

COUNTY ASSEMBLY OF KITUI

(131)

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Kitui, Kenya.

OFFICE OF THE CLERK

INTERNAL MEMO

Clerk

TO: THE SPEAKER OF THE ASSEMBLY

*This report is ready to
take in once allocate
time by the HBC
Dennis 6/05/24*

THROUGH: 1. THE CLERK OF ASSEMBLY
2. THE PRINCIPAL CLERK ASSISTANT

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

DATE: 30TH APRIL, 2024

*clear
Approved:
[Signature]
26/2/24*

REF: CAK/9/13(131)

SUBJECT: THE REPORT OF THE COMMITTEE OF POWERS AND PRIVILEGES ON ITS INQUIRY ON ITS OWN MOTION INTO THE CONDUCT OF HON. MUNYOKI MWINZI, HON. DANIEL NGOIMA KIMANZI, HON. PRISCILA MARTHA MAKUMI AND HON. MARY NDUMBU AND TO ESTABLISH WHETHER THEIR CONDUCT CONSTITUTES A BREACH OF PRIVILEGE.

The above subject matter refers;

That the Committee of Powers and Privileges on its Inquiry on Its Own Motion into the Conduct of Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscila Martha Makumi and Hon. Mary Ndumbu and to Establish whether their Conduct Constitutes a Breach of Privilege.

According to Section 16(5) of the CAPP Act, 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. The inquiry by the Committee on the matter in question was on its own motion and ought to have been completed within fourteen days of receiving th

*Mr. Speaker
you may
inform the
Speaker of
this report*

complaint. However, the Committee could not meet this statutory timeline owing to other engagements and therefore requested for an extension of the inquiry period pursuant to the provisions of S.O. 179 (A) which subsequently was granted by the House.

The Committee held a total of nine sittings, taking place on 15th, 22nd and 28th February and 13th, 26th and 28th March 2024, in order to inquire into the alleged breach of privilege and unethical conduct. During these sittings, the Committee discussed and established the scope of work in an initial meeting and received both oral and written submissions from the alleged offenders.

During the inquiry, the Committee adhered to the principles of natural justice and procedural fairness. Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Mary Ndumbu and Hon. Priscilla Martha Makumi were provided with a clear and prompt statement detailing the specific allegations against them and were given an opportunity to present their cases in person.

Based on the alleged offenders' submissions, the Committee ascertained the following key facts:

- i. There was a commotion that disrupted the proceedings of the Assembly on the morning sitting of 18th September, 2023.
- ii. The commotion was pegged on Hon. Munyoki Mwinzi who had violated the provisions of S.O 230 (1)(b) by occupying the designated seat reserved for the Leader of the Majority Party and his blatant refusal to vacate the seat after being ordered so by the Speaker of Assembly.
- iii. That, Hon. Daniel Ngoima Kimanzi, Hon. Mary Ndumbu and Hon. Priscilla Martha Makumi unjustifiably left their seats and moved to roundly obstructed the Sergeant at Arms Officers from escorting Hon. Munyoki Mwinzi from the seat of the Leader of Majority Party.
- iv. Hon. Mary Ndumbu and Hon. Priscilla Martha Makumi continuously shouted and booed while the Speaker was making his directions on the state of disorderliness in the House.

The Committee having keenly deliberated and analyzed the information gotten from the written and oral submissions, and further the evidences adduced by the alleged offenders made the following observations:

- i
- i. Hon. Munyoki Mwinzi continuously ignored and/or defied the Speaker's orders to immediately vacate the seat designated for the Leader of the Majority Party. His actions were contrary to the provisions of Section 16(c) of the CAPP Act, 2017 as read together with S.Os. 103 (1)(a) and 230.
 - ii. Hon. Munyoki Mwinzi and Hon. Daniel Ngoima Kimanzi interfered with and obstructed members of staff (sergeant at arms officers) while in the execution of their duties by preventing them from effecting the Speaker's orders. Their actions were contrary to section 26(1)(d) of the CAPP Act, 2017 and Standing Order 103A (1)(d).
 - iii. Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Mary Ndumbu and Hon. Pricilla Martha Makumi and others not mentioned in this report, unnecessarily and persistently interrupted the proceedings of the County Assembly contrary to the provisions of S.O 79(4). Their actions thus were contrary to Section 26(1)(b) of the CAPP Act, 2017.
 - iv. Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Mary Ndumbu and Hon. Pricilla Martha Makumi conducted themselves in a manner which in the opinion of the Committee is contrary to section 16 (e) of the CAPP Act, 2017 which prohibits Members from conducting themselves in a manner likely to reflect adversely on the dignity or integrity of the County Assembly. They resisted the attempts by the sergeant at arms officers to escort Hon. Munyoki Mwinzi from the said seat and booed and shouted at the Speaker when he was making his ruling on the same.
 - v. Hon. Priscilla Martha Makumi conducted herself in a manner which in the opinion of the Committee is contrary to section 16 (e) of the CAPP Act, 2017. This Section of the law prohibits Members from conducting themselves in a manner likely to reflect adversely on the dignity or integrity of the County Assembly. She was yelling loud and uncontrollably without decorum in the chamber during an ongoing sitting while looking for her phone which she had misplaced. She blatantly defied S.O No. 74 which requires a member desiring to speak to first put a request to the Speaker. Her constant shouting resulted in a breach of section 26 (1)(d) of the CAPP Act, 2017.

- vi. Article 75(1) of the Constitution of Kenya (CoK), 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 officer holder holds. Therefore, their actions of shouting, booing, blatantly defying the Speaker's rulings and subsequently disrupting ongoing plenary proceedings are contrary to the aforementioned Article of the Constitution;

In consideration of the above observations and findings and having reviewed the sanctions provided for in section 17(3) of the CAPP Act, 2017 and practices in other similar jurisdictions, the Committee found that the conduct of Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscilla Martha Makumi and Hon. Mary Ndumbu as unethical and in breach of privilege.

The committee took note of the fact that during their oral submissions before the committee on 26th March, 2024, the four Honorable Members were remorseful and apologetic for their misconduct on the material date. The committee thus took this into consideration while imposing the applicable penalties. The committee therefore recommended that :-

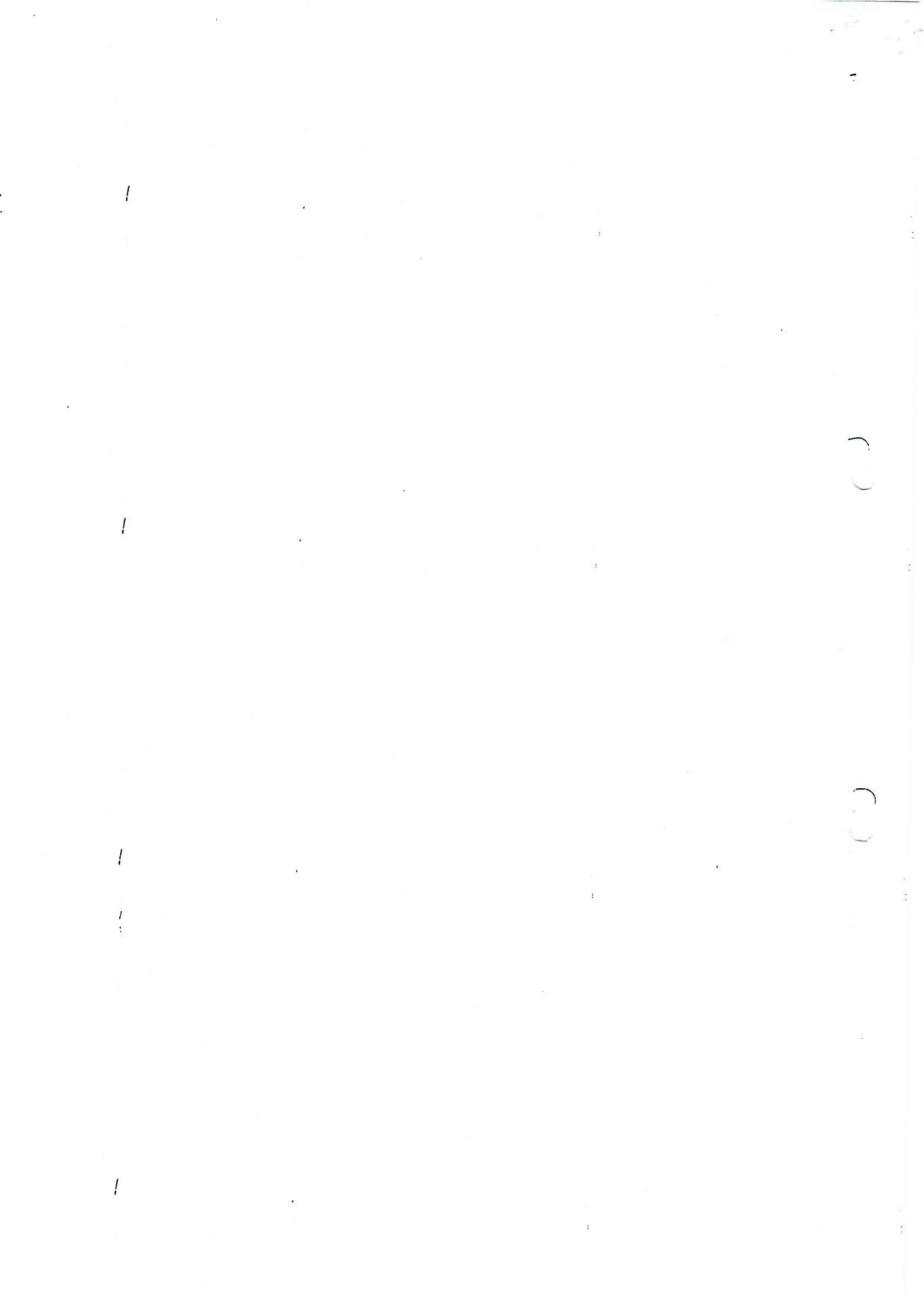
1. Pursuant to section 17(3)(a) of the CAPP Act, 2017, **warns** Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscilla Martha Makumi and Hon. Mary Ndumbu and any other honorable member not mentioned in this report from conducting themselves in such unethical manner which is detrimental to the dignity or integrity of this County Assembly.
2. Pursuant to section 17(3)(b) of the CAPP Act, 2017, **reprimands** Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscilla Martha Makumi and Hon. Mary Ndumbu for conducting themselves in a manner that reflected adversely on the dignity and integrity of the County Assembly and its Members, contrary to section 16(e) of the CAPP Act, 2017; and
3. Pursuant to Section 17(3) (c) of the CAPP Act, 2017, **orders** Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscilla Martha Makumi and Hon. Mary Ndumbu **to apologize** to the County Assembly and the Members for conducting themselves in a manner that reflected adversely on the dignity and integrity of the County Assembly and its Members contrary to section 16(e) of the County Assemblies Powers and Privileges Act, 2017.

The purpose of this memo is therefore to update you of the above and request for your guidance and further directions on the matter.

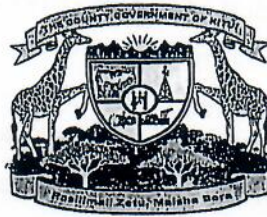

Mulandi Kavali

Clerk Assistant

County Assembly of Kitui



COUNTY GOVERNMENT OF KITUI



THE COUNTY ASSEMBLY

THIRD ASSEMBLY – (THIRD SESSION)

COMMITTEE OF POWERS AND PRIVILEGES

THE REPORT ON ITS INQUIRY ON ITS OWN MOTION INTO THE CONDUCT OF HON. MUNYOKI MWINZI, HON. DANIEL NGOIMA KIMANZI, HON. PRISCILA MARTHA MAKUMI AND HON. MARY NDUMBU AND TO ESTABLISH WHETHER THEIR CONDUCT CONSTITUTES A BREACH OF PRIVILEGE.

clerk
Approved.
[Signature]
21/4/2024.

CLERK'S CHAMBERS
COUNTY ASSEMBLY BUILDINGS,
KITUI.

APRIL, 2024

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ABBREVIATIONS

CAPP	-County Assemblies Powers and Privileges
MCA	-Member of County Assembly
S.O.	-Standing Order
CoK	-Constitution of Kenya

ANNEXES

ANNEX I - Members signed list adopting the report

ANNEX II - Letters from the office of the Clerk to the alleged offenders requesting for a written submission dated 15th February, 2024.

ANNEX III - Responses from the alleged offenders dated 16th February, 2024, 20th February 2024, 21st February, 2024 and 20th February, 2024.

ANNEX IV - Committee Minutes adopting the report.

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. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Mary Ndumbu and Hon. Priscilla Martha Makumi.

It is alleged that Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Mary P. Ndumbu and Hon. Priscilla Martha Makumi on the morning sitting of 18th September, 2023, created or took part in unlawful disturbance which interrupted the proceedings of the County Assembly during its sitting contrary to Section 26(1)(d) of the County Assemblies Powers and Privileges (CAPP) Act, 2017, as read together with Standing Order (S.O) 103A(1)(d).

Hon. Munyoki Mwinzi and Hon. Daniel Ngoima Kimanzi are further alleged to have continuously breached S.O. 103(1) (a) by defying the ruling or directive of the Speaker to withdraw immediately from the County Assembly Chamber.

According to Section 16(5) of the CAPP Act, 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. The inquiry by the Committee on the matter in question was on its own motion and ought to have been completed within fourteen days of receiving the complaint. However, the Committee could not meet this statutory timeline owing to other engagements and therefore requested for an extension of the inquiry period pursuant to the provisions of S.O. 179 (A) which subsequently was granted by the House.

The Committee held a total of nine sittings, taking place on 15th, 22nd and 28th February and 13th, 26th and 28th March 2024, in order to inquire into the alleged breach of privilege and unethical conduct. During these sittings, the

The Report of the Committee of Powers and Privileges on its Inquiry on its Own Motion into the Conduct of Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscilla Martha Makumi and Hon. Mary Ndumbu and to Establish whether their Conduct Constitutes a Breach of Privilege.

Committee discussed and established the scope of work in an initial meetings and received both oral and written submissions from the alleged offenders.

During the inquiry, the Committee adhered to the principles of natural justice and procedural fairness. Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Mary Ndumbu and Hon. Priscilla Martha Makumi were provided with a clear and prompt statement detailing the specific allegations against them and were given an opportunity to present their cases in person.

Based on the alleged offenders' submissions, the Committee ascertained the following key facts:

- i. There was a commotion that disrupted the proceedings of the Assembly on the morning sitting of 18th September, 2023.
- ii. The commotion was pegged on Hon. Munyoki Mwinzi who had violated the provisions of S.O 230 (1)(b) by occupying the designated seat reserved for the Leader of the Majority Party and his blatant refusal to vacate the seat after being ordered so by the Speaker of Assembly.
- iii. That, Hon. Daniel Ngoima Kimanzi, Hon. Mary Ndumbu and Hon. Priscilla Martha Makumi unjustifiably left their seats and moved to roundly obstructed the Sergeant at Arms Officers from escorting Hon. Munyoki Mwinzi from the seat of the Leader of Majority Party.
- iv. Hon. Mary Ndumbu and Hon. Priscilla Martha Makumi continuously shouted and booed while the Speaker was making his directions on the state of disorderliness in the House.

The Committee having keenly deliberated and analyzed the information gotten from the written and oral submissions, and further the evidences adduced by the alleged offenders made the following observations:

- i. Hon. Munyoki Mwinzi continuously ignored and/or defied the Speaker's orders to immediately vacate the seat designated for the

Leader of the Majority Party. His actions were contrary to the provisions of Section 16(c) of the CAPP Act, 2017 as read together with S.Os. 103 (1)(a) and 230.

- ii. Hon. Munyoki Mwinzi and Hon. Daniel Ngoima Kimanzi interfered with and obstructed members of staff (sergeant at arms officers) while in the execution of their duties by preventing them from effecting the Speaker's orders. Their actions were contrary to section 26(1)(d) of the CAPP Act, 2017 and Standing Order 103A (1)(d).
- iii. Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Mary Ndumbu and Hon. Pricilla Martha Makumi and others not mentioned in this report, unnecessarily and persistently interrupted the proceedings of the County Assembly contrary to the provisions of S.O 79(4). Their actions thus were contrary to Section 26(1)(b) of the CAPP Act, 2017.
- iv. Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Mary Ndumbu and Hon. Pricilla Martha Makumi conducted themselves in a manner which in the opinion of the Committee is contrary to section 16 (e) of the CAPP Act, 2017 which prohibits Members from conducting themselves in a manner likely to reflect adversely on the dignity or integrity of the County Assembly. They resisted the attempts by the sergeant at arms officers to escort Hon. Munyoki Mwinzi from the said seat and booed and shouted at the Speaker when he was making his ruling on the same.
- v. Hon. Priscilla Martha Makumi conducted herself in a manner which in the opinion of the Committee is contrary to section 16 (e) of the CAPP Act, 2017. This Section of the law prohibits Members from conducting themselves in a manner likely to reflect adversely on the dignity or integrity of the County Assembly. She was yelling loud and

uncontrollably without decorum in the chamber during an ongoing sitting while looking for her phone which she had misplaced. She blatantly defied S.O No. 74 which requires a member desiring to speak to first put a request to the Speaker. Her constant shouting resulted in a breach of section 26 (1)(d) of the CAPP Act, 2017.

- vi. Article 75(1) of the Constitution of Kenya (CoK), 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 officer holder holds. Therefore, their actions of shouting, booing, blatantly defying the Speaker's rulings and subsequently disrupting ongoing plenary proceedings are contrary to the aforementioned Article of the Constitution;

In consideration of the above observations and findings and having reviewed the sanctions provided for in section 17(3) of the CAPP Act, 2017 and practices in other similar jurisdictions, the Committee finds that the conduct of Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscilla Martha Makumi and Hon. Mary Ndumbu as unethical and in breach of privilege.

The committee took note of the fact that during their oral submissions before the committee on 26th March, 2024, the four Honorable Members were remorseful and apologetic for their misconduct on the material date. The committee thus took this into consideration while imposing the applicable penalties. The committee therefore recommended that :-

1. Pursuant to section 17(3)(a) of the CAPP Act, 2017, **warns** Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscilla Martha Makumi and Hon. Mary Ndumbu and any other honorable member not mentioned in this report from conducting themselves in such unethical manner which is detrimental to the dignity or integrity of this County Assembly.
2. Pursuant to section 17(3)(b) of the CAPP Act, 2017, **reprimands** Hon.

Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscila Martha Makumi and Hon. Mary Ndumbu for conducting themselves in a manner that reflected adversely on the dignity and integrity of the County Assembly and its Members, contrary to section 16(e) of the CAPP Act, 2017; and

3. Pursuant to Section 17(3) (c) of the CAPP Act, 2017, orders Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscilla Martha Makumi and Hon. Mary Ndumbu **to apologize** to the County Assembly and the Members for conducting themselves in a manner that reflected adversely on the dignity and integrity of the County Assembly and its Members contrary to section 16(e) of the County Assemblies Powers and Privileges Act, 2017..

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 CAPP, 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, the Speaker being the Chairperson and eight other Members of the Assembly and is currently comprised of the following Members –

- | | |
|----------------------------------|-------------------|
| 1. Hon. Kevin Kinengo Katisya | Chairperson |
| 2. Hon. Munira Mohammed | Vice- Chairperson |
| 3. Hon. Christopher Nzilu Nzioka | Member |
| 4. Hon. Boniface Maundu Katumbi | “ |
| 5. Hon. Zacchaeus Ivutha Syengo | “ |
| 6. Hon. Joseph Kasungi Kavula | “ |
| 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 CAPP, 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 CAPP, 2017 mandates the Committee to inquire into

The Report of the Committee of Powers and Privileges on its Inquiry on its Own Motion into the Conduct of Hon. Munyoki Mwinzi, Hon. Daniel Ngoima, Kimanzi, Hon. Priscila Martha Makumi and Hon. Mary Ndumbu and to Establish whether their Conduct Constitutes a Breach of Privilege.

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

The Report of the Committee of Powers and Privileges on its Inquiry on its Own Motion into the Conduct of Hon. Munyoki Mwinzi, Hon. Daniel Ngoima, Kimanzi, Hon. Priscila Martha Makumi and Hon. Mary Ndumbu and to Establish whether their Conduct Constitutes a Breach of Privilege.

Article 75 of the Constitution assigns the Committee the role to exercise penal authority over contravention of the Leadership and Integrity Code.

It states –

- (2) *A person who contravenes clause (1), or Article 76, 77 or 78 (2) –*
- (a) *shall be subject to the applicable disciplinary procedure for the relevant office; and*
 - (b) *may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.*

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

iv. Contempt

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

1.4 Referral of the Matter of Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscila Martha Makumi and Hon. Mary Ndumbu to the Committee.

During the Committee meeting held on 15th February, 2024, the Committee on its own motion pursuant to Section 15 (5) of the County Assemblies Powers and Privileges Act, 2017 resolved to inquire into the conduct of Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscila Martha Makumi and Hon. Mary Ndumbu which occurred during the morning plenary sitting of 18th September, 2023.

2.0 COMMITTEE PROCEEDINGS

The Committee held a total of nine (9) sittings to deliberate on the matter, gather and consider evidence. During a meeting held in the Assembly boardroom on Wednesday, 15th February, 2024 the Committee deliberated on the matter and resolved to conduct an inquiry in order to establish whether their alleged conduct constitutes a breach of privilege and unethical conduct. It was resolved that the following alleged offenders be requested in writing to submit written submissions on their alleged breach of privilege and unethical conduct to the Committee within seven (7) days of service.

- i. Hon. Munyoki Mwinzi,
- ii. Hon. Daniel Ngoima Kimanzi,
- iii. Hon. Priscila Martha Makumi,
- iv. Hon. Mary Ndumbu.

The Committee held two sittings on 22nd February, 2024 and acknowledged receipt of written submissions from Hon. Daniel Ngoima Kimanzi and Hon. Mary Ndumbu dated 20th February, 2024 and 16th February, 2024 respectively.

During the same meeting, it was noted that Hon. Munyoki Mwinzi and Hon. Priscila Martha Makumi had not yet submitted their written submissions by close of the deadline set for 21st February, 2024. It was therefore resolved that they would be given more time to submit their written responses.

The Committee held another sitting on 28th February, 2024, where it acknowledged receipt of written submissions from Hon. Munyoki Mwinzi and Hon. Priscila Martha Makumi dated 20th February, 2024 and 21st February, 2024 respectively.

Timelines for consideration of the matter lapsed on 6th March, 2024. 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 Mwingi from 11th to 14th April, 2024 to evaluate the submissions made, and compile a report on her findings and recommendations to the House for consideration and adoption.

The/Hansard of the Committee proceedings is 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 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. David Manzi
2. Esther Mwele
3. Noryne Katheu
4. Mulandi Kvali

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 CAPP, 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*

¹ The Report of the Committee of Powers and Privileges on its Inquiry on its Own Motion into the Conduct of Hon. Munyoki Mwinzi, Hon. Daniel Ngoima. Kimanzi, Hon. Priscila Martha Makumi and Hon. Mary Ndumbu and to Establish whether their Conduct Constitutes a Breach of Privilege.

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 CAPP, 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)(d) of the Act provides that; A person shall not- *While a County Assembly or a Committee is sitting, create or take part in any unlawful disturbance which interrupts or is likely to interrupt the proceedings of a County Assembly or any Committee while a County Assembly or any Committee is sitting.*

Section 16 (c) provides that; *the committee on powers and privileges may find a member to be in breach of privilege if the member willfully fails or refuses to obey any rule, order or resolution of a County Assembly.*

Further Section 16 (e) envisages that a Member may be found be 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.*

3.2.4 The County Assembly of Kitui Standing Orders

Standing Order No. 103A (1)(d) provides that; *Conduct is gravely disorderly if a member- persistently and willfully causes actual disorder that obstructs the Assembly from transacting business.*

Further Standing Order No. 103(1)(a) envisages that; *conduct is grossly disorderly if the member concerned defies a ruling or direction of the Speaker.*

4.0 EVIDENCE

The Committee received both written and oral submissions from the following alleged offenders –

1. Hon. Munyoki Mwinzi;
2. Hon. Daniel Ngoima Kimanzi;
3. Hon. Mary Ndumbu; and
4. Hon. Priscilla Martha Makumi.

4.1. Hon. Munyoki Mwinzi;

On Tuesday, 26th March, 2024, Hon. Munyoki Mwinzi, Member of County Assembly for Kyuso Ward, appeared before the Committee and submitted that –

1. He received a letter from the committee informing him of the allegations labelled against him for his alleged breach of privilege and unethical conduct during the morning sitting of the County Assembly held on 18th

September, 2023, and further inviting him to appear before the committee on the 26th of March, 2024.

2. He was indeed present in the County Assembly Chamber during the morning plenary special sitting of Monday, 18th September, 2023 when the alleged breach of privilege and unethical conduct is said to have occurred.
3. He could never knowingly and intentionally act in a way that constitutes a breach of privilege and unethical conduct. On the material day in question, he indeed sat on the seat designated for the Leader of the Majority Party.
4. The Wiper Democratic Movement Party, of which he is a member, had officially conducted elections where he was duly selected as the new leader of the majority party.
5. Upon being elected, he was overwhelmed with excitement and anxiety to immediately take up his new role. He was not aware that he had to wait for the Honorable Speaker to officially communicate his election to the House before he could assume the role of the Leader of the majority party.
6. On the material day in question, he excitedly and confidently occupied the designated seat reserved for the leader of the Majority Party when the plenary sitting was in session.
7. When the Honorable Speaker officially began the sitting, he directed him to immediately vacate from the seat designated for the leader of the Majority Party.
8. He stood to respond to the honourable Speaker's directive but he unfortunately became so weak and almost fainted, forcing him to slump into his seat.

9. He had just been discharged from the hospital following a corrective heart surgery and thus he was yet to fully recover and regain his strength. His arm was still in a sling to aid in his recovery.
10. He tried getting the Speaker's attention so as to inform him of his ordeal but the Speaker did not give him a chance to speak. It thus appeared that he was defying the Speaker's orders whereas in reality he was too weak to move from where he was seated.
11. It was not his intention to disobey a ruling or directive of the Honorable Speaker. He apologized for the unfortunate incident and the misunderstanding that may have arisen as a result of his actions.
12. He urged the Honorable Speaker to organize a training for all the Honorable members on mental health, how to handle anxiety and frustrations that they face as members of the County Assembly.

4.2. Hon. Daniel Ngoima Kimanzi

The MCA for Kitui Township ward appeared on Tuesday, 26th March, 2024 and submitted to the Committee that –

1. He received a letter from the committee informing him of the allegations labelled against him for his alleged breach of privilege and unethical conduct during the morning sitting of the County Assembly held on 18th September, 2023, and further inviting him to appear before the committee on the 26th of March, 2024.
2. On the material day in question, he was present during the plenary sitting and was seated next to Hon. Munyoki Mwinzi.
3. The Wiper Democratic Movement Party had conducted elections where he together with Hon. Munyoki Mwinzi, were selected as the Whip and Leader of the Majority Party respectively.

4. Following the said elections, they were both so excited to take up their new role that Hon. Munyoki Mwinzi occupied the seat designated for the Leader of the Majority Party.
5. He was surprised to hear the Honorable Speaker direct Hon. Munyoki Mwinzi to vacate the seat reserved for the leader of the Majority Party. He was not aware that the Honorable Speaker had to introduce them to the House as the newly elected leaders before they could officially take up the roles and enjoy the privileges reserved for the positions.
6. When Hon. Munyoki Mwinzi delayed to vacate from the seat, the Honorable Speaker directed the Sergeant at arms to eject him from the seat.
7. He was aware that Hon. Munyoki Mwinzi had just been discharged from the hospital after undergoing a heart surgery and that he had not fully recovered.
8. He therefore rose to shield him from the Sergeant at arms to prevent him from being bruised and hurt during the commotion.
9. His intention was to protect Hon. Munyoki Mwinzi from being injured and not to disobey the Honorable Speaker's directives.
10. When Hon. Munyoki Mwinzi left the Chamber, he also quietly walked out without being disruptive.
11. He however apologized for the commotion that took place.

4.3 Hon. Priscilla Martha Makumi

The nominated MCA appeared before the Committee on Tuesday, 26th March, 2024 and submitted that –

1. She received a letter from the committee informing her of the allegations labelled against her for an alleged breach of privilege and unethical conduct during the morning sitting of the County Assembly held on 18th September,

2023, and further inviting her to appear before the committee on the 26th of March, 2024.

2. On the material day in question, she was indeed present during the plenary sitting.
3. She did not clearly remember the events that occurred on that material day since at the time she had just been discharged from hospital and had not fully recovered.
4. All she remembered is her shouting in the chamber asking for her phone which had been misplaced during the commotion that was happening at the time.
5. She recalled that so many people were shouting in the chamber and that Hon. Godfrey Muthengi Ndagara and Hon. Boniface Katula Mukwate were trying to forcefully eject Hon. Munyoki Mwinzi from the seat he was occupying.
6. When the Speaker ordered her to go out of the chamber, she obliged and walked away.
7. She was shocked to receive a letter inviting her to the committee and accusing her of having breached privilege and acted unethically.
8. She thought that the Speaker had already punished her for shouting in the chamber by ordering her to get out.
9. She however apologized for causing disorder on the material day and that she had not intentionally intended to disobey the Speaker.

4.4 Hon. Mary Ndumbu

The nominated MCA appeared before the Committee on Tuesday, 26th March, 2024 and submitted that –

1. She had nothing further to add and that the committee should rely on her written submissions dated 16th February, 2024 where she had indicated

that she did not remember obstructing the conduct of plenary business on the morning of 18th September, 2023.

2. In her written submissions, she further apologized if any of her actions on the material day may have obstructed the business of the House.

4.5 Procedural Fairness

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

Accordingly, and in the interest of fairness, the Member accused of breach of privileges was given –

- (a) A prompt and clear statement of the precise allegations against him and
- (b) The opportunity to be heard in person.

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

Section 17(1) of the CAPP, 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 Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscilla Makumi and Hon. Mary Ndurnbu did constitute breach of privilege, hence warranting the sanctions prescribed in

section 17(3) of the CAPP, 2017.

Section 17(3) of the CAPP, 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 the House may determine;

g) the suspension of the Member for such period as the House may decide, whether or not the County Assembly or any of its committees is scheduled to meet during that period;

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

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

(6) a member who has been suspended under subsection (3) (g) shall leave the precincts of the County Assembly and shall not, during the period of suspension, without the written permission of the Speaker -

(a) enter the precincts for whatever purpose; or

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

Article 75(2) (b) of the Constitution referred to in paragraph (h) above provides as follows –

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

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

b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

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

6.0 COMMITTEE OBSERVATIONS AND FINDINGS

The Committee having keenly deliberated and analyzed the information gotten from the written and oral submissions, and further the evidences adduced by the alleged offenders made the following observations:

- i. Hon. Munyoki Mwinzi continuously ignored and/or defied the Speaker's orders to immediately vacate the seat designated for the Leader of the Majority Party. His actions were contrary to the provisions of Section 16(c) of the CAPP Act, 2017 as read together with S.Os. 103 (1)(a) and 230.
- ii. Hon. Munyoki Mwinzi and Hon. Daniel Ngoima Kimanzi interfered with and obstructed members of staff (sergeant at arms officers) while in the execution of their duties by preventing them from effecting the Speaker's orders. Their actions were contrary to section 26(1)(d) of the CAPP Act, 2017 and Standing Order 103A (1)(d).

- iii. Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Mary Ndumbu and Hon. Pricilla Martha Makumi and others not mentioned in this report, unnecessarily and persistently interrupted the proceedings of the County Assembly contrary to the provisions of S.O 79(4). Their actions thus were contrary to Section 26(1)(b) of the CAPP Act, 2017.
- iv. Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Mary Ndumbu and Hon. Pricilla Martha Makumi conducted themselves in a manner which in the opinion of the Committee is contrary to section 16 (e) of the CAPP Act, 2017 which prohibits Members from conducting themselves in a manner likely to reflect adversely on the dignity or integrity of the County Assembly. They resisted the attempts by the sergeant at arms officers to escort Hon. Munyoki Mwinzi from the said seat and booed and shouted at the Speaker when he was making his ruling on the same.
- v. Hon. Priscilla Martha Makumi conducted herself in a manner which in the opinion of the Committee is contrary to section 16 (e) of the CAPP Act, 2017. This Section of the law prohibits Members from conducting themselves in a manner likely to reflect adversely on the dignity or integrity of the County Assembly. She was yelling loud and uncontrollably without decorum in the chamber during an ongoing sitting while looking for her phone which she had misplaced. She blatantly defied S.O No. 74 which requires a member desiring to speak to first put a request to the Speaker. Her constant shouting resulted in a breach of section 26 (1)(d) of the CAPP Act, 2017.
- vi. Article 75(1) of the Constitution of Kenya (CoK), 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 officer holder holds. Therefore, their actions of shouting, booing, blatantly defying the Speaker's rulings and subsequently disrupting ongoing plenary proceedings are contrary to the aforementioned Article of the Constitution;

7.0 COMMITTEE RECOMMENDATIONS

In consideration of the above observations and findings and having reviewed the sanctions provided for in section 17(3) of the CAPP Act, 2017 and practices in other similar jurisdictions, the Committee finds that the conduct of Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscilla Martha Makumi and Hon. Mary Ndumbu as unethical and in breach of privilege.


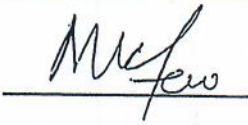
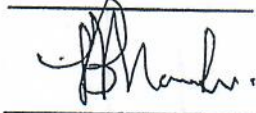
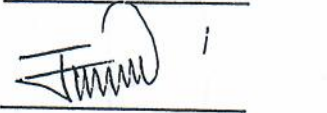
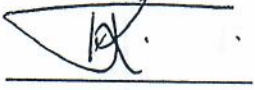

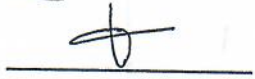

The committee took note of the fact that during their oral submissions before the committee on 26th March, 2024, the four Honorable Members were remorseful and apologetic for their misconduct on the material date. The committee thus took this into consideration while imposing the applicable penalties. The committee therefore recommended that: -

1. Pursuant to section 17(3)(a) of the CAPP Act, 2017, **warns** Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscila Martha Makumi and Hon. Mary Ndumbu and any other honorable member not mentioned in this report from conducting themselves in such unethical manner which is detrimental to the dignity or integrity of this County Assembly.
2. Pursuant to section 17(3)(b) of the CAPP Act, 2017, **reprimands** Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscila Martha Makumi and Hon. Mary Ndumbu for conducting themselves in a manner that reflected adversely on the dignity and integrity of the County Assembly and its Members, contrary to section 16(e) of the CAPP Act, 2017; and

3. Pursuant to Section 17(3) (c) of the CAPP Act, 2017, orders Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Priscilla Martha Makumi and Hon. Mary Ndumbu **to apologize** to the County Assembly and the Members for conducting themselves in a manner that reflected adversely on the dignity and integrity of the County Assembly and its Members contrary to section 16(e) of the County Assemblies Powers and Privileges Act, 2017.

ANNEX 1- ADOPTION OF THE REPORT

We, Honorable Members of the Select Committee on Powers and Privileges have pursuant to Section 15(6) of the County Assemblies Powers and Privileges Act, 2017 as read together with Standing Order 152 B and 179 (6), adopted this report on the Inquiry into the Alleged Breach of Privilege and Unethical Conduct of Hon. Munyoki Mwinzi, Hon. Daniel Ngoima Kimanzi, Hon. Mary Ndumbu And Hon Priscilla Martha Makumi and append our signatures to affirm our approval, confirmation, accuracy, validity and authenticity of this Report.

<u>NAME</u>	<u>DESIGN</u>	<u>SIGNATURE.</u>
1. Hon. Kevin Kinengo Katisya	Chairperson	
2. Hon. Munira Mohammed	V/Chairperson	
3. Hon. Christopher Nzilu Nzioka	Member	
4. Hon. Boniface Maundu Katumbi	Member	
5. Hon. Joseph Musyoka Mbite	Member	
6. Hon. Joseph Kasungi Kavula	Member	
7. Hon. Zaccheus Ivutha Syengo	Member	
8. Hon. Elizabeth Ndunge Peter	Member	
9. Hon. Ciambutra Karigi	Member	