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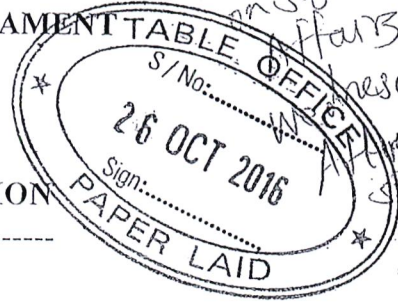
PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT TABLE

FOURTH SESSION



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26/10/16
Paper laid by
Chairperson, Committee
on S & L Affairs
Wednesday 26/10/2016
At 11:00 AM

THE DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT

ON THE APPROVAL FOR APPOINTMENT OF HON. LADY JUSTICE PHILOMENA MBETE MWILU TO THE OFFICE OF DEPUTY CHIEF JUSTICE OF THE REPUBLIC OF KENYA

CLERK'S CHAMBERS,
PARLIAMENT BUILDINGS,
NAIROBI

OCTOBER, 2016

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ABBREVIATIONS AND ACRONYMS

CID	Criminal Investigations Department
HELB	Higher Education Loans Board
EACC	Ethics and Anti-Corruption Commission
Hon	Honourable
H.E	His Excellency
KRA	Kenya Revenue Authority
MP	Member of Parliament
LSK	Law Society of Kenya
JEC	Judiciary Elections Committee
HC	High Court
CA	Court of Appeal
CMC	Chief Magistrates Court
CJ	Chief Justice
JWCEP	Judiciary Working Committee on Elections
JMVB	Judges and Magistrates Vetting Board
CLE	Continuous Legal Education
JSC	Judicial Service Commission
RRI	Rapid Results Initiative
ICT	Information Communication Technology
AG	Attorney General

1.0 CHAIR'S FOREWORD

On 13th October, 2016 pursuant to Standing Order 42 (1), the Speaker of the National Assembly communicated to the House a message from His Excellency the President Hon. Uhuru Kenyatta, regarding the appointment of Hon. Lady Justice Philomena Mbete Mwilu as Deputy Chief Justice of the Republic of Kenya.

The Message dated 12th October, 2016 was addressed to the Speaker of the National Assembly as per Article 166 (1) (a) of the Constitution of Kenya 2010. The Message also included a copy of a letter to H.E the President conveying the decision by the Judicial Service Commission to pick Hon. Lady Justice Philomena Mbete Mwilu for consideration for appointment as Chief Justice.

The above Constitutional provisions require that in making appointments to the Office of Deputy Chief Justice, the President shall seek the approval of the National Assembly. The Speaker of the National Assembly referred the Message together with the nominee's curriculum vitae to the Departmental Committee on Justice and Legal Affairs for consideration pursuant to provisions of Standing Order 42 (3) (c)

The Committee conducted approval hearing of the nominee with reference to the Constitution of Kenya 2010, the Public Appointments (Parliamentary Approvals) Act, 2011 and the Judicial Service Act, 2011, the Leadership and Integrity Act, 2012 and other relevant provisions of the law.

The Committee's Report contains observations, findings and recommendation by the majority of the Committee's members that the nominee is suitable and qualified for appointment as Deputy Chief Justice of the Republic of Kenya.

On behalf of the committee, I wish to thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate. Furthermore, the committee appreciates the input by members of the public made through submissions.

Finally, pursuant to Standing Order 216(5) (f), it is my pleasure and duty to present to the House, the Report on the approval for appointment of Hon. Lady Justice Philomena Mbete Mwilu as Deputy Chief Justice of the Republic of Kenya.

Hon. Samuel Chepkong'a, M.P

2.0 MANDATE OF THE COMMITTEE

The Departmental Committee on Justice and Legal Affairs derives its mandate from provisions of Standing order 216(5) which defines functions of the Committee as being:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those understanding order 204 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

In accordance with Second Schedule of the Standing Orders, the Committee is mandated to consider:-

- a) Constitutional Affairs
- b) The administration of law and justice
- c) The Judiciary
- d) Public prosecutions
- e) Elections
- f) Ethics ,Integrity and anti-corruption and
- g) Human rights.

The Committee oversees the following Ministries/Departments:

- a) State Law Office
- b) The Judiciary
- c) Ethics and Anti-Corruption Commission
- d) Independent Electoral and Boundaries Commission
- e) Commission on Administrative Justice

The Committee also has oversight mandate over all matters relating to political parties.

3.0 MEMBERS OF THE COMMITTEE

Chairperson	Hon. Samuel Chepkong'a, M.P.
Vice Chairperson	Hon. Priscilla Nyokabi, M.P.
	Hon. Njoroge Baiya, M.P.
	Hon. Muriithi Waiganjo, M.P.
	Hon. Ndirangu Waihenya, M.P.
	Hon. Florence Kajuju, M.P.
	Hon. Kang'ata Irungu, M.P.
	Hon. Benson Mutura, M.P.
	Hon. John Njoroge Chege, M.P.
	Hon. William Cheptumo, M.P.
	Hon. Mohamed Abdi Haji, M.P.
	Hon. Bitok Kirwa, M.P.
	Hon. Sammy Koech, M.P.
	Hon. Moses Cheboi, M.P.
	Hon. Paul Bii, M.P.
	Hon. Charles Gimose, M.P.
	Hon. Johana Ng'eno, M.P.
	Hon. Boniface Otsiula, M.P.
	Hon. David Ouma Ochieng, M.P.
	Hon. Neto Agostinho, M.P.
	Hon. Kaluma Peter, M.P.
	Hon. Fatuma Ibrahim Ali, M.P.
	Hon. Ben Momanyi Orori, M.P.
	Hon. T. J. Kajwang', M.P.
	Hon. (Bishop) Mutua Mutemi, M.P.
	Hon. Olago Aluoch, M.P.
	Hon. Christine Oduor Ombaka, M.P.
	Hon. Benjamin Andayi, M.P.
	Hon. Mwamkale William Kamoti, M.P.

4.0 COMMITTEE SECRETARIAT

First Clerk Assistant
Principal Legal Counsel
Clerk Assistant III
Legal Counsel
Research Officer

Mr. Abenayo Wasike
Mr. Dennis Abisai
Mr. Ahmed Salim
Ms. Mugure Gituto
Ms. Clare Jerotich

5.0 BACKGROUND

5.1 Establishment of the Departmental Committee on Justice and Legal Affairs

The Departmental Committee on Justice and Legal Affairs is one of the Departmental Committees established under National Assembly Standing Order No.216 (1).The Committee has mandate to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments)

The committee is mandated to consider for approval by the National Assembly, appointments of the Chief Justice and Deputy Chief Justice under Article 166(1) (a) of the Constitution. The said Article requires H.E the President to nominate and with the approval of the National Assembly, appoint the Chief Justice and the Deputy Chief Justice in accordance with the recommendations of the Judicial Service Commission.

The vetting process is guided by the Public Appointments (Parliamentary Approval) Act; 2011.Section 7 of the Act provides that-

The issues for consideration by the relevant House of Parliament in relation to any nomination shall be;

- a. the procedure used to arrive at the nominee;*
- b. any constitutional or statutory requirements relating to the office in question; and*
- c. the suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is being made.*

The vetting process is guided by the Public Appointments (Parliamentary Approval) Act, 2011.

Section 10 of the Act further provides that;

“Where the nomination of a candidate is rejected by Parliament, the appointing authority may submit to the relevant House the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly”.

The office of Deputy Chief Justice is established under Article 161 (2) (b) of the Constitution of Kenya, 2010.The Article provides that;

“There is established the office of Deputy Chief Justice, who shall be the Deputy Head of the Judiciary and.....”

The Supreme Court is established pursuant to Article 163 (1) of the Constitution and the Deputy Chief Justice shall deputise for the chief justice and be vice-president of the court under Article 163 (1) (b).

5.2 Appointment process of the Deputy Chief justice nominee

- a. The Position of Deputy Chief Justice fell vacant after the then serving Deputy Chief Justice/ Vice President of the Supreme Court Hon. Lady Justice Kalpana Hasmukhrai Rawal retired on 15th June, 2016.
- b. The position of Deputy Chief Justice of the Republic of Kenya was declared vacant by the Judicial Service Commission (JSC) pursuant to section 3 (1),part 11, First Schedule of the Judicial Service Act,No.1 of 2011.
- c. Thereafter, on 16th June, 2016 the Judicial Service Commission advertised the vacant position of Deputy Chief Justice of the Republic of Kenya in accordance with the provisions of Section 3, Part 11, First Schedule of the Judicial Service Act, and No.1 of 2011.
- d. The deadline set out in the advertisement for submission of applications was 6th July, 2016 at 5.00 p.m. However, pursuant to Gazette Notice No.4954 of 1st July, 2016 a Public Holiday (Idd – Ul – Fitr) was declared on 7th July 2016 and accordingly the deadline was extended by one day to 8th July, 2016.
- e. The Judicial Service Commission received a total of sixteen (16) applications for the advertised position of Deputy Chief Justice.
- f. Pursuant to Part 111, First Schedule of the Judicial Service Act,2011 the Judicial Service Commission in its meeting of 13th July, 2016 reviewed all the applications for completeness and compliance with Constitutional and statutory requirements and shortlisted thirteen (13) candidates.
- g. The Judicial Service Commission held a meeting on 14th July. 2016 and scheduled the thirteen (13) candidates for interview on Tuesday 6th September, 2016 at 9.00 a.m to Thursday 15th September, 2016 at 9.00 a.m.
- h. The names of the applicants and shortlisted candidates for the position of Chief Justice were published in the print media and the Kenya Gazette pursuant to the provisions of Section 9, Part 111, First Schedule of the Judicial Service Act,No.1 of 2011.The shortlisted candidates were accordingly notified of the dates of interviews.

- i. The criteria used to evaluate qualifications of individual applicants are provided under Part V, First Schedule of the Judicial Service Act, and No.1 of 2011.
- j. On the 29th August, 2016 the High Court in Constitutional Petition No.314 of 2016, ordered that the Judicial Service Commission re-consider all applicants who had not been shortlisted for the position of Deputy Chief Justice.
- k. Following the above Court order as served on the Commission on 29th August, 2016, the Commission at its meeting held on the same day reviewed the applications of applicants who had not been shortlisted and resolved that they all be invited for interview.
- l. The interview schedule was revised to include all the applicants as ordered by the Court.
- m. The Candidates were accordingly notified and the revised interview schedule published in the print media and the Kenya Gazette.
- n. Hon.Lady Justice Pauline Nyamweya appeared before the interview panel but withdrew her candidature.
- o. On the revised interview schedule, Surinder Kapila wrote to the Commission withdrawing her candidature.
- p. Mr. David Mwaure Waihiga wrote to the Commission withdrawing his candidature.
- q. Dr.Isaac Michael Rutenberg appeared before the interview panel but was disqualified as he did not meet the minimum requirements for the position.
- r. The number of candidates who appeared for the interview was twelve (12).
- s. The interviews were conducted between 26th September and 6th October, 2016 at the Supreme Court Library.
- t. The Commission exercised due diligence and contacted the following vetting bodies for confidential reports on the candidates; Kenya Revenue Authority, Higher Education Loans Board, Law Society of Kenya, Directorate of Criminal Investigation, Advocates Complaints Commission, Ethics and Anti-Corruption Commission and the National Intelligence Service. Members of the Public were also invited to submit any information of interest on any of the candidates. Several complaints /information were received from the members of the public. They were admitted, processed and forwarded to respective candidates for response. The particular candidates responded and the responses were considered in evaluating and nominating the best candidate for the position.
- u. At the conclusion of the exercise and pursuant to Article 166 (1)(a) and Article 172 (1) (a) of the Constitution of Kenya as read with Section 14, Part V, First Schedule of the

Judicial Service Act, No.1 of 2011, the Judicial Service Commission recommended Hon.Lady Justice Philomena Mbete Mwilu for appointment as Deputy Chief Justice of the Republic of Kenya.

- v. A letter from the Chief of Staff and Head of Public Service dated 12th October, 2016 to the Speaker of the National Assembly indicated that the Judicial Service Commission had recommended to His Excellency the President, the nomination of **Hon. Lady Justice Philomena Mbete Mwilu** for appointment as the Chief Justice of the Republic of Kenya.
- w. On October 13, 2016, the Hon.Speaker in a communication to the House referred the name of the nominee to the Departmental Committee on Justice and Legal Affairs for approval hearing and prepare a report for tabling in the House within the stipulated time.

5.3 Notification to the Public

Section 6(9) of the Public Appointments (Parliamentary Approval) Act (No.33 of 2011) provides that *“any person may, prior to the approval hearing and by a written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated”*.

The Clerk of the National Assembly placed an advertisement in the print media inviting the public to submit memoranda by way of written statements on oath (**sworn affidavits**) on the suitability or otherwise of the nominee in conformity with section 6(9) of the Public Appointments (Parliamentary Approval) Act 2011. The submissions were to be received latest by Monday 24th October, 2016.

Pursuant to provisions of Article 118 of the Constitution, section 6(4) of the Public Appointments (Parliamentary Approval) Act (No.33 Of 2011) and Standing Order 45(3), the general public was also notified in the print media by the Clerk of the National Assembly of the intention of the Departmental Committee on Justice and Legal Affairs to conduct the vetting and approval hearing of the nominee on Tuesday 25th October, 2016.

5.4 Submission of Memoranda

Section 7 of the Public Appointments (Parliamentary Approval) Act, 2011 provides that the issues for consideration by the relevant House in relation to any nomination shall be:-

- (a) the procedure used to arrive at the nominee;
- (b) any constitutional or statutory requirements relating to the office in question; and
- (c) the suitability of the nominee for appointment proposed having regard to whether the nominee’s abilities, experience and qualities meet the needs of the body to which nomination is being made.

Pursuant to Section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011, the Committee, through the Clerk of the National Assembly, invited submissions from the public on the suitability or otherwise of the nominee for appointment to the position Deputy Chief Justice of the Republic of Kenya.

Further, section 6(10) of the Public Appointments (Parliamentary Approval) Act, 2011 provides that a candidate may at any time, by notice in writing addressed to the Clerk withdraw from the approval process and his nomination shall thereupon lapse.

The Departmental Committee on Justice and Legal Affairs held a sitting for approval hearing of the nominee on Tuesday 25th October 2016 and was informed that:-

- (a) By the deadline date of 24th October 2016, the Clerk of the National Assembly had only received objections from Hon. Alice Muthoni Wahome, M.P
- (b) The Committee received statements in support of the nominee from the following;
 - 1. Catholic Mission Kaumoni
 - 2. Nyairo and Company Advocates
 - 3. Hon. Mr. Justice David Maraga - Chief Justice of the Republic of Kenya
 - 4. Justice Kihara Kariuki – President of the Court of Appeal
- (c) The nominee had not notified the Clerk of the National Assembly of withdrawal from the approval process as outlined under Section 6(10) of the Public Appointments (Parliamentary Approvals) Act .

In view of the foregoing and in accordance with the provisions of the Constitution, the Public Appointments (Parliamentary Approvals) Act and the Standing Orders of the National Assembly, the Departmental Committee on Justice and Legal Affairs resolved to proceed to undertake the approval hearing as required and scheduled.

5.5 Objection by Hon. Alice Muthoni Wahome, MP

Hon. Alice M. Wahome is an Advocate of the High Court of Kenya and Member of Parliament for Kandara Constituency. She averred that Hon Lady Justice Philomena Mwilu is not suitable to serve as the Deputy Chief Justice of the Republic of Kenya as she fails to satisfy the constitutional requirements and meet the statutory qualifications that apply to a Judge on grounds that:

- (a) The Hon Justice Philomena Mwilu was gazetted as an election court and assigned to hear the High Court *Election Petition No. 20 of 2008 Alice Muthoni Wahome vs Hon. Maina Kamau*.
- (b) Hon Justice Philomena Mwilu occasioned a failure of justice in this case and she totally failed to conclude the matter which, to date has never been heard on its merits.
- (c) The Applicant made four applications for Hon Justice Philomena Mwilu's recusal but the Judge declined and frustrated any further progress of the case.
- (d) Hon Justice Philomena Mwilu attempted to water down the Petition by striking out paragraphs material to the Petition and through the intervention of the Court of Appeal, the paragraphs were reinstated. Justice Philomena Mwilu notwithstanding the Court of Appeal's intervention failed to conclude the hearing of this Election Petition.
- (e) The Petitioner asserted that she has credible information that the Respondent in the Election Petition (Hon. Maina Kamau) delivered money (Kshs. 3 million) to the Hon Justice Philomena Mwilu at her House at Ridgeways Estate to influence the outcome of the Petition.
- (f) The Petitioner further stated that Hon. Justice Philomena Mwilu before her elevation to the Court of Appeal failed, refused and/or neglected to deliver 15 judgments including murder trials concluded when she was a High Court Judge thus contributing to unnecessary delays and injustice. These details can be ascertained from the Principal Judge of the High Court.
- (g) The Petitioner added that the Hon. Justice Philomena Mwilu has consistently performed poorly in the judicial performance appraisal system where each Judge is required to furnish periodic returns of his/her work. These details may be ascertained from the President of the Court of Appeal.
- (h) The honourable member Wahome raised grievances regarding Hon Justice Philomena Mwilu character bias in the High Court *Election Petition No. 20 of 2008 Alice Muthoni Wahome vs Hon. Maina Kamau* before the Vetting of Judges and Magistrate's Board.
- (i) In *Petition No. 102 of 2011 In the Matter of the Recommendation by the Judicial Service Commission of Persons for Appointment to the Offices of Judges of the Supreme Court under the Constitution of the Republic of Kenya* between *FIDA-K, CREAM, the League of Women Voters, Women in Development in Africa, Caucus for Women Leadership and the Coalition Against Women vs the Hon. The Attorney General and the Judicial Service Commission* Hon Justice Philomena Mwilu made condescending remarks against women as follows;
- "In pursuit of women's rights will women treble on the rights of a fellow woman whom they view, rightly or otherwise, not to subscribe to their view point? Women fighting a woman.*

Might the old cliché that women are their worst enemies be indeed true?’

Hon Wahome verily believes that Hon Justice Philomena Mwilu’s nomination should fail as it does not meet critical constitutional and statutory elements for appointment to the office of the Deputy Chief Justice of the Republic of Kenya, including *inter alia*: high moral character, integrity and impartiality; legal judgment, diligence; and a demonstrable ability to be impartial to all persons and commitment to equal justice under the law.

5.6 Clearance Requirements

On 13th October, 2016 the Clerk of the National Assembly wrote to the Ethics and Anti-Corruption Commission, Kenya Revenue Authority (KRA) and the Higher Education Loans Board (HELB) requesting for reports with respect to the nominee on-

- matters touching on integrity;
- tax compliance; and
- loan repayments.

In response, HELB vide a letter REF;HELB/RD/56593/POV/21 dated 25th October, 2016 that the nominee was cleared as per certificate number 29475,(KRA) Kenya Revenue Authority confirmed vide a letter REF. CDTD/HO/81 dated 24th October, 2016 that the nominee was tax compliant. The Ethics and Anti-Corruption Commission vide a letter Ref. EACC.7/10/5 VOL.III (52) dated 24th October, 2016 confirmed having no outstanding issues or ongoing investigations against the nominee. The Criminal Investigations Department (CID) confirmed vide a letter referenced CID/CRO/SEC/6/7/2/A/VOL.III/137dated 21st October, 2016 that the nominee was cleared vide Police Clearance Certificate Serial No.542971/16.

6.0 APPROVAL HEARING OF HON.LADY JUSTICE PHILOMENA MBETE MWILU – DEPUTY CHIEF JUSTICE NOMINEE OF THE REPUBLIC OF KENYA

In conducting the approval process, the Departmental Committee on Justice and Legal Affairs examined the nominee against the following criteria, amongst others, in accordance with the Public Appointments (Parliament Approval) Act No.33 of 2011.

- (i) Academic qualifications
- (ii) Employment record
- (iii) Professional affiliations
- (iv) Potential conflict of interest
- (v) Knowledge of the relevant subject
- (vi) Overall suitability for the position
- (vii) Tax compliance
- (viii) Integrity and morality
- (ix) Jurisprudence
- (x) Vision, leadership and judicial reforms
- (xi) Access to justice
- (xii) Expectations and key priorities

Hon. Lady Justice Philomena Mbete Mwilu appeared before the Committee on Tuesday 25th October, 2016 and was informed by the Chairperson that, pursuant to Section 6(9) of the Public Appointments (Parliamentary Approvals) Act, 2011, the Committee had invited submissions from the public on her suitability or otherwise for appointment to the position of Deputy Chief Justice of the Republic of Kenya and by the deadline date of 24th October 2016, the Clerk of the National Assembly had received objections from Hon.Alice Muthoi Wahome, M.P

The Chairperson informed the nominee that in view of the foregoing and in accordance with the provisions of the Constitution, the Public Appointments (Parliamentary Approvals) Act and the Standing Orders of the National Assembly, the Committee had resolved to proceed to undertake the approval hearing as required.

On self-Introduction and context within the Judiciary, she stated that;

- a. She was born on 15th April, 1958 in Makueni County, went to Makueni Girls Secondary School for KJSE, Muthetheni Girls High School for EACE and Loreto High School, Limuru for her EAACE. She holds a Bachelor's degree in law (LL.B) from the University of Nairobi and a Post graduate diploma in law from the Kenya School of Law and had been admitted to pursue a Masters degree in Law (LL.M) from the same University.
- b. She meets all the requirements under the Constitution of Kenya (Article 166), has practiced as an advocate for 32 years, served in law firms, as a director in a parastatal and other institutions and at the Judiciary for 9 years.

- c. She is confident about her abilities as a judge due to her experience of running a court single-handedly in Eldoret where she was called upon to give leadership to the court.
- d. She has worked and interacted well with the legal fraternity and considers herself a friend of LSK. She had regular meetings with the LSK during her tenure in Eldoret.
- e. She was promoted to the Court of appeal in December 2012
- f. She was cleared of the complaints against her before the Judges and Magistrates Vetting Board. She stated that there were 7 complaints before the vetting board, some complaints touched on delays and following her satisfactory explanation they were dismissed. She explained that the reason for delays was because she was the only Judge serving a very busy station. The vetting board found her fit and suitable to continue serving as a judge as there was no merit in the complaint.
- g. She comes to the position of the Deputy with a varied background. She has worked in a private sector, headed an organization and served as a judge of the High Court and Court of Appeal.

The nominee responded to questions from members of the Committee as follows;

Delay in hearing of cases and delivery of judgments;

- a. The nominee noted that before passing of the 2010 Constitution there were fewer judges resulting in delays. Since then, the number of judges has been increased.
- b. The RRI (Rapid Results Initiative) programme. The older cases were reviewed and it was realized that half of the pending cases were dead cases whereby some of the parties had lost interest and did not take steps for action.
- c. She promised to encourage a first in first out approach to handle matters before court.
- d. The Judiciary is not solely to blame for delays. It works with strategic partners like the DPP, police and advocates. In some cases the court may be ready to proceed in a matter but the advocate and his or her client may not be ready. In such instances a judge cannot be forced to proceed because she may do injustice and even if the case is dismissed there will be an application for reinstatement.

The nominee proposed the following measures to address delays in processing cases;

- That the role of the Deputy Chief Justice is to give unqualified support to the chief justice and would ensure that returns by judicial officers are made regularly.
- She would strengthen the existing programme which is a check system where by each judicial officer is expected to give returns on their target and thereafter the head of division makes returns.

- She will ensure that judges and magistrates have a conducive working environment to discharge their judicial duties.
- She will support implementation of ICT compliance to do away with long hand recording of proceedings.
- She will ensure judges and magistrates make adequate arrangements if they are away from their duty station to avoid delays.
- She will encourage collegiality among judges and more consultations with the LSK to tackle the issue of adjournments .

Views on gay relationships

- a. If confronted with the issue, she will determine whether it is a matter of choice or inborn. If it's in born nothing can be done other than manage the situation.
- b. If it is a matter of choice, the constitution protects freedom of association with regard to the lifestyle one chooses.
- c. Gay marriages are not allowed under the Constitution of Kenya 2010.

Views on access to Justice due to lack of infrastructure /distance between courts;

- a. She will pursue and strengthen the programme started by the former Chief Justice on improvement of court infrastructure across the Country.
- b. Subject to approval by Parliament, she will work on a budget to address the problem of housing judicial officers. She noted that some counties have allocated land to the Judiciary for construction of houses.

Views on public interest litigation;

- a. She will sensitize colleagues through workshops and regular meetings to hear cases on merit and avoid granting injunctions where parties are not interested to pursue the case on merit.
- b. Every Judge is independent and cannot be directed on what to do even by the Chief Justice but can be asked to speed up the trial of cases.
- c. Where possible the judge may refuse to grant an injunction so as to fast track hearing the substance of the matter. Where an injunction has to be granted, the court should hear the matter on a day to day basis for expeditious disposal.
- d. The Constitution allows public interest litigation. It is not up to the court to determine whose interest is more important than the other. The best approach is to have a speedy determination of the matters before court. All litigants rights have to be vindicated in a court of law.

Independence of the judiciary;

- a. The mandate of the judiciary cannot be touched by any arm of government but that does not mean that there can be no consultation.
- b. The judiciary in its determination and mandate cannot be interfered with but there must be a constructive interdependence between the judiciary and other arms of government.
- c. Engagement with the judiciary should be structured and every effort should be made to ensure co-existence with other arms of government.

LSK Representatives to the Judicial Service Commission;

- a. That every judge must have the courage to determine the cases despite the parties before him or her.
- b. A Judge knows he or she should rely on pleadings and the law and determine matters on merit.
- c. The potential for a JSC member to intimidate a judge exists. To deal with that, procedure must be followed to create a mechanism that they cannot appear before court while serving as members of the JSC.

Division in the Supreme Court;

- a. Judges have a cordial relationship and it will be possible to foster better relationships.
- b. The previous problem was a clash of personalities but not in their ideology in so far as their judicial mandate is concerned.

Corruption cases and the Judiciary;

- a. Corruption cases can be fast tracked since the judiciary has created corruption divisions and increased the number of Judges and magistrates.
- b. She will do actual supervision to speed up the trial of cases on day to day basis.
- c. Corruption cases have economic impact on the economy and should be concluded expeditiously.
- d. There is perceived corruption and bribery in the Judiciary.
- e. She has never been approached to be a conduit of corruption.

- f. She gave accounts of her experience in tackling corruption cases. She stated that when she was posted in Eldoret as a judge, it was reported to her that two judicial officers were engaging in corrupt practices. She asked the police to investigate the matter that Members of the registry were deceiving illiterate litigants. The nominee called the two and the complainant. The perpetrator refunded Ksh.15, 000 and was arrested thereafter.
- g. At the Energy Board, she engaged the Anti-Corruption Commission to deal with corruption cases which led to dismissal of several members of staff.
- h. With regard as to whether her actions might have compromised a criminal case, she stated that she expected to be commended because there was immediate restitution to the victim.

Alternative Dispute Resolution to Decongest Courts

- a. Some of the cases need not go to court and if people are guided properly they may discuss and settle their matters out of court.
- b. She will support the judiciary to strengthen and engage in (Alternative Dispute Resolution) ADR

Retirement and Tenure;

There is no constitutional limit to the term of the DCJ as is the case with the Chief Justice and that she is eligible to retire at the age of 70 years.

Determination of Goldenberg cases;

Cases must to be determined on merit and avoid delaying tactics. The judiciary has created courts to hear corruption cases on day to day basis.

Children's Rights;

Under the law, custody and maintenance of children are different. Custody is granted to the parent who can take care of a child of tender years while the duty to maintain is for both parents depending on their status. The court looks at the best interests of the child.

Vision of the nominee for the Judiciary;

- a. Speedy dispensation of justice where cases are determined on merit.
- b. Automation of the judiciary
- c. Ownership of the judiciary by judicial officers and staff.
- d. Develop a judiciary where members of Staff are satisfied

Challenges and activism;

- a. The position she has reached was on account of her merit and that she was extremely courageous and firm because she knew she was on the right path.
- b. she was prayerful and had a strong faith, she had support from many people including her family and that she consulted others
- c. That not all persons are given to activism but that she is firm in her pursuits.

Sexual Offence cases;

- a. The Act has tough provisions and provides for minimum sentence of life imprisonment depending on the age of the victim.
- b. Where we have solid evidence the law is tough on sexual offenders but many sexual offences cases are not reported and in some cases the evidence is hidden.
- c. The weakest link in sexual offence cases is investigations.
- d. Sentences were harsh on younger offenders since there is no discretion in sentencing and they are not given an opportunity to reform.
- e. There is need to amend the Act to consider rehabilitation of young men involved in sexual offences instead of the harsh sentences.
- f. That the rights of boys and girls should be protected in equal measure.

Jurisprudence;

She is a liberal and deals with the matters as per the prevailing circumstances and does not have a fixed mindset. Jurisprudence is growing daily based on the facts of the case. As a judicial officer, one frames issues, analyses the facts; determine best practice and applicable precedence where the law is vague.

Judgments delivered;

- a. She has delivered a number of judgments which can be ascertained from the court registry because each judge has a target to meet.
- b. She stated that she has never been called by JSC for not having met her targets or for underperforming.

- c. She is proud of all judgements she has done because what may appear to be a good judgment to one party may not be good to another since there is always an aggrieved party for every judgment.
- d. With regard to notable judgements, she stated that she gave judgements on Chapter 6 to determine the criteria on the cases on the suitability of the DPP and former chairperson of the EACC, Mumo Matemu. She also mentions that she determined an Employment case that was a class case.
- e. She stated that she has sat in conferences where there is a bench of judges and has been given the duty to do the zero draft.

Sexual harassment in the Judiciary;

- a. The issue is real and that she is a member of the judicial committee dealing with sexual harassment.
- b. Has been a victim of sexual harassment and that the greatest problem is lack of reporting
- c. There is need for a proper system of reporting and that she started working on a reporting system in the court of appeal
- d. The Judiciary is developing another policy and the docket is under the office of Deputy Chief Justice.

Constitutional Bills with timelines;

The Constitution provides a clear procedure under Article 261 for any member of the public to move to the High Court for remedies available to the court.

Enforcement of two thirds gender rule in the Judiciary;

- a. She noted that the numbers had been met except in the Supreme Court, however, that the judiciary was working towards a 50/50 gender balance rather than two thirds.
- b. She supports women's cause within the law and that this is demonstrated through her work in supporting girls in her county and as part of Catholic Women's Association.
- c. The matter is in court and will be decided on merit.

Operationalization of the legal aid Bill;

- a. The judiciary has increased the fees paid to pro bono advocates and this will attract more advocates to take up pro bono briefs.
- b. She will sensitize the LSK to encourage more advocates to serve on pro bono and increase their numbers. She noted that currently, all capital offenders are entitled to an advocate

Reform in the judiciary;

- a. The nominee stated that she was committed to the transformation framework and will continue on the path of reforms started by the former CJ.
- b. There was need for ownership of the judiciary to ensure that judicial staff perform better

Views on Performance

There is an administrative department that deals with performance and that she will strengthen the performance management system.

Handling of complaints by JSC

The body that has the mandate under the law to discipline judges is the JSC. She noted that it had prosecuted two judges and that nothing stops Parliament from enacting a law to take away the disciplinary process of judges from JSC to another body.

Views on magistrates as the weakest link

She will support the CJ and JSC to strengthen the magistrate's courts and ensure that there are practice directions for every court. She admitted that magistrates are not up to date in recent laws passed by Parliament and need to be trained, mentored and supervised.

Recusal

The nominee stated that she has never been motivated by personal relationships in determining a case and that she has recused herself where there was a personal interest.

Polygamy

She is a staunch catholic, but polygamy is accepted in several cultures and that she will decide a case regarding a polygamous man on the merits of the case and not my personal bias.

Response to Objection by Hon.Alice Muthoni Wahome, M.P;

She denied the allegations by the honourable member and submitted her written response to the Committee for consideration.

7.0 COMMITTEE'S OBSERVATIONS AND FINDINGS

7.1 Observations

- The Hon.Lady Justice Philomena Mwilu was born on 15th April, 1958
- She holds a Bachelor of Laws Degree (LL.B) from the University of Nairobi and a Diploma in Legal Practice from the Kenya School of Law.
- She is a Registered Certified Public Secretary –Registration of Certified Public Secretaries Board.
- She was appointed a Judge of the Court of Appeal in 2012 and posted to Nairobi where she is currently serving.
- She was appointed High Court Judge in 2007 and Posted to Milimani Commercial Division of the High Court where she dealt with purely Commercial Litigation. She was transferred to Eldoret High Court Station where she dealt with all manner of Cases, that is to say Civil, Commercial, Family, Judicial Review, Constitutional Cases and Criminal Cases including Murder, Revision and Protection of and enjoyment of the Bill of Rights and Fundamental Freedoms and 1st Appeals from the magistracy.
- Before being appointed a Judge of the High Court, she was a legal practitioner in private practice with Mutunga and Company Advocates. She handled clients in civil, criminal and commercial litigation in and out of court, conveyancing, contracts and manning the smooth running of the firm's operations.
- In 2006 to 2007 she served as a Board Director at Nairobi Water and Sewerage Company, Chair of the Legal and Human Resource Committee of the Board, Deputy Chairperson of the Energy Tribunal (High Court Judge level position) hearing and determining appeals arising from decisions of the Electricity Regulatory Commission on energy sector Disputes and Participating in policy making and overseeing the overall performance of the Company.
- In June, 1999 to June, 2001 she was the Board Secretary of Electricity Regulatory Board where she was the head of the Secretariat and Chief Executive Officer responsible to the Board for the day to day administration of the Board's Secretariat and Supervising Senior Managers, arranging the business of the Board and keeping records thereof, translating the Board's decisions into effective communication with internal and external public of implementation, ensuring timely and effective implementation of the Board's decisions as appropriate, including follow-up, preparing reports on Board activities, maintaining the confidentiality of Board documents and deliberations and keeping safe custody thereof, ensuring that the Board is informed of real and potential problems being experienced or likely to be experienced by the Board in its operations or the secretariat and making proposals to the Board for their solutions, ensuring prudent financial management of the secretariat including tight control of expenditure, annual budget preparation and the maintenance of proper accounting records, responsible for recruitment and replacement of staff, appraising staff performance and identifying their development and training needs, providing legal advice to the Board and where necessary

liaising with Board lawyers on litigation including those that may require settlement in court, developing the secretariat Human Resource Policies and Procedures and recommending areas of improvement, overseeing and advising on all insurance matters relating to Board property and staff in collaboration with relevant insurers/insurance brokers, ensuring Board compliance with legal reforms and other statutory requirements such as leases, rents and reforms, liaising with relevant Government Departments, providing effective and efficient secretariat services to the Board Meetings, Management Meetings and Board Committee Meetings and ensuring that the resolutions of the Board are appropriately minuted; documents, communicated and executed accordingly, preparing Board Papers and Executive Summaries, drawing all documents of a legal nature such as contracts, leases and supervising the work of the Board's legal counsel and performing such other duties as the Board may assign from time to time.

- In 1991 to 1997 as a senior legal manager with Jubilee Insurance Co. Ltd; she was head of the legal department in charge of all company's legal and corporate work in the Headquarters and at the branches; handled all insurance and other claims and in liaison with the technical director negotiating settlement thereof upon determining Liability and Quantum of Damages, advised the Board of Directors on all legal matters touching on the Company and its branches, assisted and advised on Company Secretarial duties, attended court and conducted hearings of any nature of cases involving the company such as outlay recovery, Debt collection personal injury and material damage claims, handled charges, mortgages, leases, conveyancing and commercial matters and documentation, she was Liaising with external Advocates on all matters of a legal nature involving the company, assessing legal department staff performance, dealing with staff recruitment and replacement and preparing the departmental Budget.
- In 1984 to 1991 she was a legal assistant with Muthoga Gaturu and Company advocates. As a legal assistant, she was handling all matters of legal work in and out of court, interviewing clients and witnesses and taking instructions from them, prosecuting and defending cases on Human Rights issues, Matrimonial Causes, Debt collection, Commercial Law, Banking Law, Mortgage suits, Probate & Administration, Building Contracts, Arbitration Criminal Law and Conveyancing, preparing Contracts and other Legal Documents, attending to Taxation of Bills of Costs and Execution of Decrees.
- The Committee observed that the nominee is an active participant in conferences, seminars and workshops at international and local level.
- The nominee is involved in religious activities including membership to the Catholic Justice and Peace Commission and Catholic Women Association.
- The nominees has ben involved in Community service and probono activities, long before she became a Judge and more particularly since 1986 she started paying school fees for bright children from poor families in her location back home. She mentioned that she took two of them to the University of Nairobi and Moi University from where they graduated with Bachelors degrees in Engineering and Arts, respectively. She has and continues to also sponsor a number of students to pursue secondary education through payment of school fees. She takes an active part in Schools, Churches and Community functions e.g.in raising funds for development of churches and community events.

The nominee is an accomplished motivation speaker and has been giving regular mentorship talks to girls in her former school – Makueni Girls School to motivate them to be serious with their school work and to take life seriously. She has since spread this activity to cover all girls' schools in Makueni and Machakos counties and has mentored girls in over ten (10) schools and the exercise continues. She advises the Machakos Catholic Diocese Education Board on legal issues. This is done as her return to society

7.2 Findings

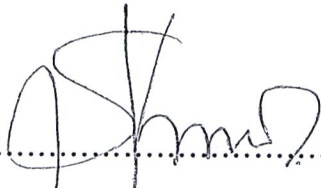
After conducting the approval hearings, the Committee made the following findings;

1. Hon. Lady Justice Philomena Mbete Mwilu has the requisite qualifications and vast experience in the Judiciary which qualifies her for appointment to the position of Deputy Chief Justice of the Republic of Kenya.
2. Hon. Lady Justice Philomena Mbete Mwilu, according to the records and information availed to the Committee, has never been implicated in any issues that may lead to a conclusion of lack of integrity on her part.
3. The candidate exhibited impressive knowledge of topical issues including demonstrated understanding of administration and management principles required to address the challenges facing the Judiciary. The nominee exhibited a proper understanding of the doctrine of separation of powers which requires the three branches of government to exercise their powers in a manner that respects their respective constitutional territories while upholding the rule of law and the principle of checks and balances.
4. As regards the objection to the appointment by Hon. Alice Muthoni Wahome, M.P. Kandara Constituency, the Committee finds that;
 - a) The nominee could not be individually blamed for the delay in the conclusion of Election Petition No.20 of 2008, Alice Muthoni Wahome versus James Maina Kamau & Others, since several other factors contributed to the delay including the apparent failure by the Petitioner to take hearing dates and give evidence in support of her Petition.;
 - b) The nominee properly refused to recuse herself from the hearing of Election Petition No.20 of 2008, Alice Muthoni Wahome versus James Maina Kamau & Others in accordance with the applicable judicial principles;
 - c) That the Judges and Magistrates Vetting Board in their Fifth Announcement on Determination of Suitability dated 12th December, 2012 found that the complaint against the Judge “were not merited, and were satisfied by the Judge’s response to the same.
5. The following members dissented from the findings of the Majority members of the Committee; Hon. Irungu Kangata, M.P, Hon. John Njoroge, M.P and Hon. Benson Mutura, M.P

8.0 RECOMMENDATION OF THE COMMITTEE

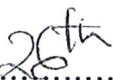
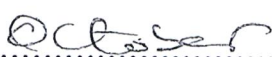
THAT Pursuant to Article 166 (1) (a) of the Constitution of Kenya, the Public Appointments (Parliamentary Approval) Act, 2011 and Standing Order 216 (5) (f) of the National Assembly, the Committee recommends that;

The National Assembly approves the nomination of Hon. Lady Justice Philomena Mbete Mwilu for appointment by H.E the President as Deputy Chief Justice of the Republic of Kenya.

Signed 

Hon. Samuel Chepkong'a, M.P
(Chairperson)

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

Dated this  Day of  2016

**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS HELD ON WEDNESDAY, 26TH OCTOBER, 2016 AT 11.30 A.M.
IN COMMITTEE ROOM 7, PARLIAMENT BUILDINGS**

PRESENT

Hon. Priscilla Nyokabi, M.P. (Vice Chairperson) - Chairing
Hon. Samuel Chepkonga, M.P. (Chairperson)
Hon. Ben Momanyi, M.P.
Hon. Benson Mutura, M.P.
Hon. Boniface Otsiula, M.P.
Hon. Bitok Kirwa, M.P.
Hon. Dr. Christine Ombaka, M.P.
Hon. David Ochieng, M.P.
Hon. Fatuma Ibrahim, M.P.
Hon. Kang'ata Irungu, M.P.
Hon. Johana Ngeno, M.P.
Hon. John M. Waiganjo, M.P.
Hon. John Njoroge Chege, M.P.
Hon. Kamoti Mwamkale William, M.P.
Hon. Mohamed Abdi Haji, M.P.
Hon. Moses Cheboi, M.P.
Hon. Njoroge Baiya, M.P.
Hon. Paul K. Bii, M.P.
Hon. Peter Kaluma, M.P.
Hon. (Bishop) Robert Mutemi, M.P.
Hon. Sammy Koech, M.P.
Hon. Tom J. Kajwang', M.P.
Hon. William Cheptumo, M.P.
Hon. Florence Kajuju, M.P.
Hon. Agostinho Neto, M.P.
Hon. Charles Gimose, M.P.

APOLOGY

Hon. Olago Aluoch, M.P.
Hon. Ndirangu Waihenya, M.P.
Ho. Benjamin Andayi, M.P.

SECRETARIAT

Mr. Abenayo Wasike	-	Clerk Assistant I
Mr. Ahmed Salim	-	Clerk Assistant III
Mr. Denis Abisai	-	Legal Counsel
Ms. Mugure Gituto	-	Legal Counsel II
Mr. Moses Kariuki	-	Sergeant-at-arm
Mr. Stanley Lagat	-	Sergeant-at-arm
Ms. Noelle Chelagat	-	Media Relations Officer

MIN No. JLA .DCJ.APP.04/2016

PRELIMINARIES

The Chairperson called the meeting to order at 11.45 a.m. and commenced with a word of prayer from Hon. Johanna Ngeno, M.P.

MIN No.JLA.DCJ.APP.05/2016:- FINDINGS OF THE COMMITTEE

After conducting the approval hearings, the Committee made the following findings

1. Hon. Lady Justice Philomena Mbete Mwilu has the requisite qualifications and vast experience in the Judiciary which qualifies her for appointment to the position of Deputy Chief Justice of the Republic of Kenya.
2. Hon. Lady Justice Philomena Mbete Mwilu, according to the records and information availed to the Committee, has never been implicated in any issues that may lead to a conclusion of lack of integrity on her part.
3. The candidate exhibited impressive knowledge of topical issues including demonstrated understanding of administration and management principles required to address the challenges facing the Judiciary. The nominee exhibited a proper understanding of the doctrine of separation of powers which requires the three branches of government to exercise their powers in a manner that respects their respective constitutional territories while upholding the rule of law and the principle of checks and balances.
4. As regards the objection to the appointment by Hon.Alice Muthoni Wahome,M.P Kandara Constituency, the Committee finds that;
 - a) The nominee could not be individually blamed for the delay in the conclusion of Election Petition No.20 of 2008, Alice Muthoni Wahome versus James Maina Kamau & Others, since several other factors contributed to the delay including the apparent failure by the Petitioner to take hearing dates and give evidence in support of her Petition.;

- b) The nominee properly refused to recuse herself from the hearing of Election Petition No.20 of 2008, Alice Muthoni Wahome versus James Maina Kamau & Others in accordance with the applicable judicial principles;
- c) That the Judges and Magistrates Vetting Board in their Fifth Announcement on Determination of Suitability dated 12th December, 2012 found that the complaint against the Judge “were not merited, and were satisfied by the Judge’s response to the same.
- d) The Judicial Service Act should be amended to provide for the tenure of the Deputy Chief Justice.

MIN No.JLA.DCJ.APP.06/2016:- ADOPTION OF THE REPORT

THAT Pursuant to Article 166 (1) (a) of the Constitution of Kenya, the Public Appointments (Parliamentary Approval) Act, 2011 and Standing Order 216 (5) (f) of the National Assembly, the Committee recommends that;

The National Assembly approves the nomination of Hon. Lady Justice Philomena Mbete Mwilu for appointment by H.E the President as Deputy Chief Justice of the Republic of Kenya.

The adoption of the Report was proposed by Hon.Priscillah Nyokabi, M.P-Vice-Chairperson was seconded by Hon.Johannah Ngeno, M.P

The following members objected to the approval of the nominee:

1. Hon.John Njoroge,M.P
2. Hon.Benson Mutura,M.P
3. Hon.Irungu Kangata

The Minutes of the meeting held on 25th October, 2016 were proposed for adoption by Hon.Paul Bii, M.P and seconded by Hon.Sammy Koech, M.P

MIN No.JLA.DCJ.APP.07/2016:- ADJOURNMENT

There being no other business to transact, the sitting adjourned at 12.30 p.m

Signed.....

(Chairperson)

Date.....26th October, 2016

**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS HELD ON TUESDAY, 25TH OCTOBER, 2016 AT 10.00 A.M.
IN MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS**

PRESENT

Hon. Priscilla Nyokabi, M.P. (Vice Chairperson) - Chairing
Hon. Samuel Chepkonga, M.P. (Chairperson)
Hon. Ben Momanyi, M.P.
Hon. Benson Mutura, M.P.
Hon. Boniface Otsiula, M.P.
Hon. Bitok Kirwa, M.P.
Hon. Dr. Christine Ombaka, M.P.
Hon. David Ochieng, M.P.
Hon. Fatuma Ibrahim, M.P.
Hon. Kang'ata Irungu, M.P.
Hon. Johana Ngeno, M.P.
Hon. John M. Waiganjo, M.P.
Hon. John Njoroge Chege, M.P.
Hon. Kamoti Mwamkale William, M.P.
Hon. Mohamed Abdi Haji, M.P.
Hon. Moses Cheboi, M.P.
Hon. Njoroge Baiya, M.P.
Hon. Paul K. Bii, M.P.
Hon. Peter Kaluma, M.P.
Hon. (Bishop) Robert Mutemi, M.P.
Hon. Sammy Koech, M.P.
Hon. Tom J. Kajwang', M.P.
Hon. William Cheptumo, M.P.

APOLOGY

Hon. Florence Kajuju, M.P.
Hon. Agostinho Neto, M.P.
Hon. Olago Aluoch, M.P.

ABSENT

Hon. Charles Gimose, M.P.
Hon. Ndirangu Waihenya, M.P.

SECRETARIAT

Mr. Abenayo Wasike	-	Clerk Assistant I
Mr. Ahmed Salim	-	Clerk Assistant III
Mr. Denis Abisai	-	Legal Counsel
Ms. Mugure Gituto	-	Legal Counsel II
Ms. Clare Jerotich	-	Research Officer
Mr. Stephen Nyakuti	-	Audio Officer
Mr. Moses Kariuki	-	Sergeant-at-arm
Mr. Stanley Lagat	-	Sergeant-at-arm
Ms. Noelle Chelagat	-	Media Relations Officer

IN ATTENDANCE

Lady Justice Philomena Mwilu	-	Nominee for Deputy Chief Justice
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MIN No. JLA .DCJ.APP.01/2016

PRELIMINARIES

The Chairperson called the meeting to order at 10.05 a.m. and commenced with a word of prayer from Hon. Robert Mutemi. The Committee had an internal briefing before the nominee was ushered into the room.

MIN No.JLA.DCJ.APP.02 /2016:- APPROVAL HEARING OF THE DEPUTY CHIEF JUSTICE NOMINEE

Views received by the Committee are as follows-

On the qualifications of the nominee:

1. The nominee received several letters of recommendation including from the Chief Justice.
2. In support of why she was the most suitable candidate, the nominee stated as follows in her opening remarks-
 - (i) That she meets all the requirements under the Constitution of Kenya (Article 166)
 - (ii) She articulated her educational background and qualifications. She stated that she had been admitted to pursue an LLM at the University of Nairobi

- (iii) She has practiced as an advocate for 32 years- she has served in a law firm, as a director in a parastatal and at the Judiciary for 9 years
- (iv) She is confident about her abilities as a judge due to her experience of running a court single-handedly in Eldoret where she was called upon to give leadership to the court
- (v) She has worked well with the legal fraternity and considers herself a friend of LSK
- (vi) She was promoted to the Court of appeal in December 2012
- (vii) She was cleared of the complaints against her brought before the Judges and Magistrates Vetting Board. The vetting board found her fit to continue serving as a judge because the complaints were without merit
- (viii) She comes to the position of the Deputy with a varied background. She have worked in a private sector, headed an organization and served as a judge.

On the issue of delay of cases, she proposed the following:

1. She was of the view that the role of the Deputy Chief Justice is to give unqualified support to the Chief Justice and would ensure that returns by judicial officers are made regularly.
2. She would strengthen the existing programme which is a check system where by each judicial officer is expected to give returns on their target and thereafter the head of division makes returns.
3. She will make sure that judges and magistrates have a conducive programme to do their work. She will also ensure ICT compliance to do away with long hand.
4. She will ensure judges and magistrates make adequate arrangements if they are away from their duty station to avoid delays. She would also ensure that collegiality among judges and promote more consultations with the LSK to tackle adjournments

Views of the nominee on the issue of homosexuality

1. She was of the view that in order to answer the question she would have to determine whether it was a matter of choice or it was inborn. If it is a matter of choice, the constitution protects the freedom of association with regard to the lifestyle one chooses, as long as those rights do not interfere with the rights of others. She said she would rely on the Constitution for guidance.
2. However, she stated that the marriage between persons of the same sex is not allowed under the Constitution

Views on access to Justice due to lack of infrastructure/distance between courts?

The nominee was of the view that there were already ongoing effort to improve the court infrastructure, as commenced by the former Chief Justice and that if appointed she will strengthen it. Further, there should be budget allocated to provide housing for judicial officers close to the courts.

Views on court orders Vis' a Vis development projects

She stated that any person who brings the public interest case is allowed by the Constitution. It is therefore not up to the court to determine whose interest is more important than the other. The best approach is to have a speedy determination of the other. She believes that everybody's rights have to be vindicated in a court of law.

Views on issue of independence of the judiciary

On this issue, the nominee was of the view that the decisional mandate of the judiciary cannot be touched by any arm of government but that does not mean that there can be no consultation. And although the judiciary in its determination and mandate cannot be interfered with, there must be a constructive interdependence between the judiciary and other arms of government. However, the engagement should be structured. The nominee was of the view that there must be every effort to make all the arms of government to co-exist.

Views of members of the JSC being practicing

The nominee was of the view that every judge must have the courage to determine the cases irrespective of the parties before him or her. Personally, she stated that she would rely on only the pleadings and the law. However, the potential for a JSC member to intimidate a judge still exists. To deal with that, procedure must be developed to create a mechanism their appearance before the court is limited.

Question of the Supreme Court being divided

She stated that judges have a cordial relationship and it will not be hard to foster better relationships. She believed that the previous problems was a disconnect in their personalities but not in their ideology.

View on developing ADR to decongest the courts

The nominee was of the view that many of the cases need not go to court and that if people were forced to sit down with a person to guide the process and discuss their matters then most matters can be easily resolved. She will support the judiciary efforts to strengthen and engage in ADR.

During the JSC interview you mentioned that corruption was a problem-have you ever reported a corruption issue? Have you ever received a bribe?

1. The nominee admitted that there was corruption in the judiciary. She stated however that she has never been approached to be a conduit of corruption
2. With regard to reporting corruption cases, the nominee gave accounts of her personal experience in facing and tackling corruption cases. For instance, in her experience at her position at the Energy Board, she engaged the Anti-Corruption Commission to deal with corruption cases which led to the dismissal of those who were found culpable.

Views on children's rights

The nominee stated that under the law, custody and maintenance of children are different. Custody is granted to the parent who can take care of a child of tender years while the duty to maintain is for both parents. Overall the court should look at the best interests of the child.

The vision of the nominee for the Judiciary

1. The nominee stated that her vision was the fast dispensation of justice and that cases are determined on their merits;
2. She also looks forward to an automated judiciary
3. Ownership of the judiciary by judicial officers and staff
4. She also looks forward to seeing judiciary staff that are satisfied in their work

Challenges faced by the nominee as a woman and addressing the challenges for other women.

1. The nominee stated that position she has reached was on account of her merit and that she was extremely courageous and firm when she knows she is on the right path
2. With regard to charisma, she stated that not all of the persons are into activism but that she believed she was firm
3. She stated that she was prayerful and had a strong faith, she had support from many people including her family and that she consulted others

Views on Sexual Offence cases

1. The nominee was of the view that where there was solid evidence the law is tough on sexual offenders. However, the problem is that many sexual offences cases are not reported and in some cases the evidence is hidden.
2. The nominee was of the view that weakest link in sexual offences cases is in investigation. She also noted that the sentences were harsh on younger men since there is no discretion in sentencing. It only gives a minimum sentence.

3. There is need to consider rehabilitation of young men involved in sexual offences instead of the harsh sentences. She believes that the rights of the boys should be equally protected as those of the girls.

Jurisprudence: Is there a judgement that demonstrates who you are?

The nominee stated that she was a liberal and deals with the matter in relation to the circumstances at hand. Her approach is that whatever duty is given, do it to the best of your ability.

On the number of judgements the nominee delivered and which one she would be most proud of:

She stated that she does not know the number but it is ascertainable because each judge has a target to meet. She stated that she has never been called by JSC for not having met her targets or underperforming.

She also stated that she was proud of all judgements she has done because what may appear to be a good judgment to one party may not be good to another since one party is always aggrieved.

Views on Sexual harassment in the Judiciary

The nominee stated that she has been a victim of sexual harassment many years ago and that the greatest problem is lack of reporting. She was of the view that there is need for a proper system of reporting and that she started working on a reporting system in the Court of Appeal.

On the strategy to operationalize the legal aid bill

The nominee noted that the judiciary had undertaken to increase the fees paid to pro bono advocates. She stated that she would undertake to sensitize the LSK to encourage advocates to serve on pro bono and increase their numbers. She noted that currently, all capital offenders are entitled to an advocate.

On handling of complaints by JSC

With regard to JSC handling cases of their own, the nominee noted that the body that has the mandate under the law to discipline judges is the JSC. She noted that it had prosecuted two judges. However, nothing stops parliament from enacting a law to take away the disciplinary process of judges from JSC to another body.

Views on magistrates as the weakest link

The nominee gave an undertaking if appointed to strengthen the magistrate courts and stated that she will support the Chief Justice and the JSC in ensuring there are practice

directions for every court. She admitted that some magistrates may not up be to date in recent laws passed by Parliament and need to be trained, mentored and supervised.

On the integration of Kadhis with the rest of the judicial system

The nominee stated that the judiciary had organized colloquiums for officers and Kadhis. She undertook to build synergy between the judicial officers to make sure they function as one judiciary.

On Recusal

The nominee stated that she has never been motivated by personal relationship in determining a case and that she has recused herself where there was a personal interest.

On Polygamy

The nominee was of the view that although she is a staunch catholic, polygamy is accepted in several cultures and that she will decide a case regarding a polygamous man on the merits of the case and not on personal bias.

Petition by Hon. Alice Wahome

The nominee responded to the petition and submitted the facts as set out in her written response. She refuted all allegations raised in the petition by providing a background of events and the reasons leading to such allegations which she termed as unfortunate and unfair.

MIN No.JLA.DCJ.APP.03/2016:- COMMITTEE'S DELIBERATIONS

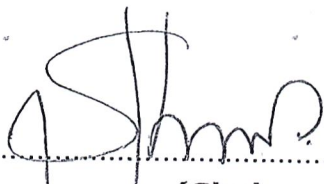
The Committee, having interacted with the nominee, deliberated on the matter and observed that the nominee is a firm and competent judge and that she demonstrated passion in her work. The Committee also noted that the nominee handled the petition lodged against her well and demonstrated high degree of patience in her responses. However, it was also noted that despite her vast experience and competence, she had not improved her academic qualifications, even though that was a matter of personal choice.

The Committee recommended that the nominee be approved for the position of Deputy Chief Justice of the Republic of Kenya.

MIN No.JLA.DCJ.APP.04/2016:- ADJOURNMENT

There being no other business to transact, the sitting adjourned at twenty five minutes past two o'clock. Next sitting was scheduled for Wednesday, 26th October 2016 to adopt the Report.

Signed.....



(Chairperson)

Date.....

26/10/16

MINUTES

**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS HELD ON WEDNESDAY, 26TH OCTOBER, 2016 AT 11.30 A.M.
IN COMMITTEE ROOM 7, PARLIAMENT BUILDINGS**

PRESENT

Hon. Priscilla Nyokabi, M.P. (Vice Chairperson) - Chairing
Hon. Samuel Chepkonga, M.P. (Chairperson)
Hon. Ben Momanyi, M.P.
Hon. Benson Mutura, M.P.
Hon. Boniface Otsiula, M.P.
Hon. Bitok Kirwa, M.P.
Hon. Dr. Christine Ombaka, M.P.
Hon. David Ochieng, M.P.
Hon. Fatuma Ibrahim, M.P.
Hon. Kang'ata Irungu, M.P.
Hon. Johana Ngeno, M.P.
Hon. John M. Waiganjo, M.P.
Hon. John Njoroge Chege, M.P.
Hon. Kamoti Mwamkale William, M.P.
Hon. Mohamed Abdi Haji, M.P.
Hon. Moses Cheboi, M.P.
Hon. Njoroge Baiya, M.P.
Hon. Paul K. Bii, M.P.
Hon. Peter Kaluma, M.P.
Hon. (Bishop) Robert Mutemi, M.P.
Hon. Sammy Koech, M.P.
Hon. Tom J. Kajwang', M.P.
Hon. William Cheptumo, M.P.
Hon. Florence Kajuju, M.P.
Hon. Agostinho Neto, M.P.
Hon. Charles Gimose, M.P.

APOLOGY

Hon. Olago Aluoch, M.P.
Hon. Ndirangu Waihenya, M.P.
Ho. Benjamin Andayi, M.P.

SECRETARIAT

Mr. Abenayo Wasike	-	Clerk Assistant I
Mr. Ahmed Salim	-	Clerk Assistant III
Mr. Denis Abisai	-	Legal Counsel
Ms. Mugure Gituto	-	Legal Counsel II
Mr. Moses Kariuki	-	Sergeant-at-arm
Mr. Stanley Lagat	-	Sergeant-at-arm
Ms. Noelle Chelagat	-	Media Relations Officer

MIN No. JLA .DCJ.APP.04/2016

PRELIMINARIES

The Chairperson called the meeting to order at 11.45 a.m. and commenced with a word of prayer from Hon. Johanna Ngeno, M.P.

MIN No.JLA.DCJ.APP.05/2016:- FINDINGS OF THE COMMITTEE

After conducting the approval hearings, the Committee made the following findings

1. Hon. Lady Justice Philomena Mbete Mwilu has the requisite qualifications and vast experience in the Judiciary which qualifies her for appointment to the position of Deputy Chief Justice of the Republic of Kenya.
2. Hon. Lady Justice Philomena Mbete Mwilu, according to the records and information availed to the Committee, has never been implicated in any issues that may lead to a conclusion of lack of integrity on her part.
3. The candidate exhibited impressive knowledge of topical issues including demonstrated understanding of administration and management principles required to address the challenges facing the Judiciary. The nominee exhibited a proper understanding of the doctrine of separation of powers which requires the three branches of government to exercise their powers in a manner that respects their respective constitutional territories while upholding the rule of law and the principle of checks and balances.
4. As regards the objection to the appointment by Hon.Alice Muthoni Wahome,M.P Kandara Constituency, the Committee finds that;
 - a) The nominee could not be individually blamed for the delay in the conclusion of Election Petition No.20 of 2008, Alice Muthoni Wahome versus James Maina Kamau & Others, since several other factors contributed to the delay including the apparent failure by the Petitioner to take hearing dates and give evidence in support of her Petition.;

- b) The nominee properly refused to recuse herself from the hearing of Election Petition No.20 of 2008, Alice Muthoni Wahome versus James Maina Kamau & Others in accordance with the applicable judicial principles;
- c) That the Judges and Magistrates Vetting Board in their Fifth Announcement on Determination of Suitability dated 12th December, 2012 found that the complaint against the Judge “were not merited, and were satisfied by the Judge’s response to the same.
- d) The Judicial Service Act should be amended to provide for the tenure of the Deputy Chief Justice.

MIN No.JLA.DCJ.APP.06/2016:- ADOPTION OF THE REPORT

THAT Pursuant to Article 166 (1) (a) of the Constitution of Kenya, the Public Appointments (Parliamentary Approval) Act, 2011 and Standing Order 216 (5) (f) of the National Assembly, the Committee recommends that;

The National Assembly approves the nomination of Hon. Lady Justice Philomena Mbete Mwilu for appointment by H.E the President as Deputy Chief Justice of the Republic of Kenya.

The adoption of the Report was proposed by Hon.Priscillah Nyokabi, M.P-Vice-Chairperson was seconded by Hon.Johannah Ngeno, M.P

The following members objected to the approval of the nominee:

- 1. Hon.John Njoroge,M.P
- 2. Hon.Benson Mutura,M.P
- 3. Hon.Irungu Kangata

The Minutes of the meeting held on 25th October, 2016 were proposed for adoption by Hon.Paul Bii, M.P and seconded by Hon.Sammy Koech, M.P

MIN No.JLA.DCJ.APP.07/2016:- ADJOURNMENT

There being no other business to transact, the sitting adjourned at 12.30 p.m

Signed.....

(Chairperson)

Date.....26/10/16

**MINUTES OF THE SITTING OF THE DEPARTMENTAL COMMITTEE ON JUSTICE
AND LEGAL AFFAIRS HELD ON TUESDAY, 25TH OCTOBER, 2016 AT 10.00 A.M.
IN MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS**

PRESENT

Hon. Priscilla Nyokabi, M.P. (Vice Chairperson) - Chairing
Hon. Samuel Chepkonga, M.P. (Chairperson)
Hon. Ben Momanyi, M.P.
Hon. Benson Mutura, M.P.
Hon. Boniface Otsiula, M.P.
Hon. Bitok Kirwa, M.P.
Hon. Dr. Christine Ombaka, M.P.
Hon. David Ochieng, M.P.
Hon. Fatuma Ibrahim, M.P.
Hon. Kang'ata Irungu, M.P.
Hon. Johana Ngeno, M.P.
Hon. John M. Waiganjo, M.P.
Hon. John Njoroge Chege, M.P.
Hon. Kamoti Mwamkale William, M.P.
Hon. Mohamed Abdi Haji, M.P.
Hon. Moses Cheboi, M.P.
Hon. Njoroge Baiya, M.P.
Hon. Paul K. Bii, M.P.
Hon. Peter Kaluma, M.P.
Hon. (Bishop) Robert Mutemi, M.P.
Hon. Sammy Koech, M.P.
Hon. Tom J. Kajwang', M.P.
Hon. William Cheptumo, M.P.

APOLOGY

Hon. Florence Kajuju, M.P.
Hon. Agostinho Neto, M.P.
Hon. Olago Aluoch, M.P.

ABSENT

Hon. Charles Gimose, M.P.
Hon. Ndirangu Waihenya, M.P.

SECRETARIAT

Mr. Abenayo Wasike	-	Clerk Assistant I
Mr. Ahmed Salim	-	Clerk Assistant III
Mr. Denis Abisai	-	Legal Counsel
Ms. Mugure Gituto	-	Legal Counsel II
Ms. Clare Jerotich	-	Research Officer
Mr. Stephen Nyakuti	-	Audio Officer
Mr. Moses Kariuki	-	Sergeant-at-arm
Mr. Stanley Lagat	-	Sergeant-at-arm
Ms. Noelle Chelagat	-	Media Relations Officer

IN ATTENDANCE

Lady Justice Philomena Mwilu	-	Nominee for Deputy Chief Justice
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MIN No. JLA .DCJ.APP.01/2016

PRELIMINARIES

The Chairperson called the meeting to order at 10.05 a.m. and commenced with a word of prayer from Hon. Robert Mutemi. The Committee had an internal briefing before the nominee was ushered into the room.

MIN No.JLA.DCJ.APP.02 /2016:- APPROVAL HEARING OF THE DEPUTY CHIEF JUSTICE NOMINEE

Views received by the Committee are as follows-

On the qualifications of the nominee:

1. The nominee received several letters of recommendation including from the Chief Justice.
2. In support of why she was the most suitable candidate, the nominee stated as follows in her opening remarks-
 - (i) That she meets all the requirements under the Constitution of Kenya (Article 166)
 - (ii) She articulated her educational background and qualifications. She stated that she had been admitted to pursue an LLM at the University of Nairobi

- (iii) She has practiced as an advocate for 32 years- she has served in a law firm, as a director in a parastatal and at the Judiciary for 9 years
- (iv) She is confident about her abilities as a judge due to her experience of running a court single-handedly in Eldoret where she was called upon to give leadership to the court
- (v) She has worked well with the legal fraternity and considers herself a friend of LSK
- (vi) She was promoted to the Court of appeal in December 2012
- (vii) She was cleared of the complaints against her brought before the Judges and Magistrates Vetting Board. The vetting board found her fit to continue serving as a judge because the complaints were without merit
- (viii) She comes to the position of the Deputy with a varied background. She have worked in a private sector, headed an organization and served as a judge.

On the issue of delay of cases, she proposed the following:

1. She was of the view that the role of the Deputy Chief Justice is to give unqualified support to the Chief Justice and would ensure that returns by judicial officers are made regularly.
2. She would strengthen the existing programme which is a check system where by each judicial officer is expected to give returns on their target and thereafter the head of division makes returns.
3. She will make sure that judges and magistrates have a conducive programme to do their work. She will also ensure ICT compliance to do away with long hand.
4. She will ensure judges and magistrates make adequate arrangements if they are away from their duty station to avoid delays. She would also ensure that collegiality among judges and promote more consultations with the LSK to tackle adjournments

Views of the nominee on the issue of homosexuality

1. She was of the view that in order to answer the question she would have to determine whether it was a matter of choice or it was inborn. If it is a matter of choice, the constitution protects the freedom of association with regard to the lifestyle one chooses, as long as those rights do not interfere with the rights of others. She said she would rely on the Constitution for guidance.
2. However, she stated that the marriage between persons of the same sex is not allowed under the Constitution

Views on access to Justice due to lack of infrastructure/distance between courts?

The nominee was of the view that there were already ongoing effort to improve the court infrastructure, as commenced by the former Chief Justice and that if appointed she will strengthen it. Further, there should be budget allocated to provide housing for judicial officers close to the courts.

Views on court orders Vis' a Vis development projects

She stated that any person who brings the public interest case is allowed by the Constitution. It is therefore not up to the court to determine whose interest is more important than the other. The best approach is to have a speedy determination of the other. She believes that everybody's rights have to be vindicated in a court of law.

Views on issue of independence of the judiciary

On this issue, the nominee was of the view that the decisional mandate of the judiciary cannot be touched by any arm of government but that does not mean that there can be no consultation. And although the judiciary in its determination and mandate cannot be interfered with, there must be a constructive interdependence between the judiciary and other arms of government. However, the engagement should be structured. The nominee was of the view that there must be every effort to make all the arms of government to co-exist.

Views of members of the JSC being practicing

The nominee was of the view that every judge must have the courage to determine the cases irrespective of the parties before him or her. Personally, she stated that she would rely on only the pleadings and the law. However, the potential for a JSC member to intimidate a judge still exists. To deal with that, procedure must be developed to create a mechanism their appearance before the court is limited.

Question of the Supreme Court being divided

She stated that judges have a cordial relationship and it will not be hard to foster better relationships. She believed that the previous problems was a disconnect in their personalities but not in their ideology.

View on developing ADR to decongest the courts

The nominee was of the view that many of the cases need not go to court and that if people were forced to sit down with a person to guide the process and discuss their matters then most matters can be easily resolved. She will support the judiciary efforts to strengthen and engage in ADR.

During the JSC interview you mentioned that corruption was a problem-have you ever reported a corruption issue? Have you ever received a bribe?

1. The nominee admitted that there was corruption in the judiciary. She stated however that she has never been approached to be a conduit of corruption
2. With regard to reporting corruption cases, the nominee gave accounts of her personal experience in facing and tackling corruption cases. For instance, in her experience at her position at the Energy Board, she engaged the Anti-Corruption Commission to deal with corruption cases which led to the dismissal of those who were found culpable.

Views on children's rights

The nominee stated that under the law, custody and maintenance of children are different. Custody is granted to the parent who can take care of a child of tender years while the duty to maintain is for both parents. Overall the court should look at the best interests of the child.

The vision of the nominee for the Judiciary

1. The nominee stated that her vision was the fast dispensation of justice and that cases are determined on their merits;
2. She also looks forward to an automated judiciary
3. Ownership of the judiciary by judicial officers and staff
4. She also looks forward to seeing judiciary staff that are satisfied in their work

Challenges faced by the nominee as a woman and addressing the challenges for other women.

1. The nominee stated that position she has reached was on account of her merit and that she was extremely courageous and firm when she knows she is on the right path
2. With regard to charisma, she stated that not all of the persons are into activism but that she believed she was firm
3. She stated that she was prayerful and had a strong faith, she had support from many people including her family and that she consulted others

Views on Sexual Offence cases

1. The nominee was of the view that where there was solid evidence the law is tough on sexual offenders. However, the problem is that many sexual offences cases are not reported and in some cases the evidence is hidden.
2. The nominee was of the view that weakest link in sexual offences cases is in investigation. She also noted that the sentences were harsh on younger men since there is no discretion in sentencing. It only gives a minimum sentence.

3. There is need to consider rehabilitation of young men involved in sexual offences instead of the harsh sentences. She believes that the rights of the boys should be equally protected as those of the girls.

Jurisprudence: Is there a judgement that demonstrates who you are?

The nominee stated that she was a liberal and deals with the matter in relation to the circumstances at hand. Her approach is that whatever duty is given, do it to the best of your ability.

On the number of judgements the nominee delivered and which one she would we be most proud of:

She stated that she does not know the number but it is ascertainable because each judge has a target to meet. She stated that she has never been called by JSC for not having met her targets or underperforming.

She also stated that she was proud of all judgements she has done because what may appear to be a good judgment to one party may not be good to another since one party is always aggrieved.

Views on Sexual harassment in the Judiciary

The nominee stated that she has been a victim of sexual harassment many years ago and that the greatest problem is lack of reporting. She was of the view that there is need for a proper system of reporting and that she started working on a reporting system in the Court of Appeal.

On the strategy to operationalize the legal aid bill

The nominee noted that the judiciary had undertaken to increase the fees paid to pro bono advocates. She stated that she would undertake to sensitize the LSK to encourage advocates to serve on pro bono and increase their numbers. She noted that currently, all capital offenders are entitled to an advocate.

On handling of complaints by JSC

With regard to JSC handling cases of their own, the nominee noted that the body that has the mandate under the law to discipline judges is the JSC. She noted that it had prosecuted two judges. However, nothing stops parliament from enacting a law to take away the disciplinary process of judges from JSC to another body.

Views on magistrates as the weakest link

The nominee gave an undertaking if appointed to strengthen the magistrate courts and stated that she will support the Chief Justice and the JSC in ensuring there are practice

directions for every court. She admitted that some magistrates may not up be to date in recent laws passed by Parliament and need to be trained, mentored and supervised.

On the integration of Kadhis with the rest of the judicial system

The nominee stated that the judiciary had organized colloquiums for officers and Kadhis. She undertook to build synergy between the judicial officers to make sure they function as one judiciary.

On Recusal

The nominee stated that she has never been motivated by personal relationship in determining a case and that she has recused herself where there was a personal interest.

On Polygamy

The nominee was of the view that although she is a staunch catholic, polygamy is accepted in several cultures and that she will decide a case regarding a polygamous man on the merits of the case and not on personal bias.

Petition by Hon. Alice Wahome

The nominee responded to the petition and submitted the facts as set out in her written response. She refuted all allegations raised in the petition by providing a background of events and the reasons leading to such allegations which she termed as unfortunate and unfair.

MIN No.JLA.DCJ.APP.03/2016:- COMMITTEE'S DELIBERATIONS

The Committee, having interacted with the nominee, deliberated on the matter and observed that the nominee is a firm and competent judge and that she demonstrated passion in her work. The Committee also noted that the nominee handled the petition lodged against her well and demonstrated high degree of patience in her responses. However, it was also noted that despite her vast experience and competence, she had not improved her academic qualifications, even though that was a matter of personal choice.

The Committee recommended that the nominee be approved for the position of Deputy Chief Justice of the Republic of Kenya.

MIN No.JLA.DCJ.APP.04/2016:- ADJOURNMENT

PARLIAMENT OF KENYA

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

MEMBERS ATTENDANCE SHEET

**ADOPTION OF REPORT ON THE NOMINATION OF LADY
JUSTICE PHILOMINA MWILU AS THE DEPUTY CHIEF
JUSTICE OF KENYA**

At Room 7, Main Parliament Building

26th October 2016 (11:30am)

NO.	NAMES	SIGNATURE
1.	SAMUEL CHEPKORIR CHAIRPERSON	[Signature]
2.	HON. PRISCILLA NYOKABI VICE CHAIR	[Signature]
3.	KANOTI MWANUKAIE	[Signature]
4.	WANGI KANG'ATA	[Signature]
5.	DELING DAVID	[Signature]
6.	JOSE CHEBOT	[Signature]
7.	FLORENCE KAJUJU	[Signature]
8.	HON NGENO JOHANA	[Signature]
9.	HON Bishop R. Mutemi	[Signature]
10.	Hon. Fatima Ibrahim Ali	[Signature]
11.	HON. BONFACE O. OTSILA	[Signature]
12.	HON. Njoroge Barya	[Signature]
13.	HON Paul K. BU	[Signature]
14.	HON Sammy Koehn	[Signature]
15.	HON CHARLES G. GIMDSE	[Signature]

16.	Hon Mottamies ABDI HATI	Handwritten signature
17.	J.M. Waiganyo	J.M. Waiganyo
18.	Hon JOHN Ndirago	Handwritten signature
19.	Hon BEN Mwanari	Handwritten signature
20.	Hon. Christine Chubaka	Chubaka
21.	BENSON MURUA	Handwritten signature
22.	NEVA ANASTIN H	Handwritten signature
23.	William Chepturo	Handwritten signature
24.	PETER KAHUMA	Handwritten signature
25.	T. J. Kajwang	Handwritten signature
26.		
27.		
28.		
29.		

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CURRICULUM VITAE

HON. LADY JUSTICE PHILOMENA MBETE MWILU

CURRICULUM VITAE, CERTIFICATES,
TESTIMONIALS AND
REFERENCE LETTERS

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CURRICULUM VITAE

1.0 PERSONAL DETAILS

NAME : PHILOMENA MBETE MWILU

ADDRESS : P. O. Box 40623 – 00100 GPO NAIROBI

TELEPHONE : 0722 391 833

EMAIL : mwilum@yahoo.com

LANGUAGES : Kikamba, Kiswahili & English

DATE OF BIRTH : 15.04.1958

NATIONALITY : Kenyan

RELIGION : Christian – Catholic

2.0 EDUCATIONAL QUALIFICATIONS

1983 : Obtained an Honours Degree of Bachelor of Laws University of Nairobi, LLB. (Hons.) NBI.

1978 : Obtained 3 Principles Bs in the East African Advanced Certificate of Education at Loreto High School, Limuru (EAACE).

1976 : Obtained 1st Division of 12 points in the East African Certificate of Education at Muthetheni Girls' High School (EACE).

1974 : Obtained grades A, A, B, B, C, C, C, D in the Kenya Junior Secondary Examination at Makueni Girls Secondary School (KJSE).

1972 : Obtained grades B, C, D in the Certificate of

Primary Education at Kaumoni H.G.M.
Primary School (CPE).

3.0 PROFESSIONAL QUALIFICATIONS

- 1999 : Registered as Certified Public Secretary –
Registration of Certified Public Secretaries
Board.
- 1991 : Enrolled as Notary Public – High Court of
Kenya.
- 1990 : Appointed as Commissioner for Oaths – High
Court of Kenya.
- 1984 : Obtained a Diploma in Law in Legal
Education Studies from the Kenya School of
Law.

4.0 WORK EXPERIENCE ON THE BENCH 2012 TODATE

PUISNE JUDGE, HIGH COURT OF KENYA

- 8th November, 2012 to-date: Appointed judge of the Court of Appeal and
posted to Nairobi. I have undertaken the
hearing and determination of numerous cases
together with my colleague judges on various
benches. I have been a valued team player.
- January, 2012 : Appointed to Head the Environment and Land
Division of the Court and undertaking
hearings of all cases touching on the
Environment and use, occupation and Title to
land.
- February– December, 2011 : Moved to the Criminal Division at the
Murder Section.
- January, 2011 : Transferred to the High Court Nairobi and
worked in the Civil Appeals Division of the
court.

- June, 2008 – December, 2010:** Transferred to Eldoret High Court Station where I dealt with all manner of cases, that is to say Civil, Commercial, Family, Judicial Review, Constitutional Cases and Criminal Cases including Murder, Revision and Protection of and enjoyment of the Bill of Rights and Fundamental Freedoms and 1st Appeals from the magistracy.
- January, 2008 – June, 2008:** Posted to Milimani Commercial Division of the High Court where I dealt with purely Commercial Litigation.
- December, 2007** : Appointed High Court Judge.

PRIVATE PRACTICE

MUTUNGA & COMPANY ADVOCATES

September, 2001 to December, 2007 :

- Handling for clients all matters of a legal nature, that is to say, Civil, Criminal and Commercial litigation in and out of Court. Handling Conveyancing, Contracts, Leases and any other documents. Manning the smooth running of the firm's operations.

ENERGY TRIBUNAL

2006 – 2007

Board Director at Nairobi Water and Sewerage Company. Chair of the Legal and Human Resource Committee of the Board.

Deputy Chairperson of the Energy Tribunal (High Court Judge level position) hearing and determining appeals arising from decisions of the Electricity Regulatory Commission on energy sector Disputes.

Participating in policy making and overseeing the overall performance of the Company.

BOARD SECRETARY – ELECTRICITY REGULATORY BOARD

June, 1999 – June, 2001

Summary of Position Responsibilities

- Head of the Board Secretariat and Chief Executive Officer responsible to the Board for the day to day administration of the Board's Secretariat and Supervising Senior Managers.
- Arranging the business of the Board and keeping records thereof.
- Translating the Board's decisions into effective communication with internal and external public of implementation.
- Ensuring timely and effective implementation of the Board's decisions as appropriate, including follow-up.
- Preparing reports on Board activities.
- Maintaining the confidentiality of Board documents and deliberations and keeping safe custody thereof.
- Ensuring that the Board is informed of real and potential problems being experienced or likely to be experienced by the Board in its operations or the secretariat and making proposals to the Board for their solutions.
- Ensuring prudent financial management of the secretariat including tight control of expenditure, annual budget preparation and the maintenance of proper accounting records.
- Responsible for recruitment and replacement of staff.
- Appraising staff performance and identifying their development and training needs.
- Providing legal advice to the Board and where necessary liaising with Board lawyers on litigation including those that may require settlement in court.

- Developing the secretariat Human Resource Policies and Procedures and recommending areas of improvement.
 - Overseeing and advising on all insurance matters relating to Board property and staff in collaboration with relevant insurers/insurance brokers.
-
- Ensuring Board compliance with legal reforms and other statutory requirements such as leases, rents and reforms.
 - Liaising with relevant Government Departments.
 - Providing effective and efficient secretariat services to the Board Meetings, Management Meetings and Board Committee Meetings and ensuring that the resolutions of the Board are appropriately minuted; documents, communicated and executed accordingly.
 - Preparing Board Papers and Executive Summaries.
 - Drawing all documents of a legal nature such as contracts, leases and supervising the work of the Board's legal counsel.
 - Performing such other duties as the Board may assign from time to time.

SENIOR LEGAL MANAGER

THE JUBILEE INSURANCE CO. LTD. JUNE, 1991 TO , 1997

Summary of Position Responsibilities

The Jubilee Insurance Co. Ltd. – June 1991 to April, 1997.

Summary of Position Responsibilities.

- Head of the Legal Department in charge of all company's legal and corporate work in the Headquarters and at the branches.
- Handling all insurance and other claims and in liaison with the technical director negotiating settlement thereof upon determining Liability and Quantum of Damages.
- Advising the Board of Directors on all legal matters touching on the Company and its branches.

- Assisting and advising in Company Secretarial duties.
- Attending court and conducting hearings of any nature of cases involving the company such as outlay recovery, Debt collection personal injury and material damage claims.
- Handling charges, mortgages, leases, conveyancing and commercial matters and documentation.
- Liaising with external Advocates on all matters of a legal nature involving the company.
- Assessing legal department staff performance.
- Dealing with staff recruitment and replacement.
- Preparing the departmental Budget.

LEGAL ASSISTANT, OCTOBER, 1984 TO MARCH, 1991

MUTHOGA GATURU & COMPANY ADVOCATES

- Handling all matters of legal work in and out of court.
- Interviewing clients and witnesses and taking instructions from them.
- Prosecuting and defending cases on Human Rights issues, Matrimonial Causes, Debt collection, Commercial Law, Banking Law, Mortgage suits, Probate & Administration, Building Contracts, Arbitration Criminal Law and Conveyancing.
- Preparing Contracts and other Legal Documents.
- Attending to Taxation of Bills of Costs and Execution of Decrees.

CONFERENCES, SEMINARS AND WORKSHOPS ATTENDED

September, 1988 – attended the 22nd Biennial International Bar Association Conference in Buenos Aires, Argentina and participated in deliberations in the section on General Practice committee H on Insurance Law, committee P on Labour Law, committee 13 on Negligence and Accident Compensation.

September, 1990 – was one of twenty (2) Third World Young and Upcoming Lawyers awarded a full International Bar Association Section on Business Law Scholarship to attend the 23rd International Bar Association Biennial Conference in New York City, USA.

May, 1994 – attended the International Commission of Jurists Conference on The Implementation of Human Rights in Africa in Nairobi, Kenya.

June, 1994 – attended the International Conference on “The Role of the Advocate in National Development, II in Nairobi, Kenya.

August, 1994 – attended a UNICEF workshop on “The Draft Convention of the Rights of the Child.”

September, 1994 – attended a three (3) day Federation of Kenya Employer’s seminar on “Total Quality Management” which discussed Service and Service quality, Measuring Services quality, Improvement and strategic management among others.

September, 1995 – attended the United Nations Fourth World Conference on Women in Beijing, China as a participant.

July, 1996 – attended in Nairobi, Kenya a two (2) day “The Super Communication Workshop” on Effective Speaking and Listening, amongst other topics, which were conducted by the internationally reputed management consultant Shiringesh.

April, 1997 – attended in Nairobi, Kenya a one (1) week Federation of Kenya Employers’ course on “Women in Management” which discussed inter alia, Women and the Law; How to handle the dilemma of career and Family, Gender Issues in the work place, purposes of Employee Performance Appraisals and methods and use thereof, Time management, stress management, Leadership and Assertiveness and Grievance handling.

June – July, 1999 – In Washington D.C., U.S.A. attended an eleven (11) day Seminar on “Legal and Regulatory issues in Power and Energy sectors” on the functions of a Regulator which was facilitated by the International Law Institute in cooperation with Georgetown University.

August – September, 1999 – attended the Institute for Public Private Partnership Program on “Structuring Legal Agreements for Public – Private Partnerships Projects” in Washington D.C. U.S.A.

March 2000 – In Washington D.C, U.S.A. attended the Institute for Public – Private Partnerships program on “Regulating Electric Utilities & Energy Networks.”

April, 2000 – attended exchange of experiences in running Public Regulatory Bodies in Manila-Philippines, Belfast-Ireland, Kingston-Jamaica and Santiago-Chile.

June, 2000 – attended the Public Utility Research Centre/World Bank Training course on Utility Regulation and Strategy at the University of Florida, Gainesville, Florida U.S.

September, 2007 – at Serena Beach Hotel Mombasa attended a week long intensive training course on Corporate Governance for Directors on, inter alia, Strategic Planning, Risk Management, Role of Directors and Effective Leadership, facilitated by the Center for Corporate Governance.

July, 2008 – Nakuru, Kenya attended workshop on Refugee Law.

October, 2009 – Naivasha Kenya attended training on Training of Trainers on Refugee Law.

January, 2009 – Mombasa Serena Kenya attended workshop on Jurisprudence of Equality training.

April, 2009 – Whitesands Mombasa trained as a Trainer for Trainers on Jurisprudence of Equality.

September, 2011 – attended the International Association of Refugee Law Judges annual conference at Lake Bled, Slovenia.

July, 2012 – attended a three day Judicial seminar on Socio-Economic Rights as they relate to the Constitution.

RELIGIOUS ACTIVITIES

A member of the Catholic Justice and Peace Commission at St. Paul’s Catholic, Chaplaincy, Nairobi working to bring peace and justice to all.

A member of the Catholic Women Association – strengthening faith, prayer and social services. Our association pays fees for a poor boy and girl each year in secondary school from Form 1 to Form 4 from members’ contributions.

COMMUNITY SERVICE & PRO BONO ACTIVITIES

Long before I became a Judge and more particularly since 1986 I started paying school fees for bright children from poor families in my location back home. Two of them, Kyalo Mbiti and Munee Ndambuki, I took through to the University of Nairobi and Moi University from where they graduated with bachelors degrees in Engineering and Arts, respectively. I sponsored a boy Gideon Musau Nzioka in Kaumoni Secondary School from Form 1 to 4, a girl Cecelia Mwikali from Form 2 to 4 in Mangauni Secondary School. From 2013 I took on the payment of the boys learning at Nairobi school. I will see them through to form 4 allowing. These are Rosana Gibert from Kisii, Patrick Mulwa from Kitui and Joseph Nyawara from Kisumu.

I take an active part in Schools, Churches and Community functions e.g. assisting in funerals back home as well as here in Nairobi and in raising funds for development of churches and community events. I am a member of a welfare society, NDIMAA, back home.

I have been giving regular mentorship talks to girls in my former school – Makueni Girls School to motivate them to be serious with their school work and to take life seriously. I have since spread this activity to cover all girls' school in Makueni and Machakos counties and I have mentored girls in over ten (10) schools and the exercise continues.

FINANCIAL DISCIPLINE

I have strict financial discipline and I live within my means. I involve myself only in financial activities that I can comfortably afford. I have taken mortgages only when the income by way of rent from the properties is enough or near enough to meet the monthly repayment sums.

INVOLVEMENT IN LITIGATION

I have never been involved in litigation and I have no criminal cases against me, past or present.

POLITICAL PARTY INVOLVEMENT

I am politically inactive and have never made any financial contribution to any political party.

PROFESSIONAL AFFILIATIONS

- i. Member of Kenya Magistrates and Judges Association.
- ii. Member of Kenya Women Judges Association.

- iii. Member of International Association of Refugee Law Judges.

PROFESSIONAL REFEREES:

1. Justice Mohammed Ibrahim
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2. Justice P. Kihara Kariuki
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CHARACTER REFEREES:

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