



THE NAIROBI CITY COUNTY ASSEMBLY
OFFICE OF THE CLERK

2ND SESSION

NBI CA. PLC. 2014 / (29)

13th May, 2014

PAPER LAID

Pursuant to Standing Order 180 (6) I beg to lay the following paper on the Table of the Assembly, today Tuesday 13th May, 2014.

1. REPORT OF THE SELECT COMMITTEE ON INVESTIGATIONS INTO THE CONDUCT OF MR. EVANS ONDIEKI, THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR TRANSPORT AND PUBLIC WORKS

(CHAIRPERSON, SELECT COMMITTEE ON INVESTIGATIONS INTO THE CONDUCT OF MR. EVANS ONDIEKI, THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR TRANSPORT AND PUBLIC WORKS)

Copies to:

The Speaker
The Clerk
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Hansard Reporters
The Press

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REPUBLIC OF KENYA
COUNTY GOVERNMENT OF NAIROBI CITY



NAIROBI CITY COUNTY ASSEMBLY
FIRST ASSEMBLY – SECOND SESSION

REPORT OF THE
SELECT COMMITTEE ON INVESTIGATIONS INTO THE CONDUCT OF MR.
EVANS ONDIEKI, THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR
TRANSPORT AND PUBLIC WORKS

CLERK'S CHAMBERS
NAIROBI CITY COUNTY ASSEMBLY
CITY HALL BUILDINGS
NAIROBI

MAY, 2014

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Abbreviations and Acronyms

CECM	-	County Executive Committee Member
MOA	-	Matatu Owners Association
PRT	-	Public Rapid Transport
CIDP	-	County Integrated Development Plan
KURA	-	Kenya Urban Roads Authority
KeNHA	-	Kenya National Highways Authority
KeRRA	-	Kenya Rural Roads Authority
EU	-	European Union

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1.0 PREFACE

Mr. Speaker, Sir,

The Select Committee on Investigations into the Conduct of Mr. Evans Ondieki, the Nairobi City County Executive Committee Member for Transport and Public Works was formed pursuant to Section 40 (3) of the County Government's Act, 2012, and Standing Order No. 62 (6).

On Tuesday, 29th April, 2014, the Hon. Chege Mwaura, MCA, moved a Motion for the censure and removal from office of the County Executive Committee Member for Public Works and Transport, Mr. Evans Ondieki, for gross misconduct, amongst other charges.

The Motion, which detailed the charges against the CEC Member, read as follows:-

Hon. Speaker Sir, I beg to give notice of the following Motion pursuant to Section 40 of the County Governments Act, 2012, and Standing Order 62:-

***THAT**, aware that County Executive Committee Members are state officers bound by Chapter Six of the Constitution of Kenya 2010 and more so Article 75 (1) (c); concerned that the County Executive Committee (CEC) Member for Public Works and Transport Mr. Evans Ondieki recently made allegations in the media imputing improper motives against the Members of the County Assembly (MCAs) thereby casting aspersions against their integrity and standing against Nairobian, and further alleged that the MCAs were compromised and received bribes in order to block the purchase of city buses that had not been budgeted for in the FY 2013/14; **noting** that he has gone against the provisions of Section 39 (2) of the County Governments Act 2012, wherein, he has on numerous occasions repeatedly failed to appear before the Sectoral Committee on Transport and Public Works without justifiable reasons and while when he has, has failed to answer questions relating to his responsibilities satisfactorily; **further noting** that on Tuesday, 22nd April, 2014, when he appeared before the said Sectoral Committee on Transport and Public Works, he was rude and insulted some members of the County Assembly terming them as hooligans. On the said day, he also incited members of public to picket outside the Assembly in order to intimidate the Committee against carrying out its mandate; **aware** that on a previous occasion, the said CEC Member asked elected County Assembly Members to bring lists of proposed 5 roads per ward knowing very well that there were no budgetary provisions for the same and to date nothing tangible has come out of the request thereby causing Assembly Members embarrassment; this Assembly resolves that Pursuant to Section 40 of the County Governments Act and Standing Order 62, this Assembly censures the said CEC member for transport and Public Works and resolves that the Governor do dismiss him from office forthwith on grounds of gross misconduct.*

The Motion was debated in the Assembly on Tuesday 29th April, 2014 and a resolution passed on the same day that the Assembly commences the process of removal from office of the CEC Member.

1.1 Appointment of The Committee

On 30th May, 2014, following a resolution of the Assembly passed on Tuesday 29th April, 2014, and pursuant to Section 40 (3) of the County Government's Act, 2012, and Standing order No. 62 (6), a Select Committee on investigations into the conduct of Mr. Evans Ondieki, the County Executive Committee Member for Transport and Public Works, was appointed by the assembly.

1.2 Mandate of The Committee

Pursuant to Section 40 (3) of the County Government Act, 2012, and Standing Order No. 62 (6) the Committee is mandated to investigate the allegations against the CEC Member and to make a report to the Assembly within ten days as to whether it finds the allegations contained in the motion to be substantiated or unsubstantiated.

The procedure of the Select Committee and other related matters thereto is covered under Standing Orders No. 177-184. The Committee has power, under the provisions of Article 195 of the Constitution, The Powers and privileges Act (Cap.6 of The Laws of Kenya), The County Governments Act, 2012, and the County Assembly Standing Orders, to summon witnesses, examine them on oath and receive evidence.

1.3 Composition of The Committee

Mr. Speaker, Sir,

The following are the Members of the Committee:

1. Hon. Maurice O. Akuk, MCA - (Chairperson)
2. Hon. Antony Kiragu Karanja, MCA - (Deputy Chairperson)
3. Hon. Jacqueline Awino Nyangala, MCA
4. Hon. Joash Omwenga, MCA
5. Hon. Stephen Murathi Kambi, MCA

1.4 Committee Proceedings

The Committee held a total of six sittings during which it closely examined and heard evidence from witnesses. The minutes of the Committee are hereto annexed and copies of the Hansard Report may be obtained at the county Assembly offices. In its investigations into the alleged gross misconduct of Mr. Evans Ondieki, the Nairobi City County Executive Committee Member for Public Works and Transport, the committee heard and received both oral and written evidence from seven (7) witnesses.

The records of evidence adduced and documents received by the Committee form the basis of the Committee's observations and recommendations as outlined in the Report and can be obtained in the HANSARD reports of the Committee available in the County Assembly.

1.5 Committee's General Observations.

In summary, the committee was tasked to make a determination on the following:-

- I. **Charge I** – That, Mr. Evans Ondieki recently made allegations in the media imputing improper motives against the Members of the County Assembly and casting aspersions against MCAs' integrity.
- II. **Charge II** – That, Mr. Evans Ondieki had failed to appear before the Sectoral Committee on Transport and Public Works without justifiable reasons, and while when he has, has failed to answer questions relating to his responsibilities satisfactorily.
- III. **Charge III** – That, Mr. Evans Ondieki was rude and insulted some Members of the County Assembly terming them as hooligans.
- IV. **Charge IV** – That, Mr. Evans Ondieki incited members of the public to picket outside the Assembly in order to intimidate the committee against carrying out its mandate.
- V. **Charge V** – That, Mr. Evans Ondieki asked County Assembly Members to bring lists of 5 roads per ward knowing very well that there were no budgetary provisions for the same and to date nothing tangible has come out of the request thereby causing Assembly Members embarrassment.
- VI. **Overall Charge on gross misconduct** – On whether the substantiated second charge (*repeated failure to honour Transport Committee's invitations for CECM to attend its meetings*) constitutes grossly disorderly conduct that warrants granting the petitioner's prayer for H.E. the Governor to dismiss the CECM from office forthwith.

Below is a summary of the Committee's observations on the investigations into the alleged gross misconduct of Mr. Evans Ondieki, the Nairobi City County Executive Committee Member for Public Works and Transport.

- I. **On the first charge** – that Mr. Evans Ondieki recently made allegations in the media imputing improper motives against the Members of the County Assembly and casting aspersions against MCAs' integrity – on consideration of the evidence submitted, the committee found the first charge against the CECM **unsubstantiated**.
- II. **On the second charge** – that Mr. Evans Ondieki had failed to appear before the Sectoral Committee on Transport and Public Works without justifiable reasons, and while when he has, has failed to answer questions relating to his responsibilities satisfactorily – on consideration of the evidence submitted, the Committee found the second charge against the CECM **substantiated**.
- III. **On the third charge** – that Mr. Evans Ondieki was rude and insulted some Members of the County Assembly terming them as hooligans – on consideration of the evidence submitted, the Committee found the third charge against the CECM **unsubstantiated**.
- IV. **On the fourth charge** – that Mr. Evans Ondieki incited members of the public to picket outside the Assembly in order to intimidate the committee against carrying out its mandate – On the totality of the evidence submitted by the

petitioner and the counsel for Mr. Ondieki regarding this charge, the committee dismissed the fourth charge against the CECM as **unsubstantiated**.

V. **On the fifth charge** – that the CEC Member asked County Assembly Members to bring lists of 5 roads per ward knowing very well that there were no budgetary provisions for the same and to date nothing tangible has come out of the request thereby causing Assembly Members embarrassment – On the totality of the evidence submitted by the petitioner and the counsel for Mr. Ondieki regarding this charge, the committee dismissed the fifth charge against the CECM as **unsubstantiated**.

VI. **On whether the substantiated second charge (*repeated failure to honour Transport Committee's invitations for CECM to attend its meetings*) constitutes grossly disorderly conduct that warrants granting the petitioner's prayer for H.E. the Governor to dismiss the CECM from office forthwith:-**

— The committee observed that on its own and by its merits, the substantiated second charge did not present sufficient grounds to warrant granting the petitioner his prayer.

✓ **The committee therefore found the charges against Mr. Evans Ondieki, the County Executive Committee Member for Transport and Public Works, unsubstantiated.**

1.6 Committee Recommendations

The Committee makes the following recommendations:-

THAT, pursuant to Section 40 (5)(a) of the County Governments Act, 2012, and County Assembly Standing Order 62 (6), the Select Committee on Investigations into the Conduct of Mr. Evans Ondieki, the Nairobi City County Executive Committee Member for Transport and Public Works, finds the allegations as contained in the Motion for censure and removal of the CEC Member from office by H.E. the Governor as unsubstantiated.

Acknowledgement

The Select Committee on Investigations into the Conduct of Mr. Evans Ondieki, the CEC Member for Public Works and Transport wishes to record its appreciation to the offices of the Speaker and the Clerk of the Nairobi City County Assembly for their support and facilitation of its hearings. The Committee is grateful to all witnesses who appeared and adduced evidence before it. Further, the Committee is indebted to the staff of the County Assembly, for the services they rendered to it. It is their commitment and dedication to duty that made the work of the Committee and production of this Report possible.

2.0 BACKGROUND

The Select Committee on Investigations into the Conduct of Mr. Evans Ondieki, the Nairobi City County Executive Committee Member for Public Works and Transport was appointed following a Notice of motion given on the floor of the Assembly by Hon. Chege Mwaura on 29th April 2014, urging H.E the Governor to forthwith dismiss the CEC Member from office on grounds of gross misconduct. (See Annex 1)

The Procedure for the removal of a Member of the County Executive Committee is provided for under Section 40 of the County Government Act, 2012, and the Standing Order No. 62, which provide for the establishment of a Select Committee to investigate the allegations contained in the motion.

The Committee is required under those provisions to report its findings to the County Assembly within ten days on whether it finds the allegations to be either:-

- Unsubstantiated - whereby no further proceedings shall be taken; or
- Substantiated, in which case the Assembly shall have to vote on whether to approve the resolution requiring the CEC Member to be dismissed.

During the proceedings of the select Committee, the CEC Member has a right to call witnesses and to be represented by an advocate in accordance with Section 40 (4) of the County Governments Act, 2012 and Article 50 of the Constitution.

2.1 Rules of Procedure

The following rules of engagement were agreed upon and communicated by the Chairperson:-

- The Chair began the first day of hearing on Wednesday 7th May, 2014, by noting that the day's event marked the culmination of a process that began on Tuesday, 29th April, 2014, when a motion on the censure and removal from office of the Nairobi City County Executive Committee Member for Transport and Public Works was proposed by the Hon. Chege Mwaura, MCA, before the Assembly, debated and adopted.
- That the Motion was proposed and moved pursuant to Section 40(2) of the County Government Act, 2012, and County Assembly Standing Order No. 62.
- He noted that the substance of the Motion detailed five grounds for the censure and removal of the CEC, amongst which were incompetence and gross misconduct as were provided for under Section 40 (1) of the County Government Act, 2012.
- Pursuant to Section 40 (3) of the County Government Act, 2012, and County Assembly Standing Order No. 62 (6), a select committee was subsequently constituted to investigate the conduct of the CEC within ten days as provided for in the Statute, in terms of the allegations made against him in the resolution motion adopted on 29th April, 2014, proposing his removal from office, and prepare a report for tabling before the Assembly on Tuesday, 13th April, 2014.

- That Article 50 of the Constitution provides the right to a fair hearing, including the right to be heard and to defend oneself for any person or persons accused of any wrongdoing before a Court or if appropriate, another independent and impartial tribunal or body. In that light, the Committee, through the Clerk of the County Assembly, wrote to Mr. Ondieki, informing him of the charges, as well as time, date and venue of this sitting.
- Unfortunately, due to space considerations, the Committee had to change the venue of its Sittings to accommodate the many interests in this matter, including the need for public participation and order.
- The Committee, through the Clerk, also provided Mr. Ondieki's Counsel Documents and information as had been requested, including witness statements.

Rules of Engagement

- The Committee informed the hearing that it would hear from both the witnesses and Mr. Ondieki's defense counsel on Wednesday, May 7th 2014, and Thursday, May 8th 2014 respectively. However, by close of business on Thursday 8th May, 2014, the Committee had not concluded taking evidence and oral submissions from the defense counsel. As such, it was agreed that the committee sits on 9th May, 2014 to give counsel for Mr. Ondieki ample time to present their prayer.

The Chair informed the hearing that its sitting would proceed as follows:-

A. DAY ONE (PETITIONER'S PRESENTATIONS & WITNESSES)

PETITIONER & FIRST WITNESS

- The Hon. Chege Mwaura, MCA, was to commence proceedings by making a general opening statement, presenting his case for removal of the CEC on gross misconduct and submit list of witnesses he will rely on to prosecute his prayers. He would then call upon his witnesses in their order of appearance as per submitted list.

SECOND, THIRD AND FOURTH PETITIONER WITNESS

- The Second, Third and Fourth witness, as per the list submitted by the petitioner, the Hon. Chege Mwaura, MCA, will take the stand accordingly. Mr. Ondieki's counsel was allowed to cross-examine each of the witnesses submitted by the Hon. Chege Mwaura.

B. DAY TWO

- The Committee informed the hearing that its proceedings for day two, Thursday, 8th May, 2014, would commence with cross examinations of the petitioner and first witness, submissions from Mr. Ondieki's counsel and his witnesses.

C. DAY THREE

- o The third day of the hearing, 9th May, 2014, commenced with submissions from the Petitioner's fifth witness, Mr. Hamisi Said Vumbi, called on the stand to corroborate delivery notes detailing letters that had been dispatched to the CECM's office by the Clerk of the County Assembly. Defense counsel was allowed to cross examine the fifth petitioner's witness.
- o The Second witness for the petitioner, the Hon. Diana Kapeen, MCA, was called back to the stand upon request by defense counsel.
- o This was to be followed by the first and second witness for the defense counsel taking the stand, and re- as well as cross examinations of the witnesses by the petitioner and the defense.
- o Sittings will thereupon conclude by close of business and the committee retreat to write its report.

2.2 Communication

The Clerk of the County Assembly sent an invitation to Mr. Evans Ondieki through his Advocate *vide* a letter dated 2nd May, 2014, informing him about the resolution by the Assembly.

In the letter, the Clerk informed the CEC Member that the Select Committee to ~~investigate the allegations contained in the motion sponsored by the Hon. Chege Mwaura, MCA, was to commence sittings on Wednesday 7th May, 2014, from 10.00am at Charter Hall, and that he was required to appear. (See Annex 2)~~

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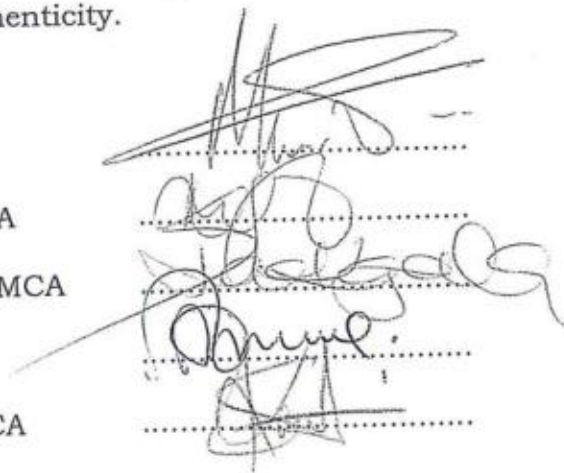


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**ADOPTION OF THE REPORT OF THE SELECT COMMITTEE ON INVESTIGATIONS
INTO THE CONDUCT OF MR. EVANS ONDIEKI, THE NAIROBI CITY COUNTY
EXECUTIVE COMMITTEE MEMBER FOR PUBLIC WORKS, ROADS AND
TRANSPORT**

We, members of the Select Committee appointed under Section 40 (3)(a) of the County Governments Act, 2012, and Standing Order No. 62, have pursuant to Standing Order No. 180(4) adopted this report and affix our signatures to affirm our approval and confirm its accuracy validity and authenticity.

1. Hon. Maurice O. Akuk, MCA
2. Hon. Antony Kiragu Karanja, MCA
3. Hon. Jacqueline Awino Nyangala, MCA
4. Hon. Joash Omwenga, MCA
5. Hon. Stephen Murathi Kambi, MCA



Mr. Speaker, Sir,

On behalf of the Members of the Select Committee, I beg to table the special Report of the Committee on investigations into the conduct of Mr. Evans Ondieki, the Nairobi City County Executive Committee Member for Public Works, Roads and Transport pursuant to Standing Order 180(4) and commend it to the House for adoption.

SIGN 

HON. MAURICE AKUK, MCA

**CHAIRPERSON, SELECT COMMITTEE ON INVESTIGATIONS INTO THE CONDUCT
OF MR. EVANS ONDIEKI (CECM, PUBLIC WORKS & TRANSPORT)**

DATE... 11th May 2014

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3.0 EVIDENCE AND SUBMISSIONS BY WITNESSES

The Committee received evidence and submissions from the following:-

- (i) The petitioner and First Witness, Hon. Chege Mwaura, MCA
- (ii) The Second Witness for the Petitioner, Hon. Diana Kapeen, MCA
- (iii) The Third Witness for the Petitioner, Hon. Maurice Gari, MCA
- (iv) The Fourth Witness for the Petitioner, Hon. Samuel Irungu, MCA
- (v) The Fifth Witness for the Petitioner, Mr. Hamisi Vumbi
- (vi) Written submissions from Hon. Chege Mwaura, MCA
- (vii) Mr. Evans Ondieki as second witness for the defense
- (viii) Second witness for Mr. Ondieki, Hon. Tabitha Ndigirigi, MCA
- (ix) Written submissions from Mr. Ondieki's counsel

3.1 EVIDENCE BY PETITIONER AND FIRST WITNESS – HON. CHEGE MWAURA, MCA

The Hon. Chege Mwaura, MCA, the petitioner and first witness, appeared before the Committee on 7th May, 2014, to adduce evidence on the charges he had detailed as the mover of the Motion for the removal from office by H.E. the Governor of Mr. Evans Ondieki as County Executive Committee Member for Transport and Public Works.

He was oathed and informed the Committee that:-

- The process currently being undertaken by the select committee was not judicial, neither was the committee a quasi-court nor a kangaroo court. He briefly spoke about roles of a member of a County Assembly, including oversight and representation.
- He decried the difficulty in handling statements and motions directed at a non-performing County Executive Committee member.
- He stated that he had five charges against the CEC member, Mr. Evans Ondieki, and began his presentation by tabling newspaper cuttings as evidence of the CEC's alleged action of bringing demonstrators to City Hall to picket and create general disorder, aimed at intimidating the Sectoral Committee on Transport and Public Works.

— **Objections were raised by Mr. Ondieki's counsel on the admissibility of newspaper cuttings as evidence before a court of law, body or tribunal exercising powers as of the High Court.**

Counsel quoted Ugandan Supreme Court ruling in Major General David Tinyefuza Vs Attorney General, Constitutional Petition Appeal No.1 of 1997, on removal of the defendant by Parliament as State Minister using newspaper cuttings, in which the removal was quashed. Counsel proceed to lay out and submit their preliminary objections to the proceedings of the select Committee, and wished that certain key issues raised in their preliminary objections regarding the very existence of the committee be settled before proceeding with the hearing.

— The chair however advised that counsel for Mr. Ondieki make general objections and submits their written preliminary objections for consideration and response the following day, 8th May, 2014, in order to allow the process proceed.

▪ Subsequently, the Hon. Mwaura proceeded to present his case with reference to the CECM's media reports casting aspersions on MCAs, and tabled further newspaper evidence (P. Exbt CM 1).

▪ He presented a letter that originated from the CECM on plans for a rapid bus mass transit system.

— Objections were raised by counsel for Mr. Ondieki on the nature of Hon. Chege's appearance before the committee, particularly on whether he was a witness or a petitioner.

— The Committee clarified that the Hon. Chege was both a petitioner and the first witness as the mover of the motion that set the process rolling.

▪ Hon. Chege proceeded to present his letter on the CECM's plan to build mass transit systems. He presented further newspaper evidence on the CEC member's allegations that MCA's were out to frustrate the mass bus transit system (P. Exbt CM 2).

▪ He further alleged that the CEC member had cast aspersions on members of the County Assembly when he stated that members had been compromised to frustrate the plans, yet he had never brought such plans before the Assembly. The petitioner further stated that Mr. Ondieki refused to either apologize or substantiate his allegations.

- Hon Mwaura further adduced newspaper articles to indicate that the project was already in implementation, and therefore there is no way members could interfere with the process (P. Exbt CM 4).
- He presented a letter dated 31st January, 2014, on the establishment of the Nairobi City Transport services in collaboration with a private partner.

— **Mr. Ondieki raised objections to the petitioner and first witness' raising evidence on the purchase of the busses, arguing that it was not part of the motion, which constitutes the charges.**

— **Counsel for Mr. Ondieki further objected to the tabling of new documents, arguing it was prejudicial to their case, as it denied Counsel the opportunity to thoroughly interrogate the said documents.**

— **However, the Chair drew the attention of Mr. Ondieki to Article 50(1) (i) of the Constitution. The Chair proceeded to read part of the motion that details the bus system as the source of the matter at hand and ruled that the petitioner proceeds with the evidence.**

- Hon. Mwaura proceeded to take the committee through the contents of the 31st January 2014 letter from the CEC member on the bus system (P. Exbt. CM 6).
- The Petitioner also tabled a letter dated 6th May 2014 as evidence, but which was rejected by the Committee as the hearings had already started and the evidence was time barred.
- He tabled photos as evidence of Mr. Ondieki's incitement of the public to picket, newspaper cuttings dated 23rd April 2014, from the Star Newspaper and a cutting from the Standard Newspaper for the same (P. Exbt CM 5 and CM7).
- He also tabled a memo dated 15th January, 2014 and letter dated 7th November, 2014, with annexures, documenting his allegations against the CEC member having failed to construct the priority roads as MCAs had been requested to submit (P. Exbt. CM 10).
- The Hon Mwaura introduced his witnesses as Hon. Maurice Gari, Hon. Diana Kapeen and Hon. Samuel Irungu.
- He concluded by thanking the committee for giving him a hearing.

3.2 COUNSEL'S CROSS EXAMINATION OF THE PETITIONER AND FIRST WITNESS - HON. CHEGE MWAURA, MCA

Counsel for Mr. Ondieki cross examined the petitioner and first witness as follows:-

- On whether the removal of the CEC member is legal – the witness noted it was.
- On whether the witness believes the process is political or legal – the witness declined to answer, instead referring the defense to section 40 of the County Government Act, 2012, and Standing Order No. 62 as guiding provisions for the process.
- On whether the resolution motion has not in effect concluded on the matter –

— **The committee chair intervened and referred counsel to Section 40 of the County Government Act, 2012, and Standing Order No. 62 on the process and its conclusion.**

- On whether the Select Committee is a fait accompli – the witness declined to comment.
- On whether any member of the Select Committee is a member of the sectoral committee on Transport and Public Works – the witness stated that he was not in a position to respond.

- On whether he attended the meeting in which it is alleged that Mr. Ondieki called MCAs hooligans – the witness stated that he attended the meeting.
- On the lack of certification for Minutes of 22nd April, 2014, can the witness confirm – he declined to comment, noting that he had not submitted Exhibit DK4, which contained the said Minutes.
- On whether witness number three was present during the meeting held on 22nd April 2014 – the witness declined to answer.
- On whether the persons who supported the motion were also members of the committee –

— **The chair intervened and guided that any member of the County Assembly can attend any meeting and vote during plenary to support or reject a resolution through a motion.**

- On exhibit SM01- the witness said he was not aware more evidence was obtained, and that the right person would be whoever presented it.
- On exhibit CM7, and whether it shows where the photo was taken – the witness said he could see the VIP entrance to City Hall Buildings. On whether the exhibit was a photograph or newspaper cutting – the witness said it was a photograph.
- On dates when photos were taken – the witness said they were not dated.
- On connecting photos with events of 22nd April 2014 – the witness noted that he presented newspaper cuttings, dated to show relevance of photos and matters before the committee.

- Counsel sought to know where the photos were taken – the witness noted at City Hall way. Asked on what side of city hall were the picketers – the witness said they were along city hall way.
- On where the meeting was held on 22nd April 2014 – the witness declined to comment.
- Counsel asked whether the witness saw members of the public and Mr. Ondieki picketing near where the committee meeting was ongoing – the witness stated that they were picketing just outside city hall, along city hall way.
- On exhibit CM4, and who is the publisher of the exhibit – the witness could not confirm the publisher of CM4, stating that he had not presented originals of his newspaper cuttings.
- On exhibit CM1, and whether the date was handwritten – the witness confirmed that the date was handwritten. On whether the name of the reporter appears on the cutting – the witness said it was not his job to identify the Nation correspondent.
- Counsel submitted that the exhibit CM1 was a third party report, the reporter was quoting the defendant. He asked the witness whether the reporter was also misrepresenting the Assembly when he said the Assembly had passed the motion on the bus system – witness said he was not aware.
- On whether the same misrepresentation could have been done to Mr. Ondieki's comments – the witness noted he merely used the allegations to prove his case.
- On whether the "Nation Correspondent" was a witness in the proceedings – the witness said he had presented his list of witnesses.
- On exhibit CM5 typographical error on naming of Hon. Imwatok as Imwatoka, the defense submitted to the petitioner that a similar error could have been made when reporting Mr. Ondieki's story.
- On whether the witness is aware of tendering for provision of buses – witness said he was not aware.
- On exhibit CM2 and whether it was signed – the witness confirmed that it was not signed.
- On list of roads CEC member promised to work on from members of the Assembly and whether the witness was aware that it was a directive from the Governor – the witness said he was not. The witness noted that his newspaper cuttings on buses were merely presented in the context of malicious allegations against members of the Assembly made by the CECM to the media. The witness noted that he merely sought to build a case on the malicious allegations.
- On whether the charges were motivated by allegations made by Mr. Ondieki in the media – the witness noted there were five charges and the malicious allegations constituted one of the charges.
- On whether Mr. Ondieki has gone to the media to clarify what he meant – the witness said he did not know. Counsel referred the witness to exhibit CM08, paragraph 7, where it was noted that it had been reported that the CEC had denied that he had made the malicious allegations that some MCAs had been bribed to frustrate the bus project.
- On his opinion about the bus project – witness said he had no comment.

- On exhibit CM4 and its relevance to proceedings – the witness stated he meant to prove Mr. Ondieki was a liar.
- On second paragraph about MOA supporting the bus project, and whether it is favorable or unfavorable – the witness declined to comment.
- On whether the witness was aware if any of the publishers was a public entity – the witness noted he was not aware.
- On the witness' assertions that the select committee is an extension of the assembly, and whether he could confirm the same to counsel – witness confirmed.
- On whether as an extension of the Assembly the select committee was bound by assembly rules – witness declined to comment.
- Defense submitted Hansard for Wednesday 12th March 2014, specifically page 7, fifth line, detailing a speaker's ruling on admissibility of newspaper evidence, to show that speaker's rulings constitute practice and procedure for the Assembly.
- On the role of CECM for Roads in relation to execution of road projects – the witness referred counsel to Section 36 of the County Government Act, 2012.
- On whether the witness believes Mr. Ondieki to be a liar for not delivering on his promises – the witness said he had nowhere called the defendant a liar
- Defense referred to Memo from Governor to Speaker dated 13th November 2013 on roads the witness proposed under the foregoing letter – witness confirmed he had given his list.
- On when the CECM was appointed – the witness said he wasn't aware when the CEC member was appointed. Whether he was amongst the majority first lot of Nairobi City County Executive Committee Members appointed or those appointed later – witness said he was not aware.
- On whether the roads the witness proposed were included in the budget approved for 2013/2014 – witness said he was not aware.
- Defense referred to documents supplied on plans to prioritize roads and asked the witness if he was aware the roads idea was the Governor's – witness stated the responsibility stops with the CEC member.
- Defense referred to a letter dated 3rd February, 2013, and whose purpose the witness read. Witness was also referred to a letter dated 19th December 2013, paragraph 3, whose purpose was also read. In light of the letters, defense asked the witness whether the letters were fair evidence that the Governor and CECM had tried to get the roads prioritized finalized - witness declined to comment.
- Counsel also referred witness to a letter dated 10th December 2013, which the witness confirmed was addressed to Kenya Urban Roads Authority (KURA), and the letter dated 8th January 2014, on progress to build the priority roads.
- On whether the witness has ever visited the CEC member to complain about roads or written a letter – he denied to ever have.
- On witness' request to CECM via written letter for lighting masts in his ward – the witness affirmed. As to whether anything towards the same, such as erecting poles or masts had been done – the witness said he had not seen anything.

- On the CEC member sponsoring hooligans as the witness had alleged – he stated that exhibit CM7 seemed to vindicate that allegation.
- On where the sectoral committee on Transport and Public Works was sitting on 22nd April 2014 - witness said it was the Transport Committee chair's duty to respond on the committee issues.
- Whether the witness to his knowledge is aware of the CEC member failing to honour summons by the Sectoral Committee on Transport and Public Works – the witness said the committee chair was better placed to respond.

— **Committee intervened and clarified counsel's question, asking the witness to cooperate with the defense. The witness proceeded to state that he had earlier stated his position and that the chair of the Transport Committee had dealt with the matter.**

- On the people picketing as alleged by the witness, could he produce photo evidence – the witness affirmed he could. On what Ondieki was telling the gathering in the photo – the witness said he could not tell, his newspaper cuttings had sought to showcase what the CEC member was saying as reported.
 - On whether the witness' name appeared on the newspaper – the witness said it didn't.
 - On his prayer to the committee – the witness wished the committee to find his substantiation verified and recommend the removal of the CECM from office by the Governor.
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- ~~▪ On whether there is bad blood between the witness and Mr. Ondieki – the witness denied there was any bad blood between himself and the defendant.~~

— **The committee proposed the recall of the second witness (Hon. Diana Kapeen) to present documents she had committed to adduce during the first day of hearing, on 7th May, 2014.**

— **Defense was however vehemently opposed to the introduction of new documents by the second witness, arguing that the witness had already been dispensed with, and as such it would be prejudicial to the defense.**

— **Counsel accused the tribunal of trying to 'panel beat' the case to suit the petitioner's case.**

The Petitioner's evidence was identified as exhibits CM 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10.

3.3 SECOND WITNESS – HON. DIANA KAPEEN, MCA

The second witness for the Petitioner was Hon. Diana Kapeen, MCA, who appeared before the Committee on 7th May, 2014. Upon being sworn she adduced documentary evidence that the CECM had failed to honour invitations to appear before the committee. The witness read her statement as follows:-

- That she is the chairperson of Transport and Public Works of Nairobi City County Assembly.
- That on several occasions the Committee sent summon letters for the CECM to appear before it but he failed to neither appear nor respond on his inability to appear as per the attached notices.
- That she brought to the attention of the speaker that the CECM Transport and public works has not been attending our committee meetings on invitation and therefore I could not respond to member's requests for Statements during plenaries of the Assembly, prompting the speaker to issue an order for him to appear on the 22nd April 2014.
- That on 22nd April 2014 at about 11.30am, she attended a meeting of the Transport and Public Works Committee, where Mr. Evans Ondieki, the Chief Executive Committee Member for Public Works and Transport appeared before the Committee to respond to the Speaker's order.

On cross examination by defense for Mr. Ondieki, she stated as follows:-

- On whether the select committee has any member from County Assembly sectoral committee on Transport – the witness stated that there was no member of the sectoral committee on transport in the select committee investigating the conduct of the CEC member.
- On whether the Hon. Kambi has ever sat in the Transport committee's meetings – the witness stated that he had as a friend of the committee.
- On whether she was the chair of the sectoral committee on Transport and Public Works – witness affirmed.

The Second witness' evidence was identified as exhibits DK 1, 2, 3, and 4.

During the third day of hearing on 9th May, 2014, defense counsel requested that witness number two, the Hon. Diana Kapeen, be recalled to the stand:-

3.4 RECALL OF PETITIONER'S WITNESS NUMBER TWO - HON. DIANA KAPEEN, MCA

The Defense sought to know the following from the witness:-

- On whether summonses are in form of a letter or other document – the witness stated that such invitations were in form of a letter.
- Defense referred the witness to exhibit DK01, a letter dated 11th February, 2014, addressed to Eng. Christine Ogut, requesting the appearance of the CECM before the committee and whether Mr. Ondieki had honored the

invitation – to which the witness stated that she was aware only of the summons vide a letter dated 22nd April, 2014 by the Speaker of the County Assembly to the CECM to appear before the Sectoral Committee on Transport and Public Works.

- Defense asked the witness to read the last part of the letter and whether it was the Speaker's ruling—
 - **The Chair intervened and guided the hearing on the difference between summons and letters of invitation, being that any order to attend to give evidence or to produce documents before the Assembly or a committee shall be notified to the person required to attend or to produce the documents by a summons under the hand of the Clerk issued by the direction of the Speaker.**
 - **Defense Counsel further clarified and noted that the issuance of summons was guided by section 15 of the Parliamentary Powers and Privileges Act.**
- On whether the witness could confirm whether the letters were delivered and received – the witness stated that she could not, since she is not involved in the Assembly's paperwork.

3.5 THIRD WITNESS – HON. SAMUEL IRUNGU, MCA

The third witness for the Petitioner was Hon. Samuel Irungu, MCA, who appeared before the Committee on 7th May, 2014 and upon being sworn in he proceeded to state that as follows:-

- That he was a member of the sectoral committee on Transport and Public Works of the Nairobi City County Assembly.
- That on 22nd April, 2014 at about 11.30am he attended a meeting of the Transport committee where Mr. Evans Ondieki, the CECM, appeared before the committee.
- That he recalled asking Mr. Ondieki if he was aware there was public picketing outside City Hall, and that the intention of the picketers was to intimidate the committee, and that Mr. Ondieki's personal assistant and himself were aware of the said picketers, Mr. Ondieki lost his temper and called the Hon. Gari a thug and a hooligan.

3.6 CROSS-EXAMINATION OF THIRD WITNESS – HON. SAMUEL IRUNGU, MCA BY COUNSEL FOR MR. ONDIEKI

On cross examination by defense counsel, the witness stated as follows:-

- On whether the public has a right to picket – the witness agreed that picketing was a Constitutional right.

- On whether the witness could adduce evidence linking picketers to the CEC member – the witness explained that the photo evidence he had adduced proves the CEC was picketing.
- On whether the witness was aware of who took the photo adduced as evidence – he responded that he wasn't aware.
- On whether the photo was dated and if the witness could show proof – the witness responded they weren't.
- On whether he attended the Transport Committee meeting on 22nd March 2014, and whether any member of the Select Committee attended – the witness said he attended, and that the Hon. Omwenga and Hon. Kambi had attended as well. He further noted the contribution of the said members who attended the meeting as friends of the committee.
- On whether he attended a meeting in which the Chief Officer for the Transport and Public Works Department, Eng. Ogut, was present – the witness stated he had attended.
- On whether Eng. Ogut requested more time to handle the road projects during the said meeting – the witness stated that she did.
- On whether he attended the meeting on 22nd April 2014 and whether Mr. Ondieki was in attendance– he confirmed he attended but denied Ondieki had attended.
- ~~On whether Mr. Ondieki addressed the committee on projects confirmed during the said meeting on 22nd April 2014– the witness declined to answer.~~
- On whether he attended proceedings during which the CEC member allegedly called members hooligans– the witness said he attended. Defense sought to know whether he had Hansard evidence of the alleged abuse– which the witness said he didn't have, but media present could adduce to it.
- On whether the witness saw the picketers and specifically Mr. Ondieki addressing the crowd– he stated that he didn't see Mr. Ondieki, but that the crowd seemed organized and with a mission.
- On whether all members of the Assembly have attended Transport committee meetings – the witness noted that it was impossible for all members of the Assembly to attend meetings of the Transport Committee.
- On whether the CEC lost his temper during the meeting and if he could confirm– the witness noted that the CEC had lost his temper during the meeting.

3.7 FOURTH WITNESS – HON. MAURICE GARI, MCA

The third witness for the Petitioner was Hon. Maurice Gari, MCA, who appeared before the Committee on 7th May, 2014 and upon being sworn in he proceeded to state that as follows:-

- That on 22nd April, 2014 at about 11.30 am he attended a meeting of the the Nairobi City County Assembly sectoral committee on Transport and Public