

REPUBLIC OF KENYA



PARLIAMENT

ELEVENTH PARLIAMENT

THE NATIONAL ASSEMBLY

FOURTH SESSION

FIRST REPORT OF THE COMMITTEE OF PRIVILEGES

IN THE MATTER OF SUSPENSION OF THE HON. JAMES
OPIYO WANDAYI, MP

The Clerk's Chambers, National Assembly,
Parliament of Kenya,
Parliament Buildings,
Nairobi

July 2016

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PREFACE

The National Assembly (Powers And Privileges) Act was enacted on April 22, 1952.

The Act declares and defines certain powers, privileges and immunities of the National Assembly and of the members. It also secures freedom of speech in the National Assembly, regulates admittance to and conduct within the precincts of the National Assembly and gives protection to the persons employed in the publication of the reports and other papers of the National Assembly.

The law has been reviewed severally through Act No. 36 of 1961, L.N. 602/1963, L.N. 87/1964, Act No. 14 of 1966, Act No. 21 of 1966, Act No. 4 of 1973 and Act No. 10 of 1981.

The National Assembly (Powers and Privileges) Act establishes the Committee of Privileges. The law on privileges and immunities is applied together with other statutes, the Standing Orders and the usages, conventions and practices of the United Kingdom House of Commons and some Commonwealth jurisdictions where applicable.

The Committee of Privileges consists of the Speaker, as Chairperson, and ten other members of the National Assembly. The House Business Committee (formerly Sessional Committee) of the Assembly nominates the members of the Committee of Privileges other than the Speaker. The quorum of the Committee of Privileges is six including the chairman. The Committee regulates its own meetings and its own procedure. It is important to note that, hitherto, the Committee of Privileges has been a Sessional Committee (appointed at the beginning of every Session).

ACKNOWLEDGEMENT

The Chairperson of the Committee takes this opportunity to thank all the Members of the Committee for their immense contribution. The Committee wishes to also thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate. The Committee further wishes to record its appreciation for the services rendered by the staff of the National Assembly that enabled the production of this Report.

On behalf of the Committee of Privileges, I have the honour and pleasure to present the Report to the House.


_____ 19/07/2016

The Hon. Moses Cheboi, MP - Ag. Chairperson

PART I: THE COMMITTEE

MEMBERSHIP

1. The Hon. Justin B. N. Muturi, EGH, MP – Speaker, *Chairperson*

Members

2. The Hon. Jakoyo Midiwo, MP
3. The Hon. Jamleck Kamau, MP
4. The Hon. (Dr) James Murgor, MP
5. The Hon. (Dr.) Susan Musyoka, MP
6. The Hon. Peter Shehe, MP
7. The Hon. Kimani Ichungwah, MP
8. The Hon. Bedzimba Rashid Juma, MP
9. The Hon. Barchilei Kipruto, MP
10. The Hon. Joyce Emanikor, MP
11. The Hon. Florence Mwikali Mutua, MP
12. The Hon. Moses Cheboi, MP (*Co-opted, Chairing on behalf of the Hon. Speaker*)

COMMITTEE SECRETARIAT

The current Committee Secretariat includes Mr Kipkemoi arap Kirui (Principal Clerk Assistant I – Clerk-in-charge), Mr Michael Karuru (Deputy Director, Legal Services National Assembly), Mr Ronald Walala (Legal Counsel II) and Mr Moses Lemuna (Clerk Assistant III).

In attendance:

Mr J. N. Mwangi – Director, Legislative and Procedural Services
Mr Samuel Njoroge – Deputy Director, Legislative and Procedural Services

Contacts: All correspondence should be addressed to The Clerk of the National Assembly, Parliament Buildings, PO Box 41842, 00100 Nairobi. The telephone number for general enquiries is 020 2848000.

PART II: ESTABLISHMENT OF THE COMMITTEE

The mandate and powers of the Committee are set out in Articles 117(2)¹, 124(2)² and 103 (1) (b)³ of the Constitution, the National Assembly (Powers and Privileges) Act (Cap 6 of the Laws of Kenya)⁴, Leadership and Integrity Act⁵, the Public Officer Ethics Act, 2012⁶ and the Standing Orders⁷.

Article 117 of the Constitution of Kenya

Article 117 provides that *'there shall be freedom of speech and debate in Parliament'* and that *'Parliament may, for the purpose of the orderly and effective discharge of the business of Parliament, provide for the powers, privileges and immunities of Parliament, its committees, the leader of the majority party, the leader of the minority party, the chairpersons of committees and members'*. Article 124 also provides that *'Each House of Parliament may establish committees, and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees'*.

The National Assembly (Powers and Privileges) Act (Cap 6 of the Laws of Kenya), the Leadership and Integrity Act, the Public Officer Ethics Act, 2012, the Standing Orders and the Speaker's Rules assign specific functions to the Committee of Privileges.

The Committee of Privileges hears matters arising out of breaches to Speaker's orders regulating the admittance of strangers to and the conduct of strangers within the Chamber and those regulating the admittance of strangers to and the conduct of strangers within the precincts of the Assembly or any other part other than the Chamber. The Committee also enforces the Code of Conduct through directions issued from time to time by the Speaker regulating the conduct of members of the Assembly whilst within the precincts of the Assembly other than the Chamber⁸. In particular, the Committee has power to order the attendance of any Member of Parliament before the committee and to require that specific

¹ "Parliament may, for the purpose of the orderly and effective discharge of the business of Parliament, provide for the powers, privileges and immunities of Parliament, its committees, the

² "Each House of Parliament may establish committees, and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees"

³ "The office of a member of Parliament becomes vacant if, during any session of Parliament, the member is absent from eight sittings of the relevant House without permission, in writing, from the Speaker, and is unable to offer a satisfactory explanation for the absence to the relevant committee"

⁴Section 10, National Assembly (Powers and Privileges) Act [Revised by Act No. 14 of 1996, s. 2, Act No. 10 of 1981]

⁵Section 6 (3), 12, 37 and 42 (2) of the Leadership and Integrity Act, 2012

⁶ Section 3 (2) (a) and Section 3 (10) of the Public Officer Ethics Act, 2003 (Cap 183)

⁷National Assembly Standing Orders 191 and 258

⁸ Act No. 14 of 1966, s. 2.

documents or records in the possession of a Member relating to its inquiries be laid before the Committee.

The Committee of Privileges, either of its own motion or as a result of a complaint made by any person, may inquire into any alleged breach by any member of the Assembly of the Code of Conduct issued by the Speaker, or into any conduct of any member of the Assembly within the precincts of the Assembly (**other than the Chamber, save when on referral by the Speaker or any Presiding Officer**) which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or that member, or to be contrary to the best interests of the Assembly or the members⁹.

After conducting an inquiry the Committee of Privileges reports its findings to the Assembly together with such recommendations as it thinks appropriate. The Assembly thereafter, in accordance with rules made by it (which rules need not be published in the *Gazette*, in this case the Sessional Paper No. 2 of 1966), considers the report and the recommendations thereon and may take such disciplinary action against the member concerned as may be provided by those rules. It is instructive to note that these 1966 rules have hitherto not been effectively enforced.

The Committee has power to order attendance of witnesses. This includes ordering any person to attend before it and to give evidence or to produce any paper, book, record or document in the possession or under the control of that person. It may also examine witnesses on oath.

The Committee is also the protector of the privileges of witnesses before any committee of the House. However, its jurisdiction is limited to matters taking place within the precincts of Parliament but outside the plenary. On April 26, 2012, while interpreting the jurisdiction of the Committee of Privileges, Speaker Francis Ole Kaparo put it thus *"the jurisdiction of the Committee of Privileges is limited and does not extend to matters which arise on the Floor ... In matters that arise on the Floor of the House, determinations properly belong to the Speaker or the Presiding Officer. The Committee of Privileges will not be seized of such a matter"*¹⁰.

The Committee also has a mandate of hearing cases of failure by Members to attend Assembly sittings. Article 103 (1) (b) of the Constitution and Standing Order 258 provide that if, *during any Session of a Parliament*, a Member is absent from eight sittings of the National

⁹ Section 10, National Assembly (Powers and Privileges) Act [Revised by Act No. 14 of 1996, s. 2, Act No. 10 of 1981]

¹⁰ National Assembly Hansard, April 26, 2014

Assembly without permission, in writing from the Speaker, the Speaker shall report the matter to the National Assembly and the matter shall stand referred to the Committee of Privileges for hearing and determination.

The Committee of Privileges inquires into a matter referred to it within fourteen days from the date it is referred to it and thereupon submit a report to the House. If the report of the Committee finds that the Member has offered a satisfactory explanation for the Member's absence from eight sittings of the National Assembly without the permission in writing from the Speaker, there shall be no further proceedings in the House in respect of the matter.

If the report of the Committee finds that the Member has not offered a satisfactory explanation for the Member's absence from at least eight plenary sittings of the National Assembly, the Chairperson of the Committee or a Member of the Committee designated by the Committee for that purpose shall, upon submitting the report, give a three days' notice of a Motion that, **"This House notes the Report of the Committee of Privileges laid on the Table of the House on ... regarding..."** with other necessary modification.

A Motion introduced for the purpose must be debated in the usual manner of debating Motions, except that-

- (a) no amendment shall be permitted to the Motion;
- (b) the debate of the Motion shall not be anticipated by a Motion for the adjournment of the House, and no dilatory Motion shall be moved in relation to the business, and the business shall not be interrupted under any Standing Order.

At the conclusion of the debate on the motion, the Speaker shall not put a question but shall declare that, pursuant to Article 103 (1) (b) of the Constitution, the office of the Member concerned has become vacant. This has however never happened.

Similar procedure applies to all other disciplinary reports of the Committee of Privileges.

No proceedings or decision of the Assembly or the Committee of Privileges when determining matters relating to the privileges and immunities of Members can be questioned in any court.

The Committee has power to refuse to allow its public proceedings to be broadcast.

PART III: SPEAKER'S REFERRAL OF A MATTER TO THE COMMITTEE OF PRIVILEGES

The Leader of the Majority Party sought directions from the Speaker on matters arising out of media reports of a Court Order reversing a matter of proceedings of the House. The Court Order stayed the decision of the House to suspend the Hon. James Opiyo Wandayi for the remainder of the Session of the House in terms of Standing Order 111 pending the hearing and determination of the Judicial Review Application filed by the Honourable Member. In light of the Court Order, the Leader of Majority sought clarification on the following fundamental issues-

- (1) what is the fate of the Standing Orders and in particular the disciplinary procedure set out in Standing Orders 107-112 of the National Assembly Standing Orders that are made pursuant to Articles 75(2)(a) and 124(1) of the Constitution?
- (2) what is the fate of the power of the House to make Standing Orders and how far can the House provide for the orderly conduct of its proceedings and what is envisaged by the use of the word "orderly conduct"?
- (3) what is the fate of the privileges conferred on this House by virtue of Article 117(2) of the Constitution and the National Assembly (Powers and Privileges) Act?

Several Members including Hon. Olago Aluoch, Hon. T.J Kajwang and Hon. Kimani Ichungw'a also debated on the issue and requested the Speaker to make a ruling on the same. Prior to the debate in the House, the Speaker had also received correspondence from Hon. Peter Kaluma and Hon. Jakoyo Midiwo requesting the Speaker to pronounce himself on the matters relating to Standing Order 111.

The Speaker explained that the court order raised fundamental issues touching on the principle of separation of powers as contemplated in the Constitution. He said the Standing Orders are made pursuant to Article 124 of the Constitution to govern the manner in which the House conducts its business. He posed: **Can the Court therefore pronounce itself on the internal rules and procedures of the National Assembly without encroaching into the powers of Parliament to conduct its**

business? What is the Speaker required to do in light of the Court Order staying the decision of this House?

The Hon. Speaker directed that the matters raised including the issues canvassed in the letters by Hon. Peter Kaluma and Hon. Jakoyo Midiwo be taken up by the Committee of Privileges as the body mandated under the National Assembly (Powers and Privileges) Act to consider and advise the House on matters of privilege by Tuesday 19th July 2016. The Speaker added that the **“Committee is also at liberty to relook at the events of 31st March, 2016 for purposes of Article 75 of the Constitution and make such recommendations as may be appropriate. The Committee shall advise the House on the way forward as regards the Court Order and the issues raised by the Honourable Members”**.

He further directed that pending the conclusion of the matter by the Committee of Privileges, the Honourable Member James Opiyo Wandayi is deemed a stranger and shall not be allowed within the precincts of Parliament except for purposes of attending the summons of the Committee of Privileges as and when required by the Committee.

PART IV: COMMITTEE SITTINGS

The Committee held three (3) sittings to consider the matter. The relevant minutes of these sittings form part of the Report and are appended hereto.

At their first sitting held on Thursday July 14, 2016 at the National Assembly Speaker’s Boardroom, the Committee held preliminary deliberations on the matter. The Committee also heard submissions from the Directorate of Litigation and Compliance on the status of the case in court and the Directorate of Legal Services on the competence of the committee to hear the matter, the *sub judice* rule and the refusal by the Hon. Wandayi to appear to give evidence before the Committee. The Committee also took evidence from the Hon. Jakoyo Midiwo on constitutional and procedural questions surrounding the suspension of the Hon. Opiyo Wandayi.

During their second sitting held in the afternoon of Thursday July 14, 2016 at the same venue, the Committee held further deliberations on the matter and took evidence from the Hon. Peter Kaluma who had written to the Speaker raising constitutional and procedural issues regarding the suspension of the Hon. Opiyo Wandayi.

At their third sitting held on Tuesday July 19, 2016, the Committee considered and their Report and adopted it.

PART V: EVENTS OF MARCH 31, 2016

On March 31, 2016 while H.E President Uhuru Kenyatta was delivering a State of the Nation Address to a joint sitting of the Houses of Parliament, the Hon. James Opiyo Wandayi and other legislators disrupted the President's speech by blowing whistles. When ordered to withdraw from the Chamber pursuant to Standing Order 107, the Hon. Member refused to so withdraw. The Speaker having called the attention of the House to the fact that recourse to force was necessary in order to compel the Hon. Member to withdraw, proceeded to enforce the provisions of Standing Order 111 by ordering the forceful removal of the Hon. Member from the House and his suspension from the service of the House for the remainder of the Session. As per Standing Order 111, the Hon. Member was to forfeit the right of access to the precincts of Parliament during the period of suspension. The Hon. Member did not appeal the decision of the Speaker.

PART VI: APPLICABLE DISCIPLINARY PROCESS UNDER STANDING ORDER 107 TO 112

1. Withdrawal

Where a Member is found to have **“committed serious breaches of the Standing Orders”** and/or **“acted in a way to the serious detriment of the dignity or orderly procedure of the House”** (Standing Order 107) and the Speaker orders him or her to withdraw immediately from the precincts of the Assembly, this being the first occasion, for the remainder of that day's sitting. A repeat offence on a second or subsequent occasion during the same session attracts an order of withdrawal from the precincts of the Assembly for a maximum of three sitting days including the day of suspension.

2. Naming and Motion to suspend a member from the service of the House

If on any occasion the Speaker deems that his or her powers are inadequate, the Speaker may name such Member or Members. After the member has been named, a Motion is made by any other Member present **“That, such Member (naming the Member) be suspended from the service of the House,”** and the Speaker forthwith puts the question, no amendment, adjournment, or debate being allowed. If the breach has been committed in a Committee of the whole House, the Chairperson forthwith leaves the Chair and reports the circumstances to the House and the Speaker after a similar Motion forthwith puts the question, no amendment, adjournment or debate being allowed, as if the offence had been committed in the House itself. A Member thus suspended shall be ordered by Speaker to withdraw from the Chamber and the precincts of

the Assembly, for—

- (a) on the first occasion, four sitting days including the day of suspension,
- (b) on the second occasion during the same Session, for eight sitting days, including the day of suspension; and
- (c) on the third or any subsequent occasion during the same Session for twenty-eight sitting days, including the day of suspension.

Such member shall during the period of such withdrawal or suspension (except during a recess) forfeit the right of access to the precincts and shall also forfeit all allowances payable during the period of such suspension.

Any Member who demonstrates or makes disruptive utterances against the suspension of a named Member is deemed to be disorderly and is also punished in a similar manner.

3. What happens if a Member refuses to withdraw?

If a Member refuses to withdraw when required to do so, the Speaker or the Chairperson of Committee as the case may be, having called the attention of the House or Committee to the fact that **recourse to force is necessary in order to compel the Member to withdraw**, orders such Member to be removed and such Member shall thereupon **without question put be suspended from the service of the House during the remainder of the Session** and shall during such suspension, **forfeit the right of access to the precincts of Parliament** and the Serjeant-at-Arms shall take necessary action to enforce the order (*National Assembly Standing Order 111*).

4. Issues raised with regard to Standing Order 111

Concerns have however been raised regarding the self-executing nature of Standing Order 111 and the risk of disproportionality in its application, lack of uniformity of punishments for similar offences during the same session, inadequate opportunity to appeal the decision, among others.

PART VII: APPLICABLE SANCTIONS IN COMPARATIVE AND OTHER JURISDICTIONS

The Committee noted that Parliamentary practice in comparative jurisdictions in the Commonwealth such as the United Kingdom, Australia, India and South Africa, sanctions against disorderly conduct of members during parliamentary proceedings include withdrawal from the House for the remainder of the sitting, naming of a member and suspension from the service of the House for specified duration of time or sittings. The length of the suspension of a member from the Service of the House depends on the frequency of a member's misconduct and the most severe sanction is suspension for twenty parliamentary sitting days as a case in the South African Parliament for exhibiting disorderly conduct on more than two occasions during the same session.

The Committee further noted that the sanctions were imposed either by the Speaker as the presiding officer or upon the passage of a motion in the House. The sanctions imposed on a member would terminate either on the passage of a motion by the House in that regard as is the practice in India or in the event the member submits a written expression of regret to the Speaker who may then approve the termination of the suspension as is the case in South Africa.

The Committee observed that the practice in United Kingdom allows suspended Members to serve in the Committees of the House especially with regard to the consideration of a private Bill to which the Member has been appointed but on the other hand disentitles the Member from drawing a salary.

The Committee further observed that the practice in the Federal Republic of Germany offered a number of novel sanctions for disorderly conduct by a member of the House. Such conduct can attract suspension for up to thirty sitting days on any occasion as per the discretion of the presiding officer.

During the suspension, the member may not serve in the Committees of the House and though the member draws a salary, a further fine of one thousand Euros may be imposed on the member for a gross breach of order. The Member may however lodge an objection to the suspension which is decided upon by the House without debate at its next sitting.

PART VIII: EVIDENCE

The Committee resolved to prioritise the matter regarding the suspension of the Hon. Opiyo Wandayi, in particular **the issues raised by the Honourable Aden Duale, Peter Kaluma and Jakoyo Midiwo** and to tender an advice to the Speaker by Tuesday July 19, 2016. The other matters

referred to the Committee were considered weighty requiring more time of deliberation before considered advice is tendered to the Speaker.

1. Preliminary

The Committee heard Mr Sheriffsam Mwendwa, Legal Counsel representing the Directorate of Litigation and Compliance, and Mr Michael Karuru counsel from the Directorate of Legal Services attached to the Committee of Privileges.

2. Hearing

The Committee took evidence from two witnesses, the Hon Jakoyo Midiwo and Peter Kaluma. The Committee did not invite the Hon. Aden Duale to appear before it to further explain the issues he had raised on the floor.

1. The Hon. Jakoyo Midiwo, MP

The Hon. Jakoyo raised a number of issues, namely—

1. That the sanctions against Hon. Wandayi did not take the principle of uniformity of punishment into account. Hon. Jakoyo questioned whether the suspension of a Member at the beginning of a Session can be compared to the suspension of a member at the end of a Session, and whether the disparity was fair.
2. That the sanctions against the Hon. Wandayi extended to third parties including his staff and constituents who rely on the services and representation of a legislator. Hon. Jakoyo did not understand why a punishment meted on a legislator should drastically alter representational and administrative services of a legislator.
3. That the sanctions against Hon. Wandayi when compared to those imposed on other members amounted to the application of double standards in the discipline of members. He cited the incident of Hon. Wandayi who blew a whistle and Hon. Washiali who during the debate on the Report of the Departmental Committee on Agriculture on the Sugar Sector on March 18, 2016 was, in his opinion, was aggressive and uttered inciting and hateful words targeted at two tribes and attempted to throw a bottle of water at a legislator. The two incidents were weeks apart.
4. That Standing Order 111 needs to incorporate the principles of fair administrative action and fair hearing in accordance with Article 47 and 50 of the Constitution and Fair Administrative Action Act, 2015. He proposed that an offender should be provided an opportunity of being heard through referral of matters of grievous

conduct to the Committee of Privilege with clear mechanisms of appealing a decision of the Speaker.

II. The Hon. Peter Kaluma, MP

The Hon. Kaluma submitted as follows:

1. The provisions of Standing Order 111 of the National Assembly Standing Orders violate Articles 1 and 2 of the Constitution relating to the people's right to representation and/or to indirectly exercise their sovereignty through duly elected representatives.
2. The provisions of Standing Order No. 111 of the National Assembly Standing Orders; to the extent that they impose punishment without hearing, are inconsistent with and violate the provisions of Article 47 and 50 of the Constitution, the rules of natural justice and the rule of law enshrined in the national values and principles of governance set out under Article 10 of the Constitution.
3. The provisions of Standing Order No. 111 of the National Assembly Standing Orders, to the extent that they by operation impose unequal punishment for same offenders, are inconsistent with the doctrine of equality and non-discrimination enshrined in the national values and principles of governance set out under Article 10 of the Constitution.
4. The enforcement of the provisions of Standing Order 111 of the National Assembly Standing Orders limit the roles of a Member of Parliament in the National Assembly provided under Article 95 of the Constitution and curtail an affected Member's rights, benefits and emoluments.
5. The enforcement of the provisions of Standing Order 111 of the National Assembly Standing Orders affect the employees of the Parliamentary Service Commission attached to an affected Member of Parliament.
6. There is need for an exhaustive definition of what constitutes the 'precincts of Parliament' so as not to victimise a member on whom sanctions have been imposed pursuant to the enforcement of the

provisions of Standing Order 111 of the National Assembly
Standing Orders

PART IX: WHAT THE COMMITTEE IS CALLED TO DETERMINE

The Speaker sought the considered advice of the Committee of Privileges on the following:

1. Appropriate recommendations after reconsidering the events of 31st March, 2016 for purposes of Article 75 of the Constitution;
2. The way forward as regards the Court Order and the issues raised by the Honourable Aden Duale, Peter Kaluma and Jakoyo Midiwo, among others;
3. Whether the Court can pronounce itself on the internal rules and procedures of the National Assembly without encroaching into the powers of Parliament to conduct its business;
4. What the Speaker is required to do in light of the Court Order staying the decision of this House;
5. The fate of the Standing Orders and in particular the disciplinary procedure set out in Standing Orders 107-112 of the National Assembly Standing Orders that are made pursuant to Articles 75(2)(a) and 124(1) of the Constitution;
6. The fate of the power of the House to make Standing Orders and how far the House can provide for the orderly conduct of its proceedings and what is envisaged by the use of the word "orderly conduct";
7. The fate of the privileges conferred on the House by virtue of Article 117(2) of the Constitution and the National Assembly (Powers and Privileges) Act;

PART X: FINDINGS AND RECOMMENDATIONS

The Committee considered the presentations from Mr Sheriffsam Mwendwa, the Deputy Director, Litigation and Compliance, and Mr Michael Karuru, the Deputy Director, Legal Services attached to the

Committee of Privileges and evidence adduced by the Hon. Jakoyo Midiwo and the Hon. Peter Kaluma.

The Committee resolved to only consider the matter of the suspension of the Hon. James Opiyo Wandayi and report to the House by Tuesday July 19, 2016. The consideration of the other matters referred to the Committee by the Speaker was **deferred** due to the limited period of time within which the Committee was required to report back to the House.

While the Committee exercised its powers under Articles 117 and 124 of the Constitution, the National Assembly (Powers and Privileges) Act and Standing Orders, it did not address itself to matters it considered to be *sub judice*.

The Committee made the following findings and recommendations:

(a) Uniformity of Punishment

The Committee considered the issue of uniformity of punishment, an important principle of criminal justice emphasising pre-offense predictability, retributive proportionality, in-system predictability and purposeful sentencing.

It was observed that an offender Member at the beginning of a Session does not get a similar treatment and punishment as a member committing the same offence towards the end of the same Session. It was recommended that the National Assembly Standing Order 111 be reviewed to cure the unequal treatment of the same offence at different times of the Session.

The Committee resolved to propose changes to the National Assembly Standing Order 111 to provide for uniformity of punishment thereafter recommending its proposals to the Procedure and House Rules Committee to be incorporated in the on-going review of Standing Orders of the House

(b) Self-Executing Standing Order 111

It was observed that Standing Order 111 is self-executing without providing room for the presiding officer or chairperson of a Committee of the Whole House to manage unique situations.

Issues arose on whether the decision taken by the Speaker when enforcing this Standing Order violated the principles of proportionality. Proportionality has been defined as:

“a principle requiring the administrative authority, when exercising discretionary power to maintain a proper balance between any adverse effects which its decision may have on the rights, liberties, or interests of persons and the purpose which it pursues”¹¹.”

The Committee appreciated that owing to the self-executing nature of Standing Order 111 the hands of the Speaker were tied. The Committee also recommends that the Procedure and House Rules Committee considers reviewing Standing Order to provide room for presiding officers to manage unique circumstances as and when they arise.

(c) Fair hearing

The Committee appreciated issues raised regarding the matter of the breach of the member’s rights under Article 47 of the Constitution and in particular touching on fair administrative action and fair hearing. It was proposed that an offender should be provided an opportunity of being heard through referral of matters of grievous conduct to the Committee of Privileges with clear mechanisms for appeal.

Article 47 of the Constitution is meant to uplift the quality of public decision making, and thereby ensure for the citizen civilised governance, by holding the public authority or a State organ to the limit defined by the law and upholding the values of fairness, reasonableness and objectivity in the conduct and management of public affairs.

The Committee recommends that matters concerning Members accused of grossly disorderly conduct or other graver offences after initial action has been taken by the Speaker or Chairperson of the Committee of the whole House be automatically referred to the Committee of Privileges for hearing before the House makes a decision on the sanctions or penalties for the offence.

(d) Stiffer penalties:

The Committee recommends that the Procedure and House Rules Committee considers introducing stiffer sanctions/penalties for grossly disorderly conduct including fines, salary cuts, suspensions among others as a deterrence.

(e) Lifting of the Suspension of Hon. James Opiyo Wandayi

That while noting the representations made by the Hon. Midiwo and the Hon. Kaluma, appreciating the provisions of Articles 47, 50 and 259 of the Constitution on fair administrative action, and notwithstanding the provisions of Standing Order 111, the Committee is of the view that the

¹¹ De Smith, Woolf and Jowel, *Judicial Review of Administrative Action*, Fifth Edition (pp.594-596)

suspension of the Hon. James Opiyo Wandayi be lifted as the duration of four months suspension already served constitutes an adequate punishment, in the circumstances.

Consequently the Committee of Privileges does not recommend any further disciplinary action on the Member.

Accordingly, as per **Rule 2** of the Disciplinary Rules (Sessional Paper No. 2 of 1966) where the Committee of Privileges does not recommend any disciplinary action, no further proceedings should follow.

Rule 2 provides thus:

“If such Report does not recommend any disciplinary action there shall be no further proceedings whatsoever in respect thereof, other than (where necessary) further inquiry and Report by the Committee of Privileges”

The matter therefore ends.

MINUTES OF THE FIRST SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON THURSDAY JULY 14, 2016 IN THE NATIONAL ASSEMBLY SPEAKER'S BOARD ROOM, MAIN PARLIAMENT BUILDINGS AT 10.00AM

PRESENT

1. The Hon. Moses Cheboi, MP – **Chairing**
2. The Hon. Peter Shehe, MP
3. The Hon. (Dr.) James Murgor, MP
4. The Hon Florence Mwikali Mutua, MP
5. The Hon. Jakoyo Midiwo, MGH, MP
6. The Hon. Kimani Ichung'wah, MP
7. The Hon. Barchilei Kipruto, MP
8. The Hon. Bedzimba Rashid Juma, MP
9. The Hon. Joyce Emanikor, MP

APOLOGIES

1. The Hon. Jamleck Kamau, MP
2. The Hon. (Dr.) Susan Musyoka, MP

SECRETARIAT

- | | | |
|----------------------------|---|--------------------------------|
| 1. Mr. Michael Karuru | – | Deputy Director Legal Services |
| 2. Mr. Kipkemoi arap Kirui | – | Principal Clerk Assistant I |
| 3. Mr. Ronald Walala | – | Legal Counsel II |
| 4. Mr. Moses Lemuna | – | Clerk Assistant III |

IN ATTENDANCE

- | | | |
|--------------------------|---|------------------------|
| 1. Mr. J.N. Mwangi | – | Director, L & P |
| 2. Mr. Samuel Njoroge | – | Deputy Director, L & P |
| 3. Mr. S. Mwendwa | – | Deputy Director, L & C |
| 4. Ms. Mercy Thanji | – | LEGAL Counsel II |
| 5. Mr. Kiplangat Kirui | – | Legal Pupil |
| 6. Ms. Jackline Kiramana | – | Legal Pupil |
| 7. Ms. Kandendi Wachosi | – | Legal Pupil |
| 8. Ms. Naomi Kembo | – | Legal Pupil |

MIN.NO. 01/2016: PRELIMINARIES

The Chair called the Meeting to order at five minutes past ten o'clock, thereafter the Hon. Bedzimba Rashid Juma said the prayer.

MIN.NO. 02/2016: ADOPTION OF THE AGENDA

The Agenda of the Meeting was adopted by the members having been proposed by the Hon. (Dr.) James Murgor and seconded by the Hon. Peter Shehe.

MIN.NO.3/2016: CONSIDERATION OF THE MATTER OF SUSPENSION OF THE HON. JAMES OPIYO WANDAYI IN TERMS OF STANDING ORDER 111

The chairperson introduced the agenda item to the members and the sitting was informed that the Hon. Speaker in his Communication to the House on **July 6th, 2016** sought the considered advice of the Committee of Privileges by:

1. Relooking at the events of 31st March, 2016 for purposes of Article 75 of the Constitution and make such recommendations as may be appropriate;
2. Advising the House on the way forward as regards the Court Order and the issues raised by the Honourable Aden Duale, Peter Kaluma and Jakoyo Midiwo, among others;
3. Considering whether the Court can pronounce itself on the internal rules and procedures of the National Assembly without encroaching into the powers of Parliament to conduct its business;
4. Advising on what the Speaker is required to do in light of the Court Order staying the decision of this House;
5. Determining the fate of the Standing Orders and in particular the disciplinary procedure set out in Standing Orders 107-112 of the National Assembly Standing Orders that are made pursuant to Articles 75(2)(a) and 124(1) of the Constitution;
6. Determining the fate of the power of the House to make Standing Orders and how far the House can provide for the orderly conduct of its proceedings and what is envisaged by the use of the word "orderly conduct";
7. Determining the fate of the privileges conferred on the House by virtue of Article 117(2) of the Constitution and the National Assembly (Powers and Privileges) Act;

Preliminary:

Whether failure by the Hon. Opiyo Wandayi to appear could invalidate the proceedings of the Committee

The meeting was informed that the Hon. Opiyo Wandayi had declined to honour an invitation to appear before the committee by way of a letter dated July 13, 2016 addressed to Clerk of the National Assembly. The meeting was further informed that failure by the Hon. Member to appear before the committee could not in any way affect the proceedings.

Submissions received by the committee

The committee heard submissions from the following parties:

1. The Directorate of Litigation and Compliance;

The Directorate of Litigation and Compliance represented by the Deputy Director Litigation took the committee through the substance of the case before court. (*Summary of the Submissions attached to these Minutes*).

2. Directorate of Legal Services

The Directorate of Legal Services represented by the Legal Counsel also briefed the Committee on the substance of the case before court besides taking the meeting through the preliminaries before hearing the two petitioners (*Summary of the Submissions attached to these Minutes*).

3. Petition from Hon. Jakoyo Midiwo

The Hon. Jakoyo raised a number of issues, namely;

1. The principle of uniformity of punishment:

Hon. Jakoyo questioned whether the suspension of a Member at the beginning of a Session occasions an equal punishment as that of a suspension at the end of a Session.

2. Punishment extended to third parties including staff and constituents who rely on the services and representation of a legislator:

Hon. Jakoyo did not understand why a punishment meted on a legislator should drastically alter representational and administrative services of a legislator in officer.

3. Double standards:

The Member cited two similar circumstances, one of Hon. Wandayi who blew a whistle interrupting a State of the Nation Address by HE President

Uhuru Kenyatta on March 31, 2016 and Hon. Washiali who during the debate on the Report of the Departmental Committee on Agriculture on March 18, 2016 on the Sugar Sector who he said was aggressive and uttered inciting and hateful words targeted at two tribes and attempted to throw a bottle of water at a legislator. The incidences were weeks apart. He paused: why the double standards?

4. The need for fair administrative action in accordance with Art. 47 and Fair Administrative Action Act:

The Member proposed that an offender should be provided an opportunity of being heard through referral of matters of grievous conduct to the Committee of Privilege with clear mechanisms to appeal.

MIN. NO.04/2016: ANY OTHER BUSINESS

There being no any other business the Chair adjourned the sitting at 1.30 pm until Thursday, **July 14, 2016 at 2:00 pm in the same venue.**



Sign.....

The Hon. Moses Cheboi - Chairing

Date..... 19 / 07 / 2016.

**MINUTES OF THE SECOND (AFTERNOON) SITTING OF THE
COMMITTEE OF PRIVILEGES HELD ON THURSDAY JULY 14, 2016
IN THE SPEAKER'S BOARD ROOM MAIN PARLIAMENT BUILDINGS
AT 2:00PM**

PRESENT

1. The Hon. Moses Cheboi, MP – **Chairing**
2. The Hon. Peter Shehe, MP
3. The Hon.(Dr.) James Murgor, MP
4. The Hon Florence Mwikali Mutua, MP
5. The Hon. Jakoyo Midiwo, MGH, MP
6. The Hon. Kimani Ichung'wah, MP
7. The Hon. Bedzimba Rashid Juma, MP
8. The Hon. Joyce Emanikor, MP
9. The Hon. Jamleck Kamau, MP

APOLOGIES

1. The Hon. (Dr.) Susan Musyoka, MP
2. The Hon. Barchilei Kipruto, MP

SECRETARIAT

1. Mr. Kipkemoi arap Kirui – Principal Clerk Assistant
2. Mr. Ronald Walala – Legal Counsel II
3. Mr. Moses Lemuna – Clerk Assistant III

IN ATTENDANCE

1. The Hon. Peter Kaluma – Petitioner
2. Mr. Samuel Njoroge – Deputy Director, L & P
3. Mr. Michael Karuru – Deputy Director, Legal Services
4. Sheriffsam Mwendwa – Deputy Director, L & C
5. Ms. Mercy Thanji – Legal Counsel II

MIN.NO. 05/2016: PRELIMINARIES

The Chair called the Meeting to order at five minutes past two o'clock, thereafter the Hon. (Dr.) James Murgor said a prayer.

**MIN.NO.6/2016: CONSIDERATION OF THE MATTER OF
SUSPENSION OF THE HON. JAMES OPIYO WANDAYI IN TERMS OF
STANDING ORDER 111 (Continued from Morning sitting)**

Submissions by the Hon. Peter Kaluma

The Hon. Kaluma raised a number of issues, namely;

1. Whether or not the provisions of Standing Order 111 of the National Assembly Standing Orders are a violation of Article 1 and 2 of the Constitution relating to the people's right to representation and/or to indirectly exercise their sovereignty through duly elected representative; and are therefore null and void.
2. Whether or not the provisions of Standing Order No. 111 of the National Assembly Standing Orders; to the extent that they impose punishment without hearing, are inconsistent with and violate the provisions of Article 47 and 50 of the Constitution; and, the rules of natural justice and the rule of law enshrined as our National Values and Principles of Governance in Article 10 of the Constitution; and are therefore null and void.
3. Whether or not the provisions of Standing Order No. 111 of the National Assembly Standing Orders, to the extent that they by operation impose unequal punishment for same offenders, are consistent with the doctrine of equality and non-discrimination enshrined as our National Values and Principles of Governance in Article 10 of the Constitution; and, are therefore null and void.
4. To what extent does enforcement of the provisions of Standing Order 111 of the National Assembly Standing Orders limit the roles of a Member of Parliament in the National Assembly provided under Article 95 of the Constitution; and, to what extent the enforcement of the of the said Standing Order provisions curtail an affected Member's rights, benefits and emoluments?
5. To what extent does the enforcement of the provisions of Standing Order 111 of the National Assembly Standing Orders affect the employees of the Parliamentary Service Commission attached to an affected Member of Parliament?

6. What is 'precincts of Parliament', generally, and in relation to Standing Order 111 of the National Assembly Standing Orders?

Observations by the Committee

Having heard submissions, from the parties and deliberating on the issues raised the committee made the following **observations**:

1. *Sub judice* rule is applied to ensure not to prejudice court proceedings and the principle of "comity", whereby it is considered undesirable for Parliament to act as an alternative forum to decide court cases. It was observed that the Speaker may allow reference to any matter before the House or its Committees and therefore the fact that a matter is before court for determination does not automatically prevent the committee of privileges from hearing it;
2. That, the committee shall confine its deliberations only to the contents of the letters from the Hon. Jakoyo Midiwo and the Hon. Peter Kaluma as far it concerns the enforcement of House rules pertaining to the matter of the suspension of the Hon. Opiyo Wandayi;
3. That in applying standing order 111 to suspend the Member, the Speaker had absolutely no discretion but to apply it as the only available avenue to bring order in the House following his refusal to withdraw, reaffirming that the Speaker in his decision acted within the law;
4. That Standing Order 111 is self-executing and therefore the need to be improved not on the basis that is excessive but to make it even more punitive, taking into account the following:
 - a. **Uniformity in imposing equal punishment for same offenders and providing timelines;**
 - b. **That its application should not disadvantage the staff and constituents represented by the affected Member; and**
 - c. **Provide for an opportunity to be heard and right to appeal;**
5. That the Hon. Wandayi could have applied for review of the Speaker's decision in writing;

6. That to protect the integrity and the standing of Parliament and the courts the Hon. Wandayi ought to withdraw the case from the court and apply for review of the Speaker's decision by the Committee of Privileges, since the case before court was superfluous.
7. That appreciating the ambiguities in the Standing Order 111, the Committee of Privileges recommends that the Speaker lifts the suspension of the member within a reasonable time. The Committee further agreed to relook into the SO 111 with a view to making it stiffer, removing existing inconsistencies and thereafter recommending its proposals to the Procedure and House Rules Committee to be incorporated in the ongoing review of Standing Orders of the House.
8. That a draft report would be considered on **July 19, 2016 at 10:00 am.**

MIN. NO.07/2016: ANY OTHER BUSINESS

There being no any other business the Chair adjourned the sitting at 4.00 pm until Tuesday, **July 19, 2016 at 10:00 am in National Assembly Speaker's Boardroom.**



Sign.....

The Hon. Moses Cheboi – Chairing

Date..... 19/07/2016

MINUTES OF THE THIRD SITTING OF THE COMMITTEE OF PRIVILEGES HELD ON TUESDAY JULY 19, 2016 IN THE NATIONAL ASSEMBLY SPEAKER'S BOARD ROOM, MAIN PARLIAMENT BUILDINGS AT 10.00AM

PRESENT

1. The Hon. Moses Cheboi, MP – **Chairing**
2. The Hon. Peter Shehe, MP
3. The Hon. (Dr.) James Murgor, MP
4. The Hon. Jakoyo Midiwo, MGH, MP
5. The Hon. Barchilei Kipruto, MP
6. The Hon. Bedzimba Rashid Juma, MP
7. The Hon. Joyce Emanikor, MP
8. The Hon. Jamleck Kamau, MP

APOLOGIES

1. The Hon. (Dr.) Susan Musyoka, MP
2. The Hon. Kimani Ichung'wah, MP
3. The Hon Florence Mwikali Mutua, MP

SECRETARIAT

- | | | |
|----------------------------|---|--------------------------------|
| 1. Mr. Michael Karuru | – | Deputy Director Legal Services |
| 2. Mr. Kipkemoi arap Kirui | – | Principal Clerk Assistant I |
| 3. Mr. Moses Lemuna | – | Clerk Assistant III |

IN ATTENDANCE

1. Mr. Michael Sialai – Senior Deputy Clerk

MIN.NO. 08/2016: PRELIMINARIES

The Chair called the Meeting to order at five minutes past ten o'clock, thereafter the Hon. (Dr.) James Murgor said the prayer.

MIN.NO. 09/2016: CONFIRMATION OF MINUTES OF THE FIRST & SECOND SITTINGS

The Minutes of the First and Second Sittings were confirmed as true record of proceeding having been proposed by the Hon. Jakoyo Midiwo, MP and seconded by Hon. Jamleck Kamau, MP.

MIN.NO.10/2016: ADOPTION OF THE REPORT IN THE MATTER OF SUSPENSION OF THE HON. OPIYO WANDAYI, MP.

The Committee considered and adopted the report in the matter of suspension of the Hon. Opiyo Wandayi and its recommendations thereof for tabling in the House today Tuesday July 19, 2016.

MIN. NO.011/2016: ANY OTHER BUSINESS

There being no any other business the Chair adjourned the sitting at 11.30 am until Tuesday, **July 26, 2016 at 10:30 am in the same venue.**




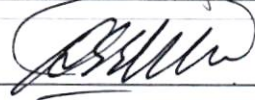





Sign.....

The Hon. Moses Cheboi - Chairing

Date..... 19/07/2016

COMMITTEE OF PRIVILEGES

ADOPTION OF THE REPORT IN THE MATTER OF SUSPENSION OF THE HON. OPIYO WANDAYI JULY 19, 2016

| NO | NAME | SIGNATURE |
|-----|-------------------------------------|---|
| 1. | The Hon. Moses Cheboi, MP- Chairing |  |
| 2. | The Hon. Peter Shehe, MP |  |
| 3. | The Hon. Kimani Ichung'wah, MP | |
| 4. | The Hon. Joyce Emanikor, MP |  |
| 5. | The Hon. Jamleck Kamau, MP |  |
| 6. | The Hon. Barchelei Kipruto, MP | |
| 7. | The Hon. James Murgor, MP |  |
| 8. | The Hon. Bedzimba Rashid Juma, MP |  |
| 9. | The Hon. Jakayo Midiowo, MP |  |
| 10. | The Hon. Susan Musyoka, MP | |
| 11. | The Hon. Florence M. Mutua, MP | |

PART XI: APPENDIX

APPENDIX I

APPENDIX II

APPENDIX III

APPENDIX IV

APPENDIX V

APPENDIX VI

APPENDIX VII

APPENDIX I

REPUBLIC OF KENYA

ELEVENTH PARLIAMENT- (FOURTH SESSION)

THE NATIONAL ASSEMBLY

COMMUNICATIONS FROM THE CHAIR

ON THE IMPLICATION OF A COURT ORDER ISSUED ON THE APPLICATION OF STANDING ORDER 111 AND THE SUSPENSION OF A MEMBER FROM THE SERVICE OF THE HOUSE

Honourable Members,

Yesterday, as you would recall, the Leader of Majority Party, Hon. Aden Duale sought directions from the Speaker on matters arising out of media reports of a Court Order reversing a matter of proceedings of this House. The Court Order stayed the decision of this House to suspend the Hon. James Opiyo Wandayi for the remainder of the Session of the House in terms of Standing Order 111 pending the hearing and determination of the Judicial Review Application filed by the Honourable Member. In light of the Court Order, the Leader of Majority sought clarification on the following fundamental issues-

- (1) what is the fate of the Standing Orders and in particular the disciplinary procedure set out in Standing Orders 107-112 of the National Assembly Standing Orders that are made pursuant to Articles 75(2)(a) and 124(1) of the Constitution?

- (2) what is the fate of the power of the House to make Standing Orders and how far can the House provide for the orderly conduct of its proceedings and what is envisaged by the use of the word "orderly conduct"?
- (3) what is the fate of the privileges conferred on this House by virtue of Article 117(2) of the Constitution and the National Assembly (Powers and Privileges) Act?

Several Members including Hon. Olago Aluoch, Hon. T.J Kajwang and Hon. Kimani Ichungw'a also debated on the issue and requested the Speaker to make a ruling on the same. Prior to the debate in the House, my office had also received correspondence from Hon. Peter Kaluma and Hon. Jakoyo Midiwo requesting the Speaker to pronounce himself on the matters relating to Standing Order 111.

Honourable Members,

Indeed, the question as to what is the import of the Court Order is one of great importance to this House as it raises fundamental issues touching on the principle of separation of powers as contemplated in our Constitution. As you are all aware, our Standing Orders are made pursuant to Article 124 of the Constitution to govern the manner in which we conduct our business as a House. Can the Court therefore pronounce itself on the internal rules and procedures of the National Assembly without encroaching into the powers of Parliament to conduct its business? This is a weighty question which the Court Order issued by the High Court reversing the decision of this House now presents. Simply put, what is the Speaker required to do in light of the Court Order staying the decision of this House?

Honourable Members,

As you are all aware, Article 107 of the Constitution provides that the role of the Speaker is to preside over or chair the proceedings of this House. The role of the Speaker is however not limited to presiding over the proceedings of the House but one which extends to ensuring that the House functions effectively and freely. Allow me to refer to the *Canadian Parliamentary Review*, "The Speakership: A New Zealand Perspective" which perhaps best illustrates the role of the Speaker and I quote..

"Those crucial separation of powers so fiercely fought over hundreds of years, remain today and establish, to my mind, the breadth and depth of the Speaker's role. The role is not just

chairing or presiding over the House. It is, in full context about ensuring the House of Representatives is free and able to function effectively both as a Legislature and in the vital role of holding the Crown or Executive to account. This view of the Speaker's role guides my interpretation of Standing Orders and also my role as "Minister" responsible for the Parliamentary Service."

The decision of the House, which the Court Order has now stayed, is one that was therefore made by the Speaker in exercise of powers which have been bestowed on him by the Constitution and the Standing Orders. Indeed, the Speaker does not take part in any debate and does not vote on the decisions of this House.

Honourable Members,

Permit me now to refer to the words of Speaker Lenthall uttered in 1642 in the British House of Commons when King Charles went into the House in 1642 and demanded to know the whereabouts of certain Members of Parliament who had opposed his proposal to raise taxes. In response, the Speaker told the King and I quote—

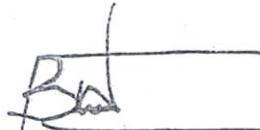
"May it please your Majesty, I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here..."

In light of the foregoing and since the Court Order seeks to stay the decision made by this House, the Speaker's hands are therefore tied, his eyes cannot see, his tongue cannot speak and he is subject to the direction of this House. Consequently, the Speaker has no option but to refer the matters raised by the Leader of Majority Party and other Members back to this House for determination. However, as you are aware, the Court Order relates to the issue of disciplinary proceedings raised by a House of Parliament against its Member, which is a question of the privilege of the House in terms of Article 117(2) of the Constitution. With this in mind, I direct that the matters raised including the issues canvassed in the letters by Hon. Peter Kaluma and Hon. Jakoyo Midiwo be taken up by the Committee on Privileges as the body mandated under the National Assembly Powers and Privileges Act to consider and advise the House on matters of privilege by Tuesday 19th July, 2016. The Committee is also at liberty to relook at the events of 31st March, 2016 for purposes of Article 75 of the Constitution and make such recommendations as may be appropriate. The Committee shall advise the House on the way forward as regards the Court Order and the issues raised by the Honourable Members.

I further direct that in the meantime, pending the conclusion of the matter by the Committee on Privileges, the Honourable Member James Opiyo Wandayi is deemed a stranger and shall not be allowed within the precincts of Parliament except for purposes of attending the summons of the Committee on Privileges as and when required by the Committee.

The House and officers of the House are accordingly advised!

I Thank you!



THE HON. JUSTIN B.N. MUTURI, E.G.H, MP
SPEAKER OF THE NATIONAL ASSEMBLY

July 6th , 2016

APPENDIX II

Hon. W. Jakoyo Midiwo, M.G.H., MP.
Gem Constituency
Deputy Minority Leader, National Assembly

Parliament Buildings
Tel: +254 20 2221291 Ext. 3445
Fax: +254 20 2245 473
P. O. Box 41842 - 00100, Nairobi, Kenya

County Hall, 2nd Flr. Room 208
P.O. Box 68077 - 00200, Nairobi, Kenya
Mobile: +254 721 504 040
E-mail: midwoj@gmail.com

19th April, 2016.

The Speaker
Kenya National Assembly
Parliament Buildings
P.O. Box 41482 - 00100
NAIROBI.

Dear Sir,

RE: SUSPENSION OF HON. OPIYO WANDAYI, MP - UGUNJA CONSTITUENCY.

I seek your indulgence in the above stated matter.

As you know the Member of Parliament for Ugunja, Hon. Wandayi is serving a suspension from House proceeding and Parliamentary activities until the end of the current session of parliament arising from the events of 30th March, 2016 during the State of the Nation address to Parliament.

I have reflected on Standing Order 111 which has been used to send him on suspension. While I am not questioning the legality of the suspension, I think this particular provision of our Standing Orders has ambiguities that I would like to bring to your attention:-

- a) The Standing Order 111 seems to discriminate on the weight of punishment to Members depending on the time the offence is committed; for example, a member who commits the offence on the last day of the Session, he/she is

suspended only for the period between Sessions. On the other hand if the offence is committed on the first day of the Session, the Member is forced to sit out for a whole year (as is the case with Hon. Wandayi's).

- b) The people of Ugunja Constituency would be subjected to endure the punishment of not having representation in Parliament for nearly one year without option of choosing a replacement through no fault of their own.

This, in my view would violate **article 1(2)** of our constitution since the people of Ugunja chose to exercise their sovereign power through 2013 election by electing Hon. Wandayi.

- c) May I also bring to your attention to the fact that during the debate on the Sugar report by Agriculture Committee on Thursday 18th March 2016, you did order the Sergeant at arms to remove **Hon. Benjamin Washiali** from the Chamber when he appeared to be disorderly. In that particular instance, you did order the Sergeant at arms to force Hon. Washiali out and ordered him to say away for three sittings. The events of that day were even aggressive on the part of Hon. Washiali. The words uttered were inciting, hateful and were directed to two particular tribes. He even attempted to throw a water bottle at me.

- d) Lastly, I would like you to address this issue in light of the requirement of **article 47** of the Constitution. This article requires that everybody be given a right to fair administrative action. In this case, the Committee of Privileges ought to have listened to this matter before Hon. Wandayi is suspended.

My Prayer

Having raised all of the above, Mr. Speaker, it is my humble appeal to you to relook into this matter and use the provisions of **Standing order number one (1)** which gives you absolute authority to pronounce yourself to clear any ambiguities in the Standing orders.

Yours faithfully,

Hon. Jakoyo Midiwo, MGH, MP
DEPUTY MINORITY LEADER.

APPENDIX II

Hon. W. Jakoyo Midiwo, M.G.H., MP.
Gem Constituency
Deputy Minority Leader, National Assembly

Parliament Buildings
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County Hall, 2nd Flr. Room 208
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Mobile: +254 721 504 040
E-mail: midiwoj@gmail.com

19th April, 2016.

The Speaker
Kenya National Assembly
Parliament Buildings
P.O. Box 41482 - 00100
NAIROBI.

Dear Sir,

RE: SUSPENSION OF HON. OPIYO WANDAYI, MP – UGUNJA CONSTITUENCY.

I seek your indulgence in the above stated matter.

As you know the Member of Parliament for Ugunja, Hon. Wandayi is serving a suspension from House proceeding and Parliamentary activities until the end of the current session of parliament arising from the events of 30th March, 2016 during the State of the Nation address to Parliament.

I have reflected on Standing Order 111 which has been used to send him on suspension. While I am not questioning the legality of the suspension, I think this particular provision of our Standing Orders has ambiguities that I would like to bring to your attention:-

- a) The Standing Order 111 seems to discriminate on the weight of punishment to Members depending on the time the offence is committed; for example, a member who commits the offence on the last day of the Session, he/she is

suspended only for the period between Sessions. On the other hand if the offence is committed on the first day of the Session, the Member is forced to sit out for a whole year (*as is the case with Hon. Wandayi's*).

- b) The people of Ugunja Constituency would be subjected to endure the punishment of not having representation in Parliament for nearly one year without option of choosing a replacement through no fault of their own.

This, in my view would violate **article 1(2)** of our constitution since the people of Ugunja chose to exercise their sovereign power through 2013 election by electing Hon. Wandayi.

- c) May I also bring to your attention to the fact that during the debate on the Sugar report by Agriculture Committee on Thursday 18th March 2016, you did order the Sergeant at arms to remove **Hon. Benjamin Washiali** from the Chamber when he appeared to be disorderly. In that particular instance, you did order the Sergeant at arms to force Hon. Washiali out and ordered him to say away for three sittings. The events of that day were even aggressive on the part of Hon. Washiali. The words uttered were inciting, hateful and were directed to two particular tribes. He even attempted to throw a water bottle at me.
- d) Lastly, I would like you to address this issue in light of the requirement of **article 47** of the Constitution. This article requires that everybody be given a right to fair administrative action. In this case, the Committee of Privileges ought to have listened to this matter before Hon. Wandayi is suspended.

My Prayer

Having raised all of the above, Mr. Speaker, it is my humble appeal to you to relook into this matter and use the provisions of **Standing order number one (1)** which gives you absolute authority to pronounce yourself to clear any ambiguities in the Standing orders.

Yours faithfully,

Hon. Jakoyo Midiwo, MGH, MP
DEPUTY MINORITY LEADER.

APPENDIX III

REPUBLIC OF KENYA
PARLIAMENT

Hon. George Peter Kaluma, MP.
Homa Bay Town Constituency

Parliament Buildings
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P. O. Box 41842 - 00100
Nairobi, Kenya

Continental House Grd Flr. Rm 007
Mobile: +254 722 140 412
Email: gpdkaluma@yahoo.com
homabaytown@parliament.go.ke

OUR REF: PK/PARL/04/16
YOUR REF:

DATE: 14th April, 2016

The Speaker of the National Assembly
Parliament Building
NAIROBI.

*Noted SDC
Do a reply as soon as possible
SNA
14/4/16*

Dear Sir,

RE: IN THE MATTER OF INTERPRETATION OF STANDING ORDER 111,
NATIONAL ASSEMBLY STANDING ORDERS
&
IN THE MATTER OF THE HONOURABLE JAMES OPIYO WANGAYI, MP. UGUNJA
CONSTITUENCY

I crave your indulgence to seek your directions concerning the interpretation and/or constitutionality of the provisions of Standing Order No. 111 of the National Assembly Standing Orders with regard to the Honourable James Opiyo Wandayi on the following issues: -

- a) Whether or not the provisions of Standing Order No. 111 of the National Assembly Standing Orders are a violation of Article 1 and 2 of the Constitution relating to people's right to representation and/or to indirectly exercise their sovereignty through duly elected representative; and, are therefore null and void.
- b) Whether or not the provisions of Standing Order No. 111 of the National Assembly Standing Orders; to the extent that they impose punishment without hearing, are inconsistent with and violate the provisions of Articles 47 and 50 of the Constitution; and, the rules of natural justice and the rule of law enshrined as our National Values and Principles of Governance in Article 10 of the Constitution; and, are therefore null and void.

Yours faithfully,

HON. PETER KALUMA,
Member of Parliament
Homa Bay Town Constituency.



- c) Whether or not the provisions of Standing Order No. 111 of the National Assembly Standing Orders; to the extent that they by operation impose unequal punishment for same offenders, are consistent with the doctrine of equality and nondiscrimination enshrined as our National Values and Principles of Governance in Article 10 of the Constitution; and, are therefore null and void..
- d) To what extent does enforcement of the provisions of Standing Order No. 111 of the National Assembly Standing Orders limit the roles of a Member of Parliament in the National Assembly provided under Article 95 of the Constitution; and, to what extent the enforcement of the said Standing Order provisions curtail an affected Member's rights, benefits and emoluments?
- e) To what extent does enforcement of the provisions of Standing Order No. 111 of the National Assembly Standing Orders affect the employees of Parliamentary Service Commission attached to an affected Member of Parliament?
- f) What is "**Precincts**" of Parliament, generally, and in relation to Standing Order No. 111 of the National Assembly Standing Orders?

~~CONFIDENTIAL~~

APPENDIX IV

RULES SUBMITTED FOR THE APPROVAL OF THE HOUSE OF REPRESENTATIVES PURSUANT TO SECTION 7B OF THE NATIONAL ASSEMBLY (POWERS AND PRIVILEGES) ACT (ACT NO. 14/66)

(as agreed by the Sessional Committee on 16.6.66)

RULES PURSUANT TO SECTION 7B OF THE NATIONAL ASSEMBLY (POWERS AND PRIVILEGES) ACT

1. Every Report by the Committee of Privileges concerning any inquiry into the conduct of a Member shall, as soon as possible after it has been completed, be laid by a member of that Committee on the Table of the House.
2. If such Report does not recommend any disciplinary action there shall be no further proceedings whatsoever in respect thereof, other than (where necessary) further inquiry and Report by the Committee of Privileges.
3. (a) If such Report recommends any disciplinary action, a member of the Committee of Privileges shall as soon as possible after the report has been laid, but after giving at least one day's previous notice, move **"That this House adopts the Report and Recommendations of the Committee of Privileges dated the19....."**
 - (b) Any such Motion shall be debated in the usual manner; except that
 - i. strangers shall be ordered to withdraw throughout the debate; and
 - ii. no amendment may be moved, other than an amendment of the disciplinary action recommended by the Report, in accordance with Rule 4 of these Rules, or an amendment to the effect that the Report be referred back to the Committee of Privileges for further inquiry.
4. Disciplinary action recommended by any such Report may be
 - (a) formal reprimand at the Bar of the House with or without exclusion, for a period not exceeding one month, from specified facilities of Parliament Buildings; or
 - (b) suspension from the service of the House for a period not exceeding sixteen days, whether or not sitting days, and whether or not during the same session.
5. In the event of the House adopting any recommendation of any such Report for disciplinary action, with or without amendment, Mr. Speaker shall forthwith take action accordingly.



APPENDIX V

PARLIAMENT OF KENYA

JOINT SITTING OF THE NATIONAL ASSEMBLY AND THE SENATE

THE HANSARD

Eleventh Parliament – Fourth Session

*(Special Sitting of Parliament convened via Kenya Gazette Notices
Nos.2038 of 22nd March, 2016 and 2039 of 21st March, 2016)*

Thursday, 31st March, 2016

*Parliament met at fifteen minutes past three o'clock
in the National Assembly Chamber
at Parliament Buildings*

ARRIVAL OF HIS EXCELLENCY THE PRESIDENT

*[His Excellency the President (Hon. Uhuru Kenyatta) escorted by the
Speaker of the Senate (Hon. Ethuro) and the Speaker of the National
Assembly (Hon. Muturi) entered the Chamber at fifteen minutes
past three o'clock accompanied by the Maces of both Houses]
[His Excellency the President (Hon. Uhuru Kenyatta)
took the Chair of State]*

(The two Maces were placed on the Table)

(The National Anthem was played)

PRAYERS

COMMUNICATION FROM THE CHAIR

CONVENING OF SPECIAL SITTING OF PARLIAMENT
FOR ANNUAL STATE OF THE NATION ADDRESS BY
HIS EXCELLENCY THE PRESIDENT

The Speaker of the National Assembly (Hon. Muturi): Your Excellency, Hon. Uhuru Kenyatta, President of the Republic of Kenya and Commander-in-Chief of the Kenya Defence Forces, the hon. Speaker of the Senate, hon. Ekwe Ethuro, hon. Members of Parliament, Article 132(1)(b) of the Constitution of Kenya requires the President to address a Special Sitting of the Parliament of Kenya once every year and at any other time.

Further, Article 132(1)(c) requires the President to, among others:-

“once every year-

(i) report, in an address to the nation, on all the measures taken and the progress achieved in the realisation of the national values, referred to in Article 10,

(iii) submit a report for debate to the National Assembly on the progress made in fulfilling the international obligations of the Republic.”

In addition, Article 240(7) of the Constitution requires that the National Security Council whose chairman is His Excellency the President to report to Parliament annually on the state of the security of the Republic.

In this regard, hon. Members, following a request from His Excellency the President and pursuant to Article 132(1)(b) and (c)(i) and (iii) of the Constitution and the provisions of Standing Order No.22(1) and (2) of the National Assembly Standing Orders, by Gazette Notice No.2038, which was published in a Special Issue of the Kenya Gazette on 24th March, 2016, I gave notice of this Special Sitting to the Members of the National Assembly.

Similarly, pursuant to Article 132(1)(b) and (c)(i) and (iii) of the Constitution and the provisions of Standing Order No.22(1) and (2) of the Senate Standing Orders, by Gazette Notice No.2039, which was published in a Special Issue of the Kenya Gazette on 24th March, 2015, the Speaker of the Senate gave notice of this Special Sitting to the Senators.

Accordingly, hon. Members, this Special Sitting is properly convened.

It is now my singular honour and privilege to invite His Excellency the President of the Republic of Kenya to address this Special Sitting of Parliament.

I thank you.

(Applause)

His Excellency the President (Hon. Uhuru Kenyatta): The Speaker of the National Assembly, Hon. Justin Muturi---

(Several Hon. Members blew whistles)

(His Excellency the President laughed)

I can sit *kidogo waendeleo*.

(His Excellency the President resumed his Seat)

(Loud Consultations)

The Speaker of the National Assembly (Hon. Muturi): Order, Members!

I wish to draw the attention of the House to the Provisions of Standing Order No.24(4) of both the National Assembly and the Senate with regard to the President's Address to Parliament. For avoidance of doubt, Standing Order No.24(4) of the National Assembly provides as follows:-

“When delivering an address to the House, the President shall be heard in silence and the Address shall not be followed by any comment or question.”

(Applause)

Hon. Members, for avoidance of doubt once again, I read Standing Order No. 24(4) of the Senate Standing Orders:-

“When delivering an Address to Parliament, the President shall be heard in silence and the Address shall not be followed by any comment or question.”

Hon Members, as you are always aware, the Standing Orders of both Houses are anchored on Article 124 of our Constitution which empowers each House of Parliament to make Standing Orders for, among other things, the orderly conduct of business.

(Applause)

Hon. Members, therefore, any breach of these Standing Orders indeed would be a breach as well of the anchor. Those that may have had some things they wanted to say, I am sure they have said it to their satisfaction. It is now fair that they allow those others who wish to listen to the Address by His Excellency the President the opportunity to be heard in silence without comment or questions as per the Standing Orders of the two Houses.

Hon. Members, as you are aware, this is a Special Sitting. I have just read out the convocation.

Hon. Members, it will be disorderly for any Member to interrupt the Speech by His Excellency the President by breaching Standing Order No.24(4) of both Houses. Any breach, obviously, attracts penalties as you have provided for in the Standing Orders.

Hon. Members, I thank you.

(Several hon. Members blew whistles as His Excellency the President stood up to read his Speech)

Hon. Members, we have a way of maintaining order in the House. Any Member who is out of order has to be dealt with.

Hon. Mbadi, you are out of order. Hon. T.J. Kajwang, you are out of order. Hon. Wanga, you are out of order. Hon. Outa, you are out of order. Hon. Wandayi, you are out of order.

Hon. Members, pursuant to Standing Order No.107, I, therefore, order that Hon. Wandayi withdraws from the Chamber.

Order, Members! Hon. Wandayi, I order that you withdraw from the Chamber. Hon. Wandayi, for the last time, I order that you withdraw from the Chamber.

(Loud consultations)

(Hon. Wandayi remained seated in his place)

(Several hon. Members blew whistles)

Hon. Wandayi, having refused to obey the instructions to withdraw from the Chamber, I draw your attention to provisions of Standing Order No.111;that now I have to recourse to the use of force. I now order that hon. Wandayi be forcibly ejected from the House by the Serjeant-at-Arms.

(Hon. Wandayi was forcibly ejected from the Chamber by the Serjeant-at-Arms)

(Loud consultations)

((Several hon. Members blew whistles)

(Loud consultations)

Hon. Members, can the Serjeant-at-Arms confirm to me that the Member has been forcibly removed?

Hon. Members, I want the Serjeant-at-Arms to confirm to me that the said Member has been forcibly ejected out of the Chamber. Is he out?

(The Serjeant-at-Arms confirmed that the Member had been ejected from the Chamber)

Hon. Members, I wish to draw your attention and I will read it for avoidance of doubt, Standing Order No.111 reads as follows:-

“If any Member shall refuse to withdraw when required to do so, by or under these Standing Orders, the Speaker or the Chairperson of the Committee as the case maybe, having called the attention of the House or Committee to the fact that recourse is necessary in order to compel such Member to withdraw, shall order such Member to be removed and such Member shall thereupon without question put be suspended from the service of the House during the remainder of the Session and shall during such suspension, forfeit the right of access to the precincts of Parliament and the Serjeant-at-Arms shall take necessary action to enforce the order.”

It is accordingly so ordered.

(Applause)

Hon. Members, we now resume and allow His Excellency the President to make his Address.

(Hon. T. Kajwang, Hon. Sumra, Hon. Outa, Hon. Mbadi, Sen. M. Kajwang, Hon. Oburu and Hon. Wanga blew whistles while waving placards)

(Loud consultations)

Hon. Members, I order hon.T. Kajwang to withdraw from the Chamber.

(Loud consultations)

I order the Hon. Wanga to withdraw from the Chamber

(Hon. Wanga withdrew from the Chamber)

(Loud consultations)

*(Hon. T. Kajwang and Hon. Wanga blew whistles
as they withdrew from the Chamber)*

(Hon. T. Kajwang consulted loudly as he withdrew from the Chamber)

Hon. Kajwang, you are a Member of the Chairman's Panel and you are not required to demonstrate in the Chamber as you withdraw. You know the Standing Orders.

(Loud consultations)

Likewise, I order hon. Mbadi to withdraw from the Chamber.

(Loud consultations)

(Hon. Mbadi remained seated in his place)

I order the Serjeant-At-Arms to ensure that hon. Mbadi is out of the Chamber.

(Loud consultations)

(Hon. Mbadi was escorted out of the Chamber by the Sejearnt-at-Arms)

I also order hon. Outa out of the Chamber. Hon. Outa, be out of the Chamber.

(Hon. Outa blew a whistle and waved a placard)

Hon. Outa, be out of the Chamber, failure to which you will be ejected.

(Hon. (Ms.) Kipchoim took hon. Outa's placard and tore it)

(Hon. Outa withdrew from the Chamber)

(Applause)

Order, hon. Members! None of you has better view of the Chamber than myself. With the resumption of order, I request His Excellency the President to make his Address.

(Applause)

(Loud consultations)

*(Sen. M. Kajwang stood up in his place and
blew a whistle while waving a placard)*

(Loud consultations)

The Speaker of Senate (Hon. Ethuro): Order, Members! Order, Sen. M. Kajwang!

(Loud consultations)

Order, Members! For the avoidance of doubt, I confirm that the Speaker of the National Assembly, who is presiding over the Joint Session, read correctly the Standing Orders of the two Houses. The sanctions contemplated apply across the board.

(Applause)

Indeed, it is the responsibility of the Speaker of the House to maintain order. When the Speaker rises, every other Member must resume his or her seat. Under those circumstances, I hereby order that Sen. M. Kajwang to withdraw from the Chamber.

(Sen. M. Kajwang withdrew from the Chamber)

(Loud consultations)

The Speaker of the National Assembly (Hon. Muturi): Order, Members!

(Hon. Odhiambo-Mabona consulted loudly)

Hon. Odhiambo-Mabona, I order you out of the Chamber.

*(Hon. Odhiambo-Mabona consulted loudly as she
withdrew from the Chamber)*

Hon. Members, as you know, everybody has a right to hold their opinions. I advise that any Member who feels that he or she is not ready to listen to the Address by His Excellency the President should feel free to withdraw from the Chamber. It does not show any level of maturity. If you feel you do not wish to listen to the Presidential Address, you are advised to withdraw quietly.

(Applause)

Now that it appears there is order in the House, may I request His Excellency the President to make his Address.

(Applause)

His Excellency the President (Hon. Uhuru Kenyatta): Thank you' Mr. Speaker, Sir. After being thoroughly entertained, we can now get back to serious business.

(Laughter)

The Speaker of the Senate, hon. Ekwee Ethuro, hon. Members of Parliament, fellow Kenyans, today I join you in this august House to reflect on the great state of our nation---

(Hon. Arati blew a whistle while waving a placard)

(Loud consultations)

The Speaker of the National Assembly (Hon. Muturi): Once again, hon. Members, Hon. Arati, you are out of order. The provisions of the Standing Orders as referred to by the Speaker of the Senate are correct both in the Senate and in the National Assembly.

Hon. Simba Arati, you are out of order. Kindly withdraw from the Chamber.

(Hon. Arati blew a whistle and waved placard as he withdrew from the Chamber)

(Loud consultations)

Hon. Members, including the Leader of the Majority in the National Assembly, the Speaker is still on his feet.

I did indicate that if you want to withdraw, please, do not interrupt. If you could withdraw quietly, it would be great honour. Indeed, it reflects a lot on you. Once again, please, if there is any Member who does not want to listen to the Address by His Excellency the President, he or she should just withdraw. You do not have to blow whistles; as you know that is a matter that will have to be dealt with by the Powers and Privileges Committee. It is gross disorder.

I now give one minute to those Members that feel desirous of withdrawing to do so.

(Hon. Bosire consulted loudly while standing)

The Speaker of the National Assembly (Hon. Muturi): Hon. Bosire, I am on my feet; just resume your seat.

(Hon. Bosire continued to consult loudly while standing)

Hon. Bosire, you are grossly out of order. Let me also disclose that we are able to identify those of you with whistles. If you do not want to listen to the Address, please, just withdraw; do not hide. Nobody should point or name any other Member.

(Hon. Bosire consulted loudly)

Hon. Bosire, you are out of order now. Those Members wishing to withdraw can do so now.

(Loud consultations)

Hon. Members, I take it that no Member wishes to withdraw voluntarily. Let me also restate that any interruption, in whatever manner, will be gross disorder and in breach of Standing Order No.24 (4) of both Houses.

Your Excellency the President, you may give your Address.

PRESIDENTIAL ADDRESS

EXPOSITION OF PUBLIC POLICY

His Excellency the President (Hon. Uhuru Kenyatta): Hon. Speakers, this occasion is not just important, but it lies at the heart of our democracy and nationhood. It is in the spirit of accountability and democracy that I have, over the last two years, addressed the nation to explain what my administration has achieved in fulfillment of the constitutional requirements laid out in Articles 10, 132 and 240.

Hon. Speakers, fellow Kenyans, I want to affirm that our nation is strong and the Nationalist Covenant negotiated by our founding fathers at Independence is alive and well. We have re-imagined, enhanced and expanded it. The spirit of the Lancaster covenant that bound us together as a nation in the 1960s is still with us. Although we experienced turbulence in the 2007 post-election violence, we as a people reaffirmed our commitment to the Nationalist Covenant in August 2010, when we proclaimed a new Constitution.

Hon. Speakers, I am humbled to pioneer the establishment of the Second Republic as envisioned by our second Constitution. To establish the first Republic, our founding fathers sacrificed their years of youth, defended the ideals of the Nationalist Covenant with their very lives and stayed the course until we were free and became an independent nation. Every one of us owes a sacred duty to them and a responsibility to pass on a secure, united and re-imagined nation to future generations.

Hon. Speakers, as I stand here, there are brave Kenyans in uniform who echo the youthful valour and patriotism of our founding fathers. With skill and tireless determination, these young heroes are fighting a cruel enemy who is burning cities and countries across the globe. Our soldiers in Somalia, their police and intelligence counterparts at home are all keeping their part of the bargain by defending the nation. They are protecting the Republic, but more fundamentally, securing the broader Nationalist Covenant. Their duties have at times demanded the ultimate price and for this, we owe them gratitude and an eternal place in our hearts. As their Commander-in-Chief, I honour them and want to assure their families of our utmost consideration and respect for their service and sacrifice. While on this, I want to assure this august House that my Government has every intent to uphold the dignity of our soldiers. As their Commander-in-Chief, I will not allow them to be subjected to undue harassment.

Hon. Speakers, I would now like to take a moment to salute our fallen heroes from the Kenya Defence Forces and the National Police Service. I ask the House to stand for a minute of silence in their honour.

*(Sen. Bosire remained sitting while
other Members stood up in their places)*

Mhe. Bosire, sikuulizi usimame kwa sababu yangu; ni kwa niaba ya askari wetu ambao wanakulinda hata wewe.

(Hon. Bosire stood up in his place)

(Hon. Members of Parliament observed a minute of silence)

Thank you very much.

Fellow Kenyans, hon. Members, today, I invite you to a moment of national self-reflection. At a personal level, I am compelled to return to the question of our nationhood as crafted by our founding fathers and re-imagined by us in August, 2010. In discussing this

question, I will expound on the Nationalist Covenant. This Covenant was crafted as an exchange of promises and guarantees between the communities that make Kenya. It was built as a bond that waxes the 42 communities to one nation. It defined our lowest common denominator and our irreducible minimum as a collection of communities. It was our unwritten contract binding one to all and all to one. That is what convinced all of us to join hands and constitute Kenya.

But as the country developed, we took this Nationalist Covenant for granted. We assumed it until we saw other nations losing it and falling asunder. We ignored it until we faced the dangers of losing it in 2007. Now, it is at the centre of our national question and we must tackle it head-on. The question we must now pose is: What is our individual and collective responsibility to this Covenant? If it is the base upon which our nationhood is build, how much do we engage with it? How do we protect it from ourselves and others? How do we preserve it for our children and generations to come?

The Nationalist Covenant is a bond that brings together 40 million Kenyans. It is greater than each one of us but must respect every one of the 40 million of us. This Covenant is sacred and the 40 million who created it are sacred too. Administrations will come and go but the Covenant and the people remain. Leaders will come and go but the Covenant and the people shall remain. If we disagree as leaders, the Covenant does not change. It remains unmoved and is the embodiment of all our collective aspirations, the representation of all of us. This unity of intent is the lowest common denominator as a people. It defines our nationhood and our diversity as Kenyans. To aggress it is to harm yourselves because it is part of you.

(Applause)

Hon. Members, those in Opposition and alternative society have disagreed with our understanding of this Nationalist Covenant. As a democratically elected Government, we have supported their concerns as part of the expansion of citizen expression. In fact, I think from this, we have created an active and effective Opposition and civil society – in fact, the most active on the continent of Africa –and we celebrate this diversity and Kenyan invention. However, our Opposition should be reminded that they are the alternative side of the Nationalist Covenant; that they are part of it and they are bound by it through normative law. In their undertakings, therefore, they must remain true to the ideal of the commonwealth of all. This way, we, as a nation, can go through election cycles without worrying whether the gains of one administration will be destroyed rather than being assured that they will be built on by the incoming one.

(Applause)

That is why, today, I invite the Opposition and the alternative society to liberally criticise my Government's agenda but they must not criticise it as a sport. They must criticise it as owners of the Covenant and provide alternatives. Criticism without alternatives is just reckless political sport.

Further, I also address myself to the beneficiaries of expanded fields of citizen expression including civil society, the general population and the media. They must enjoy the new liberties with conscientiousness, responsibility and faithfulness to the Covenant. I say this, hon. Members, because new found liberties have a way of promoting reckless abandon. As you enjoy the liberties, we must remain true to the spirit of our nationhood. We criticise if we must, but then give alternatives; build bridges between divides instead of digging trenches and build a culture of

celebration instead of a culture of lamentation. In sum, those who enjoy our new liberties must not contaminate the spirit our nationalism. Everything will come and go in Kenya but the Covenant that binds us is eternal. If we remain true to this lowest common denominator, this historical exchange of promises and guarantees, this unwritten contract that binds all to one and one to all, then the State of the Nation will forever remain unchallenged.

(Applause)

Hon. Speakers, hon. Members and fellow Kenyans, I will now turn to a record of the pledges given by my Government for the current reporting year and our achievements so far. Then, I will attempt to tie them to our nationhood. It must be noted that development is a secondary and supportive aspect of our nationhood. We are a nation on the path of progress; a nation on the move that is rapid and impressive enough to attract the attention of the world. We continue to dare, to hope in the promise of prosperity for every Kenyan. We hold steady the reins of our bold and vibrant Constitution that is intended to empower our people, strengthen our nationhood and advance positive social transformation.

Over the last two weeks, you have heard in great detail the achievements of my administration in the last 12 months. You have heard from my Deputy President as well as Cabinet Secretaries the lengths to which we have gone and we will continue to go in order to transform this nation. I want, today, to give context to the work we have done; what it means to the Kenyan people and where we are heading in the coming years.

Our economy is resilient at a time of global economic and financial turmoil that has seen some of the strongest performing economies in the world stumble into recession. I am glad that the macro-economic foundations of Kenya are strong and sustainable. Our real Gross Domestic Product (GDP) growth was 5.8 per cent in 2015 and we expect to hit the 6 per cent mark over the next 12 months. Inflation has remained under control and our foreign exchange reserves have improved significantly. We all know that our dreams for decent jobs, more profitable businesses and more taxes to pay for our health and education are depended on a strong economy.

We, as Kenyans, have joined the realm of middle income countries with the consequence that we can now access non-concessional credit from institutions such as the African Development Bank and the World Bank at significantly cheaper cost. We have also seen the continuing confidence of the financial markets in Kenya and the world's most sophisticated financial institutions agree on the strengths of our economic fundamentals, our management of the economy and our future growth story.

Speakers, hon. Members and fellow Kenyans, my administration is investing not only in the immediate improvement of Kenyans' lives but also in laying the future for the true prosperity that we seek. That is why we have made such bold investments in security, transport and infrastructure, energy, Information and Communication Technology (ICT), mining and agriculture. We all know that even while the national economy is growing strongly, it is still too small to fulfill our people's aspirations for themselves and their families. Only a true transformation will do this for us. However, transformations are not easy. They are full of ups and downs, and it is a very hard path. Every Kenyan knows this from their own life stories how tough it is to save money for school or to start small businesses; how difficult it is to walk miles every morning to get to school and work, yet with undying hope in a better tomorrow, the Kenyan people persist in working hard in seeking to improve themselves and their families.

My job as President, our job as Government, your job as legislators, is to walk with the people in that path of personal transformation, by ensuring that the country is transforming with our people. As we transform one individual at a time, we will fulfill the Nationalist Promise. In time, we will create a collective nation that is secure, prosperous, healthy and well educated in line with the covenant of our founding fathers.

This Nationalist Promise that I keep referring to was not just about inspiration or citizenship; it was also a determination to combat poverty, ignorance and disease and that we were going to enable our people to make an honest living. These are the reasons that have driven my administration to now make it easier to register a company. Through the overhaul of the Companies Act, we have cut to a minimum the old stringent rules that once made it difficult for sole business owners to register as limited companies. Further reforms such as the passing of the Insolvency Act have improved the processes that are required for one to be in business in the formal sector. They have sought not to fiddle with existing approaches but instead transform the business landscape.

Evidence of our success is that the World Bank's doing business indicators show Kenya to be the third most improved country in the world. We, as a country, jumped almost an unprecedented 28 positions in their rankings. Nairobi, our capital city, was named the most attractive destination for foreign direct investment in Africa. Kenya alone on the African continent was singled out as one of the seven most promising emerging markets. This achievement is also part of our Nationalist Promise.

(Applause)

I take this opportunity to thank you, Members of Parliament (MPs), both of the Senate and the National Assembly, for taking time to review and pass the necessary pieces of legislation, to enable many of these reforms to be implemented. I also ask for your support in quickly passing other pieces of legislations to support this effort.

Speakers, hon. Members and fellow Kenyans, despite global economic and financial turmoil, our Kenyan economy has shown notable resilience. A strong example of this resilience is the performance of the vital tourism and hospitality sectors. These suffered severe setbacks as a result of terrorist attacks. This meant that their vital role in providing employment depended on by thousands of families and businesses was harmed. That is why my administration has laid great emphasis of the full recovery of the tourism industry and we responded robustly. As part of the recovery strategy, my administration has set aside Kshs1.2 billion worth of incentives for charter flights which have resumed their previous frequency; and visa fees for children under 16 were waived with effect from 1st February, 2016. We have also accelerated the construction of the Port Reitz-Airport Road in Mombasa County as well as the planned Dongo Kundu bypass. Together, they will allow Kenyans as well as our tourists to get from the mainland to the south Coast without using the ferry.

(Applause)

Similarly, we have instituted extra marketing efforts and strengthened security measures such as the lighting of our streets and providing extra support to our security services. The result of all these has seen a rise in the number and quality of our hotels. As we speak, many of our hotels especially in the coastal region have been fully booked through to June.

I take this opportunity to thank the investors in the sector who have shown their faith in Kenya, such as the entrepreneurs who committed to the construction of the English Point Marina, the new Best Western Plus Creek side Hotel in Mombasa County and many others across the

country. We cannot, however, forget that the major factor in this rebound is the resilience of our own Kenyans and their love for our country's outstanding beauty. They have continued, even during the difficult times, to travel and book into our hotels. If we do not believe in our country, who will? I thank all Kenyans in a special way, for believing in their motherland and keeping our tourism sector going.

Speakers, hon. Members and fellow Kenyans, every single Kenyan knows what a road means to their lives. It is the opening up of numerous possibilities. The instant economic activity that follows their construction is clear to all. That is why my administration is making such a comprehensive and determined effort to open up the country. This is also part of the Nationalist Covenant whose intention was to physically link all our communities to create the nation of Kenya. The logic here is that infrastructure creates nations and jobs.

I have emphasized the development of our infrastructure because our vision of growth depends on the ability to leverage our competitive workforce, our regional position and the global economy, to deliver shared and sustainable growth. More than 100 years since the colonial government laid the first rail; the Kenya-Uganda Railway, we are constructing our own world class Standard Gauge Railway (SGR). As I stand here today, we will complete and operationalise the new railway between Mombasa and Nairobi by June 2017. The construction of the SGR project has employed thousands directly and indirectly with over 27,000 jobs created to date.

It is the intention of my administration to extend the SGR to Naivasha and eventually to the Port of Kisumu and to the border town of Malaba. This will open up more than half of the country to increased domestic and regional trade.

Plans are also underway to modernize the existing metre-gauge railway line across the country covering Voi, Taveta, Thika, Nanyuki, Nakuru, Eldoret, Bungoma, Kericho, Kitale, among others. Along these rails will be new industries and business ventures further enabling us to create jobs for our young men and women.

Hon. Members, my immediate predecessor's administration laid great emphasis on road construction, and rightly so. My administration has built from the strong foundation he started. To this end, my priority has been three-fold; first, to complete the road works commenced by President Kibaki's Administration; second, to open up major new national trunk routes; and third, to implement the ambitious Roads Annuity Programme that will provide thousands of kilometers of low volume tarmac roads to Kenyan rural communities.

Between 1963 and 2013, we built 11,000 kilometers of tarmac road. This translates to an average of 220 kilometers per year. In the last three years, my administration has tarmacked approximately 3,000 kilometers of road or an average rate of 1,000 kilometres per year. By 2017, we will have laid almost as much tarmac as happened in the 50 years since our Independence as we also continue rehabilitating our existing roads.

Hon. Members, as I address you today, road contractors are on the ground working day and night to complete a number of projects. In Marsabit, for example, the road from Merrille River to Moyale; in Taita Taveta County, the road from Mwatate to Taveta; in Kilifi County, the Mariakani-Kaloleni-Kilifi Road; in Migori County, the road from Kehancha to Suna to Masara; in Kajiado County, the road from Isinya to Ngong and, in Nairobi County, the road from South C to Kikuyu Town.

As part of this comprehensive effort in infrastructure, we have undertaken massive rehabilitation and expansion of our main port in Mombasa. In 2013, Mombasa was the 8th busiest port in Africa with a handling capacity of 890,000 twenty-foot containers. Indeed, in February

this year, my Government completed the expansion of two additional shipping berths at Kilindini, doubling our total handling capacity to 1.6 million twenty-foot containers per year. Indeed, in 3 years, Mombasa has now moved to becoming the 4th busiest port in Africa down from 8th three years ago.

Hon. Members, to consolidate our position as the region's transport hub, we opened the newly completed passenger air Terminal 2 and in addition, we will be commissioning two new terminals; 1A and 1E by May 2016. These new terminals will increase our passenger handling capacity by 5.1 million new passengers, bringing our total capacity at JKIA to 7.5 million passengers a year.

To improve domestic travel, there are new airport facilities at various stages of completion in Homa Bay, Isiolo in Isiolo County; Manda in Lamu County; Malindi in Kilifi County and Lokichoggio in Turkana County. We are also working on Suneka in Kisii County which we hope to start soon, Kakamega, Mandera, among others. All this is meant to link the communities of Kenya into a nation as part of our Nationalist Promise.

Mr. Speaker, Sir, efficient and adequate supplies of energy remain central to our nation's development agenda. My administration can report significant achievements here. In the last year, we have brought on-line 634 MW of new power, raising our total installed capacity to 2,282 MW. We appreciate that taking that power we generate into every Kenyan home is just as important as generating it. That is why we have built more than 10,000 kilometres of high capacity transmission as well as distribution lines, which now connect more parts of the country to the national grid than ever before, some of them for the very first time since Independence. Garissa is a case in point. It will receive the first ever electric power supply from the national grid next month. This shows my administration's commitment to the Nationalist Covenant and the inclusion of all.

This has also enabled us to connect many more Kenyans to the national grid. In the last twelve months, we have connected an additional 1.2 million Kenyans to electricity in their homes and places of work. My Government's street lighting initiative will have completed the installation of 26,000 new street lights across 5 counties by mid 2016. We have extended this programme to another 50 towns across the country.

Why are we doing this? It is to improve security and make the 24-hour economy a reality. From Kibokoni to Mtwapa, from Majengo to Kibera, street lighting means better returns for Kenyans and better service for their customers. As a result of this programme, traders like Dominic Ombaka in Mathare, Aisha Abdalla and Mabel Barasa in Kisii can keep their businesses open longer because of improved security. Asha and Mabel have moved from using kerosene to using electricity. This is a 24-hour economy in practice; it is part of the Nationalist Promise to practically prosper everyone.

(Applause)

Fellow Kenyans, the state of devolution is a story of rapid implementation. It is profoundly welcome by the Kenyan people and my administration's dedication to its success. Few countries anywhere in the world have undertaken such a fundamental transformation of their structures of government in such an incredibly short time. Kenya has achieved this and I would like to congratulate every Kenyan for their outstanding and unwavering support for this process. I also thank Parliament, the Council of Governors, the county assemblies, and the Constitutional Commissions for their commitment to the cause of devolution. In spite of

disagreements and, sometimes, very strong opposing views, we have stayed the course. Today we celebrate the success of reaching this advanced phase of implementation. We can share in a moment of satisfaction, knowing that more work remains to be done.

My Government has fully supported devolution, in the belief that it promises a future of shared prosperity for all of us. We know it broadens opportunities across the country and ensures that our journey forward will leave no Kenyan behind. My Government's commitment to devolution means that every year of this administration, we have transferred at least double the constitutional minimum of 15 per cent of shareable revenues to the counties. In absolute Kenya Shillings terms, we are talking of transferring one trillion to the 47 county governments as of Financial Year 2016/17, of which, 168 billion has gone directly to Arid and Semi-arid counties; 6 billion as part of the Equalisation Fund targeting previously under-resourced areas; 87 billion to the Constituency Development Fund; and, 13.4 billion to youth, women and persons with disability as part of Affirmative Action. For me this is the biggest demonstration of my administration's commitment to devolution.

(Applause)

While applauding the success with which devolution has been firmly established and taking ample resources to the grassroots, Kenyans must remember that these funds come from their hard-earned taxes. It is absolutely critical that every Kenyan demands accountability from those who manage these resources. We need, therefore, to be frank. A significant proportion of the funds transferred to the devolved units have not met the expectations of the Kenyan people. You must ask: Is the one trillion sent to the county governments reflected in what you see?

Hon. Members: No!

His Excellency the President (Hon. Uhuru Kenyatta): Is there clean drinking water and proper sanitation?

Hon. Members: No!

His Excellency the President (Hon. Uhuru Kenyatta): Efficient garbage collection?

Hon. Members: No!

His Excellency the President (Hon. Uhuru Kenyatta): Medicines in hospitals?

Hon. Members: No!

His Excellency the President (Hon. Uhuru Kenyatta): Agricultural extension workers visiting your farms?

Hon. Members: No!

His Excellency the President (Hon. Uhuru Kenyatta): Hon. Members, fellow Kenyans, devolution was meant to be a mechanism that would ensure no areas were left behind. Instead, in some areas we see wastefulness, fleets of vehicles and palaces being acquired to benefit administrators and officials. We have not seen enough of these hard-earned resources being utilised to provide concrete benefits to the people. It is important that we celebrate achievements and also face shortcomings squarely. Just as Kenyans demand from their National Government accountability, today I also join them in demanding total accountability and better results from our county governments; for this is your money.

(Applause)

My fellow Kenyans, while still on the subject of accountability, our nation has for a long time been involved in a protracted war against corruption. Previous administrations attempted to eliminate the vice, but with mixed results that did not meet Kenyans' justified expectations. Last year, I stood here and renewed our commitment to standing against corruption, an action that led to a robust national debate, renewed scrutiny of public officers and strengthened institutional tools against corruption. I pledged that the days of wanton corruption were numbered and those who chose the way of graft would be brought to book. Today, there are more than 360 corruption cases before the courts, most of them involving senior public officials. I took the unprecedented step of dismissing a third of my Cabinet; a very painful but necessary decision.

Those, in years gone-by, who might have used their positions as a shield against prosecution, find themselves today called to account for their actions. Cabinet Secretaries, Principal Secretaries, Governors, and several chief executives of state corporations have been charged for offences related to corruption. My message is clear: there will be no sacred cows.

To complement investigation and prosecution, we are investing in preventive measures, as well as tracking, seizing, and confiscating the proceeds of corruption. Let me briefly explain our strengthened approach. We have put in place a multi-agency institutional framework, bringing together all entities responsible for investigation and prosecution. In this Financial Year, we have set aside an additional Kshs1.6 billion to support this endeavour. The sharing of information between them is now more efficient and operational aspects of investigations and prosecution are now being completed without undue delays.

The Chief Justice has created a specialised division of the High Court to handle corruption and economic crimes. The Director of Public Prosecutions has in the last year trained and deployed 90 additional special prosecutors to try corruption cases. The Financial Reporting Centre and the Asset Recovery Agency are now operational. Consequently, we have traced, and are now preparing for seizure, property and assets worth Kshs1.6 billion acquired using proceeds of corruption. We intend to create a Fund into which the recovered funds will be deposited, with a view to use them for special projects to uplift the vulnerable in our society.

(Applause)

We have enhanced our co-operation with different jurisdictions through mutual legal assistance agreements. This means that hiding the proceeds of corruption will get more difficult, here at home and abroad. We will seek to prosecute the corrupt even if they seek refuge outside our borders. We have also worked with the private sector to develop tools and agreements that will ensure that it does not drive corruption in the public sector. These efforts are bearing fruit. This is demonstrated by the recent quick tracing and seizure of Kshs400 million of assets acquired through stolen National Youth Service (NYS) funds. There has also been progress in the Jersey and Anglo-Leasing cases. To reduce the temptation and opportunity for corruption, and increase efficiency, my Government has enhanced the automation of service delivery.

Speakers, hon. Members, fellow Kenyans, I understand the frustrations of those who feel that investigative and court processes have been manipulated by the corrupt in order to escape accountability, delay and derail justice. It is crucial, therefore, that the judiciary reduces and eliminates the frivolous exploitation of legal technicalities to defeat the course of justice.

Hon. Speakers, hon. Members and fellow Kenyans, I understand the frustration of those who feel that investigative and court processes have been manipulated by the corrupt in order to escape accountability, delay and derail justices. It is crucial therefore that our judiciary reduces

and eliminates the frivolous exploitation of legal technicalities to defeat the course of justice. Kenyans are justified to demand from the judiciary a tightened regime that is impatient by unwarranted delay. The judiciary has the funding and the requisite leadership and must therefore play its rightful role. It must not be perceived to be helpless, a bystander or complacent in this war. That is a threat to our development and security. They have cases before them and should conclude them and tell Kenyans the verdict.

Following the measures I took last year, I am encouraged by the overwhelming support Kenyans and indeed our friends abroad continue to give us in this fight. Everywhere I have gone, people have spoken clearly, demanding that corruption must be eliminated. I believe that this war must and will eventually be won. I will, today, be tabling before this House, the report showing cases of corruption that are already in court and another report showing frozen assets acquired using corrupt means.

Hon. Speakers, hon. Members, fellow Kenyans, our founding fathers fought for Independence to use our freedom and sovereignty to fight poverty, ignorance and diseases--- One of them is walking in to the Chamber right now.

(Sen. G.G. Kariuki walked into the Chamber)

In fact, this was part of the original Nationalist Promise before we re-imagined it under our Vision 2030. That is why I am of the firm belief that Kenya must make transformative investments in health and education. The proper healthcare of every Kenyan remains a core priority of this administration. Towards this end, we have continued to invest heavily in healthcare. To date, the free maternity programme has doubled the number of Kenyans who have access to affordable maternal healthcare from 600,000 in 2013 to 1.2 million in 2016. Mothers across the country have benefitted greatly from this intervention. We are aware that there is still work to be done in this area and I want to assure the nation that we will remain engaged in the pursuit of better maternal healthcare for all women across Kenya.

All of us know the cost of treating major chronic diseases such as cancer, diabetes, kidney failure, just to mention but a few. These diseases have bankrupted many a family. Many of us have had to endure requests for contributions towards medical costs. That is why my administration initiated the Managed Equipment Services Scheme so that Kenyans can find the care that they need at the prices they can afford and in places accessible to them.

Our people will no longer have to travel to Nairobi or abroad for that matter to find the specialist medical treatment that they need. The goal and objective of this programme is quite simple. We are equipping two hospitals, One Level Four and one Level Five in each county with state of the art equipment. The intention is to have Level Four and Level Five hospitals in every county. We want this by function and not by name.

(Applause)

Our four national referral hospitals will also receive equipment so that they can diagnose and treat these illnesses. The project is run in close collaboration with our county governments. As an illustration of the impact of this project, in 2013, there were only 44 dialysis machines in our public health institutions. Indeed, most of these were in Kenyatta National Hospital and Moi Referral Hospital in Eldoret. By December of this year, we will have a total of 289 dialysis machines spread across the country. Indeed in 2013 there were only 58 ICU beds in our public

hospitals and again those were largely in Kenyatta and Moi Referral Hospitals. By the end of this year, we will have 130 ICU beds spread across the country.

In 2013 there were only 10 ultrasound machines in our public hospitals. By the end of this year, we will have over 100 ultrasound machines in our public hospitals. The availability of this equipment in county medical facilities has had great impact on the lives of people such as Japheth Muoki, whom I happened to meet when I went to open the Machakos Hospital. One had to live in Kibera near KNH to beat the long queues. Thanks to the managed equipment scheme, he has now managed to go home to his home County of Machakos and he now has regular and comfortable access to the equipment he needs for his dialysis.

We know that there are many like him across the country. My promise to them is that working together with our governors, we shall soon reach each and every single one of you and you will receive treatment at prices that you can afford and in a hospital close to your home.
Nimekauka kidogo.

(His Excellency the President took a glass of water)

As I speak to you hon. Members, Homa Bay hospital, Nakuru General Hospital, Gucha Hospital, Kilifi Hospital, Machakos General, Moi Teaching and Referral in Uasin Gishu County have all received major equipment upgrades under the scheme and the roll out is continuing countrywide including such places as Engineer in Nyandarua, Voi, Makueni, Chuka, Kakamega, Isiolo, Mandera, amongst others. This expansive medical infrastructure and capacity is part of meeting our end of the bargain in the Nationalist Promise.

I now focus on measures my administration has taken to ensure our education sector is in tandem with our national, social and economic development gains. Before I do that however, let me show you the state of our people's quality of education in comparative terms. The world economic forum's global competitiveness report of 2014/2015 has this to say:-

“Compared to 144 countries the quality of our education system in Kenya is 30th and first in Africa. We are 32nd in the availability of research amongst those 144 countries and training services and the first in Africa. We are 33rd in this report in capacity for innovation and the first in Africa. We are 32nd in availability of research and training services and the first in Africa. We are 33rd in this report in capacity for innovation and the first in Africa”.

These are just a partial reading of the comparative statistics. The conclusion is that Kenya is number one in Africa in multiple categories.

(Applause)

It is a testament to our high standards, reflecting our expectations as a people, but we want to still do more. It is not enough to be number one in Africa. We must be able to become even better educated, more competitive, more driven to have the ability to attract the world's cutting edge industries and investments in our economy.

My administration takes this as a priority. It is also part of our Nationalist Covenant to eliminate ignorance. We cannot compromise or reverse the gains we have made so far. That is why we have taken swift and stern action against those involved in the corrupting of our examination system.

(Applause)

Hon. Speakers, I am convinced that technology and the ability to innovate it, and use it to transform businesses and agriculture is the bright future of our young people. They must be empowered. We must equip them to be future-ready. In recognition of this, we undertook to provide digital devices to Standard One pupils in every public primary school. It has taken time, but we were and are working on the infrastructure necessary to realize this goal. Today, approximately 22,000 public primary schools in every corner of our country have been connected to electricity.

(Applause)

Mr. Speaker, Sir, I am pleased to report here today that our promise to roll out the digital learning programme will be fulfilled this year. The learning devices, I am glad to say, are in the country, and are being subjected to tests. Over 1 million class one pupils will have access to digital learning devices, and appropriate curriculum which has already been digitized for Standard one and two. Equally, 60,000 teachers have already been trained to support the digital learning experience.

(Applause)

Other key indicators of our ICT master-plan remain firmly on track. Indeed, in the last three years alone, we have seen huge leaps in our mobile phone penetration and subscribers.

2G mobile phone penetration increased from 75 per cent in 2013 to 94.4 per cent in December 2015. There are only 116 sub-locations left in the country that are not covered by basic mobile voice services. This is down from 1,119 sub-locations that had no network in 2013.

The total number of mobile subscribers has increased from 29.7 million in 2013 to 37.7 million in Dec 2015 while the internet penetration has doubled from 41.6 per cent in 2013 to 82.6 per cent in Dec 2015. The number of internet users increased by an additional 21 million in the last 3 years to hit 35.5 million users in December 2015. My administration has created an enabling policy environment for continued investment in ICT. This is evidenced by the growth of companies such as *M-Kopa*.

The facts that I have shared today speak to how technology has enlarged and enhanced the democratic space for all Kenyans. How it has helped us to “leapfrog” our peers by giving us access to knowledge and information at our fingertips regardless of where we are in the country.

It is a testament to how expansion in access to electricity is creating an enabling environment to harness these technologies, establishing a virtuous cycle that enables Kenyans take better control of their lives. More connectivity means that every Kenyan has worldwide information at their fingertips. We can learn faster and feed this knowledge into our lives and enterprise. We are a developing country that is steadily taking on the characteristics of a developed nation.

(Applause)

Hon. Members, as we speak, my administration has already began consulting stakeholders to gain their assent and support for the proposed changes to the current 8-4-4 system to maintain the high standard that Kenyans deserve and to make certain that our qualifications are globally credible and acceptable. We are also working with them to restore the

integrity of our exam system. We expect to announce the results of this engagement with stakeholders on the 8-4-4 system and to present to the country a new direction in the education of our youth that will produce all rounded students with skills and values for the Kenya that we are building. Education has been the vital pipeline to opportunity in Kenya. We cannot afford to leave any child behind.

Hon. Members, in 2015, over 925,000 Kenyan children sat for the Kenya Certificate of Primary Education (KCPE). This year, when we did the Form One selection, only 759,000 received places in public and private secondary schools. The result of this is that over 167,000 of our young boys and girls are sitting at home, idle and vulnerable to the lure of vices. It is my determination to reduce this gap to zero by next year.

(Applause)

To this end, I wish to engage with Members of the National Assembly to ensure that by 2017; together we can build 3,000 new classrooms in secondary schools that are required to achieve a 100 per cent transition. I also wish to work with Members of the National Assembly to provide and to ensure that together we provide sufficient capitation for all our students.

Hon. Members, this is to attain the full promise of our Nationalist Covenant that requires that no child be left uneducated. I implore Parliament and especially the National Assembly to support us in this endeavour.

(Applause)

Hon. Members, the focus should now be making our youth employable by equipping them with appropriate technical skills. Our labour market suffers a huge deficit of technical skills. This was brought to bear with the exploration for oil by Tullow in Turkana. This brought home the reality when they had to import specialized welders from other countries because we did not have the requisite skills available here in Kenya. We also need to make our technical jobs attractive. We, therefore, need more technicians, chefs, masons, plumbers, welders and agricultural related workers to close this gap. My Government has committed and completed 54 new technical training institutes and plans to construct an additional 76 such institutes. This represents 100 per cent increase in the number of institutes in this country since 2013.

By September 2016, we expect a student enrolment of 350,000 young men and women. We have also invested in the Kenya Medical Training colleges (KMTCs). We have added an additional 33 more county campuses to reach a total of 54 across our nation. Students enrolled in these KMTCs have increased from 19,000 to over 25,000 in the last three years. This is in line with our aim to modernize the health sector, not just through brick and mortar and equipment, but also by building the capacity of our young men and women. This is also part of the Nationalist Promise.

Fellow Kenyans, we have vulnerable Kenyans that deserve a helping hand. We are not a rich country able to afford an extensive welfare system, but we are a kind-hearted people who want to help those most in need. My administration has undertaken to provide "uplift" to those who most sorely need it. These are the orphaned children, the elderly and persons with severe disabilities. In the last year, working with some of our development partners, we have benefited over 717, 000 households compared to just over 500,000 in the previous 12 months.

In budgetary allocation, we have transferred just over Kshs 18 billion shillings in cash transfers compared with Kshs 14 billion in the previous 12 months. Today, Mama Jillo from Malindi who is a senior Kenyan citizen has received the helping hand of the Kenyan people through their Government. The same goes for Amina Kazungu from Kilifi who suffers from disability. They do not need food aid any more. Their dignity and their well being have been uplifted.

When I entered office, we also had less than five million Kenyans enrolled in the National Hospital Insurance Fund (NHIF). My administration initiated a recruitment drive that today has increased enrolment to almost 7 million. This means that the cost of medical care has been reduced for millions of Kenyans, as the package by NHIF has also been expanded. My appeal to you, hon. Members, is that you join us in ensuring that we register more Kenyans to ensure that the heavy burden of medical expense and cost that Kenyans bear is reduced through adequate insurance cover.

Fellow Kenyans, these are concrete manifestations of our embracing the values of social justice and human dignity articulated in our Constitution. My administration is also working hard to ensure that every sector of the economy is uplifted. We know that agriculture is the mainstay of most of our people. It is from farming revenue that school and health fees are paid. To boost the earnings of our farmers, my administration has undertaken measures to address burdensome licensing fees and levies that remain a bottleneck, particularly in sugarcane, tea and coffee farming.

As you will recall, not long ago, I appointed a taskforce to address the challenges to the coffee sub-sector. In line with their preliminary recommendations, I have from today directed that all coffee licensing fees and levies be waived with immediate effect.

(Applause)

I expect this to increase the revenues received by the coffee farmers by 4 per cent. I have also directed the Ministry of Agriculture, the Office of the Attorney-General, and the National Treasury to review the other sectors, notably, sugar and tea to come up with a recommendation on the way forward in these sectors. We will extent these efforts also to regulatory fees in multiple sectors that continue to make it costly as well as a time consuming affair to undertake new projects or to expand existing ones. To this end, I am also today directing that the prohibitive levies at the National Environment Management Authority (NEMA), the National Construction Authority (NCA) as well as the Communications Authority of Kenya (CAK) be reviewed with immediate effect.

(Applause)

Hon. Members, ours must not be the business of making it difficult for Kenyans to do business. We must simplify and make it cheaper for our people to do business. In the same vein, I call upon our county governments to follow suit in undertaking a review of prohibitive licences and levies under their purview. I promise you that once done, you will all see the impact on job creation in this country.

Fellow Kenyans, under my administration, Article 34 of the Constitution has truly been brought to life. Our media is the vanguard of our values as a nation and they hold a special place in our socio-economic life. They form the essential bridge between the different strata of our

society. They help to convey critical information, shape opinions and the psyche of our people. The media shines light on the misdeeds that must be laid bare to the public. It sings songs of praise that galvanize our nation during times of victory. The media is also a broad sword that has grown even more potent with the evolution of new social media channels that bring on board the multiplier effect of citizen journalism. For that very reason, I will never tire to remind the Fourth Estate that with great power comes an even greater onus of responsibility; the responsibility to tell the truth, the responsibility to be fair and balanced in their criticism as well as in their praise of those in the public arena but most importantly, the responsibility and sacred duty to safeguard the unity of our nation.

(Applause)

Fellow Kenyans, hon. Members, these are difficult times. Our country faces various potential threats. The terrorists who seek to attack our people are already trying to anticipate the media's response to their evil acts. It is up to you to help us frustrate their ends. As journalists, editors and owners, you must always remember that the fate of millions of Kenyans hangs precariously on the tip of your ink pen. You can choose to use your platform to burn or to build your country. I urge you, today, to use it for the latter. I invite you to work with my Government to strengthen and protect our democratic space.

In the last year, we have made immense strides in the area of technology. The first phase of digital migration has been successfully concluded. As a result, we now have 63 licensed stations as of December, 2015 compared to only 14 that we found in 2013. Indeed, I would be justified to say that despite the vehement resistance by a section of the media to the digital migration process, it is clear that their fears were unfounded. A recent study indicates that there has been an 11.5 per cent increase in the proportion of daily television viewers.

We have seen a proliferation of exciting local talent and content on our now numerous television channels, from hilarious comedies like *Aunty Boss* to the educational entertainment offered by the *Shamba Shape Up Show*. I take this opportunity to salute our local producers like Dorothy Bosibori Ghattuba of *Spielworks Media Ltd* and Alison Ngibuini of *Al Is On Production Ltd* who have seized the opportunities brought about by digital migration, to create new jobs for hundreds of young actors, casting crew, videographers and editors. That is what we always envisioned.

Speakers, hon. Members and fellow Kenyans, the Government's most critical duty is to protect the lives and property of its citizens, as well as the sovereignty of our Republic. This task is today made more complex by violent extremism, geopolitical rivals, organised crime such as cybercrime and human and drug trafficking. I will be tabling, before the House, the report of the National Security Council (NSC) on the state of our national security, where I outline specific measures that have been undertaken by my Government to secure the people of Kenya.

Allow me now, hon. Speakers, to focus on a few important issues that touch on the security of our nation. We have implemented specific strategies that deal with our security challenges and have made a number of cross-cutting multi-sectoral interventions. These include review of security related legislation, roll out of a collaborative approach to counter terrorism and an integrated command and control centre. We have undertaken National Police Service reforms, reforms to the national administration, immigration services, correctional services, peace building and conflict management, as well as citizen participation in security through our *Nyumba Kumi* Initiative. Our reforms include the Integrated Population Registration System,

operationalisation of the Asset Recovery Agency, Integrated Border Management Programmes, inter-agency collaboration in investigation and prosecution, multi-agency team on eradication of corruption as well as regional and international initiatives.

Specifically, hon. Speakers, we have increased the number of police officers by 10,000 in the last 12 months, with an additional 10,000 set for recruitment next week.

(Applause)

We have also increased the number of patrol vehicles on our streets through the managed lease service framework and we can all testify of a much stronger police presence across the country.

Modernizing our security apparatus has been a cornerstone of our agenda and we have invested billions of shillings over the last year in specialized government transport equipment, weapons, communication, air borne capabilities as well as personal body armour for our officers.

The newly launched National Police Service Communication and Surveillance Command Center is a noteworthy illustration in this regard. This facility is the nucleus of our strategy to leverage the benefits of technology to improve both the efficiency and effectiveness of our security services.

Fellow Kenyans, we cannot run away from the fact that we face a threat of terrorism driven by a globalized ideology that is fanatically opposed to the idea of a multi-cultural and peaceful society. It seeks to destroy our sovereignty, democracy and to annihilate our liberty. This threat is not national; it is global in nature. We have seen it across the world; most recently in Pakistan, Belgium, France, Nigeria, Ivory Coast, Mali and Turkey, just to mention a few. One of this country's greatest strengths is our religious and cultural diversity and I am proud that our people refuse to be divided by the reckless actions of these criminals.

(Applause)

Today, I want to pay particular special tribute to a Kenyan of Muslim faith; Salah Farah. He was shot and killed by terrorists near Mandera for the simple fact of shielding Christians from attack.

(Applause)

He died defending people whom he did not even know. This is because he believed in their right to freedom of worship and he knew that every single life irrespective of faith is sacred. He is a powerful symbol of our country's ambition to attain the full expression of a secure, cohesive nationhood, and he is a costly reminder that we all have a role to play in protecting our freedom. I felt especially proud this afternoon speaking with his brother and his wife, when they mentioned to me that not only are they proud of their husband and brother but they too are ready to commit their lives to protect our way of life.

(Applause)

Salah exemplified the best of who we are as a country; a diverse people united by our common love for liberty and peace and above all, being our brothers' keeper. His actions epitomize the Nationalist Covenant we so desire to live by. I today acknowledge Salah's family

and I want to tell his children that their father's sacrifice will never be forgotten and will long be admired.

In recognition of his remarkable act of valour and, indeed, on behalf of the people of Kenya, I hereby posthumously award, Salah Farah the Order of the Grand Warrior of Kenya.

(Applause)

Speakers, Sir, hon. Members and fellow Kenyans, when my administration assumed office, we promised to provide an answer to the perennial land question. We pledged to address the structural challenges that affect our land tenure systems. This we did because we know how important land is, as a productive resource, to the realisation of our development agenda. Land is the basis of all other economic activities and, therefore, the sanctity of title deeds should never be in doubt. I am happy to report that in the last one year we have issued an additional one million new title deeds, bringing the total number of newly issued title deeds to 2,405,000 since 2013. We are on track to surpass our target of three million new title deeds by 2017.

(Applause)

From Mpeketoni in Lamu to Waitiki in Mombasa; Kihiu-Mwiri in Murang'a to the Nyeri colonial villages; settlement schemes in Taita-Taveta to those of Trans-Nzoia - in every region of the Republic - substantive solutions to old land disputes have been realised. The progress is there to see for those who choose to do so. We know that much remains to be done, but we are confident that we shall complete this complex task and remain true to our promise.

I take this opportunity to commend the National Land Commission (NLC) for collaborating with the Ministry of Lands. We have been able to undertake thorough audits of the 13 major land registries, to facilitate their digitisation and introduce cashless digital payment systems for various land-related services. In addition, this collaboration has given birth to a one-of-a-kind digital titling centre that enables advanced security and transparency features. It has also led to the national geo-spatial infrastructure that will come into operation at the end of this year, setting the stage for further development in Geographical Information Systems (GIS) that will improve service delivery and development initiatives.

Hon. Members, we have taken steps to improve access to Government services; creating Huduma Centres that offer Kenyans a range of vital public services under one roof. The Huduma Centres are offering a wide range of different government services and serve approximately 35,000 Kenyans per day. Each of these centres is a visible manifestation of our desire to improve the citizen's experience of Government and show the Kenyan people that serving them quickly and comprehensively is both our priority and pleasure.

Speakers, hon. Members and fellow Kenyans, Kenya's international standing continues to improve. We have cemented our role as the champion for regional integration and security. Peace-building, ceasefire and national reconciliation processes in the region are often informed by efforts supported and facilitated by Kenya. Most recently, we have witnessed the product of our persistence and faith in peace in the reconciliation underway in our neighbouring South Sudan. Our soldiers are skilled and brave peacekeepers in multiple theatres, particularly in Somalia, the Democratic Republic of Congo (DRC) and South Sudan, just to mention a few.

Our medical staff volunteered to go to West Africa to fight Ebola, a testament of their skill and bravery, and our nation's leading place in making the world a better place. Kenya

matters on the world stage. Our diplomats – and I particularly single out Amb. Kamau – led in the negotiations that led to the Sustainable Development Goals (SDGs). We were a crucial player in advancing a World Trade Round that had stalled when we hosted the WTO Ministerial Conference in Nairobi; the first time it has ever been hosted in Africa. We are an important player in multilateral negotiations on trade, environment, sustainable development, and a host of other global challenges.

In the past year, we have also hosted major international events including the Global Entrepreneurship Summit. I am happy to report to Kenyans that, that trend will continue this year when we host the First Tokyo International Conference on African Development (TICAD), the first ever to be held outside Japan. Also, later this year, we will host the United Nations Conference on Trade and Development (UNCTAD) which will be holding its 14th Session here in Nairobi.

In 2015, one renowned world leader after another visited Kenya. To name but a few, His Holiness Pope Francis made a very successful three day visit choosing Kenya as a first destination on his first African journey. Earlier in the year, President Barack Obama and I hosted the Global Entrepreneurship Summit in Nairobi and the Italian Prime Minister, the Rt. Hon. Matteo Renzi made a state visit and we are welcoming more this year.

Hon. Members, fellow Kenyans, these visits and conferences are a clear proof of the trust you have placed in the leadership of this country. Kenyans are seizing this moment to create economic opportunities and to expand our influence globally. Our international standing is high.

Hon. Speakers, hon. Members, fellow Kenyans, all these efforts are part of my generation's contribution to the Nationalist Covenant. Just as we have inherited and re-imagined the efforts of our founding fathers, so shall future generations inherit the fruit of our labour; that far, we have kept our part of the bargain of the sacred labour to build a great nation. Earlier in my Address, I singled out the heroism of Mr. Salah Farah and our men and women on the front line. In our way, let each one of us make a sacrifice to make Kenya great.

Hon. Members, let us embrace tolerance. Let us celebrate each other. Let us avoid utterances and actions that set one Kenyan against another Kenyan. Kenya is big enough for all of us. It is indeed so. This must be our solemn contract with our nation and with one another. It must be part of our Nationalist Covenant. We must take this trajectory; and if we take this trajectory, we will avoid the pitfall of passing on national challenges to our children. We will enjoy the pleasure of sharing with them the dividends of our covenant in both material and spiritual form.

Hon. Speakers, it now my pleasure to submit to Parliament the Annual Report on the State of National Security, the Report on Measures taken and Progress Achieved in the Realisation of the National Values and to the National Assembly, the Report on Progress made in Fulfilling our International Obligations.

God bless Kenya. God bless us all. *Asanteni sana.*

(Applause)

(H.E President Uhuru Kenyatta submitted the documents to the Speaker of the National Assembly and the Speaker of the Senate)

ADJOURNMENT

The Speaker of the Senate (Hon. Ethuro): Your Excellency, Sir, the Speaker of the National Assembly, Honourable Members of the Senate and the National Assembly, the Senate stands adjourned until Tuesday, 12th April, 2016 at 2.30p.m.

The Speaker of the National Assembly (Hon. Muturi): Hon. Members of the National Assembly, the National Assembly now stands adjourned until Tuesday, 12th April, 2016 at 2.30p.m.

**DEPARTURE OF HIS EXCELLENCY
THE PRESIDENT**

*(Hon. Members rose in their places
while His Excellency the President left the Chamber)*

Parliament rose at 5.30 p.m.

APPENDIX VI

BRIEF TO THE NATIONAL ASSEMBLY COMMITTEE OF PRIVILEGES ON COURT CASES FILED BY HON. JAMES OPIYO WANDAYI AGAINST THE NATIONAL ASSEMBLY, THE SPEAKER OF THE NATIONAL ASSEMBLY & THE ATTORNEY-GENERAL.

Brief facts;

1. Honourable James Opiyo Wandayi is the Member of Parliament for Ugunja Constituency.
2. On 31st March, 2016, the Member for Ugunja Constituency was in attendance in a joint sitting of Parliament during the State of the Nation address by H. E. the President of the Republic of Kenya at the National Assembly Chambers.
3. The Member for Ugunja Constituency among other Members of Parliament brought disorder in the House and refused to withdraw when ordered to do so by the Speaker of the National Assembly pursuant to Standing Order 107 of the National Assembly.
4. The Speaker ordered that Member for Ugunja Constituency be removed from the House pursuant to Standing Order 111 of the National Assembly and be suspended from the service of the House during the remainder of the session and that the Member would forfeit the right to access the precincts of Parliament.
5. Following the directive by the Speaker, the Honourable Member of Parliament for Ugunja Constituency proceeded to the High Court of Kenya Milimani, Nairobi and filed the following civil proceedings against the National Assembly, the Speaker of the National Assembly and the Attorney General (the 1st, 2nd and 3rd Respondents respectively) namely;
 - a) Nairobi High Court Petition No. 246 Of 2016- Orange Democratic Movement, Benedict Ogola Owino, Caleb Ochieng Ogutu, Charles Oduor Ouma & Hon. James Opiyo Wandayi Vs The National Assembly, The Speaker of The National Assembly & The Attorney-General.
 - b) Nairobi High Court Judicial Review Application No 258 of 2016- James Opiyo Wandayi Vs The National Assembly, The Speaker of The National Assembly & The Attorney-General.
6. Nairobi High Court Petition No. 246 of 2016 was filed at the High Court of Kenya in Nairobi on 14th June, 2016 by the *Orange Democratic Party*, *Benedict*

Ogola Owino, Caleb Ochieng Ogutu and Charles Oduor Ouma and Hon James Opiyo Wandayi against the National Assembly, the Speaker of the National Assembly and the Attorney General. The petition was accompanied by an application for conservatory orders filed under Certificate of Urgency and seeking the following orders in summary:

- i.) That pending the hearing of the application **conservatory orders** be issued restraining the 1st and 2nd Respondents, either by themselves, their servants, assigns or their representatives from restricting the access by the 5th Petitioner to the precincts of Parliament and discharging his duties as the duly elected representative of Ugunja Constituency and or accessing any or all privileges accruing to him as an elected member of the National Assembly for Ugunja Constituency;
 - ii.) That pending the hearing of the petition **conservatory orders** be issued restraining the 1st and 2nd Respondents, either by themselves, their servants, assigns or their representatives from restricting the access by the 5th Petitioner to the precincts of parliament and discharging his duties as the duly elected representative of Ugunja Constituency and or accessing any or all privileges accruing to him as an elected member of the National Assembly for Ugunja Constituency; and
 - iii.) That the costs of this application be provided for.
7. The matter went before justice Onguto on 16th June 2016 and the Judge declined to issue any conservatory orders. Instead, he ordered the Advocate for the Member for Ugunja Constituency to Serve the parties and appear for hearing on 6th July 2016. The matter was not served on Parliament until 20th June, 2016.
 8. At the same time, on 14th June, 2016, Honourable James Opiyo Wandayi filed an application for Judicial Review at the High Court of Kenya in Nairobi, being *Nairobi High Court Judicial Review Application No 258 of 2016 Honourable James Opiyo Wandayi Versus the National Assembly, the Speaker of the National Assembly and the Attorney General* (the 1st, 2nd and 3rd Respondents respectively).
 9. The Application was also filed under Certificate of Urgency seeking the following orders in summary:

- a) That leave be granted to the Applicant to apply for an order of *Certiorari* to remove into the High Court and quash the decision of the 1st and 2nd Respondents to mention the Applicant for contempt and bar him from accessing the precincts of Parliament to discharge his constitutional function of representation.
 - b) That leave be granted to the Applicant to apply for an order of *Prohibition* to prohibit the 1st and 2nd Respondents from barring and interfering with the Applicant in any manner whatsoever from accessing the precincts of Parliament including the chambers and discharging his constitutional duty of representation.
 - c) That the order granting leave do operate as stay of the decision of the 1st and 2nd Respondents to mention the Applicant for contempt and bar him from accessing the parliamentary chamber and precincts to discharge his constitutional functions of representation pending the hearing and determination of the application for Judicial Review orders.
 - d) That the costs of this application be provided for.
10. The Speaker of the National Assembly appointed Mr. Anthony Njoroge to appear in Court and defend the matter raising the issues of Parliamentary privileges and Separation of powers.
 11. The application was heard on 17th June 2016 before Honourable Justice Odunga and the ruling thereon reserved for 4th July 2016. A replying affidavit sworn by the Senior Deputy Clerk of the National Assembly was filed in response,
 12. On 4th July, 2016 the Learned Judge delivered his ruling where he found that:
 - i.) The applicant had disclosed a *prima facie* case for the purposes of leave as it had been established that the Honourable Member for Ugunja has been banished from the House without being afforded an opportunity to be heard.
 - ii.) The court shall interrogate whether the Speaker met the threshold of fairness in applying Standing Order 111.

- iii.) The court will also consider the issue whether the decision of the Speaker violated the principles of proportionality.
 - iv.) Where a state organ has violated the Constitution, the doctrine of separation of powers is not available to that state organ and the court may intervene in the matter.
 - v.) The suspension of the Honourable Member for Ugunja constituency also affects the people of Ugunja constituency which in turn affects their sovereignty as provided under Article 1.
 - vi.) *The leave granted by the Court shall operate as a stay of the decision taken under Standing Order 111.*
13. Following the ruling, Mr. Anthony Njoroge sought instructions from the Speaker to appeal the decision to the Court of Appeal and a Notice of Appeal was filed in court together with letter requesting for court proceedings.
14. The Defence raised by the Speaker in the two matters is that the proceedings ought not to have been instituted in the courts. The proper forum for the matters in question to be considered is the National Assembly Committee of Privileges and subsequently by the National Assembly.

The two court cases are scheduled for hearing on our application consolidation of the two matter on 15th July 2016. The substantive application in *Nairobi High Court Judicial Review Application No 258 of 2016 Honourable James Opiyo Wandayi Versus the National Assembly, the Speaker of the National Assembly and the Attorney General* is set for hearing on 1st August 2016 before Justice Odunga.

Attached please find:

- a) Court pleadings filed in the two cases.
- b) The ruling in Nairobi High Court Judicial Review Application No 258 of 2016.
- c) The Court order in Nairobi High Court Judicial Review Application No 258 of 2016.
- d) The Notice of Appeal in Nairobi High Court Judicial Review Application No 258 of 2016.

e) The letter requesting for typed proceedings Nairobi High Court Judicial Review Application No 258 of 2016.

APPENDIX VII

SUBMISSION BY DIRECTORATE OF LEGAL SERVICES

SUMMARY OF RULING IN J.R. NO. 258 OF 2016 BETWEEN HON. JAMES OPIYO WANDAYI, M. P., AND THE KENYA NATIONAL ASSEMBLY & 2 OTHERS

Applicant's Case

The Hon. Member for Ugunja Constituency was attending a joint sitting of parliament during the state of the nation address by H. E the President of the Republic of Kenya on 31st March 2016. In exercise of his constitutional right of representation he aired the grievances of his constituents pursuant to his right to picket under Article 37 in an effort to draw the attention of the President to the suffering of his people. The Hon. Speaker of the National Assembly in disregard of Article 201 of the constitution ordered him out of the House without according him the opportunity to explain himself. While arbitrarily invoking the unconstitutional provisions of the Standing Order No. 111, the Hon. Speaker suspended him for the remainder of the session without regard to the provisions of the Constitution and laws of natural justice requiring a person to be accorded a right to fair hearing and administrative action. His attempts to explore internal remedial measures in order to get justice have been frustrated and his unfair and unlawful treatment has been extended to his staff who have effectively been locked out of their working stations. He has been barred from accessing the precincts of Parliament and cannot therefore discharge his constitutional duty of representation to the prejudice of the people of Ugunja. The enforcement of Standing Order 11 by the Hon. Speaker violates Constitution at Articles—

- (a) 2(1) on the supremacy of the Constitution;
- (b) 3(1) requiring every person to respect, uphold and defend the Constitution;
- (c) 10(1) and (2) on the national values and principles that bind all State organs, State officers, public officers and all persons when applying or interpreting the Constitution, enacting, applying or interpreting any law, or making or implementing public policy decisions;
- (d) 19 (2) which outlines the purpose of recognising and protecting human rights and fundamental freedoms as the preservation of the dignity of individuals and communities and promotion of social justice and the realisation of the potential of all human beings;

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- (e) 20(2) which allows every person to enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.
- (f) 27(1) which makes all persons equal before the law and affords them the right to equal protection and equal benefit of the law;
- (g) 35(1) on the right of access to information;
- (h) 38 on political rights;
- (i) 47 (1) and (2) on the right to lawful, reasonable, expeditious, efficient and procedurally fair administrative action that and further the right to be given written reasons for the administrative action if a right or fundamental freedom has been or is likely to be adversely affected by administrative action;
- (j) 48 on access to justice; and
- (k) 50(1) and (2) on the right to a fair hearing.

The Hon. Member sought that the decision of the Hon. Speaker be stayed pending the hearing and determination of his application with a view to the Court eventually quashing the decision.

Respondents' case

At the said special sitting of Parliament, some Members of Parliament including the Hon. Member disrupted the proceedings of the House thereby making it impossible for the President to address the House. The Hon. Speaker of the National Assembly and the Senate sought to admonish the disorderly members of Parliament and restore order in the House. Despite several and repeated warnings, the Honorable Member continued to engage in disruptive behaviour leading to the Hon. Speaker ordering the Hon. Member and others to withdraw from the chamber pursuant to Standing Order 107. Unlike other Members, the Hon. Member disobeyed the orders of the Hon. Speaker and declined to withdraw from the chamber. The Hon. Speaker of the National Assembly invoked Standing Order 111 to suspend the Member from the service of the House for the remainder of the session.

The Standing Orders of the National Assembly were made by membership of the National Assembly for the orderly conduct of the proceedings of the House and its committees in pursuant to Article 124(1) of the Constitution and adopted by the National Assembly on 9th January, 2013. The Standing Orders regulate the proceedings of the House and its Committees and the Hon. Speaker's role is to enforce them in order to guide the proceedings of the House. The implications of Standing Order 111 were fully

known to the Hon. Member and the actions of the Hon. Speaker on the material day were lawful. Standing Order 111 incorporates due process as required under Articles 47 and 50 of the Constitution and the Fair Administrative Action Act, 2015. Standing Order No. 1 of the National Assembly allows the Hon. Speaker to guide the House on any procedural which are not covered within the text of the Standing Orders such as review of or appeal against any orders made pursuant to Standing Order Nos. 107 to 111. Had the Hon. Member challenged the decision passed against him, the Hon. Speaker would have had no option but to present the appeal to the House for resolution.

At no point was it declared that the decision passed against the Hon. Member could not be challenged. The question of the Hon. Member's discharge from the service of the House is one of privilege as it relates to the loss of his privileges and immunities for the remainder of the session of the House. As per Parliamentary precedent and practice, a House of Parliament ought to be allowed adequate opportunity to resolve and determine any question touching the rights of the House collectively, its safety, dignity and integrity of its proceedings as well as the rights, reputation and conduct of its Members. A question such as that of the loss of a Member's privileges and immunities is given the first priority before any other business, save for preliminary items, whenever it is brought before House. The Standing Orders afford a Member a fair hearing both during the proceedings of the House and in the event that he or she is dissatisfied with a directive from the Hon. Speaker during proceedings. The legitimate expectation of the Hon. Member had not been breached as he willfully failed to avail himself to existing avenues of reviewing the decision made against and sanctions imposed on him. The issue of disciplinary proceedings by a House of Parliament against its Member, being a question of privilege, ought to be first handled and dispensed with in finality by the House to guard against arbitrary and unreasonable encroachment into the affairs of the House. Intervention by the Courts would breach the provisions of Article 124 of the Constitution which empowers Parliament to establish its committees and make Standing Orders for the orderly conduct of its proceedings. The orders sought violate the provisions of Article 117 on the powers, privileges and immunities of Parliament, its committees, the leader of the majority party, the leader of the minority party, the chairpersons of committees and members. The orders sought in the Application violate the principle of separation of powers in so far as they seek for the Court to interfere with the internal management of Parliament. Judicial review is strictly limited to a review of the procedure of a public body and the Application however seeks for the Court to delve into the merits of the decision of the Hon. Speaker.

Ruling

1. The Hon. Member contended that he was named and banished from the House without being afforded a hearing. A decision made pursuant to Standing Order 111, being similar to one made by the Court where there is contempt on the face of the Court should observe the principles of fair administration of justice set out in Article 47 of the Constitution. Section 36(4) of the High Court (Organisation & Administration) Act, No 27 of 2015 requires the Court to observe such principles when punishing for contempt. The question of whether the procedure adopted by the Speaker met the threshold of fairness or not is a matter which will await the hearing.
2. Article 47 of the Constitution is emphatic on the fairness of administrative action. The Court ought to consider the twin overriding principles of proportionality and equality of arms which are aimed at placing the parties before the Court on equal footing and see where the scales of justice lie considering the fact that it is the business of the court, so far as possible, to secure that any transitional motions before the Court do not render nugatory the ultimate end of justice. The Court, in exercising its discretion, should therefore always opt for the lower rather than the higher risk of injustice.
3. The Respondents contend that the decision taken by the Hon. Speaker met the principles under the Fair Administrative Action Act. Section 5 of the said Act provides —
 - (1) In any case where any proposed administrative action is likely to materially and adversely affect the legal rights or interests of a group of persons or the general public, an administrator shall-
 - (a) issue a public notice of the proposed administrative action inviting public views in that regard;
 - (b) consider all views submitted in relation to the matter before taking the administrative action;
 - (c) consider all relevant and materials facts; and
 - (d) where the administrator proceeds to take the administrative action proposed in the notice—
 - (i) give reasons for the decision of administrative action as taken;

- (ii) issue a public notice specifying the internal mechanism available to the persons directly or indirectly affected by his or her action to appeal; and
 - (iii) specify the manner and period within the which such appeal shall be lodged.
- 4. As the Fair Administrative Action Act, 2015 is an Act of Parliament enacted pursuant to the provisions of Article 47 of the Constitution, it is arguable whether the failure to comply with its provisions may by extension be construed to amount to a violation of the spirit of the Constitution. If that were to be the position, the Respondents admit that this Court has the power to investigate actions which amount to a violation of the Constitution.
- 5. When any state organ steps outside its mandate, the Court will not hesitate to intervene.
- 6. Where it is alleged that an organ of the State has acted in a matter that violates the Constitution, the doctrine of separation of powers does not apply. Whereas, the Court cannot make a definitive finding at the preliminary stage of proceedings, the issue cannot be summarily dismissed offhandedly as being frivolous.
- 7. The period of suspension of the Hon. Member is still running and the act complained of has not come to an end. Accordingly, the Court is still seized of the jurisdiction to arrest the act from being completed.
- 8. A stay of proceedings may include stay of the decision itself where the circumstances permit. Whereas the Court appreciates that in certain cases a stay may be granted even where its effect may be to temporarily reverse the decision complained of, that remedy may only be resorted to in exceptional cases and the onus is upon the Hon. Member to prove that such exceptional circumstances exist.
- 9. In giving effect to rights under the Constitution, the Courts must balance the fundamental rights of an individual against the public interest in the attainment of justice in the context of the prevailing system of legal administration and the prevailing economic, social and cultural conditions.
- 10. Courts of law and Independent Tribunals are properly entitled pursuant to Article 1 of the Constitution to take into account public or national interest in determining disputes before them where there is a conflict between public interest and private interest by balancing the two and deciding where the scales of justice tilt. The principle of proportionality is now part of our jurisprudence and therefore it is not

unreasonable or irrational to take it into account in arriving at a judicial determination.

11. The suspension of the Hon. Member from the National Assembly and its functions runs to almost a whole year. The decision also affects the people of Ugunja Constituency who elected the *Hon. Member* to represent them in the National Assembly. The interests of the people of Ugunja are not trivial or inconsequential as Members of Parliament only exercise delegated authority. The consequences of the decision of the Hon. Speaker are that the people of Ugunja stand to be locked out from being represented and their interests articulated in the National Assembly for almost a year. They cannot for example determine the manner in which their taxes are to be expended.
12. Article 124(3)(b) of the Constitution provides that the proceedings of either House are not invalid due to the presence or participation of any person not entitled to be present at, or to participate in, the proceedings of the House. Even if the Hon. Member's application were to fail, his participation in the House proceedings may not render the decision passed by his participation null. On the other hand, the Constitution does not provide for a cure for a scenario where the application was to succeed and yet as a result of his lack of participation, decisions which could have possibly carried the day did not see the light of the day making such success of no value to him or his constituents in respect of the proceedings in which he ought to have participated but did not.
13. Parties who have invited the Court to adjudicate on a matter which they are disputing over ought not to create a situation whereby the decision to be made by the Court would be of no use. In the public interest, an order is issued staying the decision made by the Hon. Speaker of the National Assembly, on 31st March, 2016 suspending the Hon. Member from the remainder of the Session of the House pending the hearing and determination of the proceedings or further orders of this Court.