

REPUBLIC OF KENYA
KITUI COUNTY ASSEMBLY
SECOND ASSEMBLY- FOURTH SESSION
OFFICIAL REPORT
(THE HANSARD)

Wednesday 16th September, 2020

The County Assembly met at 9:13a.m.

[The Speaker (Hon. George Ndotto) in the Chair]

PRAYERS

Hon. Speaker: Next order

MOTION

MOTION ON ADOPTION OF THE REPORT BY THE SPECIAL COMMITTEE ON THE PROPOSED REMOVAL FROM OFFICE OF THE MEMBER OF COUNTY EXECUTIVE FOR LANDS, INFRASTRUCTURE, HOUSING AND URBAN DEVELOPMENT ENGINEER. JACOB MAUNDU KAKUNDI.

(Hon. Ndile-Chairperson Ad-hoc Committee)

Hon. Speaker: Where is Hon. Ndile? Whip, where is Hon. Ndile? I give you two minutes to get her. You have my permission, go and check her.

(Hon. Ndile entered the chamber)

You will move your motion from here. You want to move it from there? I am told microphones at the dispatch are not working. You can move from where you are. Go ahead please.

Hon. Ndile: Thank you Mr. Speaker. Motion on adoption of the report by the special Committee on the proposed removal from office of the Member of County Executive for Lands, Infrastructure, Housing and Urban Development, Mr. Jacob Maundu Kakundi. THAT; Pursuant to the provisions of section 40 of the County Governemnt Act 2012 as read together with Standing Order no. 62, this County Assembly hereby adopts the report of the special

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Committee on the proposed removal from office of the County Executive Committee Member for Lands, Infrastructure, Housing and Urban Development Mr. Jacob Maundu Kakundi laid on the table of the County Assembly on 10th September 2020. Mr. Speaker, I beg to move.

Hon. Speaker: Hon. Ndile go ahead.

Hon. Ndile: Mr. Speaker Sir, as you are aware on 18th of August, 2020, the Honourable Alex Wambua Mwangangi, Member of County Assembly, Kyooome/Thaana Ward, moved the following notice of motion in the Assembly;

THAT, pursuant to section 40 of the County Government Act and Standing Order No.62 this assembly hereby approves the motion on the removal from office of the County Executive Committee Member for Lands, Infrastructure, Housing and Urban Development, Mr. Kakundi, on the following grounds:-

1. Gross Violation of the constitution of Kenya,2010 and any relevant laws by;-

- (a). Violation of chapter six of the constitution of Kenya (integrity and leadership) by managing his office in a manner which does not promote public confidence in integrity of the office by overseeing unprocedural awarding of bush clearing tenders (a programme meant to benefit the vulnerable) to contractors and using the local women and youth to work in contractors' absentia only to pay some long time after they were paid and others left unpaid up to date instead of contractors using their monies as working capital for the contracted works to pay the casuals.
- (b). Failing to implement the following assembly resolutions amongst others in total breach of Article 183(1)a of the Constitution of Kenya,2010, on the Functions of County Executive Committees by refusing to;
 - (i)Procure services for the projects within the 2018/2019 financial year for the Community Level Infrastructure Development Programme (CLIDP) as provided for under the County Government Annual Development Plan (ADP) which factors in such community development projects and as such, the Kitui public lost such key projects.
 - (ii). Implement the Motion on Regulation and Management of street trade (hawking) and Boda Boda operators in Kitui and Mwingi towns etc.
 - (iii) Motion of County importance on bush clearing by Hon. David Thuvi.
- (c). Unfair service delivery contrary to Article 27(3) of the Constitution of Kenya,2010, by discriminative issuance of dozer services to a few selected wards for a period of last three financial years despite demand in other wards.
- (d). Failing to provide the County Assembly with full and regular reports on matters relating to the county ministry contrary to Article 183(3) of the Constitution of Kenya,2010 e.g. Dozer working schedule.
- (e). Violation of the County Procurement Procedures as per section 53 of the Public Procurement and Disposal Act of 2015 by;-
 - (i). Awarding tenders for bush clearing unprocedurally and misusing Kitui residents to work for contractors without payments.
 - (ii). Awarding tenders for bush clearing to contractors and then using Ward and Village administrators to perform the role of contractors on contracted works.

2.INCOMPETENCE: Failure to effectively control Ministry's programmes e.g. bush clearing and road grading done shoddily and beyond timelines as stipulated in working schedules.

3. ABUSE OF OFFICE: Using County administrators to perform the role of contractors in contracted works of bush clearing without facilitation.

4. GROSS MISCONDUCT: He blatantly misled the County Assembly Sectoral committee on Lands, Infrastructure and Urban Development on the involvement of village administrators in the recruitment of personnel for the contracted bush clearing project for 2018/19 financial year. The CECM provided contradictory information on the same as contained in the letters dated 21st December, 2018 and 2nd July, 2019.

Mr. Speaker Sir, The said motion was moved and approved by the Assembly on 25th August, 2020 in accordance with the provisions of Standing Order 62(6).

Mr. Speaker Sir, Upon approval of the motion on the removal from office of the County Executive Committee Member for Lands, Infrastructure, Housing and Urban Development, and pursuant to the provisions of section 40 (3) (a) of the County Governments Act as read together with standing order 62(6), the Honourable leader of majority party gave a notice of the following motion on 26th August, 2020:

THAT, pursuant Section 40 (3) of the County Government Act, 2012 as read together with Standing Order No. 62 (6), this Assembly approves the membership to the special Committee investigating the removal of County Executive Committee Member for Lands, Infrastructure, Housing and Urban Development Mr. Jacob Kakundi as follows.

1. Hon. Esther K. Ndile
2. Hon. Geoffrey Mwalimu
3. Hon. Fredrick Kithome Nthuri
4. Hon. John Mutuku Mbaki Kisangau
5. Hon. Boniface K. Katumo

THAT, further the mandate of the Committee will be to investigate the matter and report to the Assembly within a period of 10 days.

Mr. Speaker Sir, the motion on formation of a special committee to investigate the removal from office of the County Executive Committee Member for Lands, Infrastructure, Housing and Urban Development was moved and approved by the Assembly at a sitting held on 31st August, 2020.

Mr. Speaker Sir, following its establishment, the Special Committee commenced its proceedings on 1st September, 2020 without delay. It is important to note that the committee's schedule of activities had to be within the statutory period of 10 days as outlined under section 40 (3) of the County Governments Act and standing order 62(6).

Mr. Speaker Sir, Pursuant to the provisions of standing order 158 (1)(a) as read together with standing order 159(1), the office of the Clerk of Assembly conducted the election for the position of chairperson and vice chairperson of the special committee. Hon. Esther Kalunda Ndile and Hon. Geoffrey Mwalimu were elected the chairperson and vice chairperson respectively.

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 LIHUD; and
- ii. To report to the County Assembly whether it finds the allegations to be substantiated or not.

Mr. Speaker Sir, it is important to note the provisions of Section 40 (4) of the County Governments Act, 2012 as read together with Standing order 62(7) and Standing order 63 (1)(a) provide that the CECM being removed from office has the right to appear before the special committee during its investigations either in person or through a legal counsel.

Therefore, in accordance with these provisions, the Special committee invited the CECM LIHUD, Engineer Jacob Maundu Kakundi, to appear before the committee, either in person or through legal counsel, on Thursday, 3rd September, 2020, in order to respond to the allegations raised in the subject motion. (Copy of the invitation to appear is attached as **annex 3**).

Mr. Speaker Sir, I wish to sincerely thank the members of this Special Committee for working tirelessly and beyond working hours in order to finalize this report on time. The honourable members of the committee remained dedicated and committed to their work despite the many challenges and hardship faced.

Mr. Speaker Sir, I also wish to thank the office of the Speaker of Assembly and the office of the Clerk of Assembly for their support to this committee and facilitation during the entire period.

I also wish to thank all the members of the public who appeared before the committee in order to testify on the matter.

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.

The report is signed by the Hon. Esther Ndile, Chairperson, special committee investigating the removal from office of the county executive committee member, county ministry of Lands, Infrastructure, Housing and Urban Development. County Assembly of Kitui.

Mr. Speaker Sir, Section 40(1) of the County Government Act, 2012, provides that the Governor may subject to the provisions of section 40(2) of the County Governments Act remove a member of the County Executive Committee from office 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, the grounds for removal of a County Executive Committee Member from office is clearly provided for under Section 40 (1) of the County Governments Act, 2012, while the procedure for undertaking such removal is provided for under the Kitui County Assembly Standing Orders under Standing Order no. 62.

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 grounds set out in subsection (1).

Section 40(3) on the other hand provides that -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.

Section 40(4) The County Executive Committee member has the right to appear and be represented before the select committee during its investigations.

Section 40(5) 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.

Section 40(6)-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 procedure for executing the Motion before this house 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
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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.

METHOD OF INQUIRY INTO THE GROUNDS ALLEGED

Mr. Speaker Sir,Article 195 of the Constitution provides that;

- (1) 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.
- (2) 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;

Further, Section 18 of the County Assemblies Powers and Privileges Act, 2017 as

read together with Standing Order 171 provides that;

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

Mr. Speaker Sir, therefore, in exercise of the powers conferred on the committee by the provisions above and for effective execution of its mandate, the Committee invited the following witnesses in line with the provisions of Section 18 of the County Assemblies Powers and Privileges Act, 2017;

- i. Honourable Alex Wambua Mwangangi - Member of County Assembly, Kyooome Thaana Ward. He appeared on 2nd September, 2020
- ii. Hon. David Thuvi- Member of County Assembly, Kithumula Kwa Mutonga Ward. He appeared on 2nd September, 2020
- iii. Mr. Benson Nguthu - The Patron of the Katoteni Farmers Association. He appeared on 2nd September, 2020
- iv. Mr. Sylvester KimanziMukumbi – Personal Assistant to the M.C.A Kithumula Kwa Mutonga Ward who appeared on 2nd September, 2020.
- v. Group of unpaid bush clearers from Kyome Thaana ward, Kauwi Ward and Kithumula Kwa Mutonga Ward – appeared on 2nd September, 2020
- vi. Mr. Dennis Mbanga – owner of payment receipt who appeared on 3rd September, 2020
- vii. Eng. Jacob Kakundi in the presence of his advocate, Mr. Musyoka Kimanthi - appeared on 3rd September, 2020
- viii. Mr. John MailuKunga - Acting Chief officer, County Ministry of LIHUD – who appeared on 7th September, 2020
- ix. Mr. Timothy Mutemi – Principal Mechanical Engineer, County Ministry of LIHUD – who appeared on 7th September, 2020

Mr. Speaker Sir, we also heard the testimony of Engineer Jacob Kakundi, who appeared before the special committee on 3rd September, 2020, through his legal counsel, Mr. Musyoki Kimanthi pursuant to the provisions of section 40(4) of the County Government Act. The counsel was also accompanied by his legal assistant, Mr. Kyalo.

PRELIMINARY ISSUES RAISED

Before giving his clients testimony, Mr. Musyoki Kimanthi appearing for the County Executive Committee Member as the advocate on record representing Eng. Kakundi, raised a number of preliminary issues as follows. The said issues are listed below:-

I. BIASNESS AND LACK OF IMPARTIALITY

The CECM through his advocate Mr. Musyoki Kimanthi, contended that there was a likelihood of biasness on the part of the Special Committee, this according to him was occasioned by the fact that 4 of the 5 member Special Committee had signed the Motion calling for the removal from office of the County Executive Committee. According to the Advocate, it was evident from the face of it that the Committee was biased against his Client

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and there was nothing that the CECM would do or evidence that he would adduce before the committee that would make the 4 members change their mind regarding his removal from office.

It was further his submission that his Client would not be accorded a fair hearing even though the same was his constitutional right, this is because in his opinion since the Special Committee had manifested biasness against his client from the outset the said Special committee could not possibly evaluate the evidence adduced in support of the allegations raised against his Client objectively and impartially.

In response, it's important to note that the special committee was duly constituted as per the provisions of section 40 (3)(a). Further, the constitution of committees is based on the strength of parties.

II. LACK OF SPECIFIC PARTICULARS ON THE ALLEGED GROUND

It was the CECM's observation through his advocate that the subject motion calling for the removal from office of the CECM LIHUD did not contain specific particulars of the charges alleged. It was his assertion that the particulars of the grounds alleged in the subject Motion were neither precise nor clear as to enable the CECM to respond to.

Giving the Special Committee an example, the Advocate noted that the first ground (Ground 1a) on the gross violation of the Constitution did not specify the exact article of the Constitution that his client was said to have violated.

The advocate further noted that the allegation had only simply made reference to a breach of Chapter Six of the Constitution therefore it was difficult for the CECM to tell which article he was alleged to have violated.

It was further his contention that without precision in the charges levelled against his client, it was open for the Special Committee to go on a fishing expedition and crucify his client for the violation of any article chapter 6 as they found suitable to without according him the time to answer to the same or without giving him the evidence on which the said allegation was based.

III. INSUFFICIENT NOTICE TO RESPOND TO THE ALLEGATIONS

The CECM through his advocate claimed that he was not accorded adequate time to prepare his case and respond comprehensively to the allegations levelled against him. According to him, he received a letter forwarding the subject motion and calling him to appear before the Special committee on 2nd September, 2020 and was required to appear before said committee on 3rd September, 2020.

It was his submission that he only had 1 (one) day to prepare and respond to the grounds alleged. According to the CECM, the allegations contained in the motion were founded on an alleged breach of the Constitution thereby making it a weighty matter which required time to analyse and respond to.

The Committee notes that in a normal setting, the notice may be deemed short, however, the process for removal of a CECM is guided by statutory deadlines. Specifically,

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Section 40 (3)(b) of the County Governments Act as read together with Standing Order 62 (6), clearly outlines the period provided between the investigation of the grounds alleged and the tabling of the report to the Assembly is only 10 (ten) days. Therefore the committee did not have the luxury of time on its end. They are specifically mandated to investigate the matter, notify the CECM of the grounds alleged and table its report to the assembly within 10 days.

The committee however resolved to give the CECM more time to prepare his evidence and submit documents in support of his testimony by close of business on 7th September, 2020. However, by the time of completing this report, the CECM had not submitted any additional evidence in support of his testimony despite complaining about the time factor and the committee having extended the same.

Further, the committee notes that the allegations alleged in the motion fall within the CECM's docket and therefore the information required to be relied upon in the investigation is within the minister's reach. He therefore cannot say that he was unable to prepare sufficiently for the matter.

IV. THRESHOLD FOR REMOVAL OF THE CECM

It was the CECM's view through his advocate that the allegations contained in the Motion did not meet the Constitutional threshold, specifically it was his submission that the issue of Bush clearing could not be elevated to a constitutional issue.

V. LACK OF DISCLOSURE

It was the CECM's view through his advocate that he had only been supplied with a copy of the motion and the evidence upon which the mover of the motion was relying to support his allegations was not forwarded to him to accord him the chance to respond.

It was further the CECM's submission that without disclosing the evidence that the motion mover was relying on it would amount to trial by ambush a situation that was unprocedural in any judicial or quasi-judicial process.

INQUIRY INTO THE CHARGES AGAINST THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR LANDS, INFRASTRUCTURE, HOUSING AND URBAN DEVELOPMENT – ENG. JACOB MAUNDU KAKUNDI.

CHARGE 1: GROSS VIOLATION OF THE CONSTITUTION AND OTHER RELEVANT LAWS

Allegation 1a : Violation of chapter six of the Constitution of Kenya, 2010 (integrity and leadership) by managing his office in a manner which does not promote public confidence in integrity of the office by overseeing unprocedural awarding of bush clearing tenders (a programme meant to benefit the vulnerable) to contractors and using the local women and youth to work in contractors' absentia only to pay some long time after they were paid and others left unpaid up to date instead of contractors using their monies as working capital for the contracted works to pay the casuals.

The mover of the motion in his testimony alleged that Eng. Jacob Maundu Kakundi

lacked the principle of leadership and integrity since he did not effectively supervise the bush clearing exercise. In support of his testimony Hon. Alex Wambua Mwangangi tendered the following evidence:-

- i. Copy of a letter dated 21st December, 2018 referenced CGOKTI/CEC-LIHU/D/COUNTYASSEMBLY/VOL 1/26 (copy is attached as annex 4);
- ii. Copy of a Letter dated 2nd July,2019 and referenced CGOKTI/CEC-LIHU/D/COUNTYASSEMBLY/VOL1/76 (copy is attached as annex 5);
- iii. The list of unpaid youth and women who participated in the bush clearing exercise signed by the said women and youth (copy is attached as annex 6);
- iv. The copy of a list of contracted companies(copy is attached as annex 7); and
- v. The witnesses' signed evidence (copy is attached as annex 8).

It was further Hon. Alex Wambua Mwangangi's testimony that in the letter dated 21st December, 2018 referenced CGOKTI/CEC-LIHU/D/COUNTYASSEMBLY/VOL 1/26 (See Annex 4), originating from the County Ministry of LIHU/D, the CECM acknowledged being fully aware of who was contracted to undertake the bush clearing exercise. According to the Honourable Member, the CECM was also aware that the village administrators were involved in contracting the local women and youth to undertake the bush clearing exercise.

Under this allegation, the Committee also invited some of the women and youth who confirmed to have participated in the bush clearing exercise according to the Motion Mover and some of the Honourable members (according to the evidence adduced before the special committee) to give their testimony as to what had actually transpired in the process.

The youth and women testified that they were contracted by the village administrators to undertake bush clearing exercise within their respective villages in the year 2018 at a daily wage of Kshs. 350 (three hundred and fifty shillings) for a period of 9 (nine) days. This is further confirmed in the CECM'S letter dated 21st December, 2018 under part c. It was further their evidence that they had been engaged by the village administrator to participate in this exercise. The youth and women while undertaking the exercise, testified that they were supervised by village administrators.

It was further the submission of the youth and women who testified before the committee that since participating in the bush clearing exercise had not been paid to date.

Committee's observations

The committee noted that the wording of the key accusations by the mover of the motion in the above allegations to the CECM LIHU/D 'is overseeing unprocedural awards', therefore the accusations in ground 1a isn't about the minister's involvement with the awarding of bush clearing program that was undertaken by the ministry of LIHU/D in 2018. The committee notes that the awarding of tenders is the function of the procurement officer/department.

Upon reading the allegation, it was the Committee's resolution on a vote of 4 against 1 that the motion mover was referring to Article 73 of the Constitution.

The Committee was of the opinion that Engineer Jacob Maundu Kakundi as the CECM LIHU/D should have demonstrated leadership in the ministry he is in charge of and

co-ordinated effectively the bush clearing exercise. Engineer Jacob Maundu Kakundi should have ensured that the local women and youth were paid their dues for the bush clearing exercise.

The committee feels that the CECM failed to provide leadership in the exercise where some people were paid while others were not. The witnesses who appeared before the committee testified that they had participated in the bush clearing exercise and they were never paid.

In support of accusation 1(a), the committee relied heavily on evidence produced by;

- The motion mover
- The bush clearing witnesses who appeared before the committee; and
- the accused CECM.

The committee heard the testimony of the bush clearers from; Kithumula/ Kwa Mutonga ward, Kauwi ward and Kyome/ Thaana wards.

The bush clearing program was meant to benefit the locals and that is why money for the exercise was allocated in the county budget. The exercise ended up benefitting the contractors who were contracted and paid, yet the locals were used as ‘scapegoats’ in order to benefit unscrupulous contractors.

The evidence produced before this committee by the bush clearing witnesses clarifies that at no one time did the contractors visit the grounds where the bush clearing exercise was being undertaken, throughout the bush clearing period. The bush clearers made submissions that they were recruited by the village administrators. The locals were never paid for the bush clearing exercise carried out in 2018 to date.

It is the committee’s belief that the CECM Engineer Jacob Kakundi is linked with overseeing the unprocedural awarding of the bush clearing tenders in the following ways;

- Article 73 (2), stipulates the guiding principles of leadership and integrity;
- (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices.

Article 183, stipulates the following that A county executive committee shall; (a) implement county legislation, (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.

As the head of the LIHUD ministry, the CECM failed to promote public confidence- Article 73 (1) a(iv). By failing to protect the locals in order to receive their pay since 2018, against the contractors who were paid by the ministry, yet the bush clearers payment is still outstanding. He has failed to promote confidence upon the locals.

It is the Committee’s view that the CECM abdicated his responsibilities by failing to offer leadership, thus appears that the county ministry of LIHUD was running itself as the minister was completely unconcerned and therefore the minister violated section 36 of the County Governments Act.

It is this Committee’s view that the CECM did not promote public confidence in the integrity of the office as provided for under article 73. Further the committee notes that the

CECMS actions as relates to the management of the bush clearing program did not and do not even at this time demonstrate respect for people as provided for in article 73 (1) (a) (ii).

Further the committee notes that CECM did not bring honour to the nation and dignity to the office as per Article 73 (1) (a) (iii) and that his actions violate the provisions of Article and 73 (2)(c)(i) that is honesty in execution of duties.

The CECM failed to correct the unprocedural process. According to the bush clearers who presented themselves to this committee, and deriving this information from the evidence that they gave to the committee, no one updated the locals on the working arrangements. To date the locals still reiterate that they are still waiting to be paid by the village and ward administrators who recruited them.

He failed to formulate a linkage between the contractors and the locals. The teams that were put in place did not deliver, yet it is within his mandate to coordinate county administration and departments- Article 183 (1)(c).

The CECM has not put any measures in place despite more bush clearing exercises having being carried out in the ministry in 2019. This was reiterated by the chief officer LIHUD, who appeared before this committee and confirmed that no measures have been put in place to date to cushion the locals against rip-offs by unscrupulous contractors.

The CECM informed the committee that he is not aware who engaged the women and the youth in the bush clearing exercise, and that he is not aware if the bush clearers had been paid.

It is this Committee's belief that the CECM's actions based on the evidence of the unpaid bush clearers does not promote accountability to the public for decisions of the CECM as required under article 73(2) (d). It is also the committee's view that the CECM has violated article 73(2e) of the Constitution which calls for discipline and commitment in service to the people.

It is the Committee's position that through the letter dated 2nd July 2019 (annex 5), the CECM was very categorical when he indicated that copies of bush clearing certificates at the time are being processed as some works have not paid. He knew from July 2019 that money had not been paid for the contracted works. So in the committee's view, the minister did not demonstrate honesty in carrying out his functions.

According to this Committee, the evidence given by the witnesses under this allegation is very clear because they put it categorically that they said they were given the work by the Village Administrators and this brings forth the questions as to how these tenders were awarded. All of them had not been paid and the work was assigned to them by the Village Administrators. On the part of the minister, he was aware that there was bush clearing but he was not aware who the contract was awarded to. In July he was aware of the contract but at the hearing he wasn't aware. The minister was dishonest in giving the evidence.

The minister did not respond to the allegation that he acted in a manner which does not promote public confidence. Therefore, the committee is forced to believe that indeed the minister failed to act in a manner that does not promote public confidence according to the mover of the motion.

The Committee therefore concluded the allegation to be **substantiated**.

DISSENTING OPINION – HON. BONIFACE KATUMO

The motion mover Hon. Alex Mwangangi, moved the county Assembly through a motion dated 5th August, 2020 and approved by the Assembly on 25th August, 2020 (see annex 2).

Under allegation 1(a), the motion mover alleges that

- (a). Violation of chapter six of the constitution of Kenya (integrity and leadership) by managing his office in a manner which does not promote public confidence....

(Hon. Nguli stood in his place)

Hon. Speaker: Yes Hon. Nguli

Hon. Nguli (MCA Migwani Ward): Thank you Mr. Speaker. I wanted to know from you whether it is in order for the mover of the motion to read a dissenting view of the member who has already signed the entire report and said it is correct and he accepts everything in it and he has signed in the last page. It is still holding water for us to know the dissenting views or we should skip it and expunge?

Hon. Speaker: Order! There is only one speaker. Hon. Nguli the dissenting member signed the report on the basis of agreement in totality of the report.

(Applause)

Order! Order! Therefore I think hon. Ndile is in order. Please go ahead Hon. Ndile. Order! I did not open the debate.

Hon. Ndile: (a). Violation of chapter six of the constitution of Kenya (integrity and leadership) by managing his office in a manner which does not promote public confidence in integrity of the office by overseeing unprocedural awarding of bush clearing tenders (a programme meant to benefit the vulnerable) to contractors and using the local women and youth to work in contractors' absentia only to pay some long time after they were paid and others left unpaid upto date instead of contractors using their monies as working capital for the contracted works to pay the casuals.

It is my submission that the accuser was extremely general under that particular allegation and did not specify exactly which article of Chapter Six of the Constitution had been allegedly violated by the accused. The accuser only makes an attempt to paraphrase the said chapter particularly Article 73 of the Constitution without specifically indicating whether it is that Article that had been violated.

The committee's act of supposing that under Chapter six of the Constitution, the Article that is said to have been violated is Article 73, a particular that is not contained in the motion tabled and approved by the County Assembly.

It is my submission that the committee has continuously amended the motion by the accuser and accorded itself mandate ignoring the Kitui County Assembly Standing Orders. Standing order 62 (1) provides that a proposer of the Motion under section 40...

(Hon. Thuvi stood on a point of order)

Hon. Speaker: Yes Hon. Thuvi

Hon. Thuvi (MCA Kithumula/Kwa Mutonga Ward): Mr. Speaker while you have ruled correctly that the dissenting opinions I mean the dissenter signed for the legality of the report which I agree. My question Mr. Speaker is, is it in order for the chair to read for us the dissenting opinion without telling us how it found its way into the report? Is it through the recordings in the Hansard or was there an independent document that was signed by the dissenter and handed over to the committee? This is the clarification Mr. Speaker which we shall be called upon in the court of law to bring out. Even before we accept it as part of the report which is in order, it would be important Mr. Speaker to tell us how it found its way into the report. Is it through what the dissenter wrote, signed and gave to the committee or is it through an interrogation through the Hansard where we can retrieve or where did it find its way into the report?

(Applause)

Order! Order! Order! Hon. Ndile, this is extremely valid point of order. Can you how this dissenting view found its way in the report?

Hon. Ndile: Thank you Mr. Speaker. As a member of the committee Hon. Katumo even on the deliberations that are captured on the Hansard had the dissenting views.

Hon. Speaker: So what you are reading to the house here is captured in the Hansard, is it?

Hon. Ndile: He dissented on the Hansard about all the allegations...

(Foot thumping)

Hon. Speaker: Order! Order! Hon. Katumo please follow the rules of this house and we do not hit the table the way you are doing. You know how to cheer in the house. That is the way Hon. Nzamba, you better tell Hon. Katumo how to do it. Order! Order! Hon. Ndile, can we get this information from the Hansard?

Hon. Ndile: Word by word, no Mr. Speaker.

Hon. Speaker: Order! Order! It is not in the Hansard word by word.

Hon. Ndile: Word by word, no but...

Hon. Speaker: Who wrote this information?

Hon. Ndile: The procedural clerks.

(Hon. Nganga stood in his place)

Hon. Speaker: Hon. Nganga.

Hon. Nganga (Minority Leader): Thank you Mr. Speaker. Mr. Speaker as we deliberate on this matter of recording the dissenting, it is also Mr. Speaker wise you guide

this assembly whether there is a standard documented way of either in our standing orders or in any law on how a dissenting view should be recorded.

(Applause)

Hon. Speaker: Yes Hon. Katumo.

Hon. Katumo (MCA Kyangwithya West): Mr. Speaker thank you. Mr. Speaker I read it with a lot of malice when hon. Philip Nguli is...

Hon. Speaker: Order! Order! The word malice is admissible can you withdraw and proceed.

Hon. Katumo (MCA Kyangwithya West): I withdraw Mr. Speaker but when Hon. Members is questioning whether my dissenting opinion can be captured or can be read word by word in the hansard. It also means the whole report should be captured in the Hansard, the way it is.

Hon. Speaker: Order! Order! Hon. Members. Sit-down Hon. Nguli. Order! Order! Those of you who have Standing Orders, May you open Standing Orders no. 179 (5). It reads as follows; a report having been adopted by a majority of member, a majority or dissenting report may be appended to the report by any member(s) of the committee. Therefore, it may be there or it may not be there. Order! Order! The question which is hanging there is who put this dissenting opinion in this report? Is it the member or the clerk? Therefore we proceed on that basis that there is question as to who appended this report there, is it the clerk or the member? And therefore I rule we proceed with that question. Hon. Ndile can you proceed. Yes Hon. Kanandu.

Hon. Kanandu (MCA Mumoni Ward): Thank you Mr. Speaker. I appreciate your ruling. Mr. Speaker I think this is not the first dissenting report we have had in this house. Mr. Speaker if you read the Standing Orders that you have just quoted, appended to me is equivalent to annexure.

Secondly Mr. Speaker a dissenter to me must justify that the report came from him through appending his signature, because this is a person who has a contrary opinion from others. So Mr. Speaker as far as I am concerned a dissenting opinion which is a narrative in the report is not admissible Mr. Speaker. It cannot be admitted.

Hon. Speaker: Order! Order! We are going to be there. Yes Hon. Munuve.

Hon. Munuve (MCA Kanziku Ward): Thank you Mr. Speaker. I agree with Hon. Kanandu that any dissenting opinion or minority report must be signed by whoever did that. Mr. Speaker even we can see the handwriting. We know very well it does not belong to one Hon. Katumo.

(Applause)

Hon. Speaker: Order! Order! Yes Hon. Katumo

Hon. Katumo (MCA Kyangwithya West Ward): Mr. Speaker if we go that way, even the chairlady who is reading this report, she is not the one wrote this report. We have procedural clerks and Mr. Speaker I want to put it clear to you, if you check the last page of this report, there is my signature to affirm y dissenting opinion. So I signed the report

Mr. Speaker.

Hon. Speaker: Hon. Nguli

Hon. Nguli: Thank you Mr. Speaker and that is why from the onset I treated triggered you and your office to keep your eye on the dissenting opinion because I knew it is not appended by the dissenter and Mr. Speaker he should even have consulted the chairperson because she is the mother of dissent.

(Laughter)

She has dissented several times. More than anybody else. He should have benchmarked and Mr. Speaker the word append means including, attach, annex. Put something on top of another. That is we have minds here and we know what it means. So we want you to rule out whether we still have to continue or we expunge the entire dissenting opinion.

Hon. Speaker: Order! Order! Order! Shouting on top of your voice will not help anything or let us not show how much we can shout. Please if you want to say something, put your gadget on and I will give you time but if you shout, it will not help us here. I can see some people shouting at the top of their voices. It is not...Order! Order! Please let us be orderly and we are going to finish this. Being orderly is the essence of a house, you debate, you differ in opinion and but we proceed and we will be there and therefore. Hon. Kiruru.

Hon. Kiruru (MCA Nguni Ward): Thank you Mr. Speaker.

Hon. Speaker: Hon. Nzamba sit-down I will give you time.

Hon. Kiruru (MCA Nguni Ward): Mr. Speaker I want to thank you for awarding me this opportunity. Mr. Speaker we are trending on a very weighty matter and Mr. Speaker we need to make sure that we are on procedure. Mr. Speaker this is not a special report and therefore some issues are obvious.

Mr. Speaker when we are talking about appending and it can even be checked in the English dictionaries. It is only an annexure Mr. Speaker but what is called dissenting opinion is part of the report. The body of the report.

Number two Mr. Speaker, there is no way we can justify that these dissenting opinion belongs to one Katumo now that he has not signed. Why now are we forcing the ownership while we know this one can only be concluded as part of the body. And therefore Mr. Speaker we started by pointing a lot of anomalies and it was expected Mr. Speaker. Mr. Speaker definitely we need your ruling on this one. It is either not a dissenting opinion and whether this particular piece of information in this report is actually legal or illegal Mr. Speaker, thank you.

Hon. Speaker: Order! Hon. Nzamba

Hon. Nzamba (MCA Mulango Ward): Thank you Mr. Speaker for giving me this opportunity. Mr. Speaker madam chair has confirmed that the report was captured on hansard and we all know if the report is captured on hansard and we have our clerk, Mr. Speaker it is the responsibility of the clerk to do the report. Any time we go on committee the clerk does all our report. Even if I give out my dissenting opinion, the clerk she is there

for me as a member of that committee and she can capture my report as a member of that committee.

Hon. Speaker: Order! Order! Everybody. You allow me time to look into this because it is a weighty matter. We will continue with the debate as I lookmatter and I give my ruling in the shortest time possible as we proceed. Order! Order! Hon. Thuvi. In the meantime Hon. Ndile continue with your report and I will be back in a minute to give the ruling. Order! Order! Order!

(Hon. Speaker left the chair)

(Hon. Nthuri took the chair)

Temporary Speaker (Hon. Nthuri): Because Mr. Speaker is working on the same. Order! Order! Settle down we continue. Order! Minority Leader so that we can be heard. So as I give you permission to deliberate, do not touch on that issue of the dissenting opinion but a different one is allowed. Yes Hon Minority Laeder.

Hon. Nganga (Minority Leader): Thank you Mr. SpeakerI will not go to want the speaker said he will provide direction on, but Mr. Speaker so that we address some of these matters holistically, the issue of appending signatures. I will refer you to page 10 of this report because I have seen signatures are becoming key issues of discussion here.

(Hon. Kilonzo on a point of order)

I am on a point of order Mr. Speaker. Let me finish. Mr. Speaker on page 10 of this document the chairperson of the special committee was supposed to append her signature. There is no signature Mr. Speaker. So we want also you to rule whether this report which has not been owned by the chairperson is admissible before this house Mr. Speaker? As you rule on the dissenting views, rule also on a report the chair has not appended her signature.

Temporary Speaker (Hon. Nthuri): Minority Speaker with all due respect we did that one yesterday. Because you were absent we ruled about it. So lets continue...

Hon. Nganga (Minority Leader): It was not addressed Mr. Speaker. It was to be addressed today. The Speaker said it will be addressed today

Temporary Speaker (Hon. Nthuri): No weaddressed that one. Yes Majority Leader. Tame your language Minority leader. We are in the house of Hon. Members.

Hon. Kilonzo (Majority Leader):Mr. Speakerif a matter you have ruled on or you have said you will rule on alter, it is prudent, Hon. Minority Leader is a senior member of this house. I apparently shocked with the kind of sycophancy he could play initially in basics. Mr. Speaker can you allow the member who was on the floor to continue. The Speaker is going to rule on that matter. He cannot reverse us back with a point of order which he brings on to debate. Thank you Mr. Speaker.

Temporary Speaker (Hon. Nthuri): Hon. Members let us desist from going back to where we were and continue with the report. Hon. Ndile continue. Sit-down Hon. Members. Is this on this side? It is not a must I give chance. Hon. Kanandu, briefly. Chair

prepare to go through the report.

Hon. Kanandu (MCA Mumoni Ward): Mr. Speaker, I do appreciate your ruling but I want further guidance because the chair is continuing. The matter in contest is dissenting opinion and she was in the middle of reading dissenting opinion. Are you allowing her to continue reading dissenting opinion or to continue with the report leaving out the dissenting opinion?

Temporary Speaker (Hon. Nthuri): Thank you Hon. Kanandu. Because some contention of the same, the chair should continue with the other report. You will come back to that when we give the ruling. I have ruled from the circumstances that surrounds the issue. I am not here to be directed. I am directing. Not you to direct me. Chair continue.

Hon. Katumo (MCA Kyangwithya West Ward): Mr. Speaker sir...

Temporary Speaker (Hon. Nthuri): On what? Nobody has talked?

Hon. Katumo (MCA Kyangwithya West Ward): Mr. Speaker please, to me I need...

Temporary Speaker (Hon. Nthuri): Who has given you permission to talk? Chair continue. No point of order?

Hon. Ndile: Hon. Members I will proceed...

Temporary Speaker (Hon. Nthuri): Sit-down. So leave out that dissenting opinion. We will come to it. We are consulting. Can you sit-down or go out? Can you sit-down? You are not here to tell me. Hon. Nganga you are not telling me but I am telling you. Hon. Nganga can you sit-down? You are not telling me what to do, I know what to do. Can you sit-down? So read the report chair. Okay Hon. Members...

(Temporary Speaker left the Chair)

(Hon. Speaker took the Chair)

Hon. Speaker: Order! Order! Hon. Members. Order! Order! Order! Everybody sit down. Order! I say everybody sit-down Hon. Members. This issue of the dissenting or the minority view as we read in the Standing Orders it may or it may not be in the report. It depends...Order! Hon. Katumo. Order! we have read it may or it may not and therefore I want to rule on this matter so that we proceed. It is not here nor there. Whether it is in the main report or at the end of the report or an annex, so long as and listen to me, it is in the report one way or the other, where it is it is not important. So long as the dissenting member has signed it as an annex or, Order! Order! let me continue. The dissenting member has put signature at the end of the report to say I agree with the report to say I agree with the report provided my dissenting view is in it. It is recorded either in the main report or as an annex or at the end and therefore we are in order. Hon. Ndile continue.

(Applause)

Hon. Ndile: Mr. Speaker I proceed. I am therefore dissenting, this is Hon. Katumo for the reasons that;

- i. The motion mover did not accuse the CECM of violation Article 73 of the Constitution. It is this committee's amendment of the motion that accuses the CECM of violating the said Article.
- ii. The motion mover did not provide any admissible evidence before this committee to show how the CECM had violated Chapter Six of the Constitution whether in whole or in part. Particularly there was no evidence adduced by the motion mover showing how the CECM acted in a manner that does not promote public confidence in Integrity of the office as relates to the bush clearing exercise or if at all.
- iii. As relates to the unprocedural awarding of the bush clearing tenders, the reading of Section 53 of the Public Procurement Asset and Disposal Act, 2015, states clearly that it is the accounting officer who is in charge of awarding tenders.
The CECM is not given the responsibility of overseeing the procurement process and no evidence was tendered by the motion mover to prove the alleged involvement in the bush clearing tenders by the CECM
- iv. It is my submission that the committee has relied on hearsay and personal sentiments in arriving at its decision under the allegation as there is no evidence that has been tendered by the motion mover to connect the accused with the acts that he is accused under allegation 1(a) of having committed.

Allegation 1 b:Failing to implement assembly resolutions which is in total breach of Article 183(1) (a) of the Constitution by refusing to;

- i. Procure services for the projects within the 2018/2019 financial year for the Community Level Infrastructure Development Programme (CLIDP) as provided for under the County Government Annual Development Plan (ADP) which factors in such community development projects and as such, the Kitui public lost such key projects.

Mr. Speaker Sir, the motion mover alleged that the CECM failed to implement projects under the 2018/19 CLIDP programs thereby making the residents of Kitui County to miss out on important projects that would have been implemented to their benefit. The motion mover tendered as evidence in support of this allegation, the motion approving the amendment of the CLIDP framework (Copy is attached as annex 9).

The Motion mover submitted that the motion to amend the CLIDP framework transferred the mandate of implementation of the program to the CECM LIHUD and therefore he should be held responsible for not implementing the same and thus occasioning the people of Kitui to miss out on important and key county projects.

Mr. Speaker Sir, in his defense, the CECM informed this Committee that the CLIDP program according to the CLIDP gazzeted Framework is domiciled under the office of the Governor. The County ministry of LIHUD is neither the budget holder nor the implementer and as such, the CECM, informed the Committee that it would be better placed seeking the information on implementation form the office of the Governor as opposed to his office.

The CLIDP framework as amended by the Assembly clearly states that the CLIDP Program is under the implementing Office of the Governor.

- ii. Implement the Motion on Regulation and Management of street trade (hawking)

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and BodaBoda operators in Kitui and Mwingi towns etc.

(Hon. Thuvi stood in his place)

Hon. Speaker: Yes Hon. Thuvi

Hon. Thuvi (MCA Kithumula/Kwa Mutonga Ward): Mr. Speaker I am glad that we have several lawyers in the house. Mr. Speaker I do not in your ruling, I do not understand how...

Hon. Speaker: Order! Order! Hon. Thuvi, are you challenging the...?

Hon. Thuvi (MCA Kithumula/Kwa Mutonga Ward): No, I am not challenging your ruling Mr. Speaker, I totally agree...

Hon. Speaker: Do not refer to the ruling...

Hon. Thuvi (MCA Kithumula/Kwa Mutonga Ward): I totally agree with your ruling Mr. Speaker...

Hon. Speaker: Okay

Hon. Thuvi (MCA Kithumula/Kwa Mutonga Ward): I am only interested to know how the ambiguity, what we call ambiguity in law is being to be cured in respect to the signature of one Hon. Katumo and the report. Is the signature in support of the totality of the report or in which case he agrees with what the report says or is the signature in respect to his dissenting opinion Mr. Speaker?

Hon. Speaker: Order! Order! Hon. Ndile can you continue?

Hon. Ndile: Mr. Speaker Sir, the motion mover alleges that the CECM LIHUD failed to implement the motions on regulation and management of street trade hawking and bodaboda operators in Kitui and Mwingi. Hon. Alex Mwangangi alleged that the failure to implement the two motions led to the invasion of hawkers and bodaboda operators within the main towns. It was his submission that if the two motions had been implemented, the hawkers and bodaboda situation in the two subject towns could have been regulated and controlled.

In support of this allegation, the Hon. Alex Mwangangi produced as evidence the following:-

- 1) A copy of a letter dated 21st December, 2018 (See annex 4); and
- 2) A copy of a letter dated 31st January, 2019 (Copy attached as annex 10).

It was the Honourable Member's testimony that through the letter dated 31st January, 2019, the CECM LIHUD stated that his ministry in conjunction with that of Trade, Co-operatives and Investments, was working on a policy document on how to control street trade hawking in Mwingi and Kitui Town in addition to drafting a transport policy which would guide and regulate bodaboda operations. The Honourable member was concerned that it has been over one year since the letters were written. (Copy of the letter is attached as annex 10).

Mr. Speaker Sir, it was the CECM's LIHUD submission, through his advocate that the county Government was working towards controlling the street hawkers situation. That in fact, the County government was in the process of putting up a multiple storey building at Kithomboani within Kitui Town that would house the street hawkers and market vendors. The building was approximately 80% complete.

It was the CECM's submission through his legal counsel that since the county government could not stop the street vendors and hawkers from engaging in the business that earned them their daily wage, they could not have banned them from engaging in any business activity for their mere reason that the vendors and hawkers did not have a suitable place to engage in their trade.

It was further the CECM's submission that once complete, Kitui town particularly town would be cleared of all the hawkers since they will be relocated to the new traders' building. Further, the CECM testified that the issues arising from the implementation of the street trading motions would have simply been responded to by a letter had the county assembly sought the information from his office.

In addition, it was the CECM's opinion that the issue of street hawkers was not pegged on a Constitutional issue and thus did not warrant to be categorized under the allegation of gross violation of the Constitution.

iii. Motion of County importance on bush clearing by Hon. David Thuvi.

The motion mover alleges that the CECM LIHUD did not implement the resolutions on the motion of county importance on the bush clearing exercise.

Mr. Speaker Sir, the committee resolves that the CECM LIHUD failed to implement the above resolutions which is in total breach of article 183 (1) (a) which specifically provides that the County Executive Committee shall implement County Legislation.

The Committee relies on letters dated 31st January, 2019 referenced CGoKTI/CEC-LIHU/D/COUNTYASSEMBLY/VOL.1/32 (See annex 10) and the letter dated 21st December, 2018 referenced CGoKTI/CEC-LIHU/D/COUNTYASSEMBLY/VOL.1/26 (see annex 4) where the CECM responded to the implementation of the aforementioned resolutions.

The Committee also notes the response from the CECM when he appeared before the Committee, where he arrogantly informed the Committee that a market is being constructed at Kithomboani that will house the street traders and that the street hawkers are human beings who must earn a living therefore they cannot be banned from trading.

The committee observes that the County Assembly resolutions should be implemented as per the provisions of Article 183 (1) (a).

For those reasons therefore, the committee resolves that the allegation is substantiated.

DISSENTING OPINION – HON. BONIFACE KATUMO

The motion mover alleges under allegation 1 (b) that the CECM failed to implement the following Assembly resolutions amongst others in total breach of Article 183(1)(a) of the Constitution of Kenya, 2010, on the functions of County Executive Committees.

Article 183 (1) (a) provides that, '*A county executive committee shall implement county legislation*'.

Article 183 provides for the functions of the County Executive Committee and not the functions of the executive committee **member**. The composition of the County Executive Committee Member is provided for under Article 179 of the Constitution and it consists of the Governor, Deputy Governor and members appointed by the Governor from amongst persons who are not members of the Assembly.

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It is my submission that the CECM LIHUD cannot be personally liable for failing to perform the functions of the entire County Executive Committee. He is neither the Chief executive nor the deputy chief executive of the county and cannot therefore be crucified for the actions of the entire cabinet.

In addition, Article 260 of the Constitution defines the term 'County Legislation' to mean a law made by a County Government or under Authority conferred by a County Assembly.

Article 260 further defines legislation as to include a law made by an Assembly of a County Government or under authority conferred by such law.

I submit that it is erroneous for the committee to use the terms 'legislation' and 'resolutions' interchangeably. The same Constitution that confers the mandate to implement county legislation on the County Executive Committee is the same that expressly provides for the interpretation of what can be categorised as County Legislation.

Further the CECM LIHUD in the letter dated 31st January, 2019 (See annex 10), explained that the ministry was in the process of developing a policy to manage street trade hawking together with a transport policy to regulate bodaboda operations.

The CECM further stated that the regulation and management of bodaboda and hawking will be properly regulated once the guiding policies are approved by the Cabinet or the Assembly. This therefore clearly indicates that the role of the CECM is to simply formulate the policies and forward the same to the Cabinet for approval. He cannot be crucified for acts that he has no final say over.

ALLEGATION 1 C - Unfair service delivery contrary to Article 27(3) of the Constitution of Kenya, 2010, by discriminative issuance of dozer services to a few selected wards for a period of last three financial years despite demand in other wards.

The motion mover alleges that the CECM LIHUD discriminated against other wards by issuing the dozer services to some wards but not others. He produced in evidence a list signed by some members of the county assembly, indicating whether the dozer had been to their wards or not (Copy of the list is attached as annex 11). In his evidence, the motion mover indicated that only three wards had enjoyed the dozer services while the others had not.

(Hon. Kanandu stood on a point of order)

Hon. Speaker: Yes Hon. Kanandu

Hon. Kanandu (MCA Mumoni Ward): I think Mr. Speaker I need more guidance from you because I was left reading dissenting opinion but I did not know where it ended Mr. Speaker. Because the report is just continuing. Where is the end?

Hon. Speaker: The end of?

Hon. Kanandu (MCA Mumoni Ward): The dissenting opinion. Are we still in the dissenting opinion or where are we Mr. Speaker?

Hon. Speaker: Yes Hon. Kilonzo

Hon. Kilonzo (Majority Leader): Mr. Speaker, I am not challenging what you have

ruled but I am left wondering, what am listening to now. Are you treating this house to a level where you are telling us the whole committee report cannot be substantiated or what are we being treated to? Because I cannot understand where we are. So Mr. Speaker even as you rule you know Mr. Speaker also law is there. This is because an attachment remains an attachment. This is a story where the committee is saying the story is substantiated. The drama we are being treated to by the mover of the motion tells us that the story is not substantiated. Direct us where we are. If the story is not substantiated, let end the story there Mr. Speaker because that is where you have taken us.

Hon. Speaker: Order! Order! Hon. Kilonzo this report I have ruled there is a dissenting opinion which I have done extensive consultation. It can be in the report, as an attachment or as an annex. Order! Order! we are not doing what we want here. We have got what we call practice and so forth. Order! Order! I am not favoring anybody here. You can decide to hit the tables but I am only saying what it should be. Remember what I am saying is there is a dissenting opinion which is part of the report and the owner of the dissenting opinion signed the report... order! Order! I do not want to be challenged. Please. Therefore what Hon. Ndile if I understand her report and the committee, Hon. Kilonzo what...

(Hon. Kilonzo off record -move me)

Order Hon. Kilonzo, please you are the majority leader and we should have the order here, please. If you do not want the report to be read, it is up to you as the house, it is not my report, it is the committee's report which the committee wants to read to you on the understanding what they have found, the allegations substantiated and that is what this report says. Despite this dissenting opinion the committee had every allegation concluded by saying we therefore find this allegation substantiated and therefore...Order! Order! that is how I understand it. I do not know how you understand it. Let me finish with the arguments first of all.

(Hon. Kanandu stood in his place)

Yes

Hon. Kanandu (MCA Mumoni Ward): Mr. Speaker I just want to be clear. On page 32 where Hon. Chair is reading the topic is dissenting opinion Hon. Boniface Katumo. Mr. Speaker she has read and she is now at page 33 and my question is where did the dissenting opinion stop, at what point?

Hon. Speaker: Let us sort out what Hon. Kanandu is saying...

Hon. Kanandu (MCA Mumoni Ward): Why Mr. Speaker I am saying so is when you were quoting the Standing Orders there is a word which I know you are basing your argument, that is may. But Mr. Speaker I am still glued to the fact that if I am giving a dissenting opinion on a vote, I must demonstrate to what extent, because what we are being

treated here by the chair and I want to be very specific on page 32 when she was reading the dissenting opinion of one Hon. Katumo which I do respect Mr. Speaker and do respect your ruling. Hon. Chair is now on page 33 on allegation 1c. so can we defined whether allegations 1c is still part of the dissenting opinion because we do not know where it is ending.

Hon. Speaker: Just a minute...

Hon. Kanandu (MCA Mumoni Ward): And that is why I am saying Mr. Speaker it is very important for one who has a contrary opinion to others to at least append a signature and I want to go forth Mr. Speaker. I was just going through my data base and I came across a petition number one of 2017 where Hon. Stephen Kalonzo and Hon. Raila were challenging the presidential elections and I saw a dissenting opinion by one Ojwang' where he did a very good narrative and then he signed Mr. Speaker.

Hon. Speaker: Yes Hon. Nganga

Hon. Nganga (Minority Leader): Thank you Mr. Speaker. Mr. Speaker we are being taken through the report of a committee. This report belongs to the adhoc committee. I do not understand whether as a house we are now authoring another report on their behalf, because they went through their own report, approved it, appended signatures to it Mr. Speaker. Now to behave as if we want to author another report for them Mr. Speaker. Have we converted this assembly to another adhoc committee?

Hon. Speaker: Wait a bit. If you go back to page 31 the last sentence, what does the committee say in the last page? For those reasons therefore, the committee resolves that the allegation is substantiated. That is the verdict of the committee, irrespective of the dissenting opinion. Order! But I am talking, what is going on? Do I adjourn the house? The last page on page 31, the sentence says for those reasons therefore, the committee resolves that the allegation is substantiated. It has closed that allegation but after closing and finding the allegation substantiated they went ahead and put the dissenting opinion. Order! Hon. Ndile continue. Order! Order! and please let us give her time to finish this report so that we can debate. No I am not allowing it. Continue Hon. Ndile.

Hon. Ndile:Mr. Speaker I think I need to clarify something as I read the dissenting view. The rules that we made when we started this committee were if we are not able to agree by consensus then we take a vote. So every time you see dissenting view of Hon. Katumo it is that he is alone against the vote of four. So the substantiated remarks are the committee carried the day because it was four against one.

Hon. Speaker: No, continue Hon. Ndile.

Hon. Ndile:Yes this one he voted alone against what the four members of the committee voted for the motion for removal...

Hon. Speaker: Continue, no point of order any more.

Hon. Ndile:Allegation 1 c- unfair service delivery contrary to Article 27(3) of the Constitution of Kenya, 2010, by discriminative issuance of dozer services to a few selected wards for a period of last three financial years despite demand in other wards. I think I had read that. at the bottom of page 33, the committee invited the acting Chief Officer, ministry

of LIHUD, Mr. John MailuKunga together with the Principal Mechanical Engineer Mr. Timothy Mutemi who provided a number of daily transport work tickets for the dozer (a copy of the work ticket is attached as annex 12).

The committee relied on the information provided on the work tickets in gathering evidence as to where the dozer worked.

In support of their testimony, the two county government officers provided the dozer work schedule. The committee notes that the dozer has frequently worked in a few notable wards like Matinyani and Miambani.

The committee requested the Chief Officer to provide the following documents;

- i. Bush clearing documents for 2018/2019
- ii. The documents used in the tendering works for the bush clearing
- iii. Payment documents to the contractors
- iv. List of the paid contractors
- v. Evidence of 3 million paid to the national government for the dozer

However, as at the completion of this report the Chief Officer was yet to submit the documents requested.

From the work tickets the dozer was in Matinyani Ward on;

22/01/2019	01/04/2020	07/03/2020
31/01/2019	23/04/2020	23/03/2020
01/02/2019	31/03/2020	

The dozer was also in Miambani Ward on;

04/09/2017
12/09/2017
25/8/2017
4/9/2017
08/02/2018
27/02/2018
05/02/2018
27/02/2018
07/05/2018
6/6/2018

The dozer has been at Yatta Kwa Vonza four times out of which, the dozer was twice hired to an institution and twice used by the county government.

The dozer has never been to Nguutani ward, Kyuso and Kanziko ward just to mention but a few.

The Committee is convinced that from the above dates, the aspect of discrimination is apparent. The dozer worked for longer periods in some wards than others.

For the reasons stated above the Committee finds that this allegation is substantiated. So now when we go to the dissenting view, the four have voted to substantiate that discriminative aspect and the dissenting view is against it.

DISSENTING OPINION - HON. BONIFACE KATUMO

The motion mover alleges under allegation 1C that there was unfair service delivery contrary to Article 27(3) of the Constitution of Kenya, 2010, by discriminative issuance of dozer services to a few selected wards for a period of last three financial years despite demand in other wards.

Article 27(3) of the Constitution provides that; ‘Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres’

I am unable to understand how the CECM is connected to the individual enjoyment of personal rights and freedoms guaranteed under the said Article.

I am also unable to connect the issuance of a dozer to different wards in Kitui County for which the CECM is not responsible and the guaranteed rights under Article 27 (3)

The accuser did not tender any evidence to show that in the event the issuance of the dozer was discriminative, then that discrimination had directly been occasioned by the accused.

I submit that as per the stated that as per the work ticket schedule provided before the committee by the Acting Chief Officer Mr. Kunga, the dozer has for the past 3 years worked in 25 wards. Therefore, it would be malicious for the committee to substantiate the allegation of discrimination. Of course he has not attached any document to show which 25 wards.

It is my submission that the accuser has not tendered any admissible evidence to validate the allegation and that the committee has solely based its argument on personal sentiments and views in arriving at its decision, as opposed to evidence connecting the accused and the action alleged to have been committed.

We move to allegation 1 d - Failing to provide the County Assembly with full and regular reports on matters relating to the county ministry contrary to Article 183(3) of the Constitution of Kenya, 2010 e.g. Dozer working schedule.

The motion mover alleges that the CECM LIHUD failed to submit full and regular reports to the County Assembly on matters relating to the county. Article 183(3) of the Constitution provides that ‘the County Executive Committee shall provide the County Assembly with full and regular reports on matters relating to the county.

In view of the foregoing therefore, it is the Committee’s view that the CECM LIHUD,

Eng. Jacob Maundu Kakundi has a responsibility to ensure that full and regular reports on matters related to the county are submitted to the assembly for consideration. In his own submission, the CECM said that he can only give the reports upon request contrary to Article 183(3).

It is nevertheless the Committee's position that the County Executive Committee Member ought to provide the County Assembly with regular reports relating to county matters and that the county assembly need not ask for the same as Article 183 (3) in mandatory terms, provides that the County Executive Committee shall provide the County Assembly with regular reports and by not providing the said reports the CECM LIHUD can be said to have violated article 183(3) of the Constitution.

The committee therefore resolved that the allegation is substantiated.

DISSENTING OPINION – HON. BONIFACE KATUMO

The motion mover alleges under allegation 1D that; failing to provide the County Assembly with full and regular reports on matters relating to the county ministry contrary to Article 183(3) of the Constitution of Kenya, 2010 e.g. Dozer working schedule.

Article 183 (3) of the Constitution provides that (1) A county executive committee shall provide the county assembly with full and regular reports on matters relating to the county.

It is the County Executive Committee that is responsible in mandatory terms to provide the County Assembly with full and regular reports on matters relating to the County.

I am unable to understand how the accused can be condemned for functions that constitutionally belong to another person and in this case a constitutionally established body like the County Executive Committee.

It is completely not lost on me that the accused is a member of the County Executive Committee and also the head of the County Ministry of LIHUD, my concern is whether an individual, he should be vilified for the actions of the entire cabinet.

Then we are on allegation 1 e - Violation of the County Procurement Procedures as per section 53 of the Public Procurement and Disposal Act of 2015 by:-

- i. Awarding tenders for bush clearing unprocedurally and misusing Kitui residents to work for contractors without payments.
- ii. Awarding tenders for bush clearing to contractors and then using Ward and Village administrators to perform the role of contractors on contracted works.

Mr. Speaker Sir, the motion mover alleges that the tenders for the bush clearing exercise were un-procedurally awarded. He submitted that the CECM LIHUD flouted section 53 of the Public Procurement and Asset Disposal Act, 2015 by awarding bush clearing program tenders un-procedurally.

Section 53 provides that;

(1) All procurement by State organs and public entities are subject to the rules and principles of this Act.

(2)An accounting officer shall prepare an annual procurement plan which is realistic in a format set out in the Regulations within the approved budget prior to commencement of each financial year as part of the annual budget preparation process.

(3)Any public officer who knowingly recommends to the accounting officer excessive procurement of items beyond a reasonable consumption of the procuring entity commits an offence under this Act.

(4)All asset disposals shall be planned by the accounting officer concerned through annual asset disposal plan in a format set out in the Regulations.

(5)A procurement and asset disposal planning shall be based on indicative or approved budgets which shall be integrated with applicable budget processes and in the case of a State Department or County Department, such plans shall be approved by the Cabinet Secretary or the County Executive Committee member responsible for that entity.

(6)All procurement and asset disposal planning shall reserve a minimum of thirty per cent of the budgetary allocations for enterprises owned by women, youth, persons with disabilities and other disadvantaged groups.

(7)Multi-year procurement plans may be prepared in a format set out in the Regulations and shall be consistent with the medium term budgetary expenditure framework for projects or contracts that go beyond one year.

(8)Accounting officer shall not commence any procurement proceeding until satisfied that sufficient funds to meet the obligations of the resulting contract are reflected in its approved budget estimates

(9)An accounting officer who knowingly commences any procurement process without ascertaining whether the good, work or service is budgeted for, commits an offence under this Act.

(10)For greater certainty, the procurement and disposal plans approved under subsection (5) shall include choice of procurement and disposal methods and certain percentages referred to under subsection

(11)Any state or public officer who fails to prepare procurement and disposal plans disciplinary action.

The committee observed that the particulars of the allegations contained in the allegation were in no way related to the section of the law relied upon. In addition, section 53 of the Public Procurement and Asset Disposal Act, 2015, made reference to the Accounting officer yet the CECM LIHUD is not the accounting officer for that ministry.

The committee therefore resolved that the allegation is unsubstantiated

ADDITIONAL ALLEGATIONS ON OTHER RELEVANT LAWS

Remember the accusation on the motion is gross violation of the Constitution of Kenya 2010 and any other relevant laws. So this is based on other relevant laws. The committee in

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reliance of Article 73 (1) (a) (iii) and (iv), Article 75 (1)(c), of the Constitution of Kenya resolved to include the following particulars against the CECM LIHUD Eng. Kakundi;

- i. that CECM was responsible for overseeing the unprocedural subdivision and disposal of community/county government trust land of Kanyonyoo
The committee in reliance of Article 73 (1)(a) (iii) and (iv), Article 75 (1)(c), 75 (2) (a) and (b), of the Constitution of Kenya and Section 10 of the Contempt of Court Act, 2016, resolved to include the following particulars against the CECM LIHUD Eng. Kakundi;
- ii. the CECM LIHUD, Eng. Kakundi was in contempt of court orders of 12th February, 2009, 29th July, 2019 and 24th September, 2019 preserving the suit property LR. No. 12010 in respect of ELC case No.109 of 2018 (a copy is attached as annex 13) by undertaking a part development plan in which he had proposed for the excision of land.

The committee resolved that the additional evidence submitted before the Assembly at its sitting held on 25th August 2020 would be relied upon as evidence under the two new allegations. The additional evidence was submitted by Hon. John Kisangau and Hon. David Thuvi.

A. Particulars of the first Additional Allegation

‘That the CECM LIHUD Eng. Kakundi was responsible for overseeing the unprocedural subdivision and disposal of community/county government trust land of Kanyonyoo

It was submitted by Hon. John Kisangau that Kanyonyoo land LR NO.11802 is community land as provided for under Article 63(2)(d).

Article 63 (2)(d) defines community land as to include land that is

- (i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;
- (ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities; or
- (iii) lawfully held as trust land by the county governments but not including any public land held in trust by the County Government.

Article 63(4) provides that Community land shall not be disposed of or otherwise used except in terms of legislation specifying the nature and extent of the rights of members of each community individually and collectively.

Further, Section 6 (8) of the Community land Act, 2016 provides that ‘A county government shall not sell, dispose, transfer, convert for private purposes or in any other way dispose of any unregistered community land that it is holding in trust on behalf of the communities for which it is held’.

The member submitted that the Minister was responsible for safeguarding the land on behalf of the residents of Kitui County.

The committee relied on the following evidence submitted before the Assembly on 25th August, 2020;

- i. A map showing the Kanyonyoo area before sub division (a copy is attached as annex

14)

- ii. A map showing the Kanyonyoo area after sub division (A copy is attached as annex 15)
- iii. Demand note for payment of ground rent (A copy is attached as annex 15)
- iv. Payment receipt issued to Dennis Mbanga for payment of ground rent ((A copy is attached as annex 15)

A letter informing the CECM LIHUD of the additional evidence and he was requested to respond to the same but he did not do so. Based on the evidence provided, the committee resolved that the CECM LIHUD, Eng. Kakundi as the head of the ministry, was responsible for overseeing the sub division and disposal of County Government Trust land/ community land by the department of lands and physical planning contrary to the above mentioned provisions.

The committee therefore resolved that the allegation is substantiated.

B. Particulars of the second additional allegation

That the CECM LIHUD, Eng. Kakundi was in contempt of court orders of 12th February, 2009, 29th July, 2019 and 24th September, 2019 preserving the suit property LR. No. 12010 in respect of ELC case No.109 of 2018 (a copy is attached as annex 13) by undertaking a part development plan in which he had proposed for the excision of land.

By a notice published in the daily nation of 14th February, 2020, Engineer Jacob Kakundi advertised the proposed excision of LR. No. 12010 vide PDP No. KTI/271/KITUI 2019/02 RURAL as follows;

- i. Extension of Border post police training campus (887.03 Ha)
- ii. Squatter Settlement Scheme (1213.80 Ha)
- iii. Expansion of Musingi Market (4.140 Ha)
- iv. Proposed Daughters of Jesus the Good Shepherd (4.00 Ha)

In the ruling of an application dated 5th March 2020 by defendants numbers 2nd to 6th in respect of ELC case no. 109 of 2018 in the Environment and Lands Court at Machakos, Eng Kakundi failed to inform the court why he prepared the part development plan in respect of the suit property and had it published in the daily nation of 14th February, 2020 while orders of the court for maintenance of status quo were in existence. The disobedience of the court orders was confirmed by Engineer Kakundi when he confirmed to the court that he had signed a gazette notice no. 1405 dated 21st February, 2020 announcing to the general public about the part development plan.

In the ruling dated 15th July 2020, The Hon. Judge O. A. Angote found Eng. Jacob Kakundi to be in contempt of Court orders of the environment and land court at Machakos dated 12th February 2009, 29th July 2019 and 24th September, 2019 and Eng. Jacob Kakundi is to appear in the said court for mitigation and sentencing.

Based on the above evidence, the committee resolves that the allegation is substantiated.

DISSENTING OPINION – HON. BONIFACE KATUMO

During the debate of the subject motion on 25th August, 2020, the following additional evidence was tabled on the floor of the Assembly;

- a) A copy of the court's ruling on contempt of court (see annex 13)
- b) Copy of the map before sub division (see annex 14)
- c) Copy of the map after sub division (See annex 15)
- d) A copy of the demand note (see annex 16)
- e) Copy of the payment receipt for property rates (See annex 17)

I submit that the motion mover did not make reference to any of the evidence so tabled before the Assembly and further, the evidence is not in support of any allegation or particulars pleaded by the motion mover in the motion.

The additional evidence refers to...of course that bit challenging the ruling of the Speaker because it is the Speaker who ruled that the additional evidence should be admitted here in this house. So the committee admitted it based on that but the dissenting view is challenging that motion mover did not make reference to any of the evidence so table before the assembly and further the evidence is not I support of any allegation or particulars pleaded by the motion mover in the motion. The committee admitted it based on the evidence of the Speaker receiving it here in this house.

It is my submission that the resolution by the committee to admit as evidence additional documents that do not speak to a particular that is contained in the motion, amounts to this committee amending the subject motion.

It is my submission that the committee's act of amending the motion is malicious and a vindictive attempt to sentence Engineer Kakundi for all allegations under the sun.

The committee should only limit its investigation to the allegations contained in the motion and the evidence produced by the motion mover. The inclusion of the two additional particulars is out rightly illegal and should therefore not be substantiated. But the committee had substantiated four against one.

CHARGE 2: INCOMPETENCE

On the allegation of incompetence, the CECM failed to effectively control Ministry's programmes e.g. bush clearing and road grading done shoddily and beyond timelines as stipulated in working schedules.

Mr. Speaker Sir, on the above allegation, the CECM LIHUD failed to effectively control the ministry's programs by failing to complete road grading programs on time. It was his testimony that there were set timelines for the completion of the road grading works and the ministry did not adhere to the same. The Motion mover also alleges that the works for the road grading program were poorly done. In support of his testimony, the motion mover adduced as evidence the following documents;

- a) A road grading schedule for the year 2019/2020 (Copy is attached as annex 18)
- b) A letter dated 20th December, 2019 (copy is attached as annex 19)

Mr. Speaker Sir, to ascertain the true position on the issue of road grading programme, the Committee also invited the Chief Officer and the principal mechanical engineer, County

Ministry of LIHUD to appear before the special committee. The Ag. Chief Officer Mr. Kunga and the Principal Engineer Mr. Timothy Mutemi submitted copies of the work ticket for the dozer attached to the ministry of LIHUD (Copy is attached as annex 12).

Further, it was the Ag. Chief Officer's testimony that the county ministry of LIHUD only has one dozer and that one dozer was expected to efficiently and effectively serve the forty wards in Kitui County. It was also the Ag. Chief Officer's testimony that in his view there was no discrimination in the provision of dozer services to the wards. The Ag. Chief Officer further explained that initially, the ministry of LIHUD did not have a grading schedule for each ward and that the dozer was only issued upon request. However, for the year 2019/2020, the Ag. Chief officer came up with a dozing schedule for all the 40 (forty) wards. The ministry intended to grade 50 km per ward by the end of the financial year thereby totaling to 2000km.

Of the 2000km planned, the ministry had graded 1089 km by the end of the year 2019/2020. The delays in the completion of the remaining 919 km was due to a number of reasons, mainly;

- i. Occasional breakdown of the dozer which required repairs. However the procurement process of the repairs needed took place between December 2019 to February 2020 thereby causing a delay in the working schedule.
- ii. The dozer could not also work during the rainy season(s) which took place during the financial year thereby causing delays in the implementation of the schedule.
- iii. The corona virus pandemic outbreak within the country in March also caused a standstill of most operations thereby delaying the implementation of the schedule.
- iv. The ministry of LIHUD lacks a low loader and have to rely on the one from the ministry of Agriculture. It is important to note that the dozer cannot be moved without a low loader and thus the dozer can remain in one ward for several days until a low loader is available to transport it elsewhere. Therefore, the challenge in the availability of a low loader to transport the dozer leads to a considerable delay in the implementation of the dozing schedule.
- v. Availability of fuel. The Ag. chief officer also stated that on numerous occasions, the dozer has been unable to operate due to the lack of fuel. This has led to a considerable delay in the implementation of the dozing programme.

Mr. Speaker Sir, the mechanical engineer also informed the committee that there are some areas whose topography/landscape requires specialized equipment and therefore the dozer would not be ideal.

Mr. Speaker Sir, on incompetence, the committee relied on section 36 (1)(a) of the County Governments Act. The committee also relied on the provisions of Article 183 (c). In his own defense, the CECM confirmed he was incompetent in the way he answered questions before the committee.

The committee believes that the CECM did not competently oversee the bush clearing program and an approved schedule for the grading works which was not observed. For this reason therefore, the allegation is substantiated.

The committee also concluded that the CECM is the head of the ministry. He is the one to undertake and control the programs in the ministry. He is the one who gave guidelines on how the roads would be graded.

When the CECM was asked whether he was involved in the implementation of the ministry's programs, he responded that he wasn't. The committee notes that this was in breach of Article 183(1) and section 36 of the County Governments Act.

When he was asked whether the certification for the bush clearing and road grading programs were issued, he said he didn't know yet in his letter of 2nd July, 2019 to the Clerk of County Assembly of Kitui, he wrote that copies of bush clearing completion certificates were being processed as some works were not paid.

Based on the evidence and the responses by the CECM, the committee's conclusion is that the CECM failed to effectively guide the ministry's operations and from that, this allegation is substantiated.

DISSENTING OPINION – HON. KATUMO

It is my submission that the mover of the motion failed terribly to produce to the committee tangible evidence that the bush clearing and roads grading works were done shoddily, as he did not explain the extent of shoddiness, neither did he provide any certified report from county certified engineers nor an approved report from the assembly supporting his allegations. Therefore, the ground on incompetence is unsubstantiated....That is not in order because the committee has a four against one substantiated. So when dissenting, you cannot not unsubstantiate the report

CHARGE 3: ABUSE OF OFFICE

Allegation - Using County administrators to perform the role of contractors in contracted works of bush clearing without facilitation.

The motion mover alleged that county administrators were used in the performance of bush clearing works but remain unpaid to date.

The committee invited the below listed to appear before the special committee on 9th September, 2020 in order to shed more light on the matter.

- I. Ms. Esther Ngeta – Ward Administrator, Kyooome Thaana Ward
- II. Ms. Carolyne Kamote – Village Administrator, Kyome Thaana Ward
- III. Mr. John Mutisya – Village Administrator, Kithumula Kwa Mutonga Ward
- IV. Mr. Raphael Kavisi – Village Administrator, Kithumula Kwa Mutonga Ward
- V. Ms. Jacinta Nzioki – Ward Administrator, Kithumula Kwa Mutonga Ward

The said administrators did not however appear in line with the committee's invitation and so the committee was forced to invoke the provisions of section 18 of the County Assembly Powers and privileges act in summoning the above listed persons.

Summons were issued requiring the witnesses to appear before the Special Committee on 7th September, 2020. They were duly served upon all the witnesses. An affidavit of service of the summons is attached as annex 19.

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None of the administrators appeared before the committee on the date scheduled. Ms. Esther Ngeta and Ms. Carolyn Kamote however sent their apologies that they would be unable to appear before the committee since they were unwell. The committee therefore could not hear their evidence and did not conclude on the matter.

In view of the above, the committee could not therefore confirm the allegation. Therefore the allegation is unsubstantiated.

CHARGE 4: GROSS MISCONDUCT

Allegation- He blatantly misled the County Assembly Sectoral committee on Lands, Infrastructure and Urban Development on the involvement of village administrators in the recruitment of personnel for the contracted bush clearing project for 2018/19 financial year. The CECM provided contradictory information on the same as contained in the letters dated 21st December, 2018 and 2nd July, 2019 (see annex 4 and 5 respectively).

The Committee relied heavily on the two letters and the minister's response to the questions asked by the members of the committee.

The Committee observed that in the letter dated 21st December 2018 (See annex 4), originating from the County ministry of LIHUD, the minister CECM Eng. Jacob Maundu Kakundi wrote on paragraph (c), that "Once procurement of the works was completed, the relevant stakeholders were engaged to select locals to undertake the exercise in line with the County government agenda of empowering the youth across the county. The relevant people like village administrators were involved in identifying the youth locally to benefit from the exercise." The minister admitted to have authored the two letters.

However, in the letter dated 2nd July, 2019, titled Issue No.3 on 'Who instructed village administrators to recruit the youth', the CECM responded that "the administrators should respond to who instructed them to recruit..."

Based on the response, the committee resolves that the letter dated 2nd July, 2019 contradicts his admission that village administrators were used in identifying the locals for the bush clearing exercise. The letter dated 2nd July 2019, contradicts the letter dated 21st December 2018.

The committee therefore resolves that this contradiction by the minister contravenes Article 73 (1) (a) of the Constitution that the authority assigned to a state officer is a public trust to be exercised in a manner that brings honour to the nation and dignity to the office and promotes public confidence in the integrity of the office. This contradiction further breaches Article 73 (1)(c) of the Constitution which provides that a state officer shall behave in a manner that avoids demeaning the office of the office holder.

The committee therefore resolves that the allegation is substantiated.

DISSENTING OPINION – HON. KATUMO

The two letters dated 21st December 2018 and 2nd July 2019 were not contradictory since they conveyed the same message that the village administrators were included in the bush clearing exercise to identify the locals and not to execute the work. Therefore the evidence on

gross misconduct is unsubstantiated. Again there is an error and what I will discuss at the end of this report because that allegation has been substantiated by the four against the dissenting view.

COMMITTEE'S FINDINGS

The Committee's findings on each of the Particulars of the Allegations are therefore as follows -

1. Gross Violation of the constitution of Kenya, 2010 and any relevant laws by;-
 - (a) Violation of chapter six of the constitution of Kenya (integrity and leadership) by managing his office in a manner which does not promote public confidence in integrity of the office by overseeing unprocedural awarding of bush clearing tenders (a programme meant to benefit the vulnerable) to contractors and using the local women and youth to work in contractors' absentia only to pay some long time after they were paid and others left unpaid upto date instead of contractors using their monies as working capital for the contracted works to pay the casuals. The Committee finds that the allegation is unsubstantiated.
 - (b) Failing to implement the following assembly resolutions amongst others in total breach of Article 183(1)a of the Constitution of Kenya, 2010, on the Functions of County Executive Committees. The Committee finds that the allegation is unsubstantiated.
 - (c) (c) Unfair service delivery contrary to Article 27(3) of the Constitution of Kenya, 2010, by discriminative issuance of dozer services to a few selected wards for a period of last three financial years despite demand in other wards. The Committee finds that the allegation is unsubstantiated.
 - (d) Failing to provide the County Assembly with full and regular reports on matters relating to the county ministry contrary to Article 183(3) of the Constitution of Kenya, 2010 e.g. Dozer working schedule. The Committee finds that the allegation is unsubstantiated
 - (e) Violation of the County Procurement Procedures as per section 53 of the Public Procurement and Disposal Act of 2015. The Committee finds that the allegation is unsubstantiated.

Additional Allegations on other relevant laws

- (i) 'accusation for overseeing the unprocedural subdivision and disposal of community/county government trust land of Kanyonyoo. The Committee finds that the allegation is unsubstantiated
- iii. The CECM LIHUD, Eng. Kakundi was in contempt of court orders of 12th February, 2009, 29th July, 2019 and 24th September, 2019 preserving the suit property LR. No. 12010 in respect of ELC case No.109 of 2018 (See annex 13) by undertaking a part development plan in which he had proposed for the excision of land. The Committee finds that the allegation is unsubstantiated.

INCOMPETENCE: Failure to effectively control Ministry's programmes e.g. bush clearing and road grading done shoddily and beyond timelines as stipulated in working

schedules. The Committee finds that the allegation is unsubstantiated.

ABUSE OF OFFICE: Using County administrators to perform the role of contractors in contracted works of bush clearing without facilitation. The Committee finds that the allegation is unsubstantiated

GROSS MISCONDUCT: He blatantly misled the County Assembly Sectoral committee on Lands, Infrastructure and Urban Development on the involvement of village administrators in the recruitment of personnel for the contracted bush clearing project for 2018/19 financial year. The CECM provided contradictory information on the same as contained in the letters dated 21st December, 2018 and 2nd July, 2019. The Committee finds that the allegation is unsubstantiated

In conclusion Mr. Speaker Sir, the Special Committee having investigated the matter, finds that the allegations as contained in the motion for the removal from office of the County Executive Committee Member for Lands, Infrastructure, Housing and Urban Development - Engineer Jacob Kakundi, approved by the Assembly on 25th August, 2020 are substantiated.

Hon. Katumo however had a dissenting view that the allegations were unsubstantiated.

Therefore, this Assembly hereby resolves that The Governor shall upon receipt of the resolution of this Assembly, immediately dismiss Engineer Jacob Kakundi from the position of County Executive Committee Member, County ministry of Lands, Infrastructure, Housing and Urban Development, pursuant to the provisions of Section 40 (6)(b) of the County Governments Act as read together with Standing order 62 (10) . And this is according to the vote of four substantiated against one.

Mr. Speaker there is a matter that is of concern to me having been the chair of this committee and I have also seen it is a concern for most members and I will raise it even before I make any comments on the other matters. This is concerning his report. I raised it because officially also this matter came into your office while we were doing the report.

Mr. Speaker this house is aware that we were supposed to lay the report on Thursday last week at 9ma, but we requested to be allowed to lay it at 2:30. This is because as we left our report to be finalized because we give our submissions and we leave the clerks to finalize. By the morning of the Thursday when we were supposed lay the paper, we found that the report is not as the members had left it to be...yes we have on soft copies the report that we received from the clerks on our WhatsApp and we have the final copy.

So the house that how does not matter because you can get the soft copy we have and what we presented before in the committee and you can get also because I specifically got the copy of the corrections. So there was a disconnect between what the committee had put as submissions of the committee has been forwarded to for proof reading. I will go direct to issues that led to this kind of an occurrence.

Mr. Speaker while we were doing the report writing, we had a kind of a spat with the legal officer and I had to seek advice on...

Hon. Speaker: Order! Order! Order! Hon. Ndile, concentrate on the substance of the report, please.

Mr. Speaker I am building on the challenges of the report and I have not gone outside, the context of this report. So Mr. Speaker because I am coming to the issue of the dissenting view, you have asked me here that are the dissenting views of what the Hon. Katumo presented to this

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house.

Mr. Speaker if we go on Hansard, he dissented but the particulars of this dissenting view on Hansard are from the legal officer and I have to, the dissenting views because we have the Hansard...

(Hon. Nganga stood on a point of order)

Hon. Speaker: What is your point of order Hon. Nganga.

Hon. Nganga (Minority Leader): Mr. Speaker is it in order for the chair of the Ad-hoc committee and the lady I respect very much, to make such a strong allegations against an officer without a motion so that that officer can also be given a chance to defend herself? There is need to have a substantive motion Mr. Speaker if she wants so for us to discuss that officer.

Hon. Speaker: Order! Order! Hon. Ndile you know the Standing Orders very well. I know you have a very strong feelings of what you are saying but you know what the Standing Orders says and therefore we should not violate our Standing Orders. Continue. Order! Hon. Grace Mutua please...continue Hon. Ndile.

Hon. Ndile: Mr. Speaker I have not mentioned anyone. I have just mentioned the challenges and of the office and I am also building a case on how this report today has found its way into the house. Mr. Speaker given that there is evidence that this House could not receive this report on the stipulated time that was on the order paper on Thursday at 9am, then it is my honour to give explanation to this honourable house as to what caused the delays Mr. Speaker.

(Applause)

(Hon. Katumo stood on a point of order)

Hon. Speaker: Order! Order! Hon. Katumo declined. Continue Hon. Ndile.

Hon. Ndile: Mr. Speaker so we went into a situation of an emergency to correct our document that is how it found its way here at 2:30 pm and Mr. Speaker I will categorically tell this house...

(Hon. Katumo on a point of information)

Hon. Speaker: Declined, continue

Hon. Ndile: Mr. Speaker I will categorically, of course you have ruled that the dissenting view can be in the report. According to me and I have done dissenting views in this house, I have always appended my dissenting view and I stood with it on the floor of the house to read it but never the less I respect your ruling. What I wanted the house to know because the report is already before the house, is that as chair for the committee all these narratives on the dissent were never presented before the committee. The dissent is on Hansard of Hon. Katumo saying that I disagree with the committee but the detailed narrative because the report for the other four was done full glare of the Hansard. So that is something that the house needs to note about the

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dissenting view in respect that the Speaker has ruled that we continue to hold it in that report.

Mr. Speaker I also note because of that emergency the report has out of that dissenting view not being written before the committee, you will see that the committee of four has substantiated an accusation and then the flip side is on page 46 that the dissenting view therefore the ground on incompetence is unsubstantiated. This never found its way because we could not have been sitting as a committee and we are writing a report four of us are saying it is substantiated and one person is it is unsubstantiated and it passes. It has to be one and not the other.

Then page 49 is also the same thing. Dissenting view for Hon. Katumo. The committee resolved up there that the allegation is substantiated but the dissenting view, says therefore the evidence is a paradox and so Mr. Speaker I felt I had to bring that as a result of that dissenting views.

Mr. Speaker Sir, on the allegation on who has amended the motion because that is one of the allegation that the committee was being accused of. The mover of the motion has clearly accused the CECM of gross violation of Chapter six on integrity and leadership. The committee has just picked an article 73 without going outside the framework within which the accuser is referencing...

Hon. Speaker: Order! Hon. Katumo, Order!

Hon. Ndile: Mr. Speaker we should not be treated to that kind of debate...

Hon. Speaker: Order! Order! Sergeant-at-arms, Hon. Katumo should not be admitted there until he apologizes for walking out without bowing to the chair. He should not be allowed in there until he apologizes. Continue.

Hon. Ndile: Mr. Speaker on that dissent 2 (ii)...

Hon. Speaker: Order! Let me tell you Hon. Members, this is a very important motion and if anybody doesn't matter who misbehaves I am going to throw him out of this house. It doesn't matter who is. I can just see Hon. Members bringing jokes into this. This is important motion we must dispose of it and everybody must adhere to Standing Orders. Let us not have sideshows here. Continue Hon. Ndile.

Hon. Ndile: Mr. Speaker I was making reference to a dissent that I have seen here page 27 and it is talking of the two letters. Mr. Speaker the two letters cannot be debated because in themselves they are contradictory. One says that of December 21st 2018, about bush clearing, it says response on motion of county importance relating to bush clearing exercise and number c says once procurements of the works was completed, the relevant...

Hon. Speaker: Order! Hon. Katumo, you have to pick a mic where Hon. Mwalali is and say sorry.

Hon. Katumo(MCA Kyangwithya West Ward): Mr. Speaker I say sorry and I request and I request to be admitted back.

(Laughter)

Hon. Speaker: Continue Hon. Ndile.

Hon. Ndile: Mr. Speaker as you have said, we are dealing with a very serious motion. I

letter from the County Government of Kitui signed by CECM LIHUD Eng. Kakundi says, it is addressed to the Clerk, County Assembly of Kitui, in response, Dear Sir, Re: Response to motion on county importance relating to bush clearing exercise and it says, we refer to your letter referenced CAK 18/4/491 dated 7th September, 2018 on the above subject matter whose response is as follows and c of it says once procurements of the works was completed, the relevant stakeholders were engaged to select locals to undertake the exercise in line with the County Government agenda of empowering the youth across the county and the relevant people like the village administrators were involved in identifying the youth locally to benefit from the exercise. The quality and quantity of the works were to be certified by the ministry engineers.

The same minister on 2nd July the following year 2019 wrote to Mr. Speaker Mutambuki the County Assembly Kitui Clerk and says; Dear Sir, response for invitation to appear before the committee on Lands, Infrastructure, housing and Urban Development and the title is bush clearing issues. Issue number three he had been asked, who had instructed village administrators to recruit the youth and his response is the office or / the persons who instructed the village administrators to recruit the youth can be responded to by the administrators themselves. And to one letter he says the stakeholders like village administrators were involved in identifying the youth. On the other letter he says they should be asked. The service providers should be asked themselves on who gave them these instructions?

Mr. Speaker the mover of the motion is accusing the minister of lack of integrity in leadership. It is clearly demonstrated in his own contradictions. On one side he says this, the other side he tells a lie. Where does such the integrity of such a CECM lie?

Mr. Speaker we have also been treated to a dissent that says that we have accused Eng. Kakundi of awarding tenders. Mr. Speaker I want to make reference to a report. We have clarified I our report that and I want to read the motion. The motion mover is clear on what he is accusing the minister of. He says by managing his office in a manner that does not promote public confidence. That in itself is in article 73(4) and the dissenting views says he has not quoted anything within chapter six. Managing his office in a manner that does not promote public confidence in the integrity of office and the accusation is not that you are awarding tenders. He is clear that the minister does not award tenders but he says by overseeing unprocedural awarding. He is the head of this ministry. So overseeing is at the apex and there are departments and are under Chief Officer but he oversees at the top of that ministry.

The allegation here is that, if you go to dissenting on page 32 Mr. Speaker it is want I can call obnoxious. Mr. Speaker that member is saying that the functions of the county executive committee are the function of the executive committee member. The composition of the county executive committee member is provided for under article 179 of the Constitution. And it consists of the Governor, the Deputy Governor and members appointed by the governor from amongst persons who are not members of the County Assembly.

He says in his submission that the CECM LIHUD cannot be held personally liable for failing to perform the functions of the entire cabinet. Mr. Speaker when the committee summons, the committee of LIHUD, the committee of Education, the committee of labour, Mr. Speaker do we summon an entire cabinet? Because article 183, no lets go to the one he is quoting. Mr. Speaker article 179 says the executive authority of the county is vested in and exercised by the

county executive committee. The County Executive Committee consists of the Governor and the deputy governor and so now the dissent he uses is what I calling selective amnesia...

(Applause)

Because if you use one, Mr. Speaker what favors you and then you don't go to be which says that that committee consists of members appointed by the governor with the approval of the County Assembly from among persons who are not members of the assembly. So now we are being treated to we deal with an entire executive. How? The letters I have read have been authored from an office of a CECM who has appointed under the same article 179 that the dissent is speaking about, but you pick part (a) and then you don't continue with part(b) then you are totally losing out.

So what I can say about that dissent my friend I think 179 (b) should advise you accordingly.

Hon. Speaker: Order! Hon. Nthuri...

Hon. Ndile: Mr. Speaker you can also go further and say the one who is issuing circulars and even according at one point the dissent says according to the policy by the minister. So when it suits, then the minister can make policy. But he is saying he is not a member. He is neither here nor there. Actually according to that dissent is like firing the minister because he has got no responsibilities in that cabinet.

(Applause)

Also according to that article 179 (b) a member is appointed by the governor and vetted by the County Assembly. The minute we vet them is a done deal. They go to become the head of that ministry and that is now why the County Assembly interacts with the minister. And if the member wants to know what selective amnesia is, it means a type of amnesia in which the sufferer loses certain part of their memory and common elements may be forgotten.

(Applause)

So failing to quote article 171 (1, 2 and 3) because this is where we derive. Where the office of the CECM comes from but up to now three years down the line this assembly it looks like we are in the grey area who is a CECM. It is provided for in article 179, consists of the governor, the deputy governor and members. That is how the CECM is derived. County executive committee member in that committee executive committee there is a member and that is the member now that becomes the head of a ministry and takes charge.

So what we are talking about is there was...

(Hon. Katumo stood on a point of order)

Hon. Speaker: Yes Hon. Katumo.

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Hon. Katumo (MCA Kyangwithya West Ward): Mr. Speaker I understand this is one of the serious report we have ever received in this honorable house. Mr. Speaker is it in order for the chair of this committee to keep on giving this honorable house sections of the Constitution which are not directly linking the minister with the grounds. Mr. Speaker I can tell this honorable house the reason as to why stayed long before ringing this report to this honorable house, it is because majority of the committee members relied getting information from the Constitution instead of getting the evidence from the mover of the motion. They relied reading the Constitution now and then. Now what she is doing now is exactly what she was doing in Machakos. Instead of giving of giving this house relevant evidence, she is reading the Constitution...

Hon. Speaker: Order! Order! I will allow you to debate. You asked for a point of order and you started debating and therefore you are out of order and as far as the Speaker is concerned or the chair, Hon. Ndile has not mentioned anything outside what we are discussing here in terms of law. Can you continue? I will allow you Hon. Katumo to debate.

Hon. Ndile: Mr. Speaker just to set the record straight, I am guided by the accusation. Accusation number one is gross violation of the Constitution of Kenya 2010. This is the document and that is where I am deriving my argument because this is the accusation, gross violation of the Constitution of Kenya 2010 and any other relevant laws.

Hon. Speaker: Order! Order! Hon. Members let us allow Hon. Ndile to continue.

Hon. Ndile: Mr. Speaker you know on dwelling on bush clearing issue is because it affects our people and it has been watered down as if our people don't matter because they are doing bush clearing at a labour fee of Ksh.350. this matter has been watered down Mr. Speaker. It disturbs and it also pains me that we are here two years later and admitting witnesses in a committee and they confirmed. On these documents Mr. Speaker we have the evidence from the witnesses who came to confirm that they were never paid. It is a matter that we cannot just shelve or sweep under the carpet.

I was also disturbed when the legal counsel reiterated that this issue cannot be elevated to a Constitutional issue. A legal expert who is supposed to advise on legal matter, comes and finds a matter like this and says it is cannot be elevated to a Constitutional issue.

Mr. Speaker it is a scandal that has been running in this county since 2018 in the ministry of LIHUD. It involves women and youth. They came to us and confirmed yes we worked and we have never been paid. We have an attachment here for payment schedules to the contractors. We have evidence of the witnesses. They said they have never seen a contractor. We have the letter from the CECM saying that it is the village administrators who were recruiting the bush clearers. We have all that Mr. Speaker. So it is a scandal and it is sad. Those who received the pay are contractors and here we have a schedule and the witnesses said they have never seen a contractor.

So we say the minister failed to provide the linkage, it was good to do the work and he says in his own letter that it was a county resolution to empower the youth. Very good resolutions but now it is water under the bridge Mr. Speaker.

Mr. Speaker has the Kitui people become so negligible and so trivial that such a violation, such a misuse is deemed to lack the Constitutional threshold. Mr. Speaker that is tantamount to robbery with violence.

(Applause)

Mr. Speaker paragraph b of that letter in referenced to the same letters says we recruited youth in line with government agenda of empowering the youth. How do you empower someone your, recruit them and you don't pay them? Because empowering in this sense was economic empowerment. But they never received any pay up to date. And you want us to sit here and say these are false allegations that we are accusing the minister of awarding tenders? Then you are losing it. In fact the opposite happened. The resolution should have been the government agenda of misusing the youth and the women in Kitui County.

(Applause)

Mr. Speaker I cannot continue with the motion without quoting the Constitution. It is the mother law and it is what this motion I have here is derived on. The authority in article 73(1) is assigned to a state officer in question the one we are talking about. 2(a) to demonstrate respect for the people. How has he? Because we have saying there is no evidence to show that he violated that chapter six. How has he demonstrated leadership for the people of Kitui? If they are to come up there and take you know those vows, what we are saying here is nothing but the truth...others came carrying babies, small babies crying all over the place and they were only coming to demand for their dues of kshs 350 times 9 days that is three thousand, one hundred and fifty if I am right. Two years down the line Mr. Speaker.

Three of that article says a state officer brings honour to the nation and dignity to his office. In his fiasco, where is the dignity of the minister Mr. Speaker? and four of it says promotes public confidence in the integrity of his office and the dissent is saying he did not quote and it is here in the second sentence, managing his office in a manner that does not promote public confidence in integrity of the office. It is here quoted.

I mean the mover of the motion has a clear mind of where he is going and where we are today. Mr. Speaker you know who are the public? In that accusation the public are those women, youth. That is the public.

Mr. Speaker in the minister's evidence by this committee because we relied on the movers evidence, we relied on the witnesses evidence because this house had been treated that there is no evidence. We also relied on the minister's evidence and he was asked, are you aware that your ministry carried out bush clearing exercise in 2018. He said yes he was aware. But when he was asked whom did you contract to carry out the exercise? He said I have no idea. And yet in one of the letters he says the youth and the women I line with the government resolution to empower. He said that. He was asked were all the person contracted paid? He said, I am not aware. I do not know. Are you aware that the local women and youth were engaged in an actual bush clearing exercise? He said I have no idea and the letters are here where he is responding to the clerk of this assembly.

Did the County Government ever paid those women and youth and were all of them paid? He said I am not aware. And because the one dissenting saying the minister is not in

charge. Listen to what he said. As the head of your ministry, would it be wrong to say that you are entirely responsible for everything that is done in the ministry? He said no. meaning he is entire responsible. He said you can hold me liable but the answers are I don't know.

So Mr. Speaker where is there unfairness in the accusation of integrity and leadership? Where do you see integrity here Mr. Speaker. Everything, did you receive the amended CLIDP program from the County Assembly? He said, I can't remember...

Hon. Speaker: What is exciting you Hon. Katumo?

Hon. Katumo (MCA Kyangwithya West Ward): It is very hot

Hon. Speaker: It is hot for every not for you alone. Stop responding to what Hon. Ndile is saying. I will allow you to comment.

Hon. Ndile: Yes Mr. Speaker you need to protect me, because when he will do his, it is his right. I will listen to it. So he has no option but to listen to my report and it is also good to be a little bit official because if any of us shouted, I can imagine what kind of a house this would be. So Mr. Speaker that is what I can say on the bush clearing. The bush clearing has been treated to be a very petty matter. I have heard people say so and so you are accusing so and so wrongly and we are going to court. Do you know it is a Constitutional right for every Kenyan to go to court? If you go to labor court, it is your right but Mr. Speaker are you telling me those labourers are not also entitled to be listened to be listened into the labour court? Aren't they labourers who work and today they are disadvantaged? So aren't they the first one? Aren't they supposed to be the first ones in the labour court against violations?

On page 33, the dissent is saying further the CECM LIHUD in the letter dated 31st January explains that the ministry, allover a sudden now the CECM can explain. But when it is the function of the executive committee member, he becomes not part of that committee but the entire cabinet, but when it comes here now when it is favoring him, he is answering, the CECM explains that the ministry was in the process of developing a policy to manage street trade hawking together with the transport policy to regulate bodaboda operations. Now the minster is in charge, but when he is violating the Constitution, it is for the entire cabinet and the committee should summon the entire cabinet here. It has never happened Mr. Speaker. There is no one time we ever summoned a entire committee to come respond to some concerns within a committee unless the committees I have sat in have not understood well who they should summon. Mr. Speaker I call that a contradiction and because I thought according to that direction, it is the entire the cabinet who should have now be doing a policy.

Mr. Speaker I will move to the next which of course part b, the CLIDP is domiciled in the governor's office. So it is good for the mover to understand that we found that allegation misplaced.

On accusation number two on motion on county importance. Mr. Speaker here again we have been told about legislation, about resolutions. You know Mr. Speaker it beats purpose. Because that was the same view that was presented to this committee by the legal committee that we cannot adopt the resolutions and we cannot question a minister based on failing to implement a County Assembly resolution. Then Mr. Speaker what are we doing here if we cannot enforce? Number two and three because it is failure to implement, implementation of the motion and then the other implementation by Hon. Thuvi, that this assembly has got no teeth to bite. Once you

make a resolution, you send it to the minister whether he implements or not as long as it is a resolution, you cannot follow up. So here we come, we do motions, we make resolution. So what is the house? What are we coming here to do if that is anything to by? And it is there in the dissenting view that the committee is using legislation and resolutions interchangeably.

For us as a house, we come here and we make resolutions and those resolutions have to be followed, implemented and we have the implementation committee that now after it leaves us, it is up to them to check the implementation. So why do we have all these process if resolutions for the house cannot be questioned or followed up? That is quite interesting.

Mr. Speaker on my same question part (d), failing to provide the County Assembly with full and regular reports. Article 183 (3) it says that the minister and he is here shall provide the County Assembly with full and regular reports on matters relating to county and when cross examined by the committee the minister said I can only do that, it is on hansard when I am requested. But the Constitution says you shall provide the reports, otherwise then what is the link between the minister and the assembly if you cannot provide?

Then of course part (e) on the violation of the County procurement because we took a stand, he is not being accused of procuring. So it is good to remain by that stand and defend it. So the part (e) we also found it misplaced because he is not doing tendering.

(Hon. Kanandu stood on a point of order)

Hon. Speaker: Yes Hon. Kanandu

Hon. Kanandu (MCA Mumoni Ward): Mr. Speaker I am rising in respect to Standing Orders number 27 inviting you to interrupt the business because of the time. It is approaching 12:30 pm Mr. Speaker.

Hon. Speaker: Yes Hon. Kanandu I am aware and thank you for reminding me.

Hon. Kanandu (MCA Mumoni Ward): Thank you.

Hon. Speaker: Continue, Hon. Ndile

Hon. Ndile: Mr. Speaker I will jump to number three...

Hon. Speaker: Before you start a new point because we have only three or five minutes to go and then you leave it in between, you better stop there so that you continue in the afternoon from your next point. Can we adjourn the House.

ADJOURNMENT

Hon. Members this house now stands adjourned until this afternoon at 2:30 pm

The County Assembly rose at 12.23 pm