

COUNTY GOVERNMENT OF KITUI



THE COUNTY ASSEMBLY OF KITUI SECOND ASSEMBLY – (THIRD SESSION)

**REPORT OF THE SPECIAL COMMITTEE INVESTIGATING THE
REMOVAL FROM OFFICE OF THE COUNTY EXECUTIVE
COMMITTEE MEMBER, COUNTY MINISTRY OF TRADE, CO-
OPERATIVES AND INVESTMENTS – MR. PHILIP MUTINDA
MUMO**

**CLERK OF ASSEMBLY'S CHAMBER
NOVEMBER, 2019
P. O BOX 694 - 90200
KITUI**

ABBREVIATIONS

CECM	County Executive Committee Member
D.C.I	Directorate of Criminal Investigations
H.E	Her Excellency
EACC	Ethics and Anti - Corruption Commission
M.K.U	Mount Kenya University
I.T	Information Technology

ANNEXTURES

Annex 1 - Signed list of members adopting the report

Annex 2 – Motion by Hon. Peter Kilonzo on the removal from office of the CECM trade, Co-operatives and Investments

Annex 3 – Written Submissions by Advocate Sali Malonza of S.S Malonza and Company Advocates

Annex 4 – Letter to Mr. Philip Mutinda Mumo inviting him to appear before the special committee

Annex 5 – Copy of the questionnaire

Annex 6 – Letter to the County Secretary requesting for copies of academic certificates for Mr. Philip Mumo Mutinda

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Annex 8 - Copy of graduation booklet for the ceremony held on 25th July, 2014

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Annex 10 - Copy of degree certificate submitted to M.K.U by the D.C.I

Annex 11 - Copy of degree certificate submitted to the Appointments committee during the approval hearing in 2017

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Annex 14 - Copies of academic transcripts having the name Mr. Philip Mutinda Mumo

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BACKGROUND

Mr. Speaker Sir,

Section 40 (2) of the County Governments Act provides that a member of the county assembly, supported by at least one-third of all the members of the County Assembly, may propose a motion requiring the governor to dismiss a county executive committee member on any of the following grounds;

- a) incompetence;
- b) abuse of office;
- c) gross misconduct;
- d) failure, without reasonable excuse, or written authority of the governor, to attend three consecutive meetings of the county executive committee;
- e) physical or mental incapacity rendering the executive committee member incapable of performing the duties of that office; or
- f) gross violation of the Constitution or any other law.

Mr. Speaker Sir,

Based on the above provisions, Hon. Peter Kilonzo, Member of County Assembly for Athi Ward, moved a motion in this Honorable House on 29th October, 2019, urging the House to remove Mr. Philip Mutinda Mumo, from the Office of the County Executive Committee Member (CECM) for Trade, Co-operatives and Investments pursuant to section 40 of the County Governments Act, 2012 and Standing Order No. 62.

Mr. Speaker Sir,

Upon approval of the motion, the County Assembly appointed a five member special Committee on 5th November, 2019, pursuant to the provisions of section 40 (3) (a) of the County Governments Act as read together with Standing order no. 62(6). The special committee was mandated to investigate the grounds alleged in the motion and report back to the Assembly within ten days on whether it finds the allegations against

the County Executive Committee Member, Mr. Philip Mutinda Mumo to be substantiated or not.

Mr. Speaker Sir,

The Special Committee commenced its proceedings on 6th November, 2019. The committee had a statutory deadline of 10 (ten) days to investigate the allegations raised in the motion and subsequently report back to the Assembly.

COMMITTEE'S TERMS OF REFERENCE

Mr. Speaker Sir,

The terms of reference for the Committee are provided for under section 40(3) of the County Governments Act, 2012 and Standing Order No. 62 (6) which are:-

- i. To investigate the grounds alleged in the motion for removal from office of the County Executive Committee Member (CECM) for Trade, Co-operatives and Investments; and
- ii. To report to the County Assembly whether it finds the allegations to be substantiated or not.

COMMITTEE'S MEMBERSHIP

Mr. Speaker Sir,

The Special Committee as constituted by this Honorable House consists of the following members;

- | | |
|----------------------------|------------------|
| 1. Hon. David Thuvi | - Chairperson |
| 2. Hon. Alex N. Musili | - V/ Chairperson |
| 3. Hon. Jacob M. Kavolonza | - Member |
| 4. Hon. Anne M. Mumo | “ |
| 5. Hon. Boniface K. Katumo | “ |

ACKNOWLEDGMENT

Mr. Speaker Sir,

I wish to sincerely thank the members of this Special Committee for their dedication and commitment to their work. The members of this committee, together with the members of staff, selflessly worked for long hours to ensure that they carry out their mandate effectively and subsequently produce their report within the statutory deadline of 10 days.

I also wish to thank the office of the Speaker and the Clerk for their support towards making this undertaking a success through facilitation and other Logistics.

I also wish to thank all the members of the public who took time out of their busy schedules to avail themselves before the committee.

Mr. Speaker Sir,

It is therefore my pleasant duty and honour, to present this report on behalf of the members of the Committee, and recommend it for consideration and adoption by the Assembly.

THANK YOU.

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HON. DAVID THUVI

**CHAIRPERSON, SPECIAL COMMITTEE INVESTIGATING THE REMOVAL
FROM OFFICE OF THE COUNTY EXECUTIVE COMMITTEE MEMBER,
COUNTY MINISTRY OF TRADE, CO-OPERATIVES AND INVESTMENTS
COUNTY ASSEMBLY OF KITUI.**

PREAMBLE

ESTABLISHMENT OF THE COUNTY EXECUTIVE COMMITTEES

Mr. Speaker Sir,

The executive authority of the County is vested in and exercised by a County Executive Committee.

Article 179 of the Constitution establishes the County Executive Committee comprising of the Governor, Deputy Governor, and members appointed by the Governor with the approval of the Assembly from among persons who are not members of the County Assembly.

Article 183 of the Constitution as read together with Section 36 of the County Governments Act, 2012, outline the functions of the County Executive Committee as follows;

- 1) A County Executive Committee shall;
 - a) Implement County legislation;
 - b) Implement, within the County, National legislation to the extent that the legislation so requires;
 - c) Manage and coordinate the functions of the County administration and its departments; and
 - d) Perform any other functions conferred on it by this Constitution or National legislation.
- 2) A County Executive Committee may prepare proposed legislation for consideration by the County Assembly.
- 3) The County Executive Committee shall provide the County Assembly with full and regular reports on matters relating to the County.

APPOINTMENT OF COUNTY EXECUTIVE MEMBERS

Mr. Speaker Sir,

Section 35(3) of the County Governments Act outlines the requirements for one to be appointed as a member of the County Executive Committee.

A person may be appointed as a member of the county executive committee if that person;

- a) is a Kenyan citizen;
- b) is a holder of at least a first degree from a university recognised in Kenya;
- c) satisfies the requirements of Chapter Six of the Constitution; and;
- d) has knowledge, experience and a distinguished career of not less than five years in the field relevant to the portfolio of the department

Mr. Speaker Sir,

By definition, job requirements are the skills, experience and attributes an employer wants to find in the candidate who is hired for the position. They are the credentials that qualify an applicant for the role.

In short, job requirements are ‘must haves’ that an employer would be looking for in a candidate for a certain job or position.

When the drafters of the law expressly stipulated these minimum qualifications, they must have had a good reason. They must have deemed those qualifications as essential to the satisfactory performance of that job.

Job requirements are greatly important since they communicate the employer’s expectations from potential job seekers. Therefore, job seekers who meet the requirements are able to apply while those who do not need not apply and waste the employer’s time.

The minimum qualifications stated under section 35 of the County Governments Act were carefully crafted to encompass the most important attributes, skills and knowledge needed for the position.

Mr. Speaker Sir,

Section 35 (3) (b) provides that *‘a person may be appointed as a member of the county executive committee if that person is a holder of at least a first degree from a university recognised in Kenya’*.

The term ‘at least’ by definition means not less than, at the very minimum. Therefore, being a holder of a degree from a recognised university is the minimum qualification for a candidate seeking to be appointed as a member of the County Executive Committee.

The motion for the removal from office of the CECM, County Ministry of Trade, Co-operatives and investments was founded on the basis of the allegation that Mr. Philip Mutinda Mumo does not possess a degree from a university recognised in Kenya.

In consideration of the above, the Member of County Assembly for Athi Ward, Honourable Peter M. Kilonzo moved a motion before the Assembly for the removal from office of the County Executive Committee Member for County Ministry of Trade, Co-operatives and Investments, Mr. Philip Mutinda Mumo. The motion, which was approved by the County Assembly, raised the following grounds;

- i. **Gross violation of the Constitution and any other relevant laws;**
 - (a) By grossly violating section 35(3)(b) of the County Governments Act, 2012, which provides that for a person to be qualified to hold the office of the County Executive Committee Member, he must amongst other things be a holder of at least a first degree from a university recognized in Kenya.

The County Executive Committee Member (CECM) for Trade, Co-operatives and Investments, Mr. Philip Mutinda Mumo was appointed to the office on reliance of the fact that he is a holder of a degree from Mount Kenya University. The degree certificate was later on confirmed to be forged, not authentic and did not emanate from the institution which is purported to have issued it.

- (b) By knowingly violating the provisions of note (d) of the First Schedule of the Public Appointments (County Assemblies Approval) Act No 5 of 2017 which expressly prohibits any nominee from tendering false information during vetting as doing so leads to an automatic disqualification of the candidate.
- (c) By grossly contravening Chapter Six of the Constitution on Leadership and Integrity by misleading the County Assembly's Committee on Appointments during the vetting process by providing a forged degree certificate purported to have been conferred upon him by Mount Kenya University. This act contravenes the principles of leadership and integrity as outlined under Article 73 (2) (a) which is selection on the basis of personal integrity, competence and suitability,
- (d) By refusing to vacate from office even after a resolution was passed by the Assembly requiring his dismissal. This contravenes the spirit of article 73 (1) (a) (iv) which requires a state officer to act in a manner that promotes public confidence in the integrity of the office he holds. Further, the blatant refusal to vacate office amounts to a violation of Article 73 (2)(d) which provides that one of the principles of leadership and integrity is accountability to the public for decisions and actions,

ii. **Incompetence**

Section 35 (3)(b) of the County Governments Act No 17 of 2012 expressly outlines the minimum education qualification that one must meet to be appointed as a member of the County Executive Committee which is to be a holder of **at least** a first degree from a university recognized in Kenya.

By virtue of the fact that the County Executive Committee Member (CECM) for Trade, Co-operatives and Investments, Mr. Philip. Mutinda Mumo does not possess this minimum qualification automatically renders him incompetent and unqualified to continue holding office.

LEGAL BASIS

Mr. Speaker Sir,

The procedure for the removal from office of a member of the County Executive Committee Member is clearly provided for under Section 40 of the County Governments Act, 2012, as read together with Standing Order no. 62.

- 1) A member of the County Assembly, supported by at least one third of all the members of the county assembly, may propose a motion requiring the Governor to dismiss a County Executive Committee member on any of the grounds set out in subsection (1).
- 2) If a motion under subsection (2) is supported by at least one third of the members of the County Assembly—
 - a) the County Assembly shall appoint a select committee comprising five of its members to investigate the matter; and
 - b) the select committee shall report, within ten days, to the County Assembly whether it finds the allegations against the County Executive Committee member to be substantiated.
- 3) The County Executive Committee member has the right to appear and be represented before the select committee during its investigations.
- 4) If the select committee reports that it finds the allegations—
 - a) unsubstantiated, no further proceedings shall be taken; or
 - b) Substantiated, the County Assembly shall vote whether to approve the resolution requiring the County Executive Committee member to be dismissed.
- 5) If a resolution under subsection (5)(b) is supported by a majority of the members of the County Assembly—
 - a) the Speaker of the County Assembly shall promptly deliver the resolution to the Governor; and
 - b) the Governor **shall** dismiss the County Executive Committee member.

Mr. Speaker Sir,

The notice of motion for the removal from office of the County Executive Committee Member for Trade, Co-operatives and Investments, Mr. Philip Mutinda Mumo was given on 22nd October, 2019 and the motion moved on 29th October, 2019.

The procedure for executing the motion is provided for under Standing Order 62 as follows;

- 1) Before giving notice of Motion under section 40 of the County Governments Act, 2012, the member shall deliver to the Clerk a copy of the proposed Motion in writing stating the grounds and particulars upon which the proposal is made, for requiring the Governor to dismiss a Member of County Executive Committee on ground of a gross violation of a provision of the Constitution or of any other law; where there are serious reasons for believing that the Member of county executive has committed a crime under national or international law; or for gross misconduct. The notice of Motion shall be signed by the Member and the Clerk shall submit the proposed Motion to the Speaker for approval.
- 2) A member who has obtained the approval of the Speaker to move a Motion under paragraph (1) shall give a three (3) days' notice calling for dismissal of a Member of County Executive Committee by the Governor.
- 3) Upon the expiry of three (3) days, after notice given, the Motion shall be placed on the Order Paper and shall be disposed of within three days;
- 4) When the Order for the Motion is read, the Speaker shall refuse to allow the member to move the motion, unless the Speaker is satisfied that the member is supported by at least one-quarter of all Members of the County Assembly to move the motion. Provided that within the seven days' notice, the Clerk shall cause to be prepared and deposited in his office a list of all Members of the County Assembly with an open space against each name for purposes of appending signatures, which list shall be entitled “**SIGNATURES IN SUPPORT OF A MOTION FOR REMOVAL OF**

Mr./Mrs./Ms-----MEMBER OF COUNTY EXECUTIVE
COMMITTEE”

Provided further that the Mover shall provide to the Speaker, at least one hour before the sitting of the Assembly, a list signed by members in support of the motion.

- 5) Any signature appended to the list as provided under paragraph (4) shall not be withdrawn.
- 6) When the Motion has been passed by at least one-third of all members of the County Assembly, the Assembly shall, within seven (7) days, appoint a special committee comprising of a third of the Members to investigate the matter; and shall, within ten days, report to the Assembly whether it finds the allegations against the Member of county executive to be substantiated.
- 7) The Member of County Executive has the right to appear and be represented before the select committee during its investigations.
- 8) No further proceedings shall be taken on the matter if the select committee finds the allegations unsubstantiated.
- 9) If the select committee reports that it finds the allegations substantiated, the County Assembly shall afford the Member of County Executive an opportunity to be heard and vote whether to approve the resolution requiring the Member of County Executive to be dismissed.
- 10) If a resolution requiring the Governor to dismiss a Member of County Executive is supported by a majority of the members of the County Assembly the Speaker shall promptly deliver the resolution to the Governor and the Member shall be considered dismissed.

COMMITTEE’S INQUIRY INTO THE GROUNDS ALLEGED

Mr. Speaker Sir,

Article 195 of the Constitution as read together with our standing order no. 171, provide that the County Assembly and its committees have the power to summon any person to appear before it for the purpose of giving evidence or producing information. It further provides that the County Assembly and its committees have the same powers as the High Court to

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enforce the attendance of witnesses and compelling the production of documents.

Section 35(4) of the County Governments Act as read together with Standing order 62(7) provide that the member of the county executive committee has the right to appear and be represented before the special committee during its investigations.

Mr. Speaker Sir,

In exercise of the powers conferred on the committee by the provisions above and for effective execution of its mandate, the committee summoned the following witnesses in line with the provisions of Section 18 of the County Assemblies Powers and Privileges Act, 2017;

- i. H.E Charity K. Ngilu – The Governor, Kitui County/ the Appointing authority. She appeared on 7th November, 2019
- ii. Hon. George M. Ndotto – Speaker of County Assembly/Chairperson, Appointments Committee. He appeared on 8th November, 2019
- iii. Honourable James Munuve - Member of County Assembly, Kanziko Ward.
- iv. Hon. Peter M. Kilonzo - Member of County Assembly, Athi Ward. He appeared on 8th November, 2019
- v. Mr. Daniel Chelule - The Deputy Registrar Academic Admin, Mount Kenya University appeared on 12th November, 2019 (Sitting in for the registrar, Dr. Ronald Maathai, who was away on official business in Kigali, Rwanda).

Mr. Speaker Sir,

We also heard the testimony of Mr. Philip Mutinda Mumo who appeared before the special committee on 9th November, 2019, in the presence of his advocate, Mr. Saili Malonza pursuant to the provisions of section 40(4) of the County Governments Act.

TESTIMONY OF H.E THE GOVERNOR – HON. CHARITY K. NGILU

Mr. Speaker Sir,

We had the testimony of H.E the Governor that;

- 1) She had received a letter from the Speaker of Assembly informing her that the County Assembly had approved a motion by the Appointments Committee on Verification of Educational Credentials for the Kitui County Executive Committee Members (CECM's). One of the recommendations in the Motion was that the Governor should dismiss within 7 days, the CECM's for Health and Sanitation and Trade, Co-operatives and Investments namely Ms. Rosaita M. Ngina and Mr. Philip Mumo Mutinda respectively.
- 2) Upon receiving the County Assembly's resolution to dismiss the CECM, Mr. Philip Mutinda Mumo, she wrote back to the Speaker informing him that she could not do so since she was unable to confirm the authenticity of the annexures attached to the Speaker's letter since some of them were neither signed by the authors nor stamped as received by the relevant institutions.
- 3) The County Assembly did not have the requisite mandate to undertake a re-vetting exercise of the CECM'S after the Assembly had already approved them for appointment.
- 4) As far as she was concerned, her office had done all that was expected from it. Vacancies for the positions had been duly advertised, candidates shortlisted, interviewed by a competent panel and the names forwarded to the County Assembly for vetting. The Nominees were subsequently approved and appointed. Therefore, the County Assembly could not embark on a re-vetting exercise to confirm credentials and testimonials as this should have been done in 2017 during the approval hearings.
- 5) She personally did not have any human resource capacity and for that reason she engaged a skilled panel comprising of a representative of the County Public Service Board and one Mr. Titus Ndambuki from the Public Service Commission. Her only responsibility was to forward the names to the County Assembly and

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subsequently appoint them upon getting a go ahead from the County Assembly.

- 6) One of the officers the County Assembly was intending to impeach is her top performing CECM and in addition the Ministry of Health and Trade were in her opinion, the top performing departments.
- 7) One of the officers to be impeached was no longer an employee of the County Government. She however did not verify which officer it was upon further prodding by the members of the Special Committee.
- 8) The exercise by the County Assembly to verify the credentials of the CECM's and the intention to subsequently impeach them is an exercise in futility, fueled by malice and witch hunting. She personally did not complain to the County Assembly asking the institution to re-vet the CECM's and therefore does not understand the reason behind it.

**TESTIMONY OF HON. GEORGE M. NDOTTO – SPEAKER/
CHAIRPERSON, COMMITTEE ON APPOINTMENTS.**

Mr. Speaker Sir,

We had the testimony of Hon. George M. Ndotto that;

- 1) He is the Speaker of the County Assembly of Kitui and by virtue of that position, he is automatically the Chairperson of the Committee on Appointments.
- 2) During the approval hearing process, Mr. Philip Mutinda Mumo presented copies of his academic credentials and testimonials to the Appointments Committee and from the documents presented, he appeared to be qualified for the position applied for.
- 3) The Appointments committee focused on the candidate' academic credentials, professional training and experience, personal integrity and background as directed by section 7(8) of the of the Public Appointments (County Assemblies) Approval Act, 2017.

- 4) He believed the Appointments committee conducted the approval hearing in accordance with the law and that they did what was required of them at the time.

TESTIMONY OF HON. JAMES M. MUNUVE – MCA, KANZIKO WARD

Mr. Speaker Sir,

We had the testimony of Hon. James. M. Munuve that;

- 1) The Special Committee had invited him to testify before it by virtue of him being the mover of the motion on inquiry into the authenticity of the Kitui County Executive Committee Members' academic qualifications. The said motion was laid before the Assembly on 9th July, 2019 and subsequently approved by the Assembly on 10th July, 2019.
- 2) He brought the motion before the Assembly as a result of a continuous public outcry from the residents of Kitui County who alleged that some of the CECM's did not possess university degrees. This is in total contravention of Section 35 (3) of the County Governments Act.
- 3) Article 1 (2) of the Constitution provides that "People may exercise their sovereign power either directly or through their democratically elected representatives." Further, Article 185 (3) of the Constitution gives the County Assembly the power to exercise oversight over the County Executive and any other county executive organs.
- 4) As an M.C.A, he represents the people of Kanziko Ward and one of his roles under section 9(1) (b) is to present views, opinions and proposals of the electorate to the County Assembly. It is for that reason therefore that he heeded to the people's cry and brought the motion for the inquiry into the authenticity of the CECM's academic qualifications.
- 5) Some of the people complaining about the CECM's qualifications are those that had applied for the positions together with those who knew their backgrounds.

- 6) He was so far satisfied by the progress of the implementation of his motion and he was happy that the issue was being looked into by the Assembly.

TESTIMONY OF HON. PETER KILONZO - M.C.A ATHI WARD

Mr. Speaker Sir,

We had the testimony of Hon. Peter M. Kilonzo that;

- 1) He was Hon. Peter M. Kilonzo, the member of County Assembly representing Athi ward and the leader of the majority party. He was also a member of the Appointments Committee as a result of being the leader of the majority.
- 2) The Special Committee had invited him to testify before it due to the fact that he was the mover of the motion on removal from office of the County Executive Committee Member for Trade, Co-operatives and Investments (**Annex 2**).
- 3) His motion was based on the allegations that Mr. Philip Mutinda Mumo did not possess an authentic degree certificate and was thus therefore not qualified to continue holding office as the CECM.
- 4) What informed his motion for the removal from office of the CEC member, was the findings of the Appointments committee after it conducted a verification exercise of the academic certificates submitted by the CECM's during their vetting.
- 5) The Appointments committee conducted an inquiry into the authenticity of the academic qualifications and found that Mr. Philip Mutinda Mumo is not a holder of a degree certificate. In a report approved by the Assembly on 6th August, 2019, the Assembly resolved that H.E the Governor should within seven (7) days on receipt of the Assembly's resolution, dismiss the CECM, Mr. Philip Mutinda Mumo. The report further stated that in the event H.E the Governor declined to dismiss the CECM, Mr. Philip Mutinda Mumo, within the stipulated timelines, then the County Assembly would without delay, commence the impeachment process against him.

- 6) Based on the foregoing, and in order to kick start the impeachment process, Hon. Peter Kilonzo moved the motion for the removal from office of the said CECM. The motion was approved by the Assembly on 29th October, 2019.
- 7) The Committee on Appointments received the nomination list from H.E the Governor of the nominees to be appointed as members of the County Executive Committee. One of the names on the list was that of Mr. Philip Mutinda Mumo.
- 8) Mr. Philip Mutinda Mumo personally appeared before the Appointments Committee during the approval hearing and presented his original certificates and testimonials having personally completed and submitted the prescribed questionnaire.
- 9) In his opinion, the Appointments Committee executed its mandate diligently and in accordance with the provisions of the relevant statutes during the approval hearing.

TESTIMONY OF MR. PHILIP MUTINDA MUMO – CECM, COUNTY MINISTRY OF TRADE, CO-OPERATIVES AND INVESTMENTS

Mr. Speaker Sir,

We had the testimony of Mr. Philip Mutinda Mumo who appeared in the presence of his advocate Mr. Saili Malonza of S.S Malonza and Company advocates.

Mr. Philip Mutinda Mumo declined to give his testimony under oath citing that his advocate was present and he should therefore not be subjected to the oath. He also presented the special committee with written submissions in response to the grounds alleged against him (**Annex 3**).

Mr. Philip Mutinda Mumo together with his legal counsel testified that;

- 1) He is the County Executive Committee Member for Trade, Co-operatives and Investments and is currently still in office.
- 2) He had received the letter notifying him of the invitation to the sitting of the special committee together with the grounds alleged in the motion for his removal from office (**Annex 4**).

- 3) He understood that the committee's proceedings would be recorded on the Hansard.
- 4) The documents that may be relevant to the matter in question had been confiscated by the Directorate of Criminal Investigations (DCI) and they would thus be unable to submit the same to the committee. They also informed the committee that they did not have any copies of the documents in support of his testimony.
- 5) He learnt about the vacancy for the position of CECM County Ministry of Trade, Co-operatives and Investments from an advertisement in the newspapers. He also stated that he fully understood the requirements listed for one to be appointed as a CECM and thus he proceeded to apply.
- 6) He was eventually shortlisted and interviewed for the position by three people namely; the deputy governor Dr. Wathe Nzau, the former chair of the County Public Service Board Ms. Rose Masya and one Mr. Ndambuki.
- 7) He was notified by the County Assembly of the time and place for the approval hearing which he personally attended and appeared before the Committee on Appointments. He also submitted his original certificates and testimonials, copies of which he however did not have in possession at the time of giving his testimony to the special committee.
- 8) The First Schedule of the Public Appointments (County Assemblies Approval) Act contains a questionnaire which candidates to be vetted are required to collect, fill out and submit to the office of the Clerk of the County Assembly. Mr. Philip Mutinda Mumo informed the committee that he personally filled out the questionnaire and he fully understood its contents. He further went ahead to confirm that the copy of the questionnaire in the possession of the Special committee was indeed a true copy of the one he had filled out and submitted to the office of the Clerk in the year 2017 (**Annex 5**).
- 9) He was indeed aware of the provisions of Note 2 of the questionnaire which cautions anyone from tendering false information.

- 10) He was a graduate of Mount Kenya University having graduated from the institution in December 2014 with a Bachelors of Business Information Technology (BBIT).
- 11) He had erroneously indicated in the questionnaire that he had been awarded a degree in Bachelors of Business Administration with I.T but instead it should have been a Degree in Bachelors of Business Information Technology (BBIT). This degree had been conferred upon him by Mount Kenya University in December, 2014 upon graduating. He did not however have the degree certificate awarded to him since the same had been taken by the Directorate of Criminal Investigation.
- 12) He did not have any copies of his testimonials and the same could be requested from the office of the County Secretary, Kitui. However, on writing to the office of the County Secretary requesting for the copies, they wrote back and informed the special committee that the file containing copies of Mr. Philip Mutinda Mumo's academic testimonials had been burnt down by the fire that engulfed the Tourist Building in February, 2018 (**Annex 6 and 7**).
- 13) The copy of the degree certificate that the Special Committee had in their possession was not the one he had submitted to the Appointments committee during his approval hearing. He could not confirm whether the academic transcripts and application letter that the Special Committee had were his, since he needed his originals to compare them to.
- 14) He neither remembered his registration number nor the name of the Vice Chancellor at the time he undertook his studies at the Mount Kenya University, but the registrar of academics at the time was one Mr. Maathai.
- 15) While in university, he wrote a research project on the Impact of Technology in Entrepreneurship which he defended before a panel. This was in fulfilment of the requirements to be met before one can qualify to graduate with a bachelor's degree.
- 16) He has never been invited to any other approval hearing by the Appointments committee other than the one he attended in the year

2017. He was also not aware of whether the Governor had re-submitted his name to the County Assembly for re-vetting.

TESTIMONY OF MR. DANIEL CHELULE, THE DEPUTY REGISTRAR ACADEMIC ADMIN, MOUNT KENYA UNIVERSITY

Mr. Speaker Sir,

We had the testimony of Mr. Daniel Chelule that;

1. He is the deputy registrar academic admin, Mount Kenya University.
2. The Registrar Academics, Dr. Ronald Maathai, was away on official business in Kigali and he was acting on his behalf.
3. As the deputy registrar, he had the authority to give information to the committee on matters pertaining to the verification of Mr. Philip Mutinda Mumo's bachelor's degree certificate.
4. The information he was about to give to the committee was not subject to any verification by any other person or authority within the institution.
5. Once an interested person applies for admission to the university, they are issued with an admission letter upon payment of Kshs 1000/= (one thousand) to the university's account. They are then issued with the fee structure, medical forms, acceptance forms, and confirmation by the guardian. This procedure applies to all students being admitted to the university.
6. Mount Kenya University does not have any admission records pertaining to Mr. Philip Mutinda Mumo of I.D No. 24085632 and that he has never been a student there.
7. Mount Kenya University has since inception never offered any degree program by the name Bachelor's Degree in Business Administration with I.T. That Mount Kenya University does not have any bachelors program with the connotation "with I.T" at the end. The only university that offers a program with the connotation 'with I.T' at the end is a public university and as far as he is aware, it is only Masinde Muliro University which offers such a program.

8. Once a student is admitted to the university, they are issued with a unique registration number pertaining only to that particular student. The registration number will belong to the student until s/he graduates from the institution and it can never be issued to another student.
9. Every registration number generated by the institution contains 3 (three) parts;
 - a) Initials of the program being pursued (e.g. BBM.)
 - b) The year of admission (019)
 - c) A unique number only for that particular student (0000)

Therefore an example of a registration number issued by the institution will be as follows BBM/019/0000. That even if a student transfers to pursue another program within the institution, only the initials of the program pursued will change, the other numbers will remain the same. Also, a student can only transfer to another program within the first 3 weeks of admission. If you opt to transfer to another program at the expiry of the 3 weeks then you would have to reapply and be readmitted afresh to the new program.

10. The University is mandated to maintain a student's records for 7 (seven) years after they graduate. Therefore, the institution has records for every student that graduated in the year 2014. Every bonafide student who graduates from the institution must appear in the graduation booklet for that particular year and for that particular graduation ceremony. Therefore, if a person's name does not appear in the graduation booklet then that means the particular individual did not graduate from the institution.
11. In the year 2014, Mount Kenya University held two graduation ceremonies on 25th July, 2014 and on 11th December, 2014. Copies of the graduation booklets for the two graduations in 2014 would be availed to the committee (**Annex 8 and 9**). Mr. Philip Mutinda Mumo's name did not appear on either the Bachelors of Business Information Technology or Bachelors of Business administration with I.T, the two programs he purported to have graduated in.

12. The copy of the degree certificate that the Assembly had forwarded to M.K.U is different from the one that the D.C.I had forwarded to them for verification (**Annex 10 and 11**). He will provide a copy of the same to the committee, however, due to confidentiality reasons, he will not provide the committee with a copy of the D.C.I's forwarding letter.
13. The copy of the degree certificate that the special committee possessed differed from the one that the D.C.I had forwarded to the institution for verification. Both copies as submitted were fake and not issued by Mount Kenya University. Mr. Philip Mutinda Mumo was playing games with the county government and the independent investigative agencies.
14. The degree certificates issued by Mount Kenya University have close to 10 (ten) security features that make it easy for them to detect any fake certificates (**Annex 12**).
15. Each certificate has a QR (Quick Response) code which stores the student's data. The QR code when scanned, displays the students information in the sequence below;
 - i. Certificate number
 - ii. Name of the student
 - iii. Program pursued
 - iv. Date and year of graduation
16. One of the degree certificates purported to have been issued by M.K.U and belonging to Mr. Philip Mutinda Mumo did not have the QR code while the other degree certificate as submitted by the D.C.I had the QR code although the sequence of the data produced when scanned was not the correct one as designed by Mount Kenya University (**Annex 13**). In addition the certificate number on the degree certificate implied that the student had graduated in the year 2015 while the degree certificate itself stated that the student had graduated in 2014. The QR code on one of the certificates was not generated by M.K.U and must have been generated by the one who forged the certificate. However, both degree certificates contain the

program Bachelors of Business Administration with I.T which M.K.U does not offer.

17.The directorate of Exams for Mount Kenya University did not have any records of the serial numbers (53151/ 53152, 53153, 53154) contained in the academic transcripts purported to have been issued by Mount Kenya University. The transcripts did not originate from M.K.U and were forged (**Annex 14**).

18.Mr. Philip Mutinda Mumo has never been admitted to Mount Kenya University and subsequently he has never graduated from the institution and neither was he awarded with any degree certificate. All the certificates presented were forged. He was more than willing to give the Assembly any additional information when required.

COMMITTEE'S FINDINGS AND OBSERVATIONS

Mr. Speaker Sir,

The Committee is in agreement that the need for looking into the authenticity of the CECM'S academic certificates was indeed a matter of public interest in Kitui County. Hon. Munuve's resolution to table the motion was not fueled by malice and neither was he targeting any particular individual. In addition, the approved motion on inquiry into the authenticity of the academic credentials of the CECM's was not intended to re-open the re-vetting exercise of the CECM's since none of them had ever been invited by the committee on appointments for a second approval hearing and neither has the Governor ever re-submitted their names for re-vetting. Hon. Munuve promptly responded to the people's concern thereby demonstrating true leadership.

The committee on Appointments did all what was expected of them under the law during the approval hearing.

Mr. Philip Mutinda Mumo's testimony contained numerous inconsistencies and falsehoods. He confirmed that he had filled out the questionnaire personally but claimed that he had erroneously filled out the name of the program he allegedly pursued. It is improbable that one would forget the

name of the degree program that s/he had pursued for 4 (four) years and subsequently graduated in.

Mr. Speaker Sir,

The special committee attempted to verify his handwritten job application letter seeking to be appointed as a CECM, but he declined to confirm the same despite it having been authored by him (**Annex 15**). He blatantly refused to look at the application citing that he needed his original copy to compare the same with bearing in mind that the letter contained his signature.

The office of the County Secretary's response that the file containing the documents relating to the CECM's appointment is believed to have been burnt down in the fire that engulfed the Tourist building in February, 2018 was doubtful since the office did not provide any evidence to prove the same.

The deputy registrar of Mount Kenya University informed the committee that Mr. Philip Mutinda Mumo has never been admitted by the institution to undertake any program and neither has he ever graduated from the university.

The name Philip Mutinda Mumo did not appear in any of the graduation booklets for the two graduation ceremonies held in the year 2014. The same was also confirmed by the deputy registrar.

Mr. Speaker Sir,

The degree certificate submitted to the Assembly during the approval hearing was that of a bachelor's degree in 'Business Administration with I.T', however, the deputy Academic registrar Mr. Chelule, categorically stated that Mount Kenya University has never offered any degree program by the name Bachelors of Business Administration with I.T.

The committee also noted that Mount Kenya University had received two different copies of the fake degree certificates purported to have been

issued from the institution, from both the County Assembly of Kitui and the Directorate of Criminal Investigations. The two documents differed in the arrangement of the wordings, the font, and the certificate numbers.

Also, the committee observed that during his testimony, Mr. Philip Mutinda Mumo informed the committee that his documents had been confiscated by the D.C.I and that the degree he possessed was that of a Bachelors in Business Information Technology. However, when the committee interviewed the deputy registrar, he confirmed that the copy of the degree certificate he had received from the said D.C.I was that of a Bachelor's in Business Administration with I.T.

The committee also discovered that Mr. Philip Mutinda Mumo has never been a student at Mount Kenya University since the university did not have any single record pertaining to his admission or graduation.

The committee observed that the degree certificates issued by Mount Kenya University have close to 10 (ten) security features that made it easy for them to detect any fake certificates. Therefore, the university was easily able to confirm that the copies submitted were fake.

The Committee observed that the Governor is of the view that what the Assembly is doing through verification of the CECMs academic qualification is a re-vetting exercise, which was not the case.

Mr. Speaker Sir,

It is important to note that if the Governor had submitted Mr. Philip Mutinda Mumo's name to the Assembly for re- vetting, then the matter would not have been brought before a special Committee but rather it would have been taken before the Committee on Appointments for re- vetting in line with Standing Order 184.

The Governor's claim that she did what she was expected to do which was to forward the list of nominees to the County Assembly, is unjustified. The Governor is aware of the provisions of section 35 of the County Governments Act which lists a first degree as a mandatory requirement and

therefore as an appointing authority she cannot assume, she needed to have ensured that she nominated and appointed qualified people therefore she cannot transfer the obligation. She is as responsible as the County Assembly.

As a special committee, we have been given a task by the County Assembly through the approved motion on removal from office of the CECM, Mr. Philip Mutinda Mumo and therefore she does not have to complain for us to act because we are an independent institution having our own constitutional mandate.

The grounds in the motion for removal from office of the CECM Mr. Philip Mutinda Mumo are neither baseless nor misleading as alleged in the submissions by the legal Counsel representing Mr. Philip Mutinda Mumo.

The fact that the Appointments Committee had undertaken a rigorous vetting process during the approval hearings, does not preclude the County Assembly from verification of the authenticity of the academic certificates.

Mr. Speaker Sir,

We submit that vetting was done and the Appointments committee recommended the approval of Mr. Philip Mutinda Mumo and the same was approved by the Assembly, and at that point, the vetting exercise was concluded therefore the assertion that this Special Committee is conducting a re-vetting exercise is untrue.

We submit that we appreciate there have been other processes undertaken by this Assembly through other Assembly committees particularly the committee on Appointments, trying to verify the authenticity of Mr. Philip Mutinda Mumo's academic certificates. We note that this committee has also undertaken its investigations by specifically writing to M.K.U, a copy of which is annexed, the letter was duly received and acted upon by the University.

It is a submission of the Committee that the exercise being undertaken by the Committee is not a re-vetting exercise. According to the Black's Law

dictionary, 'Vetting' is defined as the formal examination of a person prior to a grant of approval. Re-vetting would therefore constitute the submission by the Governor of the list of candidates together with their academic testimonials and this is not the task before this Committee.

Additionally, the Committee submits that the Assembly is not in receipt of any request by the Governor to re-vet Mr. Mutinda Mumo, a position that he also alluded to and confirmed that his name had not been forwarded to the assembly for re-vetting neither had he been invited to any approval hearing.

Mr. Speaker Sir,

The County Assembly is a gate keeper and has a constitutional mandate under Article 185 to exercise oversight over the County Executive and therefore it does not matter at what point in time an error is discovered, once we become aware of it, we must move in quickly to investigate and give our resolutions.

The Assembly is an independent Constitutional arm of the government and is fully equipped with the powers to carry out investigations particularly on matters that affect County Governments and to this effect it is not subject to other government institutions.

We note the lawyers submission that one Mr. Philip Mutinda Mumo did not submit any false information but upon talking to the university deputy Registrar of academic admin, Mr. Chelule, and upon scrutiny of the documents by the university purported to have issued them, we note that this submission is untrue and the information submitted to the Committee on Appointments that he holds a degree from M.K.U was found to be false.

Mr. Speaker Sir,

The submission by Mr. Philip Mutinda Mumo's advocate that it is only the High Court that has the requisite jurisdiction to determine whether Mr. Philip Mutinda mumo has breached Article 73 of the Constitution is untrue. We submit that section 40 of the County Governments Act allows the

County Assembly to impeach any member of the County Executive Committee on account of having violated the Constitution or any other written law and for that we have the powers to investigate whether the CECM has violated the Constitution or not.

COMMITTEE'S RESOLUTIONS AND RECOMMENDATIONS

Mr. Speaker Sir,

Based on the above witnesses' submissions, interrogation of written evidence, findings and observations, the Committee resolved on each allegation as below:

i. GROSS VIOLATION OF THE CONSTITUTION AND ANY OTHER RELEVANT LAWS;

(a) By grossly violating section 35(3)(b) of the County Governments Act, 2012, which provides that for a person to be qualified to hold the office of the County Executive Committee Member, he must amongst other things be a holder of at least a first degree from a university recognized in Kenya.

The County Executive Committee Member (CECM) for Trade, Cooperatives and Investments was appointed to the office based on the fact that he was a holder of a degree certificate from Mount Kenya University. The degree certificate was later on confirmed to be forged, not authentic and did not emanate from the institution which is purported to have issued it.

This allegation is substantiated for the following reasons: THAT:

- 1. Mr. Philip Mutinda Mumo submitted to the Committee that he holds a first Degree certificate from Mount Kenya University and therefore was appointed to the office having fulfilled the requirements of section 35(3)(b) of the County Governments Act.**

2. Mount Kenya University who purportedly conferred the degree certificate upon Mr. Philip Mutinda Mumo however informed the Committee that one Mr. Philip Mutinda Mumo is not a bonafide graduate of the University and that the Degree Certificate on whose basis he was appointed as the CECM County Ministry of Trade, Co-operatives and Investments was not authentic and did not emanate from the University.
3. As per the graduation list for the year 2014 availed to this Committee by Mount Kenya University, the University doesn't offer a degree by the name Bachelor of Business Administration with I.T. In addition, Mr. Philip Mutinda Mumo was not in the graduation list for Bachelor of Business and Information Technology that he claimed to have studied. In addition, according to the University Deputy Academic Registrar (Admin), Mr. Daniel Chelule, the degree certificate he availed to the Committee had very many anomalies.

(b) By knowingly violating the provisions of note (d) of the First Schedule of the Public Appointments (County Assemblies Approval) Act No 5 of 2017 which expressly prohibits any nominee from tendering false information during vetting as doing so leads to an automatic disqualification of the candidate.

This allegation is substantiated for the following reason: THAT:

1. Mr. Philip Mutinda Mumo confirmed that note (ii) of the questionnaire prohibits candidates from submitting false information to the Committee at the time of vetting. Mr. Philip Mutinda Mumo however still tendered information that was false particularly where he informed the committee on Appointments that he was a graduate of Mount Kenya University. The Committee has confirmed beyond any iota of doubt that Mr. Philip Mutinda Mumo is not a graduate of Mount Kenya University.

(c) By grossly contravening Chapter Six of the Constitution on Leadership and Integrity by misleading the County Assembly's Committee on Appointments during the vetting process by providing a forged degree

certificate purported to have been conferred upon to him by Mount Kenya University. This act contravenes the principles of leadership and integrity as outlined under Article 73 (2) (a) which is selection on the basis of personal integrity, competence and suitability,

This allegation is substantiated for the following reasons: THAT:

- 1. Mount Kenya University who purportedly conferred the degree certificate upon Mr. Philip Mutinda Mumo however informed the Committee that one Mr. Philip Mutinda Mumo is not a bonafide graduate of the University and that the Degree Certificate on whose basis he was appointed as the CECM, County Ministry of Trade, Co-operatives and Investments was not authentic and did not emanate from the University.**
- 2. As per the graduation list for the year 2014 availed to this Committee by Mount Kenya University, the University doesn't offer a degree by the name Bachelor of Business Administration with IT. In addition, Mr. Philip Mutinda Mumo was not in the graduation list for Bachelor of Business and Information Technology that he claimed to have studied. In addition, according to the University Deputy Academic Registrar (Admin), Mr. Daniel Chelule the degree certificate he availed to the Committee had very many anomalies.**

(d)By refusing to vacate from office even after a resolution was passed by the Assembly requiring her dismissal. This contravenes the spirit of article 73 (1) (a) (iv) which requires a state officer to act in a manner that promotes public confidence in the integrity of the office he holds. Further, the blatant refusal to vacate office amounts to a violation of Article 73 (2)(d) which provides that one of the principles of leadership and integrity is accountability to the public for decisions and actions,

This allegation is substantiated for the following reasons: THAT:

- 1. Mr. Philip Mutinda Mumo in his testimony confirmed to the Committee that he was still holder of the office of the CECM for Trade, Cooperatives and Investments. This is despite the fact that he was found by this county assembly to have been appointed to the**

said position based on forged documents and therefore he was unqualified to occupy the said office.

(ii) **INCOMPETENCE**

Section 35 (3)(b) of the County Governments Act No 17 of 2012 expressly outlines the minimum education qualification that one must meet to be appointed as a member of the County Executive Committee which is to be a holder of **at least** a first degree from a university recognized in Kenya.

By virtue of the fact that the County Executive Committee Member (CECM) for Trade Cooperatives and Investments Mr. Philip Mutinda Mumo does not possess this minimum qualification automatically renders him incompetent and unqualified to hold such an office.

This allegation was substantiated for the following reason: THAT:

1. **Section 35(3)(b) of the County Governments Act provides that for one to be appointed a CECM, they must hold at least a first Degree from a University recognized in Kenya. This law sets the bare minimum which a person must possess for them to rightfully and suitably occupy the office of the CECM.**
2. **That since the law requires for one to possess these minimum qualifications for them to hold the office of a CECM, in the absence of such qualifications, such a person is under law presumed to be incompetent, unsuitable and unqualified to hold that office.**

Mr. Speaker Sir,

The Special Committee finds that the allegations as contained in the motion for removal from office of the County Executive Committee Member for Trade, Co-operatives and Investments, Mr. Philip Mutinda Mumo, approved by the Assembly on 29th October, 2019 are **substantiated**.

Therefore, this Assembly hereby resolves that;

- 1) The Governor shall upon receipt of the resolutions of this Assembly, immediately dismiss Mr. Philip Mutinda Mumo from the position of

County Executive Committee Member, County ministry of Trade, Co-operatives and Investments, pursuant to the provisions of Section 40 (6)(b) of the County Governments Act as read together with Standing order 62 (10) .