



PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT  
( THIRD SESSION - 2015 )

PARLIAMENT  
OF KENYA  
LIBRARY

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL  
AFFAIRS

# REPORT

ON THE PETITION ON THE MATTER OF THE ELECTION OF  
THE CHAIRPERSON OF THE AGRICULTURAL SOCIETY OF  
KENYA

CLERK'S CHAMBERS,  
PARLIAMENT BUILDINGS,  
NAIROBI.

OCTOBER, 2015

*Approved*  
*28/10/15*  
*SNA*  
*Paper laid*  
*By the Hon*  
*Florence Kiyong*  
*on Wednesday*  
*28/10/2015*  
*[Signature]*

TABLE  
S/NO  
28 OCT 2015  
SIGN  
PAPER LAID

*v.26*

## TABLE OF CONTENTS

<u>No.</u>		<u>Page</u>
1.	Table of contents.....	1
2.	List of appendices.....	2
3.	Preface.....	3
4.	Background.....	7
5.	Consideration of the Petition and findings. ....	7
6.	Recommendations.....	8

---

## **LIST OF APPENDICES**

- 1 Minutes of the sitting of the Committee which adopted the report
2. Attendance list of Members who attended the sitting that adopted the report
- 3 The Petition

## **1.0 PREFACE**

**Mr. Speaker Sir,**

On behalf of the Departmental Committee on Justice and Legal Affairs and pursuant to Standing Order 216(5), it is my pleasure and duty to present to the House, the Committee's Report on the Petition on the matter of the election of the Chairperson of the Agricultural Society of Kenya (ASK).

### **1.1 Committee Membership**

The Committee on Justice and Legal Affairs was constituted by the House on Thursday 16<sup>th</sup> May, 2013 and comprises the following members:

1. The Hon. Samuel Chepkong'a, M.P. – **Chairperson**
2. The Hon. Priscilla Nyokabi, M.P. – **Vice Chairperson**
3. The Hon. Njoroge Baiya, M.P.
4. The Hon. Muriithi Waiganjo, M.P.
5. The Hon. Ndirangu Waihenya, M.P.
6. The Hon. Florence Kajuju, M.P.
7. The Hon. Kang'ata Irungu, M.P.
8. The Hon. Benson Mutura, M.P.
9. The Hon. John Njoroge Chege, M.P.
10. The Hon. William Cheptumo, M.P.
11. The Hon. Mohamed Abdi Haji, M.P.
12. The Hon. James Bett, M.P.
13. The Hon. Sammy Koech, M.P.
14. The Hon. Moses Cheboi, M.P.
15. The Hon. Paul Bii, M.P.
16. The Hon. Charles Gimose, M.P.
17. The Hon. Johana Ng'eno, M.P.
18. The Hon. Boniface Otsiula, M.P.
19. The Hon. David Ouma Ochieng, M.P.
20. The Hon. Neto Agostinho, M.P.
21. The Hon. Kaluma Peter, M.P.
22. The Hon. Fatuma Ibrahim Ali, M.P.
23. The Hon. Ben Momanyi Orori, M.P.
24. The Hon. T. J. Kajwang', M.P.
25. The Hon. (Bishop) Mutua Mutemi, M.P.
26. The Hon. Olago Aluoch, M.P.
27. The Hon. Christine Oduor Ombaka, M.P.
28. The Hon. Munuve G. Mati, M.P.
29. The Hon. Mwamkale William Kamoti, M.P.

## 1.2 Committee's Mandate

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing order 216(5) which defines functions of the Committee as being to:-

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) study and review all legislation referred to it;
- d) study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister;
- f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those understanding order 204 (Committee on appointments); and
- g) make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to deal with the following subjects:-

- a) Constitutional Affairs;
- b) The administration of law and justice;
- c) The Judiciary;
- d) Public prosecutions;
- e) Elections;
- f) Ethics ,Integrity and anti-corruption; and
- g) Human rights.

On 24<sup>th</sup> April, 2015 pursuant to Standing Order 225, you conveyed to the House a Petition on the matter of the election of the Chairperson of the Agricultural Society of Kenya (ASK).

The Petition by one Mr. Joseph Gachagua, a resident of Nanyuki within Laikipia County is dated 22<sup>nd</sup> April, 2015, was presented to your office through Hon. Weru Kinyua, M.P. and is signed by the Petitioner who prays as follows:-

- (i) The House finds and hold that his Lordship Justice Anthony Mrima of Kakamega High Court is not qualified to hold an elective office in the name of National Chairman of Agricultural Society of Kenya;

- (ii) The House finds that the elections held on 27<sup>th</sup> February, 2015 and presided over by the Chief Executive Officer of the Agricultural Society of Kenya were contrary to rule L of the Elections Rules of 2009 and the outcome thereof is null and void;
- (iii) The House resolves that the Cabinet Secretary, Ministry of Agriculture calls for fresh elections of the Agricultural Society of Kenya for purposes of electing new office holders, to be presided over by the Returning Officer appointed by the Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries in accordance with the provisions of the Agricultural Society of Kenya's constitution and elections rules of 2009. Thereafter, the Ministry of Agriculture presides over the handing over process to the new officials.
- (iv) The House resolves that by virtue of being a major stakeholder and financier of the Agricultural Society of Kenya, The Principal Secretary, Ministry of Agriculture be an automatic board member of the Society to provide guidance and represent public interest. The Society's constitution be amended accordingly to provide for this post.

The Petitioner draws the attention of the National Assembly to the following:-

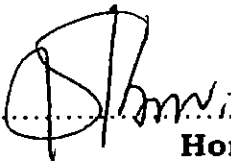
- (i) The Agricultural Society of Kenya was formed in December 1901 with an objective of promoting agricultural development in Kenya.
- (ii) The Constitution of Law Society of Kenya provides that there shall be a National Chairman who shall be elected after every five years by the council from among members of the council.
- (iii) The ASK elections were conducted on 27<sup>th</sup> February, 2015 when a sitting judge of the High Court was elected to the office of the National Chairman.
- (iv) That the said election was marred by massive electoral issues, irregularities and illegality. Despite objections raised by the Petitioner and the directions given by the Ministry of Agriculture, the ASK leadership proceeded to regularize the irregular appointments.
- (v) That the election of justice Mrima is in violation of Article 77 of the Constitution of Kenya, 2010 which restricts a full-time state officer from participating in any other gainful employment.

The Petition was committed to the Departmental Committee on Justice and Legal Affairs pursuant to provisions of Standing Order 227. The Committee considered the Petition pursuant to the Constitution of Kenya, 2010 and other enabling laws.

### **1.3 Acknowledgements**

The Committee wishes to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

- It is my pleasant duty and privilege, on behalf of the Committee to present this report to the House.

SIGNED.......... DATE.....*28th October 2017*.....  
Hon. Samuel Chepkong'a, M.P  
(Chairperson)

**Departmental Committee on Justice and Legal Affairs**

## **2.0 BACKGROUND**

The Petition is dated 22<sup>nd</sup> April 2015 and was presented to the National Assembly by Hon. Weru Kinyua, M.P. on behalf of Mr. Joseph Gachagua, a resident of Nanyuki within Laikipia County.

The Petitioner prays that the National Assembly, through the Departmental Committee on Agriculture, Livestock and Co-operatives:-

- (i) Recommends that the Cabinet Secretary, Ministry of Agriculture finds and holds that his Lordship Justice Anthony Mrima of Kakamega High Court as not qualified to hold an elective office of Chairman of Agricultural Society of Kenya (ASK) for purposes of electing new office holders to be presided over by the Returning Officer appointed by the Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries in accordance with the provisions of the Society's constitution and elections rules, 2009.
- (ii) Recommends that the Agricultural Society of Kenya constitution be amended accordingly to provide that the Principal Secretary, Ministry of Agriculture be a Board member of the Society to provide guidance and represent public interest.

The Petition was conveyed to the House on 23<sup>rd</sup> April, 2015. The Honorable Speaker however noted that the issues raised were of legal nature and he committed it to the Departmental Committee on Justice and Legal Affairs on 23<sup>rd</sup> April 2015 which was the most suited to deal with legal issues.

## **3.0 CONSIDERATION OF THE PETITION AND FINDINGS**

The Committee considered the petition on the 8<sup>th</sup> of September, 2015 during which it interrogated the issues raised and drew the conclusion that the election of Justice Mrima as a Chairperson of the Agricultural Society of Kenya was null and void because he holds another State Office as a Judge of the High Court of Kenya.

---

#### **4.0 RECOMMENDATIONS**

Having considered the petition in line with Article 119 of the Constitution and the provisions of the Petitions to Parliament (Procedure) Act, and the Standing Orders of the National Assembly, the Committee recommends as follows:-

- i. As a Judge of the High Court and pursuant to Article 77 (1) of the Constitution, Justice Mrima was ineligible to vie for or accept election to the position of Agricultural Society of Kenya (ASK) Chairperson. In the circumstances thereof, a fresh election for the position of ASK Chairperson be held in accordance with the Constitution of Kenya and the ASK Constitution.
- ii. A copy of the petition be forwarded to the Judicial Service Commission (JSC) for further action in relation to any violation of the Judicial Code of Conduct during the period Justice Mrima held the two concurrent posts despite the express provisions of Article 77 (1) of the Constitution

.....**END**.....

# **APPENDIX 1**