonwealth! What the Prime Minister did was to react to the public outcry and take the matter outside the purview of Parliament. For this , Members were not very happy. They demanded that the Committee reports to the House, or its Committee of privileges, which was until that time, very conservative and almost dormant.

5. When the Committee tabled its report, the House agreed with its recommendations to establish and appoint a **Parliamentary Commissioner for Standards** to be the custodian of all claims of financial related misconduct. They also agreed to establish a Committee of Standards and Privileges in place of the Committee of Privileges. These two were created immediately in 1995! This was the beginning of financial probity and in-ward reforms in the UK Parliament. The Commissioner of Standards was charged with the duty of advising the Committee and making recommendations to it, but the duty of specifying the penalty was left with the Committee after endorsement by the House.

6. Later in 2009, the UK press published a series of articles on Members' expenses claims dating back several years. It was reported that, initially, the then Speaker of House of Commons, Speaker Michael Martin was not very keen to have the matter investigated as it was merely "press reports". Later, he asked the Commissioner of Standards to take it up, together with the Police. As the matter became "hot", he convened a meeting of political party leaderships in the House who prescribed drastic changes in the manner of lodging monetary reimbursement and claims. In short, this last scandal led to three things (1) was the untimely resignation of Speaker Michael Martin attributable to the manner in which he mishandled the allegations; (2) was the historic hurried passage and enactment of the **Parliamentary Standards**

APPENDIX VIII

WRITTEN SUBMISSION BY MR. GEORGE GAZEMBA.

GEORGE GAZEMBA

BRIEF TO THE COMMITTEE OF PRIVILEGES ON MATTERS OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) UNDER INQUIRY

18TH MARCH, 2015

RESPONSE TO MATTERS OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) UNDER INQUIRY BY THE PRIVILEGES COMMITTEE

1. Introduction

I am an Advocate of the High Court of Kenya and a member of the Law Society of Kenya (LSK), Eastern Africa Law Society (EALS), African Bar Association (ABA), Commonwealth Bar Association (CBA), International Bar Association (IBA) and Commonwealth Association of Legislative Counsels (CALC).

I was employed by the Parliamentary Service Commission (PARLSCOM) as Clerk Assistant III in October, 2003 and have since risen up the ranks to position of Senior Clerk Assistant by virtue which I supervise clerks of Joints Committees of the National Assembly and the Senate.

Other than the Public Accounts Committee (PAC), which I clerked for six (6) years i.e. from Feb, 2009 to January, 2015, I have since employment been the lead clerk of the Departmental Committee on Agriculture, Lands and Natural Resource (as it then was) the Committee of Privileges, the Select Committee that Investigated the Closure of the Kenya Cashewnut Factory in Kilifi, the Departmental Committee on Energy, Transport and Public Works (as it then was), the Departmental Committee on Local Authorities which was abolished with the enactment of the new constitution.

Besides the above, I have also represented the National Assembly at the Kenya Integrity Forum (KIF), headed the secretariats of African Organization of Public Accounts Committees (AFROPAC), Eastern Africa Association of Public Accounts Committees (EAAPAC) and Accountability Kenya (AK).

2. My relationship with Hon. Ababu Namwamba, Chairperson of the Public Accounts Committee (PAC)

First and foremost I am **Mr. George Gazemba** and not **George Gezemba** as the Chairperson has referred to me throughout his complaint letter to the Hon. Speaker.

The current Public Accounts Committee (PAC) was constituted in May, 2013 and Hon. Ababu Namwamba was elected chairperson during the same month. I left PAC for the Departmental Committee on Justice and Legal Affairs in January, 2015 after a reshuffle affecting several Committees clerks. I therefore clerked PAC for one year eight months under the chairmanship of Hon. Ababu Namwamba and not three years as he has claimed in his letter.

Besides clerking the PAC of the 10th Parliament for four years and the five other Committees mentioned in the introductory part, no questions of integrity, poor work ethics, indolence, incompetence and disrespectful demeanor as alleged by the chairperson have ever been raised against me. The Public Accounts Committee has never discussed my performance and or conduct as a clerk and the allegations made against me by the chairperson are his personal.

Serving the as secretary to the Public Accounts Committee under the chairmanship of Hon. Namwamba of PAC has been difficult on account of the following few instances:-

(i) The chairperson would on many occasions dismiss advice given by the secretariat. For instance, in August, 2014, he fixed two days for a report writing retreat on the accounts of the financial year 2010/2011 in Kisumu. I advised him based on my experience in PAC that the Committee required five days for the retreat but he dismissed me in front of Members. While dismissing me, he said that he didn't like my defeatist attitude and that if the previous PAC took, five days to write such reports, his PAC would take two days. At the end of the retreat, the Committee was only halfway through. He would on several occasions I would advise him call me a defeatist which was demoralizing.

(ii) During the August, 2014 retreat in Kisumu, he instructed the secretariat to book Vic Hotel which would also be the venue for the Accountability Kenya (AK) Annual Conference. My colleagues, Victor Weke, Aaron Tungo and Johnston Kioko can attest to this. We checked at the hotel on 4th August, 2014 and embarked on the report writing on 5th August, 2014. Apparently, there was ongoing construction work at the hotel which interfered with the report writing. He told the hotel management to suspend work until completion of the report writing but the management did not oblige. He became angry and accused the secretariat of incompetence and failure to do a reconnaissance visit of the hotel before the Committee went to Kisumu. Because the Committee was writing the report on the Accounts for 2010/2011, the secretariat had carried the Government Financial Management Act of 2004 which was in force during the financial year under review. He lifted up the Act for Members to see and accused the secretariat again of sheer incompetence by

carrying a repealed Act of Parliament. In the course of the report writing, reference was indeed made to the Act. After slamming the secretariat for about twenty minutes, he then directed that the Committee changes venue to Imperial Hotel in Kisumu which from the onset he disliked. We accordingly obliged.

(iii) While writing the report at Imperial Hotel, the Chairperson for the entire two days delegated the chairing of the session to Members mostly; Hon. Sakwa Bunyasi, Hon. John Mbadi and Hon. James Bett while he would be seated there busy on his phone and would be in and out of the report writing room. He would then insist that the Committee sits up to 9.00 p.m. In fact he would ensure he is in the report writing room from 5 pm onwards to ensure Members work up to 9 p.m. while he would be busy on his phone. He would make one or two interventions some of them changing positions taken earlier. Some Members would complain to the secretariat urging us not to release more draft reports so that the day's business would come to a close but we could not do this. In the end, many Members would walk out leaving very few writing the report. A good report writing exercise should have as many Members present at any particular time. The Kenya National Audit Office and Treasury officials sitting with the Committee also complained of working from 9 a.m. to 9 p.m. This situation would again replicate itself for five days in October, 2014 at Pangoni Hotel in Mombasa when the Committee was writing reports on the accounts for 2011/2012 and 2012/2013. This time round, the chairperson's spouse and children were at the hotel and he would spend a lot time with them at the poolside while the report writing was ongoing.

(iv) After the Kisumu report writing retreat, the Committee was to attend the Annual General Meeting and Conference of Accountability Kenya in the same hotel. Immediately after the chairperson had concluded his closing remarks, he was on his feet to the Accountability Kenya (AK) conference venue. He wanted me to be in his procession to the venue and expected that I should have been on my feet as soon as he was on his. Apparently I was consulting the Auditors over some issues in the report we had just been writing and could not. While he walked away to the conference venue he insulted me that I was a nut. The

exact words he used were that *''this fellow is such a nut''*.

(v) The chairperson would make unilateral decisions many of them Members would not be happy with. Members rarely challenged his decisions before the Committee presumably because they were terrified of him or they knew it would be an exercise in futility. Members would however express their displeasure with the secretariat. For instance In September, 2014, Members declined to retreat at Crown Plaza Hotel, Nairobi for two nights, which was the chair's choice to conclude report writing on the accounts for the financial year 2010/2011 and demanded to retreat in Mombasa. This happened on the eve of the retreat after all arrangements had been made. Members told the secretariat to tell the Chair that Nairobi was not ideal for such retreats. They also told us to tell the chairperson that they would not go to Naivasha the following month for another retreat for report writing on the accounts for 2011/2012 and 2012/2013. The chairperson had instructed the secretariat to make arrangements for this retreat. In October, 2014, the secretariat made arrangements for inspection tour of CDF projects in Chapalungu and Tigania East on instructions from the chairperson and come the day of the tour, Members declined to travel. One of the Members who declined to travel informed the secretariat that the chairperson wanted to use them on a political witchunting mission against Governor, Isaac Ruto and Governor, Peter Munya who were strong proponents of the *''pesa mashinani''* campaign. The two Governors were MPs for the two constituencies at the time the audit queries under examination were raised.

(vi) The chairperson would call and cancel meetings at his own convenience. On few occasions, the Committee would agree on a programme of activities for a particular period but he would change it for his own convenience. Otherwise on most occasions, he would be the one calling and instructing the secretariat to arrange for meetings. The secretariat would be at pains explaining to Members the cancellation of meetings. His actions in this respect made it difficult to plan our work and exerted pressure on the secretariat.

(vii) The chairperson would direct the secretariat to call for meetings with Accounting Officers, the Auditor General and Treasury on very short notices, as short as two hours and I would decline to act on such instructions since the National Assembly had a policy on calling for meetings with outsiders where reasonable notice of seven days should be given unless under very exceptional circumstances. Officers from the Kenya National Audit Office on several occasions complained of being called on very short notices as if they were serving the National Assembly alone and would just be seated waiting to be called for meetings. Mr. Francis Kiguongo, Director of Audit at the Kenya National Audit Office is on record complaining of unreasonable short notices. The chairperson would himself call and direct Accounting Officers and junior officers from the Kenya National Audit Office and Treasury to appear before the Committee which was unprocedural and not expected of him.

(viii) Whereas it was the secretariat's responsibility to edit reports as instructed by the Committee, the chairperson would take over this responsibility from us and edit reports against our expectations thereby putting us in an awkward position with fellow Members and our bosses. For instance, the chairperson spent a considerable length of time editing the hustler's jet report and the reports on the accounts for the financial years 2010/2011, 2011/2012 and 2012/2013. He handed over the financial year reports to the secretariat to prepare them for tabling after the Speaker raised the red flag against Committees taking too much time to conclude investigations and submit reports to the House.

(ix) Kenya hosts the secretariats of African Organization of Public Accounts Committees (AFROPAC) and Accountability Kenya (AK). These organizations were formed long time ago and remain unregistered because of the chairperson. Whereas the Registrar of Societies has directed change of names to include ''Association'', the chairperson has insisted that the names be registered as they are hence a standoff. The non registration of these Associations means they cannot open bank accounts and members cannot pay annual subscriptions which are much needed for the Organizations' operations. AFROPAC members have been calling asking for bank details to pay their annual subscriptions in vain. Some countries are

unhappy with this state of affairs and the National Assembly stands a high chance of losing out on the hosting of the secretariat which South Africa is eyeing.

(x) Kenya is the Secretary General of the East African Association of Public Accounts Committees. The chairperson's participation at the Association's annual conference held in November, 2014 in Addis Ababa, Ethiopia did not go down well with other office bearers. He did not play the role expected of the Secretary General and the worst case scenario was when he was not present at the Annual General Meeting delaying its commencement. The Association's chair (Uganda) directed our staff to get him from his hotel room for the meeting. In this regard, a plot has been hatched to relocate the secretariat from Nairobi to Kigali.

I have always briefed the Director of Committees and Clerk of the National Assembly of my difficulties and frustrations at PAC. I even requested them to transfer me to another Committee but they urged me to stay on till completion of taking evidence and report writing on crucial reports on the accounts for the financial year 2010/2011, 2011/2012 and 2012/2013. When the chairperson insulted me in Kisumu, in August, 2014, I almost walked out of the Committee but the Clerk urged me to stay on.

3. <u>Incidents and circumstances when I was asked to withdraw from Committee sittings</u>

When the matter of confidential expenditure in the Auditor General's report on the accounts for 2012/2013 - Office of the President first came up for discussion on the way forward after the media had intensively reported on it, the entire secretariat was asked to leave the Committee Room. This meeting was chaired by Hon. Namwamba himself and he asked the secretariat to leave after request from a Member who claimed he had a dossier on the matter which he did not want to share with fellow Members in the presence of the secretariat.

During the report writing retreat on the Judicial Service Commission and Judiciary report in Kisumu from 15th to 18th December, 2014, the chairperson asked me to leave his Committee after disagreeing with him the report writing procedures. This was a unilateral decision he made which and did not go down well with some Members.

4. **Disappearance of supporting documents submitted by Auditors and witnesses**

The chairperson has alleged that I caused the disappearance of documents submitted with respect to audit queries on confidential expenditure and Housing units for the Kenya Police. I wish to respond as follows:-

(i) This audit query relates to the then Ministry of Internal Security and Provincial Administration. The Accounting Officer, Ministry of Interior and Coordination of National Government gave evidence before the Committee on 29th September, 2014 and 1st October of the same year. The Committee also made a fact finding tour of the housing units on 2nd October, 2014. I did not attend the sitting neither did I make the tour because i was in Lilongwe, Malawi for training which took place from 22nd September to 3rd October, 2014. The certificate issued for the training to confirm that I was there is annexed hereto as appendix 1. I returned to Kenya on 4th October, 2014 which was on a Saturday and the following day travelled to Mombasa for the Committee's retreat to write reports on the accounts for 2011/2012 and 2012/2013 relating to these matters.

(ii) The writing of the report on the particular matters took place on 6th October, 2014 and the issue of documents missing was never discussed by the Committee. All documents required for the retreat were available. My colleagues, Victor Weke, Johnson Kioko, Aaron Tungo who handled the retreat logistics while I was away can attest to this.

(iii) If at all any document was missing, the correct procedure would have been that the chairperson should have first asked the secretariat to produce the document and only conclude that I had caused the disappearance of documents after I was unable to produce them. This never happened and I am learning of this allegation in the complaint letter to the Speaker.

(iv) The Auditor, Mr. Essau Ndeda tabled documents before the Committee. It is common knowledge that Mr. Ndeda retained originals or copies of documents he tabled before the Committee. Such documents once tabled would be photocopied for Members and also Treasury which attends

PAC sittings and which also keeps copies. How could I therefore cause the disappearance of the documents when the same could be easily obtained from the Kenya National Audit Office (KENAO) or Treasury?.

(v) Witnesses appearing before the Committee usually submit thirty five (35) copies of documents for use by each Committee Member, staff and Treasury. Advance copies are usually sent to the Auditor General. They also submit the documents in soft to both Parliament and the Auditor General. How feasible would it be therefore to hide such documents?.

(vi) It should further be noted that the chairperson has not stated which documents disappeared if indeed any disappeared.

(vii) The implication of this allegation by the chairperson is that I was compromised to cause the disappearance of the documents in favour of a particular witness and he should have proved this before the Privileges Committee beyond reasonable doubt failure of which he withdraws.

In the light of the foregoing, it is my submission that this allegation is unfounded and should be dismissed.

5. <u>Allegations that the report of the Committee on the accounts for 2012/2013 was altered before tabling in the House</u>

The alleged alteration relates to audit queries under the Ministry of State for Provincial Administration and Internal Security currently Ministry of Interior and Coordination of National Government. As said earlier, i did not attend sittings where the Accounting Officer gave evidence as I was in Malawi for training.

While in Mombasa, the Committee agreed on certain findings and recommendations on matters under the Ministry but revisited the matters when back in Nairobi. The two main items revisited were paragraph 44 on *irregular cash transfers* and paragraph 46 on *unaccounted for funds*. I attended the first meeting where these matters were briefly revisited but did not attend the subsequent meeting neither did I attend the meeting adopting the report because I was engaged with business of the Funeral Organizing Committee for the late Homa Bay Senator, Senator. Otieno Kajwang'. I was nominated by the House to sit on this Committee

through a communication from the chair and therefore this Committee's business took precedence over business of the Public Accounts Committee.

I am in the circumstances incompetent to say if the report was altered though I am informed by the clerks who were present that whereas they were supposed to take notes and compile the report when the Committee revisited the matters cited above, the chairperson took over this responsibility from them and what Members signed for is what was written by the chairperson himself. Minutes of the sitting of the Committee adopting the report and confirming that I did not attend the sitting are annexed hereto as appendix 2.

6. **The Judiciary report**

The chairperson has alleged that I drafted the Judiciary report in a manner suspiciously intended to favor a key person. I wish to respond as follows:-

(i) **First retreat from 4th to 8th November, 2014 at Pangoni Resort, Mombasa**

This retreat was to take place from 4th to 7th November, 2014. The Committee however arrived in Mombasa on 2nd November and was to use 3rd November to complete report writing on the accounts for the financial years 2011/2012 and 2012/2013 on the Constituencies Development Fund (CDF).

On 3rd November, 2014, the Committee convened at about 4 p.m. and concluded writing the report on CDF accounts for 2011/2012. The delay in starting the report writing was occasioned by the chairperson's late arrival. He had created an environment where no Member would want to chair sittings and make decisions in his absence. On this particular day, it was until about 4 p.m. that he instructed Hon. Jackson Rop to chair the sitting. Upon completion of the report, Hon. Rop was not keen to embark on the 2012/2013 report because major decisions were to be made and this required the presence of the substantive chair.

On 4th November, 2014 the Committee concluded the report writing on CDF accounts for the financial year 2012/2013 in the presence of the substantive chair.

On 5th November, 2014, the Committee embarked on the report writing on the JSC and Judiciary. The secretariat had first circulated part one of the report which was summary of evidence. Hon. Ababu Namwamba chairing however demanded that the second part of it

which comprised draft findings and observations be also distributed. By this time, the document was being printed. On reading the evidence of the former Judiciary Chief Registrar, Mrs. Gladys Shollei which appeared first in the report for comments and remarks, the chairperson alleged that the secretariat had omitted from the report crucial evidence submitted by Shollei with an intention of having her cleared by the Committee. This is after looking at the second part of the working document which contained some findings and observations. These findings and observations were based on documents submitted by witnesses after the hearing and which the chairperson never looked at. Some of these documents cleared certain audit queries raised by the Auditor General. He went further to say that the secretariat had been compromised to write such kind of a report. He then left the report writing room, called the Director of Committee's Mrs. Florence Abonyo asking for the hansard report.

I did not understand why the chairperson called the Director to ask for the hansard record, when the hansard officer responsible for the recording was attending the retreat and had the audio record. When the Committee wrote the *''hustlers jet report''*, the hansard officer would be called upon to replay the audit record and the Committee would make decisions.

After talking to the Director of Committees, the chairperson came back and the report writing continued. He then raised the second issue that the draft report was poorly structured and a considerable amount of time was spent deliberating on the structure of the report. At the end of the day, the Committee agreed on a new structure of the report and adjourned till the following day with instructions to the secretariat to redraft the report in line with the new structure. It should be noted that the initial report was structured like the *''hustlers jet''* report which the Committee had tabled earlier in the year.

On 6th November, 2014, the Committee was to reconvene at 9.00 a.m. but the chairperson suspended sittings until 4.00 p.m. so that he could attend a retreat of the National Security Committee at Serena Hotel. He was also a Member of the Committee. He came back to Pangoni at about 5.00 p.m. and the Committee immediately reconvened. Members looked at the working document and again the issue of structure of the report come up. The Committee resolves that the structure of the *''hustlers jet''* report earlier rejected be applied. The Committee then spent a few minutes making proposals on the content of the introductory part and adjourned the sitting at about 6.15 p.m. till the following day.

On 7th November, 2014 which was the final day of the retreat, the Committee reconvened at 9.00 a.m. and the chairperson informed Members that the report writing exercise cannot continue because of poorly done drafts and blames the secretariat. The working document produced by the secretariat is annexed hereto as appendix 4.

On the same day (7th November, 2014) Hon. Namwamba is seen on the front page of the Star Newspaper in the company of Malindi Member of Parliament, Hon. Gideon Mung'aro and Machakos Governor, Dr Alfred Mutua following a meeting in one of the hotels the previous day. The paper reports that the three were planning to form a new political party. This meeting took place the previous day when the chairperson had suspended PAC sittings.

(ii) 2nd retreat at the Sovereign Hotel, Kisumu from 15th to 18th November, 2014

One week to the retreat, I emailed the chairperson a working document and expected that he would call the secretariat and probably Auditors for a meeting to discuss the report and give guidance to the secretariat before the retreat. The email forwarding the document and the document itself are annexed hereto as appendices 3 and 4. I had raised this issue during the Mombasa retreat and he said he would oblige. To my disbelief, the chairperson sent me text messages instructing me to ensure the summary of evidence is interactive and that the report has an executive summary. I could not believe this and responded by text telling him the summary of evidence is usually a record of what the witness tells the Committee based on questions put to him by Members. All reports written by Parliament including the *''Hustlers Jet Report''* he fondly talks about had been written this way.

On the second instruction, I told him that an executive summary of a report is done once the Committee has agreed on the final content of the report. The main content of the executive summary would be the key findings and recommendations which the Committee had not agreed on. I also told him that I would not write draft observations and findings because when I did them during the Mombasa retreat, instead of asking me to explain how I arrived at them for the Committee to make a determination as would be the procedure, he concluded that I had been compromised by Mrs. Gladys Shollei to write a report to clear her. He agreed with me on this position stating that the committee would make its own observations, findings and recommendations but did not respond on the earlier two positions I had indicated.

The report writing was to begin at 9.00 a.m. but it was at about 11.30 a.m. when the chairperson arrived that the exercise began. After a few introductory remarks, the chairperson hit out at me because I had not done the executive summary and made the summary of evidence interactive. I maintained my earlier position and he told me to leave the Committee which I did. On leaving the report writing room, I wanted to go back to Nairobi but the Director of Committees Mrs. Florence Abonyo instructed me to remain around and assist Mr. Victor Weke from the sidelines. Mr. Weke was going to take charge in my absence and lacked the much needed experience since was newly employed.

The issue of the structure of the report again came up during this retreat whereby the Committee developed a new structure and instructed Mr. Weke to redraft the report in line with the new structure. In the meantime, the Chair directed that the Committee reconvenes at 6.00 p.m. as he rushed to Ugenya Constituency to attend a political party function. He never came back and never took part in the retreat as he returned to Nairobi to attend to party matters. This report has up to date not yet been finalized.

(i) <u>Norms, practices and procedures in report writings by Committees</u>

I wish to point out the following norms, practices and procedures in report writings by Committees of Parliament:-

(a) The role of the secretariat in report writing is to generate working documents which Committees are supposed to use in coming up with draft reports. These draft reports become official reports of the Committee after adoption.

(b) It is further a practice that before any report writing exercise by the Committee, the chairperson reads the working document and guides the secretariat appropriately before the final working document is presented to Members. In this case, the chairperson failed to do so.

(c) During report writing exercise, the chair is supposed to lead the Committee in reading the working document word by word and making changes where necessary. In this case, the chair has alleged that the draft report I submitted was grossly at variance with the evidence and testimonies rendered to the Committee. It was his responsibility to lead the Committee to correct this

anomaly and come up with a draft report but he failed to do so.

(d) The secretariat cannot contextualize what each and every Member wants to appear in the report and this calls for the Chairperson to lead the Committee in agreeing on the content of the report where Members disagree with what has been written by the secretariat.

(e) A Committee may even elect to disregard the entire working document produced by the secretariat and produce its own draft report for adoption.

Based on the events in Mombasa and Kisumu, it can be concluded that the chairperson was not keen or was not in a hurry on writing the Judiciary report and was using the secretariat as the scapegoat. Also having worked with the chair and understanding him well, if he really wanted this report finalized, it would have indeed been finalized within the time he wanted.

It is my humble submission that this allegation be dismissed with the chairperson taking responsibility for failing to provide leadership to both the secretariat and Members to ensure the Committee concluded the report writing on this matter during the first retreat in Mombasa.

7. **Any other matter I may inform the Committee to assist them inquire into the issues before them**

The chairperson has alleged questionable integrity, poor work ethics, indolence, incompetence and disrespectful demeanor against me. These allegations are subjective because at no given time did the Committee or my employer asses my performance and conduct as a clerk of Committees and make such a determination. If the chair had issues with my clerking of the Committee, the correct procedure is that he should have complained in writing to my employer who would adjudicated on the complaint and passed a verdict. He never did this.

Notwithstanding the foregoing, these allegations cannot be true since my effort was crucial in the production of the *''hustlers jet''* report and the three reports on the accounts for the financial years 2010/2011, 2011/2012 and 2012/2013 which the chairperson has cited as his major achievement while at the helm of the Committee. These are the only reports the Committee has submitted to the House since constitution and the secretariat's effort is even acknowledged in the preface parts of the reports themselves.

I have since employment in 2003 been the lead clerk of the Departmental Committee on Agriculture, Lands and Natural Resource (as it then was) under the chairmanship of Hon. Dr. Noah Wekesa, then Hon. Franklin Bett, the Committee of Privileges under the chairmanship of Speaker Hon. Francis Kaparo, the Select Committee that Investigated the Closure of Kenya Cashewnut Factory in Kilifi under the chairmanship of Hon. Joe Hamisi, the Departmental Committee on Energy, Transport and Public Works (as it then was) under the chairmanship of Hon. James Rege, the Departmental Committee on Local Authorities (abolished with the enactment of the new constitution) under the chairmanship of Hon. Mohamed Gabow and Hon. David Ngugi and finally the Public Accounts Committee (PAC) under the chairmanship of Hon. (Dr) Bony Khalwale. These were brilliant chairpersons whom any clerk would enjoy working with. I never had issues with them.

8. Conclusion

Based on my experience as clerk of the PAC of the 11th Parliament under the Chairmanship of Hon. Ababu Namwamba, I wish to make the following recommendations for the purposes of improving Committee work especially on reports:-

(i) Committees of the House should constitute Steering Sub-Committees comprising the Chair, Vice Chair, one or two experienced Members and the secretariat to provide direction for the main Committees;

(ii) Steering Committees should discuss draft reports of Committees before report writing retreats and be able to guide Members accordingly during the retreats;

(iii) All sittings of Committees should be recorded verbatim and reports immediately made available for reference;

(iv) Committees of the House which spend public funds on assignments like report writing retreats and fail to do the assignments should be surcharged for loss of public funds;

(v) In addition to surcharge in (iv) above, such Committees should show cause to the house leadership why further sanctions should not be taken against them including disbandment;

(vi) Committees should ensure proper planning of their business. Most importantly, Committees should have in place annual work plans and programmes which they should adhere to;

(vii) The House leadership should provide timelines within which Committees must conclude investigations. These

timelines should only be extended by leave of the House;

(viii) The National Assembly should develop proper guidelines on report writing which Committees should adhere to;

(ix) The original reports of Committees should be countersigned on each page by the Chair and one or two other Members after adoption to safeguard any unlawful alterations;

(x) Committee Members should without fear or favour challenge bad decisions purportedly made on their behalf by the Chair and ensure proper decisions are made;

(xi) Committees of the House should ensure that their reports are immediately tabled in the House after they are adopted.

Signed.....

GEORGE GAZEMBA

Date 18/03/2015

APPENDIX X

MEMORANDUM BY MR. L G. KAMWETI.

L.G. KAMWETI
C/O Mukele Ngacho
12th Floor
Hazina Towers
P.O. Box 11308-00100
Tel. No. 0733 601117
email:kamweti@yahoo.com
NAIROBI

78

10th March 2015

Chairman
Powers and Privileges Committee
Parliament Buildings
Nairobi.

Attn: Hon. Moses Cheboi MP

Dear Sir,

RE : INFORMATION TO ASSIST COMMITTEE INVESTIGATE QUESTIONABLE REPORTS BY MEMBERS

A. BACKGROUND

1. Confidential legal advice was given to National Bank addressed to me when I was the Company Secretary of National Bank by the bank lawyers Ochieng Kibet Onyango & Ohaga. In the Board meeting of 07-08-13 that terminated my services you can hear an audio of the directors confirming that such a letter was indeed written. The audio is Marked "*the confidential document*" on the annex marked "I"(pg 2). Relevant associated transcript is annexed as "II" (pg 3).

2. The advisory opinion was stolen from my custody in 2006 by Mr. Ahmednassir Abdullahi Advocate who was litigating against the bank on the same matter causing me considerable professional issues with the Bank. In the meeting of 07-08-13 that terminated my services you can hear an audio recording of the directors confirming that such a theft indeed took place. Ahmednassir is clearly identified as the thief. The audio is Marked "*the thief of the confidential document*". on the annex marked "I" (pg 2).

3. Following an invitation letter of 27-10-2010 (letter annexed as "III" (pg 4)) I appeared before the Parliamentary Justice and Legal Affairs Committee on 28-10-2010 and gave them information that the thief (being Mr. Ahmednassir Abdullahi Advocate) was on account of afore-stated conduct unfit to be a JSC member. My supporting affidavit to that effect is annexed as "IV".(pg 5 & 6)

I was surprised later to see and hear Hon Namwamba confirm on NTV that :-

> "*...We have interacted with the nominee on that information and the Committee is satisfied with both the information and the clarification given by the nominee and we are now in a position to proceed make a decision and report to the National Assembly*"..

The 58 second Video is marked "*satisfied with both information and clarification*" on the page marked "I". (pg 2) Relevant associated transcript is annexed as "V". (pg 7)

DETAILS OF CURRENT POSITION FOR AWARENESS PURPOUSES

The friend and cousin of Ahmednassir i.e. respectively Mr. Hassan and Ahmed whom you heard in the audio's referenced in Para 1 and 2 above, abused their offices and terminated my services in National Bank on of 07-08-13 for failing to withdraw a disciplinary complaint against him. The following are ongoing: (i) disciplinary complaint arising from the theft (ii) the labour dispute arising from the termination and (iii) a private prosecution against Ahmednassir's two friends for corruption, abuse of office and obstruction of the Disciplinary Committee process. The relevant judicial bodies empowered to deal with these will hopefully fairly address them.

ISSUE FOR CONSIDERATION BY THE HONOURABLE PROBE COMMITTEE

I express the humble view that it is **impossible** for the honourable member and then Committee Chair to be satisfied with "*both the information*" of the victim of the theft and the "*explanation of the nominee*" i.e. the thief/perpetrator. As a member of the public I am left with the strong view that such a report to parliament was doctored compromised or massaged to suit parties rather than carry out the core watchdog mandate of the Hon Committee. A dented image of both the Committee and its members is the result. That part of the report cannot stand to scrutiny. Neither is it logical. If it is within your current mandate, kindly dissect and note this fully documented anomaly in the interest of committee credibility.

This factual narrative is not a secret letter and can be shared with all or any party named.

L.G. KAMWETI

APPENDIX IX

WRITTEN SUBMISSION BY MR. JOHNSTON KIOKO.

REPUBLIC OF KENYA

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Telephone +254 20 2221291
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E-mail: clerk@parliament.go.ke

KENYA NATIONAL ASSEMBLY

CLERK'S CHAMBERS
National Assembly
Parliament Buildings
PO Box 41842-00100
NAIROBI, Kenya

18th March 2015

Mr. Justin Bundi, CBS,
Clerk,
Kenya National Assembly,
Parliament Buildings,
NAIROBI.

Through: **The Director,**
Directorate of Committee Services,
Kenya National Assembly,
Parliament buildings,
NAIROBI

Dear

RE: BRIEF TO THE COMMITTEE OF PRIVILEGES ON MATTERS OF THE PUBLIC ACCOUNTS COMMITTEE

I refer to your letter Ref: KNA/Cop/ Vol.2/2015 (20) dated 17 March 2015 concerning the abovementioned subject.

During its Committee Sitting on 3rd June 2014, Members of the Public Accounts Committee (PAC) resolved to undertake a fact-finding tour to the 4G Identity Solutions Limited of India as part of the ongoing Public Accounts Committee (PAC) investigation of procurement of Biometric Voter Registration (BVR) equipment by the Independent Electoral and Boundaries Commission (IEBC) for 2013 elections.

4G Identity Solutions Limited was the lowest bidder in the tender to supply 9,750 biometric voter registration kits (BVR) to the Independent Election and Boundaries Commission at $45 million (Sh3.72 billion). Others were Symphony whose bid was $47.5 million (Sh3.9 billion), Face Technologies of South Africa at $55.3 million (Sh4.6 billion) and On Track of Israel at $99.4 million (Sh8.2 billion). The original tender

committee awarded the contract to Face Technologies of South Africa, which ranked third, against the recommendation of the Evaluation Committee that 4G Identity Solutions Limited be awarded the contract.

Preparations

Mr. George Gazemba, the Senior Clerk Assistant and head of the Committee secretariat was tasked to follow up on the matter with the Office of the Clerk of the National Assembly.

After almost two months of trying, Mr. Gazemba reported to the Committee that the Ministry of Foreign Affairs had been unsuccessful in securing an appointment with 4G Identity Solutions. He also reported that he was not getting the necessary cooperation from the Ministry concerning the matter.

Owing to the urgent need to conclude the fact-finding tour phase of the investigation, the Committee mandated me to try the alternative route of directly communicating with the Company headquarters in Hyderabad to secure formal appointment with them.

I finally secured the formal invitation with them and forwarded the invitation documents to the Director of Committee Services so as to commence preparations on the trip.

The itinerary would include a courtesy call to the Kenya High Commission in New Delhi to get briefs and thereafter proceed to the company headquarters in Hyderabad.

The Committee nominated the following Members accompanied by two parliamentary officers.

1. Hon. Ababu Namwamba, EGH MP, PAC Chair and Leader of the Delegation
2. Hon. Gonzi Rai MCH MP
3. Hon. Jessica Mbalu, MP
4. Hon. James Bett, MP
5. Hon. Sakwa Bunyasi, MP
6. Hon. Kyengo Maweu, MP
7. Hon. Omondi Anyanga, MP
8. Mr. Johnston Kioko, Clerk Assistant and Secretary of the Delegation
9. Mr. Victor Weke, Clerk Assistant

The delegation was scheduled to depart on Sunday 12th October and arrive back on Saturday 18th October 2014.

Departure to and stay in New Delhi

The delegation left Nairobi at 1.45pm and arrived at Delhi, at 1.20pm (Kenyan Time) Members were received by the staff of the High Commission in India lead by the Deputy Head of Mission. The Mission had booked the Members in Lalit Hotel and were transferred to the hotel (21 Kilometers from the Airport) by 3 taxis. The Delegation was expected to meet all the accommodation and travel expenses.

The following day on Monday, (14-10-2015), the delegation left the hotel using the same 3 vans, to meet the High Commissioner at her offices at 11 am and thereafter for a lunch at a Chinese restaurant and back to the Hotel.

Earlier, during the meeting with the Kenya's High Commissioner, Members placed a request for her office to secure an appointment with the Director General of Unique Identification Authority of India (UIDAI) in the morning and if possible with the Lokh Sabah's (Memorial Library), in the afternoon of the following day.

Later that night, the Mission communicated to me that they were unable to secure the proposed appointments. After communicating the same to the Chair, it was unanimously agreed that the following day Members would visit key Indian monuments including the Taj Mahal in Agra, and later proceed to the Indira Gandhi international Airport to catch the flight to Hyderabad at 6.30 pm (Indian time).

On that day, we used the three vans and, another extra van which took two members from the Hotel as they did not travel with the others to Agra.

Departure to and stay in Hyderabad

Before our departure from New Delhi, the Mission had recommended to us 3 hotels in which to stay in Hyderabad. These included Novotel, Trident and Marriott, but specifically encouraged us to consider Trident Hotel because another Kenyan delegation from the Central Bank of Kenya would be residing there at the same time.

The owners of the taxis we were using at New Delhi also gave me the contact of their counterparts in Hyderabad and informed them to avail 3 vans for us at the Rajiv Gandhi International Airport- Hyderabad during our arrival time at 9.30 pm (Indian time).
I had also communicated with the management of 4G Identity Solutions that the delegation would be staying at Hotel Trident.

However, at the airport in Delhi, we were informed that there would be a 6-hour delay in our flight to Hyderabad on Jet Airways due to harsh weather and cyclones at the southern coast of India. That would mean that the delegation would arrive at Hyderabad in the morning at 3.45 am.

At around 10.00am I received a call from one of the managers of 4G Identity Solutions Mr. Rajesh, who had come to check on us at Hotel Trident. I informed him of the delay and asked him if he would assist us to organize three taxis for us upon landing at 3.45am, to which he obliged.
I put in that request because I had lost contact with the taxi company that was referred to us from New Delhi. They however caught up with us the following day.

On arrival at Hyderabad airport, we met the Mr. Rajesh of 4G Identity Solutions, with his car and two taxis and, in a convoy, departed to the Hotel Trident.
Mr. Rajesh, who told us that he had lived in Mombasa, engaged the Members in chats as we checked in.
As I was about to finalize checking in the Members, Mr. Rajesh approached me to inform me that he had in fact paid for the taxis and was, also making arrangements for the company (4G S) to foot the accommodation bill for the Members of Parliament.

When I informed the Chair of the development, he appeared surprised. He, however called Hon. Sakwa Bunyasi, and the representative of 4G aside, for some discussion. Shortly afterwards, he came back to the Members and informed them that the company and offered to pay for their accommodation expenses, BUT, he had declined the offer because (in his own words) 'the Parliament of Kenya had facilitated the Members adequately'.
At this point, most of the Members were dozing and could not interrogate the matter.

That day, according to the schedule, the delegation was supposed to visit the offices of 4G solution at 10.00am in the morning but the Chair requested that the appointment be rescheduled to the following day, 15th October, 2015.

Later in the afternoon the Chief Executive of 4G, Dr. Sreeni Tripuraneni, visited the delegation where he told Members that his company's gesture was very genuinely typical of Indian generosity and was not meant to influence their work or perceptions in any way. He further told Members that his company did not expect any favour from them since the BVR tender had since been awarded and executed by other parties; and that, the company had accepted the verdict of the Kenyan people on the matter. Both parties concurred and agreed to have a joint dinner in the evening.

At that point I and Mr. Victor Weke left room and cannot tell what transpired later at the meeting.

In the evening, all Members, (except Hon. Edick O. Anyanga), and two representatives of the company, had dinner that went up-to 11.00pm. ***However, when the company representative was preparing to pay, the Chair again declined and instead gave me a VISA card that belonged to Hon. Sakwa Bunyasi to pay for the dinner. The dinner bill came to about Indian Rupees 26,400 and he asked those Members present to each contribute US$60 to refund Hon. Bunyasi.***

While I was tasked to collect from the Members, all of them reacted negatively, with some politely telling me that 'they will handle the matter at their level'. I returned the receipt back to Hon. Bunyasi.

Therefore, to the best of my knowledge, until the time we left Hyderabad on the night of 17th October 2014, I did not witness any other attempt by 4G Solutions Limited to provide any accommodation, travel or entertainment for any of the Members of the delegation.

Regarding the PAC Report of Accounts of Gok for the 2012/2013,

I am not aware of those allegations regarding the Report. Its contents were fully interrogated by Members during the Mombasa retreat where the recommendations were arrived at. Personally, I was working on the 2011/2012 Report and did not witness any instance of alteration after the adoption of the said Report.

The Secretariat has all evidence in support of the findings in both Reports.

Way forward

I my view the current PAC Committee has, so far, been able to achieve much considering the backlog that existed before the commencement of its tenure in May 2013.

However, considering that a committee can only be as good as its members; their unity, resolve and unanimity is important in achieving the unity of purpose required to meet the expectation in its mandate.
The institution of Parliament could therefore consider making it a Sessional Committee.

Secondly, Parliament could consider revising the Standing Orders to provide for a platform for determining whether a matter meets the threshold for investigation by a watchdog committee of the House. This will reduce incidences where committees of the House singularly resolve to investigate a matter even when it may not be properly before it.

Thirdly, Parliament could consider revising its Standing Orders to stipulate the period by which any matter under investigation by the watchdog committee shall be disposed off and a report tabled in the House.

Lastly, Parliamentary Service Commission, could consider further strengthening its administrative mechanisms to cushion the Committee Secretariat/ staff from political intrigues.

Yours

Johnston Kioko
CLERK ASSISTANT II

APPENDIX XI

COPIES OF CORRESPONDENCES BY THE COMMITTEE OF PRIVILEGES

NATIONAL ASSEMBLY
RECEIVED
16 MAR 2015
SPEAKER'S OFFICE
NAIROBI.

REPUBLIC OF KENYA

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National Assembly
Clerk's Chambers
Parliament Buildings
P. O. Box 41842 –00100
NAIROBI, Kenya

When replying please quote

KNA/CoP/Vol.2 (05)/2015

March 10, 2015

The Hon. Justin B. N. Muturi, EGH, MP
Speaker of the National Assembly
Parliament Buildings
Nairobi

Permission is granted.
SNA
16/3/15

Dear Hon Speaker,

RE: EXCLUSION OF MEDIA AND MEMBERS OF PUBLIC: MEETINGS OF THE COMMITTEE OF PRIVILEGES- MARCH 9 TO 31ST, 2015

Following your directive, the Committee of Privileges has commenced the process of inquiring into *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is of the view that the nature of matters under inquiry necessitates the exclusion of the media, members of the public and other Members of Parliament who are not members of the Committee from its meetings.

In this regard and in accordance with the provisions of Article 118 of the Constitution and Standing Orders 198(2) and 252, the Committee now seeks your permission to conduct its proceedings *in camera*.

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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Nairobi, Kenya

Ref: KNA/ CoP/ Vol.2/ 2015 (07)

March 25, 2015

VERY URGENT

Mr. Samuel M. Arachi, MBS
Deputy Inspector General of Police
Vigilant House
NAIROBI

Dear Mr. Arachi

RE: APPEARANCE BEFORE THE COMMITTEE OF PRIVILEGES BY AN OFFICER OF THE POLICE FORCE: CPL. BERNARD ODAKO-THURSDAY, MARCH 26, 2015 AT 11.30 AM

On March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to Inquire into *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House on or before March 31st, 2015 in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

In course of the Inquiry, the Hon. Ababu Namwamba, MP, Chairperson of the Public Accounts Committee submitted audio recorded material as evidence against persons who he claimed to have either solicited or received bribes to compromise the work of the Public Accounts Committee. Later, the Hon. Namwamba, MP also claimed that the recording was made using his personal mobile telephone, but the activation for the recording was made by Corporal Benard Odako, a police officer attached to him. He also claimed that he was not aware that Corporal Odako had activated the mobile phone to record the conversations between the Member and the persons he was meeting.

In order to examine the recording in terms of the requirements of Section 78A of the Evidence Act, the Committee resolved that the police officer appears before them to adduce evidence related to the said recording.

This is therefore to request you to avail the officer to appear before the Committee of Privileges on Thursday, March 26, 2015 in the Committee Room No. 9, Fisrt floor, Main Parliament Buildings at 11.30 am. The officer may be accompanied by any other person, including his Counsel at the meeting. The Speaker has granted leave to the Committee to hold its proceedings in *Camera*

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

67

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National Assembly
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NAIROBI, Kenya

When replying please quote

Ref: KNA/ CoP/ Vol.2/ 2015 (18)

March 17, 2015

The Hon. Joseph Manje, M.P,
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Jude Njomo, M.P,
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Joel Onyancha, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Gonzi Rai, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Julius Melly, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Jackson K. Rop, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Fathia Mahbub, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Mathias Robi, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Stephen Manoti, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Arthur Odera, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Junet Sheikh Nuh, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. John Mbadi, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Kyengo Katatha Maweu, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Silvance Onyango Osele, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Manson Nyamweya, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Alice Nyanchoka Chae, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Mwadime Andrew, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Geni Charles Mong'are, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

Dear

RE: EXPRESSION OF INTEREST TO APPEAR AND EXAMINE MATTERS BEFORE THE COMMITTEE OF PRIVILEGES: WEDNESDAY AND THURSDAY, MARCH 18, 2015

As you are aware, on March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

The Speaker also referred to the Committee, the *Hansard* Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought direction on certain matters relating to privilege of Members. In this regard, the Committee has since resolved to request you to express interest in meeting them to examine the issues before them and assist them to explore possible solutions for recommendation to the House. Any Member with such interest is therefore invited to confirm attendance with the Clerk of the National Assembly or Mr. Rana Tampati, Principal Clerk Assistant on Ext 3287 or mobile No. 0722273077 or email to: clerk@parliament.go.ke. The Committee of Privileges will thereafter contact individual Members of the PAC who will have expressed interest so as to meet them individually or in groups in the afternoon of Wednesday, March 18, 2015 commencing 3.00 pm. The Committee has already had meetings with the Honourables Ababu Namwamba, M.P, Cecily Mbarire, M.P, Kareke Mbuiki, M.P; James Bett, M.P, John Lakwa, M.P, Edick Omondi Anyanga, M.P, Abass Ahmed Ibrahim, M.P, Samuel Arama and Jessica Mbalu, M.P.

During the meeting of March 18, 2015, the invited Members of PAC in attendance will also be asked to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including your proposal, if any, on the most judicious manner of addressing the allegations against the Chairperson and Members of the Public Accounts Committee. You are notified that the Speaker has granted leave to the Committee to hold its meetings in *Camera*.

Kindly express interest as requested.

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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'Bunge', Nairobi
Telephone 2848000
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NAIROBI, Kenya

When replying please quote

Ref: KNA/ CoP/ Vol.2/ 2015 (16)

March 16, 2015

The Hon. Jakoyo W. Midiwo, MGH, MP
Deputy Leader of the Minority Party
The National Assembly
Parliament Buildings
Nairobi

Dear Hon Midiwo

RE: MEETING WITH THE COMMITTEE OF PRIVILEGES: WEDNESDAY, MARCH 18, 2015 AT 10.00 A.M.

As you are aware, on March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

The Speaker also referred to the Committee, the *Hansard* Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought direction on certain matters relating to privilege of Members. In this regard, the Committee has since resolved to accord you an opportunity to meet them on Wednesday, March 18, 2015 to examine the issues before them as one of the Members who spoke to the matter when it was raised in the House and to also assist them to explore possible solutions for recommendation to the House. At the meeting, you will be invited to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including your proposal, if any, on the most judicious manner of addressing the allegations against the Chairperson and Members of the Public Accounts Committee.

This is therefore to convey the decision of the Committee and request you to attend their next meeting of Wednesday, March 18, 2015, in the Committee Room No.9, Main Parliament Buildings at 10.00 am. The Speaker has granted leave to the Committee to hold its meetings in *Camera*.

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

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THE NATIONAL ASSEMBLY

Ref: KNA/ CoP/ Vol.2/ 2015 (21)

March 23, 2015

The Hon. Ababu Namwamba, EGH, MP
Chairperson, Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

Dear Hon. Namwamba

RE: MEETING WITH THE COMMITTEE OF PRIVILEGES: WEDNESDAY, MARCH 25, 2015 AT 09.30 AM.

Our letter Ref. KNA/ CoP/ Vol.2/ 2014 (04) dated March 9, 2015 on the above refers.

During its Sitting held on Monday, March 23, 2015, the Committee of Privileges reiterated its earlier resolution to meet you after receiving evidence from other Members and persons in connection with the Inquiry. The Committee therefore agreed to invite you for meeting to clarify on already submitted evidence.

This is therefore to convey the decision of the Committee and request you to attend their next meeting on Tuesday, March 24, 2015 in Committee Room No.9, First Floor, Main Parliament Buildings at 10.00am.

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

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NAIROBI, Kenya

When replying please quote

Ref: KNA/ CoP/ Vol.2/ 2015 (21)

March 16, 2015

The Hon. Francis Nyenze, EGH, MP
Leader of the Minority Party
The National Assembly
Parliament Buildings
Nairobi

Dear Hon Nyenze

RE: EXPRESSION OF INTEREST TO EXAMINE MATTERS BEFORE THE COMMITTEE OF PRIVILEGES: WEDNESDAY, 18TH MARCH, 2015 AT 11.30 A.M.

As you are aware, on March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

The Speaker also referred to the Committee, the *Hansard* Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought direction on certain matters relating to privilege of Members. In this regard, the Committee has since resolved to request you to express interest in meeting them to examine the issues before them and assist them to explore possible solutions for recommendation to the House. The purpose of the meeting is to discuss and propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament including the most judicious manner of addressing the allegations against the Chairperson and Members of the Public Accounts Committee.

The Committee has already had meetings with the Honourables Ababu Namwamba, M.P, Cecily Mbarire, M.P, Kareke Mbuiki, M.P; James Bett, M.P, John Sakwa, M.P, Edick Omondi Anyanga, M.P, Abass Ahmed Ibrahim, M.P, Samuel Arama, Jessica Mbalu, M.P and has sought written submissions from relevant officers serving in the secretariat of PAC.

Should you have such interest, kindly confirm attendance of the Committee's Meeting of Wednesday, March 18, 2015 at 11.30 am by contacting undersigned or Mr. Rana Tiampati, Principal Clerk Assistant on Ext 3287 or mobile No. 0722273077 or email to: clerk@parliament.go.ke You are notified that the Speaker has granted leave to the Committee to hold its meetings in *Camera*. Kindly express interest as requested.

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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When replying please quote

Ref: KNA/CoP/Vol.2/2015 (21)

March 17, 2015

Mr. Mutea Iringo, OGW, EBS, CBS
Principal Secretary
Ministry of Defence
DOD Headquarters
Nairobi

Dear Mr. Iringo

RE: MEETING WITH THE COMMITTEE OF PRIVILEGES: MONDAY, MARCH 23, 2015 AT 10.00 A.M.

Your letter Ref. No. MOD/17/09 dated March 13, 2014 and our letter Ref: KNA/ CoP/ Vol.2/ 2015 (14) dated March 10, 2015 respectively on the above matter refers.

On March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of CAP 6.

The National Assembly Committee of Privileges is established under Section 10 of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya) and mandated to, amongst others, *either of its own motion or as a result of a complaint made by any person. inquire into any alleged breach by any member of the Assembly of the Code of Conduct issued under section 9, or into any conduct of any member of the Assembly within the precincts of the Assembly (other than the Chamber) which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the member thereof, or to be contrary to the best interests of the Assembly or the members thereof.*

During it sitting on Tuesday, March 17, 2015, The Committee resolved to accord you an opportunity to respond to the issue raised in the Hansard Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee on the allegations that you offered and extended a bribe of KES.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee arising from audit reservations on the Annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013.

This is therefore to convey the decision of the Committee and request you to attend the meeting of the Committee on Monday, March 23, 2015 in the Committee Room No.9, Main Parliament Buildings, at 10.00 am. You may be accompanied by such other persons you may deem necessary to assist you to respond to the claims.

You are notified that the Speaker of the National Assembly has granted leave to the Committee to hold its meetings in *Camera*

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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When replying please quote

Ref: KNA/CoP/ Vol.2/ 2015 (17)

March 17, 2015

The Hon. Aden Duale, EGH, MP
Leader of the Majority Party
The National Assembly
Parliament Buildings
Nairobi

Dear Hon Duale,

RE: MEETING WITH THE COMMITTEE OF PRIVILEGES: WEDNESDAY, MARCH 18, 2015 AT 10.45 AM.

As you are aware, on March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

The Speaker also referred to the Committee, the *Hansard* Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought .ection on certain matters relating to privilege of Members. In this regard, the Committee has since resolved to accord you an opportunity to meet them on Wednesday, March 18, 2015 to examine the issues before them and assist them to explore possible solutions for recommendation to the House. At the meeting, you will be invited to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including your proposal, if any, on the most judicious manner of addressing the allegations against the Chairperson and Members of the Public Accounts Committee.

This is therefore to convey the decision of the Committee and request you to attend their next meeting of Wednesday, March 18, 2015, in the Committee Room No.9, Main Parliament Buildings at 10.45 am. The Speaker has granted leave to the Committee to hold its meetings in *Camera*.

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

52

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When replying please quote

Ref: KNA/ CoP/ Vol.2/ 2015 (20)

March 17, 2015

Mr. Johnson Kioko
Second Clerk Assistant
The National Assembly
Parliament Buildings
Nairobi

Through: The Director
Directorate of Committee Services
The National Assembly
Parliament Buildings
Nairobi

Dear

RE: BRIEF TO THE COMMITTEE OF PRIVILEGES ON MATTERS OF THE PUBLIC ACCOUNTS COMMITTEE

As you are aware, on March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

The Speaker also referred to the Committee, the *Hansard* Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought direction on certain matters relating to privilege of Members. In this regard, the Committee, has since resolved that you submit a written brief to them, explaining the following matters-

(i) the details of logistic arrangements ahead of the Committee's recent trip to Hyderabad, India , including-

(a) how the ground travel and accommodation logistics were arranged and financed;

(b) details of any attempts to arrange or meet cost of travel, meals of accommodation on behalf of the Committee by any person or institution.

(ii) allegations that the Report of the Committee on the 2012/2013 Accounts of GoK was altered before tabling in the House; and,

(iii) any other matter you may wish to inform the Committee to assist them to Inquire into the issues before them.

The Committee has already had meetings with the Honourables Ababu Namwamba, M.P, Cecily Mbarire, M.P, Kareke Mbuiki, M.P; James Bett, M.P, John Sakwa, M.P, Edick Omondi Anyanga, M.P, Abass Ahmed Ibrahim, M.P, Samuel Arama and Jessica Mbalu, M.P.

This is therefore to convey the decision of the Committee and request you to submit the written brief to the Committee on or before **Wednesday, March 18, 2015 at 5.00 pm.** I have enclosed copies of the said PAC *Hansard* and the letter by the Chairperson of the Committee (which you are expect to treat as confidential), to assist you to respond to the matters raised. Although as the senior officer you will assu[illegible] responsibility of content, Mr. Victor Weke, Third Clerk Assistant, who also traveled with you to Hyderabad is expected to input into the brief. I have enclosed confidential copies of the said PAC *Hansard* and the letter by the Chairperson of the Committee to assist you to respond to the matters raised.

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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When replying please quote

Ref: KNA/ CoP/ Vol.2/ 2015 (19)

March 17, 2015

Mr. George Jusa Gazemba
Senior Clerk Assistant
The National Assembly
Parliament Buildings
Nairobi

Through: The Director
Directorate of Committee Services
The National Assembly
Parliament Buildings
Nairobi

Dear

RE: BRIEF TO THE COMMITTEE OF PRIVILEGES ON MATTERS OF THE PUBLIC ACCOUNTS COMMITTEE

As you are aware, on March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

The Speaker also referred to the Committee, the *Hansard* Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought direction on certain matters relating to privilege of Members. In this regard, the Committee, has since resolved that you submit a written brief to them, explaining the following matters-

(i) your relationship with the Chairperson of the Committee;

(ii) incidences and circumstances where you were asked to withdraw from the meetings of the Committee;

(iii) allegations that the Report of the Committee on the 2012/2013 Accounts of GoK was altered before tabling in the House;

(iv) item No.4 of the Letter by the Chairperson of PAC of February 25, 2015 (copy enclosed); and,

(v) any other matter you may wish to inform the Committee to assist them to Inquire into the issues before them.

The Committee has already had meetings with the Honourables Ababu Namwamba, M.P, Cecily Mbarire, M.P, Kareke Mbuiki, M.P; James Bett, M.P, John Sakwa, M.P, Edick Omondi Anyanga, M.P, Abass Ahmed Ibrahim, M.P, Samuel Arama and Jessica Mbalu, M.P.

This is therefore to convey the decision of the Committee and request you to submit the written brief to the Committee on or before **Wednesday, March 18, 2015 at 5.00 pm.** I have enclosed confidential copies of the said PAC *Hansard* and the letter by the Chairperson of the Committee to assist you to respond to the matters raised.

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

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When replying please quote

Ref: KNA/ CoP/ Vol.2/ 2015 (11)

March 10, 2015

The Hon. Kareke Mbiuki, MGH, MP
Member, Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

Dear Hon Mbiuki

RE: MEETING WITH THE COMMITTEE OF PRIVILEGES: THURSDAY, MARCH 12, 2015 AT 12. 00 PM

As you are aware, on March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

The Speaker also referred to the Committee the Hansard Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought direction on certain matters relating to privilege of Members. In this regard, the Committee, during the meeting of March 10, 2015, resolved to accord you an opportunity to meet them on March 12, 2015 to inquire into the various matters contained in the said *Hansard* Record, most of which were also replicated in the Chairperson's Letter to the Speaker.

The matters for inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament include-

(i) that you received a share of a bribe of KES.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee and or to exonerate one Mr. Mutea Iringo from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013; and,

(ii) that the Committee accepted bribes of about KES.10 million that was shared out to Committee Members;

During the meeting, the Committee will also invite you to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including your proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

This is therefore to convey the decision of the Committee and request you to attend the Committee's meeting of Thursday, March 12, 2015 in the Committee Room No.9, Main Parliament Buildings at 12.00 pm. You are notified that the Speaker has granted leave to the Committee to hold its meetings in *Camera*.

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

21

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When replying please quote

Ref: KNA/ CoP/ Vol.2/ 2015 (09)

March 10, 2015

The Hon. Samuel Arama, MP
Member of Parliament
The National Assembly
Parliament Buildings
Nairobi

Dear Hon. Arama,

RE: MEETING WITH THE COMMITTEE OF PRIVILEGES: THURSDAY, MARCH 12, 2015 AT 10.30 AM.

As you are aware, on March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

The Speaker also referred to the Committee, the Hansard Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought direction on certain matters relating to privilege of Members. In this regard, the Committee, during the meeting of March 10, 2015, resolved to accord you an opportunity to meet them on March 12, 2015 to inquire into the various matters contained in the said *Hansard* Record, most of which were also replicated in the Chairperson's Letter to the Speaker.

The matters for inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament include-

(i) that you solicited and accepted a share of a bribe of KES.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee and or to exonerate one Mr. Mutea Iringo from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013; and,

(ii) that the Chairperson of the Public Accounts Committee attempted to compromise you to allege misdeeds against fellow Members on the promise of your being reinstated into the Membership of the Public Accounts Committee.

During the meeting, the Committee will also invite you to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including your proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

This is therefore to convey the decision of the Committee and request you to attend the meeting of the Committee on Thursday, March 12, 2015, in the Committee Room No.9, Main Parliament Buildings at 10.30 am. You are notified that the Speaker has granted leave to the Committee to hold its meetings in *Camera*

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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When replying please quote

Ref: KNA/ CoP/ Vol.2/ 2015 (10)

March 10, 2015

The Hon. Cecily Mbarire, MGH, MP
Vice-Chairperson, Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

Dear Hon Mbarire,

RE: MEETING WITH THE COMMITTEE OF PRIVILEGES: THURSDAY, MARCH 12, 2015 AT 11. 15 AM

As you are aware, on March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

The Speaker also referred to the Committee, the Hansard Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought direction on certain matters relating to privilege of Members. In this regard, the Committee, during the meeting of March 10, 2015, resolved to accord you an opportunity to meet them on March 12, 2015 to inquire into the various matters contained in the said *Hansard* Record, most of which were also replicated in the Chairperson's Letter to the Speaker.

The matters for inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament include-

(i) that you received a share of a bribe of KES.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee and or to exonerate one Mr. Mutea Iringo from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;

(ii) that the Chairperson of the Public Accounts Committee disclosed an Interim Reports of the Public Accounts Committee to the Publisher of *The Nairobi Law Monthly;* and,

(iii) that the Committee accepted bribes of about KES.10 million that was shared out to Committee Members;

During the meeting, the Committee will also invite you to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including your proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

This is therefore to convey the decision of the Committee and request you to attend their next meeting of Thursday, March 12, 2015, in the Committee Room No.9, Main Parliament Buildings at 11.15 am. You are notified that the Speaker has granted leave to the Committee to hold its meetings in *Camera*.

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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When replying please quote

Ref: KNA/ CoP/ Vol.2/ 2015 (14)

March 10, 2015

Mr. Mutea Iringo, OGW, EBS, CBS
Principal Secretary
Ministry of Defence
Nairobi

Dear Mr. Iringo,

RE: MEETING WITH THE COMMITTEE OF PRIVILEGES: TUESDAY, MARCH 17, 2015 AT 10. 00 A.M.

The National Assembly Committee of Privileges is established under Section 10 of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya) and mandated to, amongst others, *either of its own motion or as a result of a complaint made by any person. inquire into any alleged breach by any member of the Assembly of the Code of Conduct issued under section 9, or into any conduct of any member of the Assembly within the precincts of the Assembly (other than the Chamber) which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the member thereof, or to be contrary to the best interests of the Assembly or the members thereof.*

On March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of CAP 6.

The Speaker also referred to the Committee, the Hansard Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought direction on certain matters, relating to privilege of Members.

There are allegations in the two documents that you offered and extended a bribe of KES.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee arising from audit reservations on the Annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013. In this regard, the Committee, during the meeting of March 10, 2015, resolved to accord you an opportunity to meet them on March 17, 2015 to inquire into the said allegations.

This is therefore to convey the decision of the Committee and request you to attend the meeting of the Committee on Tuesday, March 17, 2015 in the Committee Room No.9, Main Parliament Buildings, at 10.00 am. You may be accompanied by such other persons you may deem necessary to assist you to respond to the claims.

You are notified that the Speaker of the National Assembly has granted leave to the Committee to hold its meetings in *Camera*

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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Ref: KNA/ CoP/ Vol.2/ 2014 (13)

March 10, 2015

The Hon. Jessica Mbalu, MP
Member, Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

Dear Hon. Mbalu,

RE: MEETING WITH THE COMMITTEE OF PRIVILEGES: THURSDAY, MARCH 12, 2015 AT 4. 15 PM

As you are aware, on March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

The Speaker also referred to the Committee, the Hansard Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought direction on certain matters relating to privilege of Members. In this regard, the Committee, during the meeting of March 10, 2015, resolved accord you an opportunity at to meet them on, March 12, 2015 to inquire into the various matters contained in the said *Hansard* Record, most of which were also replicated in the Chairperson's Letter to the Speaker. The matters for inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament include your generalised allegation that the Committee accepted bribes of about KES.10 million that was shared out to Committee Members.

During the meeting, the Committee will also invite you to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including your proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

This is therefore to convey the decision of the Committee and request you to attend the Committee's meeting of Thursday, March 12, 2015 in the Committee Room No.9, Main Parliament Buildings at 4.15 pm. You are notified that the Speaker has granted leave to the Committee to hold its meetings in *Camera*.

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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When replying please quote

Ref: KNA/ CoP/ Vol.2/ 2014 (12)

March 10, 2015

The Hon. Sakwa Bunyasi, MP
Member, Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

Dear Hon Bunyasi

RE: MEETING WITH THE COMMITTEE OF PRIVILEGES: THURSDAY, MARCH 12, 2015 AT 3. 30 PM

As you are aware, on March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

The Speaker also referred to the Committee, the Hansard Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought direction on certain matters relating to privilege of Members. In this regard, the Committee, during the meeting of March 10, 2015, resolved to accord you an opportunity to meet them on March 12, 2015 to inquire into the various matters contained in the said *Hansard* Record, most of which were also replicated in the Chairperson's Letter to the Speaker.

The matters for inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament include-

(i) that there were attempts to compromise the Committee and procure improper favours from the Chairperson of the Public Accounts Committee during a recent investigative trip to Hyderabad, India, (in which you were part of the delegation), including claims of attempts by the firm under investigation to settle hotel bills for the Committee Members; and,

(ii) that the Committee accepted bribes of about KES.10 million that was shared out to Committee Members.

During the meeting, the Committee will also invite you to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including your proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

This is therefore to convey the decision of the Committee and request you to attend the Committee's meeting of Thursday, March 12, 2015 in the Committee Room No.9, Main Parliament Buildings at 3.30 pm. You are notified that the Speaker has granted leave to the Committee to hold its meetings in *Camera*.

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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NAIROBI, Kenya

When replying please quote

Ref: KNA/ CoP/ Vol.2/ 2014 (08)

March 10, 2015

The Hon. Abbas Ahmed Ibrahim, MP
Member, Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

Dear Hon Abbas,

RE: MEETING WITH THE COMMITTEE OF PRIVILEGES: WEDNESDAY, MARCH 11, 2015 AT 4.15 PM

As you are aware, on March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

The Speaker also referred to the Committee, the Hansard Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought direction on certain matters relating to privilege of Members. In this regard, the Committee, during its meeting of March 10, 2015, resolved to accord you an opportunity to meet them on Wednesday, March 11, 2015 to inquire into the various matters contained in the said *Hansard* Record, most of which were also replicated in the Chairperson's Letter to the Speaker.

The matters for inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament include-

(i) that you solicited and accepted a share of a bribe of KES.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee and or to exonerate one Mr. Mutea Iringo from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;

(ii) that the Chairperson of the Public Accounts Committee received a bribe of KES. 5 Million from the Office of the President to influence the outcome of recent investigations by the Public Accounts; and,

(iii) allegations that the Chairperson of the Public Accounts Committee was bribed in respect of the Committee's recent examination of irregularities in the Judiciary;

During the meeting, the Committee will also invite you to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including your proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

This is therefore to convey the decision of the Committee and request you to attend the next meeting of the Committee on Wednesday, March 11, 2015 in the Committee Room No.9, Main Parliament Buildings at 4.15 pm. You are notified that the Speaker has granted leave to the Committee to hold its meetings in *Camera*

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

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Ref: KNA/ CoP/ Vol.2/ 2015 (08)

March 10, 2015

The Hon. James Bett, MP
Member, Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

Dear Hon. Bett,

RE: MEETING WITH THE COMMITTEE OF PRIVILEGES: WEDNESDAY, MARCH 11, 2015 AT 5.00 PM.

As you are aware, on March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

The Speaker also referred to the Committee, the Hansard Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought direction on certain matters relating to privilege of Members. In this regard, the Committee, during the meeting of March 10, 2015, resolved to accord you an opportunity to meet them on Wednesday, March 11, 2015 to inquire into the various matters contained in the said *Hansard* Record, most of which were also replicated in the Chairperson's Letter to the Speaker.

The matters for inquiry relating to abuse of privilege and/or breach of code of conduct for Members of Parliament include-

(i) that you solicited and accepted a share of a bribe of KES.1.5 million at Silver Springs Hotel, Nairobi, in order to influence the findings of the Public Accounts Committee and or to exonerate one Mr. Mutea Iringo from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;

(ii) that there were attempts to compromise the Committee and procure improper favours from the Chairperson of the Public Accounts Committee during a recent investigative trip to Hyderabad, India, (in which you were part of the delegation) including claims of attempts by the firm under investigation to settle hotel bills for the Committee Members;

(iii) that the Committee accepted bribes of about KES.10 million that was shared out to Committee Members; and,

(iv) allegations that the Chairperson of the Public Accounts Committee was bribed in respect of the Committee's recent examination of irregularities in the Judiciary;

During the meeting, the Committee will also invite you to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including your proposal, if any, on the most judicious manner of addressing the allegations against Members of the Public Accounts Committee.

This is therefore to convey the decision of the Committee and request you to attend the Meeti of the Committee on Wednesday, March 11, 2015 in the Committee Room No.9, Main Parliament Buildings. at 5.00 pm. The Speaker has granted leave to the Committee to hold its meetings in *Camera*.

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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KNA/CoP/ Vol.2 (04)/2015

March 10, 2015

The Hon. Ababu Namwamba, EGH, MP
Chairperson, Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

Dear Hon. Namwamba,

RE: MEETING WITH THE COMMITTEE OF PRIVILEGES: WEDNESDAY, MARCH 11, 2015 AT 10.30 AM.

As you are aware, on March 5, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/ or code of conduct by the Members of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya). The Speaker also referred to the Committee, the correspondence you had written to him seeking direction on certain matters, which in the Speaker's opinion, relate to privilege of Members.

In this regard, the Committee, during its meeting on Monday, March 9th, 2015, resolved to accord you an opportunity to meet them before and after receiving evidence from other Members and persons in connection with the Inquiry. Therefore, the Committee resolved to invite you for a meeting to inquire into the various matters raised in your letter to the Speaker and the following other claims that relate to abuse of privilege and/or breach of code of conduct for Members of Parliament, that -

(vii) the Chairperson of the Public Accounts Committee was bribed in respect of the Committee's recent examination of irregularities in the Judiciary;

(viii) a member of the Committee received a bribe of Ksh.10 million "to share out with other Members of the Public Accounts Committee";

(ix) there were attempts to compromise the Committee in order to exonerate one Mr. Mutea Iringo from possible blame arising from audit reservations on the annual Accounts of the Government of Kenya (Office of President) for the year 2012/2013;

(x) the Chairperson of the Public Accounts Committee received a bribe of Ksh.5 million from the Office of the President to exonerate certain persons from possible blame;

(xi) there were attempts to compromise the Committee and procure improper favours from the Chairperson of the Public Accounts Committee during a recent investigative trip to Hyderabad, India, including claims of attempts by the firm under investigation to settle hotel bills for the Committee Members; and,

(xii) alleged compromise of a discharged Member of the Public Accounts Committee to allege misdeeds against fellow Members on the promise of being reinstated into the Membership of the Public Accounts Committee.

This is therefore to convey the decision of the Committee and request you to attend their next meeting on Wednesday, March 11, 2015 in the Speaker's Boardroom, Main Parliament Buildings at 10.30 am. The Speaker has also granted leave to the Committee to hold its meetings in *Camera*

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

Copy to:-

The Hon. Justin Muturi, E.G.H, MP
Speaker of the National Assembly
First Floor, Main Parliament Buildings, Parliament Road
Nairobi, Kenya

NATIONAL ASSEMBLY
RECEIVED
16 MAR 2015
SPEAKER'S OFFICE
NAIROBI.

REPUBLIC OF KENYA

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KNA/CoP/Vol.2 (05)/2015

March 10, 2015

The Hon. Justin B. N. Muturi, EGH, MP
Speaker of the National Assembly
Parliament Buildings
Nairobi

Permission is granted.
NA
16/3/15

Dear Hon Speaker,

RE: EXCLUSION OF MEDIA AND MEMBERS OF PUBLIC: MEETINGS OF THE COMMITTEE OF PRIVILEGES- MARCH 9 TO 31ST, 2015

Following your directive, the Committee of Privileges has commenced the process of inquiring into *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is of the view that the nature of matters under inquiry necessitates the exclusion of the media, members of the public and other Members of Parliament who are not members of the Committee from its meetings.

In this regard and in accordance with the provisions of Article 118 of the Constitution and Standing Orders 198(2) and 252, the Committee now seeks your permission to conduct its proceedings *in camera*.

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

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Ref: KNA/ CoP/ Vol.2/ 2015 (07)

March 25, 2015

VERY URGENT

Mr. Samuel M. Arachi, MBS
Deputy Inspector General of Police
Vigilant House
NAIROBI

Dear Mr. Arachi,

RE: APPEARANCE BEFORE THE COMMITTEE OF PRIVILEGES BY AN OFFICER OF THE POLICE FORCE: CPL. BERNARD ODAKO-THURSDAY, MARCH 26, 2015 AT 11.30 AM

On March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to Inquire into *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House on or before March 31st, 2015 in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

In course of the Inquiry, the Hon. Ababu Namwamba, MP, Chairperson of the Public Accounts Committee submitted audio recorded material as evidence against persons who he claimed to have either solicited or received bribes to compromise the work of the Public Accounts Committee. Later, the Hon. Namwamba, MP also claimed that the recording was made using his personal mobile telephone, but the activation for the recording was made by Corporal Benard Odako, a police officer attached to him. He also claimed that he was not aware that Corporal Odako had activated the mobile phone to record the conversations between the Member and the persons he was meeting.

In order to examine the recording in terms of the requirements of Section 78A of the Evidence Act, the Committee resolved that the police officer appears before them to adduce evidence related to the said recording.

This is therefore to request you to avail the officer to appear before the Committee of Privileges on Thursday, March 26, 2015 in the Committee Room No. 9, Fisrt floor, Main Parliament Buildings at 11.30 am. The officer may be accompanied by any other person, including his Counsel at the meeting. The Speaker has granted leave to the Committee to hold its proceedings in *Camera*

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY

REPUBLIC OF KENYA

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When replying please quote

Ref: KNA/ CoP/ Vol.2/ 2015 (18)

March 17, 2015

The Hon. Joseph Manje, M.P,
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Jude Njomo, M.P,
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Joel Onyancha, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Gonzi Rai, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Julius Melly, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Jackson K. Rop, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Fathia Mahbub, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Mathias Robi, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Stephen Manoti, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Arthur Odera, M.P.
Member of the Public Accounts Committee
The National Assembly
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The Hon. Junet Sheikh Nuh, M.P.
Member of the Public Accounts Committee
The National Assembly
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The Hon. John Mbadi, M.P.
Member of the Public Accounts Committee
The National Assembly
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The Hon. Kyengo Katatha Maweu, M.P.
Member of the Public Accounts Committee
The National Assembly
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Nairobi

The Hon. Silvance Onyango Osele, M.P.
Member of the Public Accounts Committee
The National Assembly
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Nairobi

The Hon. Manson Nyamweya, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Alice Nyanchoka Chae, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Mwadime Andrew, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

The Hon. Geni Charles Mong'are, M.P.
Member of the Public Accounts Committee
The National Assembly
Parliament Buildings
Nairobi

Dear

RE: EXPRESSION OF INTEREST TO APPEAR AND EXAMINE MATTERS BEFORE THE COMMITTEE OF PRIVILEGES: WEDNESDAY AND THURSDAY, MARCH 18, 2015

As you are aware, on March 5th, 2015, the Speaker of the National Assembly directed the Committee of Privileges to inquire into and report on *"the matters of alleged breach of privileges and/or code of conduct of Membership of the Public Accounts Committee, including recent claims of compromises, corruption and deceit"*. The Committee is expected to submit a report to the House within 21 days, in accordance with Section 10(5) of the National Assembly (Powers and Privileges) Act, (Cap 6 Laws of Kenya).

The Speaker also referred to the Committee, the *Hansard* Report of the Public Accounts Committee's Meeting of February 26, 2015 and a letter written by the Chairperson of the Committee, which he sought direction on certain matters relating to privilege of Members. In this regard, the Committee has since resolved to request you to express interest in meeting them to examine the issues before them and assist them to explore possible solutions for recommendation to the House. Any Member with such interest is therefore invited to confirm attendance with the Clerk of the National Assembly or Mr. Rana Kampati, Principal Clerk Assistant on Ext 3287 or mobile No. 0722273077 or email to: clerk@parliament.go.ke. The Committee of Privileges will thereafter contact individual Members of the PAC who will have expressed interest so as to meet them individually or in groups in the afternoon of Wednesday, March 18, 2015 commencing 3.00 pm. The Committee has already had meetings with the Honourables Ababu Namwamba, M.P, Cecily Mbarire, M.P, Kareke Mbuiki, M.P; James Bett, M.P, John Lakwa, M.P, Edick Omondi Anyanga, M.P, Abass Ahmed Ibrahim, M.P, Samuel Arama and Jessica Mbalu, M.P.

During the meeting of March 18, 2015, the invited Members of PAC in attendance will also be asked to propose mechanisms for dealing with the matters of integrity, breach of privilege and/or code of conduct by a Committee or individual Members of Parliament, including your proposal, if any, on the most judicious manner of addressing the allegations against the Chairperson and Members of the Public Accounts Committee. You are notified that the Speaker has granted leave to the Committee to hold its meetings in *Camera*.

Kindly express interest as requested.

Yours

JUSTIN BUNDI, CBS
CLERK OF THE NATIONAL ASSEMBLY