


GOVERNMENT OF NAIROBI CITY COUNTY



Paper laid on 22nd February
2022 by Hon. Dennis Ojien

22/2/22

THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

SECOND ASSEMBLY
(SIXTH SESSION)

NCCA/TJ/PL/2022 (9)

22nd February 2022

PAPERS LAID

Pursuant to Standing Order 191 beg to lay the following Paper on the Table of the Assembly, today Tuesday 22nd February, 2022:

THE REPORT OF THE SELECT COMMITTEE ON POWERS AND PRIVILEGES ON INDUCTION OF THE COMMITTEE ON PROVISIONS OF THE COUNTY ASSEMBLIES POWERS AND PRIVILEGES ACT, 2017, THE INTEGRITY QUESTIONS ON PUBLIC OFFICERS AND THE COMMITTEE'S INVESTIGATORY MANDATE

(The Chairperson, Select Committee on Powers And Privileges)

Copies to:
The Speaker
The Clerk
Hansard Editor
Hansard Reporters
The Press

THE NAIROBI CITY COUNTY GOVERNMENT



THE NAIROBI CITY COUNTY ASSEMBLY

SECOND ASSEMBLY – FIFTH SESSION

THE REPORT OF THE SELECT COMMITTEE ON POWERS AND PRIVILEGES ON INDUCTION OF THE COMMITTEE ON PROVISIONS OF THE COUNTY ASSEMBLIES POWERS AND PRIVILEGES ACT, 2017, THE INTEGRITY QUESTIONS OF PUBLIC OFFICERS AND THE COMMITTEE'S INVESTIGATORY MANDATE.

Clerk's Chambers,
CITY HALL,
NAIROBI.

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1.1 Establishment and Mandate

Hon. Members,

The Committee on Powers and Privileges is established pursuant to the Standing Order 183 as read together with Section 15 of the County Assemblies Powers and Privileges Act, 2017 (the Act). The Committee's mandate amongst others, as outlined under Section 15 of the Act is to:

- a. Inquire into the conduct of a member whose conduct is alleged to constitute a breach of privilege; and
- b. Either of its own motion or a result of a complaint made by any person, inquire into the conduct of a member whose conduct is alleged to constitute a breach of privilege
- c. Investigate, table reports and make recommendations to the floor of the house
- d. Issue summons to witnesses to appear before the committee,
- e. Receive evidence and to request for and receive papers and documents from the Government and the public.

Further, as envisaged under Section 18 of the Act as read with Article 195 of the Constitution of Kenya, the Committee as constituted has the same powers as the High Court.

1.2 Committee Membership

The Committee Membership comprises of:

- 1) Hon. Benson Mutura - Speaker/Chairperson
- 2) Hon. Naftali Mathenge, MCA - Vice - Chairperson
- 3) Hon. Peter Wahinya Njau, MCA
- 4) Hon. Geoffrey Odhiambo Majiwa, MCA
- 5) Hon. Mary Njambi, MCA
- 6) Hon. Margaret Mbote, MCA
- 7) Hon. Jackline Apondi, MCA
- 8) Hon. Maurice Ochieng, MCA
- 9) Hon. Pius Mbono, MCA
- 10) Hon. Michael Ogada, MCA
- 11) Hon. Ibrahim Hassan Abdi, MCA
- 12) Hon. Paul Kados, MCA
- 13) Hon. Osman Khalif, MCA

1.3 Secretariat

1. Mr. Austine Inyundele – Senior Clerk Assistant

Committee Retreat

The members of the Powers and privileges Committee undertook a training workshop that was held from 18th to 21st March 2021 in Continental Resort, Mombasa County. The main purpose for conducting the workshop was on Induction of the Committee on Provisions of the County Assemblies Powers and Privileges Act, 2017, The Integrity questions of Public officers and the Committee's Investigatory Mandate

Acknowledgement


Hon. Chair,

The Chairperson of this Committee wishes to wholeheartedly thank the members for their punctuality and commitment in the execution of the committee mandate. The committee also thank the staff of the County Assembly attached to the Committee and the technical experts for their expertise and unlimited support.

Finally, on behalf of the Select Committee on Powers and Privileges, it is my pleasure to present on the induction workshop held from 18th to 21st March 2021 in Continental Resort, Mombasa County

Hon. Members, it is therefore my pleasant duty and privilege to table this report before the Assembly and recommend it for adoption.

Thank You

for Signed 

Dated.. 6.5.2021

Hon. Benson Mutura, MCA
Speaker/ Chairman

PROCEEDINGS OF THE RETREAT

The secretariat did a presentation entailing; Description of the mandate, Presence of National security organ in the precincts, Access to the precincts, Service of a civil process and Assembly and picketing

Access to the precincts of the Assembly

- An officer of a national security organ may, with the permission and authority of the Speaker - (a) enter upon or remain in the precincts of a county assembly for the purpose of performing any function of that national security organ; or (b) perform any other function within the precincts of a County Assembly.
- A member of the public may, subject to the County Assemblies Powers and Privileges Act, the Standing Orders and such orders and directions as may be issued by the Speaker, access such places within the precincts of a County Assembly as may be specified.

Service of civil process

- No process issued by any court in Kenya in the exercise of its civil jurisdiction shall be served or executed- (a) within the precincts of a County Assembly while the County Assembly is sitting; or (b) through the Speaker or any officer of a County Assembly unless it relates to a person employed within the precincts of a County Assembly or to the attachment of a Member's salary.
- The right of access to justice under Article 48 of the Constitution shall be limited as specified under this section for the purposes of facilitating the conduct of the business and the affairs of a County Assembly.

Assembling, demonstrating and picketing

- The Speaker may designate areas within or outside the precincts of a County Assembly where members of the public may, pursuant to Article 31 of the Constitution, assemble, demonstrate, picket or present petitions or memoranda to the county assembly.
- Any assembling, demonstration, picketing and presentation of petitions or memoranda to a County Assembly shall be in accordance with such guidelines as the Speaker may issue. A person who assembles, demonstrates or pickets contrary to the provisions of this section may be removed from the precincts of a County Assembly on the direction of a Speaker, a duly authorized member of staff or a police officer.
- The right of assembly, demonstration, picketing and petition under Article 37 of the Constitution shall be limited as specified under this section for the purposes of facilitating the orderly conduct of the business and affairs of a County Assembly.

Summoning of Witnesses

- A County Assembly or its committees may invite or summon any person to appear before it for the purpose of giving evidence or providing any information, paper, book, record or document in the possession or under the control of that person and, in this respect, a County Assembly and its Committees shall have the same powers as the High Court as specified under Article 195 of the Constitution. A summons shall be issued by the Clerk on the direction of- (a) the Speaker; or (b) the chairperson of a Committee acting in accordance with a resolution of the Committee. (3) The general form of a summons shall be as set out in the First Schedule. The summons shall be served by a member of staff or a police officer who is duly authorized by the Clerk by delivering a copy of the summons- (a) to the person mentioned in the summons; or (b) at that person's usual or last known place of residence, employment or business or left with a person who is over the age of eighteen years and who resides or is employed at that place.
- Where the summons is to be served on a corporation, the summons may be served- (a) on the secretary, director or other officer authorized by the corporation; or (b) if the officer serving the summons is unable to find any of the officers of the corporation mentioned in paragraph (a)- (i) by leaving it at the registered office of the corporation; (ii) by sending it by prepaid registered post or by a licensed courier service provider approved by the court to the registered postal address of the corporation; if there is no registered office and no registered postal address of the corporation, by leaving it at the place where the corporation carries on business; or by sending it by registered post to the last known postal address of the corporation.
- The serving officer in all cases in which summons has been served shall swear and annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which summons was served and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of summons. The affidavit of service shall be in the form set out in the Second Schedule of the CAPP Act with such variations as circumstances may require.
- Any person who knowingly swears a false affidavit of service commits the offence of *perjury* and may in addition be subject to such disciplinary action as the relevant County Assembly Service Board may determine. A return by a person who serves a summons shall be prima facie proof of the service of the summons. A person requested or summoned in terms of this section by a County Assembly or a Committee to attend a sitting of a County Assembly or Committee shall be paid such amount of money as shall be approved by the Clerk as reimbursement for the expenses incurred.

Examination of a witness

- Where a County Assembly or a Committee requires that any information be verified or otherwise ascertained by the oral examination of a witness, the County Assembly or the Committee may- (a) cause such witness to be examined on oath; and (b) require the witness to produce any document, paper, book or record in the possession or under the control of the witness which may have a bearing on the subject of the inquiry

Privileges of witnesses

- Every person who is summoned to give evidence or to produce a document before a County Assembly or a Committee shall be entitled to the same rights and privileges that are applicable to a witness before a court of law. A person who is being examined under oath or affirmation shall be required to answer any question put to the person in connection with the subject of the inquiry and to produce any document or information that the person is requested to produce under that section despite the fact that the answer or the document would incriminate or expose the person to criminal or civil proceedings in a court of law.
- Evidence given under oath or affirmation by a person before a County Assembly or a Committee shall not be used against the person in a court or other place outside the County Assembly except in criminal proceedings where the person concerned stands trial on a charge of *perjury* or a charge contemplated under section 27(1)(c) or (3)(g) or (h) of the CAPP Act.
- The right to fair hearing under Article 50 of the Constitution shall be limited as specified under this section for the purposes of advancing the freedom of speech and debate set out in Article 117 of the Constitution.

Duty of public officers to give evidence

- No public officer shall refuse to produce before a County Assembly or a Committee any paper, book, record or document.
- Any County public officer who contravenes section 22 (l) of CAPP Act commits an offence.
- Where a County Assembly passes a resolution that a County public officer has contravened 22 (l) of CAPP Act, the resolution of the County Assembly shall constitute a ground for removal from office of the County public officer in accordance with the Constitution or any applicable law.

Role of Director of Public Prosecutions

- Where an offence is suspected to have been committed under CAPP Act, the Clerk shall, on the directions of the Speaker, make a request to the Director of Public Prosecutions to take such action as may be appropriate. Where an offence is suspected to have been committed under section 26(1)(b), the Clerk shall make a

request to the Director of Public Prosecutions to take such action as may be appropriate.

- The Director of Public Prosecutions shall, within **thirty days** from the date of receipt of a request from the Clerk under subsection (1), and within such other subsequent period as the Speaker may determine, submit a report to the Clerk stating the action taken on the matter.

Powers extended to members of staff

- Every member of staff shall, for the purposes of CAPP Act and of the application of the provisions of the criminal law, have all the powers and enjoy all the privileges of a police officer.
- Every offence under this Act shall be cognizable to the police.

ENFORCEMENT

Prohibited acts in respect of a County Assembly and its Members

- ❖ A person shall not- (a) assault, threaten, use abusive language, obstruct, molest or insult any Member proceeding to, being within or leaving the precincts of a County Assembly, or endeavour to compel any Member by force, insult or menace to declare himself or herself in favour of or against any proposition or matter pending or expected to be brought before a County Assembly or any Committee; (b) assault, threaten, use abusive language, interfere with, molest, resist or obstruct any member of staff while in the execution of his or her duty; (c) assault or threaten a Member or unlawfully deprive a Member of any benefit on account of the Member's conduct in a County Assembly; (d) while a County Assembly or a Committee is sitting, create or take part in any unlawful disturbance which interrupts or is likely to interrupt the proceedings of a County Assembly or any Committee while a County Assembly or the Committee is sitting; or (e) fail or refuse to comply with an instruction by a duly authorized member of staff or a police officer regarding- (i) the presence of the public in the precincts of a County Assembly including a meeting within the precincts of a County Assembly; or (ii) the possession of any article, including a firearm, within the precincts.
- ❖ A person, including a member who contravenes section 26 (1) of CAPP Act commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding two years or to both.

Offences relating to witnesses

- ❖ A person commits an offence where the person- (a) having been duly summoned in terms of section 18 fails, without sufficient cause to- (i) attend at the time and place specified in the summons; or (ii) remain in attendance until excused from

further attendance by the person presiding at the inquiry; (b) when called upon under section 18 of CAPP Act, refuses to be sworn in or to make an affirmation as a witness; or (c) fails or disobeys without sufficient cause to- (i) answer fully and satisfactorily all questions lawfully put to the person under section 18; (ii) produce any document, paper, book or record in the person's possession, custody or control which the person has been required to produce under section 18 of CAPP Act.

- ❖ A person who commits an offence under section 29 (1) of CAPP Act is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both. A person commits an offence where the person- (a) threatens, obstructs, assaults or insults a member of staff or police officer carrying out service of summons issued under this Act; (b) uses abusive language directed at a Member of a County Assembly or its Committees; (c) threatens or obstructs another person in respect of evidence to be given before a County Assembly or a Committee; (d) induces another person to- (i) refrain from giving evidence to or to produce a document before a County Assembly or a Committee; or (ii) give false evidence before a County Assembly or a Committee; (e) assaults or penalizes or threatens another person or deprives that person of any benefit on account of the giving or proposed giving of evidence before a County Assembly or a Committee; (f) with intent to deceive or mislead a County Assembly or a Committee, produces a false, untrue, fabricated or falsified document; or (g) willfully furnishes a County Assembly or a Committee with information which is false or misleading or makes a statement before a County Assembly or Committee that is false or misleading.
- ❖ A person who commits an offence under section 29 (3) is liable, on conviction, to a fine not exceeding five hundred thousand or a term of imprisonment not exceeding one year or to both such fine and imprisonment

The secretariat did an in depth presentation citing an array of issues in regards to integrity and code of conduct as anchored in **Leadership and Integrity Act, 2012 (No. 19 Of 2012)** as Follows;

Rule of Law

6. (1) A Honourable Member shall respect and abide by the Constitution and all other laws;

(2) A Honourable Member shall carry out the duties of his or her office in accordance with the law;

(3) In carrying out the duties of his or her office, a Honourable Member shall not violate the rights and fundamental freedoms of any person.

Public trust

7. A State Office is a position of public trust and the authority and responsibility vested in a Honourable Member shall be exercised by the Honourable Member in the best interest of the office and the people of Kenya.

Responsibility and duties

8. Subject to the constitution and any other law, a Honourable Member shall take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of his or her office.

Performance of duties

9. A Honourable Member shall, to the best of his or her ability –

- (a) Carry out the duties of the office efficiently and honestly;
- (b) Carry out the duties of the office in a transparent and accountable manner;
- (c) Keep accurate records and documents relating to the functions of the office; and
- (d) Report truthfully on all matters of the office.

Professionalism

10. A Honourable Member shall –

- (a) Carry out the duties of his or her office in a manner that maintains public confidence in the integrity of the office;
- (b) Treat members of the public, staff and other state and public officers with courtesy and respect;
- (c) To the extent appropriate to the office, maintain high standards of performance and level of professionalism within the office; and
- (d) If the Honourable Member is a member of a professional body, observe and subscribe to the ethical and professional requirements of that body in so far as the requirements do not contravene the Constitution, any other law or this Code.

Confidentiality

11. A Honourable Member shall-

- (a) Subject to Article 35 of the Constitution and any other relevant law, a Honourable Member shall not disclose or cause to be disclosed any information in his or her custody to any unauthorized person.

Financial integrity

12. (1) A Honourable Member shall not use his or her office to unlawfully or wrongfully enrich himself or herself or any other person.

(2) Subject to article 76(2) (b) of the Constitution a Honourable Member shall not accept a personal loan or benefit which may compromise the Honourable Member in carrying out his or her duties.

(3) A Honourable Member shall submit an initial declaration of income, assets and liabilities within thirty days of assuming office and thereafter make biennial declarations to the office, and a final declaration within (30) days of ceasing to be a Honourable Member.

(4) The Declaration under sub-paragraph (3) shall be submitted to the County Assembly Service Board.

(5) A declaration filed by a Honourable Member in accordance with the provisions of sub-paragraph (3) shall be accessible to the Commission and any other person, subject to the provisions of Section 30 of the Public Officer Ethics Act, 2003.

(6) A Honourable Member shall pay any taxes, loans or other debts due from him within the prescribed period.

(7) A Honourable Member shall not neglect their financial, family or other legal obligations.

Moral and ethical requirements

13. (1) A Honourable Member shall observe and maintain the following ethical and moral requirements –

- (a) Demonstrate honesty in the conduct of his or her public and private affairs;
- (b) Not to engage in activities that amount to abuse of office;
- (c) Accurately and honestly represent information to the public;
- (d) Not engage in wrongful conduct in furtherance of personal benefit;
- (e) Not misuse public resources;
- (f) Not falsify any records;
- (g) Not sexually harass or have inappropriate sexual relations with other Honourable Members, staff of the office or any other person;
- (h) Not engage in actions which would lead to the Honourable Members removal from the membership of a professional body in accordance with the law;

- (i) Not commit offences and in particular, any of the offences under parts XV and XVI of the Penal Code, Sexual offences act, 2006, the Counter-Trafficking in Persons Act, 2008, and the Children Act;
- (j) Not engage in fighting or physical confrontation with any person; and
- (k) Maintain high standards of etiquette at all times.

(2) A person who wishes to be elected to the Office shall for purposes of this Code, submit to the Independent Electoral and Boundaries Commission a self-declaration in the form set out in the First Schedule to the Act.

(3) A Honourable Member shall maintain high standards of etiquette at all times.

Gifts or benefits in kind

14. (1) A gift or donation given to a Honourable Member on a public or official occasion shall be treated as a gift of donation to the office.

(2) Notwithstanding subparagraph (1) a Honourable Member may receive a gift given to the Honourable Member in official capacity, provided that –

- (a) The gift is within the ordinary bounds of propriety, a usual expression of courtesy or protocol and within the ordinary standards of hospitality
- (b) The gift is not monetary
- (c) The gift does not exceed the value of Kenya Shillings twenty thousand or such other amount as may be prescribed by the Commission through Regulations

(3.) A Honourable Member shall not –

- (a) Accept or solicit gifts, hospitality or other benefits from a person who –
 - i. Has an interest in any matter under consideration by the Assembly;
 - ii. Has a contractual relationship with the office;
 - iii. Has any interest that is directly or indirectly connected with the Honourable Members duties;
- (b) Receive a gift which has the potential of compromising his or her integrity, objectivity or impartiality; or
- (c) Accept any type of gift expressly prohibited under the Act.

(4) A Honourable Member who receives a gift or donation shall declare the gift or donation to the Authorized Officer within seven days of receipt of the gift.

(5) The Office shall maintain a register of all gifts received by the Honourable Members serving in the Office and another register of all gifts given by the office to other State or Public Officers.

Wrongful or unlawful acquisition of property

15. A Honourable Member shall not use the office to wrongfully or unlawfully acquire or influence the acquisition of public or other property.

Conflict of interest

16. (1) A Honourable Member shall use the best efforts to avoid being in a conflict of interest, a situation where his or her personal interests conflict or appear to conflict with the Honourable Members official duties.

(2) Without limiting the generality of subparagraph (1)

(1) a Honourable Member shall not hold shares or have any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having that interest would result in a conflict of the Honourable Members and the officers official duties.

(3) A Honourable Member whose personal interest's conflict with their official duties shall declare the personal interest to the office.

(4) The Office may give directions on the appropriate action to be taken by the Honourable Member to avoid the conflict of interest and the Honourable Member shall comply with the directions, and refrain from participating in any deliberations with respect to the matter.

(5) Any direction issued by the office under sub paragraph (4) shall be in writing.

(6) Notwithstanding any directions to the contrary under subparagraph (4) a Honourable Member shall not influence the award of a contract to:-

- (a) Himself or herself
- (b) The Honourable Members spouse or child
- (c) A business associate or agent or
- (d) A corporation, private company, partnership or other body in which the officer has a substantial or controlling interest.

(7) Where a Honourable Member is present at a meeting, and an issue which is likely to result in a conflict of interest is to be discussed, the Honourable Member shall declare the interest at the beginning of the meeting or before the issue is deliberated upon.

(8) A declaration of a conflict of interest under subparagraph (7) shall be recorded in the minutes of that meeting.

(9) The Office shall maintain a register of conflicts of interest in the prescribed form in which an affected Honourable Member shall register the particulars of the registrable interests, stating the nature and extent of the conflict.

(10) For purposes of subparagraph (9), the registrable interests shall include:

(a) The interests set out in the second schedule of the Act;

(b) Any connection with a person, firm or a company, whether by relation, friendship, holding of shares or otherwise, which is subject of an investigation by the Constitution.

(c) Any application for employment or other form of engagement with the office by a family member or friend of the Honourable Member or by a law firm or corporation associated with the Honourable Member.

(d) Any application to the office, by a family member or friend of the Honourable Member, for clearance with respect to appointment or election to any public office.

(e) Any other matter which, in the opinion of the Honourable Member, taking into account the circumstances thereof, is necessary for registration as a conflict of interest.

(11) The Office shall keep the register of conflicts of interest for five years after the last entry in each volume of the register.

(12) The Office shall prepare a report of the registered interests within thirty days after the close of a financial year.

(13) A Honourable Member shall ensure that an entry of registrable interests under subparagraph (9) is updated and to notify the office of any changes in the registrable interests, within one month of each change occurring.

Participation in tenders invited by the office

17. (1) A Honourable Member shall not participate in a tender for the supply of goods or services to the office.

(2) Notwithstanding subparagraph (1) a company or entity associated with the Honourable Member shall not be construed as trading with the office, unless –

(a) The Honourable Member has a controlling shareholding in the company or entity;

(b) The Honourable Member is a director of the company; or

(c) The Honourable Member is a managing partner in a law firm providing services to the office.

Public Collections

18. (1) A Honourable Member shall not solicit for contributions from the office or any other person or, public entity for a public purpose unless the President has, by notice in the Gazette, declared a national disaster and allowed a public collection for the purpose of the national disaster in accordance with the law.

(2) A Honourable Member shall not participate in a public collection of funds in a way that reflects adversely on the Honourable Members' integrity, impartiality or interferes with the Performance of the official duties.

(3) Nothing in this clause shall be constructed as prohibiting a Honourable Member from making voluntary contribution.

Bank accounts outside Kenya

19. (1) Subject to Article 76(2) of the Constitution or any other written law, a Honourable Member shall not open or continue to operate a bank account outside Kenya without the approval of the Commission.

(2) A Honourable Member who has reasonable grounds for opening or operating a bank account outside Kenya shall apply to the commission for approval to open or operate a bank account outside Kenya.

(3) A Honourable Member who operates or controls the operation of a bank account outside Kenya shall submit statements of the account annually to the commission and authorize the commission to verify the statements and any other relevant information from the foreign financial institution in which the account is held.

(4) Subject to subparagraph (1) and (2), a person who is appointed as a Honourable Member in the office and has a bank account outside Kenya shall, upon such appointment close the bank account within 3 months or such other period as the Commission may prescribe by notice in the Gazette.

(5) Subject to subparagraph (4) a Honourable Member may open or continue to operate a bank account outside Kenya as may be authorized by the Commission in writing.

Acting for foreigners

20. (1) A Honourable Member shall not be an agent of, or further the interests of a foreign government, organization or individual in a manager that may be detrimental to the security interests of Kenya, except when acting in the course of official duty.

(2) For the purposes of this paragraph –

(a) An individual is a foreigner if the individual is not a citizen of Kenya; and

- (b) An organization is foreign if it is established outside Kenya or is owned or controlled by a foreign government, organization or individual.

Care of property

21 (1) A Honourable Member shall take all reasonable steps to ensure that public property in his or her custody, possession or control is taken care of and is in good repair and Condition.

(2) A Honourable Member shall not use public property, funds or services that are acquired in the course of or as a result of the official duties, for private activities of activities that are not related to the official work of the Honourable Member.

(3) A Honourable Member shall return to the office all the public property in his or her custody, possession or control at the end of the election or contract term.

(4) A Honourable Member who contravenes subparagraph (2) or (3) shall, in addition to any other penalties provided for under the Constitution, the Act or any other law, be personally liable for any loss or damage to the public property.

Misuse of official information

22. (1) A Honourable Member shall not directly or indirectly use or allow any person under the officers 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.

(2) A Honourable Member shall not be deemed to have violated the requirements of subparagraph (1), if the information given –

- (a) Pursuant to a court order;
- (b) For purposes of educational, research, literary, scientific or other purposes not prohibited by law; or
- (c) In compliance with Article 35 of the Constitution and the relevant law.

Impartiality

24. A Honourable Member shall, at all times, carry out the duties of the Office with impartiality and objectivity in accordance with principles and values set out in Articles 10, 27, 73 (2)(b) and 232 of the Constitution and shall not practice favouritism, nepotism, tribalism, cronyism, religious bias or engage in other preferential treatment of another Honourable Member, Public Officer or a member of the public.

Giving of advice

25. A Honourable Member who has a duty to give advice shall give honest, accurate and impartial advice without fear or favour.

Offers of future Employment

27. (1) A Honourable Member shall not allow himself or herself to be influenced in

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the performance of his or her duties by plans or expectations for or offers of future employment or benefits.

(2) A Honourable Member shall disclose, in writing, to the Commission, all offers of future employment or benefits that could place the Honourable Member in a situation of conflict of interest.

Former Honourable Member acting in a government or public office

28. A former Honourable Member shall not be engaged by the Office in a matter in which the Honourable Member was originally engaged in as a Honourable Member, for at least two years after leaving the office.

Misleading the public

29. A Honourable Member shall not knowingly give false or misleading information to any person.

Falsification of Records

30. A Honourable Member shall not falsify any records or misrepresent information to the public.

Conduct of private Affairs

31. A Honourable Member shall conduct their private affairs in a manner that maintains public confidence in the integrity of the Office.

Bullying

32. (1) A Honourable Member shall not bully another State or Public Officer or any other person.

(2) For purposes of subparagraph (1) “bullying” includes blackmail, coercion, threats, intimidation or repeated offensive behaviour which is vindictive, cruel, malicious or humiliating whether or not is intended to undermine a person and includes physical assault.

Acting through Others

33. (1) A Honourable Member shall not –

- (a) Cause anything to be done through another person that would constitute a contravention of this Code, the Constitution or any other law if done by the Honourable Member or
- (b) Allow or direct a person under their supervision or control to do anything that is in contravention of this Code, the Constitution or any other law.
- (c) (2) Subparagraph (1) (b) shall not apply where anything is done without the Honourable Member’s knowledge or consent or if the Honourable Member has taken reasonable steps to prevent it.

Reporting improper orders

34. If a Honourable Member considers that anything required of him or her is in contravention of the Code or is otherwise improper or unethical, the Honourable Member shall report the matter to the Commission.

(2) The Commission shall investigate the report and take appropriate action within ninety days of receiving the report.

Duty to prevent Occurrence of corruption or unethical practice in the office

36. A Honourable Member who believes or has reason to believe corrupt act or unethical malpractice has occurred or is about to occur in the office shall take all necessary measures to prevent it from continuing or materializing in addition to any other appropriate action.

Use of Social Media

37. A Honourable Member shall not use social media in a manner that is prejudicial to public interest, national cohesion or that otherwise constitutes a breach of any law

Dress code

38. A Honourable Member shall maintain appropriate standard of dress and personal hygiene at all times.

Political and other Influence

39. (1) A Honourable Member shall exercise independence in the discharge of his duties and shall not allow himself to be subjected to political or any other internal or external influence that is detrimental to public interest

(2) A Honourable Member shall not influence or attempt to influence the decision of any other State or Public Officer or public entity on any matter

(3) A Honourable Member shall not in any way interfere with the duties of any other Honourable Member Public Officer or public entity

Provisions relating to implementation of projects

40. (1) A Honourable Member shall in the exercise of oversight over implementation of projects not interfere with such implementation in any way

(2) A Honourable Member shall not influence the undertaking of any project without prior planning or budgeting

(3) A Honourable Member shall not demand or accept any kickbacks, gifts, benefits or other favours from contractors or other persons or entities who are engaged in implementation projects

(4) A Honourable Member shall not compromise or abet comprising of standards of any project

(5) A Honourable Member shall, subject to the law, disclose all relevant information regarding any project to any person requiring such information

Preferential treatment

41. A Honourable Member shall ensure equal and equitable distribution of resources to all persons and any section of the population in his area of jurisdiction and shall not confer any undue advantage to any person or section of the population.

ENFORCEMENT OF THE CODE

42. (1) Any person may lodge a complaint alleging a breach of this code by a Honourable Member to the Office or to the Commission.

(2) Breach of this Code amounts to misconduct for which the Honourable Member may be subjected to disciplinary proceedings including removal from office.

(3) Where a Breach of this code amounts to violation of the Constitution, the Honourable Member may be removed from the office in accordance with the applicable laws.

(4) Where an allegation of breach is made to the Office, the person alleging the breach shall submit a petition setting out the grounds and facts of the alleged violation to the Authorized Officer of the Office.

(5) Upon receipt of the Complaint, the Office shall register and carry out investigations into the complaint, and may take action against the Honourable Member in accordance with the Act, Standing Orders of the Assembly, any Regulations made by the Commission under the Act or other law that for the time being governs the conduct of Honourable Members in the Assembly.

(6) If upon investigation into the alleged breach of the Code, the Office is of the opinion that civil or criminal proceedings out to be preferred against the respective Honourable Member, it shall refer the matter to –

- a) The Commission, with respect to civil matters; and
- b) The director of Public Prosecutions with respect to criminal matters.

(7) Where the complaint is made to the Commission, the Commission shall take such action against the Honourable Member as it deems necessary in accordance with its mandate under the law

(8) Notwithstanding sub-paragraph (5), the Commission may, subject to the law, take any additional action it deems appropriate in relation to any breach of the Code or require the Office to take any action against a State Office who has breached the Code

Victimization

43. A Honourable Member shall not in any way victimize any other Honourable Member or Public Officer or any other person for any lawful action or omission.

Duty of Authorized Officer and Accounting Officer to comply with directives of the Commission in implementation of the Code

44. The Authorized Officer or Accounting Officer of the Office shall at all times comply with such orders or directives as may be issued by the Commission from time to time towards the implementation and enforcement of this Code

In addition, the secretariat took the Committee on Invitation and summons and specifically on the following areas; Examination of witnesses, Rights and privileges of witnesses, Duty of public officer to give evidence and the role of DPP in Assembly privileges – 34

The Committee was taken through an overview of the it's mandates (Section 15- Establishes the Powers Committee) and an in – depth scrutiny of the circumstance under which a member may be deemed to have conduct constituting beach of privileges as enshrined in the County Assemblies powers and privileges Act 2017 as follows;

- Conduct constituting breach of privilege
- Contravening sections 25, 26(1) and 27 or 29
- Broadcasting without authority (25)
- Assault, threats, use abusive language, obstruct, molest or insult members; unlawfully deprive a member of benefits; disrupt chambers;

Section 26 on Prohibited Acts

- Assault, threat, abusive language, obstruction (mace), molest or insult any member proceeding to chamber entailing;
- Assault threat etc to a member of staff while in execution of his or her duty
- Deprive a member of any benefit on account of the member's conduct in a county assembly
- During a sitting- create or take part in any unlawful disturbance which interrupts proceedings (Hon. Mary Ariviza's case)
- Refuse to comply with an instruction by a duly authorized member of staff

The Secretariat shed light on determination of the breach of privileges by deliberating on the powers bestowed on the County Assembly in relation to inquiries into and pronouncements upon any Act or matter constituting breach of privilege in terms of Section 16. Further informed that an inquiry by a County Assembly into a matter ought not to preclude criminal investigation or criminal proceedings against a member in connection with the matter concerned.

With the contravention one may be deemed to have committed an offence and is liable on conviction to a fine of Kshs. 500,000 or 2 years' imprisonment. Other contravention include refusal to comply with a lawful instruction by a duly authorized staff, refusal to honor summons.

Section 17 on Determination of breach of privilege bestows powers on the County Assembly (Assembly has all the powers necessary for inquiring into and pronouncing upon any matter constituting breach of privilege. Notably, Such an inquiry however shall not preclude criminal investigation against a Member in connection with the matter concerned)

In circumstance where a County Assembly finds that a member has committed a breach of privilege, the County may, in addition to any other penalty to which the member may be liable under the County Assemblies Act 2017, or any other law, impose any or more of the penalties as well stipulated in the County Assemblies Acts 2017 Section 17(3)

On improper influence of members, whereby a person shall not, by fraud, intimidation, force, insult, or threat of any kind or by the offer or promise of any inducement or benefit of any kind, or by any other improper means (Section 28 a, b, c) (Hon. Malde's case)

Section 29 dwells much on duty of court registrar- where a member is convicted for 6 months, Court Registrar shall inform the speaker (This is ground for misconduct (Section 30 of Powers and Privileges Act 2017)

Some of the crucial sections that were highlighted includes;

- ✓ Section 31- Members of the Public offenses within the precincts
- ✓ Section 32- defamation against county assembly
- ✓ Section 34 – Clerk on directions of the Speaker to make a request to DPP to take up matter involving offences
- ✓ Members of staff have powers of police officers (Section 35)

The hon. Chairperson advised members to acquaint themselves with the statutory tools and specifically the Powers and privileges Act 2017 as this will assist them dispense the committee mandates amicably.

The Committee was taken through an in-depth understanding of the investigation process including;

- ❖ When to commence an investigation
- ❖ Salient preliminary actions by the Committee
- ❖ Engagement of witnesses
- ❖ Reporting
- ❖ The role of Chair and the speaker in investigation process

Since there were new members, who joined the Committee, the Secretariat took members through the establishment and mandates of the Committee

Establishment and Mandate.

The Committee on Powers and Privileges is established pursuant to the Standing Order 183 as read together with Section 15 of the County Assemblies Powers and Privileges Act, 2017

(the Act). The Committee's mandate amongst others, as outlined under Section 15 of the Act is to:

- f. Inquire into the conduct of a member whose conduct is alleged to constitute a breach of privilege; and
- g. Either of its own motion or a result of a complaint made by any person, inquire into the conduct of a member whose conduct is alleged to constitute a breach of privilege
- h. Investigate, table reports and make recommendations to the floor of the house
- i. Issue summons to witnesses to appear before the committee,
- j. Receive evidence and to request for and receive papers and documents from the Government and the public.

Further, as envisaged under Section 18 of the Act as read with Article 195 of the Constitution of Kenya, the Committee as constituted has the same powers as the High Court.

N/B The County Assembly Committees are extensions of the Assembly established under the County Assembly Standing Orders and in accordance with Section 14 of the County Governments Act, 2012. The Committees are supposed to perform functions that the Assembly is not well fitted to consider in plenary.

The select Committee on Powers and Privileges exercises its mandate by investigating any matter pertaining conduct of members and staff within the precincts of the Assembly.

Pursuant to the provisions of Standing Order 183 as read together with Section 15 of the Act, the Select Committee on Powers and privileges should have a meeting to consider, deliberate and lay modalities on how to proceed with matters that is placed before the Committee for investigation for that matter. This is necessary for the effective discharge of the Committee's mandate.

Salient Preliminary actions by the Committee

a) Committee sittings.

- i) The Committee receives evidences from witnesses and footage may be reviewed by the Committee.
- ii) Witnesses get summoned to appear and adduce evidence in chief.

b) Investigation

A committee may commence an investigation following a direction from the Hon. Speaker.

A case (Inquiry into the conduct of members on 26th June 2019 at a sitting of the Sectoral Committee on Early Childhood Education and vocational training and allegation of harassment of a witness

The matter was brought before the committee vide a direction from the Hon. Speaker on the floor of the House on 27th June 2019. A meeting of the Committee was subsequently convened on 2nd July 2019 where the committee deliberated upon the said issue and reiterated on the protection on witnesses as anchored in County Assemblies Powers and Privileges Act 2017, 20(1).

Committee Inquiry into Privileges Breaches

a) Legal Framework

The Select Committee on Powers and Privileges draws its mandates and powers from various Constitutional and statutory provisions, as well as parliamentary dictates derived from long standing practice and procedure.

Primarily the enabling law to the mandate of the Committee is the Nairobi County Assembly Standing Orders, which draws its legality and powers from County Governments Act, 2012 and the Constitution. Standing Order 183 provides for the Powers and privileges of Committees, thus -

Committees shall enjoy and exercise all the powers and privileges bestowed on County Assembly by the Constitution and statute, including the power to summon witnesses, receive evidence and to request for and receive papers and documents from the Government and the public.

The Committee is established under the County Assemblies Powers and Privileges Act, 2017, Section 15 (1). The Act is established under Article 196(3) of the Constitution of Kenya, 2010.

The Committee's powers to summon witnesses for purposes of giving evidence is provided for under Article 196 of the Constitution, thus –

A county assembly or any of its committees has power to summon any person to appear before it for the purpose of giving evidence or providing information. For the purposes of clause (1), an assembly has the same powers as the High Court to—

- a) enforce the attendance of witnesses and examining them on oath, affirmation or otherwise;*
- b) compel the production of documents; and*
- c) issue a commission or request to examine witnesses abroad.*

Further, Article 196(3) provides that *Parliament shall enact legislation providing for the powers, privileges and immunities of county assemblies, their committees and members.* It is on the basis of the foregoing that the Senate and the National Assembly of the Republic of Kenya enacted the County Assemblies Powers and privileges Act, 2017.

Section 16 of the County Assemblies Powers and Privileges Act, 2017 states what constitutes to be a breach of the privileges and Section 15 of the Act gives the Committee the mandate to inquire into conduct of a Member whose conduct is alleged to constitute a breach of privileges in terms of Section 16.

The Act provides comprehensively for offenses, under Section 27 for failure to attend to summons and for general breaches of the law's provisions elsewhere.

WITNESSES

The Committee to outline the number of witnesses to be invited for purposes of shedding light on the incidence under inquiry. The witnesses may be comprised of honorable members, members of staff and even witnesses from outside whose names are implicated in the investigations.

On behalf of the Committee, the office of the Clerk of the County Assembly facilitate the process by issuing invitation letters to the witnesses to appear before the committee to shed light on the investigations.

Appearance before the Committee by witnesses

- Oath Taking
- Statements and oral testimony from witnesses are reviewed and noted.

THE COMMITTEE'S OBSERVATIONS AND FINDINGS

Upon review of the footage, documentary evidence and examination of witnesses, the Select Committee on Powers and Privileges make observations and findings

COMMITTEE RECOMMENDATIONS

A Committee having received evidence in chief from summoned witnesses; reviewed video footage; having examined primary and secondary documentary evidence tables before the Committee and; having deliberations and made observations and findings, the Select Committee on Powers and Privileges makes recommendations

ADOPTION OF THE REPORT BY THE COMMITTEE

The Committee of Powers and Privileges, having considered a Report on an investigation, confirm their agreement with the content of the Report and request the Chairperson to present the Report to the Assembly.

5.0 COMMITTEE RECOMMENDATIONS

Having: dispensed with the workshop business, the Select Committee on Powers and Privileges made the following recommendations-

THAT,

- a) Pursuant to the Nairobi City County Assembly Standing Orders (179) – The Committee Chairperson urged members to be attending and participating during the committee retreats to members going forward.
- b) The committee to have more trainings to allow members acquaint themselves with the Powers and privileges Act 2017 and other statutory tools to enable them dispense their mandate amicably

ADOPTION OF THE REPORT BY THE COMMITTEE

WE, the undersigned Members of the Committee of Powers and Privileges, having considered this workshop Report. A workshop held in Continental Resort, Mombasa County from 18th to 21st March 2021, do hereby confirm our agreement with the content of the Report and request the Chairperson to present the Report to the Assembly -

MINUTES OF THE (VIRTUAL) SITTING OF THE NAIROBI CITY COUNTY ASSEMBLY
SELECT COMMITTEE ON POWERS AND PRIVILEGES HELD ON 6TH MAY 2021 AT 12:00
NOON.

MEMBERS PRESENT

1. Hon. Naftali Mathenge, MCA - Vice – Chairperson
2. Hon. Margaret Mbote, MCA
3. Hon. Maurice Ochieng, MCA
4. Hon. Peter Wahinya Njau, MCA
5. Hon. Jackline Apondi, MCA
6. Hon. Pius Mbono, MCA
7. Hon. Geoffrey Majiwa, MCA
8. Hon. Mary Njambi, MCA

MEMBERS ABSENT

1. Hon. Benson Mutura – Speaker/Chairperson
2. Hon. Paul Kados, MCA
3. Hon. Osman Khalif, MCA
4. Hon. Michael Ogada, MCA
5. Hon. Ibrahim Hassan Abdi, MCA

SECRETARIAT

1. Mr. Inyundele Austin – Clerk of the Committee

AGENDA

1. Preliminaries (Prayers and Adoption of the Agenda)
2. Confirmation of minutes of previous sittings
3. Matters arising
4. Adoption of a Committee report on workshop held at Continental Hotel Mombasa County from 18th to 21st March 2021.
5. Any Other Business
6. Adjournment

MIN. 0043/NCCA/P&PC/MAY/2021: Preliminaries

The Vice-Chairperson called the meeting to order at 12:00 noon. He welcomed members present to the meeting and led members in a word of prayer. The agenda of the meeting was then adopted as proposed by Hon. Jackline Apondi, MCA and seconded by Hon. Margaret Mbote, MCA.

MIN.044/NCCA/CP&P/MAY/2021: CONFIRMATION OF THE PREVIOUS SITTINGS;

The minutes of the Committee meeting held on 25th March 2021 (afternoon) were read by the Vice-Chairperson and confirmed as true record of the proceedings as proposed by the Hon. Peter Wahinya Njau, MCA and seconded by the Hon. Pius Mbono, MCA

The minutes of the Committee meeting held on 15th April 2021 were read by the Vice-Chairperson and confirmed as true record of the proceedings as proposed by the Hon. Peter Jackline Apondi, MCA and seconded by the Hon. Margaret Mbote, MCA

MIN.045/NCCA/CP&P/MAY/2021: ADOPTION OF A COMMITTEE REPORT

The Vice Chairperson to the Committee took members through the report of the Select Committee on Powers and Privileges on Induction of the Committee on Provisions of the County Assemblies Powers and Privileges Act, 2017, the Integrity Questions of Public Officers and the Committee's Investigatory Mandate. A workshop held at Continental Hotel Mombasa County from 18th to 21st March 2021,

The Committee having registered their satisfaction with the content of the said report, unanimously adopted the report and confirmed it as true records of what transpired. The Committee therefore resolved to table the said report upon resumption of Assembly sittings.



MIN.046/NCCA/CP&P/MAY/2021: A.O.B

The Committee stressed on the importance of Committees' trainings in the enhancement of the members in execution of Committee mandate. The Committee therefore proposed to have numerous trainings as this will assist the members dispense Committee roles amicably.

MIN.047/NCCA/CP&P/MAY/2021: Adjournment

The Committee having dispensed with the business of the day, and there being no other business the Chairperson adjourned the meeting at 12.50 p.m. The next meeting would be communicated by notice.

CONFIRMED AS A TRUE RECORD OF THE PROCEEDINGS

	SIGN	DATE
CHAIRPERSON		4/6/2021
SECRETARY		4 th June 2021