

COUNTY ASSEMBLY OF KITUI

THIRD ASSEMBLY - (SECOND SESSION)

PAPER LAID

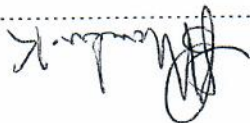
(Designated Member, Committee on Powers and Privileges)

Mr. Speaker sir,

THAT, pursuant to the provisions of Section 15(6) of the Powers and Privileges Act, 2014 as read together with Standing order 179(6), I beg to lay the following Paper on the Table of the County Assembly today, Tuesday, 18th July, 2023.

The Report by the Committee on Powers and Privileges on Inquiry into the Alleged Breach of Privilege and Unethical Conduct of Hon. Sammy Musili Munyiya (Member of County Assembly for Kivou Ward).

(Hon. Boniface Maundu Katumbi- M.C.A)

.....
Sign 

.....
Date 17/7/23

~~.....~~
Clear
Approved

12/7/2023

Mr. Speaker
You may
approve
&
17/7/2023

COUNTY ASSEMBLY OF KITUI



OFFICE OF THE CLERK

Clerk's Office,
Kitui County Assembly,
P.O. BOX 694 - 90200.

Tel: (044)22914
Email: kituiassembly@gmail.com
Website: kituiassembly.go.ke

INTERNAL MEMO

I A/Clerk
forwarded for your
direction
17/07/23

TO: THE CLERK OF ASSEMBLY
THRO: PRINCIPAL CLERK ASSISTANT
FROM: CLERK ASSISTANT (Serving the Committee on Powers and Privileges)

REF: CAK/9/13/92

DATE: 17TH JULY, 2023

SUBJECT: THE COMMITTEE ON POWERS AND PRIVILEGES REPORT ON
INQUIRY INTO THE ALLEGED BREACH OF PRIVILEGE AND UNETHICAL
CONDUCT OF HON. SAMMY MUSILI MUNYITHYA (MEMBER OF
COUNTY ASSEMBLY FOR KIVOU WARD).

The above subject matter refers:

The Committee on Powers and Privileges held a total of six sittings, taking place on 10th and 18th, May, 15th June, and 6th to 8th July, 2023 to inquire into the alleged breach of privilege and unethical conduct of Hon. Sammy Musili Munyithya (Member of County Assembly for Kivou Ward). During these sittings, the Committee established the scope of work in an initial meeting and received submissions from the following witnesses: Ms. Grace Musombo, Hon. Kyalo Kimuli, Hon. Aron Kilonzi Kasele, Hon. Benard Mwangangi Munyasya, Hon. Sammy Musili Munyithya, Hon. Mary Ndumbu and Hon. Priscilla Martha Makumi.

Upon conclusion of the inquiry, the Committee made the following observations:
1. Hon. Sammy Musili Munyithya interfered with and obstructed a Member of staff while in the execution of her duties by forcibly grabbing a Committee file and fleeing with it outside the Assembly precincts. His actions were contrary to section 16(b) and 26(1)(b) of the County Assemblies Powers and Privileges Act (CAPPA), 2017;

Clerk
Approved
17/7/2023

Mr. Speaker
your report needs approval for tabling
17/7/2023

2. Hon. Sammy Musilli Muniyithya conducted himself in a manner which in the opinion of the Committee is contrary to section 16 (e) of the CAPPA, 2017 which prohibits Members from conducting themselves in a manner likely to reflect adversely on the dignity or integrity of the County Assembly. He confronted a Member of Staff and subsequently forcibly grabbed a Committee file from her and fled with it outside the Assembly precincts.
 3. Article 75(1) of the Constitution of Kenya, 2010 requires state officers to behave, whether in public or private life, or in association with other persons, in a manner that avoids demeaning the Office the Office holder holds. Therefore, his act of forcibly grabbing a Committee file and running away with it is contrary to the aforementioned Article of the Constitution:
 4. Standing Order 219 (1) inter alia states that the 'Clerk of the Assembly is the custodian of Journals and Records, whether audio, electronic or any other form, including all papers and accounts belonging to the County Assembly'. Therefore, Hon. Sammy Musilli Muniyithya acted contrary to this Standing Order by forcibly grabbing and fleeing with a Committee file outside the Assembly precincts.
 5. His dishonorable conduct therefore called for sanctions or other appropriate penalties for breach of privilege and unethical conduct under section 17 of the CAPPA, 2017.
- Informing by the above findings and observations, the Committee made several recommendations in the report attached that upon its adoption, the House: -
1. Pursuant to section 17(3)(g) of CAPPA, 2017, **SUSPENDS** Hon. Sammy Musilli Muniyithya for sixteen (16) plenary sittings for interfering with and obstructing a Member of staff while in the execution of her duties, contrary to section 26(1)(b) of the CAPPA, 2017;
 2. In line with section 17(6) of CAPPA, 2017, **BARS** Hon. Sammy Musilli Muniyithya from entering the precincts of the County Assembly during the period of the suspension for whatever purpose or participating in any activity of the County Assembly or a Committee of a County Assembly without a written permission of the Speaker;
 3. Pursuant to Section 17(3) (c) of CAPPA, 2017, **ORDERS** Hon. Sammy Musilli Muniyithya to apologize to the County Assembly after lapse of the suspension period for:

- i. Interfering with and obstructing a Member of staff while in execution of her duties.
- ii. Adversely undermining the dignity and integrity of the County Assembly and its Members.

4. Failure to apologize will amount to contempt and breach of privilege under section 16 (c) of CAPPA, 2017. The Section provides that A Member will be in breach of privilege if he/she willfully fails or refuses to obey any rule, order or resolution of a County Assembly.

Forwarded herewith, please find the aforesaid report. Kindly facilitate its approval for tabling.



Chris Mwangangi
Clerk Assistant II
COUNTY ASSEMBLY OF KITUI.



COUNTY ASSEMBLY OF KITUI



OFFICE OF THE CLERK

Clerk's Office,
Kitui County Assembly,
P.O. BOX 694 - 90200.

Tel: (044)22914
Email: kituiassembly@gmail.com
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INTERNAL MEMO

TO: THE CLERK OF ASSEMBLY

THRO: PRINCIPAL CLERK ASSISTANT

FROM: CLERK ASSISTANT (Serving the Committee on Powers and Privileges)

REF: CAK/9/13/92

DATE: 17TH JULY, 2023

SUBJECT: THE COMMITTEE ON POWERS AND PRIVILEGES REPORT ON CONDUCT OF HON. SAMMY MUSILI MUNYITHYA (MEMBER OF COUNTY ASSEMBLY FOR KIVOU WARD).

The above subject matter refers:

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Upon conclusion of the inquiry, the Committee made the following observations:

1. Hon. Sammy Musili Munyithya interfered with and obstructed a Member of staff while in the execution of her duties by forcibly grabbing a Committee file and fleeing with it outside the Assembly precincts. His actions were contrary to section 16(b) and 26(1)(b) of the County Assemblies Powers and Privileges Act (CAPPA), 2017:

*Mr. Speaker
This report needs
your approval
for tabling
17/07/23*

*forwarded for your
direction
17/07/23*

I A/Clerk

2. Hon. Sammy Musili Munyithya conducted himself in a manner which in the opinion of the Committee is contrary to section 16 (e) of the CAPPA, 2017 which prohibits Members from conducting themselves in a manner likely to reflect adversely on the dignity or integrity of the County Assembly. He confronted a Member of Staff and subsequently forcibly grabbed a Committee file from her and fled with it outside the Assembly precincts;

3. Article 75(1) of the Constitution of Kenya, 2010 requires state officers to behave, whether in public or private life, or in association with other persons, in a manner that avoids demeaning the Office the Office holder holds. Therefore, his act of forcibly grabbing a Committee file and running away with it is contrary to the aforementioned Article of the Constitution;

4. Standing Order 219 (1) inter alia states that the 'Clerk of the Assembly is the custodian of Journals and Records, whether audio, electronic or any other form, including all papers and accounts belonging to the County Assembly'. Therefore, Hon. Sammy Musili Munyithya acted contrary to this Standing Order by forcibly grabbing and fleeing with a Committee file outside the Assembly precincts.

5. His dishonorable conduct therefore called for sanctions or other appropriate penalties for breach of privilege and unethical conduct under section 17 of the CAPPA, 2017.

Informed by the above findings and observations, the Committee made several recommendations in the report attached that upon its adoption, the House: -

1. Pursuant to section 17(3)(g) of CAPPA, 2017, **SUSPENDS** Hon. Sammy Musili Munyithya for sixteen (16) plenary sittings for interfering with and obstructing a Member of staff while in the execution of her duties, contrary to section 26(1)(b) of the CAPPA, 2017;

2. In line with section 17(6) of CAPPA, 2017, **BARS** Hon. Sammy Musili Munyithya from entering the precincts of the County Assembly during the period of the suspension for whatever purpose or participating in any activity of the County Assembly or a Committee of a County Assembly without a written permission of the Speaker;

3. Pursuant to Section 17(3) (c) of CAPPA, 2017, **ORDERS** Hon. Sammy Musili Munyithya to apologize to the County Assembly after lapse of the suspension period for;

- i. Interfering with and obstructing a Member of staff while in execution of her duties.
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Forwarded herewith, please find the aforesaid report. Kindly facilitate its approval for tabling.



Chris Mwangangi
Clerk Assistant II

COUNTY ASSEMBLY OF KITUI.



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JULY, 2023

KITUI.

COUNTY ASSEMBLY BUILDINGS,
CLERK'S CHAMBERS

REPORT ON INQUIRY INTO THE ALLEGED BREACH OF PRIVILEGE
AND UNETHICAL CONDUCT OF HON. SAMMY MUSILI
MUNYITHYA (MEMBER OF COUNTY ASSEMBLY FOR KIVOU
WARD)
COMMITTEE ON POWERS AND PRIVILEGES

THIRD ASSEMBLY – (SECOND SESSION)

THE COUNTY ASSEMBLY



COUNTY GOVERNMENT OF KITUI

EXECUTIVE SUMMARY

This report contains the findings and recommendations of the Committee on Powers and Privileges regarding an inquiry into the alleged breach of privilege and unethical conduct by Hon. Sammy Musili Munyithya, the Member of County Assembly (MCA) for Kivou Ward.

It is alleged that Hon. Sammy Musili Munyithya, the Chairperson Committee on Lands, Infrastructure, and Urban Development, on the evening of Wednesday, 12th April, 2023, after a meeting of the Committee within the Assembly premises confronted Ms. Grace Musombo, the Committee Clerk. He questioned the Clerk as to why he being the Committee Chairperson had not been informed about the meeting. He then forcibly grabbed a Committee file from her and fled with it, using a vehicle belonging to Hon. Priscilla Martha Makumi.

According to Section 16(5) of the County Assemblies Powers and Privileges Act (CAPPA), 2017, the Committee on Powers and Privileges is required to inquire into the conduct of a Member upon receiving a complaint or of its own motion. This inquiry must be completed within fourteen days of receiving the complaint. However, the Committee could not meet this statutory timeline and therefore requested for an extension of the inquiry period which request was granted by the House.

The Committee held a total of six sittings, taking place on 10th and 18th, May, 15th June, and 6th to 8th July, 2023, in order to inquire into the alleged breach of privilege and unethical conduct. During these sittings, the Committee established the scope of work in an initial meeting and received submissions from the following witnesses: Ms. Grace Musombo, Hon. Kyalo Kimuli, Hon. Aron Kilonzi Kasele, Hon. Benard Mwangangi Munyasya, Hon. Sammy Musili Munyithya, Hon. Mary Ndumbu and Hon. Priscilla Martha Makumi.

During the inquiry, the Committee adhered to the principles of natural justice and procedural fairness. Hon. Sammy Musili Munyithya was provided with a clear and prompt statement detailing the specific allegations against him and was given an opportunity to present his case in person.

Based on the witnesses' submissions, the Committee identified the following key facts:

- i. A meeting of the Committee on Lands, Infrastructure, and Urban Development took place on the evening of 12th April, 2023, with the aim of passing a vote of no confidence in the Chairperson, Hon. Sammy Musili Munyithya.

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1. Pursuant to section 17(3)(g) of CAPP, 2017, **SUSPENDS** Hon. Sammy Musili Munyithya for sixteen (16) plenary sittings for interfering with and obstructing a Member of staff while in the execution of her duties, contrary to section 26(1)(b) of the CAPP, 2017;

In consideration of the above observations and findings, the Committee made the following recommendations, that upon adoption of this report by the House -

- v. His dishonorable conduct therefore called for sanctions or other appropriate penalties for breach of privilege and unethical conduct under section 17 of the CAPP, 2017.
- iv. Standing Order (S.O.) 219 (1) inter alia states that the 'Clerk of the Assembly is the custodian of Journals and Records, whether audio, electronic or any other form, including all papers and accounts belonging to the County Assembly'. Therefore, Hon. Sammy Musili Munyithya acted contrary to this Standing Order by forcibly grabbing and fleeing with a Committee file outside the Assembly precincts.
- iii. Article 75(1) of the Constitution of Kenya, 2010 requires state officers to behave, whether in public or private life, or in association with other persons, in a manner that avoids demeaning the Office the Office holder holds. Therefore, his act of forcibly grabbing a Committee file and running away with it is contrary to the aforementioned Article of the Constitution;
- ii. Hon. Sammy Musili Munyithya conducted himself in a manner which in the opinion of the Committee is contrary to section 16 (e) of the CAPP, 2017 which prohibits Members from conducting themselves in a manner likely to reflect adversely on the dignity or integrity of the County Assembly. He confronted a Member of staff and subsequently forcibly grabbed a Committee file from her and fled with it outside the Assembly precincts;

Upon conclusion of the inquiry, the Committee made the following observations:

- ii. After the said meeting, Hon. Sammy Musili Munyithya made his way into the Assembly precincts and forcibly grabbed a Committee file from the Committee Clerk, Ms. Grace Musombo.
- iii. The Honorable Member fled with the Committee file using a vehicle belonging to Hon. Priscilla Martha Makumi.

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2. In line with section 17(6) of CAPPA, 2017, **BARS** Hon. Sammy Musili Munyiha from entering the precincts of the County Assembly during the period of the suspension for whatever purpose or participating in any activity of the County Assembly or a Committee of a County Assembly without a written permission of the Speaker:
3. Pursuant to Section 17(3) (c) of CAPPA, 2017, **ORDERS** Hon. Sammy Musili Munyiha to apologize to the County Assembly after lapse of the suspension period for:
 - i. Interfering with and obstructing a Member of staff while in execution of her duties.
 - ii. Adversely undermining the dignity and integrity of the County Assembly and its Members.
4. Failure to apologize will amount to contempt and breach of privilege under section 16 (c) of CAPPA, 2017. The Section provides that A Member will be in breach of privilege if he/she willfully fails or refuses to obey any rule, order or resolution of a County Assembly.

ABBREVIATIONS

- CAPPA** County Assemblies Powers and Privileges Act
- MCA** Member of County Assembly
- S.O.** Standing Order

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- ANNEX I - Members signed list adopting the report
- ANNEX II - Memo dated 13th April, 2023 stating occurrences during the meeting of the Committee on Lands, Infrastructure and Urban Development on 12th April, 2023.
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1.0 PREFACE

1.1 Establishment of the Committee on Powers and Privileges

The County Assembly Committee on Powers and Privileges is established under Section 15(1)(a) of the CAPPA, 2017 as read together with Standing Order (S.O.) 152B of the Kitui County Assembly Standing Orders.

1.2 Membership of the Committee on Powers and Privileges

The Committee consists of nine Members, being the Speaker as the Chairperson and eight other Members of the Assembly and is currently comprised of the following Members –

- | | |
|------------------|----------------------------------|
| Chairperson | 1. Hon. Kevin Kinengo Katsiya |
| Vice-Chairperson | 2. Hon. Munira Mohammed |
| Member | 3. Hon. Christopher Nzilu Nzioka |
| “ | 4. Hon. Boniface Maundu Katumbi |
| “ | 5. Hon. Zachaeus Ivutha Syengo |
| “ | 6. Hon. Joseph Kavula Kasungi |
| “ | 7. Hon. Joseph Musyoka Mbite |
| “ | 8. Hon. Elizabeth Ndunge Peter |
| “ | 9. Hon. Ciambutra Karigi |

1.3 Mandate of the Committee

The Committee on Powers and Privileges draws its mandate from the Constitution, the CAPPA, 2017, the Public Officers Ethics Act, 2003, the Leadership and Integrity Act, 2012, and the Kitui County Assembly Standing Orders which assign to the Committee various functions including the following:

i. Inquiring into the conduct of a Member whose conduct is alleged to constitute breach of privilege

Section 15(4)(a) of the CAPPA, 2017 mandates the Committee to inquire into the conduct of a Member whose conduct is alleged to constitute breach of

privilege in terms of section 16 of the Act. A Member may be found to be in breach of privilege under section 16 if he/she: -

- a) contravenes sections 25, 26(1), 27 or 29;
- b) commits an act mentioned in section 28(1)(a), (b) or (2) and (3)(d), (e), (f) or (g);

c) willfully fails or refuses to obey any rule, order or resolution of a County Assembly;

d) contravenes any provision of the Speaker's orders issued under section 40 of this Act; or

e) conducts himself or herself in a manner which, in the opinion of the committee on powers and privileges, is intended, or is likely to reflect adversely on the dignity or integrity of a County Assembly, or of the Members or to be contrary to the best interest of a County Assembly or its Members.

The Committee may inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege either of its own motion or as a result of a complaint made by any person.

Upon conclusion of the inquiry, the Committee may recommend any or all the sanctions under Section 17 of the Act.

ii. Failure to attend sittings

Article 194(1) (b) of the Constitution of Kenya, 2010 as read together with S.O. 229 mandates the Committee to inquire into incidences of alleged absenteeism (eight sittings) from the Assembly without permission, in writing from the Speaker and is unable to offer satisfactory explanation for the absence.

iii. Enforcement of the Rules Governing the conduct of Members of County Assembly

Article 75 of the Constitution assigns the Committee the role to exercise penal

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forwarded to the Committee on Powers and Privileges for consideration. by Ms. Grace Musombo. Upon receipt of the said memo, the same was CAK/ADM/15/VOL.V(69) dated 13th April, 2023 to the office of the Clerk The same was put in writing via a memo referenced grabbed a Committee file and fled with it.

the Committee on Lands, Infrastructure and Urban Development and forcibly He alleged that Hon. Sammy Musilli Munyithya confronted the Clerk serving breach of privilege and unethical conduct of Hon. Sammy Musilli Munyithya. On 12th April, 2023 during the Speaker's luncheon at Parkside Villa Hotel- Kitui, Hon. Bernard Mwangangi Munyasya raised the matter on the alleged

Committee.

1.4 Referral of the Matter of Hon. Sammy Musilli Munyithya to the

contempt. orders or resolutions of the County Assembly and or Committees constitutes Standing Orders 103 and 103A, any willful failure or refusal to obey rules, As stipulated in Section 16 (c) of the CAPPA, 2017, as read together with

iv. Contempt

contravened the Code of Conduct and Ethics. officer may investigate to determine whether the public officer has Ethics. Section 35(1) provides that the responsible Commission for a public of investigating and enforcing compliance with the Code of Conduct and The Public Officer Ethics Act, 2003 also assigns to the Committee the function

paragraph (a), be dismissed or otherwise removed from office.

(b) may, in accordance with the disciplinary procedure referred to in

relevant office; and

(a) shall be subject to the applicable disciplinary procedure for the

(2) A person who contravenes clause (1), or Article 76, 77 or 78 (2) –

It states –

authority over contravention of the Leadership and Integrity Code.

2.0 COMMITTEE PROCEEDINGS

The Committee held a total of six (6) sittings to deliberate on the matter, gather and consider evidence. During a meeting held in the Assembly boardroom on Wednesday, 10th May, 2023 the Committee deliberated on the matter and resolved to conduct an inquiry in order to establish whether the alleged conduct constitutes a breach of privilege and unethical conduct. It was resolved that the following witnesses be invited to appear before the Committee to make submissions on the matter at hand.

i. Ms. Grace Musombo,

ii. Hon. Kyalo Kimuli,

iii. Hon. Benard Mwangangi Munyasya

iv. Hon. Aron Kasele

v. Hon. Sammy Musili Munyithya.

The Committee held a second sitting on 18th May, 2023, and received submissions from the aforementioned. During the oral submissions, Members noted that Hon. Mary Ndumbu and Hon. Priscilla Martha Makumi were repeatedly mentioned by the witnesses and therefore resolved to invite them in the next meeting to clarify on the incidence under inquiry and to provide more information on what had transpired.

During the third sitting on 15th June, 2023, Hon. Mary Ndumbu appeared before the Committee and gave her oral submissions. Hon. Priscilla Martha Makumi excused herself and gave her submissions on phone as she was unwell. Members noted that the honorable Member was willing to appear before the Committee but she could not make it due to health reasons.

Timelines for consideration of the matter lapsed on 8th June, 2023. However, in line with S.O.179A, the Committee sought leave of the Assembly to extend the period for consideration of the matter by sixty (60) days and the House granted the extension.

The Committee retreated to Nairobi as from 6th to 8th July, 2023 to evaluate the submissions made, and compile this report on her findings and recommendations to the House for consideration and adoption.

The Hansard of the Committee proceedings in both audio and verbatim reports are preserved by the Clerk of the County Assembly in accordance with S.O. 219 (1).



ACKNOWLEDGEMENT

I take this opportunity to thank all the Members of the Committee for their immense contribution to the inquiry that culminated to this Report. The Committee wishes to also thank the Offices of the Speaker and the Clerk of the County Assembly for the necessary support extended to it in the execution of its mandate.

The Committee also thanks all parties who honoured invitations to appear before the Committee to give their submissions which have greatly guided the Committee in undertaking this inquiry.

Finally, the Committee further wishes to record its appreciation for the services rendered by the staff of the County Assembly that enabled the production of this Report.

On behalf of the Committee on Powers and Privileges, I have the honour and pleasure to present this Report to the Assembly for adoption.



Hon. Kevin Kinengo Katisya

Speaker/Chairperson of the Committee on Powers and Privileges
COUNTY ASSEMBLY OF KITUI.

Committee Secretariat

The Committee's operations were facilitated by a Secretariat comprising of the following officers: -

1. Mercy Mbinya
2. Chris Mwangangi
3. Esther Mwele
4. David Manzi

3.0 PROCEDURE FOR CONDUCTING AN INQUIRY, APPLICABLE LAWS AND TABLING A REPORT.

3.1 Procedure for Conducting an Inquiry

The manner of conducting an inquiry and tabling a report of the Committee on Powers and Privileges is anchored in Section 15 of the CAPPA, 2017.

Section 15(5) provides that:

"The Committee of powers and privileges shall, either of its own motion or as a result of a complaint made by any person, inquire into the conduct of a Member whose conduct is alleged to constitute a breach of privilege in terms of section 16, within fourteen days of receipt of a complaint."

Section 15(6) of the Act provides further that, *"The Committee of powers and privileges shall, within fourteen days of the conclusion of an inquiry, table its findings in the relevant County Assembly together with such recommendations as it considers appropriate."*

Section 15(7) provides that:

"Each county Assembly shall, in accordance with its standing orders, consider the report and the recommendations thereon and may take such action against the Member concerned as may be appropriate."

3.2 Applicable Provisions of the Law on the Alleged Unethical Conduct of Members of County Assembly

3.2.1 The Constitution of Kenya, 2010

Article 73(1) (iii) of the Constitution bestows upon State Officers the responsibilities of leadership and requires authority assigned to a State officer to bring honour to the Nation and dignity to the office.

Further, Article 75(1) (c) of the Constitution provides that *"A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids demeaning the office the officer*

holds." Further, Articles 75(2) and 194(1) of the Constitution details sanctions for contravention of Article 75(1) of the Constitution.

3.2.2 The Leadership and Integrity Act, 2012

This law was enacted pursuant to Article 80 of the Constitution to give effect to the provisions of Chapter Six of the Constitution on Leadership and Integrity. Section 11(b) of the Act requires a State Officer to "treat Members of the public and other public officers with courtesy and respect;"

Section 41(1) provides that, "Subject to subsection (2), a breach of the Code amounts to misconduct for which the State officer may be subjected to disciplinary proceedings"

3.2.3 The County Assemblies Powers and Privileges Act, 2017

Section 16(a) of the CAPPA, 2017 provides that, "The Committee of Powers and Privileges may find a Member to be in breach of privilege if the Member contravenes sections 25, 26(1), 27 or 29;"

Section 15, 16 and 17 of the Act vests in the Committee on Powers and Privileges the authority to inquire into, report on and to recommend penalties for breach of privileges.

Further, Section 26(1)(b) of the Act provides that; A person shall not-
(a) assault, threaten, use abusive language, interfere with, molest, resist or obstruct any Member of staff while in the execution of his or her duty.

Section 16 (e) envisages that a Member may be found in breach of privilege if the Member— conducts himself or herself in a manner which, in the opinion of the Committee on Powers and Privileges, is intended, or is likely to reflect adversely on the dignity or integrity of a County Assembly, or of the Members or to be contrary to the best interests of a County Assembly or its Members.

4.0 EVIDENCE

The Committee received oral submissions from the following witnesses –

1. Ms. Grace Musombo;
2. Hon. Kyalo Kimuli;
3. Hon. Aron Kilonzi Kasele;
4. Hon. Benard Mwangangi Munyasya;
5. Hon. Sammy Musili Munyithya;
6. Hon. Mary Ndumbu; and
7. Hon. Priscilla Martha Makumi.

4.1. Ms. Grace Musombo

On Thursday, 18th May, 2023, Ms. Grace Musombo appeared before the Committee and submitted that –

1. Indeed, on the evening of 12th April, 2023 she was assaulted by Hon. Sammy Musili Munyithya while from a meeting of the Committee on Lands, Infrastructure and Urban Development;

2. The alleged confrontation occurred immediately after the Committee meeting as she was heading towards her office to store the committee files. Hon. Sammy Musili Munyithya allegedly approached her while shouting and asking why the Committee had held a meeting without his knowledge as the Committee Chairperson;

3. Before she could respond, Hon. Sammy forcibly grabbed a Committee file from her hands to a point of her sustaining minor soft tissue injuries on the right hand and fled with it using Hon. Priscilla Martha Makumi's vehicle;
4. She reported the matter to the Principal Clerk Assistant who instructed her to proceed to Parkside Villa Hotel - Kitui for the Speaker's luncheon and promised to take up the matter with the Clerk of Assembly;
5. While at Parkside Villa Hotel, Hon. Sammy repeatedly called her to pick the file which he personally brought to the said hotel;

6. He tendered his unreserved apology to her for his conduct and stated that he will never act in such a manner.

4.2. Hon. Benard Mwangangi Munyasya

The MCA for Mwingi Central ward appeared on Thursday, 18th May, 2023 and submitted to the Committee that –

1. He indeed witnessed Hon. Sammy Musili Munyithya confronting the Member of staff, one Ms. Grace Musombo on the evening of 12th April, 2023 immediately after the Committee on Lands, Infrastructure and Urban Development meeting which was held within the Assembly precincts:

2. The said meeting was convened by Hon. Aron Kilonzi Kasale and the main agenda was to pass a resolution of vote of no confidence in the Chairperson, one Hon. Sammy Musili Munyithya:

3. The meeting concluded well and the Committee Clerk left for her office for custody of the files leaving him standing outside the Committee room together with Hon. Aron Kasale and Hon. Kyalo Kimuli. At that point, he saw Hon. Sammy Musili Munyithya coming towards them:

4. He tried to trigger a verbal exchange between him and the other two Members but they never responded resulting in him walking towards the direction where the Committee Clerk was heading:

5. In a short while they heard a loud cry from the Committee Clerk and as they were approaching the direction where the voice was coming from, they met Hon. Sammy heading to the parking lot with a Committee file; 6. That they tried to plead with him to return the file but he refused and entered Hon. Priscilla Makumi's vehicle and sped off.

4.3 Hon. Kyalo Kimuli

The MCA for Kanziko ward appeared on Thursday, 18th May, 2023 and submitted to the Committee that –

1. He indeed witnessed Hon. Sammy Musili Munyiithya confronting the Member of staff, one Ms. Grace Musombo on the evening of 12th April, 2023;

2. The alleged confrontation occurred on 12th April, 2023 immediately after the Committee on Lands, Infrastructure and Urban Development meeting which was held within the Assembly precincts;

3. The said meeting was convened by Hon. Aron Kilonzi Kasale and the main agenda was to pass a resolution of vote of no confidence in the Chairperson, one Hon. Sammy Musili Munyiithya;

4. All went well in the meeting until when the committee clerk was taking back the files to her office;

5. He was standing outside the Committee room together with Hon. Bernard Mwangangi Munyasya and Hon. Aron Kilonzi Kasale when they heard a voice of a lady crying coming from the direction of the Committee Clerk's office;

6. They rushed to find out what was happening and, on their way, came across Hon. Sammy Musili Munyiithya heading to the parking lot while carrying a Committee file;

7. They tried to plead with him to return the file but he refused and either entered Hon. Mary Ndumbu's or Hon. Priscilla Makumi's vehicle and sped off;

8. They went back towards the Committee Clerk's office and found her crying. She informed them that Hon. Sammy had forcibly grabbed the file from her causing her to sustain soft tissue injuries on her right hand.

4.4 Hon. Aron Kilonzi Kasale

The MCA for Mutito/Kaliku Ward appeared on Tuesday, 18th May, 2023 and submitted to the Committee that –

1. He indeed witnessed Hon. Sammy Munyi confronting the Member of staff, one Ms. Grace Musombo on the evening of 12th April, 2023; 2. The alleged confrontation occurred on 12th April, 2023 immediately after the Committee on Lands, Infrastructure and Urban Development meeting which was held within the Assembly precincts; 3. He is the one who convened the meeting of which the agenda was to pass a resolution of vote of no confidence in the Chairperson, one Hon. Sammy Musili Munyi; 4. The Chairperson has not been committed to lead the Committee in actualizing her mandate thereby creating a bad rapport between himself and the Members; 5. The meeting ended well and as he was having a discussion with Hon. Bernard Mwangangi Munyasya and Hon. Kyalo Kimuli outside the Committee room, Hon. Sammy Musili Munyi approached them and tried to confront them but they never responded; 6. He left them and walked towards the direction of the Committee Clerk and in a short while they heard a lady crying; 7. They rushed there to check on what was happening but, on the way, they saw Hon. Sammy Musili Munyi walking away towards the parking lot while carrying a committee file; 8. They tried to plead with him to return the file but he refused and entered Hon. Priscilla Makumi's vehicle and sped off; 9. It was wrong for Hon. Sammy to forcibly grab a Committee file from the Committee Clerk to a point of hurting her on the right hand.
- 4.5 Hon. Sammy Musili Munyi
- On Thursday, 18th May, 2023, the MCA for Kivou Ward appeared before the Committee and submitted that -

that-
The MCA appeared before the Committee on 15th June, 2023 and submitted

4.6 Hon. Mary Ndumbu

1. On the evening of 12th April, 2023 at about 5:00pm, he came back to the Assembly precincts to look for his car keys which he had misplaced;
2. On arrival he saw Ms. Grace Musombo; the Clerk serving Lands, Infrastructure and Urban Development Committee with some of the Committee Members, Hon. Bernard Munyasya, Hon. Kyalo Kimuli and Hon. Aron Kilonzi Kasale coming out of one of the Committee rooms;
3. He approached Ms. Grace Musombo and asked her why she had convened a Committee meeting without his knowledge as the Committee Chairperson;
4. The Committee Clerk informed him that she did not have an answer as the meeting seemed political and she did not want to involve herself in politics since she is a civil servant;
5. He then requested the Committee clerk to give him the Committee files so that he could confirm what transpired in the meeting;
6. The Committee Clerk voluntarily handed over to him the Committee file for perusal;
7. He stated that there were no wrangles, grudges or any misunderstanding between himself, the Committee Clerk and the committee Members. They are all great friends;
8. He neither assaulted the Committee Clerk nor forcibly took the Committee file from her as alleged;
9. He applauded the Powers and Privileges Committee for taking up the matter and pleaded that they act fairly and justly.

1. She was standing outside her car at the Assembly parking when she suddenly saw Hon. Bernard Mwangangi Munyasya, Hon. Aron Kilonzi Kasale and Hon. Kyalo Kimuli running after Hon. Sammy Musili Munyithya while attempting to grab a file from him;
 2. When they arrived where she was, she asked them what the problem was since it appeared that they were about to fight;
 3. Hon. Sammy stated that the Lands, Infrastructure and Urban Development Committee had held a meeting without his knowledge.
 4. She told them they are Honourable Members and that is not the conduct expected of them;
 5. She did not witness Hon. Sammy grabbing the file from the Committee Clerk, neither did she see the Committee Clerk;
 6. She never went anywhere with Hon. Sammy after the altercation and he never attempted to enter her vehicle.
- 4.7 Hon. Priscilla Martha Makumi**
- The MCA had been invited to appear before the Committee on 15th June, 2023 but she rendered her apology for non-attendance since she was unwell. She however informed the Committee that she was willing to give her testimony over the phone. She testified on speaker phone that -
1. On the material day at around 4:00 pm while at Kitui Teachers Sacco, she saw a text message from the Committee Clerk informing her of a Lands, Infrastructure and Urban Development Committee meeting to be held that evening. However, she got late and arrived at the Assembly at around 5:00 pm;
 2. Upon arrival, she found a commotion at the parking lot between Hon. Sammy Musili Munyithya, Hon. Bernard Mwangangi Munyasya, Hon. Aron Kilonzi Kasale and Hon. Kyalo Kimuli;

(b) The opportunity to be heard in person. and
 (a) A prompt and clear statement of the precise allegations against him
 – privileges was given –
 Accordingly, and in the interest of fairness, the Member accused of breach of
 Committee applied principles of procedural fairness at all stages.

Honourable Member's conduct was unethical and a breach of privilege, the
 procedural fairness in conducting its inquiry. In determining whether the
 it is pertinent to note that the Committee was guided by principles of

4.8 Procedural Fairness

Members.

9. According to her, there seems to be internal wrangles between the

that Hon. Sammy had grabbed the file from her by force;

8. She did not see Ms. Grace Musombo but later called her and she explained

advised him to return the file to the Committee Clerk;

that the Committee had resolved to remove him as the Chairperson. She

7. Hon. Sammy alighted from the vehicle with the file and he informed her

Assembly of which he did;

file and therefore instructed her driver to immediately drive back to the

6. Shortly thereafter she learnt that Hon. Sammy had left with a Committee

emergency;

drive off which he did upon her authorization since there seemed to be an

5. Hon. Sammy immediately got into her car and instructed her driver to

register but she was informed that there was nothing to sign;

4. She asked them what was going on and requested to sign the attendance

Sammy Musilli Munityhya in an attempt to prevent them from fighting;

Benard Mwangangi Munyasya while Hon. Aron Kilonzi Kasale held Hon.

3. She alighted from her car and saw Hon. Mary Ndumbu holding Hon.

5.0 DISCIPLINARY PROCESS AND SANCTIONS FOR BREACH OF PRIVILEGE AND UNETHICAL CONDUCT.

Section 17(1) of the CAPPA, 2017 provides that -

(1) The County Assembly shall have all the powers necessary for enquiring into and pronouncing upon an act or any matter constituting breach of privilege in terms of Section 16.

Section 41(1) of the Leadership and Integrity Act provides that -

“... a breach of the Code amounts to misconduct for which the State Officer may be subjected to disciplinary proceedings”

Accordingly, the Committee's inquiry was focused on making a determination as to whether the alleged unethical conduct by the Member for Kivou ward did constitute breach of privilege, hence warranting the sanctions prescribed in section 17(3) of the CAPPA, 2017.

Section 17(3) of the CAPPA, 2017 provides that:

(3) Where the County Assembly finds that a Member has committed a breach of privilege, the County Assembly may, in addition to any other penalty to which the Member may be liable under this Act or any other law, impose any or more of the following penalties -

a) a formal warning;

b) a reprimand;

c) an order to apologize to the County Assembly or a Member in a manner to be recommended by the Committee of Powers and Privileges;

d) the withholding, for a specific period of time, of the Member's right to the use or enjoyment of any specified facility provided to Members by the County Assembly;

e) the removal or suspension for a specified period of time of the Member from any County Assembly position occupied by the Member;

f) such fine in terms of the Member's monthly salary and allowances as

Member of staff while in the execution of her duties by forcibly grabbing
i. Hon. Sammy Musili Munyithya interfered with and obstructed a
analyzed the evidence and made the following observations:
Having heard the oral evidence adduced by the witnesses, the Committee

6.0 COMMITTEE OBSERVATIONS AND FINDINGS

The aforementioned provisions formed the basis upon which the Committee
premiered its observations, findings and recommendations.

paragraph (a), be dismissed or otherwise removed from office.

b) may, in accordance with the disciplinary procedure referred to in
office; and

a) shall be subject to the applicable disciplinary procedure for the relevant

75(2) A person who contravenes clause (1), or Article 76, 77 or 78 (2) –

provides as follows –

Article 75(2) (b) of the Constitution referred to in paragraph (h) above

Assembly.

(b) participate in any activity of a county assembly or a committee of a County

(a) enter the precincts for whatever purpose; or

suspension, without the written permission of the speaker -

the precincts of the County Assembly and shall not, during the period of

(6) a member who has been suspended under subsection (3) (g) shall leave

Section 17(6) of the CAPPA, 2017 provides that:

Constitution.

h) vacation of seat pursuant to Articles 75(2)(b) and 194(1)(c) of the

scheduled to meet during that period;

whether or not the County Assembly or any of its committees is

g) the suspension of the Member for such period as the House may decide,

the House may determine;

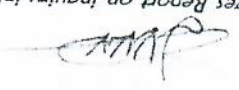
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ii. Hon. Sammy Musili Munyithya conducted himself in a manner which in the opinion of the Committee is contrary to section 16 (e) of the CAPPA, 2017 which prohibits Members from conducting themselves in a manner likely to reflect adversely on the dignity or integrity of the County Assembly. He confronted a Member of Staff and subsequently forcibly grabbed a Committee file from her and fled with it outside the Assembly precincts:

iii. Article 75(1) of the Constitution of Kenya, 2010 requires state officers to behave, whether in public or private life, or in association with other persons, in a manner that avoids demeaning the Office the Office holder holds. Therefore, his act of forcibly grabbing a Committee file and running away with it is contrary to the aforementioned Article of the Constitution:

iv. S.O.219 (1) inter alia states that the 'Clerk of the Assembly is the custodian of Journals and Records, whether audio, electronic or any other form, including all papers and accounts belonging to the County Assembly'; Therefore, Hon. Sammy Musili Munyithya acted contrary to this Standing Order by forcibly grabbing and fleeing with a Committee file outside the Assembly precincts.

v. His dishonorable conduct therefore called for sanctions or other appropriate penalties for breach of privilege and unethical conduct under section 17 of the CAPPA, 2017.



7.0 COMMITTEE RECOMMENDATIONS

In consideration of the above observations and findings, the Committee recommends that upon adoption of this report, the House -

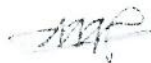
1. Pursuant to section 17(3)(g) of CAPPA, 2017, **SUSPENDS** Hon. Sammy Musilli Munyithya for sixteen (16) plenary sittings for interfering with and obstructing a Member of staff while in the execution of her duties, contrary to section 26(1)(b) of the CAPPA, 2017:

2. In line with section 17(6) of CAPPA, 2017, **BARS** Hon. Sammy Musilli Munyithya from entering the precincts of the County Assembly during the period of the suspension for whatever purpose or participating in any activity of the County Assembly or a Committee of a County Assembly without a written permission of the Speaker:

3. Pursuant to Section 17(3) (c) of CAPPA, 2017, **ORDERS** Hon. Sammy Musilli Munyithya to apologize to the County Assembly after lapse of the suspension period for:

- iii. Interfering with and obstructing a Member of staff while in execution of her duties.
- iv. Adversely undermining the dignity and integrity of the County Assembly and its Members.

4. Failure to apologize will amount to contempt and breach of privilege under section 16 (c) of CAPPA, 2017. The Section provides that A Member will be in breach of privilege if he/she willfully fails or refuses to obey any rule, order or resolution of a County Assembly.




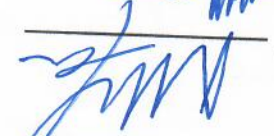
ANNEX I


ADOPTION OF THE REPORT BY THE COMMITTEE ON POWERS AND PRIVILEGES ON INQUIRY INTO THE ALLEGED BREACH OF PRIVILEGE AND UNETHICAL CONDUCT OF HON. SAMMY MUSILI MUNYITHYA (MEMBER OF COUNTY ASSEMBLY FOR KIVOU WARD).


We, the Honourable Members of the Committee on Powers and Privileges do hereby affix our signatures to this report to affirm its accuracy, validity and authenticity: -

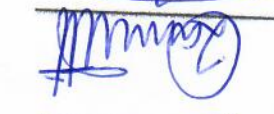
1. Hon. Kevin Kinengo Katsiya
Chairperson
2. Hon. Munira Mohammed
Vice Chairperson
3. Hon. Christopher Nzilu Nzioka
Member
4. Hon. Boniface Maundu Katumbi
"
5. Hon. Zacchaus Ivutha Syengo
"
6. Hon. Joseph Kavula Kasungi
"
7. Hon. Joseph Musyoka Mbite
"
8. Hon. Elizabeth Ndunge Peter
"
9. Hon. Ciambutra Karigi
"










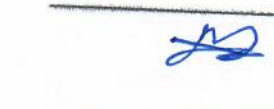














Upon stepping out of the meeting, Hon. Sammy Musili Munyiya arrived and started confrontations with Committee members. As I was trying to calm the situation and establishing what the issue was, the Chairperson Hon. Sammy Musili Munyiya inappropriately manhandled me and forcefully grabbed the Committee's attendance register file from me and ran away with it. I called the principal Clerk Assistant and reported the incidence.

At around 5.30 p.m. the Chairperson called me and enquired where I was so that he could return the attendance register file. However, I had left the assembly precincts to attend the staff meeting at Parkside Hotel. The Chairperson Hon. Sammy Musili Munyiya later brought the file at Parkside villa hotel where I was attending the Speaker's Luncheon.

This is all I have to state.

But

Grace Mbula Musombo.

First Clerk Assistant

COUNTY ASSEMBLY OF KITUI

THIRD ASSEMBLY - (SECOND SESSION)

MINUTES OF THE POWERS AND PRIVILEGES COMMITTEE MEETING HELD ON 8TH JULY, 2023 DURING THE WRITING OF THE REPORT ON THE INQUIRY INTO THE ALLEGED BREACH OF PRIVILEGE AND UNETHICAL CONDUCT OF HON. SAMMY MUNYITHYA - MCA KIVOU WARD.

PRESENT

- 1. Hon. Kevin Kienego Katsiya
- 2. Hon. Munira Mohammed
- 3. Hon. Christopher Nzilu Nzoka
- 4. Hon. Boniface Maundu Katumbi
- 5. Hon. Zachaeus Ivutha Syengo
- 6. Hon. Joseph Kavula Kasungi
- 7. Hon. Joseph Musyoka Mbite
- 8. Hon. Elizabeth Ndunge Peter
- 9. Hon. Ciambura Karigi
- “
- “
- “
- “
- “
- “
- Chairperson
- Vice Chairperson
- Member

IN ATTENDANCE

- 1. Chris Mwangangi
- 2. Mercy Mbinya
- 3. David Manzi
- 4. Esther Mwele
- Procedural Clerk (Taking Minutes)
- Procedural Clerk
- Procedural Clerk
- Procedural Clerk
- Procedural Clerk

AGENDA

- 1. Prayer:
- 2. Communication from the Chair:
- 3. Confirmation of previous minutes:
- 4. Matters arising:
- 5. Report writing exercise on the alleged breach of privilege and unethical conduct by Hon. Sammy Musili Munyithya

PRAYERS

The meeting began at 9:30 A.M with a word of prayer said by Hon. Munira Mohammed.

MIN (PPC) 028/2023: COMMUNICATION FROM THE CHAIR

The Chairperson welcomed members to the meeting and thanked them for their attendance.

MIN (PPC) 029/2023: CONFIRMATION OF PREVIOUS MINUTES

The minutes of the previous meeting held on 6th July, 2023 were read and

confirmed to be a true record of the proceedings upon being proposed and

seconded by Hon. Joseph Musyoka Mbiti and Hon. Joseph Kasungu Kavula

respectively.

MIN (PPC) 030/2023: MATTERS ARISING

There were no matters arising from the previous minutes.

MIN (PPC) 031/2023: REPORT WRITING EXERCISE ON THE ALLEGED

BREACH OF PRIVILEGE AND UNETHICAL CONDUCT BY HON. SAMMY

MUSILI MUNYITHYA.

The clerks serving the committee took the Members through the draft

report. They deliberated on the contents therein and unanimously adopted

the report and approved it for forwarding to the office of the Clerk.

ADJOURNMENT

There being no other business to transact, the meeting was adjourned at

5.00 P.M.

CHRIS MWANGANGI.

FOR: THE CLERK OF ASSEMBLY
COUNTY ASSEMBLY OF KITUI

CONFIRMED:.....

HON. KEVIN KINENGO KATISA
CHAIRPERSON, COMMITTEE ON POWERS AND PRIVILEGES
COUNTY ASSEMBLY OF KITUI

DATE: 08/07/2023